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The Promotion of Employee Ownership and Participation

*Study prepared by the Inter-University Centre
for European Commission's DG MARKT
(Contract **MARKT/2013/0191F2/ST/OP**)*

Final report October 2014



Inter-University Centre

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Abstract

This Study provides an overview of the development of employee financial participation, in particular employee share ownership, across the EU-28. Against the background of the policy development of the past 30 years, it highlights the growth of financial participation of employees over last decade using the most recent 2013 European Company Survey data which also show employee financial participation's potential positive impact on employment and productivity. The study analyses a range of policy options in depth and makes recommendations to the Commission in the form of a five-point plan. Most importantly, it proposes the establishment of a Virtual Centre for employee financial participation including an effective tax rate calculator in the short term, the development of a code of conduct in the mid-term, and an optional "Common European Regime on Employee Financial Participation" in the long term. Overcoming the barriers especially to cross-border plans, is particularly important in view of the potential described in this study for EU companies to implement such schemes and benefit from their impact.

This Study has been prepared by the consortium of
Stiftung Europa-Universität Viadrina Frankfurt (Oder) and Freie Universität Berlin
in the framework of the Inter-University Centre co-operation.

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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
CGT	Capital gains tax
CIT	Corporate income tax
CETREPS	Calculating Effective Tax Rates for Employee Participation Schemes
CEREFP	Common European Regime on Employee Financial Participation
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
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
ELTIF	European Long-Term Investment Funds
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-28	The 28 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
OMC	Open Method of Co-ordination
PEE	Plan d'épargne d'entreprise
PEPPER	Promotion of Employee Participation in Profits and Enterprise Results
PIT	Personal income tax
PLN	Polish złoty
PS	Profit sharing
PSM	Propensity match score
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
U.S.	United States of America



Executive summary

Background and aim of this Study

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. Opinions drafted by the European Economic and Social Committee, most recently in 2010, as well as Reports and Studies by the European Parliament and a **2014 Resolution 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 Study is to identify the main obstacles to cross-border EFP schemes and to **develop detailed policy recommendations** for the promotion and encouragement of employee ownership at EU level.

Types of EFP plans, their benefits and increasing incidence

Financial participation of employees can take a variety of forms:

- **individual employee share ownership** (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, i.e., 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, as well as 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 take into account 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** (2010 European Working Conditions Survey, 2010 CRANET, 2013 European Company Survey (ECS)) show that in the last 15 years—despite the period of economic and financial crisis companies increased their offer while employees continue to expand their participation in ESO plans in Europe. According to the ECS data, between 2009 and 2013 the proportion of firms offering **ESO schemes rose from 4.7 per cent to 5.2 per cent** (an increase of 10 per cent) and that offering **PS schemes from 14.3 per cent to 30.2 per cent** (the incidence more than doubled).



Challenges for the promotion of ESO

The ECS data suggests that firms with ESO or PS schemes are more likely to experience significant 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. Today, about **68 per cent of firms in the EU do not provide any form of financial participation to their employees**. At the same time, the latest analysis of the ECS data estimates that at least **300,000 small firms across the entire EU-28 could be potential candidates for the introduction of EFP**. If these prospective firms actually 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.

ESO is much less frequently used in Europe than, e.g., in the U.S. 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 strategy for stimulating sustainable and inclusive growth of the EU economy. However, **barriers especially for cross-border EFP plans arise** from: 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.

Policy options and recommended measures to promote EFP

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. Considering the current interest in EFP, triggered by the 2014 EP Resolution as well as the Pilot Project, immediate action is advisable in order to maintain momentum. **Information sharing and awareness raising measures** are crucial in the short to medium term; creating a level playing field for EFP through a **European legal framework** is 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** coordinated and promoted by the Commission, is suggested. As a first step the launch of a “**Virtual Centre for EFP**”, presented in this Study, could be an effective means of making the necessary and relevant information provided by this Study available to those needing such information (especially SMEs). The promotion of best practice examples for EFP could be best accomplished 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, the **online effective tax rate calculator**, presented in this Study, would make it possible 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 as well as of specific tax incentives. However, this tool would need to be tested with stakeholders and practitioners to collect feedback.



