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The PEPPER V Report

Benchmarking Employee Participation in Profits and Enterprise Results in the European Union, the United Kingdom and the United States

With a foreword by

the European Commissioner for Jobs and Social Rights,

Nicolas Schmit

Co-funded by the European Union

The information and views set out in this Study are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this Study.

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prepared by the Kelso Institute Europe

in cooperation with European University Viadrina and the Inter-University Centre network

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Abstract

This Report provides an overview of the development of employee financial participation, i.e., employee share ownership and profit sharing, across the EU-27, the United Kingdom, and the United States of America as of January 2024. Against the background of the policy development of the past 35 years, it highlights the growth of financial participation over the last decade using the most recent cross-country data available, i.e., the 2021 CRANET Survey, the 2019 European Company Survey and the 2015 European Working Conditions Survey, which also show its potential positive im-pact on employment and productivity. However, our analysis also shows that positive distributive effects in the EU and the US are called into question by the concentration of capital ownership and capital income at the top in the two regions.

The report provides a like-for-like comparison of all countries under consideration including 29 individual country profiles. Countries are ranked using three indicators, i.e., (i) legal framework, (ii) fiscal incentives, and (iii) political support / social dialogue. It argues that incentives should be extended to all enterprises including those from the social economy. Policy recommendations are provided at the national level and to the European Commission, amongst other for a "Common European ESOP regime". Finally, the report highlights the complementarity of employee and consumer financial participation in the context of the "Proximity and Social Economy industrial ecosystem" and the Energy Transition.

Preface

The European Commission’s interest in employee financial participation (EFP) is reflected in the publication of the PEPPER reports. The first report, published in 1991, was followed by a Council Recommendation in 1992 calling for the direct involvement of Member States (MS) and the social partners in promoting financial participation schemes. A second PEPPER report, based on replies to a questionnaire sent to MS, explored in 1997 what they were doing to encourage the use of EFP schemes and put forward ideas for further promoting their use. In 2006 a third PEPPER report extended the analysis to the new member and candidate countries after the eastward enlargement of the EU. In 2009 the PEPPER IV report closed the gap between PEPPER I/II (1991 EU 12 / 1997, EU 15) and PEPPER III (2006, 10 new MS / 4 candidate countries) implementing the benchmarking indicators developed by the European Foundation for the Improvement of Working and Living Conditions in all 27 EU member and candidate countries. The PEPPER I-IV reports are accessible at:
https://www.eurofound.europa.eu/areas/participationatwork/pepperreports

This PEPPER V report summarises and updates the previous PEPPER reports. It is a follow-up of the 2014 European Parliament pilot project “The Promotion of Employee Ownership and Participation” for the European Commission’s DG MARKT (Contract MARKT/2013/0191F2/ST/OP); see final study at: https://op.europa.eu/en/publication-detail/-/publication/3077af3b-ecd4-11e5-8a81-01aa75ed71a1.

Complying with the concept of the previous PEPPER reports and building on them this report provides a solid basis for leveraging the development of EFP in the EU and to facilitate further reforms triggered by the European Commission and Parliament. It has been co-financed by the Kelso Institute Europe and the European Commission, building on the previous Commission-financed PEPPER reports and the DG MARKT Study in particular regarding the development of the dissemination tool “Virtual Centre for EFP” to make the 29 Country Profiles publicly available.

The editing of the country reports was supervised by Jasper Lüke. The individual countries’ Chapters of the PEPPER V Report are based on the country profiles of the previous PEPPER I-IV Reports and were updated and expanded by a network of affiliated experts for the most part already involved in the previous reports. The authors would like to thank the European Foundation for the Improvement of Living and Working Conditions for granting them early access to the ECS 2019 data.

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Abbreviations

APSS	Approved Savings-Related Share Option Scheme
ASLE	Agrupación Empresarial de Sociedades Laborales de Euskadi (Business Association of Worker-Owned Companies of the Basque Country)
CEO	Chief executive officer
CETREPS	Calculating Effective Tax Rates for Employee Participation Schemes
CEREFP	Common European Regime on Employee Financial Participation
CGT	Capital gains tax
CIT	Corporate income tax
CONFESAL	Confederación Empresarial de Sociedades Laborales de España (Business Confederation of Worker-Owned Companies of Spain)
CRANET	The Cranfield Network on International Human Resource Management
CSOP	Consumer Stock Ownership Plan
DKK	Danish krone
EBO	Employee buyout
EBT	Employee benefit trust
ECJ	European Court of Justice
ECS	European Company Survey
EFP	Employee financial participation
e.g.	exempli gratia (for example)
EIB	European Investment Bank
EMI	Enterprise Management Incentives
EmpC	Employer company
ES	Employee share
ESO	Employee share ownership
ESOP	Employee Stock Ownership Plan
ESOT	Employee Stock Ownership Trust
ESP	Spanish peseta
etc.	et cetera (and so forth)
EU	European Union
EU-13	Member States, which joined the European Union after 1 May 2004: Bulgaria, Croatia, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia, Slovakia
EU-15	Member States, which had joined the European Union before 1 May 2004: Belgium, Denmark, Germany, Ireland, Spain, France, Greece, Italy, Luxembourg, Netherlands, Austria, Portugal, Finland, Sweden, United Kingdom
EU-27	The 27 current Member States of the European Union
EUR	Euro
EWCS	European Working Conditions Survey

FCPE	Fonds communs de placement d'entreprise
GBP	British pound
HR	Human resources
HUF	Hungarian forint
IAFP	International Association for Financial Participation
i.e.	id est (that is)
IntE	Intermediary entity
JSC	Joint-stock company
LLC	Limited liability company
Ltd	Limited
PEE	Plan d’epargne d’enterprise
PEPPER	Promotion of Employee Participation in Profits and Enterprise Results
PIT	Personal income tax
PLN	Polish złoty
PS	Profit sharing
PSM	Propensity score matching
SAL	Sociedad Anónima Laborales (plural: Sociedades Anónimas Laborales)
SLL	Sociedad Limitada Laboral (plural: Sociedades Limitadas Laborales)
SAYE	Save-As-You-Earn Scheme
SIP	Share Incentive Plan
SL	Sociedad Laboral (plural: Sociedades Laborales)
SME	Small and medium-sized enterprise
SNPI	De Stichting Nederlands Participatie Instituut
SO	Stock options
SP	Spółka pracownicza (plural: Spółki pracownicze)
SSC	Social security contributions
TEC	Treaty establishing the European Economic Community (Treaty of Rome, now Treaty on the Functioning of the European Union) of 25 March 1957, prior to the revision by the Treaty of Lisbon
TEU	Treaty on European Union of 1 February 1992 as amended by the Treaty of Lisbon signed on 13 December 2007, entered into force on 1 December 2009
TFEU	Treaty on the Functioning of the European Union (formerly Treaty establishing the European Economic Community of 25 March 1957) as amended by the Treaty of Lisbon signed on 13 December 2007, entered into force on 1 December 2009
UK	United Kingdom
US	United States of America

Foreword

The promotion of employee participation in profits and enterprise results (PEPPER) has been on the agenda of the European Commission for more than three decades. The PEPPER V Report looks at the effect the financial crisis and the COVID-19 pandemic have had on employee financial participation and makes recommendations that can also be food for thought in today's socio-economic context.

Social participation rights as enshrined in the European Pillar of Social Rights are key to the success of maintaining and expanding the social welfare state. One way to enable all European citizens' full participation in society is the financial participation of employees in their employer companies. Particularly important in this context is active support to long-term employment and the involvement of workers. Therefore, social rights need to have a definite place on the European map as most recently affirmed in the 2021 Porto Social Commitment, a blueprint for implementing the Pillar of Social Rights action plan. But for Porto to actually prove itself to be a "game-changer", we need to continue taking concrete action to ensure quality jobs that offer decent pay and work-life balance across the Member States.

The Social Economy should not be thought of as an alternative to public services but as complementary and reinforcing. There is great scope for collaboration between the mainstream private, profit-oriented companies, and entities operating within the Social Economy. In particular in times of crises this sector has proved to be resilient and agile in responding to citizens' and communities' needs. Social Economy entities need targeted support, while their employees need to be protected, and enjoy adequate working conditions, as well as training and career development opportunities. The report argues that employee financial participation should be extended to the Social Economy.

Just like conventional enterprises, social enterprises, cooperatives, non-profit associations, and the like need mechanisms in place to motivate and reward their staff, to retain key employees and pass on their mission to the next generation. It is all too often forgotten that they are inclined to be best suited to confront the current challenges of climate change and the energy transition as they put people and the environment at the centre of their mission and reinvest most of their profit back into the organisation or a specific social cause.

The conclusions of this PEPPER V Report provide interesting reflections in this important debate on employee financial participation.

Nicolas Schmit

European Commissioner for Jobs and Social Rights

Executive summary

Background and aim of this report

The European Commission's interest in employee financial participation (EFP) has grown substantially since publication of the first PEPPER Report in 1991 and the Council Recommendation on EFP of 27 July 1992. Since then, the European Union has not only extended from 12 Members States to currently 27 but has also faced many complex and urgent challenges. Financial and other crises have endangered prosperity and cohesion on the continent and **both, the financial crisis of 2008/09, and the COVID-19 pandemic 2020/21 have left their marks on "Social Europe"**. Although the overall trend is positive, both crises, as the econometric analysis in Part 1, Chapter II shows, have – albeit only to a limited extend – negatively affected EFP and put the issue of distributive justice on the agenda of national policy makers and that of the European Commission.

Opinions drafted by the European Economic and Social Committee, and Reports and Studies by the European Parliament and **2014 and 2018 Resolutions on EFP** emphasised the growing importance of EFP, particularly with respect to small and medium-sized enterprises (SMEs). Against this background, the Commission included the promotion of employee share ownership (ESO) in its **Action Plan to reform European company law and corporate governance** and embarked on **the 2013/14 Pilot Project**. Based on the most recent data on the scope and impact of various EFP schemes in EU companies and the legal and regulatory changes in individual Member States, the aim of this report is to identify the main obstacles to EFP schemes and to **develop detailed policy recommendations** for the promotion and encouragement of employee ownership both at the EU and at the national level.

Types of EFP plans, benefits, and their increasing incidence in the EU

Financial participation of employees can take a variety of forms:

- **Employee share ownership** (ESO, i.e., employee shares or stock options);
- **Employee Stock Ownership Plans** (ESOPs, i.e., collective employee share ownership, with shares acquired through an intermediary entity, financed by a share of profits allocated to employees in addition to their remuneration);
- **Profit sharing** (PS, in cash or shares, paid immediately or deferred).

Thirty years of research have confirmed that companies partly or entirely owned by their employees are more profitable, create more jobs and pay more taxes than their competitors without employee ownership. At the **macroeconomic level**, EFP leads to higher productivity and, therefore, higher competitiveness and growth as well as strategic stabilisation of ownership. At the **company level**, it can contribute to solving problems such as absenteeism, labour turnover and the retention of key employees, and business succession and funding, especially in SMEs and micro-enterprises. At the **regional level**, EFP encourages enterprises to stay rooted in their home communities, enhancing the purchasing power of employee households while discouraging outsourcing and hostile takeovers. Of course, it is also important to consider the potential negative aspects associated with ESO, such as the risk borne by employees.

The most recent rounds of different **large scale cross-country surveys** (2015 European Working Conditions Survey, 2021 CRANET (Cranfield Network on International Human Resource Management), 2019 European Company Survey (ECS)) analysed in Chapter III show that **in the last 15 years** – despite the financial crisis and the COVID-19 pandemic – **companies increased their offer of EFP while employees continue to expand their participation in EFP plans in Europe**.

- <u>ECS data – Offer in firms with at least 10 employees</u>: **Between 2009 and 2013** the proportion of firms offering **ESO schemes rose from 4.7% to 5.2%** (an increase of 10%) and **between 2009 and 2019** that offering **PS schemes from 14.3% to 42%** (the incidence almost tripled). Since the incidence of ESO is strongly size-related, the ECS figures – including small firms – are much lower than the following CRANET figures – only capturing large firms.
- <u>CRANET data – Offer in larger firms with at least 200 employees</u>: **Between 2005 and 2021**, the offer of **broad-based ESO schemes increased from 19% to 27%** – a clear increase of almost 30% during fifteen years – while, however, that of **broad-based profit-sharing schemes slightly decreased from 35% to 31%**. The year 2021 is the period immediately after the Covid-19 pandemic, which may have affected company profit levels and the offer of profit sharing by large companies.
- <u>EWCS data – Take up of schemes by employees</u>: **Between 2000 and 2015** the proportion of **employees having ESO in their firms increased from 1.4% to 3.5%** and that of **employees receiving income from profit-sharing schemes from 6.4% to 15%**. The take-up figures are much lower than the figures for the offer as on the one hand not all employees participate in a scheme offered and on the other the data set also includes other forms of employment.

In conclusion, EFP in general has been increasing over the last two decades. Nevertheless, the level of ESO schemes remains fairly low in all EU countries while PS schemes have already become prevalent in over 40% of companies across the EU. Despite this difference, **the estimated number of firms that – given appropriate incentives – can be expected to offer ESO schemes to their employees is a bit over 300,000 and that for SMEs is around 190,000 across the EU**. This provides an opportunity for policy makers to adopt policies that apply to a very a large number of companies and to provide targeted support especially for SMEs where ESO can have **significant impact on employment and sustainability as our econometric analysis shows**.

Challenges for the promotion of ESO

The ECS data suggests that firms with ESO or PS schemes are more likely to experience an increase in both productivity and employment. However, despite the acknowledged positive effects and the widespread use of EFP schemes throughout the EU, they have been extended to a significant proportion of the working population in only a handful of Member States. In 2019, about **58% of firms in the EU did not offer any form of financial participation to their employees**. despite the above-mentioned potential for the introduction of EFP schemes. If these prospective firms decided to offer an ESO or PS scheme, there would be a significant improvement in both productivity and employment – and thereby competitiveness – of these firms.

At the same time available data presented in Chapter IV indicate that both **capital ownership (wealth) and capital income are concentrated at the top** in both, the EU and the US though wealth is less concentrated in Europe. US data on capital income show that:

- **Capital income has largely collapsed between 1979 and 2018 for the working middle class**. 59.3% of all capital income was received by the richest 1% of households in 2018 (compared with 39.6% in 1979); 89.7% of all capital income was received by the richest 20% of households in 2018 (compared with 76.2% in 1979).
- **Each percentile, except for the richest 1%, has seen sharp falls in its total share of capital income over the period.** Business income increased in dollar terms by 600% for the richest 1% of households and doubled as a percentage of income for this group, from 11% to 22%.

Policy makers need to be aware that **EFP can have an important role in narrowing the income and wealth gap for the working middle class** when the concentration of capital ownership and capital income is high and when real wage growth is low.

However, as Chapter V reports, in recent years most legislative activities focused on start-ups with as many as 12 EU Member States having introduced tax incentives for ESO in this type of SME. But **incentivising ESO in SMEs should be extended to all SMEs**, the engine of the European Economy, **including those from the social economy** having shown their crucial function for the resilience of our societies during the COVID-19 pandemic. Since the European Commission launched the 2011 Social Business Initiative followed by the 2016 Start-up and Scale-up initiative, many actions to support social enterprises in view of their potential to address societal challenges and contribute to sustainable economic growth have followed. Most recently, the 2021 Social Economy Action Plan of the European Commission gave important impulses. The potential of employee buyouts offering a continuation perspective to SMEs owners looking for successors was highlighted in the **2022 EC report "Transition Pathway for Proximity and Social Economy" calling for the implementation of ESOPs**.

Comparative analysis of the 27 MS, the UK and the US

ESO is much less frequently used in Europe than, e.g., in the US. If this **still largely unexploited potential** is to be harnessed, the further development of financial participation, ESO in particular, should be part of an overall European strategy for stimulating sustainable and inclusive growth of the EU economy. Nevertheless, a generally favourable attitude in a given country has usually led to some supportive legislation for EFP schemes, which in turn has spread their practice. Tax incentives are important tools for enhancing and broadening financial participation; when properly designed, they effectively promote the spread of EFP. **Chapter VII assesses the EU 27 and the UK using three indicators, i.e., (i) legal framework, (ii) fiscal incentives, and (iii) political support / social dialogue** to obtain an overall ranking for each country both for ESO and PS and compares it with that of the Pilot Project. **In twelve countries, i.e, 44% of MS a positive change in the ranking incurred between 2014 and 2024**.

However, barriers especially for cross-border EFP plans persist because of (a) differences in regulatory density, application and legislative requirements of national legal frameworks or (b) differences in the fiscal treatment of existing schemes. Although the scope and types of these obstacles are diverse, the actual effect on the spread of cross-border EFP schemes is the same; firms will need to collect a large quantity of information, which will involve high costs and considerable expert knowledge – two **obstacles that many companies, especially SMEs, may not be able to overcome**. The result of comparing the incidence of EFP with the ranking of a given country conveys different messages for ESO and for PS:

- Regarding ESO we find some degree of correlation, showing that countries with high value in the country ranking mostly also have a high(er) offer figure. This indicates that **ESO is effectively promoted by a conducive regulatory and political environment** but also, that it **is likely to remain underdeveloped in the absence thereof**.
- For PS, on the other hand, we do not find this type of correlation, meaning that countries with high PS offer do not necessarily have high ranking too (many of them have low ranking on the composite index). This is consistent with the experience in many MSs, showing that **PS is less dependent on supportive measures than ESO, and is often introduced without them**.
- In summary, for ESO – especially in SMEs, as the incidence is strongly size-related – we conclude that **ESO is likely to be sustainable only when supportive measures are in place for a long period of time without substantial changes**.

The way to European harmonisation ten years after the DG MARKT Pilot Project

With a third of business successions failing, **the EU is still confronted with a haemorrhage of around 150,000 enterprises and 600,000 jobs every year**. Although thirty years of research has confirmed the positive effects of ESO for European enterprises and its important function for business succession, best practice such as the US ESOP is thinly spread across the EU. Nevertheless, MS have developed a broad variety of ESO schemes involving intermediary entities to acquire and administer employee shares in the employer firm in particular for the transfer of businesses to employees. However, for SME owners the main barrier is still a lack of clearcut and transparent options to sell their enterprise to their employees and corresponding incentives to do so. In this light **Chapter VIII proposes a European approach, that is, a European Employee Stock Ownership Plan (European ESOP)**. The Proposal is a response to the Council Recommendation of 7 December 1994 "on the transfer of small and medium-sized enterprises", Commission Communications and the 2003 European Parliament report. The **2013/14 DG MARKT Pilot Project and the 2018 European Parliament Own-Initiative report explicitly calls for a European mechanism** facilitating the sale of businesses to employees.

A "Common European ESOP Regime", as a first step towards a "Common European Regime on EFP" would complement existing national laws aiming primarily at their harmonisation.

- As the name suggests, this would be a **second contract law regime parallel to national legislation on ESO**. Its objective is to eliminate obstacles to the single market that mainly, though not exclusively, stem from heterogeneous regulatory density. The existing obstacles are due to the multifarious development of national laws governing EFP in the Member States.

- The "Common European ESOP Regime" would **offer employers and employees a choice between two alternative EFP regimes one originating in national legislation, the other in European legislation**. The choice between these two alternatives would be entirely optional, as in the case of the European Company Statute.
- **The European ESOP is modelled on the US ESOP <u>and</u> EU best practice**. It embraces six European types of legal vehicles, i.e., the employee ownership trust (EOT), the French employee ownership mutual fund (FCPE), the Austrian civil law foundation, the Spanish Sociedad Laboral, the cooperative, and the closely held limited liability company.

Thus, the "Common European ESOP regime" would neither replace nor override national legislation but would serve as a cross border alternative to national laws, to be used at the discretion of the parties involved. Regarding its contents it would contain best practice rules derived from each of the ESOP vehicles discussed in Chapter VIII to reflect the entire life cycle of SMEs (starting up, consolidation, succession).

Conclusions and policy recommendations

From the first PEPPER report in 1991 until this PEPPER V report the EU has not only expanded from 12 Members States to currently 27 but also faced complex and urgent challenges. Both the financial crisis of 2008/09 and the COVID-19 pandemic 2020/21 have left their marks on "Social Europe". **Although the overall dynamic of EFP across the EU 27 is positive, EFP is declining in terms of its share of household income in the light of the concentration of capital ownership and of capital income**. Along the issue of distributive justice other challenges like that of business succession in SMEs, on the agenda for decades, and new ones like the extension of EFP to the social enterprises are also calling for action. It is against this background that the following policy recommendations should be read.

From the comparison of the countries, the cluster analysis and against the background of the importance of legal framework and fiscal incentives – two general principles can be derived: a) **establishing EFP schemes through legislation is of primary importance** as countries that provide a stable and transparent regulatory framework for EFP also show a wider implementation of EFP practices; **b) when properly designed, fiscal incentives promote the spread of EFP effectively** as both countries with a long tradition of tax incentives for EFP (e.g., UK, France) and those with a more recent development (e.g., Austria) confirm. **Concerning fiscal incentives, the following best practices may be derived**:

(i) Tax incentives should (and in most countries they actually do) target those taxes, which constitute the heaviest burden in the national taxation system.

(ii) Tax incentives should be provided for both employees and the employer company.

(iii) Even substantial tax incentives may prove inefficient when the pre-conditions for eligibility are too restrictive, complex, or inflexible.

(iv) Some forms of tax incentives are more suitable for certain types of plans, e.g., deferred taxation for ESO, capital gains tax in lieu of personal income tax for dividends and sale of shares, or tax exemptions for matching contributions for ESOPs.

In spite of the difficulty of their implementation at the European level, tax incentives remain powerful tools for enhancing and broadening financial participation and, therefore, require European harmonisation.

Focussing on ESO, one crucial circumstance is that size and enterprise type matter. Despite more than three decades of political initiatives at the European level and that of MS, SMEs as the largest enterprise group across the EU still are at a competitive disadvantage regarding support measures and incentives for the introduction of ESO. While we have not yet seen much action in the field of EFP for the social economy, as many as twelve MS introduced tax incentives for ESO schemes in SMEs with a focus on start-ups. To make our economies both more competitive and resilient these incentives should be extended to other types of SMEs. Concerning privately held limited liability companies (LLCs), which have a very low ESO rate, despite structural differences, there are however intersections offering synergies and new impulses.

In light of this need for SME action and the great potential for introducing ESO in this enterprise segment, from our recommendations we emphasise in particular:

- Alleviating the evaluation problem in unlisted SMEs through debt-to-equity-swaps; ESO may initially take the form of an employee loan to the company, creating corporate debt, subsequently to be converted into company shares.
- Facilitating share transfers in privately held LLCs by ending the requisite for notarial certification (Italy, France) or limiting it to the identity of seller and buyer.
- ESO in SMEs via intermediary entities, e.g., trusts, foundations, LLCs, or other SPVs to hold and administer employee shares (AT, IE, UK, HU, FR, SI, USA).

Outlook: Extending financial participation to consumers

PEPPER V also looks into EFP's future development and its possible extension. With the passing of the **"Clean Energy Package" (CEP) in winter 2018/19 the legal foundations for consumer co-ownership in renewable energies were laid, be it individually or be it collectively as part of energy communities**. Consumer co-ownership is deemed essential to the overall success of the Energy Transition, increasing motivation to become more energy efficient, making energy infrastructure projects publicly acceptable and to ensure energy equity for the European citizenry. And indeed, there is a dynamically growing population of energy communities (EC estimates 9,000 at the beginning of 2023) fostering co-ownership of European citizens in renewable energy installations. Parallel to the rise of consumer co-ownership in renewables the **EC has launched the "Proximity and Social Economy industrial ecosystem"** (European Commission 2022) in the framework of the EU Industrial Strategy to boost the social economy contribution to the green transition. For both policy fields promising synergies with EFP exist:

- There are no legal barriers to combine employee and consumer financial participation as the principal mechanisms of company law, corporate governance, fiscal and other incentives are mostly identical.
- An example for a legal vehicle already requiring employee and consumer financial participation is the French cooperative society of collective interest (SCIC).
- In the (renewable) energy world, Consumer Stock Ownership Plans (CSOPs) are implemented, providing a governance model for financial participation that involves a fiduciary element, just as the ESOPs do for EFP.

Therefore, the potential for co-ownership of employees in the enterprises they work for and of consumers in the utilities they are served by should inspire each other and possibly be harnessed under a joint approach.

PART 1 – Benchmarking Employee Financial Participation in the EU

I. Introduction and background

Jens Lowitzsch

1. Structure of the Report

This report is divided into three Parts. The first consists of a summary of the policy background of the current situation, a discussion of the benchmarking results, an analysis of the specific context of EFP and of the challenges for ESO in SMEs and start-ups. The second Part provides country profiles, each covering the attitudes of social partners and government policies, the legal foundations for different schemes, where available, existing incentives, and information on incidence. The third Part summarises the experience of EFP across the EU and puts a focus on the role and relevance of ESO in SMEs. Finally, recommendations and suggestions for further initiatives are made. The systematic Chapters in Parts one and three are structured as follows:

PART 1

- This introduction recapitulates the context of the PEPPER reports, offers an overview of EFP forms and summarises the policy developments at the EU level.
- Chapter II provides an overview of the current state of affairs in the EU 27, the United Kingdom and the United States of America as of 2023.
- Chapter III discusses the most recent empirical findings on EFP from various cross-country data sources (ECS, EWCS and CRANET) showing the dynamics of ESO and PS between 1999 and 2021 with a focus on effects on employment and productivity as well as the potential for the introduction of EFP schemes.
- Chapter IV puts EFP into the context of the concentration of capital ownership and the concentration of capital income highlighting distributive effects.
- Chapter V provides an overview of the regulatory framework for ESO in SMEs and in Start-ups investigating both differences and communalities across the EU.

PART 3

- Against the background of the 29 country profiles contained in PART 2 (EU 27, UK, and US) Chapter VII proposes a framework for the ranking of the 27 MS and the UK based on regulatory density and support measures and provides an assessment of this ranking in the light of empirical data on the incidence of EFP.
- Chapter VIII proposes a transnational approach to develop a European Employee Stock Ownership Plan (European ESOP) that, amongst other objectives facilitates business succession in SMEs drawing on best practice from the Member States.
- Chapter IX puts forward policy recommendations.

The annexes contain (i) case studies of ESO through intermediary entities as relating to the European ESOP, (ii) a description of the data sources, and (iii) a technical description of the econometric models used.

This report is based on the most recent data on the scope and impact of various EFP schemes in EU companies. It draws on this information and the most recent legal and regulatory changes in individual MS to develop policy recommendations for concrete actions to implement the Commission's policies on the promotion of employee ownership. In some respects, the conclusions of the PEPPER V report are similar to a number of previous policy documents (particularly those by the 2003 High Level Expert Group and the 2013/14 Pilot Project for the Directorate General MARKT), which, however, were not or only partially followed. But unlike previous studies the recommendations of this report come at a particular point in time, where in response to an EU wide public discussion on fair and equitable participation in the aftermath of the COVID-19 pandemic both the European Parliament and the Commission have shown an explicit interest in taking concrete action.

2. Context, aims and scope of the PEPPER V Report

The European Commission's interest in employee financial participation has grown substantially since publication of the first PEPPER (**P**romotion of **E**mployee **P**articipation in **P**rofits and **E**nterprise **R**esults) Report (details of the policy development are described in Section 4 below). With the Recommendation on EFP of 27 July 1992, the Council encouraged its active promotion by all Member States. To move the issue forward, in 2002 the Commission published a Communication on a framework for the promotion of employee financial participation. Opinions drafted by the European Economic and Social Committee as well as Reports and Studies by the European Parliament and a 2014 Resolution further emphasised the growing importance of EFP, particularly with respect to small and medium-sized enterprises (SMEs). Already in the 2012 Action Plan, the Commission had committed itself to several measures intended to encourage long-term shareholding. However, inasmuch as many different issues are involved (such as taxation, social security contributions and labour law) the Commission has highlighted the importance of analysing ESO in more detail, particularly its internal market dimension, stating that: *"the Commission will identify and investigate potential obstacles to trans-national employee share ownership schemes, and will subsequently take appropriate action to encourage employee share ownership throughout Europe"* (EC Communication Action Plan 2012 p. 11).

This was the background for the Commission putting promotion of employee shareholding on its Action Plan to reform European company law and corporate governance[1] and embarking on the 2013/2014 Pilot Project for the Directorate General MARKT, which developed a "Five-Point Plan to Promote Employee Participation".[2] The Pilot Project concluded that if the policy objectives of promoting EFP at the EU level are to be successful, measures beyond the assessment of the current situation and the identification of best practice are necessary. Information sharing and awareness raising is crucial in the short to medium term while creating a level playing field for EFP through a European legal framework was deemed important in the long term. A package of different short, medium and long-term initiatives, combined in a Five-Point Action Plan to promote EFP were suggested. Making the necessary and relevant information available

1 European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies, COM(2012)0740; section 3.5. Employee share ownership.

2 For details see Lowitzsch/Hashi et al., Study on the Promotion of Employee Ownership and Participation, Brussels 2014; this study for DG MARKT summarises the results of the Pilot Project.

to those needing such information (especially SMEs) and the promotion of best practice examples for EFP could be accompanied by means of a voluntary Code of Conduct for EFP, to be regularly amended by, e.g., a Commission Expert Group. Parallel measures to raise awareness, e.g., a European EFP Day, could accompany and frame the above measures. With regard to the much-needed transparency on taxation and social security contributions for the various national EFP schemes, an online effective tax rate calculator, was developed to quantify the effective tax burden for EFP schemes across the EU-28 and thus provide a representative comparison of the effect of tax systems and of specific tax incentives. Finally, regarding the harmonisation of national legislation, a binding legal framework on EFP was considered. However, to avoid conflict with existing national EFP models, an optional Common European Regime for EFP was identified as a more pragmatic policy option.

In response to these Commission goals, the PEPPER V report, will undertake to:

(1) Benchmark the incidence of EFP schemes across the EU-27 and the UK drawing on the various available rounds of cross-country surveys showing the dynamic of EFP between 1999 and 2021.

(2) Assess EFP across the EU-27 and the UK, explaining the reasons for widely divergent approaches between Member States and identifying problems with cross-border implementation of EFP schemes; and

(3) Analyse regulatory and non-regulatory actions that might be proposed or undertaken by the Commission to promote EFP and in particular ESO.

Within these parameters, the principal concerns of this report are the differences pertaining to different types of enterprises (in terms of size and sectors) including for the first time start-ups, the specific obstacles to the spread of ESO schemes and the challenges confronting SMEs in particular with regard to business succession.

3. Types of employee financial participation plans in the EU

Financial participation of employees is a form of remuneration, in addition to regular pay systems, that enables employees to participate in profits and enterprise results (Uvalić 1991; Robinson et al. 1995). It can take a variety of forms:

- Individual employee share ownership (employee shares or stock options but excluding executive stock options);
- Employee Stock Ownership Plans (ESOPs, i.e., collective employee share ownership, with shares acquired through an intermediary entity, financed by a share of profits allocated to employees in addition to their remuneration);
- Profit sharing (in cash or shares, paid immediately or deferred), including gain sharing.

Individual employee share ownership (ESO) provides for employee participation in enterprise results in indirect ways, through receiving dividends, through appreciation of share values, or both.[3] Shares may be distributed for free or may be sold at

[3] To defer the valuation problem in unlisted SMEs, capital participation may initially take the form of an employee loan to the firm, creating corporate debt (external capital) then converted into company shares. Valuation of the shares to be acquired through the loan can be postponed until the moment of the actual conversion into shares (debt-to-equity) without impeding the implementation of the scheme.

market price or under preferential conditions; the latter may include sale at a discount rate (Discounted Stock Purchase Plan), sale at a lower price through forms of delayed payment (usually within a capital increase), or by giving priority in public offerings to all or a group of employees.

There are also *employee stock options*, which – unlike executive stock options granted to reward individual performance – are broad-based and offered to all or a majority of employees. The company grants employees an option, which entitles them to acquire shares in the company at a later date, but at a price fixed at the time the option is granted. The potential gain from rising share prices is the primary reward conferred by options.

In **Employee Stock Ownership Plans (ESOPs)** the acquisition of shares is facilitated through a separate intermediary entity usually set up by the company and financed by a profit share paid in addition to wages and – of course – dividends of the shares acquired. Essentially the structure is as follows:

- The company establishes an employee share ownership fund for the benefit of its employees and shares are held and managed in the trust by a separate entity (in continental Europe by a limited company, foundation, or association; in the UK, Ireland and North America usually a trust).
- The fund is financed by a combination of company contributions and loans. The former are free shares or cash, usually as part of a profit-sharing agreement with the employees. The trust may borrow money directly from a bank or from the company, which may utilise a loan from a bank or other lender.
- Shares are either acquired directly from existing shareholders or through a new share issue. They are held collectively in trust, and are only allocated to individual employees' accounts, or distributed, after a specific holding period.
- The loan may be repaid by direct cash contributions from the company to the fund, by monies received from sale of shares to the share-based profit-sharing scheme, or by dividends on the shares held in the fund.

Profit sharing (PS) – strictly defined – means the sharing of profits between employers and employees by giving the latter in addition to a fixed wage a variable income directly linked to profits or some other measure of enterprise results. In contrast to individual incentives, this concept involves a collective scheme, which generally includes all employees. In practice, profit sharing can take various forms. The formula may include profits, productivity and return on investments. It can provide employees with immediate or deferred benefits, it can be paid in cash, enterprise shares or other securities, or it can be allocated to special funds invested for the benefit of employees. A related form of participation is the concept of *gain sharing*, designed to provide variable pay, and usually to encourage employee involvement, by rewarding employees for improvements in individual and organizational performance. In addition to the basic salary, usually to reward individual or small unit performance, gains, measured by a predetermined formula, are shared with employees, through cash bonuses.[4]

[4] The formulas for measuring employee performance vary considerably; piece rates and productivity bonuses are most common, but other performance indicators may be employed, such as profit, productivity, costs, sales, etc. (Vaughan-Whitehead 1995 pp. 2).

Although employee share ownership and profit sharing are often used in combination, a distinction has to be made between the two, particularly because of fundamental differences in taxation and with regards to participation in decision-making. Both forms are often embedded in asset accumulation or employee savings plans which offer a vehicle to allocate and invest sums received in other schemes. While profit sharing, employee share schemes and stock options are relatively widespread in the European Union, ESOPs are predominantly found in countries with an Anglo-American tradition, e.g., the United Kingdom and Ireland (Shanahan and Hennessy 1998). However, ESOP-like schemes exist in other countries, e.g., in France, where enterprise mutual investment funds (FCPE) pool monies from profit-sharing schemes and voluntary employee and employer matching contributions are made to buy shares in the employer company, take part in capital increases, or receive free shares.[5] With regard to employee share ownership it should be kept in mind that in practice – whether shares are held individually or under some form of trust – does not automatically entitle employee shareholders to have a say in the operation of the company (Pérotin 2002 p. 8).

In order to link these many and very diverse EFP models found in the EU Member States, a Commission financed project has developed the "Building Block Approach", which includes all the above-mentioned forms of financial participation practised and stresses the potential of combining different forms of EFP tailored to the situation and needs of individual enterprises (Lowitzsch et al. 2008).[6] This Approach reflects the postulates of the 2002 Commission Communication, i.e. that all EFP schemes should: be regularly applied; be calculated according to a predetermined formula; be treated as an addition to wages; provide variable employee benefits linked to enterprise performance; have all employees as beneficiaries; cover all types of enterprises, both private and public; be used in all enterprises irrespective of size; be simple; include employee information and education; be voluntary. The European Parliament has also endorsed it.[7]

Therefore, and since employee share ownership is often funded by profit sharing schemes, this Study reviews the entire range of EFP although the focus of the Pilot Project is on employee ownership.

4. Employee financial participation on the EU policy agenda

The Commission started to investigate financial participation with the Green Paper on Employee Participation in November 1975[8] and the Memorandum on Employee Participation in Asset Formation in August 1979[9]. The topic has been in the Commission's focus of attention since 1991 when it commissioned a research project specifically intended to obtain an overview of the state of the art of financial participation of employees in the EU. The results were published as the first PEPPER Report (Uvalić 1991). The Report was followed by a number of measures designed to promote em-

5 According to the Association Francaise de la Gestion Financière (AFG) in 2013, out of a total of EUR 98bn managed in FCPEs, ca. EUR 37bn were invested in share plans of the employer company.

6 With forewords of the then Presidents of the European Parliament Hans Gert Pöttering (DE/EN/FR) and Jerzy Buzek (PL).

7 Own-Initiative Report on financial participation of employees in companies' proceeds; 2013/2127(INI) - 18 December 2013, recommendation no 19.

8 COM(75)570; see in particular Bulletin of the European Communities, Supplement 8, 1975, p. 31.

9 Memorandum on employee participation in asset formation, COM(79)190.

ployee financial participation in the Member States. Some of the main steps in this process were:

- A Council Recommendation followed up this first report in 1992[10], which emphasised the importance the Community attached to the use of financial participation schemes and called for the direct involvement of Member States and the social partners. In January 1997, the Commission adopted the PEPPER II report (Commission of the European Communities 1997), which reviewed the effects of the earlier mentioned recommendation 92/443/EEC in the Member States.
- The conclusions of these reports were the basis of a Communication on a framework for the promotion of EFP, which the Commission launched in 2002.[11] This communication established a working group of independent experts to analyse legal and legislative obstacles to the transnational diffusion of employee financial participation and offered concrete proposals for dealing with them. The Commission published the report of this high-level expert group on 'cross-border obstacles to financial participation of employees for companies having a transnational dimension' in 2003.[12]
- The PEPPER III Report (Lowitzsch 2006) extended the previous two reports to cover the new Member States and candidate countries (Croatia, Bulgaria, Romania and Turkey) of the EU. In 2009, the PEPPER IV Report summarised and updated the previous reports (Lowitzsch, Hashi and Woodward 2009). Providing conclusive evidence that the previous decade had seen a significant expansion of employee financial participation in Europe, it also reported that despite this positive trend only a handful of countries have extended financial participation to a significant proportion of the working population.
- The promotion of employee share ownership received further boost from the Commission by being included in the 2012 Action Plan to reform European company law and corporate governance and by making "business transfers" one of the priorities of the 2013 Entrepreneurship 2020 Action Plan[13] a field, where employee share ownership plans could play a crucial role.
- With the "Five-Point Plan to Promote Employee Participation", developed in the pilot project for the Directorate General MARKT in 2013/14 the Commission for the first time proposed a concrete roadmap for further action at European level.[14] In addition to long-term legislative measures, this plan envisages a series of "soft measures that can be introduced in the short and medium term and are and are not tied to the lengthy legislative process.

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10 Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of employee participation in profits and enterprise results, including equity participation.

11 European Commission Communication on a framework for the promotion of employee financial participation, in July 2002 (COM(2002)364 final).

12 See Report of the High-Level Group of Independent Experts on Cross-Border Obstacles to Financial Participation of Employees for Companies Having a Transnational Dimension (European Commission 2003).

13 Communication from the Commission; Entrepreneurship 2020 Action Plan – reigniting the entrepreneurial spirit in Europe, European Commission (COM(2012)795 final), January 2013.

14 For details see Lowitzsch/Hashi et al., Study on the Promotion of Employee Ownership and Participation, Brussels 2014; this study for DG MARKT summarises the results of the Pilot Project.

The European Economic and Social Committee has emphasised the potential of ESOPs in business transfers in its 2010 Own-Initiative Opinion with reference to previous motions of the European Parliament. In its Opinion, which linked this issue with the Europe 2020 Strategy, the EESC noted that "the introduction of EFP can help business in Europe, especially SMEs, to improve their competitiveness by increasing employees' loyalty and identification with the company, in good times and bad".[15]

The European Parliament also has repeatedly taken a positive stand on promoting employee financial participation.

- Notably, in its Resolution of 6 May 2009 on the Renewed Social Agenda, the European Parliament suggested that *"the social partners at national level discuss new methodologies for wage policies, which could reverse the current declining percentage relation between salaries and profits and include higher financial participation of employees in companies' proceeds through the use of schemes that mitigate the impact of inflation."* It further suggested that "such schemes could allow for channelling employees' extra earnings to special capital funds created by companies". It also called for *"a debate regarding ways of encouraging companies to engage in those methodologies"* and furthermore calls for *"a debate regarding legal frameworks that regulate the access of employees to those funds in a gradual way over time"*.[16]
- In 2012 the European Parliament commissioned a study to provide a comprehensive appraisal of the development of EFP in the EU.[17] In the same year a European Parliament hearing on the issue of EFP laid the ground for the Pilot Project and, therefore, this Study.
- The 2014 Own-Initiative Report on financial participation of employees in companies' proceeds[18] underlined the importance of promoting EFP at the EU level addressing all the issues covered here. It recommends various instruments to facilitate the implementation of cross-border EFP schemes. These include setting up information centres on EFP, developing an effective transnational tax rate calculator and exploring the possibility of constructing a 29th regime to implement an optional European regulation on EFP.
- Finally, in the 2018 an Own-Initiative Report on the "role of Employee Financial Participation in creating jobs and reactivating the unemployed" the European Parliament[19] took up the target provisions of the 2014/15 Pilot Project (see above) with additional emphasis on the role of employee participation in creating jobs and reintegrating the unemployed into the labour market.

Figure 1 shows the different policy initiatives at the EU level on the subject of employee financial participation:

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[15] Opinion of the European Economic and Social Committee on Employee financial participation in Europe, SOC/371, October 2010.

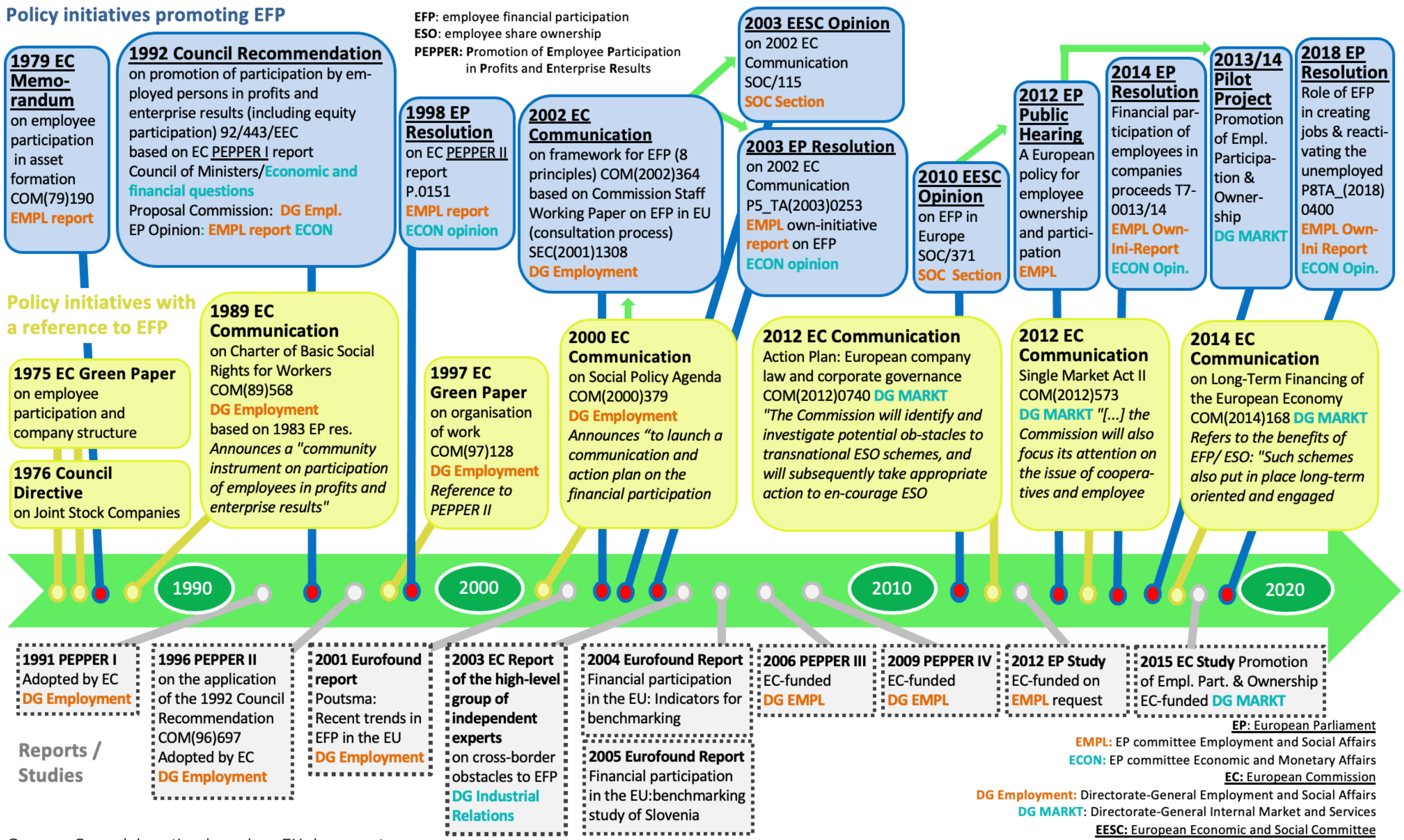
[16] European Parliament Resolution of 6 May 2009 on the Renewed social agenda, P6_TA (2009)0370.

[17] Employee financial participation in companies' proceeds, (2012). Brussels: European Parliament. Lowitzsch, J., & Hashi, I. (Eds.).

[18] European Parliament Own-Initiative report adopted on 14 January 2014: Financial participation of employees in companies' proceeds, 2013/2127(INI).

[19] European Parliament Own-Initiative report adopted on 23 October 2018: The role of Employee Financial Participation in creating jobs and reactivating the unemployed, (2018/2053(INI)).

Figure 1: Policy initiatives on employee financial participation at EU level.



Source: Own elaboration based on EU documents.

Summarizing above development the Vice-President of the European Commission, Michel Barnier, in his speech at a 2014 DG MARKT conference on employee ownership and participation in the context of the Pilot Project, stated that:

> *"[. . .] Employee share ownership is, by its very nature, a long-term investment. It will have a stabilising effect on capital markets and is seen by our enterprises as a welcome counterweight to speculative, short-term investment. Enterprises that practise employee share ownership, can count on a block of demanding but loyal shareholders, who are attached to an enterprise and know the firm better than external shareholders.*
>
> *A second benefit of employee share ownership is that it enhances competitiveness. This is the main challenge to ensure jobs. 30 years of research, which you'll discuss today, confirm that companies either partly or entirely owned by their employees are more profitable, more competitive, create more jobs and pay more taxes than their competitors without employee ownership schemes. These companies also relocate less and favour local production. Most of the income they generate is, as we have seen, spent in the local communities of the companies' headquarters.*
>
> *Finally, employee shareholding can, and often does, play a decisive role in the future of Europe's SMEs, for the men and women who work in the EU regions they live in. Europe's family enterprises, in particular, are frequently faced with business succession problems. Buy-outs of these firms by loyal employees can result in a key solution for the new purchasers and other salaried employees."*

Especially the problem of business successions in SMEs, motor of the EU economy and sector with the bulk of its employees, persists. This is a challenge that has been identified already in 1994 and, with a third of successions failing, lead to a continuous haemorrhage of around 150,000 enterprises and 600,000 jobs every year (COM(2020) 103 final). As the proposal for a European ESOP in Part 3, Chapter II shows, there is no one-size-fits-all solution but a European business succession vehicle enabling employees to become co-owners needs to be modular. In such a way it will be possible to adapt the ESOP solution – best practice for over 50 years now – to the needs of the partners involved in the concrete setting while respecting national traditions. At the same time, as the Slovenian variant shows, this includes the successful cooperative model and, illustrated by the Spanish Sociedades Laborales concept, can even be applied in micro enterprises long deemed to be unsuitable for employee share ownership. Together with established concepts as the French FCPE, or the British EOT, in this way, ESOPs and ESOP-like schemes can be applied across the whole economy including the Social Economy.

Currently, Europeans are deeply affected by the energy crisis exacerbated by the Russian invasion of Ukraine. Across the European Union, we witness an impact on stability and cohesion of our societies, that is, the secondary impact of exploding energy prices requiring massive government intervention leading, again, to distributive conflicts within and between Member States. While for the Ukrainian people the war has immediate, mid-, and long-term effects directly killing or damaging the health of an unforeseeable number of humans, the impact on the EU 27 unfolds at a slower pace but is still anticipated to endanger the stability of our democracies.

Democracies may be notoriously slow in responding to unprecedented challenges but when they finally do, they can mobilize quickly and efficiently. An example for such swift action is that over the last two years as many as twelve Member States introduced tax incentives for share ownership schemes in SMEs with a specific focus on start-ups to make our economies more competitive. However, we have not yet seen such action in the field of the Social Economy which is just as important if not even pivotal in regard to increasing the resilience of our polities to multiple crises. In a social market economy, the balance between the interests of workers and the interest of capital includes a just repartition of benefits, that is, a fair and equitable participation of workers be they employed in the primarily profit driven private sector or the Social Economy. New impulses for EFP also in the Social Economy are, therefore, much needed both in the form of profit sharing and employee share ownership as for example in the Slovak Republic.

II. Overview of Employee Financial Participation as of January 2024

Jens Lowitzsch and Jasper Lüke

1. Reasons for and the scale of adoption of EFP schemes in the EU

In the last decades, EFP has been moved up the EU policy agenda because of its benefits both perceived and demonstrated. At the same time, though slow to take off, both the offer of EFP schemes by enterprises and their take-up by employees have picked up surprising momentum between 2000 and 2023. These developments are discussed in this Section.

a) Overview of the benefits of financial participation of employees

The theoretical and empirical literature (for a recent overview see Ligthart et al. 2022) over the past three decades points to the following important benefits of EFP (particularly ESO) to firms:

- By strengthening employees' commitment to, and identification with, the firm EFP makes the company more productive and hence more competitive.[20]
- Firms in which employees have an ownership stake are more profitable, create more jobs and are better taxpayers than firms without ESO schemes. In fact, businesses with substantial employee ownership perform better than conventional firms over the long term as illustrated by the UK Employee Ownership Index, which has grown faster in comparison to the FTSE 100 index.[21]
- ESO provides a potential solution to the business succession problem, potentially making a smooth transition of the ownership and management of family enterprises and SMEs possible, thus keeping them rooted in the community and securing continuity and employment.[22] This is a serious problem inasmuch as, according to 2011 figures, each year some 450,000 firms in the EU look for successors, affecting up to 2 million employees. Every year, with a third of successions failing, around 150,000 enterprises and 600,000 jobs are estimated to be lost every year.[23]

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[20] For example, a survey of 70 empirical studies on the effects of employee stock ownership, broad-based stock options, profit sharing, and employee participation by Blasi, Kruse and Bernstein (2003) found that the adoption of any of the scheme had led to an average rise in productivity by 4%, return on equity (ROE) by 14%, return on assets (ROA) by 12% and profit margins by 11%; another survey of some 70 papers by Kaarsemaker (2006) found that 48 of the 70 reviewed studies had shown a positive effect, while only 6 studies had found negative effects. A third survey of the literature on employee- owned firms by Freeman (2007) corroborates the earlier survey results that most of the surveyed papers showed that the sample firms were more productive and profitable, survive longer, and result in better shareholder returns.

[21] https://www.equityprojectuk.com/uk-employee-ownership-index, accessed 1 October 2023.

[22] For the role of ESO in facilitating business succession as well as a summary of other advantages, see The Nuttall Review (2013); the UK government recently introduced tax incentives for employee ownership trusts in the context of business successions.

[23] See Commission Communication "An SME Strategy for a sustainable and digital Europe" (COM(2020) 103 final) relating to European Commission 2011, Business Dynamics: Start-ups, Business Transfers and Bankruptcy, final report for DG Enterprise, p. 95, 96 and 100.

- Financial participation strengthens corporate governance since employees are long-term shareholders par excellence.
- EFP can also assist in recruiting and retaining highly qualified and skilled employees, especially in SMEs, by providing benefits in addition to wages (IAFP 2010; Soppe and Houweling 2014).
- Financial participation is often regarded as a solution to some of the chronic problems of industrial society, i.e., employee dissatisfaction, low quality of working life and declining productivity. It has been shown that EFP schemes are likely to decrease absenteeism and labour turnover and to reduce internal conflicts (McDonnell, Macknight and Donelly 2012; Robinson and Zhang 2005; Wilson and Peel 1991).
- Companies with employee ownership also tend to be economically more resilient in tough economic times (The Nuttall Review 2012 pp. 24; Lamper, Bhalla and Pushkar 2010; Blair, Kruse and Blasi 2000).
- Companies with ESO do not relocate as easily and are more strongly embedded in their local communities and regions.
- ESO directly connects to the Europe 2020 strategy, especially to the challenge of meeting the long-term financing needs of companies.[24]
- By extending capital ownership to employees and their families, ESO can help reduce inequality.

The impact of EFP on company performance, of course, varies from case to case, depending on multiple factors such as the extent of employee share ownership or profit sharing, the qualification structure of employees and the type of industry in which the firm operates (more on this in Chapter III).

Despite the cited benefits, the concept of employee financial participation has been criticised on a number of grounds such as the "free riding", creating confusion between the roles of managers and workers, and the excessive risk borne by employees. On the whole, these issues have remained largely at a theoretical level and not supported by large-scale empirical evidence (Kaarsemaker 2006). The literature review in Annex 2 discusses the research on the evidence of both benefits and shortcomings of EFP schemes. It is of course the case that both profit sharing and share ownership involve a certain amount of risk for employees. Profit is determined not only by employees' efforts, but also by management decisions and external factors outside of their control. Firms and employees have developed mechanisms to mitigate some of the potential problems, which may arise in firms with EFP schemes.

b) The development of financial participation schemes in the EU-27

The number of firms offering EFP schemes to their employees, though slow to take off, has grown over the years in most EU countries. In 2009, on the basis of the European Working Conditions Surveys (EWCS), Cranfield Network on International Human Resource Management (CRANET) surveys and European Company Survey (ECS) data as well as individual country profiles, the PEPPER IV Report noted the significant rise in

[24] See point 7 of the Communication from the Commission to the EP and the Council on Long-Term Financing of the European Economy, COM(2014)0168 final.

EFP in the EU-27 between 2000 and 2005. The most recent rounds of these cross-country surveys (2010/2013/2019/2021) broadly confirm these empirical findings and show that EFP generally has continued to expand in Europe despite of the 2008-09 financial crisis and the 2020-21 COVID-19 pandemic. This is true of both profit sharing and employee share ownership, although profit sharing is more widespread.

- The European Company Surveys[25] conducted in 2009, 2013 and 2019 show that **the proportion of companies with a workforce of more than 10 offering ESO and PS schemes to their employees increased** (however, the question on employee share ownership was dropped from the 2019 questionnaire restricting the analysis); the proportion of companies offering ESO schemes between 2009 and 2013 rose from 4.7 % to 5.2 % (an increase of 10 %) and the proportion of companies offering PS schemes between 2009 and 2019 almost tripled from 14.3 % to 42 % (all weighted averages).
- This rise is reflected only partly in the CRANET Surveys (Cranfield Network on International Human Resource Management) conducted in 2005, 2010, 2015 and in 2021[26], showing that **between 2005 and 2021 in firms with a workforce of more than 200 the proportion of employees to whom broad-based EFP schemes were offered increased** from 19 to 27.7 % for employee ownership, while that for profit sharing somewhat decreased from 35 to 30,7 % (all weighted averages).
- The European Working Conditions Surveys[27] conducted in 2005, 2010, and 2015 indicate that also the **proportion of employees participating in EFP schemes increased between 2000 and 2015** (2.3 % to 3.5 % for employee ownership and 6.4 % to 14.44 % for profit sharing). The breakdown for the weighted averages[28] for the four different rounds of the EWCS discussed in Chapter III show though that growth has slowed over the years.

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[25] This is a regular survey of European companies conducted by the European Foundation. It covers some 30,000 firms in 30 European countries (all EU Member States and candidate countries). The size distribution of the ECS sample is not according to the distribution in the population (large firms are over-represented while small companies are under-represented). For this reason, the data has to be weighted in order to be representative of the population. The Survey database also contains weights calculated by the Eurofound. All information relating to ECS data in this Study are weighted using published weights.

[26] The CRANET Survey is a large-scale survey of the human resource practices of around 10,000 companies in Europe and other countries undertaken by a network of universities co-ordinated by the Cranfield School of Management (Cranfield University, U.K.) approximately every four or five years since 1992. In each of four survey rounds, this report focusses on, only subsets of EU Member States (MS) had participated: In 2005, 5,057 firms from 19 MS; in 2010, 3,419 firms from 17 MS; in 2015, 3,457 firms from 19 MS; and finally, in 2021, 3,446 firms from 19 MS and the UK, which had left the EU on 31 January 2020.

[27] The EWCS is a large-scale survey of working conditions across Europe undertaken by the European Foundation every four or five years to investigate a variety of factors influencing individuals working and living conditions. It covers some 30,000 people in 30 countries. The 1999 Survey was conducted in the EU-15. The EU-12 were surveyed in 2000. For simplicity, we refer to the two surveys as the "2000 survey". The data reported here refers to the employees of private sector companies only as the public sector does not lend itself to either employees share ownership (as there are no shares in these organisations) or profit sharing (as public sector organisations generally do not make profit). The 2010 Survey covered 43,816 randomly selected individuals in 34 countries (including all EU Member States and candidate countries as well as some non-EU countries). The 2015 Survey covered 44,000 workers in 35 countries. Due to the COVID-19 pandemic the 2021 Survey was reduced to a telephone survey with the questionnaire largely reduced and the questions pertaining to EFP were unfortunately dropped.

[28] In calculating weighted averages here and in the rest of this report, the population of each country is used as its weight.

As expected, the ECS 2009, 2013 and 2019 data confirm results from previous research that the size of a company is positively related to the incidence of EFP, especially that of ESO. It indicates that large firms almost always have higher levels of EFP schemes than medium and especially small firms (a more detailed discussion of the trend of EFP adoption and its impact can be found in Chapter III). However, the offer of broad-based schemes in large companies reflected in the CRANET dataset shows a temporary decline in both PS and ESO schemes after the 2008-09 financial crisis; for ESO this drop is overcome by 2015 but the offer of broad-based PS schemes remains below the 2005 peak. A possible explanation is that although in the environment after the financial crisis firms probably used profit sharing as a mechanism to incentivise employees while increasing wage flexibility (see also Chapter III 2. below) profits remained low and so did the actual offer, resulting in a lower incidence being reported although a PS scheme may have been in place. Similarly, during COVID-19 enterprise profits generally plummeted and so most likely did the actual offer of profit sharing albeit existing schemes may have remained in place.[29] The effect of crises with times of low profits on the offer of EFP is also expected to be stronger on PS than on ESO as benefits of the latter are tied to both share value appreciation and dividends with a long-term perspective making them less volatile.

In summary, the expansion of the EFP schemes in the period 2005-2021, which is in the focus of the empirical evidence as provided in this report, has been different for ESO and PS schemes, with the latter overall expanding significantly faster over time than the former but showing drops in broad-based schemes following the two crises. However, the reasons for differences in the incidence of ESO and PS in different countries are many, including also some general issues such as: (i) the concepts of ESO and PS are very different and not many companies have yet been convinced of the benefits of ESO; (ii) the implementation of ESO is more complex and involves higher administrative costs while the adoption of a profit-sharing scheme is fairly straightforward and simple; and (iii) the attitudes of employers and trade unions have been less supportive of ESO. There are of course other reasons for this phenomenon, which are still unknown and require more investigation which has been outside the scope of this report.

2. Overview of EFP in the EU-27, the UK, and the US: Government and social partners' attitudes, legal framework, incidence

This Section provides a tabular overview of the status quo in all 29 countries under consideration as of January 2024. The table is organised to match the information digested in the comparative assessment of Chapter VII: Column 2 captures political support by governments and social partner's positions; Column 3 synthesises legal framework and fiscal and other incentives; Column 4 provides the most recent empirical figures from the mentioned cross-country studies and – where available – national data. This snapshot should be read together with the country profiles of Part 2, which expand the presented information in detail and give the necessary background.

[29] Concerning the analysis of the offer of broad-based profit-sharing schemes in the CRANET dataset an additional difficulty other than the limited representativeness (see Cahpter III) is that the questionnaire asks only whether "profit-sharing" is offered (for ESO the concerning question asks about "employee share schemes") making it impossible to distinguish whether a PS scheme was in place but due to a lack of company profits these were not shared or whether the firm did not have a scheme in place at all.

Table 1. EFP in 2024, government/social partners' attitudes, legal framework, incidence

Abbreviations[30]: AI = anecdotal information; bn = billion; CGT = capital gains tax; CIT = corporate income tax; CivC = Civil Code; CPS = cash-based profit sharing; CS = case studies; DPS = deferred profit sharing; EA = employer associations; EBO = employee buyout; EmpC = employer company; Empl = employee; ES = employee shares; ESO = employee share ownership; ESOP = Employee Share Ownership Plan; EFP = employee financial participation; FMV = fair market value; GS = gain sharing; IEnt = intermediary entity; JSC = joint-stock companies; LLC = privately held Limited Liability Company; m = million; MEBO = management-employee buyout; NCL = national company law; NLL = national labour legislation; NSL = national social benefit legislation; PIT = personal income tax; PrivL = privatisation legislation; PS = profit sharing; SAYE = save-as-you-earn schemes; SO = stock options; SPS = share-based profit sharing; SSC = Social Security Contributions; TU = trade unions.

Country	**General attitude** [A] Social partners [B] Government	**Legislation and fiscal or other incentives**	**Schemes and their incidence** Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
EU-27			
Belgium	**[A] TU** opposed, but do support ESO to a certain extent; **EA** in favour; **[B]** Since 1982, legislation for ESO; amendment 1991; since 1999 legislation for SO; 2001 new law on ESO and PS, 2002 Royal Decree on EFP; 2018 new incentives for EFP and simplifications for PS introduced; 2023 ESO/SO reform planned.	**All share plans:** Up to 10% of payroll; after 2/5 years 15% special tax on benefit (if free or discounted); in JSC, financing by firm possible; in capital increases: up to 20% of equity capital, ES discount limit 20%; **ESO**: Restricted Stock grant - value reduced by 16.7%, taxation deferred if 2 years blocked, no SSC; Stock Purchase Plan – max. 20% discount, tax and SSC exempt after 5-year blocking period; **SO:** since 1999 taxed at grant on 18% a lump-sum basis, no SSC; PIT and SSC on discount; 50% tax-base reduction if 3 years blocked; 2024 deferred taxation at sale, progressive PIT and SSC on discount, 15% CGT exempt from SSC planned; **PS:** two qualified plans with 13.07% SSC, one 7% PIT, one PIT exempt; 30-33% deductible EmpC SSC contribution.	2013 ECS: **ESO** 5.2%, 2019: **PS** 24%; 2021 Cranet: **ESO** 11.4%, **PS** 25.7%; 2015 EWCS: **ESO** 2.9%, **PS** 14%; **ESO:** AI for share purchase plans, firms involved mainly from financial sector, large firms and multinationals; **SO** 2005 Cranet: 2%; EU Report 2003: 75,000 Empl benefit; most of 20 largest Belgian firms operate plans; 40% of firms > 50 Empl; 2023 estimates: 50,000 to 60,000 Empl (1% of workforce) hold ES.
Bulgaria	**[A] TU** open to EFP, **EA** indifferent but managers positive; not on either of their agendas; **[B] ESO** strong support 1997-2000, then ignored; in 2002 PrivL incentives abolished; EFP generally ignored.	**All share plans (ES/SO):** 5% cap for ES in capital increase; proceeds of sale taxed as capital gains at 10% (SO on exercise); 32.3% SSC incur; uniform 5% dividend tax; no SSC on capital gains; transactions of shares listed on regulated markets are PIT exempt; **PS:** none.	2013 ECS: **ESO** 4.4%, 2019: **PS** 52%; 2021 Cranet: **ESO** 11.5%, **PS** 9.7%; 2015 EWCS: **ESO** 3.1%, **PS** 9.3%; **SO:** 2005 Cranet 14%; **ESO:** 10% mass privatisation, 4-5% cash privatisation; low, decreasing; **MEBO:** 1,436, 28% privatisations; managers took over most; **PS:** AI, few cases; BCCI 2022 survey: 82.5% of firms plan PS bonuses.

[30] Given the amount of abbreviations used in Table 1 and the fact that the table is in several pages, we provide the list of abbreviations immediately after the table caption. This is unusual but it is the only way the reader can follow the table sensibly.

Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
Czech Republic	**[A] TU / EA** historically indifferent to EFP; recently support initiatives: TU in 2018, EA in 2022; **[B] ESOP** discussed in 1990; EFP ignored after introduction of voucher concept.	**ESO:** discounted ES/SPS in JSC; not considered public offering; financing by firm possible; uniform 15% dividend tax; gains from sale of shares tax-exempt if held at least 3 years, or if total income from sale less than CZK 100,000; those from sale of LLC shares if held at least 5 years; **PS:** CPS/SPS in JSC; PIT of 15%.	2013 ECS: **ESO** 4.2%, 2019: **PS** 58%; 2021 Cranet: **ESO** n.a., **PS** 19.3%; 2015 EWCS: **ESO** 4.2%, **PS** 28%; **SO:** 2005 Cranet: 3%; **ESO:** insignificant; 0.31% of the privatised assets; **PS:** AI, very low but slowly increasing, mostly foreign firms.
Denmark	**[A] TU** indifferent to EFP; **EA** opposed to any extension of EFP; **[B]** Employee Funds discussed in 1970-80s, PS popular; later support for ESO and SO; in 2000s support for share-based schemes, abolished in 2012, partially re-introduced in 2016.	**All qualified share plans:** up to value of 10%, 20% if broad-based, i.e., offered to 80% (start-ups: since 2021 up to 50% without 80% rule) of annual salary deferred taxation of benefit at 27% up to DKK 58,900 (2023), 42% above; SSC at exercise of SO or sale of ES; **ESO:** ES in JSC: discounted or free; financing by firm possible; in capital increases deviation from pre-emption rights possible; only CGT on benefit of discounted/free shares; **SO:** subject to PIT and SSC on exercise; on sale 27% CGT, above DKK 58,900 (2023) 42%; **PS:** none (but SPS as above).	2013 ECS: **ESO** 6.8%, 2019: **PS** 35%; 2021 Cranet: **ESO** 9.9%, **PS** 6.6%; 2015 EWCS: **ESO** 6.7%, **PS** 19.7%; **SO** 2005 Cranet: 2%; EU Report 2003: 20% of 500 largest firms by 1999, one-third of quoted firms 2000. 2021 Study: 2016, 365 firms (624,123 Empl) operate ESO schemes with 53,580 Empl holding ES;
Germany	**[A] TU** traditionally sceptical /partly hostile because of ‘double risk’, growing support; **EA** supportive; **[B]** Traditional focus on savings plans (total capital higher than that of ES company plans); EFP since 2006 on political agenda of all parties; 2009 Law on Capital Participation of Employees; 2020 reform initiative for SME & Start-ups extended in 2023.	**ESO:** discounted ES in JSC, financing by firm possible; state savings bonus of 20% of up to EUR 400 (EUR 80 p.a.) invested in EmplC stock; 6-year blocking period; no tax/SSC on up to EUR 1,440 (2,000 from 2024 on) per year EmpC matching contribution; no PIT on deferred salary contributions; 2009 Employee Participation Funds abolished 2013; deferred taxation possible if ESO blocked in IEnt; **SO:** in capital increase, nominal amount restricted to 10%, that of increase to 50% of equity capital; on exercise subject to PIT and SSC; CGT on sale; in young SMEs and start-ups deferred taxation since 2021; **PS:** none.	2013 ECS: **ESO** 3.3%; 2019: **PS** 45%; 2021 Cranet: **ESO** 23.3%; **PS** 36.3%; 2015 EWCS: **ESO** 1.7%, **PS** 10.5%; 2011 IAB: **ESO** 2%, **PS** 10%; 2011 BISS: **ESO** 3%, **PS** 11%; **SO:** EU Report 2003, in over two-thirds of DAX-listed firms; **ESO:** 2010 AGP: 720 JSC, 1.5 mln. Empl, EUR 7.6 bln.; 310 Ltds, 10,000 Empl, EUR 159 mln.; 1,330 firms with silent partnerships, 352,000 Empl, EUR 1.7 bln.; 2022 DAI: 1.1 mln. Empl shareholders in JSC;

Coun-try	**General attitude** [A] Social partners [B] Government	**Legislation and fiscal or other incentives**	**Schemes and their incidence** Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
Esto-nia	**[A] TU** indifferent to EFP, **EA** ambiguous; IT/start-up sector positive; **[B]** PrivL supported **ESO** until 1992; after 1993 EFP ignored; start-up / tech scene lobbied successfully for SO incentives.	**ESO:** rights attached to shares issued before 1995 remain valid; no public prospectus for ES needed; Emp.: no income tax on dividends from resident firms; EmpC: 20% on distributed profit, only 'bonus issue' in capital increase exempt; **SO**: Emp.: 33% SSC & 20% PIT on discount and spread; EmplC: exempt from fringe benefit tax if 3-year vesting period; **PS:** none; taxation of distributed profits is disincentive.	2013 ECS: **ESO** 8.4%, 2019: **PS** 48%; 2021 Cranet: **ESO** 8%, **PS** 8%; 2015 EWCS: **ESO** 3.6%, **PS** 24.1%; **ESO:** 2005 2% (1995 after privatisation 20%) of firms majority Empl-owned, 20% minority; 2011 Keskus Centar: in 7% of private firms; **PS:** AI, survey evidence, few cases; **SO:** Survey data 2021/22: Prevalent in ICT (but less than 10% of firms).
Ire-land	**[A] EA** strong support; **TU** support if financial and intrinsic reward to Empl; managers/Empl pragmatically motivated; Lobby groups/institutions support **ESO;** **[B]** Support in privatisation; improvements in 1995 and 1997; promoting voluntary adoption of SPS, e.g., Approved PS Scheme (APSS); continued support, introduction of KEEP 2017.	**ESO:** ES/SPS in JSC, financing by firm possible; Restricted Stock Scheme: limited PIT tax base deduction for Empl.; **SO:** SAYE: bonus/interest on savings tax-free, no PIT on grant/exercise but SSC and 33% CGT at sale; KEEP since 2017 for SMEs, extended 2022: no PIT or SSC on grant/exercise but 33% CGT at sale; EUR 3mln. cap (6mln. Planned for 2024) per EmplC, EUR 250,000 per Empl over 3 years; **ESOP:** ESOT: tax incentives as for APSS if ESOT part of APSS; no CGT on disposal of shares; PrivL – 14.9% ESOT stock paid for by loan/by state; **PS:** APSS: 2 years blocked in trust; after 3 years at transfer no PIT but SSC and 33% CGT at sale; salary foregone - up to 7.5% of gross salary deductible.	2013 ECS: **ESO** 6.4%, 2019: **PS** 24%; 2021 Cranet: **ESO** 14.7%, **PS** 21.3%; 2015 EWCS: **ESO** 4.8%, **PS** 11.5%; **SO:** 2022 FinMin/Revenue: 100 firms with SAYE, 51 with KEEP, 4 ESOTs; 2002 IBEC: 15 firms with Approved Share Option Schemes; **PS:** 2022 FinMin/Revenue: 411 firms with APPS; **ESOP:** n.a.
Greece	**[A] TU** moved from scepticism to support since 1990s; **EA** indifferent, not a current topic; collective bargaining includes facilitation of EFP; **[B]** Some regulations on CPS (1984) and ESO (1987); since 1999 more attention on SO; renewed interest since government change in 2019.	Unified regime for ESO/SO in corporations since 2018; **ESO:** ES in JSC discounted or free; within capital increase for 3 years not transferable, up to 20% of annual profit; benefit subject to PIT; **SO:** max 10% of share capital; generally, once vested profit subject to PIT and SSC; since 2019 15% CGT at sale, if 2 years blocked; for start-ups 5% CGT at sale, if 3 years blocked; costs deductible for EmplC; **PS:** up to 15% of firm profits, 25% of Empls' gross salary; EmplC: 24% CIT + 5% dividend tax; Emp: PIT and SSC;	2013 ECS: **ESO** 2.2%, 2019: **PS** 38%; 2021 Cranet: **ESO** 10.1%; **PS** 3.4%; 2015 EWCS: **ESO** 1.2%, **PS** 2%; **SO:** 2005 Cranet 2%; EU Report 2003: only a limited number of firms.

Coun-try	**General attitude** [A] Social partners [B] Government	**Legislation and fiscal or other incentives**	**Schemes and their incidence** Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
Spain	**[A]** Low priority: **TU** only support broad-based plans on top of wages; **EA** indifferent to broad-based plans; **[B]** Government constitutionally obliged to facilitate EFP; bipartisan support and long tradition of social economy: COOPs and **EBO** (new law 1997); **PS** supported in 1994 then shift to **ESO/SO**; 2015 reform law on 'Workers Companies' (Sociedades Laborales) introducing also 'Participatory Companíes'; 2022 EUR 800 mln. EU Next Generation Funds allocated to Social Economy.	**ESO:** discounted or free ES in JSC, financing by firm possible; **ES/SO:** up to EUR 12,000 p.a. PIT / SSC exemption; plans must be broad-based since 2015; since 2022 for start-ups cap 50,000 without broad-based requirement; ES: for dividends up to EUR 1,500 yearly tax exempt, above flat tax brackets; **SO:** irregular income 30% tax reduced >2 years with EUR 300,000 cap; no SSC at sale; **EBO:** 'Workers Companies' with more than 51% ESO, 10% of profits in Reserve Fund; tax exempt from: capital transfer tax, tax on formation/capital increase, and notary fees; supported by enabling framework; NSL: capitalisation of unemployment benefit as a lump sum, to set up or buy into a "Workers' company" or a Protected Co-operative; since 2023 requirement of previous unemployment dropped; newly created JSC, Ltd. or 'Workers Companies': up to EUR 100,000 per year 50% of share subscriptions deductible **PS:** NLL.	2013 ECS: **ESO** 4.7%, 2019: **PS** 47%; 2021 Cranet: **ESO** 3.9%, **PS** 7.8%; 2015 EWCS: **ESO** 2.6%, **PS** 7.6%; **SO:** 2005 Cranet: 19%; 2011 TU report: only in 5 Ibex35 firms broad-based plans, 18 with executive plans EU Report 2003: plans in 40 firms of which 50% in IBEX 35; **ESO**: 2003 CNMV 20% of large firms with share purchase plans; **EBO:** 2020 7,801 Workers' Companies employing 54,954 workers; on average 1.3 jobs created per funding partner (1999-2013); 2018 estimates: potentially 419,240 LLCs could qualify as Participatory Company.
France	**[A] TU** show mixed attitudes: sceptical but actively involved, favour EFP if not substitute to pay; **EA** generally in favour, especially if voluntary; TU & EA inter-branch agreement on Empl savings plans, focus firms with less of 50 Empl; **[B] PS**/**ESO** strong continuous support since 1959; also in privatisations; climate friendly toward EFP, focused policy; 2019 harmonisation of retirement savings plans.	**ESO:** PrivL- 10% ES reserve, up to 20% discount; discounted or free ES in JSC, financing by firm possible, also capital increase; reduced SSC of 17.2% and 12.8% tax on all income from shares for Empl; 20% SSC for EmpC on free ES and SO; also in SMEs, simplified via SAS suited for start-ups; "labour shares" possible in JSC / SAS; **SO:** Capital increase; qualified SO Plan: flat tax on exercise gain 30% after 2-year holding period; BSPCE for SMEs: at least 25% of firm capital held by individuals; at sale benefit subject to 22.7% PIT and SSC or 30% PIT and SSC flat tax; **ESOP/EBO:** Law on Trusteeship 2007; special EBO reserve; **PS:** DPS compulsory/cash-based PS voluntary; DPS: 2% special tax for EmplC, SSC of 9.9% on 93.2% of Empl's con-	2013 ECS: **ESO** 8.6%, 2019: **PS** 56%; 2021 Cranet: **ESO** 20.7%, **PS** 85.2%; 2015 EWCS: **ESO** 8.1%, **PS** 32.7%; 2014 Acemo/PIPA: 55.8% of Empl (i.e., 8.7 mln.) covered by DPS plans; **SO:** 2005 Cranet 3%; SO EU Report 2003: approx. 50% of quoted firms and 28% of limited companies, total approx. 30,000 Empl; **ESO/PS in savings plans:** LabourMin 2020: ESO plans in 23.7% listed firms (1.3% of all firms with ≥10 Empl) with >600,000 Empl. benefitting, of which 460,000 granted free shares; in 2018 ca. 9 mln., i.e., 50.9% of private-sector Empl covered; AFG 2022: 367,000 companies with 12 mln. Empl; cumulative EUR 158.6 bln. assets in 2022, of which 36% shares of EmplC and 64% in diversified funds.

Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
		tribution, special 15.5% SSC on returns; PEE broad-based, 5-years blocked (PERCO until retirement); no PIT, special SSC of 9.9%/12.8% on returns.	
Croatia	**[A] TU** promote ESO in revision of privatisation; **EA** indifferent; long tradition of self-management; **[B] ESO** supported until 1995, later EFP ignored; 2010 ESOP plans in 2020 pending; ESO taxation aligned in 2019; ICT/ start-up incentives discussed 2023.	**ESO:** ES in JSC: financing by firm possible; since 2020 CGT on benefits at 20% and on proceeds of sale & dividends at 10%; up to 10% of capital may be special ES; ES in LLCs: still progressive PIT (widely criticised); **ESOP:** NCL general rules apply; **SO:** Since 2020 20% CGT on benefits at exercise (+ surtax); **PS:** none.	2013 ECS: **ESO** 3.4%, 2019: **PS** 46%; 2021 Cranet: **ESO** 3.2%, **PS** 4.8% 2015 EWCS: **ESO** 2%, **PS** 12.6%; 2008 PEPPER IV: **ESO** 34%, **PS** 29%; **ESO:** 2005 more than 10% of value of privatised firms (1996 20%); 2004 12% firms with majority ESO; **ESOP:** survey evidence, ESOP elements in 9.4% of firms (52 out of 552), completed ESOP approx. in one-fourth of them; **PS:** AI.
Italy	**[A] TU** mixed attitudes, recently interested in topic / **EA** divided, but mostly supportive; **[B]** Trilateral agreement 1993 and 2013 supported **PS**; then shift to support **ESO/SO**; recently discussed on political agenda; 2010 Code of Participation in still pending; but 2021 new rules for social enterprises and in 2022 new draft law discussed in senate.	**ESO:** CivC - discounted or free ES in JSC, financing by company possible; in capital increases deviation from pre-emption rights and preferential 'ES' possible; PIT and SSC exemption up to EUR 3,000 (4,000 in broad-based plans) after 3-year holding period; in LLCs free share up to EUR 7,500 benefit tax and SSC exempt, deferred taxation at sale; since 2012 no SSC and deferred taxation for equity incentives in start-ups / innovative SMEs; since 2018 no notarisation for LLC share transfers; **SO:** no tax or SSC on grant if non-tradable option; on exercise subject to CGT, no SSC; **PS:** tax/SSC exempt up to EUR 4,000 for incomes <EUR 80,000 with cap 3% of total pay.	2013 ECS: **ESO** 3%, 2019: **PS** 28%; 2021 Cranet: **ESO** 13%, **PS** 5.8%; 2015 EWCS: **ESO** 2.1%, **PS** 5.1%; **SO:** 2005 Cranet 1%; EU Report 2003, approximately 6% of Empl involved; **ESO:** AI, as protection against hostile take-overs, linked to ESG decarbonisation plans.
Cyprus	**[A]** EFP not an issue on **TU** / **EA** agendas; **[B]** EFP so far ignored.	**ESO:** discounted ES in JSC; financing ES by firm possible; dividends/gains from sale tax-free; 17% defense contribution on dividends for residents; **PS:** None.	2013 ECS: **ESO** 6%, 2019: **PS** 36% 2021 Cranet: **ESO** 5.3%, **PS** 6%; 2015 EWCS: **ESO** 1.1%, **PS** 3.7%; **SO:** 2005 Cranet: 4%; **ESO/PS:** AI only, insignificant.
Latvia	**[A] TU** since 2016 moderate interest **/ EA** indifferent to EFP; not a current topic on their agendas; **[B]** Little support for **ESO** in PrivL; EFP mostly ignored; **SO** regulated Since 2018.	**ESO:** PrivL - up to 20% ES until 1997; non-voting/non-transferable ES in state/public firms; preferential ES in JSC free/discounted; up to 10% of equity capital; not transferable, repurchase obligation; PIT, CGT, SSC, no tax on dividends (but for EmplC);	2013 ECS: **ESO** 1.4%, 2019: **PS** 43%; 2021 Cranet: **ESO** 9.1%, **PS** 4.3% 2015 EWCS: **ESO** 3.5%, **PS** 15%; **ESO:** PrivL 110.6m vouchers to 2.5m people; AI, 1999 16% of 915 firms dominant ESO but falling over time; **PS:** AI, 7% of firms; mostly IT, consulting, real estate.

Coun-try	**General attitude** [A] Social partners [B] Government	**Legislation and fiscal or other incentives**	**Schemes and their incidence** Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
		SO: max. 10% of share capital; 15% CGT and SSC at sale; PIT and SSC exemption after 1-year holding period; since 2021 also in LLCs; **PS:** none, subject to PIT (23 to 31.4%) but no SSC.	
Lithu-ania	**[A]** Climate EFP friendly; **TU** interested, lack of actions; **EA** support individual firms; **[B] ESOP**/**ES** strong support in PrivL until 1996; EFP included on government agenda 2014, new rules for **EFP** 2017/18 extended for SO in 2020.	**ESO:** PrivL - 5% ES deferred payment up to 5 years; in corporations ES for 3 years non-transferable/non-voting, financing by company possible; uniform 15% dividend tax, free shares exempt; after holding period profits from sale of shares not taxed, no SSC; **SO:** three-year blocking period during which transferable only between Empl; 15% CGT at exercise; no Empl SSC after 3-year holding period; since 2020 no CGT if 3-year vesting period; **PS:** subject to progressive PIT (20-27%); since 2018 broad share-based PS deductible from income with cap of 5% of Empl salary (25% for life-, health-, pension-, insurance contributions since 2020).	2013 ECS: **ESO** 13.9%, 2019: **PS** 55%; 2021 CRANET: **ESO** 5.5%, **PS** 7% ; 2015 EWCS: **ESO** 2%, **PS** 11.2%; 2008 PEPPER IV: **ESO** 4%, **PS** 36%; **ESO:** low and decreasing; AI, 2000 36% (1995 92%) privatised firms dominant ESO, falling over time; **PS:** AI; CPS mostly foreign (IT, consulting, advertising, etc.); DPS few cases 2005 linked to Empl savings plan.
Lux-em-bourg	**[A] TU/EA** growing interest in 1990s, **PS** popular; initially not supportive of share schemes; **[B]** EFP not a current issue; new law on ES 2016; plans to legislate EFP to retain key staff 2018; 2020 sift away from SO to PS.	**ESO:** free or discounted ES in JSC, financing by company possible; in capital increases deviation from pre-emption rights possible; **SO:** tax incentive (SSC exemption and yearly tax relief of 5%) abolished in 2021; **PS:** 50% tax exemption with 5% cap for "participative premium" since 2020 extended 2022.	2013 ECS: **ESO** 11.3%, 2019: **PS** 46%; 2015 EWCS: **ESO** 4.5%, **PS** 17.5%; **SO:** EU Report 2003, estimates 25% of firms - mainly financial sector; **PS:** PEPPER II, 1995 CPS in 25% of firms, mainly banks.
Hun-gary	**[A] TU** lobbied **ES**/**ESO** in privatisation, recently only sporadic support; **EA** indifferent; **[B] ESOP**/**ES** strong support in PrivL until 1996, new law extending **ESOPs** beyond Priv. 2016, amended 2018 and 2021(executive SESOP; climate friendly towards EFP.	**ESO:** PrivL - preferential sale; discount up to 50% of share price and 150% of annual minimum pay, instalments; Decree '*Egzisztencia*' Credit; specific 'ES' in JSC - discounted/free, up to 15% of equity capital, financing by firm possible; since 2003 tax-qualified stock plans – min. 10% coverage with less than 25% management, first HUF 1m free, then 9% CGT no SSC; **SO:** 15% PIT at exercise; **ESOP:** holding period 1 year, 2 years from 2020 on; EmplC contributions up to 20% tax	2013 ECS: **ESO** 2.6%, 2019: **PS** 31%; 2021 Cranet: **ESO** 5.7%, **PS** 5.7%; 2015 EWCS: **ESO** 3.7%, **PS** 9.7%; **SO:** 2005 Cranet 27%; **ESO:** 2010 HWERS 7% of companies; 2009 Labour Force Survey of the Hungarian Central Statistical Office 0.4% of Empl; **ESOP:** initially 287 companies employing 80,000, in 2016 30 active ESOPs left, but resurge to 91 in 2023; **PS:** 2010 HWERS 7% of companies (plan pre-defined and broad-based).

Coun-try	**General attitude** [A] Social partners [B] Government	**Legislation and fiscal or other incentives**	**Schemes and their incidence** Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
		deductible; 15% CGT at sale, no SSC; since 2021 SESOPs also in LLCs suitable for MEBO: min. 10 members (fixed at inception), min.10 years; if leveraged EmpC contributions tax exempt; **PS:** none.	
Malta	**[A] TU** support schemes in practice; EFP not a current topic in national tripartite dialogue; **[B]** EFP collateral effect of nationalisation (1980s) and privatisation (1990s) not a current issue.	**ESO:** ES in corporations, exempt from prospectus/capital market rules; up to 10% discount, financing by company possible; **SO:** 15% flat CGT at exercise; **ESOP:** Trust Act refers to EFP; 15% tax on interest / 10% on investment income; PIT at sale; **PS:** mentioned in NLL.	2013 ECS: **ESO** none, 2019: **PS** 38%; 2015 EWCS: **ESO** 2.3%, **PS** 10.9%; **ESO:** AI; banking sector: ES, SAYE, SO; **ESOP:** AI, Trust Funds in Bank of Valetta / Malta Telecom; **PS:** AI; 2004 public sector (Shipyard 1,761 Empl); private (foreign) firms, mostly reserved for management.
Netherlands	**[A] TU/EA** generally in favour, recently also for broad-based plans; **TU** support if supplement to pay, postulate deferred taxation in 2022; **[B]** Traditional focus on savings plans; support for SO in 2003 and then in 2018; support for tax advantages of employer share ownership to support start-ups, broadened to all types of firms in 2023.	All tax incentives abolished as of 1 Jan. 2012; no dividend taxation per 2020; tax reform 2023; **ESO:** ES in JSC, financing by company possible; deferred taxation until shares tradable; **SO:** Until Jan 2023 25% tax exemption in start-ups up to EUR 2,500 p.a., PIT on remaining 75%; since 2023 deferred taxation for all firms instead; **PS:** none; but annual, tax-free gift-payments of 3% up to annual payroll of EUR 400,000 and above of 1.18%; exceeding limits taxed at 80%.	2013 ECS: **ESO** 6.7%, 2019: **PS** 44%; 2021 Cranet: **ESO** 7.3%, **PS** 34.6%; 2015 EWCS: **ESO** 2.6%, **PS** 24.1%; **ESO:** 2014 Soppe/Houweling: broad-based ES in 17% of all listed firms; 2009 Kaarsemaker for SNPI 3.6% of all firms have broad-based ESO plans; **SO:** 2014 Soppe/Houweling: broad-based SO in 21% of all listed firms; 2009 Kaarsemaker for SNPI 1% of all firms have broad-based SO plans; **PS:** 2014 Soppe/Houweling: PS in 50% of all listed firms; 2009 Poutsma/Braam 7% of all AEX firms have broad-based PS plans.
Austria	**[A] TU/EA** currently support EFP and co-operate; different views about participation in decision-making **[B]** Legislation since 1974; first tax incentives since 1993; more active support since 2001; 2018 law on Employee Ownership Foundations; 2022 law on PS incentives; 2023 law on ES for start-ups.	**ESO:** discounted/free ES in JSC; financing by company possible; PIT/SSC allowance for benefit up to EUR 4,500 in JSC/Ltd; dividends CGT or 1/2 PIT; sale gain tax exempt; 25% EmpC withholding tax on dividends; 2024 start-ups: discounted ES, capital increase max.10% EmpC equity; cap 10% of Empls' salary, taxation deferred, 75% at 27.5% / 25% PIT, 5-year blocked, transfer restricted; **Employee Foundations:** EmpC buys own stock, held in IEnt, dividends paid out; IEnt: setting-up, operation, contributions to cost deductible, no capital transfer tax; Empl: no SSC; max. EUR 4,500 p.a. PIT tax allowance on contributions; CGT on dividends;	2013 ECS: **ESO** 7%, 2019: **PS** 47%; 2021 Cranet: **ESO** 2.7%, **PS** 26.7%; 2015 EWCS: **ESO** 2.8%, **PS** 7.8%; 2005 WKÖ/BAK: **ESO** 8%, **PS** 25%; **SO:** 2005 Cranet: 2%; 2005 WKÖ/BAK: 1%. 2007 Kronberger, Leitsmüller, Rauner: ESO in 8% firms, mostly listed JSC, 160,000 Empl, 6% workforce, owning an average of ≤5% shares in EmplC

Coun-try	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
		SO: max. 10% capital increase: increase max. 50% of equity capital and max. 20% for total amount of shares; PIT/SSC allowance for benefit up to EUR 4,500 if scheme broad-based, held by Empl Foundation until end of employment; **PS:** tax-free PS up to EUR 3,000 per year if scheme broad-based.	
Poland	**[A] TU/EA** indifferent to EFP; managers/ Empl pragmatically motivated; lobby groups/financial institutions supportive to **ESO;** **[B]** EFP supported in early privatisation period; **ESO** in most privatisations, since mid-1990s more and more ignored, short revival 2016/17; **PS** increased emphasis in the context of collective bargaining agreements; in 2009-11 on political agenda.	**ESO:** PrivL - 15% ES for free, 2 years non-transferable, up to value 18 months minimum pay, National Investment Funds 1995, shares for symbolic fee; ES/SPS in JSC, financing by company possible; uniform 19% dividend tax; deferred 19% flat taxation at sale for shares of foreign firms; **SO:** in JSC discount tax exempt if qualified "incentive scheme", 19% flat tax on benefit of sale **EBO:** PrivL - Leverage Lease Buyout (LLBO), anticipated ownership transfer possible; interest 50% of refinance rate; interest part of lease payments are costs; Insolvency Law - buyout right; 2009 program 'Supporting Privatization through Granting Sureties and Guarantees to EmplC and civic activity companies' state guaranties possible if at least 33% ESO; **PS:** CPS/SPS in JSC.	2013 ECS: **ESO** 4.2, 2019: **PS** 42%; 2015 EWCS: **ESO** 5.1%, **PS** 14.8%; 2008 PEPPER IV: **ESO** 40%, **PS** 26%; 2017 PWC: of 140 listed firms **ESO** in 31% (two thirds broad-based) **ESO:** in Priv. low and declining; AI in privatised firms, 2000 approximately 11.4% (1998 12.7%); NIF: adult citizens 1 share in 15 funds; 2021 estimates: decrease from 100,000 Empl shareholders in 2010 to 30,000 in 2021; **EBO:** LLBO 2002 one-third of privatisations, most frequently used single method, 1,335 firms w. 162,000 Empl, 14% over 250 Empl; **PS:** AI, limited to management.
Portugal	**[A] TU / EA** indifferent, low priority; **TU** recently partly supportive, prefer PS to SO; **[B] ESO** mainly supported in privatisation, especially around 1997, but no longer on agenda; EFP generally ignored; 2016 modifications for **SO** and **PS**.	**All share plans**: If free or discounted PIT on benefit, 28% CGT on dividends/sale, no SSC; **ESO:** PrivL - discounted ES; ES in JSC, financing by firm possible; capital increase: suspension of shareholder pre-emptive right for 'social reasons' possible; **SO**: after 12 month blocking period spread tax-exempt up to EUR 40,000; **PS:** NLL - PIT and SSC; variable bonuses exempt from SSC.	2013 ECS: **ESO** 3.4%, 2019: **PS** 38%; 2021 Cranet: **ESO** 2.4%, **PS** 14.5%; 2015 EWCS: **ESO** 0.8%, **PS** 2.6%; 2008 PEPPER IV: **ESO** 5.3%, **PS** 28%; **SO:** EU Report 2003, from 60 firms listed at Euronext Lisbon Stock Exchange, about 22% implemented SO.
Romania	**[A] TU** support individual cases; **EA** avoid topic; tripartite council tackled EFP sporadically; Collective	**ESO:** PrivL - aim 30% of privatised assets vouchers/ES; vouchers free; 10% discount ES; ES in JSC, financing by	2013 ECS: **ESO** 2.2%, 2019: **PS** 46%; 2015 EWCS: **ESO** 2.6%, **PS** 6.8%; 2008 PEPPER IV: **ESO** 6%, **PS** 42%:

Country	**General attitude** [A] Social partners [B] Government	**Legislation and fiscal or other incentives**	**Schemes and their incidence** Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
	Labour Contract 2007-10 social partners committed to sustain Empls' shareholder associations in privatisation; support faded since 2016; **[B] ESO** supported until 1997 especially **MEBO**; then support declined; current government gives little support.	company possible; 5% dividend tax; RSU: 16% CGT at sale conditional on vesting period min 1 year; **ESOP:** PrivL on Employee Shareholder Associations; leveraged transaction, preferential credit, up to interest rate 10%; 30% minimum participation of workers in ESOP; **SO**: free or discounted; 16% CGT at sale conditional on vesting period min. 1 year; **PS:** Ordinance – CPS compulsory in state/municipal firms, maximum payout of 10% of overall profits.	**ESO:** ES 10% of shares issued at privatisation, decreasing; **SO:** AI, mostly in financial sector and tech firms; **ESOP:** 1998 one-third of privatisations, most frequently used single method 2000: 2,632 firms, average 65% ESO, 1,652 majority ESO; **PS:** estimated 1.2 mln. Empl in public sector covered in 2006.
Slovenia	**[A] TU/EA** very supportive to EFP; "Employee Ownership Association" lobbies legislation; active support by Works Councils/Manager Associations; **[B]** Strong political support to EFP; draft laws 1997/2005 in parliament rejected; new Law on EFP in 2008; 2023 new Ministry for Solidarity-Based Future drafts ESOP law.	**All Schemes:** since 2008, 70% tax relief for PS and ESO with 1-year holding period (100% relief with more than 3-year); up to 20% profits or 10% total salaries per annum and up to EUR 5,000 per Empl; **ESO:** PrivL – up to 20% ES for vouchers; vouchers free, shares for overdue claims; ES/SPS in corporations; discount / financing by company possible; up to 10% of company capital; discount up to 35% if Empl employed >1 year for ES as pay; PIT exempt if <100% average Slvenian salary, but SSC; **EBO:** up to 40%, shares 4 years non-transferable; Worker association proxy organisation under Takeover Law; **PS:** SPS/CPS; up to 20% of net profits.	2013 ECS: **ESO** 9.3% 2019: **PS** 54%; 2021 Cranet: **ESO** 8.5%, **PS** 20.8%; 2015 EWCS: **ESO** 2.3%, **PS** 24.6%; **SO:** 2005 Cranet 4%; **ESO/EBO:** 90% of privatised firms; CS 1998 60% majority; ESO while only 23% of capital (2004 18% strong decline); 2019 Klanecek et al.: 26.4% firms, 33% with Emp majority ownership; 2021 business registry: since 2019, 8 new profit-sharing plans, 1 share purchase plan; **PS:** CS, in statutes of 32% of firms, but unexploited in 22%; for board members 20% of listed firms.
Slovakia	**[A] TU/EA** indifferent to EFP; except EA to Empl motivation; **[B] ESOP** discussed in 1990; **EBO** concept failed 1995; EFP generally ignored; 2018 Social enterprise Law.	**ESO:** discounted ES and share-based PS in JSC; up to 70% discount and financing by company possible; ESO as principle in social enterprises; **PS:** CPS/SPS in JSC, subject to 19% PIT.	2013 ECS: **ESO** 3.1%, 2019: **PS** 40%; 2021 Cranet: **ESO** 55%, **PS** 5%; 2015 EWCS: **ESO** 3.9%, **PS** 19.6%; **SO:** 2005 Cranet 10%; **ESO:** marginal; AI, banking sector / new privatisations; **EBO:** AI, management-led privatisation; as of 2023: 616 social enterprises.
Finland	**[A] TU/EA** generally support EFP, especially desire to improve the environment for "Personnel Funds"; other forms not discussed;	**ESO:** discount tax free up to 10%, no SSC if broad-based plan; dividends tax exempt if >9% per share and >EUR 90,000 total; since 2021 rules also apply to LLCs; **SO:** benefit PIT, sale 30% CGT;	2013 ECS: **ESO** 13.3%, 2019: **PS** 55%; 2021 Cranet: **ESO** 10.2%, **PS** 13.6%; 2015 EWCS: **ESO** 2.6%, **PS** 28.4%; **Personnel funds:** since 1990 total of over EUR one bln. allocated; 2014 EUR 63 mln. contributions with total assets estimated at EUR 533 mln. (ca. 100

Coun-try	**General attitude** [A] Social partners [B] Government	**Legislation and fiscal or other incentives**	**Schemes and their incidence** Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
	[B] Discussions on EFP since 1970s; 1989 Law on **Personnel Funds** (major form until now) amended 2010, 2015 and 2022;	**PS:** CPS none; share-based “Personnel funds”: broad based since 2023 in firms with more than 5 Empl and more than EUR 100,000 turnover, since 1999 also in public firms, registration with Ministry of Labour, with-drawals up to 15% p.a.; 20% of payments to Empl tax free; earnings of fund tax free.	funds with around 150,000 members); 25 new funds set up in 2014/15; **SO:** 2005 Cranet 5%; 2003 EU Report: 84% of companies listed at Helsinki Stock Exchange; **PS:** 2022 319 Personnel Funds with 154,651 members and EUR 684 mln. in assets.
Swe-den	**[A] TU** neutral/opposed, advocated “Wage Earners’ Funds”; **EA** favour PS for wage flexibility, but no active support; **[B]** In 1992–97 tax incen-tives for **PS** in firms; since then no support until 2018 incentives for **SO** with a focus on start-ups extend-ed in 2022.	**ESO:** ES in JSC, financing by company possible; in capital increase suspension of share-holders’ pre-emptive right pos-sible; **SO:** Deferred taxation in start-ups <10 years young and <150 Empl, CGT at sale; cap of Kro-ner 75 min. total and 3 mln. per Empl; no SSC for EmplC; **PS:** CPS none; share-based ‘Profit-Sharing Foundations’: one-third of Empl on similar terms, assets distributed after dissolution; EmplC 24.26% pay-roll tax instead of 32.28% SSC.	2013 ECS: **ESO** 10.2%, 2019: **PS** 32%; 2021 Cranet: **ESO** 10.8%, **PS** 15.9%; 2015 EWCS: **ESO** 7.1%, **PS** 26.5%; **PS:** 2003 Heissmann: 15%; Wage Earners’ Funds created in 1983, abolished in 1991. **PS/ESO:** Oktogonen foundation was Handelsbanken’s second largest share-holder in 2023, owning 8.3% of the vot-ing shares and 8.1% of the capital.
Former EU			
UK	**[A]** Climate EFP friendly & supportive; **TU** involved, but reservations: prefer ESO to PS; **EA** positive, favour flexibility regarding form of schemes; Empl interested; **[B]** Long tradition of EFP, esp. ESO and ESOP; little participation in decision making; support for SO (SAYE/Sharesave); 2000 Enterprise Management Incentives (EMI); 2012 Nuttall Report sparked continuing legislation on ES; Scottish initiative since 2018; extended incentives for 2024.	**ESOP:** vehicle for ESO, Employ-ee Ownership Trust (EOT): if controlling interest is trans-ferred to EOT, no CGT for selling owners; no PIT for up to GBP 3,600 of bonus payments per Empl; **ESO:** Share Incentive Plan, 5-year blocking period; no PIT/SSC; free shares up to GBP 3,600 per year; no dividend tax if dividends reinvested in shares; no CGT if sale immedi-ately after taking shares out of the plan; **SO:** All plans CGT on sale; SAYE: tax bonus on savings, no PIT; Company SO Plan: gener-ally, no PIT at grant or exercise; GBP 30,000 cap per Empl; EMI esp. for Start-ups: no PIT, no SSC at grant or exercise; **PS:** approved PS; tax benefits abolished in 2002.	2013 ECS: **ESO** 8.3%, 2019: **PS** 35% 2021 Cranet: **ESO** 37.7%, **PS** 29.6%; 2015 EWCS: **ESO** 8.7%, **PS** 19.1%; **ESO:** 2020/21 HM Revenue and Cus-toms: 16,330 firms operate approved plans - 820 Share Incentive Plans, 480 SAYE plans, 1,170 Company Share Op-tion Plans, 14,310 EMI plans; more than 700 EOTs by the end of 2021; 115 public service mutuals in 2018; **Share-based Profit Sharing:** 2002 1mln. Empl under approved schemes, average per head less than GBP 700; **SO:** 2005 Cranet: 2%; 2006 ProShare: SAYE in 1,300 firms, 2.6m Empl; Com-pany Share Option Plans in 3,000 firms; EMI in 3,000 firms;

Coun-try	**General attitude** [A] Social partners [B] Government	**Legislation and fiscal or other incentives**	**Schemes and their incidence** Offer: ECS >10 / CRANET >200 Empl Take-up rate by Empl: EWCS
Benchmark country			
USA	**[A]** After legalization of unions in 1935, collective bargaining CPS/ GS; later focus on EFP as pension plans; last decades also Empl motivation; today bipartisan support by **EA/TU**. **[B]** Long-standing government efforts (Republicans and Democrats alike); Internal Revenue Act 1921 boosted EFP and retirement benefits; ESOP authorised by Employee Retirement Income Security Act (ERISA) in 1974; legislation for 401(k) plans in 1978; further ESOP incentives passed in 1984 and 2001.	**ESO:** *Direct stock purchases* – CGT, after 1 year; *Employee stock purchase plans* (ESPPs) – not taxable at grant / exercise; taxation as long-term gains conditional on holding period; **ESOP:** can be leveraged; sale of stock to ESOP taxed at CGT if purchase leveraged, interest and principal tax-deductible; "tax-free rollover" for seller, if min. 30% of stock & reinvested in "qualified securities" in 1 year; dividends to ESOP participants or to service loan deductible; since 2001 also S corporations; S corporation 100% owned by ESOP tax-exempt; **SO:** *Incentive Stock Option Plans* – conditional CGT; *Non-qualified Stock Options* – taxed at exercise; at sale, CGT after holding period; **PS:** tax-exempt trust, diversified investments, EmpC contributions tax-deductible up to 25% of payroll, trust earnings tax-exempt; *Qualified Profit-Sharing Plans* - exemptions from diversification requirement; *401(k) plans* - deductible salary contributions to plan (for 2023, max USD 22,500); since 2006 company matching contributions after 3 years of service; *DPS* – deferred taxation of cash bonuses and cash PS amounts;	**ESOPs:** 2021 NCEO estimates 6,467 ESOPs and ca. 2,000 ESOP-like plans, total ca. 8,500 plans; ca. 14.5 mln. Empl.; holding USD 1.8 bln. in assets; **PS** and **401(k)** Plans (Plan Sponsor Council of America Annual Survey) 2022: 625,000 401(k) plans with ca. 60 mln. Empl; 401(k) plans held ca. USD 6.3 trillion in assets (20% of USD 39.3 trillion in US retirement assets); **2010 General Survey** (GSS): 36% of Empl, i.e., 28 mln. Empl own company stock through different benefit plans like ESOPs, 401(k) plans, SO and similar grants as well as ESPPs (**ESO:** 18.7 mln. Empl, i.e., 17.4% owned company stock; **SO:** 9.3 mln. Empl = 8.7%).

Sources: PEPPER I-IV and: BCCI 2022 (Bulgarian Chamber of Commerce and Industry);CNMV 2003; CRANET 2010/2005 (firms with more than 200 Empl); DAI 2022 (Deutsches Aktieninstitut); ECS 2013; EU Stock Options Report 2003; EWCS 2005 (take-up rate); FONDACT 2004; GSS 2010; Heissmann 2003; HWERS 2010 (Hungarian Workplace Employment Relation Survey); IAB 2005; IBEC 2002; ifsProShare 2006; NCEO 2014; Nutall Report 2012; WKÖ/BAK 2005; WSI 2003; please note that the country data of the different surveys is incoherent due to inconsistencies in methodology and definitions. *Excluded from studies*: Management Buyout, General Savings Plans, Consumer and Housing Cooperatives.

III. Empirical evidence on EFP according to the available data of cross-country surveys (ECS, CRANET and EWCS)

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1. Comments on available and comparability of cross-country data

Accurate information on the scale of EFP in EU companies is difficult to obtain, as there is no register of companies with EFP schemes in any country. The main sources of information on EFP are small scale surveys undertaken by academic researchers in one or a few countries for the specific purpose of investigating the incidence and impact of EFP, or occasional surveys conducted by larger organisations for reasons not related to EFP but which include questions on financial participation, namely, the ECS, the EWCS and the CRANET. The following Sections summarise the main findings of these cross-country data sources (representing the EFP landscape at three to five points in time: 2000, 2005, 2009/10, 2013/15, 2019 and 2021) as well as of the 2023 update of the country profiles. For a description of respective data sets see Annex 2.

The results from the CRANET surveys do not always correspond to those from the ECS database. In contrast to the ECS and the EWCS the CRANET is a survey of a relatively small number of firms designed to compare the industrial relations and human resource management practices of different organisations across national contexts. The CRANET survey questionnaire is sent to some 7,000 companies in the EU and with the response rate of about 20% in the various waves, the total number of firms is around 1,400 in the EU (including the United Kingdom). As a result, the number of firms eligible to be included in our analysis in each country may be very small (e.g., for 1999 as low as 24 in Austria and 12 in Cyprus). Because of the small size of the sample, the CRANET survey cannot maintain its representativeness for the analysis presented here.[31] However, given that CRANET is one of the few sources of information on EFP across the EU over the last 25 years, we present the outcome of these surveys despite problems with representativeness and even though at times the results do not correspond to the results based on ECS or the individual country assessment of the conduciveness of the environment for EFP (we comment on this in the discussion of the figures in the relevant Section below).

Another shortcoming of the CRANET survey is that it was not conducted in all EU countries in all the years of the survey. As a result, the averages calculated are not, strictly speaking, comparable across the five surveys. To deal with this issue, we developed the following rules to ensure that the average variation in the variables of in-

[31] In general population surveys such as the ECS and the EWCS, the distributions of survey variables can be expected to be "well-behaved" (i.e., normally distributed). This is not the case for organisational or business surveys like CRANET, however (e.g., in any given country the distribution of company size is skewed to the right, i.e., there are many small companies and only a few large companies.) This is particularly important above all for the econometric work in Sections 2 and 3 but also has an implication for the study of descriptive statistics, as many statistical procedures and estimation methods crucially depend on the assumption of normally distributed variables and error terms.

terest over time are comparable: (i) countries in which the survey was conducted only once were excluded from the study (these were: Ireland, Lithuania, Poland, Portugal, Romania and Latvia, the latter only for PS); (ii) for countries where the survey was conducted twice or more, the missing year(s) has/have been replaced by the average value of the variable for years in which data was available.

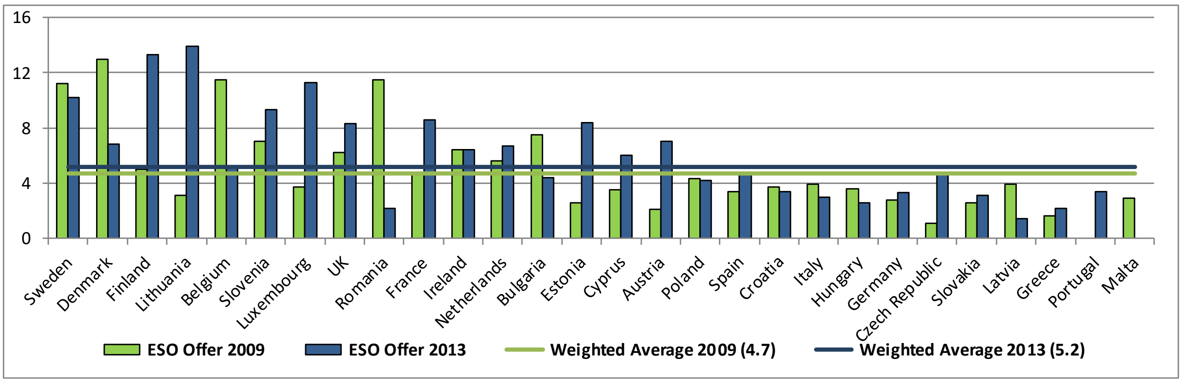
2. ECS 2009, 2013 and, for profit sharing, 2019: Offer of EFP schemes by firms with more than 10 employees according to size and sector

The European Company Survey conducted by European Foundation for the Improvement of Living and Working Conditions (Eurofound) is the largest firm level survey conducted in all European countries (and even some non-EU countries). It covers the total population (universe) of EU companies (with ten or more employees) of approximately 1.65 million.[32] The ECS 2009 sample contained 25,140 companies of which 19,320 were private sector firms; the 2013 survey contained 27,300 companies with 22,974 of them being private and the 2019 survey contained 21,870 and by design the public sector was excluded.[33] It is important to note that although the picture of the ECS data is more detailed with regard to firm size (compared to CRANET), only the 2009 and the 2019 round allows to distinguish between broad-based and narrow-based schemes. Furthermore, the question on employee share ownership was dropped from the 2019 questionnaire further restricting the analysis.

a) Employee share ownership (ESO)

Despite the period of economic and financial crisis in the EU, firms continue to offer share ownership schemes to their employees. As Figure 2 shows, for the sample as a whole, the average proportion of private firms offering ESO schemes has increased from 4.7% to 5.2% (a growth of about ten per cent) since the 2nd ECS.[34]

Figure 2: Proportion of private companies offering employee share ownership schemes in EU-28 in 2009 and 2013 (in per cent)



Source: ECS 2009 and 2013.

32 Eurostat figure for 2011. This is the latest data on the actual total number of companies in EU countries. Given that the actual number of companies in 2013 is likely to be higher than 2011, the actual number of companies offering EFP schemes are likely to be slightly higher than those estimated in this chapter.

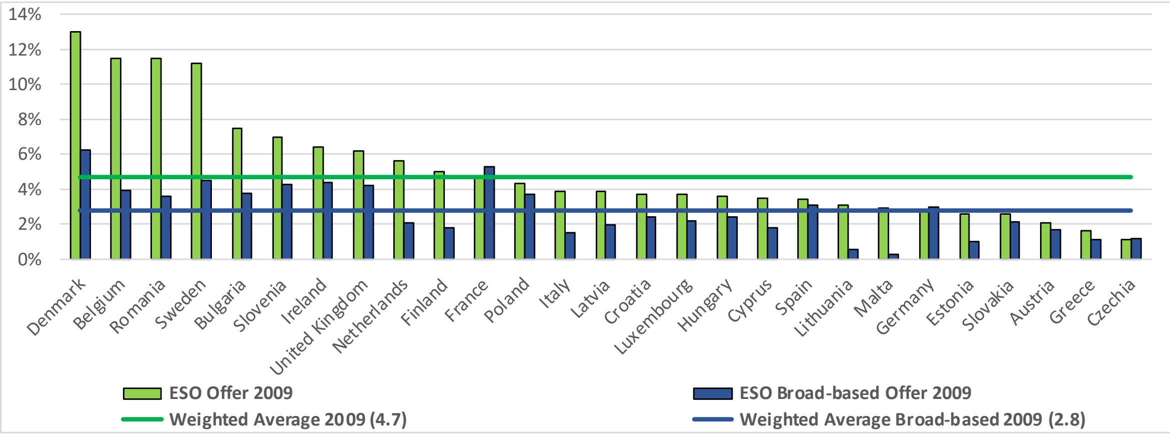
33 The ECS covers only firms with 10 and more employees. All information extracted from the ECS data (e.g., averages) are weighted (as explained in footnote 28). The figures and data mentioned here refer to EU-28 (for 2013) and to EU 27 plus Croatia (for 2009).

34 In the 2009 ECS sample, 1,388 of 20,828 private firms (weighted average, 4.7%) reported ESO implementation. Of these more than half implemented the scheme broadly, i.e., to all employees. Unfortunately, the 2013 round of the ECS survey did not distinguish between broad and narrow based schemes.

However, there is significant variation in adoption of ESO schemes across the EU. Firms in Austria, Estonia, Finland, France, Lithuania, Luxembourg, Slovenia, Spain and the United Kingdom have experienced an expansion of ESO schemes while those in Belgium, Bulgaria, Denmark and Romania have witnessed significant declines. The volatility within countries is somewhat peculiar without any strong explanation.

For the ECS 2009 round, which included the question on whether an ESO scheme was offered to all employees, we can distinguish between broad-based and executive schemes, which however, are defined differently in ECS (offer to all employees) and CRANET (offer to more than 50%); the results are shown in Figure 3. The weighted average of the general ESO offer in 2009 was 4.7% while that for broad-based ESO schemes offered to all employees was 3.4%. In 2010 the CRANET weighted average for broad-based ESO offer was 16.9%. This relatively large difference between ECS and CRANET is in line with the literature and empirical findings showing that, in particular for ESO, the relation between company size and the offer of EFP is strong with smaller firms offering much less ESO to their employees. Since the ECS captures firms with a workforce of more than 10 and the CRANET of more than 200 it was to be expected that the values in the ECS would be much lower (this is also corroborated by our ECS analysis results in Figure 4 below).

Figure 3: Proportion of private companies offering broad-based vs. narrow-based employee share ownership schemes in EU-28 in 2009 (in per cent)

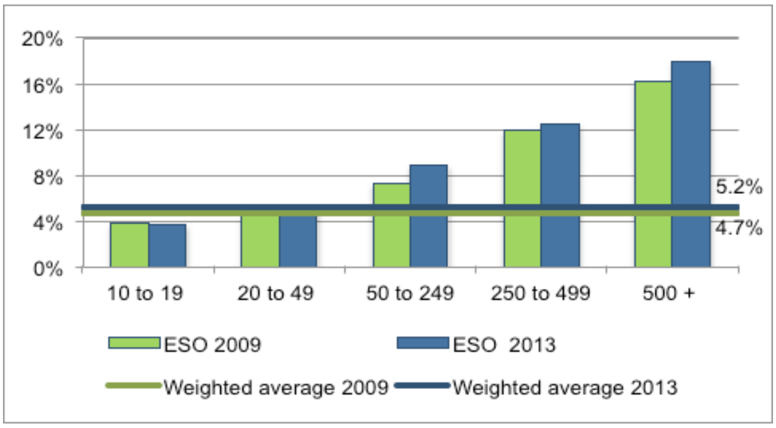


Source: ECS 2009.

It is possible to identify a number of characteristics of firms offering ESO, such as size and sector of activity, which influence the adoption of these schemes. As Figure 4 shows, the adoption of ESO schemes in the EU is positively correlated with firm size, both in 2009 and 2013.[35]

[35] For a quantitative study of the impact of firm characteristics on the likelihood of a company adopting financial participation schemes using the 2nd ECS, see Hashi and Hashani (2013).

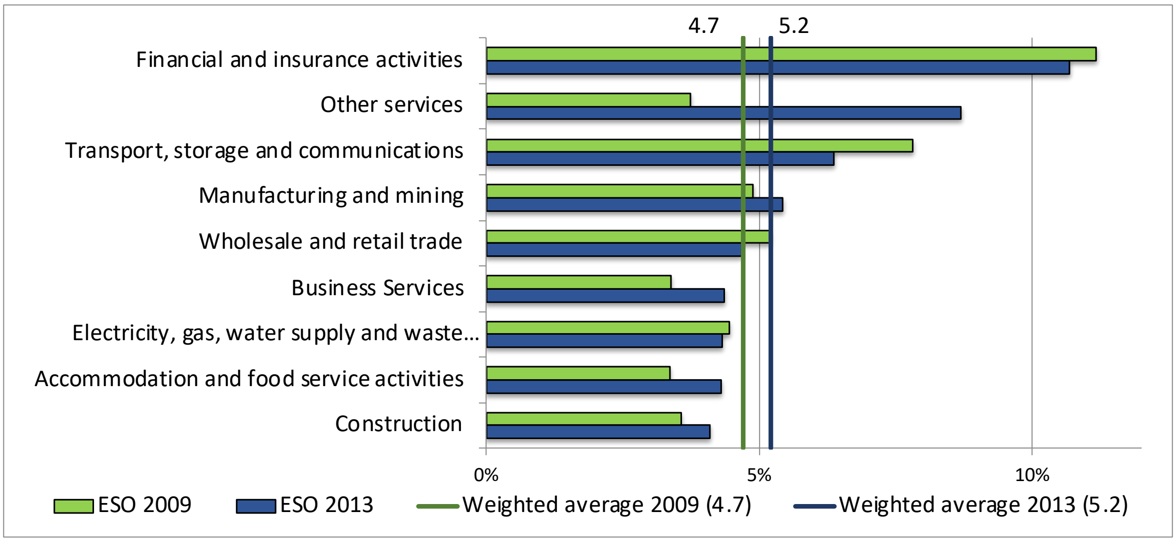
Figure 4. Proportion of private firms offering employee share ownership schemes by size class in EU-28 in 2009 and 2013 (in per cent)



Source: ECS 2009 and 2013.

Similarly, in terms of sector of operation, there is considerable variation in the adoption of ESO schemes across sectors. However, as Figure 5 shows, firms in the Financial Intermediation and Real Estate and Business Services sector are much more likely to offer their employees an ESO scheme than those in other sectors. Although the adoption of ESO schemes has increased overall, it has marginally declined in few sectors, including the two leading sectors with highest incidence.

Figure 5. Proportion of private firms offering employee share ownership schemes by sector of activity in EU-28 in 2009 and 2013 (in per cent)



Source: ECS 2009 and 2013. Note: Sector classification changed during the period under consideration, i.e., NACE Rev. 1.1 in 2009 and NACE Rev. 2 in 2013. Sectors were, therefore, matched using broad one-to-one correspondence between sub-sectors.