The establishment of a binding legal framework on EFP through hard law instruments, e.g., by means of a **Framework Directive on EFP**, would lead to the harmonisation of national legislation. This would clearly have the largest impact on removing obstacles to EFP, particularly to cross-border schemes. However, to avoid conflict with existing national EFP models, a more pragmatic policy option would be to develop and implement an optional **Common European Regime for EFP** either through a Regulation or a Directive. Either variant would present the most ambitious policy option in the long term.

As part of the Pilot Project, the **conference “Taking Action: Promotion of Employee Share Ownership”** was organised on 30 January 2014 in Brussels. The Conference was followed by an online survey of participants. The positive feedback from the Survey indicates the commitment of the stakeholders to take actions to promote EFP in the future.

Focus: EFP information centres

An important element of an information and awareness raising campaign, an integral part of the Pilot Project, is the **establishment of an information platform for EFP**. Here, European firms could find both general information on national legal frameworks and information on fiscal treatment of different EFP schemes in the EU-28 to assist in deciding whether or not to introduce a cross-border plan. The costs, impact and administration of such an information platform would differ according to its form, e.g., whether they would be physical or virtual.

A virtual information centre would deliver best results vis-à-vis the given criteria. The main advantage of the *Virtual Centre for EFP*, proposed in this Study, in comparison with physical centres, would be to **provide quality information at low cost** (EUR 780,000 compared with EUR 3.6m per year for one physical centre and EUR 6.2m for 28 centres). The virtual centre is more cost effective since it requires only one central administrator. This facilitates **quick response to local market changes** via push updates to the web application and shorter communication lines in general. However, the larger and more personal scope of the physical centres could justify their higher costs. Their establishment, however, could be made conditional on self-sustainable financing.

Programmed as a web-based plug-in, the prototype of the “*Virtual Centre for EFP*” could be easily integrated into an unlimited number of existing websites. Since well-established information channels used by the target groups would have a multiplier-effect, the coverage is potentially wide and the cost low. **Regular updates of the information would be managed centrally** through the back end. The cost of launching the Virtual Centre and the CETREPS Calculator for a pilot period of 18 months is estimated at EUR 75,000. Once tested, the operating cost for the Calculator (EUR 100,000 per year) and the annual operating cost of the Virtual Centre (EUR 250,000 per year) are estimated to be roughly EUR 1m for a pilot phase of three years.

Legislative proposal for a Common European Regime on EFP

An optional Common European Regime on EFP would introduce a **“market approach” to harmonisation**, triggering competition between the existing national rules and the newly introduced second EU-wide regime, similar to the approach in the proposal for a Common European Sales Law. Employers and employees in all EU Member States could **choose to operate EFP plans under one single European regulatory**



framework. At the same time it would do without the conventional EU harmonisation procedure. Excluding taxation issues, this proposal would be the least invasive legislative measure and thus could be expected to achieve the necessary consensus within the **ordinary legislative procedure according to Art. 114 TFEU.**

Since national best practice influencing the common European regime would be expected to prevail in this market-based approach, over time this development could eventually lead to **mutual approximation of national regulation.** Furthermore, in many countries rules on EFP are only rudimentary. The common European Regime would be above all an optional solution to **complement 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 with 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.