Apart from country, size and sector of operation, the presence of an employee representation system in a company can also affect the adoption of an ESO scheme. As Table 2 shows, the presence of an employee representation arrangement in a company increases the likelihood of the presence of a share ownership scheme. This is also the case for companies in all size classes. Still, there is considerable heterogeneity between countries. The proportion of companies with employee representation and offering ESO schemes in the period under consideration, in all size-classes, ranged from zero to 18%. In 2013 the bottom three countries were Malta, Romania, and Italy while the top three countries were Luxembourg, the United Kingdom and Lithuania.

Table 2. Proportion of private companies offering employee share ownership schemes by employee representation and size class in EU-28 in 2009 and 2013 (in per cent)

	2009			2013		
Size-class	All companies	Without employee representation	With employee representation	All companies	Without employee representation	With employee representation
10-19	3.8%	3.6%	4.7%	3.7%	3.10%	6.50%
20-49	4.6%	4.3%	5.1%	5.2%	4.70%	6.40%
50-249	7.3%	5.2%	8.6%	8.9%	6.90%	10.50%
250-499	12.0%	10.8%	12.3%	12.5%	8.90%	13.40%
500+	16.2%	10.0%	17.0%	18.0%	16.70%	18.40%
Total	4.7%	3.9%	6.3%	5.2%	4.10%	7.90%

Source: ECS 2009 and 2013.

b) Profit sharing (PS)

Profit-sharing schemes became even more popular than ESO schemes between the 2nd, 3rd and 4th ECS rounds, with the average proportion of private firms offering PS schemes to their employees almost tripling, rising from 14.3% in 2009 to 30.2% in 2013 and to 42% in 2019. As Figure 6 shows, their popularity increased in all EU Member States.

Figure 6. Proportion of private companies offering profit-sharing schemes in EU-28 in 2009, 2013 and 2019 (in per cent)

Source: ECS 2009, 2013 and 2019.

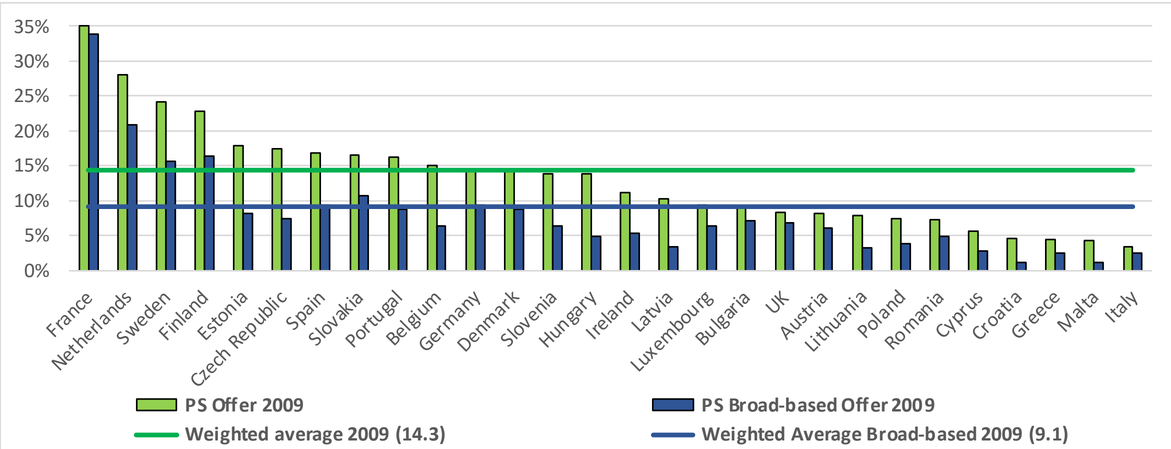
In the aftermath of the financial crisis, the adoption of PS schemes increased in all EU countries even though there was no general improvement in the legal/policy environment across the EU.[36] One possible explanation is that during the crisis, in an environment of increased profit volatility risk, employers used PS schemes as a mecha-

[36] Unlike in the CRANET survey the relevant ECS question in the 2013 survey was more specific including the general issue whether or not employees receive profit sharing as a "type of pay". We can therefore exclude here the problem that in the absence of profits the question related to the offer of PS would be answered negative.

nism for incentivising employees while increasing wage flexibility. By adopting more flexible compensation schemes such as PS, a part of this risk is transferred to employees. It is unclear whether this practice involves substitution of wages. This observation is backed both by anecdotal evidence from some experts[37], as well as findings from the European Restructuring Monitor (Hurley et al. 2009) and a study investigating – among other issues – the relationship between EFP and the evolution of wages.[38] The continued increase through 2013, however, suggests that PS in general had a much more dynamic development in comparison to ESO, a finding corroborated by the other available cross-country datasets.

However, when looking at countries individually, there is no strong explanation for variations between countries. Between 2009 and 2021, Austria and Slovenia saw the largest expansion of PS schemes (more than quadrupling), France and the Netherlands, the smallest expansion. A noticeable trend was the significant increase in the adoption of PS schemes in East European Countries, where the average proportion more than tripled during the period under consideration. Between 2013 and 2019 these trends changed with Croatia, Malta and Greece experiencing an increase above 20 percentage points while in Slovakia and Sweden a two-digit drop and in Slovenia and Denmark a one-digit drop could be observed; Lithuania and Austria only had a marginal decrease. More generally speaking the period between 2009 and 2013 saw a strong increase in all countries under observation which the slowed down a bit between 2013 and 2019 and in some countries, i.e., six out of 27 + UK, turned negative.

Figure 7: Proportion of private companies offering broad-based vs. narrow-based profit-sharing schemes in EU-28 in 2009 (in per cent)



Source: ECS 2009.

For the ECS 2009 round, which included the question whether a PS scheme was offered to all employees, we can distinguish between broad-based and executive schemes. The weighted average of the general PS offer in 2009 was 14.3% while that for broad-based PS schemes offered to all employees was 9.1%. This difference of

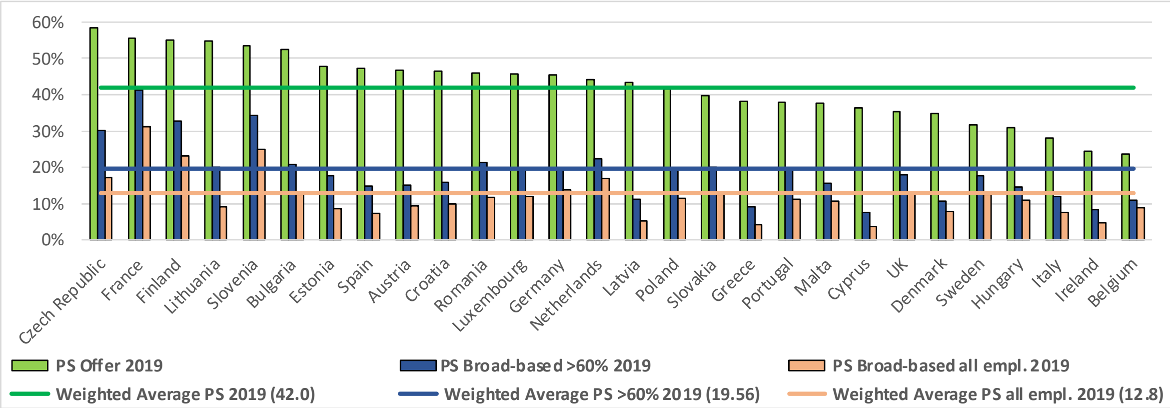
[37] For example, the large majority of 20 human resource managers of large German enterprises confirmed this practice at the workshop "Neuer Schwung für die Belegschaftsaktie" (new impulses for employee shares) on 14 May 2014 in Frankfurt organised by the Deutsches Aktieninstitut.

[38] See Employment Studies Centre (CEE) (2014), which suggests that financial participation goes along with wage moderation that is compensated by bonus payments. However, the study uses older data that cover the period prior to the crisis (1999-2007).

roughly 30% is again in line with the expectation that broad-based schemes are somewhat less widespread.

The ECS 2019 round, which is the only round where the questionnaire asked to how many per cent of the workforce the PS scheme was offered to, allows us to refine the picture as.[39] To make the analysis of ECS comparable with our CRANET results in this respect, for the ECS 2019 round Figure 8 other than the offer shows both, that to all employees (as in the ECS 2009 questionnaire) and that to more than 60 %. The reason is that for the ECS 2009 we can only distinguish between the offer and the offer to all employees while our analysis of the CRANET dataset uses the criterion of more than 50% for a broad-based scheme; in this way we can draw a comparison both within the ECS between the 2009 and 2019 rounds and more general with the CRANET. As we can see from Figure 8 the values for broad-based PS schemes when compared to the general offer are roughly half as high.

Figure 8: Proportion of private companies offering broad-based vs. narrow-based profit-sharing schemes in EU-28 in 2019 (in per cent)



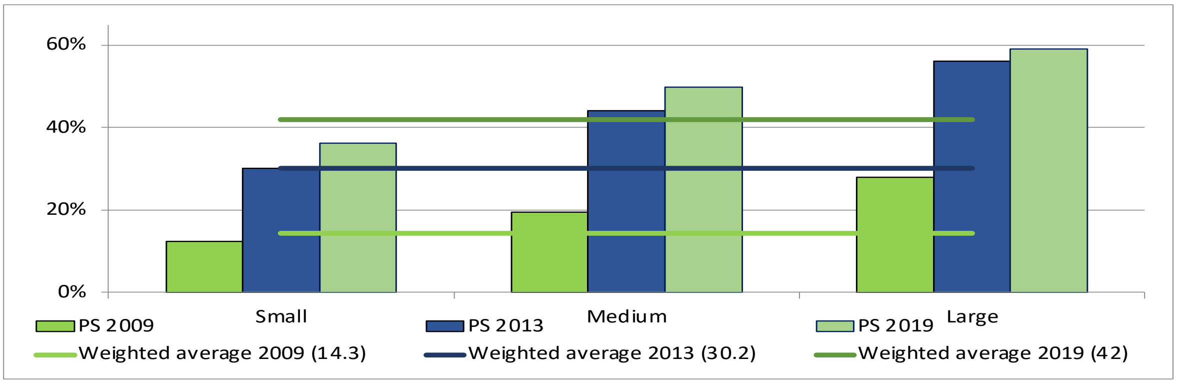
Source: ECS 2019.

Given the relation between offer and company size (in larger companies the offer is higher), above results of Figures 7 and 8 concerning size are reflected in the results from the CRANET survey: The weighted average of broad-based PS offer for the 2009 round of ECS is 9.1% and that for the CRANET 2010 round is 32%; that for the 2019 round of ECS is 20% and that for the CRANET 2015 round is 27.9%.

In terms of the characteristics of companies which have adopted PS schemes, it is possible to identify a number of features, such as size and sector of activity, that influence the adoption of any employee participation scheme in companies. Figure 9 presents the proportion of companies of different size classes offering PS schemes to their employees over a decade.

[39] With regard to the question whether a PS scheme is broad-based or not the ECS 2019 asks whether a scheme was offered to more than 20%, 40%, 60% or 80% of the workforce which makes it impossible to apply the 50% criterion we used in the CRANET analysis. The weighted average of the general PS offer in 2019 was 42%; the broad-based PS in 2019 is (i) 22% if we calculate over 40% of employees; (ii) 20% if we calculate over 60% of employees; we decided to use the 60% threshold as the differences are not prominent.

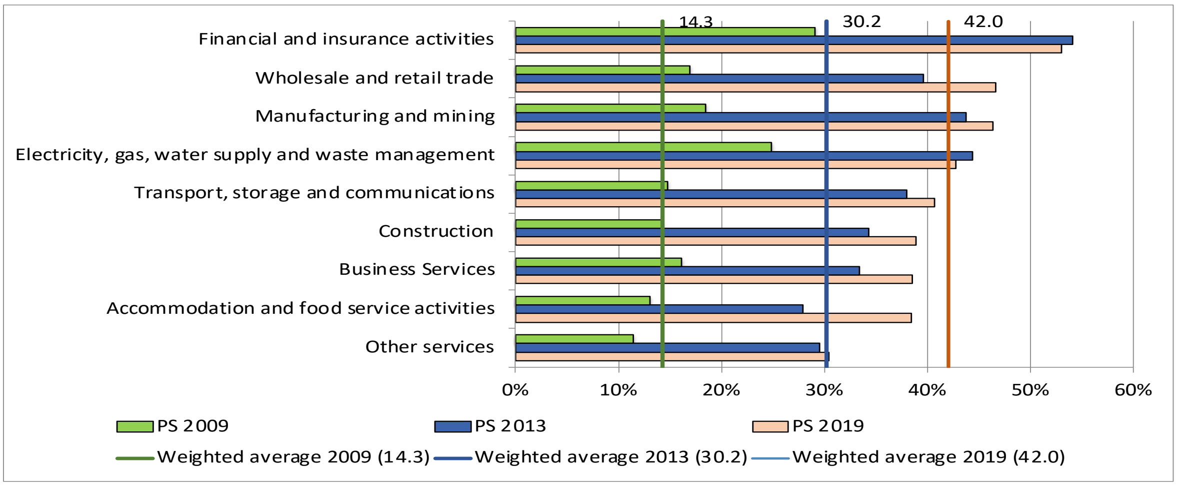
Figure 9. Proportion of private companies offering profit-sharing schemes by size class (number of employees) in EU-28 in 2009, 2013 and 2019 (in per cent)



Source: ECS 2009, 2013 and 2019.

Figure 10 illustrates the adoption of PS schemes in different sectors of activity. These schemes are most commonly employed in the financial and insurance sector, followed by the wholesale and retail trade. Profit-sharing schemes have become more widespread in almost all sectors in 2019 in comparison to previous rounds, though the proportionate increase across sectors varies greatly; the two exceptions are the insurance and the electricity, gas etc. sector which showed a slight drop between 2013 and 2019). Again, the aggregated data cannot depict the disparities between countries.

Figure 10. Proportion of private companies offering profit-sharing schemes by sector in EU-28 in 2009, 2013 and 2019 (in per cent)



Source: ECS 2009; 2013; 2019. Note: Sector classifications changed during the period under consideration, i.e., NACE Rev. 1.1 in 2009 and NACE Rev. 2 in 2013 and 2019. Sectors were, therefore, matched using broad one-to-one correspondence between sub-sectors.

Apart from country, size and sector of activity, the presence of an employee representation system in a company can also influence its decision to employ a PS scheme. As Table 3 shows, companies that have an employee representation system are more likely to offer their employees profit sharing in some form, a relationship that has prevailed in both surveys. This relationship is also found in firms of different size class, with the largest much more likely to offer their employees a PS scheme. The averages shown in Figures 6 and 7 as well as in Table 3 do not, of course, show between-country heterogeneity. The proportion of companies with employee representation and offering PS schemes in the period under consideration, in all size-classes, ranged from

5 to 45%. In 2013 the bottom three countries were Cyprus, Greece, and Hungary while the top three countries were Finland, Czech Republic, and Slovakia. In 2019 this order changed somewhat with the bottom three countries being Ireland, Belgium, and Italy while the top three countries were Czech Republic, Finland, and France.

Table 3. Proportion of private companies offering profit-sharing schemes by employee representation and size class in EU-28 in 2009 and 2013 (in per cent)

	Size-class	Large (>249)	Medium (<250 />49)	Small (<50)
2009	All Companies	27.93	19.56	12.45
	Without employee representation	15.52	14.07	10.91
	With employee representation	30.95	23.53	16.43
2013	All Companies	56.13	44.15	30.05
	Without employee representation	42.70	35.68	27.46
	With employee representation	59.20	49.33	35.95
2019	All Companies	59.11	49.80	36.27
	Without employee representation	54.07	48.04	35.33
	With employee representation	60.68	51.38	39.37

Source: ECS 2009 and 2013.

3. CRANET 2005, 2010, 2015 and 2021 data: Offer of EFP schemes by medium/large firms and coverage of employees

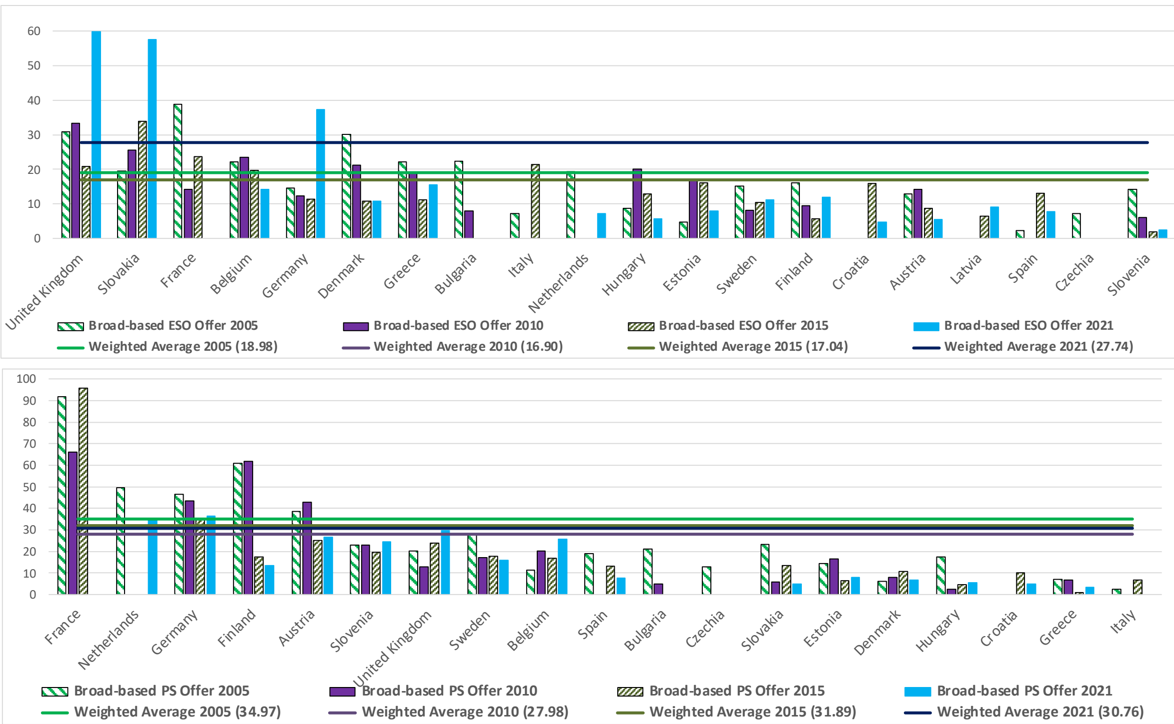
One section of the CRANET questionnaire is concerned with employees' remuneration and its components. In this section there are questions on whether the company offers any EFP scheme to various occupational groups of employees (management, professional and technical, administrative, and manual workers) which allows us to focus on broad-based schemes, that is, schemes covering more than 50% of employees. It is, however, important to note that as a result of the lack of representativeness of the CRANET data set (see introduction to this chapter) the individual values in the different rounds need to be treated with caution as they may be misleading. Another difficulty regarding the interpretation of the dynamics over time is that not all countries under consideration participated in all rounds of the survey. For these reasons, we limit ourselves regarding the interpretation of the results to: a) the general trend over time represented by the weighted averages; and b) differences between countries showing the frontrunners and laggards.

a) Offer of broad-based EFP schemes in firms with more than 200 employees

Figure 11 shows the proportion of firms offering broad-based financial participation (ESO and PS) to employees in 2005, 2010, 2015 and 2021 in 21 EU Member States. We observe erratic variations in the variables of interest in quite a few countries. There are also some clearly erroneous values such as the drop in the offer of PS in France from 92% in 2005 to 66% in 2010 since we know that PS is compulsory in France in firms with more than 50 employees. Concerning the weighted averages, we can observe the following: The ESO offer has a high start with 19% in 2005 before dropping to 16.9% by 2010, which we surmise can be attributed to the effects of the financial crisis. In 2015 we observe slight recovery to 17% and then a subsequent strong increase to 27.7% in 2021 despite the COVID-19 pandemic showing a long-term positive development of ESO across the countries under observation.

Of the countries with an average participation rate of over 20% the United Kingdom, Slovakia, and Germany show a strong increase in the second decade while France, Belgium and Denmark have an opposite dynamic. In the broad middle field with values of around 10%, the ratio generally dropped in the second decade; four of these with a pronounced drop (Bulgaria, Hungary, Estonia, and Croatia) are transition countries. The two lowest-ranked countries (average below 5%) are the Czech Republic and Slovenia, but it is, indeed, surprising to see Slovenia in this group, as the country's privatisation programme generated a large amount of employee ownership and there has been continuous political support for ESO during the last decade. It is interesting that Denmark is far ahead of the other two Nordic countries (Sweden and Finland), a possible indication of the heterogeneity of this group of countries. Finally, it is also interesting to note that Estonia, Bulgaria and Hungary have similar levels of offer, albeit with some volatility across the waves, in spite of the different privatisation methods used in these countries. This is possibly an indicator of convergence of ownership structures in the post-transition period in these countries.

Figure 11: Proportion of firms offering broad-based employee share ownership (ESO) and profit-sharing (PS) schemes in 20 EU MS and the UK, 2005-2021 (in per cent)



Source: CRANET Survey, 2005, 2010, 2015 and 2021. Note: For countries missing in a given round of survey the calculation of weighted averages is based on imputed values.

Figure 11 also shows how broad-based PS has developed between 2005, 2010, 2015 and 2021 in most countries. As mentioned earlier, the analysis of the PS offer in the CRANET dataset other than the limited representativeness (see Section 1. c) above) has a methodological caveat with the questionnaire asking only whether "profit-sharing" is offered (for ESO the concerning question asks about "employee share schemes") making it impossible to understand whether a PS scheme was in place but due to a lack of company profits these were not shared or whether the company did not have a scheme in place at all. In this light, the weighted average for all countries included in the surveys had a significant drop from initially 35% in 2005 to 29% in 2010 which again possibly is an effect of the financial crises when profits were scarce or absent. The recovery in the following years reaches 32% in 2015 but slightly declines to 31% in 2021, a development potentially affected by the second year of the COVID-19 pandemic when again profits were lower or nil.

We also note a much wider variety of results than in the case of ESO. For ESO, the proportion of firms offering a scheme ranges from an average of 5 to 32%; for PS from under 5 to over 85%. France, where PS is compulsory for firms with a workforce larger than 50 employees stands out; the following leading countries are the Netherlands, Germany, Finland, and Austria (with averages over 33% of firms offering PS schemes), followed by Slovenia, the United Kingdom, Sweden and Belgium (with around 20%). The lowest-ranked countries (with averages around 5% in 2010) are Croatia, Italy, and Greece.

b) Coverage of broad-based EFP schemes in firms with more than 200 employees

Using the CRANET survey, it is possible to calculate the proportion of employees in the sample covered by broad-based ESO and PS plans (or to whom the schemes are offered).[40] The results are presented in Figure 12. Concerning the weighted averages, we can observe the following: In terms of ESO, the coverage of employees by these plans has initially been high in a majority of countries throughout the first decade before dropping in 2010 (a development parallel to the offer as described above, which we surmise may be attributed to the effects of the financial crisis); the weighted country average decreased from 30.4% in 2005 to 20.7% in 2010. In 2015 we observe an increase to 27.2 %, settling with a small increase at 27.7% in 2021, which is in line with the other data sources. Unlike for the offer (see Figure 2 above) the COVID-19 pandemic had no pronounced effect.

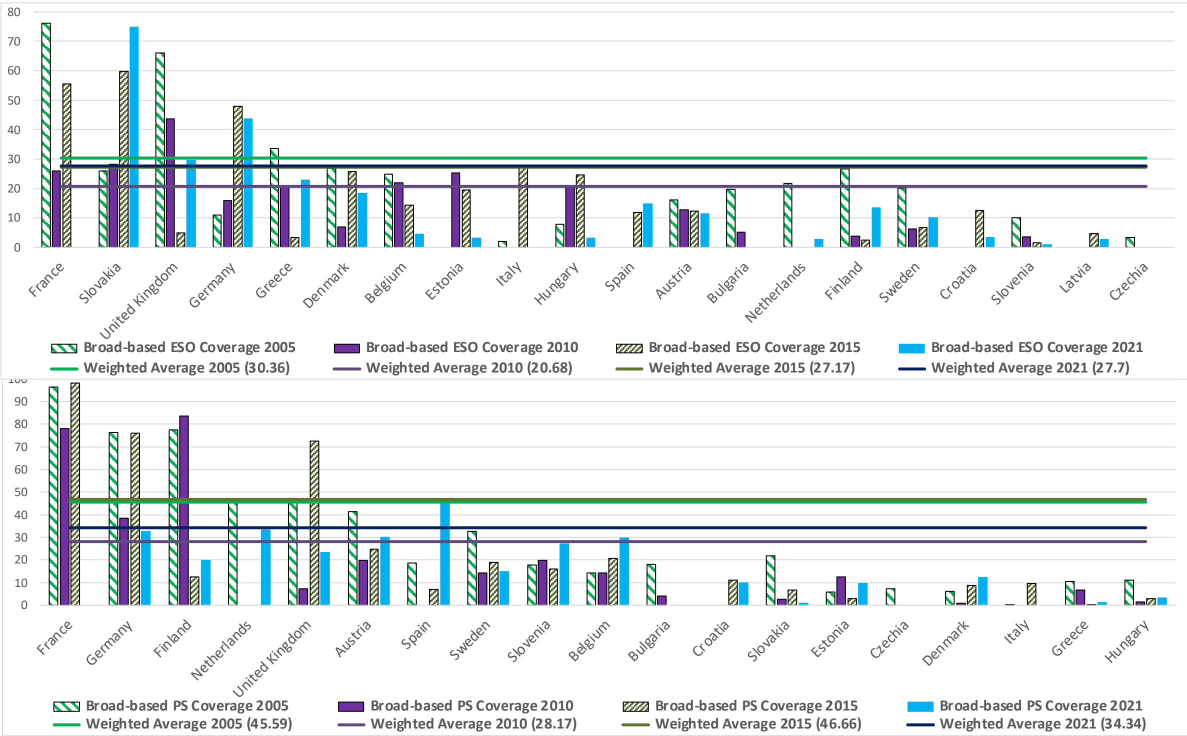
The leaders (with an average employee coverage of over 35%) are France, Slovakia the United Kingdom and Germany. We see a wide middle field with countries showing averages between 7.5 and 2.5% followed by a group of low-ranked countries (Croatia, Slovenia, Latvia, and the Czech Republic). Slovenia's position at the low end is surprising given its privatisation history and broad political support and probably should be treated as an artefact; the same is seems to be the case for the very low 2015 value for the United Kingdom.

Turning to the weighted averages for PS coverage, it can be seen from Figure 12 that growth dynamics have been somewhat different than those of the ESO schemes; from a very high starting point of 45.6% in 2005 the weighted average drops steeply to 28.2% in 2010 until recovering in 2015 to a peak of 46.7% and then dropping again to 34.3% in 2021. Both drops in coverage, the strong decline in 2010 and the less

40 The CRANET questionnaire contains questions on the proportion of different categories of employees (managers, professionals, administrative and manual) to whom FP plans are offered and on the share of these different categories in the total workforce of the company. This allows us to calculate the number of employees in each company to whom broad-based EFP plans are offered (and their share in the total number of employees in the sample for each country).

pronounced one in 2021 are possibly related to profits being scarce or absent in the financial crisis and in the second year of the COVID-19 pandemic. For the same reasons and methodological constraints as with the PS offer (see discussion of Figure 11) it seems consistent that PS coverage is also affected negatively in times of crises.

Figure 12: Proportion of employees covered by employee share ownership (ESO) and profit-sharing (PS) schemes in the EU Member States, 2005-2021 (in per cent)



Source: CRANET 2005, 2010, 2015 and 2021. Note: For countries missing in a given round of survey the calculation of weighted averages is based on imputed values.

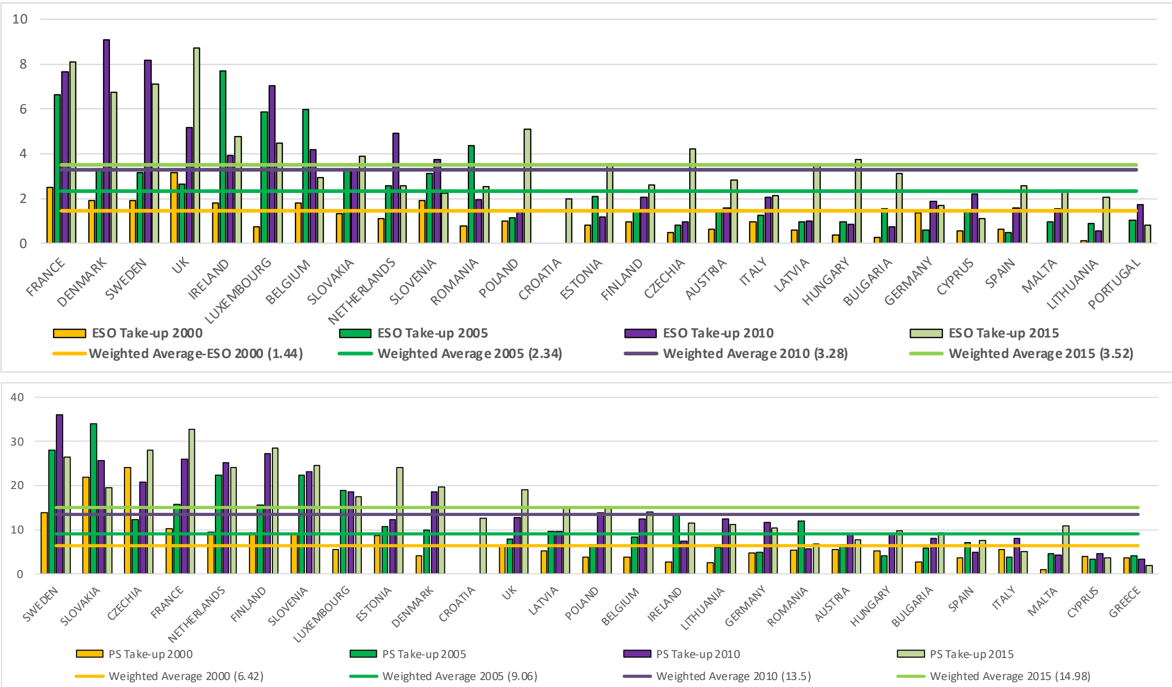
Unsurprisingly, France again takes the far ahead pole position. It is followed by Germany, Finland, the Netherlands, the United Kingdom, Austria and Spain all having averages above 30%. We observe a smaller middle field with countries showing averages between around 20% (Sweden, Slovenia, Belgium) followed by a large group of low-ranked countries with averages below 10%.

4. EWCS 2000, 2005, 2010 and 2015: Take-up by employees

The four rounds of EWCS clearly demonstrate that the proportion of employees participating in both ESO and PS schemes has continued to grow – in a majority of countries for the former and in most countries for the latter (Figure 13). Notable exceptions for ESO schemes are Belgium, Ireland, Romania and Estonia, where the 2005 figures are significantly higher than 2010 and Denmark, Sweden, Luxembourg, the Netherlands, Cyprus and Portugal, where the 2010 figures are significantly higher than 2015. For PS schemes, the exceptions are Sweden, Slovakia, Ireland, Romania, Italy, and Greece showing a significant drop in 2015.

The top countries for ESO schemes were France, Denmark, Sweden, the United Kingdom, Ireland, and Luxembourg where the participation rate was over 5%. The lowest-ranked countries (with ESO participation rates under 2% in 2015) were Germany, Cyprus, Lithuania and Portugal. As far as PS schemes are concerned, these schemes are much more prevalent than ESO schemes (the weighted averages more than double between 200 and 2015), as shown in Figure 13. The top countries (with participation rates of over 20% in 2015) were France, Finland, the Czech Republic, Slovenia, the Netherlands, and Estonia. In 2015, the number of countries with an increase of more than 5% was six. The lowest-ranked countries (with participation rates under five per cent) in 2010 were Italy, Cyprus, and Greece and Portugal.

Figure 13: Proportion of employees participating in employee share ownership (ESO) and profit sharing (PS) schemes in the EU Member States, 2000-2015 (in per cent)



Source: EWCS 2000, 2005, 2010 and 2015.

It has to be mentioned that a version of the EWCS was conducted in 2020, during the Covid-19 pandemic but this round was conducted on telephone and was a much smaller survey than the previous rounds. The questions on employee participation in ESO or PS schemes were not included in the survey.[41]

5. Econometric evidence: ECS 2009, 2013 and 2019 for profit sharing / EWCS 2000, 2005, 2010 and 2015

Since the question on employee share ownership was dropped from the 2019 Survey questionnaire, the analysis in this Section uses the data related to this round of survey only for the estimation of the impact of profit sharing on firm performance and the estimation of potential number of companies offering PS schemes. The analysis of the impact of share ownership and the potential number of companies offering ESO schemes will be based on only 2009 and 2013 rounds of ECS.

[41] This brings us back to the issue of the need for the inclusion of questions on EFP in EU-wide surveys. As EFP has not been the focus of various surveys, data collection on EFP has suffered over the years. We have already seen that the question on ESO was deleted from the ECS 2019 and now this is followed by the deletion of the question on EFP from the EWCS 2020.

Econometric analysis of the 2nd, 3rd and 4th round of the European Company Survey data makes it possible to estimate the impact of EFP schemes and other firm characteristics (including location) on firm performance measured by either productivity improvement or employment increase in the previous three years.[42] The results are in line with the bulk of previous empirical findings (referred to in Chapter I, 4. a), which indicate that EFP is likely to improve the performance of firms regardless of how they are measured. However, unlike previous studies, which were based on relatively small samples and on one or a few countries, the ECS is based on a very large sample (over 63,000 firms from three rounds of surveys) in all 28 EU countries. This wider coverage makes the results highly significant and ensures external validity of inferences.

In addition to the type of EFP schemes present, companies have other characteristics (for example their size, the proportion of highly qualified or educated staff, the sector of activity, the presence of other forms of participation such as a system of employee representation, location, etc.) which may also influence their performance and the likelihood of their offering an EFP scheme.

a) The impact of EFP on productivity and employment levels

The impact of above-mentioned factors on the performance of companies was estimated by relevant econometric models presented in Annex 2. For the purpose of illustration, a number of possible scenarios (different EFP schemes and different firm characteristics) have been constructed to enable us to show numerically the impact of the EFP schemes and characteristics on company performance. There are, of course, many possible combinations of firm-level variables and it is possible to calculate the impact of each combination on the performance of companies with those characteristics but, here, only a small number of these possible combinations are included for illustrative purposes. Table 4 demonstrates how ESO schemes affect the performance (productivity improvement and employment increase) of companies with a number of possible combinations of characteristics.

The performance measures identified in the European Company Survey are twofold: ‘improvement in productivity’ and ‘increase in employment’ in the past three years. The questionnaire does not ask for the magnitude of the rise in either productivity or employment, only if they have increased, decreased, or remained unchanged.[43] Table 4 compares the likelihood of improved performance as a result of employee share ownership schemes in companies with different characteristics.

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[42] For details of the econometric model underlying the analysis in this section, see Annex 2.1.

[43] The relevant questions in the 2009 and 2013 surveys were: (1) for productivity improvement, question MM502 (in 2009) and P7 (in 2013): “Over the past 3 years, has the labour productivity of this establishment increased, decreased or stayed about the same?” (2) for employment, question MM103 (in 2009) and P7 (in 2013): “Over the past 3 years, has the total number of employees in this establishment increased, decreased or stayed about the same?”

Table 4. The impact of ESO schemes and other firm characteristics on productivity improvement and employment increase (in per cent)

No.	Scenario	Probability of improving productivity			Probability of increasing employment		
		A	B	C	D	F	G
		Without an ESO scheme	With an ESO scheme	Percentage increase from A to B	Without an ESO scheme	With an ESO scheme	Percentage increase from D to F
1	A large firm in manufacturing in Western Europe (Austria, Belgium, France, Germany, Luxembourg, Netherlands, Ireland, UK) in 2013	1.25	3.51	181	0.79	2.57	225
2	Same as 1 but a small company	0.27	1.02	278	0.14	0.63	350
3	Same as 1 but in Financial Intermediation sector	2.34	5.84	150	1.93	5.06	162
4	Same as 1 but in Nordic countries (Finland, Sweden, Denmark)	3.29	7.09	116	1.41	4.34	208
5	Same as 1 but in CEE countries (Czech Republic, Hungary, Poland, Slovakia, Slovenia, Romania, Bulgaria)	1.08	2.85	164	0.33	1.32	300
6	Same as 1 but with employee representation present	1.75	4.72	170	1.01	3.22	219

Source: Authors' calculations based on ECS 2009 and 2013.

For each performance indicator, the table first shows the probability of improvement in performance in a particular type of company in the absence of an ESO scheme, and then the probability of performance improvement in the same type of company with an ESO scheme. In all scenarios (or types of companies), when a company introduces an ESO scheme, the likelihood of its experiencing improved performance increases too, with the increase ranging from 116 to 278% for productivity and 162 to 350% for employment. Although the survey does not quantify the scale of improvement, nevertheless there is a highly significant rise in the likelihood of improvement. This impact is generally stronger in the financial intermediation and other services sectors in Nordic countries, and in companies, which already have employee representation in some form. It is generally weaker in Southern Europe and Iberian regions.

The picture is very similar with respect to profit-sharing schemes. Table 5 shows that PS schemes positively impact the likelihood of companies experiencing improved productivity or increased employment. Here, the percentage increase in the probability of performance improvement as a result of adoption of a PS scheme varies from 237% to 447% for productivity and from 184% to 213% for employment. The probability of an increase in employment is smaller than was the case with an ESO scheme (Table 4). It should be mentioned that the estimation of the impact of PS schemes is based on the pooled data combining the three rounds of ESC (2009, 2013 and 2019). The use of the larger dataset, and the fact that a larger number of firms have adopted PS schemes in 2019 confirms the positive impact of PS schemes on performance.

Table 5. The impact of PS schemes on productivity improvement and employment increase (in per cent)

No.	Scenario	Probability of improving productivity			Probability of increasing employment		
		A	B	C	D	F	G
		Without a PS scheme	With a PS scheme	Percentage increase from A to B	Without a PS scheme	With a PS scheme	Percentage increase from D to F
1	A large firm in manufacturing in Western Europe (Austria, Belgium, France, Germany, Luxembourg, Netherlands, Ireland, UK) in 2013	4.68	15.39	329	6.08	11.50	89
2	Same as 1 but a small company	1.52	6.48	426	2.09	4.48	114
3	Same as 1 but in Financial Intermediation sector	5.97	18.12	304	9.48	16.12	70
4	Same as 1 but in Nordic countries (Finland, Sweden, Denmark)	9.51	24.23	255	7.95	14.88	87
5	Same as 1 but in CEE countries (Czech Republic, Hungary, Poland, Slovakia, Slovenia, Romania, Bulgaria)	6.12	18.03	295	4.44	9.23	108
6	Same as 1 but with employee representation present	6.89	20.95	304	8.28	15.37	86

Source: Authors' calculations based on ECS 2009, 2013 and 2019.

b) Potential number of companies offering EFP schemes (PS or ESO)

The above Sections focus on the companies in the ECS sample, which actually offer EFP schemes to their employees and the impact of these schemes on their performance. But there are many other companies in the sample, which, for a variety of reasons, do not currently offer any such scheme to their employees despite their similarity in terms of observed characteristics with those that do. These companies have the potential to provide their employees with EFP opportunities if right conditions are present. It is possible to estimate the number of these candidate companies by using statistical techniques such as **propensity score matching** (PSM). This technique uses the observed characteristics of companies which offer a scheme (e.g., size, sector of operation, region, etc.) to find companies with matching characteristics, which do not offer any scheme. In this way, the technique identifies those companies, which could potentially offer a scheme to their employees based on their similarity with those companies that currently do. The procedure uses observed characteristics to locate a matching group of companies and assumes that there are no differences in unobserved characteristics between them.[44]

Furthermore, given that the ECS sample is a statistically representative sample of EU companies, once the number of companies in the sample which could potentially offer

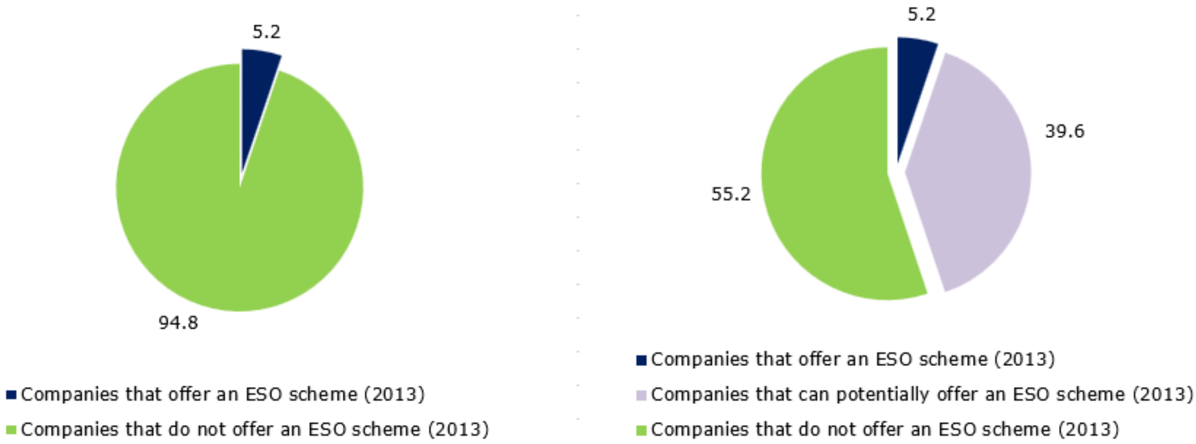
[44] For a technical discussion of the econometric model underlying the analysis in this section, see Annex 3.

EFP schemes to their employees is estimated, it would also be possible to estimate the number of firms in the population of EU companies that could potentially adopt an EFP scheme.

Employee share ownership

The number of companies in the European Company Surveys 2009 and 2013, which may potentially offer ESO schemes to their employees can be estimated by applying the propensity score matching technique to the sample, using the companies currently offering ESO schemes as the comparison group. Using this technique, we find the number of companies matched against the group offering ESO schemes in 2009 to be 6,069 (out of a total of 18,777, i.e., 32.3% of all private companies in the sample) while in 2013, the number of matched companies is 9,107 (out of total 22,974, i.e., 39.6% of all private companies in the sample). These companies are statistically likely to offer an ESO scheme to their employees as their propensity score – conditional probability of offering a scheme – is matched with those that currently offer an ESO scheme. Applying the 32.3% figure in 2009 and 39.6% in 2013, to the total population of private companies in the EU with over 10 employees (1.65 million companies), one arrives at a total of 533,280 companies in 2009 and 654,211 in 2013 that are likely to offer ESO schemes based on the matched observed characteristics. Figure 14 compares the actual and potential proportions of companies offering an ESO scheme in 2013.

Figure 14: Actual and potential distribution of firms offering ESO schemes in 2013 (in per cent)



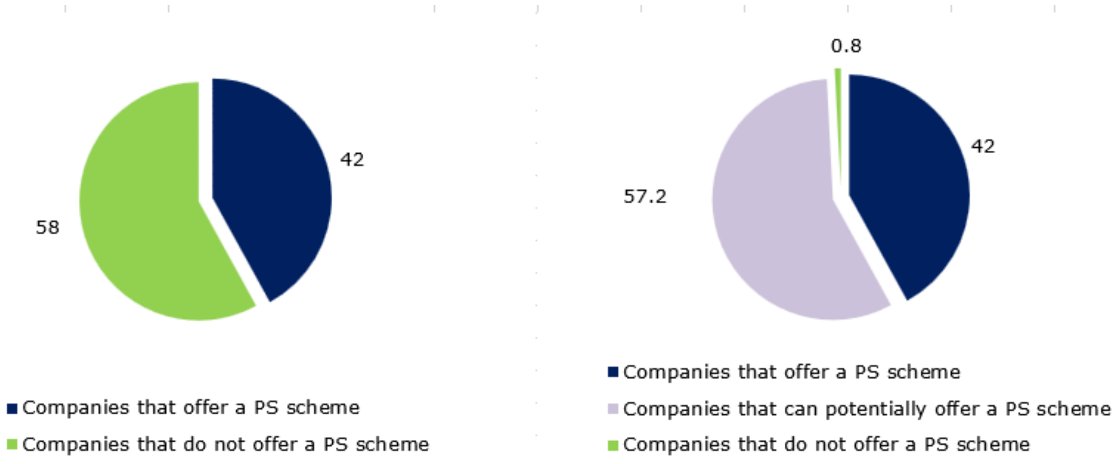
Source: Authors' estimations based on ECS 2009 and 2013.

Using the same method, it is possible to estimate the number of small companies that can potentially offer ESO schemes to their employees. For the small size companies (10 to 49 employees) in the sample, the number of matched companies in 2009 is 2,179 (i.e., 20.8 per cent of 10,475 small firms in 2009) while in 2013, the number of matched companies is 3,282 (i.e., 27.6 per cent of 11,893 small firms in 2013). Applying the 20.8 per cent figure in 2009 and 37.6 per cent in 2013, to the total population of small companies in the EU (around 1.38 million), one arrives at a total of 287,725 in 2009 and 380,245 in 2013 small companies that are likely to offer ESO schemes based on the matched observed characteristics.

Profit sharing

The number of companies in the European Company Surveys 2009, 2013 and 2019, which may potentially offer PS schemes to their employees, can be estimated by applying the PSM technique to the sample, using companies currently offering PS schemes as the comparator group. Using PSM, the number of companies in 2009 matched against the group offering PS is 7,699 (out of the total of 18,777, i.e., 41% of all private companies in the sample in 2009). In 2013, the number of companies matched against the group offering PS is 11,556 (out of the total of 22,974, i.e., 50.3% of all private companies in the sample in 2013). In 2019, the number of companies matched against the group offering PS is 12,508 (out of the total of 21,868, i.e., 57.2% of all private companies in the sample in 2019). These companies are statistically likely to offer a PS scheme to their employees as their propensity score – conditional probability of offering a scheme – is matched with those that currently offer a PS scheme. Applying the 41% figure in 2009, 50.3% figure in 2013, and 57.2% figure in 2019, to the total population of private companies in the EU (around 1.65 million companies), one arrives at a figure of 676,500 companies in 2009, 829,950 companies in 2013, and 943,800 companies in 2019 that are likely to offer PS schemes based on the matched observed characteristics. Figure 15 compares the actual and potential proportions of companies offering a PS scheme in 2019. We have already seen in Figure 8 that by 2019, companies offering PS schemes had increased significantly to 42% of ECS sample. Not surprisingly, the number of those that can potentially offer such schemes has also grown, reaching 57.2% of the sample and leaving only 0.8% of the sample as companies that will not offer any form of PS.

Figure 15. Actual and potential distribution of firms offering PS schemes in 2019 (in per cent)



Source: Authors’ estimations based on ECS 2009, 2013 and 2019.

Using the same method, it is possible to estimate the number of small companies that can potentially offer PS schemes to their employees. For the small size companies (10 to 49 employees) in the sample, the number of matched companies in 2009 is 3,876 (i.e., 37% of 10,475 small firms in 2009) while in 2013, the number of matched companies is 5,994 (i.e., 50.4% of 11,893 small firms in 2013). In 2019, the number of matched companies is 7,249 (i.e., 53.1% of 13,651 small firms in 2019). Applying the 37% figure in 2009, 50.4% in 2013, and 53.1% in 2019 to the total population of small companies in the EU (around 1.38 million), one arrives at a total of 510,633 in

2009, 695,732 in 2013, and 733,161 small companies that are likely to offer PS schemes based on the matched observed characteristics.

c) Estimating the Potential for the introduction of ESO and PS across the EU

As previously mentioned, the PSM technique uses "observed" characteristics to identify the matching group of companies that can potentially offer an EFP scheme. Given that there are also unobserved characteristics of firms, which the questionnaire has not identified or was unable to capture, the actual number of these potential companies will be less than those estimated under (a) and (b) above. However, if a margin of error of 50% is allowed to account for the unobserved characteristics, there are still a very large number of companies (including small companies) that can potentially offer an EFP scheme to their employees. Table 6, summarises the above discussion and shows the number of companies in the ECS sample and the expected number of companies in the population of firms that currently offer EFP schemes to their employees. It also shows the number of potential companies that, under the right conditions, may offer a scheme to their employees.

Table 6. Number of actual and potential companies offering EFP schemes

		ESO		PS	
		% of firms	# of firms	% of firms	# of firms
Number of firms in the ECS sample offering a scheme	2009	4.7	883	14.3	2,685
	2013	**5.20%**	**1,195**	30.20%	6,938
	2019	N/A	N/A	**42%**	**9,185**
Number of **firms** in the population which can potentially offer a scheme	2009	32.32%	266,640* (533,280)	41%	338,250* (676,500)
	2013	**39.64%**	**327,106*** (654,211)	50.30%	414,975* (829,950)
	2019	N/A	N/A	**57.20%**	**471,900*** (943,800)
Number of **small firms** in population which can potentially offer a scheme	2009	20.80%	143,863 (287,725)	37%	255,317* (510,633)
	2013	**27.60%**	**190,123** (380,245)	50.40%	347,866* (695,732)
	2019	N/A	N/A	**53.10%**	**366,581*** (733,161)

Notes: Last year available bold. * Potential number of companies with a margin of error of 50% to account for the unobserved characteristics (the number in pranthesis is the orignal figure). Source: Own calculation.

Clearly, there are a few hundred thousand companies with the potential to offer EFP schemes. If these companies change from potential to actual by deciding to offer an ESO or PS scheme to their employees, a significant improvement in labour productivity (and therefore competitiveness) of EU companies and an equally significant increase in their employment levels could be expected.

d) The impact of employee and firm characteristics on the offer and take-up of EFP schemes

Econometric analysis of the available data, particularly EWCS and ECS, makes it possible to estimate the impact of firm and employee characteristics (including location) on the presence of EFP schemes. The analysis shows that the probability of an employee with certain characteristics working in a particular sector of activity and region to be in a profit sharing or share ownership scheme is positively related to employee and firm characteristics. The estimation results, based on four rounds of EWCS (2000, 2005, 2010 and 2015) indicate that gender, qualifications of employees, the nature of their employment contract (permanent against fixed term), size, location and sector of activity of the enterprise affect the probability of employee participation in an EFP scheme.

Table 7 shows a few examples of how different combinations of employee, firm, industry and location characteristics influence the chances of employees taking up either a profit-sharing (PS) or employee share ownership (ESO) scheme. Broadly speaking, the table indicates that male employees, employees of larger firms, and those working in the financial sector are more likely to participate in EFP schemes. Employees in Nordic countries and Eastern Europe are also more likely to take up EFP offers. Employees in Southern European countries and the Iberian Peninsula are, *ceteris paribus*, least likely to take up EFP schemes.

Table 7: Probability of employees taking up an EFP scheme (in per cent)

Examples of characteristics		PS	ESO
1.	A male employee of average age and experience, with a permanent contract, in a managerial/professional position in a large manufacturing enterprise in Western Europe (Austria, Belgium, France, Germany, Luxembourg, Netherlands, Ireland, UK)	42	17
2.	Same as 1 but a female employee	32	10
3.	Same as 1 but in the financial and insurance sector	51	25
4.	Same as 1 but in wholesale and trade sector	42	15
5.	Same as 1 but in Nordic countries (Finland, Sweden, Denmark)	43	12
6.	Same as 1 but in Central and Eastern Europe (Czech Republic, Hungary, Poland, Slovakia, Slovenia, Romania, Bulgaria)	43	7
7.	Same as 1 but in the Baltic region (Estonia, Latvia, Lithuania)	40	5
8.	Same as 1 but in Southern Europe (Cyprus, Greece, Italy, Malta)	19	7
9.	Same as 1 but in Iberian Peninsula (Portugal and Spain)	20	8
10.	Same as 1 but in a medium-sized company	34	8
11.	Same as 1 but in a small company	29	6

Source: Authors' own calculations based on EWCS 2000, 2005, 2010 and 2015).

Similarly, using the European Company Survey (2009, 2013 and 2019), it is possible to estimate the probability of a firm offering an EFP scheme to its employees – this also would depend on the employee and firm characteristics. Table 8 summarises the impact of factors such as gender, the proportion of highly qualified employees in the work force, size and sector of activity and the location of the company on the probability of a firm offering an EFP scheme to its employees.

Table 8 confirms many of the results of Table 7. Large companies in the financial sector are more likely to offer EFP schemes to their employees than small or medium-sized firms or firms in other sectors of activity. Companies in Nordic countries are also more likely to offer their employees both kinds of EFP schemes. Southern Europe is the region with companies least likely to offer ESO schemes while companies in the Baltic States are least likely to offer PS schemes. The proportion of female employees affects profit sharing adversely but does not seem to have much effect on the offer of ESO schemes. The proportion of high-skill employees has a positive – though small – effect on this decision.[45]

Table 8: Probability of a firm offering an EFP scheme to its employees (in per cent)

Examples of characteristics	PS 2009; 2013; 2019	ESO 2009; 2013
1. A large manufacturing company operating in Western Europe with the share of female employees of 39% (mean for the sample for PS) or 37% (mean for the sample for ESO) and the share of high-skill employees* of 25% (mean for the sample for PS) or 21% (mean for the sample for ESO) (Austria, Belgium, France, Germany, Luxembourg, Netherlands, Ireland, UK)	35	11
2. Same as 1 but in the financial and insurance sector	41	21
3. Same as 1 but in wholesale & trade sector	35	12
4. Same as 1 but in Nordic countries (Finland, Sweden, Denmark)	46	20
5. Same as 1 but in Central and Eastern Europe (Czech Republic, Hungary, Poland, Slovakia, Slovenia, Romania, Bulgaria)	25	11
6. Same as 1 but in the Baltic region (Estonia, Latvia, Lithuania)	0	7
7. Same as 1 but in the Iberian Peninsula (Portugal and Spain)	30	9**
8. Same as 1 but in Southern Europe (Cyprus, Greece, Italy, Malta)	30	6
9. Same as 1 but in a medium-sized company	14	6
10. Same as 1 but in a small company	26	3
11. Same as 1 but with share of female employees at 47% (instead of 31%)	17	11
12. Same as 1 but with share of high-skilled* employees at 31% (instead of 21%)	36	14

*Source: Authors' own calculations based on ECS 2009, 2013 and for PS also 2019. Note: *High-skill employees are those with university and higher degrees or qualifications. **This figure is for Spain only (Portugal is excluded from ESO data in the ECS (2009).*

[45] Details of econometric models used here to assess the impact of different factors are available from the authors.

6. Conclusion

This Chapter explored the dynamics of EFP over the first two decades of the new century, using a variety of data sources available. It also investigated the determinants of the level of employee financial participation as well their impact on company performance. Two measures of EFP are the specific focus of the Chapter: employee share ownership schemes and profit-sharing schemes. Although each of these two consists of a number of variants, we do not distinguish between these variants. Broadly speaking the extent of both employee share ownership and profit-sharing schemes have increased over the two decades; this is true both for the offer of financial participation by companies and for the take up of these schemes by employees. The offer of financial participation schemes has been considered from two dimensions: proportion of companies offering such schemes and the proportion of employees of private companies to whom the offer is made. Both employee share ownership and profit-sharing schemes apply to private companies as public organisations and publicly owned companies are not aiming to make profit and their shares are not up for sale (indeed they may not even have shares). Mixed ownership companies are included since the privately owned part of these companies can be subject to EFP schemes.

The European Company Surveys (2009, 2013 and 2019) and CRANET Surveys (2005, 2010, 2015 and 2021) both highlight the increasing proportion of **companies offering ESO and PS**. The upward trend is quite unmistakable in the much larger and more representative European Company Surveys which cover all companies with at least 10 employees. The trend is more erratic in CRANET Surveys which are much smaller and less representative, cover only companies with more than 200 employees, and measure 'broad-based' schemes (those offering any scheme to more than 50% of employees).

- According to ECS, **profit sharing** schemes were offered in 14% of all private companies in 2009, 30% in 2013 and 42% in 2019 – a clear continuing increase in the proportion of companies offering such schemes to employees almost tripling over time.
- The CRANET surveys, however, indicate that **broad-based profit-sharing** schemes were offered in 35% of companies with at least 200 employees in 2005, 28% in 2010, 32% in 2015 and 31% in 2021. The years 2010 and 2021 are the periods immediately after crisis (global financial crisis and the Covid-19 pandemic), which may have affected company profit levels (and the offer of profit sharing) by large companies.

The crises may explain the decline in 2010 and 2021 in the CRANET dataset. But the nature of data (with small sample and very small number of companies in each industry) may also explain the fluctuating nature of the results.

- In terms of **employee share-ownership** schemes, the upward trend is less dramatic. According to the ECS data, the proportion of companies with more than 10 employees offering ESO schemes was 4.7% in 2009 and 5.2% in 2013, an increase of 10%. The CRANET data indicate that the proportion of larger companies with more than 200 employees offering **broad-based ESO schemes** was 19% in 2005, 17% in 2010 and 2015 and 27% in 2021 – a clear increase of almost 30% during the last fifteen years.
- In terms of the **proportion of employees to whom EFP schemes were offered**, the CRANET database, the only source of information on this indicator,

shows a fluctuating level in the period under consideration: the proportion of employees in private companies to whom a broad-based PS scheme was offered changed from 46% in 2005 to 28% in 2010, 32% in 2015 and 31% in 2021. During the same period, the proportion of employees of private companies to whom broad-based ESO schemes was offered changed from 30% in 2005 to 21% in 2010, 47% in 2015 and 28% in 2021.

A different indicator of EFP is **the take up of these schemes by employees** – the information that has been picked up in the European Working Conditions Surveys. Here, too, the upward trend is unmistakable.

- For ESO, the proportion of employees of private companies who have shares in their companies has increased from 1.4% in 2000 to 2.3% in 2005, 3.3% in 2010 and 3.5% in 2015.
- The proportion of employees receiving income from profit-sharing schemes has increased from 6.4% in 2000, to 9.1% in 2005, 13.5% in 2010 and 15% in 2015. The EWCS in 2020/21 had excluded the option relating to income from share ownership and profit sharing.

While, broadly speaking, the adoption of ESO schemes is increasing, their level remains fairly low in all EU countries. The PS schemes have already become prevalent in over 40% of companies. Given the known characteristics of companies that offer EFP schemes, it is possible to use propensity score matching techniques to estimate the **number of companies** that have similar characteristics and, therefore, **can potentially offer such schemes to their employees**.

- This number is very large across the EU and provides an opportunity for policy makers to adopt policies that apply to a very a large proportion of companies.
- Especially for SMEs targeted support of EFP can have significant impact on employment and sustainability of EU companies.

Econometric evidence, using the large scale and representative ECS database confirms the bulk of previous evidence on the **positive impact of EFP schemes on company performance measured by improvement in productivity and increase in employment**. The effect is moderated by other factors such as size, sector of activity, education level of employees, gender balance in a company, its location, and the presence of some form of employee participation schemes.

- Larger companies, companies in sectors such as financial services and those in Nordic countries are more likely to benefit from EFP schemes by higher growth of employment and higher productivity than other companies.
- The general environment for EFP schemes and the presence of a supportive set of policies in place vary widely across the EU, generally more conducive to EFP in Nordic countries than in Southern or Central and East European countries.

IV. EFP and the Rising Concentration of Capital Ownership and of Capital Income

Joseph Blasi and Douglas Kruse

1. Introduction

The PEPPER V Report can be viewed by examining EFP in and of itself as an isolated subject or it can be viewed in a much wider set of contexts. Widening the lens in order to examine EFP in the context of the concentration of capital ownership and the concentration of capital income can help observers establish EFP's span of relevance.

This Chapter makes a very straightforward observation that the relevance of EFP in an economic system, in a country, and for the average employee in a country is related to the trend in the concentration of capital ownership and capital income. Interest in the idea is potentially increased or decreased by trends in real wages. Atkinson, who many consider the founder of modern wealth concentration scholarship, "focuses on the increasing share of capital incomes a source of income inequality among individuals." (Cirillo et. al, 2017: 1) Indeed this Chapter considers the difference between labour's share and capital's share to be a critically important fundamental problem of political economy. This essay asserts that when this concentration is high and real wages are flat, other things being equal, EFP may be more relevant. When the concentration of capital ownership and capital income is high, this means that ownership and income on that ownership is thinly spread in the population. When real wages are flat, this means that the rate at which fixed wages can replenish wealth is decreasing. As a result, both trends would make EFP more relevant.

Some overall definitions will be important to sort out the mechanisms under discussion. For the purpose of this Chapter,

- **Concentration of capital ownership** is the same as wealth concentration, although the specific metric used, from the World Inequality Database, is net personal wealth share of assets minus liabilities, as noted below.
- EFP refers to **individual employee share ownership** of whole shares of stock, holding of company stock options, or participation in various employee share purchase plans. Briefly, employee share ownership is a mechanism to expand capital ownership of wealth.
- EFP also refers to **individual employee profit sharing** (based on a computation of company profits) or individual employee "gain" sharing (based on a computation of financial gains at the facility or department or work group level. Briefly, profit sharing and "gain" sharing are mechanisms to expand employee access to capital income, while the payment of dividends and the accrual of capital gains on whole shares of stock are also ways to expand employee access to capital income.
- Every capital asset that can be owned can yield **capital income**, which, for the purposes of this Chapter, refers to all capital gains, all dividends, all interest, all rents, and shares of unincorporated business assets.

First, this Chapter will discuss in greater detail the conceptual reasons why the concentration of capital ownership, the concentration of capital income, and trends in real wages might be related to the relevance of EFP. Second, empirical data on the concentration of capital ownership (wealth) in the European Union compared to the United States will be presented to assess the role of such concentration in considering EFP. Third, empirical data on the dynamics in the concentration of capital income in Europe will be presented to assess the role of such concentration in considering EFP. Fourth, empirical data on the dynamics in the concentration of capital income in the United States will be presented to assess the role of such concentration in considering EFP. These US data are introduced into the picture because there is a forty-year dataset that allows the examination of long-term trends in capital income from 1979-2018. Fifth, this Section provides the first ever data on EFP in the US as a percent of wages and wealth and illustrates the role that EFP plays in the US economy to directly affect capital ownership and capital income. Finally, on the conclusion, some unique aspects of the EU will be discussed that can help to focus on the important points for future research and consideration. Throughout the essay, attention will be drawn to measurement and methodological issues that will rise to some level of importance in accurately assessing the amount of capital income in the EU and the relevance of EFP to the distribution of capital income. Ideas for future research will be recommended.

2. Conceptual Reasons Connecting Capital Concentration and Employee Financial Participation

We consider the composition of household incomes and how changes in this composition might play a major role in the relevance of EFP in economies that seek to have more broad-based economic systems. This composition can at a general level be considered to be made up of income from labour and income from capital. Let's examine two extreme ideal types to illustrate this point. On the one hand, consider an economy where labour income (income for effort in job roles through salaries and fixed hourly pay) makes up the overwhelming percentage of most citizens' annual income flow <u>and separately</u> income from capital – namely income from capital assets such as capital gains, dividends, interest, rents, and unincorporated business assets – makes up a very small percentage of most citizen's annual income flow. In such an economy, labour income will offer the main mechanism to accumulate wealth (other than inheritance) and inequalities in labour income will largely determine inequalities in total wealth. On the other hand, consider an economy where labour income is growing slowly and may even be relatively flat adjusted for inflation and capital income - namely income from capital assets such as capital gains, dividends, interest, rents, and un-incorporated business assets - makes up a very large percentage of most citizen's annual income flow. In such an economy, capital income will offer the main mechanism to accumulate wealth (other than inheritance) and inequalities in capital income will largely determine inequalities in total wealth (Blasi, Freeman, and Kruse, 2013).

These two ideal types establish the poles between which the relevance of EFP can be assessed and measured. In the economy where labour income has primacy, EFP could potentially play the role of another mechanism expanding the total wealth of citizens, that is, if such an economy had supportive features that allowed EFP to be an accumulation mechanism, namely, a lack of wage substitution for EFP and a tax system that allowed citizens to keep much of their EFP. In such an economy, the capital ownership such as employee share ownership in companies and the capital income attached to it, such as capital gains and dividends on employee share ownership and other forms of profit sharing, could supplement labour income.

An influential intellectual who thought about these issues decades ago and can help understand these issues is political economist and lawyer, Louis O. Kelso. In his book with Mortimer J. Adler, *The Capitalist Manifesto* (1958), Kelso theorized that the coming decades would evidence increasing wealth inequality as a result of the rise of technology that replaced physical and mental labour. He predicted that labour effort would increasingly result in a smaller contribution to wealth than capital effort or the deployment and investment of non-human capital. The implications of Kelso's theory involved predicting that this state of affairs would lead to rising wealth inequality, exacerbated by those who had privileged access to capital ownership and income, while those who were increasingly dependent on labour income – and had less capital ownership and access to capital income – would fall behind. Kelso believed that broadening the access of all citizens to capital ownership and the capital income that was the fruit of this capital ownership – namely, capital gains, dividends, interest, and rents, etc. – was the only way to preserve the middle class and its role in capitalism. Kelso tied these dynamics to broader changes in the economy, asserting that the development of technology that replaces labour with capital would exacerbate the concentration of capital ownership and capital income and overshadow the role that labour income plays in an economic system and an average middle class employee's wealth. He also asserted that access to credit that would allow employees and citizens to acquire capital assets and pay back this access to credit through the income on these assets, essentially the leveraged buyout he invented for this purpose[46] and in its prototype applied to regular members of society, would provide a mechanism to expand capital ownership and access to capital income.

In *The Capitalist Manifesto* and subsequent books, last, *Democracy and Economic Power* (1990), written with Patricia Hetter Kelso, this perspective asserted that forms of EFP in the companies for which employees worked along with other approaches to broaden capital ownership, could increase access to capital ownership and capital income by average employees and citizens. The work of the Kelso's was subsequently responsible for inspiring the creation of the Employee Stock Ownership Plan, which is the dominant form of employee equity participation in the US today. As noted, the access to credit has figured prominently in the Kelso analysis, where, in the case of the ESOP, corporations access credit in private credit markets with Federal tax incentives that allows the ESOP employee trust to buy shares in the companies where the employees work using Leveraged Buyout (LBO) financial transactions that Kelso pioneered. In the ESOP, employees do not purchase the stock with their savings or retirement assets or by pledging their personal assets as collateral, rather, the corporations where they work set up an ESOP trust and the company accesses credit with tax incentives and purchases shares of stock on behalf of employees from existing business owners. These shares are then distributed to employees as the new owners as the credit is repaid out of the operations of the company itself. This is the classic Leveraged Buyout applied to employee share ownership as proposed by Kelso.

[46] It is little known that the prototype of the leverage buy-out as applied for the first time in 1956 an employee buy-out when in the first historical ESOP the employees of Peninsula Newspapers, Inc. bought out the retiring owners; see also, Louis O. Kelso and Patricia Hetter Kelso "Why I Invented the ESOP LBO", *LEADERS, Oct., Nov., Dec. 1989, Vol. 12, No. 4;* https://kelsoinstitute.org/louiskelso/literary-legacy/why-i-invented-the-esop-lbo/.

The Kelso paradigm provides a broader theoretical perspective to examine the issues under consideration in this Chapter. In recent decades, Syracuse University Law professor Robert Ashford has laid out and expanded on this theoretical approach in a number of recent articles (2015, 2011, and 2007). Both Kelso and Ashford have asserted broader implications for this theoretical perspective that are important to consider. For the purposes of this analysis, the presentation is focused more narrowly on, what scholars are calling the functional distribution of household income or functional income distribution between labour income and capital income. Let's examine the EU economy empirically in terms of the concentration of capital ownership and capital income to observe how these concepts look in light of the facts and what the context is for EFP in Europe and the United States, by comparison.

3. Empirical Data on the Concentration of Capital Ownership in Europe versus the United States

The World Inequality Database examines the trends in the concentration of capital ownership. The measure employed there is net personal wealth which is standardized by the World Inequality Database across countries and regions. Data are available for various countries and regions. The year for which comparative data is available between Europe and the US is 2019. In 2019, the net personal wealth share for the top 1% was 26.5% for Europe while it was 35.3% for the United States. In 2019, the net personal wealth share for the top 10% was 60.8% for Europe while it was 71.5% for the United States. In 2019, the net personal wealth share for the bottom 50% was 3.2% for Europe while it was 0.3% for the United States. These estimates are shown in Table 9.

Table 9: Concentration of Capital Ownership: Europe and the United States in per cent

	Top 1%	Top 10%	Bottom 50%
Europe	26.5	60.8	3.2
United States	35.3	71.5	0.3

Source: World Inequality Database.[47]

Because of the concentration of wealth which includes access to the shares of both closely held corporations and corporations on public-traded stock markets, an argument can be made that broadening access to employee share ownership as a strategy for EFP is relevant to wealth inequality.

a) Dynamics in the Concentration of Capital Income in Europe

While, as we have seen above, it is possible to compare the concentration of capital ownership between Europe and the United States there are some complications in developing estimates on the concentration of capital income – namely, income on all wealth assets such as all capital gains, dividends, interest, rents, and unincorporated business assets – in Europe. EUROSTAT, the European Union's statistical office created

[47] Data available at: https://wid.world/world/#shweal_p0p50_z/WO;QP;US/2019/eu/k/p/yearly/s/false/-1.978/7.5/curve/false/region;https://wid.world/world/#shweal_p0p50_z/WO;QP;US/2019/eu/k/p/yearly/s/false/-1.978/7.5/curve/false/country; Note: This is estimated as the net personal wealth share in the World Inequality database. It is the total value of non-financial and financial assets (housing, land, deposits, bonds, equities, etc.) held by households, minus their debts. The source is the WID codebook at https://wid.world/codes-dictionary/#distributed-wealth.

the European Community Household Panel (ECHP) in 1994 to study the income and living conditions of different households in the EU and this longitudinal panel was carried out until 2001 with the initial individuals in the survey followed and surveyed each year, including their changes in domicile. In 2004, EUROSTAT created the Statistics on Income and Living Conditions (EU-SILC). It provides microdata in all member countries and allows for *"European comparative studies on inequalities and the role of social and fiscal policies of redistribution"*. It has more coverage and detail than the European Community Household Panel (ECHP) and allows for both longitudinal and cross-sectional analysis. This Chapter provides only an initial review of some EU-SILC conclusions from 2004-2022 as a context for considering EFP in the EU. The goal is to understand the dynamics of capital income in the EU in a preliminary way with the hope that later scholarship will expand on these insights and present further analysis of the EU data. The most recent European Union's Statistics on Income and Living Conditions (EU-SILC) survey report is available for 2022 but the preliminary report does not report in detail on capital income; in the EU-SILC, capital income is referred to as "property income".[48]

What is known about "property income" comes from its mention in several reports that call attention to the data limitations in EUROSTAT. Törmälehto (2019b, p. 34) says there is a discrepancy between measures of property income using the national accounts methodology versus using the Survey of Income and Living Conditions (EU-SILC; see, Piketty, Saez, and Zucman, 2008 for this national-accounts method.) This suggests that there is a lot of work in order to property assess capital incomes (property income) in the EU. Törmälehto (2019b, p. 30) does report that *"property income is very concentrated to the top of the distribution, and the gap between survey and national accounts could be entirely or mostly allocated to the very top."* Törmälehto (2017) presents an analysis of property incomes by EU member nations in Figure 2.2.2 and states that *"France stands out as having by far the highest share of capital income in the top 5%, followed by Finland and Iceland. This can be contrasted with Sweden and Denmark, with lower shares and where capital income consists mostly of interest and dividends. Luxembourg and Greece have high share of rental income."* (p.12) Piketty (2014) has also made this observation. Törmälehto (2017) cautions that the individual household surveys he uses are likely to understate capital incomes, especially, capital incomes of top earners.

Schlenker and Schmid (2013) have analysed data on capital income shares in seventeen EU countries from 2005 to 2011 also using the European Union's Statistics on Income and Living Conditions (EU-SILC). They reiterate (p.2) that it is the only *"longitudinal survey that offers rich data for all EU member states and Norway since 2002. The number of observed households outnumbers all other existing studies."* They note (p. 3, 4): "For our analysis, we use data from the cross-sectional files from the waves

48 https://www.cso.ie/en/releasesandpublications/ep/p-silc/surveyonincomeandlivingconditionssilc2022/; a search of all recent reports in EUROSTAT indicates that "property income" has not been a major feature of reports for the EU-SILC; see https://ec.europa.eu/eurostat.

between 2005 until 2011."[49] They again find that capital income drives concentration. They find (p. 8) *"a positive relationship between changes in capital income shares and changes in the concentration of gross household income."*[50] Schlenker and Schmid (2013) thus confirm this Chapter's conceptual prediction that the concentration of capital income plays a large role in wealth inequality thus establishing the relevance of broadening forms of capital income. However, given that there are 27 European Union Member States, their perspective also cautions that the impact of capital income on wealth inequality depends on how concentrated capital income is in each particular Member State. By extension, the concentration of capital ownership and the concentration of capital income in each Member State will create different contexts for EFP in each Member State respectively.

Cirillo, Corsi, and D'Ippoliti (2017) also focus on the European Union's Statistics on Income and Living Conditions (EU-SILC) survey using a cross-sectional survey in 2007 and 2013, the years they define as the European economic crisis; their definition of capital income (p. 63) also includes *"profits from investments in unincorporated businesses."* Their main findings are that (p. 64) *"42% of European households earned their largest share of income from labour (income)".* This group was the majority group when correcting for the fact that public transfers are a central form of income. They find that (p. 65) *"for around 4% of European household's capital incomes are the main source of income" with a slight increase between 2007 and 2013."* The connection of capital income to wealth inequality is clearcut because (p. 70) *"households' capital income shares positively affected their probability of an upwards shift in the income distribution… (while) capital income becomes a significantly negative predictor of the probability of downwards income mobility".* This reflects what will be shown from the US sample below, namely that a dependence on labour income means a group goes lower in the income distribution. There is an interesting artifact in their data, namely, that low-income households might have high capital income driven by rents because a small amount of rent turns out to be a large percent of capital income relative to a small total household income. Cirillo, Corsi, and D'Ippoliti's (2017) contribution to the discussion is to show the role capital incomes play in upward and downward economic mobility.

Ranaldi (2022) offers results based on a different survey, the Luxembourg Income Study (LIS). It helps introduce some insights on compositional inequality, namely, a central issue to our discussion, the inequality between different groups in the population in terms of the composition of their total income as either labour income or capital income. He calls LIS (p.3) *"The only harmonized household surveys available for a large set of countries."* He focuses on two benchmark years: 2000 and 2016 and adjusts for the underestimation of both labour incomes and capital incomes at the top of

[49] The authors describe the dataset as such: "Our final panel data consists of observations for 17 countries, namely Austria (AT), Belgium (BE), Cyprus (CY), Germany (DE), Denmark (DK), Spain (ES), Finland (FI), France (FR), Greece (GR), Ireland (IE), Italy (IT), Luxembourg (LU), the Netherlands (NL), Norway (NO), Portugal (PT), Sweden (SE) and the United Kingdom (UK) and covers the seven different years from 2005 to 2011. Due to limited data availability, we miss some variables for different countries and years. (p.4)"

[50] This is demonstrated in their paper in their Figure 5, on The Contribution of Capital Income Shares to the Concentration of Gross Household Income and their Figure 6 on The Contribution of Capital Income Shares to Income Inequality Against Capital Income Concentration (p. 13-14).

the wealth distribution that is a common criticism of such surveys.[51] His dataset covers 60% of the world population with 84% and 94% respectively of the population of mature economies represented (p.6). For this Chapter's discussion, Ranaldi's analysis sharpens the issue of compositional inequality which means the inequality between how labour income and capital income constitute relative parts of total household income. As the US data below will reflect, those households with capi-tal income composing more of total household income will drive higher levels of wealth in-equality, while those households where labour income plays a greater role and capital in-come plays a lesser role will be more unequal. Ranaldi concludes (p.11-12): *"High levels of compositional inequality are associated to classical capitalism, where rich and poor separately earn from different income sources, whereas low levels to liberal, or multiple-sources-of-income societies."* Linking this discussion to his more detailed data on the US, Ranaldi finds that in the US 60% of the population lost access to capital income (p. 23). This finding will be reflected in the empirical results from our own studies presented on the US below that underlines the collapse of capital income for the working middle class. Ranaldi's work underlines the role that capital income plays in the concentration of wealth and the role compositional inequality plays in this story.

Blanchet et. al. (2022) constructs Distributional Wealth Accounts for Europe which provide more accurate data about the concentration of wealth and its distribution than surveys of individuals such as the European Union's EU-SILC. The data were constructed from national accounts, tax records and surveys to put together the first Distributional Wealth Accounts (DWAs) for Europe from 1970–2018 (p. 25-29). Net household wealth includes all financial and non-financial assets net of debt. Blanchet's data allow the calculation of the distribution of wealth-by-wealth bracket and an estimation of both labour income and capital income, along with providing the savings rates for each group (p. 32, 34). One key finding from Blanchet's work is that net housing assets are more central to Europe's 1% than in the US where financial assets dominate as financial assets are more important for the top 1% wealth share in the US (p. 34 - 35). Indeed, he reports (p. 40, 42) that *"wealth inequality has grown much faster in the United States than in Europe since the mid-1980s … Using wealth accumulation decompositions, we find that both the weaker rise in labour income inequality and the stronger rise in house prices relative to financial assets in Europe relative to the United States appear to explain why Europe has experienced a more moderate rise in wealth concentration since the mid-1980s."* Blanchet's contribution is to demonstrate the impact on the analysis of using Distributional Wealth Accounts for better data, while calling attention to the special role of housing assets in Europe.

Finally, Ooms' (2019) doctoral dissertation at Oxford University provides a comprehensive literature review on the role of capital incomes in wealth inequality in Table 1 (page 11-15). Juute's doctoral dissertation at the University of Jyväskylä in Finland examines the link between the concentration of capital incomes and economic growth, concluding (p. 180): *"Our main theoretical prediction is that an increase in income inequality is associated with higher subsequent economic growth when labour is the dominant factor of production in the economy. On the contrary, when the capital share*

[51] Ranaldi's definition of capital and labour income is as follows (p. 8): "While capital income is composed by rent, dividends and interests, labour income is the sum of wages and self-employment income."; this criticism is noted by (Törmälehto, V. M. (2017) regarding the EU Survey of Income and Living Conditions (EU-SILC).

of income is large, an increase in inequality is related with lower growth. This prediction holds when credit constraint is sufficiently low." As noted, this Chapter will not address these broader claims.

b) Dynamics in the Concentration of Capital Income in the United States

As noted in the Introduction, US data are introduced into this discussion regarding the European Union because there is a forty-year US dataset that allows the examination of long-term trends in capital income made available annually by the Congressional Budget Office of the US Congress (2021), entitled *The Distribution of Household Income, 2018*. These data have allowed for an examination of trends from 1979 to 2018 using consistent methodology in *Capital Income as a Share of Compensation* (Blasi and Kruse, 2021). That analysis looked at capital income data and standardizes all dollar values to 2018 dollars for comparability across the forty years. Unlike the EU data, the US dataset is mostly based on a sample of actual tax returns (about 90,000 in the earlier to 350,000 in the more recent years). While the US dataset has the advantage that it is not based on individual household surveys, it does not adjust for unreported income.

What does an overview of the data on capital income show for the US? Capital income for the entire population averages 12% of all household income in 2018 and adds 22% on average on top of wage and salary income. **Between 1979 and 2018:**

- **The average dollar value of capital income for all households increased 47.25% but average capital income as a percent of household income fell from 13.28% in 1979 to 11.62% in 2018.** In 2018, when total capital income averaged USD 13,400 per household, the percentage distribution of its components was: capital gains 53.73%; dividends 18.65%; interest 11.19%; share of corporate income taxes borne by capital owners 9.70%; positive rental income 6.71%.
- **Capital gains as a percent of total capital income increased 95.59%, nearly doubling its share of capital income**, dividends as a percent of total capital income increased moderately from 14.3% to 18.7%, interest as a percent of capital income decreased from 31.9% of capital income to 11% of capital income – a drop by almost two-thirds.
- **The share of corporate income taxes borne by capital owners as a percent of capital income decreased from 19.8% of capital income to 9.7% of capital income**, while positive rental income share of total capital income was stable at 6.6%-6.7%.

Capital gains have thus increased to constitute more than half of capital income. As King Richard III's broker said at Bosworth field, "Your wealth, your wealth, your wealth is in capital gains and dividends".

What are the trends by quintiles and percentiles of the US population from 1979 to 2019? Table 10 examines these trends in terms of capital income as a percent of household income and the dollar value of capital income. Stated briefly, the top 1%, the next 4%, and the next 5% showed large increases in the dollar value of capital income from 1979 to 2018 with all other groups showing declines.

Table 10: Changes in average capital income 1979-2018 by percent of average household income and dollar value in 2018 USD

	1979 % of total house-hold income	2018 % of total house-hold income	Percent-age point decline	% decrease	Average in 1979 USD	Average in 2018 USD	*Average USD change	% Capital income change
Quintile								
1st Q	4.3	1.8	-2.5	-58.1	700	400	(-300)	-43
2nd Q	5.2	1.6	-3.6	-69.2	2,000	800	(-1,200)	-60
3rd Q	5.6	2.3	-3.3	-59.0	3,300	1,800	(-1,500)	-46
4th Q	6.2	3.4	-2.8	-45.2	5,000	3,800	(-1,200)	-24
Top Q	21.8	18.9	-2.9	-13.3	33,200	59,800	+26,600	+80
Percentile								
81-90	8.7	4.9	-3.8	-43.7	9,100	8,500	(-600)	-7
91-95	11.2	7.4	-3.8	-34.0	14,400	17,800	+3,400	+24
96-99	22.8	13.5	-7.3	-32.0	42,600	53,600	+11,000	+24
Top 1%	54.4	42.0	-12.4	-22.8	318,200	839,500	+521,300	+164

Notes: Based on authors' analysis of Congressional Budget Office data. *For the average dollar value change column, the amount in parentheses indicates the decrease in dollar value.

Table 10 shows changes in the detailed distribution of capital income among the five quintiles of household income groups and different percentiles over the 1979-2018 period. While capital income as a percent of total household income has fallen for every quintile and percentile, this drop has been smaller for the top 1%, the next 4%, and the next 5% of households. But that does not tell the real story. The real story is that the dollar value of capital income from 1979 to 2018 dramatically increased for the top 1% by +164%, for the next 4% by +24%, and for the next 5% by +24% while it dropped stunningly by -43% to -60% for the first three quintiles. The fourth quintile is a transitional quintile where there is a large percentage drop in capital income as a percent of household income from 1979-2018 but much smaller dollar value drop.

What can be observed is a stunning concentration of capital income at the top in the US. While the top quintile shows a 13.3% decline in capital income as a percent of total household income, the top quintile saw an 80% increase in their capital income over the period. These averages for the top quintile cloud the fact that – looking inside the sub-groups within the top quintile – those in the 81st-99th percentiles have largely experienced the same phenomenon as the first three quintiles, with large drops in the capital income as a percent of household income. Dollar values of capital incomes went down in the 81-90th percentiles but up in the other top percentiles. Large increases in household income in the top 10% led to a decrease in capital income as a percent of household income, but the dollar value increased by 24% for the 91st-99th percentile and a standout 164% for the top 1%. In brief, the concentration dynamics are prevalent in the top 10% of households not the entire top quintile.

The study of capital income trends in the US from 1979 to 2018 found that capital income in the US is more concentrated than capital ownership (wealth). Table 1 above reported for the US wealth was concentrated in the top 1% by 35.3%, in the top 10%

by 71.5% and in the bottom 50% by 0.3%. In contrast, the top 1% in the US had 59% of all capital income while the top 20% had 89.7% of capital income.

Understanding the US data involve some definitional issues. Contrary to the EU-Survey of Income and Living Conditions data, the US definition of capital income does not include "net income from businesses or farms operated solely by their owners, partnership income, or income from S corporations." (CBO, 2021: 51).

For example, entrepreneur E can pay herself USD 200,000 salary as President of a Company that is 100% owned by E, yet also have net income of USD 1 million from that same company as "business income." For the purposes of this discussion, both the labour income from companies that E owns part of and the "business income" is included the CBO's definition of E's "total household income." The definition of "capital income" used by the US Congressional Budget Office and many others does not include this "business income." Given the large increase in the concentration of capital income in the US from 1970 to 2018, it is a valid question whether such business income "filled in" for capital income in the lower quintiles. That was decidedly not the case. Average business income per household grew from USD 3,100 to USD 8,100 from 1979 to 2018 for all households, but business income as a percent of total household income was flat for the middle three quintiles at around 2% at the beginning and the end of the period, so it could not substitute for the decline in capital incomes.

Capital income in this research does not include income from businesses. Is it possible that business income was less concentrated in the US than capital income? No, business income as a form of capital income also went to the top in the US. Indeed, in terms of dollar values, business income did not make a meaningful dollar value difference in the second to fourth quintiles, where it added USD 300 on average for the second quintile and middle quintile and USD 600 for the fourth quintile. Business income did, however, increase as a percent of total household income for the lowest quintile of households from 2% to 7% of total household income for an actual dollar increase of USD 120. This ironic figment is similar to the finding in the EU-Survey of Income and Living Conditions where rental income increases among lower income demographic groups appeared to show an increase in their capital income, while, in fact, only a small amount of rental income could show a large increase from an already small base.

The large gains of business income as a percent of total household income occurred for the fifth quintile. However, when the data for the fifth quintile are disaggregated, business income over the 1979-2018 period was also flat for the 81st to 90th percentile, the 91st to 95th percentile, and the 96th to 99th percentile as a percent of household income. In terms of the 2018 dollar value increase over the period, business income rose USD 2,100 for the 81st to 90th percentile (a 54% increase), USD 5,250 for the 91st to 95th percentile (a 79% increase), and USD 26,200 (a 135% increase) for the 96th to 99th percentile. But business income only rose significantly for the Top 1%, doubling from 11% to 22% of average household income and showed growth in 2018 dollars from USD 61,500 to USD 430,600, namely, dollar growth of 600% (Blasi and Kruse, 2022, p. 13). Business income did not play any critical role in the household income in the lowest to the fourth quintile or in the 81st to 99th percentile of the fifth quintile.

To the extent that capital income can be viewed as an income stream potentially augmenting wages and salaries, possibly even a "raise" on top of wages, its role has also waned greatly with a more than half decline from 1979-2018.

- The flip side of these shifts are a **ballooning concentration of capital income among the richest households** from 59.3% of all capital income held by the top 1% of households in 2018 (up from 39.6% in 1979) and 89.7% of all capital income in the hands of the top 20% of households in 2018 (up from 76.2% in 1979).
- **Every percentile except the top 1% showed large decreases in their total share of capital income** over the period. Business income increased in dollar value by 600% for the Top 1% of households and it doubled as a percent of household income for that group from 11% to 22%. Business income did not offset the plummeting role of capital income in the first four quintiles.
- In summary, the US data on capital income show that **capital income has largely collapsed as a reality from 1979 to 2018 for "the working middle class."** The composition of incomes changed away from capital incomes for the lower quintiles and played a major role at the very top.

Comparable EU data is needed to benefit from a comparison of both economic regions. The story of the concentration of capital ownership and the concentration of capital income in the US sets the stage to put US EFP under a microscope and explore some ideas for studying this phenomenon in Europe.

4. Employee Financial Participation in the US

The dollar value of EFP has been studied for two decades in the US using the respected General Social Survey. These data include six national random samples from 2002 to 2022 every four years, namely, in 2002, 2006, 2010, 2014, 2018, and 2022.

These data provide the dollar value of all forms of EFP, such as employee share ownership, profit sharing, and gain sharing for each year. (Estimates of the dollar value of unexercised stock options are not available). These data have been collected by the National Opinion Research Center of the University of Chicago which does contract work for the US Census.[52] Here the US data from the General Social Survey are used to illustrate the role that EFP plays as a percentage of wages and wealth in an economy and the impact EFP can have on broadening access to capital ownership and to capital income. Because no strictly comparative data for the European Union are available, it is difficult to make firm comparative judgements between the EU and the US about these results. At most, they indicate the impact that EFP has had on wealth in an economy that has a lot of EFP and what could be learned in Europe if the collection of such data were implemented.

[52] The GSS is supported by taxpayers through the US National Science Foundation with the special questions on EFP supported mainly by the Russell Sage Foundation, the Rockefeller Foundation, Employee Ownership Foundation, and others until 2018, and by Google.org in 2022.

According to the General Social Survey for 2022, 17.5% of all adult private sector employees own company stock and 7.7% hold employee stock options, 34.9% have access to company profit sharing, 26.7% have access to company gain sharing, while 41.8% have access to one or more of these forms of EFP. In companies with stock, 52.4% of all adult employees have access to one or more of these forms of EFP. While the percentage results for the EU focus principally on the percent of company and not the percent of employees in the whole economy covered, these results do appear to indicate that EFP is more widely implemented than in the EU (Kruse and Blasi, 2023). In 2023, the Institute for the Study of Employee Ownership and Profit Sharing announced the creation of The Shares Laboratory to monitor EFP more closely. The first quarterly report released on 1 March 2023, reported the dollar value of these form of EFP in 2018 and looked at the 2002-2018 trends. These data are shown in Table 2. The data that follows only focuses on employee equity participation in whole shares of stock. When an employee owns a whole share of stock, that employee has the potential to have more capital ownership along with greater capital income as a result of the capital gains of the shares and the dividends associated with the shares.

The data is shown in Table 11 below. For those employees with EFP in the US, **the average dollar value of the equity compensation stake as a percent of yearly income** has generally hovered between 56.8% and 89.5% of annual salary if one looks at the statistics for 2002, 2006, 2014, and 2018, meaning that on average employees almost achieved total equity dollar value equal to about one year of their salary. The average of all the employees for which data is available over the twenty-year period is 83.7%, meaning over the twenty-year period the average employee reported wealth equal to about 84% of annual salary in 2018 dollars. The medians are between 21.2% and 30.7% for 2002, 2006, 2014, and 2018, meaning that half of employees have less than that as a percent of yearly earnings and half have more than that percent of salary earnings. This strikes the authors as a relatively low number suggesting that the accumulated total career equity compensation dollar value was less than 20-30% of annual earnings for half of all employees with equity compensation, and that was more than 20-30% for the other half. Across all years, median equity compensation as a percent of yearly income in USD equalled 24.9%.

The dollar value of the equity compensation stake as a percent of net family wealth (assets minus liabilities) communicates what proportion the total equity dollar value in the US is as a percent of family wealth communicates or how many multiples of net family wealth it represents. On average, the dollar value of the equity compensation stake as a percent of net household wealth has generally hovered between 18% and 24.6% for 2002, 2006, 2014, and 2018, meaning that on average employees had total equity dollar value equal to about a fifth to a third of their total household wealth. The average of all the employees for which data is available over the twenty-year period is about 25%, meaning all the available information suggests average equity dollar value equals a quarter of net family wealth. The medians range between 7% and 8.5% for 2002, 2006, 2014, and 2018 meaning that half of employees have less than that as a percent of net household wealth and half have more than that. This strikes us as a relatively low number suggesting that the accumulated total career equity compensation dollar value was less than 7-9% of net household wealth for half of all employees with equity compensation, and that it was more than 7-9% for the other half. Taking all employees over the entire period it was 8.1%.

Table 11: Value of Employee Equity Compensation Stake, 2002-2018 (in 2018 USD)

	2002	2006	2014	2018	All years
Mean	66,061	41,123	54,050	76,318	60,423
Median	12,607	18,630	12,690	20,000	14,008
As a % of yearly earnings					
Mean	89.5%	56.8%	93.9%	88.2%	83.7%
Median	21.2%	24.9%	23.1%	30.7%	24.9%
As a % of Family Wealth*					
Mean	NA	18.4%	30.7%	24.6%	25%
Median	NA	7%	8.5%	7.6%	8.1%

Source: Own elaboration of the authors. *Wealth is total assets minus total liabilities estimated by the employee respondent.[53]

These findings suggest that there is wide variation in the impact of the dollar value of equity compensation on individual employees' wealth accumulation as a percent of each individual employee's annual earnings or net household wealth, which obviously indicates more about the impact on their family's economic situation.

Table 12 presents more detailed data by looking at the impact of equity compensation in the US on three different income groups. In order to investigate the distribution of the dollar value of equity compensation between different groups in the population, the population was divided into three income groups, the lower third, the middle third, and the upper third. Here is a more finely-grained summary of the results:

- The **dollar value of equity compensation as a percent of annual earnings is remarkably similar in its impact** on the lower third, middle third, and upper third of employees ranging from 70-96% at the mean, while at the median it is 16%-31%.
- The **dollar value of equity compensation as a percent of net household wealth is also remarkably similar in its impact** on the lower third, middle third, and upper third of employees ranging from 18%-29% at the mean, while at the median it is 5%-9%.
- This suggests that when employees are included in equity compensation plans that the level at which they are able to supplement their wealth accumulation as a percent of both their annual earnings and their net household wealth is remarkably similar.

In effect, **when equity compensation plans are available and employees are included at different income levels, the impact in the US is not as heavily skewed as one might expect and is relatively egalitarian**.

[53] Note: 2010 data was not collected. Based on employees who report a dollar value for equity compensation plans. These data do not include self-employed individuals and those that answered, "Don't know." Only for-profit firms are included. Only dollar values of equity compensation of USD 1 million or lower were included in order to limit the impact of out-liers on the results. The median statistic would modulate the impact of outliers.

Table 12: Employee Ownership by Earnings Groups as Proportion of Earnings & Wealth

		2002	2006	2014	2018	Average 2002-2018
Across all employee owners						
Dollar value of EO stake (2018 $, capped at $1 mln.)						
Mean		$66,061	$41,123	$54,050	$76,318	$60,423
Median		$12,607	$18,630	$12,690	$20,000	$14,008
n		175	129	115	116	535
EO stake as percent of yearly earnings (upper 1% capped)						
Mean		89.5%	56.8%	93.9%	88.2%	83.7%
Median		21.2%	24.9%	23.1%	30.7%	24.9%
n		175	129	115	116	535
EO stake as percent of family wealth (upper 1% capped)						
Mean		na	18.4%	30.7%	24.6%	25.0%
Median		na	7.0%	8.5%	7.6%	8.1%
Separately by low, middle, and high earners						
Dollar value of EO stake (2018 $, capped at $1 million)						
Mean	Lower third	$24,859	$20,908	$28,398	$14,631	$22,308
	Middle third	$35,064	$43,709	$57,289	$56,471	$48,402
	Upper third	$143,409	$60,355	$82,635	$156,303	$117,338
Median	Lower third	$5,603	$12,420	$3,701	$2,000	$4,230
	Middle third	$14,008	$12,420	$23,265	$19,000	$15,862
	Upper third	$42,023	$31,050	$31,725	$74,000	$37,260
EO stake as percent of yearly earnings (upper 1% capped)						
Mean	Lower third	86.2%	54.3%	140.4%	86.5%	96.4%
	Middle third	54.7%	66.3%	75.8%	84.6%	70.4%
	Upper third	127.5%	43.8%	56.6%	92.9%	84.0%
Median	Lower third	15.9%	31.9%	11.3%	8.2%	15.9%
	Middle third	24.7%	18.9%	31.1%	30.7%	26.1%
	Upper third	33.8%	24.9%	25.5%	54.9%	30.7%
EO stake as percent of family wealth (upper 1% capped)						
Mean	Lower third	na	31.7%	29.2%	22.9%	27.5%
	Middle third	na	15.2%	42.0%	28.8%	28.5%
	Upper third	na	8.5%	19.6%	22.9%	18.4%
Median	Lower third	na	11.5%	3.9%	3.5%	5.1%
	Middle third	na	5.6%	11.3%	10.1%	8.8%
	Upper third	na	4.9%	10.6%	12.3%	8.6%

Source: Own elaboration of the authors.

A focus on the lower third group income group merits some further exploration. In the lowest third group by yearly earnings those employees in equity compensation plans were able over the entire period (including all employees for which data is available) to accumulate a dollar value of equity compensation equal to 96% on average of one year's salary, whereas this was 84% for the upper third of earners. The working middle class, as it were, the middle third of earners had an equity compensation stake equal to 70% of their yearly income. Looking now at equity compensation as a proportion of total wealth, in the lowest third group by yearly income, those employees in equity compensation plans were able over the entire period (including all employees for which data is available) to accumulate a dollar value of equity compensation equal to 27% on average of household wealth, whereas this was 18% for the upper third of earners. The working middle class, as it were, the middle third of earners had an equity compensation stake equal to 28% of their family household wealth. These findings suggest that participation in equity compensation plans has relatively similar impacts on individuals and family household wealth at this level.

5. Conclusion

All available data indicate that both capital ownership (wealth) and capital income are increasingly concentrated at the top in the European Union and the United States. Because equity ownership can broaden EFP in both capital ownership (through ownership of property) and capital income (through capital gains and dividends), this Chapter provides a preliminary examination of the relevance of EFP in this context. Capital ownership is less concentrated in the European Union than in the US and while capital income is concentrated at the top, precise estimates about the level of EU concentration of capital income are simply not readily available, with the differences between Member States having a lot of meaning for any analysis. Data on the US is introduced by comparison in order to illustrate how a detailed analysis of capital income concentration by quintile and percentiles in one economy can be described and used to generate insights and ideas for further research. Data from the US is also introduced to illustrate possible methods for assessing the impact that EFP can have on expanding capital ownership and capital income as a percent of the wealth of different income groups in the population. This Chapter presents – for the first time – a society-wide measure of the impact of EFP on one economy, namely, the US For further research, it makes sense to build on the comparable data available on the distribution of capital ownership and have similar research on the distribution of capital income for both the EU and the US along with measures of the EUR and USD values of EFP.

The conceptual model suggested for this Chapter asserts that the relevance of EFP can be viewed as a function of narrowing income and wealth options for the working middle class when the concentration of capital ownership and capital income is high and when real wage growth is low. Does this relevance change across economic systems? There is no question that the future understanding of these issues requires adding metrics to the statistical methodologies of different regions and countries and adding to existing reports and analyses that focus on both the dynamics of and trends in capital income (property income in the EU) and on the EUR and USD value of EFP at the mean and at the median for different income levels of the population.

Limitations of the analysis

First, measures of capital income from surveys and from samples of tax returns are viewed by experts as significantly understating the capital income of top income groups. Efforts are underway to adjust for this understatement using alternative methods but the gaps between survey data and samples of tax returns and national accounts income aggregates need to be addressed (see, Piketty, Saez, and Zucman, 2008 for this method, and Guio 2021).

Second, data on the country level or region (EU) level incidence of employee share ownership, profit sharing, gain sharing, and holding of employee stock options are not available for the EU, either in individual years or in a time series. This makes the comparison with other countries and regions difficult.

Third, data on the EUR and USD value of EFP at the mean and at the median for different income levels of the population are not both available for the EU and the US, making comparisons impossible. Different regions of the world and different countries require having both incidence data and EUR and USD value of EFP at the mean and at the median for different income levels of the population. It is difficult to establish what comparisons mean with this data deficit.

Fourth, at the present time, the analysis does not factor the impact of social transfers and state and private pension payments. Comparisons between employees in the EU where state pensions and social transfers are common to employees in the US where state pensions and higher social transfers are uncommon, are thus not apple to apple comparisons. There is also the important question of the role of housing assets in building up wealth and property income through capital gains in the EU. What are the differential dynamics of government support and public support for EFP in different economic systems where these different factors of pensions and housing play different roles.

V. Employee Share Ownership in SMEs – Start-ups, Conventional Firms and Social Enterprises

Denis Suarsana and Jens Lowitzsch

1. Introduction: Differences and Similarities

The situation of Employee Share Ownership in start-ups has some parallels with that in traditional SMEs, but in many respects, they differ fundamentally. This concerns the motives, conditions, share ownership plans used, and consequently, the political demands regarding ESO. Start-ups are young companies with an innovative business idea and high potential for rapid growth. Unlike SMEs, start-up owners (i.e., founders and potentially risk investors) typically do not have a long-term perspective. Venture capitalists finance the swift implementation and market penetration (scaling) of the business idea. In the event of success, a so-called exit follows after five to seven years, which involves selling the start-up or taking it public through an IPO. Therefore, investing in start-ups is a risky "bet" on the future success of the company.

In the competition for highly qualified specialists, start-ups are at a significant disadvantage compared to larger established companies, particularly during their early development phase due to limited financial resources. As compensation for relatively low base salaries, start-ups offer their key personnel, among other things, an opportunity to participate in the company's ownership. Furthermore, ESO in start-ups can lead to aligning the interests of employees and founders with regards to rapid growth and value appreciation of the company. Moreover, in the United States, numerous former employees of start-ups have become founders or investors themselves after leaving, thanks to the proceeds from the sale of their share upon exit, which has had a positive impact on the entire start-up ecosystem in Silicon Valley. The reasons why ESO in start-ups is not widespread in the EU, despite these potentially positive effects, are diverse. They range from the risk behaviour of employees and the attitudes of founders to the lack of successful role models. However, according to start-up interest groups, the main reason is the tax and regulatory framework, which, in their view, constitutes a significant obstacle in many EU Member States (Open letter 2019).

Although, on the other hand, social enterprises may also have to compete with large firms for qualified staff and face challenges when growing or scaling their activities, the reason why ESO in this enterprise segment is not widespread in the EU is altogether different. In the absence of a prescribed legal form of incorporation, social enterprises operate in various forms (be it for profit or non-profit), e.g., cooperatives, closely held limited liability companies, mutuals, associations, voluntary organisations or foundations. The European Commission employs the term to cover businesses (i) for whom the social or societal objective of the common good is the reason for their activity, (ii) whose profits are mainly reinvested to achieve this social objective, and (iii) where the method of organisation or the ownership system reflects the enterprise's mission, using democratic or participatory principles or focusing on social justice.[54]

[54] https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu/social-enterprises_en.

Some of the mentioned legal forms do not allow for financial participation in the form of ESO as their ownership structure is not organised by capital shares. Nevertheless, the mentioned benefits of ESO for start-ups, e.g., the support for growth or the retention of key staff, are also valid for social enterprises. Therefore, this Chapter looks into the extension of the incentives for ESO to social enterprises inasmuch as they are organised in legal forms allowing for share ownership, above all in the form of limited liability companies.

Following intensive lobbying in 2019, twelve EU countries have introduced new regulations that facilitates ESO in start-ups. Against the background of this recent and very dynamic developement this Chapter:

- Provides an overview of the start-up business segment in comparison to other types of companies, particularly focusing on differences with the SME sector.
- Examines the legal regulations that hinder a broader adoption of employee share ownership in European start-ups.
- Presents best-practice examples to demonstrate the favourable conditions already established in some EU Member States.
- Discussed whether these reforms and best practice examples could be extended and – as is already the case in some countries – applied to the whole SME population including Social Economy enterprises.

2. Employee Financial Participation in Start-ups – A Special Case

Start-ups are in fierce competition to attract the best talents. Especially in the early years, many rely on highly skilled developers and IT specialists. Start-ups can particularly appeal to young professionals with a modern corporate culture. Employees in start-ups usually work in small and highly motivated teams, working together to build something. In addition, start-ups offer their employees a high degree of flexibility and freedom, a relatively steep learning curve, quick assumption of responsibilities, and an open corporate culture with flat hierarchies.

However, start-ups worldwide face significant challenges in finding suitable personnel. The reason for this is often high personnel costs. Especially in the growth phase, most start-ups lack the funds to pay the high salaries for IT experts customary in larger companies and international research institutions. Therefore, many start-ups, especially in the USA, rely on ESO models to allow their employees to participate in the company, usually in the form of stock options. Employees forego high base salaries and, in return, receive the option to acquire shares in the company. In the event of a successful exit, such as a sale or an IPO, employees receive shares or their share of the proceeds. In particular the latter option which seems to be prevalent has triggered criticism that ESO in start-ups will be inherently not sustainable, as one of the main aims of the exit strategy is to sell the shares. For start-ups themselves, such stock options offer several advantages. They conserve the usually limited financial resources of the start-up while simultaneously providing incentives for in-demand top talents to join the company, despite initially lower salary prospects. Furthermore, employee participation increases the motivation of employees and their identification with the company. As in other types of companies, positive effects include higher productivity, improved work quality, lower turnover rates, and reduced absenteeism. Ultimately, stock options lead to an alignment of interests among employees and founders, as well as among employees themselves. The common goal, however, is primarily the growth and value appreciation of the start-up with a focus on the exit.

The participation of their own employees has not only helped individual start-ups attract the best talents but has also contributed to the creation of an entire ecosystem for founders in Silicon Valley. Numerous former start-up employees became founders or so-called angel investors themselves after their multi-million-dollar exits, providing start-ups with initial capital. The most famous example is the "PayPal Mafia", a group of former employees and founders led by ex-CEO Peter Thiel, who went their separate ways after the company was sold to eBay. Elon Musk founded Tesla, Reid Hoffman LinkedIn, and Jawed Karim co-founded YouTube, among others. Many other members of this group also started successful start-ups or became influential venture capital investors. In the United States, both policymakers and start-ups recognized the great potential of employee share ownership decades ago. Thanks to tax incentives for share-based models, a start-up-friendly environment was created, where employees accept salaries significantly below market rates in their respective industries. As a result, the average share of ESO in US start-ups at the end of their Series D round is around 25%, significantly higher than the European comparative value of 10% (indexventures 2017).

In this context, numerous start-up founders and investors from across Europe signed an open letter in January 2019, demanding better conditions for employee share ownership in start-ups from policymakers. According to the signatories, urgent action is needed to enable European start-ups to compete for the best professionals in the global market.[55]

3. The regulation of employee share ownership in start-ups in the EU

a) Forms of employee share ownership and motives for their introduction

ESO in start-ups is significantly less common in the EU than in the USA. The reasons for this are diverse, as mentioned before, including a generally lower risk appetite among employees, the reluctance of founders and investors to grant shares to their employees, and the simple lack of successful examples that demonstrate the success of employee participation in their own start-ups, such as Google, PayPal, or Lyft. However, the main reason in many EU Member States is a regulatory framework that does not promote and sometimes even hinders the introduction of ESO models in start-ups. Often, this is also related to unfavourable legal conditions for ESO in general (see the ranking and more detailed overview of the EU-27 in Chapter III 2). For start-ups, this represents a significant hurdle due to their small size and limited financial resources. Additionally, the legal form during the founding phase, usually a privately held limited liability company, impairs the introduction of stock options and other forms of capital participation due to transaction costs, especially those of notarisation and restrictions

[55] *"Over the next twelve months, Europe's start-ups will need to hire more than 100,000 employees. Add to that the number of employees that start-ups yet to be born will need to get their ideas off the ground. […] stock options reward employees for taking the risk of joining a young, unproven business, and give them a real stake in their company's future success. Stock options are one of the main levers that start-ups use to recruit the talent they need; these companies simply can't afford to pay the higher wages of more established businesses. But policies that currently govern employee ownership across Europe are often archaic and highly ineffective. Some are so punishing that they put our start-ups at a major disadvantage to their peers in Silicon Valley and elsewhere [...]. If we fail to take action, we could see a brain drain of Europe's best and brightest, leading to fewer jobs created and slower growth."* (Open letter 2019).

on transferability. Against this backdrop, significant bureaucratic effort, and high costs in setting up an employee share ownership plan, as well as unfavourable taxation of stock options, are the most mentioned hindrances.

Therefore, many start-ups in Europe offer their employees so-called virtual options to avoid the bureaucratic effort and costs associated with introducing real stock options. Virtual options or shares represent a contractual agreement between the employer and employee, in which the employee is promised a certain financial share of the proceeds in the event of the start-up's sale or IPO. The value of the proceeds is linked to the market value of the company's actual shares, hence the reference to stock options in the name. Virtual options are flexible and easy to manage, and taxation only occurs upon pay-out. However, the employee does not actually receive shares in the company – they do not become a co-owner but only benefit from the start-up's value appreciation. Additionally, virtual option models are less legally binding than "real" employee share ownership models and often less transparent for individual employees. Therefore, such participation programs are systematically classified as profit sharing, which also affects their taxation, as illustrated in the following sub-section.

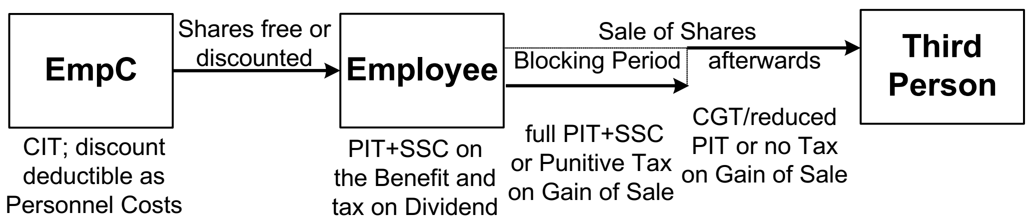
b) Taxation

Unfavourable taxation of employee share ownership in start-ups, especially regarding stock options, complicates taxation principles that vary across MS and are listed as obstacles. Since the practice of employee share ownership in start-ups varies and includes both employee shares/stocks, stock options, and profit sharing, the following provides a brief overview of taxation principles to facilitate the evaluation of regulations in each MS.

Employee Shares

The taxable benefit resulting from the transfer of discounted shares is generally considered employment income, subject to general income tax and social security contributions for employees. The employer company can generally deduct the discount as personnel costs from the corporate income tax base. However, national valuation rules differ significantly, particularly regarding shares of non-listed companies. The taxation of dividends depends on the corporate tax system in each country. Since none of the MS provide tax relief for the employer firm related to distributed dividends, corporate tax is generally levied on the entire profit, including the portion to be distributed.

Figure 16: Taxation of Employee Shares



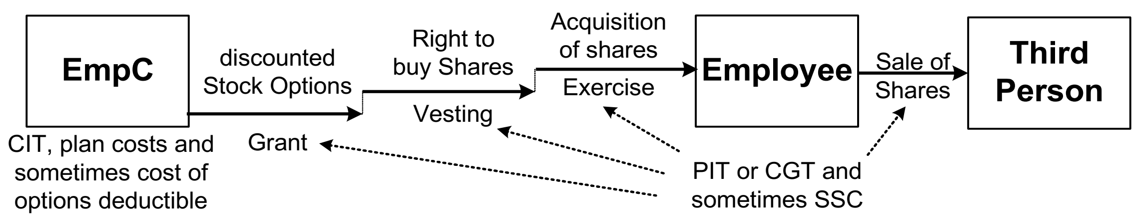
Source: Lowitzsch et al. 2008; CIT = Corporate Income Tax, CGT = Capital Gains Tax, PIT = Personal Income Tax, SSC = Social Security Contributions.

The taxation of proceeds from the sale of shares depends on whether the shares were sold during or after the blocking period. If the shares are sold during the lock-up period, there are no fundamental differences in the tax treatment among MS: either income tax and social security contributions are levied or a special (high) tax with punitive character. If the shares are sold after the lock-up period, the type of taxation of proceeds from the sale of shares is crucial (see Figure 16); various concepts are presented in the country profiles in Annex V of this study (see also the overview of the EU-27 and UK in Chapter II 2). Where there is no general tax exemption and no exemption for small stakes, other tax reliefs generally apply.

Stock Options

Taxation of employee stock options is complex due to significant differences in the taxation timing and valuation methods that depend on the timing (see Figure 17).

Figure 17: Taxation of Stock Options



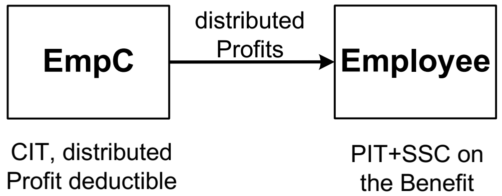
Source: Lowitzsch et al. 2008; CIT = Corporate Income Tax, CGT = Capital Gains Tax, PIT = Personal Income Tax, SSC = Social Security Contributions.

In most MS, the taxation timing occurs at exercise; however, taxation at transfer by the employer company, or optionally at transfer or exercise, as well as taxation upon the sale of shares by employees, are practiced in different MS. Taxation at transfer by the employer company is associated with significant risks, so special tax incentives such as reduced tax rates or reduced tax base and exemption from social security contributions are granted as compensation. Although there are strong arguments for considering employees' income from stock options as capital income, most MS classify this income as employment income and subject it to corresponding income tax and sometimes social security contributions. The employer company can generally deduct the establishment and administration costs of the stock option plan for employees, as well as the cost of options if the shares were purchased by the company before exercise (with a few exceptions, e.g., Belgium). In some countries (e.g., Ireland, Luxembourg, Portugal), employees and employers are exempt from social security contributions related to stock options.

Profit Sharing

Regarding profit sharing, there are no significant differences among MS (see Figure 18). The profit distributed to employees is generally deductible as personnel costs for the employer company (except in Estonia, where distributed profits are taxed). Employees are subject to income tax and social security contributions.

Figure 18: Taxation of Profit Sharing



Source: Lowitzsch et al. 2008; CIT = Corporate Income Tax, PIT = Personal Income Tax, SSC = Social Security Contributions.

The taxation of stock-based profit sharing is regulated similarly to the taxation of employee share ownership plans. Only when profit sharing plans are combined with savings plans or when the profit sharing is initially invested in the company or on the capital markets with holding periods, tax incentives, reduced social security contributions, or exemptions are typically granted.

c) Overview of specific regulations in the EU Member States

In light of the obstacles described above regarding the implementation of employee participation programs in start-ups, and particularly in response to the criticism from interest groups (see the cited open letter from 2019, Fn. 55) that view the regulations for employee participation in this segment of companies in Europe as "inconsistent and simply outdated," taking stock of the situation is appropriate. In fact, the situation is not equally problematic in all EU Member States. On the contrary, according to a ranking by venture capital investor Index Ventures among a total of 22 OECD countries, Estonia ranks first globally in terms of the framework for employee participation in start-ups, surpassing Israel, Canada, and the United States. Portugal and France also offer relatively favourable conditions for start-ups accordingly.

In twelve MS, lawmakers have established legal frameworks in recent years to specifically promote employee participation in start-ups. While in a majority of countries these rules are restricted to this specific segment of SMEs some countries formulated them from the beginning broader to benefit all SMEs and some extended them later to SMEs. The following summary briefly illustrates the contents of these regulations, for details see the respective Country Profiles in Part 2.

Denmark – Regulations for start-ups were introduced in 2018 and further extended in 2020 and in 2021. Unlike for conventional employee stock plans that require being offered under a broad-based plan and imposing a cap of 80% the beneficiaries' salary, they stipulate that stock option plans are eligible for tax benefits if the maximum value of options granted to an individual employee does not exceed 50% of their annual salary (ceiling raised from 20% as of 1 January 2021.). To offer shares without being subject to said conditions the company must: (i) have no more than 50 employees in the two most recent annual accounts when the agreement was entered; (ii) have a net turnover or balance sheet total no exceeding DKK 15 million in one of the last two annual accounts; (iii) not have been active on the market for five years or more before the year the agreement on employee shares is entered; (iv) be an active operating company other than in a business that predominantly consists of passive capital placement; (v) not be listed on the stock exchange or otherwise admitted to trading on a regulated market; (vi) report if the total state aid from the agreement in the same calendar year exceeds 500,000 EUR; and (vii) not grant this incentive to employees directly or indirectly owning more than 25% of the share capital or control more than 50% of the votes in the company.

Germany – In 2021, Germany reformed its employee share ownership regulations especially aiming at strengthening the use of stock options in start-ups. The new regulations increased the tax-free allowance for free or discounted share-allocation to employees from EUR 360 to EUR 1,440 per year. In addition, the regulations introduce deferred taxation on income from employee share ownership (taxed, however, as employment income), but only in small and medium-sized enterprises, which were established no more than 12 years ago. Income from the shares is not subject to taxation and wage tax deduction until the shares are sold, the employment relationship is terminated, or 12 years have passed since the transfer. The law on the financing of future-proof investment passed by parliament in the end of 2023 significantly increased the tax-free allowance to EUR 2,000 and extend deferred taxation rules to companies with up to 999 employees, annual sales of EUR 100 million or total assets of EUR 86 million, and that have been founded no longer than 20 years ago. In addition, income from shares shall not be taxed until 20 years after the transfer of the asset participation.

Estonia – Following pressure from the Service Industry Association, an umbrella organisation of tech companies and start-ups, stock purchase programs were regulated in 2017 such that stock options were no longer accounted as taxable fringe benefit in case the employee does not monetize them before three years. Although the introduced rules are specific for start-ups but general, they are reportedly very popular in the start-up scene.

Ireland – In 2017, Ireland introduced the Key Employees Engagement Programme (KEEP), which provides tax-favoured stock option plans for SMEs (small and medium-sized enterprises) and extended it in 2022 with a focus on start-ups. The program aims to attract and retain skilled employees in companies. Profits generated from exercising an option remain tax-free and, unlike other tax-favoured stock option plans, are exempt from social contributions. Capital gains tax is only applicable when the shares are sold. Only employees working at least 20 hours per week or 75% of their individual working time are eligible to participate in such a plan. The period between the issuance and exercise of the option cannot exceed 10 years. The value of the options per employee cannot exceed EUR 250,000 or 50% of their annual salary. It is foreseen: to extend of the scheme to 31st December 2025 (currently qualifying share options granted between 1 Jan 2018 and 31 Dec 2023); allow the use of existing rather than just new shares; the facilitation of share buybacks; and the increase of limit for the total market value of issued but unexercised qualifying share options for qualifying companies and qualifying holding companies to EUR 6,000,000.

Greece – A 2019 reform of the tax treatment of stock option plans (Law 4172/2013, as amended by Law 4646/2019) stipulating that they are not taxed as income from employment but as income from capital gains at a rate of 15% at the time of sale of the shares conditional on a two-year blocking period after exercise. The added value is defined as the difference between the closing price of the share market and the issue price of the shares of listed companies or the difference between the acquisition price and the selling price of the shares of unlisted companies. A special provision for non-listed start-up companies provides a similar tax treatment conditional on a retention period of three years with a capital gains tax of 5%. In both cases social security contributions incur.

Spain – Company shares or shares from a group of companies given to employees for free or at a discounted price are excluded from income tax assessment under the following conditions of Art. 42.3 f) Personal Income Tax Law: (ii) the market value of the benefit at the time of acquisition does not exceed Euro 12,000 p.a., (ii) shares are offered within the framework of a regular broad-based compensation plan. Law 28/2022 of 21 December 2022 on the promotion of the start-up ecosystem, introduced specific incentives for start-ups by raising the cap in the case of start-ups to EUR 50,000 relaxing above conditions to making the offer as part of the company's general remuneration policy but not necessarily being broad-based.

France – With the 2018 Finance Act, France introduced stock options promoted under the "Bons de souscription des parts de createur d'entreprise" (BSPCE) scheme. To qualify, the company: (i) must not be listed on the stock exchange, (ii) is less than 15 years old, (iii) has a total capitalization of less than EUR 150 million, and (iv) the share capital must be held at least 25% by individuals, or by companies that are held directly at least 75% by individuals. Only when the shares are sold, a flat tax of 30% (12.8% income tax and 17.2% social contributions) is levied on the profit. If an employee has been with the company for less than three years at the time of sale, the tax portion alone increases to 30% (resulting in a total of 47.2% tax). Since the beginning of 2020, the scheme also applies to foreign start-ups.

Italy – With D.L. 179/2012 ("Growth Decree 2.0" or "Start-up Act") the country introduced share ownership schemes for the innovative start-up sector allowing remunerating administrators and workers with shares or quota exempted from social contributions and granting deferred taxation at sale in 2012. Decree-Law 3/2015, (known as "Investment Compact"), converted into Law 33/2015, extended most of the benefits envisaged for innovative start-ups to a broader range of companies, the innovative SMEs. To qualify as "innovative Start-up" these privately held limited liability companies (including cooperatives) must: (i) be newly incorporated or been operational for less than 5 years, (ii) not be the result of a merger, split-up, or spin-off, (iii) have a maximum turnover is EUR 5 mln., (iv) not have been distributing dividends, (v) have the development, production and distribution of products and services with technological value as their main objective. To qualify as "innovative SME" they must have: (i) a maximum turnover is EUR 50 mln. (no minimum turnover is required), and (ii) a workforce of up to 250 people. Moreover, both must possess at least one of three characteristics related to innovation and research. Such firms can register into a section of the business register dedicated to Innovative Start-ups and Innovative SMEs to access administrative and fiscal benefits, such as zero cost incorporation, simplified insolvency procedures, tax incentives for equity investments, and a public guarantee scheme for bank credit.

Netherlands - Since January 1, 2018, the Netherlands has also implemented a tax-favoured stock option model for innovative start-ups. Twenty-five percent of the profits from stock options, up to a maximum value of EUR 12,500, remain tax-free, while the remaining 75% is subject to income tax. Requirements for tax benefits include a research and development declaration from the start-up and exercising the options between one and five years after issuance. Furthermore, the total value of options issued to employees in the company must not exceed EUR 200,000. Starting January 2023, the government abolished these specific preferential conditions for start-ups in the context of a tax reform, instead granting employee stock options in all type of firms deferred taxation.

Sweden - Since January 1, 2018, Sweden has implemented deferred taxation for stock option plans in start-ups. The conditions include the start-up being younger than ten years, employing fewer than 50 people, and generating annual revenue of less than EUR 7.6 million. At the time of transfer, the employer is exempt from social security contributions. Taxation occurs in the form of a capital gains tax of 25%

only when the shares are sold. The total value of stock options per company cannot exceed EUR 7.2 million, and the value per individual cannot exceed EUR 287,000.

Austria – In Austria, starting as of 1 January 2024, a new law introduced the possibility of the transfer of discounted employee shares at nominal value by way of a capital increase of up to 10% of the company's equity. Eligible firms must have an average of less than 100 employees and a turnover of no more than EUR 40 million. in the preceding business year at the time of granting the shares. The shares must be granted within 10 years after the end of the year of foundation of the firm, the benefitting employee may not directly or indirectly hold a share of 10% or more and the shares may not be transferred without the consent of the employer. Granting deferred taxation to the employees, 75% of the benefit measured according to the proceeds of the sale or the fair market value is subject to a fixed tax rate of 27.5% (also exempt from ancillary wage costs, municipal tax and employer's contribution) with the remaining 25% to be taxed at the individual progressive income tax rate. Prerequisite for the preferential taxation is that the shares have been held for at least 5 years and that the employment relationship has lasted for at least 3 years at the time of termination.

United Kingdom – The Enterprise Management Incentives (EMI) have been in place in the UK as early as 2000. They aim to help start-ups attract and retain skilled employees in the long term. The program applies to companies with a maximum gross asset value of GBP 30 million and fewer than 250 full-time employees. The value of stock options per employee cannot exceed GBP 250,000, and per company, it cannot exceed GBP 3 million. Both employers and employees are exempt from income tax and social security contributions when issuing and exercising options. Capital gains tax is only applicable when the shares are sold.

Although some regulations, such as those in the Netherlands, have been taken back and replaced by general rules pertaining to all SMEs, they generally go beyond the conditions prevailing in most EU Member States. All promotion models share the common feature of providing tax relief for employee stock option plans. Typically, this involves a reduction or exemption of taxation at the time of issuance and exercise of the options. Employees are then only subject to capital gains tax when selling their shares. Such a fundamental model, as introduced in various forms in the afore-mentioned countries, could potentially serve as a blueprint for similar promotion programs in other EU Member States.

4. Extending preferential rules to all SMEs including Social Enterprises

Incentivising ESO in SMEs should not be restricted to start-ups. SMEs are the engine of the European Economy and in particular those from the social economy – as illustrated by the COVID-19 pandemic – have shown their crucial function for the resilience of our societies. Since the European Commission launched the Social Business Initiative (SBI) in 2011 (COM (2011) 682 final) followed by the Start-up and Scale-up initiative in 2016 (COM (2016) 733 final), and in view of their potential to address societal challenges and contribute to sustainable economic growth many actions to support social enterprises have followed. These initiatives pertain not only to issues specific to the social economy but also embrace entrepreneurial topics common to all enterprises and in particular to those of small or medium size, examples being retention of key staff, motivation or business successions.[56] And indeed, the potential of employee buyouts offering continuation perspective for SMEs owners looking for successors was also highlighted in the 2022 EC report "Transition Pathway for Proximity and Social Economy" (European Commission 2022: 12, 18) calling for the implementation of ESOPs.

As the proposal for a European ESOP in Part 3, Chapter VIII shows, there is no one-size-fits-all solution for ESO in SMEs, but a European approach needs to be modular. ESO in SMEs under the ESOP concept – be it as a European business succession vehicle or other objectives that involve employees to becoming co-owners – will greatly benefit from extending the incentives discussed above generally to SMEs. In such a way it will be possible to adapt the ESOP solution, best practice for over 50 years now, to the needs of the partners involved in the concrete setting while respecting national regulatory framworks and traditions. At the same time, as the Slovenian variant shows, this includes the successful cooperative model and, illustrated by the Spanish Sociedades Laborales concept, can even be applied in micro enterprises long deemed to be unsuitable for employee share ownership. Together with established concepts as the French FCPE, or the British EOT, in this way, ESOPs and ESOP-like schemes (for details see Chapter VIII) can be applied across the whole economy including the Social Economy.

But even if Member States refrain from extending said incentives to broader strata of enterprises fearing foregone tax revenues, there are simple and basic measures that could be taken as a first step. In this context, Italy and France are worth mentioning again, since part of the reforms implemented there did not specifically target the start-up segment but generally aimed to facilitate business transactions for SMEs (and thereby also employee ownership) and can be considered best practice for the whole enterprise segment.

> **Italy** - With effect from January 1, 2019, the 2018 Budget Law abolished the requirement for notarial certification for the liquidation and transfer of shares in limited liability companies (S.r.l.). Instead, the relevant documents now only need to be submitted to the competent registry office by a person registered in the auditors and accountants' registers. This person, instead of a notary, now verifies compliance with the legally prescribed conditions, including (i) the identity of the parties involved in the transaction and their legal capacity, (ii) the marital property regime, if applicable, (iii) actual ownership of the shares, and (iv) any conflicting restrictions in the company's articles of association. Compared to the traditional notarial certification, the procedure is now less costly and significantly faster: the transfer of shares only requires one working day from the date when all digital signatures on the document are available; the transfer becomes effective on the same day it is signed and registered by the accountant. The document must then be registered with the tax authorities by the authorized accountant within 20 days after the digital signatures and timestamps are affixed.

[56] See, e.g., the EaSI "Technical Assistance workshop on worker buyouts under the cooperative form: exploring the potential of social finance" on 31 May 2022; accessible at (login Oct. 2023): https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1993&furtherEvents=yes.

France – In this context it is worth also mentioning the French "Société par actions simplifiée" (SAS) allowing for easier transfer of shares without the need for a notarial certification, in contrast to the traditional limited liability company. Sales of SAS shares are recorded by a simple transfer from one account to another and are subject to a 0.1% registration fee. Furthermore, the SAS's low threshold of two founders with minimum capital of EUR 1.-, its flexibility to its founders to define the company's governance rules, the, and the possibility of issuing bonds, securities of different classes to restricted circles of investors, and warrants for business creators including ESO schemes (BSCPEs) make it a springboard LLC for start-ups and growth companies. The SAS is, however, a specific sub-type of corporation – and thus applicability is less broad than in Italy; a similar concept exists in Luxembourg.

The abolition of the requirement for notarial certification for the transfer of S.r.l. shares in Italy facilitated employee participation programs in these unlisted corporations. This simplification, as the introduction of a new corporate form like the French SAS, should serve as a model for reform in other countries. The example of the Netherlands, where specific incentives for start-ups have been replaced by general rules pertaining to all SMEs illustrates this approach.

5. Summary and Outlook

Employee share ownership has significant potential for start-ups in the competition for highly qualified IT professionals. In recent years, as many as twelve EU Member States have introduced corresponding tax incentives. However, it remains to be seen to what extent this momentum will be extended to all SMEs including the Social Economy and/or transferred to other EU Member States. European start-up entrepreneurs and investors increased the pressure on national and European policies while the Social Economy Action Plan (European Commission 2021) gave important impulses.

Concern was expressed that only a limited group of enterprises in the SME segment benefit from the specific rules for start-ups. Criticism was formulated against the fact that this business segment, particularly in the digital sector, creates little employment overall, and that the perspective of such participation models in the light of the "exit perspective" is not sustainable. This raises not only arguments of distributive justice concerning the promotion of share ownership in the overall economy but also questions of sustainable development and continuity of ownership. For the majority of (successful) start-ups, the goal is the founders' exit through a rapid IPO. The objectives pursued by ESO in traditional SME concepts (see Chapter II, 1.), such as fostering employee loyalty, forming an owner group in solidarity with the main owners, or ensuring business succession, can only be effective to a limited extent in this context. At the same time, they apply equally to SMEs from the sector of the Social Economy, which in times of crises was recognised as crucial to increase resilience of our societies. Therefore, this sector not only needs targeted support but should be supported by tailored EFP schemes providing motivation, appropriate compensation, and opportunities for business succession for its employees.

However, there are also areas of overlap between start-ups and SMEs, particularly regarding the limited transferability of privately held limited liability companies' shares due to the costs associated with notarial certification. For this reason, the introduction of an exception to notarial certification, as done in Italy or France, would be an important step. Legislators in other EU Member States would not have to go as far as Italy and completely abolish notarial certification for the transfer of privately held limited liability companies' shares. The exception could (i) remain specifically limited to the transfer of shares within an SME or (ii) restrict notarial certification in standardized SME models to the identity of the seller and buyer. Both options would still drastically reduce transaction costs. In the second case, the fees based on the value of the shares in notarial certification would no longer apply even to the contract. This way, a solution could be found for the standardized transfer of shares within an SME program that effectively increases the transferability of employee shares at low costs while preserving the purpose of notarial certification. Such a solution would also be an incentive for start-ups to offer real share ownership instead of phantom stocks (atypical profit-sharing), especially since they could then benefit from existing tax incentives and potentially utilize deferred taxation through the construction of intermediate companies.

PART 2 – Country Information

VI. Country Profiles

All 29 country profiles included in Part 2 of this report are numbered 1 – 29 and have the following identical structure (we, therefore, refrain from repeating them in the table of contents) to enable a like-for-like comparison:

a) General Attitude

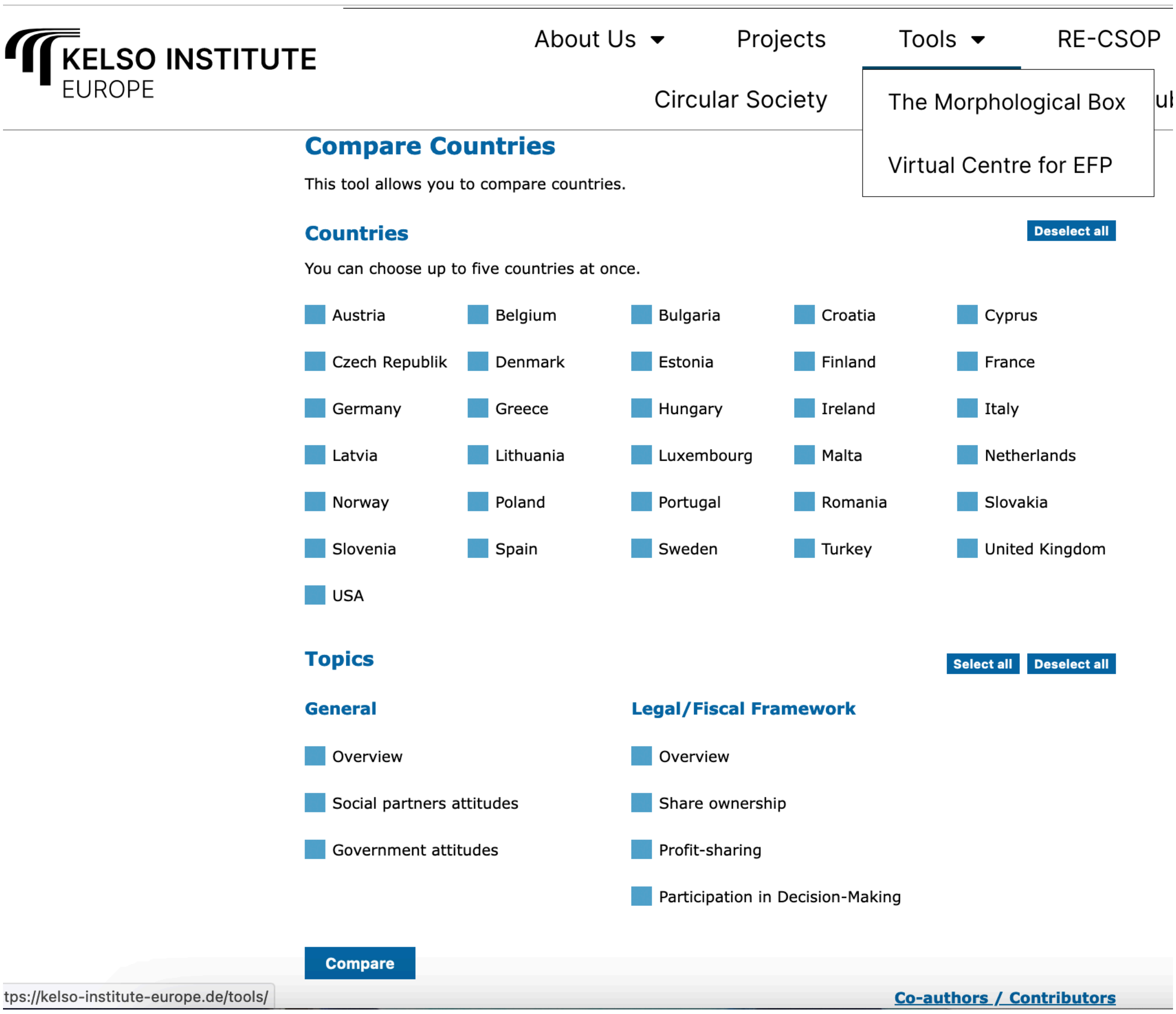
b) Legal and Fiscal Framework

aa) Share Ownership

bb) Profit Sharing

cc) Participation in Decision-Making

The 29 Country Profiles are also available online via the "Virtual Centre for EFP", an online tool developed for and financed under the Pilot Project for DG MARKT in 2014 (below screenshot is an example of how this online tool is embedded on partner organisations' websites).



1. Belgium

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Tom Vandenbrande, Natalia Spitsa and Marc Mathieu, those that contributed to the updates were in chronological order in 2014 Guy van Gyes, Sarah De Groof, in 2019 Simon Taes and in 2023 Jasper Lüke.

In Belgium, some forms of employee financial participation began to emerge at the end of the 19th century; the number of plans, however, remained very small, especially between 1945 and 1990. The Belgian government introduced its first incentives for employee share ownership in Royal Decree "Monory-De Clerq" on 9 March 1982. These provisions were primarily intended to support the stock exchange in the wake of a financial crisis; among them was employee share ownership, submitted in a proposal by the Liberal Party. Still applicable, these provisions have proved efficient. Additional incentives were introduced in 1991 by the Law on Equity Capital Incentives. The Law on Incentives for Stock Options of 26 March 1999 and the Law on Promotion of Employee Financial Participation of 22 May 2001 followed. The latter laws introduced tax incentives for profit-sharing and employee share-ownership schemes; however, the number of plans continues to be relatively small. As of the beginning of 2023 it is estimated that between 50,000 and 60,000 employees corresponding to just over 1% of the workforce are shareholders in the employer company.[57] In 2017 new incentives in particular for profit sharing ("Profit Premium Plan") as well as simplifications for implementation were introduced taking effect on 1 January 2018. A 2023 tax reform plans to introduce deferred taxation for stock option plans starting January 2024.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 23.5% (2013, 21.2%; 2009, 15.1%) of companies with more than 10 employees in Belgium offer their employees profit-sharing and in 2013 5.2% (2009, 11.5%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 14% (2010, 12.49%) of Belgian employees were taking part in profit-sharing while 2.9% (2010, 4.18%) of them were participating in share-ownership schemes.

a) General Attitude

Especially since the end of the 1990s, the government has supported employee financial participation, regarding it as a pillar of the social security system. However, legislative proposals have been introduced into Parliament from the beginning of the 1970s. These were mainly sponsored by the Liberal Party, although until 1999 the Socialist Party blocked all such proposals. At the end of the 1990s, the government launched a new employee financial participation promotion campaign intended to spread financial participation to 25% of all employees. The employers' associations (e.g., Federation of the Belgian Enterprises, National Federation of Small Firms and

57 See G. Woelfle, 1% des travailleurs belges sont actionnaires de leur entreprise en Belgique, pourquoi si peu d'intérêt ?, https://www.rtbf.be/article/1-des-travailleurs-belges-sont-actionnaires-de-leur-entreprise-en-belgique-pourquoi-si-peu-d-interet-11156137, accessed Aug. 2023.

Traders) had given support to employee financial participation even earlier, seeking to influence the government through campaigns in the mass media which were obviously successful. The employers' associations, however, mainly favour financial participation only for executives and higher management. The trade unions (especially the largest, the Christian Unions (CSC/ACV) and the Socialist Unions (FGTB/ABVV)) generally oppose any form of employee financial participation on the grounds that employees are powerless to influence competitiveness or profitability. To a certain extent, they do support employee share ownership plans not financed from the wages or salaries of employees.

b) Legal and Fiscal Framework

The Law on Promotion of Employee Participation of 22 May 2001 regulates the procedure for establishing employee financial participation plans, especially cash-based and share-based profit-sharing; an amendment to the law taking effect as of 1 January 2018 simplifies the rules and improves its incentives (Program law of 25 December 2017); a second amendment clarifies certain applications of the law, e.g., pro rata principle in case of suspension of the employment contract and certain periods of leave that treated as working time (Law of 14 December 2018 containing a number of labour provisions). Generally, terms and conditions prescribed by law (e.g., rules for calculating length of employment, duration, mandatory or non-mandatory participation of employees, and blocking period) must be introduced by a collective agreement or, in companies without union representation, by a collective agreement or an act of accession.[58] If profit sharing is equal for all employees, in absolute terms or as percentage of pay, the shareholders can unilaterally decide to introduce such plans. For group level plans, it is sufficient that the company which first proposed the plan within the group concludes the collective agreement and the other companies consult with their employee representatives. Moreover, the bodies representing employees must be informed of how the plan relates to the company's employment development and employment policies before the plan is introduced.

Plans must include all employees, apart from employees with less than one year of service; different classes of employees may be treated differently under the plan if this is the industry-wide collective agreement or a Royal decree. Any discrimination between employees must be based on objective criteria defined in the Royal Decree of 19 March 2002, which include: Length of continuous employment, position within the company, salary/compensation level and education. Plans are generally voluntary, unless the collective agreement or the act of accession provide otherwise.

aa) Share Ownership

Employees may be granted shares, share certificates or stock options under an employee share ownership plan. The total annual amount of transfers under share plans cannot exceed 10% of the payroll with general taxation at 25%. If the shares are held two to five years, the special tax of 15% on the benefit (if shares are transferred free or at a discount) applies. The blocking period terminates earlier if the employee is dismissed, resigns for serious cause, retires, or dies, or if the plan shares are publicly

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[58] Terms and conditions not prescribed by law can be introduced by the employer company upon consultation with the workers' council; in companies without a workers' council, with the committee for prevention and protection at work; in companies without such a committee, with the union delegation, and in companies without union representation, with all individual employees.

offered, if control of the company has been changed by the transaction, or if the employee is transferred to a non-affiliated company under the national TUPE-legislation. Shares sold during the blocking period are subject to an additional punitive tax of 23.29%. Stock option plans are governed by a special law. Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may acquire their own shares for their employees without decision of the general assembly and may advance funds, make loans, provide security (financial assistance), with a view to acquisition of these shares by their employees provided that the value of financial assistance remains within distributable reserves and that the net assets do not become less than subscribed capital; a limit of 20% of equity capital and a max. of 20% discount applies with these shares being not transferable for five years.

Share Ownership Plans – Granting of shares at discounted price 'Restricted Stock Unit' (RSU) – If restricted stock is granted at a discounted price or free of charge, the benefit can be taxed at grant or, if ownership is transferred later,[59] at vesting. The taxable base depends on the nature of the shares.[60] If the shares are not listed, the taxable benefit in kind for the employee amounts to the difference between the so-called 'net asset value'[61] of these shares and the actual purchase price. Thus, if shares have been granted free of charge, the employee will be taxed on the 'net asset value' of the shares. In case the shares are publicly traded on a Belgian or foreign stock exchange, the taxable benefit in kind is equal to the difference between the listed stock value and the actual purchase price. However, the tax base can be reduced to 100/120 (i.e. 83.33% resulting in a tax incentive of 16.7%) in two situations: (i) if the company grants a "substantial" number of discounted shares and the purchase of the shares on the stock market may be expected to result in a drop in price (however, this might be difficult to prove if the stock is traded at a large stock exchange on a liquid market); or (ii) a holding period of two years applies during which the shares cannot be transferred. No compulsory social security contributions are to be paid. The employer (company) can deduct the full market value (including the discount rate) from its corporate income tax base if the stock is purchased and sold by a foreign company which charges the discount back to a Belgian company. If a Belgian company purchases and sells the stock, the deduction is subject to debate: if the discount is regarded as capital loss, it is not deductible, but if it is regarded as personnel costs, it can be deductible. However, it is probable that the tax authorities will generally favour the more restrictive option, as was confirmed in case law (Court of Appeal Brussels of 25 June 2014).

Share purchase plan with a max. 20% discount. Companies may offer their employees to subscribe for newly issued voting shares at a discount of 20% to the shares' market price at the time of subscription, as long as they have distributed at least two dividends in the three previous accounting years. The plan must be offered to all employees under the same terms and conditions and may foresee vesting condi-

59 A criterion of a later ownership transfer is that no dividends are paid to the employee during the blocking period.

60 In certain cases, the taxable base for the benefit in kind for the employees can be reduced to zero, see Point 17 of the administrative commentary on Art. 36 of the Belgian Income Tax Code.

61 The net asset value defined as the amount of company net equity and reserves divided by the total number of shares.

tions. The main condition for an exemption of the 20% discount from market value from income tax and social security contributions is a blocking period of five years from the date of subscription. These plans are reported to be occasionally used, mostly by large industrial or banking institutions that are quoted on the stock exchange.

Stock Option Plans – Qualified stock option plans to which tax incentives apply are governed by the Law on Incentives for Stock Options of 26 March 1999. This law applies to stock options (and profit certificates) granted as of 1 January 1999. The Bank and Finance Commission must approve stock option plans and the prospectus prior to their introduction. Stock options are taxed at grant. If the employee does not notify the tax authority within 60 days after grant, the option is considered to be refused.[62] With respect to the tax base, a distinction has to be made between whether the underlying shares are listed on any stock exchange or not. If they are listed, the tax base of the received stock option equals the option's closing price before the date of the offering of the option. However, if the shares are not listed, the tax base will generally be a lump sum value equal to 18% of the underlying stock value at grant plus one percent for each year or part of the year beyond the initial five years from grant to expiration. The tax base is reduced by half for options having a minimum blocking period of three years from the date of issue conditional that the exercise period does not extend beyond the tenth year following the issuing year; the options are transferable only upon death of the employee; the underlying shares are of the employer company, its parent or grandparent company; no guarantee for the decrease of value of the underlying share was issued by the employer company or an affiliated company after its grant; and the strike price was determined at the time of offer. In general, no compulsory social security contributions are to be paid on the benefit; however, if options are granted for free or at a discount the value of the price reduction is considered as wage triggering social security contributions. It is not clear whether the issuing company may deduct the costs related to the stock option.[63] In early 2023 the Ministry of Finance brought a draft law to reform stock options into parliament scheduled to come into effect on 1 January 2024.[64] Part of a broad tax reform package the draft law introduces deferred taxation at the time of the sale as one of the key elements of the reform accompanied by a new 15% capital gains tax (until now capital gains were not taxed). The value of the discount is taxed as professional income at progressive income tax rate and subject to social security contributions while the increase in value between the date of granting and disposal of the stocks is taxed at a separate rate at 15% exempt from social security contributions.

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62 Until 10 January 2003 (Law of 24 December 2002, published 31 December 2002), not notifying resulted in an automatic acceptance of the stock option.

63 When the employee exercises his or her option (if the agreed purchase price is lower than the actual underlying value of the share) the company selling the underlying share will usually suffer a capital loss not deductible under Belgian tax provisions. However, the employer company should be able to deduct the difference between the market value of the underlying stock and the exercise price of the option if the employee obtains shares from another company upon exercise and the costs are charged back to the Belgian company. Case law, however, does not always agree with this approach although supported by the majority of legal doctrine.

64 Plans sur actions et sur options: à quoi pourrait ressembler le nouveau régime fiscal sur les "instruments financiers de rémunérations"?, 2 May 2023, at: https://blog.forumforthefuture.be/fr/article/reforme-fiscale-plans-sur-actions-et-sur-options-a-quoi-pourrait-ressembler-le-nouveau-regime-fiscal-sur-les-instruments-financiers-de-remunerations/18740, accessed 1 August 2023.

bb) Profit-Sharing

Profit-sharing plans are usually cash-based and as a rule need to be introduced by a collective bargaining agreement, except for companies without trade union representation (Art. 3 Law of 22 May 2001) for which a special procedure, the so-called "Accession Act". (Art. 4 Law of 22 May 2001) is foreseen. There are three types of plans of which the first two are qualified plans under the Law on Promotion of Employee Participation of 22 May 2001 and the latter is an individual plan without specific incentives: (i) the new collective "Prime des benefices" subject to a social solidarity contribution of 13.07% and a tax levy of 7% with a cap of 30% of the payroll; the broad-based plan is subject to a company tax of 29.58% (for SMEs 20.40% on the first 100,000 euros), is not deductible but the employer does not have to pay a solidarity contribution. (ii) the collective "Bonus CCT 90bis" up to EUR 3,383 (2019) per year is only subject to a social solidarity contribution of 13.07% by employees; the broad-based plan is subject to a special employer social security contribution of 33% (instead of company tax) and is a deductible cost. The employer has to define the collective targets conditional for the bonus in advance. (iii) the individual "Prime brut" subject to progressive personal income tax and a social solidarity contribution of 13.07%; the broad-based plan is subject to a special employer social security contribution of 25% (before 2018 the rate was 33%) and is a deductible cost.

For small enterprises, defined in the Company Code, the so-called investments savings plan was introduced by the Law on Promotion of Employee Participation of 22 May 2001. Under these, an employee immediately loans his share of the annual profit to the company; the loan must be repaid within two to five years with interest. Tax incentives and pre-conditions for interruption of the blocking period for these plans are the same as for share ownership plans.

cc) Participation in Decision-Making

Participation in decision-making has no connection with financial participation; financial participation plans are specifically forbidden to extend existing decision-making rights. However, the plan can only be introduced when a collective agreement or an act of accession and consultation with employees' representatives is prescribed for the remaining part of the plan so that terms and conditions are negotiated with employees' representatives; thus, some elements of participation in decision-making may be included in the financial participation plan. Pursuant to Art. 3 Law of 22 May 2001 an exception exists for companies without trade union representation foreseeing a special procedure of the so-called "Accession Act" (Art. 4 Law of 22 May 2001).

2. Bulgaria

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Stela Ivanova and Spartak Keremidchiev, those that contributed to the updates were in 2014, 2018 and 2023 Maya Neidenowa and Spartak Keremidchiev.

The development of EFP schemes in Bulgaria has been influenced by both the historical commitment to a strong cooperative movement[65] and the special circumstances accompanying the transition to a market economy. The main form of employee financial participation became employee share ownership, mostly rooting in the privatisation process: While mass privatisation and the sale of up to 20% of shares at 50% discount to employees were contributing the management employee buy-out (MEBO) method gaining support from 1994 until 2000 (1,436 or 28% of 5,165 deals) was the main driver (Mintchev 2004). Close to half of the enterprises were initially acquired by insiders, but employee ownership has decreased over time. Although no data on the sales of shares by employees after privatisation are available, it can be fairly estimated that about 10% of enterprises privatised by MEBO may still be under majority employee ownership. According to the Centre for Mass Privatisation, at the close of mass privatisation in 1998 shares were distributed as follows: 40.8% state property; 6.4% employees; 12.9% individual shareholders, and 39.9% privatisation funds. Later however, these employees' shares were transferred to managers and outside owners. Profit sharing has developed only very recently, as the private sector began to stabilise, and human capital became a major factor in company success.

Before the beginning of the financial crisis several Bulgarian and foreign companies took the initiative to transfer company shares to employees. Such examples are Schneider Electric, Mobitel AD, Investor.bg, Avtomotor Corporation, Devin, CBA Asset Management, the IT company Magic Solutions, Hewlett Packard, Netage and Elana Trading. In 2019 companies as Korado Bulgaria AD (part of a Czech Holding) decided to transfer company shares (0.10%) to 245 employees – a signal that the shortage of manpower also in Bulgaria-reactivated such solutions now. More broadly, the highest prevalence of share ownership schemes in Bulgaria can be observed in the consulting, law and IT firms, family businesses and NGOs.[66] It is a tradition in Bulgarian companies to give out bonuses at the end of the year. A Bulgarian Chamber of Commerce and Industry (BCCI) survey shows that in 2022, 82.5% of employers plan to give bonuses to their employees. For the most of them, they will be up to BGN 200 (about EUR 102).[67] Another survey conducted in November 2019 among the clients of the HR company Adecco Bulgaria covered over 100 companies from Sofia and Plovdiv, which are from the IT industry, outsourcing, fintech, trade and production indicating that employers seek to diversify the package of social benefits and compensation more and

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65 The percentage of coops among industrial enterprises ranged from 8.5% to 10.4% between 1980 and 1988. The corresponding numbers for personnel was 6.8% and 6.7%. Source: NSI.

66 These firms often are founded as partnerships in which the ownership is distributed among the associates; after a successful integration in the firm new employees get a chance to gradually acquire shares corresponding to their position with these shares having to be sold back when leaving the company.

67 BCCI survey: The majority of companies in Bulgaria grants Christmas bonuses. Available at: https://www.infobusiness.bcci.bg/article/30690, accessed 1 July 2023.

more companies preferring to pay for additional health insurance instead of boni.[68] To attract and retain their employees, companies strive to develop a competitive Employee Value Proposition consisting of four elements, i.e., financial rewards, material benefits (mobile phone, laptop, public transport card or car), service subscription (most often sports card or supplementary health insurance) and life-work balance (remote work, additional annual leave and flexible working hours).According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 52.4% (2013 33.2%, 2009 9.2%) of companies with more than 10 employees in Bulgaria offer their employees profit-sharing and in 2013 4.4% (2009 7.5%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 9.3% (2010 8%) of Bulgarian employees were taking part in profit-sharing while 3.1% (2010 0.7%) of them were participating in share-ownership schemes.

a) General Attitude

Two trade union organisations are recognised at the national level: the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Confederation of Labour Podkrepa (Podkrepa). From early transition on, CITUB and Podkrepa have been in favour of developing financial participation. Both unions have published books[69] on the subject, including concrete proposals on helping workers get more involved in the capital, profits, and decisions of their company. The transition period brought about a significant change in the power relationship between social partners. In the beginning, trade unions dominated the social dialogue. The end of the privatisation process however saw union power and influence drastically decrease. In recent years, the employers' associations have grown more powerful than trade unions. Until 2019, employers were represented by five national associations, which currently do not consider employee financial participation an important issue in either policy or practice. Two sociological surveys conducted in 2010-2011 with 120 managers and in 2012-2013 with 131 managers of joint stock companies showed that the attitude of Bulgarian managers towards employee participation in ownership, financial results and corporate management is generally positive.[70]

The 39th Bulgarian Parliament (national government under Prime Minister Simeon Sakskoburggotski, 2001-2005) did show interest in questions relating to financial and decision-making participation of employees. Under the guidance of Ognyan Gerdzhikov, then President of Parliament, a comparative legal survey on national solutions within the EU and some adjacent states was conducted. The survey, focussing on joint-stock companies, identified a number of national regulatory mechanisms and possibly contributed to the popularity of the ideas behind them. However, the survey resulted in

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[68] Adecco Bulgaria. What are companies doing to attract and retain employees?, available at: https://adeccobulgaria.com/2019/11/04/total-remuneration-packages/ , accessed 1 July 2023.

[69] See Aroyo J. 1992. Employee participation in the management and ownership, CITUB, 35 p.; Keremidchiev Sp. et al. 1992. Industrial democracy and trade unions, CL "Podkrepa", 64 p.; Keremidchiev Sp. et al. 1994. Privatisation and options for employee participation in the company ownership, CL "Podkrepa", 35 p.

[70] Dimitrov et al. 2014. Corporate Governance for XXIst century, Sofia, ERI-BAS, 405 p. However, while the first study more than 65% of the managers gave their unconditional support this share dropped in the second study to 47% and the share of those with a negative attitude increased from 11% to over 30%.

no relevant act of law. The subsequent governments, most recently under Prime Minister Kiril Petkov (2021-2022), were not in favour of financial participation. This issue has been raised in the Parliament in the middle of 2019 in the occasion of the draft Act on public enterprises. Then a group of MPs drafted a proposal for employee participation in the boards of all state-owned enterprises. They argued that similar regulation exists in 18 countries of EC, out of it in 6 countries it refers only to state owned enterprises and 12 countries - to state owned and private companies. This proposal was not taken into consideration and the final version of the Act does not envisage a way for employee participation in the boards of state-owned enterprises.

b) Legal and Fiscal Framework

No specific legal regulation for EFP schemes exists[71]; the legal framework provides neither incentives nor restrictions concerning employee financial participation. In all share-based plans the proceeds of the share sale are taxed as capital gains at 10% while social security contributions incur, and a uniform 5% dividend tax applies. When offering share plans in Bulgarian listed companies by capital increase, the increase must not exceed 1% of the capital per year and 3% in total, regardless of the period lapsed between the increases with a cap of 5% newly issued shares offered to employees (Art. 112 (3) of the Public Offering of Securities Act).[72] Beneficial tax treatment is available on exit as capital gains realised from on-exchange transactions in shares listed on a regulated market within the European Economic Area (EEA) are exempt from taxation (Personal Income Tax Act). The employer, if a Bulgarian taxable entity, must withhold tax/social security on all payments to an employee, including benefits-in-kind while there are no social security implications for the realisation of capital gains.

aa) Share Ownership

Privatisation (1992, 1997, abolished in 2002) – Under the Law on the Reorganisation and Privatisation of State and Municipal Enterprises of 7 May 1992 (LRP), employees with Bulgarian citizenship and permanent residency in Bulgaria were entitled to preferential (free or discount) share acquisition. In voucher (mass) privatisation, each eligible individual could obtain free shares, with the total value of free shares distributed not exceeding 10% of the nominal stock of the target entity. This privilege was abolished in 1998 when voucher privatisation was virtually abandoned. Under the stock-sales method, eligible individuals were entitled to acquire up to 20% of the nominal stock at 50% of the assessed price. This privilege was abolished in January 2002. The share acquisition itself had no tax relevance, subsequently, dividends received were subject to the general rule on dividend taxation. Furthermore, the LRP regulated the so-called *'MEBO-company'* ('rabotničesko-menidžărsko družestvo'), a legal entity established by a minimum of 20-30% of an enterprise's employees for the sole purpose of participating in the privatisation process. A general incentive for a MEBO-company was the permission to maintain stock of only 10% of the minimum stock generally required for stock corporations or limited liability companies. Further incen-

[71] In line with Directive 2010/73/EU (amending Prospectus Directive 2003/71/EC and Transparency Requirements Directive 2004/109/EC) provisions for employee share plans on regulated markets were introduced.

[72] The limitation of 3% does not apply if meanwhile the capital has been increased at least by 10% from the shareholders by subscription for a specified number of shares. (Art.112 (3) in connection with Art.112 (1), (2) and §1 (3) of the Supplementary provisions).

tives subject to specific conditions were a 100% profit tax exemption for three years after privatisation and 50% for the following two years, payment privileges, and immediate transfer of property in the case of enterprises of minor value (Keremidchiev 2016). Thus, a MEBO company had significant advantages, especially an acquisition price about 36% less than for other buyers, until these were abolished in March 2000.[73]

The Law on Privatisation and Post-Privatisation Control (LPPPC) of March 19, 2002, which replaced the LRP in Art. 7 states as a general principle of privatization the equality of candidates for privatisation. The law gives no privileges based on the status of applicants. In particular, there are no provisions favouring employees. Current privatisation legislation negates the former LRP which provided a number of preferential measures to facilitate employee participation. These were intended to narrow the social gap between capital owners and the labour force – a gap that the liberalisation of the Bulgarian economy opened during the post-communist era. Although the LPPPC was amended more than 25 times, it is still in force.

Employee Shares – Commercial Law (hereinafter CL) and company law in general contain no specific regulations pertaining to employee share ownership. In the absence of statutory regulation, therefore, certain general provisions will be examined here. There are no general squeeze-out or sell-out rules concerning the minority shareholders of a joint stock company. However, the Law on Public Offers of Securities obliges a shareholder who has acquired 50% of the stock of a public joint stock company and wishes to keep this majority position to make an economically justifiable public offer to acquire the shares of the remaining shareholders (Art. 149). The majority shareholder does not have the right to vote in the General Assembly before that offer. This public offer is the only legitimate means of capital concentration available to a majority shareholder. Upon its expiration, he may acquire an additional 3% of the stock per year. Also, where a shareholder of a limited liability company or a joint stock company has voted against a Mergers and Acquisitions deal (Art. 263c CL) or a joint-venture project (Art. 126e Law on Public Offers of Securities) he/she has the right to have his/her shares bought by the company. If the employer funds the employee share plan as a rule the benefit deemed a benefit-in-kind subject to taxation and withholding of social security contributions as a part of the employment remuneration. On proceeds of the sale the employee must report capital gains realised in his/her tax return with 10% applicable tax rate.

Share option plans – Especially if the share-option plan is funded by the employer, in which case on exercise the share option qualifies as a benefit-in-kind social security obligations arise. The tax rate on employment compensation is at a flat 10% rate, based on gross employment remuneration less social security contributions payments. The most common aggregate social security rate for 2023 is 32.7% distributed between the employer and employee in a proportion of 60:40. The contributions are calculated on the basis of the employee's monthly remuneration along with all employment benefits received for the respective month with a capped maximum social security base of BGN 3,400 (2023). The excess of the employee's monthly remuneration is not subject to social security contributions. In the case that the associated cost is not

[73] See Ivanova and Keremidchiev, PEPPER III Extended Country Report on Financial Participation in Bulgaria, p. 29, according to the calculations of the authors.

directly funded by the Bulgarian subsidiary, or the shares are not listed the tax and social security basis may be difficult to calculate.

bb) Profit-Sharing

While not forbidden, employers generally derive no benefits from profit-sharing schemes under Bulgarian tax law. However, under Bulgarian Law it is possible to offer profit-sharing contracts on an individual basis (based on the principle of freedom of contract).[74] These may be cash-based or share-based.

cc) Participation in Decision-Making

In the majority of cases employee ownership did not lead to participation in decision-making. Currently, most employees are minority shareholders without notable influence. The rights of employees to participate in decision-making under the Labour Code are very limited and have no significant influence on management. While the workers' meeting composed of all employees of a given business once accounted for more than 20 sections[75] of the socialist version of the Labour Code, only two relevant provisions are presently in force. These empower the workers' meeting to choose between two or more drafts of a collective bargaining agreement when the trade union organisations at the enterprise level cannot agree on a single version (Art. 51a (3) Labour Code). Also, the workers' meeting can decide the disposition of the company's social fund (Art. 293 (1) Labour Code). The employer, however, is not obliged to establish such a fund. The Commercial Law provides that an employees' representative must be chosen in corporations[76] employing more than fifty persons with an advisory vote at the shareholders' meeting on decisions related to profit allocation including employee financial participation plans. In limited liability companies, regardless of the number of employees, the shareholders' general meeting can only decide to offer employee-share plans after hearing the employees' representatives. The company is under no obligation to recognise more than one representative as its work force grows. Also, the number of employees has no effect on the form or the force of employee representation. Thus, the Commercial Law establishes a model friendly to the employer. An impetus for the development of participation in management came from EU Directives[77] transposed into the Bulgarian legislation by amending the Labour Code of 2006 and by a new Law on information and counselling of employees in multinational companies, company groups and European groups that was adopted in June 2006.

According to Bulgarian Industrial Association (BIA), in 10% of the target enterprises there are elected representatives for information and counselling. Regarding the establishment of European Works Councils, in 14 of them there are 18 representatives of the Bulgarian divisions of multinational companies. The results of an online survey on the state of employees and the representation of workers in enterprises in Bulgaria, conducted in 2019 under the WIM project "Worker participation - awareness, experi-

74 Joint stock company offers of any of these incentives to a Council or Board member, must be approved by the general meeting for every beneficiary on an annual basis.

75 Art. Art. 12-32 Labour Code were abolished in 1992.

76 Commercial Law: Art. 136 (3) (for limited liability company), Art. 220 (3) (for joint stock company) and Art. 253 (2) (for a partnership limited by shares).

77 Directive 2002/14/EU (information systems and consulting), Directive 2001/94/45/EU (European Works Councils), Directive 2001/86/EC (participation of employees in management the European company) and Directive of the Council of Europe 2003/72/EC (staff participation in European Cooperative Society).

mentation, monitoring", give a more comprehensive picture[78]: 43.7% of the respondents from 103 enterprises reported to have a functioning workers and employees' representation in their enterprise or organization. Nearly 91.5% of respondents considered that the choice of workers and employees' representatives did not have a negative impact on the employer's activity. More than 57% of the respondents consider it appropriate to have the widest forms of participation possible, including information, consultation, and participation in joint decision-making. Some more than 17% are in favour for expanding the representation beyond traditional HR management issues by involving representatives in topics related to the activity of the company and its economic situation.

3. Czech Republic

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Stephan Heidenhain, Lubomír Lízal and Ondřej Vychodil, those that contributed to the updates were in chronological order in 2014 Stephan Heidenhain and Monika Martišková and in 2018/20 Jens Lowitzsch and Monika Martišková and in 2023 Monika Martišková and Lenka Hanulová.

The country whose privatisation policy has granted by far the fewest concessions to insiders was the Czech Republic. Despite some tradition of both financial participation of employees and employee participation in decision-making, the Czech privatisation framework did not include any special price reductions, credit arrangements, or pre-emptive rights for employees. Czech policy opted for the voucher concept, with no specific schemes for employees. After the split with Slovakia in 1993, the corporate governance and enterprise structures were – and remain – unfavourable to employee participation in general. Out of 1,688 state enterprises privatised into joint-stock companies, 480 proposed and received approval to issue part of their shares as employee shares, but only 171 of these eventually gave shares to their employees. Employee share ownership remained insignificant, representing only 0.31% of privatised assets. Under voucher privatisation, about 1.5 % of the total shares were allocated to employees. Profit-sharing plans are still rare although their number is increasing; most are found in foreign companies. Of the existing, rather restrictive, regulations on employee share ownership and (share-based) profit sharing, only the former have been implemented, although to a limited extent. At the local level, some new worker cooperatives emerged, but the phenomenon is not widespread. Around 1,200 start-ups operate in Czechia employing around 6,200 workers, which is the highest number within

[78] ZDS 2019. WIM 3: Workers' involvement in management – awareness, experiment, monitoring. Regional overview and future trends, available at: https://www.zds.si/en/projects/wim-3-workers-involvement-in-management-awareness-experiment-monitoring/publikacija/, accessed 1 Aug. 2023; see also CITUB 2018. Direct Participation in Europe Comparative report. Available at: http://direct-project.org/images/docs/body_web.pdf, accessed 1 Aug. 2023.

the four Visegrád countries, but unlike in many other EU Member States share-ownership schemes were not an issue in the sector.[79]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 58.3% (2013, 51.4%; 2009, 17.4%) of companies with more than 10 employees in the Czech Republic offer their employees profit-sharing and in 2013 4.7% (2009, 1.1%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 28% (2010, 20.7%) of Czech employees were taking part in profit-sharing while 4.2% (2010, 1%) of them were participating in share-ownership schemes.

a) General Attitude

After the outcome of voucher privatisation, public confidence in share ownership and similar programmes was low or non-existent. In recent years though, both trade unions and employers were involved in debates and initiatives demanding measures to support employee financial participation. In 2018 the ČMKOS trade union joined an EU level initiative advocating for the introduction[80] of both profit-sharing and employee share-ownership schemes to increase employee engagement, motivation, and productivity. Similarly, an employer’s initiative led by the Czech Association of Employers/Entrepreneurs SPČR introduced in 2022 the so-called 2nd Economic Transformation initiative[81] that also calls for the further development of employee share-ownership schemes in particular as a means to increase motivation and social cohesion.

Nevertheless, these initiatives did not change the existing law. While participation in decision-making – as part of the *acquis communautaire* in the context of labour law reform – was on the government agenda of tripartite negotiations, financial participation of employees was not. The only policy which supports employees´ direct participation at company´s decision-making is their presence in the supervisory boards of joint-stocks companies. Compulsory for quota employee participation in supervisory board in companies with more than 50 employees was valid until 2013 and reintroduced in 2017 limiting the quota only to companies with more than 500 employees.

b) Legal and Fiscal Framework

The Czech legal framework contains no specific preferential rules to support employee financial participation. The general rules of company law allow employees share acquisition and profit sharing in joint-stock companies, albeit only to a limited extent. In 2012 the Commercial Code No. 513/1991 Coll. was substituted by the law on Commercial Companies and Cooperatives (dubbed "New Corporate Code" or "Business Corporations Act") No.90/2012 Coll. Law limiting the rules for to some extent. In general, gains from the sale of securities are tax-exempt if they are held for at least three

[79] The segment of start-ups is growing mostly in technology and e-commerce service sector with 71% of start-ups employing less than 20 employees in 2018. Česko v datech (2019): Rozjezdy českých stratupů (Chechia in data (2019): Launch of Czech start-ups), available at: https://www.ceskovdatech.cz/clanek/113-rozjezdy-ceskych-startupu/, accessed 1 Aug. 2023.

[80] https://www.cmkos.cz/cs/obsah/738/evropska-vyzva-firmy-zamestnanci-prukopnici-nove-cesty-pro-e/22418, accessed 1 Aug. 2023.

[81] https://druhaekonomickatransformace.cz/, accessed 1 Aug. 2023.

years, or if the total gross income from their sale does not exceed CZK 100,000 (ca. EUR 4,160); that from the sale of shares in a limited liability company is tax exempted if the shares were held for at least 5 years prior to the sale. The tax rate on dividends paid to shareholders is 15%. In recent years, no new incentives or innovative schemes of employees emerged.

aa) Share Ownership

Privatisation (1990) – Mass privatisation made employee share ownership possible in principle. Each firm on the mass privatisation list had to submit a privatisation plan. This proposal could include any combination of available privatisation methods (e.g., voucher scheme, domestic direct sale, foreign direct sale, public auction or tender, free transfer, or employee shares). It was possible for others besides firm management to submit a competing privatisation plan for all or part of each enterprise. The supervising ministry and the Ministry of Privatisation decided on the winning project (foreign sales had to be approved by the government). Finally voucher privatisation itself provided an alternative way of creating employee ownership within the privatisation process. Nevertheless, in these programs, a small proportion of shares was offered to and reserved for employees.

Employee Shares (2000, 2004) – In 2000, Art. 158 of the Commercial Code (CC) No. 513/1991 Coll. was revised in line with the *aquis communautaire* to abolish any type of special share; it also eliminated "employee shares" as a special type of share. Instead, from then on, joint-stock companies could amend to their Articles of Association to allow their employees to buy company shares at a discount. Previously issued "employee shares" had to be converted into regular shares by decision of the general shareholders assembly by January 2003. Since dissenting shareholders must have been bought out in a public offering according to Art. 186a para. 3 ff. CC employed shareholders were given the de facto opportunity to cash-out their shares. The acquisition of shares on preferential conditions according to Art. 258 CC was limited to current or retired employees if stipulated by the company´s articles of association.

Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) and as an exception to the general prohibition against acquiring its own stock, Art. 161a para. 3 CC, introduced in 2004 and changed in 2012 to Art. 305 of CC No. 90/2012, permits a company to acquire its own shares in order to sell them, in accordance with the Articles of Association, to employees of the company. In such case the shares must be transferred on preferential conditions to the employees within twelve months of acquisition. If the transfer is not carried out within the stipulated period, Art. 306, para. 3 of New CC requires that the shares be sold, or the share capital be decreased accordingly; if the company does not comply, a court can order its liquidation (Art. 308, para 3 of the New CC). Furthermore, current legislation permits joint stock companies to issue new shares granting employees favourable conditions (§258) which are to be defined in the Articles of Association. Shares issued to be acquired by employees shall not be considered a public offering. Designated employees do not have to be identified in the decision of the general shareholders assembly on the capital increase.

Following the 2nd Council Directive on Company Law, to facilitate the acquisition of shares by employees, the legislation further permits the company to fully or partly pay for the stock acquired by its own employees. The restrictions on the preferential conditions for the purchase of shares by employees are enumerated in Art. 258 para. 2 CC

No. 90/2012 Coll. Since 2014 the overall value of the granted discount for the issued shares is not limited to a percentage of the enterprise's equity capital (previously 5%). In addition, Art. 314 of the New Czech Commercial Code contains a regulation excepting a company from the prohibition against leveraging the acquisition of its own stock if these shares are to be sold, in accordance with the Articles of Association, to its own employees. Thus, share acquisition by the employees of a particular company may be leveraged by the company's discounting the purchase price within the aforementioned limits, by credit financing, by providing collateral, or by a combination of these three preferential methods.

Stock Options – According to the Czech Capital Market Undertakings Act (Act No. 256/2004 Coll.,) company´s shares offered to employees are exempted from the obligation to offer them publicly, although requiring a public prospectus submitted to Czech national bank (Act No 256/2004, §35). The exemption is applicable to the employer or group which is seated in any EU member state, or for a non-EU legal entity, its securities are accepted for trading on a European regulated stock market or its equivalent. Employees shares are not considered as a special type of shares although they might be sold with lower price to the employees provided that the difference is covered by company´s equity (Act on business corporations No. 90/2012 Coll, §276).

bb) Profit-Sharing

Nothing in the Czech legal system prohibits profit sharing. Unless specific rules on profit sharing are contained in the articles of association of the given company, profit should be distributed to shareholders proportional to their shareholding (§ 348, para. 1). A capital increase generally requires the approval of the general shareholders assembly. However, in a memorandum of association the rules for capital increase might be defined differently. Profit shares are all taxable at the personal income rate of 15% as progressive taxation was cancelled in 2008 and replaced by a flat tax rate.[82]

cc) Participation in Decision-Making

There are no special rules on employee participation in decision-making with respect to EFP schemes or privatisation matters. According to Law No. 1/1992 Sb. on Wages, Remuneration for Work Readiness and Average Earnings, as amended, among the negotiable issues in collective bargaining agreements are the amount of and the conditions for providing incentive wages (bonuses, rewards, etc.), which includes participation in company profits. The main structure for representing employees at the workplace is the local trade union group, which needs only three individuals to set it up. Until 2001 this was the only structure; since then, it has been possible to set up a works council in companies with more than 25 employees where there is no trade union organisation and where at least one third of the workforce requests such a body. Nevertheless, the majority of companies have no representation at all. The most important level of collective bargaining in the Czech Republic is at the company level,

[82] A 2017 discussion paper by the Coordination Committee of the General Financial Directorate and the Chamber of Tax Advisors clarified that withholding tax at a rate of 15% applies to profit sharing disproportionate to the share in registered capital (https://home.kpmg.com/xx/en/home/insights/2017/10/tnf-czech-republic-tax-treatment-of-disproportionate-profit-share-distributions.html, login 5 Oct. 2018).

although in many companies bargaining does not occur. Industry-level agreements cover only some industries.[83]

In January 2017 the requirement to have employee representatives on the supervisory board of joint-stock companies was reintroduced four years after it had been abolished (Amendment No. 458/2016 Coll.). The present codetermination laws pursuant to Amendment No. 33/2020 (dubbed "Grand Amendment to the CCC") took effect on 1 January 2021. While the old rules had set a threshold of 50 employees now employee representatives constitute one-third of the supervisory board only to the companies with more than 500 employees. Pursuant to the newly inserted Section 448a since 2021 only an employee of the company may be elected representative to the supervisory board.

4. Denmark

This country profile is based on the country chapter of the PEPPER IV Report; the co-author of the earlier version was Niels Mygind, those that contributed to the updates were in chronological order in 2014, Georg Stadtmann, Niels Mygind and Caspar Rose, in 2018/20 Niels Mygind and Simon Fietze, and in 2023 Simon Jebsen (né Fietze).

Employee financial participation (EFP) began to be discussed at the end of the 1950s in connection with an ideological debate on the concept of economic democracy and in response to the Swedish wage earner fund model. In 1987, the Liberal-Conservative Government introduced the first tax incentives for certain forms of broad, voluntary, share-based plans at the enterprise level. Many firms implemented these plans with success. However, the issue of financial participation disappeared from the political agenda, remaining dormant until the beginning of the new century. In 2003, several new individual share-based and stock option plans were added. In 2005, these new plans were amended in response to problems that had emerged in practice. In the course of general tax reforms in 2009 and 2011 in connection with the global financial crisis, first, tax incentives for individual plans and later also for broad-based plans were repealed. However, in 2016 beneficial tax treatment was re-introduced for a broad variety of share-based plans and subsequently extended in 2018 including a specific incentive targeting start-ups which was further increased in 2021.

Up to 2007, the Tax Ministry reported to Parliament on the progress of employee share ownership.[84] According to the 2006 report, the newly introduced individual prof-

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[83] According to Law No1/1992Sb. Para.7 and 7a there is a possibility to extent the collective agreement on non-signatory employers within one industry. This provision is not used often. In 2009 four out of 25 agreements were extended to the whole industry and in 2010 and 2011 five out of 25 agreements extended.

[84] According to the 2005 report, the number of employees (reflecting the "flow", i.e., the number of additional plan participants/shares in the respective year) participating in the various plans and the corresponding asset values were as follows: broad share-based profit-sharing – 10,000 employees, DKK 163 million; broad profit-sharing based on stock options – 1,000 employees, DKK 10 million; individual stock option plan without limitations – 4,047 employees, DKK 388 million. Data in absolute numbers for 1999 were presented by the trade union Dansk Metal estimating that 160,000 employees were shareholders in their companies and that 13% of companies in high-growth industries and 25% of all IT companies operated a share-based plan for their employees.

it-sharing plans based on shares and stock options covered 1,326 employee participants in 77 enterprises. According to estimates of the Tax Ministry, the tax deficit due to tax incentives for employee financial participation plans amounted to 400 million DKK annually in this period while PricewaterhouseCoopers assumed that the number of EFP plans increased rapidly during the financial crisis[85] which as a consequence of the expected high tax deficit was presumably a key reason for the mentioned abolishment of tax incentives. A 2021 report provides insights into the distribution of Danish assets invested in employee share programs. The study reveals that in 2016, 365 Danish companies actively participated in employee share programs, collectively employing 624,123 individuals, of which 53,580 hold employee shares. As of 2016, the combined value of these shares reached nearly DKK 3.4 billion with managers and academics holding approximately half of the total value of employee shares; moreover, the financial sector accounts for almost half of the value of employee shares and the industrial sector for about one-third. Notably, the research emphasises that a significant majority of both share capital and employees with employee shares are concentrated in companies that have implemented broad share programs, where more than 35% of the workforce has ownership stakes.[86]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 34.7% (2013 38.2%, 2009 14.1%) of companies with more than 10 employees in Denmark offer their employees profit-sharing and in 2013 6.8% (2009 13%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 19.7% (2010 18.6%) of Danish employees were taking part in profit-sharing while 6.7% (2010 9.1%) of them were participating in share-ownership schemes.

a) General Attitude

In the 1960s and 1970s, the Danish Trade Unions Federation and the Social Democratic Party submitted several proposals for compulsory collective funds, national and regional, related to the wage earner fund (the Meidner Plan) of Sweden. These proposals were strongly opposed by both the Danish Employers Federation and the parties of the central and right political spectrum; they preferred tax incentives for voluntary plans at the enterprise level. At the same time, the government wanted to introduce additional tax incentives for existing schemes but failed to get its draft law through Parliament.

EFP remained a highly controversial political issue until the late 1980s. During the 1990s, little attention was paid to financial participation by either the government or social partners. Since the beginning of the present century, the government has actively supported EFP by introducing and adopting new individual share-based plans. Trade unions have been reported to be indifferent, while employer associations appear sceptical and reluctant to an extension of employee participation in general. The indifference towards EFP is reflected in the legislation process, which led to the abolish-

[85] Stop for medarbejderaktier giver 200 mio., in: Berlingske business of 27 November 2011.

[86] Medarbejderaktier i Danmark, in: Tænketanke Demokratisk Erhverv & CBS (2021).

ment of all tax incentives. The budget law L31 of 2011, including abolishing tax incentives for EFP, was based on an agreement between the Government and the left-wing party Unity List (Enhedslisten). These parties and other parties represented in the Parliament supported the law.[87] However, following the 2013-14 crisis of Danish slaughterhouses leading union members suggested wage restraints in combination with different forms of share compensation in that sector.[88] Nonetheless, in 2016 beneficial tax treatment was re-introduced for a broad variety of share-based plans, a development confirmed in a further reaching agreement between the political partners in November 2017.

b) Legal and Fiscal Framework

The following EFP plans are regulated: broad-based share-based profit-sharing plans, including stock options; broad-based share ownership plans; individual share-based profit-sharing plans, including stock options, and individual stock option plans. With the abolishment of generous tax incentives previously granted for these plans in 2012, as a rule, the top-bracket tax was imposed on employee benefits; however, in 2016, beneficial tax treatment was partly re-introduced for a broad variety of share-based plans, including RSU's, ESPP, Matching Shares and Stock Option Plans.

aa) Share Ownership

Following social partners' initiatives in 2016, moderate tax incentives were introduced (law 430/2016) stipulating amongst others under § 7 P of the Danish Tax Assessment Law that firms may offer employee shares (including options to purchase and subscribe shares) to their employees as part of their remuneration granting deferred taxation of the benefit as capital gains at a rate of 27% for the first DKK 58,900 (57,200 in 2022) and 42% above this amount instead of personal income tax (up to 56%) at the moment of sale. Social security contributions become due at the time of exercise of options or sale of the shares. The incentive is conditional that (i) the firm and the employees reach an agreement according to § 7 P and (ii) the value of the shares is less than 10% of the employee's annual remuneration. If the value of the shares is above 10%, the exceeding amount is taxed as personal income tax. As for share plans with a repurchase obligation, this agreement will make it easier to set the price at fair market value at the time of the termination, a possibility significantly limited by the Danish Supreme Court in 2011. In an amendment to different tax laws in 2018 (law 359/2018), this incentive was amended raising the ceiling to 20%, conditional that the plan is offered to at least 80% of the employees on the same terms and effective for all agreements entered after 1 January 2018 (see also the new specific rules for start-ups below).

Employee Shares – Under the broad-based share ownership plan, shares of the employer company can be offered at a discount to all employees. The general assembly can authorise such shares in a capital increase for up to five years in accordance with

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[87] Neither political parties nor the general public discussed the draft law and its consequences. The grounds of L31 do not give a special reason for the abolishment of tax incentives for EFP, no differentiation is made between the economic effects of EFP and fringe benefits, which are mainly addressed by the law.

[88] In June 2014 employees at a Danish Crown slaughterhouse voted unanimously to approve an ESO scheme in order to save their jobs, setting up of an employee investment company permitting to invest between 5-10% of their annual salaries into the company up to an annual limit of 35,000 DKK; see A. Hassel, J.S. Knudsen & B. Wagner, p. 1230 of the Journal of European Public Policy 23, Special Issue 2015.

the Articles of Association. The plan may include management but not external members of the supervisory board. If above conditions are met, the shares are placed under bank trusteeship, with the employee being only liable to capital gains tax at sale while the employer company, however, cannot deduct its costs from its corporate income tax base (as was the case prior to 2011). Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting Directive 77/91/EEC, dating back to 13 December 1976), joint stock companies may acquire their own shares for their employees provided that the share capital less own shares held amounts to not less than DKK 500,000. In qualified stock purchase plans, they may advance funds, make loans, or provide security (financial assistance), with a view to acquisition of these shares by their employees, provided that the shareholders' equity in the firm exceeds the amount of not distributable dividends. Furthermore, deviations from subscription / pre-emption rights for the benefit of employees are permissible by a decision of the General Assembly requiring 2/3 of votes and equity capital.

Stock Option Plans – A stock option plan under § 7 P of the Danish Tax Assessment Law follows the preferential rules for taxation as described above. Furthermore, two other types of pans exist:

The stock option plan under § 28 of the Tax Assessment Law (qualified / approved plan) is individual and may include members of the supervisory board. Share options are granted on either a discretionary or all-employee basis. The number of options under this plan has no limits. However, it must be filed with the tax authorities. The employee is taxed via personal income tax at exercise of the option on the difference between the market price and the purchase price (the latter may not be zero). Employees must pay capital gains tax on the gains at the time of sale. The gain is calculated as the difference between the shares' sale price and market value on exercise. The capital gains tax rates for 2019 were 27% for a gain of up to DKK 58,900 (DKK 117,800 for married couples) in a calendar year and 42% for any gain above that amount. Unlike under the rules prior to 2011, social security contributions become due at the time of exercise and sale, and the employer company cannot deduct the options cost from its corporate income tax base. If a cash settlement is possible under the plan, either the employee or the grantor can require cash rather than shares to be delivered on exercise. Companies can make the exercise of options conditional on meeting performance or time-based vesting conditions. This so-called Section 28 stock option plan used to be Denmark's most popular ESO scheme.

The stock option plan under § 16 of the Tax Assessment Law (unqualified/unapproved plan) does not comply with the requirements of § 28 of the Tax Assessment Law and can result in a disadvantageous tax treatment for the employee. Although any company may introduce such plans, they are uncommon in Denmark. Again under § 16, options can be granted on a discretionary basis, to any employee and on different terms. There is no maximum value of shares over which options can be granted, but the exercise price may not be zero. A share option is taxable when the employee acquires an unconditional right to it. If the option has vesting conditions with a vesting period of three years or more, the unconditional right generally arises on vesting. The unconditional right generally arises on a grant if there are no such conditions. In any case, the option's value on grant or vesting is charged to income tax at progressive rates ranging from about 42% to 56%. On exercise, taxation depends on how the share option is classified. If, at the time of exercise, the employee is only entitled to subscribe for new shares (instead of acquiring already issued shares), the option is classified as a warrant, and no tax arises. Otherwise, the gain qualifies as capital income at the time of exercise.

Specific tax incentive for start-ups – The tax incentives for employee shares and options (see introductory paragraph above) were specified for ESO schemes in start-ups in 2018 and further extended for this type of enterprise in 2020. The 2018 reform bill provided special rules for small start-ups (§ 7 P, subs. 7 and subs. 2, no. 2, 4th point Danish Tax Assessment Law) allowing them to offer shares without being subject to the 80% requirement under the conditions that the company: (i) has no more than 50 employees in the two most recent annual accounts when the agreement was entered; (ii) has a net turnover or balance sheet total no exceeding DKK 15 million in one of the last two annual accounts; (iii) must not have been active on the market for five years or more before the year the agreement on employee shares is entered; (iv) must be an active operating company and must not, at the time when the agreement is entered, operate a business that predominantly consists of passive capital placement; (v) or its affiliated companies, must not be listed on the stock exchange or otherwise admitted to trading on a regulated market when the agreement is entered; (vi) must report if the total state aid from the agreement in the same calendar year exceeds 500,000 EUR (the aid is obtained indirectly through lower taxation); and (vii) may not grant this incentive to employees that at the time of the agreement, directly or indirectly own more than 25% of the share capital or control more than 50% of the votes in the company. The ceiling of the incentive for in start-ups (for all schemes 20% as of 2018) was raised to 50% for agreements entered from 1 January 2021.

bb) Profit-Sharing

Broad, share-based – These plans introduced in 1987 are based on share or stock options and must include all employees, although special rules may pertain to length of employment, working hours or seniority. They were also linked to tax incentives[89] until the tax reform of 2009/11. External supervisory board members are not eligible, and the tax authorities must approve the plan. General taxation rules apply when the shares are sold: if the income from the sale of shares does not exceed DKK 58,900 (57,200 in 2022), the tax rate is 27%; otherwise, 42%. Unlike under the rules prior to 2011 the employer company cannot deduct from its corporate income tax base the value of shares or options transferred to employees.

Individual, share-based – First introduced in 2003, these plans are based on shares and/or stock options. Only employees are eligible (external supervisory board members excluded), and only common stock can be allocated. The value of shares may not exceed 10% of annual salary or 20% for broad-based plans offered to more than 80% of employees. If the above pre-conditions are fulfilled, the employee is charged capital gains tax at sale according to above rules. The employer company may not deduct costs from the tax base of the corporate income tax.

Cash-based – Plans do not benefit from any tax incentives; their incidence is reputedly low.

[89] If free shares were allotted within the plan, no tax needed to be paid by the employee at grant on total share values not exceeding DKK 8,000 (2006), and shares were placed in a trust with a bank subject to a blocking period of seven years. In the case of stock options, the employee paid no tax at grant or exercise if the value did not exceed 10% of annual salary and the shares were placed in trust with a bank for a blocking period of five years.

c) Participation in Decision-Making

No direct connection exists between participation in decision-making and EFP. Financial participation plans are enjoined explicitly from extending the existing rights in connection with participation in decision-making. Financial participation is generally not a part of collective bargaining agreements. Nonetheless, according to a recent report[90] in 2016, 18,605 companies in Denmark operated under a democratic structure or had majority ownership by a democratic organisation. However, out of these companies, only 5,864 are included in the statistics maintained by Statistics Denmark. Notably, 8.3% of those companies' total turnover is attributed to business-democratic enterprises, while around 5.5% of private employees are employed by such companies.

5. Germany

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Natalia Spitsa, Bernd Waas, and Heinrich Beyer and those that contributed to the updates were in chronological order in 2014 Heinrich Beyer and Stefan Hanisch, and in 2020 and 2023 Jens Lowitzsch and Stefan Hanisch.

Despite a long-standing tradition and the general acknowledgement of the positive effects on both productivity and job creation, employee financial participation (EFP) is still not widespread in Germany although picking up in recent years. Traditionally schemes focus on defined contribution savings plans with a total capital allocated much higher than that of all employee share plans; with regards to financial participation the combination of share ownership plans with these savings plans may be considered typical. Germany's lower standing in comparison to other countries and a recent slight decrease in employee share ownership (ESO) may be attributed to insufficient government support. Another reason is the traditional scepticism of both trade unions and employers' associations towards EFP, which, however, has mellowed recently. In spite of bipartisan support for EFP since 2007, the 2009 Law on Capital Participation of Employees merely increased existing modest fiscal incentives only offered for ESO from merely EUR 135 to annually EUR 360, while profit sharing is not supported by any tax incentives; the Special Fund for Employee Participation governed by the Investment Law introduced in the same law and intended primarily for SMEs with the aim to offer a diversified alternative to direct employee ownership and thus reduce the employees' risk of capital loss was abolished as markets never accepted the fund model. Tax-free allowances under the Income Tax Law (ITL) finally increased significantly to EUR 1,440 in 2021 per employee. The 2021 federal government coalition committed[91] to making ESO more attractive and raised the tax-free allowance for ESO from EUR 1,440 to EUR 2,000 and introduced deferred taxation in start-ups starting

90 Danmarks Demokratiske Virksomheder, Tænketanken Demokratisk Erhverv & Analyse & Tal, 2019.

91 Coalition Agreement 2021-2025 "Dare more progress: Alliance for freedom, justice and sustainability" (Mehr Fortschritt wagen: Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit), pp. 19, 30.

on 1 January 2024 with the 2023 law on the Financing of Future-Proof Investments.[92] Deferred compensation (Entgeltumwandlung), which has been little practiced to date, could become more important as a result of the increase in the tax-free amount.

In contrast to large companies, mezzanine investments, and in particular silent partnerships, dominate ESO in the German SME sector. Genuine equity investments under company law in the form of employee share programs of unlisted companies are rare, and limited liability company investments even rarer; as a rule, the larger the company, the higher the offer of ESO. Employee shareholding via intermediary entities occurs but are still the exception. In start-ups, unlike in other European countries or in the US, virtual shareholdings and phantom stocks (both atypical profit-sharing schemes) but not ESO are prevalent. Although profit sharing enjoys no tax incentives, it is more widespread than share ownership. Empirical evidence is scarce and not systematically collected: In 2010/11, profit-sharing plans were operated by 10% of enterprises according to the IAB company survey (Möller 2013: 48-53)[93] and by 11% according to the BISS project (Hauser-Ditz et al. 2011)[94]; share ownership plans were implemented by 2% of enterprises according to the IAB survey and by 3% of enterprises according to the BISS survey. In 2010, 720 joint-stock companies maintained share-ownership plans for 1,521,000 employees with an overall value of EUR 7,571 billion (AGP 2010)[95] while only 310 limited liability companies for 10,000 employees with an overall value of EUR 159 million operated this type of plans. Additionally, silent partnership can be noted as a prevailing praxis with 1,330 companies, 352,000 employees, EUR 1.7 billion in 2010 (AGP, 2010). The number of listed companies preparing to introduce share-based plans in 2013 almost doubled in comparison to 2011.[96] For 2022 the German Shareholding Institute DAI indicates 1.1 mln. (decreasing from a peak of 1.58 mln. in 2020) employee shareholders in joint stock companies.[97]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 45.3% (2013, 30.5%; 2009, 14.4%) of companies with more than 10 employees in Germany offer their employees profit-sharing and in 2013 3.3% (2009, 2.8%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 10.5% (2010, 11.6%) of German employees were taking part in profit-sharing while 1.7% (2010, 1.9%) of them were participating in share-ownership schemes.

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92 Zukunftsfinanzierungsgesetz – ZuFinG, https://www.bundestag.de/dokumente/textarchiv/2023/kw46-de-zukunftsfinanzierungsgesetz-976556, accessed: 20 December 2023.

93 Data based on questionnaires of 16,000 German companies. Profit-sharing plans are prevailingly implemented in companies with more than 500 employees (36% of all such firms; esp. ICT and financial sector), no relevant difference between the sectors exists for ESO. EFP is much more widespread in Western than Eastern German firms, and in foreign- than German-owned companies.

94 Data based on a representative survey of 3,254 German companies.

95 AGP-Mitteilungen 1/2010 Nr. 351 / 57. Jahrgang - 10. Dezember 2010.

96 According to a survey of 154 enterprises by the Hay Group; W. Eggers / N. Dublanka / N. Akin, 2013.

97 See an overview 2010-2022 on p. 14: https://www.goingpublic.de/wp-content/uploads/epaper/epaper-Spezial-Mitarbeiterbeteiligung-2023/#14, accessed Aug. 2023.

a) General Attitude

The greater promotion of employee ownership was the subject of a lively political debate in Germany in the 1960s and 70s – particularly as a counterproposal to the expansion of corporate codetermination demanded by the trade unions. After the adoption of the Law on Employee Co-Determination of 4 May 1976, and the resulting fulfilment of the unions' demands, however, the issue largely disappeared from public attention. Notwithstanding the regular recurrence of the topic on the political agenda over the past decades, the attitude of governments and social partners towards EFP until recently has been by and large indifferent, sometimes even negative. The then Grand Coalition (2005–2009) put forward contradicting proposals[98] resulting in a modest compromise, the 2009 Law on Capital Participation of Employees that fell far short of earlier ambitious plans for reform. In November 2012, the government (2009–2013) launched an awareness-raising campaign including a web-portal for EFP, which continues to this day and is continuously updated.[99] With the 2023 law on the Financing of Future-Proof Investments the German legislator finally leaped ahead to close up with other EU Member States like France or Austria providing, for the first time, substantial incentives for ESO.

Trade unions – with after a long decline most recently increasing membership – still have great political influence and are an important power factor, particularly through the system of co-determination, both at the strategic level in the company and through the works constitution at the company level. With some exceptions explicitly supporting ESO, the majority of the unions take a hesitant position towards EFP, fearing decentralization and de-solidarisation in wage policy along with a general loss of power, not least due to the increased occurrence of atypical employment relationships (temporary work, click-work in the platform economy, bogus self-employment, etc.). As an argument against profit sharing, they cite the risk that employers could calculate a decrease in the amount of profit to the detriment of employees; profit-related wage components are usually accepted only in good times as additional remuneration on top of the normal salary. Employee share ownership, they argue further, imposes on employees the risk of losing both jobs and share income. ESO when substituting for wage increases or in combination with wage reductions is generally rejected.

Employer associations have recently paid more attention to EFP. Although they have traditionally given preference to profit-sharing plans in a general preference for voluntary participation plans at company level, share plans are also gaining in popularity. In 2015, in a joint call "For an Employee Share Ownership Agenda", AGP, the Confederation of German Employers' Associations BDA, the Federation of German Industries BDI, the German Shareholding Institute DAI and other organizations called in 2015 for consistent de-bureaucratization. In November 2017 AGP, DAI and Siemens launched an appeal for asset formation of employees to policymakers with more than 60 signatories from the field. In summer 2018, the German federal state of North Rhine-Westphalia launched a legislative initiative in the Federal Council proposing an in-

[98] The Christian Democrats proposed to introduce new tax incentives for voluntary share schemes at the firm level of up to EUR 1,000 per employee annually with the possibility to defer taxation if connected to a retirement savings plan. The Social Democrats favoured a "Germany Fund" under state guarantee with employees investing in the fund, which in turn would invest in German enterprises, esp. SMEs.

[99] https://www.existenzgruender.de/DE/Unternehmen-fuehren/Personal/Mitarbeiterkapitalbeteiligung/inhalt.html. Accessed: 13 July 2023.

crease of the tax-exempt amount from EUR 360 to EUR 2,000. In June 2020, the Federal Association of German Start-ups, presented a comprehensive study on the situation of employee share ownership in start-ups in Germany[100] then publishing a 2022 Position paper on the German government's "comprehensive start-up strategy".[101]

b) Legal and Fiscal Framework

German legislation permits both, share ownership and profit sharing, while no fiscal or other incentives are available for the latter which, however, is more widespread. Asset formation or savings plans offer a vehicle to allocate and invest sums received as salary or under EFP schemes. In this context, share schemes can be combined with such savings plans and, to promote asset formation of employees with the possibility of employee contributions being matched by the state. The amounts, percentages and income ceilings of the incentive system under section 19a ITL and the Fifth Law on Asset Formation increased since 2009: (i) concerning employer allowances, the ceiling of the value of the benefit from free or discounted shares exempted from tax and social security contributions (section 3 no. 39 ITL)[102] from annually 1,440 in 2020 to EUR 2,000 starting in 2024 with the equity participation is regarded as remuneration in kind conditional that the participation on top of salary;[103] the extended tax exemption is, however, tied to a three-year blocking period whose violation triggers a flat taxation of 25% instead of progressive income taxation. According to regulation in force since 2010,[104] parts of the salary or special payments up to the amount of EUR 360 per year can now also be "left" in the company as an equity participation being tax-free, however, not exempt from social security contributions and for amounts over EUR 2,000 only if they are granted on top of the regular salary. (ii) Additionally, an employee savings bonus of 20% (section 2 para. 1 to 5 Fifth Law on Asset Formation; previously 18%) is granted on a maximum investment of EUR 400 per year, i.e., a maximum of EUR 80 (section 13 para. 2 Law on Asset Formation) with an income limit for the full savings bonus of 20% of EUR 20,000 for single earners (previously EUR 17,900) or EUR 40,000 for married couples (section 13 para. 1 sentence 1 No. 1 Law on Asset Formation), which is still exceptionally low. The incentive is conditional on the plan being available to all employees who have been continuously employed by the company for one year or more at the time the offer is announced (section 3 no. 39 ITL); as previously a blocking period of six years applies.[105]

aa) Share Ownership

Employee share ownership is mostly practiced in joint-stock companies (Aktiengesellschaft, AG) due to special features of German company law. In commercial partner-

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[100] https://startupverband.de/fileadmin/startupverband/mediaarchiv/Politik/200701_IEF_BGC_ESOPasap.pdf, accessed 13 July 2023.

[101] Positionspapier zur „umfassenden Startup-Strategie" der Bundesregierung (März 2022), pp. 5. See https://startupverband.de/fileadmin/startupverband/mediaarchiv/Politik/20220331_Positionspapier_Startup-Strategie_final.pdf, Accessed: 13 July 2023.

[102] Since 2010 (Law on implementation of EU tax requirements, BGBl. 2010 I, p. 386) employee contributions from salary reduction are also tax-free, but not exempt from social security contributions.

[103] Section 3 no. 39 also applies to silent partnerships, convertible bonds, profit participation rights and employee loans.

[104] Law on implementation of EU tax requirements, BGBl. 2010 I, p. 386.

[105] The previous requirement that the benefit was not to exceed 50% of the share value was removed in 2009.

ships (OHG, KG), the concept of co-ownership and thus co-entrepreneurship on the one hand and the inflexible transferability of the legal position of a partner on the other hinder ESO schemes. In limited liability companies (GmbH) and partnerships, employee share ownership is less common but usually taking the form of mezzanine capital (silent partnership, profit-participation rights). Reasons are specific legal obstacles, e.g., the relatively strong position of a shareholder vis-à-vis management, the transfer of share ownership only by notarial deed and disadvantageous taxation. However, a partnership that serves to facilitate EFP in a limited liability company and holds a share of this limited liability company as its sole asset (holding-GbR), is not required to make a notarial deed to transfer its shares.[106] Borrowed-capital forms of ESO, which are being practiced, are employee loans, employee accounts and phantom shares. General taxation rules stipulate that for employee shares received free of charge or at a reduced price, the difference between the market value and the subscription price is regarded as a part of the salary and thus subject to personal income tax and social security contributions. However, up to a maximum of EUR 2,000 (previously EUR 1,440) in a calendar year (section 3 no. 39 ITL) the benefit is exempt from taxes and social security contributions. If the company contribution remains below the amount of EUR 2,000, the employees themselves can make tax-free contributions up to the ceiling but – unlike the employer contributions – have to make social security contributions. Proceeds from the share sale are not taxed if the period between the date of acquisition and sale is more than one year (section 23 para. 1 sentence 1 no. 2 ITL). More generally, deferred taxation only granted to start-ups (see below) can also be achieved through contractual design, if the shares are blocked in an intermediate entity (trusteeship or the like), so that the employee cannot economically dispose of them and, therefore, no taxable inflow incurs.

Employee Shares – Pursuant to the transposition of the Directive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law (replacing 2012/30/EU recasting the 2nd Council Directive on Company Law 77/91/EEC of 13 December 1976), joint-stock companies may acquire their own shares for their employees, may advance funds, make loans, provide security (financial assistance, section 71a para. 1 sentence 2 Law on Joint-Stock Companies of 6 September 1965, BGBl. I S. 1089 as amended – JSCL), with a view to acquisition of these shares by their employees provided and may increase their capital to distribute shares to employees. With regard to the acquisition of the company's own shares with a view to the transfer to its (former) employees or employees of affiliated firms (section 71 para. 1 no. 8 JSCL) a decision of the General Assembly is not necessary provided that the shares are transferred within 12 months; prerequisite is a reserve fund for own shares to be established without reducing equity capital or reserve funds (section 71 para. 2 sentence 2 JSCL, section 272 para. 4 CC). With regard to capital increase, the law provides for a conditional capital increase (sections 192 et seq. JSCL) and a capital increase by authorized capital (sections 202 et seq. JSCL). In both cases a General Assembly's decision is necessary and the nominal amount restricted to 50%, the number of shares or stock options to 10% of equity capital (section 192 para. 3 sentence 1 JSCL). In the latter case, the board of directors is authorized by the general meeting to increase capital up to a certain nominal value. Such an authorization, however, must be intended in the company statute. The gen-

[106] Decision of the Federal High Court (Bundesgerichtshof) of 10 March 2008 regarding section 15 para. 4 Law on Limited Liability Companies (GmbHG) and section 125 Civil Code (BGB); II ZR 312/ 06.

eral meeting's decision to authorize the board requires a majority of three quarters of the decision-making stock capital (section 202 para. 2 JSCL).

Stock option plans – are more common as executive schemes, but broad-based schemes exist. The decision to adopt a stock option plan as part of a capital increase (see above sections 192 et seq. and sections 202 et seq. JSCL) must contain a description of the allocation scheme (section 193 para. 2 no. 2 JSCL). The total nominal value of the shares for which options in the form of naked warrants can be granted generally cannot exceed 10% of the nominal share capital of the company (section 192 para. 3 and section 71 para. 1, no. 8 JSCL). The issuance of convertible bonds or warrant bonds is permissible up to 50% of the nominal share capital of the company, provided that any naked warrants are counted against this threshold. The plan itself must determine the strike price per share (section 193 para. 2 No. 3 JSCL). In lieu of the strike price, the decision can state the basis for the calculation of the price. The law stipulates a blocking period of at least two years. Details on the blocking period and vesting period shall be included in the decision on capital increase (section 193 para. 2 No. 4 JSCL). The exercise of an option is a taxable event with income tax ranging at progressive rates, ranging from 14% to 47.5% including solidarity surcharge (in 2022). The amount of income that is subject to tax (benefit) is the difference between the fair market value of the shares at the date of exercise and the exercise price; social security contributions, which are shared between employer and employee, are additionally payable, subject to a base cap. As with employee shares, an exemption from taxes and social security contributions up to EUR 2,000 in a calendar year (section 19a para. 1 sentence 3 ITL) applies. Furthermore, the sale of shares is taxable. If the shares acquired by the employee on or after 1 January 2009 comprise less than 1% of the total share capital of the company, the employee must pay tax at a flat rate of 25% on the capital gain realised on sale (plus a 5.5% solidarity surcharge on that tax payment). The taxable capital gain is the difference between the shares' fair market value at the date of exercise and the sale price. Social security contributions are not due on the sale of shares.

Stock Options in start-ups – As of 1 July 2021, amending the Fund Location Law, the ITL provides for deferred taxation of employee stock options and share incentive plans in start-ups (taxed, however, as employment income), but only in small and medium-sized enterprises or cooperatives (up to twice the size of the EU definition), which were established no more than 20 years ago (section 19a para. 3 ITL). Income from the shares is not subject to taxation and wage tax deduction until the shares are sold, the employment relationship is terminated, or 15 years have passed since the transfer (section 19a para. 4 ITL). The 2023 law on the Financing of Future-Proof Investment increased the tax-free allowance from the cap of EUR 1,440 introduced in 2021 to EUR 2,000 per year starting January 2024 and extended deferred taxation rules to companies with up to 999 employees, annual turnover of EUR 100 mln. or total assets of EUR 86 mln. (previously 250 employees, annual of less than EUR 50 mln., annual balance of less than EUR 43 mln.). Moreover, if the employer guarantees that he will be liable for payroll tax (since ESO granted free or discounted is considered employment income), equity investments are to be taxed until they are sold even if this is beyond the 20year threshold or termination of the employment relationship.

bb) Profit Sharing

Profit sharing, while not legally regulated or linked to tax incentives, is more widespread than ESO. The statistical evidence on this issue might reflect the fact that indirect financial participation (e.g., employee loans, profit-participation certificates and debenture bonds) is considered as profit sharing. The only genuine form of profit sharing practiced more commonly is cash-based profit sharing within a bonus plan, which partly connects the shared amount to the annual profit of the enterprise and partly to the individual performance of the employee.

cc) Participation in Decision-Making

Co-determination and participation rights of employees through their representatives are traditionally well developed under German labour law. Employees representatives are present on supervisory boards, and workers' councils protect their rights at the level of the individual undertaking. There is no direct connection between participation in decision-making and EFP in the sense that EFP plans would automatically extend existing rights pertaining to decision-making.

An employee shareholder enjoys mandatory rights (right to control, right of participation, right to demand information). Examples of these rights are the right of a shareholder in a limited liability company to inspect and demand information pursuant to section 51a of the Law on Limited Liability Companies, and the right of the stockholder in a joint-stock company to demand information at the general meeting pursuant to section 131 JSCL.

6. Estonia

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Raul Eamets, Natalia Spitsa and Niels Mygind, those that contributed to the updates were in chronological order in 2014 Raul Eamets and Krista Jaakson, in 2019 Krista Jaakson, and in 2023 Krista Jaakson.

Employee financial participation (EFP) has made moderate progress in Estonia. EFP schemes did not develop during the period of independence between the two world wars or under the Soviet regime. Although employee participation in decision-making had some role in state enterprises during the Soviet era, it was later dismissed as a relic of that system. Employee ownership was briefly popular as a tool for privatising publicly owned assets in the early stages of privatisation but turned out to be a temporary expedient. Neither was EFP considered relevant to the solution of employment and social problems. In 1995, 29% of employees were estimated to be owners; by January 1997, this figure had fallen to around 25% (Jones and Mygind 1998).[107] In January 2005, out of a sample of 722 firms, 2.6% were (partly) employee-owned with a share ownership ranging from 20% to 100% (Jones, Kalmy and Mygind 2005). According to a survey conducted in 2011 (Eesti Rakendusuuringute Keskus Centar 2011), ongoing broad-based schemes for employee share ownership were present in 6.9 % of companies that had at least 5 employees. The incidence of share ownership was reported more common in micro enterprises with 5-10 employees, as start-ups

[107] According to an overview of the distribution of ownership in a sample of 666 Estonian enterprises.

attract necessary know-how by offering ownership rather than paying market average salaries. In ICT sector, it has become a standard practice that all employees can start buying company shares after certain period of employment, typically a year.[108] Various forms of monetary incentive schemes are used in nearly 50 % of companies, whereas large majority of those incentives are individual monthly pay-for-performance.[109] Pre-determined schemes for broad-based profit-sharing are rare; if a company does well, base salaries tend to increase.

According to the latest 2022 employer benefit policy survey 5% (2018 2.7%) of companies admitted employer-supported option schemes covering all employees, another 4% enables options to certain employee groups or key employees.[110] This figure is in alignment with a management survey conducted in October 2021 (Vadi et al. 2021): Out of 375 surveyed business organizations, share ownership or options were considered important aspect in employee motivation by 33 managers (8.8%). Evidence from the employees' side allows concluding that stock options are available for approximately 5% of employees in Estonia, whereas half of them have used this opportunity and half of them not.[111] In general, variable pay makes up relatively large part of income among Estonian private sector employees, but it is merit-based and financial participation does not dominate in these arrangements.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 47.8% (2013, 42.2%; 2009, 17.8%) of companies with more than 10 employees in Estonia offer their employees profit-sharing and in 2013 8.4% (2009, 2.6%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 24.1% (2010 12.2%) of Estonian employees were taking part in profit-sharing while 3.6% (2010 1.2%) of them were participating in share-ownership schemes.

a) General Attitude

Currently, social partners are represented by the Confederation of Estonian Trade Unions and the Estonian Employers' Confederation. They do not have equal power; the trade unions traditionally are the weaker party. Employers' attitude towards regulating EFP is ambiguous (Jaakson and Kallaste 2016; Eesti Rakendusuuringute Keskus Centar 2011). In 2011 34% of surveyed employers or their representatives said that they did not use EFP, because employees had no right to capital; 30% said the specifics of the organisation did not enable EFP and 20% admitted having never thought of that option. In-depth interviews with employers, employers' confederation and trade unions revealed that there is little support for the idea that EFP should be mandatory in any form. Specifically, social partners find that this would be contrary to "business philosophy" and it would be too difficult to effectively regulate. It was stated that the aims

[108] Interviews with HR managers in start-ups by *Krista Jaakson*.

[109] Estonian Salary Information Agency https://www.palgainfo.ee/en/ conducts bi-annual surveys among HR managers; in Autumn 2022 441 responses were obtained (both public and private sector).

[110] Estonian Salary Information Agency collecting 331 responses from businesses, Autumn 2022.

[111] Estonian Salary Information Agency https://www.palgainfo.ee/en/ conducts bi-annual surveys among Estonian workforce; in Autumn 2022 more than 6900 individuals participated.

of employee productivity and commitment could be achieved by alternative means (Kallaste et al. 2011). After pressure from the Service Industry Association, an umbrella organization of ICT and start-ups, in 2017 stock options were regulated in a way that they no longer accounted as taxable fringe benefit in case the employee does not monetize them before three years. EFP schemes have not been on Parliament's political agenda; in the past only the Social Democratic Party has addressed this issue.

b) Legal and Fiscal Framework

No specific legislation on any PEPPER scheme in Estonia exists at present. The legal framework neither creates nor prevents incentives for the development of EFP schemes. Corporate profit as such is not taxed but a resident company pays income tax at the rate of 20% on distributed profits, whether the distribution is monetary or non-monetary (§ 50(1) Income Tax Act); this is a clear disincentive for profit sharing or the distribution of dividends.

aa) Share Ownership

Privatisation (1990, abolished in 1993) – Semi-private forms of business ownership ("people's enterprises" and leased enterprises) introduced in the early stage of privatisation under Soviet law (and later legalised under Estonian law), in particular leased enterprises, are assumed to have been a major source of employee ownership in Estonia. In the privatisation of small and medium-sized enterprises, employees were given a pre-emptive right to buy the enterprise at the initial price. By 1993, when all privileges were abolished, small enterprise privatisation was almost complete; an estimated 80% of enterprises had been taken over by insiders. The privatisation programme for large enterprises was finally adopted in 1993. Following the German Treuhand model, it contained no preferential rights for employees. Employee ownership of shares in enterprises purchased during privatisation decreasing. Enterprises in the energy sector, as well as public utilities, are still partially state-owned; they could be put up for sale in the future. The current Privatisation Law offers no privileges to employees or other potential buyers.

Employee Shares – Estonian Commercial Law contains no special rules on employee share ownership with respect to acquisition, limitations on the number of shares, or issuance of employee stock for any specific undertaking; general rules therefore apply. Some employees still hold shares purchased during privatisation and thus have the rights attached to these securities according to the Commercial Code (CC) and Securities Market Law (SML). Since employees who became shareholders often acquired minority shares in newly founded limited liability companies and joint-stock companies during early privatisation, provisions concerning the rights of minority shareholders and shares acquired during this period are important.[112] Pursuant to §§ 515 (1) and (2) CC, rights attached to shares issued before 1 September 1995 which do not comply with the provisions of the Commercial Code remain valid, whereas rights not attached to shares are void. If securities issued by a company are offered solely to its

[112] Minority shareholders of a joint-stock company can be bought out by a majority shareholder holding at least 9/10ths of the shares upon resolution of the general meeting with at least 95% of the votes represented by all shares; in this case a fair compensation to minority shareholders is secured by the provisions regarding takeover bids (§§ 363 2 (2) and 363 7 (1) CC) and the right to lodge a claim with a court (§§ 363 8 (2) and (3) CC). Minority shareholders have no corresponding sell-out right, i.e., they cannot demand that the majority shareholder buy their shares if they wish to sell them.

employees or managers, a prospectus need not be made public and registered (§ 17 (1) 2) SML).[113] For employees no income tax on dividends from resident firms incurs. Indirectly though the income from dividends is part of total income, which forms the basis of calculating the person's tax-free amount. The employer company pays 20% tax on distributed profit. However, if the profit is distributed by way of an increase of the company's share capital no tax incurs.

Stock Options – Both special employee shares and regular shares can be issued as a result of exercising the options; they may be acquired free of charge or for a fee. The taxation of stock options changed in 2011 and the Tax and Customs Board specified the terms in 2013. In general, selling employer shares at a lower than market price to employees is considered a fringe benefit subject to social (33% in 2022) and income tax (20% in 2022) with taxation incurring at the moment of the exercise. Employee share ownership is not explicitly incentivised and if transaction takes place below the market price, it is considered as part of compensation and taxed as such. According to regulations in effect since 2011[114], employee stock options are tax-exempt for employers if: (i) the stock options offered to employees are not tied to an obligation to acquire employer's shares; (ii) specific conditions (e.g., obligation to work for the employer) and the time-frame to buy the shares are stipulated at the moment of grant; (iii) the employer uses stock options as a bonus to employees to involve them in the operations of the establishment in order to increase firm productivity, efficiency and reduce employee turnover; (iv) the time between granting the stock option and realising it is at least three[115] years. Additionally, since July 2017, the tax exemption, which currently requires 3-years between the grant and the exercise of the share options applies proportionally to the part which corresponds to the time the option has been granted to the employee, in case 100% of the shares of the company in which the share options were provided are sold (also in case of death of the employee). Hence, the employer would be required to pay fringe benefit tax proportionally only from the part which is left until the third anniversary of the option grant.

bb) Profit Sharing

Special legislation on profit-sharing schemes does not exist; therefore, there are neither direct incentives nor direct restrictions. The resident company pays income tax at the rate of 20% on distributed profits, whether the distribution is monetary or non-monetary.

cc) Participation in Decision-Making

Although Estonian company law is so strongly influenced by German law that rulings by German courts can be used to interpret provisions of the Estonian CC, special rules

[113] Consequently, employees and management are not entitled to compensation pursuant to § 25 SML on losses resulting from the volatility of acquired securities. This seems to be justified since management and employees might have insider knowledge, but it could be argued that employees, unlike managers, do not necessarily have full information as to the financial situation of the company. Notably, employees are not deemed insiders, but rather as third persons who could receive information from insiders, under the same law (§ 191 (1), (3) SML).

[114] Income Tax Act §48(5^3) https://www.riigiteataja.ee/en/eli/ee/530082022007/consolide/current#para17b1 and Estonian Tax and Customs Board explanation on taxing stock options: https://www.emta.ee/en/private-client/taxes-and-payment/taxable-income/securities-and-investment-account#tooandjalt-voi-jurisikult.

[115] If an employee decides to exercise the option before three years, the employer must pay fringe benefit tax. Net income from stock options' exercise must be declared by the employee subject to income tax.

on the participation of employees in management and decision-making contained in a special German law (Betriebsverfassungsgesetz) were not considered by the Estonian lawmakers. Since 2007 pursuant to §17 of the Employees' Trustee Act, an information and consultation obligation on certain issues for all employers with at least 30 employees exists. If employees are also shareholders, they have voting rights in each company form, although they generally have no influence on resolutions of the general meeting since they are, in most cases, minority shareholders. There is a clear trend to consult employees when devising strategic plans of the company. According to managers' survey in 2021[116] the role of employees has increased considerably compared to 2010. The same is concluded by the employee statistics: in 2009 and 2015 correspondingly 12% and 14% of employees were satisfied with their opportunity to participate in decision-making, but in 2021[117] this figure has risen to 20%. In general, job satisfaction has increased in Estonia – in part, flexible work arrangements implemented during COVID-19 have contributed to it, and tight labour market accompanying relatively strong economic growth.

7. Ireland

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were George Tutthill, Anthony Kerr and Seamus Milne and those that contributed to the updates were in chronological order in 2014 Seamus Milne, Sinéad Reynolds, in 2016 Deirdre Donaghy in 2018 Patrick Brennan and Sarah Waters, in 2020 Jens Lowitzsch and in 2023 Leona Cantillon.

Although employee financial participation (EFP) has been discussed in Ireland since the mid-1970s, not until 1982 was the first tax incentivised plan introduced (Approved Profit-Sharing Scheme/APSS). Additional tax incentives came in 1986. During and shortly after the tax reform of 1997, additional plans (Approved Savings-Related Share Option Scheme / SAYE and Employee Share Ownership Trust/ESOT) were added. In 2001 another plan (Approved Share Option Scheme/APOS) was approved however, since 2011 it is no longer in operation. In 2017 the Key Employees Engagement Programme (KEEP), a share options program for SMEs to retain key personnel was introduced, it was most recently amended in 2022. There are now five share-based plans linked to tax incentives – the first three approved schemes enumerated above plus restricted stock schemes and KEEP. The Irish Finance Ministry advised that as of end 2022 there were 411 APSS plans; 100 SAYE plans and 4 ESOTs; Revenue Commissioners (Ireland's Inland Revenue) reports 51 firms with KEEP schemes (not requiring prior authorisation by Revenue).[118] According to the 2021 Commission on Tax-

[116] https://eas.ee/wp-content/uploads/2022/04/eesti-juhtimisvaldkonna-uuring-2021.pdf, login Sept. 2023.

[117] https://www.stat.ee/et/statistika-too/tooelu-uuring-2021, accessed: Sept. 2023.

[118] According to statistics provided by the Irish Business and Employers Confederation (IBEC), in 2002 there were in operation 400 APSS plans, 15 APOS plans and 90 SAYE plans with 140,000 employees. Whereas the number of new schemes declined after 2001, it increased again since 2004. In 2008, 10% of the private sector workforce (estimated 135,000 employees) participated in 500 APSS schemes according to the Irish ProShare Association Revenue Review of APSS. Although there were only 125 SAYE plans in 2008, they seem to be the most popular judging by the number of participating employees.

ation and Welfare Report, in 2020 682 employers in Ireland provided share awards to employees that were taxed via payroll remuneration schemes. The majority of plans are found in listed multinational companies. Since Ireland suffered from the effects of the financial and fiscal crisis, the Government removed fiscal incentives for a part of employee financial participation schemes to accumulate revenue for the bailout austerity programme. The support for EFP was reduced but did not cease.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 24.4% (2013 24.2%, 2009 11.2%) of companies with more than 10 employees in Ireland offer their employees profit-sharing and in 2013 6.4% (2009 6.4%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 11.5% (2010 7. 5%) of Irish employees were taking part in profit-sharing while 4.8% (2010 3.9%) of them were participating in share-ownership schemes.

a) General Attitude

Since the beginning of the 1980s, the Irish Business and Employers' Confederation (IBEC) has supported tax-efficient share schemes and regard them as a key element in recruiting and retaining personnel, but only if they remain voluntary. The Irish ProShare Association, which promotes and conducts research on employee financial participation, was founded by IBEC. Trade unions also support those financial participation plans which provide explicit financial rewards as well as a sense of participation. Representatives of both employers and trade unions support partnership initiatives at the enterprise level. During the financial crisis, employee financial participation was not a priority for social partners.

EFP, especially share ownership, has been supported by successive governments, as a means of aligning the interests of employees with employers and making retirement more secure. However, it has not been linked to pension policy so far. Employee Financial Involvement (EFI) is addressed in national economic programmes and in national wage agreements but is regulated only by local collective agreements or by in-house agreements. The Commission on Taxation and Welfare, an independent group established by the Irish Government in 2021 to consider how best the taxation and welfare systems can support economic activity and promote increased employment and prosperity in a financially sustainable way published its report was in September 2023 and included considerations regarding share-based remuneration.

b) Legal and Fiscal Framework

Employee financial participation plans fall into two categories: either they are approved or unapproved. Plans introduced under the annual finance acts and approved by and registered with the Revenue Commissioners enjoy tax advantages as well as exemption from employer PRSI (compulsory social security contributions). However, the number of approved plans was reduced in the aftermath of the financial crisis, since fiscal incentives for some of them were abolished. Unapproved plans may be designed and introduced at the employer company's discretion but receive no specific tax advantages (with KEEP being an exception). Approved plans must be designed in accord with legal specifications whereas unapproved plans enjoy more flexibility. Under current legislation, all approved plans (and typically unapproved plans as well) are share-based, including profit sharing, share ownership and stock option plans. Tax incentives for approved plans are governed by the Taxes Consolidation Act of 1997, as amended (Part 17, Schedules 11, 12, 12A, 12B and 12C). Unapproved plans are used for granting shares or options to individual employees, where the company does not operate an approved scheme or where the company wishes to award shares in excess of the amount that can attract favourable tax treatment or in contravention of the rules of any of the approved schemes. Unapproved plans are usually combined with approved plans.

aa) Share Ownership

Three stock option plans (SAYE, restricted stock and KEEP) are supported by tax incentives. The approved schemes are exempt from income tax; however, Universal Social Charge (USC) at the employee's marginal rate (in 2022 progressive between 0.5 and 8%, with exemption if total income is below EUR 13,000) and Pay Related Social Insurance (PRSI) of 4% in 2022 are due. No income tax, USC or PRSI is due on gains arising from the exercise of KEEP options, but capital gains tax is due when shares acquired are subsequently disposed of. There is also an unapproved stock option plan which exempts employers from PRSI contributions but imposes the full personal income tax at exercise. Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may advance funds, make loans (financial assistance) under shares schemes, with a view to acquisition of these shares by their (former) employees and members of their families.

Share Ownership Plans – In a *Restricted Stock Scheme* (share clogs 128D Taxes Consolidation Act 1997), participants are given a future interest in shares, subject to certain restrictions. On shares held for at least one year, the employee may deduct a specific percentage of the benefit from the personal income tax base (from 10% for one year to 60% for more than five years). For the *Purchase of New Shares* (s479 Taxes Consolidation Act 1997) additionally to PRSI the USC at the rate of 2 to 8% depending on the amount of the benefit is applied since January 2011.[119]

The Approved Savings-Related Share Option Scheme (SAYE) was introduced by the Finance Act of 1999. It must be open to all employees on similar terms, with possible exception of employees with less than three years of service. The plan is structured as follows: the employee make a save-as-you-earn (SAYE) contract with a bank, agreeing to save a specified monthly amount (EUR 12 to 500) through deductions from after-tax remuneration for a period of three or five years service (in the five year plan the monies saved can be left on deposit with the financial institution for a further two years), while the employer corporation grants him share options for the maximum number of shares his SAYE savings will be able to buy at the exercise price. The SAYE contract always includes a tax-free bonus to be awarded at completion, the amount depending on the term. The exercise price may be up to 25% lower than the market value of the shares at the time of grant. At maturity of the SAYE contract, the employee may choose to exercise the option, selling or retaining the shares, or to receive

[119] Prior to 2011, if employees paid full price for newly issued shares and held them for three years, the subscription cost (subject to a lifetime ceiling of 6,350 EUR as of 2006) was exempt from both personal income taxes and PRSI and a capital gains tax was based on the issue price. The employer company was also exempt from PRSI.

the savings and bonus in cash. These requirements fulfilled, the employee is exempt from personal income tax at the time of grant or exercise (but PRSI and USC apply); capital gains tax, however, is levied at the time of sale. Following 2011 the employer is exempt from PRSI.

The Key Employees Engagement Programme (KEEP) was introduced in 2017 as a potentially tax advantageous share option incentive for private SMEs non-approved share scheme. It was modelled after the UK EMI scheme aiming at attracting and retaining key personnel. The total value of unexercised qualifying share options that can exist per SME is capped at 3 million euros. Under the KEEP incentive, gains realised on the exercise of qualifying share options granted between 1 January 2018 and 31 December 2023 by employees and directors, are not subject to income or social welfare taxes at the date of exercise with the gain instead being subject to capital gains tax on a future disposal of the shares at 33%. The value of shares acquired by key employees under the KEEP incentive will also be exempt from employer PRSI contributions. For employees to qualify for KEEP they work at least 20 hours a week and the option must be exercised within 10 years of grant. The total market value of all shares in respect of which qualifying share options have been granted to an employee or director does not exceed EUR 100,000 in any one year or EUR 250,000 in any 3 consecutive years of assessment. The Finance Act 2022 introduced the following provisions to help address some of the restrictions with KEEP: (i) The scheme applies to qualifying group company structures allowing options over shares in the employer company or in a qualifying parent company and (ii) the hours required to be worked by an individual have been reduced from 30 hours per week to either 20 hours per week or at least 75% of the individual’s working time. Conditional on receipt of State aid approval it is foreseen to extend of the scheme to 31st December 2025 (currently qualifying share options granted between 1 Jan 2018 and 31 Dec 2023); other pending changes are allowing the use of existing rather than just new shares, the facilitation of share buy-backs, and the increase of limit for the total market value of issued but unexercised qualifying share options for qualifying companies and qualifying holding companies to EUR 6,000,000.

bb) Profit-Sharing

The oldest form of financial participation is the approved profit sharing, introduced in 1982. It is a share-based leveraged profit-sharing plan. Cash-based and/or direct share-based profit-sharing plans are also possible but have no tax advantages. Individual gain sharing based on performance-related indicators, promoted by the government since 2000, may be more widespread than cash-based profit sharing.

Approved Profit-Sharing Scheme (APSS) – The APSS must apply to all employees on similar terms, with the possible exception of those having less than three years service. Any shares allocated under APSS cannot be subject to restrictions other than restrictions which apply to all shares of the same class. An exception to the general rule on restrictions exists, when the company’s articles of association require an employee or director to dispose of his/her shares on leaving the company.[120] Employee shares are held in trust and cannot be withdrawn for two years; not until the third

[120] This provision could prove to be an obstacle to introducing these plans in non-listed companies if the employees – unlike shareholders who are not employees – have to sell the shares to the company after leaving, which in turn might create tax complications arising from the obligatory sale.

year do tax incentives apply. The trust must allocate the shares to the employees within 18 months and subsequently is not held liable for the tax on dividends. Employee benefits of up to 12,700 EUR (2022) are exempt from both income taxes and PRSI contributions where the share-based remuneration was the subject of a written agreement, entered into between the employer and the employee before 1 January 2011. For agreements entered into after 1 January 2011, a charge to employee PRSI and USC is applied. If the shares are sold during the blocking period, the employee is liable to personal income tax on the lesser amount of the market value of the shares or the proceeds of sale. Shares sold after the blocking period are subject only to the capital gains tax (33% in 2022). Subsidiary schemes to APSS are the *"relinquished salary" scheme,* more commonly known as *"salary forgone"*, where the employee is allowed to deduct up to 7.5% of his base pre-tax salary to increase his share-based profit sharing, and the employer matching scheme (so-called *BOGOF*, i.e., *buy-one-get-one-free*), where the employee buys shares with his after-tax income and the employer matches his purchases. The employing company can deduct costs of setting up and operation of the plan and costs of providing shares to employees, and it is not liable to employer PRSI.

Employee Stock Ownership Trust (ESOT) – Since 1997 the APSS has been allowed to combine with an ESOT, similar to the American Employee Stock Ownership Plan (ESOP). In contrast to the APSS trust, the ESOT is empowered to hold shares for 20 years; it may also borrow funds and sell shares. The trust pays no tax on dividends used for specified purposes (e.g., acquiring shares, repaying loans, etc.). Shares transferred to the ESOT must be common shares, fully paid for and irredeemable. There are three types of trust structure permitted viz; single trustee; majority of trustees are employees; and equal employee/company representation plus an independent trustee. On shares not transferred directly to employees but first to the APSS trust, tax incentives for APSS apply. The ESOT is not subject to capital gains tax on disposal of shares provided the proceeds are used for specified purposes. The ESOT was widely used for privatisation of state-owned enterprise. Usually, 14.9% of the equity capital of the company undergoing privatisation was accumulated in the ESOT for employees. Shares were typically acquired by a combination of loans and a direct state grant, in exchange for productivity concessions and the agreement of trade unions to privatise. A well-known example was the Eircom ESOP. Within this plan, the employees owned 35% of the shares through an ESOT which has a representative on the board of the now privatised company. However, ESOTs, including the Eircom ESOP, also suffered losses in the course of the financial crisis due to the financial difficulties of the founding companies. The Eircom ESOP was subsequently bought out.

cc) Participation in Decision-Making

Participation in decision-making and financial participation have no direct connection, nor can existing decision-making rights be extended by a financial participation plan. General provisions of labour law, such as equal pay and prohibition of discrimination, also apply. Employee representatives in Ireland's single-tier boards are only found in the state-owned sector, where they normally account for a third of the total. Privatisation has cut the number of companies covered and the process is continuing. There is no statutory system for workplace representation in Ireland. Those who work in unionised workplaces – about half of the entire workforce – have representation through the union. New procedures have been introduced as a result of the EU directive on information and consultation, but they may not make much difference. National pay pacts have provided a framework for bargaining in Ireland since 1987. Agreed between the unions, employers and government, they are not legally binding, but have been widely observed.

8. Greece

This country profile is based on the country chapter of the PEPPER IV Report; the co-author of the earlier version was Christos A. Ioannou those that contributed to the updates were in chronological order in 2014 Christos A. Ioannou and Konstantinos Papadimitriou, in 2019 Christos A. Ioannou, Konstantinos Papadimitriou and Ioannis Skandalis and in 2023 Konstantinos Papadimitriou and Ioannis Skandalis.

The first tax incentives for employee financial participation (EFP) plans were introduced as early as 1974. Legislation altered and broadened tax incentives until 2008 when the 2009 public sector deficit and financial crisis changed the environment and as of 2010 tax incentives for all forms of financial participation were abolished or reduced. Employee financial participation plans have not been widespread, despite being on the increase in the period between 2000 and 2007, especially executive stock option plans. Their peak was in 2007 when 13 % of companies listed on the Athens Stock Exchange offered stock option plans, mainly to executives. 30,000 persons (1.8% of employees) participated in these plans.[121] The EU High Level Group of Independent Experts (2003: 32) found that the limited spread of employee financial participation plans, despite tax incentives, was attributable to the complexity and restrictions of the regulations. Tax incentives were, indeed, restricted to joint-stock companies. However, the number of such companies in Greece is quite high (16,767 companies in 2007), with the vast majority of them being SMEs.[122] The amendments to tax legislation concerning distribution of profits and shares extended the tax regime for distribution of profits to employees of limited liability companies. The complexity of the regulations related to the fact that the provisions on tax incentives have been dispersed through many different pieces of legislation. Another important factor inhibiting the spread of employee financial participation has been the reluctant attitude of social partners at the company level, although social partners at the national level have expressed occasionally a more positive view.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 38.2% (2013 17.3%, 2009 4.4%) of companies with more than 10 employees in Greece offer their employees profit-sharing and in 2013 2.2% (2009 1.6%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 2% (2010 3.3%) of Greek employees were taking part in

[121] Ioannou, Ch. (2008), Changing Payment Systems in Greece (in Greek), OMED, Athens.

[122] According to the statistics by the Hellenic Statistical Authority (EL STAT), 27,816 joint-stock companies and 18,857 limited liability companies existed in 2002.

profit-sharing while 1.2% (2010 0.21%) of them were participating in share-ownership schemes.

a) General Attitude

Successive governments generally supported EFP schemes by initiating and implementing tax incentives for specific types of plans. Employer associations were initially not interested in EFP. Trade unions (i.e., the General Confederation of Greek Workers, sector/industry level and company level unions) originally strongly opposed, have accepted financial participation since the beginning of the 1990s. Attitudes of both social partners have become gradually more favourable since then with the facilitation of EFP schemes eventually reaching the national collective bargaining agenda. In the 2008-2009 round of collective bargaining both social partners made employee financial partnership an issue to be included in the agreement. However, this agreement required government ratification to become easier applicable at the company level.

After the financial crisis erupted in Greece in 2009, the national bargaining round addressed employee financial participation in 2010. In May 2010, national level social partners concluded a collective bargaining agreement with a three-year horizon. Art. 5 of this agreement entitled "Facilitation of profit distribution to the enterprise staff" stipulates that any company can "annually distribute part of net profits to the employees on its own initiative and that the parties of the agreement plan to promote favourable taxation of such schemes". Not much progress has been made since then; on the contrary the social partners' agreement has been affected by pay change restrictions during the early stages of the 2010-2012 economic adjustment programme. However, since July 2019 the new government adopted a U-turn towards investment friendly reforms and as part of this aims to facilitate financial participation schemes.

b) Legal and Fiscal Framework

In the 1970s, legal provisions for EFP were adopted. Further laws were implemented successively in 1984, 1987, 1990 and 1994, providing tax incentives for both employees and employers, which, however, have been abolished in 2010. Legislation regulates cash-based profit sharing, employee share ownership and stock option plans.

aa) Share Ownership

Since 2010, tax incentives for share ownership have been reduced, and tax incentives for stock options have been abolished until they were reintroduced in 2019.

Share Ownership Plans – Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) since 1987 (Law 1731/87), joint-stock companies have been allowed to acquire their own shares to distribute them to employees. If these shares are purchased on the public market, up to 10% of equity capital can be distributed; the distribution must be made within 12 months. If the shares for distribution are to be issued in the course of a capital increase, up to 20% of the annual profit can be distributed; the shares must be blocked for three years unless the general meeting provides otherwise. The employer company can deduct the distributed amount from the tax base of the corporate income tax (29% in 2018, 24% in 2019).

Stock Option Plans – Stock option plans were divided into qualified plans under the Law 2741/1999 and non-qualified plans under the Presidential Decree 30/1988.[123] Law 4548/2018 on limited liability companies by shares entering into force in the beginning of 2019 transposing Directive 2007/36/EC and Directive 2017/828/EU largely substituted above legislation (Presidential Decree 30/1988 and C.L. 2190/1920) providing for a single legal regime in relation to the award in both qualified and non-qualified plans. Art. 113 provides that by decision of the general shareholders meeting a share distribution program (stock option plan) may be introduced for the members of the board of directors and the company's personnel, as well as those of affiliated companies. Beneficiaries may also be individuals who provide services to the firm on a fixed basis. The total nominal value of the shares available for stock option plans may not exceed a total of 10% of the company's share capital. Said limit also applies in the event of share distribution (if share distribution is combined with a stock option plan, the total value of shares is taken into consideration). The decision of the general shareholders meeting, stipulating the specific rules and conditions (number of shares, price, holding period etc.), shall also provide whether the share distribution will take place through the increase of the company's share capital or through own shares that the company acquires or acquired in accordance with Art. 49 of Law 4548/2018. Especially for listed companies, the provision of shares or stock option plans shall be included in a relevant reward policy, as per Arts. 110-112 of Law 4548/2018.

In all such plans, employees are generally subject to personal income taxation and to social security contributions, once the right to the shares is vested.[124] The employer company can deduct the value of distributed shares as personnel costs. Following a substantial increase in the number of non-qualified executive stock option plans since 2000, and after their peak in 2007 with generous benefits for executives, the government introduced a much higher tax rate of 40%. The difference between the stock exchange price of the share at the time of the exercise of the option and the pre-determined preferential price in the Stock Option Plan is regarded as profit. The above provision is applied even if the employment relationship is no more valid on date on which the employee exercises his option. A reform of the tax treatment of stock option plans took effect in December 2019[125] and applies to the tax years from January 2020 onwards. In particular, Law 4172/2013, as amended by Law 4646/2019, provides that benefits from employee stock option plans are not taxed as income from employment conditional on a two-year blocking period after exercise and (i) are taxed only at the time of sale of the shares, (ii) as income from capital gains at a rate of 15%. The add-

[123] In qualified plans, the shares to satisfy the claims of option owners at exercise are issued in a qualified capital increase whereby the number of shares should not exceed 10% of shares already outstanding. In non-qualified plans, shares to satisfy the claims of option owners at exercise are purchased on the public market. Under these plans, employees are generally subject to personal income tax and social security contributions, but the local tax office could levy a gift tax instead of the personal income tax if "*the benefit derived exceeded the proper measure*".

[124] Greek law does not explicitly regulate the issue of social security contributions regarding stock option plans; however, recent administrative practice shows a restrictive approach especially since January 2017, following the enactment of Law 4387/2016 amending the entire social security landscape.

[125] The provisions were criticized by the scientific committee of Greek parliament for their lack of clarity: Although the taxable income and thus the tax liability arise at the "*time of exercising the stock option*" and not at the time of the further transfer of the acquired shares, it is unclear how the introduced exemption will operate in practice; it is ambiguous that "*in the case of stock options for shares not being listed on a regulated market, the (taxable) market value of the exercise of the option is the selling price reduced by the acquisition price*" since the stock option may not be sold during the same tax year.

ed value is defined as the difference between the closing price of the share market and the issue price of the shares of listed companies or the difference between the acquisition price and the selling price of the shares of unlisted companies (article 13 par. 4 of Law 4172/2013, as in force). In addition, a special provision for non-listed start-up companies provides a similar tax treatment conditional on a retention period of three years with a capital gains tax of 5%. In both cases social security contributions incur.

bb) Profit-Sharing

Profit-sharing plans are predominantly cash-based and are not any more linked to tax incentives. The company is allowed to distribute 15% of annual net profits to employees. Each employee can receive up to 25% of annual gross salary as profit share. The company must submit a list of beneficiaries, with amounts payable to each individual employee, to the works council within one month of approval by the general meeting. However, it must be noted that only a small number of companies have works councils; when they exist, they must be informed, but their approval is not required. In practice, no case is known where this pre-condition became a problem. Profit-sharing distributions are subject to the general corporate income tax (22% from 2021 onwards, 24% in 2019) and a 5% dividend tax. The employer company can deduct the distributed amount from the tax base of the corporate income tax. For the employee the distributed amounts are taxed as personal income further affect the additional "extraordinary contribution for solidarity" tax that applies to total annual income from all sources. The profit share amount is also subject to social security contributions (as of 1 June 2022, 13.87% for the employee and 22.29% for the employer in the majority of sectors, unless special rates apply for a particular sector or profession; the upper limit of employees' salary for the calculation of social security contributions is EUR 7,127 in 2023).[126]

cc) Participations in Decision-Making

There is no direct connection between participation in decision-making and financial participation of employees. In particular, financial participation plans cannot extend to existing rights with regard to participation in decision-making. Two levels of employee representation (1/3rd employees, 1/3rd board of directors, 1/3rd elected by employees) in the representative assembly of social control setting broad policy objectives were compulsory for companies under state control. In the former "socialized sector" (e.g., public utilities and transport), which is subject to privatisation plans employees had the possibility to influence the introduction and design of financial participation plans but did not choose to do so as most of them were loss making and unions opted for direct pay raises rather than bothering for corporate performance.