Firms could also utilise the Common European Regime on EFP in domestic settings. This advantage is of primary importance for **SMEs, which could easily extend a plan based on the optional common European regime across borders, as they grow and expand.**



I. Introduction and background

1. Structure of the Study

This Study is divided into nine chapters followed by conclusions and four annexes; its structure is as follows:

- This introduction recapitulates the background, policy developments and current policy initiatives on employee financial participation (EFP) with a focus on employee share ownership (ESO) at the EU level.
- Chapter II outlines the links between the 2012 Commission Action Plan and the Pilot Project on the Promotion of Employee Ownership and Participation, which includes the current Study and the related January 2014 Conference, as well as the recent policy debates suggesting the current challenges for employee financial participation.
- Chapter III discusses the most recent empirical findings on EFP from the 2009 and 2013 European Company Surveys with a particular focus on the effects on employment and productivity as well as the potential for the introduction of EFP schemes.
- Chapter IV provides an overview of potential policy measures and options to promote employee share ownership and possible ways to implement them.
- Chapter V contains a comparative assessment of the policy options and formulates recommended measures to promote EFP, i.e., a Five Point Plan to promote EFP.
- Chapter VI briefly summarises the main outreach event of the Pilot Project, i.e., the January 2014 Conference “Taking Action: Promotion of Employee Share Ownership” with its results, and reports on the results of a survey carried out among the participants of the conference.
- Chapter VII analyses the feasibility of the establishment of Information Centre(s) for EFP.
- A description of The Virtual Centre for EFP and the CETREPS effective tax rate calculator for EFP schemes developed for this project follows in Chapter VIII.
- Finally, Chapter IX provides an assessment of the proposed optional Common European Regime on Employee Financial Participation.

The separate annexes contain (i) an overview of the results of the assessment of the present situation regarding EFP in the 28 EU Member States (EU-28), (ii) a review of literature on EFP, (iii) examples of best practice models for employee share ownership from the EU-28 and (iv) the background econometric work on the impact of EFP schemes on company performance and the potential number of companies, which may offer EFP schemes—the non-technical results of which are presented in Chapter III.

This Study 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 Member States to develop detailed policy recommendations for concrete actions to implement the Commission’s policies on the promotion of employee ownership. In some aspects the conclusions of this Study are similar to a number of previous policy documents (particularly those by the 2003 High Level Ex-



pert Group), which, however, were not followed. But unlike previous studies the recommendations of this Study come at a particular point in time, where both the European Parliament and the Commission have shown an explicit interest in taking concrete action. Therefore, it includes an in-depth assessment of a number of potential initiatives, which could be the basis for future decision-making within the Commission.

2. Context, aims and scope of the Pilot Project

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 3d 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 (the most recent in 2010) 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). This was the background for the Commission putting promotion of employee shareholding on its Action Plan to reform European company law and corporate governance¹ and embarking on the 2013/2014 Pilot Project, which includes this Study.

In the introduction to the Action Plan, the Commission notes the shareholders' apparent disinterest in holding management accountable for their decisions and actions and links this to the fact that many shareholders hold their shares for only a short time. Since employee shareholding is a type of long-term investment, it could serve as a counterweight to short-term speculation and help to stabilise the capital markets. The Commission stresses, that the interest of employees in the sustainability of their employer firm should be a factor in the design of any well-functioning governance framework. The Action Plan cites research conducted in preparation of the 2011 Green Paper on corporate governance, indicating that ESO schemes can play an important part in increasing the proportion of long-term shareholders. In respect to transparency, responsibility and competitiveness, the three areas identified by the Action Plan as stages for possible future action, ESO is considered as an important means of encouraging shareholders to engage more actively in corporate governance. If the majority of shareholders remain passive, not seeking to interact with management and failing to exercise their voting rights, any form of corporate governance will be less effective.

The Commission has 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 transnational employee share ownership schemes, and will subsequently take appropriate action to encourage employee share ownership throughout Europe"
(EC Communication Action Plan 2012 p. 11).

¹ See Action Plan: 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.



In response to this Commission goal, the Pilot Project, and this Study in particular, will undertake to:

- (1) Assess EFP across the EU-28, explaining the reasons for widely divergent approaches between Member States and identifying problems with cross-border implementation of EFP schemes; and
- (2) 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 Study are the elimination of cross-border obstacles, the setting up of Information Centre(s) for ESO and the challenges confronting small and medium sized companies.

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. Shares may be distributed for free or may be sold at market price or under preferential conditions.² 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:

² 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 converted into company shares. 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.