[126] For a monthly gross salary equal above the cap an additional monthly surcharge of EUR 227, i.e., EUR 87 for the employee and EUR 139 for the employer applies; see https://www.ey.com/en_gr/tax/tax-alerts/ey-greece-increase-of-the-upper-limit-of-employees-salary-subject-to-social-security-contributions, accessed 1 Aug. 2023.

9. Spain

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Izaskun Alzola and Fred Freundlich and those that contributed to the updates were in chronological order in 2014 Jone Nolte, Marta Enciso Santocildes and Izaskun Alzola and in 2020 and 2023 Jens Lowitzsch and Marta Enciso Santocildes.

Art. 129-2 of the Spanish Constitution obliges the government to take an active role in promoting employee financial participation (EFP) and facilitating access of employees to ownership of productive assets. The most popular forms of EFP in Spain are "Worker-owned Companies" (Sociedades Laborales) and profit sharing. A Sociedad Laboral (SL) is a qualified form of conventional corporation, majority-owned by its permanent employees with no parallel in other EU countries. Most profit-sharing plans are cash-based. Tax incentives for share purchase plans were introduced in 2003 to encourage employee share ownership plans. Stock option plans in listed companies are mostly reserved for executives[127] but broad-based plans are gaining popularity in start-ups[128]. In the context of general overhaul of the legal framework for Sociedades Laborales in 2015, the concept of a "Employee Participatory Companies" was introduced, although it is still awaiting implementation decrees; no statistical data is available on the number of Participatory Companies". The European Working Conditions Observatory reported for 2010 that approximately 15.9% of the total Spanish working population participated in the profits of their employer enterprise with the financial services sector (i.e., 27%) being dominant compared to other sectors such as construction, public administration, or education workers (14.5%, 8.1% or 4.8%, respectively).[129]

Sociedades Laborales are usually small and micro-sized limited liability companies employing an average of 4.8 workers; joint stock SLs became less common over time. Despite only moderate fiscal incentives, SLs have flourished over the past 25 years (Lowitzsch et al. 2017)[130]: The overall number of SLs rose by 18% from 9,620 firms in 1999 to 11,322 in 2013 while the number of workers employed in SLs declined by 16% – from 75,606 workers to 63,472 – during the same period, though. Reflecting a shift to limited liability companies (Sociedades Laborales Limitadas, SLLs), nevertheless, both population (from 5,060 to 9,984) and employment (from 20,808 to 47,727) of SLLs doubled in the same interval. However, these official employment figures did not capture independent workers which are estimated to account for between 15 and 25% of overall employment. This decrease was mainly due to the financial crisis; the largest loss occurred in the construction sector. The described trend is reflected in the

[127] A report by the trade union UGT found that in 2011 of the Ibex35 firms only five had broad based plans (*Banco Sabadell, BBVA, Iberdrola, Telecinco, and Red Eléctrica Española*) while 18 had plans only for directors and top managers; see *Participación sindical en empresas del IBEX35, Informe 2011 en* http://www.observatorio-rse.org.es/Publicaciones/Informe%20Interactivo%202011%20Participaci%C3%B3n%20de%20los%20trabajadores%20en%20las%20empresas%20del%20IBEX35.pdf, login: Sept. 2023.

[128] https://lawants.com/en/stock-options-under-spanish-law-an-alternative-employee-compensation/.

[129] ISUSI, Iñigo*, Spain evolution in wages during the crisis*, European Working Conditions Observatory (EWCO) http://eurofound.europa.eu/ewco/studies/tn1203015s/es1203011q.htm; July 2012 update for 2010 figures.

[130] All figures in this profile for the interval 1999 to 2013 stem from Lowitzsch, Dunsch, Hashi (2017).

figures for 2016 (Fajaroda et al. 2016) when 10,209 SLs were employing 65,953 workers. However, although they have demonstrated their ability to generate stable employment and endure over time leading to a peak in 2016 their population suffered a decline since then. 2020 official statistics from the Ministry of Labour and Social Economy find that the number of SLs decreased over the last years to 7,801 with a workforce of 54,954 (in comparison to 2019 the drop of the number of SLs was 11.4% and that of employment 11.7). The reasons for this decline are manifold and can partly be explained by the long-term effects of the financial crisis and then that of the COVID 19 pandemic and partly stem from regulatory constraints to qualify as SL rendering the concept unattractive in comparison to conventional LLCs. In many cases, they have converted to conventional firms (either by choice or by disqualification) often becoming "victims of their success": They continue to exist with substantial employee ownership but do no longer qualify as SL, e.g., because the employee ownership rate drops below 50%.[131]

A major reason for the initial steady growth in the number of SLs is that since 1985 in lieu of receiving monthly payments, job seekers may choose to capitalise their unemployment benefits into a lump sum in order to set up a new SL or to recapitalize an existing SL by becoming a member. It is estimated that about one-third of SLs utilise the capitalisation of unemployment benefits at the time of their founding. Between 2006 and 2013 on average 2,240 persons capitalized unemployment benefits to set up or join a SL in Spain, with an average annual total of around EUR 13,233 per person. SLLs generally had higher survival rates than their conventional competitors but there were regional differences. They survive long enough to amortise capitalised unemployment benefits: The average paid-out lump sum represents roughly the cost of 1.3 years worth of unemployment benefits; between 2006 and 2013 on average, 88% of all SLs survived this long. An important reform of this capitalisation mechanism allows from 1 September 2023 SL workers with an indefinite employment relationship to buy into their employer company, dropping the requirement of previously unemployment.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, 2019 47.2% (2013, 25.7%, 2009 16.9%) of companies with more than 10 employees in Spain offer their employees profit-sharing and in 2013 4.7% (2009 3.4%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 7.6% (2010 4.5%) of Spanish employees were taking part in profit-sharing while 2.6% (2010 1.6%) of them were participating in share-ownership schemes.

a) General Attitude

Employer associations are careful not to promote plans limited to executives only, since, in the past, stock options adversely affecting financial markets, caused political friction and left a negative image generally. Nevertheless, they do not actively support broad-based plans. Trade unions accept EFP plans only if they are on top of regular wages. Associations which lobby to protect the advantages gained by companies prac-

131 Between 1 January 2010 and 31 December 2012 in the Basque Registrar of SLs of 110 disqualifications 51 became conventional companies, i.e., 46.36% of which only 8 have closed down.

ticing financial participation exist at both the regional and firm level (e.g., Mondragon Corporation, Confesal, CEPES, Federaciones de Cooperativas). As of 2018 a declaration for the future agenda „Toward a more ethical inclusive-participatory company model" was passed by the regional parliament of the autonomous communities Navarra and the Basque Country; one of the key pillars of this declaration urging both regional governments to draw up an action plan for promoting this type of entities is the *promotion of employees' involvement in management, earnings, and ownership.* Since 2006 (previously CONFESAL, re-founded in 2019 to include alongside with SL, Participatory Companies, under the name of LABORPAR), a modification of the Law on Worker-owned companies that would eliminate some restrictive prerequisites, thereby making this type of firm more like a normal firm with standard labour relations has been under consideration, but it was not until February 2013 that the reform process took off. Finally, the 2015 Law on Worker-Owned and Participatory Companies replaced the 1997 Law on Sociedades Laborales.

Under the Spanish Constitution, the government is obliged to take an active role in facilitating access of employees to ownership of productive assets (see Art. 129-2). Both major political parties, the right-wing People's Party (Partido Popular – PP) and the left wing Spanish Socialist Workers Party (Partido Socialista Español – PSOE) are in favour of the concept of Workers' Companies (Sociedades Laborales) while "Podemos" (part of the Government with PSOE until July 2023, now known as *Sumar*) is also supportive. The 5/2011 Law on Social Economy – at the time approved with the parliamentary support of all political parties[132] – in 2023 is under revision to improve it. In 2022 the Recovery, Transformation and Resilience Plan, financed by European Next Generation Funds was approved, allocating EUR 800 mln. to Social Economy entities, SLs among others. In contrast, the far-right Vox party does not include in its political programme any reference to the social economy in general or to worker-owned companies.

b) Legal and Fiscal Framework

Workers' companies are (Sociedades Laborales or SLs) governed by the 2015 Law on Worker-Owned and Participatory Companies[133] and to regular company law, rules on employee shares and share option plans are to be found in company and tax law. There is no special regulation pertaining to profit sharing.

Along with the 2015 reform of the legal framework for SLs the concept of Employee Participatory Companies (Sociedades participadas por los trabajadores) was introduced stipulating their promotion an aim of public institutions; both participation in enterprise results and decision-making are key elements to qualify for such support. Pursuant to the definition of Art. 19 these firms may be joint stock companies or limited liability companies that do not meet the requirements of Sociedades Laborales

[132] See https://www.boe.es/buscar/pdf/2011/BOE-A-2011-5708-consolidado.pdf; this category includes worker-owned companies, cooperatives, mutuals, social integration companies, special employment centres, fishermen associations and agrarian transformation societies (SAT) as well as foundations and associations that carry out economic activities. The Law has had an important echo in other countries like Mexico, Belgium, Italy, Portugal, which either intend to put into force a similar regulation or have already done so.

[133] 'Ley de Sociedades Laborales y Participadas' of 14 October 2015, Official Journal no. 247, which came into force on 14 November 2015; available at http://noticias.juridicas.com/base_datos/Laboral/560557-l-44-2015-de-14-oct-sociedades-laborales-y-participadas.html (20.10.2015).

(see below), but promote the access of workers to the status of partners as well as to the different forms of participation, particularly through legal representation of workers.[134] After recognition as Participated Company following a procedure to be established by ordinance of the Ministry for Employment and Social Security such enterprises according to Art. 20 can benefit from measures adopted by public administration to promote and support the participation of employees in enterprises. As of 2022 the implementation regulations are still pending, and it is unclear how many companies would qualify for this type of support (Bel Durán et al. 2018)[135]; the practical implications of the concept thus are still unclear.

aa) Share Ownership

Worker-owned Companies constitute the typically Spanish form of employee share ownership. In addition, some listed companies implement stock option plans (although often for executives only), whereas in non-listed companies share purchase plans are practised. The Law on Stock Ownership Incentives 46/02 of 18 December 2002, effective, introduced tax incentives for employee share ownership and stock option plans with regard to income tax liability 1 January 2003; in the end of 2014 the law was amended introducing a requirement to offer these types of plans to all employees at the same conditions.[136] Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may acquire their own shares for their employees both for share and stock option plans; they may advance funds, make loans, provide security (financial assistance), with a view to acquisition of these shares by their employees (Article 150-2º, Capital Companies Law). Investments in new or recently created companies up to 3 years since their constitution are enticed by a tax deduction introduced in January 2015 (Art. 68-1 Personal Income Tax Law)[137]; 50% of the contributions to share subscriptions up to EUR 100,000 per year are deductible under the following conditions: (1) legal form of a joint stock, limited liability or Worker-Owned company; (2) personal and material means to develop an economic activity (3) equity capital not exceeding EUR 400,000 in the first tax period; (5) a maximum of 40% shareholding of spouses or family members up to second degree.

Worker-Owned Companies (Sociedades Laborales) – A SL is a qualified form of conventional corporations, majority-owned by its permanent employees. Unlike a co-operative, an SL is based on shared ownership and is permitted to utilise non-employee capital. Permanent workers must own more than 50 % of company shares while the minimum number of working partners is two and individual shareholders may not hold more than one-third of the capital (except in SLs partially owned by the State, Autonomous Communities or Local Authorities, in which case public ownership

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[134] To qualify as Employee Participatory Company they have to fulfil any of the following requirements: (i) they have workers who participate in the capital and/or the results of the enterprise; (ii) they have workers who participate in the voting rights and/or decision-making in the company; (iii) they adopt a strategy to promote the incorporation of workers as partners.

[135] It is estimated that among LLCs as many as 419,240 firms would qualify as a Participatory Company as many of these firms while not complying with the strict SL requisites, esp. the 51% threshold for worker capital, still have an important share of employee ownership.

[136] Law 26/2017 of 27 November 2014 that came into force on 1 January 2015.

[137] This incentive preplaced the New Company Limited Partnerships (SLNE), a "company savings account" introduced in 2003 (Decree Law 2/2003 of April 25 regarding economic reform measures) providing an incentive for employee savings to acquire shares in the employing company.

may reach up to 50%). In general, non-owner workers may not work more than 49 % of the hours worked by worker-owners. When a worker-owner leaves the company, his or her shares must be offered for sale internally, with non-shareholding employees having priority. There are two forms: *Sociedad Anónima Laboral* (SAL) with minimum equity capital of Euro 60,000 and *Sociedad Limitada Laboral* (SLL) with minimum equity capital of Euro 3,000. Like any other corporation each Worker-owned Company must establish a compulsory reserve for the compensation of losses of 10% of its annual net profits until it reaches 20% of the share capital pursuant to art. 274 Capital Companies Law. Furthermore, SLs are obliged under Art. 14 of the Law on Worker-Owned and Participatory Companies to form a Special Reserve Fund amounting to another 10% of its net profits until the funding reaches 200% of social capital (other than to compensate losses these funds can be used to support the purchase of shares by non-owner workers). The remaining profits can be distributed between the members of the workers' company, attributed to a voluntary reserve to increase the company's own capital, or used for any other legitimate corporate purpose.

An SL may apply for a modest exemption from taxes and notarial deeds on asset transfers to the SL incurred in the start-up phase (99% tax exemption from capital transfer tax affecting primarily acquisitions of real estate by the SL). Furthermore, workers' companies are exempted from: (1) taxes in connection with company formation and transformation of SLL to SAL or vice versa as well as capital increases (additional to a tax credit of 99% of taxes connected with transfer of shares to employees); (2) notarial deeds on transfers to the company as well as notarial deeds on bond debts, and debenture bonds (including a 99% tax reduction when the worker-owned society acquires goods or rights from the company where the majority of its workers were previously employed). These incentives only apply to the setting up of the workers' company (i.e., they do not affect personal income tax liability, etc.). Furthermore, pursuant to Art. 11.2. a) Corporate Tax Law tangible fixed assets, intangible assets and property investments affected by *Sociedades Laborales* in conducting their activities and acquired during the first five years from the date of qualification, may be depreciated freely. Furthermore, investment in fixed assets and the reimbursement of loan interests are supported by aids and subsidies. Independently general fiscal incentives for SMEs and newly founded businesses introduced in 2013 also apply to the SL.

Government grants facilitate the integration of unemployed persons as worker-owners as well as technical assistance and training. Unemployed persons can capitalise their unemployment benefits as a lump sum to start a new SL or to recapitalise an existing SL by joining it. Since 1 September 2023 SL workers with an indefinite employment relationship are also allowed to buy into their employer company, dropping the requirement of previously unemployment. However, there is a significant difference to conventional start-up subsidies for the unemployed in that SLs are set up not only by unemployed persons but also by ordinary entrepreneurs and typically involve external investors which account for 27% of their partners. Unlike conventional start-up subsidies for jobseekers, SLs offer not only access to capital but practical assistance and entrepreneurial advice to an unemployed person joining or setting up an SL. With respect to secondary employment, SLs have two structural features that differentiate them from ALMP start-ups: (1) they involve outside investments, a condition for growth; (2) they require a minimum of three partners as a condition of incorporation and are designed to integrate additional employees. According to employment data for 2008 – 2013, 1.3 additional jobs were created per founding worker partner.[138] In the Basque Country from 2006 to 2013, an average of 49 SLs were created annually, providing jobs for 164 owner-workers and 213 non-owner-workers. With annually on average subsidies of EUR 355,917 for 377 jobs this breaks down into a subsidy of EUR 944 per job created. Non-profit organisations representing SLs, e.g., ASLE in the Basque Country, provide major on-going support for entrepreneurs – training, coaching and similar services are provided by ASLE at an average annual subsidy cost of EUR 817 per SL. In 2016 in the Basque Country somewhat more than one-third of SLs, i.e., 309 out of 883, were clients of ASLE and thus beneficiaries of this type of subsidy.

Share Ownership Plans – Share Purchase Plans have enjoyed tax incentives under certain conditions since 1996 which were specified in law RD 214/1999 extended in 2003 and are now stipulated in the Personal Income Tax Law (Law 35/2006, dated 28th November). Company shares or shares from a group of companies given to employees for free or at a discounted price are excluded from income tax assessment under the following conditions of Art. 42.3 f) Personal Income Tax Law: (i) the market value of the benefit at the time of acquisition does not exceed Euro 12,000 p.a., (ii) shares are offered within the framework of a regular compensation plan to all employees (broad-based plan). Shares given to employees under these circumstances will not be considered as payments in kind.[139] Law 28/2022 of 21 December 2022 on the promotion of the start-up ecosystem, introduced specific incentives for start-ups by raising the cap in the case of start-ups to EUR 50,000 p.a. relaxing above conditions to making the offer as part of the company's general remuneration policy contributing to employee participation but not necessarily being broad-based. Where personal income tax is payable, employers must withhold the applicable personal income tax for any relevant employee when the shares are acquired. If the value of the benefit exceeds EUR 12,000 p.a., the excess is also subject to social security contributions. Dividends are subject to a flat tax in the following brackets: below EUR 6,000, 19%; between EUR 6,000 and 50,000, 21%; and over EUR 50,000, 23% (all figures for 2023) At the moment of sale of the shares, the same brackets and tax rates as for dividends apply.[140] A tax exemption for the first EUR 1,500 of the benefits of the sale was abolished from January 2015 on.

Stock Option Plans are also linked to tax incentives as of 2003. In general, companies must withhold the relevant personal income tax on exercise. At the time the option is exercised, the difference between the market value and the exercise price is treated as employment income. For up to EUR 12,000 the same tax exemption as for share plans applies conditional that the stock option plan complies with the conditions

[138] The EEPO review (EC 2014) analysed a large variety of start-up subsidies to reactivate the unemployed existing in all EU Member States found an average rate of secondary employment of merely 0.2. Following the EEPO criteria Lowitzsch, Dunsch and Hashi (2017) found that in comparison SLs were superior in all indicators under consideration (all following figures from the Basque Country stem from this study).

[139] This distinction refers to taxation only, in labour law terms shares are payments in kind and their value cannot amount to more than 30% of the wage (payments in kind is only admissible if there is a law, a collective agreement or a pact between the parties authorising it; the employer can never unilaterally impose it).

[140] Since 1st of January 2013 gains or losses arising from sales held one year or less are not subject to the flat tax rate anymore, but subject to personal income tax, on the basis of a progressive scale.

of Art. 42.3 f) Personal Tax Income Law (see above); the amount exceeding EUR 12,000 can benefit from a tax reduction of 30% for "irregular incomes" if generated over more than 2 years with a cap of EUR 300,000 but allocated in a single tax period (art 18-2 Personal Income Tax Law). The tax base is calculated by using difference between the price paid on exercise by the employee (or the market value of the shares at acquisition if they were granted for free) and the price of the shares at the moment of the sale. No social security contributions are charged on the sale of shares.

bb) Profit-Sharing

Since the 1994-reform of the labour market (Law 11/1994 of 19 May) the Workers' Statute mentions the use of bonuses connected to the results and situation of the enterprise. Both cash-based and share-based profit-sharing plans are found, but cash-based profit sharing prevails. In many cases, profit-sharing plans contain financial indicators as well as performance-related indicators, so that they cannot be considered as genuine profit-sharing plans. Certain share-based plans ("performance shares") are linked to financial indicators. Stock appreciation rights, i.e., payment in cash or transfer of shares connected to the increase in the share value at the end of a determined period, are sometimes granted, but rarely.

cc) Participation in Decision-Making

Employee share ownership in Worker-owned Companies is directly linked to participation in decision-making. The highest authority in these firms is the shareholders general assembly in which all worker-owners have the right to vote. The board of directors cannot decide on liquidation, capital increase or reduction or board composition without general assembly consent. Each member of the Worker-owned Company has the right to be a candidate for election to the governing bodies of the company. In other plans, there is no direct connection between participation in decision-making and employee financial participation; in particular, financial participation plans cannot extend the existing rights pertaining to participation in decision-making.

10. France

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Paul Maillard, Marco Caramelli and Francis Kessler and those that contributed to the updates were in chronological order in 2014, 2018 and 2020 Jens Lowitzsch and Francis Kessler and in 2023 Francis Kessler, Nicolas Aubert and Jens Lowitzsch.

France has a long tradition of employee financial participation (EFP), especially different forms of profit sharing and collective savings plans. The first profit-sharing plans (*intéressement*) were introduced in 1959, but they did not become widespread until substantial tax incentives were introduced, and restrictions abolished in 1986. A second type of profit-sharing plans (*participation*) introduced in 1967 was compulsory for all companies with more than 100 employees, a number reduced to 50 employees in 1986. Additionally, in 1967, tax incentives were introduced for profit sharing and the first employee savings plan (*Plan d'Epargne d'Enterprise* (*PEE*)) adopted. Important improvements were enacted in 1994 for all types of plans, the most recent plan is a company-sponsored defined contribution scheme (*Plan d'Epargne-Retraite Collectif*

(*PERCOL*) introduced as *Plan Partenarial d'Epargne Salarial Volontaire* (*PPESV*) in 2001, renamed in 2003 and modified in 2019 designed to facilitate voluntary savings for retirement. Stock option plans were first introduced only for listed domestic companies in 1970 and extended to unlisted and foreign companies in 1987. Although the taxation of these plans became more favourable in 1996, they are still prevailingly used by executives and seldom broad-based. Since 1986 in privatisations, 5% of shares are reserved for employees and can be offered at a discount of up to 20% of fair market value, with the amount being increased to 10% in 2006. Moreover, mechanisms regarding retirement savings plans were harmonised by the creation of the *Plan d'Epargne Retraite* (*PER*) through the so called *Loi PACTE* and codified in Monetary and Financial Code.[141] The *PER* is constituted *of sub-categories* of company retirement savings plans, the *Plan d'Epargne Retraite Obligatoire* (*PERO*), compulsory company level plans substituting the so-called *Article 83* contracts, and the voluntary *Plan d'Epargne Retraite Collectif* (*PERCOL),* formerly *PERCO.*[142]

As of 2023, the most common five basic plans are: voluntary profit sharing (*intéressement*), compulsory profit sharing (*participation*), employee savings plans (*PEE*), and collective and individual company-sponsored defined contribution schemes (*PERCOL* and *PERO)*. Whereas *participation* is compulsory for all companies with 50 or more employees, the other plans are voluntary. All these plans are traditionally classified as profit-sharing plans, although *intéressement* can be linked to indicators other than profit or to non-financial indicators and savings plans are more a financial vehicle for profit sharing than genuine profit-sharing plans. The traditional classification is followed here but with the above reservations. Shares can be transferred to employees directly for free or at a discount, but distinctive share ownership plans are seldom. Employee share ownership generally emerges from profit-sharing plans when profit shares, employee earnings or employers' matching contributions are invested in company shares.

According to the French Ministry of Labour (Berger & Briand 2023), in 2020 23.7% of listed companies (1.3% of the total population of firms with 10 or more employees) set up an employee share ownership scheme with more than 600,000 employees benefitting from it of which 460,000 were granted free shares, either as standalone plans or in combination with PEE schemes. According to data from Acemo and the PIPA annual surveys of the French Ministry of Labour (Batut & Rachiq 2021) in 2018 9 mln., i.e., 50.9% of private-sector employees (excluding farming) were covered by at least one of the five afore mentioned basic plans with a strong correlation of coverage to enterprise size. The average amount received from intéressement, participation and employer's matching contribution in 2015 was Euro 2,200 with an average of total assets in plans of Euro 8,500 per employee (up to Euro 40,000 in high tech SMEs).

According to the data of the *Association Francaise de la Gestion Financière* (*AFG*)[143], between June 2021 and June 2022, the number of firms operating employee financial participation plans rose from 348,000 to 367,000 (+5.6%), especially among compa-

[141] Law no. 2019-486 of 22 May 2019 for corporate growth and transformation, called *Loi PACTE;* Articles L. 224-1 to L. 224-40 of the Monetary and Financial Code.

[142] The new law also created Plan d'Epargne Retraite Individuel (PERI), instead of the Plan d'Epargne Retraite Populaire (PERP) and the so called "Madelin contracts" dedicated to self employed.

[143] *AFG*, *L'épargne salariale poursuit sa dynamique grâce à une collecte record, et malgré un contexte de marché défavorable*, 10 November 2022.

nies with less than 50 employees (+6.1%); in the same interval, the cumulative value of assets (including funds invested, value of the remaining assets and capital gains from these assets) decreased from EUR 162.4 bln. to EUR 158.6 bln. due to unfavourable market effects (EUR 117.5 bln. in 2015; EUR 98.6 bln. in 2013; and 71.4 bln. in 2008) of which 36% were invested in shares of the employer company and 64% in diversified funds (overall 51% are held in shares). As of 1 September 2022, employees had deposited EUR 13,2 bln. in profit-sharing plans (a 19% increase compared to the first half of 2021) of which Euro 4.35 bln. contributed as *participation*, Euro 5.13 bln. as *intéressement*, Euro 1.46 bln. were voluntary payments of employees, and Euro 2.22 bln. were matching payments by the employing company to PEE and PERCO. In a context of high corporate profits in 2021, this rise was driven by a strong increase in *intéressement* (+23.6%) and *participation* (+34.7%), despite a slight drop in voluntary contributions (-4.9%). Created in 2019, PER continue to grow *with* 129,200 *firms operating* the new PERCOL (+20%) and 2.2 m*ln. participants* (+53%). Since the beginning of 2022, employees have saved EUR 1.5 billion PER for their retirement (only payments, excluding transfers), i.e., a 54% increase since 2021. in 15.2 billion (+21%). More than 60% of PER consist of PERCOL with a total of outstanding retirement savings of EUR 24.7 bln. in June 2022.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 55.6% (2013, 41.3%; 2009 35%) of companies with more than 10 employees in France offer their employees profit-sharing and in 2013 8.6 % (2009, 4.7%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 32.7% (2010, 26%) of French employees were taking part in profit-sharing while 8.1 % (2010, 7.7%) of them were participating in share-ownership schemes.

a) General Attitude

Successive governments have been developing employee financial participation schemes for the last 40 years. Legislation had to become more complex in order to prevent discrimination of lower-ranking employees in relation to management, on the one hand, and to prevent employee abuse of these schemes to avoid taxes, on the other hand. The main political goals are more equal distribution of wealth through participation in enterprise results, enhancing purchase power and solving social security problems, especially pensions. More generally, shareholders in France have a positive attitude towards financial participation with employee share ownership being viewed as a way to align the employees' and shareholders' and as an indicator of the employees' trust in the company.

The employers' associations support voluntary plans as these allow more flexibility in the planning of labour costs; they strongly oppose compulsory schemes, although they are compelled to implement them. The trade unions generally support all schemes that do not lead to a reduction of cash pay with only a few (e.g., *CGT*, *FO*) being sceptical; since 2002 *CFE-CGC*, *CFTC*, *CFDT* but also *CGT* are involved in the '*Comité Intersyndical de l'Epargne Salariale*' (*CIES*), an inter-trade-union committee for employee savings. If employee assets are to be invested, the trade unions advocate diversification on the grounds of less risk rather than investment in the employer company's shares. They oppose using the savings plans to reduce or replace pensions and fear a substitution effect with regard to wages. National employers' association and trade unions agreed on 10 February 2023 on a national inter-branch agreement on employee savings schemes to facilitate their development especially in firms with less of 50 employees.

b) Legal and Fiscal Framework

The major EFP plans *intéressement* profit-sharing, *participation* profit-sharing, employee savings plans (*PEE*), collective company-sponsored defined contribution voluntary schemes (*PERCOL)* or a mandatory company saving plan (*PERO*)[144] were introduced by various laws (i.e., Law on Profit Sharing of 1959, Law on Compulsory Profit Sharing of 1967, Law on Employee Savings Plans of 1967) which have been amended many times, most recently by the Law of 31 December 2006, the Law of 4 December 2008 and lately by the Law of 22 May 2019 (*Loi PACTE*).

Irrespective of the type of plan, an employee starting to work for the company must be informed of the plans in operation and the pre-conditions of participation. Company training of employees on financial participation issues is linked to tax incentives. The tax relief for the employer company is EUR 75 for one hour training of the employee, but not more than EUR 5,000 per company for two years. As confirmed by the 2006 amendment, plans must be approved by the Ministry of Labour prior to introduction. If the Ministry submits no objections within four months of submission of the agreement by the employer company, the plan is deemed approved. However, this provision does not protect the employer company, should the competent state authority contest the plan implementation.

Generally, benefits from EFP schemes under qualified plans were exempt from social security contributions; however, since 2009 a social contribution named "*forfait social*" was introduced with initially 2% which gradually increased to 12% in 2011 and with the Corrective finance Law for 2012 to finally 20%. The "Macron" Law[145] stipulated a reduced rate of 'forfait social' of (i) 8% for the first 'intéressement' or 'participation' agreement in companies with less than 50 employees, for 6 years; and (ii) 16% for "profit-sharing bonuses" paid into *PERCO* and for employer's matching contributions when at least 7% are invested in *SMEs*' shares. The "Macron" Law further introduced the possibility employer's matching contributions to *PERCOs* without any deposit from employees as well as the possibility for employees to allocate the equivalent of 10 days of paid leave to a *PERCO* each year with a ceiling of 30 days. As of the end of 2018 the Law "PACTE" the following modifications of the legal framework: (i) ESO savings plans are open to SMEs (Plan d'épargne en actions PME) with the maximum of employee contributions raised from EUR 75,000 to EUR 225,000; (ii) stimulation of employee share ownership introducing a reduced 'forfait social' for contributions when it is increased in case of acquisition of securities of the company by the employee and the establishment of a possibility of unilateral employer matching contributions for the acquisition of shares or investment certificates of the company. Additionally, it is worth mentioning the "Société par actions simplifiée" (SAS)[146] allowing for easier

[144] This plan evolved from the Plan Partenarial d'Epargne Salarial Volontaire (PPESV) and may be set up as an inter-enterprise (PERCOI) or branch (PERCOB) plan.

[145] Law no. 2015-990 of 6 August 2015 "for growth, activity and equality of economic opportunities".

[146] The SAS, created in 1994 (law of 3 January 1994), was for a long time reserved for joint ventures, which could only be formed between companies with capital of at least 1.5 mln. Francs.

transfer of shares without the need for a notarial certification (in contrast to the traditional limited liability company) thus reducing transaction costs often impairing implementation of employee share plans in SMEs. Sales of SAS shares are recorded by a simple transfer from one account to another, subject to a 0.1% registration fee.

aa) Share Ownership

(i) Grant of free shares (*Attribution gratuite d'actions - AGA*)

In France, it is possible to transfer free shares to employees. The issue of such shares in a capital increase must be authorised by the extraordinary general assembly and does not constitute a public offering. Pursuant to Articles L.225-197-1 and L.225-197-2 of the French Commercial Code, the following persons can be granted free shares: (i) salaried employees, or certain categories of salaried employees, of the company allotting the shares; (ii) salaried employees of companies or economic interest groupings, provided that at least 10% of the capital or voting rights of which is directly or indirectly held by the company allotting the shares (for shares traded on a regulated market additionally employees of companies or economic interest groupings having at least 50% of their capital or voting rights directly or indirectly held by a company which itself directly or indirectly holds at least 50% of the capital of the company allotting the shares); (iii) various members of the management under above mentioned conditions. However, shares may not be allotted to salaried employees and corporate legal representatives who individually hold more than 10% of the share capital, and a free allocation of shares shall not result in individual salaried employees and corporate legal representatives holding more than 10% of the share capital.

Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may acquire their own shares for their employees in the context of share-based profit-sharing scheme, share savings plan or stock option scheme; they may advance funds, make loans, provide security (financial assistance), with a view to acquisition of these shares by their employees also in subsidiaries or companies included in a group savings scheme.

Since 2006 such transfers are without a holding period and with a vesting period of initially four now reduced to two years by the "Macron Law" after which employees were liable to a 10% contribution on the value at the date of acquisition and benefit from tax allowances on capital gains on the sale. Social security contributions levied on free share options and free shares were reduced to 20% from 2018 on (a reduction from 30% already introduced in 2015 but abolished in 2017) for the employer within one year of the actual transfer of the shares (previously two years). The "Macron Law" also introduced an exemption from the 20% contribution for SMEs that have never paid out dividends. In short term savings plans it is possible to offer employees to subscribe to a capital increasing at a subscription price with up to 20% discount of the fair market value using their savings and company matching contributions. Introduced in 1986 (Law no. 86-912 of 6 August 1986 concerning the modalities of privatisations) in privatisation, 10% of shares (initially 5%) are reserved for employees and can be offered at a discount of up to 20% of fair market value; this rule was abrogated by presidential decree in 2014[147] but reintroduced in a slightly modified version in August 2015 by the "Macron Law".

Until 1 January 2018, financial income such as dividends, interest, and capital gains on the sale of shares earned by individuals was subject to French annual income tax at progressive rates (up to 45%), exceptional contribution on high income (up to 4%), and to social contributions (15.5% in 2017). The Finance Bill for 2018 changes this regime and introduces a 30% flat tax on financial income (interest, dividends, capital gains, carried interest, distributions and similar revenues), composed of a 12.8% income tax, and 17.2% social contributions (GSC – generalised social contribution and CRSD – contribution for the repayment of the social debt), further to the 1.7% increase in the GSC rate provided for in the Social Security Finance Bill for 2018. The contribution on high income however remains in place in addition to the 30% flat tax resulting in a maximum global marginal tax rate of 34%. Taxpayers are, however, allowed to opt for the former regime (i.e., application of the progressive income tax rates instead of the flat tax) then applicable to all their income.

(ii) Stock options (*Options sur actions*)

Two qualified share option plans are used in French enterprises: Under the *French-qualified share option plan*[148] employees receive the right to purchase or subscribe a share of their company at an option price set at the time of grant. There is no maximum value of shares for options. However, the grant of options is limited to one-third of the share capital of the French granting company. Such share option plans are very popular among French or foreign listed companies, but also among non-listed ones.[149] The grant is discretionary. For options granted after 28 September 2012, the spread is treated as a salary subject to the above-mentioned flat taxation on investment income (12.8% income tax plus 17.2% GSC/CRSD). No taxes or social security contributions apply at the level of the employer.

Introduced with the 2018 Finance Act the so-called *Bons de souscription de parts de créateurs d'entreprise (BSPCE)*[150] are warrants granting the employee the right to subscribe to newly issued shares at a specific future date for a fixed price. These plans are mainly used in growth companies that qualify as non-listed, small, and midlevel – normally with less than EUR 150 million market capitalisation. The company must have existed for less than 15 years, and the share capital must be held at least 25% by individuals, or by companies that are held directly at least 75% by individuals. Since the beginning of 2020, the scheme also applies to foreign start-ups. There is no tax obligation and social security contribution on grant or exercise of the warrant. At the time of sale, the employee is subject to income tax at 12.8% (30% if the employee works in the company for less than three years at the date of sale) on the gain re-

[147] Article 41 of the Ordinance no. 2014-948 of 20 August 2014 concerning the governance and operations regarding the capital of corporations with "participation"; art. 192 of law no. 2015-990 of 6 August 2015.

[148] Articles L. 225-177 to L. 225-186 of the French Commercial Code.

[149] If the company is listed, the exercise price for a subscription option cannot be less than 80% of the average quotation price during the 20 quotation days immediately preceding the grant Date. If the company is not listed, the option price must be equal to the value of the shares at the date of grant determined in compliance with the method provided for by the extraordinary shareholders' meeting on report from the corporate auditors.

[150] Articles L. 228-91 and L. 228-92 of the French Commercial Code.

alised at sale. Further, 9.9% social security contributions or optional the flat taxation on investment income (12.8% plus 17.2% GSC/CRSD; see above) apply.

(iii) "Labour shares" granting dividend payments

The SAPO is a qualified form of a public limited company (SA) established by law of 26 April 1917 extended in 1994 to simplified joint stock companies (SAS). Under the SAPO regime two types of shares are issued, i.e., regular shares and "labour shares" representing the work-force's contribution to the social capital considered in its entirety. Generally, these labour shares give the employees the right to participate in the appreciation of the company shares exclusively in the form of dividends during their employment with this right ceasing once they leave the company. The internal vehicle for collectively holding of the labour shares on behalf of all employees having been employed at least one year and distributing dividend payments to them the is a designated legal vehicle, the so called "cooperative society of the workforce" (Société Coopérative de Main-d'OEuvre = SCMO). The SCMO's statutes are integrated into those of the SAPO, it operates on a one-member-one-vote principle although the general assembly can stipulate different allocation rules. What make the SAPO different from profit sharing arrangements is that it awards voting rights proportional to the ratio labour shares / total shares the SCMO at the general shareholders meeting and representation on the board of directors both exercised by delegates elected by the employees. In practice the importance of SPAOs is limited with only a handful of companies operating them.

bb) Profit-Sharing

As pointed out above, all major plans are broadly regarded as profit-sharing plans. An employee may participate in different types of plans at the same time if several plans are offered by the company. The combination of different plans is advantageous from the viewpoint of taxation and, therefore, quite common. Profit-sharing accumulations can be transferred to *PEE, PERCOL* or to some extent to *PERO*[151] as well as – for profit sharing only – to a special blocked account in the companies' accountancy. Article L. 224-9 of the Monetary and Financial Code provides that a company operating a *PEE* must negotiate on the set up of a company's *PER* for all employees.

"*Participation*" profit-sharing plans are compulsory; the other three plans are voluntary. Profit sharing, both "*intéressement*" and *participation*, as well as *PERCOL*, *PERO* and *PEE* can be introduced on the basis of an agreement with employee representatives or by an unilateral decision of the employer. All plans must be broad-based (i.e., apply to all employees, with the exception of those with less than three months of service). A blocking period of five years (profit-sharing, *PEE*) or until retirement (*PERCOL*) in principle[152] is compulsory and linked to substantial tax incentives, which generally include exemption from personal income tax and social security contributions and the imposition of special social contributions of 9.9% (since 2018) with a correla-

[151] Employer's contributions to the *PEE* cannot be transferred to the *PERO*. Transfers of employer's contributions from employees' savings are conditional on every employee benefitting from the *PER*.

[152] The blocking period expires under certain personal circumstances of employees such as cases of early retirement, death, disability, overindebtedness, end of unemployment rights, expiry rights to unemployment insurance benefits, revocation, or non-renewal of the term of office as a director.

tive increase of the tax-deductible portion to 6.8%[153] (previously 8% and 5.1% deduction) for both employees and the employer company and on returns of 15.5% (instead of 32.5% without incentives). A Law of 28 June 2013 allows the early release by employees of their profit sharing, especially *intéressement* and *participation* during the period from the 1st of July 2013 to the 31st of Dec. 2013. The early release must be made conditional on collective bargaining agreement. Failing such agreement, the employer must authorize the exceptional release. Employees concerned can only spend the amount of profit sharing for buying goods or provision of services under the limit of EUR 20,000 per employee. The sums are exempted from personal income tax and social security contributions. On 12 March 2014, the French Administrative Supreme court (*Conseil d'Etat*) judged the amount of profit sharing both *intéressement* and *participation* constitute eligible expenditure for the research tax credit. Research tax credit is a government-funded aid to businesses investing in research and development.

Invested employee earnings and matching contributions of the employer company must be, and employee profit shares can be, transferred to mutual funds (*Fonds Communs de Placement d'Entreprise - FCPE*[154]), usually managed by assets management firms, i.e., branches of banks or insurance companies which invest the assets on the capital markets, in shares or bonds of the employer company or of several different companies. *FCPE*s are usually at enterprise level (whereas special rules apply to SMEs), they may be either diversified or non-diversified and while the company must offer the former the latter is optional. If the employer company is not listed, the *FCPE* is obliged to invest one-third of assets in marketable shares or bonds. There are however two exceptions: (1) *FCPE simplifié* – a mechanism guarantying the liquidity (e.g., by the enterprise) is installed or the company buys back 10% of its own shares or (2) *FCPE de reprise* – all assets belong to employees planning to participate in a leveraged buy-out. After the blocking period expires, the accumulated assets are paid out as a lump sum (all plans) or an annuity (only *PEE* and *PERCOL*).

Composition of the Diversified *FCPE*

(Limitations for certain types of assets / issuers in % of total value of the *FCPE*)

Max. 33%	**Min. 66%**
(0% for multi-non-listed SME fund) qualified assets of enterprise / group that grant their employees contributions in order to acquire shares in the *FCPE*	(100% for multi-non-listed SME fund) other qualified assets / investments: • max. 5% of each Issuer / Investment fund • max. 10% of diversified Investment fund investing in employer company

Composition of the Non-Diversified *FCPE*

(Limitations for certain types of assets / issuers in % of total value of the FCPE)

Min. 33% up to 100%	**Max. 66%**
(max 66% for non-listed SME fund) qualified assets of enterprise / group that grant their employees contributions in order to acquire shares in the *FCPE*	(min 33% for non-listed SME fund) other qualified assets / investments • max. 5% of each Issuer / Investment fund

[153] However, this deduction is only available when income is subject to income tax at progressive rates and not when income is subject to flat taxation.

[154] Articles L. 214-164 et L. 214-165 of the Monetary and Financial Code.

In the following, individual plans are presented:

Compulsory Profit Sharing (*participation*) is compulsory in all companies with 50 or more employees[155], while voluntary in smaller companies. However, not all such companies have introduced profit-sharing plans in practice, especially if they cannot pay the minimum amount of profit share due to plan participants according to the compulsory formula given the financial results. The compulsory formula for the special profit-sharing reserve is as follows: 1/2 x (net profit – 5% of share capital) x total wage bill/value added. In addition, an additional bonus (the so called "working dividend") can be paid according to the general rules of the company's profit-sharing plan if profits are substantially higher than expected. The maximum annual amount per employee is equivalent to 75% of the annual ceiling for the calculation of social contributions, e.g., for 2014, Euro 28,161.

If employees do not decide to collect or invest the amount of profit sharing, the Law adopted on 9 November 2010 instituted an automatic investment of 50 % of the total amount of *participation* for the savings plan *PERCOL* and *PEE*. The collective agreement related to participation must provide a savings plan in order to be exempted from tax income and social security contributions. The *participation* plan can be introduced on the basis of an agreement with the trade unions or with the workers' council or with the approval of a two-thirds majority of employees. Since 2006, profit sharing became a compulsory part of collective agreements of the economic sectors which then may be applied to individual companies on a voluntary basis. Since the 2008 amendment each year employees may opt to have their profit share paid out for the current year. If they do not, their profit share is automatically deferred and, during the blocking period, transferred either to a special blocked account of the company (CCB) or to a mutual fund (*FCPE*); however, special blocked accounts were abolished by the *PACTE* Law. If deferred, the benefit is exempted from personal income tax and regular social security contributions; but *Forfait social*[156], up to 16% or 20%, and GSC/CRSD apply instead. The interest or returns are subject to a special social contribution of 17.2% and, if paid out during the blocking period, income tax (if the interest or returns are accumulated, they are exempt from income taxation).

Voluntary Profit Sharing (*intéressement*) is voluntary, and its formula is free. It can be linked to indicators other than profit, such as reduction of losses, fewer work injuries or other performance-related indicators, but it is usually based on financial indicators. The maximum amount is the same as for the profit-sharing plan. It is introduced by a three-year agreement with the trade unions or the workers' council, which is not automatically renewable, or on the basis of approval by two-thirds of all employees. The amount exempt from social security contributions (except the special flat social contribution of 9.9%), but subject to full personal income tax, used to be paid out to the employee immediately; The "Macron" Law aligned the allocation mechanism nudging employees to invest in a *PEE* or *PERCOL* by making this the default solution restricting pay out to the express will of the employee.[157] The maximum annual

[155] It is worth noting that with the *PACTE* Law, the assessment of the number of employees is ruled by Articles L. 130-1 and R. 130-1 of the Social Security Code (previously Articles L. 1111-2 and L. 1111-3 of the Labour Code); thus, assessment is now made on five years, and no longer three years.

[156] Forfait social does not apply for companies with less 50 employees.

[157] In 2014 of a total of Euro 7.236 billion paid out under "intéressement" only about 45% were invested against 70% under "participation".

amount per employee is equivalent to 50% of the annual ceiling for the calculation of social contributions, e.g., for 2014, EUR 18,774. However, if the profit share is invested for more than five years in a company savings plan (*PEE*) or until retirement in a long-term savings plans (*PERCOL*) income tax exemption applies and the fiscal treatment is as described above.

The "profit-sharing bonus" ("*prime de partage des profits*") is a bonus introduced by the Corrective finance Law of Social security for 2011. This bonus is directly linked to company dividends. The key article of the Bill ("article 1") provides that all French commercial companies with more than 50 employees must negotiate the principle and modalities of a bonus to be paid to their employees at the time they would distribute dividends to their shareholders the amount of which per share would be higher than the average amount of dividends distributed during the previous two years. In the same conditions as apply for *participation*, the share of profits can be modulated, different from one worker to another and constitute a compulsory part of collective agreements. This profit sharing is exempted from social security contributions under the limit of EUR1,200 per worker and per year. The Law states that the failure to enter into the mandatory process of negotiation will be qualified as a hindrance tort and subject to the penalty provided by article L. 2243-2 of the French Labour Code.

Savings plans (*PEE*, *PERCOL*, and *PERO*) are voluntary and their formula is free. The holding period is five years for *PEE* and until retirement for *PERCO.* An employee can transfer part of his earnings and/or his profit share up to a ceiling of the total amount of 25% of his gross earnings to the savings plan. The company is entitled (but not obliged) to match the employee contribution with an amount up to 3 times higher. The maximum matching amount (*abondement*) was originally expressed in absolute figures, but, since 2006, it is expressed as a proportion of the annual social security ceiling. The maximum matching amount is higher for the investment in company shares than for diversified investment, and higher for *PERCOL* (ca. EUR 6,358 in 2018) than for *PEE* (ca. Euro 3,179 in 2018) and may reach up to ca. Euro 9,000 cumulative. The matching amount is generally exempted from personal income tax and social security contributions but is subject to a special social contribution of 9.9%. However, the amount of the matching contribution exceeding the ceiling for *PEE* in *PERCOL* is subject to an 9.9% flat tax, and the amount exceeding the ceiling for *PERCOL* is subject to full personal income tax and social security contributions for the employee and the employer company.

The "Macron" Law of 2015 reduced the social contribution rate for payments into *PERCOL* from profit sharing and incentive plans from 20% to 16%. However, to be eligible for this 16% social contribution rate, the collective pension plan must fulfil two criteria: (i) the collective pension plan provides for management by a fund manager by default; (ii) at least 7% of the shares in the share portfolio must be eligible for investment in a *PEA-PME* share savings plan, a French scheme for investing in shares of small and medium-sized companies (article L221-32-1 of the French financial markets code. As above the tax on interest and returns is a flat tax of 12.8%. After the blocking period expires, the amount may remain in the *PEE*/*PERCOL* with the same fiscal advantages, can be paid as a lump sum or an annuity or invested elsewhere. In large companies, leveraged savings plans are frequent; furthermore, employees can use an interest free bank loan to purchase up to ten times more shares than those acquired with their own earnings against a share in capital gains. Since Law adopted on 9 November 2010 related to retirement and clarified by the ministerial circular dated 19

April 2012, employees who do not benefit from a time-saving account (*CET*) are entitled to transfer part of their rest days to *PERCO* under the limit of five days per year in application of Article L. 3334-8 of the Labour Code.

cc) Participation in Decision-Making

Most major employee financial participation plans can be introduced only on the basis of an agreement with the trade unions or the workers' council, so that employee representatives generally participate in negotiations on the design of the plans. In addition, the workers' council is usually consulted before the agreement is signed and informed of the implementation of profit-sharing plans, both *intéressement* and *participation*. For savings plans, a special supervisory body elected by the workers' council must be consulted and informed. Mutual funds are managed by a supervisory board consisting of one-half employee representatives, elected by the workers' council for two years, and one-half employer representatives. If the assets are invested in company shares, the chairman must be an employee representative. In practice, this body is inefficient, since the management decisions are taken at face value by the bank or insurance company and generally accepted by the supervisory board. If employees own more than 3% of the equity capital of a listed company, they must have at least one representative on the company board who must be elected. The mandate of the representative ends upon cessation of employment. All companies have to amend their statutes accordingly at the first extraordinary meeting after the publication of the law. However, this provision does not play a major role in practice, since employees have a larger share in a very small number of companies.

Back in 1990 the Ethics Commission drafted and published an initial code of good practice for investment funds, which applied to the entire industry. The *AFG* then drafted rules for management mandates and revised the rules for investment funds periodically to keep pace with changes in the industry and the growing diversity of products. In June 1999, after analysing the specific issues for FCPEs. The provisions, approved by the market regulator, apply to all FCPE management companies. In December 2012, a new version of the code has been published. 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 1 January 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.

11. Croatia

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Darko Završak, Ratko Brnabić and Srečko Goić, those that contributed to the updates were in chronological order in 2014 Ratko Brnabić and Marko Žmirak and in 2020 and 2023 Jens Lowitzsch and Ratko Brnabić.

Even though the economic and political system of Croatia, while a part of the former Yugoslavia, was based on employee participation for more than 40 years, its role today is relatively minor. Employee stock ownership created in the early stages of privatisation is steadily diminishing with the previously strong position of employee owners being gradually weakened. By 1995, small shareholders owned (bought or subscribed to) about 20% of the nominal value of the enterprises privatized during this first stage. During the second (1995-1999) and third (1999-2002) stages of privatisation, support for employee participation ceased and employee ownership began to decline, falling to only 12% in 1998 with the decline continuing during the following. Nevertheless, ESOPs and ESOP-like employee ownership schemes modelled around the US ESOP were broadly discussed in the context of the reform of the privatisation law in 2006 and despite a continuing lack of regulation in some cases implemented, although their number remained small (Mrak et al. 2013). In a study from late 2003, “organized programmes of larger involvement of employees in the enterprise ownership” were found in 9.4% of enterprises (52 out of the 552 total surveyed)[158]; employees owned 10% of shares in 68% of enterprises reporting employee ownership, they held a majority share (over 50%) in 12% of enterprises while only in 5% of firms did they own more than 90%.[159] Profit sharing is still scarce and there is no mention in legislation, legal documents or collective agreements. However, the IT industry is likely to give a new impetus to the development of ESOPs in Croatia due to the shortage of qualified personnel led by Silicon-Valley-type IT companies like Infobip and Span.[160]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 46.4% (2013, 20.1%; 2009, 4.6 %) of companies with more than 10 employees in Croatia offer their employees profit-sharing and in 2013 3.4% (2009, 3.7%) they offer some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU-28, shows that in 2015 12.6% (2010, n.a.) of Croatian employees were taking part in profit-sharing while 2% (2010 n.a.) of them were participating in share-ownership schemes.

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158 Tipurić (2004); in many cases analysed in the study, ESOP programmes were stopped or completed, while some programmes had only a few ESOP characteristics in their design.

159 See also the PEPPER III Report, pp. 118 f., 123 (Table 1).

160 10 % Infobip shares have been owned by employees since 2017, when the IT company decided to implement an ESOP that is currently expanded to all employees; Span employees also own shares, but they acquired them when the company was listed on the Zagreb Stock Exchange. See https://www.tportal.hr/biznis/clanak/novi-val-radnickog-dionicarstva-u-hrvatskoj-sto-se-krije-iza-modela-koji-su-proslavili-divovi-silicijske-doline-20220926, login 20 May 2023.

a) General Attitude

Trade unions had no part in the design of privatisation models, nor did they promote a stronger position for employees.[161] Not until the first two stages of privatisation had been completed did some unions and union leaders begin to advocate employee ownership as a means of privatising remaining state-owned assets, as well as for restructuring distressed enterprises, and to propose models for doing this. Employees are represented by numerous trade unions organised at different levels for various purposes. Employers, represented by the Croatian Association of Employers, have a stronger position in most issues involving the interests of employers and employees. The fact that a single organisation represents employers while employees are represented by many only partly explains this disparity in power. On the issue of employee financial participation, employers and their organisation remain publicly non-committed, neither positively in favour nor adamantly opposed. As of 2016 both management and trade unions in firms still eligible for privatisation and those privatised with a high share of state ownership advocate more employee financial participation (EFP) through employee share-ownership schemes (Pološki Vokić et al. 2016).

Croatian governments did not support employee ownership in privatisation beyond the first stage. While this policy was entirely consistent with the ideological orientation of the right-wing governments in power during the first decade of transition, it is less evident why the Social Democratic governments, in office from 2000-2004, made virtually no changes in the area of employee participation. A possible exception of this attitude was the period around the reform of the privatisation law around 2006 but successive governments have not shown any serious intention of introducing measures to promote, or at least to regulate, EFP. Some business spokesmen, representing firms that already have employee ownership in some form, have publicly advocated greater employee participation in the privatisation of the remaining state shares. They have also requested clearer regulation and support of existing schemes. Although these requests are currently being discussed, definitive feedback by either the government or political parties is still pending. The Croatian Government started showing more interest in regulating the issue of employee share ownership since 2010 entering into a dialogue with social partners, primarily unions of employees of joint stock companies where the state holds majority of shares; however, no concrete actions have been undertaken since.

The most recent dynamic development of start-ups in particular in the IT industry created new momentum for the development of ESO and in particular of ESOPs supported by American Chamber of Commerce in the context of their recommendations for the tax system reform in 2023.[162] The main issue is the unequal treatment of the taxation of income from appreciation of employee shares for listed joint stock companies and privately held limited liability companies, with the former benefitting of a 20% tax rate whereas the latter are burdened with a high progressive income tax rate, a key argument being the valuation problem of shares in privately held firms. A similar progressive position was included in the Strategy for Digital Croatia for the period until

161 The Statute of Parliament 2000 authorizes social partners to participate in the work of Parliamentary committees, thus giving them direct influence over the drafting of laws dealing with such matters as employment and industrial relations.

162 https://www.amcham.hr/storage/upload/doc_library/amcham_stajaliste_preporuke_za_reformu_poreznog_sustava_u_2023_13193.pdf, login Aug. 2023.

2032 (Official Gazette 2/2023 of 4 January 2023) postulating favourable taxation of income from bonuses in the form of stock/share and stock option awards to make the system more competitive compared to the relevant industry in other countries in Central and Eastern Europe and to retain key employees in Croatia. Both positions are expected to spur legislation more favourable for ESO schemes in the near future.

b) Legal and Fiscal Framework

Employee financial participation is at present not explicitly regulated. Privatisation legislation in the past, however, has supported employee share ownership. Various schemes of financial participation, including profit sharing and ESOPs[163], occur in individual firms despite the absence of state regulation. Amendments to the Privatisation Law were expected for almost a decade to bring ESOPs into the regulatory fold.[164] However, until today the legislator failed to establish a comprehensive legal framework for employee share ownership. Below we give more details on the laws enacted after the Law on privatisation ceased to be valid.

aa) Share Ownership

In the context of a 2019 general taxation reform and 2020 amendments the tax burden for employee shares and employee stock options was aligned with that for capital gains tax: Previously the benefit from free or discounted shares were taxed as personal income from employment at a tax rate of 24% up to EUR 47,780.28 and 36% above this amount; as of January 2020, (Art. 68. Income Tax Act)[165], it is taxed as capital income at a rate of 20% while to dividends and the proceeds from the sale of stock a capital gains tax of 10% applies; however social security contributions incur. Income received by executives and regular employees from the allocation of treasury shares is determined in the amount of the market value or the difference between the market value of the value of the allocated shares and the compensation paid, if the shares are acquired at a discount. However, the Income Tax Act (Official Gazette No. 115/16., 106/18., 121/19., 32/20., 138/20., 151/22.) regulates the tax obligations arising from income from appreciation of employee shares for listed joint stock companies and privately held limited liability companies differently, with the former benefitting of a 20% tax rate whereas the latter are burdened with a high progressive income tax rate (Jelčić et al. 2008: 198-200).

Privatisation (1991, 1996, 2005) – The Croatian Law on the Transformation of Enterprises Under Social Ownership 1991 (Transformation Law) gave employees, including managers and former employees, the right to buy shares at a discount proportional to their years of employment, starting at 20% and adding one % for every working year up to a maximum of 60%. Employees who paid for their shares in cash were given an additional discount of 10%. Payment could also be made in instalments spread over five (later prolonged to 20) years. After having paid five % of the total price, the

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[163] In this context, the term ESOP is applicable to all schemes where employees make an offer to buy shares of the company, the purchase is funded by special credit, and a new company is formed in order to administer the shares.

[164] Trade unions in former state enterprises like the petrol company Uljanik, have been supporting a dedicated law on employee ownership for long (see https://www.braniteljski-portal.com/procitajte-upravljacka-prava-dionicara-dionice-i-radnicko-dionicarstvo-u-uljaniku, login 5 Oct. 2018).

[165] From January 2020 on an income tax reduction of 100% to persons up 25 years and 50% to those between 26 and 30 years is granted up to EUR 47,780.28 of their annual income from self-employment (Art. 46. para. 2. of the Income Tax Act).

employee received all his or her discounted shares outright. Amendments to this Law in 1993 entitled employees to buy no more than 50% of total shares with a value not to exceed one million Euros. One-third of the remaining shares were transferred to state pension funds and two-thirds to the state Privatisation Fund to be publicly tendered at market value. Since privatisation was partly reversed in 1999, many shares of state enterprises still remain to be privatised. After the bankruptcy of 22.2% of all privatised firms, the remaining assets were transferred back to the state Privatisation Fund. By 1999, 379,030 out of 641,152 sales contracts of employees who were buying discounted shares in instalments were in default. Recognizing that the objectives of privatisation had not been achieved, a new law, the Law on Revision and Transformation and Privatisation, came into effect on 16 May 2005. The privatisation of 1,556 enterprises was investigated under this law; procedural irregularities were discovered in all but 75 cases.

Laws on management of state property – The Law on management and disposal of property owned by the Republic of Croatia (Law 94/2013 abrogated in 2018) regulated disposal and management of state ownership not defined by special provisions. The Law instated the authority of management over real estate and strategic companies by the State Office for management of state property (DUUDI), executed by the Centre for restructuring and sale (CERP). The most important provision relating to employee share ownership was Art. 47 para. 2 authorising the Government to sell up to 25% of stock in companies to their employees within an employee share ownership plan with the exception of companies declared of special strategic interest. Following the setting up of the State Property Ministry at the end of 2017, in May 2018 the Law on State Property Management (Law 52/2018) replaced the former regulation, thereby abrogating Art. 47 containing provisions concerning the preferential sale to employees. Although, in a decision of 22 May 2018 – merely eight days before Law 52/2018 came into force – the Constitutional Court ruled Art. 47 para. 2 as constitutional putting into question its abrogation[166] this ruling had no effect, and the new Law on State Property Management does not mention workers any longer.

Employee Shares (2003) – According to Art. 233 (2) of the 2003 Company Act from (CA), a company can issue special employee stock with a value not exceeding 10% of registered capital. Employee shares are non-voting until fully paid for. Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may: (i) buy back own shares within the same limits with the decision of the general assembly concerning the acquisition of own shares lasting 5 years (Art. 233 (2); instead of 18 months as previously); (ii) may provide "financial assistance", that is, advance funds, make loans, provide security, (Art. 234 CA exempts the company from the general prohibition against borrowing in order to acquire its own stock), with a view to acquisition of these shares by their employees provided that a reserve is created so as not to endanger equity capital by the sale of shares to employees; (iii) decide on a "conditional capital increase" for the purpose of fulfilling the employee acquisition right (Art. 313 CA). Since employees, including those who became shareholders during the

166 Decision U-I-3250/2014; claimant argued the norm violated, i.a., constitutional guarantees for entrepreneurship,https://www.usud.hr/sites/default/files/doc/Izvod_iz_zapisnika_7._sjednice_Suda_22.5.2018.pdf, login 25 September 2023.

course of privatisation, are usually minority shareholders, provisions protecting this class are also relevant.[167]

Stock Options – From 2020 on the taxable benefits from share option schemes for employees are reclassified from employment to capital income and taxed at a rate of 20% plus city surtax if applicable (versus income from employment that can fall within the 36% tax bracket) at the moment of exercise. The income reclassification applies also to employees' share options schemes of related domestic and foreign entities. Capital gains from the option purchase of shares are determined as the difference between the market value of the share and the price of the shares determined by the option contract, if the market value is higher at the time the right from the option is exercised. The exercise of option is considered the date of purchase of shares by the option holder or the date of transfer of the right to purchase shares of the company to a third party.

bb) Profit-Sharing

There is no legal regulation of profit sharing and hence no incentives. Although individual enterprises offer monetary incentives, especially to managers, bonuses are usually not linked to company profit. They are regarded as wage compensation and taxed according to the personal income tax rate.

cc) Participation in Decision-Making

Employees of a private company employing at least 20 regular employees have the right to a voice in decisions which affect their economic and social rights and interests, under conditions and procedures prescribed by the Labour Law. Employees of such companies are entitled to elect one or more representatives to the employees' council by means of a free, direct and secret ballot. The function of the council is to protect and promote the interests of employees vis-à-vis the employer. If no employee's council has been established, the trade union assumes its powers.

12. Italy

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Domenico Paparella, Emanuela Di Filippo and Mirella Damiani, those that contributed to the updates were in chronological order in 2014 Roberta Caragnano and Andrea Borroni and in 2020 and 2023 Jens Lowitzsch and Andrea Borroni.

Employee financial participation (EFP) in Italy emerged particularly in the context of production process restructuring and redesign of human resource management during the mid-1980s in firm level bargaining agreements (e.g., Olivetti 1984, Fiat 1982 and

[167] A three-quarters majority of votes representing equity is required to change the Articles of Association. Shareholders holding at least 10% of the equity have a voice in decisions made by the General Meeting on liability of members of the Board of Directors or of the Supervisory Board (Art. 273 CL); they can also lodge a claim at court to remove a board member for cause. Shareholders owning at least 5% of shares can call the general meeting. A majority shareholder who holds at least 95% of total shares can buy out minority shareholders, at fair compensation, if the general meeting so resolves (Art. 300 CL).

1986, Mondadori 1987 and Unipol 1986). Trade unions seeking more power and legitimacy demanded workers to have an important role in shaping these agreements at the company level. At the same time the so-called Marcora law (no. 49/1985) was enacted to encourage the establishment of cooperatives, in line with Italy's prevailing cultural approach advocating such models of financial participation. Preferential conditions for employee share ownership were implemented during privatisations of individual enterprises in the early 1990s with Decree Law no. 333/92 on transformation of state-owned enterprises such as ENI, IRI, ENEL into private firms permitting the preferential sale of shares to employees in the context of initial public offerings.[168] Tax incentives for employee financial participation were introduced in the late 1990s. In contrast to tax incentives in other countries, they are applicable also to smaller firms, i.e., limited liability companies. In July 2010, the Italian Ministry of Labour presented the so-called *Code of Participation*[169]*,* to include all relevant legal regulations from different legal sources governing EFP as well as documentation of the Parliament on the draft laws submitted by social partners; however, this framework regulation was not continued, and the last legislative initiative discussed in the senate in December 2022 is a draft law submitted in 2018.[170]

Employee share ownership was used as a protective mechanism against hostile takeovers, e.g., by Gucci in 2000[171], and to buttress the link with the employees in "Umbra Cuscinetti" where in 2008 37 employees joint the shareholder' structure (each of them investing a minimum of 40,000 euros). More recently, Luxottica promoted corporate employee participation plans (*Boost*) in 2019 that were renewed in subsequent years, Campari launched an employee share ownership program open to all the workers in 2022, and Generali Group linked a preferential share offer to the achievement of ESG decarbonization goals related to the reduction of emissions in 2023.[172]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 28% (2013, 16.8%; 2009, 3.4%) of companies with more than 10 employees in Italy offer their employees profit-sharing and in 2013 3% (2009, 3.9%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 5.1% (2010, 8.1%) of Italian employees were taking part in profit-sharing while 2.1% (2010, 2.1%) of them were participating in share-ownership schemes.

[168] Other examples of privatisations involving employee share ownership in this period were Credito Italiano, Banca Commerciale, IMI, INA, AEM SpA, Dalmine and Italian Telecom (with a 14% stake) at the beginning of the 2000s.

[169] http://www.lavoro.gov.it/Lavoro/PrimoPiano/codice_partecipazione.htm; for details Caragnano (2011).

[170] See https://www.senato.it/leg/18/BGT/Schede/FascicoloSchedeDDL/ebook/48709.pdf, of 17 December 2022, DDL S. 106 - Senato della Repubblica; proposing amongst other free associations of workers for the use of non-speculative financial instruments to invest proceeds from EFP.

[171] Gucci management and the sectorial trade unions signed an agreement offering the purchase of shares to all employees using their end-of-service allowance and their performance-related pay and establishing an employee shareholder association. See A. Borroni (2017).

[172] See "on the Share Plan for Generali Group employees based upon financial instruments" https://www.generali.com/doc/jcr:1a7243a5-6297-4b75-af6c-d9a976c7413d/Share%20Plan_18_4.pdf/lang:en/Share_Plan_18_4.pdf

a) General Attitude

Trade unions and employer representatives alike have mixed views of financial participation. Trade unions agreed in principle on the positive effects of profit sharing but were divided over employee share-ownership schemes. Of the major trade unions, CISL is in favour of share schemes, regarding them as a means to expand participation in decision-making; UIL, on the other hand, believes it is not the function of trade unions to promote share ownership. CGIL, however, is traditionally opposed to share schemes; its position is that employee financial participation is better realised through special complementary funds ("Fondi di previdenza complementare"). Employer associations were similarly divided. Confindustria wants to leave the matter entirely to individual enterprises without taking a stand. The organisations representing SMEs (Confartigianato, Confcommercio) are more open to financial participation if it takes the form of funds to promote regional development of SMEs.

Under the Tripartite Agreement of 1993[173], new rules on decentralised bargaining and income policy were adopted but corresponding tax incentives for promoting EFP were not introduced until 1997 aiming to control wage inflation. Renewed bipartisan interest led to the adoption of Law no. 126/2008 flexibilising compensation schemes and increasing tax incentives. In January 2009 Cisl, Uil and Ugl (only CGIL abstained) signed the Framework Agreement of 22 January 2009 with employers and the government on a new system of collective bargaining[174] and an Interconfederal Agreement of 15 April 2009. The Agreement of 24 April 2013 between CONFINDUSTRIA, CGIL, CISL, UIL called on the government to reduce the tax burden on profit sharing and to cover small businesses without union representation. The 2016 program of the Ministry of Economy and Finances (DPEF) introduced a general yearly threshold of EUR 2,500 per employee for profit sharing and productivity incentives. Despite increased interest, other types of participation, e.g., employee shareholding, do not have the unanimous support of employer associations and trade unions. UGL that publicly endorsed workers' financial participation and the acquisition of companies in distress by their employees stands apart. All political parties agree on introducing fiscal incentives to encourage company-level agreements linking increases in remuneration to increased productivity. At the beginning of 2023, CISL promoted a popular initiative bill to encourage social partners involvement in strategic decisions and to define national and second-level contractual initiatives including financial participation. The economic-financial part of the bill inter alia concerns profit-sharing and share-ownership schemes. Finally, five bills aimed at fostering new forms of worker participation in the management of enterprises, also increasing their powers of control and information, are currently under discussion in the combined Finance (VI) and Labor (XI) Committees of the Chamber of Deputies.

b) Legal and Fiscal Framework

Although Art. 46 and 47 of the Italian Constitution recognises the right of workers to have access to share investments in the main production industries, legislative support of EFP is only modestly developed. Special legislation, including tax incentives, exists

[173] V. "Protocollo sulla politica dei redditi e dell'occupazione, sugli assetti contrattuali, sulle politiche del lavoro e sul sostegno al sistema produttivo" of 13 July 1993.

[174] See T. Treu, L'accordo per il nuovo modello contrattuale, in GL, 2009, 5, 12.

for profit sharing, employee share ownership and stock option plans.[175] Corporate governance rules that apply to Italian listed companies are set out in Italian Legislative Decree No. 58 of 24 February 1998 (Decree No. 58/1998, as amended by Decree No. 6 of 17/1/2003). The fiscal regime for EFP is now regulated by the 2017 program of the Ministry of Economy and Finances (2017 DPEF) as interpreted by the *Agenzia delle Entrate* in Circular N. 5/E, of 29 March 2018 permitting amongst other incentives in the form of company loans, contributions to private retirement funds (tax exempt up to EUR 8,165) and shares of the company. Art. 184-bis, let. C, of the 2017 DPEF introduced a tax exemption for contributions to acquire shares of the employer company or share-based profit sharing of up to 5,066 Euros. With regard to employees with an annual salary not exceeding EUR 80,000 the employer may grant a bonus of up to EUR 3,000 available for any kind of participative benefit with the ceiling being increased to EUR 4,000 for broad-based schemes (Art. 1, par. 189, Law 208/ 2015 and Art. 4 of Decree n. 50/2017); apart from a PIT exemption under this regime the employee is exempted from social security contributions, which the state covers in order not to reduce the initial contribution.[176] The aforementioned incentives are subject to the adoption of a plan whose features are determined by Art. 51 of Legislative Decree n. 81 of 15 June 2015 and specified by Art. 1, comma 189 of Law 28 December 2015, n. 208 and specified in the Inter-ministerial Decree 25 March 2016. In particular, it is required that by means of collective agreements ("Piani di risultato") aiming at more efficient outcomes in terms of productivity, quality, efficiency, and innovation the financial participation of employees in the economic results of these measures is defined. The results must be monitored and verified according to a numeric indicators or predetermined indices. (Art. 2,2 D.M. 25 March 2016).

aa) Share Ownership

Pursuant to the Law no. 262 of 28 December 2005, quoted companies that intend to provide share or stock option plans to employees, directors or consultants need the approval by the shareholder meeting; they also must communicate information on the plan to both the Italian Securities and Exchange Commission, Consob, and to the public authorities. In general, the sale gain is taxed with 12.5% CGT instead of 40% provided that the transfer regards less than 2% of the votes or 5% of the capital in quoted companies or respectively less than 20% of the votes or 25% of the capital in non-quoted companies; in cases of losses the amount can be carried forward as a tax credit.[177] Since 1999, free shares are not considered income from employment. Pursuant to 2017 DPEF under these plans up to EUR 4,000 per year of the value of the shares or stock options granted free or discounted to employees (the benefit, i.e., the difference between value and price at grant) is exempt from personal income tax and social security contributions if all the following conditions are met: (1) the plan is addressed to all employees of the company; (2) the shares are issued by a group company; (3)

[175] EFP plans for Italian listed companies and the controlling and/or controlled companies are subject to corporate actions and disclosure and specific regulations for executive compensation companies from the financial sector exist.

[176] Circular n. 28/E of 2016 expressly states that these provisions are aimed at increasing the motivations of the workers and encouraging the sharing of the productivity processes.

[177] A new 10% additional tax is applicable to executives working in the financial sector with respect to bonus income or income received on the exercise of stock options if that income is more than three times the rate of the manager's fixed salary (article 33, Law Decree No. 78/2010).

the shares are held by the employees for at least three years from the date of grant.[178]

Share Plans – The Italian Civil Code (hereinafter referred to as CC) regulates discounted employee shares in joint stock companies with a holding period of 3-5 years. Pursuant to Law no. 112/08 the value of the discount in principle is deemed income and subject to personal income tax and social security contributions accordingly; the same applies to shares transferred in lieu of remuneration. According to Art. 2441 CC, the pre-emptive right of shareholders can be suspended for up to 25% of newly issued shares by majority vote of the general assembly if these shares are to be transferred to employees. To facilitate the acquisition of shares by employees, the law permits a company to advance funds and to make and secure loans, with a view to acquisition by employees of the company, conditional that this "financial assistance" is within the limits of distributable reserves (Art 2358 §8 CC). Furthermore, Art. 2349 and 2351 CC permit the issuing of special "employee shares" in capital increases with specific rules for form, tradability, and rights (see below c)) conditional that permitted by the company's bylaws and approved by an extraordinary shareholders meeting.[179] The implementation of such plans may require the adoption of specific provisions restraining the transferability of stocks allocated to employees. In practice companies often to recourse to a mixed form of stock allocation, namely free-of-charge shares combined with the possibility to share purchase offers reserved for employees as a protective mechanism against hostile take-overs.[180] The allocation of free-of-charge stocks can involve either the company's employees or the employees of associated companies.[181]

Privatisation – Pursuant to § 381 of the Law no. 266 of 23 December 2005, the bylaws of companies in which the state has a significant ownership position may contain categories of shares or options, to be transferred free of charge to all employees or against payment to individual employees in order to facilitate the privatisation process. The criteria for the calculation of the issue price are stipulated by the Minister of Justice in cooperation with the Minister of Economy and Finance and Consob (the Italian Securities and Exchange Commission). The right of the owners of such shares or stock options to participate in profits and to residual assets in the case of liquidation is limited.

Stock Option Plans – Specific rules regarding stock option plans were introduced in 1997 under Art. 48 para. 2 g) and g-bis) ITL as amended by the Decree Law 314/97. Decree Law 505/99 exempted the increase in value between grant and exercise of broad-based options from personal income tax and social security contributions (but not IRPEF contributions) with new conditions for the tax exemption introduced by Decree Law no. 262 of 3 October 2006 (the so-called "Financial Law" converted into Law no. 286/2006): (1) minimum vesting period of three years from when they are as-

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178 However, no blocking period has to be observed if the shares are transferred ex lege (Tax Agency decision no. 97 of 25 July 2005).

179 Pursuant to Art. 2349, §2 CC this includes the issuing of financial instruments, other than shares, bearing financial rights or even administrative rights, with the exclusion of the right to vote in the general shareholders meeting.

180 Pirelli Spa has resorted to this form of financial participation, allocating stocks to all employees, and granting specific benefits to its senior managers without setting any limitations or constraints in relation to shareholders' voting rights.

181 As acknowledged by the *Testo Unico* 58/1998 concerning the employees' subscription to listed companies' stocks.

signed; (2) at the moment when the employee exercises the option or the share is accrued, the company is listed on the market[182]; (3) a minimum holding period of five years from date of exercise. Furthermore, no tax or social security contributions are charged on granting broad-based options if the option is non-tradable or not transferrable to third parties. If a non-tradable option becomes tradable, any difference between the market value and the purchase price is taxable at the employee’s progressive PIT tax rate and is subject to social security contributions.[183] Upon exercise of the option the difference of the fair value of the shares at the exercise date and the strike price if any is taxed as capital gain at 12.5%[184]; the exercise of the option does not trigger social security contributions.

Limited Liability Companies – While shares of Limited Liability Companies transferred as remuneration until 2011 were subject to corporate income tax at company level, free shares since then are exempt from tax and social security contributions up to an amount of Euro 7,500 (2009) with the notary fees borne by the employer. With effect from January 1, 2019, the Budget Act 2018 abolished the mandatory form of notarial certification for the liquidation and transfer of shares in limited liability companies (S.r.l.). Instead, the relevant certificates now only have to be submitted by a person entered in the registers of auditors and accountants to the responsible office in the commercial register. Instead of the notary, he now checks whether the statutory requirements have been met, (i) the identity of the parties to the transaction and their ability to act, (ii) the matrimonial property regime of the spouses, if any, (iii) the actual ownership of the shares and (iv) any conflicting restrictions in the company's Articles of Association. The procedure is now - compared to classic notarial certification - less expensive and significantly faster: share transfers only require one working day from the date on which all digital signatures are available on the certificate taking effect on the same day registered by the accountant (within 20 days after the application of digital signatures and time stamps).

Start-ups and Innovative SMEs – With the adoption of the D.L. 179/2012 (“Growth Decree 2.0” or “Start-up Act”), Italy introduced share-ownership schemes for the innovative start-up sector allowing remunerating administrators and workers with shares or quota exempted from social contributions and granting deferred taxation at sale. Decree-Law 3/2015, (known as “Investment Compact”), converted into Law 33/2015, has extended most of the benefits envisaged for innovative start-ups to a broader range of companies, the innovative SMEs. To qualify as “innovative Start-up”[185] these privately held limited liability companies (including cooperatives) must have: (i) to be newly incorporated or operational for less than 5 years, (ii) not result of a merger, split-up or spin-off, (iii) a maximum turnover is EUR 5 million, (iv) not been distributing dividends, (v) development, production and distribution of products and services with technological value as their main objective. To qualify as “innovative

[182] This condition substantially reduces the possibility of exemption from ordinary taxation for a large number of employees, considering that the number of companies listed on the market is rather low.

[183] Furthermore, the Agenzia delle Entrate clarified in its Response to Interpello No. 427 of Oct. 25, 2019 that shares that an employer grants to its employees on the basis of a non-qualified stock option plan constitute employee income and are subject to social security contributions and normal IRPEF taxation.

[184] Note that: The fair value of unlisted shares is based on the value of the company; the fair value of listed shares is equal to the average of the listed prices over the previous month.

[185] https://www.mimit.gov.it/images/stories/documenti/Slides%20innovative%20startups%20and%20SMEs%2007_2019.pdf, login Sept. 2023.

SME" [186] they must have: (i) a maximum turnover is EUR 50 million (no minimum turnover is required), and (ii) a workforce of a maximum 250 people. Moreover, both must possess at least one of the following three characteristics for Start-ups/Innovative SME respectively : a) expenditure in R&D of at least 15% / 3% of the higher value between turnover and operating costs, or b) one third / one fifth of the workforce made up of PhD holders, PhD students or researchers, or alternatively two thirds / one third of the workforce consisting of employees with a master's degree or equivalent; c) the firm is the holder, licensee or owner of a patent or original computer program / original computer program, directly relating to the company's corporate purpose. Such firms can register into a section of the business register dedicated to Innovative Start-ups and Innovative SMEs to access administrative and fiscal benefits, such as zero cost incorporation, simplified insolvency procedures, tax incentives for equity investments, and a public guarantee scheme for bank credit.

bb) Profit-Sharing

Rules for profit sharing are determined by collective bargaining at the firm level. Tax incentives for profit sharing were introduced by the Decree Law no. 67 of March 1997 allowing a partial tax exemption for employers' contributions up to 1% of the payroll; this percentage was subsequently increased to 3%.[187] Further, a 10% "compulsory solidarity contribution", substituting for the general social security contribution, was introduced. Although the new Law no. 247/2007 increased the tax exemption for employer contributions to a maximum of 5% the Inter-ministerial decree of 7 May 2008 set a ceiling of 3%. The employer benefits from a 25% reduction in social security contributions. The employee is exempted from social security contributions, which the state covers in order not to reduce the initial contribution. The ceiling of the annual maximum value of the bonus rose from EUR 3,000 to EUR 4,000 with the income ceiling for eligibility for incentives fixed at EUR 80,000 annually. Within these limits, performance bonuses paid to employees are subject to a substitutive tax on personal income and an additional regional and municipal tax of 10%. However, the limit of the maximum value of the bonus per year may vary depending on the funds available in the budget at the end each fiscal year, and it depends on the maximum eligible income value of the year. Within these limits, performance bonuses paid to employees are subject to a substitutive tax on personal income and an additional regional and municipal tax of 10%.[188]

cc) Participation in Decision-Making

Employee financial participation is generally not linked to the extension of the existing participation rights in decision-making. A rare exemption is Art. 2351 CC: it stipulates, that shareholders of specific "employee shares" can be granted the right to nominate a representative to the management or supervisory board under the company's articles of association. Nevertheless, Art. 2351, introduced with the 2003 reform of the Civil Code has not been used to date. Although Art. 46 of the Italian Constitution recognis-

[186] https://www.mise.gov.it/images/stories/documenti/executive_summary_innovative_SMEs_23febbraio2017.pdf, login Sept. 2023.

[187] In 1998, the share of the flexible wage exempted from payment of social security contributions was raised to 2% and in 1999 the tax relief was re-determined to a maximum of 3%.

[188] See Circolare N. 15/2013, Ministero del lavoro e delle politiche sociali, prot. N. 37/0006009. Cfr. Circolare n. 11/E, Agenzia delle entrate.

es the right of workers to “cooperate in the running of the companies in a manner and within the limits defined by the law”, this regulation was never transformed in special laws. However, Law no. 300/70 guarantees the freedom of trade unions and the right to be represented. The so-called “Intesa Quadro” between the major trade unions CGIL, CISL and UIL of 1 March 1991 introduces an organ of union representatives (RSU) which may be set up in any company with more than 15 employees and has the right to represent workers, i.a. in collective bargaining. Information rights (e.g., about investment, planning, production, forecasts, technological changes) and consultation rights (e.g., on internal work rules and the working environment) are defined in collective bargaining contracts. The transposition of the European Directives on Information and Consultation rights (Decree Law 25/2007) into national law extends and strengthens the effectiveness of these rights in all companies employing more than 50 employees. A new legislative initiative of 12 April 2011 by CGIL, CISL, UIL, Confindustria, ABI, ANIA and Confcommercio is aimed at transposing the EU Directive 2009/38/EU into national law. On 4 October 2021[189] new rules for social enterprises**,** placing an obligation to encourage the widest possible involvement of workers, users and other stakeholders in their activities, through consultation or participation mechanisms. In social enterprises exceeding EUR 2.2mln. of balance sheet assets, EUR 4. 4 mln. of revenues and 25 employees, in addition to the information, consultation and participation procedures mentioned above, at least one member of both the management body and the control body is an employee representative (Art. 11, para. 4, Leg. Decree No. 112/2017).

13. Cyprus

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Christos Ioannou, Loizos Papacharalambous and Haris Kountouros, those that contributed to the updates were in chronological order in 2014 Denis Suarsana and Haris Kountouros and in 2018 Haris Kountouros and Georgia Charalambous and in 2023 Haris Kountouros.

Both employee ownership and profit sharing are rare in Cyprus. The country had a large cooperative sector, developed over decades with the participation of more than half of the population which, however, suffered greatly because of the financial crisis of 2013. In 2018 the Central Cooperative Bank collapsed and was bought for a nominal amount by a private bank operating on the island. However, the country has developed financial institutions, with more than 50% of households holding shares as financial assets. The voluntary regulations allow room for joint initiatives. Collective agreements are not legally binding in Cyprus but are usually observed (although during recent periods of economic depression frequent violations have been reported). Unionisation used to be comparatively high, but over the last two decades it has de-

[189] Decree of the Minister of Labour and Social Policies “guidelines for the identification of the methods of involvement of workers, users and other stakeholders in the activities of social enterprises”.

clined (2021: 42%; 2014: 47%)[190], similar to trends in other European countries and elsewhere. Employee participation, either financial or in decision-making, does not appear as a priority on the agenda of either the government or social partners. One example of financial participation was provided by Cyprus Airways, which was effectively state owned, and which had established a scheme rewarding its employees with shares of the company. The company, however, went out of business in 2015.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 36.4% (2013, 22%; 2009, 5.6%) of companies with more than 10 employees in Cyprus offer their employees profit-sharing and in 2013 6% (2009, 3.5%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 3.7% (2010, 4.6%) of Cypriot employees were taking part in profit-sharing while 1.1% (2010, 2.2%) of them were participating in share-ownership schemes.

a) General Attitude

The long tradition of tight regulation of financial markets, capital controls, and limited financial assets available to households underwent change in the mid-1990s. A modern capital market evolved through the Cyprus Stock Exchange (CSE), which officially launched operations in March 1996. The bust of the stock market (2001)[191], the banking crisis (2012-13) and the collapse of the central cooperative bank and its eventual buyoff by a private bank (2018) have left a legacy which makes it difficult to convince of benefits associated with share-ownership schemes providing for variable means of pay. The industrial relations system in Cyprus is based on voluntarism and has largely developed through the Industrial Relations Code, dating back to 1977 and signed by the government, unions, and employer associations. Trade unions are mainly organised at the industry or sectoral level and belong to national-level federations or confederations, the most important being the Cyprus Workers Confederation (SEK) and the Pancyprian Federation of Labour (PEO). Employers are organised into industry or branch level associations and mostly members of the Cyprus Employers' and Industrialists' Federation (OEB) and the Cyprus Chamber of Commerce and Industry (KEBE).

Employee financial participation (EFP) has not been an issue on the agenda of either the social partners or government. Government economic policy tended to favour voluntary arrangements within industrial relations. Amongst others, this translated into a lack of enthusiasm for establishing a legal framework for financial participation of employees. In like terms, the Industrial Relations Code makes no mention of employee financial participation and there is no evident appetite for any discussion of this matter on behalf of the social partners. Instead, unions have been pushing for greater security in wages and, against this background, a new law establishes, as of 1st January 2023, a national minimum wage. Companies in Cyprus seem to rely on more tradi-

[190] 47,7% in 2014, 43,3% in 2016. See OECD (2021): Cyprus – Main indicators and characteristics of collective bargaining. Accessible at: https://www.oecd.org/employment/collective-bargaining-database-Cyprus.pdf, login Aug. 2023

[191] By October 2001, had fallen from 800 at the peak of a short-lived boom in 1999 to 100. During 2002/03 the market continued a long-term decline, reaching a level of 80 in late 2003.

tional and less innovative forms of business and human resource strategies[192], possibly a hampering factor for a further development of financial participation schemes in the country. The pervasive lack of any notable developments on employee financial participation, as well as of relevant data on the matter, may also be explained to a large extent by the generally very small size of enterprises operating in Cyprus. 93.3% of Cypriot enterprises, employing 38.3% of employees are micro-companies (compared to 93.0% and 29.8% for the EU-28). The State also maintains monopoly or near monopoly in several public utilities to the effect that employee profit sharing or options schemes are lacking in these sectors.

b) Legal and Fiscal Framework

Due to its colonial past, the Cypriot legal system is largely based upon the same principles as those of the United Kingdom. Laws regulating business matters and procedures are based essentially on the English Common Law[193] while many laws, including The Companies Law (CL), which regulates registered companies, are very much based on their British equivalents.[194] The taxation system in Cyprus is generally favourable to companies, including offshore ones. The rate of corporate income tax is 12,5% and is amongst the lowest in the EU. The legal framework provides no incentives for the development of PEPPER schemes, though it does not prevent such schemes either. No specific fiscal incentives exist, general rules apply. Social security contributions payable by employees amount to 8.3% of their salary with a maximum cap on salary of EUR 60,060 (as of 2023) and for the employer to 8.3% while the State contributes a further 5.2%; the employer is also liable for a contribution of 1.2% to the Redundancy Fund, 0.5% to the Training and Development Fund and 2% to the Social Cohesion Fund.[195] While capital gains, i.e., dividends and profits from the sale of securities[196] are not subject to income tax (but are subject to a Special Contribution for Defence of 17%), this is a general rule that applies to all shareholders and not just employees.[197]

aa) Share Ownership

Cypriot Company Law does not contain any special rules on employee share ownership. Transposing provisions of the Second Council Directive on Company Law it, however, provides an exception to the general prohibition against companies acquiring their own stock. Registered companies in Cyprus are mainly governed by Chapter 113 of the Cyprus Company Law (hereinafter referred to as CL), as amended, which is almost identical to the UK's former Companies Act 1948 (without, however, incorporating the amendments made to the UK act) (Papasozomenou 2013: A140). There is no law in Cyprus on share option schemes for employees, but these may be included in

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192 CRANET (2017): *International Executive Report 2017(*https://www.fdv.uni-lj.si/docs/default-source/cpocv-doc/cranet-international-report-2017.pdf?sfvrsn=4)

193 English case law is often cited in the Cypriot Courts and is of persuasive authority. Administrative law forms an exemption to the general system and is much influenced by principles deriving from the Greek judicial system.

194 The Companies Law, Cap 113 as amended. For the latest consolidated text in EL visit: http://www.cylaw.org/nomoi/enop/non-ind/0_113/full.html The majority of this law's provisions (especially the original ones) are almost identical to the UK's former Companies Act 1948, without, however, incorporating the amendments made to the UK act.

195 Pwc tax summaries Cyprus https://taxsummaries.pwc.com/cyprus/individual/other-taxes, login 1.8.2023.

196 Except if a company owns real estate situated in Cyprus when a 20% capital gains tax applies.

197 Eurofound/Cedefop (2020): European Company Survey 2019: Workplace practices unlocking employee potential, European Company Survey 2019, p. 79.

private employment contracts or given to employees as part of an incentive scheme. For instance, it is possible – though not common – for an employing company to grant non-voting shares to employees that nevertheless provide for a right to receive a fixed dividend. This practice should be seen as an alternative to granting bonuses to employees, rather than as a share ownership option.

The CL contains only a mere notion of employee share ownership: The provisions of the Second Council Directive on Company Law (2012/30/EU recasting Directive 77/91/EEC dating back to 13 December 1976) were adopted by national legislation and specifically in the CL. Article 47A provides an exception to the rule that shares can only be allotted in return for contribution of assets which can be given an economic value, if the shares are allotted to employees of the company. Furthermore, an exception to the general prohibition against acquiring its own stock, Art. 57A(3) CL permits a public company to acquire its own shares without a special resolution of the general shareholders assembly if the shares are acquired for the purpose of being transferred to the company's employees or to the employees of an associate company. To facilitate the acquisition of shares by employees, Art. 53 (1)c CL permits the company to advance funds, and make or secure loans, with a view to acquisition by employees of the company or employees of an associate company (or to trustees who will hold shares for the benefits of the employees).[198]

bb) Profit-Sharing

Profit sharing is permitted, as there is no explicit law or regulation prohibiting it. At the same time, no specific provisions encourage profit sharing for employees. Companies are reported to implement bonus schemes with their employees according to their performance or for percentages (commissions) according to the sales made by their department. Nevertheless, in practice, profit-sharing schemes remain few and far between. When it comes to the five large companies which are established in Cyprus it is notable that none of those has any profit-sharing schemes in place. In contrast, a higher rate of incidence is observed in relation to schemes linking pay to performance.

cc) Participation in Decision-Making

As far as employee participation on management boards is concerned, this has never been a feature of the industrial relations system in Cyprus.[199] The CL does not contain any special provisions concerning employee participation in control and decision-making in corporations. Regarding board-level representation, the practice in state and semi-state companies has been for the government to periodically appoint high-level trade union officials, mainly from the confederations to the administrative boards of state-controlled organisations; this is not a legal requirement but rather a legacy of state management.

European Union law has had some influence in the area. National provisions (Law 277(I)/2004) implementing Directive 2001/86/EC on supplementing the Statute for a European company about the involvement of employees and Directive 2003/72/EC,

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[198] If an executive receives a loan or financial assistance from the company, he/she will be deemed to have received a benefit in kind equal to 9% per annum of the loan/assistance; see https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-cyprushighlights-2018.pdf.

[199] During the 1990s, only SEK had initiated a stance in favour of employee representatives' participation in decision-making through participation of labour representatives at the board level of public and semi-public sector institutions and organisations; this effort met no success.

supplementing the Statute for a European Cooperative Society regarding the involvement of employees into Cypriot national law foresee the participation of employee representatives in the management or supervisory bodies of enterprises. Other social and labour legislation issues, such as employee rights concerning information and consultation, are also regulated by EU Directives transposed into national law and the Industrial Relations Code.[200] Since the Cypriot system of employee representation is a single-channel system, information and consultation rights are exercised by the trade unions, rather than works' councils (see Law 106(I)/2011, implementing Directive 2009/38/EC).

14. Latvia

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Tatyana Muravska, Irina Rezepina, Theis Klauberg and Niels Mygind, those that contributed to the updates were in chronological order in 2014 and 2018 Theis Klauberg and Tatyana Muravska and in 2023 Jens Lowitzsch and Tatyana Muravska.

Employee financial participation (EFP) in Latvia may be summarized as not well developed and on the decline; however, the last decade has seen a positive dynamic. During the transition period, privatisation shaped the environment for EFP and influenced the current state of employee share ownership and profit sharing. However, the transition process only resulted in a low level of EFP. By the end of 1998, shares with the nominal value of LVL 27 mln. (ca. EUR 29 mln.), amounting to 13.6% of total shares had been sold for vouchers to 25,611 employees and former employees of the companies. In 1997, the management survey showed that still five out of 28 enterprises had majority employee ownership. During the period 1997-1999, employee' and former employee' ownership decreased by 19.2% and 23.3% respectively. In the 2000s, the introduction of profit-sharing schemes as incentives for productivity and performance is usually regulated on an individual basis by bilateral agreements between the employer and the employee but is sometimes also unilaterally granted by companies as a part of their human resource management policies. Nevertheless, these plans are usually applied only to top and middle management (Eurofound 2007: 11). Since 2018 employee stock options are defined in the Commercial Law, an amendment that also modified the rules for employee shares and in 2021 generous preferential tax treatment for stock options was introduced.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 43.2% (2013, 22.5%; 2009, 10.3%) of companies with more than 10 employees in Latvia offer their employees profit-sharing and in 2013 1.4% (2009, 3.9%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey

[200] See Law 78(I)/2005, implementing Directive 2002/14/EC and Laws 68(I)/2002 and 43(I)/2003 implementing Directive 94/45/EC.

(EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 15% (2010, 9.6%) of Latvian employees were taking part in profit-sharing while 3.5% (2010, 1%) of them were participating in share-ownership schemes.

a) General Attitude

Trade unions are not strong; the current rate of unionisation in Latvia is 14%, and most members are civil servants (Stacenko 2013). The Free Trade Union Confederation of Latvia (FTUC) is the biggest non-governmental organisation in Latvia; it protects the interests of employees who are trade union members at branch and inter-branch levels and represents 20 individual unions affiliated with the Free Trade Union Confederation (FTUC). On 1 August 2011, FTUC and the Latvian Employer's Confederation (LEC) signed a cooperation agreement, according to which they plan to promote EFP by organising joint activities and supporting legislative initiatives. However, only as of 2018 were reforms in the area of EFP implemented by the Latvian government. Although a bipartisan project financed by the European Commission to explore and support EFP in the Baltic republics was launched in 2016 with two following projects 2017/18 and 2018/19 it seems that trade unions are more actively supporting the idea now. The National Reform Program and Latvian Strategic development plan 2010-2013 did not address the issue of EFP. Finally, in 2018 on initiative of the Ministry of Justice rules for employee stock options were introduced for the first time and those pertaining to employee shares modified.

b) Legal and Fiscal Framework

Both employee share ownership and profit sharing are found in Latvian companies and are directly or indirectly regulated by legislation. There is no special legal regulation of profit sharing, however, several pieces of legislation relate to employee share ownership and as of 2018 also to stock options including tax incentives. Regulation in this area has not been systematic, so existing legislation partly creates incentives and partly inhibits these schemes.

aa) Share Ownership

Privatisation (1991, 1997) – Small-scale privatisation started in November 1991 in accordance with the Law on the Privatisation of Objects of Trade, Catering and Services. Local privatisation commissions decided the privatisation method, initial price, etc. Potential privatisation methods were sale to employees, auctions to a selected group, open auctions, and sale to a selected buyer. Buyers had to be Latvian citizens or to have been residents of Latvia for at least 16 years.[201] Large privatisation of state-owned property and land was carried out by the Latvian Privatisation Agency. Shares of state-owned corporations could be sold to employees, in the course of privatisation, at a price even lower than the nominal value of such shares. However, the shares to be sold to the employees could not exceed 20% of the share capital of the particular company (Art. 57 of the Law on the Reorganisation of State and Municipal Enterprises in Corporations). The 20% limit on employee share privatisation was a limitation of rights and not an entitlement. However, the Law on the Reorganisation of

[201] Decrees of 1992/93 included a list, proposed by the sector Ministries, of 579 medium and large enterprises to be privatised. Four hundred of these enterprises were to be public offerings, and an additional 147 were to be leased with the option to buy; later this list was expanded to 712 enterprises.

State and Municipal Enterprises in Corporations was abolished, so that the privatisation is currently irrelevant for EFP.

State or municipal owned companies (2001/2015) – According to the Law On Governance of Capital Shares of a Public Person and Capital Companies of 16 October 2014, the government of Latvia or the respective municipal authority decides in which state or municipal company employee shares can be issued (Art. 87). Employee shares can only be owned by employees and board members and carry no voting rights. If employment is terminated, or the board member leaves office, the employee's shares are transferred back to the company. This is also one of the exceptions when a company is allowed to acquire its own stock (Arts. 88). Employee stock acquired by the company must be transferred to employees within six months. Shares not transferred within the prescribed time period will be cancelled and the share capital decreased accordingly (Art. 89).

Employee Shares (2004) – For a limited liability company, there are no special legal regulations on employee share ownership so general rules apply. By contrast, a joint stock company may issue shares, which can be acquired by employees in the broad sense, i.e., including managers and supervisory board members pursuant to Art. 255 Commercial Law (CL): The total value of employee stock should not exceed 10% of the registered company's equity capital (Art. 255 (4) CL). Another limitation concerning employee stock is the requirement that if these shares are for free, they need to be issued at the expense of the company's retained earnings (Art. 255 (2) CL). Unlike prior to 2018 employee shares carry voting rights if stipulated in the articles of association, the right to receive dividends and if issued against a fee a right to liquidation quotas is attached to employee stock issued according to Art. 255 (3) CL.[202] However, since 2018 they are a specific class of shares and upon termination of the employment relation or death are to be transferred back to the company against remuneration if they were issued for a fee (Art. 255 (6) CL). To ensure this transfer even without the consent of the employee the shares – regardless of their form, for example if the shares are held in the financial instruments account of the company – are held by the company itself. Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may acquire their own fully paid-up shares to be transferred to their employees within 12 months following a decision of the general assembly valid for a maximum of five years. Social security contributions (2023 employee 10,50; employer 23,59) apply and on the benefit of free or discounted employee shares (since 2018 progressive personal income tax at 20% < EUR 20,000, 23% < EUR 55,000 and 31.4% above) as well as the gains from the sale of employee shares (2018 capital gains tax 20%) and dividends (2018 corporate income tax 20%; no personal income tax) incur. At the time of dividend distribution, the employer has to pay corporate income tax.

Employee stock options (2013, 2018, 2021) – Pursuant to Art. 248.1 CL joint stock companies may offer share options, either free of charge or at a reduced price after the vesting period to their employees including managers and supervisory board members. The company must create a reserve fund or use retained earnings to issue

[202] Limitations previously attached to employee stock according to Art. 255 CL, in particular lack of voting rights, did however not apply to shares of privatised companies.

employee stock options (248.1 (2) CL) with a ceiling of 10% of the paid-up share capital (248.1 (4) CL). The company owners may, at their discretion, establish the purchase price or grant options free of charge and they may be granted with or without voting rights and be limited to a certain class of stock. Unlike employee shares employee stock options are freely transferable conditional that the Articles of Association or the conditions of release contain relevant stipulations (248.1 (3) CL). Already from January 2013 on the taxation of employee stock options changed introducing a 15% of capital gains tax at sale of shares instead of full taxation at 25% PIT and 35.09% social security contributions (both for 2018) as previously. To qualify for PIT and SSC exemption for employee stock options a 3-year holding period was required. Until January 2018 stock options were only referred to in the country's Law on Personal Income Tax, a situation that changed with a 2017 amendment of the Commercial Law. With an amendment of 12 January 2021 to the Personal Income Tax Law and the Commercial Law the possibilities to grant employee stock options were expanded granting them an even more favourable taxation regime[203]: (i) the minimum holding period was shortened from 36 to 12 months; (ii) restrictions on former employees were relax extending the tax incentives to options exercised within six months after the end of employment; and (iii) stock option plans are now permissible for any shares carrying dividend rights, i.e., also in privately held limited liability companies. However, the tax incentives are not available to employees if they were acquired with a loan from the employer that is not repaid before the vesting date. No corporate income tax is payable by the employer company if stock options are exercised more than one year after grant. Finally, the requirement for the employer to file the plan with the tax authority within two months after the grant date remains unchanged.

bb) Profit-Sharing

Performance related pay may take the form of profit-sharing arrangements linked to the profits of the employer company or of premiums. There are no specific legal limitations or regulations[204] pertaining to profit sharing with employees which is considered as income from capital and taxed at 20% capital gains tax (15% until 2018) while no social security contributions incur. Premiums on the other hand are considered as income from labour and taxed with the since 2018 progressive personal income tax rates (20% < EUR 20,000; 23% < EUR 55,000 and 31.4% above).

cc) Participation in Decision-Making

There is no statutory employee representation at the board level in Latvia. The main form of workplace representation in Latvia is through the unions, but since the revised Labour Law (LL) came into effect on 1 June 2002, it has also been possible to elect "authorised employee representatives" (Art. 10 (1) LL). Both are involved in information and consultation, and both can be involved in collective bargaining, although non-union representatives can only negotiate if there is no union (see Art. 18 (1) LL). The employer shall consult with employee representatives on issues that may affect the interests of employees, in particular decisions which may substantially affect work remuneration, working conditions and employment (Art. 11 (1) 2) LL).

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203 Details and a comparison with employee shares: https://breicis.com/en/stock-options/, login Aug. 2023.

204 However, Regulation No. 107, implementing profit sharing rules for related party transactions (Latvian Official Gazette 2021/38.5 of 24 Feb.) applies.

15. Lithuania

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Valdonė Darškuvienė, Niels Mygind and Stefan Hanisch, those that contributed to the updates were in chronological order in 2014 Tomas Davulis, Stefan Hanisch and Valdonė Darškuvienė, in 2018 Jens Lowitzsch and Valdonė Darškuvienė, and in 2023 Valdonė Darškuvienė.

Historically, the development of employee financial participation (EFP) in Lithuania was linked to the establishment of new ownership structures following privatization of state-owned companies. After Lithuania regained independence, employee ownership was the priority method to implement privatisation. In the initial privatization stage 1991-1995, employee buyouts at a discount, combined with the extensive use of vouchers by employees and leasing with the option to buy, resulted in a high percentage of employee majority ownership. By 1994, fewer than 5% of firms privatised under the Law on the Initial Privatisation of State-owned Property (LIPSP) had no employee ownership, while the percentage of firms where employees had taken over most of the assets increased from 3% in 1991-1992, to 65% in 1993 and 92% in 1994-1995 (Ministry of Economics). Since most employee preferential rights were abolished in 1995, employee ownership began to decline. Employee shares of firms surviving the wave of bankruptcies at the end on '90s were sold to outsiders or management. Newly established private firms led the development of market economy with diverse ownership structures, including family and other private ownership, management ownership, investment fund ownership, etc.[205]

The discussion at the national scale accelerated in the first decade of 21st century along with the growing demand for highly skilled personnel and companies leaning towards modern corporate governance structures. Preferential taxation for employee stock options were introduced in 2018 and extended in 2020. While empirical data especially on profit sharing remains limited, a study on four company cases, illustrate how a variety of employee share-ownership schemes were introduced to support initiative and responsibility, motivation, loyalty, and performance of both managers and employees (Darškuvienė & Vazniokas 2006). A study conducted in Lithuania in 2019, based on interviews from 19 firms indicates that the application of employee share schemes is a complex phenomenon, making it difficult to single out specific benefits (Civinskas & Stašys 2021). Employee share programmes were used only to a limited extent, mainly in professional services companies, with primary focus on top executives. As of 2023 EFP tends to be viewed as an instrument for employee motivation, however, focussing on executives and initiated by managers and owners of companies.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 54.9% (2013, 55.4%; 2009, 7.9%) of companies with more than 10 employees

[205] A manager-survey conducted in the spring of 2000 provides information on ownership at the time of privatisation or in new firms for the years 1993, 1996, 1999 and 2000 with 405 respondents (for details see the PEPPER III report, pp. 199, 205, Table 4). In 1993, ca. 50% of employees were owners in the sample; however, that proportion fell to about 1/3 in 1999 and in employee-owned firms from 76% to 66% in the same interval.

in Lithuania offer their employees profit-sharing and in 2013 13.9% (2009, 3.1%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 11.2% (2010, 12.5%) of Lithuanian employees were taking part in profit-sharing while 2.1% (2010, 0.6%) of them were participating in share-ownership schemes.

a) General Attitude

Employee representation by trade unions is organised through industrial/sectoral trade union organizations, with the strongest ones in the public sector. In the early stage of the ownership transition, unions promoted employee ownership and actively contributed to place it on the Lithuanian privatisation agenda. The major national trade union confederations in Lithuania include Lithuanian Trade Union Confederation, the Lithuanian trade union Solidarumas, and the Lithuanian trade union Sandrauga. Lithuania has one of the least developed systems of industrial relations in Europe. Trade union membership in general is low and has been going down during the last decade. From 2007 to 2018 the number of trade union members in Lithuania fell from 115 to 86.6 thousand, with trade union density thus falling from 9.3% to 7.1%. Low trade union density (10% in 2012[206]) is among key drivers defining the low collective bargaining coverage. The general objective of trade unions is higher wages for employees while associating employee ownership with an increase in company profitability. Although no specific actions concerning EFP are presently on the Confederation's agenda, this issue garnered support. Employers are organised within the Lithuanian Confederation of Industrialists, Lithuanian Business Confederation and the Lithuanian Employers' Confederation; the question of EFP has not been addressed by either of them.

However, a bipartisan project financed by the European Commission to explore and support EFP in the Baltic republics was launched in 2016 with two following projects 2017/18 and 2018/19. Employers' focus on employee motivation amongst other through financial incentives is prompted by the emigration of skilled workers. Since 2014 the Lithuanian government included EFP on the agenda to be developed with participation of trade unions and to be discussed in the Parliament. And, indeed, this initiative resulted in 2017/18 and subsequent reforms concerning the regulatory framework for employee shares, stock options and participation in decision-making.

b) Legal and Fiscal Framework

EFP is only partly regulated in Lithuania. Current legal regulations contain special some provisions on EFP schemes and provide companies with modest incentives to introduce them. A 2018 tax reform[207] introduced progressive personal income tax (20% and 27% above EUR 8,900 monthly income in 2019) instead of the 15% flat tax. Employee social security contributions increased from 9-11% to 19.5% while employer contributions are reduced to 1.47% (from 31.18%) while gross salary is now recalculated by 28.9% to compensate employees for this shift in the tax burden.

[206] ICTWSS (2019). ICTWSS database, http://www.uva-aias.net/en/ictwss, login Sept. 2023.

[207] See *Press release of 28 June 2018* (https://www.lrs.lt/sip/portal.show?p_r=119&p_k=2&p_t=259876).

aa) Share Ownership

Privatisation (1991, abolished 1995, 1997) – The first stage of privatisation started when the Law on the Initial Privatisation of State-owned Property of 1991 with the agent of the rapid privatisation in Lithuania being the voucher scheme.[208] Employees had the opportunity to buy a certain percentage of shares in the first round of auctions at lower rates before most of the remaining shares were sold in public offerings in later rounds. The percentage of shares available for employees was increased from 10% in 1991 to 30% in 1992 and to 50% after the former Communist Party came into power in early 1993. The additional 20% shares reserved for employees after 1993 did not initially include voting rights; later the general meeting could convert these shares into regular voting shares. The second stage of privatisation was based upon a new Law on Privatisation of State-owned and Municipal Property of 4 July 1995 which aimed at the sale of residual shares and some of the very large companies, including public utilities and infrastructure enterprises and abolished Vouchers; only cash privatisation was permissible. The third Law on Privatisation, still effective, was adopted on 11 April 1997. Privatisation of the majority of enterprises in Lithuania was completed. However, the respective legal regulations of privatisation state-owned property are still in force.[209] The Law on Privatisation contains no significant preferential rights for employees in the privatisation process. However, if shares are privatised by public tender, employees can be offered up to 5% of the state-owned shares at par value. This provision does not apply to enterprises under state control or to enterprises in which employees have already acquired shares of their employer enterprises under other laws (Art. 16 (3)). If shares are offered at a public tender or by direct negotiation, the final payment can be postponed for five years in the case of employees (Art. 20 (3)).

Employee Shares – A 2017 amendment of the Company Law (hereinafter referred to as CL) in force since 1 January 2018 modified the rules for employee shares making a distinction between broad-based employee shares and shares offered to management.[210] With regard to the former, corporations (joint-stock companies as well as limited liability companies) may subject to the provisions of its Articles of Association issue employee shares, also free of charge or partly remunerated (Art. 43, Art. 47 of CL[211]). The CL sets no maximum percentage on these new employee shares. They are to be distributed among all employees wishing to purchase them, except for employees, who are CEO, members of the board and supervisory board (Art. 43(2) CL). A restriction period of no longer than three years must be determined within which employee shares can be sold only to other employees (Art. 43 (3) CL). During this period employee shares are not only of limited tradability, but also non-voting (Art. 43 (3.3)

[208] Vouchers and cash quotas were only given to residents and had limited transferability (to relatives, later they could be used in exchange for outstanding housing loans).

[209] The most important of these are the Law on Privatisation of State Property and Property of Municipalities of 11 April 1997 as amended (hereinafter referred to as PL), the Law on Securities Market of 16 January 1996 as amended, and the Law on the State Property Fund of 11 April 1997 as amended.

[210] The rules for shares transferred to management or supervisory board members are stipulated in Art. 47.1 and contain various restrictions like only physical persons being eligible, an exclusion of those holding already more than 5% of the shares as well as procedural and disclosure rules.

[211] Law on Companies from 13 July 2000, No.VIII-1835 with amendments on employee shares by Law No.XIII-556, as of 29 June, 2017. According to CL, shareholders have the pre-emptive right to acquire shares or convertible debentures issued by the company, unless the general meeting decides to withdraw the pre-emptive right for all shareholders.

CL), although employee shares are ordinary shares (Art. 43 (1.1) CL). Art. 43 (5) CL stipulates that an employee must pay for subscribed employee shares before the restriction period for the transfer of shares expires. The first payment should be made in cash within a short period; further instalments can be deducted from the employee's salary upon application of the employee. The corporation may not exact pressure on employees to force them to purchase shares or to pay for shares by salary deductions (Art. 43 (4) CL). After the restriction period for the transfer of shares expires, employee shares become ordinary shares and can be sold to third parties not company employees (Art. 43 (3) CL). Since most employees are minority shareholders, provisions on the protection of minority shareholders apply. Uniform 15% dividend tax applies[212] except for shares issued free of charge or in a capital increase which are not considered to be dividends or distributed profits (Art. 32 (2) Corporate Income Tax Law, of 20 December 2001, No. IX-675 as amended); after the holding period profits from sale of shares are not taxed, no social insurance contributions incur. Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) and to facilitate the acquisition of shares by employees, under Art. 45.2 CL, the legislator has made an exception to the general prohibition against leveraging acquisition of its own stock. Thus, conditional upon the creation of a corresponding reserve (Art. 45.2 (3) CL), the company may advance funds, make loans, and provide security to expedite the acquisition of its stock by its own employees or those of an affiliated company.

Employee Stock Options – Both special employee shares and regular shares can be issued as a result of exercising stock options; they may be acquired free of charge or for a fee. Although in principle employee share options can be sold transfers are restricted to other employees of the employer company for three years from the day of subscription. Until 2020 taxation of employee stock options incurred at the moment of the exercise at 15% but were exempt from social insurance contributions after a holding period of 3 years[213] with the taxable benefit being the difference between the fair market value of the shares and the price paid by employee. The employer was liable for 31,18% social tax as part of the fringe benefit tax and should withhold 6% of health insurance contributions and 3% (or 5% if the employee was participating in a voluntary pension scheme) from employees' remuneration. According to an amendment to the Law on Personal Income Tax from July 11, 2019, for options granted after 1 February 2020 the value of shares vested under stock options not earlier than three years after date of grant are exempt from taxation and social security contributions. Capital gains, from the sale of the acquired shares, is subject to personal income tax with taxation incurring only when the share options are exercised. In case of non-listed companies, the extent of application of these amendments depends upon possibility to issue share options.

bb) Profit-Sharing

There are no specific regulations on sharing profits with employees. Since companies pay income tax on dividends, this is viewed as an expensive method of profit distribu-

[212] Enterprises with fewer than ten employees and less than EUR 300,000 in gross annual revenues can benefit from a reduced CIT rate of 5%.

[213] *Law* on profit tax of Republic of Lithuania, Art. 9, Law on Social Insurance of Republic of Lithuania, Art 11 (25).

tion; therefore, priority is given to share buyback schemes. Employee monetary incentive schemes used in companies include payments of premiums and bonuses, in some cases related to company turnover and profits. Bonuses are tax advantaged, since they are not considered distributed profits and thus not double taxed as dividends are (firstly at corporate profit tax rate, secondly at income tax rate), but taxed only as income for individuals. Personal income tax is progressive since 1 January 2019 at 20% up to a ceiling of 20% EUR 8,900 monthly income in 2019 and 27% above (with a gradual reduction to EUR 6,200 in 2020 and EUR 4,400 in 2021)). Corporate income tax is also 15%. Since 2018 amendments to profit tax regulation favour share-based profit sharing (Art. 32 (2) Corporate Income Tax Law, of 20 December 2001, No. IX-675 as amended) and as fringe benefits (Art. 26 (2)) as the employee benefits may be deducted from income on the condition that the scheme stems from a collective agreement, that it is broad based without discrimination, and that it is restricted to up to 5% of the employee’s salary. Furthermore, since 2020 employer life insurance-, voluntary health insurance-, and pension- contributions are considered as a form of profit sharing and not considered as taxable benefits provided that their total amount does not exceed 25% of the employee's annual salary.

cc) Participation in Decision-Making

Employee representation within the companies is regulated by Labour Code (hereinafter referred to as LC). According to the Labour Code[214] employees may be represented and protected by trade unions or work councils or a person with fiduciary responsibility (Art. 165 LC).[215] In case there is no trade union established, or less than 1/3 of employees are members of trade unions, the employees should be represented by work council. The election of work council is compulsory for companies with at least 20 employees. Work council, consisting of 3-11 representatives, is elected by secret voting in the general meeting of employees. The trade unions and works councils have the right to negotiate collective bargaining agreements, to participate in information and consultation procedures, to approve internal work regulation in the enterprise. Participation of employees in the management or supervisory boards is compulsory for state-owned companies.

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[214] Approved by the Parliament of Republic of Lithuania on 14 September 2016, No.XII-2603, in force since 1 July 2017 (replacing the Labour Code of 4 June 2002, No. IX-926).

[215] Where an enterprise, agency or organisation has no functioning trade union and if the staff meeting has not transferred the function of employee representation and protection to the trade union of the appropriate sector of economic activity, the employees shall be represented by the work council elected by secret ballot at the general meeting of the staff (Art. 19 (1); 21 (2) LC).

16. Luxembourg

This country profile is based on the country chapter of the PEPPER IV Report; the authors of the earlier version were Gary Tunsch and Stefan Hanisch; those that contributed to the updates were in chronological order in 2014 Denis Suarsana and Jean-Luc Putz, in 2020 Jens Lowitzsch and Jean-Luc Putz and in 2023 Jean-Luc Putz and Anne Van Knotsenborg.

Few employee financial participation (EFP) plans exist in Luxembourg, mainly in multinational companies in the financial sector. Presumably the most common form is cash-based profit-sharing; the data, however, is unreliable inasmuch as the widely used bonus plans ("gratification") are generally unrelated to profits or other financial indicators and therefore are not genuine profit-sharing plans. While stock option plans seem to be gaining popularity in the last years share ownership are few and seldom broad-based. However, following reports that stock options had been misused by the financial industry to pay tax-free bonuses[216], their preferential regime introduced in 2002 was abolished as of 1 January 2021. In the meantime, the law of 19 December 2020 introduced a new tax regime regarding participative premium considered as more democratic as its tax regime applies to (broad-based) cash bonuses and not to (executive) share plans.[217]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 45.7% (2013, 30.2%; 2009, 9.4%) of companies with more than 10 employees in Luxembourg offer their employees profit-sharing and in 2013 11.3% (2009 3.7%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 17.6% (2010 18.6%) of Danish employees were taking part in profit-sharing while 4.5% (2010 7.2%) of them were participating in share-ownership schemes.

a) General Attitude

Government interest in EFP dates from the beginning of the 1990s. At that time, policy makers were especially advocating voluntary profit sharing, with the proviso that it should not be made a part of collective agreements. Nevertheless, no concrete policy measures were adopted and in recent years the issue has not been broached. Employers' associations (organised in the Union des Entreprises Luxembourgeois, UEL) were generally opposed to financial participation schemes, preferring other flexible pay models, however, they have not recently taken a position. The two major trade unions, the Onofhängege Gewerkschaftsbond Lëtzebuerg (OGBL) and the Lëtzebuerger Chrëschtleche Gewerkschaftsbond (LCGB), were sceptical about EFP, fearing loss of

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216 For a review of the development see Jess Bauldry, *Startups call for supportive Stock Options Framework,* Silicon Luxembourg, 15 February 2023, https://www.siliconluxembourg.lu/startups-call-for-supportive-stock-options-legal-framework/#:~:text=As%20a%20result%20of%20these,heavily%20taxed%20on%20their%20stocks.

217 Michel Molitor, Régis Muller & Pierre-Jean Estagerie, *Employee Share Plans in Luxembourg: Regulatory Overview,* Thomson Reuters Practical Law, https://uk.practicallaw.thomsonreuters.com/3-503-2481?transitionType=Default&contextData=(sc.Default)&firstPage=true.

control over the collective bargaining process. Nevertheless, some collective agreements have included elements of profit sharing. In December 2018 the coalition agreement of the newly elected government contained the explicit aim to introduce legislation supporting EFP schemes as an instrument to retain key personnel.

b) Legal and Fiscal Framework

The regulatory framework for EFP in Luxembourg is scarce. In addition to rules on employee shares introduced in 2016, following the abolishment of preferential treatment of stock options in 2020, tax incentives for cash-based profit-sharing (participative premiums) were introduced in the same year instead.

aa) Share Ownership

Broad-based share ownership and stock option plans, if any, exist in very few large multinational companies.

Employee Shares – An amendment to the company law introduced on August 10th 2016 allows for listed companies to distribute free shares to the employees of the employer company, those of a subsidiary, a sister company or those of its parent company (Art. 420-26 (6)).[218] The beneficiaries may also be salaried employees of companies or economic interest groups, at least 10% of the capital or voting rights of which is directly or indirectly held by the company allotting the shares (for shares traded on a regulated market additionally employees of companies or economic interest groupings having at least 50% of their capital or voting rights directly or indirectly held by a company which itself directly or indirectly holds at least 50% of the capital of the company allotting the shares). As provided by the Articles of Association for this purpose the companies may either use existing shares or issue new ones whereas preemptive subscription rights of existing shareholders may be suspended. Furthermore, pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may acquire their own shares for their employees and may advance funds, make loans, provide security (financial assistance), with a view to acquisition of these shares by their employees provided that the net assets do not become less than subscribed capital plus reserves. The free allocation may concern categories of shares whose voting rights and / or dividend rights are reduced or increased; the alteration of the exercise of these rights may be considered. Thus, the shares may be subject to a vesting period during which the exercise of the voting right is suspended on all or certain decisions submitted to the general meeting. For shares disposed of more than six months after the acquisition date capital gains are tax-exempt if the taxpayer does not hold a major shareholding (less than 10%); a tax deduction of up to EUR 50,000 valid every eleven years may be claimed on the capital gain (doubled for married taxpayers and civil partners filing jointly).