- 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*, which is designed to provide variable pay, and usually to encourage employee involvement, by rewarding employees for improvements in individual and organizational performance. Gains, measured by a predetermined formula, are shared with employees, usually through cash bonuses. These constitute an addition to the basic salary and usually are intended to reward individual or small unit performance.³

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.⁴ With regard to employee share ownership it should be kept in mind that in practice—whether shares are

³ 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).

⁴ According to the Association Française 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.



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).⁵ 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.⁶

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

In the last decade, 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 2013. These developments are discussed in this section.

a) Overview of the benefits of financial participation of employees

The theoretical and empirical literature (for details see Annex 2) 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.⁷
- 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 conven-

⁵ With forewords of the then Presidents of the European Parliament Hans Gert Pöttering (DE/EN/FR) and Jerzy Buzek (PL).

⁶ Own-Initiative Report on financial participation of employees in companies’ proceeds; 2013/2127(INI) - 18 December 2013, recommendation no 19.

⁷ 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 per cent, return on equity (ROE) by 14 per cent, return on assets (ROA) by 12 per cent and profit margins by 11 per cent; 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.



tional firms over the long term as illustrated by the UK Employee Ownership Index, which has grown faster in comparison to the FTSE 100 index.⁸

- ESO provides a potential solution to the business succession problem, effecting a smooth transition of the ownership and management of family enterprises and SMEs, thus keeping them rooted in the community and securing continuity and employment.⁹ 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, there is a risk of losing approximately 150,000 companies and 600,000 jobs due to inefficient business transfers.¹⁰
- 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 Donnelly 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.¹¹
- 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.

⁸ http://www.employeeownershipindex.co.uk/wiki/index.php5?title=The_Employee_Ownership_Index.

⁹ 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.

¹⁰ See European Commission 2011, *Business Dynamics: Start-ups, Business Transfers and Bankruptcy*, final report for DG Enterprise, p. 95, 96 and 100.

¹¹ 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.



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-28

The number of firms offering EFP schemes to their employees, though slow to take off, has grown over the years in most EU countries. The most recent rounds of various cross-country surveys (conducted in the last five years) show that EFP generally has continued to expand in Europe despite of the 2008-09 financial crisis. This is true of both profit sharing and employee share ownership, although profit sharing is more widespread.

- The European Working Conditions Surveys (EWCS) conducted in 2005 and 2010¹² indicate that the proportion of company employees participating in EFP schemes increased between the two Surveys (9.1 per cent to 13.5 per cent for profit sharing and 2.3 per cent to 3.3 per cent for employee ownership).
- This rise is to some extent reflected in the CRANET Surveys (Cranfield Network on International Human Resource Management) conducted also in 2005 and 2010¹³, showing that between 2005 and 2010 the proportion of employees to whom broad-based EFP schemes were offered increased from a weighted average 17.7 to 19.9 per cent for employee ownership, with a slight decline from 33.6 to 32.5 per cent for profit sharing.
- The European Company Surveys¹⁴ conducted in 2009 and 2013 show that the proportion of companies offering ESO and PS schemes to their employees increased between the two surveys too; the proportion of companies offering ESO schemes rose from 4.7 per cent to 5.2 per cent (an increase of 10 per cent) and the proportion of companies offering PS schemes during the same period more than doubled from 14.3 per cent to 30.2 per cent.

As expected, the ECS 2009 and 2013 data confirm results from previous research that the size of a company is closely related to the incidence of EFP, especially that of em-

¹² This is a large survey of some 30,000 individuals in 30 European countries undertaken by the European Foundation for the Improvement of Living and Working Conditions (Eurofound) every four or five years. 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).

¹³ This is a survey of companies with more than 200 employees 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 2010, the number of companies surveyed was 6,258 and only 20 Member States of the EU were included.

¹⁴ This is a regular survey of European companies conducted by the European Foundation. It covers some 30,000 companies 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 companies 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 in a scientific manner by the Eurofound. All information relating to ECS data in this Study are weighted using published weights.



ployee share ownership. It indicates that large firms almost always have higher levels of EFP schemes than medium and especially small companies. (A more detailed discussion of the trend of EFP adoption and its impact can be found in Chapter III).