Stock option plans – There was no special legislation on these types of plans. Stock option plans can be divided into potential options, i.e., not tradable at grant ("*options individuelles ou options virtuelles*") and tradable options, i.e., tradable at grant ("*op-*

[218] These provisions are essentially modelled on articles L. 225-197-1 to L. 225-197-6 of the French Commercial Code.

tions librement négociables”). Tradable options for employees were very rare.[219] Until 2020 employee stock options were granted a preferential tax regime introduced in 2002 and amended in 2012, 2015 and 2017[220]; following reports of abuse these rules by the financial industry to pay tax-free bonuses it was abolished (Circular letter 104/2 of 14 Dec. 2020) and as of 1 January 2021 is no longer applicable. Special rules applying to “substantial participation”, i.e., if the shareholder alone or together with their partner or his family holds, directly or indirectly, during the five years before selling the shares, more than 10% of the company's share capital were also abolished.[221]

bb) Profit Sharing

Cash-based profit sharing is the most common form of EFP. It is difficult to distinguish these plans, however, from the commonly practiced bonus plan (gratification), which is unrelated to financial indicators. Nevertheless, incidental evidence suggests that collective agreements link this “gratification” to company profits. Most collective agreements are not public; only those declared to be binding for a whole economic branch are published and can be viewed on the Labour Inspectorate’s website. It is thus difficult to quantify this phenomenon, but anecdotical evidence suggests that genuine broad-based cash-based profit-sharing plans are still rare. However, a 50% tax exemption was introduced in 2020 for “participative premium” bonuses[222] for employees subject to Luxembourg income tax and personally affiliated to a social security scheme, national or foreign conditional amongst other that: (i) the total amount of the profit-sharing bonus that can be allocated is limited to 5% of the positive result of the previous operating year and (ii) that it cannot exceed 25% of the gross amount of the employee's annual remuneration of the tax year in which the bonus is granted. As the participative premium had a restrictive scope due to the 5% cap of company's positive result limiting it as an instrument to attract and retain employees[223] a 2022 law introduced a derogation to the bonus[224] allowing the “positive results” considered for the calculation of the bonus to be the consolidated profits generated by a company group and not just an individual company alone extending the potential application of the

[219] Prior to 2021, tradable options were valued at 30% (since 2018) of the value of the underlying asset and taxed at the total grant price conditional on that the proportion of options did not exceed 50% of the annual remuneration, the plan only applied to senior executives (*cadre supérieur*) and the option price did not exceed 60 % of the value of the underlying asset.

[220] Prior to 2021, the employee was subject to personal income tax, but exempt from social security contributions. The employing company could deduct the costs of the plan and was exempt from social security contributions.

[221] Long-term gains (Article 100, LITL) benefitted from a number of tax advantages: (i) The purchase price was re-valued using the revaluation ratios for inflation during the period of ownership; the ratios are updated once every two years; (ii) the first Euro 50,000 (doubled for couples taxed jointly) of gains realised in an 11-year period were exempt; (iii) they were taxed at half the individual's marginal tax rates; (iv) they could be compensated with long-term losses after six months from purchase (as long as these gains would have been taxable).

[222] Law of 19 Dec. 2020 “concernant le budget des recettes et des dépenses de l’Etat pour l’exercice 2021”, Mémorial A n° 1061/2020.

[223] Before the derogation was introduced in 2022, the sum of the distributed bonus could not exceed 5% of only the company’s profits from the preceding year, which allowed only big firms to make use of the participative premium to attract new employees.

[224] Art. 3(6) of the law of 23 December 2022 “concernant le budget des recettes et des dépenses de l’Etat pour l’exercice 2023”, Mémorial A n° 649/2022 states that *"on an annual basis and under certain conditions, the participatory bonus may be calculated according to the positive algebraic sum of the results of the members of the integrated group".*

participative premium. The participatory bonus must be filed to RTS tax office otherwise the 50% tax exemption cannot be granted.

cc) Participation in Decision-Making

There is no direct connection between participation in decision-making and financial participation of employees; in particular, financial participation plans cannot extend existing rights pertaining to participation in decision-making. In companies with compulsory employee representation on the board (pursuant to Art. L. 426-1. of the Labour Code in state companies and companies with more than 1,000 employees), employee representatives may initiate and influence the design of financial participation plans.

17. Hungary

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Dorottya Boda, László Neumann, Zoltán Víg, those that contributed to the updates were in chronological order in 2014 Erika Kovacs, Zoltán Bankó, Dorottya Boda and László Neumann and in 2018/2020 Jens Lowitzsch and László Neumann and in 2023 Gyula Kocsis and Jens Lowitzsch.

Employee ownership has been the main form of employee financial participation (EFP) in Hungary. It has been variously structured to include employee acquisition of state assets on preferential terms during the first wave of privatisation, employee share ownership as a part of external privatisation, long-term incentive plans, and stock options. In the first stages of privatisation, the most prevalent form of employee ownership was the Hungarian Employee Share Ownership Programme, MRP, modelled on the US Employee Stock Ownership Plan (ESOP). Although briefly popular as a quick expedient for getting assets into the hands of company employees, now that privatisation is over, the number of ESOP companies declined from 269 in 1994 to about 79 in 2010.[225] After this long decline an amendment that entered into force on 1 January 2016 appears to have given a positive impulse for establishing non-privatisation ESOPs 'with remuneration purpose' as the title of the section of the law defines them. A 2016 Deloitte survey[226] suggests that approx. 90% of the 177 large corporations in Hungary would consider introducing an ESOP; contrary to high expectations, in 2018 the company register (www.céginfo.hu) included only 30 active ESOPs established since 2016.[227] However, between 2017 and 2021 the number of active ESOP gradually rose to 48, then experiencing a strong increase bringing the number to 91 at the beginning of 2023.[228] To close a loophole in the 2016 regulation that allowed tax-efficient

[225] Since 2010 the Central Statistical Office has not been publishing data on ESOP organisations separately and included them in 'other type of organizations' group.

[226] https://ado.hu/munkaugyek/hodit-a-munkavallaloi-resztulajdonosi-program/, accessed Sept 2023.

[227] Company documents and stock exchange disclosure prove these ESOPs were established following the legal changes of 2016; they include the biggest Hungarian companies and the 'blue chips' traded at the Budapest Stock Exchange, like OTP Bank, MOL, BorsodChem, Richter Gedeon and Waberer's.

[228] For 2022-23 see I. Gál "What is an employee share ownership program and why is it worth it?" March 2023 https://www.hrportal.hu/hr/mi-az-es-miert-eri-meg-a-munkavallaloi-resztulajdonosi-program-20230424.html, login Sept. 2023.

remuneration to top executives the Parliament passed an amendment to the ESOP law that came in force on 1 January 2019. With the exception of the Approved Employee Securities Benefit Programme (AESB), introduced by tax laws in 2003, the other EFP schemes, including profit sharing, are found only to a limited extent. Having little support in official economic policy, they are not formally registered or reported.

The online company register (www.céginfo.hu) provides the most reliable data about companies with employee shares issued under the company law indicating that in April 2014 their number was 254 in a population of 3,034 joint-stock companies; of these 107 were considered to be still operating, however only seven of them employ more than 1,000. In January 2019 the same source indicated that 61 ESOPs established before 2000 were still registered[229] which together with the recent ones mentioned above adds up to 91 ESOPs. According to the Hungarian Central Statistical Office before the 2008-2009 financial-economic crisis about 30 AESB plans had been launched in each year; anecdotal evidence indicates that during the financial crisis companies became more interested in stock options. Furthermore, the following survey data is available: The Hungarian Workplace Employment Relation Survey (HWERS) 2010 reported employee share ownership plans in 7% of companies of which 66% were broad-based. According to the Labour Force Survey 2009 of the Hungarian Central Statistical Office only 0.4% of employees participate in employee share ownership plans. Whereas the data from HWERS 2010 imply that the employees have the highest level of participation in large multinational companies, the Labour Force Survey 2009 contains data, according to which the level of employee share ownership is approximately equal in large, middle-sized and small enterprises. According to the HWERS 2010 profit sharing plans were operated in 20% of companies with only 14% being broad-based and only 7% pre-defined, that is, genuine profit-sharing plans.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 30.9% (2013, 16.4%; 2009 13.8%) of companies with more than 10 employees in Hungary offer their employees profit-sharing and in 2013 2.6% (2009, 3.6%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 9.7% (2010, 9.2%) of Hungarian employees were taking part in profit-sharing while 3.7% (2010, 0.9%) of them were participating in share-ownership schemes.

a) General Attitude

The Confederation of Hungarian Employers and Industrialists (Munkaadók és Gyáriparosok Országos Szövetsége, MGYOSZ) has partaken in several international projects and programs on EFP (e.g., TOBEQUE 3) over the last decade; however, so far there has not been any domestic policy initiative on behalf of MGYOSZ or other employer associations. Although, trade unions at the national level actively promoted employee ownership in various forms, local trade unions – in spite of lobbying for

[229] However, it is unclear how many of the "old" ESOPs are still operating, as some companies are known to have exited the market and thus their number may be lower in spite of being accounted for by the company registry court; in 2014 the company register indicated 67 companies (partly) owned by ESOP organisations while it also contained 203 allegedly operating ESOP organisations.

preferential shares and ESOP buy-outs – often took a surprisingly passive stand, declaring their interest in employee buy-outs but taking no active role in implementation. Other than influencing privatisation decisions, unions usually had at least one of their leaders as a member of ESOP organising committee and ESOP trust, however, regarding ESOP and other buy-out schemes mainly as tools for preserving jobs. More generally, since the end of privatisation in 1998, lobbyists have fought, to gain political support and financial incentives for extending the use of ESOPs beyond the privatisation process.

In 2012 the National Federation of Workers' Councils (Munkástanácsok Országos Szövetsége, MOSZ), one of the trade union confederations, solicited the government to sell minority shares in companies to employees via ESOPs putting the revision of ESOP legislation on the agenda. However, in an environment of the right-wing government buying back a dozen companies mainly in banking and utilities sectors privatised by previous governments, upgrading the privatisation-oriented Hungarian ESOP program conflicted with the then policy approach sinking the initiative. Another MOSZ initiative linked to the new Civil Code effective as of March 2014 introduced the institution of "fiduciary trustee" into the Hungarian legal system. Although the legislators' primary aim was to provide wealthy private persons with an instrument for asset management, the "fiduciary trustee" was compatible with an "employee ownership trustee", and following the general election in 2014, MOSZ filed the government a detailed policy document eventually leading to a reform. Despite political parties on both left and right declaring their commitment it was not until a 2015 law brought some of the desired changes, most importantly the extension of ESOPs beyond privatisation transactions. A 2018 amendment in force as of January 2019 tightened the rules for this new type of ESOPs. In 2021 an amendment introduced a new Special Employee Stock Ownership Programme (SESOP) targeting specifically executives and supervisory board members.

b) Legal and Fiscal Framework

The legal framework of EFP includes both profit sharing and employee share ownership. However, no specific legal or tax incentives for profit sharing are granted either to employer or employee. Company law explicitly regulates employee shares, including ESOPs and stock options. In 2003 an Approved Employee Securities Benefit Programme with specific incentives has been introduced. A 2015 reform of the ESOP legislation extended these plans beyond privatisation transaction.

aa) Share Ownership

In Hungary the US ESOP system strongly influenced the law regulating the establishment and functioning of ESOPs basically following the American 'trust' model. However, there is a major difference between the two systems: while the Hungarian ESOP was conceived as a privatisation vehicle with the organisation ceasing to exist as soon as all the securities are paid for and their ownership transferred to the employees, the US ESOP is designed to perpetually administer the securities of employees.[230] This situation, however, changed in 2016 with an amendment introducing ESOPs as a genu-

[230] Another difference between the US and Hungarian regulation was that under the 1992 ESOP Law there were no 'fairness' rules (this led to disproportionately large manager ownership); however, this was changed with the 2003 Amendments.

ine instrument for asset formation element and remuneration policy in private companies. Independently of ESOPs various share-based schemes have been introduced over time with various fiscal incentives available.

Employee privatisation on preferential terms (1991, 1995, 2007) – The privatisation law of 1991 contained various preferential privatisation techniques for employees. In 1995 a new Law on Privatisation reduced some allowances for employees but offered at the same time new forms and techniques, i.e., privatisation on deferred terms, employee privatisation on preferential terms, *'Egzisztencia'* credit, and ESOPs.[231] In 2007 the Law on Privatisation was superseded by the Law on State Property (Law CVI of 2007) which, however, preserved the described incentive system. Privatisation offers three financial techniques for acquiring employee ownership on preferential terms: (1) price reduction, (2) purchase by instalment, and (3) purchase on credit. Thus, a discount of up to 150% of the annual minimum salary is possible. However, the nominal value of shares thus acquired may not exceed 15% of the company's registered capital nor the discount granted exceed 50% of the purchase price. In the event of paying the discounted price in instalments, except if sold within the framework of an ESOP (see below), a down payment of fifteen % is required in cash, upon which payment of the remainder may be deferred for a period of up to three years at the prevailing interest rate charged on public debts. Further, Hungarian citizens may take up to 50% of the property that they wish to acquire, up to a maximum of 50 million HUF, as an *'Egisztencia' credit*, regardless of the number of buyers.[232]

Employee stock ownership plans in privatisation (1992, 2003, 2007) – The Hungarian ESOP is an independent legal entity; so-called 'privatisation' and 'non-privatisation' ESOPs exist.[233] In the case of the former, the ESOP buys the property of the State Property Agency or of municipalities; there are incentives attached to this form. In the latter case, shares or business shares not at the disposal of the State Property Agency are sold, e.g., already existing securities or securities issued in connection with capital increase. The only difference between the two forms is that there are no specific incentives encouraging companies or employees to establish non-privatisation ESOPs. If the employees decide that the ESOP should remain in place, regulations for the period after repayment (e.g., rules for marketing shares) must be developed.[234] The ESOP is fully liable for its obligations. Members of the ESOP are not liable for its debts except for the securities already allocated to them. Until the shares are transferred to the plan participants the ESOP owns the shares. As for the exercise of property rights, participants have voting rights in proportion to their registered shares, but only up to a maximum of 5% of the property acquired by the ESOP. Tax exemptions for *'privatisation' ESOPs* grant the company tax allowances for property sold to the ESOP as prescribed by the corporate Tax Law. Accordingly, the company

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231 Law XXXIX of 1995 on the Realisation of Entrepreneurial Property in State Ownership; Governmental Decree No. 28 of 1991 on 'Egzisztencia' Credit and Deferred Payments Benefits (see below).

232 Section 58 (3) of Law XXXIX of 1995 on Realisation of Entrepreneurial Property in State Ownership. This rule applies to ESOP credits as well.

233 Regulated by Law XLIV of 1992 on Employee Stock Ownership Programme, which entered into force on July 14, 1992, amended by Law CXIX of 2003 and articles 38-42 of Law CVI of 2007 on State Property.

234 In absence of such legal regulations, the majority of ESOP organisations ceased to exist after the loans were repaid. Whereas 269 privatisation ESOPS existed in 1994, only 79 remained in 2010 according to the Hungarian Central Statistical Office. Moreover, the established forms of operating the asset (e.g., setting up a limited company) involve considerable costs. See Boda, Neumann, Vig, PEPPER III 2006.

may deduct up to 20% of the amount paid to the ESOP from its tax base. Until then end of 1996 ESOPs were not subject to corporate income tax when the rules of the Law on Corporate Tax and Dividend Tax levied 16% tax on their income.[235] According to Personal Income Tax Law, securities transferred from the company to employees are tax-free since they are not considered income, except those shares bought back and then redistributed by the ESOP organisation. However, when the employee sells these shares, the proceeds are taxed at the capital gains tax rate of 15% (Law CXVII of 1995 on Personal Income Tax)[236] while no social security contributions are due.[237]

Employee stock ownership plans in private Companies (2016) – Act CLXXXVII of 2015 brought significant novelties to Law XLIV of 1992 on *Employee Stock Ownership Programme* (ESOP law) detaching ESOPs from privatisation and introducing them as an element of remuneration policy in private companies. Corporations may establish ESOPs to hold securities such as shares, bonds or other financial instruments on behalf of the firm itself or the parent company and to distribute the yields among employees holding stock in the ESOP. This type of ESOP has to serve a defined purpose, for examples future improvement of the company’s performance, minimising effective risks or preparation for going public (Law XLIV, Sec. 1(7)) while financial institutions, insurance companies and investment firms may use an ESOP only for managing shares as part of their remuneration policy (Law XLIV, Sec. 1(8)). An ESOP can be set up by the company or the holder of the majority of shares of a company (Law XLIV, Sec. 24/B(1)) requiring a statute that settles amongst others the rules for decision-making and the principles of property distribution in case of termination (Section 24/B(5)). It has to be managed by a law firm (Law XLIV, Sec. 24/E(1)) representing the ESOP shareholders administrating the participant’s accounts and being responsible for financial matters (Section 24/G). Employees can receive shares or options for free or under preferential conditions. The scope of the ESOP in particular with regards to coverage and eligibility criteria is subject to the employer to define within the legal limits preventing discrimination etc. Both employees and employer benefit from a preferential tax regime for ESOPs: Employees are solely liable to capital gains tax of 15% on the gains when disposing of the ESOP shares while no social security contributions incur (which would otherwise account for 18.5%). ESOPs may restrict eligibility to certain employee groups or make participation compulsory for all or certain employees. Shares are not transferable but can be inherited (Law XLIV, Sec. 24/C(7,8)). The minimum threshold to set up an ESOP is five natural persons (24/B(2,3)) while quantity, holding period or the proportion at which management and regular employees may obtain shares are not defined; against this background, it is questionable whether this regulation promotes the creation of broad-based programmes.

Chapter IX. of Act LXXXII of 2018 amended 1992 ESOP law aiming above all to close loopholes of the 2015 amendment in newly established ESOPs. These loopholes per-

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[235] Two special rules apply to calculating the tax base of an ESOP: (ii) the tax base is reduced by the amounts paid by private persons as their own contribution to the ESOP and by the amounts of subsidy paid by other private or legal persons or by the employer company (under general rules these amounts would have been considered income); (ii) at the same time, the tax base must be increased by the acquisition value of the shares given to the ESOP participants (under general rules this amount would be accounted among expenditures, thus reducing the profit).

[236] Securities acquired from already taxed personal income of the programme participant are not taxable.

[237] The latter is a more topical regulation, as nowadays most of the former ESOP organisations cease to exist and often distribute shares among the members.

mitted the distribution of capital gains realised on the difference of the value of securities between the time of their granting and repurchase and thus payments not or only partially dependent on the yield of the securities. As the 2015 law did not specify the minimum holding period during which the securities had to be owned by the ESOP entity, some companies introduced bonus payment systems for executives under the umbrella of ESOPs without establishing a genuine ownership relationship with securities held by the ESOP entity for a matter of days only to reduce the tax burden. Firstly, the amendment stipulates that only the employer's ordinary shares, or other, publicly issued securities with a similar investment risk are transferable to the ESOP entity. This change eliminates corporate bond programmes that were typically issued privately and often had no genuine economic substance from the ESOP system, because the bonds in question. Secondly, the period for the assessment of the company's performance serving as the basis for payments need to be at least one year in 2019 and two years from 2020 onwards. Consequently, these securities have to be held by the ESOP entity on behalf of the employees at least for this period of time putting a stop to ESOP structures in which the employer – contrary to the intentions of the legislator – transferred securities to the ESOP entity for a brief period only.[238] Thirdly, the assessment of the company's performance, serving as the basis for payments, has to be justified by either the data of the annual company report, or based on mandatory, regularly published data of issuers of publicly traded shares or industry indexes. Fourthly, the amendment defines the main purpose of the ESOP creating an ownership interest of the participants rendering the 'remuneration policy' as the main document defining the conditions for the transfer of the securities void if not complying with these legal requirements; accordingly, the law also establishes procedural rules for filing a lawsuit in order to declare the 'remuneration policy' void.[239]

An amendment by Act CI of 2021 effective as of July 2021[240] introduced the establishment of a new Special Employee Stock Ownership Programme (SESOP) targeting specifically executives and members of supervisory board or board of directors of privately held limited liability companies (SESOPs are not limited to public limited companies as ESOPs are).[241] Unlike the ESOP, the SESOP programme must be set up with a minimum of ten participants and operated for a fixed period of at least ten years to be eligible for tax incentives with the asset management method chosen by the SESOP at the time of its formation not to be changed during the fixed term, conditions believed to limit its spread.[242] After the expiry of that period, any assets acquired by the SESOP organisation or their equivalent value shall be transferred to the participants and the implementing entity shall be dissolved with the employer company having a pre-emptive right to acquire shares not distributed. The number of SESOP participants cannot be increased after the organisation has been set up, nor, as a general rule, can

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238 See: https://www.portfolio.hu/en/tax/not-too-good-to-be-true.37883.html

239 See: http://www.mrpvilag.hu/az-mrp-torveny-folyamatban-levo-varhatoan-2018-november-vegen-elfogadasra-kerulo-modositasa/

240 On Certain Asset Management Issues and Amending Certain Laws to Strengthen the Coherence of the Legal System, adopted on 15 June 2021.

241 See A. Gondi, SESOP, or a new alternative to management remuneration, 9 Dec. 2021 https://jalsovszky.com/blog/kmrp-avagy-a-menedzsment-javadalmazasanak-uj-alternativaja, accessed 1 Aug. 2023.

242 Of 48 ESOPs registered in 2021, only four fall within the scope of the persons covered by the SESOP; see G. Horváth, Opinion - What does the new ESOP legislation bring?, 6 Aug. 2021 https://www.vg.hu/velemeny/2021/08/mit-hoz-az-uj-mrp-jogszabaly, accessed 1 Aug. 2023.

membership of the organisation be terminated. But – unlike in the ESOP – shares are transferable providing an opportunity to pay out income from the SESOP more flexibly already during the two-year holding period of the ESOP (introduced in 2018, see above). Upon the death of a SESOP participant, the membership share can be inherited, and one successor beneficiary be nominated, failing which a new participant can acquire membership. The sponsoring company can make non-refundable contributions to the SESOP organisation to acquire the assets. In addition to setting up a SESOP organisation, employees can also set up a trust under the Asset Management foundation Act (with at least HUF 10 mln. of SESOP assets to be transferred) to manage one or several SESOPs. The SESOP may carry out other economic activities only on a limited basis, in the form of bond issuance and the purchase of government securities and may not (usually) alienate the acquired assets before the closing general meeting (§ 17 (13) Act CI of 2021 amending § 24/O of Law XLIV). Finally, the SESOP is providing a tool for a management buy-outs with the SESOP organisation taking on a loan to buy out the employer company which is entitled to facilitate the acquisition providing the SESOP with capital contribution tax exempt for both, the SESOP and its owners recognised as an expense for the employer company.

Employee shares (1988) – Employee shares, first introduced by the Law on Business Associations of 1988, still exist under the current law. They are registered shares and can be issued free of charge or at a reduced price in accordance with the provisions of the Articles of Association of the joint-stock company, e.g., in the context of a Long-Term Incentive Plan or a broad-based Stock Option Plan. Employees' shares may be issued in conjunction with a simultaneous share capital increase of the joint-stock company, up to a maximum of 15% of the increased share capital. A joint-stock company may pass a resolution entitling employee held shares to dividends from after-tax profits to be distributed amongst shareholders prior to the shares belonging to other categories or classes of shares but following shares granting preferred dividends. In the event the employee dies or terminates his or her employment, except in the case of retirement, his or her heir or the employer has the right to transfer the employee's shares to other company employees within six months.[243] The employer company can distribute them free or at a discounted price, making this form of financial participation very attractive to employees. However, this form of share acquisition enjoys no tax incentives. Since January 1, 2003, income received in the form of securities is no longer regarded as an allowance in kind.[244] Thus, in the case of employees' shares, the difference between the purchase price and the sale price is subject to personal income tax. A recent legislative change of minor importance is that the former provisions of Law on Business Associations on Employees' Shares issued by the company, now is incorporated into the new Civil Code (Act V. of 2013, Art. 3:236-7). The new Code came into effect on 15 March 2014.

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243 If this deadline expires without success, at the first shareholders' meeting thereafter the company shall withdraw the employees' shares in question with a corresponding reduction in its share capital or shall decide to sell such shares after transforming them into ordinary, preference or interest-bearing shares.

244 The applicable rules of taxation are determined by the legal relationship between the private person and the provider. In the case of securities provided by employer to employee, such income is considered as income from employment, and the pertinent tax rules have to be applied. See Informant of the Tax and Financial Control Administration (APEH) on the Rules on Securities Allowance in Force from January 1, 2003. Source: Hungarian CD Jogtar (Feb. 28, 2005).

Approved Employee Securities Benefit Programme (2003) – At the beginning of 2003, new legislation[245] came into effect allowing companies to set up state-recognised, tax-qualified stock plans which can involve securities either free of charge or on a discount basis (e.g., buy one – get another free.) The enterprise introducing an Employee Securities Benefit Programme has to submit an application for its recognition to the Ministry of Finance which informs the relevant tax authorities of its decision. The programme must comply with certain proscribed conditions, e.g., only securities issued by the applicant company or by its majority shareholder (also shares of affiliated companies, provided that they are traded or issued in EEA or OECD countries) may be offered in the programme; statutory threshold levels of at least 10% employee participation and a management share of less than 25% representing less than 50% of the total value of the shares offered. At the time of sale, the employee is taxed on the spread between exercise price and sale price. This capital gain is taxed at 9%, separately from other income.[246] Companies have no withholding or reporting obligations in connection with employee stock option or purchase plans. The first HUF 1,000,000 (2009) of the shares that have met vesting requirements are not taxable at exercise or vesting.[247] Once vested, employee shareholders enjoy the same rights as any other shareholder of the same class. An amendment of the Law on Personal Income Tax (Act LXI of 2006) stipulated that gains of all share purchases and similar transactions should be added up in the given tax year and that in calculating the tax base, instead of the nominal value at the time of allocating the share option, the actual value at the time of purchase is the relevant number. At the same time, according to the interpretation of the officers at the Ministry of Finance, the amendment abolished the three-year blocking period.

Between 2011 and 2013 the regulation on Approved Employee Securities Benefit Programme has been amended twice. In 2011 supervision of Approved Employee Securities Benefit Programme was transferred to the National Tax and Customs Administration (Act CLVI of 2011). In 2013 the previous approval of initiated programs ceased to exist, from this time onward the supervision has been confined to ex-post control (Act CC. of 2013).[248] To ensure proper control of the allocation of tax benefits Act LXXIV of 2014 makes the notification of the tax authority on the implementation of a plan mandatory. Act CC of 2013 changed some of the criteria of launching the programs. The former law gave incentives to benefit employees with shares of the given (employer) company and that of its controlling (mother) company Now, the scope of the eligible securities is extended to shares of any other 'connected' or 'affiliated' companies, i.e., those having the same owner as that of the program initiator company. The law aims to maintaining the broad-based nature by requiring new programs' written notice that should be available for all eligible employees. According to the criteria such programs keep qualifying for 'majority employee benefit' programs, as top managers and offi-

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[245] Decree of the Ministry of Finance No. 5 of 2003 on the Procedure of Registration of Approved Employee Securities Benefit Programme, and on the Rate of Administration Service Fee for the Initiation of the Procedure (reform of Law CXVII of 1995 on Personal Income Tax).

[246] While personal income tax is payable because the shares are regarded as earned income, no social security contribution must be paid (earlier share benefits were regarded as in-kind benefits, belonging to the highest income tax bracket (44%), and the social security contribution was also payable).

[247] Any shares deemed non-qualified are taxed as employment income (until the end of 2010 progressive scale from 17% to 32%) since 2016 as flat personal income tax rate at 15%.

[248] The relevant ministries backed complaints of program organisers about excessive administrative burdens; accordingly, the 'approved' adjective was cancelled from the program name throughout the text.

cials (board members) may be at most 25% of the participants and they may acquire at most 50% of total face value of the shares. The top accounting official and members of the supervisory board, as well as their relatives are excluded from the programs. The law stipulates that neither the eligibility criteria nor the amount of the benefit can be tied to employees' individual work performance. It allows specifying conditions (mainly in connection with economic performance of the company) that should be met prior to the actual implementation.

As the ministries did not commission any impact study during the drafting process, it remains unclear whether ex-post control is an appropriate form of monitoring the internal conditions (e.g., participating managers and officials, share of subordinate employees in the number of participants and in total amount of shares) as such data are missing from the form to be filed to the tax authority.[249]

bb) Profit-Sharing

Except for section 12 of the Labour Code, stating that an employer may grant any benefit to its employees if it is provided in a non-discriminatory manner, no regulations exist. There are neither tax allowances nor other incentives for profit-sharing; any kind of benefit paid to employees is taxed as personal income, there is no allowance for employers.

cc) Participation in Decision-Making

Employee representatives make up one third of the supervisory board in companies with more than 200 employees. In companies with more than 200 employees having a two-tier board system (both a supervisory and a management board), the works council has the right to nominate one third of the members of the supervisory board. In companies with a single-tier board system (only a board of directors), employee participation at the board level must be regulated by an agreement between the works council and the company. This is a relatively new development (prior to the 2006 legislation only two-tier board structures were possible), and it represents a potential weakening of employee representation at the board level since there are no minimum requirements. Furthermore, Article 42 of the Law on State Property requires, that prior to adopting a decision concerning the sale of an enterprise under majority state ownership, the employees' representatives must be informed about any possible opportunities regarding the acquisition of ownership by the employees. Workplace representation in Hungary is provided by both local trade unions and (since 1992) elected works councils, with the balance between the two varying over time. After legal amendments initiated by the socialist government elected in 2002, only the union has the right to negotiate collective agreements; however, the 2012 Labour Code resumed the works council's right to conclude quasi-collective agreement (which may not have stipulations on wages) in absence of sectoral collective agreement and local trade union eligible to bargain.

The new Civil Code (Act V of 2013) embraces several legal fields formerly regulated by separate Acts, e.g., applying to the former company law (Act IV of 2006 on Business Associations, which used to have regulations on board level employee representation). The basic concept of employees' board level representation compulsory (unless the

[249] The tax return form no. K70 (www.nav.gov) requires each year: identification of the company, the trustee and the benefitted individual(s), identification, type and market value of the transferred securities.

company and the woks council agreed differently) in the two-tier system in any form of firm employing more than 200 remained unchanged. Regulation on board level representation under one-tier system has not changed either. However, minor changes affected employee representatives' position on supervisory boards, the most detrimental being that employee delegates lost their legal protection.[250]

18. Malta

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Saviour Rizzo and David Borg-Carbott, those that contributed to the updates were in chronological order in 2014 David Borg-Carbott and Clement Mifsud Bonnici, in 2018 David Borg-Carbott and Lara Pace, and in 2023 Patrick Farrugia.

In spite of a strong historical link to the United Kingdom, the source of much of the law on Companies and Employment in Malta in practice, employee financial participation (EFP) is not well developed, being neither well diffused nor enjoying much political support. The ramifications of the nationalisation programme in the 1970s and the privatisation drive of the 1990s had the unintended consequences of introducing employee financial participation in some larger firms first. However, privatisation cannot be said to have been auspicious for workers' participation. Following Malta's entry into the European Union and the adoption of the Euro currency, with an increasing number of foreign-owned entities being set up in Malta, a number albeit limited of well-established companies, including listed companies have also started to offer employee share ownership plans to their employees. This was also encouraged by amendments to the Fringe Benefit Rules in 2007, 2010 and subsequently in 2017.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 37.6% (2013, 13%; 2009, 4.3%) of companies with more than 10 employees in Malta offer their employees profit-sharing and in 2013 0%[251] (2009, 2.9%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 10.9% (2010 4.2%) of Maltese employees were taking part in profit-sharing while 2.3% (2010, 1.5%) of them were participating in share-ownership schemes.

a) General Attitude

Historically, the government policies that actually triggered the largest number of EFP schemes in practice were not focused upon EFP but produced it rather as a side effect. Between 1971 and 1987 the newly elected government of the Malta Labour Party

[250] In fact, this change was attributable to the 2012 Labour Code restricting legal protection to the president of the works council, leaving 'ordinary' members behind.

[251] The sample of the ECS 2013 round for Malta was comparatively small and the authors suspect that the result of 0% might be an artefact.

(MLP) embarked upon a programme of nationalisation as part of the de-colonialisation process, seven years after attaining political independence. The banking sector, at that time dominated by two major banks, was one of the nationalisation targets. The winding up of a 'widow and orphans' fund in operation in these banks prior to nationalisation resulted in the issuing of shares for the employees of one of these banks. The privatisation programme of 1990 adopted by the Nationalist Party, in power since 1987, also had the unintended consequence of introducing employee financial participation schemes in the banking sector. Reversing the process of nationalisation begun by the previous administration, the government divested itself of several entities in which it was a majority shareholder. A side effect of this privatisation process was the creation of a trust fund for the benefit of employees in one of the banks.

Despite the social partners' apparent lack of enthusiasm, trade unions have supported all the schemes that were proposed, putting them into practice and actively participating in their administration. With no collective bargaining at the sectoral level, it is easier for Maltese trade unions to support such schemes in practice. The most active trade union in this area is the Malta Union of Bank Employees. This arises from the fact that the two major banks, where the union is heavily represented, were the targets of both the afore mentioned nationalisation and privatisation programmes. The general trade unions, i.e., General Workers Union, the island's largest union, and the Union of United Workers, were also involved in prolonged discussions with the Government about the introduction and implementation of a public sector scheme which gave employees the opportunity to set up cooperatives and submit tenders for work contracts. EFP schemes have never been prominently featured on the agendas of the two major political parties. In a number of cases, trade unions have supported company proposals to introduce EFP plans and have been actively involved in their implementation. In most companies offering financial participation schemes trade unions are present. In 2022 the Malta Council for Economic and Social Development, a consultative institution composed of representatives of employers, trade unions and civil society, was suggested as a platform for the promotion of EFP but no follow up initiatives have been reported and it seems that the topic still has little appeal.[252]

b) Legal and Fiscal Framework

Maltese law tends to refer to EFP schemes indirectly tacitly recognising that Maltese firms may put such schemes in place (by means of private or collective agreements). Although there are no specific regulations to facilitate either share-ownership or profit-sharing schemes, Maltese law does provide a legal instrument for ESOPs, namely the trust vehicle.

aa) Share Ownership

Privatisation (1990) – The privatisation drive which the Nationalist Party embarked upon in the early 1990s resulted in a share ownership scheme being put into place for the employees of two formerly para-statal entities[253] which were partially privatised.[254]

[252] See Saviour Rizzo, Financial participation of employees - Employees should be offered profit sharing and share ownership, 9 January 2022, https://timesofmalta.com/articles/view/Financial-participation-of-employees-Saviour-Rizzo.925963, accessed Aug. 2023.

[253] By virtue of their nationalisation these two banks had become para-statal entities (independent statutory bodies within the realm of the public sector).

However, these schemes had no statutory basis; they were set up and regulated by means of private agreements (both individual contracts and collective agreements) between the newly privatised companies and their employees.

Private Companies (2004) – There is no statutory framework for either share-ownership or share-option schemes. Maltese law does not regulate the exact conditions under which share-option schemes may be offered. It is left to individual companies to create their own schemes based on general company and civil law principles. Provided that a company is empowered by its Memorandum and Articles of Association to implement employee financial participation schemes, employers wishing to adopt one of the two types of schemes can enter into private or collective agreements with their employees, setting out the scope, terms and conditions. Where the employer company is itself the issuer of the shares to be offered to its employees, it is not considered to be providing an investment service subject to the Investment Services Act (Cap. 370, Laws of Malta, IS Act) and are therefore exempt from requiring an investment service licence/collective investment service licence. Such exemption however only applies upon approval by the Malta Financial Services Authority. Shares must be allocated to employees in accordance with the general rules set forth in the Companies Act (Cap. 386, Laws of Malta) (CA). As a general rule, the CA prohibits a company from acquiring its own shares (Art. 105 para. 1 CA) or the shares of its parent company (Art. 110 para. 1 a) CA), or providing financial assistance for the purchase of either (Art. 110 para. 1 lit. b) CA). However, pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) Art. 106 para. 4 CA and Art. 110 para. 2 CA make an exception to this general rule allowing a company to both acquire its own shares or those of its parent and to provide financial assistance to facilitate the acquisition of shares by or for its own employees or the employees of a company of the same group. In such cases, the obligation for the company to effect such an acquisition by virtue of an extraordinary resolution delineating the maximum amount of its own shares which may be acquired by it, and the duration and consideration of such acquisition, may be dispensed with. The only condition is that company equity must not drop below the total value of called up issued share capital of the company and of those reserves which may not be distributed under the provisions of the CA or under the company's Memorandum or Articles of Association. It should also be noted that the CA generally allows companies to offer their shares at a discount or pay a commission to anyone subscribing or agreeing to subscribe to company shares. This may also apply where shares are offered to employees at a discount in a corporate share ownership scheme. In this context the CA does not differentiate between discounted shares offered to employees or to third parties.[255]

[254] This was a trust fund, set up on behalf of employees, in the Bank of Valletta, a formerly state-owned bank, and in GO, a formerly state-owned telecommunication enterprise.

[255] Consequently, the following conditions apply across the board: (i) authority for the making of discounts must be given by the company's Memorandum and Articles of Association, (ii) the discount must not exceed 10% of the issue price or as prescribed by the Memorandum and Articles, whichever is less, (iii) the amount or rate of discount, together with the number of the shares agreed to must be made public, (iv) in no event may the value of the shares be reduced to below their nominal value as a result of such a discount, and (v) the difference between the option price at granting and its market value on exercise is liable to tax.

Stock Option Plans – The Fringe Benefit Rules issued under the Income Tax Act provide for tax incentives for employee share-option schemes. In 2017, significant amendments were made to the Fringe Benefit Rules in relation to share-option schemes. According to the Rules the grant of an option to acquire shares is not, in itself, a taxable benefit. The company will, however, be treated as providing a taxable fringe benefit if and every time that the employee exercises the option and acquires shares in the company. Similarly, the company is treated as providing a benefit whenever it transfers shares to its employees under a share award scheme. The value of the benefit is the excess, if any, of the market value of the shares at the time when the shares are transferred over the price paid for those shares by the employee, but the tax on this value is charged at the flat rate of 15% (rather than their incremental personal tax rate which can go up to 35%). For the purpose of taxation of this fringe benefit, the taxable value is treated as income that is separate and distinct from the beneficiary's other income. The employee may subsequently transfer the shares at a profit, which income shall subsequently constitute a capital gain.

Listed Entities – The Listing Rules, issued by the Malta Financial Services Authority contain provisions on Employee Share Schemes and Directors' Share-based Schemes (Chapter 5 of the Listing Rules). These Rules require an ordinary resolution of the shareholders of the entity to approve these schemes, whilst further specifying the contents of what such resolution is to contain, thereby providing sufficient disclosure to the company's shareholders. However, an exception to such requirement applies when such schemes are made available to all, or substantially all, of the issuing entity's or its subsidiary's employees, or under certain conditions in the case of a recent takeover or reconstruction. Furthermore, the Code of Principles of Good Corporate Governance (Appendix 5.1 of the Listing Rules.), require a listed entity's Remuneration Committee to disclose details of share options alongside the details of the remuneration policies of listed entities.

Employee Share Ownership Plans (ESOPs) – Maltese law contains no specific regulations on ESOPs. Trust legislation (The Trusts and Trustees Act), inspired by Jersey legislation, has seamlessly integrated the UK common law concept of trusts into Maltese law. A Trust can take many forms, and although the concept originated in the UK, trusts are not exclusive to countries that follow the common law tradition. One of these civil law countries is Malta which, through the Trusts and Trustees Act 1988, as amended in 2004 (Trusts Act), allows Maltese individuals and companies both to found and be a beneficiary in trusts regulated by Maltese law. The Trusts Act does in fact contain an explicit reference to "employee benefit or retirement schemes or arrangements" as forming the basis of a Trust. Although traditionally used for hedge funds, the "Collective Investment Scheme" (CIS) may also be the basis for an ESOP.[256] With regard to the taxation of ESOPs which fall within the definition of CISs, the Income Tax Act (Cap. 123, Laws of Malta) does not contemplate a favourable tax treatment for "exempted CISs" (the definition refers to licensed or registered CIS); therefore,

[256] CIS defined in Art. 2 IS Act is any scheme which aims at 'collective investment of capital acquired by means of an offer of units for subscription, sale or exchange'. It must operate according to the principle of risk spreading and either (i) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or (ii) at the request of the holders, units are or are to be re-purchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or (iii) units are, or have been, or will be issued continuously or in blocks at short intervals.

the income from CIS ESOPs is taxable at the normal rate. For taxation purposes, a licensed CIS primarily holding shares in a Maltese company (as an ESOP) is treated as a "prescribed fund".[257] Investment income, as defined in the Income Tax Act, which is received by a "prescribed fund", is subject to a withholding tax of 15% on bank interest and 10% on investment income from other sources. Other income and capital gains remain exempt for "prescribed funds". When Maltese resident participants of the CIS (the employees) redeem, liquidate, or cancel their units in the CIS, they are subject to taxation at their normal personal rates unless the CIS is listed on a recognised stock exchange in which case certain exemptions may be available.

bb) Profit-Sharing

Employment law considers profit-sharing arrangements between employers and employees as forming part of the employee's wage. Labour legislation also recognises service contracts in which remuneration is also made in the form of a commission or a share of the employer's profits (Arts. 22 (3), 36 (13) Employment and Industrial Relations Act, 2002). This treatment as a "wage" implies that any share of the profits will be computed together with the employee's salary for the purposes of the imposition of income tax and in terms of the legal protections afforded to the protection of wages and income.

cc) Participation in Decision-Making

There are no general statutory arrangements for board level representation in Malta. Employee representatives in companies at board level are only found in the state-owned and recently privatised sector, and even here they are becoming less common. In Malta it is the union, provided it is recognised (that is, the employer agrees to negotiate with it), that normally represents the employee at workplace. In light of EU directives companies employing 50 employees and over are required to adopt information and consultation structures (Employee (Information and Consultation) Regulations, 2006). However, the threshold finds itself reduced below the required 50 employees in specific cases, namely in cases of business transfers (Reg. 4, Transfer of Business (Protection of Employment) Regulations, 2003) required when the enterprise employs at least 20 employees and collective redundancies (Reg. 2, Collective Redundancies Regulations, 2003) required where the enterprise employs 10 employees at a minimum, although the value may vary proportionally depending on the size of the enterprise. Employee representatives are to be kept updated on economic developments and the structure and status of employment, whilst they must also be consulted on matters likely to lead to significant changes to the business. Furthermore, in light of transposition of European Directives, European Companies and European Co-Operative Societies also provide for employee involvement. There is also protection for those not covered by collective bargaining through a series of wage orders for specific industries that set minimum terms.

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[257] A "prescribed fund" Holds, at least, 85% of the total assets in Malta and needs to be classified as a prescribed fund by the Commissioner of Inland Revenue ("CIR").

19. Netherlands

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Pascale Nieuwland-Jansen and Natalia Spitsa, those that contributed to the updates were in chronological order in 2014 Dave Lemmens and Pascale Nieuwland-Jansen and 2018 Jens Lowitzsch and Felicia van Tulder and in 2023 Pascale Nieuwland-Jansen and Jasper Lüke.

Employee financial participation (EFP) schemes were introduced in the 1950s on behalf of expatriate executives from the United States. Many plans, especially share ownership and stock option plans, are still limited to top management. Savings plans combined with profit sharing or employee share ownership plans, generally broad-based, have been implemented since the 1970s. The combination of profit sharing and share ownership plans with savings plans were most common in the Netherlands and thus may be considered typical. However, tax incentives for savings plans (spaarloon), which were the substantial part of the EFP plans, were abolished in 2011 for 2012. The grounds for abolishing tax incentives were not directly linked to EFP but aimed at collecting additional funds for the recent reduction of the real estate tax. New tax incentives or regulations for broad-based employee participation were not introduced since then with the exception of a favourable regime for employee stock options in innovative start-up firms in 2018 which were gaining popularity already in 2017.[258] Starting 2023, the government abolished preferential conditions for start-ups in the context of a tax reform granting employee stock option in all type of firms deferred taxation instead.

In the long-term study by Poutsma and Braam, statistics on plans, broad-based as well as individual, in AEX companies in 1999, 2006 and 2009 were collected. The study showed that the number of broad-based profit-sharing and stock option plans have decreased over time, whereas the number of broad-based share ownership plans increased from 8% in 1999 to 13% in 2009 while the number of executive share plans (38%) was still much higher (Poutsma & Braam 2012). In a study that took into account all Dutch companies Kaarsenmaker finds that in 2009 broad-based share ownership plans were implemented in 3.6%, or 2,500 firms, and broad-based stock option plans in 1%, or 700 firms while executive plans were implemented in 5.8% of firms (Kaarsemaker 2009: 12-13). Both studies showed that share plans had a positive impact on the productivity and financial results of the companies. A 2014 study – one of the first empirical surveys based on questionnaires sent to both employers and employees – focusing on listed companies (Soppe & Houweling 2014) found that although overall interest for EFP is increasing, the number of companies that is implementing schemes remained still rather low with that having broad-based plans growing very slowly. However, interest for EFP exists in all types of sectors and not only in consultancy or financial companies and 62% of employees and 78% of employers believed that EFP has a positive effect in the long-term on a company. In 2014 profit sharing was the most common form of EFP with ca. 50% of all companies apply some sort of scheme while share schemes and share certificates issued by applying the legal form

[258] Employed in a company that is also in your ownership, (NL) Financieel Dagblad of 11 Feb. 2017, https://blog.snpi.nl/nieuwsberichten/snpi-in-het-het-financieele-dagblad-participerend-personeel-is-ondernemender, login Sept 2023.

of a foundation, Stichting Administratiekantoor, STAK were not frequently applied, and the number of broad-based plans increased only little. In summary, EFP still seems to be an instrument for board members and higher management. All listed Dutch companies apply some form of EFP in their company.[259]

Overview statistics listed companies (AMX and ASCX)

	Board	Management	Employees
Profit sharing	48%	15%	8,3%
Options	35%	29%	21%
Shares	54%	33%	17%

(Source: Soppe and Houweling 2014)

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 44.2% (2013, 34.8%, 2009 28%) of companies with more than 10 employees in the Netherlands offer their employees profit-sharing and in 2013 6.7% (2009, 5.6%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 24.1% (2010 25.25%) of Dutch employees were taking part in profit-sharing while 2.6% (2010 4.9%) of them were participating in share-ownership schemes.

a) General Attitude

Employers' associations traditionally backing only executive EFP plans over the last decade, however, have begun to support broad-based plans for reasons pertaining to employee motivation. In small family enterprises owners generally oppose employee share ownership because they fear loss of control. Trade unions, which generally had been opposed to EFP, also have declared their support for broad-based plans conditional on that they are offered on top of normal remuneration. In 2001, the trade unions began a discussion on whether profit sharing and broad-based stock option plans should be included in collective bargaining agreements, a proposal that, however, was turned down; nevertheless, information on EFP was included in a handbook for collective agreements. In 2013 the Netherlands Participatie Instituut (SNPI) initiated a research project on EFP in the Netherlands resulting in the above-mentioned 2014 report by the Erasmus University, on which representatives of the country's largest employers' association and several trade unions collaborated. In 2022 the Christian National Trade Union Federation CNV publicly proposed deferred taxation of employee

[259] Soppe and Houweling find the main reasons for implementing EFP are to enhance entrepreneurship and commitment of employees and sharing of profits. Employers find continuity also important, and employees find voting rights important as a third reason of why to implement EFP schemes in the company. The study also shows why companies do not implement EFP schemes. The main reasons for employers not to implement schemes is that they believe the decision-making processes of the company will become too complex, the costs for implementation are too high and there is a lack of fiscal incentives. For employees the main reasons are that they have never thought about EFP and that they do not know what EFP is and how it is implemented (Ibid.).

shares and stock options when employees dispose of their shares to avoid taxation of illiquid assets.[260]

The government has given little support to EFP following the 2014 publication of the SNPI report, concluding that such plans, especially those limited to executives only, do not contribute to a more equitable distribution of wealth. Nevertheless, in 2017 the government introduced new rules on wealth taxation and new incentives for employee stock options in start-up firms. The latter rules for start-ups were amended and extended in 2022 to give start-ups better conditions to offer stock options instead of high salaries which they cannot pay at their foundation phase.

b) Legal and Fiscal Framework

When combined with savings plans profit sharing or employee share ownership plans were linked with specific tax incentives; for this reason, this combination is the most typical form of EFP. In 1994, legislation on deferred profit sharing, cash-based profit sharing and stock options was enacted. However, all tax incentives for savings plans and thus also for EFP plans were abolished in 2011 for 2012.[261] Notwithstanding, as of January 2017 the introduction of different tiers for the taxation of income from wealth has created a slightly more favourable fiscal regime for employee owners with a 30% capital gains tax on 2.8% of assets up to EUR 75,000 (previously 4%).[262] The controversial 2018 decision to abolish dividend taxation from 2020 on was widely criticized as benefitting only foreign firms and it remains to be seen whether it will be upheld.

aa) Share Ownership

Share Ownership Plans – Although public companies (Naamloze Vennootschap) may transfer shares directly, limited companies (Besloten Vennootschap) must utilize an intermediary because share transfer for them can be made only by means of a notarial deed. The intermediary chosen for this purpose is usually a foundation (the above-mentioned STAK). It owns the employee shares, exercises voting rights and transfers depository receipts of shares to the employee shareholders. Other business forms can also be used as intermediaries. Tax incentives did not apply to share ownership not combined with a savings plan.[263] Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may acquire their own shares for their employees without decision of the general assembly if the Articles of Association provide and conditional that the equity capital reduced by the acquisition price is not less than the amount paid for the shares plus reserve funds; they may also advance funds, make loans, provide security (financial assistance), with a view to

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[260] Ministerie van Financiën (2022): Kamerbrief over kabinetsreactie op voorstellen CNV over werknemersparticipatie: https://open.overheid.nl/documenten/ronl-87d1fbf3c1fecc1081402a8452a9c681665477fe/pdf, accessed on 29. Aug. 2023.

[261] Belastingplan 2012, Ministry of Finance of the Netherlands, p.2, p.18.

[262] Until 2017 all returns on income from wealth were taxed equally. In 2017 three tiers progressively taxing capital income were introduced: assets with a value of up to 75,000 EUR; between 75,000 and 975,000 and finally 975,000 and up. Employee-share owners, likely to fall within the first bracket pay less tax than the upper two tiers (see https://blog.snpi.nl/nieuwsberichten/aandelen-voor-werknemers-fiscaal-gunstiger).

[263] Under a savings (spaarloonregeling) plan, an employee could save from his pre-tax salary a legally specified maximum amount (613 Euro in 2008). However, if savings were converted into shares, the annual maximum allowance was doubled (1,226 Euro in 2008). As explained above, these tax incentives were abolished in 2011 for 2012. Over this amount, employees do not have to pay taxes.

acquisition of these shares by their employees, however, with restriction for closed joint stock companies.

Stock Option Plans – Stock option plans were originally limited to executives, but there has been an increase in the number of broad-based plans since the beginning of the 1990s. Options may be conditional (e.g., subject to a vesting period or a performance-related proviso) or they may be unconditional (i.e., tradable at grant). Specific rules regarding the moment of taxation introduced in 2001[264] and respective tax incentives were abolished in 2005 so that taxes from then on were paid at exercise only. Following a much-discussed tax reform that came into force in 2023, taxation is deferrable to the moment when the shares are tradable. Employees can still opt-out and pay taxes in the moment of exercising. The only difference is made between listed and non-listed companies: Sale restrictions for shares of newly listed companies expire five years after the company's listing, while those for already listed companies expire five years after exercising the option. Parallel to the introduction of deferred option taxation for all types of firms, specific incentives for start-ups introduced in 2018 were abolished (see below).[265]

Stock Options in start-ups – Starting 1 January 2018, the Dutch tax authorities introduced a favourable tax treatment for employee stock options in innovative start-up companies consisting of a tax exemption for 25% on gains with a ceiling of EUR 12,500 per year with the remaining 75% taxed as wage. Prerequisites to this favourable treatment were (i) an available "R&D declaration", (ii) the exercise of the option between 1 and 5 years of grant date, (iii) not exceeding EUR 200,000 per enterprise over a three-year period.[266] With a 2022 tax reform (see above), the government extended the preferential treatment granting deferred taxation for stock option plans in start-ups once employee are allowed to sell the shares, starting in January 2023.

bb) Profit Sharing

Both cash-based and share-based profit sharing is practised. Since 2003, tax incentives for profit-sharing plans depended on their linkage to a savings plan. The general rules governing savings plans and corresponding tax incentives, discussed under share ownership above, were also applicable to profit-sharing plans. Additional, under plans which include at least 75% of employees, with employee shares being held in the savings plan for four years, a 15% flat tax is paid at exit in lieu of personal income tax and social security contribution. Under certain circumstances, the four-year blocking period could be waived (e.g., if the employee buys a principal residence, starts a new business, or takes a sabbatical or educational leave of absence). However, since 2012, all tax incentives for profit sharing were abolished. Since 2015 mandatory for all employers, the Werkkostenregeling (WKR)[267] contains a free budget-rule allowing em-

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264 As of 2001, the employee could choose between one of two tax alternatives: unconditional options could be taxed at grant and conditional options at vesting, with no tax liability at the moment of exercise if held for more than three years, or tax could be imposed at exercise on the total capital gain.

265 Pwc (1 Jan. 2023): Amendment taxable moment stock options per 1 January 2023 (see https://www.pwc.nl/en/insights-and-publications/tax-news/pwc-special-budget-day/2022-tax-plan-stock-options-more-attractive-as-remuniration.html, accessed on 12 Oct.2023.

266 2018 Tax Plan; see https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-rewards-update-netherlands-6-february-2017.pdf, login Sept 2023.

267 https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/themaoverstijgend/brochures_en_publicaties/handboek-loonheffingen-2022, login Sept 2023.

ployers to grant their employees an annual, tax-free gift in the form of additional payments or specific goods (e.g., a company bicycle or a profit-share). As of 2023[268], the tax-free amount up to and including an annual payroll of EUR 400,000 is 3% and above 1.18%; amounts exceeding these limits are taxed at 80%.

cc) Participation in Decision-Making

There is no direct connection between participation in decision-making and EFP. The latter plans are specifically enjoined from extending those participation rights already in force. Moreover, EFP is generally not part of collective agreements. Companies with a workers' council (compulsory in all firms with more than 50 employees) must obtain council approval for any amendments made in the "system of remuneration"; broad-based EFP plans are regarded as a part of this system. However, no approval of the workers' council is required in the case of "discretionary plans", i.e., plans restricted to management only. The 2014 Erasmus University study (Soppe and Houweling 2014) on the relation between participation in decision-making and EFP showed that EFP is not a replacement for the regulated forms of participation in decision-making via workers' councils but seen as an addition to existing forms of decision-making.

20. Austria

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Natalia Spitsa and Max Stelzer those that contributed to the updates were in chronological order in 2014 Denis Suarsana and Stefan Hanisch, in 2018 Jens Lowitzsch and Stefan Hanisch and in 2023 Stefan Hanisch, Johannes Pointner and Jens Lowitzsch.

In Austria, employee financial participation (EFP), has a relatively recent history in regard to the regulatory framework and government support. The topic started to be politically relevant only as of the middle 1990's in the context of the privatisation of utilities, such as the postal services, telecommunication, and strategic companies as AUA airlines, the Vienna airport, the multinational integrated oil, gas and petrochemical company OMV or the steelmaker voestalpine. The total number of financial participation plans, although still relatively small, has increased significantly since 2001 in response to the introduction of tax incentives. Only eight per cent of plans currently active were established prior to 1990; 48% date between 1990 and 2000, and 45% after 2000 (Vevera 2005). Tax incentives for stock options introduced in 2001 were reduced in 2009 and then further in 2012. Fiscal incentives for both stock options and employee shares were extended in 2016. On 1 January 2018, the Law on the Employee Ownership Foundation of 26 July 2017 entered into force, aiming at extending the flexibility of the framework for private foundations and at expanding their scope by introducing a new form of private foundation with commercial purpose – the employee ownership foundation. This regulation is expected to make hostile takeovers more dif-

[268] From 2024, the tax exemption of the WKR is between 1.7% and 1.92% up to a payroll EUR 400,000. The 2023 exemption temporarily increased the free allowance in 2023 from EUR 6,800 to EUR 12,000 for a payroll of up to EUR 400,000 (e.g., for 8 employees earning a combined EUR 400,000, an additional untaxed allowance of EUR 650 per employee); from 2024 on, the free allowance will be EUR 7,680.

ficult, render Austria more attractive for businesses and secure jobs. In 2022 the Eco-social Tax Reform Law introduced income tax exemptions for profit sharing up to EUR 3,000 per employee and calendar year. Starting from 2024 new rules introduced equity incentives and deferred taxation for startups.

The incidence of various models of EFP depends on the business form: As of 2007 share ownership plans are introduced equally often in quoted joint-stock companies (AG) and cooperatives, foundations, registered associations; they are rare in privately held limited liability companies and do not exist in partnerships; 8% Austrian of enterprises, mostly listed joint-stock companies, have introduced employee share ownership plans with 160,000 employees, or 6% of the Austrian work force, owning an average of 5% or less of shares in their employer firms (Kronberger et al. 2007). Leveraged employee ownership plans (similar to ESOPs), using different forms of foundations as a vehicle, were introduced in connection with privatization. The best-known example is voestalpine Mitarbeiterbeteiligung Privatstiftung, which as of 2022 holds a 14.8% ownership stake, i.e., approximately 25.6 million shares on behalf of 25,000 employees and is the second largest shareholder. Stock option plans, generally not broad-based, have been implemented in one percent of enterprises. Profit sharing plans were found in 25% of enterprises, mostly small and medium-sized trade companies (Kronberger et al. 2007).

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 46.7% (2013, 47%, 2009, 8.1 %) of companies with more than 10 employees in Austria offer their employees profit-sharing and in 2013 7% (2009, 2.1%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 7.8% (2010 9.1%) of Austrian employees were taking part in profit-sharing while 2.8% (2010 1.6%) of them were participating in share-ownership schemes.

a) General Attitude

By the end of the 1990s, the government had become more supportive of EFP. Behind this change in attitude were such factors as increasing competition with Eastern European economies, promotion of employee participation by the EU, and impending privatization of several large state-owned companies (e.g., voestalpine AG, Vienna Airport, Saline AG, AMAG, AUA, OMV). Both the trade unions and employers' associations strongly support employee financial participation and cooperate with each other in this area. A government declaration from autumn 2013 announced that in the context of an impending tax reform the doubling of the existing tax exemptions for share ownership scheme and the introduction of additional incentives for profit sharing are considered. The former proposal was supported by the social democrats and led to a motion by the liberals for a parliament resolution of September 2014, while the latter was a project associated with the Christian democratic faction.

After tax incentives were introduced in 2001, the Federal Workers' Chamber (BAK) and the Austrian Economic Chamber (WKÖ), in cooperation with the University for Applied Science Wiener Neustadt, conducted a study (2005) of the effects of EFP on enterprise results and employee attitudes in individual companies. This study found that 80% of employer companies and workers' councils in firms which have EFP plans are satisfied with the results, while 71% of enterprises without such plans would introduce them if the legal framework were improved (Kronberger et al. 2007). In their proposals for reforming the legal framework, representatives of both employers and employees focus in part on the same issues: introduction of tax incentives for profit-sharing schemes, higher tax incentives for employee share ownership schemes, and more incentives to encourage SMEs to introduce employee-ownership schemes, especially leveraged ones similar to the ESOP.

The only controversial issue is whether EFP should include a role in decision-making. Trade unions are critical of models, which subject employees to risk, as with non-voting employee shares, without granting corresponding rights; they also object to schemes that benefit only management. Since labour law already requires employee participation in decision-making, this issue only affects small enterprises without workers' councils.

b) Legal and Fiscal Framework

An absolute obstacle to employee share ownership in partnerships is the institute of co-ownership under the Austrian company law; this institute is typical of Germanic legal systems. Other obstacles to the spread of employee share ownership plans in limited liability companies include the strong position shareholders enjoy vis-à-vis management, the transfer of share ownership only by notarial deed, and the absolute prohibition against privately held limited liability companies acquiring their own shares. Employee share ownership is based on a direct participation model in 21% of enterprises (Kronberger et al. 2007).

Leveraged models are becoming more popular in spite of administration costs; they are found in large, listed joint-stock companies, especially those emerging from privatization; the Law on the Employee Ownership Foundation of 26 July 2017 is expected to give new impulses in this field. The Law on Capital Market Offensive of 5 January 2001 (BGBl. I Nr. 2/2001) introduced tax incentives for employee share ownership schemes by amending the Income Tax Law (hereinafter referred to as "ITL") and the Corporate Tax Law (hereinafter referred to as "CTL"). Profit-sharing plans are found in every third limited liability company and every second private joint-stock company. As a result of the eco-social tax reform (BGBl. Nr. 10/2022, Article 1, para. 1), as of 2022 employers are for the first time able to grant employees a tax-free profit-sharing bonus of up to EUR 3,000 per year.

aa) Share Ownership

Employee share ownership plans are mainly based on direct share transfer. However, leveraged share ownership plans and stock option plans have become more widespread since 2001. For the latter, incentives changed as from April 2009 on tax advantages only apply to options that are non-transferable and that were granted before 1 April 2009 (§ 124b, no. 151 ITL). Important fiscal incentives for employee share ownership were introduced in 2015 (with effect for taxation from 2016) and 2017 (effective from 1 January 2018).

Employee Shares – Pursuant to the transposition of the Directive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law (replacing 2012/30/EU recasting the 2nd Council Directive on Company Law 77/91/EEC of 13 December 1976) a joint-stock company may acquire its own stock for its employees (§ 65, para. 1, no. 4 of the Law on Joint-Stock Companies, hereinafter "JSCL", BGBl. Nr. 98/1965, as amended). A resolution of the general meeting is required to introduce such employee shares which remains in effect for no longer than 30 months. Transfer of shares to employees in connection with a capital increase, excluding pre-emptive rights of existing shareholders, is possible if the resolution of the general meeting on the capital increase makes this exclusion (§§ 149, para. 1, 153, para. 3, 5 JSCL). No period for the transfer of shares to employees is specified in the JSCL, but this transfer must take place immediately after issue to comply with company law. A blocking period for the transfer of employee shares is not prescribed, but shares have to be held for at least five years to benefit from the tax exemption (§ 3, para. 1, no. 15 (b), dash 2, sentence 2 ITL).

Since 1 January 2016, a personal income tax and social security allowance of up to EUR 3,000 (Law on taxation reform of 14 August 2015 BGBl. I Nr. 118/2015; previously 1,460 Euro) applies to the benefit from the transfer of free or discounted shares of the employer company (§ 3, para. 1, no. 15(b) ITL) with the following requirements: (i) this tax allowance applies only to current employees of a (domestic or foreign) employer company or an affiliated or associated company; (ii) the shares must be held for at least five years; (iii) the plan must be broad-based, and shares must be directly held by the employees but – in case of securities – deposited with a domestic credit institution or a fiduciary, which administrates the shares and exercises voting rights according to the employee's instructions. The tax privilege does not apply if the employee participates in a fund and this fund (albeit exclusively) holds a stake in the employer company. Ineligible are the transfer of shares in partnerships, the atypical silent partnership and debt securities. If the allowance is exceeded, the excess amount is fully taxed and liable to social insurance contributions. Taxation of dividends on employee shares depends on the economic ownership. If the employee has the economic ownership of shares, the capital gains tax or, upon application of the employee, half of the personal income tax, is imposed (dividends on shares of foreign companies are always taxed at half of the personal income tax) (§ 37, para. 4 ITL). If the employee is not the owner (e.g., if the employing company may buy the shares back at will or if the shares must be returned at termination of the employment contract), full personal income tax and social security contributions are imposed. A company that pays dividends is subject to dividend withholding tax on its profit of 25%, which must be withheld from dividends paid. No further tax is payable by employees on receipt of dividends.

Leveraged Share Ownership Plans – The Law on Capital Market Offensive of 5 January 2001 amended the ITL also in relation to the taxation of private foundations. In view of prospective privatization of large state companies, a model for "strategic ownership" of employees had to be developed. An already existing business form, the private foundation, was chosen to serve as the vehicle for leveraged employee share ownership plans. Whereas many large privatised enterprises use a private foundation under the Law on Private Foundations (BGBl. Nr. 694/1993, as amended) as an intermediary company (e.g., voestalpine AG, Saline AG, AMAG), some utilise the form "employee participation foundation" (Belegschaftsbeteiligungsstiftung) introduced by the 2001 Law on Capital Market Offensive and defined in § 4, para. 11, no. 1, § 4d, para. 3 ITL (e.g., Vienna Airport).[269] The foundation holds and purchases the shares,

[269] In the literature it is objected that the economic activities of foundations are restricted by law so that they cannot create reserves and make investments. For small companies, administrative complexity and associated costs may be prohibitive making associations (Vereine), fiduciary arrangements (Treuhandschaften) and partnerships under civil law (GbR) an alternative.

exercises voting rights, and transfers returns to the employees.[270] On 1 January 2018, the Law on the Employee Ownership Foundation of 26 July 2017 (BGBl. I Nr. 105/2017) entered into force that reconfigured the rules for private foundations with commercial purpose (betriebliche Privatstiftungen[271]) as a whole and introduced a new tax-privileged form, the "employee ownership foundation" (Mitarbeiterbeteiligungsstiftung). In contrast to direct employee share ownership plans, the beneficiaries of leveraged plans enjoying tax concessions can also be retired employees and family members (spouses, children) of employees. The value of its own shares or money for purchasing shares transferred to the foundation as well as the costs of establishing and operating the foundation can be deducted from the tax base of the corporate income tax by the employer company.

Employee Ownership Foundation (EOF) – An EOF distributes contributions by the employer company over nine financial years, and EUR 4,500 per employee per annum is tax free (§ 13, para. 1, no. 1 (b) and (c) CTL). Dividends on shares held by the foundation are also tax exempt (§ 10, para. 1 CTL). The employee pays a capital gains tax on returns transferred by the foundation of up to EUR 4,500 and full personal income tax (§ 3, para. 1, no. 15 (c) ITL), but no social security contributions on the amount in excess thereof. Administrative costs covered by the EOF are not considered taxable benefit of the employees (§ 3, para. 1, no. 15 (d) ITL). Finally, the transfer of the right to dispose of employee shares to an employee after the termination of employment by the EOF is tax neutral within the above-mentioned annual limit. This newly introduced vehicle serves the collective warehousing and administration of employee shares in the employer companies, not just the mere transfer of dividend income as in the case of the already established model of the employee participation foundation. In addition to the newly redesigned benefits for employees, granting employee shares bundled in an EOF for the duration of their employment facilitates the formation and/or strengthening of a core shareholder with a uniform exercise of voting right. The allocation of shares and other assets by the company to the EOF is exempt from capital transfer tax of 2.5% applied to assets transferred into a private foundation and corporate tax; the shares granted are deductible as operating expenses. The EOF – apart from the administration of the employees' shares – is entitled to hold shares of the employer company with a ceiling of 10 % of the voting rights in that company. Such shares, being initially held by the EOF under a fiduciary arrangement, must be successively transferred to the employees.

To enable the employer company to financially facilitate the acquisition of shares by the employees ("financial assistance"; see above) in this context, § 66a sentence 2 of the JSCL now explicitly allows the employer company to advance funds, provide collateral or give loans with a view to the acquisition of shares "by or for"[272] employees of the company or an affiliated company (subject to preservation of the net assets pursuant to § 66a sentence 3 JSCL), which is based on the implementation of the Directive (EU) 2017/1132 (formerly Second Company Law Directive).

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[270] In some companies, the shares are possessed by employees, whereas the foundation only accumulates and exercises the voting rights. In such cases, the taxation is different.

[271] "Betriebliche Privatstiftung" is a concept in Austrian tax law meaning a private foundation, where the trustor's capital contribution comes from business assets and constitutes an operating expense.

[272] The Austrian provision goes much further than the German equivalent provision, which, according to its wording (see § 71a, para. 1, sentence 2 of the German Joint-Stock Company Law), covers only the share purchase "by" the employees themselves.

Stock Option Plans – Employees, executives and members of the management bodies of a joint-stock company or an affiliated company are allowed to acquire shares through stock options if the shares constitute not more than 20 % of equity capital (§ 159, para. 5 JSCL). Tax incentives for stock options based on §§ 1, 3, para. 1, no. 15 (b) ITL were abolished for all non-transferable options granted from 1 April 2009 on.[273] However, starting from 1 January 2018, employees who are granted shares free-of-charge or at a reduced price up to an amount equal to EUR 4,500 per calendar year will not be subject to personal income tax and social security contributions at grant, as long as the shares are held in trust by an Employee Participation Foundation until the end of their employment (§ 3, para. 1, no. 15 (c) ITL). Such option plan must be made either to all employees who are eligible or to groups of employees defined according to general non-discriminating criteria. Since 2012 income from the exercise of stock options exceeding EUR 3,000 per year and since 2016 exceeding EUR 4,500 per year is taxed at exercise according to the general rules at the progressive personal income tax rate (§ 67, para. 1 ITL on other remuneration in addition to current wages and salaries) and 27.5% capital gains tax (§§ 27, 27a ITL).

Employee share ownership for start-ups[274] – Starting as of 1 January 2024, a new law (FlexKapGG) introduced the possibility of the transfer of discounted employee shares at nominal value by way of a capital increase of up to 10% of the company's equity for firms having an average of less than 100 employees and a turnover of no more than EUR 40 mln. in the preceding business year at the time of granting the shares. The shares must be granted within 10 years after the end of the year of foundation of the firm, the benefitting employee may not directly or indirectly hold a share of 10% or more and may not be transferred without the consent of the employer.[275] Granting deferred taxation to the employees, 75% of the benefit measured according to the proceeds of the sale or the fair market value is subject to a fixed tax rate of 27.5% (also exempt from ancillary wage costs, municipal tax and employer's contribution) with the remaining 25% to be taxed at the individual progressive income tax rate. Prerequisite for preferential taxation is that shares have been held for at least 5 years and that the employment relationship has lasted for at least 3 years at the time of termination.[276] The reform is accompanied by simplifications for privately held limited liability companies lowering the minimum social capital to EUR 10,000.- and introducing of a new corporate form suitable for start-ups, the "flexible corporation".

bb) Profit-Sharing

Profit-sharing schemes are relatively widespread, especially in small corporations. This was already the case before the Ecosocial Tax Reform Law 2022 Part I (BGBl. Nr.

[273] For non-transferable stock options granted between 1 Jan. 2001 and 31 March 2009, 10% in one year and 50% of the difference between the value of the underlying share at exercise of the option and the value of the underlying share at grant of the option were tax exempt up to a value of the underlying shares of EUR 36,400 (§ 3, para. 1, no. 15 (c) ITL at that time). Taxation of the remaining amount could be deferred up to the 7th year following grant. The employer company could deduct the cost of shares.

[274] Ministerial draft 275/ME of 26 May 2023 concerning the law for the promotion of start-ups (Start-up-Förderungsgesetz) and the amendment of company law (GesRÄG 2023) https://www.bmf.gv.at/public/informationen/start-up-paket.html, accessed Sept. 2023.

[275] For details of the FlexKapGG see https://brutkasten.com/artikel/startup-paket-was-bei-flexco-und-mitarbeiterbeteiligung-ab-1-jaenner-2024-zu-beachten-ist, accessed Dec. 2023.

[276] See VIP News September 2023 "2. Neuerungen im Gesellschaftsrecht, 2.1 Start-Up-Mitarbeiterbeteiligung" https://steuerundservice.at/service/news-detail/vip-news-september-2023/, accessed Sept. 2023.

10/2022, Art. 1, para. 1) amending the ITL (§ 3 para. 1, no 35)[277] introduced tax incentives for profit-sharing with retrospective effect from 1 January 2022. Since then, exempt from income tax is profit sharing by the employer to active employees up to EUR 3,000 per calendar year provided that the plan is granted to all employees or certain groups (§ 3 para. 1, no 35, lit. a ITL) with a prohibition against wage substitution (§ 3 para. 1, no 35, lit. c, d ITL). To the extent that the sum of the profit sharing granted annually exceeds the companies' or groups' earnings before interest and taxes there shall be no tax exemption.[278]

Most profit sharing is cash-based and takes into consideration such factors as turnover, EBIT, cash flow, etc., alone or in combination, and not necessarily balance sheet profit (Kronberger et al. 2007). A profit-sharing plan may be introduced through a collective agreement, an in-house agreement, or an employment contract. However, an in-house agreement can regulate the pre-conditions, factors, calculation methods and form of payment (§ 97, para. 1, no. 16 of the Law on Labour Relations, hereinafter referred to as "LEC", BGBl. Nr. 22/1974, as amended) only if the factor to which the plan refers also considers the expenditure of the enterprise; plans relating to turnover as a factor cannot be regulated by an in-house agreement. A plan not regulated by an in-house agreement is usually based on individual employment contracts whose content is not restricted in this respect. A participating employee is entitled to examine the basis of his share calculation in the books (§ 14, Law on Employees, BGBl. Nr. 292/1921, as amended). If the plan originates in a collective agreement, the workers' council is also entitled to examine the calculation basis, but not documents on individual wage payments (§ 89 of the LEC).

cc) Participation in Decision-Making

Under labour law, co-determination and participation rights of employees through their representatives are traditionally well developed. Employees send members to the supervisory board (§ 110, para. 1, 5 LEC) and are represented by the workers' council. There is generally no direct connection between participation in decision-making and financial participation of employees; in particular, financial participation plans cannot extend existing rights in connection with participation in decision-making. However, the employees in their capacity as shareholders can take substantial influence on important decisions of the general meeting (e.g., prevent a squeeze-out) and be represented in the supervisory council if their cumulative share is at least 10%. Certain aspects of financial participation plans can be regulated by a collective agreement and/or an in-house agreement; in this case, employees' representatives participate in negotiations and decisions. The following rights of the workers' council can be connected to financial participation: right to information (§§ 91, 92 LEC), right to consultation in the case of operational changes (§ 109 LEC), and right to demand elimination of faults (in this context all circumstances of financial participation detrimental to employees; see § 90, para. 1 LEC). Only 17 % of enterprises operating financial participation plans indicated problems in connection with decision-making (Kronberger et al. 2007). In general, problems arise only in small enterprises which do not have a workers' council.

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[277] See also the explanations provided in the information of the Federal Ministry of Finance of 25 March 2022, BMF - IV/7 (IV/7).

[278] For details: https://www.wko.at/service/steuern/mitarbeiterbeteiligung-am-gewinn.html, login Sept. 2023.

21. Poland

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Jens Lowitzsch, Richard Woodward, those that contributed to the updates were in chronological order in 2014 Leszek Mitrus, Jens Lowitzsch, Maciej Kozłowski and Piotr Kozarzewski, in 2018 Jens Lowitzsch and Piotr Kozarzewski and in 2020/23 Jens Lowitzsch.

Poland's privatisation programme was characterised by significant incentives for employee participation, especially in firms privatised by leasing and transformed into so-called Employee Companies (*spółki pracownicze*).[279] From 1990 until 2012, 73.8% of enterprises undergoing "direct privatisation" were transferred into private hand through this concept resulting in a total of 1,563 Employee Companies, in the end of 2012 employing a total of 120.6 thousand workers and an average size of 77 employees.[280] Between 2000 and 2007 out of 185 leasing agreements with a total value of 658 million PLN only 14 were prematurely terminated due to late payments; by the end of 2009 around 68 firms were earmarked to be potentially privatised by this method.[281] Ownership structures in these employee companies have, initially, been relatively stable, with non-managerial employees retaining, on average, a significant portion of enterprise shares. Research conducted in the late 1990s from a sample of 110 employee-leased companies privatised between 1990 and 1996 showed that on average the share of non-managerial employees in ownership decreased from 58.7% immediately after privatisation to 31.5% in 1999. Approximately 32% of leasing-privatised firms were still majority-owned by non-managerial employees by mid-1999. Over time, more and more shares were also found in the hands of outsiders, while the presence of strategic outside investors (including foreign investors) rose (see PEPPER III report, p. 237: Table 3) a trend seemingly to be rooted in the economic performance of the company – either very poor or very good. In the former case, it can be seen as a trade-off between the power of insiders and the firm's chances for continued existence; in the latter case, it reflects the opportunity of insiders to reap significant gains by selling their shares to outside investors. No national research on employee companies has been conducted since the turn of the century. Only a couple of regional studies have been carried out which corroborate the continuing trend of concentration and "outsiderization" of employee companies' ownership structure. Less significant forms of minority employee share ownership emerged from privatisation methods other than leasing. Insiders possessed only 12.7% of shares at the beginning of 1998, and this fell to 11.4% two years later.

Although, all current forms of employee financial participation (EFP) may also be used in employee compensation schemes outside of privatisation, there are only very limited tax incentives to encourage this. In 2017 an employee "incentive schemes" for introduced tax incentives for Stock Options and RSU but only in joint stock compa-

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[279] The idea of ESO in Poland goes back to the 1920ies when "Gazolina" headquartered in Lviv introduced a scheme obliging permanent employees to invest their 13th salary bonus in discounted company shares, offering them to buy more shares and grating a profit share on top of dividend payments.

[280] Statistical Yearbook of the Republic of Poland 2013, Central Statistical Office, Warsaw, 2013, p. 734.

[281] Guide to employee privatisation, (PL), Ministry of the Economy 2009, p. 6, 37 i 42; their financial results were assessed positively by a Report of the Highest Control Chamber of March 2009.

nies.[282] Over the last decade, a new form of creating employee-owned companies emerges – as a spin-off from state-owned entities not subject to privatization (e.g., schools, kindergartens). Usually this is caused by the plans of the entity to close down a unit and to outsource its services. Employees of such units create companies which provide the outsourced services. Research conducted in 2017 by PwC Poland (2017) on a group of 140 public companies listed on the Warsaw Stock Exchange (WIG 20, WIG 40 and WIG 80) indicates that about 31% of them offer employee share ownership programs (of which 77% broad-based) with a prevalence in the banking and finance sector. Most of these programs were share plans (a third stemming still from privatisation) followed by programs using subscription warrants and lastly stock option plans; a few companies operate more than one type of plans. It is estimated that the number of employees benefitting from share schemes dropped from around 100,000 in 2010 to somewhere around 30,000 in 2021.[283]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 41.6% (2013, 37.2%; 2009, 7.4%) of companies with more than 10 employees in Poland offer their employees profit-sharing and in 2013 4.2% (2009 4.3%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 14.8% (2010 13.8%) of Polish employees were taking part in profit-sharing while 5.1% (2010 1.5%) of them were participating in share-ownership schemes.

a) General Attitude

With regard to EFP schemes and other forms of workers' participation, the positions of trade unions like Solidarność were and still are inconsistent and often ambiguous. Institutions created to support employee-owned firms in Poland include the Union for Employee Ownership (*Unia Własności Pracowniczej*), the All-Poland Chamber of Employee-Owned Companies (*Ogólnopolska Izba Gospodarcza Spółek Pracowniczych*) in Poznań, and the Gdańsk Employee Ownership Bank (*Bank Własności Pracowniczej SA w Gdańsku*); however, their role in employee-led privatisation in Poland was very limited. As of early 1996, the Union for Employee Ownership, founded in the autumn of 1990, had only 76 member firms, some of which were still state-owned. Now its role is even more marginal.

Clearly, since the mid-1990s, the main, openly declared objective of privatisation policy has been to maximise revenues; therefore, all but the smallest state enterprises are to be privatised by commercial methods, even though employee-owned firms were often the most successful. Moreover, policy makers have encouraged enterprises being commercially privatised to seek outside investors; for this purpose, a clause was included in the 1996 Privatisation Law requiring at least 20% of the shares of a leasing firm to be purchased by persons not employed by the firm. 100% Management-

[282] This isolated reform possibly reflects practice in multinational companies operating such schemes like Leroy Merlin, Auchan, LPP, Wielton, Zepak, Mabion, Rafako, Boryszew or 11 Bits Studio.

[283] See M. Łukasik, The Prime Minister praised employee share ownership. However, participation of Poles is falling, (in Polish), 3 March 2021, https://www.money.pl/gospodarka/premier-zachwalal-akcjonariat-pracowniczy-uczestnictwo-polakow-jednak-spada-6613780664666656a.html, login Aug. 2023.

employee buyouts were thus made difficult. Policy makers provided no incentives for the extension of employee financial participation other than through privatisation schemes. At the end of 2000s, an attempt was made to revive and promote employee privatization with the help of financial guarantee schemes. However, it seems to have failed due to lack of interest from potential beneficiaries and resignation of Waldemar Pawlak, who was the enthusiastic supporter of employee buyouts and stayed behind this initiative, from the posts of Vice-premier and the Minister of Economy in 2012. In March 2016 the Polish government proposed the so-called Morawiecki-Plan for responsible development which among others aims at promoting widespread employee share ownership as a means to increase the proportion of domestic ownership in Polish companies. Furthermore, a draft law on Employee Stock Ownership Programmes presented by the foundation "Forum for the development of employee ownership and domestic capital" (*Forum Rozwoju Akcjonariatu Pracowniczego i Kapitału Krajowego*) was presented in the autumn of 2017. Neither the proposed plan nor the draft law materialised in the years to come, and this initiative is a notable exception from the pertaining lack of interest in further development of EFP schemes which in general can be observed both in political and trade union circles.

b) Legal and Fiscal Framework

In Poland the legal framework provides various forms of EFP schemes, embracing on the one hand share ownership and profit-sharing, and on the other hand the private sector as well as enterprises undergoing privatisation. However, almost no incentives have been provided by policy makers for the extension of EFP schemes. All forms of participation are available for use in employee compensation schemes, although there are no specific tax incentives to do so; dividends and interest are subject to a 19% flat rate final tax, personal income tax is progressive. A rare exception is an amendment of the Personal Income Tax Act introducing deferred taxation until sale at 19% flat tax for shares or stock options acquired from publicly traded firms registered in the territory of EU member states or the EEA on the basis of a new issue or buy-back from the market by a shareholder meeting resolution as of 1 January 2017 (extended to companies outside the EU as of 1 January 2018).[284] Under this 2018 Tax Regime, benefits from share ownership are not considered income from labour if the program is qualified as an "incentive program".

aa) Share Ownership

"Employee Companies" (1990, 1996) – So-called employee companies emerged from Leverage-Lease-Buy-Out (LLBO) privatisation. This is one form of so-called liquidation privatisation introduced in 1990 which according to Art. 39 of the Law on Commercialisation and Privatisation (PrivL[285]) requires since 1997: relatively good financial and market conditions; no requirement for substantial investment to modernise, replace, develop equipment, etc; a yearly turnover of max. EUR 6 million; a maximum of EUR two million of equity consisting of two enterprise funds; willingness of management and employees to assume the financial risk involved in undertaking a

[284] While extending deferred taxation to firms from, e.g., the US or Switzerland the legislator – most likely unintentionally – excluded domestic Polish companies; cf. PwC Poland "Employee Stock Ownership Programs – an Opportunity for Companies, an Opportunity for Poland" Warsaw, December 2017, p.30.

[285] Of 30 August 1996, Dz. U. No. 118, Pos. 561, republished in Dz. U. 2002 No. 171, Pos. 1397, No. 240, Pos. 2055, with subsequent amendments.

common investment (including third parties). A newly established private company concludes an agreement with the State Treasury to lease the assets of the state enterprise for a maximum period of 15 years.[286] The interest payment was set at 30% (75% of 40%) if the central bank refinance rate exceeded 40%; in 1993 this was lowered to 50% of the refinance rate.[287] Moreover, a leased company can apply to its founding organ for a reduction of interest payments owed as a result of postponements during the first two years of the leasing period if its investment expenditures out of profits amount to at least 50% of its net profit. Finally, the corporate income tax law allows firms to include the interest portion of their lease payments as costs, thus reducing their tax liability. The new privatisation law in 1996 additionally leveraged the financial lease contracts in order to enhance the creditworthiness of employee-leased firms applying for bank loans. Art. 52 PrivL makes it possible for full ownership to be acquired before the end of the contract if one-third of total leasing rates have been paid, provided that the balance sheet for the second business year of the company has been approved. If more than half of the total leasing rates have been paid, the blocking period is cut in half. Because of conditions on the Polish credit-market, this regulation has become very important in practice.[288]

Employee shares in Capital Privatisation (1990, 1997) – According to Art. 36 pp. of the new PrivL, which came into force in early 1997, employees can acquire 15% of shares for free, with the restriction that these shares be exempt from free trade for two years, and for three years in the case of employees elected to the management board. Generally, they are required to enter their claim six months before the company is registering since the right expires otherwise; the right is also good for six months after sale of the first share. Shares are allocated in groups made up according to length of employment in the enterprise. The total value of allocated shares under these claims may not exceed the sum of the average salary in the public sector for 18 months, multiplied by the number of employees acquiring shares. This rule applies not only to commercialised companies undergoing capital privatisation and those included in Mass Privatisation, it was also extended to include 15% employee participation in "direct privatisation" transactions involving the sale of an enterprise as a going concern, as well as in kind contributions of an enterprise (Art. 48 para. 3, Art. 49 para. 4 PrivL). The only other exception is commercialisation via debt-to-equity-swaps.

Employee Shares (2003) – Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) and in an exception from the general prohibition against acquiring its own stock, Art. 362 para. 1 of the Commercial Companies Code (CCC) permits a company to acquire its own shares in order to offer them to current employees, retired employees of the company, or employees of an affiliated company contingent

[286] Until 2002 Art. 52 para. 1 PrivL foresaw a maximum of 10 years; the legal regulations for LLBOs are to be found in Art. 39 para. 1 No. 3 and 50 to 54 PrivL; it is reserved exclusively for Polish nationals and as an exception also legal persons (Art. 51, para. 1 No. 2 PrivL).

[287] Ordinance of the Minister of Finance of 13 May 1993, M. P. 1993 No. 26, Pos. 274, altering that of 7 May 1991, M. P. 1991 No. 18, Pos. 123.

[288] Furthermore Art. 54 PrivL foresees the possibility to regulate the specific conditions of such leverage by Ordinance of the Council of Ministers including the possibility to reduce the threshold of paying 20% of the net value of the object of the lease stated in Art. 51 para. 1 No. 3 PrivL to 15%. In this context Art. 64 PrivL granted existing Employees Companies the right to renegotiate their contracts within 3 months of the Ordinance coming into power.

upon a business relationship of at least three years. In this case, Art. 393 No 6 CCC requires a decision by the general shareholders assembly and Art. 363 para. 3 CCC states that the shares shall be transferred to the employees within 12 of acquisition. Acquisition of the company's own shares in this case is subject to the provisions that the total nominal share value may not exceed the value of 10% of the enterprise's equity capital, and that the purchase price, together with the transaction cost, may not be higher than the reserve set aside from the company's own profits (Art. 348 para. 1 CCC).[289] Additionally, under current legislation, joint stock companies may issue new shares to be transferred to employees in the context of so-called conditional capital increases, with Art. 448 para. 2 No. 2 CCC expressly referring to the possibility of transferring shares to employees to satisfy previously acquired claims from profit sharing. A prerequisite to this form of capital increase is that the employees are identified in the decision made by the general shareholders assembly on the capital increase.[290] A companion regulation originating in the 2nd Council Directive on Company Law is Art. 442 para. 1 CCC, which stipulates the possibility of capital increases financed by the company's own capital, referring to Art. 348 para. 1 CCC concerning reserves made from the company's own profits. In order to facilitate the acquisition of shares by employees, under Art. 345 para. 2 of the CCC, the legislature has made an exception to the general prohibition against leveraging acquisition of its own stock. Thus, conditional upon creating of a corresponding reserve (Art. 348 para. 1 CCC), the company may advance funds, make loans, and provide security to expedite the acquisition of its stock by its own employees or those of an affiliated company.

Stock Options / Restricted Stock Units (2017) – Employees may receive stock options, regular or on a privileged basis (at below-par prices or free of charge) although there is no specific regulation to this effect. In case of joint-stock companies the discount granted for share options issued under an "incentive scheme" are not subject to taxation. The benefit derived from the sale of the shares acquired as result of such a scheme is subject to a flat personal income tax of 19% (instead of progressive taxation) at the moment of sale.[291] To qualify as an "incentive scheme" in the meaning of Article 24(11,a,b) of the Personal Income Tax Act is conditional on: (i) the incentive scheme being established by a joint stock company (employer company) or a parent company (within the meaning of Article 3(1)(37) of the Accounting Act) in relation to the employer company; (ii) the scheme having been approved by a resolution of the company's general meeting of shareholders[292]; (iii) the benefitting employee taking up or acquiring shares in the company.[293] Taxation is based on the fair value

[289] Art. 347 para. 3 and 348 para. 1 CCC provide the possibility to allocate enterprise profits to special funds while not paying them out as dividends to shareholders, thus allow share based profit-sharing.

[290] The issuance of shares to be acquired by employees in this case shall not be considered as a public offering but as a 'private subscription' (Art. 431 para. 2 No. 1 CCC).

[291] The deferred taxation at sale was confirmed by Judgment of the Regional Administrative Court in Gdańsk in the judgment of 16 December 2020, ref. no. I SA / Gd 819/20).

[292] According to the individual interpretation of the Director of the National Fiscal Information issued on 5 May 2021, No. 0113-KDIP2-3.4011.100.2021.2.IR a scheme introduced by board decision in accordance with corporate regulations applicable to a US company and based on the US commercial law does not qualify.

[293] Case law of administrative courts based on a restrictive, literal interpretation excludes shares taken up based on subscription warrants from being an "employee incentive scheme" in the sense of the PIT Act.

of the shares acquired less the expenses incurred for their acquisition. Unqualified options are taxed at exercise at the individual progressive tax rate.[294]

Pre-emptive Right of Purchase of an Enterprise under Insolvency Law (2003) – The Insolvency and Reorganisation Law (IRL) of 2003, a completely new version of Polish insolvency law[295] provides a contingent possibility for setting up "employee companies" in the context of a liquidation procedure. If the sale of the debtor's business as one or several functioning units is impossible, then each asset is to be publicly auctioned by the administrator, under supervision of the judge-commissioner. If assets are not sold at a public auction or the judge-commissioner does not accept the offer, he can order a second auction, or can determine the minimum price and conditions of sale and allow the administrator to find a purchaser or to sell assets free of procedural restrictions (to be approved by the creditors' committee). In this case, a commercial company founded by at least half of the debtor enterprise's employees and with the participation of the Treasury has a pre-emptive right of purchase of the enterprise or functioning enterprise units (Art. 324 IRL).

State Guarantees for Companies with Participation of Employees and Local Governments (2009) – The program has been developed by the Ministry of Economy to revive and promote employee and citizens' participation in privatization and acquiring assets of liquidated insolvent firms.[296] According to the program, two types of companies have the right to apply for state guarantees issued by the state-owned BGK bank (*Bank Gospodarstwa Krajowego*): employee companies established according to the PrivL and so-called citizens' activity companies (*spółki aktywności obywatelskiej*) in which at least 33% of shares should belong to the employees of a privatized or liquidated enterprise, the rest belonging to physical persons who cooperated with the enterprise and/or to the local government. The guarantees are to secure leasing payments, any other forms of buyout of an enterprise, or increasing capital. If a company enters the guarantee program, its shareholders cannot sell their shares during a two-year period.

bb) Profit-Sharing

The possibility of implementing profit-sharing as a form of remuneration in addition to wage systems and directly linked to enterprise profits is stipulated in Art. 347 para. 3 and 348 para. 1 CCC for joint stock companies (*tantiema*).[297] Furthermore, as already mentioned, share-based profit-sharing is regulated in the context of conditional capital increases under Art. 448 CCC, which mentions the possibility of transferring shares to employees, especially in cases where they have acquired claims from profit-sharing. The general type of scheme linked to enterprise results is referred to in Polish as a '*bonus*' but has no legal foundations. Other practices presently sanctioned by law are compensation forms linked to an employee's individual results (gain sharing); these

[294] Stressing this risk, the American chamber of commerce criticized the narrow application in their Quaterly Vol. V, No. 4/2022, https://amcham.pl/sites/default/files/2022-12/06-Vistra.pdf, login Aug. 2023.

[295] Dz. U. 2003 No. 60, Pos. 535. For a detailed analysis of the new law see Zedler (2003).

[296] Support for Privatization through State Guarantees for Companies with Participation of Employees and Local Governments (Citizens' Activity Companies). The State Program, Warsaw, October 2009, published on the Ministry of Economy website: http://www.mg.gov.pl/files/upload/10233/prywatyzacja.pdf.

[297] See decision of the Supreme Court of 5 May 1992, I PZP 23/92, Bibl. Prac. No- 25, p. 96.

are not generally linked to enterprise results and thus do not constitute an EFP scheme.[298]

cc) Participation in Decision-Making

Codetermination at the strategic level takes the form of obligatory representation of employees on the supervisory boards of commercialised companies of, initially, two-fifths of the members and, from the moment the state ceases to own 100% of the shares, one-third (Art. 14 PrivL). Furthermore Art. 11, 12, 60 PrivL provide a detailed procedure for the election and qualification of representatives, while Art. 15 PrivL protects their employment contract for the duration of their term and the year following. A new feature in the context of "social compensation" is the participation of an employee representative on the executive boards of privatised enterprises employing more than 500 employees (Art. 16 PrivL). Outside privatisation, development of participation in decision-making has been very limited, even in companies where employees have significant share accounts. Poland is still dominated by an elitist and managerial corporate culture which minimises opportunities for participation. Almost all progress made in the area of participation in decision-making in Poland may be attributed to the European Union.

Although the development of both direct and indirect (representational) employee participation in decision-making in employee-owned companies seems rather low, there are signs that some potential for genuine employee involvement could be latent in these firms. In many Polish employee-owned companies, for example, no dividends have been paid out, even after two or three years as a private firm, because of decisions to plough back profits into investment or to not pay dividends until the lease is paid off. That employee shareholders can be convinced to vote in favour of such "austerity" plans is evidence that the entrepreneurial attitudes characteristic of genuine ownership and participation seem to be present amongst the work forces of certain employee-owned companies.

22. Portugal

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version as well as those that contributed to the updates were in chronological order in 2014, 2018, 2020 and in 2023 Ana Filipe and Alberto Simões.

No tradition of employee financial participation (EFP) has emerged in Portugal for reasons both historical and economic. The Portuguese economy is still based on small and medium companies under continuous family ownership; these owners are reluctant to granting participation rights to employees. Moreover, flexibility in employment and labour costs has been achieved independently. Employee share ownership and stock option plans were promoted in connection with privatisation in the 1990s after the

[298] Such as other forms of remuneration, e.g., gratifications (gratyfikacja, nagrody, nagrody jubileuszowe), thirteenth salary, commissions (prowizja; used frequently, if not universally, in the case of sales force employees) and various types of bonus schemes. For details see Ciupa (2001); 'Premie i nagrody dla pracowników', Rzeczpospolita of 3 Oct. 2005.

French example. However, this did not lead to any substantial increase in employee share ownership because a significant number of employees, prior to the share transfer, had signed contracts waiving their rights and agreeing to sell their shares immediately after the end of the blocking period. Currently, only few plans are operated by large multinational companies primarily in the financial and insurance sector; the majority of these are cash-based profit-sharing plans; however, single cases of employee share ownership occur. In 2016, while modest tax exemptions for employee stock options were introduced, those for profit sharing were abolished. Nevertheless, despite a continuing absence of specific legal regulation the number of companies opting for cash-based profit sharing has been increasing over the years with many being now regularly implemented. However, at the same time many cases of discrimination of individual employees or groups of employees have been reported.[299] No national statistics on the incidence are collected by state authorities or private organisations.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 37.9% (2013, 21.9%; 2009 16.3%) of companies with more than 10 employees in Portugal offer their employees profit-sharing and in 2013 3.4% (2009, n.a.) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 2.6% (2010, 3.3%) of Portuguese employees were taking part in profit-sharing while 0.8% (2010, 1.7%) of them were participating in share-ownership schemes.

a) General Attitude

The government maintains its' indifference towards employee financial participation. Employer associations are disinterested with the possible exception of wage flexibility through cash-based profit-sharing, remaining reluctant to address the topic in collective bargaining, at sectoral level and relegating the question of whether or not to introduce EFP to companies, if they so wish. Reflecting increased difficulties in finding qualified workers in many of the productive sectors (largely because of the low wages practiced) individual companies are looking for solutions which gradually involve the attribution of bonuses and premiums to workers, however, often to the detriment of salary increases. More generally, it seems that since the financial crisis the interest of employers' associations in EFP as an instrument to flexibilise remuneration and to incentivise workers while compensating for low wages has increased.

Initially, trade unions were suspicious of financial participation, but they have changed their attitude since 1988 and now to promote it. However, this is true only of independent trade unions, e.g., SIMA (Sindicato das Indústrias Metalurgicas e Afins), which has endorsed to include financial participation in collective agreements and continues to do so. They support EFP as long as it is complementary to regular remuneration and not substitution wages stressing the importance of clear rules increasing legal

[299] In a volatile post COVID-19 crisis environment, it, however, remains unclear to what extent companies introduce cash-based profit-sharing schemes to avoid salary increases while seeking to flexibilise remuneration policies. Anecdotal evidence from trade union representatives reflects a growing concern of a veiled substitution of regular remuneration, a phenomenon already observed during and in the aftermath of the financial crisis 2008/09.

certainty which in turn would render implementation easier and more transparent. SIMA support establishing rules, at sectoral level, based on objective and equitable criteria, through collective bargaining, ensuring the effective involvement of workers, via information and communication mechanisms. The largest trade unions, UGT (União Geral de Trabalhadores) and CGTP (Confederacão Geral de Trabalhadores), generally do not support such initiatives, continuing to defend that the negotiations should be restricted to questions of wage increases, although they do not refuse EFP when applied at company level.

b) Legal and Fiscal Framework

No specific legal regulation on EFP exists except for a notion on employee shares in the context of the Framework Privatisation Law of 1990. A small number of financial participation plans are operated primarily by large companies in the financial and insurance sector; many of these plans are limited to executives. Cash-based profit-sharing schemes predominate. In 2016 modest tax exemptions for stock options in general were introduced while the personal income tax exemption for profit sharing was abolished.

aa) Share Ownership

The number of share ownership and stock option plans is very small, executive plans included. The existing plans are purported to be modelled on similar plans in the U.K. and Ireland. If options or shares are granted free or discounted personal income tax incurs at the individual rate on the benefit as well as 28% capital gains tax on dividends and the gains of the sale but no social security contribution apply.

Privatisation (1989 - 1998) – Share Ownership Plans were used on a larger scale in the privatisation process between 1989 and 1998. According to Art. 10 and 12 of the Framework Privatisation Law of 1990, a certain percentage of the capital reserved for acquisition or subscription had to be reserved for current employees and, if employed by the company for more than three years and not dismissed as a result of a disciplinary proceeding, for former employees as well; the blocking period was for two years. As to privatisation of individual companies, special laws containing specific conditions (e.g., the relation of pre-emption rights of employees to pre-emption rights of other individuals), in compliance with the Framework Privatisation Law, were enacted. The employees had to pay a certain price determined by the Minister of Finance. Gains in share value on employee shares held for at least two years were not taxed. In addition, employees enjoyed tax incentives if they purchased shares offered by the state for public sale; they could deduct up to 30% of total taxable income, up to a fixed amount.

Employee Shares – Portuguese company law generally permits joint stock companies to acquire their own shares and also in view with an acquisition by their employees provided that the Articles of Association does not provide for anything else. Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may advance funds, make loans, provide security (financial assistance), with a view to acquisition of these shares by their employees or employees of affiliated firms provided that liquid assets do not become less than the subscribed capital plus the not distributable reserves. In capital increases the General Assembly may limit or abolish pre-emptive right of shareholders for "social reasons".

Stock Option Plans – Stock Option Plans are often limited to executives. Since the total number of stock option plans, including executive plans, is very small, the number of broad-based stock option plans will probably be fewer than ten. In general, employee stock options, like other types of stock options, are subject to personal income tax (in 2018 between 11,08% and 45%) at the time exercised, and no social security contributions need be paid unless a recharge arrangement[300] with a foreign parent company exists. Special rules for employee stock options (Budget Law 2016 amending Law 82-E/2014) foresee that after a blocking period of 12 months the earnings from the spread is tax exempt with a cap of EUR 40,000. Resident employees report the exercise of the option and add it to their annual taxable income; non-resident employees are subject to a withholding tax at 21.5%.

bb) Profit-Sharing

Both cash-based and share-based profit-sharing schemes exist, with the percentage of cash-based profit-sharing schemes being much higher recently noticing an increase. At company level the inclusion of such provisions in collective agreements, e.g., of the Portuguese national flight carrier, TAP Portugal, has been reported. Profits allocated to employees are usually transferred immediately, but under certain conditions can be blocked for one to two years. Conditions are determined at the company level. Since 2016 profit sharing for employees is not exempt of taxation and social security contributions any longer; however, variable bonuses are exempt from social security contributions. The employer company can deduct distributed profit transferred to the employees.

cc) Participation in Decision-Making

No direct connection exists between participation in decision-making and employee financial participation; in particular, financial participation plans may not extend the existing rights in connection with participation in decision-making. Financial participation is not a part of collective agreements, although the trade unions have proposed including such schemes on several occasions. Employee representation on the executive and supervisory boards is prescribed by law in certain public companies, but not often implemented in practice. Although consultations on financial participation plans are not compulsory, they sometimes take place, especially in the case of profit-sharing plans, to improve the design.

[300] A formal agreement between a parent corporation and its foreign subsidiary under which the subsidiary reimburses the parent for the cost of equity compensation.

23. Romania

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Lucian Albu, Axel Bormann, Marius Acatrinei and Gabriela Bilevsky, those that contributed to the updates were in chronological order in 2014 Raluca Dimitriu, Gyula Kocsis, Lucian Albu and Sorin Dinu and in 2018/20 Gyula Kocsis, Lucian Albu and Sorin Dinu and in 2023 Tudor Dan Ancuta.

Employee financial participation (EFP) in Romania is a relatively new idea, as distinguished from various pseudo schemes attempted under the communist regime. EFP schemes emerged during early-stage privatisation; at that time voucher privatisation and insider privatisation via an ESOP-like scheme ("Management Employee Buy-out method") were the two main privatisation methods. The most prevalent form is employee share ownership, mainly through ESOP-like schemes. It is estimated that by the end of 1998, over a third of all industrial firms in the State Ownership Fund had undergone ESOP privatisation, with an average employee ownership of 65% and a median of 71%; in addition, ESOP participants made up the largest owner group in one-fourth of Romanian privatised firms, making this method the country's most important tool for state ownership divestment (Earle & Telegdy 2002). Well known examples of ESOP associations founded in 2008, are that of SC Oltchim MBO gathering 2,000 employees from OLTCHIM SA – more than half of the employees – and that in Electrica SA acquiring 10% of the employer company; however, OLTCHIM SA since 2013 is under insolvency procedures and Electrica SA in 2014 was privatised through a Secondary IPO on the stock exchanges of Bucharest and London for 51% of existing issued shares. Nevertheless, ten years into the ownership transition, only 40% of large enterprises and about two-thirds of medium-size enterprises had been privatised. According to the IMF (Böwer 2017) in 2012-2014 in Romania 799 State owned companies were registered with a trend as of 2018 to increase the role of state-owned enterprises for example in Bucharest where 24 new municipal companies were set up by the end of 2020. As of 2023, according to the Romanian Finance Ministry there are at least 1,578 state owned companies registered.[301] However, many State-owned enterprises are in a difficult economic situation or in long insolvency proceedings.[302]

Since 2001 cash-based profit sharing, known as "The Fund of Employee Profit Participation", has been compulsory in companies and in autonomous bodies where the state is the sole or majority owner. At a national level, net profits directly paid to employees in 2003 was about 2.2% on average, while 70.3% was distributed from salary funds, including premiums and benefits. However, profit-sharing schemes have been tacitly phased out in many firms and institutions due to the economic and financial crises' impact on the Romanian economy.[303] In 2017 tax incentives for employee stock options and restricted stock units have been introduced though.[304]

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[301] https://mfinante.gov.ro/static/10/Mfp/buletin/executii/Anexa4330inuie2023engl_25092023.pdf - https://tinyurl.com/MF-Romania, accessed Sept. 2023.

[302] Of the 24 mentioned municipal firms 9 are bankrupt, 4 in liquidation, 1 insolvent and 11 remain active.

[303] Although compulsory, interview evidence reported, that in practice it is seldom applied and, if applied, concerns a rather small number of employees.

[304] Examples for implementation of corresponding plans are Banca Transilvania, the largest Romanian bank, UiPath, a Romanian IT start-up listed in New York this year and building materials producer TeraPlast.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 45.9% (2013, 32%, 2009 7.3%) of companies with more than 10 employees in Romania offer their employees profit-sharing and in 2013 2.2% (2009 11.5%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th The European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 6.8% (2010 5.7%) of Romanian employees were taking part in profit-sharing while 2.6% (2010 2%) of them were participating in share-ownership schemes.

a) General Attitude

While employees are represented by a considerable number of large trade union confederations, employers' associations – eleven of them registered – are even more fragmented. In privatisation of utilities and the oil and gas industry, employees often have purchased shares through trade unions, since the unions, being very strong in these sectors, have substantial influence, including the right to appoint at least one member to the boards of administration. In some cases (e.g., the sale of 8% of the capital of the PETROM Company, representing a total value of about EUR 200 mln.) trade unions tried to have the relevant law amended to make employees' associations controlled by the trade unions become the purchasers of the offered shares rather than individual employees. Such cases illustrate that the interests of trade unions and their representatives are not necessarily in line with the interests of individual employees.[305] Trade unions have a strong position in the tripartite council (National Social and Economic Council), which also includes the government and the employers' associations. Employers' associations have not addressed the issue of EFP. However, according to Art. 104 of the Collective Labour Contract concluded at the national level for the years 2007-2010, employers and trade unions committed to mutual information concerning changes in the property form of their companies and to sustain the participation of employees' associations in their privatisation, which however were not always successful (see above). The trade unions now are more oriented towards increasing the minimum wage and the implementation of an occupational pension fund scheme than towards the promotion of EFP schemes which were not a topic in the 2022 social dialogue law.

As of 2022, EFP is of little interest to either the government or political parties with the exception a 2019 bill proposing to require the private sector to pay the 13th and 14th salary with a deduction of up to 20% of the income tax owed. The last significant commitment by policy makers was in 2017 when tax incentives for employee stock options and restricted stock units were introduced. Until the economic and financial crisis one aspect of EFP addressed by the government was the sale of minority shares to employees in public enterprises in the process of privatisation; these included utilities (or the so-called '*regii autonome*'), oil and gas, banks, and state-owned companies. In some of these privatisation cases, trade unionists and representatives of political parties were suspected of engaging in insider deals and corrupt practices at the

[305] In the aftermath of the economic crisis the leader of the oil, gas and energy industry trade union was jailed for money laundering, tax evasion and fund diversion from trade union companies in the energy sector, including the diversion of PETROM shares.

expense of employees, a factor detrimental to public confidence in government support of EFP. Since 2016 as economic privatisation policy was changed to favour sales to strategic outside investors, including foreign investors, government support for ESOPs has faded as the remaining state-owned companies need investments and additional capital for their economic recovery. Fiscal consolidation reached its peak in 2015 after which significant tax cuts were passed. To finance the expansive fiscal policy since 2017 involving tax cuts and rising public sector spending, including wages, pensions, and social welfare, while reducing investments State owned enterprises were forced to distribute 90% of their net profits. As of 2021 the wage led growth policy of the last years focused on the accelerated increase of the minimum wage and fiscal consolidation instead.

b) Legal and Fiscal Framework

Romanian law lacks a systematic legal framework for regulating EFP. However, several laws passed in conjunction with the privatisation process influenced the extent to which the concept of EFP spread, with mass privatisation and an ESOP scheme being the major forms. The only legal regulations of profit sharing concern a compulsory scheme in (majority) state owned companies to which until 2011 national unique collective agreement applied. Nevertheless, tax law provides modest tax incentives for employee stock options and restricted stock units since the beginning of 2017.

aa) Share Ownership

Privatisation (1991, 1995, 1999) – The Romanian Privatisation Law 58/1991 decreed that 30% of shares be free shares transferred under alternative privatisation methods, mainly through vouchers and contained regulations on preferential treatment for employees and management in the sale of shares through the national Privatisation Agency. According to Art. 48 of Law 58/1991, employees (including management) of the relevant enterprise had a pre-emptive right to purchase the offered shares on preferential terms. In a fixed price sale, the "insider share price" had to be 10% lower than the public price; in the case of a sale by competitive bidding, the insider offer had to be accepted by the Privatisation Agency as long as the offered price was not lower than 90% of the highest public bid. This preferential treatment was extended to the direct sale procedure, where the insider offer had to be accepted by the Privatisation Agency in the event of an equal negotiation offer from other interested parties. In 1999 the law was amended stating that in privatisation transactions a share of 8% of the share capital has to be sold to employees in the oil & gas and utilities companies. The 30% quota was reaffirmed by Law 55/1995 on the Acceleration of the Privatisation Process; the privatisation agency compiling a list of suitable enterprises issued the so called "nominal value vouchers for privatisation" to be distributed amongst the resident population that had not made full use of their property vouchers received according to Law 58/1991. This law contained the first real incentive for EFP in voucher privatisation. While members of the general public who owned the nominal value vouchers could exchange their vouchers only for shares of companies chosen from the privatisation agency's list of suitable enterprises, Art. 5 offered employees, former employees (pensioners or the unemployed) and managers the same opportunity to acquire shares of non-listed companies. In the last decade, any privatisation transaction primarily emphasised on relieving the government budget and additionally a large part of state holdings in state-owned companies has been transferred to a Property Fund which is used for the compensation of former owners of confiscated property by the communist regime.

Employee Stock Ownership Plans (1992, 1994, 1997, 2002) – ESOP associations stem from Act 1/1992 on the Standard Procedure for the Privatisation of Small Enterprises by the Sale of Shares in force as of January 1993. Although focused on the privatisation of so-called "small enterprises" with not more than 50 employees, this regulation defines insider privatisation via an ESOP-like scheme (the so-called employee associations, 'asociația salariaților' or 'Programul pentru Acționarii Salariați' (PAS)) implemented by means of direct negotiations with interested employees and managers as the standard privatisation procedure. However, the shares were not acquired directly by participating employees but by an incorporated association of shareholders ruled by Law 77/1994 (MEBO law) allowing employees and the management of partly or fully state-owned enterprises earmarked for full or partial privatisation to establish ESOP associations.[306] Until 2002, only one ESOP association could be established in each enterprise to be privatised, eliminating the possibility of competition between associations over the purchase of one specific enterprise. Membership in the ESOP association, while voluntary, was a precondition for making use of the advantages and rights. The law prescribes that a minimum of 30% of the total number of employees and management staff must participate in establishing the ESOP association. The employing enterprise is obliged to disclose all relevant commercial and financial information to the association's founding committee; it must also bear the costs of a preliminary feasibility study. The ESOP association buys and administers the shares for its members. Membership is open to employees with open-ended labour contracts for at least half-time employment (since 2002 also to fixed-term employees and to pensioners), to members of the management of the employer company and former employees, both unemployed and pensioners.

The association's main decision-making body is the general meeting in which each member has one vote. The general meeting adopts the ESOP association's Articles of Association which must contain strict rules on the distribution of shares purchased. With the share not being acquired directly by employees and management, but the intermediary ESOP association, with an autonomous legal personality, participation in decision-making therefore depends upon the decision-making procedure within the association and how members' decisions are transmitted to the shareholders' meeting. The ESOP association may also purchase shares on behalf of individual members. In this case the shares are distributed directly to and administered by the members themselves once they fully pay for the shares either with cash or privatisation vouchers. The main advantage of buying shares through the ESOP association is the use of the credit offered either by the Privatisation Agency itself or by external banks. Shares bought under the name of the association are not vested directly to individual members, but retained by the association until they are entirely paid for, serving as credit securities during this period. ESOP associations' members have pre-emptive rights to the unvested shares, on the basis of length of employment, firm position and salary. If the members do not exercise their pre-emptive rights, these shares may be distributed to new employees. When all shares are distributed to its members, the association must be dissolved. Law 77/1994 additionally offers preferential instalment options[307]

[306] Law on Associations of Employees and Members of the Management in Companies in the Privatisation Process. When voucher privatisation came to an end Emergency Ordinance 88/1997 defined a rough legal framework subsequently changed by Law no. 137/2002 on some measures to forward privatisation.

[307] Regarding Art. 52 of Law 77/1994 the Privatisation Agency is bound by these conditions. The Agency has to accept a certain amount of privatisation vouchers in exchange for the shares to be transferred.

for shares purchased by ESOP associations. This involves a low advance payment, complemented by a minimum repayment period of five years and a maximum interest rate of 10% per year. Given the high inflation rate that obtained during the 1990s, this interest rate limit turned out to be remarkably advantageous.

Share-based profit-sharing – Share-based profit-sharing schemes were only kept in force until the beginning of the economic and financial crises. After the mass privatization programme and the application of the MEBO law mainly in the 1990'ies the employees could no longer purchase shares in the case of privatization because the state-owned companies remaining to be privatized need important investment and operate in sectors with higher demand for capital. The last sale operation of shares to employees was performed in the period of 2005-2007 before the beginning of the crises in the banking sector. During the crises many of MEBO privatized companies filed for bankruptcy or were in a difficult financial position while other parts were sold to strategic investors through capital increase methods.

Employee Shares – The legal framework established by Romanian company law is defined by Law 31/1990 on companies, republished in 2004. Romania has only made partial use of the tools/exceptions offered by the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) to promote employee financial participation by means of corporate legislation. Regarding permission to acquire the companies' own shares for its employees Art. 103 Law on Companies offers an exception to the restrictive general rule for such transfers which requires a decision of the shareholders' meeting in the case of the acquisition of shares for the employees of the company. The second exception is Art. 106 para. 2 Law on Companies, i.e., the encouragement of share acquisitions by employees by permission to advance funds and to make or secure loans for this purpose.

Stock Options – Share-based remuneration offered under stock option plans were acknowledged under tax legislation and qualify for preferential taxation since 1 January 2017 conditional that they (i) restrict the shares – free of charge or at a preferential price – to employees, administrators, directors, or affiliates and (ii) introduce a vesting period of at least one year.[308] Instead of being subject to taxation at date of issuing of such shares, as it had been the case prior to 2017, 16% capital gains tax is due at disposal of the shares and subject to the employee's annual income tax statement of that year (i.e., no withholding by the employer any longer). Furthermore, according to the Emergency Ordinance No. 84/2016 amending Art. 7(39) of the Fiscal Code No. 227/2015, this preferential treatment was extended to unlisted companies.

Restricted Share Units (RSU) – Since 1 January 2016 RSU type awards that are share-settled and have a vesting period of more than one year are taxable at the date of sale and subject to 16% capital gains tax.[309] Unless the employee has not reached the cap with his/her salary the sales proceeds are also subject to health insurance contributions. Previously, income tax and social security were due at vesting/delivery on the market value of the shares at that date.

[308] Previously executive stock-option schemes were only available in multinational companies, investment funds and some private-owned companies as a way to increase the responsibility of management.

[309] Cash-settled RSUs, and share-settled RSUs with a vesting period of less than one year, remain taxable at the date of vesting subject to the employer withholding the tax.

bb) Profit-Sharing

In 2001 the government passed Ordinance 64/2001[310] covering state or municipal enterprises whose legal form is prescribed by Law 31/1990 on Trading Companies, with the state as single or majority owner, or in a specific legal structure which is still widely used by public utilities ('regii autonome', governed by specific regulations). The ordinance regulates the details of profit distribution, such as reserve funds, payouts to owners and the coverage of losses from previous years. In Art. 1 lit. e), the ordinance also contains a provision which sets the maximum payout rate for employee profit-sharing at 10% of the overall profit of the enterprise (10% in the case of companies, or 5% in the case of autonomous bodies, depending upon employees' performance and contribution to the financial results).[311] There is no current provision regarding a minimum rate; it should be noted that the number of state firms actually making a profit is still low. Nevertheless, Ordinance 64/2001 is one of the few laws expressly dealing with the issue of employee profit sharing. Against the background of the pronounced encouragement of ESOP privatisation schemes, profit sharing in companies privatised through this method should be widespread, as a side effect of share ownership. Since ESOP privatisation policy particularly favoured the sale of smaller enterprises to employees and management, profit-sharing schemes should be over-represented in the sector of small and medium sized firms. However, cash-based profit-sharing plans have been unwound silently for two reasons: (1) due to lack of profit of many Romanian companies; and (2) due to higher budget deficits of the budgetary institutions and the implementation of a financial and economic adjustment programme agreed with IMF-EU-World Bank.

cc) Participation in Decision-Making

While legislation before 1990 emphasised employee participation in decision-making excessively, the privatisation laws passed since 1990 contain no special regulations on this issue. Although discussed, the notion of employees' co-determination, as in German law, was not introduced. The Company Law does not provide any legal means for the privileged participation of employees in decision-making. However, it does contain various provisions protecting the interests of minority shareholders. Once the New Labour Code was published in the Official Gazette on 18 May 2011 the obligation to conclude national labour collective agreements was cancelled (Act 62/2011 on Social Dialogue). Instead, labour collective agreements may be concluded at company level, unit group level or sector level (Section 128(1)). However, regulation on neither of these levels contains any provisions regarding profit sharing or share ownership of employees. The 2022 social dialogue law from (replacing that of 2011) focusses on collective bargaining now mandatory for establishments with at least 10 employees/workers (prior 21 employees) and industrial relations. In firms with at least 10 employees and no trade union present, employees' interests can be promoted and defended by elected representatives.