In summary, the expansion of the EFP schemes in the most recent period (2009-13), which also forms the basis of the empirical evidence of this Study, has been very different for ESO and PS schemes, with the latter expanding significantly faster than the former. This seems to reflect the environment after the financial crisis when firms used profit sharing as a mechanism to incentivise employees while increasing wage flexibility. However, the reasons for the different 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 to observers and require more investigation which has been outside the scope of this Study.

5. Employee financial participation on the EU policy agenda

The Commission started to investigate financial participation with the Green Paper on Employee Participation in November 1975¹⁵ and the Memorandum on Employee Participation in Asset Formation in August 1979¹⁶. 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 "state of the art" 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 employee financial participation in the Member States. Some of the main steps in this process were:

- A Council Recommendation followed up this first report in 1992¹⁷, 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 2002.¹⁸ 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-

¹⁵ COM(75)570; see in particular Bulletin of the European Communities, Supplement 8, 1975, p. 31.

¹⁶ Memorandum on employee participation in asset formation, COM(79)190.

¹⁷ Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of employee participation in profits and enterprise results, including equity participation.

¹⁸ European Commission Communication on a framework for the promotion of employee financial participation, in July 2002 (COM(2002)364 final).



border obstacles to financial participation of employees for companies having a transnational dimension' in 2003.¹⁹

- 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 Plan²⁰ a field, where employee share ownership plans could play a crucial role.

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".²¹

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".²²
- In 2012 the European Parliament commissioned a study to provide a comprehensive appraisal of the development of EFP in the EU. In the same year a European Parliament hearing on the issue of EFP laid the ground for the Pilot Project and, therefore, this Study.

¹⁹ 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).

²⁰ Communication from the Commission; Entrepreneurship 2020 Action Plan – reigniting the entrepreneurial spirit in Europe, European Commission (COM(2012)795 final), January 2013.

²¹ Opinion of the European Economic and Social Committee on Employee financial participation in Europe, SOC/371, October 2010.

²² European Parliament Resolution of 6 May 2009 on the Renewed social agenda, P6_TA (2009)0370.

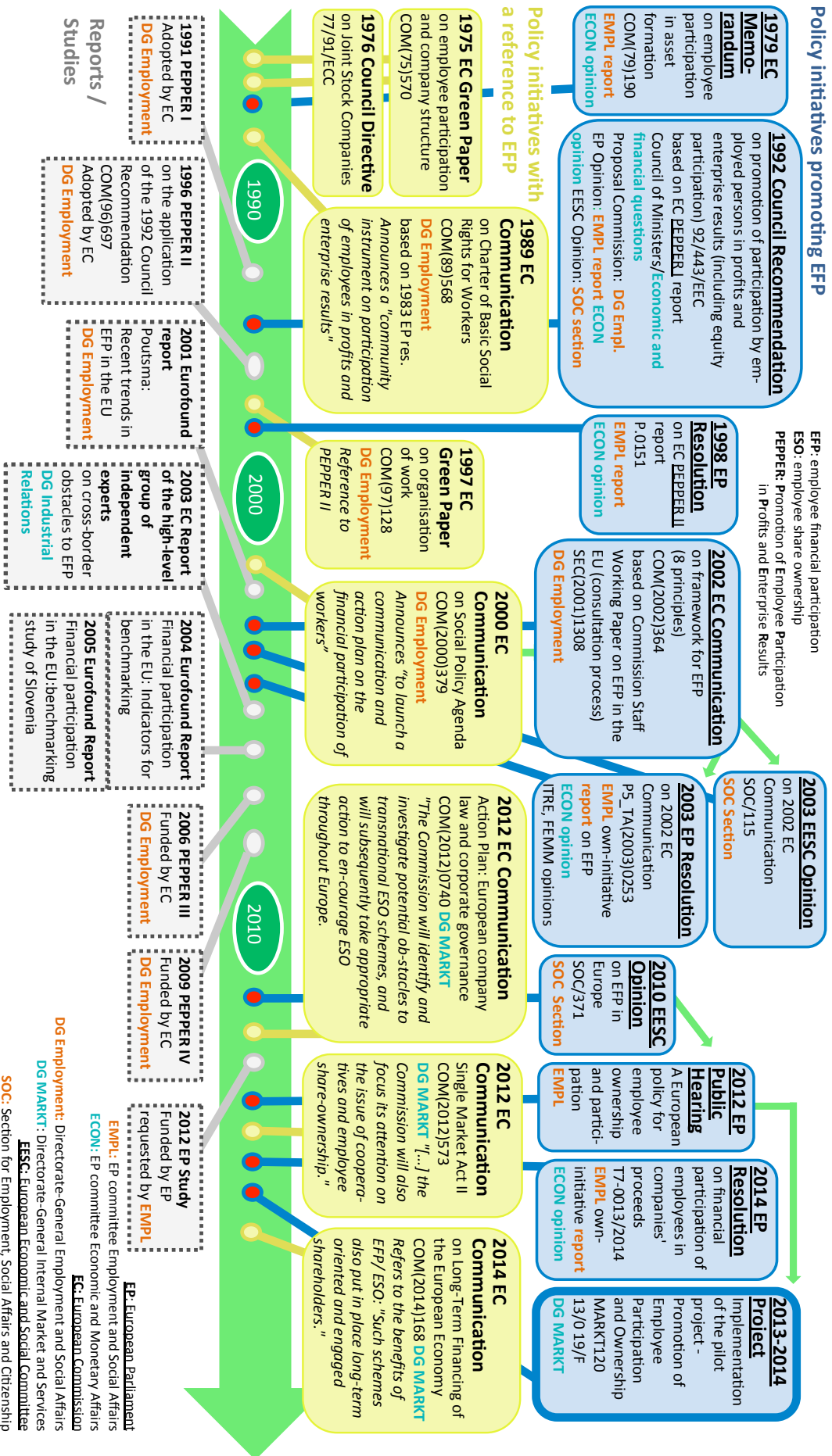


- Finally, the European Parliament underlined the importance of promoting EFP at the EU level addressing all of the issues covered here. In its most recent Own-Initiative Report on financial participation of employees in companies' proceeds that was adopted on 14 January 2014²³, it recommends various 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.

The following figure shows the different policy initiatives at the EU level on the subject of employee financial participation:

²³ European Parliament Own-Initiative report: Financial participation of employees in companies' proceeds, 2013/2127(INI) T7-0013/2014.

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



Source: Own elaboration based on EU documents.





II. The Action Plan and ESO – links with current policy debates and challenges

1. Links between employee shareholding and corporate governance

As mentioned above, in December 2012 the Commission included the promotion of employee share ownership (ESO) in its Action Plan to reform European company law and corporate governance. This signalled a new appreciation of EFP, and particularly ESO, as a policy area, while in the 1990s it had been predominantly regarded as related to social policy.

While the focus in the Action Plan with regard to ESO is on “engaging shareholders”, the positive effects of ESO (see Chapter I, 4. a) are of course relevant to all three areas targeted by the Action Plan, i.e., transparency, responsibility and competitiveness. ESO broadens the role of employees and elevates their status. In so doing, ESO contributes to:

- Higher transparency of remuneration: Employee shareholders having a “say on pay” contribute to making executive compensation transparent, a step toward more sustainable remuneration policies. As knowledgeable insiders they can exercise more effective “oversight” than other shareholders.
- A switch from short-term to long-term incentives: Companies with a significant employee shareholder base gain a bloc of exacting but loyal shareholders composed of their own employees who understand the firm more intimately than outsiders ever could. Employee shareholders can support management in resisting the short-term actions of the financial markets; they may also impose some constraint on opportunistic management and short-term policies.
- Making EU firms more competitive through productivity gains arising from increased employee loyalty and identification with the company: Employee share ownership can increase employee participation and reward the assumption of new responsibilities at both the shop floor and shareholder levels.