[310] On the Repartition of Profits Obtained by State and Municipal Companies with the State as Single or Majority Owner (M. Of. No. 536/2001 as amended) abrogating earlier regulations, e.g., Ordinance 23/1996 on the same issue.

[311] Supplemented by Governmental Disposition No. 298/25 2002 for the approval of the explanatory note regarding the establishing of the amounts making the object of the profit repartition conforming to the Governmental Ordinance No. 64/2001 and their reflection in bookkeeping (M. Of. No. 157/2002).

24. Slovenia

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Aleksandra Gregorić, Šime Ivanjko and Grit Ackermann, those that contributed to the updates were in chronological order in 2014 Vesna Težak, Šime Ivanjko and Rajko Knez, in 2018 Šime Ivanjko and Rajko Knez, and in 2023 Tej Gonza, Gregor Berkopec, Vesna Težak and Rajko Knez.

Slovenia has a long tradition of employee participation, starting with cooperativist movement initiated by Janez Evangelist Krek by the end of 19th century as part of his Socialist-Catholic teaching, and later with the development of employee self-management in the 1950s. The strong tradition of employee involvement in corporate affairs is reflected in both the Slovenian model of privatisation and in the development of Slovenian company law. Furthermore, in contrast to other Eastern European countries, Slovenia has retained relatively strong political support for the employee financial participation (EFP) up to the present time, with draft laws being presented in 1997, 2002 and 2005. Although Parliament did not pass any of the draft laws, supporters of financial participation have established associations to promote the creation of a legal framework. Their efforts finally led to success: on 29 February 2008, the *Financial Participation Act* was adopted by the Parliament and came into force in April 2008.

According to statistics collected by Damijan et al. in 2004, insider ownership decreased by more than 10% in the period 1998-2002 (from 38.52% to 26.17%) with the number of firms predominantly owned by employees (managers excluded) having declined from 74 to 26. While 10% of the firms had no employee owners whatsoever and in 25% employees held less than 5 % of shares, in the majority of firms, namely 50 %, the aggregate level of employee ownership did not exceed 18.4%; only in 25% of firms, employee ownership exceeded 40% of share capital. A 2019 study carried out by Klanecek et al. found that 26,4% of firms surveyed had some degree of employee ownership (managers excluded) with, however, only a third of them being predominantly owned by employees (Klaneček et al. 2019).[312] Profit-sharing schemes under the *Financial Participation Act*, are rare. Kanjuo-Mrčela (2002) found that only about 7% of the 41 largest Slovenian firms had constituted a "fund of own shares" to remunerate their employees; about 32% of the firms introduced the possibility of profit-sharing in their Articles of Association, although often leaving it unused (22% of firms in the sample). Following the adoption of the 2008 *Financial Participation Act* only 26 companies had registered profit-sharing plans between March 2008 and December 2012 with the ministry. In 2014 companies have been reported to perceive profit sharing enshrined in the 2008 law inefficient and non-stimulating, as it did not consider individual employee's performance[313]; their use continues to be scarce with 67 prof-

[312] The survey (co-financed by the State) based on responses from 102 firms concludes that the scale of employee ownership had decreased in 52,0%, remained unchanged in 44,1%, and increased only in 3,9% of employee co-owned companies.

[313] Zalaznik, J: *The law is satisfying for very few*, 22 January 2014, Zurnal24, available online at: http://www.zurnal24.si/zakon-ustreza-le-pescici-clanek-220302.

it-sharing plans registered until February 2018.[314] The latest 2021 public business registry update showed that since 2019, only eight businesses introduced profit-sharing plans and only one company (Datalab d.d.) a share purchase plan.[315]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 53.6% (2013, 59.8%; 2009 13.9%) of companies with more than 10 employees in Slovenia offer their employees profit-sharing and in 2013 9.3% (2009, 7%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 24.6% (2010, 23.2%) of Slovenian employees were taking part in profit-sharing while 2.3% (2010, 3.7%) of them were participating in share-ownership schemes.

a) General Attitude

Debates over the establishment and continuance of employee ownership and other forms of EFP began in the early 1990s. The DEZAP (*Employee Ownership Association*), a group of enterprise representatives, union representatives, journalists and academics that was founded in 1995, strives to encourage employee ownership in Slovenia, its inception, growth and effectiveness. DEZAP promotes the adoption of suitable legislation on employee ownership, provides professional assistance to training and education of employee owners, develops networks of employee-owned firms, and promotes cooperation with other firms and international organisations. Accordingly, the Association was actively involved in the adoption of the Financial Participation Act in 2008 with expert advice. A similar organization, *Association of Workers Councils* (Studio Participatis), consisting of 107 members as of 2023, supports all forms of employee participation (see http://www.delavska-participacija.com).

Trade unions, however, have varying views. For example, they opposed the 1997 profit-sharing law because it linked the introduction of profit sharing to regular wages, one of the reasons why the proposed law was rejected. On the other hand, in 2010, trade unions have been strongly in favour of adoption of the proposed amendment to the *Financial Participation Act*, which was aimed to render profit sharing mandatory, but was ultimately vetoed by the National council. Further promotion of EFP especially by share-based profit sharing, represents one of the objectives of *Slovenian Association of Managers* (Združenje Manager), stated in its Commitment 15/2020 (see www.zdruzenje-manager.si). Such aim is undoubtedly inherent to a very low level of share-based profit sharing among the Slovenian companies, as the majority of companies decided to adopt cash-based schemes (one of the reasons possibly being that tax favourable share-based profit sharing is restricted to listed firms). Tax issues represented a major obstacle to adoption of the *Law on employees' financial participation* in 1997. In October 2002, the Ministry of economic development and technology established an expert group to prepare the regulations on employee share ownership and other forms of financial participation, however, the new draft law on EFP, submit-

[314] However, the schemes stem from merely 30 independent firms, mostly SMEs. See Gostisa, M.: *Vlozen predlog novega Zakona o udelezbi delavcev pri dobicku*, Februar 2018, Ekonomska demokracija, available online at http://www.delavska-participacija.com/priloge/2795-1.pdf, p. 12-13.

[315] https://www.gov.si/teme/udelezba-delavcev-pri-dobicku/, accessed 28 March 2023.

ted to the Parliament by Social Democrats in 2005, was also rejected. It has to be noted that these draft laws, all of them having been proposed by centre-left governments, have foreseen a compulsory scheme for the EFP plans and as a consequence, employer groups strongly opposed their adoption. The 2006 draft law by contrast was submitted by the first centre-right government in co-operation with the social partners and agreed upon in the Economic Social Council in 2007, and on 29 February 2008, the *Financial Participation Act* was finally adopted enabling companies to benefit from tax incentives once they register their EFP plans with the ministry. An amendment to this 2008 law was submitted to Parliament in 2010 but rejected as a result of the employer groups urging the National council to veto the adoption. In 2018, an amendment incorporating mandatory profit sharing was suggested again, but unsuccessfully.[316] Amendments to the Act remain under discussion with the media calling for the adoption of an ESOP model and expanding favourable tax treatment.[317]

Since 2018, one of the main organizations working on the topic of employee ownership and workplace participation is the Institute for Economic Democracy (IED), focusing on research of best practice, policy and advocacy on employee ownership, ownership restructuring and trainings for employees. IED together with ambassadors from the business sector initiated a public debate on the topic of employee ownership and government support for employee ownership is growing in the recent legislative initiatives. Main issues for improvement are higher tax incentives for profit sharing, profit sharing via stock options and, most importantly, an administrative simplification for profit sharing. It appears these initiatives have gained traction with the Slovenian government setting up a new ministry for solidarity-based future in January 2023, tasked with *inter alia* further strengthening of employee financial participation.[318] The ministry started to work on a *Law of Employee Ownership Cooperative* (LEOC)[319] to establish an ESOP-like mechanism.[320]

b) Legal and Fiscal Framework

The 2008 Financial Participation Act regulates share ownership and share-based profit-sharing plans and as mentioned above, offers strong tax incentives for the schemes eligible. Pursuant to the Ministry of Finance authorizing such incentives in its Orders,[321] interested companies are now obliged to register the contracts they signed

[316] *Levica z zakonsko podlago za udelezbo delavcev pri dobicku*, 15 February 2018, available online at: https://www.sta.si/2482950/levica-z-zakonsko-podlago-za-udelezbo-delavcev-pri-dobicku.

[317] Gonza, T.: *And if the employees rented the capital?* 9 March 2018, Mladina, https://www.mladina.si/184516/in-ce-bi-delavci-najeli-kapital/. See also Sutanovac, L.: *Can you offer employee ownership through the ESOP model?*, 7 Sept. 2017, available online at: https://mladipodjetnik.si/novice-in-dogodki/novice/esop-nacrt-lastniskega-kapitala-zaposlenih.

[318] Government of the Republic of Slovenia Act (OG RS 24/05 – official consolidated version, last amended in 2022) established a Ministry for Solidarity-Based Future; see "*Simon Maljevac prisegel kot minister za solidarno prihodnost"*, 27 Jan. 2023, https://www.gov.si/novice/2023-01-27-simon-maljevac-prisegel-kot-minister-za-solidarno-prihodnost/; see also *Ministrstvo za solidarno prihodnost, predstavitev kandidata za ministra z ekipo*, 6 Dec. 2022: https://www.gov.si/novice/2022-12-06-ministrstvo-za-solidarno-prihodnost-predstavitev-kandidata-za-ministra-z-ekipo/.

[319] https://obljubadeladolg.si/vse-obljube-15-vlade/krepitev-delavskega-lastnistva-podjetij/ login 22 March 2023.

[320] In 2022, there were three pilot applications of the Slovenian ESOP: Hudlajf d.o.o. with 9 workers becoming 10% employee-owned; IneaRBT d.o.o. with 9 employees becoming 51% employee-owned; and Inea d.o.o. with 90 employees becoming 100% employee-owned.

[321] Rules on corporate income tax returns, OG RS 12/09, OG RS 67/10 and amended by 77/12, OG RS 109/13.

with the workers with the Ministry of economic development and technology to become eligible for tax incentives. However, privatisation legislation, on the basis of which employee ownership first emerged in Slovenia, and general company law both contain regulations with regard to financial participation, and therefore have to be taken into consideration as well.

aa) Share Ownership

Privatisation (1993, 1997) – Privatisation was introduced by the *Ownership Transformation of Companies Act* of 1992 (Of 5 December 1992, OG RS 55/1992, as amended)[322] which authorized the sale of companies and social capital to workers or third parties and defined a special form of workers' participation in social capital. Companies under social ownership were transformed into corporations and issued shares in the amount of the value of the social capital. The shares could be either distributed or sold internally, either sold to outsiders, as well as assets. The Act provided for the mandatory distribution of 40% of the social capital to different funds (10% to the Pension Fund, 10% to the Restitution fund and 20% to the Development Fund for subsequent sale to Privatisation Investment Funds). The companies were then entitled to distribute (in exchange for employee vouchers) up to 20% of ordinary shares amongst current and former employees, including retired employees. Registered shares obtained by workers could not be transferred for a period of two years after the issue date, except in case of inheritance.[323] Authorized proxies (the so-called authorized investment companies, or 'PIDs', as commonly referred to in Slovene) emerged in order to gather the minority shareholders' powers to vote at the meetings of general assemblies, and thus acquire the controlling interest. All mentioned factors have led to very low percentage of employees as (minority) shareholders. In 2009, due to the constant tendency of the majority shareholders to squeeze out the minority shareholders in the preceding two decades,[324] the Small Shareholders' Association of Slovenia was founded in order to protect their interests and representation.[325]

After distribution of 40% of the shares to various funds and 20% to inside owners in the process of privatisation, companies had discretion over the allocation of the remaining 40% of their capital, which they could either sell to insiders (internal buy-outs) or outsiders (outside privatisation). In an internal buy-out, workers could buy shares with the profits of the companies owned by participants in the internal sale programme, as well as with their salaries or other sources. The workers could also obtain a part of the shares to satisfy salary claims or other legitimate claims against the company. In addition, the option of the so-called 1/5 company model was introduced in order to support employee participation in ownership. For privatisation purposes, Slovenian citizens were granted vouchers; the value of vouchers granted to each individual depended upon the length of employment (Art. 31 *Ownership Transformation*

[322] Art. 168 Company Law as amended in August 1990 (dubbed "the beginning of capitalism"), already authorised the managing body of socially-owned companies and public companies to offer the employees the possibility to buy the assets of the company under the conditions defined in the Articles of Association.

[323] In practice, however, employees found ways to sell their shares before the end of the blocking period, and many sold them immediately or, due to the financial crisis and tax incentives, in the following years.

[324] Minority shareholders have been squeezed-out of numerous large Slovenian companies, namely Ljubljanske Mlekarne, Merkur, Nova KBM, NLB, Abanka, and others.

[325] In 2018 the association for the ninth year in a row had organized the collection of proxies for over 650 shareholder meetings; see www.skupaj.si.

Act). Vouchers could be used to obtain shares in the employer company within the limitations of internal distribution (the initial 20%), to obtain shares of *Privatisation Investment Funds*, to purchase shares of other companies privatised by public sale, and to purchase shares or other property of the Republic of Slovenia and state-owned companies offered to the public in return for vouchers (in the latter case, the vouchers could not be freely traded).

Certain measures were taken to preserve employee ownership after privatisation, beginning with the two-year restrictions on trading shares gained from internal distribution (internal buy-out). To prevent decline in employee ownership, some firms decided to limit trading with internal acts, namely through "shareholder agreements" prohibiting the sale of employee shares to outsiders and providing for employee representation of employees in the firm's decision-making process. However, such shareholder agreements proved easy to abandon and difficult to administer (Mrčela, 2002). In 2006, an amendment was introduced to the *Takeovers Act* of 1997 upon the proposition of DEZAP, the Slovenian Chamber of Commerce and the Association of Free Trade Unions. The new *Takeovers Act* of 2006, which implemented Directive 2004/25/EC ('*the Takeover Directive*') and was amended five times to this date (most recently by ZPre-1G, OG RS 75/2015), provided for the possibility of the sell-out of minority shareholders (Art. 69), as well as enabled the workers' representatives to participate and state opinions in the process of takeover bid (Articles 24, 33 and 34). Thus, Workers Associations became professional proxy organisations and, as such, had to act in accordance with both the *Takeovers Act* and the provisions of the *Companies Act*. Earlier laws regulating transformation and privatisation, although not abolished, are no longer in practice since privatisation has generally been completed.

Employee Shares (2004, 2008) – The transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) into Slovenian *Companies Act* ('CA') in 2004 enabled companies to buy their own shares up to 10% of the subscribed capital for distribution to their own employees and employees of associated companies within a one-year period (Art. 247 CA). This provision applies to both joint stock companies and limited liability companies; tradability is unrestricted for shares thus acquired. Furthermore, Art. 248 CA allows companies to advance funds, make loans, and provide security for the acquisition of company shares by their own employees or employees of an associate company. Pursuant to Art. 343 CA, part of the profit can be distributed to employees in the form of new shares if the general meeting so decides. According to the *Financial Participation Act*, which introduced cash-based profit-sharing, employees are granted a 70% tax relief on distributed shares held for one year, and a 100% tax relief on shares held three years, up to an annual maximum of 5,000 EUR. In addition, no social security contributions (22.10% for employees and 16.10% for the employer in 2018)[326] are imposed on the benefit. In the original draft law, only employees covered by collective agreements, i.e., with the exception of management and other key personnel under individual contract, were eligible for tax incentives. However, the final version of the Act includes all personnel categories, but only entitles them to a limited annual amount, which may not exceed 20% of company profit or 10% of the employees' total

[326] Guidelines by the Ministry of Finance dated March 2018 are available online at https://www.fu.gov.si/davki_in_druge_dajatve/podrocja/prispevki_za_socialno_varnost/.

gross salary. When determining this amount, the employer company may deduct the value of distributed shares from the corporate income tax base.

Distribution of Share Ownership as Payment for Work – The Slovene *Personal Income Tax Act* (*PITA*; OG RS 13/11 – official consolidated version, as amended) provides for a possibility that a part of a payment for work is paid to the worker as a benefit in-kind including as a right to purchase or a right to receive shares or stock in the employer company or its parent company. In such cases there is an exception to the general rule that the value of the benefits in-kind must be equal to fair market value, allowing a discount of 35% conditional that the employee is employed for more than one year (Art. 43 PITA). Additionally point 12 of Paragraph 1 of Art. 44 of PITA provides for a possibility that employees receive a payment in-kind including in form of stock or shares as a business performance bonus. This is not subject to personal income tax if the payment in-kind is less than 100% of the average monthly salary of employees in Slovenia. Social security contributions are payable in such cases of distribution of shares or stock in the company to employees.

bb) Profit-Sharing (2006, 2008)

The *Financial Participation Act* also applies to share-based, and not only cash-based profit sharing. In addition, general provisions of the Companies Act (ZGD-1, OG RS 42/2006, last amended by Trade Secrets Act, OG RS 22/2019; in the following CA) also apply; in Art. 230, the amended CA of 2006 regulates the use of net profit. This profit must primarily be used for covering losses and creating legal and statutory reserves. The remaining net profit, not exceeding 50%, may be used for other reserves; if the articles of association so provide, a part may be distributed to employees and members of the management and supervisory boards.[327] These matters are decided by the general meeting in determining distribution of profit. In summary, the CA makes profit-sharing possible, provided there is enough profit to cover losses, legal and statutory reserves, that the articles of association allow some use of profits for employees, and that the general meeting approves the decision.[328] The participation amount is usually determined as a percentage of the annual profit of the company. While the *Financial Participation Act* imposes a limitation of 20% of the net profits, most of the companies with profit-sharing schemes comply with that very amount.[329]

cc) Participation in Decision-Making

Art. 75 of the Constitution specifies the terms and conditions of employee participation in management. This provision was first implemented by the special *Worker Participation in Management Act* of 1993 (of 6 Aug. 1993, OG RS 42/1993, as amended), which regulates workers' participation in the management of economic units regardless of ownership form, including cooperatives.[330] According to this Act workers may participate in management by submitting initiatives, by demanding information, by

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[327] Only the Articles of Association can grant members of the management board the right to participate in profit-sharing in recognition of their work contributions (Art. 269 (1) CL).

[328] Profit sharing can be defined by the shareholders meeting (Art. 293 CL) amending the Articles of Association.

[329] Snoj, T: Profit-sharing with employees, 20 February 2012, Jana, available online at: http://www.jana.si/2012/02/delitev-dobicka-delavcem/.

[330] Individual specific provisions on employees' co-management are integrated into the special laws for different economic sectors, e.g., the Energy Law, Banks and Savings Banks Law, Insurance Company Law.

consultations with their employer, and by participation in decision-making, including the right to reject employers' decisions. In particular, workers are entitled to nominate between 1/3 and ½ of the supervisory board members and in companies with more than 500 employees, one member of the management board. Since employees who obtained shares in the course of privatisation are, as a rule, minority shareholders, special provisions of the CA on the protection of minority shareholders apply. These special rights relate to the general meeting, the right to information, the right to examine the books, and the right to lodge a complaint against the decisions of the general meeting. These rights, however, do not include the right to replace management.

Despite the legislation being aimed to facilitate the employees' participation in corporate governance, events in 2013[331] have pointed out that the governance is, especially in the state-owned companies, overly influenced by the employees' representatives, namely the members of supervisory boards, who are sometimes faced with the conflict of interests and might pursue their own political interests instead of acting on behalf of the workers. Due to the fact that the members of management and supervisory boards change continuously in the state-owned companies, the employees' representatives retain even more power. Accordingly, a new law (ZSDH-1, published on 7 April 2014) amending the Slovenian *Sovereign Holding Act* excludes the possibility of employees being represented in a supervisory board.[332] In 2018, the Constitutional court confirmed this was in line with the Constitution because the efficient functioning of the Slovenian Sovereign Holding –in charge of managing the state assets – was in public interest, and therefore its operations justified such specific regime determined by the government and the parliament.[333] However, this exclusionary stance seems to be limited to the unique role of the Slovenian Sovereign Holding: in 2019, the Constitutional court ruled that exclusion of employee representatives from supervisory boards of *banks* was not justified because employee participation in a bank's policy-making could not compromise the efficiency of the banking activity.[334] . The amended *Banking Act* from 2021 accordingly provides for employee representation in supervisory bodies of credit institutions but excludes it for their management.[335]

[331] Šuligoj, B.: *Mišič becomes the new chairman of the management board in Luka Koper*, 26.8.2013,Delo, available online at; http://m.delo.si/gospodarstvo/podjetja/misic-novi-predsednik-uprave-luke-koper.html.

[332] Grgič, M.*: Employees – necessary the shareholders or the kidnappers of a company?,* 24 February 2014, Delo, available online at: http://www.delo.si/gospodarstvo/podjetja/delavci-ndash-nujni-delezniki-ali-ugrabitelji-druzb.html.

[333] Decision of the Constitutional Court dated 18 October 2018, No. U-I-14/15-19.

[334] Decision of the Constitutional Court dated 13 June 2019, Nos. U-I-55/16/19 and U-I-196/16-15.

[335] Banking *Act* of 8 June 2021, OG RS 92/2021. See also Franca, V. and Strojin Štampar, A.: *Delavski predstavniki v organih vodenja in nadzora gospodarskih družb*, 2022, Uradni list RS, p. 39.

25. Slovakia

This country profile is based on the country chapters of the PEPPER III and IV Reports; the co-authors of the earlier versions were Christine Goeken, Lubomír Lízal and Alexander Klein, those that contributed to the updates were in chronological order in 2014 Martin Provaznik and Monika Martišková and in 2018/20 and in 2023 Monika Martišková and Lenka Hanulová.

Despite political declarations in the mid-1990s, employee financial participation (EFP) has made limited progress in Slovakia. However, the environment for EFP has been generally more favourable than in the Czech Republic due to a major difference in the privatisation concept revised after the split from Czechoslovakia in December 1992. Starting with a focused policy favouring the voucher scheme, the new government switched to traditional privatisation methods – trade sales in particular but also insider privatisation – in its second privatisation wave. The populist government in the mid-1990s used employee shares in conjunction with managerial types of privatisation to facilitate property transfer to members of their party. However, the subsequent reformist government abolished this system; from 1998 on, the *Dzurinda* government focused on revenue-oriented privatisation of the remaining state enterprises, which included telecommunications, gas utilities and large banks. The private ownership structure which emerged from this point was entirely dominated by external or managerial ownership. Since 2000 there have been only marginal changes with regard to EFP. However, the 2018 Act on social economy and social enterprises re-introduced employee participation schemes to legislation (European Commission 2020). The act aims to facilitate labour market integration of long-term unemployed, socially excluded or disabled while at the same time defining principles for employee participation in private companies, cooperatives, and NGOs. A total of 616 social enterprises were established with 550 operating as of March 2023; the size of de facto social enterprises can only be estimated as they are not systematically assessed.[336]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 39.8% (2013, 54.3%; 2009, 16.6%) of companies with more than 10 employees in Slovakia offer their employees profit-sharing and in 2013 3.1% (2009, 2.6%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 19.6% (2010, 25.6%) of Slovak employees were taking part in profit-sharing while 3.9% (2010, 3.3%) of them were participating in share-ownership schemes.

a) General Attitude

The general attitude towards EFP, currently, can be summed up as indifferent, in the best case benevolent regarding HR management practices for employee motivation

[336] European Commission estimates for employment by social enterprises in Slovenia's active population are at 0.045% for their revenues at 0.041% of GDP; for de facto social enterprises the estimates are higher with 0.268% of the working population and 0.269% of GDP; companies for people with disabilities have the highest share of employees with 1.37% of the active population; see Social enterprises and their ecosystems in Europe. Updated country report: Slovakia loc. cit.

and most recently the Social Economy. External ownership is the preferred form of ownership; no incentives to encourage other forms or employee participation are provided. A survey of past and recent literature on enterprise sector development and corporate governance in Slovakia reveals only minor professional or public interest in EFP. Over the last decade the National Organization of Employers (Republiková únia zamestnávateľov, RÚZ) tried to promote EFP through raising the awareness about the topic among employees and employers.[337] There are no concrete legal proposals to supporting the EFP, except the recently approved Act on social economy that had so far only limited impact and did not trigger discussion among major stakeholders. Trade unions on the whole also seem indifferent as they approach the topic of employee participation primarily as participation in decision-making through social dialogue without addressing the issue of EFP.[338] Political parties seem to ignore the issue, except for some left-wing politicians within but also outside the social democratic party SMER who, however, do not see the topic as a priority.[339] Although the 2018 Act on social economy and social enterprises explicitly defines forms of employee participation both financial and in decision-making, it did not (yet) trigger debates on the issue one reason being probably the limited scope of the law primarily targeting marginalized groups in society. Whether or not the new law will move the topic out of the shadow will to a large extent depend on the spread of social enterprises as a new form of entrepreneurship. At the same time, Slovakia in comparison Czechia seems to have chosen a different, more socially oriented development path. However, despite a less dynamic start-up scene[340] and the void of regulation, technical assistance to implement ESOPs or ESOP-like schemes have been offered by consultancies in the tech / start-up sector.[341]

b) Legal and Fiscal Framework

Under Slovak law, there is no specific legislation addressing EFP, except for the 2018 Act on social economy that defines employee participation in social enterprises. Outside social enterprises regulations, the only regulations pertaining to EFP stem from general laws and regard the acquisition of shares by employees and profit-sharing in joint-stock companies.

aa) Share Ownership

Privatisation (1995, abolished 1996) – The Slovak Republic National Council Act No. 192/1995 was the basic legal act, which accelerated direct sales primarily, while at the same time subsidising domestic entrepreneurs and enabling them to participate in

[337] Republiková únia zamestnávateľov, 2010: Finančná motivácia - zvýšený výkon zamestnancov, lepšie výsledky firiem (Financial Motivation – Raising Effort of Employees, Better Results of Firms). Retrieved on 25 March 2012 from http://www.ruzsr.sk/tobeq/download/publikacia.pdf.

[338] See, e.g., the description of the Independent Christian Unions in 2017 of the topic: Zamestnanecká participácia. Accessed Sepz 2023 https://www.nkos.sk/news/zamestnanecka-participacia/.

[339] See,e.g.,: Ľuboš Blaha: https://www.noveslovo.sk/c/Antiglobalista_a_Humanisticka_ekonomika or Eduard Chmelár: https://www.noveslovo.sk/c/Eduard_Chmelar_Som_lavicovy_kandidat (both accessed Aug. 2023).

[340] There are more than 1,200 start-ups in Czechia employing 36,000 people while Slovakia with ca. 296 start-ups remains behind; see https://pub.lucidpress.com/StartupHeatmap2022/#h_tmR-JD-z0Y login Aug. 2023.

[341] For example Accace proposing to use private law foundations in the absence of trust legislation; see the weblog "ESOP and SMEs in Slovakia" of Feb. 2023, https://accace.com/esop-in-slovakia/ login Aug. 2023.

the privatisation process under favourable conditions. Direct sales were to be used to compel employee ownership, obliging the transferee either to issue employee shares that accounted for 10% of the companies' equity capital, or to enable employees to acquire at least a one third[342] stake in the transferees' equity. Instalment payments scheduled for 5-10 years with the first instalment at about 20% of the purchase price were foreseen to offset domestic financial capital shortage.

Employee shares (1989, 2001, 2004) – In 2001, the concept of genuine "employee shares" as a special type of share was abolished in favour of an option allowing joint-stock companies to include rules in their statutes which allow their employees to buy company shares at a discount. According to § 768c, para. 17, Commercial Code (CC), previously issued "employee shares" had to be converted into regular shares by a decision of the general shareholders assembly by January 2004. In case the conversion requirement was not met, § 768c, para. 14, CC stipulates the possibility of liquidation of the company by court decision. § 204, para. 4, CC introduced the possibility of employees acquiring shares on preferential conditions to replace "employee shares". The general prohibition against a company acquiring its own stock, regulated in §§ 161a and 161 f CC, is in principle an obstacle to the introduction of employee shares. However, pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) the corporate charter can permit (pursuant to the rules laid down in § 161 a para. 5 CC, introduced in 2004) a company to acquire its own stock for the purpose of transfer to its employees; such shares must be transferred within 12 months of acquisition by the company. Under current legislation, joint stock companies may issue new shares which grant employees favourable conditions in the context of so-called mixed capital increases (according to § 209a para. 1 CC), i.e., the capital increase of a company issuing new stock financed by the company' own capital. According to § 204 para. 4, the general shareholders assembly can authorize the offer of a certain number of those shares to employees at a lower price than the offering price, with the difference paid from the company's own resources.

In order to facilitate share acquisition by employees, legislation allows a company to fully pay for the stock acquired by its employees. § 204 para. 4 CC states that a prerequisite to the preferential conditions for the purchase of shares by employees is that the overall value of the granted discount for the issued shares has to be covered by the company's own resources. The terms will be decided by the general shareholders meeting. In the case of the mixed capital increase previously mentioned, applying § 204 para. 2 CC, and in analogy to § 209a para. 3 and 5 CC, the total discount may amount to 70% of the share price provided that the remaining 30% is paid by the employees at the moment of the transaction, unless the down payment for the acquisition is financed otherwise. In fact, § 161e para 2 CC, introduced in 2004, contains an additional regulation permitting the company, an exception to the general prohibition against leveraging the acquisition of own its stock, to do this in order to facilitate the acquisition of shares by its employees. The company may make loans to employees for the purpose of acquiring newly issued shares or in order to buy them from third persons; also, to guarantee such loans from third persons provided that this does not endanger the company's own funds. Thus, a company may enable its employees to

342 All privatised firms had to issue 34% of their share capital in employee shares, a requirement abolished within half a year and the privatisation law further only mentioned an option to issue employee shares.

acquire company shares by discounting the purchase price, by providing credit and financing, by acting as guarantor, or by a combination of all three preferential conditions.

Employee stock options – Share options can be issued on preferential terms for employees in joint stock companies and for freelancers in "simple joint stock companies" and granted after 1 January 2010 are generally taxable at exercise while Slovak corporate law remains silent about employee shares in LLCs. The difference between the fair market value of the share and the price at which the employee acquired the share is subject to taxes and levies. The Income Tax Act stipulates income (pecuniary and non-pecuniary) resulting from employment taxable as salary and levies social security and health care contributions. However, income from the sale of the shares is tax exempt up to EUR 500.-. Furthermore, as of 2016, gains from the sale of securities traded on the stock exchange for more than one year are tax-exempt conditional on the period between acquisition and sale of the securities exceeding one year and provided the securities are not part of the taxpayer's business assets.[343]

Social entrepreneurship – The 2018 Act on social economy and social enterprises (No. 112/2018 Coll.) defines workers´ participation in the supervisory board of social enterprise but also introduces financial participation schemes for employees in §10 on democratic governance principles in the cooperatives, companies, and NGOs. In regard to enterprises established according to the Commercial Code, §10 (2) of the Act on social economy and social enterprises, stipulates that democratic corporate governance is fulfilled conditional on: (i) the majority of employees owning shares in the company; (ii) most shareholders being employees; (iii) in the case of a vote at a general meeting or a similar body, each shareholder having one vote irrespective of the amount of his shares. The obligation to ensure that employees working more than five years in the company have a right to vote, was omitted from the Act in 2020. Alternatively, the social enterprise can opt for a "conseil committee" according to §9, ensuring the workers representatives participation in the form of information sharing, consulting and control activities, similar to the works councils. Since May 2018, when the law was approved, 616 social enterprises were established, and as of March 2023 550 were operating.[344] Interestingly, 90% of all social enterprises are limited liability companies, of which none applies the form of democratic governance. According to the ministry database, only five social companies apply democratic governance principles, with the rest opting out for the "conseil committee" providing thus a lower degree of employee participation compared to democratic governance.

bb) Profit-Sharing

Nothing in the Slovak legal system prohibits companies from sharing profits with their employees. The only explicit regulation is provided in § 178 para. 4 CC which states that, in accordance with the corporate charter, employees may be entitled to a share in the company's profits (cash-based profit-sharing). Either the corporate charter or the general shareholders meeting may also stipulate that profits allocated to the em-

[343] A tax exemption also applies to gains from sale of securities, options and derivatives from long-term investment saving schemes meeting specific conditions, in particular duration of at least 15 years; for details see https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2023/01/TIES-Slovakia.pdf, login Aug. 2023.

[344] The register of social enterprises is accessible at https://www.employment.gov.sk/sk/praca-zamestnanost/socialna-ekonomika/register-sp/.

ployees be used exclusively to purchase shares on preferential conditions, or to make up the discount granted to employees in such a purchase (share-based profit-sharing). Further, share-based profit-sharing is mentioned in the context of capital increases. As a rule, a capital increase requires the decision of the general shareholders assembly, but § 210 CC, in accordance with the corporate charter, allows delegation to the management board. § 210 para. 4 CC regulates a capital increase through the issuance of the shares to be transferred to employees on preferential conditions. This possibility is especially emphasised in the case where the general shareholders assembly has previously decided that the part of the profits that it allocates to employees is used exclusively to purchase these shares. All those benefits will be subject to personal income tax of 19%.

cc) Participation in Decision-Making

According to § 200 of the Slovak CC, joint-stock companies (similar remnant as in the Czech Republic due to common initial conditions, which, however, was abolished there in 2013) with more than 50 employees must have 1/3 representation of employee-delegated members on the supervisory board. There are no special rules for participation of employees in decision-making with regard to EFP schemes or privatisation matters, except for those in the newly established social enterprises. Other than introducing employee ownership as a principle in social enterprises, the 2018 Act on social economy and social enterprises foresees the establishment of an “advisory board” requiring at least one employee to be a member. The advisory board has consultative, informative and supervisory competences ((§9 (3)). With regard to employee shareholding the general rules of the Commercial Code concerning shareholders rights still apply.[345]

26. Finland

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Tina Sweins and Anders von Koskull, those that contributed to the updates were in chronological order in 2014 Stefan Hanisch and Tina Sweins and in 2018/20 and in 2023 Jens Lowitzsch and Jasper Lüke.

Personnel funds are the only form of employee financial participation (EFP) to enjoy fiscal incentives and the support of the social partners. In 1989, the Council of State appointed a committee to find new forms of co-operation for enhancing economic democracy, competitiveness, and productivity. A draft law in 1987[346] proposed voluntary personnel funds as a key element. The funds were to encourage efficiency at the company level, innovations at all levels, and a balanced division of decision-making and responsibilities. The first law, enacted in 1989 (814/1989), attracted great attention and the majority of those in place today were established then. In 2010 the first per-

[345] Limited liability companies §§ 114, 122, 123, 125 ff., joint stock companies §§ 178, 179, 180 ff. CC.

[346] First discussions on Employee Wage Earner Funds attributable to the Swedish Meidner wage earner funds took place in 1981 at Trade Union Organisations general meeting; the US ESOP was also a source of inspiration.

sonnel fund law was repealed, and a new law (5.11.2010/934) enacted to encourage the use of collective incentive schemes and to improve productivity and competitiveness. The intention of the law was to improve cooperation between employers and employees with regard to EFP introducing three major amendments; (i) repealing the five-year vesting period for withdrawals; (ii) allowing not only profit sharing, but also broad-based performance related pay to contribute to the fund; and (iii) permitting to the establishment of a personnel fund also in the municipal sector and non-profit organisations. From 1 April 2023 on the setting up of personnel funds is simplified requiring a minimum of 5 employees and a turnover of at least EUR 100,000 opening the scheme also for SMEs.

Although initially not widely used, personnel funds gained popularity over time. A Ministry of Labour study in 1999 of funds which closed down concluded that in ten companies out of 13 the closure was due to changes in the company structure, e.g., mergers and acquisitions; another cause was a shift towards performance-related pay (two cases in the forest industry). Since the recession in the mid 1990s only a few funds have been established each year; recently their popularity has increased though. The interest in personnel funds was growing and in 2005 when eight new funds were registered, more than in any other year since 1991. As of 2013, there were 55 operating personnel funds with about 113,500 members covering more than five per cent of the workforce; fifteen new funds were set up in 2014 and 2015 saw more than a dozen new registrations.[347] In 2014 EUR 63 million were contributed to personnel funds with funds' total assets estimated at EUR 533 million.[348] The aims of the 2010 reform to increase the use of personnel funds and employee financial participation were reinforced with the 2015 reform of the law. Performance related pay, i.e., other than personnel fund is used in 1/3 of the firms.[349] The popularity of personnel funds is still rising fast: While in 2021, there were 264 personnel funds with a total of 130,210 member and a total capital of EUR 616 mln., there were 319 personnel funds with a total of 154,651 members and EUR 684 mln. of capital in 2022.[350]

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 55.1% (2013, 51%, 2009 22.8%) of companies with more than 10 employees in Finland offer their employees profit-sharing and in 2013 13.3% (2009, 5%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 28.4% (2010 27.3%) of Finnish employees were taking part in profit-sharing while 2.6% (2010 2.1%) of them were participating in share-ownership schemes.

347 https://www.ess.fi/uutiset/kotimaa/2015/10/26/henkilostorahastojen-suosio-lahti-kasvuun, login 9.2023.

348 It is estimated that since 1990 a total of over one billion euros were allocated to personnel funds See https://www.hs.fi/talous/art-2000002792026.html, login Sept. 2023.

349 Of the 500,000 employees belonging to the Confederation of Finnish Industries 52% are participating in some performance related pay scheme.

350 https://yt-asiamies.fi/en/reform-of-the-personnel-funds-act, login Oct. 2023.

a) General Attitude

Until recently, personnel funds were the only subject discussed by the social partners. Personnel funds were promoted by employee associations, (e.g., Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK), and the Confederation of Unions for Professional and Managerial Staff (AKAVA)) and employer associations (e.g., Confederation of Finnish Industries (EK), Commission for Local Authority Employers (KT) and the State Employer's Office) as well as the government.[351]

The new personnel fund law 934/2010 and the 2015 amendment was elaborated by a tripartite group consisting of employer associations, employee associations and state representatives. Options and share ownership are not viewed as proper subjects for collective bargaining. Some employee associations would like profit sharing or performance-based pay to be subject to collective wage bargaining negotiations. The employer associations believe that companies should have the flexibility to unilaterally decide whether such pay forms should be used.

b) Legal and Fiscal Framework

aa) Share Ownership

Personnel funds are sometimes considered employee ownership as the funds' assets are invested in the employer company. Technically speaking, however, they are defined as profit sharing.

Employee shares – Joint stock companies may transfer shares to employees at a favourable price. The benefit is tax-free if the discount is up to 10% below the current price and the majority of employees have access to the plan (§ 66 para. 1 of the Income Tax Law). 30% of dividends from public companies are tax free, and 70% are taxed as capital income. The company withholds 19% in tax from payments to the employees; employees can deduct this tax from the personal income tax base. Capital gains at sale are taxed at a flat rate (30% in 2022; 34% for amounts exceeding EUR 30,000) and are calculated as the difference between the sale price and the acquisition cost of the shares (plus a tax-free discount if applicable). Dividends of private companies are tax free if earnings per share are less than 9% and the total amount of earnings does not exceed Euro 90,000; otherwise, they are taxed as dividends of public companies. Finnish company law generally permits joint stock companies to acquire their own shares in view with an acquisition by their employees. Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may advance funds, make loans, provide security (financial assistance), with a view to acquisition of these shares by their employees provided that the interest rate is less than the reference interest rate with the difference being treated as taxable benefit and subject to social security contributions. Since an amendment to the Income Tax Act in 2021, unlisted limited liability companies can offer shares to their employees, including firms from the European-Economic-Area (EEA). The Finnish Supreme Administrative Court ruled in February 2021 that the discount of broad-based offers of new shares or treasury shares are taxed only to the extent that it exceeds 10% of the

[351] In 2007/08 the Centre party held the majority of seats in parliament and was the ruling majority, together with the Coalition party, whereas the Social Democratic party is in opposition.

shares' market value. Dividends are considered as part of the salary for calculations of unemployment benefits and employees must pay unemployment insurance premiums on their labour dividends.

Stock options – The first stock option plans in publicly traded companies in Finland were launched in 1987 with an increase between 1998-2000, when the stock market was at record highs. The majority of option schemes are used in publicly traded companies and in companies that are preparing for initial public offering. The schemes are either broad-based or selective with the former becoming popular in 1998-2000 but then waning. The Law on Joint-Stock Companies (624/2006) requires companies to report all relevant conditions and changes in their stock option schemes to shareholders. Generally, in Finland stock options are either given for free or in exchange for a loan to the company which is usually to be repaid in one to three years. Options typically can be exercised two to four years after grant. The exercise period may extend from a few months to a few years. The share price is usually set to correspond to the price at the time of grant. The benefit of stock options is taxed as earned income; the gain on the sale of shares acquired under a share option plan is taxed at a flat rate (30% in 2023; 34% for amounts exceeding EUR 30,000) and are calculated as the difference between the sale price and the acquisition cost of the shares.[352] The employer pays social security contributions.

bb) Profit-sharing

Personnel Funds – Personnel funds (Sweins et al. 2009; Sweins & Jussila 2010) have been the most frequent form of employee financial participation since 1990. The first Law on Personnel Funds (814/1989) was issued 15 September 1989 and amended several times thereafter. Even though Finnish personnel funds were inspired by Swedish wage-earner funds and US employee stock ownership plans, important differences exist between these schemes. Neither Employee Share Ownership Plans (ESOPs) nor wage-earner funds (WEFs) are profit-sharing schemes.[353] Whereas personnel funds typically distribute their shareholdings quite widely and invest also in other securities, ESOPs invest only in the employer firm. The main difference between personnel funds and wage-earner funds is that the former are completely voluntary and operate at the level of the firm, whereas the latter operated at the national level for the benefit of the entire workforce. In the design of Finnish personnel funds, the employers explicitly wanted to avoid the Swedish obligatory model.

The new law on personnel funds 934/2010 came into force on 1 January 2011 and was amended in 2015. Personnel funds are deferred profit-sharing plans allowing investment in the equity of the employer company and thus involving an element of employee share ownership. Annual payments to the fund are made based on either a pre-determined profit-sharing scheme or a performance-based scheme. The employer retains the right to choose the criteria for the payments, but these must be fixed, typically, a year in advance. The funds are established if the company has at least 10 employees and the company's turnover at least EUR 200,000 (Chapter 2, Section 2,

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352 https://uk.practicallaw.thomsonreuters.com/5-502-9883?transitionType=Default&contextData=(sc.Default)&firstPage=true, accessed Sept. 2023.

353 In ESOPs, the trust acquires shares with borrowed capital, and in WEFs with the government assistance; see Blasi and Kruse (1991) for a description on ESOPs and Whyman (2004) for a recent account on WEFs.

subsection 2, Subsection 2 of the Audit Act 1141/2015); this requires a collective decision of two-thirds of all personnel groups; in the case of corporate groups there can also be a joint fund for all member companies. The law requires all employees to be included in the plan (§ 6), whereas only senior management may be excluded (§ 16). A personnel fund is registered with the Ministry of Employment and Economy and is a legal entity in its own right. However, it may engage only in activities determined by the Personnel Fund Law (934/2010). The funds invest their assets either in shares of the employer company or other companies, in investment funds, bonds or bank accounts. These investments multiply the financial returns of the employees beyond company profits. Since 1999 (amendment 344/99) it is allowed that the funds can be established in civil service departments and in state owned companies. In lieu of profit, the government offices use measures of performance.

The assets in the personnel fund are distributed into individual accounts. The shares are generally distributed to employees either in relation to base pay or to hours worked or a combination of these both. A member can withdraw up to 15% of the value of his accumulated fund share once a year. At retirement, the employee is entitled to withdraw the value of the fund share either immediately or in instalments within four years. The law requires the fund to provide each employee with information about his account at least once a year by letter. Personnel funds enjoy several tax advantages. For employees, 20 % of the pay-outs from the fund are tax free (§ 65 of the Income Tax Law). The fund pays no taxes on its earnings (§ 20 Income Tax Law). The employer company is not liable to social security contributions and can deduct profits contributed to the fund as professional expenses from the corporate tax base (§ 8 Corporate Tax Law). In 2000 (amendment 1145/99), the law was changed to allow employees to withdraw their share in cash if it is permitted by personnel fund regulations, but then the share withdrawn is not tax free. Internationalisation and globalisation led to a change that also allowed Finnish international companies to extend profit sharing plans, including personnel funds, to its subsidiaries abroad (amendment 499/2002). Since 2011 (934/2010) it is also possible to establish personnel funds in the municipal sector, to the department of social insurance, universities as defined in the Act of universities (558/2009), to companies which include a corporation, foundation or a natural person who is engaged in economic activity, regardless of whether the activity is meant for profit-making. Amendment 09.18.2015/1158 from 2016 on simplified the setting up of personnel funds requiring a minimum of 10 employees and a turnover of at least EUR 200,000 opening the scheme also for SMEs; following a 2022 reform since 1 April 2023, the thresholds were again lowered to at least five employees and a turnover of at least EUR 100,000.

Performance related pay – There are no legislation nor incentives for performance related pay, except for those performance-based pay schemes that are to be paid to personnel funds. Performance related pay may be paid from company profit or from budgeted money or it may be a mixture of both. Plans may be related both to individual (gainsharing) performance as well as collective performance (profit sharing). There are differences between sectors and personnel groups. The pay schemes are usually covering the whole workforce, but they may cover only a part of the workforce. performance related pay is more common in the industry sector (69%) than in the service sector (44%) or building sector (40%).

cc) Participation in Decision-Making

Financial participation is generally not linked to the extension of participation in decision-making. While wage increases are subject to collective agreement, companies may adopt profit sharing and other performance-based payments independently without negotiations.[354] However, financial participation in form of personnel funds which is the most common form in Finland requires the consent of 2/3 of employees to establish or to dissolve a fund pursuant to § 11 Personnel Funds Law (934/2010).[355] Co-determination, employees' representation on the supervisory board is prescribed in the law 725/1990 (Finnish companies) and in 758/2004 (Societas Europaea and European co-operatives). In companies with over 150 employees, the employees have a right to elect representatives in the company management, i.e., one-fourth of the members of – depending on the company type – the supervisory board, the board of directors or management groups. There is no data available for how many companies have employees in the supervisory board.

27. Sweden

This country profile is based on the country chapter of the PEPPER IV Report; the co-authors of the earlier version were Tina Sweins Natalia Spitsa and Mia Ronnmar, those that contributed to the updates were in chronological order in 2014 Lars Lindkvist and Tina Sweins, in 2018/20 Jens Lowitzsch and Lars Lindkvist and in 2023 Tobias Karlsson and Jens Lowitzsch.

There is no specific regulatory framework for the promotion of employee financial participation (EFP) in Sweden, despite the fact that discussions about wage earner funds started in Sweden already at the beginning of the 1960s. The Law on Wage Earner Funds was enacted in 1983[356], whereby the majority of their assets were placed in shares of large companies. However, the obligation to make contributions to the funds was abolished in 1990.[357] There are no common definitions for different pay systems

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[354] Unionisation rate in Finland is 70-80%; about 90% of all wage and salary earners are covered by collective bargaining agreements; few collective agreements includ negotiation on performance-based pay.

[355] One of the prerequisites for a personnel fund is a profit bonus system decided by the employer. An eventual decision on establishing a personnel fund shall be preceded by a procedure of information and consultation in accordance with § 19 Co-operation law 334/2007. The final decision of establishing a personnel fund is always made by the employees with a 2/3 majority.

[356] At that time, there were only discussions inside the Central Organisation of Trade Unions (LO). A workgroup around Rudolf Meidner proposed that 20% of the profit in companies with over 100 workers should be invested in wage earner funds. Approximately 60% of all employees in Sweden worked in such companies. The profits of these companies made up about 80% of the profits in the whole country. The proposal was to create five regional wage earner funds which would be coordinated with the employment pension funds, but the enacted law differed from the initial proposal. The funds got their assets from 20% tax on the company real profit and from an increase in pension contribution. The public sector also participated in the funds.

[357] In 1991, the political right wing won the elections and started to terminate wage earner funds. The draft law brought into the Parliament stipulated that existing funds be closed down and no new funds established. The accumulated capital of 22 billion SEK in shares was be used to enhance private ownership and savings, but this proposition was rejected as it might increase volatility of financial markets. The government decided that 10 billion would be invested in research promotion and the remaining amount in subsidies for pension schemes.

in Sweden, which makes comparison difficult. There is neither a particular national policy to promote financial participation nor statistics on how many companies use financial participation. One of the main thoughts behind the taxation reform in the late 1990s was that all different sources of income from labour should be treated equally, and therefore, no income tax reliefs for the employees exist.

Profit-sharing foundations exist, but the extent is unknown, as they are not registered with any authority. Performance-based pay based both on collective and individual results is used with collective agreements leaving place for such schemes. However, for recent years, it is not possible to distinguish, how many of these plans are profit-sharing plans. One study, conducted in 1998, showed that 19% of the employees were involved in broad-based profit-sharing plans and 12% in broad-based share ownership plans and the number seems to have increased in the following years (Würz 2003: 116-128). A study by The Confederation of Swedish Enterprises in 2009 showed that the mean amount of performance-based pay decreased from 26 percent in the mid-1970s to less than 11 percent. In 2018 qualified employee stock options (QESO) for start-ups were introduced with the implementation and eligibility conditions revised and improved from January 2022 on.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 31.6% (2013, 41.7%; 2009, 24.1%) of companies with more than 10 employees in Sweden offer their employees profit-sharing and in 2013 10.2% (2009, 11.2%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 randomly selected individuals in the EU 28, shows that in 2015 26.5% (2010 36%) of Swedish employees were taking part in profit-sharing while 7.1% (2010 8.2%) of them were participating in share-ownership schemes.

a) General Attitude

Employer associations regard EFP as a good method of attaining increased flexibility in labour costs, depending on the success of individual firms. Because trade unions fear that financial participation will become a part of basic remuneration and affect regular raises in pay their view is neutral and sometimes negative. In practice, EFP remains a local issue, while the national associations are more concerned with the taxation issues of financial participation as they affect their respective constituencies, e.g., for employers the Confederation of Swedish Enterprises and for employees the Landsorganisationen (LO), the Swedish Confederation of Professional Associations (SACO), and the Swedish Trade Union Confederation (TCO).

Governments in recent years have showed little interest in financial participation and the established view is that employment income from different sources should be taxed at the same rate. The history of wage earner funds may still affect the debate on financial participation. However, in 2018 employee share ownership, more specifically stock options in start-up SMEs received fiscal support, extended in 2022.

b) Legal and Fiscal Framework

Legal regulations on profit sharing in the form of wage earner funds date back to the beginning of the 1960s with a framework, the Law on Wage Earner Funds, enacted in 1983. However, the obligation to make contributions to the funds was abolished in

1990. Employee share ownership is possible under Swedish law, but no specific legal framework exists.

aa) Share Ownership

Employee Shares – The employer may offer stock purchase programmes to the employees at a discount price, but no incentives are available. Employees pay income tax on the difference between the discount and the market price, while the employer pays social security contributions at the time of grant if the grant price is below market. Future gains are taxed as capital income. Swedish company law generally permits joint stock companies to acquire their own shares and also in view with an acquisition by their employees. Pursuant to the transposition of the 2nd Council Directive on Company Law (2012/30/EU recasting the Directive 77/91/EEC, dating back to 13 December 1976) joint stock companies may advance funds, make loans, provide security (financial assistance), with a view to acquisition of these shares by their employees or employees of a group firm provided that the total value is limited, at least 50% of the firms' employees are covered and the advance or the loan is to be repaid within 5 years. In capital increases the General Assembly may suspend pre-emptive right of shareholders; also, wife, husband or children may be the beneficiaries.

Stock options – Stock option programmes became more common in Sweden during the 1990s. One of the reasons was that generally tax is paid on capital income which is lower than that on income from labour. Nevertheless, employee stock options are considered income from employment and thus, taxation is not as favourable as for other options. The employer has no contributions at time of grant; social security contributions are paid at time of exercise.[358] Likewise, employees are not taxed at time of grant. At the time of exercise, the difference between the market price and the exercise price of the shares is taxed as income of employment (progressive rate of 29 to 55,5% as of 2023) and social security contributions are due; future gains are taxed as capital income (§ 12 of the Income Tax Law 1999/1299). Employee stock options usually have the following characteristics: only available to employees within a company or group, granted for free with a vesting period of five to ten years, not portable if the employee leaves the company.

Qualified employee stock options in start-ups – From January 2018 on employee stock options in start-up companies being less than ten years old, having fewer than 150 employees (since 2022, previously the cap was 50) and a revenue of less than 280 mln. kronor (ca. EUR 23.6 mln.; since 2022, previously the cap was SEK 80 mln., ca. EUR 7.6 mln.) are granted deferred taxation at the moment of sale with employers exempted from social security contributions.[359] To qualify: (i) public bodies may not hold 25% or more of the equity of the company and shares of the company may not be traded on a regulated market; and (ii) during the first three years, the main business may not operate in banking or financing, insurance, coal or steel production, trading of land, real estate, commodities or financial assets, long-term leasing of premises or housing, or legal, accounting or auditing services. Eligibility criteria for employees include at least three years of employment from grant working at least 30 hours per week with a monthly salary corresponding to at least 13 income base

358 This may involve the risk of large social security contributions for the employer in the future.

359 For the 2022 amendments, see also https://www.bakermckenzie.com/en/newsroom/2022/01/2022-updates-sweden-tax-treatment, login Sept. 2023.

amounts if employed (SEK 26k/month, ca. EUR 2,200.-), and 1.5 income base amounts if a board member (ca. SEK 36k/year, ca. EUR 3,000.-) and holding less than 5% of the companies' equity. The total value of stock options granted is capped at 75 million kronor (ca. EUR 7.2 million) and that of each employee's stock options at 3 million kronor (ca. EUR 287,000). Employees will be subject to capital income tax (effective rate 30% as of 2023) at sale of the underlying shares.[360] However, if the company is a closely held company with "qualified shares" (*kvalificerade andelar, "3:12-reglerna"*), gains on such shares are taxed at a higher rate of up to 60%.[361]

bb) Profit-Sharing

Cash-based profit sharing exists but remains unregulated by law. No incentives exist for cash bonuses. No statistics on profit sharing are available.

Profit-Sharing Foundations – Although legally possible since 1962 (Law 1962/381), the first profit-sharing foundations in Sweden were established a decade later. A profit-sharing foundation is an entity for the benefit of employees, to which the employer company contributes a percentage of company profit, and which is governed in accordance with legally defined principles. If the company decides to create a profit-sharing foundation, the employees, often through union representatives, establish the foundation and determine its charter, including the provision on how the contributions are to be invested. In listed companies, the assets are often partially invested in company shares. A profit-sharing foundation must fulfil certain requirements under the Law 1990/659. Employer contributions should represent a reward to employees for improving their performance. At least one-third of the employees must participate. Profit sharing contributions are to be vested for at least three years. Terms and conditions must equally apply to all participants. When the foundation is terminated, its assets must be distributed directly to the employee participants, not to the company. The purpose of the foundation is to administer the allocated assets according to specific directions of its charter. Employer contributions to the foundation were once exempt from social security contributions and payroll tax (1992-1997). This probably influenced the number of new funds. Today the employer pays a payroll tax of 24.26 % on contributions at the time they are made (Law 1996/97:21 s.25) in lieu of a social security contribution of 31,42% which is paid on wages. No tax incentives are given to employees; they pay taxes on income attributed to employment service at the time their trust accounts are distributed. The foundation pays capital tax 1.5% on its assets (§20 of the Law on Governmental Capital Tax 1997:323).

The purpose of a profit-sharing foundation is to motivate employees, to increase both their identification with the firm and their efforts to make it more profitable. Since there is no systematic registration of profit-sharing foundations, it is impossible to know the extent of use or number. The most famous profit-sharing foundation in Sweden is that of Handelsbanken, called Oktogonen, enacted in 1973. Handelsbanken made contributions of parts of its profits to Oktagonen in the period 1973 to 2018 with one third of foundation assets invested in Handelsbanken shares, and the remainder in

[360] Compared to conventional stock options, taxed as remuneration at about 50% income tax for employees and burdened by 31% social security contributions for the employer company.

[361] Setting up a holding company and transferring the shares to this holding before sale, however, seems a practical way to avoid higher tax levels; see https://startuptools.org/se/eng/ultimate-guide-stock-options-swedish-startups/, accessed Aug. 2023.

the shares of publicly traded companies. Shares are divided equally among employees, and the employee collects his or her payments at the age of 60. The foundation was Handelsbanken's second largest shareholder in 2023, owning 8.3% of the voting shares and 8.1% of the capital. In 2020, the company board decided to not make further contributions to Oktagonen.

cc) Participation in Decision-Making

Employee financial participation is not connected to participation in decision-making. The extensive co-determination, representation and consultation rights of employees, mainly through trade union representatives, are governed by the Law on Board Representation (1987/1245) and the Law on Co-determination at Work (MBL 1976/580). The Act on Board Representation gives the local trade union the right to appoint two representatives to the board of directors if the company has at least 25 employees. If the company has at least 1000 employees and operates in several industries or business sectors, the trade union has the right to appoint three board representatives. Under the Act on Co-determination at Work all important matters concerning the relation between employer and employees' organisations shall be determined by negotiation. The employee is always represented by the trade union organisation that has the right to negotiate. In the case of the employer, the right of negotiation may be exercised either by an employers' organisation or by the individual employer.

28. United Kingdom

This country profile is based on the country chapter of the PEPPER IV Report (co-authors Natalia Spitsa, Andrew Pendleton and Fred Hackworth). The co-authors of the 2014, 2018 and 2020 updates were Jens Lowitzsch and Graeme Nuttall, that of 2023 Graeme Nuttall.

Profit-sharing plans first appeared in the UK in the 19th century. Employee share ownership (ESO) plans became better known from the 1950s. These plans, however, remained small in number until, starting in 1978, tax incentives for ESO plans were introduced. By 2020/2021 16,330 companies maintained HM Revenue & Customs tax advantaged ESO plans.[362] Following the abolition, from 2000, of a tax advantaged cash profit-sharing plan (the Profit-Related Pay Scheme), the only tax advantaged plans were share-based until the introduction of an income tax exemption for certain qualifying bonuses paid by companies controlled by employee-ownership trusts (EOTs) in 2014. The EOT has had a significant positive impact in growing the UK employee ownership sector with the number of EOTs exceeding 700 by the end of 2021.[363] There continues to be Government support available for new and existing public service mutuals, which numbered around 115 in 2018.[364] The Department for Digital, Culture,

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[362] All figures in this Section are for United Kingdom tax years (6 April to 5 April) and are either up to or for the tax year 2020/2021 unless otherwise stated. They are from Employee Share Schemes Statistics to 2020/2021, HM Revenue & Customs, June 2022.

[363] https://www.rm2.co.uk/resources/blog/2021-was-another-bumper-year-for-employee-ownership-trusts/, accessed Sept. 2023.

[364] https://www.gov.uk/government/collections/public-service-mutuals#research-and-evidence, Sept.2023.

Media and Sport's Mutuals Support Programme 2 (MSP2) supported 44 projects between March 2018 and January 2020. An evaluation of MSP2 found "increased employee engagement and cultural change" in organisations. [365]

Four tax-advantaged ESO plans operated in 2020/2021. The majority of companies (98%) operated only one type of plan. The breakdown is as follows: There are two "all-employee" ESO plans, that is, Share Incentive Plans (SIPs) operated by 820 companies and Savings-Related Share Option Schemes (SRSOs) (also known as Sharesave or SAYE Schemes) operated by 480 companies. SIPs were introduced in 2000 and the number of companies operating a SIP peaked at 940 in 2006/2007 declining to average just over 800 in recent years. A steady decline in the number of SRSOs can be seen over the period 2000/2001 to 2013/2014 from 1,110 to 440 increasing to somewhat to average around 480 over recent years. There are two "discretionary" or "selective" ESO plans: Company Share Option Plans (CSOPs) operated by 1,170 companies and Enterprise Management Incentives (EMI) share option arrangements operated by 14,310 companies. A substantial decline in the number of CSOPs can be seen from 4,270, in 2000/2001, to 1,050 in 2013/2014, since when the number has been between 1,140 and 1,200. The EMI arrangement was introduced in 2000/2001 with the number of EMI arrangements exceeding the total number of other tax advantaged plans by 2004/2005. The number of EMI arrangements has increased in almost every tax year since its introduction, averaging around 1,100 additional EMI arrangements in each recent year. EMI arrangements account for the 88% overall increase since 2009/2010 in the number of tax advantaged plans.[366]

In March 2022, there were 195 employee-owned companies, including worker co-operatives, operating in Scotland.[367] 146 of these were Scottish headquartered with 5,350 employees and a combined turnover of GBP 691 million a number that had risen to around 165 in Press reports in March 2023. The number of Welsh employee-owned companies has started to grow significantly too. In June 2022 there were 38 such companies in Wales, with eight created in the previous six months.[368] The total was 63, including worker co-operatives, by May 2023.[369] The significant growth in the number of employee-owned companies in Scotland and Wales, and elsewhere in the UK, is attributed to the success of the EOT.

According to the 3rd and 4th European Company Survey (ECS), a survey of more than 27,000 human resource executives across Europe conducted in five-year intervals, in 2019 35.3% (2013, 26.5%; 2009 8.3%) of companies with more than 10 employees in the United Kingdom offer their employees profit-sharing and in 2013 8.3% (2009, 6.2%) some form of share-ownership schemes (the question regarding share-ownership schemes was not included in the 2019 ECS). The 6th European Working Conditions Survey (EWCS), a regular household survey which covered 35,765 random-

365 Evaluation of the MSP2, NatCen Social Research, September 2020, accessed Sept. 2023.

366 Since tax advantaged plans involve events which are not all reported to HM Revenue and Customs, it is impossible to determine the exact number of employees participating in plans at a given moment. The official statistics do not distinguish between plans in listed companies and private companies. Many companies combine one or more tax advantaged plans with non-tax advantaged plans (no statistics are available).

367 Scottish Employee-Owned Business Census 2022, Co-operative Development Scotland, 31 March 2022.

368 https://www.gov.wales/employee-ownership-day-economy-minister-sets-out-plans-double-number-employee-owned-businesses, accessed Sept. 2023.

369 Video call between Cwmpas and Graeme Nuttall on 24 May 2023.

ly selected individuals in the EU 28, shows that in 2015 19.1% (2010, 12.8%) of British employees were taking part in profit-sharing while 8.7% (2010 5.2%) of them were participating in share-ownership schemes.

a) General Attitude

Successive United Kingdom Governments have committed themselves to supporting employee financial participation (EFP) plans and promoting widespread individual share ownership for reasons both ideological and pragmatic. These include making enterprise more democratic, developing financial markets and fostering social welfare. Various non-governmental organisations in the United Kingdom promote ESO in all its forms, including ProShare, which promotes ESO, and the Employee Ownership Association which promotes the employee ownership of companies. Employers' organizations generally support EFP plans. Trade unions over the years have taken a dim view of EFP on the grounds that it would undermine the traditional collective bargaining process. This was their reason for strong past opposition to Profit-Related Pay Schemes. In 2013 the Trades Union Congress (TUC) published its principles of acceptable employee ownership.[370]

Reforms 2011-13 – From 2011 to 2013 the Office of Tax Simplification reviewed the complexities of ESO plans, both tax advantaged and non-tax advantaged. This enabled the Government to undertake a significant package of reform to the tax rules for ESO plans. These reforms simplified the tax rules and made it easier for private companies to introduce tax advantaged ESO plans. In 2012 the Government commissioned the Nuttall Review of Employee Ownership. This provided a comprehensive appraisal of the situation of employee ownership in the country and proposed a wide range of initiatives to promote the employee ownership business model in the British economy (Nuttall 2012). The Nuttall Review defined "employee ownership" as "a significant and meaningful stake in a business for all its employees" and explained that "What is 'meaningful' goes beyond financial participation. The employees' stake must underpin organisational structures that ensure employee engagement". This report resulted in a number of significant Government initiatives and legal reforms[371]. Amongst other initiatives, in October 2012 the Government adopted an Action Plan on Employee Ownership and included in the Budget 2013 a financial provision from 2014-15 to further incentivise growth of the employee ownership sector. In terms of legislative reforms, in 2013 the British Government reformed the Companies Act 2006 in favour of ESO plans and in 2014 introduced tax exemptions for "indirect" ownership of shares on behalf of employees, through EOTs. This was a significant change in emphasis from only supporting the ownership of shares directly by employees and means there are now tax advantaged arrangements for all the main forms of employee ownership. The Government's view (in October 2018) was that following its support for the Nuttall Review recommendations on awareness-raising and simplifying relevant regulations it is now for the private sector to grow employee ownership. The United Kingdom had an additional tax advantaged arrangement for certain shares issued from 2013 to 2016 to those with "Employee Shareholder" status. In exchange for giving up various employment law rights an individual was awarded at least GBP 2,000 of shares in their em-

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370 https://www.webarchive.org.uk/wayback/archive/20171001181011/http://touchstoneblog.org.uk/2013/07/trade-unions-and-employee-ownership-a-good-mix-lost-in-the-myths/.

371 Nuttall Review of Employee Ownership – a guide to source materials http://tinyurl.com/FieldfisherEO19.

ployer or parent company. There is a capital gains tax exemption when these Employee Shareholder shares are sold. This "shares for rights" scheme was widely criticised. The tax advantages were abolished for new Employee Shareholder shares arrangements from December 2016.

Devolved legislatures support – There is strong support for EFP and employee ownership in Scotland and Wales. Backed by the Scottish Government, an industry leadership group launched in August 2018 and called "Scotland for EO" aims to increase this number to 500 by 2030. This initiative adds to the work of Co-operative Development Scotland, an arm of the Scottish Government, working in partnership with Highlands and Islands Enterprise that supports company growth through collaborative and employee ownership business models.[372] There is also support for employee ownership from the Welsh Government[373], supported by Cwmpas (formerly the Wales Co-Operative Centre).[374]

b) Legal and Fiscal Framework

All EFP plans fall into one of two categories: tax advantaged and other, non-tax advantaged, plans. At one time all tax advantaged plans had to be approved by HM Revenue & Customs. In 2014 this approval process was replaced by self-certification. Some non-tax advantaged plans may still be referred to as "Unapproved Plans". Tax advantaged share and share option plans enjoy substantial tax and national insurance contributions (NICs) exemptions, as set out primarily in the Income Tax (Earnings and Pensions) Act 2003, especially for employees. Non-tax advantaged plans may be introduced at the employer's discretion but receive no special tax incentives. Tax advantaged plans must conform to tax law requirements; non-tax advantaged plans are more flexible. Non-tax advantaged plans may be used for granting shares, options or cash equivalents without conforming to the requirements imposed on tax advantaged plans and may be operated alongside tax advantaged plans. Following the phasing out, from 2000, of a Profit-Related Pay Scheme, all tax advantaged EFP plans had been ESO plans. This changed in 2014, because of the findings of the Nuttall Review, with the introduction of an income tax exemption for certain qualifying cash bonuses paid by companies controlled by EOTs. UK Governments have promoted the concept of what is called a public service mutual. This is an organisation that delivers public services (such as community health care) but has "spun-out" of the public (state) sector and has employee control embedded within its organisation. This can be employee control through ESO. For a period, the Mutuals Information Service managed by the Cabinet Office's mutuals team, encouraged and supported the establishment of public service mutuals.

aa) Share Ownership

Share plans may be tax advantaged or non-tax advantaged. Under current legislation there are four main tax advantaged plans, one share plan with several variations (SIP) and three share option plans (SRSO, CSOP and EMI). As already noted, SIP and SRSO are broad-based "all-employee" plans, while CSOP and EMI may be restricted to se-

[372] https://www.scottish-enterprise.com/support-for-businesses/business-development-and-advice/employee-ownership, accessed Sept. 2023.

[373] https://businesswales.gov.wales/socialbusinesswales/employee-ownership, accessed Sept. 2023.

[374] https://employeeownershipwales.co.uk/, accessed Sept. 2023.

lected employees. Some forms of non-tax advantaged plans are quite widespread: Growth Share Plans, Long-Term Incentive Plans (LTIPs), Restricted Shares Plans and Unapproved (i.e., non-tax advantaged) Option Plans. Growth Share Plans, LTIPs and Restricted Shares Plans are predominantly confined to executives. Unapproved Option Plans may be used to "top-up" awards under a tax advantaged plan. The following section will cover only rules concerning tax advantaged plans.

The two years of 2012 and 2013 saw some crucial legislative reform in the field of ESO in the United Kingdom. A consultation on improving the operation of internal share markets was launched in 2012 following the publication of the Nuttall Review. This consultation resulted in "The Companies Act 2006 (Amendment of Part 18) Regulations 2013" that came into force on 30 April 2013. This legislation allows for shareholder approval of off-market share buy-backs by a simple majority, and where the share buy backs are connected to an employees' share scheme (a term defined in the United Kingdom Companies Act) allows for this approval to be granted in advance. Further, it gives private limited companies greater freedom to finance the share buy backs by allowing for such companies to pay for shares they buy back (in connection with an employees' share scheme) in instalments (if the seller agrees) and by introducing a simplified regime for buying back shares out of capital (in connection with an employees' share scheme) and involving small amounts of cash. In addition, the legislation allows all companies to hold shares bought back in treasury. The legislation retains the need for shareholder approval where necessary to protect the interests of shareholders and creditors. These provisions are deregulatory and voluntary and largely limited to buy backs linked to employees' share schemes (Nuttall 2013).

Further, the Government introduced a capital gains tax exemption and income tax exemption to promote employee ownership in the UK. Both these exemptions help simplify indirect employee ownership and, in particular, the capital gains tax exemption encourages its use as a solution to the growing challenge of finding a business succession in SMEs. The capital gains tax exemption is granted when a controlling interest in a company is transferred to an EOT. The capital gains tax exemption applies from 6 April 2014 (Finance Act 14 Sch 37 Pt 1) and is unlimited in amount. Instead of a trade sale or other forms of exit, owners may now opt for an EOT buy-out as their succession solution. There is also from 1 October 2014 (Finance Act 2014 Sch 37 Pt 2), an exemption from income tax (but not NICs) of GBP 3,600 per employee per tax year for certain bonus payments made to all employees of a company where an EOT has a controlling interest. This provides a cash alternative to operating a SIP. The EOT is a more restrictive form of the employee trust previously more commonly used in the United Kingdom (the so called "section 86 trust" because it meets the requirements in section 86 Inheritance Tax Act 1984). The differences between an EOT and a section 86 trust are acceptable in the context of a trust that is designed to acquire, and hold shares indefinitely on behalf of the employees. One additional restriction is that the EOT must not include a power for the trustee to make loans to beneficiaries. A key difference relates to who must benefit from any distribution from the EOT. A section 86 trust usually defines its beneficiaries by reference to employment with a particular body but can limit the class of beneficiaries to 'all or most' of the persons employed by the body concerned and only selected employees may, in fact, benefit. In contrast, in an EOT, essentially, every employee of the relevant company or group must be an eligible employee, except for certain excluded participators. A same terms requirement permits differing amounts to be paid to eligible employees, but every such employee must receive something if there is a distribution. The Government considered a change in English trust law to allow employee trusts to last forever instead of limiting their life to 125 years but deferred action on this idea.[375] Apart from this legislation several tax advantaged ESO plans operate in the United Kingdom to promote direct employee ownership:

Tax advantaged Share Plans – *Share Incentive Plan (SIP)* The SIP was introduced in the Finance Act 2000 to replace the 1978 Approved Profit Sharing Scheme on which it is partially modelled. Several possible modifications made it more flexible. The employer company sets up a trust to serve as an intermediary in allocating shares to employees. The shares may be allocated without cost ("free shares"), at a discount, or at full price ("partnership shares"); also, the employer may match the employee's partnership shares ("matching shares"). Dividends paid on all shares may be reinvested in additional shares ("dividend shares"). Each plan is subject to specific requirements which, if met, confer substantial tax advantages on both employees and the employer company. These generally take the form of exemption from both personal income tax and NICs. The plan must include all employees, with the possible exclusion of those employed less than 18 months, and the same general provisions must apply to all participants. Tax exemptions are valid for all versions of the plan after the shares have been held for five years, or earlier if the employee terminates his employment on account of injury, disability, redundancy, retirement or death; also, if transferred under the Transfer of Undertakings (Protection of Employment) Regulations, or on the employer company ceasing to be an associated company. Shares sold immediately after withdrawal are exempt from capital gains tax. Regulations specific to each type of award are as follows:

Free shares cannot be withdrawn from the trust during a holding period of three to five years. However, if the employee withdraws the shares or his or her employment ceases between the third and fifth year for reasons other than above, personal income tax and NICs are payable on the lesser of market value on the award date and the market value on the withdrawal/cessation date. If the employment ceases for other than the stated reasons before the end of the three- year holding period, full personal income tax and NICs are imposed. An employee's award of free shares in the plan is limited to GBP 3,600 per tax year (from the 2014/15 tax year).

Partnership shares are purchased by the trust from a part of the employee's pre-tax remuneration according to the employee's agreement with the employer company. The shares are purchased either within 30 days of pay deduction or at the end of a specified accumulation period of up to 12 months. An employee is limited to GBP 1,800 per tax year (or 10% of an employee's annual gross salary) (from the 2014/15 tax year). After the five-year holding period or termination of employment for the given reasons, the employee is exempted from personal income tax and NICs, and the employer exempt from NICs. If the employee withdraws the shares or his employment ends for a reason other than those stated between the third and fifth year, personal income tax and NICs are paid on the lesser of the amount of the employee contributions for purchase and the market value of shares on the date of withdrawal/cessation.

Matching shares can be offered by the employer company up to two matching shares for each partnership share. These are allocated to the employee on the same day as

[375] http://www.fieldfisher.com/publications/2014/06/the-employee-ownership-business-model.

partnership shares are acquired. The holding period is the same for matching shares as for free shares. Dividends per annum may be used to purchase *dividend shares*. The general holding period for dividend shares is three years. If these shares are withdrawn or employment ends for other than stated reasons within five years of their acquisition, the employee is liable for personal income tax on the dividends used to purchase the shares. However, there is no liability for NICs.

Tax advantaged Share Option Plans – *Savings-Related Share Option Scheme (SRSO) or Sharesave or SAYE Scheme*, was introduced by the Finance Act 1980. It must apply to all employees, except possibly those with relatively short service. The basic structure of the plan is as follows: the employee enters into a Save-as-you-earn (SAYE) contract with a designated bank or building society, agreeing to save a specified monthly amount (GBP 5 to GBP 500) by deduction from after-tax remuneration for three or five years (a seven-year contract was withdrawn in 2013) and the employer company grants him share options for the maximum number of shares he will be able to purchase at the exercise price with his SAYE savings. The SAYE contract could include a tax-free bonus added to savings on completion, the amount depending on the term of the contract and the rates are set by HM Treasury. However, the rates have been set at 0% since December 2014, an approach confirmed in June 2022.[376] The share exercise price can be up to 20% under the market value of the underlying shares at the time of the grant. At maturity of the SAYE contract, the employee is entitled to choose whether to exercise the option and retain or sell the shares or take the savings and any bonus in cash. These requirements fulfilled, the employee is not liable for personal income tax or NICs at grant or exercise. However, they must pay capital gains tax on the sale of shares.

Company Share Ownership Plan (CSOP) was introduced in 1984 as a Discretionary Share Option Plan and re-launched in 1996 under the current name with amended requirements. It is a discretionary plan which is often limited to executives but can also be broad-based. It is often connected to performance results, i.e., a certain goal must be reached before the option can be exercised. The following requirements also apply: the value[377] of outstanding options per employee must not exceed GBP 30,000 at grant; the exercise price may not be less than market value at grant; the exercise period may not be shorter than three nor longer than 10 years after grant.[378] These requirements fulfilled, the employee is not liable for personal income tax or NICs at grant or exercise. Proposed changes to CSOP rules will, in particular, increase the individual CSOP limit to GBP 60,000.[379]

Enterprise Management Incentives (EMI) was introduced by the Finance Act 2000 in order to help small, higher risk companies to recruit and retain highly qualified employees. It applies to companies with gross assets of less than GBP 30 million[380] and (from 21 July 2008) fewer than the equivalent of 250 full-time employees. The plan can be selective. Approval of HM Revenue & Customs is not required, but it must be

[376] https://www.gov.uk/guidance/employment-related-securities-bulletin-43-june-2022.

[377] The value is equal to the number of shares multiplied by the exercise price.

[378] Before 2003, an additional requirement had to be fulfilled: the exercise period had to be not less than three years after any previous tax-free exercise. This requirement was abolished.

[379] Finance (No. 2) Bill, 21 March 2023; Spring Budget 2023, HM Treasury, March 2023.

[380] Originally, the volume of assets was GBP 15 million (until 2003), but it was considered necessary to increase it substantially.

notified of each share option grant under EMI within 92 days. Options granted must not exceed a total market value (from 15 June 2012) of GBP 250,000 per employee (including any amount granted under a CSOP) or GBP three million for the company. If various requirements are fulfilled, neither employees nor the employer company are subject to personal income tax or NICs at grant or exercise. Employees must pay capital gains tax at the sale of shares, although business asset disposal relief (previously entrepreneurs' relief), which provides a lower rate of capital gains tax, may apply after a two-year period of ownership (with the two years measured from the date of grant of the EMI option). Proposed changes to EMI rules will change the time period for notifying EMI options to one ending on 6 July after the end of the tax year of grant.[381]

bb) Profit Sharing

Apart from the EOTs income tax exemption (see above), there is no tax advantaged or widely used standard form for non-tax advantaged cash profit-sharing plan. There used to be a tax advantaged cash profit-sharing plan – the Profit-Related Pay Scheme – which was increasingly popular until terminated. Many companies used this Scheme to get tax advantages without really linking pay to profits. The Government phased it out from 2000.

cc) Participation in Decision-Making

Financial participation plans in themselves do not necessarily extend existing rights in decision-making. The UK Government has generally left it to a company to decide to what extent EFPs form part of a company's ownership and governance structure. There is generally no direct connection between participation in decision-making and EFP in the United Kingdom. Some initiatives have involved a more direct link between ESO and ownership and governance. A successful Private Act of Parliament, the Employee Share Schemes Act 2002, amended the SIP rules to confirm and promote the idea that a SIP's trustees may include employee representatives.[382] The public service mutuals initiative involves an emphasis on employee control. The Nuttall Review highlighted that ESO can involve a significant and even majority or 100% ownership stake in a company and the EOT tax exemptions introduced in 2014 are only available once an EOT has acquired a controlling interest.

General provisions of labour law, e.g., equal pay and prohibition of discrimination, also apply to financial participation plans. Although the now abolished Employee Shareholder status (see above) involved exchanging certain employment law rights for the tax advantaged ownership of Employee Shareholder shares. At the Government's request the Financial Reporting Council revised the UK Corporate Governance Code for listed companies to require boards to have in place at least one of three worker voice mechanisms: a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director. If a board has not chosen one of those methods, it has to explain to its shareholders what alternative arrangements are in place and why they are effective.[383]

[381] Finance (No. 2) Bill, 21 March 2023; Spring Budget 2023, HM Treasury, March 2023.

[382] Other provisions of the Employee Share Schemes Act 2002 (an enhanced corporation tax deduction) and SIP legislation (a capital gains tax rollover relief) support the use of a SIP as a business succession arrangement but there is no reported use of these provisions.

[383] https://www.frc.org.uk/news/july-2018/a-uk-corporate-governance-code-that-is-fit-for-the future, login Sept. 2023.

29. United States of America

This country profile has been written for the EC Pilot Project Study "The Promotion of Employee Ownership and Participation" in 2014 by John D. Menke with the support of Patricia Hetter Kelso, the author of the 2023 update was John D. Menke.

The US has had a long and rich history of experimenting with various forms of employee financial participation (EFP). Many of the original thirteen colonies had homestead laws that permitted settlers to acquire land ownership by simply fencing in the land and tilling it for a number of years. The first implementation of an ESOP as a method for buying out the owners of a privately-held business, the Peninsula Newspapers, Inc., was initiated by San Francisco attorney Louis O. Kelso in 1956.[384] The ESOP concept was codified into law as part of the Employee Retirement Income Security Act of 1974 ("ERISA") defined as a qualified stock bonus plan designed to be primarily invested in shares of company stock and that is authorized to make leveraged purchases of company stock. In the Revenue Act of 1978, Congress authorized 401(k) plans, an IRS qualified cash or deferred arrangement under which covered employees can elect to have a portion of their cash compensation contributed to a qualified plan as a pre-tax reduction in salary requiring the company to make "matching" contributions and typically allowing profit-sharing contributions to the plan.[385] Today, almost all firms that have 20 or more employees, public or private, offer 401(k) plans. To encourage business successions, the Tax Reform Act of 1984 included two ESOP tax incentives, the "tax-free rollover" (a tax-deferral of capital gains taxation for sellers to ESOPs) and the "deductible dividend" (permitting a company to deduct dividends paid on shares of company stock held by an ESOP). During the 20 years following the adoption of these two tax incentives, the number of ESOPs in the US soared until the 2002-2003 recession. In 2001 Congress amended §1361 of the Internal Revenue Code including an additional tax incentive with the result that in S corporations (see below) 100% owned by its ESOP, 100% of the earnings of the corporation will be exempt from any and all income taxation. In the 21 years since this change in the tax code, there has been a large increase in the number of S corporations that have become 100% ESOP owned.

Table 13: Number of US ESOPs in 2020

Type of Plan	No of Plans	No of Participants	Employer Securities*	Total assets for plans*
Public-company ESOPs	*580*	*12.0 mln.*	*141.2 bln.*	*1,612.3 bln.*
Large private-company ESOPs (>100 participants)	*2,472*	*1.8 mln.*	*145.4 bln.*	*201.4 bln.*
Small private-company ESOPs (<100 participants)	*3,415*	*200,000*	*17.0 bln.*	*20.1 bln.*
Total	6,467	14.0 mln.	303.6 bln.	1,833.8 bln.

Source: National Center for Employee Ownership 2020; * columns 4 and 5 in USD.

384 As such, it is not only an employee benefit plan, but unlike other defined contribution plans, it is also recognized a being a "tool of corporate finance."

385 As 401(k) plans are largely funded by employee salary deferrals rather than company contributions, they gained rapid popularity; within three years of authorization by the Code, half of all large firms had adopted 401(k)plans.

A recently completed study by the National Center for Employee Ownership (NCEO) found that as of the end of 2020, the number of ESOPs in the US was 6,467. These plans covered 13.9 million participants and held USD 1,833.8 billion in assets (see Table 13). According to the Investment Company Institute, as of September 30, 2022, 401(k) plans held an estimated USD 6.3 trillion in assets and represented nearly 20% of the USD 39.3 trillion in US retirement assets, which include employer sponsored retirement plans (both defined benefit (DB) and defined contribution (DC) plans with private-sector and public-sector employees), individual retirement accounts (IRAs) and annuities. In 2022, there were about 625,000 401(k) plans, and these plans covered about 60 million active participants.[386] According to the US Pension Benefit Guarantee Corporation, as of September 30, 2022, the number of defined benefit pension plans covered by the Pension Benefit Guarantee Corporation's single-employer insurance program was approximately 25,000. In addition, there were approximately 1,400 multi-employer plans in existence as of September 30, 2022.

a) General Attitude

There has been a favourable attitude in the US to various forms of EFP since the very founding of the country. Republicans and Democrats alike have supported legislation to encourage greater employee financial participation in the firms where these employees work. Congressional support for greater employee share ownership through company-sponsored ESOPs has been especially significant. Since ESOPs were first authorized by ERISA in 1974, Congress has passed over 25 separate bills that have enhanced the benefits provided by ESOPs. The General Social Survey ("GSS") which was completed by the University of Chicago's National Opinion Research Center in 2010 provides detailed and comprehensive data regarding various forms of employee financial participation. The data from the 2010 GSS summarized by Blasi, Freeman, and Kruse in their 2013 book *The Citizens Share* reports that 47% of private sector full-time wage and salary workers have some form of share in the firm where they work.[387] EFP in the US is promoted by a large number of for-profit firms including law firms, CPA firms, and pension and profit-sharing consulting and administration firms. It is also supported by a number of non-profit firms that promote greater EFP, including: Plan Sponsor Council of America (PSCA), the ESOP Association (TEA), the National Center for Employee Ownership (NCEO), the Beyster Institute, Employee-owned S Corporations of America (ESCA), and Employee Owned Equals (EO). PSCA primarily promotes the implementation of qualified profit-sharing plans and 401(k) plans, whereas the ESOP Association, the NCEO, the Beyster Institute, ESCA and EO primarily promote the implementation of ESOPs through research, publications and national and regional conferences and seminars. In addition, the ESOP Association has 19 state or regional Chapters that hold their own local conferences and seminars.

b) Legal and fiscal framework

The US laws offer a wide variety of financial participation and retirement plans ranging from qualified retirement plans (defined benefit pension plans, profit sharing plans,

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[386] According to the 65th Annual Survey of Profit Sharing and 401(k) Plans conducted by the Plan Sponsor Council of America in 2022, due to the decline in the number of stand-alone profit-sharing plans, it is no longer feasible to report on the number of stand-along profit sharing plans or the number of participants covered by these plans.

[387] About 40% of workers receive profit sharing or gain sharing and about 21% have employee shares in the employer company with many workers having more than one type of stake in their firm.

401(k) plans, stock bonus plans and ESOPs) to numerous types of non-qualified incentive plans such as direct cash bonuses, deferred cash bonuses, direct stock purchases, direct stock bonuses, incentive stock option plans, non-qualified stock option plans, employee stock purchase plans, restricted stock bonus plans, phantom stock plans and stock appreciation rights plans.[388] All of these retirement plans and most of these incentive plans are incentivized to some degree by tax reduction provisions.

aa) Share Ownership

Employee Stock Ownership Plans (ESOPs) – ESOPs were codified into law as part of the Employee Retirement Income Security Act of 1974 ("ERISA"). §407(d) of ERISA defined an ESOP as a qualified stock bonus plan (or combined stock bonus plan and money purchase pension plan) which is designed to be primarily invested in shares of company stock. At the same time, §4975 of the IRC was amended to provide a similar definition of ESOPs in §4975(e)(7) of the Code. §406(a)(1)(B) of ERISA and §4975(c)(1)(b) of the Code prohibits any direct or indirect lending of money to a qualified plan. However, in the case of an ESOP, § 408(b)(3) of ERISA and §4975(d)(3) of the Code exempts from this prohibition any loan to an ESOP if such loan is primarily for the benefit of participants in the plan, the interest rate on the loan is at a reasonable rate of interest, and the collateral for the loan consists only of qualifying employer securities. Because of this exemption, ESOPs, unlike other qualified plans, are permitted to borrow funds for the purpose of purchasing shares of company stock.[389] In order to qualify as a leveraged ESOP, a number of requirements must be met: (i) The ESOP must purchase that class of voting stock that has the highest voting rights and the highest dividend rights. (ii) Shares purchased in a leveraged transaction must be released from a suspense account in proportion to interest and principal payments made each year if the term of the loan is more than ten years but can be released in proportion to principal payments if term of the loan is ten years or less. (iii) If employment ends because of death, disability or attainment of the normal retirement age, distributions must commence as soon as possible in the following plan year (if it is terminated for any other reason, distributions can be deferred until the participant incurs a five-year break in service; in both cases, distributions - either in the form of cash or in shares of company stock - can be made either in a lump sum or in five annual instalments).

In the case of both S or C corporations[390] that are substantially employee owned, the company may elect to make distributions in cash only. In addition, once a participant has attained age 55 and has completed 10 or more years of service, participants may elect to "diversify" up to 25% of their company stock account balances. Such diversification is usually accomplished by cashing out 25% of a participant's shares and transferring the cash proceeds, tax-free, to a 401(k) plan or to an Individual Retirement

[388] Qualified stock bonus plans were first authorized by the Internal Revenue Code of 1921; they were popular, especially with publicly listed companies, during the 1920s and 1930s. With the advent of ESOPs in 1974, these plans are virtually non-existent today which is why we do not report any details.

[389] As a result, starting in 1974, ESOPs were able to able to serve not only as an employee benefit tool, but also as a tool of corporate finance in the acquisition of the stock of both public and private companies. Since then, ESOPs have become the most popular form of workers' share ownership in privately held companies.

[390] "C" corporations have a two-tier system taxation with the corporation paying corporate income tax while their shareholders pay taxes on any distributions from the company. An "S" corporation is is treated as a partnership for tax purposes, thus avoiding any taxation of profits at the corporate level.

Account. However, a participant may simply elect to take the distribution in cash and pay ordinary income taxes on the amount. Once a participant is eligible for diversification, the participant can elect to diversity 25% on a cumulative basis at any time between the age of 55 and 60. Once the participant attains age 60, such participant can then elect to diversify 50% of his company stock account balance, less the dollar amount that he or she has previously diversified.

In 1984, the tax advantages available to sellers[391] were enhanced by the provisions of §1042 and §404(k) of the Code. §1042 of the Code enables a seller to sell his stock tax-deferred, provided the ESOP acquires at least 30% of the outstanding stock of a privately held C corporation, and provided the seller reinvests a like amount of money in "qualified replacement property" within twelve months of the date of sale. If the sellers hold these qualified investments until death, these investments receive a step up in basis to the then fair market value. Hence, neither the sellers nor their estates ever pay a capital gains tax on the stock they have sold to the ESOP. The "deductible dividend" provision (§404(k) of the Code) permits a company to deduct reasonable dividends paid on shares of company stock held by an ESOP provided the dividends are either passed through to participants or used to make payments on an ESOP loan incurred to purchase company stock. The purpose of this provision was to support the borrowing of money in order to enable the ESOP to buy and pay for more shares of company stock than would otherwise be possible. In 2001, §1361 of the Code was further amended to allow ESOPs to qualify as shareholders of S corporations, and §512(e)(2) of the Code was amended to exempt ESOPs from the unrelated business income tax, provided the ESOP passes the anti-abuse provisions of §409(p) of the Code. Any share of their profits that is attributable to an ESOP as an S corporation shareholder will not be subject to income tax or to the unrelated business income tax that is normally imposed on "unrelated earnings" received by a qualified employee plan. Since the ESOP is otherwise a tax-exempt entity, this change means that the earnings attributable to an ESOP, whether they are "related" or "unrelated", will be tax-exempt. Under this provision, an S corporation that is 100% owned by an ESOP will be essentially tax-exempt. As a result, there are now more S corporation ESOPs than C corporation ESOPs.

Direct Stock Bonuses – Direct stock bonuses are sometimes used in public companies and in privately-held companies to compensate key employees for exceptional performance. In general, however, direct stock bonuses are seldom granted since the employee will be taxed on the stock bonus at ordinary income tax rates. When direct stock bonuses are made, they are usually coupled with direct cash bonuses so that the employee will have sufficient cash to pay the income tax that will be owed on the total amount of the stock bonus and the cash bonus.

Direct Stock Purchases – Many privately-held companies allow selected key employees to purchase stock directly, especially if the company is just starting up as a new corporation. No formal plan is necessary, and there are no tax advantages to the

[391] When ESOPs were first codified into law in 1974, there was a twofold advantage to owners of privately held companies. First, unlike a redemption of the stock by the company itself, any sale of stock to an ESOP would be taxed at capital gains tax rates rather than at ordinary income tax rates. Second, unlike a redemption of stock, if the purchase was financed with leverage (either with a bank loan or a seller note), not only would the interest be tax deductible, but the principal would also be tax deductible to the extent the loan was repaid my means of tax-deductible contributions to the ESOP.

buyer or to the seller other than the fact that the employee will be entitled to capital gains tax treatment if the employee holds the stock for at least one year. Since this type of arrangement is usually limited to executives and co-founders of start-up companies, it is not usually thought of as a form of employee financial participation.

Employee Stock Purchase Plans (ESPPs) – An ESPP is a plan adopted under the provisions of §423 of the Code that enables a company to sell shares of company stock to employees at a 15% discount. If the plan complies with the provisions of §421, the employee will not be taxable either at the date of the grant or at the exercise date. To qualify for this favourable tax treatment, IRC §421 requires that the following conditions be met: (i) The shares must be offered under a written plan that specifies the number of shares authorized under the plan. The plan must be approved by shareholders within twelve months before or after the board of directors approves it. (ii) The plan must cover all employees, except for 5% or more owners who are not permitted to participate, those employed for less than two years or whose customary employment is 20 hours or less per week or who work for not more than 5 months per year, and "highly compensated employees" as defined in §414q of the Code. (iii) All employees must have equal rights and privileges under the plan. However, employees are permitted to purchase stock proportional to their relative compensation. (iv) The purchase price cannot be less than the lesser of 85% of the fair market value at the beginning of the offering period or the fair market value on the purchase date. (v) If the purchase price is based upon the fair market value at the time of purchase, the offering period can be up to five years long. If the purchase price is based upon the fair market value at the beginning of the offering period, the offering period may not exceed 27 months. (vi) No participant is allowed to purchase more than USD 25,000 worth of stock per year, determined by using the fair market value of the stock at the beginning of the offering period. (vii) The employee must hold the stock for at least two years after the offering period and for at least one year after their purchase of the stock. If these conditions are met, upon a later "qualifying disposition' of the stock, the employee will pay an ordinary income tax on the lesser of the 15% discount amount at the beginning of the offering period or the sale price minus the purchase price. Any other gain or loss will be taxed as a long-term gain or loss. If, on the other hand, the employee has a "disqualifying disposition", the employee will be taxable on the difference between the fair market value at the time of purchase and the actual purchase price at that date at ordinary income tax rates. Any other gain or loss will be long term or short-term depending upon the employee's holding period. Because grants of stock under an ESPP must be offered to all full-time employees, and because an ESPP necessitates having an annual stock appraisal, ESPPs are used almost exclusively by public companies.

Incentive Stock Option Plans (ISOs) – An ISO is a plan adopted under the provisions of §421 of the Code that enables a company to issue options to selected employees and have these employees taxed on the gain, if any, at capital gains tax rates rather than at ordinary income tax rates. In order for the favourable capital gains tax rate to apply, IRC §421 requires that the following conditions be met: (i) The option must be granted under a written plan that specifies the number of shares authorized under the plan. The plan must be approved by shareholders within twelve months before or after the board of directors approves it, and it must identify the class of employees eligible to receive grants. (ii) The exercise price must not be less than the fair market value of the company's stock on the date of the grant. (iii) Only $100,000 worth of stock, valued as of the grant date, can become exercisable in any given calendar year. (iv) The employee must not dispose of the stock for at least two years after the grant date and must hold the stock for at least one year after the exercise date. It should be noted, however, that if an employee exercises an ISO but does not sell the shares in the year of exercise, the employee may be liable for the alternative minimum tax since the spread on the option at exercise date is a "preference item" for purposes of calculating the alternative minimum tax. ISOs are frequently used as an incentive plan for executives of public companies. They are seldom used in privately held companies because of the requirement of having an annual stock appraisal.

Nonqualified Stock Options (NSOs) – Unlike ISOs, NSO do not have to be issued under a written plan and do not have to be targeted to any particular class of employees. They can be issued entirely at the discretion of the board of directors. A NSO is any option that does not meet the requirements of Code §421. If the option does not have a "readily ascertainable fair market value" (i.e., it is not actively traded on an established market), the employee will only be taxed at the time the option is exercised, not at the time the option is granted. When the employee does exercise the option, however, the employee will be taxed at ordinary income tax rates on the difference between the then fair market value of the stock and the exercise price. When the employee later sells the stock, the employee will be taxable on the gain, if any, at long-term capital gains tax rates or at short-term capital gains tax rates depending upon how long such employee has held the stock subsequent to the exercise date. If the NSO does have a readily ascertainable fair market value, on the other hand, the employee will be taxable at ordinary income tax rates on the difference between the exercise price and the fair market value of the stock at the time it is granted. Employees are not taxed again when they exercise the option and buy the stock. When they later sell the stock, they will be taxable on the gain, if any, at long-term capital gains tax rates or at short-term capital gains tax rates depending upon how long they have held the stock subsequent to the exercise date.

Restricted Stock Awards (RSAs) – RSAs consist of restricted stock bonuses issued under the provisions of §83 of the Code. These stock bonuses can be awarded on an *ad hoc* basis, or they can be awarded under the provisions of a management stock bonus plan which sets aside a stock bonus reserve of a specified number of shares and sets forth the conditions under which bonus shares will be issued. They are "restricted" in that they are forfeitable and are nontransferable until certain conditions are met and, therefore, the employee is not taxed until such time as the restrictions lapse or are removed. When the restrictions lapse, the employee is taxed at ordinary income tax rates on the then fair market value of the shares. The amount paid to the employee is also subject to payroll taxes and payroll tax withholding at that time. When the employee later sells the stock, however, the employee will be taxed at long-term capital gains tax rates on the difference between the selling price of the shares and the value of the stock at the time the restrictions lapsed. In the alternative, the employee can make an election under §83(b) of the Code to pay ordinary income tax on the value of the shares at the time the shares are awarded with any subsequent gain taxed at the long-term or short-term capital gains tax rates depending upon the holding period. Restricted stock bonus shares issued as "retention" bonuses are typically issued on an annual basis in order to assist the company in retaining key employees. Restricted stock bonus shares issued as "performance" bonuses are typically issued from year-to-year based upon the company's attaining or exceeding projected levels of pre-tax profits or EBITDA goals. In public companies, RSAs are used to retain and compensate top-level executives. In private companies, RSAs are often used in combination with ESOPs as a means of retaining and compensating key employees who would otherwise not receive enough shares under an ESOP to compensate them as well as they might be compensated in a non-ESOP company.[392]

bb) Profit Sharing

Qualified Profit-Sharing Plans – IRS qualified profit-sharing plans were first authorized by the Internal Revenue Act of 1921. Like all other defined contribution plans under §401(a) of the Code, a qualified profit-sharing plan consists of a written plan document and a tax-exempt trust that is qualified under §501(a) of the Code. Companies are allowed to make tax-deductible contributions to the plan in any amount up to 25% of eligible payroll. Trust earnings are tax-exempt. Unlike ESOPs and qualified stock bonus plans, the investments of a profit-sharing plan must be diversified and must earn a fair rate of return. Plan benefits are normally paid out upon death, total disability or attainment of the normal retirement age. If the plan so provides, plan benefits can also be paid out upon termination of employment. Section 404(a)(2) of ERISA exempts qualified profit-sharing plans from the requirement that all investment be diversified to the extent the plan document specifically provides that the plan may invest up to a specified percentage of its assets in company stock. However, this provision only exempts the fiduciaries from the rule requiring diversification of investments. It does not exempt the plan fiduciaries from the general rule of prudence. Prior to ERISA, many profit-sharing plans, such as Sears & Roebuck and JC Penny, invested a majority of their funds in company stock. After ERISA was signed into law, most of these plans converted to stock-bonus plans or to ESOPs in order to comply with ERISA's requirement that all investments be prudently invested. Qualified profit-sharing plans were the most popular form of financial participation for employees of both public and private companies until the Revenue Act of 1978 authorized 401(k) plans. After that, 401(k) plans quickly gained in popularity. Today almost all US companies, both public and private, sponsor 401(k) plans, and very few companies still maintain a separate qualified profit-sharing plan.

401(k) Profit-Sharing Plans – 401(k) plans were first authorized by the Code in 1978. A 401(k) plan is a qualified plan that is subject to the all the same requirement that apply to all other qualified defined contribution plans under §401(a) of the Code. In addition, such plans must also comply with the non-discrimination rules of §401(k) of the Code. 401(k) plans are authorized to invest in a wide variety of investments, including investments in company stock. Although 401(k) plans, unlike ESOPs, cannot be leveraged, they can be heavily invested in company stock, and many companies have used 401(k) plans as their primary vehicle for providing broad based employee stock ownership. Under a 401(k) plan, participants are allowed to reduce their salary by up to a specified amount each year and contribute this salary reduction amount to the 401(k) plan. For 2023, the maximum deferral amount is USD 22,500 per person. In order to prevent the plan from primarily benefiting highly compensated employees, the plan must pass either an ADP (actual deferral percentage) test or an ACP (actual

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[392] Because these bonuses are usually funded with newly issued shares, care must be taken to assure that the issuance of these shares does not overly dilute the ESOP. Hence, the issuance of restricted stock bonus shares in ESOP-owned companies is usually based upon attainment of performance goals such that the dilution can be justified on the basis of performance.

contribution percentage) test.[393] When Enron and WorldCom collapsed in 2001 and 2002, thousands of Enron and WorldCom employees lost the entire value of the company stock that had been accumulated in their 401(k) accounts. As result, Congress amended §401(k) in 2006 to require that participants be allowed to sell shares of company stock that have been purchased with salary deferrals at any time, and to require that participants be allowed to sell shares of company stock acquired through company matching contributions at any time after completing three years of service. To the extent an ESOP is combined with a 401(k) plan of a public company, these same rules apply to the 401(k) portion of the combined 401(k) ESOP.

Cash-Based Profit-Sharing Plans – The great majority of both public companies and private companies continue to maintain cash-based profit-sharing plans. In the beginning, most of these plans simply provided for a discretionary yearend cash bonus based upon sharing a portion of the yearend profits with the employees of the firm. Starting in the 1970s, companies increasingly starting setting aside a fixed percentage of profits for distribution to employees on a quarterly or annual basis. More recently, relying upon the advice of management consulting firms such as McKinsey & Company, The Great Game of Business Institute, and Ownership Thinking, companies have started to require that these cash profit sharing distributions be based upon the attainment of specific financial goals. By all accounts, these performance-based cash bonuses had been far more effective in incentivizing increased employee productivity and company profitability than traditional cash profit sharing plans.

Deferred Profit Sharing – US law has long provided that cash bonuses and cash profit sharing amounts can be deferred to a future date so as to avoid current taxation so long as the deferral election is made prior to the date the amount has been earned or has been constructively received. During the financial meltdown that occurred in the US in 2001 and 2002, Congress discovered that highly paid executives in large public companies were avoiding taxes by deferring large amounts of compensation to future years when such executives might be retired and taxed at lower tax rates. In addition, Congress found that many such executives were manipulating their tax liabilities by further deferring or accelerating the payment of these deferral amounts. Accordingly, Congress added new a new provision, IRC §409A, to the Code to curb these abuses as part of the American Jobs Creation Act of 2004. Code §409A generally provides that elections to defer compensation can no longer be made during the calendar year in which the payment would otherwise be made. Rather, such deferral elections must be made no later than the beginning of the calendar year in which services will be performed. In addition, the pay-out of such deferred compensation amounts may only be paid upon the following events: separation from service; disability, death, a specified time for fixed schedule; a change of control, or an unforeseen financial emergency. Deferred compensation arrangements are typically found only in large public companies. They are almost never found in private companies. Despite the new

[393] Under the ADP test, for example, the plan will not qualify if the ADP for the highly compensated employees exceeds the ADP for the non-highly compensation employees by more than 2%. The ADP has a similar limit. Since highly compensated employees naturally tend to defer larger percentages of their pay than do non-highly compensated employees, companies quickly discovered that they could pass the ADP/ACP test only if they made matching contributions that would serve to increase the ADP for the non-highly compensated employees. Subsequently, §401(k) was amended to provide for certain "safe harbor" matching contributions that, if made, would exempt the plan from having to comply with the ADP/ACP tests.

restrictions under §401A, such arrangements continue to be popular with executives of large public companies.

cc) Participation in Decision Making

For the years 2002 and 2006 Kruse, Freeman and Blasi (Kruse et al. 2010) report 40% of employees having "a lot of influence in decisions" or "often participate with others in job decisions", around 30% being in an employee involvement team or self-managed work team. Studies conducted by the NCEO suggest there is no automatic improvement of employee attitudes or of employee productivity related to simply being an employee-owner. Rather, any positive impact seems to be linked to greater perceived or actual participation in decision-making. Since the great majority of ESOP are adopted by privately held companies, founders of such firms are naturally reluctant to provide greater employee participation in decision-making out of a fear of possible loss of control. However, in the great majority of ESOPs, voting rights are exercised by the plan trustees, not by the participants. Hence, the potential for any loss of voting control by the founders is nil. Further, studies conducted by the NECO have revealed that participants have little or no interest in voting rights. What participants do want is a greater say in day-to-day decision making on the shop floor or in the workplace. As more or more ESOPs acquire 100% ownership of their companies, more and more of these companies have begun to explore various ways to further engage their employees in day-to-day decision making. There are now several consulting firms around the country that specialize in training managers of ESOP-owned companies to implement employee participation programs, including firms such as Workplace Development and Praxis Consulting Group. In addition, once an ESOP acquires 100% ownership, the Plan Committee is typically expanded to include active employees and to eventually exclude all of the original founders. This in turn usually leads to the formation of employee committees that are devoted to promoting greater employee participation in day-to-day decision making.

PART 3 – Comparative Analysis of the Benchmarking Exercise

VII. Assessment of the Member States in the light of the country profiles and empirical data on EFP[394]

Jens Lowitzsch and Iraj Hashi

1. Ranking based on regulatory density and support measures

In deciding to actively encourage EFP throughout the European Union and to identify and investigate potential obstacles to transnational EFP schemes, the European Commission has taken an important step with the "Five-Point Plan to Promote Employee Participation" of 2015. This initiative was then taken up in the 2018 an Own-Initiative Report of the European Parliament on the "role of Employee Financial Participation in creating jobs and reactivating the unemployed" (2018/2053(INI), see Chapter I). However, serious challenges remain, as discussed in Part 1 of this report.

As corroborated by more than 30 years of research and laid out in the econometric part of Chapter III, EFP can help to expand the single market, thus contributing to the goals of the Europe 2020 strategy by raising productivity, stimulating economic growth, and stabilising employment. But **to achieve these goals, EFP itself requires a single market.** As EU firms operate across national borders, so also must their ESO schemes. Bottlenecks to cross-border application of EFP schemes and for transferability of national schemes must be identified and eliminated. For example, whereas employees of large multinational enterprises can at least partly benefit from transferable schemes, employees of SMEs with operations in other EU Member States, as a rule, have no access to such schemes because of the complexity and costs of transfer.

The country profiles in Part 2 of this report depict very diverse scenarios throughout the European Union; while some Member States have introduced legislation and tax incentives to promote the development of EFP, this practice is much less popular in others (for an overview of the status quo in the EU-27, the UK and the US see the table in Chapter II). Research and feedback from practitioners show that the costs, administrative burden and other complexities have also hampered the introduction of financial participation schemes across the EU, particularly in small or medium sized transnational enterprises (IAFP 2011 pp. 20). In 2003 the Commission set up a high-level expert group to deliver an in-depth analysis of obstacles to EFP for transnational companies. The group's report identifies **differences between the legal and tax frameworks in different countries as the major obstacles to cross-border EFP schemes** (High-Level Expert Group 2003). Research undertaken over the last two decades confirms this analysis (see e.g., Lowitzsch, ed. 2020).

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[394] As with the Country Profiles contained in Part 2 of this report, the comparative assessment is a continuation and an update of the respective chapters of the 2009 PEPPER IV report, the 2012 Study "Employee financial participation in companies' proceeds" for the European Parliament and the analysis of the study "The Promotion of Employee Ownership and Participation" in the context of the DG MARKT pilot project.

Difficulties may arise from: a) differences in application and regulatory density of national legislative frameworks and their legislative requirements on the implementation of EFP schemes, or b) differences in the fiscal treatment of different schemes.

a) Differences between national legal frameworks on EFP

Considering **regulatory density**, we observe that some countries – among them France, the United Kingdom, Ireland and Slovenia – provide detailed rules on and considerable support for EFP schemes, while a large number of Member States, including Greece, the Netherlands and Poland, stipulate only a few rules for the implementation of EFP schemes. Some countries, such as Bulgaria, Portugal and Cyprus, have been passive with no specific regulations on EFP (for details see the overview table in Chapter II). However, the overall trend is positive: In the past, the general attitude of governments and social partners had shown a dearth of concrete policy measures supporting EFP schemes, with limited interest on the part of trade unions and employers' organisations in about half of the countries. The last decade has seen a general, positive shift in attitude across the EU, with the number of passive countries decreasing from half to less than a third of the total. Important legislative improvements were introduced in Italy, Spain, or Luxembourg recently but also in Germany and Austria where the latest round of reforms is expected to take effect as of January 2024.

It is important to stress that the update of the country data since the DG MARKT pilot project 2014/15, which is undertaken in this report, seems to indicate that the West-East divide with respect to share ownership observed in the PEPPER IV Report is narrowing. Initial differences (Lowitzsch 2006) were probably due to the different genesis of EFP in the EU-15 and the EU-12:

- In the EU–15, a generally favourable attitude in a given country has usually led to some supportive legislation for EFP schemes, which in turn has spread their practice. This suggests a clear link between national attitudes, legislation, and diffusion. In general, the development of EFP was a progressive evolution of pay system and work organisation process.
- A quite different situation prevailed in the countries that jointed the EU since 2004. Few laws specifically address EFP, and these refer almost exclusively to employee share ownership; legislation on profit sharing is rare. Although employees were frequently offered privileged conditions for buying shares of their employer firms, the purpose was not to motivate them to become more efficient and productive. Occasionally the issue of social justice (workers had suffered under the socialist regime and, therefore, should be compensated) was raised. But, overall, this method was simply an expedient mechanism for privatising state-owned enterprises for which there were no buyers at the time. It was essentially a decision made by default.

Furthermore, in the former socialist countries, after the privatisation processes were completed ESO has been largely ignored and even viewed with suspicion by governments and employers. In these countries, ideas such as "co-operatives" or "worker ownership" were associated with the former regime (something that they were trying to move away from) and there was – at least in the first two decades after the fall of the Berlin wall – no interest to encourage such ideas. Even though in the course of the privatisation programmes in almost all of these countries, employees acquired (or were given) significant shares of their companies, employee ownership declined rapidly in the early years of transition with employees selling their shares on the market

(Uvalić and Vaughan-Whitehead 1997). It has taken some twenty years for these countries to realise that genuine employee ownership can be a feature of developed market economies and something that can contribute to the growth of productivity and competitiveness.

In combination with **differences in legislative requirements** concerning EFP schemes, the heterogeneity of national rules becomes an obstacle, especially to the implementation of cross border plans. Examples of requirements, which hinder cross-border plans are rules pertaining to the involvement of employees in the introduction of such schemes, the coverage of EFP plans, the eligibility criteria, the retention period, or the rules on investment and administration of funds. The legal framework – being a premise for implementation schemes – is the most fundamental of the measures in place to promote EFP. The presence or absence of specific regulations is directly related to conducive and non-conducive legal arrangements. Thus, establishing EFP schemes through legislation is of first importance. Schemes approved through legislation give companies a distinct legal basis and provide them with a clear framework for decisions and actions.

b) Issues related to taxation and social security contributions

Tax incentives are important tools for enhancing and broadening financial participation. When properly designed, they effectively promote the spread of EFP[395] but they do not appear to be a prerequisite to the development of financial participation[396]. Moreover, at the national level, taxation can either inhibit or support the spread of EFP. At the EU level, cross-border migration of employees partaking in financial participation plans, as well as the transfer of such plans by companies to subsidiaries in different Member States, faces problems created by conflicting tax regimes.[397] Generally, attention is centred on tax incentives, which are often considered the State's main instrument for promoting EFP. But there are a number of problems in assessing the fiscal treatment of EFP schemes, especially for employees. The first issue is a lack of comparability (Lowitzsch 2008, Annex II.C):

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[395] Countries with a long tradition of tax incentives for EFP (e.g., UK, France) confirm this point, but so do countries where tax incentives are relatively recent, e.g., Austria. In France, legislation on voluntary EFP without tax incentives of 1959 and even legislation on compulsory EFP without tax incentives of 1967 did not lead to a significant number of plans in operation. Only in 1986 when the first tax incentives were introduced did the number of plans increase rapidly; this upward tendency has been supported by the introduction of new tax incentives (see Country Profile France). In the UK, although profit sharing has existed since the 19th century and share ownership since the early 1950s, the number of plans remained small until the first tax incentives were introduced in 1978. Since then, the system of tax incentives and economic efficiency of incentives and plans are regularly reviewed by the government, and the number of plans is steadily increasing, esp. Revenue Approved plans (see Country Profile UK and the 2012 Nuttall Report); the same is true for the US, where the continuous spread of ESOPs only started after being regulated in ERISA in 1974 and the subsequent introduction of tax incentives (see Country Profile US).

[396] Financial participation schemes without tax incentives (e.g., profit-sharing plans in Austria and Germany) sometimes have a higher incidence than those with tax incentives (e.g., share ownership plans in Austria and Germany). In Austria, only 8% of enterprises and 6% of the workforce participated in employee share ownership plans in 2005, tax incentives for which were introduced in 2001, whereas 25% of enterprises operated profit-sharing plans without tax incentives (see Kronberger, Leitsmüller and Rauner (2007) pp. 11, 17, 162). In Germany, 2.4% of enterprises had employee share plans in 2001, supported by (marginal) tax incentives, whereas at the same time 8.7% of enterprises operated profit-sharing plans without tax incentives (see Würz 2003 p. 59). Both countries recently introduced generous incentives for ESO.

[397] See Lowitzsch/Hashi et al. 2014; see also Report of the High-Level Group of Independent Experts on cross-border obstacles to financial participation of employees for companies having a transnational dimension, December 2003, p. 43 et seq. on obstacles to exportation.

- Tax incentives are relative; they need to be analysed in the context of the general taxation system in the given country.
- National tax systems are not easily comparable; it is even more difficult to compare taxation laws governing national financial participation schemes.
- Moreover, compulsory social security contributions must be considered since they add substantially to the overall burden of state levies, especially on labour.
- Also, in many countries, social security contributions influence the tax base of the principal income taxes.

Differences in national taxation systems also affect the tax treatment of different EFP schemes across the Member States. In turn, the diverse tax treatment of EFP across the EU is another very important barrier to the implementation and spread of these schemes (High-Level Expert Group 2003). These differences are mainly linked to:

- the incidence and timing of taxation;
- the uncertainty and/or complexity of fiscal treatment;
- differences in tax treatment and social security contributions for employers and/or employees;
- questions of double taxation or double exemption.

For employees who are not resident in the country in which they work (i.e., they live there less than 183 days) or who change their tax residence, this leads to uncertainty and/or complexity of fiscal treatment, possibly resulting in double taxation or double exemption. Within a single company, resident and non-resident employees may be treated differently, which may lead to discrimination. Despite their broad freedom to design their tax systems according to domestic policy objectives, EU Member States are not allowed to discriminate on the basis of nationality or to apply unjustified restrictions on the exercise of the fundamental EU Treaty freedoms.[398] Furthermore, withholding tax on portfolio dividends is a potential problem for employees holding shares in companies located in another EU Member State. There is already a practical difficulty in claiming entitlements to relief from foreign withholding taxes. A further obstacle is the several layers of taxation being applied (company level, withholding tax in the source country, and tax in the country of residence) for which no double taxation relief may be available despite the existence of double taxation treaties between Member States.

Although the scope of the above-mentioned different types of obstacles is diverse, the actual effect on the spread of cross-border EFP schemes is the same; transnational companies with subsidiaries in different Member States planning an EFP plan for the entire group, or intending to extend their local plan across the EU, will need to collect a large amount of information about the different national legal regulations on EFP, and about the differences in national tax and social security systems. Such an undertaking will involve high costs and considerable expert knowledge – two obstacles that many if not most firms, especially SMEs, may not be able to overcome.

[398] While the European Court of Justice has ruled that double taxation due to the parallel exercise of taxing rights by MS, is not per se contrary to EU law, the EC considers it an obstacle in the Single Market.

c) Political support for EFP and social partner's attitudes

The views of governments, trade unions, and employer associations across the EU are very diverse. Structural differences, if at all, exist between new and old MS.

Traditionally, trade unions in several West European countries have been the strongest critics of EFP with their reasons varying with the national contexts (Uvalić, 2009). Some have been strongly opposed to employee ownership itself, regarding radical changes in the economic system as the only way to bring about a more equal distribution of wealth, or as, e.g., in Germany because of the dual risk for workers – that they would lose both their jobs and savings in the event of enterprise failure. In France and the UK, not only trade unions but also parties on the left have strongly opposed EFP because conservative governments in both countries promoted it. However, the rhetoric has undergone change over the last 15 years with many trade unions recognising that EFP can strengthen worker motivation and improve intra-firm human relations. Employer's associations have usually supported voluntary EFP schemes (and opposed any binding arrangement) regarding them as a means for a closer identification of employees with their firm and to increase wage flexibility. In short, EFP schemes have become part of a new culture of industrial relations based on innovative managerial strategies and more flexible remuneration policies. There has been an unusual convergence from opposite ends of the political spectrum. Both left- and right-wing political parties, including many trade unions traditionally opposing it, have accepted minority employee ownership within traditional firms.

In the MS of Central and Eastern Europe the initial attitudes towards EFP, i.e., general indifference, were strongly influenced by the legacies inherited from the communist times and the priorities imposed by the post-1989 transition to multi-party democracy and a market economy. The word "participation" was frequently misinterpreted and its promotion confused with the desire to re-introduce outdated concepts and practices, which these countries had long abandoned. Consequently, only in a few countries of the region have trade unions actually promoted employee ownership within the privatisation process. As for employer's associations, their position on EFP has been passive; in most countries, a clear official viewpoint has not been developed. However, during the past years EFP in its various forms - in particular but not only in the Baltic States - is more frequently viewed as a complementary element to social and industrial relations. Another positive example is Slovenia, where a consensus across social partners and political parties to support EFP has triggered important government initiatives.

2. Overall rating of Member States and classification in clusters

It is possible to develop an overall rating of EFP measures in each country by adding up the individual ranking on the three indicators, i.e., a) legal framework, b) fiscal incentives, and c) political support and social dialogue to obtain an overall ranking for each country. The results are presented in the form of a table (Table 14) with an overview of the methodology presented in the textbox following the table.[399]

[399] The methodology was developed for the study "Employee financial participation in companies' proceeds", commissioned by the European Parliament (Lowitzsch & Hashi, eds. 2012); for details see p. 56, 57 and Annex 3, p. 106 et. sequ. The underlying information summarised in the overview table in Chapter II stem from individual Country Profiles of each Member State as contained in Part 2 of this report.

The overall ranking varies from zero to ten. The final score for each country, shown in the column "Ranking", is calculated by adding up the rankings in the three indicator columns, separately for PS and ESO. The colours in indicator columns correspond to the level of support (red-passive, blue-low, green-high). The findings summarised here build on those of the 2012 EP study and the 2013/14 EP Pilot Project and were updated 2023. **In twelve countries, i.e, 44% of MS a positive change in the ranking occurred since 2014 (we show the old 2014 value in parenthesis).** The ranking is supported and updated by national survey data (see the individual Country Profiles). Companies asked to identify the greatest obstacles to the implementation of EFP schemes other than opposition by existing shareholders mentioned both a difficult legal framework and complex accounting regulations. Although companies of varying size noted these issues, they appeared to be most onerous for SMEs.

Table 14: Ranking of EU Member States based on regulatory density, fiscal incentives and political support for EFP in 2023 (2014 value, if changes took place)

EU Member States	Legal framework		Fiscal incentives		Political support, social dialogue		Ranking	
EFP schemes	PS	ESO	PS	ESO	PS	ESO	PS	ESO
Belgium	2	2	2	2	1	1	5	5
Bulgaria	0	0	0	1	0	1	0	2
Czech Rep.	1	1	0	1	2 (0)	2 (0)	3 (1)	4 (2)
Denmark	0	2 (1)	0	2 (1)	0	1 (0)	0	5 (2)
Germany	0	3 (2)	0	2 (1)	0	3 (2)	0	**8** (5)
Estonia	0	1	-1	1 (0)	0	0	-1	2 (1)
Ireland	2	2	3	3	3	3	**8**	**8**
Greece	1	1	0	1	2	2	3	4
Spain	1	2	0	3	0	3 (1)	1	**8** (6)
France	3	2	4	3	3	3 (2)	**10**	**8 (7)**
Croatia	0	2	0	1	0	1	0	4
Italy	1	3 (2)	1	2	2	2	4	**7** (6)
Cyprus	0	1	0	1	0	0	0	2
Latvia	0	2	0	2	1	1	1	5
Lithuania	0	2	1 (0)	2	0	1	1 (0)	5
Luxembourg	1 (0)	1	1 (0)	1	2 (0)	1	4 (0)	3
Hungary	0	2	0	1	0	1	0	4
Malta	0	1	0	1	0	1	0	3
Netherlands	1	2	0	1	2	2	3	5
Austria	0	2	1 (0)	3	2	2	3 (2)	**7**
Poland	1	2	0	2	0	0	1	4
Portugal	1	1	1	1	0	0	2	2
Romania	0	2	0	1	0	0	0	3
Slovenia	3	3	3	3	3	3	**9**	**9**
Slovakia	0	1	0	1	0	1 (0)	0	3 (2)
Finland	3	2	3	1	3	0	**9**	3
Sweden	2	1	1	1	0	1	3	3
UK	0	3	0	4	1 (0)	3	1 (0)	**10**

Source: Own research based on the PEPPER Country Profiles updated for this report. For countries where there was a change in the ranking since the 2014 Pilot Project, we show the 2014 value in parenthesis.

The analysis in Table 14 is based on objective criteria applicable to all EU Member States and—at least generally—measurable. The three indicators are: (i) **legal framework,** (ii) **fiscal and other incentives**, and (iii) **political acceptance and social dialogue**. However, this task is complex as most potential values of the indicators are not quantitative.

The legal framework

The legal framework as an indicator is not easily quantifiable, but the presence or absence of regulations can be used as a basis for distinguishing conducive and non-conducive legal arrangements. Regulations may be contained in different laws, but it is deemed effective, if it is systematic, i.e., the provisions of different laws are co-ordinated.

-1 The Member State has no systematic regulation of EFP and its general legal regulations inhibit the development of EFP.

0 The Member State has no systematic regulation of EFP and its general legal regulations neither promote nor inhibit the development of EFP

+1 The Member State has an isolated regulation of one aspect of EFP (usually company law).

+2 The Member State has a systematic regulation of more than one aspects of EFP.

+3 The Member State has a systematic regulation of more than one aspects of EFP (usually tax and company law) and one or more additional aspects (connection to securities law, labour law, social legislation, etc.).

Fiscal incentives

The indicator, which is generally quantitative, is connected with fiscal incentives. Usually, the term "fiscal incentives" refers to not just tax incentives but also measures such as subsidies for training or consulting on EFP, authorisation to use public unemployment benefits to set up a worker-owned company (and thus become a shareholder) or reduction of registration fees. The following grades were given to the EU Member States for fiscal incentives:

-1 The Member State has no special tax incentives on EFP and its general system of taxation inhibits the development of EFP.

0 The Member State has no special tax incentives on EFP and its general system of taxation neither promotes nor inhibits the development of EFP

+1 The Member State has (some) tax incentives on EFP, but their impact is not clear. This indicator alone might seem inadequate for rating since tax incentives could be ineffective and, therefore, have no impact on the practical implementation of EFP schemes. However, it does show the interest of the lawmaker in the issue and their willingness to adopt amendments, which could increase the effectiveness of tax incentives.

+2 The Member State has some tax incentives on EFP and the difference between the effective tax rate on a salary increase and that on an increase in income of the same value accruing through financial participation (e.g., employee shares or profit sharing) is **significant** due to these specific tax incentives (in some cases the advantage would accrue only if transferred shares are held by the employee for a period of time). The effective tax rates are calculated for all Member States in a separate table. A difference of over five per cent shall be deemed as substantial.

+3 The Member State has tax incentives on EFP applicable to most enterprises and the criteria for these tax incentives are clearly defined and not restrictive.

+4 The Member State has effective tax incentives (as under +2 and +3) and, additionally, other instruments of fiscal support for EFP schemes.

Political acceptance and social dialogue

The attitude of social partners, political parties and governments is a classic soft indicator. For the success rating, negative, neutral and positive attitudes were taken into account.

-1 The government and/or social partners are opposed to EFP in the Member State.

0 Neither government nor social partners are interested in EFP in the Member State.

+1 Only one social partner supports EFP in the Member State.

+2 Social partners support EFP, thus is a part of social dialogue in the Member State.

+3 EFP is a part of social dialogue and is substantially supported by the Government.

Differentiation between the level of support for ESO and PS is important, because the level of support for different forms of EFP differs in most Member States, as it can be expected that the respective incidence of PS or ESO will also differ correspondingly. According to the ranking of Member States in this classification, four clusters of countries may be identified. Clusters 1 and 2 comprise of the most successful EU Member States, whereas Clusters 3 and 4 comprise of least successful Member States.

Cluster 1 (overall PS or ESO ranking over 7): UK, France, Slovenia, Finland, Ireland and since the 2023 update also Germany and Spain.

The Member States belonging to Cluster 1 have all introduced extensive support measures a relatively long time ago. National statistics and the data presented in Chapter III show that the measures have led to a relatively high level of offer especially with regards to those schemes, which enjoyed specific support. A good example is employee ownership in the UK or profit sharing in Finland. In France, the level of offer is high both in profit sharing and employee ownership, although, strictly speaking, only profit sharing is linked to generous tax incentives, but profit sharing is share-based in most cases.

Cluster 2 (overall PS or ESO ranking 5-7): Lithuania, Netherlands, Austria, Latvia, Italy, Belgium and since the 2023 update again Denmark.

The Member States in Cluster 2 are prominent in the different cross-country data sources or, at least, in the middle field of the benchmarking in Chapter III, with the exception of Italy. It can be explained by the fact that Italy – unlike e.g., the Netherlands – has introduced the supportive measures quite recently, the acceptance among social partners is slowly growing with discussion at national level being recent, and the absolute numbers are still relatively low, although the increase is quite high. Interestingly, Denmark, after abolishing EFP incentives in the aftermath of the financial crises reintroduced them.

Cluster 3 (overall PS or ESO ranking 3-4): Romania, Poland, Hungary, Sweden, Greece, Malta, Croatia; since the 2023 update Luxembourg, Czech Republic, Slovakia.

It is remarkable that the Czech and Slovak Republics made significant progress in policy support, an indication that EFP is changing its role in Central Eastern Europe.

Cluster 4 (overall PS or ESO ranking 2 or less): Portugal, Bulgaria, Cyprus and Estonia.

Among countries from Clusters 4 (generally ranking low on the benchmarking, see Chapter III) there has been no improvement, and they can be considered as passive.

3. Comparison of country clusters with the ECS 2009 cross-country data on the offer of EFP schemes

Based on above classification of the Member States measuring the degree to which they facilitate or promote EFP a rating can be applied to define best practice principles and obstacles to the development of EFP in the EU and formulate policy recommendations for further promotion at the EU level. It should be stressed, however, that the notion of "success" measured with the three criteria applied (see Table 14 above and the summary of the methodology thereafter) reflects only a selection of the different factors that influence incidence of these schemes. Especially with regards to the impact of the different size of enterprises, the results must be treated with caution. To illustrate this effect, the relationship between the ranking for individual countries and the offer of EFP according to the ECS 2013 (for ESO) and the 2019 (for PS) dataset is looked upon using scatter diagrams; this database is chosen as it covers firms with more than ten employees, with about half of the firms in the sample being small with less than 50 employees.[400]

a) Limiting factors

Before discussing the relationship between the ranking and the ECS offer, a number of limitations to the observations should be noted. In particular, the **dynamics of the changes in legislation on EFP over time should be taken into account**, i.e.:

- Whether measures have been enacted recently or a relatively long ago.

The introduction of supportive measures usually lead to the spread of EFP plans only after a certain period of time, which is needed for spreading information on EFP and supportive measures and the gradual acceptance of EFP by the owners and managers of enterprises. This period of time can be reduced by an information campaign, including sharing of best practice, also from other EU Member States. Once the measures are widely known and accepted, EFP develops its own dynamics and grows steadily over time as the examples of countries from Cluster 1 illustrate (see Chapter III, Figure 2 and Figure 6).

- Whether the offer of EFP in Central and Eastern European countries has its roots in previous developments, e.g., privatisation.

In all Central and Eastern European countries, mass privatisation, together with supportive measures for employees, took place during the early transition period, which resulted in some degree of employee ownership.[401] After this period, employee share ownership has not been supported in most of these countries. Thus, the level of ESO does not necessarily reflect the current level of support but may be a remnant of the previous privatisation process. As far as dynamics are concerned[402], it should be noted that without additional supportive measures the level of the remaining ESO has decreased and is still declining. On the other hand, supportive measures after privatisation, as in Slovenia, led to a relatively high level of employee share ownership.

b) Relation between countries' classification and the offer of EFP

The results are presented in the form of separate scatter diagrams for ESO and PS in Figure 19 and Figure 20. The units of measure for ESO and PS are the percentage of companies offering such schemes to their employees (the incidence of EFP) in each country. Generally, countries with a long tradition of promoting EFP, such as the UK, France, Ireland, and Slovenia, have a high level of offer of approved schemes. The vertical axis in both diagrams shows the overall ranking of countries in the three measures discussed earlier with the rankings indicated in Table 14.

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[400] In the 2009 ECS data, for PS, the number of observations is 18,777, of which 10,475 are small-size companies, 5,274 are medium-size companies and 3,028 are large-size companies. For ESO, the number of observations is 17,869 (as Portugal was excluded here), of which 9,954 are small-size companies, 5,003 are medium-size companies and 2,912 are large-size companies.

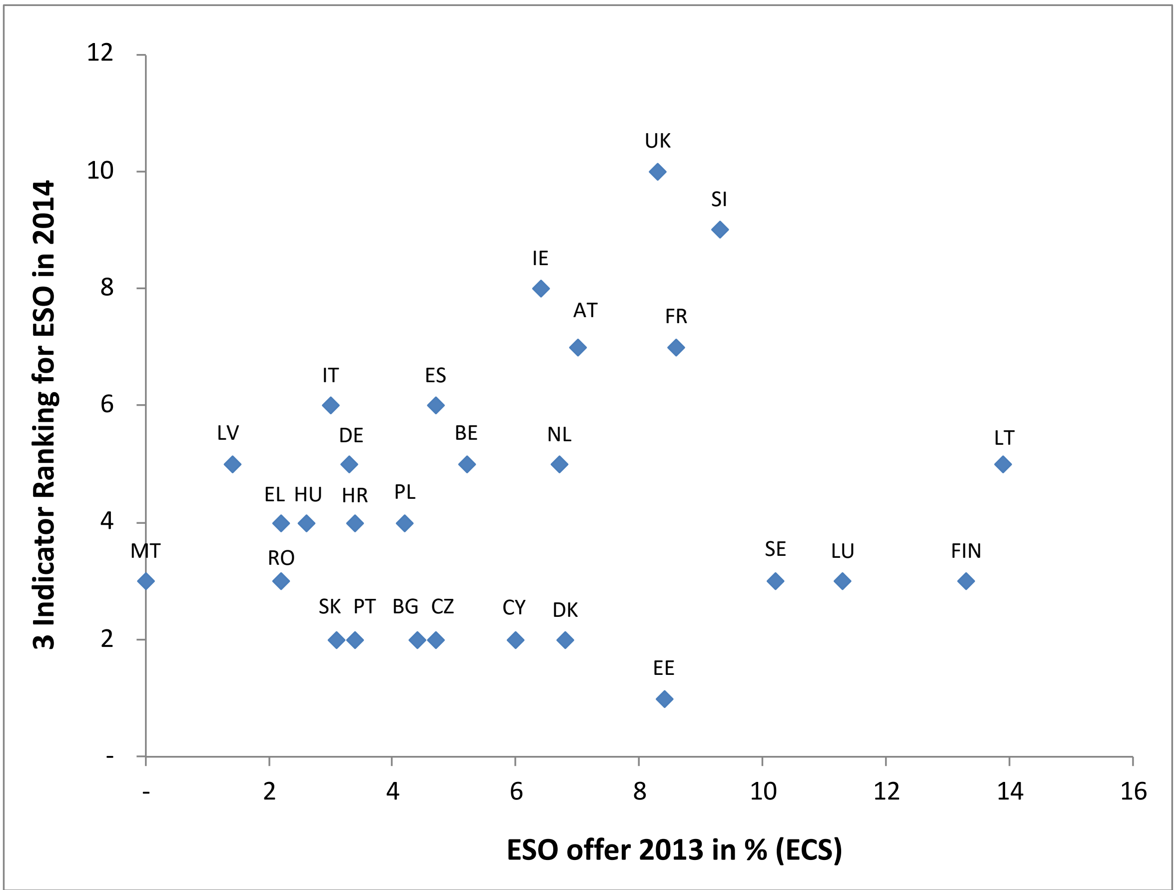
[401] In some countries, ESO at the first stage of privatisation was exceptionally high, as in Lithuania where employees owned the majority of shares in 92% of firms in 1994/95 (Lithuanian Ministry of Economics).

[402] Referring again to the example of Lithuania, the number of firms with ESO plans shrank to 4% in 2007. Whereas in the first phase of transition, capital constraint for restructuring and the low level of wages usually inhibited the development of EFP, later lack of institutional and legal support led to a steep decline (Mygind, 2012, pp. 1614). However, as the Country Profile shows, attitudes seem to change.

Employee share ownership

Figure 19 shows that in countries and clusters with better overall environment, firms are generally more active in offering EFP schemes to employees.

Figure 19: Three-Indicator Ranking 2014 vs. Employee-share offer in 2013 (ECS)



Source: Own research. **Nota bene:** Since the question on ESO was dropped from the ECS 2019 Survey we use the 2013 data and combine it with the 2014 ranking from the DG MARKT Pilot Project.

In particular, Cluster 1 (with the exception of Spain and Germany) and Cluster 2 (with the exception of Latvia and Italy) have the highest incidence of ESO in 2013. **France** is prominent in ESO and PS, given that profit sharing is generally share-based and – at the same time – the incentive system promotes both types of schemes. **Spain** is a good example for the **size-relatedness of ESO**: Although belonging to Cluster 2 ESO relatively low in the ECS sample with half of the companies being small but higher in CRANET (compare Figure 2 with Figure 11). The low incidence despite a high level of support, can be explained as the micro-enterprises (Sociedades Laborales having an average size of 4.5 employees), which are mainly addressed by the supportive measures, are largely excluded from the data on offer of EFP. The same applies to **Italy**, however, for a different reason. Here, the promotion of ESO was introduced with a vivid public discussion only in 2009 and faces regulatory volatility which is detrimental to acceptance in SMEs; at the same time large companies have increased the deployment of ESO (see Figure 11 and the Country Profile Italy).

The incidence of ESO is higher than expected in Sweden and Luxemburg. The **UK** does not have the highest level of offer in employee share ownership, although it has the highest ranking based on support measures. This is perhaps because not all types of approved employee share ownership plans (probably only the Share Incentive Plans—SIP) were included in the ECS survey. The share ownership plan EMI, with the highest growth rate in the UK, has been developed especially for small (start-up) enterprises with few employees and is not properly reflected. In **Finland**, the funds accumulated on individual employee's accounts of personnel funds are considered as profit-sharing schemes, although they can be also used for buying shares. **Sweden** has few supportive measures, but a long tradition of EFP since 1962. The legislation on Profit-Sharing Foundations, though dating from 1967, is still in force and employee shares can still be acquired through Profit-Sharing Foundations. **Bulgaria** seems to have a residual employee share ownership from the privatisation process, as Bulgarian companies today offer only few share ownership plans.

Profit sharing

The corresponding figure for profit sharing, Figure 20, shows the proportion of firms in each country offering profit-sharing schemes vs. the overall ranking of the supportive measure on different clusters.

In the profit-sharing diagram, only to a limited extent, Cluster 1 – with the exception of the UK and Ireland supporting only share ownership or share-based plans – and partly Cluster 2 (with the exception of Italy and Belgium) correspond to the overall ranking of different countries. (The high incidence in the Czech Republic and Bulgaria are difficult to explain and may be due to a small country sample.) In this case, **a general explication for the missing correlation has to be considered**. Profit sharing is less costly to implement and – among others for this very reason, as it seems – less size-related than employee share ownership; the PS incidence in the ECS and the CRANET datasets are much more similar than that of ESO despite the different firms size the two surveys capture (compare Figure 6 and Figure 11). Consequently, as we see from the classification of countries in Table 14, profit-sharing schemes enjoy fewer support measures across the EU than share ownership schemes.

Of course, there are also individual reasons. The **UK** – although prominent in share ownership – has a low level of offer in profit sharing, since HRM approved schemes in the UK are share ownership plans. In the **Netherlands**, the low incidence on the basis of ECS data is probably due to a plan definition problem, since the incidence of profit sharing in the Netherlands according to ECS is much higher than according to national statistics (42% vs. 7%). The Dutch plans are savings plans, which can apparently be interpreted as either share ownership or profit sharing. **Hungarian** authorities and research institutions collect detailed and differentiated statistics[403] on the issue, which deliver an explanation for the relatively high level of profit sharing in Hungary in the ECS data. The reason is the unlimited definition of profit sharing used in the ECS research. According to the ECS data, 32% of Hungarian firms have profit-sharing plans, but national statistics show that only 7% of these plans are pre-defined and linked to enterprise profit, thus are genuine profit-sharing plans.

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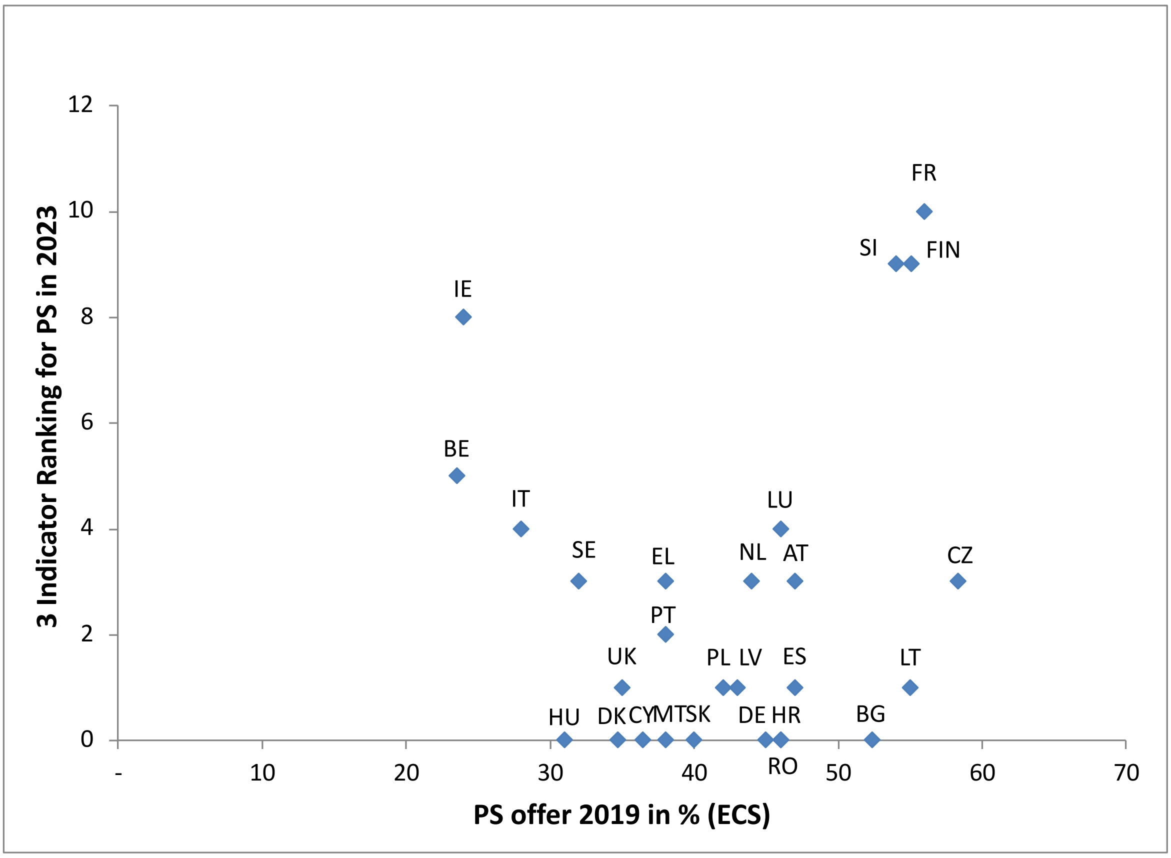
[403] Only in few MS, special statistics on different forms of EFP are collected by state authorities. Usually, only statistics on the volume of tax incentives are collected by finance ministries or other tax authorities. Even if national statistics are available, they are often not comparable with the international survey data, as different criteria are used. However, some national statistics can help explain the unusual ECS data.

Figure 20: Three-Indicator Ranking 2023 vs. Profit-sharing offer in 2019 (ECS)



Source: Own research. **Nota bene:** Since the question on PS was included in the ECS 2019 Survey we use the 2019 data and combine it with the latest 2023 ranking from this report.

4. Interpretation of the results

As one can see, the two scatter diagrams (Figures 19 and 20) convey different messages. The diagram on ESO displays some degree of correlation, showing that countries with high value of one variable mostly have high value of the other variable, indicating that countries with high offer do have high ranking, too. The diagram on PS, on the other hand, does not show any correlation, meaning that countries with high offer do not necessarily have high ranking, too (many of them have low ranking on the composite index). This is consistent with the experience in many MS, showing that PS is less dependent on supportive measures than ESO, and is often introduced without them. For ESO – especially in smaller companies, as the incidence is strongly size-related (see Figure 4) – the opposite is true: Only when supportive measures are in place for a long period of time without substantial changes, the ESO is likely to be sustainable.

More generally speaking, this message seems to have been acknowledged by policy makers as more and more countries have adopted support measures over the last decade and in particular for ESO schemes. Of the 12 countries that have improved their support for EFP over the last decade (see Table 10 capturing the difference between 2014 and 2023) as many as eight introduced measures to support ESO while only five did so in regard to PS. Interestingly in none of the countries under observation did the conditions worsen which is in line with the general positive dynamic of EFP over the last decade.

VIII. Towards a European Employee Stock Ownership Plan (European ESOP)

Jens Lowitzsch, John D. Menke, Denis Suarsana, Graeme Nuttall, Tej Gonza, Thibault Mirabel[404]

1. Context and approach

In its 2020 SME Strategy (COM(2020) 103 final) the European Commission once more commits to facilitate business successions in the Member States of the European Union: *"It is estimated that every year, around 450,000 SMEs change ownership affecting more than two million employees. However, in a third of cases the transfer is not successful and, as a result, Europe loses around 150,000 enterprises and 600,000 jobs.*[405] *The reasons are often lack of early preparation, difficulty in finding a successor, and unfavourable tax and regulatory measures. The Commission will continue its work on facilitating business transfers and will support Member States in their efforts of establishing a transfer-friendly business environment.*[406]*"*

Against the background of the pressing problem of business succession this Chapter explores employee share-ownership schemes regarding their potential for business transfers. We propose a European approach, that is, a European Employee Stock Ownership Plan (EU ESOP). The Proposal is part of a wider initiative building on four Commission funded projects on EFP as well as a follow-up of a 2012 European Parliament study on EFP and a 2014 European Parliament Pilot Project implemented by DG MARKT.[407] It is a response to the Council Recommendation of 7 December 1994 "on the transfer of small and medium-sized enterprises"[408], Commission Communica-

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[405] Extrapolation based on Business Dynamics: Start-ups, Business transfer and Bankruptcy, Final report 2011.

[406] Directive on cross border conversions, mergers and divisions (EU) 2019/2121 adopted 27 November 2019.

[407] "Employee Financial Participation in Companies' Proceeds", J. Lowitzsch, I. Hashi et. al. 2012, Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy; J. Lowitzsch, I. Hashi et al., Study on the Promotion of Employee Ownership and Participation, DG MARKT Brussels 2014.

[408] 94/1069/EEC, OJ No C 400, p. 1; sales to employees were also defined a key area in the Final Report of the MAP 2002 Project, DG Enterprise, "Transfer of Businesses - Continuity Through a New Beginning", 2003.

tions[409], a 2003 European Parliament report[410], and a 2018 European Parliament Own-Initiative report[411] all explicitly calling for the sale of businesses to employees.

An ESOP is a financing technique that employs an intermediary corporate vehicle and facilitates the involvement of individual investors through a trusteeship. It is a type of investment transaction that may use external financing, thereby achieving the benefit of financial leverage. The ESOP was applied for the first time in 1956 with spectacular success in the US by its innovator, Louis O. Kelso, a business and financial lawyer turning the employees of a Californian newspaper chain into (co-)owners buying out the retiring owners. It is Kelso's best-known financial innovation, that until today enabled millions of American workers to become (co-)owners of their employer companies and is considered best practice for business successions. The ESOP repays the acquisition loan not from wages or savings but from the future profits of the shares acquired. Today the ESOP is an integral part of American corporate finance with around 6,467 plans, covering about 13.9 mln. participating employees holding around USD 1.833 trillion in assets as of 2020.

Share-ownership schemes[412] involving some sort of intermediary entity (special purpose vehicle) are the most sophisticated vehicles of employee share ownership. The cost of designing, implementing and eventually administrating such a scheme depends again on the chosen corporate vehicle. In the case of the US ESOP for example these costs may be considerable and, therefore, it is recommended for firms of medium size or larger. However, implementing business successions with cooperatives as intermediary entity or via Sociedades Laborales is also an option for micro-enterprises.[413] More generally speaking, a consistent and transparent regulatory framework is required to keep the costs of setting up a genuine ESOP or any similar entity as low as possible. In an ESOP, typically some type of share-based profit-sharing is combined with a fiduciary entity. The latter ensures an internal market for these shares so that they can be 'recycled' for the allocation to new employees, either sold by retiring owners or retiring employee shareholders.

As legal systems across the EU – despite harmonisation of company law – still have important differences often rooted in cultural and economic traditions, there is no one-size-fits-all concept for a European ESOP. An ESOP applied for business succession, therefore, has to be adapted to the regulatory environment of each Member State and to the specific needs of the given business succession setting which is what this Chapter does.

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409 Reiterated in that of 28 March 1998 "on the transfer of small and medium-sized enterprises" (OJ C 93), that of 14.03.2006 "Implementing the Lisbon Community Programme for Growth and Jobs, Transfer of Businesses – Continuity through a new beginning" (COM (2006) 117 final).

410 See Resolution of 5 June 2003; P5-TA (2003) 0253.

411 The role of employee financial participation in creating jobs and reactivating the unemployed, European Parliament resolution of 23 October 2018 on the role of employee financial participation in creating jobs and reactivating the unemployed (2018/2053(INI)).

412 For the purpose of this comparative discussion, we distinguish between a) direct individual share ownership as, e.g., in employee stock purchase plans, b) individual share ownership mediated through a SPV providing individual claims over reinvested net income through individual capital accounts, e.g., in a US-ESOP, and c) indirect collective share ownership as in an employee ownership trust where no individual has an interest in a specified allocation of shares.

413 Coop legislation exists in all EU Member States. Low-threshold limited liability companies are today recognised in most of the Member States; see Lowitzsch, Dunsch, Hashi (2017), Annex II.

a) Aim and Ambition

Different legal systems offer different legal solutions for the required utility of a business succession tool involving ESO plans facilitating substantial participation in equity by all or the majority of the employees of a firm. The various underlying concepts may at time be confusing as they involve seemingly similar terms for, however, at times different outcomes. A prime example is the difference between the Anglo-American institution of the trust and its civil law fiduciary counterparts, be it an alternative – albeit very similar – concept as the German Treuhand or an emulation as the French Fiducie introduced in 2007. While trust law is based on the concept of split ownership the latter have a similar utility but differing underlying concepts, both more limited and less complex, variations, which, however, for the purpose of the European ESOP constitute no obstacle.

Instead of trying to describe the functionality of each legal concept in detail requiring an in-depth comparative legal analysis that would not serve the purpose of this Chapter, i.e., to formulate a policy approach, we chose a functional analysis following the main objectives of the variants of the ESOP concept. The European Employee Stock Ownership Plan in this context should, thus, be understood as an umbrella term for a business succession concept based on employee share ownership that – depending on its finality – may take different legal corporate forms; when we refer to the original ESOP, invented by Louis O. Kelso in the 1950s we speak of the US ESOP. Said structural distinction according to the desired function most importantly pertains to the three following issues:

(i) Type and way of distribution of benefits to the employees involved, i.e., whether

- it concerns a company's equity itself (or at least allowing capital appreciation rights) or the profits of the undertaking;
- it is immediate, deferred or in connection to a specific purpose, e.g., retirement.

(ii) Flexibility of the framework conditions, i.e., whether they

- are durable and cannot be undone by the contracting parties without approval of the fiduciary, or can be conceptually changed by the will of the plan participants;
- are compatible with other types of owners, (e.g., entry of external investors).

(iii) To what extent employees participate in decision-making.

In practice, there are seven types of legal vehicles that lend themselves to realise above mentioned different objectives, namely the Anglo-American trust, be it an employee stock ownership trust (ESOT) or an employee ownership trust (EOT), the French employee ownership mutual fund (EOMF, in French FCPE), the Austrian civil law foundation, the Spanish Sociedad Laboral (SL), the cooperative (COOP), and the closely held limited liability company (LLC, implemented in an ESOP context in combination with a fiduciary). Each of these legal vehicles – depending on the country of operation and the corresponding regulatory environment – can be employed to implement the European ESOP to realise the different desired functions according to their inherent characteristics.

Table 15 gives a generalised overview of the prevalent functional settings, but it has to be kept in mind that in some cases combinations are possible. Furthermore, the question of implementation cost which, depending on the vehicle and the governance model, can be significant[414] is the more general issue concerning company size is. However, the costs of setting up the corporate vehicle have to be compared to those of the operation of the ESOP variant; while for example the setting up of a trust may be costly the administration of accounts and share transfers are associated with limited costs. This is illustrated by the contrast to LLCs as ESOP vehicle, where the notarial certification of share transfers (which in some countries like Italy and France is not an obstacle anymore) has been an obstacle to ESO in SMEs and thus to ESOP implementation (this led to fiduciary solutions, discussed more in detail below under c)). Therefore, the row on implementation cost should be treated with caution.

Table 15: Overview of legal vehicles according to desired function of the EU-ESOP

Legal vehicle / Function	US, UK, IR, Malta		Civil Law countries				
	EOT	**ESOT**	**Foundation**	**EOMF (FCPE)**	**Cooperative**	**Sociedad Laboral (SL)**	**LLC + fiduciary**
Distribution of profits: equity vs. cash	cash	equity	cash	equity	capital appreciation*	equity	equity
Benefits: immediate, deferred, tied to aim	immediate	deferred, at retirement	immediate	deferred	partly deferred	immediate	deferred
Durability	perpetual	dispositive	perpetual	dispositive	perpetual	dispositive	dispositive
Changeable by participants	no	no	no	no	no	yes	depending on statutes
Participation in decision making	defined by statutes	defined by trust deed	delegated / defined by statutes	delegated representtation	one-member-one-vote	voting proportional to shares held	defined by fiduciary agreement
Compatibility w. other owners	low	medium	medium	high	medium	medium	high
Cost: Implementation / operation	high / low	high / medium	high / medium	high / medium	low / low	low / low	low / medium

Source: Own elaboration. * As in cooperatives membership is not based on share ownership it is more correct to speak of capital appreciation rights here.

b) Conveying Employee Share Ownership through an Intermediary Entity

In countries with an Anglo-American legal system the intermediary entity conveying employee's interest is a trust. In countries with continental legal tradition the intermediary entity is a special purpose vehicle that can have different legal forms, most commonly a closely held limited liability company, be it generally or in the specific case of a Sociedad Laboral[415], an employee buy-out mutual fund[416], a cooperative[417] or

[414] For a medium-sized US ESOP, the installation costs are about USD 40,000 with the annual administration costs, including appraisal, ranging to about USD 15,000. For smaller firms the on-going annual appraisals cost around USD 5,000. Information provided by Menke & Associates, Inc., San Francisco, CA.

[415] The Sociedad Laboral as a LLC is suggested here as a concept for business succession in micro-enterprises where the target company of the buy-out is a partnership or a single owner.

[416] Above all the French "FCPE de réprise", an employee buyout mutual fund specifically designed for enterprise successions. Fonds commun de placement d'entreprise or FCPE are a specific type of Undertakings for Collective Investments in Transferable Securities (UCITS) at enterprise level reserved to its employees; at the EU level UCITS are regulated by Directive 2001/107/EC and 2001/108/EC.

[417] For a technical description of the Slovenian Coop-ESOP, see Ellerman, Gonza, Berkopec, (2022); available at: https://link.springer.com/article/10.1007/s43546-022-00363-7.

a foundation.[418] The choice of the legal vehicle depends on (i) the tradition and customs of company law, (ii) the overall aim agreed between the employer and the employees and (iii) on the regulatory framework conditions in the given country.

All entities but the trust inherently carry a different extent of membership rights for the participating employees which ranges from delegated representation for the foundation and the buy-out mutual fund, shareholder rights pro rata for the LLC (modified via the fiduciary relationship) and the one-member-one-vote rule for the cooperative; in the case of trusts the extent of the membership rights is stipulated in the trust deed or the statutes. The absence of trust legislation creates two additional challenges that need to be resolved if the intermediary entity is a) a corporation by shares: the fungibility of the shares avoiding registry and notarisation fees (easy transferability); b) a cooperative or a foundation: the liquidation of the capital interest of the participating employees (cashing out).

The trust has the advantage of combining the functions of share acquisition (possibly leveraged using single source financing) and administrating the equity interest (in the case of the ESOP as legal owner for the employees as beneficial owners). The buy-out mutual fund, the foundation, and the cooperative yield a similar result where the intermediary entity alone provides the vehicle for the buy-out <u>and</u> the instrument for the administration of individual capital accounts including facilitating changes amongst the participating employees. Only the closely held limited liability company as intermediary entity requires an additional contractual fiduciary to ensure both functions while ensuring reasonable transaction costs.

c) Excursus: Adapting the trust to continental law – Closely held limited liability company in combination with a fiduciary

The LLC coupled with a contractual fiduciary requires two corporate entities since the fiduciary for liability reasons as a rule will not be a physical person[419]: (i) a holding LLC that acquires the shares from the retiring owner and (ii) a fiduciary LLC that holds the shares of the holding LLC on behalf of the employees. Similar to a trust, in the case of the LLC coupled with a contractual fiduciary it is the fiduciary relationship that – if desired – enables a cautious and gradual transfer of involvement in management decisions while the responsibility for day-to-day decisions of business operations stays with skilled management (Kelso, Hetter Kelso 1991). The fiduciary relationship is thus also a tool for professionalization of decision-making processes on the part of employees, which at the same time ensures that employees vote their shares together (en bloc) after an internal consultation advised by an expert.

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418 It is important to emphasise that, although the statutory law governing these different types of entities is much harmonised across the EU, important differences persist. Therefore, the solutions described in this contribution need to be checked against the relevant national legislation of a MS in which the EU ESOP is to be implemented in particular as regards the rules pertaining to a) transferability of shares including the related transaction costs; b) the decision-making rights tied to the ownership interest held; c) where applicable, the (contractual) fiduciary relationship between employees and fiduciary.

419 The fiduciary typically takes the form of a fiduciary LLC administered by a managing director (Lowitzsch, Kudert, Neusel 2012). In this case the fiduciary entity has only one shareholder (i.e., its founder, often the initiator of the ESOP) shown in the list of shareholders at the registry court, with its sole purpose to represent the shareholding of the employee-shareholders in the holding LLC that acquires the shares of the employer company. The establishment of the holding LLC as intermediary entity follows the conclusion of fiduciary contracts between the employees as trustors and the managing director representing the fiduciary entity. From a tax point of view the fiduciary entity is transparent as it is the employee-shareholders who are the economic owners of the shares.

A fully fledged fiduciary shareholding occurs when a shareholder (here the fiduciary entity, i.e., the fiduciary LLC) owns the shareholding for the account of one or more other entities (here individual employee-shareholders) in the sense that he is entitled to the rights arising from the shareholding only in accordance with a fiduciary contract concluded with the employee plan participants (Criddle, Miller, Sitkoff 2019). As in the case of the ESOP trust (but unlike an “authorisation trust” or the “power of attorney trust”) in this case the separation of the trustee's external legal competence from his internal fiduciary duty is accomplished. The fiduciary entity has a dual role: a) in relation to the other shareholders (e.g., retiring owner, other shareholders of a family business, or strategic investors) she is the holder of the shareholder rights; and b) in relation to the participating employees as holders of the equity interest she is entitled and obliged to exercise these rights for their account. The employees can be described as holders of shareholder rights merely in the economic sense of the term. The fiduciary LLC is in every respect carrier of the membership rights (i.e., shareholder) and, consequently, it is the fiduciary LLC that is shown in the list of shareholders of the employer company.

d) Methodology

Before designing a flexible model regime for a European equivalent offering (a European ESOP) as a starting point one needs to examine to what extent the key elements of such a scheme are already regulated in the 27 Member States of the EU and the UK. Taking into account the different existing national rules on EFP in general and employee shareholding in particular is essential in order to develop a new European regulatory model, one that is both practicable as well as appealing to existing owners, workers and companies alike. Only if the rules of the European ESOP correspond with the practices and the requirements that need to be met in the Member States, will it find acceptance among employees, employers, and governments. The comparison of the different national regulations is based on the PEPPER country profiles updated as of September 2023 bundling information on the incidence of EFP schemes and on the respective legal and fiscal framework in each Member State.[420] A detailed illustration of the national regulatory frameworks decomposed regarding the mentioned categories can be found in Part 2 Chapter VI 1-28 of this report. This Chapter provides a summary of this comparison, emphasizing the existing differences and similarities that exist among Member States in reference to the regulation of ESOP schemes.

The following analysis includes only legislation currently in effect. Regulation that has been abolished either recently or already many years ago – as is the case in Denmark or most Central- and Eastern European countries – is not considered. Further, specific national schemes that exist in only one Member States and lack any resemblance with schemes in other countries are only incorporated insofar as they can be integrated into the developed system of categories. Finally, a number of countries do not provide any regulation on ESO or have only relatively few rules on the issue. Accordingly, they will be underrepresented in this comparison, while the analysis will be dominated by a smaller number of countries that have comprehensive legal frameworks on ESO. The results of the following examination of regulations will thus not suffice to design one of

[420] The country profiles have first been drafted in the context of the PEPPER III Report in 2006 and have subsequently been extended and updated on a regular basis by respective national experts. The profiles are also available for the UK and the US.

the possible European ESOP types, but they may well serve to choose the most suitable legal vehicle depending on the desired purpose.

2. The challenge: business succession in European SMEs

a) European Commission initiatives

Following the 1994 Council Recommendation on the transfer of small and medium-sized enterprises (SMEs)[421] a Commission Communication from 2006[422] stated that with the aging of Europe's population, *"one third of EU entrepreneurs, mainly those running family enterprises, will withdraw within the next ten years"*. This portends an enormous increase in business transfer activity affecting up to 690,000 SMEs and 2.8 million jobs *every year*.[423] Transfers to employees as a specific measure for facilitating business succession in SMEs has been highlighted as one of the main objectives of said 1994 Recommendation and in 2002/3 by the European Commission, explicitly stressing the importance of ownership.[424] The European Commission has worked on business transfers for over 25 years including it as a strategic issue in key milestones in EU initiatives as the Small Business Act (2008), the Entrepreneurship 2020 action plan (2013) and the SME strategy (2020).[425] Although an ESOP can be used to provide a minority financial stake to employees, as a business succession solution the main design requirement of the European ESOP must be one that can acquire and hold a majority or 100% interest in a trading company or group on behalf of all of its employees.

It is anticipated that because of the new forms of business finance now coming into use, transfers within the family will decrease, while sales to outside buyers will rise. The entrance of international investors into what used to be primarily domestic markets will broaden the range of potential buyers for European SMEs. But these enterprises are the backbone of Europe's national economies, cultures and traditions. Their sale to impersonal Private Equity funds[426] and strategic investors will affect not only the working lives of Europeans, but also their material well-being and the quality of their communities. This process is likely to threaten the successful regional structure

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[421] On the transfer of small and medium-sized enterprises, 94/1069/EEC, with explanatory note, Official Journal No C 400, 31. 12. 1994, p. 1; reiterated in the Communication from the Commission on the transfer of small and medium-sized enterprises, OJ C 93, 28.3.1998.

[422] Implementing the Lisbon Community Programme for Growth and Jobs, on the Transfer of Businesses – Continuity through a new beginning, from 14.03.2006 COM(2006) 117 final.

[423] Calculated by Extrapolations from the final report of the BEST-project on the transfer of small and medium-sized enterprises, 2002, which estimated that the annual transfer potential for the EU 15 was 610,000 businesses. E.g., the Transfer volume of enterprises is estimated for Germany around 354,000 over the next five years (Institut für Mittelstandsforschung, Bonn, 2005), for France around 600,000 for the next decade (Vilain, La transmission des PME artisanales, commerciales, industrielles et de services, avis et rapport du conseil économique et social, 2004). Final Report of the MAP 2002 Project (2003).

[424] One of the key areas defined in the Final Report of the MAP 2002 Project, *European Commission Enterprise Directorate-General*, "Transfer of Businesses – Continuity Through a New Beginning", 2003.

[425] The Commission put forward an SME strategy for a sustainable and digital Europe on 10 March 2020 with the aim to make Europe the most attractive place to start a small business, make it grow and scale (COM(2020) 103 final).

[426] The Volume of Private Equity transactions in Europe has been rising over the last years with 126 billion Euros in 2005 and a new peak of 178 billion Euros in 2007; source: Incisive Financial Publishing, 2007.

of European (family-owned) businesses[427] and will profoundly affect the European Community itself – its values, its vision and its effectiveness.

The growing number of Private Equity firms targeting Europe's small and medium-sized enterprises[428] makes a comparison of an alternate leveraged buy-out tool of immediate strategic importance. This alternate vehicle is the Employee Stock Ownership Plan. Although the ESOP and the Private Equity fund have some features in common[429], the two markedly differ in one crucial respect: they benefit different constituencies and have different economic and social effects. The Private Equity buy-out concentrates ownership of productive enterprises and the income they produce, while the ESOP broadens both the economy's ownership base and the distribution of income. The Private Equity buy-out increases the wealth of its own narrow constituency, while the ESOP improves the material well-being and economic security of working people and their families. The Private Equity buy-out is a short-term transaction aiming at restructuring and selling the target company to a third party – that, in turn, may be just another Private Equity Fund. The ESOP is a long-term commitment which ensures the continuity of the enterprise.

Quick profits for a few investment consortiums, whose participants are already well-capitalized, or incomes rising over time for employees motivated by the ESOP to make their enterprises more profitable and competitive? This is the choice confronting the European Union as it prepares for a massive transformation of ownership of the business enterprises that generate its economic prosperity.

b) The US ESOP as best practice for business successions

A full or partial ESOP buy-out provides an ideal vehicle to facilitate transitions in ownership and management of closely held companies. The ESOP creates a market for retiring shareholders' shares, which is of major importance to unlisted SMEs having no other ready source of liquidity. Moreover, ESOPs may easily buy-out one or more shareholders while permitting other shareholders to retain their equity position. This is one of its major advantages from the shareholders' perspective. At the same time, ESOPs give business owners the opportunity to diversify their investment portfolios without the costly process of going public (for US-ESOPs, see Ackermann 2002). There is no dilution in equity per share of current stockholders since no new shares are issued and all shares are bought at fair market value.[430] Finally, an ESOP is a sustainable alternative to a private-equity buy-out, generally considered short-termed and sometimes harmful to the interests of the employees and the well-being of local communities (Appelbaum and Batt, 2014).

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[427] Germany's Mittelstand - an endangered species? Focus on business succession, Deutsche Bank Research, current topics 387, 29.5.2007, p.1, download at www.dbresearch.de. See also "PES Priorities for the EU policy agenda 2008", adopted at the Party of European Socialists Leaders' meeting 21st June 2007, p. 3.

[428] The part of LBOs in the total funds raised in Europe reached over 68% in 2005. In contrast the amount of venture capital investments only represents 5%. See "Hedge Funds and Private Equity - a Critical Analysis", PSE Socialist Group in the European Parliament, 2007, p. 69.

[429] The ESOP, invented in 1956, is the prototype leveraged buy-out; the Private Equity form originated in the seventies to utilize tax advantages which the US Congress had passed to encourage the ESOP.

[430] Theoretically, there is a temporary loss in the potential of the company caused by the obligation of the loan, since the borrowed funds used for the buy-out otherwise might be used to finance further growth. It is unlikely, however, that a trade sale to an outsider, if at all possible, would trigger the same increase in productivity and profitability as a result of higher employee motivation.

Leveraged employee share ownership, on the other hand, as in the case of ESOPs, involves an additional element of risk. Whereas profit-sharing plans represent a variable financial burden, leveraged schemes require fixed loan amortisation payments regardless of the company's financial performance - a condition similar to taking on debt. In fact, such loans are treated as a liability if the company guarantees the loan or commits to future contributions to service it. Thus, if a company is not growing or becomes unprofitable, the repayment liability can threaten its ability to survive. Furthermore, in US ESOPs closely-held companies usually are obliged to purchase the shares of departing plan participants because of the absence of a public market for their stock (so called repurchase obligation).[431] In such a case the repurchase liability in a successful company generally increases over time as the appraised value of the company's stock rises, although it does not usually increase as a percentage of the company's free cash flow.[432] If a company does not plan adequately to meet this liability, it may be forced to make a public offering of its stock to eliminate the repurchase obligation, an expedient which is not only very expensive but also involves a loss of control and independence and the loss of opportunity to future employees (Smith and Burt 2009).[433] A better alternative is the creation of a "sinking fund", although in small companies it may be difficult to develop accurate actuarial assumptions (Ackermann 2002). Where a relatively large portion of the re-purchase liability is attributed to a few plan participants, the use of life insurance may be appropriate (Bye 2002).

Thus, the ESOP may be an attractive alternative to selling the business to outsiders, especially when there is a desire to keep control of the business within a family or a key-employee group.[434] As a trusteed plan, the US ESOP is designed to professionalise participation of employees in strategic questions while not requiring them to be involved in decision-making on a day-to-day basis. The trustee exercises the voting rights while the employees are the financial beneficiaries of the trusteed entity; of course, the board of directors should be able to elect, recall and change the trustee should they wish so.[435] Independently plan participants have delegated voting rights on a number of strategic issues like, sale of the stock of the company to a third party, a merger, recapitalisation or liquidation of the company. When transferring the US ESOP to European or other countries, however, different forms of the fiduciary entity will have different effects on governance depending on legal framework and the needs of the given succession setting. For smaller firms especially, it is much easier to con-

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[431] If local company law, as in the US, or bylaws of the company requires this. In Ireland, for example, departing employees have no right to be bought out at market value.

[432] The percentage of a company's free cash flow which will be required to service the repurchase liability on average over a period of years is fairly constant unless the multiple of the company's earnings (price / earnings ratio) alters dramatically. The average company will require cash equivalent to 7.5% of the value of the allocated stock in the trust for repurchase liability purposes each year. This is equivalent to a 7.5% dividend on the stock, but only on the stock already allocated to employee accounts in the trust (Lyon 1989).

[433] Thus, the ESOP transaction should be modelled in advance to ascertain that the company can afford this amount of "dividend". Otherwise, there should be a limit on how large a percentage of the company's total stock may be acquired by the ESOP. A growing company may require almost all of its free cash flow to fund future growth, but a company growing this fast may well want to go public.

[434] The ESOP may also be used to buy out dissident shareholders.

[435] In the US the trustee may, in fact, be the very person who has just sold some or all of his shares to the trust thanks to the strict rules of trust law Ireland, Malta and the UK; in countries without trust legislation, i.e, the broad majority of EU Member States this, however, would collide with corporate governance and corporate law and thus would be not admissible.

template a gradual transfer of ownership by creating a market for the shares of those who wish to sell at the present moment, while enabling those who wish to hold their shares to retain their equity interest permanently or at least until some later date. The result is the opportunity of gradually cashing out without giving up immediate control.[436] The virtue of an ESOP is that it can easily accomplish a 100% buy-out over time without subjecting the company at any given moment to 100% leverage.[437] For that reason, the ESOP has been called the "*ultimate instrument for succession planning*" in the US (Frisch 2001).

As of 2020, the number of US ESOPs was 6,467 with 13.9 mln. participants holding USD 1,833.8 bln. in assets (see US Country Profile). Over the last decades the population of US ESOPs is relatively stable with little positive dynamic, and while many new ESOPs are created annually (NCEO reports that in 2019, 239 ESOPs covering 46.537 employees were created), a similar number is terminated every year. One explanation is that the population of mature SMEs seeking for a successor – and consequently that of companies suitable for an ESOP – is relatively stable over time. Another reason that their population was not growing recently is market consolidation with a large number of firms being bought by private equity firms resulting in a 50% drop in the number of independently privately owned companies over the last decade.[438]

3. Defining the core elements of an ESOP

ESOPs as a rule are funded by the company either contributing shares to the plan, contributing cash that the plan uses to buy shares, or by having the plan borrow money to buy new or existing shares. The schemes may be combined (Shannahan and Hennessy 1998), resulting in the following essential structure:

- The company establishes a fiduciary entity in favour of its employees.
- The fiduciary entity is usually financed by a combination of company contributions and borrowings. Company contributions often are part of a profit-sharing agreement with the employees. The fiduciary entity may borrow money directly from a bank or from the company, which in turn may take a loan from a bank or other lender. Shares are either acquired directly from the existing shareholders or by means of a new share issue. The loan taken on by the fiduciary entity is usually guaranteed by the company, but in some cases, it is without recourse to the company.
- The shares are first held collectively in the trusteed entity and are only allocated to individual employees' accounts, or distributed, after a particular holding period. This holding period may be either a matter for the trustees to determine, or it may be driven by the need to repay borrowings before distributing shares or by tax holding periods before the shares can be distributed free of income tax. Most commonly, it is a combination of all three.

[436] Once the loan is paid off, of course, most companies make some arrangement for the presence of employee representatives on the plan committee.

[437] One hundred percent buyouts are very difficult for most companies to finance without a significant part of capital from lenders who demand a very high rate of return (35%-40%). The costs for arranging the financing can amount to millions of Euros, which is certainly beyond the range of SMEs.

[438] Rooting in the fiduciary duties towards the beneficial owners ESOP fiduciaries must accept an offer above ESOP share price which led to many acquisitions.

- When a share-based profit-sharing scheme is used to distribute the shares, the shares are usually transferred by the fiduciary entity to the profit-sharing scheme without the profit-sharing scheme being required to pay for them (see the French FCPE for example). Alternatively, the company can make a payment to the profit-sharing scheme to allow the scheme to acquire the shares from the trusteed entity (as with US 401 plans).
- The loan may be repaid by direct cash contributions from the company to the fiduciary entity, or dividends on the shares held in the fiduciary entity.

a) Fiduciary Entity

Unlike a pension plan, which as a rule requires diversification, an ESOP is specifically designed to hold employer securities via a fiduciary entity. In Anglo-American countries the fiduciary entity is typically a trust; in countries with a different legal tradition, it can take the form of any other intermediary entity that can serve as a trusteeship. An ESOP can be used by a company which does not have a listing for its shares to create an internal market for the employees to buy and sell the company's shares. This can be done if the ESOP both distributes shares to the employees and also operates a market whereby employees can sell their shares and acquire further ones. The ESOP can provide liquidity to this internal market if it is also a buyer of shares in this internal market. The shares which the ESOP buys will then be distributed to employees in subsequent distributions. The creation of a market for the shares of an otherwise illiquid company makes the ESOP a financial tool which benefits both employees and the employer company.

As mentioned, the fiduciary entity can also be an entity different from a trust, e.g., a limited liability company or a cooperative, which, however, has implications for the taxation of individual employee-owners and their corporate rights (see Sections 1 b) and c) above). The choice of the form the fiduciary entity takes will depend in large part on the national regulatory framework but also on the specific succession setting and on how different types of fiduciary entities are perceived by the social partners in a given country. Regarding a cooperative, for example, the one-member one-vote principle may be seen as an obstacle where business owners and/or participating employees prefer voting rights proportional to their shareholding. (Of course, it should be stressed that – independently of the choice of the intermediary entity – voting is proportional to shareholding at the level of the operating company.) The European ESOP therefore only defines a generic standard special purpose vehicle, but with a distinct governance structure allowing for the execution of voting rights of the employee shareholders. The fiduciary agreement defines which decisions are retained by the employee shareholders and which are delegated. Typically, decision making for day-to-day operations will be left to the fiduciary together with the retiring owner and its management (i.e., the shareholders of the operating company). Thanks to professional advice and clear and simple rules, time-consuming involvement or expert-knowledge for strategic decisions is not required. While being protected from manipulation, at the same time, employees can gain knowledge from their active involvement; an example of such an apprenticeship is the introduction of open book management which requires training.[439]

[439] See Jack Stack with Bo Burlingham (2013) "The Great game of business".

b) Leveraged or not leveraged financing

An important feature of an ESOP is that it can be leveraged by taking out a loan or issuing a seller note to buy shares in the employer company. This leverage potential is most important because it can accommodate large transactions for the company and its shareholders while creating particularly sizeable capital ownership in employee accounts. The ESOP debt is funded by appropriately timed contributions from the company to the trusteed entity. Of course, any dividends earned by the stock may also help to pay off the loan, but this is more of a complementary element.[440] As with any other bank loan, ESOP loans must be repaid regardless of whether the dividends on the stock are sufficient to pay off the loan. By making the loan payments tax deductible to the corporation, as, e.g., in the US, the loan is repaid with tax-free income, in contrast to a conventional re-capitalisation loan that must be paid back with after-tax income (for US ESOPs, see Bachman and Butcher, 2002). Utilizing corporate credit to guarantee the loan which funds the acquisition of employee shares by the fiduciary entity and writing off loan repayments as expenses deductible from taxable corporate income substantially reduces the financing costs. Given the additional advantage that the shares are not sold to outsiders, thus eliminating the risk of loss of control, the ESOP solution in most cases will be preferable to a conventional bank loan. Of course, any of the objectives of an ESOP resulting in any percentage of shareholding from 1% to 100%, can be achieved on an unleveraged basis over time.

In a variation of the described loan structure in the US ESOP lenders often prefer to make the loan directly to the company, followed by a second "mirror loan" from the company to the trust (with the same tax results as in the case of a direct loan to the trust). The same can apply in a EU ESOP with the company making annual payments to the fiduciary entity in amounts sufficient to amortise the internal loan (from the company to the fiduciary entity). The amounts paid by the ESOP to the company to amortise the internal loan should – national tax law permitting – usually constitute tax-free loan repayments and can be used by the company to amortise the external bank loan. The "mirror loan" structure provides the lender with a stronger security interest in the assets pledged to secure the loan. In the case of default, the lender will be in a better position to defend against claims of fraudulent conveyance if it has taken collateral directly from the borrower rather than from a guarantor of the loan.

An ESOP, considered only as an umbrella term to cover a fiduciary entity set up by a company to put shares in the hand of its employees, is similar in many ways to a share-based profit-sharing scheme, but most importantly is not as limited. While the latter has only one source of funds (i.e., direct contributions from the employer company), the ESOP can be financed from such different sources as:

- A loan from the employer company, from a selling shareholder or from a financial institution such as a bank;
- Dividend earnings;
- Sale of shares to its related share-based profit-sharing scheme;
- Contributions from the employer company.

[440] If the P/E ratio is 5 and the interest rate is as low as 5%, a standard 7-year level-principal loan amortisation schedule would require P/7 + P x .05 or almost a 20% dividend in year one to service the loan.

Neither the US nor the European ESOP are based on employees personally making share purchases out of their salaries or other income.

c) Individual indirect employee ownership and individual capital accounts

The ESOP introduces two central features to a successful ownership scheme – it individuates shares to employees in the company and holds shares in a separate legal vehicle.[441] The first technical element is individual capital accounts (ICAs), designated to each ESOP participant. ICAs allocate the individuated claim over the net asset value or the market value of the shares of the underlying company held by the ESOP vehicle.[442] The system of ICAs allows employees to cash out the reinvested value after they exit or retire. While the claim over the reinvested value is personal to each ESOP participant, he or she does not hold the shares directly but through the intermediary fiduciary entity. Consequently, employees enjoy the right to income and capital appreciation of the shares, but transactions in the shares are regulated by the intermediate vehicle restricting individual transactions (Ellerman, Gonza and Berkopec, 2022).

The use of an intermediate vehicle, as well as simplifying administration of the shareholdings, can ensure the sustainability of employee shareholding. Experience from the privatization in the East and Southeast Europe (Ellerman and Stiglitz 2001) shows that if workers hold shares directly, they are inclined to sell or trade the shares under soft or hard pressures of external stakeholders. Rather than selling to outsiders, the ESOP buys back the shares and allocates them to current workers' ICAs. In this way, ownership is anchored with the current generation of employees, who at the same time are members of the local community. Rather than being dispersed, ownership remains with the local community, which aligns the interest of the business with that of its surroundings, leading to socially and environmentally responsible practices (Boukhima and Khallouki 2022; Burgess 1999; Hübner 2020; Sahasranamam et al. 2019; Stranahan and Kelly 2020). To maintain the sustainability of the ESOP structure legislative safeguards in the case of ESOP sell-outs, for example tax-clawbacks or requiring a large majority of employees to agree to the sale of ESOP stock should be considered. In summary, an intermediate vehicle can help prevent sales to outsiders as well as concentration of shares with management.

d) Roll-over mechanism vs. repurchase liability

The US ESOP originates as a special type of retirement plan typically with a repurchase obligation once employees exit or retire (see Country Profile US).[443] With long-established pension systems across Europe the EU ESOP is not primarily designed as a complementary element for retirement and thus not tied to a repurchase obligation. Contributions are scheduled to initially repay the loans/notes and subsequently to ensure new employees that decide to participate in the EU ESOP can acquire shares and those exiting are bought out (also mitigating the stochasticity behind repurchase obli-

441 Both crucial elements to prevent the failures of the historical "socialized" employee ownership models in Central Eastern Europe or those of "direct" employee ownership following during privatisation.

442 This claim over the net asset value presents a solution to the famous critique of self-management introduced by Furubotn and Pejovich (1970), since workers maintain the claim over the net income after it is reinvested (Ellerman 2020).

443 There are provisions allowing a part of the shares to be repurchased after the beneficiaries reach age 55 and in individual cases ESOPs were structured permitting employees to access ICA liquidity before retirement.

gation in the US ESOP) (Ellerman, Gonza, and Berkopec, 2022). Unlike the US ESOP, the EU ESOP can foresee a "roll-over" mechanism to stretch the repurchase liability evenly through time:

(i) ESOP contributions continue on a regular basis after the bank loan and/or note to the seller has been paid fully. In that moment, all the shares are allocated to ICAs and there are no shares left in the suspense account.

(ii) The intermediary fiduciary entity maintains liquidity through controlled cash flows from the employer company, which it uses to repurchase the oldest ICA shares from the employees on a first-in first-out basis.

(iii) As the oldest shares are repurchased from an ESOP participant (independently whether still an employee or not), these shares are redistributed to the active ICAs held by employees still with the company. Employees who left the company are excluded from new share (re-)distributions and are gradually paid out within the rollover system. When a new employee or a current employee decide to participate in the ESOP, he or she receives the shares re-allocated.

Since ESOP contributions are determined based on annual financial capabilities of the employer company and determine the size of the repurchase liability, the roll-over system ultimately controls for the liabilities. In other words, the ESOP contribution determines the repurchase obligation and not vice versa. At the same time, the rollover system solves the problem of “cashing out” when the intermediary entity is a cooperative or a foundation and allows equalising the ICAs among younger and older members, distributing risk more evenly. Finally, it gives the younger workers a more tangible motivation since they start receiving payments sooner.

4. Tailoring ESOP mechanisms to specific aims

Based on the main ESOP principles described in the preceding Section, each of the legal vehicles introduced in the introduction (see Table 15) can be employed to implement a variant of the EU ESOP depending on the desired setting and objective. To illustrate the key differences between the ESOP variants presented in this Chapter this section provides examples of how the ESOP mechanism can be tailored to specific aims; the choice of the examples is, of course, not exhaustive and above all serves the purpose to illustrate the great adaptability of the ESOP concept.

a) Indirect collective share ownership in EOTs

In 2013 the British Government reformed the Companies Act 2006 in favour of ESO plans and in 2014 introduced tax exemptions for “indirect” ownership of shares on behalf of employees, through Employee Ownership Trusts (EOTs). The EOT is a more restrictive form of the employee trust more commonly used in the United Kingdom (the so called “section 86 trust” because it meets the requirements in section 86 Inheritance Tax Act 1984). The differences between an EOT and a section 86 trust are acceptable in the context of a trust that is designed to acquire, and hold shares indefinitely on behalf of the employees. One additional restriction is that the EOT must not include a power for the trustee to make loans to beneficiaries. A key difference relates to who must benefit from any distribution from the EOT. A section 86 trust usually defines its beneficiaries by reference to employment with a particular body but can limit the class of beneficiaries to ‘all or most’ of the persons employed by the body concerned and only selected employees may, in fact, benefit. In contrast, in an EOT, essentially, every employee of the relevant company or group must be an eligible employee, except for certain excluded participators. A same terms requirement permits differing amounts to be paid to eligible employees, but every such employee must receive something if there is a distribution. The UK Government considered a change in English trust law to allow employee trusts to last forever instead of limiting their life to 125 years but deferred action on this idea. The EOT has had a significant positive impact in growing the UK employee ownership sector with the number of EOTs exceeding 1030 by the end of 2022.[444] Since 2014 the number of employee-owned companies in the UK has increased rapidly from under 200 in 2014 to in excess of 1,600 (by Autumn 2023), almost all of which are EOT controlled.[445]

The key difference between the US ESOP and the EOT is there are no allocations of shares by the trustee to individual employees. This simplifies the employee ownership model considerably, meaning annual operating costs are low. In all models, assuming employees are not expected to provide finance, the only source of finance to support employee ownership is company profits. Bank loans can be used to accelerate payments and provide working capital, but the loans will need to be repaid with interest from company profits. The US ESOP's recurring repurchase obligations are similarly satisfied from company profits. The trustee of any EOT, assuming it is a controlling shareholder, has scope to ensure company profits are applied as the trustee think is best aligned with an employee ownership ethos. In practice, in the UK this means paying out "surplus" profits as bonuses to all employees on a regular (typically annual) basis. In summary, once an EOT trustee has paid for its shareholding, company profits may be used to finance all-employee cash bonuses.

In business successions[446] the EOT can be an option for the European ESOP when it is not desired that shares eventually end up in the hand of outsiders and when the perpetuity of the employee ownership is the goal. The core mechanism of such an arrangement is the EOT: On the one hand, the trust sells shares to employees and possibly provides them with matching shares under an approved scheme. On the other hand, both employees and external investors are allowed to sell their shares only to the EOT, so that the EOT also serves as the only marketplace for the employer companies' shares. Employees are obliged to sell their shares to the EOT after leaving the company. Due to this mechanism, a pool of shares for the future 100% employee ownership is created within the EOT. However, employees cannot – as e.g., in the US ESOP – benefit from share appreciation beyond their employment. Thus, under this arrangement it is rather company profits during the time of employment that are shared with the current active employees via the EOT. The UK Government introduced a capital gains tax exemption and income tax exemption to promote employee ownership in the UK with in particular the former encouraging its use as a solution to the

444 https://goeo.uk/blog/how-many-employee-ownership-trusts-are-there-in-the-uk/, accessed Dec. 2023.

445 These latest figures were provided by Graeme Nuttall in December 2024.

446 The UK recognises another trust for business succession, the share incentive plan (SIP), build on the US ESOP model. The SIP is an "all-employee" plan requiring a trust deed to create a SIP trust, to hold the shares awarded to participants, a free share agreement (if there is to be an award of free shares) and a partnership share agreement (if there is to be a purchase of partnership shares by employees). In relation to using a SIP as a buy-out vehicle, there is a relief from capital gains tax for a person, other than a company, who sells shares to the SIP trustee and who reinvests the sale proceeds in chargeable assets (as defined) within a specified period; relevant conditions require the SIP trustee to acquire not less than 10% of the total ordinary share capital of the relevant company; for details see the UK country profile.

growing challenge of finding a business succession in SMEs; for more details and in particular the tax treatment, see the UK Country Profile.

b) Employee-buyout mutual ("FCPE de reprise") and employee ownership mutual ("FCPE simplifié") funds

In France, employee share ownership is mostly[447] acquired by means of profit-sharing plans as part of the overall system of EFP composed of the following major plans: "intéressement" profit sharing, "participation" profit sharing and "Plan d'epargne d'enterprise or PEE" enterprise savings plans (for details see the French Country Profile). Within this system, invested employee earnings and matching amounts of the employer company must be – and employee profit shares can be – transferred to mutual funds (Fonds commun de placement d'entreprise or FCPE)[448], usually managed by assets management firms, i.e., branches of banks or insurance companies, which invest the assets on the capital markets in shares or bonds of the employer company or of several different companies. In PEE it is furthermore possible to offer employees an option to subscribe to a capital increase at a subscription price with up to 20% discount of the fair market value using their savings and company matching contributions. If the employer company is not listed, the traditional non-diversified FCPE is obliged to invest one third of assets in marketable shares or bonds. There are however two exceptions: (i) "FCPE simplifié" (employee ownership mutual fund) – a mechanism guarantying the liquidity (e.g., by the enterprise) is installed, or the company buys back ten per cent of its own shares – or (ii) since 2006 the "FCPE de reprise" (employee buyout mutual fund) – all assets belong to employees planning to participate in a leveraged buyout. All plans must be broad-based (i.e., apply to all employees, with the exception of those with less than three months of service). A blocking period of five years (profit sharing, PEE) is compulsory and linked to substantial tax incentives, which generally include exemption from personal income tax and social security contributions and imposition of special social contributions of eight per cent for both employees and the employer company and on returns of 13.5% (instead of 32.5% without incentives).

The "FCPE de reprise" was introduced into the French system of EFP to allow employees to take over their employer company under preferential conditions allowing the fund to invest in unlisted shares of the employer company (Art. L.3332-16 Labour Code) or of a company of the same group (or of a holding company set up in view of its acquisition reserved to the employees. The "FCPE de reprise" can be invested up to 95% in shares of the purchased company vs. 67% in the case of the regular non-diversified FCPE[449]; thus, the liquidity reserve is limited to five per cent. The blocking period of sums allocated to the fund continues until the completion of the takeover of the company but no less than five years (as opposed to five years for the classic FCPE). A holding company is created to carry the debt needed to buy out the compa-

[447] However, it is possible to transfer free shares to employees; since 2006 such transfers are without a holding period and with a vesting period of four years. In privatisation, ten% of shares are reserved for employees and can be offered at a discount of up to 20% of fair market value.

[448] FCPE are a specific type of Undertakings for Collective Investments in Transferable Securities (UCITS) at enterprise level reserved to its employees; at the EU level UCITS are regulated by Directive 2001/107/EC and 2001/108/EC.

[449] FCPEs are usually at enterprise level whereas special rules apply to SMEs; they may be either diversified or non-diversified and while the company must offer the former the latter is optional.

ny; this is usually a S.A.S.[450], i.e., a "simplified joint-stock company" non-quoted and common in LBO transactions (similar to the British limited company and the US limited liability company). Prerequisite is the existence of a negotiated company savings plan (as opposed to a PEE unilaterally implemented by the employer) anticipating the "FCPE de reprise". At least 15 employees (or one third of employees in firms with less than 50 employees) must hold shares in the acquisition vehicle (holding) created. These employees may own unequal shares of the capital, and it is not required that the operation be offered to all employees.

The "FCPE de reprise" system contains some legal constraints and uncertainties that could explain why according to a statement by the Autorité des marchés financiers (AMF) until 2018 the only case registered was „La Redoute".[451] To promote the application of mutual funds in business successions, it is easier to structure the financing of the buyouts, especially those that are management-led, by using the "FCPE simplifieé". In comparison to the "FCPE de reprise", this modification of the non-diversified classic FCPE has no limit on holding unquoted employer securities, provided that a mechanism guarantying the liquidity is in place, or the company buys back ten per cent of its own shares. The only additional requirements are that the FCPE obtain a liquidation valuation at least once a year and that the FCPE give employees a two-month notice before publication in order to make subscription or sale orders. As the following example illustrates investors and financiers still may find management buy-outs where employees have an insignificant role more attractive.

c) Cooperatives as intermediary entity for the ESOP model

The Slovenian ESOP, which builds on the US ESOP, UK EOT, and Mondragon cooperative experience, provides a comprehensive blueprint for establishing sustainable broad-based employee ownership. The model focuses on the establishment of a cooperative as a legal entity and ownership vehicle, which holds a specified percentage of shares in the operating company – the ESOP cooperative. The Slovenian ESOP is a fully leveraged employee buyout mechanism, where the operating company finances the purchase of shares in the name of employees.[452] The ESOP cooperative becomes a shareholder in the operating company by purchasing a designated percentage of shares from the existing owners or the operating company itself (treasury shares and issuing new shares). The purchase of shares is financed solely through company contributions called ESOP contributions, minimising the financial burden. Membership in the ESOP cooperative is exclusively open to employees within the corporate group, all employees, upon meeting certain tenure requirements, it automatically terminates when an individual ceases to be employed, including in case of death. Membership in the cooperative and membership shares are non-transferable. The process of entering and exiting the ESOP cooperative is designed to incur minimal transaction costs.

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[450] Art. L227-1 to L227-19 of the French Commercial Code, which was rendered more flexible by Law of 15 May 2001 and most recently was reformed in 2009.

[451] Boucquet, V. La Redoute: le choix d'un FCPE «de reprise» inédit. Les échos, Sept 18. login 29. 7. 2023. (https://business.lesechos.fr/directions-financieres/financement-etoperations/credits/030546601858-la-redoute-le-choix-d-un-fcpe-de-reprise-inedit-313266.php)

[452] The upcoming Slovenian ESOP legislation anticipates a tax-clawback to disincentivize sell-outs. If the members (democratically) decide to sell the EC stock or dilute EC ownership, they must return a proportional part of the tax breaks on corporate income tax received in past 10 years in acquiring the stock by the EC.

The cooperative as vehicle allows simple and low-cost membership administration, with all members having individual capital accounts (ICA) that capture the appreciation of their shares.[453] This appreciation may vary among members. Alternatively, individual capital accounts can represent a debt owed to members upon exit, similar to the Mondragon model. Once the acquisition debt is paid back, the ESOP contributions remain in place with the board of the target company (operating company) deciding annually on profit allocation and the size of the contributions based on financial capacities of the operating company. ESOP contributions are used to *maintain* employee ownership by buying off the oldest shares on ICAs and re-allocating the shares to all the active accounts. New members gradually accumulate value/shares on their ICAs, while departing workers are gradually paid out without incurring heavy liquidity constraints upon their exit. The repurchase period, in principle indefinite, is established according to the ESOP's financial capabilities. The distribution of profits to members in varying amounts follows a distribution key that measures the individuated claim over the retained and distributed profits determined based on pay ratios within the operating firm. The ESOP cooperative members direct the decisions of their representative on ESOP-related matters, with each member having one vote. Their representative enacts these decisions at the shareholder level of the operating company with the vote proportional to the stock held by the cooperative.

d) Strategic shareholding via Employee Ownership Foundations

On 1 January 2018, the Austrian Employee Ownership Foundation Act (BGBl. I Nr. 105/2017), entered into force to flexibilise the framework for private foundations and at expand their scope by introducing a new form of private foundation with commercial purpose[454] – the Employee Ownership Foundation (EOF). One of the aims of this regulation was to make hostile takeovers more difficult, render Austria more attractive for businesses and secure jobs. The law reconfigures the rules for private foundations with commercial purpose as a whole.[455] For all or defined groups of employees, as of 1 January 2018, the free or discounted distribution of shares of the employer company up to a value of EUR 4,500 per year are exempt from tax and social security contributions conditional that the shares are managed under a fiduciary arrangement by the employee ownership foundation and that these remain in the foundation until the end of employment.[456] Furthermore, administrative costs covered by the employee ownership foundation are not considered taxable benefit of the employees. Finally, the transfer of the right to dispose of employee shares to an employee after the termination of employment by the employee ownership foundation is tax neutral within the

[453] In addition to ICAs, (partial) collective capital accounts are allowed in Slovenian ESOP to further decrease the risk of liquidity problems in financing the repurchase liability; only a portion of the retained profits are individuated to the workers, and a portion is collectivized similar to Mondragon cooperatives' structure.

[454] "Betriebliche Privatstiftung" is a concept in Austrian tax law meaning a private foundation, where the trustor's capital contribution comes from business assets and constitutes an operating expense.

[455] Report of the Finance Committee of the Austrian National Council on the 2017 Law on Employee Ownership Foundations https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_01722/fname_642954.pdf; accessed 3 January 2018.

[456] Hitherto, shares were exempt from tax and social security contributions up to a value of EUR 3,000 (having been increased in 2016 from EUR 1,640), if allocated directly to employees, not to a foundation. Existing employee participation schemes using an intermediate company, such as voestalpine Mitarbeiterbeteiligung Privatstiftung at voestalpine AG, had to bring about tax-neutral solutions through appropriate contractual arrangements.

above-mentioned annual limit. The EOF serves the collective warehousing and administration of employee shares of the companies concerned, not just the mere transfer of dividend income as in the case of the already established model of the employee participation foundation. In addition to the newly redesigned benefits for employees granting shares to employees bundled in an employee ownership foundation for the duration of their employment facilitates the formation and/or strengthening of a core shareholder with a uniform exercise of voting right. The allocation of shares and other assets by the company to the employee ownership foundation is exempt from the 2.5% capital transfer tax applied to assets transferred into a private foundation and corporate tax; the shares granted are deductible as operating expenses. The sole criticism of the new legislation is that its scope is limited to joint stock companies which, experts argue, might violate the constitutional principle of equality regarding limited liability companies.

The EOF – apart from the administration of the employees' shares – is entitled to hold shares of the employer company with a ceiling of 10%% of the voting rights in that company. Such shares, being initially held by the EOF under a fiduciary arrangement, must be successively transferred to the employees. To enable the employer company to financially facilitate the acquisition of shares by the employees ("financial assistance") in this context § 66a sentence 2 of the Austrian Public Limited Company Act now explicitly allows the employer company to advance funds, provide collateral or give loans with a view to the acquisition of shares "by or for" employees of the company or an affiliated company. The Austrian provision, which is based on the implementation of the 2nd Directive on Company Law, goes much further than the German equivalent provision, which covers only the share purchase "by" the employees themselves.

e) Business succession in micro-enterprises via Sociedades Laborales

A Sociedad Laboral (SL, worker-owned company) is a qualified form of conventional corporations, majority-owned by its permanent employees. Unlike a cooperative, an SL is based on shared ownership and is permitted to utilise non-employee capital. This makes it an ideal tool for business succession in partnership or micro-enterprises where the retiring owner(s) can gradually cash out and – for a transition period – remain shareholders in the SL while handing over the management to the new employee owners. Permanent workers must own more than 50 % of company shares while the minimum number of working partners is two and individual shareholders may not hold more than one-third of the capital (except in SLs partially owned by the State, Autonomous Communities or Local Authorities, in which case public ownership may reach up to 50%). In general, non-owner workers may not work more than 49 % of the hours worked by worker-owners. When a worker-owner leaves the company, his or her shares must be offered for sale internally, with non-shareholding employees having priority. There are two forms: *Sociedad Anónima Laboral* (SAL) with minimum equity capital of Euro 60,000 and *Sociedad Limitada Laboral* (SLL) with minimum equity capital of Euro 3,000. Like any other corporation each SL must establish a compulsory reserve for the compensation of losses of 10% of its annual net profits until it reaches 20% of the share capital; furthermore SLs are obliged to form a Special Reserve Fund amounting to another 10% of its net profits until the funding reaches 200% of social capital (other than to compensate losses these funds can be used to support the purchase of shares by non-owner workers). The remaining profits can be distributed between the members of the workers' company, attributed to a voluntary reserve to increase the company's own capital or used for any other legitimate corporate purpose.

Important for buying out retiring owners is that in Spain an SL may apply for an exemption from taxes and notarial deeds on asset transfers to the SL incurred in the start-up phase. Furthermore, workers' companies are exempted from: (1) notarial deeds on transfers to the company as well as notarial deeds on bond debts, and debenture bonds (including a 99% tax reduction when the worker-owned society acquires goods or rights from the company where the majority of its workers were previously employed); (2) taxes in connection with company formation and transformation of SLL to SAL or vice versa as well as capital increases (additional to a tax credit of 99% of taxes connected with transfer of shares to employees). Furthermore, pursuant to Art. 11.2. a) Corporate Tax Law tangible fixed assets, intangible assets and property investments affected by SLs in conducting their activities and acquired during the first five years from the date of qualification, may be depreciated freely. Finally, investments in fixed assets and the reimbursement of loan interests are supported by aids and subsidies.[457]

Another important element facilitating employee buy via SLs is that government grants facilitate the integration of unemployed persons as worker-owners as well as technical assistance and training. Unemployed persons can capitalise their unemployment benefits as a lump sum to start a new SL or to recapitalise an existing SL by joining it. Since September 2023, the requirement of prior unemployment was dropped, making it now possible for any employee to capitalise their unemployment benefits to set up a new or buy into an existing SL. However, there is a significant difference to conventional start-up subsidies for the unemployed in that SLs are set up not only by unemployed persons but also by ordinary entrepreneurs and typically involve external investors which account for 27% of their partners. Unlike conventional start-up subsidies for jobseekers, SLs offer not only access to capital but practical assistance and entrepreneurial advice to an unemployed person joining or setting up an SL. With respect to secondary employment, SLs have two structural features that differentiate them from ALMP start-ups: (1) they involve outside investments, a condition for growth; (2) they require a minimum of three partners as a condition of incorporation and are designed to integrate additional employees. According to employment data for 2008 – 2013, 1.3 additional jobs were created per founding worker partner.[458] In the Basque Country from 2006 to 2013, an average of 49 SLs were created annually, providing jobs for 164 owner-workers and 213 non-owner-workers. With annually on average subsidies of EUR 355,917 for 377 jobs this breaks down into a subsidy of EUR 944 per job created.

5. Commonalities amongst Member States and required national rules

As EFP is most often only regulated sporadically – if at all – most of the Member States do not govern general principles on the matter. However, where such principles

[457] Independently general fiscal incentives for SMEs and newly founded businesses introduced in 2013 also apply to the SL.

[458] The EEPO review (EC 2014) analysed a large variety of start-up subsidies to reactivate the unemployed existing in all EU Member States found an average rate of secondary employment of merely 0.2. Following the EEPO criteria Lowitzsch, Dunsch and Hashi (2017) found that in comparison SLs were superior in all indicators under consideration (all following figures from the Basque Country stem from this study).

are regulated, they reveal a number of similarities that are shared among the EU with regard to the basics of EFP. Only on a few issues and only in a few Member States do specific prerequisites or conditions exist. The purpose of this Section is to give an overview of both the commonalities and – where they exist – the prerequisites, starting with (the few) existing general rules, then discussing issues typically to be explored when setting up one of the European ESOP variants pertaining to share-based profit sharing, and fiduciary relations; the Section closes with an overview of rules and principles for intermediary entities.

a) General principles for share schemes

Range of application: There are no regulations on the range of application of EFP schemes in any Member State, with only one exception. In the Netherlands, individual share-ownership plans are reserved for listed companies. Non-listed firms that wish to introduce employee share-ownership are required to set up an intermediary entity that acquires and administers the shares. The lack of regulation on the issue means that all EFP plans are generally open to all company types in all but one EU Member States.

Eligibility: All Member States that have regulations on the issue of eligibility require EFP plans to be generally broad-based, i.e., open to all or at least to a majority of workers in the employer company (or an affiliated one) if they wish to benefit from incentives ("qualified plans"). Exceptions to the rule are allowed with regard to employees that have just entered the firm. For example, this applies to workers with less than three months in a company (France), less than one year (Belgium, Germany), depending on the type of award 18 months (United Kingdom), or even three years (Ireland). Some of these schemes are also accessible for retired workers or even for employees' family members.

Method of admission: In general, EFP schemes are voluntary for both workers and enterprises in all Member States. There are only two exceptions. In France, all companies with more than 50 employees are obliged to introduce broad-based profit-sharing. In Belgium, collective agreements may defect from the principle of voluntariness and introduce obligatory EFP schemes.

Principle of distribution: Most countries do not regulate the principle of what a company decides to distribute under EFP schemes. EFP may be based on profits, on a firm's turnover, EBIT or cash flow, or individual or group performance.

Connection to the system of remuneration: There are different legal rules on the relation of EFP to the system of remuneration in the MS. In Malta, profit-sharing is often explicitly considered as part of a worker's wage remuneration, while in Portugal, it is excluded from the system of remuneration. As EFP schemes are voluntary in almost all countries, it is clear that they are on top of regular wages. However, if shares or stock options are distributed at discount and not for free, participating employees need to invest parts of their savings or wage income in the plan. Often these worker contributions are limited.

Communication of the implementation of a scheme: With regard to communication and information requirements on EFP schemes, regular density varies as well. Few countries (e.g., Austria, Belgium, Germany, Greece and France) have specific rules on how the implementation of such plans must be communicated to employees. Such obligatory communication has to include information on the eligibility, the conditions of participation, the mechanism of distribution (including blocking and vesting periods) or the amounts payable to each worker or the prices for shares and stock options. Further, in Belgium, such communication statements have to include information on the relationship of the respective scheme to the company's employment development policies. In the UK, SIP participants must receive an official notice explaining how buying shares might affect State benefit entitlements.

b) Regulatory scope of possibly required national rules to be settled for ESOPs

General rules for share-based schemes – *Origin of shares:* Should companies be allowed to issue new shares or buy back their own shares in order to distribute them among workers? Or should employee shares be limited to shares already issued by the firm? Most of the existing rules go back to the transposition of the optional rules contained in the 2nd Council directive on Company law from 1976.[459] ***Evaluation of shares:*** How should employee shares be evaluated if they are not traded on the market? Existing rules typically stem from tax and accountancy laws. ***Mechanism of distribution:*** Should the distributed number of shares be equal for all employees or should it be dependent on specific characteristics, e.g., wage levels or a worker's position in the company? Should there exist an entitlement for workers to receive shares of the company regularly under such a scheme, or should this be subject to a single-case decision by the firm's management? Existing rules in this area often intersect with labour law and, therefore, may be compulsory. Share-ownership schemes employing an intermediary entity are either based on cash- or share-based profit sharing or on workers' acquisition of free or discounted shares. In the latter case, some countries allow for employer matching contributions. With regard to the distribution of funds, two different models exist. In the first model, the intermediary entity acquires and administers the shares until they are entirely paid for, subsequently transferring them to the individual employees (Ireland, France, Hungary, Romania). In this case, the intermediary entity is simply the transition to eventually setting up an individual share-ownership scheme. In the second model, the intermediary entity does not only acquire and administer the shares, but may own them, too. In the latter cases (often foundation models or EOTs), employees only command depository receipts of the share (i.e., a claim on the shares' value and returns) or receive cash bonuses based on the shares' return (Austria, Netherlands, Finland, United Kingdom).

Share acquisition – *Mechanism of acquisition*: Should the intermediary entity receive shares for free from the company or should it acquire them at a discount or even at market price? Should the company issue new shares or only contribute shares that are already existing? Should the company be allowed to buy back shares on the market in order to contribute them to the trust? Should the fiduciary entity be allowed to buy shares from outside investors? Should the fiduciary entity be allowed to sell excess shares to outside investors? In general, the intermediary entity acquires shares either directly from the company, in the course of a capital increase or on the market. Shares bought from the company may be acquired under preferential conditions, i.e., at discount or in instalments. If the intermediary entity is set up merely to facilitate share acquisition and distribution of individual employee shares, it is dissolved after the shares are fully paid and transferred (this was the rule until 2015 for the Hungari-

[459] Now Directive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law (replacing 2012/30/EU recasting the 2nd Council Directive on Company Law 77/91/EEC of 13 December 1976).

an ESOP). In France, if a company is not listed, the intermediary entity has to invest a minimum of one-third of its funds in marketable shares or bonds. Exceptions exist if the employer company can guarantee the trust's liquidity or if the trust is set up as a vehicle for an employee buy-out. In Finland, such diversification is possible, but not compulsory. ***Financing the Intermediary entity:*** How should the intermediary entity be financed? By a bank or company loan, by regular cash contributions or free contributions of shares by the company? If an ESOP is leveraged, how should the loan be repaid? Directly by the company, via cash contributions from the company to the trust, by income received from the sale of shares to a share-based profit-sharing scheme or by dividends from the shares held? Should the company be obliged to guarantee the loan, or should the fund's assets constitute a sufficient guaranty? Should a leveraged ESOP be subject to a minimum equity ratio? What happens in the case of bankruptcy or if the trust becomes illiquid? As in the case of individual schemes, collective employee share-ownership plans may be financed from a variety of funds, e.g., profits, reserves, equity, or employee contributions. In addition, entities holding shares on behalf of employees may also be leveraged, i.e., borrow funds to acquire shares. Where Member States have made use of the option, in accordance with Art. 23 (2) of the 2nd Council Directive, companies may advance funds or make loans to the trust or to guarantee a bank loan taken by the trust for buying employee shares. The trust (or the guaranteeing company) is fully liable for its debt, while the liability of the trust participants (the employees) is restricted to the value of their funds.

Rules for employees – *Employee Contributions*: Should employees be allowed to contribute to the acquisition by deferring compensation or making own additional contributions? If yes, should there be a ceiling to contributions? Should matching contributions by the employer be possible? If employee contributions are allowed, should the fiduciary entity be obliged to diversify or to take out an insurance policy to guaranty the contributed cash? Only two countries have specific rules on financial contributions by workers to share-ownership held in intermediary entities. In Ireland, an employee may deduct 7.5% of pre-tax salary to increase her share from an underlying share-based profit-sharing scheme. In France, workers may even invest 25% of their gross earnings in the scheme. In both countries, employer matching contributions are possible and regular practice. ***Holding Period:*** How long should the fiduciary entity hold the shares before they become disposable to the individual employee? What should happen with the dividends from the shares during that period? Should there be another blocking period subsequent to this initial holding period? There are no legally required holding or blocking periods in the majority of Member States. Only Austria stipulates a holding period of nine years and Ireland stipulates a range between two and twenty years, depending on the targeted tax-breaks. ***Termination of ownership:*** If an employee wants to sell her shares, should companies or intermediary entities holding employee shares be obliged to buy them back if no market exists for them? Should workers be banned from selling shares to outside investors? Should workers be obliged to sell their shares if they leave the company? Should employee shares be inheritable in case of the owner's death? Again, the available legal vehicles presented in the introduction offer very different scenarios with solutions sometimes at the disposal of the contracting parties (e.g., LLC) and sometimes inherent to the legal vehicle itself (e.g., in the case of the EOT or the ESOT). In most countries there is no legal requirement on how to proceed if an employee leaves the company. In Ireland, employers may require workers to sell their shares to the company on leaving.

In Finland, there are more specific rules on the issue with employees being allowed to withdraw from the trust a maximum of 15% of the value of their funds annually; however, upon retirement, they are entitled to withdraw the entire value of their funds immediately or in instalments within four years.

Intermediary entities - *Control of the trusteed entity:* Who should be in charge of managing the trusteed entity? Should employee-owners have a say on the operations of the trusteed entity? There are only four Member States that have regulations on who should be in charge of an intermediary entity holding shares on behalf of employees. In Austria and Finland, it has to be the employer company. In Romania, the intermediary entity is required to set up a general assembly where each participant has one vote. In France, control of the intermediary entity has to be transferred to an asset management firm. ***Information requirements**:* Should the company or the fiduciary entity be obliged to regularly inform employee-owners about their investment? If yes, what should be included in such a documentation? In most Member States, there are no legal requirements on the communication and information policy of an intermediary entity holding shares on behalf of employees. Only in Romania, the company is obliged to disclose all relevant commercial and financial information as well as to finance a preliminary feasibility study before setting up such a scheme. In Finland, the intermediary entity is required to inform each employee about her account at least once a year by letter. Further, the criteria of investment of profit-sharing funds must be disclosed at least one year in advance.

6. Conclusion – Launching a Common European framework for ESO under the roof of a European ESOP

Thirty years of research has confirmed the positive effects of ESO for European enterprises and its important function for business succession. However, the need for employers to identify the applicable law, to discover the provisions of a foreign applicable law, often involving translation, to obtain the legal advice necessary to understand its requirements, and to adapt their EFP-plans to the different national laws that may apply in cross-border situations, makes implementation of cross-border EFP schemes, and ESO schemes in particular, more complex and costly than operating a plan in one Member State (High-Level Group of Experts 2003). This situation is exacerbated by the fact that ESO in some Member States is not regulated, or if so, only to a very limited extent, thus adding to the uncertainty.

a) Disparities between the national rules of Member States obstruct the fundamental freedoms and distort competition

Contract-law-related barriers are thus a major contributing factor in dissuading a large number of firms with operations in more than one Member State from offering cross-border ESO plans to their employees. In cases where a successful ESO plan is an important part of corporate culture, this could even prevent firms from expanding operations into additional Member States. This deterrent effect is particularly strong for SMEs whose costs of entering foreign markets are particularly high in relation to their turnover. In this event, both employers and employees are deprived of the cost savings that an ESO plan based on one uniform contract law for all cross-border transactions could achieve.

Differences in national laws governing employee share ownership are therefore a major barrier, which prevent both employers and employees from reaping the advantages of the internal market. Those civil law barriers would be significantly reduced, if ESO schemes could be regulated by the same contract law rules, irrespective of country. By reducing legal complexity, a common European framework would also significantly reduce transaction costs. Uniform contract law rules should apply to the full life cycle of an ESO scheme (and EFP schemes in general) and thus would include provisions most important to contractual agreements on ESO. These should also include provisions to assure trans-national portability for employees.

Differences between national company, tax, and contract laws as they affect implementation of cross-border EFP plans also contribute to limiting competition. EFP, in particular ESO, is a valuable means of attracting and retaining key employees (IAFP 2011 pp. 25, 125, 133). With a low level of cross-border EFP plans, there is less competition for key staff, and thus less incentive for firms to become more innovative and to improve the quality of working conditions. The barriers to cross-border EFP plans may jeopardise competition between SME and larger companies, particularly with regard to attracting and retaining key employees. Because of the significant impact of transaction costs in relation to turnover, an SME is much less likely to extend its EFP plan to a foreign market than a larger competitor.

b) EU legislative proposal for a Common European Employee Stock Ownership Plan

To overcome above-described barriers, one of the options endorsed by the 2014 European Commission Study[460] and part of the "Five-Point Plan to Promote Employee Participation" of the DG MARKT Pilot Project is a new legislative initiative, the "Common European Regime in EFP", which would aim to create a level playing field for EFP across the EU-28. This proposal responds to the call for a legal European optional framework for EFP[461] referring to the suggestions of the EP resolution on EFP of 14 January 2014[462] and further developing the approach[463] therein postulated. As the name suggests, this would be a second contract law regime parallel to national legislation on ESO.[464] It would offer employers and employees a choice between two alternative EFP regimes one originating in national legislation, the other in European legislation. The choice between these two alternatives would be entirely optional. The common European regime would neither replace nor override national legislation but would serve as a cross border alternative to national laws, to be used at the discretion of the parties involved. In its resolution on EFP of 14 January 2014[465] the EP – referring to the Pilot Project and its interim report – also called for an impact assessment and

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[460] See Chapter IX "EU legislative proposal for a Common European Regime on Employee Financial Participation", pp. 89 ff. of the Commission Study "The Promotion of Employee Ownership and Participation".

[461] For references of this aim in the current and past policy development see above Chapter I d) "EFP on the EU policy agenda", Chapter II 2. a) "Current challenges of EFP - Differences between national legal frameworks on EFP" and Chapter V 2. "Follow-up and consultations on conference results".

[462] Resolution on EFP in Companies' Proceeds P7_TA(2014)0013, recitals 7, 16.

[463] The EP approach roots in the concept of a so-called "29th Regime" as mentioned in the 2010 EESC Own-initiative Opinion INT/499 and the EP Resolution T7-0013/2014.

[464] Similar to the Commission proposal for a Common European Sales Law to which this potential proposal refers in the following; COM(2011) 635 final. 2011.

[465] Resolution on EFP in Companies' Proceeds P7_TA(2014)0013, recitals 17, 20, 21.

"Encourages the Commission to present an independent impact assessment on such a '29th regime' for EFP, anticipates the inclusion of information thereon in the Commission's interim report" (P7_TA(2014)0013, recital 20).

The 2018 Own-Initiative Report on the "role of Employee Financial Participation in creating jobs and reactivating the unemployed" of the European Parliament[466] took up these postulates with a focus on SMEs and stressing the importance of ESOPs:

"1. Calls on the Commission to consider appropriate recommendations to encourage Member States and companies, particularly SMEs, to develop and offer EFP schemes for the benefit and in the interest of both employees and companies; … 3. Calls on the Commission to implement the 'five-point action plan' included in the final report of the pilot project for the promotion of employee ownership and participation of 2014;"

Against this background a "Common European ESOP Regime", could be launched as a first step towards a "Common European Regime on EFP", which would complement existing national laws aiming primarily at their harmonisation.

c) Elimination of obstacles resulting from the multifarious development of national laws

A "Common European ESOP Regime", as a first step towards a "Common European Regime on EFP" would complement existing national laws aiming primarily at their harmonisation. Its objective is to eliminate obstacles to the single market that mainly, though not exclusively, stem from heterogeneous regulatory density. The existing condition is due to the multifarious development of national laws governing EFP in the Member States: These schemes – and their resultant legislation – have only recently been introduced in some countries, while in others they have a long tradition. Depending on national tradition, corporate culture and social partners' attitudes, they vary greatly in both form and extent across the EU-28 (see the overview of EFP in EU-28 in Chapter II). In fact, unlike for example in the case of the European Company Statute or the Common European Sales Law the average density of existing national regulation on EFP across the EU is entirely different, i.e., very low. While some countries, e.g., France and the UK, recognise all main types of EFP schemes that could be contained in a "Common European ESOP Regime" (i.e., share-based profit sharing, employee shares, stock options and Employee Stock Ownership Plans) the majority of Member States regulates only one or two types. Furthermore, in many countries these rules are only rudimentary, e.g., Portugal, Estonia, Bulgaria, Cyprus; for a mapping of the diversity of regulatory density across the EU-27 see Chapter VII, Table 14.

Such the "Common European ESOP Regime" would be above all an optional solution to match national law where rules do not or not sufficiently exist. While in some Member States the common European regime would introduce coherent rules for the first time, in the majority of countries, it would overlap only the area of existing national regulation dealing with a specific EFP scheme. Only in a minority of Member States would it actually duplicate national law. Similar as in the case of the Common European Sales Law the "Common European ESOP Regime" concerns a legal area where wide national differences (with regard to company, tax and contract law) exist. But regulation of EFP

[466] European Parliament Own-Initiative report adopted on 23 October 2018, (2018/2053(INI)).

is further complicated by differences and discrepancies stemming from heterogeneous regulatory density and scope of application leading to contradictions and legal uncertainties across borders, and thus obstacles to cross border plans. It is in cases where no or very limited national legal rules exist that the approximation effect is strongest. As the "Common European ESOP Regime" would provide an optional EU-wide default solution for countries where regulatory density is low, it would give governments a clear incentive to harmonise national legislation with EU-wide best practice and that of advanced countries. Thus, the "Common European ESOP Regime" would induce governments to amend national law in line with the newly introduced EU-wide rules.

Regarding its contents the "Common European ESOP Regime" would contain best practice rules derived from each of the ESOP vehicles discussed in this Chapter to reflect the entire life cycle of SMEs (starting up, consolidation, succession). In this way an adaptable regulatory framework can be developed that not only respects different legal and cultural traditions but also provides flexibility to the key functions of the EU-ESOP as summarised in Table 15.

IX. Policy recommendations

Jens Lowitzsch

From the first PEPPER Report in 1991 until this PEPPER V Report the European Union has not only extended from 12 Members States to currently 27 but also the challenges have increased in both complexity and urgency. Financial and other crises have endangered prosperity and cohesion on the continent and both, the financial crisis of 2008/09 and the COVID-19 pandemic 2020/21 have left their marks on "Social Europe". Although the overall trend is positive, both crises, as the econometric analysis in Part 1, Chapter II shows, have negatively affected EFP and put the issue of distributive justice on the agenda of national policy makers and that of the European Commission. Furthermore, put into the context of the concentration of capital ownership and the concentration of capital income EFP is declining in terms of its proportion in household income. But there are also other issues on the table like the problem of business successions in SMEs – motor of the EU economy and sector with the bulk of its employees – a challenge that was identified already in 1994 and, with a third of successions failing, leading to a haemorrhage of around 150,000 enterprises and 600,000 jobs every year (COM(2020) 103 final). It is against this background that the following policy recommendations should be read.

1. General principles

From the composition of the four clusters and the discussion of the importance of the two main categories of measures in place – i.e., legal framework and fiscal incentives – two general principles and a number of best practices concerning fiscal incentives in particular may be derived.

a) The importance of a stable legal framework including fiscal incentives

Establishing EFP schemes through legislation is of primary importance. Schemes approved through legislation give companies a distinct legal framework and provide them with a clear framework for company decisions and actions. At the same time, establishing a legal framework delineates what is possible for companies without inviting sanctions from regulatory, legal or taxation authorities. Correspondingly, countries that provide a stable and transparent regulatory framework for EFP also show a wider implementation of EFP practices as shown in Chapter VII Section 3.b). However, this relationship is much stronger for ESO schemes that for PS schemes as the former are more complex requiring more support but at the same time have much wider benefits, both for employees and the employer companies.

When properly designed, fiscal incentives effectively promote the spread of EFP. Countries with a long tradition of tax incentives for EFP (e.g., UK, France) confirm this point, but so do countries in which tax incentives are more recent, e.g., Austria, where a substantial increase has been observed, even though total numbers are still relatively low (see Chapter VII Section 1. b)). However, fiscal incentives are not always a prerequisite to financial participation in particular with regard to profit sharing. Financial participation schemes without tax incentives, e.g., profit-sharing plans in Austria and Germany, sometimes have a higher incidence than those with tax incentives, e.g., share ownership plans in the two countries. Therefore, tax incentives as such are not to be considered a prerequisite to the development of financial participation.

b) Best practice with regards to fiscal incentives

From best practice examples it can further be derived that to be effective, tax incentives have to fulfil the following conditions:

First, tax incentives should (and in most countries they do) target those taxes, which constitute the heaviest burden in the national taxation system. Usually – with the exception of countries with flat tax systems, which at present on the whole do not offer specific tax incentives – these are the progressive personal income tax and social security. Many countries therefore provide:

- exemptions from social security contributions for certain plans (e.g., France, Belgium, UK, Ireland, Finland);
- imposing a capital gains tax (e.g., UK) in lieu of personal income tax;
- imposing a special low tax (e.g., France) in lieu of personal income tax; and
- tax allowances for personal income tax (e.g., Austria, Finland, Ireland).

Second, tax incentives should be provided for both employees and the employer company, inasmuch as participation is voluntary for both parties in all EU Member States except France. However, this requirement is relative: in most countries the employer company has already been granted tax incentives in the form of deductions under general taxation law and only tax incentives for taxes involving the cost of shares and stock options are needed. In most countries, the only important incentive for the employer company is the exemption from social security contributions; this has been introduced in many countries (e.g., France, Ireland, Finland, Belgium). The employee is usually more in need of direct incentives as the heaviest burden of progressive taxes falls on him or her.

Third, even substantial tax incentives may prove inefficient when the pre-conditions for eligibility are too restrictive, complex, or inflexible. This is the case in Greece for cash-based profit sharing and in Belgium for all types of schemes. The inflexibility problem can be solved, as in Ireland and the UK, by allowing the employer company to choose between the less flexible approved schemes combined with substantial tax incentives and more flexible unapproved schemes combined with minor tax incentives. Another interesting approach was presented in the EC Report on Stock Options (Stock Options 2003): since direct taxes cannot be harmonised under the EU Treaty, it might be reasonable to harmonise the pre-conditions for the application of tax incentives. National legislators should be authorised to introduce additional national plans and to decide on the size and form of tax incentives for these and for those plans encompassing all of Europe. Harmonisation can only be accomplished if the existing pre-conditions in different EU Member States are at least comparable for all types of EFP schemes, as is apparently the case for stock options (Lowitzsch, Spitsa 2008, p. 75).

Fourth, some forms of tax incentives are more favourable for certain types of plans and also lead to higher efficiency:

- For share ownership and stock options, as far as benefit taxation is concerned: deferred taxation (often linked to holding period) combined with generous valuation rules, and, if possible, exemption from social security contributions for both the employer company and the employee.
- For dividends and sale of shares: a special tax rate or capital gains tax in lieu of personal income tax and, possibly, exemption from social security contributions.

- For ESOPs and intermediary entities: exemptions from income tax on share acquisition[467] or on share sale if the profit is realised after a holding period or within a retirement programme; the company may qualify for tax relief on both interest and principal payments on the loan; sale of stock to an ESOP on a tax-deferred basis if the proceeds of the sale are re-invested in securities of other domestic corporations (tax-free rollover).
- For profit sharing: a special tax rate in lieu of the progressive personal income tax as well as exemption from social security contributions for both the employer company and the employee.

However, as all forms of tax incentives lead to revenue losses, efficiency should be weighed against the revenue requirements of each country independently. Should a government wish to introduce specific tax incentives, it might well begin with "soft" tax incentives, which do not cause substantial revenue losses, e.g., tax allowances defined by nominal amount (which can be raised successively as in Austria or Germany). Later, depending on revenue needs and the political climate, it may proceed to more effective measures: tax allowance as a proportional amount, deductions, tax credits, introduction of special low tax rates, and – finally – full exemption from taxation.

More generally, in spite of the difficulty of their implementation at the European level (because of the exclusive jurisdiction of national legislation over tax laws), tax incentives remain powerful tools for enhancing and broadening financial participation. This is especially true when they remain optional for the Member States and not subject to a unanimous vote of approval. Countries could voluntarily offer tax incentives singly or in groups. Such a step would create an increasingly favourable environment in which countries having an advanced tradition, such as France or the United Kingdom, would encourage emulation. Optional preferential treatment, of course, also requires distinguishing between profit-sharing schemes, share-ownership schemes and ESOPs.

2. Focus employee share ownership – Size and enterprise type matter

Legislative support for ESO has been a slow and cumbersome political process over the last three decades. However, there are exceptions, when policy makers across MS identify an issue, they consider important to take concerted action. An example is that over the last years as many as twelve Member States introduced tax incentives for ESO schemes in SMEs with a focus on start-ups to make our economies more competitive (see Chapter V). At the same time, we have not yet seen much action in the field of the social economy which is just as important in the SME sector. Social enterprises are pivotal in regard to increasing the resilience of our polities to multiple crises as demonstrated during the COVID-19 pandemic. Furthermore, despite more than three decades of discussion and various political initiatives at the European level SMEs as the largest enterprise group across the EU still are at a competitive disadvantage regarding support measures and fiscal and tax incentives for the introduction of employee share ownership schemes.

[467] In Ireland, this is the case only where the ESOP comprises an ESOT working in tandem with an Approved Profit-Sharing Scheme (APSS).

a) The main characteristics of ESO for the three types of enterprises

Table 16 provides an overview of the most important differences between three groups of companies, i.e., publicly traded joint stock companies, SMEs, typically family businesses but also firms from the Social Economy, and start-ups regarding the respective forms of employee share ownership; the latter category reflects a trend across the EU in the early 2020ies to introduce rules to specifically facilitate ESO also in start-ups (for details see Chapter V).

Table 16: Synopsis – ESO in different types of enterprises

Firm type Criteria	**Joint stock company**	**Medium-sized firm / family business / Social Economy**	**Start-ups**
Dominant owner(s) / ownership structure	Public companies, majority or anchor shareholders and institutional investors	Entrepreneurs and entrepreneurial families / unity of ownership and corporate management	Founders and (majority) investors with limited time perspective and high-risk tolerance
• Form of incorporation • Form of ESO	• SE, JSC • employee shares and empoye stock options	• Closely held limited liability company, partnership or cooperative • Mezzanine participations / rarely employee loans or special forms	• Almost exclusively limited liability companies • Virtual shares & exit success bonuses / less often stock options / rarely employee contributions
Motives for introduction	Motivation / employee retention, entrepreneurial thinking / less: participation in decison making, fending off takeovers	Employee retention, attracting skilled workers, facilitating entrepreneurial thinking, performance improvement, business succession	International competition for talent, employee retention, facilitating entrepreneurial thinking, performance improvement
Essential rules of the ESO programme	Matching contributions / discounted shares and issue of bonus shares, usually with holding periods; tax incentives common	Employee and company contributions, holding periods, often repurchase on termination or expiry, usually no insolvency protection; limited tax incentives	No employee contributions; genuine ESO less common (but phantom stocks linked to firm value); specific rules for eligibility, allocation, expiry; few tax incentives
Barriers	Procurement of shares; cost of custody account administration; timing of tax-free allowances; definition of employee status	Costs for introduction and administration; lack of information and tradition for ESO; transfer cost of limited liability companies' shares	Costs for introduction and administration; high tax burden; low regulatory density; limited fiscal incentives
Proposals to increase attractiveness ESO programmes	Increase of tax-free allowance; reduced taxation of dividends and interest income for holding periods; international harmonisation	Increase tax-free allowances; appropriate firm valuation; exempt share transfers between employees from notarisation; incentives for employees in business successions; intern. harmonization.	Fiscal incentives; avoidance of "dry income"; creation of a separate form of capital participation for start-ups; taxation of profit sharing as capital income; international harmonisation.

Source: Own elaboration.

b) Different solutions for different types of enterprises

In light of the need for SME action in particular and the effectiveness of promotional measures and the great potential for introducing ESO in general, the question now is what type of incentives and measures should best be implemented. In terms of timing, a distinction should be made between short-, medium- and long-term measures; regarding the type of measures, not only legislative but also soft support measures in particular should be considered. It should be emphasised, however, that isolated "island solutions" promise little success and that what is more important is an overall consistent regulatory framework. In general, it should also be noted that the dispute over the introduction and level of tax incentives for various forms of EFP often obscures the view of a whole range of other important possible support measures.

Regarding employee share-ownership schemes in SMEs, which are in the focus of this report, it should also be noted that, despite all the structural differences, there are also intersections offering synergies and new impulses. Using the example of privately held limited liability companies (LLCs), the overview in Table 17 provides a summary for the different types of LLCs, their problem areas to be addressed in a reform and the proposed solutions.

Table 17. Developing solutions for the different types of LLCs

Type of LLC	Characteristics	Problem	Solution	Example
Micro-firms < 10 empl.	Very low number of share transfers (mainly founders)	• Raising of share capital; • Capitalisation of firm	• Low-threshold LLC; • Capitalisation of unemployment benefits	• EU-27 + UK[468]; • ES Sociedades Laborales; • Capitalisation of unemployment benefits: ES, FR, PT, BG
Small firms 10 - 50 empl.	• Firm in growth; • Low number of share transfers	• Fungibility of shares; • Raising of share price by empl.	• Financial Assistance; • Tax incentives for acquisition by empl.; • Capitalisation of unemployment benefits	• EU-law: Directive 2017/1132/EU; • ES Sociedades Laborales; • Capitalisation of unemployment benefits: ES, FR, PT, BG
Medium-sized firms 50 - 200 empl.	• Consolidation phase; • Potentially higher number of transfers	• No liquid share market; • Share transfer costs; • Business succession	• Exception of shares transfer from notarisation for ESO; • Intermediary entities / fiduciary agreements	• IT 2018 Company law reform; • UK-EOT, HU-ESOP, US-ESOP; • A Employee-Ownership Foundation (EOF); • FR FCPE de Réprise, Société par actions simplifiée (SAS)
Social Economy firms	• Non-profit / profits retained • Sustainability & local benfits as goal	As firms above + • Perceived not marketable; • Growth limited	• Intermediary entities / fiduciary agreements • Capitalisation of unemployment benefits • Exception/restriction for shares transfer notarisation for ESO	• UK-EOT, A EOF, ; • IT 2018 Company law reform; • ES Sociedades Laborales; • Capitalisation of unemployment benefits: ES, FR, PT, BG
Start-ups	• ESO compensates low pay; • Objective exit; • Low number of transfers	• Fungibility of shares; • Transaction costs	• Exception/restriction for shares transfer notarisation for ESO; • Deferred taxation	• IT Company law reform 2018; • FR Société par actions simplifiée (SAS)

Source: Own elaboration.

[468] For a tabular overview of low threshold limited liability companies in the EU Member States requiring only symbolic capital for incorporation, see Lowitzsch et al. 2017, op. cit., Annex II.

3. Potential measures to encourage EFP in SMEs specifically

The costs of designing and implementing a financial participation scheme are disproportionately high for SMEs. To these must be added the on-going costs for administration, legal services, and employee communication. Generally speaking, – unless a company is medium-sized – without any support these costs may outweigh possible tax advantages for small companies.[469] Therefore, support measures going beyond tax incentives, e.g., advice in administrating EFP schemes, independent counselling, business incubators or EFP lobby groups and associations are essential if SMEs are to adopt EFP plans and in particular ESO plans. The role of ESO schemes in providing a solution to the succession problem in SMEs has already been discussed (see Chapter VIII). For smaller firms, access to information and advice as well as to financing can have a much greater significance than for larger firms. The following examples illustrate some of the support measures specifically tailored to the needs of SMEs.

a) Alleviating the evaluation problem through debt-to-equity-swaps

The valuation of the shares prior to the acquisition by employees may create unreasonable costs particularly in a small firm. This problem is exacerbated when the valuation is repeatedly necessary for different share acquisitions not occurring simultaneously. To defer the valuation problem in unlisted SMEs, capital participation may initially take the form of an employee loan to the company, creating corporate debt (external capital), subsequently to be converted into company shares.[470] Valuation of the shares designated for acquisition through the loan can be postponed until the moment of the actual conversion into shares (debt-to-equity) without impeding the implementation of the scheme. However, these considerations – although providing a relatively simple solution to the evaluation problem – require specific expertise and advice, which in turn may be expensive. Here, a government-funded information platform or an independent organisation financed under a support programme dedicated to ESO in SMEs can be very useful.

b) Meeting the potential repurchase obligation for shares of departing plan participants

Leveraged employee share ownership, as in the case of ESOPs, involves an additional element of risk. Whereas profit-sharing plans represent a variable financial burden, leveraged schemes require fixed loan amortisation payments regardless of the company's financial performance – a condition similar to taking on debt. In fact, such loans are treated as a liability if the company guarantees the loan or commits to future contributions to service it. Thus, if a company is not growing or becomes unprofitable, the repayment obligation can threaten its ability to survive. Furthermore, closely held companies may be obliged to purchase the shares of departing plan participants because of the absence of a public market for their stock.[471] In such a case, the repurchase liability in a successful company generally increases over time as the appraised

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469 See Poutsma and Tillart (1996); however, set-up expenses are usually tax deductible as, e.g., in Ireland. See Shanahan and Hennessy (1998), p. 33.

470 See the Annex of the Committee on Employment and Social Affairs Report on the Commission communication "on a framework for the promotion of employee financial participation", COM(2002)364, 2002/2243(INI); "Models for Employee Participation in SMEs", PE 316.420.

471 This depends on whether local company law, as in the US for ESOPs, or bylaws of the company requires this. In contrast for Irish ESOPs, departing employees have no right to be bought out at market value.

value of the company's stock rises, although it does not usually increase as a percentage of the company's free cash flow.

If a company does not plan adequately to meet this liability, it may be forced to make a public offering of its stock to eliminate the repurchase obligation – an expedient, which is not only very expensive, but also involves a loss of control and independence, and the loss of opportunity to future employees.[472] A better alternative is the creation of a "sinking fund", although in small companies it may be difficult to develop accurate actuarial assumptions.[473] Where a relatively large portion of the repurchase liability is attributed to a few plan participants, the use of life insurance contracts may be appropriate (Bye, 2002). Here again, expertise and know-how – often not available to SMEs at affordable cost – is needed and can be offered as a support measure specifically targeting small firms.

c) Boosting SME lending to finance business successions in SMEs

When the owner of an SME wants to retire and exit from the business, he generally has three alternatives. He can sell the business to an outsider (a strategic buyer, e.g., a competitor), to his key employees (a management buyout), or to his staff through the mechanism of an Employee Stock Ownership Plan (ESOP) or a similar scheme, see above Chapter VIII. When he sells to a strategic buyer, financing for the transaction will be provided from cash previously accumulated by the buyer and from loans provided by the buyer's existing lenders. The sale of a business to a few key employees usually is leveraged, as most management buyouts are in fact buyouts that are financed by private equity groups.[474] The employee buyout, on the other hand, often faces great difficulties to finance the transaction.

Here, a public bank such as the European Investment Bank (EIB) could step in focussing its efforts more on providing senior and/or mezzanine capital for the transmission (buyout) of established mature companies.[475] Providing loans to established mature companies is by definition less risky than for example providing loans for start-ups and newer SMEs. Further, providing loans for the transmission of established mature companies would enable the EIB to invest larger sums of money. As this field of business is not well developed in Europe, yet, the EIB will have little or no competition from regular commercial banks for this type of financing. As the experience from the US – where this type of lending has become part of the texture of corporate America – shows, loans made for ESOP buyouts have a much lower default rate than is the case with other types of loans.[476] A related SME loan facility could be embedded, for example in the EIB's JEREMY programme.

[472] Thus, the ESOP transaction should be modelled in advance to ascertain that the company can afford this amount of "dividend". Otherwise, there should be a limit on how large a percentage of the company's total stock may be acquired by the ESOP. A growing company may require almost all of its free cash flow to fund future growth, but a company growing this fast may well want to go public.

[473] For US ESOPs, see Ackermann (2002).

[474] In practice, the private equity group provides all or most of the equity and retains all of the control. If the company is successful, management will be granted 15 to 20% of the equity based upon the attainment of performance objectives. If the company is not successful, management will wind up with little or no equity.

[475] The EIB was asked to boost SME lending at the request of ECOFIN following the Nice meeting on September 12-13, 2008 and a 2007/08 EIB consultation calls for modernising its products, among them, with regard to loans financing business succession of SMEs.

[476] For case studies, see Annex 1.

d) Facilitating share transfers in privately held LLCs

Notarial certification of share transfers is a major obstacle to ESO schemes in privately held limited liability companies as they impose substantial transaction costs on the change of the employee shareholders. As the share are not liquid this may entirely prevent non-executive employees who do not have liquidity reserves from participating. In Italy, with effect from January 1, 2019, the 2018 Budget Law abolished the requirement for notarial certification for the liquidation and transfer of shares in limited liability companies (S.r.l.). Instead, the relevant documents now only need to be submitted to the competent registry office by a person registered in the auditors and accountants' registers. This person, instead of a notary, now verifies compliance with the legally prescribed conditions, including (i) the identity of the parties involved in the transaction and their legal capacity, (ii) the marital property regime, if applicable, (iii) actual ownership of the shares, and (iv) any conflicting restrictions in the company's articles of association. Compared to the traditional notarial certification, the procedure is now less costly and significantly faster: the transfer of shares only requires one working day from the date when all digital signatures on the document are available; the transfer becomes effective on the same day it is signed and registered by the accountant. The document must then be registered with the tax authorities by the authorized accountant within 20 days after the digital signatures and timestamps are affixed. Similar rules lowering the transaction costs for share transfers exist for the French SAS (for both examples see the respective Country Profiles and Chapter V.)

Although the introduction of an exception to notarial certification, would be the simplest solution, Legislators in other EU Member States do not necessarily have to go as far as Italy and completely abolish notarial certification for the transfer of LLCs' shares. The exception could (i) remain specifically limited to the transfer of shares within an SME or (ii) restrict notarial certification in standardized SME models to the identity of the seller and buyer. Both options would still drastically reduce transaction costs. In the second case, the fees based on the value of the shares in notarial certification would no longer apply even to the contract. This way, a solution could be found for the standardized transfer of shares within an SME program that effectively increases the transferability of employee shares at low costs while preserving the purpose of notarial certification.

e) Targeted support for social enterprises as part of the "Proximity and Social Economy industrial ecosystem"

Since the 2011 Social Business Initiative (SBI) and the 2016 Start-up and Scale-up initiative the European Commission has postulated to harness the economic potential of social enterprises in view of their crucial role in fostering sustainable economic growth. Presented in the framework of the EU Industrial Strategy the EC has launched a new initiative for the beginning of 2022 to boost the social economy contribution to the green transition[477] as captured under the heading *"The social economy business case for the green transition".*[478] Acknowledging the strong presence and pioneering

[477] https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/transition-pathway_en.

[478] Commission Staff Working Paper "Scenarios towards co-creation of a transition pathway for a more resilient, sustainable and digital Proximity and Social Economy industrial ecosystem" SWD(2021) 982 final of 9 Dec. 2021, pp. 14-20, section *"Fully enabling the ecosystem as agent for the green transition"*.

role of social enterprises in climate change mitigation and adaptation, clean energy transition, circular economy and related areas this policy action directly contributes to develop the corresponding institutional environment of the "Proximity and Social Economy industrial ecosystem" (European Commission 2022). Social enterprises have been present for decades delivering innovative green solutions for example in the circular economy.[479]

These initiatives pertain not only to issues specific to the green transition but also embrace entrepreneurial topics common to all enterprises and in particular to those of small or medium size, examples being retention of key staff, motivation or business successions.[480] For example, the potential of employee buyouts offering a continuation perspective for SMEs owners looking for successors was highlighted (European Commission 2022: 12, 18) calling amongst other for the implementation of ESOPs. More generally speaking, fostering employee loyalty, forming an owner group in solidarity with the main owners, or ensuring business succession, are legitimate aims for all SMEs including those from the Social Economy. Since social enterprises have proven their role to increase resilience of our societies in times of crises, this sector not only needs targeted support but should be supported by tailored EFP schemes providing motivation, appropriate compensation, and opportunities for business succession for its employees. Relevant information should be included in the EU Social Economy Gateway (https://social-economy-gateway.ec.europa.eu/index_en).

4. Summary of the recommendations

Against this backdrop, the following list of possible promotion measures – embracing fiscal and tax incentives – provides an overview that also includes a number of lesser-known or popular instruments and measures.

a) General

- **Better information:** The human resources argument that ESO strengthens staff loyalty and commitment needs to be disseminated, as does the fact that EFP and in particular ESO strengthens interaction and cooperation with co-determination. This also applies to the many other positive effects of ESO but should of course also include an explanation of the risks.
- **Privileging long-term equity investments:** Long-term investors should be taxed differently from investors who think and act in the short term, e.g., by exempting capital gains from taxation for a minimum holding period of five years.
- **Increasing the tax-free allowance:** Notwithstanding differences between large public limited companies, SMEs, social enterprises, and start-ups the demand for a higher tax-free allowance is a common and justified concern. Best practice from pioneering Member States, indicates an amount between EUR 2,500 and EUR 5,000 to be recommended.

[479] Examples are providing re-use and up- and recycling services, generating collaborative economy models, eco-design, but also RE production as the already large and dynamically growing population of RECs and CECs demonstrate (European Commission 2022).

[480] See, e.g., the EaSI "Technical Assistance workshop on worker buyouts under the cooperative form: exploring the potential of social finance" on 31 May 2022; accessible at (login Oct. 2023): https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1993&furtherEvents=yes.

- **Harmonisation at the European level:** The intentions articulated by the European Commission to reduce regulatory and tax obstacles to the cross-border implementation of EFP programmes, at least across the EU, are necessary and can provide important impulses for development at the national level.

b) Focus on small and medium-sized enterprises

- **Legislative measures to simplify the implementation of ESO:** reduction of transaction costs and bureaucracy, especially for SMEs. An important example of a concrete measure, which, as in Italy, has a major impact on practice is the exemption from the obligation to notarise the transfer of LLC shares for participating employees. In countries that do nt wish to go that far, the restriction of notarisation to the identity of the seller and the acquirer would be sufficient, as it would drastically reduce transaction costs.
- **Extending deferred taxation for employee shareholders:** Already today, deferred taxation can be achieved for both employer and employee contributions, insofar as ESO is structured via an intermediate entity (see Chapter VIII). Member States should consider encouraging both, the introduction of deferred taxation for ESO in SMEs and the use of intermediary entities.
- **Standard solutions, easily to be adapted also for small businesses:** Entrepreneurs with start-up ideas are not necessarily business economists who are well-informed about legal forms and possibilities of ESO. What is needed are prototypical "standard solutions" for different settings and their dissemination, e.g., through information materials or start-up advice.
- **Promotion of ESO in SMEs via intermediary entities:** In more and more European countries, the use of trusts, foundation models or special purpose vehicles to hold and administer employee shares can be observed (AT, IE, UK, HU, FR, SI, USA). This not only creates a market for normally illiquid holdings, but also solves the problem of transaction costs on transfer and deferred taxation on sale (see Chapter VIII).
- **European ESOPs for business successions:** In a modular approach, variants of the European ESOP (see Chapter VIII) should be actively supported by MS. Employees should be put on an equal footing with uninvolved third-party buyers when acquiring company shares. The taxation of benefits from an acquisition of company shares by employees should be waived and standard valuation procedures applied by the tax authorities in these cases.
- **Targeted support for EFP in social enterprises:** Acknowledging the strong presence and pioneering role of social enterprises in climate change mitigation and adaptation, clean energy transition, and the circular economy was long overdue. Corresponding incentives for EFP and in particular ESO in this SME segment should be included in the initiatives of the Social Economy Action Plan.

In summary, the authors of the study conclude that targeted promotion of EFP and ESO in particular in SMEs has enormous potential for strengthening the European economy and its competitiveness. Above all, the broad range of instruments available to national legislators and social partners needs to be emphasised. In this light, reviving the 2015 "Five-Point Plan to Promote Employee Participation", developed in the 2014 pilot project for Directorate General MARKT, and adapting it to launch a concrete roadmap for further action at European level is much needed.

5. Outlook: Extending financial participation to consumers

This PEPPER V report not only looks back on more than three decades of EFP across the European Union, but also offers the opportunity to look upon its future development and its possible extension to broader strata of our societies. Since the first PEPPER report the European Union has not only extended from 12 Members States to currently 27 but is also confronted with new and unprecedented challenges. The Energy Transition, global climate warming and the 2021/22 energy crisis are challenging policy making with both increasing complexity and urgency. In this setting consumer co-ownership of renewables is essential to the overall success of the Energy Transition increasing motivation to become more energy efficient, making energy infrastructure projects publicly acceptable and to ensure energy equity for the European citizenry (Lowitzsch ed. 2019). Countless grass roots initiatives rising across the EU – some at the municipal level, some led by individuals and yet others by organised local action groups – testify to the rising awareness of the necessity of shifting away from fossils to renewables to arrest global warming. At the same time the European Commission has identified the strong presence and pioneering role of social enterprises in climate change mitigation and adaptation, clean energy transition, circular economy, and related areas. In this context dubbed "Proximity and Social Economy industrial ecosystem" (European Commission 2022) both (local) employees and consumers have an equally crucial role and should therefore be equally offered financial participation to reward their efforts and motivate them.

As of the beginning of 2023, Europeans are deeply affected by the energy crisis exacerbated by the Russian invasion of Ukraine. Across the European Union, we witness an impact on stability and cohesion of our societies, that is, the secondary impact of exploding energy prices requiring massive government intervention leading, again, to distributive conflicts within and between Member States. While for the Ukrainian people the war has immediate, mid- and long-term effects directly killing or damaging the health of an unforeseeable number of humans, the impact on the EU 27 unfolds at a slower pace but is still anticipated to endanger the stability of our democracies. Against this background, financial participation with its acknowledged positive effects on social cohesion and motivation should not be limited to employees but extended as a focused policy also to citizens as consumers. Interestingly, exactly this has been happening since passing of the "Clean Energy Package" (CEP) – a comprehensive legislative overhaul of the European Energy Union – in winter 2018/19.

a) The new EU legal framwork for consumer co-ownership in the energy transition

In December 2018, the European Union passed a legal framework for consumer co-ownership, i.e., prosumership[481], in the recast of the Renewable Energy Directive (RED II) and in the Internal Electricity Market Directive (IEMD). Energy communities are mentioned and defined in both the RED II and the IEMD. While the recast of the renewables directive focuses on the promotion of RE and thus speaks of "Renewable Energy Communities" (RECs) the directive on the internal electricity market of the European Union as the more general legal act addresses "Citizen Energy Communities" (CECs).

[481] As early as 1972 Marshall McLuhan and Barrington Nevitt suggested in their book *Take Today*, (p. 4) that technological progress would transform the consumer into a producer of electricity. The artificial word stemming from the Latin was probably first introduced by Alvin Toffler in his book *The Third Wave* (1980).

Both have the explicit aim to provide environmental, economic, or social community benefits for their members but may be profit making. From June 2021 onwards – once the RED II has been transposed into national law – consumers, as prosumers, will have the right to consume, store or sell RE generated on their premises both:

(i) individually, for example households and micro enterprises, or jointly acting, for example in tenant electricity projects;

(ii) and collectively as part of RECs or CECs organised as independent legal entities, (most likely in the form of SMEs).

As a result, there is a growing number of energy communities involving an increasing share of co-ownership of broader strata of European populations (Lowitzsch 2019); the EC estimates 9,000 energy communities currently in operation across the EU.[482] In contrast to EFP – characterised by an absence of European legislation – binding rules for consumer co-ownership have already been transposed in the majority of MS (Hoicka et al. 2021).[483] The principal mechanisms of company law, corporate governance, fiscal and other incentives are mostly identical for both employee and consumer financial participation (Lowitzsch ed. 2019) and ample synergies exist. Intermediary entities that facilitate consumer co-ownership are similarly diverse with RE cooperatives, LLCs, foundations, associations being present just as in the realm of ESO.

b) Examples for financial participation models involving employees and consumers

Paralell to the rise of consumer co-ownership in renewables the EC has launched the above-mentioned initiative to boost the social economy contribution to the green transition presented in the framework of the EU Industrial Strategy.[484] Acknowledging the strong presence and pioneering role of social enterprises in climate change mitigation and adaptation, clean energy transition, circular economy and related areas this policy action directly contributes to develop the corresponding institutional environment of the "Proximity and Social Economy industrial ecosystem" (European Commission 2022). Such an undertaking other than political support requires appropriate business models that are flexible enough to involve employees and consumers as key stakeholders of this SME environment. The following two examples seek to illustrate that there are no legal barriers to combine employee and consumer financial participation while stressing the potential of such business models, but there are many more already existing across the EU.

In the energy world it is the Consumer Stock Ownership Plan (CSOP), which provides a governance model for financial participation that involves a fiduciary element, just as the ESOP does for EFP.[485] The CSOP is a financing technique that employs an intermediary corporate vehicle, facilitates the involvement of individual investors through a fiduciary and may use external financing, thereby achieving the benefit of financial leverage. CSOPs were pioneered in the Horizon 2020 project SCORE[486], which

482 https://energy.ec.europa.eu/news/focus-energy-communities-transform-eus-energy-system-2022-12-13_en.

483 https://energy-communities-repository.ec.europa.eu/transposition-guidance-citizen-energy-policies_en.

484 https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/transition-pathway_en.

485 Both plans were invented by the American lawyer and investment banker Louis O. Kelso in the 1950ies.

486 SCORE. Horizon 2020 SCORE (GA No. 784960) n.d. Available online: https://www.score-h2020.eu

ran from 2018 to 2021 in five pilot regions and in cities across Europe following these pilot projects (Lowitzsch 2022). SCORE reached out to more than 700 local authorities and 10,000 consumers demonstrating the positive impact co-ownership has on consumer behaviour and showing the ability of this democratic participation model to include underrepresented groups.

An example for legal vehicles that already do so is the French Société coopérative d'intérêt collectif (SCIC, Cooperative society of collective interest; https://www.les-scic.coop/chiffres-cles) which can take the form of a public limited company, a simplified joint stock company or a limited liability company. Anchored in a geographical area, or within a professional community, or dedicated to a specific public the SCIC is organised around a common economic activity or interest and can cover any type of activity that provides services to organisations or individuals, with no a priori restrictions. It allows any individual or legal entity under private or public law to be involved. However, to legally qualify a SCIC must involve: (i) employees (or, in their absence, farmers, craftsmen, etc.); (ii) beneficiaries (customers, suppliers, volunteers, groups of all kinds, etc.); and (iii) a third type of partner, depending on the company's ambitions (local authorities, private companies, financiers, associations, etc.). Local authorities, groups of local authorities and local public bodies can become partners and hold up to 50% of the capital. A SCIC is registered with the commercial registry, subject to commercial taxes and operates like any other company subject to the imperatives of good management and innovation.

The discussion on broadening ownership seems to transcend ideological grounds and more and more centres on questions of how to increase cohesion amongst our societies and how to cope with the new challenges for example the energy transition most efficiently. Policy makers are more and more perceptive to arguments in favour of employee and consumer co-ownership and have begun to understand that the behavioural changes necessary to preserve our habitat and make our economies more equitable require appropriate incentives. Therefore, the potential for co-ownership of employees in the enterprises they work for and of consumers in the utilities they are served by should inspire each other and possibly be harnessed under a joint approach. In view of the significant political initiatives currently under way at both European and national level, we believe that the conditions for further developing financial participation are now especially favourable.

ANNEX 1 – Case Studies of Employee Share Ownership through Intermediary Entities as relating to the European ESOP

Based on the main ESOP principles, each of the legal vehicles introduced in described Chaapter VIII (see Table 15) can be employed to implement a variant of the European ESOP depending on the desired setting and objective. At the same time, we observe a trend across the European Union towards using intermediary entities as a vehicle for employee shareholding as they provide various benefits, for example, limiting personal liability and investment risk for employee shareholders, allowing for leveraged investments, pooling voting rights after the shares are acquired and the like. To illustrate the key differences between the ESOP variants presented in Chapter VIII this Annex provides best practice case studies of how the ESOP mechanism tailored to specific aims are implemented in practice; the choice of the examples is, of course, not exhaustive and above all serves the purpose to illustrate the great adaptability of the ESOP concept.

1. Employee Stock Onwership Plans in the United States

John D. Menke and Stefan Hanisch

Since the 1970ies the American Government sucessively introduced legislation including effective fiscal and tax incentives for ESOPs sucessfully establishing the US Employee Stock Onwership Plans (ESOPs) as the long-standing best practice example for business succession in SMEs. Market Contractors Ltd. and Stone Construction Equipment, Inc. are two examples for a typical business sucession ESOP, in a C-orporation and an S-Corporation.[487]

a) Market Contractors, Ltd. (Business Succession ESOP)

The Company – The company was founded as a C-Corporation by a sole shareholder in 1978. Services include buildings, tenant improvements, remodels, re-imaging and fixture installations. The original market focus was the grocery industry, providing major remodel, fixturing and maintenance services in Oregon and Southwest Washington. Continuing growth has been achieved through the operation of a regional office in Portland and satellite locations in Seattle, Phoenix, Denver, and Sacramento. Effectively the company has spread its base of operations so as to provide construction services in 13 Western US states. Its products and services have expanded to include casework and millwork. The client mix includes the following industries: banking/financial; medical/dental; retail; grocery, and restaurants. The company continues to base its growth on a wide diversity of trade disciplines and expertise, and a larger geographical market focus. An exclusive service offers corporate retailers and corp/franchisors a reliable, high-quality alternative to in-house resources for site development, facilities space planning management, and construction management on a national scale. In 2006 the company had a turnover of USD 37,352,888 and pre-tax earnings of USD 1,867,644.

The Plan – The Employee Stock Ownership Plan replaced a former Profit-Sharing Pension Plan; it originally became effective November 1, 1989, and was twice amended

[487] "C" corporations have a two-tier system taxation with the corporation paying corporate income tax while their shareholders pay taxes on any distributions from the company. An "S" corporation is is treated as a partnership for tax purposes, thus avoiding any taxation of profits at the corporate level.

and restated, effective as of November 1, 1992, and November 1, 1999. In 2005, the ESOP owned 52.2% of the company's shares. At that time, the company employed 148 people, 36 of whom were participants in the plan. Originally, distributions of less than USD 3,500 were paid out in a lump sum after a five-year period of break in service. According to the 2000 amendment to the plan, amounts of less than USD 10,000 are distributed in a lump sum as soon as possible after termination. Also, since then, the plan provides for distributions in five equal annual instalments after a five-year break in service. QDRO (qualified domestic relations order) distributions commence as soon as possible after approval. Amounts less than 10,000 USD are to be paid in a lump sum; amounts of more than 10,000 in five equal annual instalments. In 2006, a further 45% of shares were sold to the ESOP, which finally owns 97.12% of total shares. The value of the 45% of shares was appraised at USD 9,338,220 (5x pre-tax earnings) or USD 54.34 per share.

Buying out the Owner – Originally only 99 shares were issued. In order to facilitate share allocation in the ESOP, the company re-issued the shares, 159,840 shares replacing the original 99. The company was valued at USD 10.00 per share or USD 1,590,840. In 1990, when the ESOP was installed, the company had just entered into a contract with a silent partner to purchase his interest. He held 48 shares or a little over 48% of the company. The company borrowed money from the bank (USD 428,000) which was secured by 42,800 shares. The loan funds were utilized to cash out the silent partner and recapitalise the company. The original 42,800 shares were transferred to the ESOP as part of this transaction. Another 19,680 shares were contributed by the company to the ESOP. Finally, the ESOP owned 62,480 shares, of which 29,680 shares were still encumbered by the remaining balance of the bank loan of USD 296,800. The bank loan was paid down with USD 131,200 of the contribution in that year. So, in 1990, the sole shareholder owned 88,480 shares (55.36 %), the ESOP owned 62,480 shares (39.09 %), and two previous key employees owned 8,880 shares (5.55 %).

One key employee shareholder sold his 5,920 shares to the ESOP for USD 16.00 a share in 1996 (as of October 31, 1996, valuation). Also in 1996, many employees were asking to have more stock in the company instead of in Other Investments Account (OIA) funds because the company was performing better than OIA funds. So the company issued 10,000 new shares as a contribution valued at USD 19.50 per share or USD 195,000 for which the company took a tax deduction as a contribution. This brought the ESOP share in the company to 78,400 shares. In subsequent years, the ESOP purchased stock from the shareholders as follows: in 1997, 3.200 shares for USD 59,200 or USD 18.50 per share; in 2000, 3,076 shares for USD 100,031.52 or USD 32.52 per share, and again 708 shares for USD 23,024.16 or USD 32.52 per share; in 2001, 958 shares for USD 34,219.76 or USD 35.72 per share. The last purchase was financed by the company through a short-term loan to the ESOP. The sole shareholder sold 3,038 shares to the ESOP in 1999 for a price of USD 98,248.92 or USD 32.34 per share. In 2006, the company had 171,848 shares of its sole class of voting common stock issued and outstanding, 77,500 of which were owned by the sole shareholder. He sold all of these 77,500 shares to the ESOP for a total of USD 4,211,350 or USD 54.34 per share.

The ESOP paid USD 1,050,000 in cash, USD 500,000 of which were obtained from the Other Investments Accounts (OIA)[488] of participants in the ESOP and USD 550,000 of which were borrowed by the company from the cash value of a certain life insurance policy owned by the company and loaned by the company to the ESOP in return for its promissory note (ESOP Company Note, interest rate 5.25%). The ESOP will pay the principal of the ESOP Company Loan in 11 consecutive annual instalments of USD 50,000. The remaining unpaid principal balance of the ESOP Company Note falls due at the end of the 11-year period. In addition, the ESOP provided the seller with its promissory note in the amount of USD 3,161,350 for the balance of the purchase price (ESOP Seller Note, interest rate equal to the greater of the prime rate charged by the National Bank at its main branch in Portland, Oregon, less 1% or the lowest long term applicable Federal rate applicable for purposes of Sec. 1274 IRC 1986, as amended). The ESOP will pay the principal of the ESOP Seller Loan in ten consecutive annual instalments of USD 105,378. The remaining unpaid principal balance of the ESOP Seller Note falls due at the end of the 10-year period.

Average plan participant – In 2005, the average plan participant (not including employees who were hired during the plan year and the majority shareholder of the company) was 44 years of age, had 7 years of service and had been participating in the plan for 7 years. His/her annual gross compensation amounted to USD 60,545. He/she has been vested 88% of allocated shares. The total value of shares allocated to the account of the average plan participant has been USD 63,115; the value of vested shares USD 60,161.

Employee A (early participant) – Employee A was born in 1948. In 2005, he was 57 years old. He joined the company in 1989, 17 years ago, and has been participating in the plan for 16 years. His annual gross compensation amounts to USD 57,758. In 2005, shares in the total value of USD 201,423 have been allocated to his ESOP account. In accordance with his years of service, he has been vested 100%. Thus, vested shares are valued at USD 201,423.

Employee B (late participant) – Employee B was born in 1966. In 2005, he was 38 years old. He joined the company in 1998, 7 years ago, and has been participating in the plan for 6 years. His annual gross compensation amounts to USD 49,940. As of 2005, his ESOP account had been allocated shares with a total value of USD 59,592. In accordance with his years of service, he has been vested 100%. Thus, his total vested shares are valued at USD 60,161.

Employee C (cashed out) – Employee C was born in 1949. In 2005, he was 56 years old. He joined the company in 1991 and the plan in 1993. In 1998, after 7 years of service and 5 years of participation in the plan, he retired. His final annual gross compensation amounted to USD 37,558. His ESOP account had accumulated shares to the total value of USD 43,105. He cashed out in four equal annual instalments to the amount of USD 10,776 each. In 2005, he received USD 10,776.

b) Stone Construction Equipment, Inc. (Business Succession ESOP)

The Company – The company is an S-Corporation and a national leader in the design, manufacture and marketing of light construction equipment. The more than 350

[488] Cash contributed to the ESOP that has not purchased company stock is allocated to each participant's OIA.

products designed and manufactured for worldwide distribution include: concrete and mortar mixers; power trowels; concrete and masonry saws; hand held, walk behind and ride on dirt and asphalt compactors. The company was founded in 1967 and is located in Honeoye, New York, in an 150,000 square-foot facility. In 2007, the company ranks 43rd on the Rochester US TOP 100 list of fastest-growing private companies, a program of the Rochester Business Alliance and KPMG. The company's book value at December 31, 2005 was USD 13,098,910, or USD 36.21 per share, based upon 361,787 shares of common stock outstanding. The company's average pre-tax earnings capacity for the financial years 2001-2005 was in the range of USD 1,135,000 to USD 1,250,000. The sustainable EBITDA was estimated at USD 2,545,000 (its financial years 2001-2005 weighted average EBITDA). The appraisal applied a guideline of a publicly traded company-based EBITDA multiple of 6.5X. The net shipments (sales) in the financial year 2005 amounted to USD 55,955,046. The present value of future pre-tax earnings capacity was estimated at USD 29,990,000.

The Plan – The ESOP was originally installed on January 1, 1979, but was amended and restated effective twice, as of January 1, 1989, and January 1, 2001. Since 1995, a number of stock transactions have taken place each year, consisting of the issuance of restricted common stock to key management pursuant to an incentive stock option plan as well as the purchase of common stock into the company's treasury from terminating ESOP participants. Currently 221 (out of 249) employees participate in the plan. The plan provides for lump sum distributions in case of death, disability or normal/early retirement during the following plan year. In the event that a participant's employment is terminated for these reasons, distribution of his or her plan benefit in excess of USD 1,000 shall commence no later than one year after the close of the plan year in which the earliest of these events occurred. Distribution of a participant's plan benefit attributable to employer securities acquired by the plan after December 31, 1986, will be made in a lump sum, as soon as administratively feasible, during the sixth plan year following the plan year in which the participant separated from service. If the total vested value of a participant's Corporate Savings Account (CSA) and Other Investments Accounts (OIA) is USD 1,000 or less, distribution shall be made in a lump sum as soon as administratively possible after the participant terminates employment. Effective for all plan years beginning on or after January 1, 2005, the USD 1,000 limit was amended to USD 5,000. As of December 31, 2005, the ESOP Trust owned 83% or 361,787 of the company's outstanding common stock with a value of USD 16,740,000, or USD 46.27 per share. Twelve percent of stock was still held by a second main shareholder and 5% by other employees (due to other retirement plans).

Buying out the Owner(s) – The sole proprietor was born in 1940 and sold all of his stock to the ESOP prior to 1991 in order to start up a new business. In addition to the funds received from the sale of his stock, in 2005 he received an additional USD 42,179 from his 12-year participation in the ESOP. Altogether, between 1985 and 1995, the ESOP obtained 300,635 shares for a total value of about USD 6,000,000: 100,000 shares from outside investors for a total of USD 2,000,000, and 200,000 shares from the sole shareholder and his family for a total of USD 4,000,000. In financial years 1983-1984, the ESOP bought about 17% of the outstanding stock (50,000 shares) at an average price of USD 19 per share. These transactions were financed out of operating cash flow. In the financial year 1985, the ESOP borrowed USD 1,000,000 from a bank and used the proceeds to buy stock from existing shareholders at USD 19 per share. In the financial year 1986, the ESOP borrowed USD 4,000,000 to purchase an additional 67% of the outstanding stock (200,000) at USD 20 per share.

In this transaction, the ESOP purchased all of the shares held by the founder and his family. This brought the ESOP to 100% ownership. The loan was repaid over a 10-year term from 1986-1996.

Average plan participant – In 2005, the average plan participant (not including employees who were hired during the plan year and the majority shareholder of the company) was 45 years of age, had 13 years of service and had been participating in the plan for 13 years. His/her annual gross compensation amounted to USD 54,605. The total value of shares allocated to his/her account was USD 52,095. He/she was vested 82.13% of allocated shares having a value of USD 51,361.

Employee A (early participant) – Employee A was born in 1968. In 2005, he was 37 years old. He joined the company in 1988, 17 years ago, and has been participating in the plan for 17 years. His annual gross compensation is USD 44,545. As of 2005, shares with a total value of USD 58,368 have been allocated to his ESOP account. According to his years of service, he is 100% vested. Thus, his vested shares to are worth USD 58,368.

Employee B (late participant) – Employee B was born in 1953. In 2005, he was 52 years old. He joined the company in 1999, 7 years ago, and has been a plan participant for 7 years. His annual gross compensation amounts to USD 73,229. As of 2005, his ESOP account had accumulated a total value of USD 17,203. His years of service entitle him to 100% vesting. Thus, his ESOP account is worth USD 17,203.

Employee C (cashed out) – Employee C was born in 1953. In 2005, he was 52 years old. He joined the company in 1999 and the plan in 2000. In 2005, after 6 years of service and 5 years of participation in the plan, he terminated. His last annual gross compensation amounted to USD 31,843. He accumulated shares to the total value of USD 5,292. He cashed out with a lump sum of USD 4,234 after taxes.

2. Employee Onwership Trusts in the United Kingdom

Dave Lemmens and Natalia Spitsa

In 2013 the British Government reformed the Companies Act 2006 in favour of ESPs and in 2014 introduced tax exemptions for "indirect" ownership of shares on behalf of employees, through Employee Onwership Trusts (EOTs). The case of Child Base illustrates how the EOT was launched on the basis of a previously existing ESO plan with the finality of aqcuiring 100% of the ownership from the retiring owners.

The Company – Childbase Partnership is the fourth largest nursery group in the country operating throughout the United Kingdom, but mainly in the south of England. It has more than 2000 employees and operates 43 nurseries. Childbase is expanding by two to four new nurseries annually, either by opening new entities or by acquisitions.[489] Rated one of the UKs 'outstanding' companies by Best Companies (2018), the employee-owned Childbase Partnership has been listed as a UK Top 100 company to work for for 12 years. The company is headquartered in Newport Pagnell, UK, which. Originally, it was founded by Sir Peter Thompson and his son Mike Thompson as a small family company with 4 staff members and 20 children in 1989. Mike Thompson is still CEO and co-owner. As the company expanded, the Thompson family as core

[489] Andrew Bibby (April 2009), Schooled in a duty to employees, Financial Times. Available Under: http://www.ft.com/intl/cms/s/0/e39e1ea8-2ed5-11de-b7d3-00144feabdc0.html#axzz1mMUtW2Yi.

owners decided to enable the employees to participate in the capital of the company. In 2001 thy introduced the "Childbase All Employee Share Plan" to enable the employees to obtain company shares in order to increase employee motivation, to secure the succession, to provide additional capital resources for future expansion and, consequently, to achieve a sustainable progress of the company. The underlying idea was, in the first place, to act in line with the corporate culture "we all contribute, we all benefit" and to motivate the employees by the concept of fair participation. This idea, on which also the company image is based, makes the company also more attractive and reliable for its clients. A positive and fair working climate is of special importance in the childcare business. Additionally, the transfer of ownership to employees was intended to solve the problem of business succession and protect the company from hostile takeovers.

The owners – Sir Peter Thompson, the father of the current CEO and co-owner Mike Thompson, already had experience with the ownership transfer to employees, since he was responsible for the privatization of the state-owned National Freight Corporation through an employee buy-out. The first step in the employee financial participation programme of Childbase was to establish the Childbase All Employee Share Plan (CASP) as an approved scheme, under which the employees could obtain one matching share for each share they buy from the Employee Benefit Trust (EBT). Later the number of matching shares was, for a certain period, increased to two in order to further motivate employees to buy shares. The core owners are committed to the goal of hundred per cent employee ownership. To provide EBT with its own funds, Childbase diluted its own shares and transferred them to the EBT as free shares under an approved scheme. From the established funds, the EBT first paid out the core owner Sir Peter Thompson. Afterwards, Childbase transferred matching shares to the EBT in relation two to one and occasionally also transferred free shares under the respective approved scheme. With concerns to trust establishment there was a problem of legal nature. It was preferable to establish the trust under the Scottish law, since the Scottish law, unlike the English law, allows establishing trusts for more than eighty years, as these trusts have no "shelf life". Childbase founded three new trusts simultaneously under Scottish law, which was a complex legal process.

Childbase All Employee Share Plan – The main ESO scheme was the CASP, under which all permanent employees can buy shares and obtain the matching shares from the EBT. The employees can let the interest be paid out in cash or invest it in shares. Within the CASP, employees also can obtain benefits not directly related to employee ownership. Additionally, Childbase implements an approved SAYE scheme. In 2014 the employees already held the majority of the equity capital, so that they can influence the election of the management. Since then former core owner and current CEO and co-owner Mike Thompson needs the approval of the employees to be re-elected. Such control corresponds to his idea of an employee-owned enterprise. The employees have no direct representatives in the management of the company. However, their representatives, called councillors, are involved in decision-making, e. g. as far as remuneration and working hours are concerned.[490] One councillor is elected in each of 43 nurseries to the Childbase Partnership Council. The tasks of the councilors are to promote employee ownership at company and nursery level through regular meetings

[490] The Guardian (November 2011), Available under: http://www.guardian.co.uk/public-leaders-network/blog/2011/nov/16/mutuals-provide-sunshine-amid-cuts/print.

with the staff, to decide on staff bonuses, reduction of hours strategy, to propose new policies, to represent staff views and to improve cooperation between the management and the staff. Additionally, the communication between the staff and the top management takes place at the regular "listening lunches", specially organized in order to enable employees to directly address the top management.

Employee Benefit Trust – Prior to introducing EOT to UK legislation the core mechanism of the CASP was the EBT. On the one hand, the trust sold shares to employees and provided them with matching shares under the approved scheme. On the other hand, both employees and external investors were allowed to sell their shares only to the EBT, so that the EBT also served as the only marketplace for Childbase shares. Employees were obliged to sell their shares to the EBT after leaving the company. Due to this mechanism, a pool of shares for the future one hundred per cent employee ownership was created within the EBT. Shares could be bought or sold back on two annual dealing days held in May and November each year under the CASP. The company accountant was setting the share value before the trade takes place. The Child Base shares were traded at £ 0.40 in 2000 and at £ 1.14 in April 2011 (Ownership Matters – EOA, 2009). Each individual shareholder is limited to 2.5 per cent (Bibby, 2009a) to prevent individuals from gaining substantial control over the company. The sale of the company is only possible with the approval of the Independent Board holding the so-called Golden Share that grants the right to veto any decision concerning the company existence. The decision must be unanimous.

Launching the Employee Onwership Trust – In 2014, all shareholders voted on the "Sharing our Success" initiative to sell their shares back to the company to establish a Trust to benefit everybody. The share price had risen from 20 pence in 2000 to £1.96 in 2016 and £2.30 when they were sold back to the company in 2017. The newly-formed Childbase Employee Ownership Trust incorporated on 24 February 2017 now holds all shares for the benefit of all employees. Its Trust Board (Childbase Employee Ownership Trustee Limited is the sole corporate trustee for the EOT) has independent and employee-elected directors from the company's 42-member Partnership Council. In January 2019, a tax-free Partnership Dividend payment of £750 was paid to every employee.[491] The core mechanism of the current CASP is the EOT. On the one hand, the trust sells shares to employees and provides them with matching shares under the approved scheme. On the other hand, both employees and external investors are allowed to sell their shares only to the EOT, so that the EOT also serves as the only marketplace for Childbase shares. Employees are obliged to sell their shares to the EOT after leaving the company. Due to this mechanism, a pool of shares for the future 100 per cent employee ownership is created within the EOT.

Implications – The share ownership plan has led to an increase of the employee share in the equity capital from zero to 64 per cent in 12 years. If the plan is implemented on the same lines in the future, the goal of 100 per cent employee ownership could be achieved in the next ten years. Consequently, the succession in the company and the protection against hostile takeovers are secured. Profit-sharing schemes, social programs and participation in decision-making flank the plan. The acceptance of the plan by the staff and the management is high and has already led to a substantial

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[491] Childbase Company Website (Jan. 2020), https://childbasepartnership.com/news/childbase-partnership-employees-start-year-ps12-million-pay-out

change of attitude. According to the survey "Best Companies", 80 per cent of Childbase employees like to work for the company, 85 per cent are proud of it and 71 per cent believe that they are treated fairly and that the management respects their needs. As a result, Childbase, unlike many mid-sized companies, has low personnel fluctuation and has the advantage of recruiting personnel for higher management positions from the own company.

3. Employee buyout mutual funds in France

Thibault Mirabel

Within the French system of EFP, invested employee earnings and matching amounts of the employer company must be, and employee profit shares can be, transferred to mutual funds (Fonds commun de placement d'entreprise – FCPE[492]), usually managed by assets management firms, i.e., branches of banks or insurance companies, which invest the assets on the capital markets, in shares or bonds of the employer company or of several different companies. If the employer company is not listed, the FCPE is obliged to invest one-third of assets in marketable shares or bonds. There are, however, two exceptions: (i) "FCPE simplifié"[493] – a mechanism guarantying the liquidity (e.g., by the enterprise) is installed or the company buys back ten per cent of its own shares, or (ii) since 2006, the "FCPE de reprise"[494] – all assets belong to employees planning to participate in a leveraged buyout. The following two case studies provide examples for both concepts in the business succession context, Les Zelles for a "FCPE de reprise" and Koesio for the "FCPE simplifié".

a) "FCPE de reprise" Les Zelles

The Company – Les Zelles, headquartered in the Vosges (France), is a carpentry company specialized in the design, manufacture, and installation of windows, doors, and shutter systems, in PVC and aluminum for collective and individual housing as well as the tertiary sector. Being a local company, it has adapted to demand and progressively extended its market to become a sucessful national player. Created in 1946, when providing exterior carpentry to answer the demand from post-war reconstruction Les Zelles became a limited liability company in the 1970s counting about 40 workers and EUR 2 mln. annual sales. In the 1990s, with the rise in the demand for social housing, Les Zelles specialized in PVC windows and diversified its activities. Les Zelles has grown steadily over the years, with 137 workers and EUR 12.6 mln. sales in

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492 Company mutual funds (*FCPEs*) are investment funds dedicated to the employees of a company and managed by an undertaking for collective investment in employee savings securities. Both, the "*FCPE simplifié*" and the "FCPE de reprise" are part of the company saving plan (*PEE*). Management companies are approved by the *AMF* (*Autorité des Marchés Financiers*) and custodian institutions are approved by the *CECEI* (*Comité des établissements de crédit et des entreprises d'investissement* – "Credit Institutions and Investment Firms Committee"). Unitholders are exclusively employees or former employees of the company. They have a Supervisory Board composed in particular of representatives of unitholders.

493 Following European Directive 2011/61, the "FCPE simplifié" was introduced into the French system of EFP to allow employees to indirectly buy shares of their company under preferential conditions; in 2017, it was also introduced into the French Financial and Monetary Code (Article L.214-165), enabling also non-French workers to benefit. In December 2022, there were 642 "FCPEs simplifiées", among which 234 in unlisted companies (AFG, 2023).

494 There have only been three buyouts via EBMF: La Redoute, a retail company, in 2015; Carbone Savoie, a manufacturing company, in 2017; and Les Zelles, a manufacturing company, in 2021. All of them have been managed and implemented by *Equalis Capital*. Les Zelles is the first, and so far only, case since the 2019 PACTE law which brought significant changes to ESO tools that have been fully used in this case.

1985, to 323 workers and EUR 55.9 mln. in 1995.Today, Les Zelles being a medium-sized company[495] with about 500 workers and annual sales of EUR 140 mln. has 8 commercial agencies and 3 production sites covering the whole territory of metropolitan France. About fifty years after its creation, in 1994, Les Zelles became a subsidiary of the Lapeyre Group, which it left in 2008 to be owned by MBO & Co and *Société Générale Capital Partenaires* (more than 90% of the capital). In 2021, having 474 workers with sales of EUR 104.7 mln., Les Zelles implemented an "FCPE de reprise" (employee buyout mutual fund). As of 2023, the employees of Les Zelles are the single largest shareholder with a 39% equity stake.

Les Zelles is also a purpose-driven company (*entreprise à mission*).[496] Established in 2019 by the PACTE law, the status of purpose-driven company allows a company to include in its legal status an obligation of performance not only economic and financial but also social and environmental and thus engage with both itself and its ecosystem and society as a whole. To be specific, Les Zelles adopted in 2021 a *raison d'être* written in its legal status as to "Builders of high performance, responsible solutions for sustainable construction and collective well being". An independent and certified auditor (KPMG) audits Les Zelles every two years to ensure the respect of its *raison d'être*. Becoming a purpose-driven company was driven by Les Zelles' management vision and convictions and the company's history and regional background. The firm buyout through employee buyout mutual funds was the first brick of the purposes-driven company's social dimension.

Financing mechanism – The "FCPE de reprise" is invested in unlisted securities to acquire shares of the employer company or of a holding company set up for its acquisition reserved to the employees. It can be invested up to 95% in shares of the purchased company instead of 67% in the case of the regular non-diversified *FCPE*. Thus, the liquidity reserve can be reduced to 5%. In the case of Les Zelles, a holding company is created, named Pando Group, to carry the debt needed to buy out the company. The fund was invested at 90% into Pando Group and at 10% into a monetary fund to ensure enough liquidity to cover entries and exits from the fund. At least 15 employees—or one-third of employees in firms with fewer than 50 employees—must hold shares in the holding created. With 474 eligible workers to subscribe to the EBMF, Les Zelles easily met this requirement. The employees may own unequal shares of the capital, and it is not required that the operation is offered to all employees. In the case of Les Zelles, the operation was offered to all employees, whether they had indefinite or short-term employment contracts, on the condition that they had been in the company for at least three months. The "FCPE de reprise"was the only investment vehicle available, for top management and employeesproviding three ways to invest: (i) voluntary payment, capped at one year of the gross annual remuneration (instead of 3 months in the case of the regular non-diversified *FCPE*); (ii) investing the profit-sharing bonuses (*intéressement* and *participation*); (iii) transferring money from other employee mutual funds from the short term company saving plans (*PEE).* In short, the

[495] In 2020, France counts 5,607 medium-sized companies, among which 1,055 in the manufacturing industry with an average of EUR 197 mln. sales (INSEE, 2022).

[496] Purpose-driven companies (*entreprises à mission*) are proper to France and differ on key aspects with B-Corps. To be a purpose-driven company is legally recognized and written in the status of the company at the initiative of the company, it states the direction the company wants to follow, and thus intervenes to trigger or foster the company's mission beyond profit. B-Corp is a label given by a non-profit organization recognizing the state of the company and its path taken beyond profit.

employees invest in the fund which is invested in a holding company that owns Les Zelles. The employees thus become indirect shareholders of Les Zelles by owning shares of the fund.

Incentives and constraints – To encourage workers to invest in the "*FCPE de reprise*", Les Zelles implemented a set of financial incentives: (i) One-sided contribution of EUR 200 to every worker without any conditions, ensuring that 100% of employees would become shareholders their company and thus all embark in the same project. (ii) A 20%-100% contribution adding to the worker’s investment depending on the seniority of employees. This contribution also decreases with the amount of the investment made. This contribution applies to voluntary payments and profit-sharing bonuses re-invested, but not to money transfers from other funds. (iii) Stocks are bought at a 30% discounted price. (iv) Profit-sharing bonuses were paid out simultaneously to the capital increase. (v) The company pays the annual operational fees of the funds. (vi) Stock options locked up for 5 years were also issued for some of the managers proportionally to their individual financial commitment (roughly one year salary) to provide partial security to their subsequent investment. All of the 474 eligible employees became shareholders of Pando Group, the holding company owning Les Zelles, holding a 27% stake. 70% of the employees have invested in the "*FCPE de reprise*", the remaining 30% became shareholders thanks to a unilateral company contribution. In addition to this 27%, some of the managers have direct ownership of Pando Group through stock options. Overall, the employees of Les Zelles are the single largest shareholder of the Pando Group with a 39% equity stake; with the remaining shares owned by five smaller banks.

The money invested in the "*FCPE de reprise*" is blocked for five years. Contrary to an "*FCPE simplifié*", there are only three cases of early release (instead of 12) which are: death, invalidity, and retirement. The blocking period of five years is compulsory and linked to substantial tax incentives including exemption from personal income tax. Only social security contributions on returns of 17.2% are due by the employees. The capital invested by the employees (including incentives from the company) is taxed Special social contributions of about 9% are also due on the investment made. Les Zelles also implemented a series of 30 informative meetings with Q&A sessions, a confidence-building process that took months and that keeps going with the monthly delivery of informative documents on the economic state of the company.

Supervisory Board – The role of the "*FCPE de reprise's*" Supervisory Board is to involve employees in decision-making on the management of their shares. By way of derogation from the regular *FCPE*, the Supervisory Board of the "*FCPE de reprise*" is composed solely of employees elected by all employees who hold units. The Supervisory Board reviews annually the administrative, accounting, and financial management of the "*FCPE de reprise*" and reports to the shareholders. It participates in important decisions in the life of the fund, in particular the definition of the management direction, exercises the voting rights attached to the shares of the shareholding funds, and has extensive powers with the management company, the custodian, and the fund's auditor, who are required to comply with its convening notice. It may refer the matter to the *Autorité des Marchés Financiers* and may also take legal action to defend or assert the rights or interests of employees who hold shares. Its members are entitled to economic, financial, and legal training. However, they do not have any responsibility for the actual financial management, carried out by the management company as part of the fund's settlement. Regular information, in particular on changes in the value of the fund's share (net asset value), must also be provided to investors allowing him or her to track the performance of his investment if he or she decides to sell her shares.

Valuation of the fund's shares and re-openings – An independent expert valuates the fund each semester on a fixed methodology defined at inception of the fund. Usual methodology for assessing the market value of non-listed companies is used such as EBITDA multiple of comparative companies minus net financial debt. Re-openings of the fund are at the discretion of the company. Created in 2021, the fund has been reopened yearly in 2022 and 2023 without the incentives of the one-sided contribution of EUR 200 but with the discount of 30% and the 20% to 100% contribution. Those re-openings enabled the new workers to get access to the company's capital.

Implications – Workers have invested on average about EUR 5,800, which with the aid provided by the company amounts to an average investment of EUR 6,600 plus the discount of 30% on the price of shares. Since 2021, the value of the fund's shares has increased by 132%. Gains are exonerated from income tax but still subject to social charges, 17.2% in 2023. For the conpany the "*FCPE de reprise*" was the first step for building a strong purpose-driven company (*entreprise à mission*) with environmental, local, and social missions. Employee ownership meets the social mission. As a result, the company received in 2021 the Award of Best Practices in Employee Ownership from the French Federation of Employee Shareholders and the Ulysse Award in 2022 from the Association for Company Takeovers for its successful takeover.

Just as the US ESOP, which is primarily popular as a business succession vehicle for SMEs, the French "*FCPE de reprise*" creates a market for retiring shareholders' shares, which is of major importance to unlisted SMEs having no other ready source of liquidity. Their scarcity is surprising and is likely to be due to the limited knowledge of their existence among professionals in the concerned financial sector and the legal uncertainty with only a few examples to back up. One obstacle to the implementation of the "*FCPE de reprise*" is that the employees keep their shares even if they leave the company. But overall, the "*FCPE de reprise*", although very similar to the employee ownership mutual fund (*FCPE simplifié)*, much better ensures the stability and continuity of an employee buyout operation and thus provides more security to potentially interested external investors and stakeholders.

b) "FCPE simplifié" Koesio

Koesio, headquartered in Valence (France), is a medium-sized IT firm specialized in services to SMEs and local public accounts with about 3,500 employees and EUR 1 bln. sales in 2023.[497] Koesio's success is mainly driven by external growth. Created in 1991 under the name C'Pro during the setting up of a wave of IT firms, Koesio changed its name in 2021 and merged 27 companies. Up today, Koesio has realized 180 acquisitions, among which 84 between 2018 and 2021. The Covid-19 crisis has accelerated the informatic transition of many SMB enterprises and public accounts, reinforcing Koesio as the leader of this market in France. In 2023, Koesio is structured as a network of 176 local agencies covering France, Belgium, and Luxemburg. The geographic expansion of Koesio has been accompanied by a diversification of its activities including printing, communication, data security, and document management services. At the joint initiative of the management company, *Equalis Capital*, and a custodian insti-

[497] In 2018, the IT sector represented 5% of the workforce in medium-sized companies (Insee, 2018).

tution for these assets, *Natixis Interepargne,* Koesio opened an "*FCPE simplifié*" (employee ownership mutual fund) in 2016. In 2022, 53% of the 2,746 eligible employees had invested in the "*FCPE simplifié" holding* about 5% of the companies' capital.

The launch of the "*FCPE simplifié" was* part of a broader plan to develop environmental and social responsibility within the company. In that respect, in 2022 Koesio created a foundation that operates as a democratic financing platform internal to the company allowing employees to allocate EUR 100 provided by the company to environmental, local, solidary non-profit organizations of their choice through projects proposed by their colleagues. A unique platform in France, yearly donations amount to about EUR 300,000.

Financing mechanism – The "*FCPE simplifié*" is invested in unlisted securities to acquire shares of the employer company. It can be invested up to 100% in shares of the purchased company instead of 67% in the case of the regular non-diversified *FCPE*. In the case of Koesio, the liquidity reserve is kept between 4% and 10% through the monetary fund to ensure enough liquidity to cover entries and exist from the fund. The remainder is invested in Koesio shares. The employees may own unequal shares of the capital, and it is not required that the operation is offered to all employees. In the case of Koesio, the operation was offered to all employees, whether they have indefinite or short-term employment contracts, on the condition that they have been in the company for at least three months. Workers have three ways to invest in the EOMF: (i) voluntary payment, capped at 3 months gross annual remuneration; (ii) investing the profit-sharing primes (*intéressement* and *participation*); (iii) transferring money from other funds from the short-term company saving plan (*PEE*). In short, the employees invest in the fund which is invested in the company. The employees thus become indirect shareholders of Koesio by owning shares of the fund. The overall investment has been capped for the last 3 years at EUR 8,000 per employee per year, to limit the risk for employees.

Incentives and constraints – To incite workers to invest in the "*FCPE simplifié*", Koesio implemented a set of financial incentives: (i) A 300% matching contribution to the worker’s investment up to EUR 100 appliying to voluntary payments and profit-sharing primes, but not to money transfers from other funds. (ii) Stocks are bought at a 20% discounted price. (iii) The company pays the annual operational fees of the funds. Note that Koesio did not provide an unconditional one-sided contribution to all workers; the matching contribution and the discounted price have not been available during the re-openings of the "*FCPE simplifié*". Only in 2020 and 2021, Koesio provided a 200% contribution up to EUR 200 and EUR 100 respectively for new workers only to enable them to invest in the company. In 2022, 53% of the 2,746 eligible employees had invested in the "*FCPE simplifié*" (in 2016 it were 86% of 413) owning about 5% of the companies' capital.

The money invested in the "*FCPE simplifié*" is blocked for five years, however, with many cases of release: end of the employment contract, acquisition / expansion / construction of the main residence, wedding, birth or adoption of a third child and then of each subsequent child, divorce or separation with custody of at least one child, domestic violence, creation or takeover of a company, over-indebtedness, invalidity or invalidity of the partner/children, retirement, death or death of the partner/children. The locking up period of five years is compulsory and linked to substantial tax incentives including exemption from personal income tax. Only social security contributions on returns of 17.2% are due to the employees and special social contributions of about 9% are due by both employees and the employer company. Koesio also implemented a series of informative meetings with Q&A sessions and delivered informative documents on the operation, a confidence-building process that took months.

Supervisory Board: The role of the "*FCPE simplifié's*" Supervisory Board is to involve employees in decision-making on the management of their shares; it is composed equally of representatives of employee shareholders (i.e., those who have invested in the fund) elected or appointed (by the Social and Economic Committee or among the Trade Union Delegates) and representatives appointed by the company. Its Chairman must be chosen by the members of the Board from among the employee representatives. The Supervisory Board reviews annually the administrative, accounting, and financial management of the "*FCPE simplifié's*" and reports to the shareholders. It participates in important decisions in the life of the fund, in particular the definition of the management direction, exercises the voting rights attached to the shares of the shareholding funds, and has extensive powers with the management company, the custodian, and the fund's auditor, who are required to comply with its convening notice. It may refer the matter to the *Autorité des Marchés Financiers* and may also take legal action to defend or assert the rights or interests of employees who hold shares. Its members are entitled to economic, financial, and legal training. However, they do not have any responsibility for the actual financial management, carried out by the management company as part of the fund's settlement. Regular information, in particular on changes in the value of the fund's share (net asset value), must also be provided to investors allowing him or her to track the performance of his investment if he or she decides to sell her shares.

Valuation of the fund’s shares and re-openings – An independent expert valuates the fund each semester on a fixed methodology defined at inception of the fund. Usual methodology for assessing the market value of non-listed companies is used such as EBITDA multiple of comparative companies. Re-openings of the fund are at the discretion of the company. Created in 2016, the fund has reopened yearly to enable new employees from acquisitions to become shareholders. The number of employee shareholders has increased alongside the growth of Koesio, from 341 eligible employees in 2016 (with a subscription rate of 86%) to 2,746 eligible employees in 2022 (with a subscription rate of 53%). Note the discounted price of 20% and the matching contribution of 300% were not renewed after the initial opening. Today, about two-thirds of Koesio’s employees are indirect shareholders through the EOMF. Due to numerous acquisitions the number of Koesio’s workers eligible for the "*FCPE simplifié*" have grown from, 341 in 2016 to 413 in 2019 to 2,457 in 2021.

Implications – In 2016, workers have invested on average about EUR 3,800, which with the aid provided by the company amounts to an average investment of EUR 4,000 plus a 20%discount on the share price. Since 2016, the value of the fund’s shares has multiplied by 10. In 6 years of existence, the value of the fund has never experienced a yearly decrease. Gains are exonerated from income tax but still subject to social charges, 17.2% in 2023. For the company, one of the main impacts of the "*FCPE simplifié*" is to foster and strengthen corporate culture, a key element in the IT sector to be identified clearly by current and potential customers. This is particularly useful for a company like Koesio with an external growth strategy. The "*FCPE simplifié*" also distinguishes Koesio from competitors to hire the best workers. Koesio received in 2021 the Award of Best Practices in Employee Ownership from the French Federation of Employee Shareholders after having received the label Great Place to

Work every year since 2013. Since 2011, the proportion of "*FCPEs simplifiées*" in unlisted companies among all "*FCPEs simplifiées*" is roughly constant by about a third. Employee ownership through a "*FCPE simplifié*" is widely spread across big listed companies in France. Hence, the potential growth is concentrated in medium-sized unlisted companies with Koesio being a successful example.

4. The Slovenian Cooperative ESOP model – The case of Inea d.o.o.

Tej Gonza

Since 2018, one of the main organizations working on the topic of employee ownership and workplace participation is the Institute for Economic Democracy (IED), focusing on research of best practice, policy and advocacy on employee ownership, ownership restructuring and trainings for employees. These initiatives gained traction with the Slovenian government setting up a new ministry for solidarity-based future in January 2023, *inter alia* tasked with further strengthening of EFP. The ministry started to work on a *Law of Employee Ownership Cooperative* (LEOC)[498] to establish an ESOP-like mechanism.[499] The Case study of Inea d.o.o. is currently the biggest company in Slovenia that implemented the Slovenian Coop-ESOP model being in its pilot implementation phase.

The Company – Founded in 1987, Inea d.o.o. is a dynamic company specialising in industrial automation, process control, manufacturing intelligence and industrial energy management. With approximately 100 employees, Inea has evolved significantly over the past eight years from a service-oriented company to a major manufacturer of automation equipment, including production lines and various devices. In the field of energy management, Inea's focus is on energy flexibility, while in industrial automation its main focus is on information systems. Notably, Inea exports more than 90% of its services and products and has consistently ranked among the top 100 Slovenian exporters over the past five to seven years. Inea's ownership origins can be traced back to its founding as a spin-off from the Jožef Štefan Institute (IJS) in Ljubljana. IJS took an innovative approach by actively integrating its research results into the business world, which led to the establishment of Inea. Over time, Inea underwent a transformation from public to private ownership, with around 15 initial owners, including IJS and Inea employees. In 2022, former employees who were owners left the company, leaving Inea with seven owners. Inea was looking for different ownership models to consolidate employee ownership and create a sustainable structure, which would help the company to perpetually maintain its values of internal ownership. In that context, the owners started working with the Institute for Economic Democracy to adopt the Slovenian ESOP model.

Reasons for Coop-ESOP implementation – From the beginning, employee ownership has been a key aspect of Inea's identity and strategy. This commitment was interpreted differently by the original owners, with some interpreting it as ownership by active employees and others interpreting it differently. In its early corporate documents, Inea was explicitly described as an employee-owned company. However, over

498 https://obljubadeladolg.si/vse-obljube-15-vlade/krepitev-delavskega-lastnistva-podjetij/ login 22 March 2023.

499 In 2022, there were three pilot applications of the Slovenian ESOP: Hudlajf d.o.o. with 9 workers becoming 10% employee-owned; IneaRBT d.o.o. with 9 employees becoming 51% employee-owned; and Inea d.o.o. with 90 employees becoming 100% employee-owned.

time, as certain owners retired and left the company, Inea's ownership gradually shifted away from its active employee-owners. The prevailing ownership model was based on direct share ownership by individual employees, which proved unsustainable as it raised concerns about succession and transfer of ownership during generational changes in the workforce. There was no established mechanism for the automatic transfer of ownership to the new generation of active employees when the previous generation of employee-owners retired, resulting in the retention of ownership by the retiring owners. In addition, the owners recognised that the company's growth ambitions could potentially outstrip the financial capacity of the owners.

Over the years, Inea's ownership structure evolved from an initial group of around fifteen owners to around 20, 30 and finally around 40 owners, the majority of whom were relatively small owners. Among these, a few significant owners collectively held about half of the company's shares. Keeping the number of owners below 50 was a priority, as exceeding this limit would trigger the need to re-register as a different legal entity under Slovenian company law, which was not in the best interests of the company. The existing direct employee ownership model, which had been in place for more than 30 years, was facing difficulties as employees retired. The cost of shares was increasing significantly, which posed a challenge for new employees wishing to purchase shares. The partnership and unlisted company models were also explored but did not provide effective solutions. In addition, the existing tax policy in Slovenia required employees to purchase shares from their own savings and wages, placing a financial burden on them.

Financing mechanism – Inea embarked on a journey to find an appropriate ownership model to address the issue of business succession and maintaining internal ownership. The Slovenian Coop-ESOP model effectively addresses the issue of ownership succession by streamlining the transfer of ownership shares between employees. It eliminates the legal complexities associated with direct ownership and provides a clear framework for entry, ownership, governance and exit. Individual transfer or sale of ESOP shares is prohibited, thus avoiding conflict and making exits a collective decision. As part of the employee buyout based on the Slovenian Coop-ESOP model, the company set up acooperative as intermediary entity (the ESOP-Cooperative). In August 2023, stock was transferred to the ESOP-Cooperative. The worker buy-out transition period in Inea was bridged through an agreement between the remaining owners and the workers, which states that the ESOP-Cooperative has 100% of the voting rights and the profit rights despite outstanding shares. This is not a necessary feature of the Slovenian Coop-ESOP model but rather an agreement between the owners and the workers, who both desired to transition to 100% employee-ownership as soon as possible. In this way, 100% employee-ownership through the ESOP-Cooperative was established in Inea.

Incentives and constraints – Inea employees receive profit rights and have the claim over the value of the capital held by the ESOP-Cooperative (shares of the underlying company). In the first phases, when the acquisition debt is being paid off through profits, the value of the credit payments is credited in a form of shares allocated to individual capital accounts (ICAs) of each individual member of the ESOP-Cooperative. In the second stage, after the acquisition debt will be paid off in full, all the internal shares will be allocated to ICAs. The retained profits in Inea increase the value of shares allocated on ICAs, preventing the skewed investment incentive found in employee-ownership model that do not ensure capital appreciation rights. The annual ESOP contribution in Inea is maintained to finance the roll-over, which helps to consolidate ownership with the ongoing generation of Inea workers.

The system of ICAs is an important invention for the capital structure of employee-owned firms, since it ensures an individual claim over the capital appreciation of the employee-owned company (the value of ICA is increased proportionally with a share of profit reinvestment for each individual worker-owner). It ensures the sustainability of employee-ownership through changes in generations of employees as workers cannot freely dispose of or trade ICA shares/values or keep the shares after they leave the company. With account holding being conditional on employment in the firm, a set of rules that clearly define when and under what conditions a worker can cash out the value on ICAs is integral part of the Slovenian Coop-ESOP model.

Decision making and Governance – The Coop-ESOP model ensures broad employee participation in ownership, in line with Inea's core values, and maintains a democratic structure where each employee-owner has equal voting rights in the General Assembly, which in turn influences the composition of the Board of Directors. Younger employees were particularly enthusiastic about the model, as it allowed for the collective purchase of shares from retiring owners through financial leverage, fostering a sense of unity and shared ownership among employees. When the ESOP-cooperative was established, its board of directors and supervisory board were democratically elected in the elections held in December 2022. The board of directors consists of five members, while the supervisory board has three members. The latter monitors and supervises the operation of the cooperative, which is structured and operates democratically, i.e., based on the one person, one vote principle. In the Inea Coop-ESOP, the cooperative acts as the sole owner, i.e., the general assembly discusses strategic decisions and adopts a general strategy, which is then implemented by the management, who is appointed by the democratically elected board of directors.

5. Employee shareholder foundations in Austria – voestalpine Mitarbeiterbeteiligung Privatstiftung

Benjamin Cornils and Jens Lowitzsch

On 1 January 2018, the Law on the Employee Ownership Foundation of 26 July 2017 entered into force, aiming at extending the flexibility of the framework for private foundations and at expanding their scope by introducing a new form of private foundation with commercial purpose – the employee ownership foundation. This newly introduced vehicle serves the collective warehousing and administration of employee shares in the employer companies, not just the mere transfer of dividend income as in the case of the already established model of the employee participation foundation (for details see the Country Profile Austria). The best-known example is voestalpine Mitarbeiterbeteiligung Privatstiftung described in this case study.

The Company – voestalpine AG, headquartered in Linz (Austria), is mainly active in the production and treatment of steel. As a successful international corporate group with some 500 production and sales companies in more than 50 countries, it has approximately 51,200 employees (about 45% of them in Austria). As one of the most profitable European steel producers, the Group generated total turnover of around EUR 18.2 billion and an EBITDA of EUR 2.5 billion in the 2022/23 financial year. In conjunction with discussions about the full privatization of the corporate group undertaken at the beginning of 2000, the group's Board of Management, together with the employee representatives, developed and later implemented an ESO scheme which at that time was unprecedented in Austria. Through this, a large portion of the group's workforce, as well as a small group of ex-employees, as 2023 hold a 14.8% stake (around 25.6 mln shares) administrated by a private foundation (*voestalpine Mitarbeiterbeteiligung Privatstiftung*). This foundation, representing the employee shareholders, has been the most stable core shareholder of voestalpine for years. Today, it is the second largest shareholder after the Raiffeisenlandesbank Oberösterreich Invest GmbH & Co. (nearly 15%). The chairman of the foundation's governing body represents – including voting rights of the shares held by a small group of former employees – 14.8% of the voting rights within the General Meeting of Shareholders. In addition, the foundation nominated a representative to the Supervisory Board since 2004.[500]

Reasons for setting up the Austrian model – In 2000, the Austrian government, under Chancellor Wolfgang Schüssler, enacted the so-called ÖIAG Act (Federal Law Gazette 1 no. 24/2000) with the intention of accelerating the privatization process among (partial) state-owned industrial companies. One of these companies administrated by the Austrian Industry-holding company Stock Corporation ÖIAG (*Österreichische Industrieholding AG*) was the voestalpine AG. In 2000 ÖIAG administrated a state-owned stake of 38.8% which subsequently was slightly reduced in two steps to 34.7%. In 2003, the Austrian Council of Ministers mandated ÖIAG to fully privatize the voestalpine AG. Against all odds, in the context of the so-called secret project "Minerva", a hostile takeover by Magna was prevented, and since August 2005 the voestalpine AG has been fully privatized.[501] In response to the privatization ambitions of the Austrian government, in 2000 the voestalpine management in cooperation with the group's employee representatives immediately started intensive discussions about the group's future ownership structure. In the course of these talks, both parties accepted that a substantial equity stake owned by the group's workforce could contribute to a more stable ownership structure (strategic ownership). From the very beginning, an ambitious plan was conceived to acquire, in the short and medium term, an employees' stake of not less than 10% of the total number of voting rights.

Financing mechanism – The core element of the first and all later ESO schemes is a private foundation, the *voestalpine Mitarbeiterbeteiligung Privatstiftung* which is not only responsible for the administration of the acquired stock, but also concentrates all individual employees' voting rights due to a transfer of the ownership's civil claim, fixed within integrated fiduciary agreements. Thus, it is ensured that the workforce has an important voice within the general shareholders' assembly. On the other side, the individual right to receive a dividend remains in employees' hands. The *voestalpine Mitarbeiterbeteiligung Privatstiftung* has the following three tasks: (i) administration of the different schemes (with the assistance of the actuaria benefits consulting GmbH); (ii) further development of the employee ownership scheme; (iii) execution of voting rights at the General Meeting of Stakeholders.[502] Since 2018 with the newly in-

[500] All figures and details from this case study stem from voestalpine Mitarbeiterbeteiligung Privatstiftung (ed.): Wir sind daran nicht ganz unbeteiligt. Die voestalpine-Mitarbeiterbeteiligung 2000-2010, Linz, 2010; Voestalpine Arbeitnehmer-Privatstiftung (ed.): Ein Stück vom Erfolg persönlich genießen. Die Entwicklung der voestalpine Mitarbeiterbeteiligung 2000-2006, Linz, 2006.

[501] Auer, Hannes S.: Neoliberalismus in Österreich? Hochschulpolitik, Gesundheitspolitik und Wirtschaftspolitik der ÖVP-FPÖ/BZÖ-Koalition auf dem Prüfstand, Norderstedt, 2008, p. 245-249

[502] Stelzer, Max: Employee Participation voestalpine AG. Ten years of Public Policies for Employee Ownership in Europe (presentation), Brussels, 26 November 2010, p. 6

troduced instrument of Employee Ownership Foundations (EOF), and EUR 4,500 per employee per annum is tax free (§ 13, para. 1, no. 1 (b) and (c) Corporate Tax Law (CTL)). Dividends on shares held by the foundation are also tax exempt (§ 10, para. 1 CTL). The employee pays a capital gains tax on returns transferred by the foundation of up to EUR 4,500 and full personal income tax (§ 3, para. 1, no. 15 (c) ITL), but no social security contributions on the amount in excess thereof. Administrative costs covered by the EOF are not considered taxable benefit of the employees (§ 3, para. 1, no. 15 (d) ITL). Finally, the transfer of the right to dispose of employee shares to an employee after the termination of employment by the EOF is tax neutral within the above-mentioned annual limit.

Governance and decision making – The two main bodies of the foundation are the Management Board and the Advisory Board. The group's Board of Management and Works Councils nominate its members equally.[503] Both bodies are chaired by an employees' representative who in case of a tie casts the deciding vote. The Advisory Board makes all decisions concerning employee participation schemes (e.g., their further development, administration of the assets, etc.) and is responsible for appointing the Management Board. The chairman of the Management Board represents the voting rights of all participating employees at the General Meeting of Stakeholders. His vote at the meeting is restricted by the decisions of the Advisory Board, which are always taken on the basis of a suggestion by the Management Board and a wide opinion-building process among the group's Works Councils. The Management Board is further responsible for administering the participation scheme and also foundation assets.

Share ownership schemes – Through the first of the fourteen ESO schemes implemented so far, the voestalpine workforce in Austria acquired an immediate 4.9% equity stake (around 1.6 mln. shares). Based on opening clauses in relevant collective bargaining agreements, an additional wage agreement (*Zusatzkollektivvertrag*) was fixed between social partners (Labour Union and Economic Chamber) on 1 November 2000 which allowed the group's management to retain parts of concluded pay increases for the purpose of attaining the employee share ownership target. Thus, 1% of monthly employees' gross wages in combination with company's savings in non-wage labor costs arising from stock transfers[504] and a yearly value adjustment of employees' own contributions[505] were the basis to calculate within the complex *Barwertmodell (Cash Value Model)* the total advance of money used for the acquisition of the above mentioned 1.6 mln. shares at the stock exchange. For all employees hired after 1 November 2000, a *Schichtmodell (Shift Model)* was developed which calculated the employee's own monthly contribution in accordance with the *Barwertmodell* (1% of the employee's monthly gross wage, the company's savings in non-wage labor costs and a yearly value adjustment (3.5%) of this contribution).

So far strategic employee share ownership has been facilitated through eleven additional schemes (II-XIV). All of these have been based on the additional wage agreements to retain a percentage of employees' pay increases regulated by internal com-

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[503] The Management Board consist of three members (3rd member is collaboratively nominated) and the Advisory Board of 12 members.

[504] According to the Social Security Act, employers in Austria are not required to pay non-wage labour costs in case of stock transfers. In the example of the Voestalpine AG it was decided to pass these savings on to employees, thereby increasing their own contribution about 25%.

[505] The calculation included a yearly 3.5% increase in employees' contributions.

pany agreements. In a separate model for employees outside of Austria an employer matching contribution of one share for every three shares acquired with a ceiling of 3,000 EUR employee contribution per year exists. Additionally, annual profit-sharing payments are awarded in a share-based scheme. Furthermore, the financing of the monthly employees' own contribution in all schemes is accordant with the *Schicht-modell* (model I). Unlike the initial scheme, the pre-financing of shares in the following schemes II, III and V was leveraged (credit financed). In concrete terms: (i) In 2002 scheme II increased the existing employees' stock[506] by 2.5% (around 1 million shares). (ii) In 2003 (scheme III) the so called "squeeze-out-threshold" of 10% was passed for the first time by the purchase of around 1.5 million shares (3.7%). Since then, the *voestalpine Mitarbeiterbeteiligung Privatstiftung* on behalf of the workforce has nominated a representative to the Supervisory Board. (iii) This achievement was only once put at risk when in 2005 the voestalpine AG issued convertible bonds and increased the group's share capital. Thus, at the end of 2005 a fourth scheme was concluded, through which the Voestalpine AG between 2007 and 2009 credit financed the purchase of about 3.2 mln. shares[507] (2%) on the stock exchange and transferred them to the *voestalpine Mitarbeiterbeteiligung Privatstiftung.* (iv) Based on an additional wage agreement, reached in the course of collective bargaining in the metal industry, a fifth scheme was started in November 2007 mainly in order to integrate a large number of new voestalpine staff, particularly from the BÖHLER-UDDEHOLM-Group, into the employee ownership scheme. It was agreed to allot 0.5% of their monthly gross wages for this purpose. On the other side, the monthly contribution of already participating employees was raised by 0.3% of their monthly gross wages. Deviating from the procedure in previous models, shares still available within the foundation were utilized for this new allocation. (v) Scheme VI[508], implemented as a result of a conditional capital increase, enlarged the employees' stock within the foundation by 2% (3.3 mln. shares). (vi) The subsequent schemes VII to XIV further gradually increasing employee share ownership up to 14.8% since 2019.

Incentives and constraints – To fully benefit from an income tax exemption according to § 3 I Z. 15 lit b & lit c from 2018 onwards of the Austrian Income Tax Act and an exemption from social security contributions according to § 49 III Z. 18 lit. c of the Social Security Act, acquired shares were initially allocated to employees to a maximum of EUR 1,460 per year. Since 2016 this tax and social security exemption was raised to EUR 3,000 and since 2018 to EUR 4,500 per year additional to the general tax exempt quota of EUR 3,000. Shares acquired under the voestalpine employee ownership schemes carry a blocking period for the whole employment until they may be sold and are held by the foundation for the entire period of employment. All relevant regulations, e.g., relating to the retention of employees' pay increases or the allocation of shares to individual employees, were concluded within the internal company agreement.

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506 At this time the stake already had been decreased to about 4% followng a capital increase.

507 As a result of a share split in July 2006 each share had been split into four.

508 The implemented schemes gradually increased the amount invested from the monthly gross wage: scheme I (1%), scheme II (0.5%), scheme III (0.5%), scheme IV (0.5%), scheme V (0.5% in case of new integrated employees and 0.3 % in case of already participating employees) and scheme VI (0.45%); in 2014, for example, Austrian employees spend up to 3.25% of their monthly gross wages for the allocation of shares.

Implications – The workforce's capital investment has proved its financial value. Each year since 2000, the voestalpine AG has declared a dividend. In the period from 2000 to 2023, it distributed a total of net EUR 190 mln. in dividends (after 25% respectively 27,5% deduction CTL) to participating employees. Demonstrating confidence in their capital investment, 15% of them (3,450 individuals) have elected to reinvest their dividends. For the company, the result is that as of 2023 a large percentage of the group's workforce, together with a small group of former employees holds a 14.8% ownership stake, i.e., approximately 25.6 million shares held by 23,000 Austrian and approx. 2,800 international employees which are administrated by a private foundation. In addition to the gradual expansion of voestalpine's ESO scheme in Austria, its internationalization is also progressing. In 2004, the Dutch subsidiary launched its own model and since 2009 the participation, in the form of an offer to buy shares at a reduced price, has been extended to the EU Member States Germany, Great Britain, the Netherlands, Poland, Belgium, Czech Republic, Italy, Switzerland, Romania and since 2018 also extended to Spain and Sweden.[509] Regardless of the different tax and social insurance systems, 97 voestalpine companies outside Austria are already integrated in 2023 with an average participation rate of 20%.

6. ESO in micro-enterprises – Spanish Sociedades Laborales

The Spanish concept of Sociedades Laborales (Workers' Companies, SLs) is the only ESO scheme involving an intermediary entity across the EU implemented at large scale in small and micro companies, which makes it of particular interest for policy making. The following case studies illlustrate in particular the different size groups that SLs are existing in. A major reason for the initial steady growth in the number of SLs is that since 1985 in lieu of receiving monthly payments, job seekers may choose to capitalise their unemployment benefits into a lump sum in order to found a new SL or to recapitalize an existing SL by becoming a member.[510] An important reform of this capitalisation mechanism allows from 1 September 2023 SL workers with an indefinite employment relationship to buy into their employer company, dropping the requirement of previously unemployment.

a) Komunikazio Biziagoa S.A.L.

Giuliano Scocozza and Armandina Vogel

The Company – Komunikazio Biziagoa S.A.L. was founded in 1998 as a worker-owned company, but it already existed with a different legal form, predating the SL concept. Its origins can be traced back to 1919, as the publisher of a religious magazine. Then, two years later, the news journal *Argia* was born. These two publications were the antecedents of Komunikazio Biziagoa. In the 1960s, the company focused on the Basque people's work and progress in the middle of Francisco Franco's dictator-

[509] See https://www.voestalpine.com/group/de/konzern/mitarbeiterbeteiligung/grundsaetze-der-mitarbeiterbeteiligung/, Login: 03.01.2018.

[510] It is estimated that about one-third of SLs utilise the capitalisation of unemployment benefits at the time of their founding. Between 2006 and 2013 on average 2,240 persons capitalized unemployment benefits to set up or join a SL in Spain, with an average annual total of around EUR 13,233 per person. SLLs generally had higher survival rates than their conventional competitors but there were regional differences. They survive long enough to amortise capitalised unemployment benefits: The average paid-out lump sum represents roughly the cost of 1.3 years' worth of unemployment benefits; between 2006 and 2013 on average, 88% of all SLs survived this long.

ship. In 1997, it was the first communication medium in the Basque language to go online. In 1998, Komunikazio Biziagoa S.A.L. in its current legal form was created, after considering the different options and deciding that a joint stock company qualifying as a Sociedad Laboral was the most appropriate form to adapt the business model to the current times. As of 2020, it is the publisher of *ARGIA* (The Light), a weekly magazine whose mission is to be an information source for citizens who want a better world and a better Basque Country. Its main challenge is to keep readers well informed about Basque issues on a weekly basis.

Table 1: Main 2018 data Komunikazio Biziagoa S.A.L.

Net turnover	€ 1,538,160
Number of shares	18,964
Price per share	€ 6.01
Company's share of stock	16.35%
EBITDA	€ 23,750.65
Equity	€ 729,960.77
Share capital	€ 113,975.94
Number of employees	24
Number of worker-owners	19

Table 2: Komunikazio Biziagoa S.A.L. compared to sector firms in Spain and in the Basque Country

Financial ratios	**Kom. Biz. 2018**	**Sector average (Spain) 2018**	**Sector average (Basque C.) 2016**
EBITDA margin	1.82%	7.31%	19%
Indebtedness	25.9%	44.37%	45%
Financial profitability	1.61%	4.63%	5.42%
Productivity	1.7%	9.12%	31%

Company sector: NACE - J 5814 - Publishing of journals and periodicals

Sector for Spain: NACE - J 58 – Publishing activities

Sector for Basque Country: 22 - Publishing, imagery, radio y television (A38) / 59 - Publishing (A86)[511]

Sources: Own elaboration with data obtained through ASLE from Komunikazio Biziagoa S.A.L.'s annual accounts and the annual accounts of sector companies submitted to the Trade Register in Spain (and obtained through the Bank of Spain) and to the Basque Statistics Institute (Basque Country).

Financing mechanism and ownership structure – Upon its foundation, 13 partners capitalized their unemployment benefits, each of them contributing EUR 3,000. Over the years, new partners have been incorporated into the company with ten of them having capitalized their unemployment benefits. The company's ownership is structured based on two types of shares: Type A shares have voting rights and are reserved for employees, without exceptions. Type B shares are reserved for companies belonging to the corporate group, or employees of these companies who were formerly partners of Komunikazio Biziagoa and they do not provide voting rights to their holders. As of 2011, the company had a total of 23 partners: 20 worker-owners (who own type A shares) and three companies belonging to the corporate group. The percentage of type A shares owned by each worker ranged from 2.64 to 7.91 per cent. The company's capital stock consisted of 18,964 shares valued at EUR 6.01 each. The minimum holding is 500 shares (EUR 3,005.06). Total stock is EUR 113,975.93. Work-

[511] Balance sheet for sector "22, Publishing, imagery, radio y television" as per classification A38; income statement for sector "59, Publishing (A86)" as per classification A86. Source: Basque Statistics Institute.

ers owned 75 per cent of the company, while the companies belonging to the corporate group own the remaining 25 per cent.

Governance and decision making – Workers are the business owners and thus participate in decision-making at all levels. As a worker-owned company, the business revolves around its workers. Even though becoming a partner in Komunikazio Biziagoa is optional, the vast majority of workers, i.e., 19 out of 24 are partners. Maintaining worker-ownership is the key to independence and thus helps reinforce its credibility. Trust, communication, and equality have been defined as its fundamental values. The company considers itself as having no employees, only truly motivated partners. Workers are firmly committed to their work; this level of cooperation is only possible between owners. Although the focus is on employee participation in all decision-making processes, task delegation is essential. Sometimes employees even have to be reminded of the freedom they have to make decisions.

Implications – Komunikazio Biziagoa workers' dual status as owners and employees allows them to establish sustainable growth policies, to practice financial restraint, and to reinvest profits in the company's future. Upon analysing the gender variable in the company's workforce, we observe that the proportion of male and female workers is balanced throughout the period 2007-2017, reaching a maximum of 52% female participation in 2008 and a minimum of 39% in 2011 and 2012 that picked up in the following years. Worker-owners have also remained under considerable stable gender proportions, with a slight tendency towards male predominance that reached its peak in 2018 at 42% of female participation. Investing partners who do not work in the company are all legal entities and thus the gender variable cannot be analysed.

b) Hirunox Calderia Inoxidable S.L.L.

Giuliano Scocozza and Armandina Vogel

The Company – Hirunox Calderia Inoxidable S.L.L. specialises in boiler making, manufacturing, assembly and installation of metal structures, metal carpentry, works of all types of boiler making and especially stainless, as well as manufacturing, repair of machinery and facilities in general, engineering services, and heat-treating services. The company was incorporated on April of 2012 in Tolosa, Guipuzcoa by three owner-worker partners that took advantage of the possibility to capitalize their unemployment benefits as a onetime lump-sum payment of EUR 25,000 each after their previous employer Talleres GOG SA was liquidated in April of the same year. In addition to the unemployment benefits, all three partners expended on personal assets as capital. This allowed the partners to forego any need of external loans or capital. Incorporated as a limited liability company and registered under the 'General Social Security Regime[512]', Hirunox's start-up social capital is reported to be of EUR 93.000. In 2018, Hirunox suffered a performance setback due to issues with a big client, however, it is reported that 2019 was a positive year, as they have performed an analysis of their

[512] The general social security regime is applicable to dependent workers: it grants a wide protection including the unemployment insurance and the wage guarantee fund. The advantage of the General regime is that the essential part of the SS contribution is to be paid by the employing company. A certain category of workers is assimilated to the general regime, however excluding the unemployment insurance and the wage guarantee fund. The Special Regime for Independent Workers offers a more restricted social protection. Furthermore, the contributions are fully carried by the registered persons.

activity and cost-study in order to increase productivity. Figures for 2019 were not disclosed by ASLE at the time of this study. Stemming from a sector that is usually associated with heavy labour, it is no surprise to observe that the company is exclusively composed of men. As of 2018, six male employees constitute the workforce, whereas management of the company falls under one male partner president serving as president, and two additional male partners serving as the company's advisers.

Table 18: General overview – Hirunox in 2018

Net turnover	€ 495.286,08
Number of shares	9300
Price per share	€ 10
Company's share of stock	0
EBITDA	€ -17.501,27
Equity	100%
Share capital	€ 93.000
Number of employees	6
Number of worker-owners	3

Table 19: Hirunox benchmark indicators against sector (2016/2017)

Financial ratios	**Hirunox (2018)**	**Sector average (2016/2017)** *
EBITDA margin	-40%	13%**
Indebtedness	32%	55%**
Financial profitability	-12%	8.6%***
Productivity ratio	1.08	1.26[6]

* Sector data beyond 2016/2017 was not available at the time of this writing of this case study.

** Ebitda margin was calculated as '(Income – Expeneses + Amortization) ÷ (Income)' using aggregated 2016 data from the territories of Araba/Álava, Bizkaia and Gipuzkoa – 'Industry' sector category.

*** Data from 2017, obtained from EUSTAT's "Ratios de las empresas no financieras de la C.A. de Euskadi por sectores (A38) (%). 2017" report, item 10 – 'Fabricación de metales básicos y de productos metálicos, excepto maquinaria y equipo'.

**** Productivity was calculated as '(Income – Expenses) ÷ (Staff expenses)' using aggregated 2016 data from the territories of Araba/Álava, Bizkaia and Gipuzkoa – 'Industry' sector category

Source: Own elaboration with data obtained from ASLE and EUSTAT.

Financing mechanism and ownership structure – All three owner-worker founders capitalized their unemployment benefits as a onetime lump-sum payment of EUR 25,000 eachand additionally expended on personal assets as capital. As of 2020, the worker-owner partnership structure remains unchanged, with six non-partner workers. Hirunox has not had the opportunity to concretely evaluate their market value of equity, however, there are 93,000 stocks held by its worker-owner partners at a value of EUR 10,00 each.

Governance and decision making – The Administrative Board serves as the main body that directs the progress of the company, supervising and managing the performance. It is comprised of one president and two advisers, all men, and each of them holding one third of the company shares. The owners are envisaging reforming the company's articles of partnership regarding the transfer of shares in the future in order to establish an evaluation procedure leading to a transfer value in between.

Implications – The company has benefited mainly thru support programs from the Department of Employment and Social Policies of the Basque Country, like they did in 2013 for the amount of EUR 5,000. However, they were unable to qualify for administrative support programs. Nonetheless, ASLE, the local representative for Sociedades Laborales in the region has continually coached and has provided counsel to Hirunox in the areas of auditing, human resources, management, legal and financial matters since its inception. However, they have some reservations regarding the limitations of non-partner worker hours during high demand. Infringing beyond that what is allowed could be a reason for disqualification as a sociedad laboral. Moreover, they conveyed that incorporating them as partners would hinder the agility to administer the management and decision making. Nonetheless, the updated regulations of Law 44 passed in October of 2015 improved this condition somewhat. As of early January 2020, the company was in process of hiring an additional non-partner worker for a full-time position with indefinite contract.

ANNEX 2 – Description of Data Sources

Any benchmarking exercise, especially one involving a large number of countries, relies on the availability of comparable and consistent data. While there are many studies on the impact of employee participation on company performance[513], there are very few sources of information on the availability and take-up of financial participation schemes across countries. Below we briefly present the main sources of information on financial participation (FP) schemes in European countries on which the discussion of this Chapter and country reports are based. These sources are very different from each other and need careful interpretation.[514]

1. Country Profiles

These are based on various sources, including the PEPPER I, II, and III and IV Reports, the EIRO Survey and our Project Expert Network in the field. The profiles of 29 countries (EU-27 and the United Kingdom, plus the United States of America) cover developments in three areas: a) Evolution of Financial Participation Schemes; b) Social Partners' Attitudes and Current Government Policy; and c) Legal Framework.

2. CRANET Survey

This is a survey of companies with more than 200 employees[515] undertaken by the Cranfield School of Management (Cranfield University, UK) approximately every four or five years since 1992. It is largely a postal survey, sent to the Human Resources Departments of companies with the main aim of investigating the HR characteristics and practices of these companies. One section of the questionnaire is concerned with employees' remuneration and its components. In this section there are questions on whether the company offers any financial participation scheme (specifically, share ownership, profit-sharing or stock option schemes) to various occupational groups of employees (management, professional and technical, administrative, and manual workers). The combination of these two questions allows us to calculate the number of employees in each company to whom broad-based EFP plans are offered (and their share in the total number of employees in the sample for each country). In 2005, the survey covered 7,914 companies in 32 countries (among them the EU Member States and candidate, countries; not included were Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania and Croatia). In each of the four survey rounds this report focusses on, only subsets of EU Member States (MS) had participated, with the

[513] These studies are usually concerned with individual or a small number of countries and use a variety of methodologies in pursuing their objectives.

[514] In the period 2005-2021, three cross-country surveys, EWCS, ECS and CRANET survey, were conducted, including questions on employee financial participation. However, it should be noted that employee financial participation was only a minor issue in these surveys and that the data from the three surveys on the incidence of employee financial participation differ considerably. This fact shows that—although the incidence must be an objective value—data from the surveys apparently do not reflect it with the necessary precision. The deviations can relate to imprecise definitions, translation difficulties and/or the limited understanding of the notion of financial participation on the part of the respondents.

[515] The 2010 Survey covered companies with 100 or more employees; in order to make this data set comparable with the previous survey it was recalculated for companies with more than 200 employees. The unit of investigation in CRANET is an "organisation" or a "business unit". While this may include a self-contained subsidiary of a larger company, in general it coincides with the boundaries of 'companies'. For the sake of simplicity, therefore, we refer to them as companies.

number of companies and MS being as follows: In 2005, 5,057 firms from 19 MS; in 2010, 3,419 firms from 17 MS; in 2015, 3,457 firms from 19 MS; and finally, in 2021, 3,446 firms from 19 MS and the UK, which had left the EU on 31 January 2020.

The CRANET sample is selected randomly from the population of companies with more than 200 employees and is designed to represent the size and sectoral distribution of companies in the population.[516] The companies included in the sample are selected separately in each round of the survey, thus the data is not in the form of a panel. The response rate of the postal survey was 16% in 2005, around 10% in 2010, 2015 and 2021. Since this report focusses on private sector companies (including those with mixed ownership but excluding the non-profit sector) in the various waves, the total number of relevant firms in the EU (including the United Kingdom) is much smaller than the entire sample. As a result, the number of firms eligible to be included in our analysis in each country may be very small (e.g., for 2005 as low as 21 for Cyprus and Estonia). Because of the small size of the sample, the CRANET survey cannot maintain its representativeness for the analysis presented here and the individual values in the different rounds need to be treated with caution as they may be misleading. It is essential to note that the CRANET survey does not indicate the incidence of financial participation schemes in companies but only their availability. Furthermore, for the purpose of this research, we have been concerned with broad-based financial participation schemes (that is, schemes covering more than 50% of employees) in private sector companies only, as profit-sharing or share ownership are largely not applicable to public sector organisations (which do not make "profit" as such and do not always have shares to distribute to employees).

3. European Working Conditions Survey (EWCS)

This is a large-scale survey of working conditions across Europe, undertaken by the European Foundation every four or five years to investigate a variety of factors influencing individuals' working and living conditions in all EU Member States and candidate countries as well as some non-EU countries. One section of the questionnaire deals with remuneration and sources of income, asking the respondent whether they receive any income in the form of profit sharing or any income from the ownership of shares in the companies for which they work.[517] Given that individual subjects may be employed, unemployed, self-employed or retired, the present survey is only concerned with the individuals who are in employment. The 2005 Survey covered some 30,000 randomly selected individuals in 31 countries, the 2010 Survey 43,816 in 34 countries, and the 2015 Survey 44,000 workers in 35 countries. These surveys are conducted as face-to-face interviews and had response rates of 48% in 2005 and 44% in 2010[518]. As with the CRANET Survey, only a small part of this investigation is related to financial participation. The previous round of this survey took place in two waves—in 2000

[516] For more detailed information on the CRANET Survey, see CRANET (2011), CRANET (2005) and Pendleton et al. (2001).

[517] There are however problems of definition. Especially the definition of profit sharing in the EWCS questionnaire is too broad and does not correspond to the formal definition of genuine profit-sharing plans. In some countries, the EWCS definition can include performance-related pay, bonuses, fringe benefits and even the 13th salary. Additionally, the distribution of these additional payments is often not linked to predefined criteria, so that it cannot be qualified as a plan. For that reason, the level of profit sharing according to EWCS is exceptionally high in almost all countries, but it does not reflect the actual situation.

[518] Of course, given that respondents either "did not know" or "refused to answer" some of the questions in the survey, the effective response rate was lower.

for the EU-15 and a few other European countries and in 2001 for the accession and candidate countries. Unlike the CRANET survey, which only shows the availability of EFP schemes to employees, the EWCS represents the actual take-up of these schemes. However, the data applies to all employees, irrespective of the size of their companies. Given that respondents may be from any category of employee (managers, professionals, clerical or manual), it is not possible to identify whether any financial participation scheme is broad or narrow. Unlike the 2000, 2005, 2010 and 2015 surveys, the 2001 round did not directly distinguish between employees of the public and private sector.[519]

4. European Company Survey (ECS)

The ECS 2009 was carried out in 30 countries: the 27 EU Member States, plus Croatia, Turkey and the Former Yugoslav Republic of Macedonia (FYROM), covering 27,160 companies. The 3rd round of the survey in 2013 covered some 30,000 companies in 28 Member States and Turkey. The 4th round of the survey in 2019 covered some 21,800 companies in 27 Member States and the UK. The following extracts from the European Foundation (2010) describe the sampling methodology of the European Company Survey (2009). "The unit of analysis in ECS is the establishment, the local unit in the case of multi-site enterprises. The sample is representative of establishments with ten or more employees from all sectors of activity, except for agriculture and fisheries (NACE A and B, Rev. 1.1), activities of households and extraterritorial organisations (NACE P and Q). The companies in the sample, selected for interviews, were chosen at random among those with ten or more employees in each country. Interviews were held in 27,160 establishments in 30 European countries, the number in each country ranging from almost 350 in Malta, the smallest EU economy, to about 1,500 interviews in the larger economies (for details of sampling method, see European Foundation, 2010, pp. 89-91). The number of private establishments used for the analysis of profit sharing and share ownership was about 18,000. The respondents are managers and employee representatives, who have a good understanding of the issue discussed. Portugal is excluded from the information on share ownership due to incompatibility of the process with other countries."

In the 2009 survey (questions MM460-464), a more precise definition of profit sharing and share ownership is included, and a distinction is made between broad-based and executive plans. However, the distinction between broad based and narrow based schemes was dropped in the 2013 survey. Question H23 of the 2013 Survey asks merely about "*Variable extra pay linked to the results of the company or establishment (profit sharing scheme)*" and "*Variable extra pay in form of share ownership scheme offered by the company*" while the 2009 Survey contained two additional questions regarding profit sharing and employees share ownership respectively MM461 / MM464 "*Is this offered to all employees of your regular workforce or is it offered to employees in specific positions only?".* In the 2019 survey, regrettably, the question on employee share ownership was dropped from the questionnaire restricting the analysis. The remaining question of the 2019 Survey asks about "*variable extra pay linked to the results of the company or establishment (profit sharing scheme)*" and in which percentage they were available employees.

519 However, given that the surveys identify the sector of activity of respondents, the gap between the 2000 and 2001 surveys has been reduced by eliminating those respondents working in "public services".

ANNEX 3 – Technical description of the econometric models used in Chapter III

1. Econometric modelling: The impact of EFP on company performance

The econometric investigation of the relationship between EFP and performance is complicated because of the potential endogeneity between the two variables. Much of the previous studies estimated the impact of various EFP schemes on the performance of firms but overlooked the fact that the performance of firms may also affect the decision of firms to offer EFP schemes or change the level of EFP for their employees. Furthermore, many of the factors that influence one variable also affect the other variable. For both reasons, it is likely that the relationship between the two is endogenous. Hence, direct estimation of this relationship without considering the endogeneity issue might lead to biased estimation of this relationship. In trying to overcome this problem, particularly given the dichotomous nature of the two main variables, this Study uses the 'seemingly unrelated probit models' which are a class of simultaneous equation models (Maddala 1983; Greene 2007). They draw upon an equation for the potentially endogenous dichotomous variable (EFP schemes in this case) and a structural form equation for the performance measures of interest (improvement in productivity and increase in employment). The basic overview of such models is as follows:

$$\left.\begin{aligned} q_{1i} &= \beta_{1i}X_{1i} + u_{1i} \\ q_{2i} &= \delta_{1i}q_{1i} + \delta_{2i}Z_{2i} + u_{2i} \end{aligned}\right\}$$

Where q_{1i} represents the probability that a firm offers an EFP scheme and q_{2i} represents company performance structural equation. X_{1i} and Z_{2i} represent independed exogenous variables, and β_{1i}, δ_{1i}, δ_{2i} are estimated parameters. The error terms of the two models are dependent and distributed as a bivariate normal so that $E(u_{1i}) = E(u_{2i}) = 0$, $var(u_{1i}) = var(u_{2i}) = 1$, and $\rho = cov(u_{1i}, u_{2i})$. Various tests provide the evidence for the correlation between the unobserved explanatory variables of both equations so that if $\rho = 0$, then q_{1i} is exogenous for the second equation. Within this parametric framework the hypothesis of exogeneity of the dummy can be defined as the absence of correlation between the two equation's error terms, and submitted to statistical tests.

The EFP model, the probability of a firm offering an EFP scheme is as follows:

$$EFP = \left(\frac{P_i}{1-P_i}\right) = \beta_0 + \beta_1 Medium + \beta_2 Large + \beta_3 Southerneurope + \beta_4 Baltic + \beta_5 Iberia + \beta_6 Nordic + \beta_7 CEE + \beta_8 Construction + \beta_9 Electricity + \beta_{10} Financial\ sector + \beta_{11} Wholesale\ and\ trade + \beta_{12} Real\ estate\ and\ transport + \beta_{13} Other\ services + \beta_{14} High\ skilled\ workers + \beta_{15} Employee\ representation + \beta_{16} Teamwork + \varepsilon_i \quad \ldots$$

(q1 equation)

The performance model of this study is as follows:

$$Improvements\ in\ Labour\ productivity/Employment = \left(\frac{P_i}{1-P_i}\right) = \beta_0 + \beta_1 EFP + \beta_2 Medium + \beta_3 Large + \beta_4 CEE + \beta_5 Southerneu + \beta_6 Baltic + \beta_7 Iberia + \beta_8 Nordic + \beta_9 Construction + \beta_{10} Electricity + \beta_{11} Financial\ sector + \beta_{12} Wholesale\ and\ trade + \beta_{13} Real\ estate\ and\ transport + \beta_{14} Other\ services + \beta_{15} 2013 \varepsilon_i \quad \ldots$$

(q2 equation)

In the q2 equation, the dependent variable is the probability of a company exhibiting improvement in performance indicators (growth in productivity or employment). Independent variables include a dummy variable taking the value of 1 if company offers an EFP scheme (the EFP variable) and 0 otherwise; as well as other dummy variables controlling for size, region and sector of activity. In the q1 equation, the depended variable is the probability of a company offering EFP schemes (Employee Share Ownership or Profit Sharing). The independent variables include control variables as in q2 as well as three additional instrumental variables as exclusion restriction. These variables control for employee characteristics (proportion of high skilled workers) as well as HR practices (the existence of employee representation and the organization of work in teams). The dependence of EFP on these variables have already been demonstrated using the 2009 ECS data (Hashi and Hashani 2013).

The description of variables in the two equations is provided in Table A1. For this exercise, the data from ECS 2009 and 2013 were pooled together for ESO schemes, while for the PS schemes data from ECS 2009, 2013 and 2019 were pooled together.

Table A1. Description of variables

Name of the variable	**Description**
Dependent variables	
Labour productivity improvement	Value of 1 if the company reported improvements in labour productivity in the last three years, 0 otherwise
Increase in employment	Value of 1 if the company reported an increase in the number of employees in the last three years, 0 otherwise
Independent variables	
Employee share ownership schemes	Value of 1 if the employer offers share ownership, 0 otherwise
Profit-sharing schemes	Value of 1 if the employer offers profit-sharing, 0 otherwise
Proportion of high skilled workers*	Proportion of high skilled workers in total workforce (in percentage)
Small (Base category)	1 if the company has less than 50 employees, 0 otherwise
Medium	1 if the company has between 50-249 employees, 0 otherwise
Large	1 if the company has more than 250 employees, 0 otherwise
Sector 1. Manufacturing (Base category) 2. Electricity 3. Financial sector 4. Wholesale and trade 5. Construction 6. Real estate and transport 7. Other services	1 if the company operates in the particular sector, 0 otherwise
Region 1. Western Europe (base category)	1 if a company is from Western Europe, 0 otherwise (Austria, Belgium, France, Germany, Luxembourg, Netherlands, Ireland, UK)
2. Iberia region	1 if a company is from Iberian region and 0 otherwise (Spain and Portugal)
3. Nordic region	1 if a company is from Nordic region and 0 otherwise (Finland, Sweden, Denmark)
4. Central and Eastern Europe	1 if a company is from Central and Eastern Europe and 0 otherwise (Czechia, Hungary, Poland, Slovakia, Slovenia, Romania, Bulgaria)
5. Southern Europe	1 if a company is from Southern Europe, 0 otherwise (Cyprus, Greece, Italy, Malta)
6. Baltic region	1 if a company is from Baltic region, 0 otherwise (Estonia, Latvia, Lithuania)

2013	1 if an observation is from the year 2013 and 0 if an observation is from the year 2009
2019	1 if an observation is from the year 2019 and 0 if an observation is from the year 2009 or 2013
Teamwork	1 if a company organizes its work in teams, 0 otherwise
Employee representation	1 if a company has some form of employee representation, 0 otherwise

* Continuous variables. Source: ECS 2009 and 2013.

The results are presented in Table A2 and A3. Table A2 and Table A3 are divided into two panels each (panel 1 and panel 2) with two sets of results (Specification 1 and Specification 2, representing two different specifications of the model). The first panel represents q2 equation, i.e., the structural equation for the performance measures (improvement in labour productivity in Specification 1 and increase in employment in Specification 2). The second panel represents the results of q1 equation, i.e., the equation for the potentially endogenous dichotomous variable (Employee Share Ownership in Table A2 and profit sharing in Table A3).

The coefficients in all specifications are mostly significant, and their magnitude and the direction of the effects are as expected. Results (Table A2 and A3) show that independent variables are jointly significant, as the Wald chi2 statistic is statistically significant in all specifications respectively with the p value of absolute zero. Likelihood ration test of the covariance (rho coefficient) is statistically significant in all cases indicating that if the endogeneity has not been addressed, the results would have been biased and inconsistent. As a robustness check, the regressions were also run separately for ECS 2009 and 2013. The results were consistent and similarly highly significant. For the seemingly unrelated probit model, the estimated coefficients do not have a direct economic interpretation. Therefore, the results are interpreted in terms of predicted probabilities. The predicted probability allows one to simulate changes in firm characteristics and note respective difference. The predicted probabilities that a company will have improvements in either labour productivity or employment levels when controlling for presence of Employee Share Ownership and/or profit sharing are presented in Chapter III in the form of a number of scenarios. Predicted probabilities are calculated using the 'margins' command in STATA 13. All predicted probabilities are statistically significant. Additional technical details are available from the authors.

Table A2. Results from seemingly unrelated probit model (controlling for ESO schemes)

PANEL 1 (q2 equation: the structural form equation for the performance measures of interest; productivity and employment), controlling for the presence of ESO schemes				
	Specification 1		Specification 2	
	Improvement in labour productivity		Improvement in employment	
Variable	Coefficient	p- values	Coefficient	p- values
Employee share ownership	0.902***	0.000	0.804***	0.000
Medium	0.163***	0.000	0.202***	0.000
Large	0.229***	0.000	0.248***	0.000
Southern EU	-0.048**	0.054	-0.184***	0.000
Baltic	0.126***	0.000	-0.139***	0.000
Iberia	-0.263***	0.000	-0.291***	0.000
Nordic	0.281***	0.000	-0.008	0.747
CEE	0.135***	0.000	-0.224***	0.000
Construction	-0.255***	0.000	0.045*	0.080
Electricity	-0.019	0.751	-0.025	0.681
Financial sector	0.081*	0.082	0.245***	0.000
Wholesale	-0.034*	0.064	0.085***	0.000
Real estate and transport	-0.012	0.581	0.268***	0.000
Other services	0.018	0.457	0.266***	0.000
_2013	-0.221***	0.000	-0.113***	0.000
Constant term	0.019	0.292	-0.522***	0.000
PANEL 2 (q1 equation: equation for the potentially endogenous dichotomous variable; ESO in this case).				
Employee share ownership	Improvement in labour productivity		Improvement in employment	
Medium	0.188***	0.000	0.199***	0.000
Large	0.413***	0.000	0.428***	0.000
Southern EU	-0.243***	0.000	-0.259***	0.000
Baltic	-0.156***	0.002	-0.175***	0.000
Iberia	0.151***	0.000	0.147***	0.000
Nordic	0.250***	0.000	0.245***	0.000
CEE	-0.136***	0.000	-0.163***	0.000
Construction	0.011	0.783	0.027	0.480
Electricity	0.191*	0.019	0.203**	0.011
Financial sector	0.213***	0.000	0.201***	0.000
Wholesale	0.008	0.792	-0.003	0.929
Real estate and transport	0.094**	0.005	0.079*	0.015
Other services	-0.328***	0.000	-0.361***	0.000
Proportion of high-skilled workers	0.007***	0.000	0.007***	0.000
Teamwork	0.298***	0.000	0.276***	0.000
Employee representation	0.137***	0.000	0.100***	0.000
Constant term	-2.098***	0.000	-2.063***	0.000
rho	- 0.419*** chi2(1) = 39.58	Prob > chi2 = 0.000	-0. 395*** chi2(1) = 33.09	Prob > chi2 = 0.000
Number of observations	32,825		33,929	
Wald Chi 2	2869***	0.000	2625***	0.000

* p<0.05, ** p<0.01, *** p<0.001. Source: ECS 2009 and 2013.

Table A3. Results from seemingly unrelated probit model (controlling for PS schemes)

PANEL 1 (q2 equation: the structural form equation for the performance measures of interest; productivity and employment), controlling for the presence of PS schemes				
	Specification 1		Specification 2	
	Improvement in labour productivity		Improvement in employment	
Variable	Coefficient	p- values	Coefficient	p- values
Profit sharing	0.961***	0.000	0.528***	0.000
Medium	0.07***	0.001	0.17***	0.000
Large	0.097***	0.001	0.213***	0.000
Southern EU	0.032	0.342	-0.146***	0.000
Baltic	0.101***	0.002	-0.143***	0.000
Iberia	-0.186***	0.000	-0.239***	0.000
Nordic	0.229***	0.000	-0.009	0.489
CEE	0.115***	0.000	-0.23***	0.000
Construction	-0.19***	0.000	0.077**	0.007
Electricity	-0.045	0.377	-0.024	0.611
Financial sector	0.067	0.193	0.263***	0.000
Wholesale	-0.029**	0.039	0.09***	0.000
Real estate and transport	0.021	0.557	0.302***	0.000
Other services	0.104***	0.000	0.307***	0.000
_2019	-0.232	0.000***	-0.128***	0.000
Constant term	-0.13	0.000***	-0.584***	0.000
PANEL 2 (q1 equation: reduced form equation for the potentially endogenous dichotomous variable; PS in this case).				
Profit sharing	Improvement in labour productivity		Improvement in employment	
Medium	0.310***	0.000	0.308***	0.000
Large	0.447***	0.000	0.477***	0.000
Southern EU	-0.301***	0.000	-0.332***	0.000
Baltic	0.038	0.351	0.045	0.164
Iberia	-0.170***	0.000	-0.158***	0.000
Nordic	0.234***	0.000	0.223***	0.000
CEE	0.072**	0.013	0.042*	0.095
Construction	-0.174***	0.000	-0.166***	0.000
Electricity	0.168**	0.011	0.116***	0.023
Financial sector	0.091***	0.085	0.088*	0.088
Wholesale	0.042*	0.054	0.042*	0.057
Real estate and transport	-0.122***	0.000	-0.131***	0.000
Other services	-0.422***	0.000	-0.455***	0.000
Proportion of high skilled workers	0.009***	0.000	0.008***	0.000
Teamwork	0.248***	0.000	0.210***	0.000
Employee representation	0.237***	0.000	0.242***	0.000
Constant term	-1.177***	0.000	-1.161***	0.000
rho	- 0.508*** chi2(1) = 94.52	Prob > chi2 = 0.000	-0.254*** chi2(1) = 17.74	Prob > chi2 = 0.000
Number of observations	59,201		62,050	
Wald Chi 2	6331***	0.000	5255***	0.000

* p<0.05, ** p<0.01, *** p<0.001. Source: ECS 2009, 2013 and 2019.

2. Propensity score matching: Estimating the potential for EFP

Although only a small proportion of firms in the ECS sample offer EFP schemes to their employees, there are many other firms with similar characteristics which, under other conditions, may also be willing to initiate such schemes. Perhaps, they do not have sufficient knowledge of, and information about, these schemes and their impact; or perhaps the environment is not conducive to the initiation of such schemes. Given that it is possible to identify factors which influence the adoption of EFP schemes, it is also possible to apply this knowledge to firms which currently do not offer any scheme and identify those that, under different circumstances, may be able to offer. In order to estimate the likely number of companies that may offer any EFP schemes, a matching technique may be used. Matching can be applied in almost any context as long as there is a group of companies engaging in an action and a group of companies not engaged in that action; the former group can serve as a suitable benchmark. It relies on observed characteristics to construct a comparison group, assuming there are no unobserved differences among the two groups.

In order to find a matching group, it is necessary to find companies with similar characteristics in the two groups, or approximate the characteristics of firms from the two groups as closely as possible. If the number of characteristics is small, it would be easy to find companies in the two groups with very similar characteristics. But as the number of characteristics increases, the chances of finding companies with similar characteristics (matching companies) decrease.[520] This problem can be resolved by using the propensity score matching (PSM) technique developed by Rosenbaum and Rubin (1983). PSM does not try to match all characteristics of firms but, instead, it estimates a single propensity score for each firm (from both groups) that represents the likelihood of a firm offering an EFP scheme. It is then relatively easy to identify firms that have similar scores. In effect, PSM reduces the dimensionality problem into one single score which is then used for matching.

The observable characteristics used to estimate the propensity score were already identified in Hashi and Hashani (2013), in a model similar to equation 1 in section 1 of this Annex, i.e., estimating the probability of a firm offering an EFP scheme. The propensity scores of the group of companies offering PS and ESO were estimated separately using Stata user written programme (**psmatch2**). Using observable characteristics this programme implements propensity score matching methods to match companies that offer PS and ESO schemes against those that do not. The procedure is based on estimating a probit model described as in the q3 equation below.

$$Propensity\ Score\ EFP = \beta_0 + \beta_1 Medium + \beta_2 Large + \beta_3 Southerneurope + \beta_4 Baltic + \beta_5 Iberia + \beta_6 Nordic + \beta_7 CEE + \beta_8 Construction + \beta_9 Electricity + \beta_{10} Financial\ sector + \beta_{11} Wholesale\ and\ trade + \beta_{12} Real\ estate\ and\ transport + \beta_{13} Other\ services + \beta_{14} Employee\ representation + \beta_{15} Teamwork + \varepsilon_i \quad \text{...(q3 equation)}$$

The depended variable is the propensity score (i.e. likelihood of a firm offering an EFP scheme). The Propensity Scoring Algorithm was run using the following independent variables: size of the company; region where the company is located; sector of activity; presence of an employee representation arrangement; and whether work orga-

[520] This is known as the 'curse of dimensionality' and it increases exponentially with the increase in the number of characteristics against which one wants to match firms from the two groups.

nized in teams. The precise definition of these variables is provided in Table A1, earlier in this Annex. In all specifications, the diagnostic tests are valid showing that the group of companies offering EFP schemes do have comparison observations 'nearby' in the propensity score distribution. Also, the characteristic used for matching are found to be statistically significant determinants of likelihood of companies offering EFP schemes. Additional technical details are available from the authors.

In reality the firms offering EFP may also have other characteristics which are either not specified in the data set or they are not observable at all. To the extent that there are other variables affecting the probability of a firm offering a scheme, the procedure underestimates the number of matching firms with similar propensity scores. For this reason, in Chapter III, we have allowed a 50% margin of error to account for such unobservable characteristics.

3. Determinants of (i) companies offering a scheme, and (ii) employees taking up the scheme

This section focuses on two models which examine: (1) the likelihood of companies offering EFP schemes and (2) the likelihood of employees taking up the EFP schemes. The basic model used for assessing the likelihood of companies offering EFP schemes is as follows:

$$\begin{aligned} EFP = \left(\frac{P_i}{1-P_i}\right) = {} & \beta_0 + \beta_1 Medium + \beta_2 Large + \beta_3 Southerneurope + \beta_4 Baltic + \beta_5 Iberia \\ & + \beta_6 Nordic + \beta_7 CEE + \beta_8 Construction + \beta_9 Electricity + \beta_{10} Financial\ sector \\ & + \beta_{11} Wholesale\ and\ trade + \beta_{12} Real\ estate\ and\ transport + \beta_{13} Other\ services \\ & + \beta_{14} High\ skilled\ workers + \beta_{15} Employee\ representation + \beta_{16} Teamwork + \varepsilon_i \end{aligned}$$

... (Eq. 1)

where the dependent variable is the likelihood that the company will offer EFP schemes - either profit sharing (PS) or employee share ownership (ESO) schemes. Independent variables include proportion of female workers at the company, proportion of high skilled workers, size of the company (Eurostat; SBS size class), sector of operation (NACE classification) and region. Definition of variables is provided in Table A4. Most of our responses in the binary variables have sufficient variation, which is important for producing efficient results. Results are presented in table A5.

Table A4: Description of variables of model 1 (specifications 1.a and 1.b)

Name of the variable	**Description**
Dependent variable/s	
Employee share ownership schemes	Value of 1 if the employer offers share ownership schemes and 0 otherwise
Profit sharing schemes	Value of 1 if the employer offers profit sharing schemes and 0 otherwise
Independent variables	
Proportion of female employees*	Proportion of female employees expressed in percentage of total workforce.
Proportion of high skilled workers*	Proportion of high skilled workers expressed in percentage of total workforce.
Small (<50 employees)	1 if the company is small and 0 otherwise
Medium (50-250 employees)	1 if the company is medium and 0 otherwise
Large (>250) (Base category)	1 if the company is large and 0 otherwise

Sector 1. Manufacturing (Base category) 2. Electricity 3. Financial sector 4. Wholesale and trade 5. Construction 6. Real estate and transport 7. Other services	1 if the company operates in the particular sector and 0 otherwise
Western Europe	1 if a company is from Western Europe and 0 otherwise (base category) (Austria, Belgium, France, Germany, Luxembourg, Netherlands, Ireland, UK)
Iberia region	1 if a company is from Iberian region and 0 otherwise (Spain and Portugal)
Nordic region	1 if a company is from Nordic region and 0 otherwise (Finland, Sweden, Denmark)
Central and Eastern Europe	1 if a company is from Central and Eastern Europe and 0 otherwise (Czech Republic, Hungary, Poland, Slovakia, Slovenia, Romania, Bulgaria)
Southern Europe	1 if a company is from Southern Europe and 0 otherwise (Cyprus, Greece, Italy, Malta)
Baltic region	1 if a company is from Baltic region and 0 otherwise (Estonia, Latvia, Lithuania)

* Continuous variables

Table A5: Results for the model 1; specification (1.a) profit sharing schemes and (2.a) employee share ownership schemes ECS

Variable	**Model 1.a:** profit sharing schemes		**Model 1.b:** employee share ownership schemes	
	Coefficient	**Marginal Effect**	**Coefficient**	**Marginal Effect**
Proportion of female employees	-0.0006 (0.185)	-0.0001 (0.185)	0.0002 (0.797)	0.000 (0.797)
Proportion of high skilled workers	0.0051*** (0.000)	0.0012*** (0.000)	0.0073*** (0.000)	0.0007*** (0.000)
Medium size	0.2943*** (0.000)	0.0744*** (0.000)	0.2851*** (0.000)	0.0324*** (0.000)
Large size	0.5236*** (0.000)	0.1464*** (0.000)	0.6124*** (0.000)	0.0880*** (0.000)
Southern Europe	-0.6824*** (0.000)	-0.1179*** (0.000)	-0.2973*** (0.000)	-0.0248*** (0.000)
Baltic region	-0.1320** (0.011)	-0.0295*** (0.011)	-0.2559*** (0.002)	-0.0217*** (0.002)
Iberia region	-0.0955** (0.012)	-0.0218*** (0.012)	-0.0987 (0.146)	-0.0094 (0.146)
Nordic region	0.2075*** (0.000)	0.0531*** (0.000)	0.3733*** (0.000)	0.0479*** (0.000)
CEE region	-0.2505*** (0.000)	-0.0549*** (0.000)	-0.0087 (0.839)	-0.0009 (0.839)
Construction	-0.1167*** (0.004)	-0.0264*** (0.004)	0.0778 (0.167)	0.0083 (0.167)
Electricity	0.1355 (0.240)	0.0343 (0.240)	0.3870*** (0.004)	0.0535*** (0.004)
Financial sector	0.1245*** (0.087)	0.0313*** (0.087)	0.4338*** (0.000)	0.0615*** (0.000)
Wholesale	0.0267 (0.406)	0.0064 (0.406)	0.0580 (0.212)	0.0061 (0.212)
Real estate	-0.0323 (0.352)	-0.0076 (0.352)	0.1277*** (0.006)	0.0140*** (0.006)
Other services	-0.4989*** (0.000)	-0.0951*** (0.000)	-0.3734*** (0.000)	-0.0299*** (0.000)
Constant term	-1.1066*** (0.000)		-2.0011*** (0.000)	

The second model investigates the likelihood of an employee taking up the scheme. The basic specification of the participation model is as follows:

$$P(y = 1|x) = \beta_0 + \beta_1 Gender + \beta_2 Age + \beta_3 Yearsatthecompany + \beta_4 Typeofcontract + \beta_5 Occupation + \beta_6 Training + \beta_7 Size + \beta_8 Sector + \beta_9 Region + \beta_{10} Years + \varepsilon_i \quad \ldots \text{(Eq. 2)}$$

where the dependent variable is the likelihood that an employee will take the participation schemes offered by the company - either profit sharing (PS) or employee share ownership (ESO) schemes. Independent variables include gender of an employee, age of an employee, years with the enterprise, type of the contract, occupation (ISCO-88), trainings attended by the employee, sector of the enterprise where the respondent works (NACE classification), size of the enterprise (Eurostat; SBS size class), region where the enterprise is based and year dummies. Definition of variables is provided in Table A6. Similarly here two specifications were run (2.a) with PS as a dependent variable and (2.b) with ESO as a dependent variable. Most of our responses in the binary variables have sufficient variation, which is important for producing efficient results. Results are presented in table A7.

Table A6: Description of variables of model 2 (specifications 2.a and 2.b)

Name of the variable	**Description**
Dependent variable/s	
Employee share ownership schemes	Value of 1 if the employee participates in the employee share ownership schemes and 0 otherwise
Profit sharing schemes	Value of 1 if the employee participates in the profit sharing schemes and 0 otherwise
Independent variables	
Gender	1 if the employee is male and 0 otherwise
Age*	Age of the employee
Years at the company*	Years at the company
Type of contract	1 if the employee has a permanent contract and 0 otherwise
Occupation**	1 if the employee has managerial position and 0 otherwise (other employees are the base category)
Training	1 if the employee attended a training paid for by the employer and 0 otherwise
Small (<50 employees)	1 if the company is small and 0 otherwise
Medium (50-250 employees)	1 if the company is medium and 0 otherwise
Large (>250)	1 if the company is large and 0 otherwise
Sector 1. B+C 2. D+E 3. F 4. G+I 5. H 6. J+L+M 7. K 8. N+O+S+T+U 9. P+Q+R	1 if the employer of the responded operates in the particular sector and 0 otherwise
Western Europe	1 if a company is from Western Europe and 0 otherwise (base category) (Austria, Belgium, France, Germany, Luxembourg, Netherlands, Ireland, UK)
Iberia region	1 if a company is from Iberian region and 0 otherwise (Spain and Portugal)
Nordic region	1 if a company is from Nordic region and 0 otherwise (Finland, Sweden, Denmark)

Central and Eastern Europe	1 if a company is from Central and Eastern Europe and 0 otherwise (Czech Republic, Hungary, Poland, Slovakia, Slovenia, Romania, Bulgaria)
Southern Europe	1 if a company is from Southern Europe and 0 otherwise (Cyprus, Greece, Italy, Malta)
Baltic region	1 if a company is from Baltic region and 0 otherwise (Estonia, Latvia, Lithuania)
Years	Year dummies controlling for years 2000, 2005 and 2010 (2010 is the base year)

* Continuous variables
**Employees whose occupation falls in any of the three major groups (1, 2 and 3 following ISCO-88) were classified as 'managerial employees', whereas the rest were classified as 'other employees'.

Table A7. Results for the model of participation in (i) profit sharing schemes and (ii) employee share ownership schemes (EWCS)

	Model 2.a: profit sharing schemes		**Model 2.b: employee share ownership schemes**	
Variable	**Coefficient**	**Marginal Effect**	**Coefficient**	**Marginal Effect**
Sex	0.2082*** (0.000)	0.0314*** (0.000)	0.2006*** (0.000)	0.0073*** (0.000)
Age	-0.0032*** (0.001)	-0.0005*** (0.001)	-0.0005 (0.779)	0.0000 (0.779)
Years at the company	0.0080*** (0.000)	0.0012*** (0.000)	0.0125*** (0.000)	0.0005*** (0.000)
Permanent contract	0.2562*** (0.000)	0.0351*** (0.000)	0.1594*** (0.001)	0.0053*** (0.001)
Management	0.4488*** (0.000)	0.0794*** (0.000)	0.3923*** (0.000)	0.0181*** (0.000)
B+C	0.2930*** (0.000)	0.0494*** (0.000)	0.2506*** (0.001)	0.0107*** (0.001)
D+E	0.3672*** (0.000)	0.0706*** (0.000)	0.4597*** (0.000)	0.0276*** (0.000)
F	0.1195** (0.017)	0.0194** (0.017)	0.1784*** (0.000)	0.0077*** (0.000)
G+I	0.3466*** (0.000)	0.0585*** (0.000)	0.3420*** (0.000)	0.0150*** (0.000)
H	0.1050* (0.063)	0.0170* (0.063)	0.1742* (0.072)	0.0076* (0.072)
K	0.6617*** (0.000)	0.1465*** (0.000)	0.7395*** (0.000)	0.0566*** (0.000)
J+L+M	0.4205*** (0.000)	0.0805*** (0.000)	0.3749*** (0.000)	0.0195*** (0.000)
P+Q+R	-0.2838*** (0.000)	-0.0367*** (0.000)	-0.0970 (0.298)	-0.0033 (0.298)
Small	-0.3502*** (0.000)	-0.0579*** (0.000)	-0.4253*** (0.000)	-0.0187*** (0.000)
Medium	-0.2188*** (0.000)	-0.0304*** (0.000)	-0.2210*** (0.000)	-0.0071*** (0.000)
Training	0.3603*** (0.000)	0.0611*** (0.000)	0.2294*** (0.000)	0.0095*** (0.000)
Year_2005	0.4442*** (0.000)	0.0771*** (0.000)	0.4200*** (0.000)	0.0192*** (0.000)
Year_2010	0.5636*** (0.000)	0.0913*** (0.000)	0.4986*** (0.000)	0.0206*** (0.000)
Southern Europe	-0.4771*** (0.000)	-0.0544*** (0.000)	-0.3889*** (0.000)	-0.0102*** (0.000)
Baltic region	-0.0170 (0.660)	-0.0026 (0.660)	-0.4379*** (0.000)	-0.0108*** (0.000)
Iberia	-0.4618*** (0.000)	-0.0539*** (0.000)	-0.3548*** (0.000)	-0.0097*** (0.000)
Nordic	0.1906*** (0.000)	0.0319*** (0.000)	-0.0430 (0.320)	-0.0015 (0.320)
CEE	0.1235*** (0.000)	0.0199*** (0.000)	-0.2689*** (0.000)	-0.0082*** (0.000)
Constant term	-2.1487*** (0.000)		-2.7812*** (0.000)	

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