Good corporate governance, of course, improves company performance and thus benefits all shareholders and stakeholders. But, since the link between ESO and better corporate governance is complex, it may be helpful to review the main related arguments and findings. Issues such as information sharing, long-term shareholding and participation in decision-making are interlinked; by regarding employees not just as another factor of production, but as shareholders and stakeholders, employees are encouraged to actively contribute to good corporate governance.

a) ESO contributing to information sharing

Anyone with an important stake in a company, such as his/her own job or savings, naturally wants full transparency on company accounts and company decisions; employee owners would push for transparency of accounts. Participation based on share ownership complements participation based on information and consultation. To encourage positive attitudes and behaviour, management also needs to adopt such practices as information sharing, clarifying and strengthening the link between individual and organisational performance, and employee participation in decision-making into their incentive plan. These measures complement EFP (Pendleton and Robinson 2010). Well-informed employees can also make significant contributions to the effectiveness



of company boards, especially to their important function of monitoring and overseeing management.

The company should also supply employees with detailed, independent and timely information on firm performance and its determinants so that employees can better understand the financial risks and benefits associated with joining a scheme (Pérotin and Robinson 2002). Information sharing can attract employees who otherwise might not involve themselves in company affairs. Moreover, employee shareholders have an incentive to provide the management with useful information on shop floor level. Financial participation, in particular ESO, would enhance information sharing because of the closer alignment between individual employees and corporate interests; this is also likely to improve company decisions.

For non-employee shareholders, it is advantageous to know that they have the company's employees as fellow shareholders pursuing the same objectives. ESO also appears to benefit the firm by increasing disclosure to *all* of its stakeholders. (Bova, Dou and Hope 2013) Employee shareholders are better positioned to monitor and exercise oversight on management than any other entity. They also have an incentive to monitor their fellow employees. This can potentially improve corporate governance within the company. The presence of employee shareholders should assure other long-term investors, such as institutional shareholders, that the company's long-term interests will prevail.

b) ESO contributing to participation in decision-making

Employee participation in the decision-making process and employee financial participation are regarded as complementary, with the potential to reinforce the beneficial effects of each on productivity and the quality of management. Financial participation gives employees an additional incentive for involvement, while participation in decision-making gives them a means of doing so. Financial participation thus rewards results—i.e., profits—while participation in decision-making offers employees ways and means to actually make the firm more profitable—not by working necessarily harder but smarter, and by eliminating the organizational and other bottlenecks and inefficiencies that impede production and increase costs.

Participation in decision-making is a concept so heavily weighted with ideological connotations that it is necessary to state that the term as used here refers to various levels of involvement—having a say on work organization is quite different from participating in board decisions. The extent of participation in decision-making will be influenced by the home country's history of labour relations²⁴, by how much company stock employees own, and many other factors. Concerning financial participation, however, three areas of participation have proved to be crucial: information sharing, involvement at the shop floor level, and executing voting rights as a shareholder.

- Because company performance depends on many factors, both internal and external, employees may be reluctant to exert more effort unless they are informed about major decisions, e.g., investment or strategic decisions having an impact on profit and share prices. The positive impact of financial participation

²⁴ E.g., the consensual continental contrasts with the Anglo-American confrontational model; likewise the strong position of the state in France contrasts with the powerful role of the German collective bargaining parties, such as trade unions and employer associations (Pendleton and Poutsma 2004).



may depend on providing employees with the information necessary to understand the ways in which firm profitability can be increased. This in turn will influence employees' investment decisions, i.e., the decision of whether to acquire shares in their own company.

- As to active involvement at the shop floor level, it is important that employees' ideas and concerns are taken seriously and that employee suggestions for improving work procedures and operations are put into effect. This is particularly important if employees own shares in the company and begin to think like co-owners. Otherwise the inability to positively influence the company's financial results could lead to demoralizing frustration, undermining the positive motivational effects that financial participation would provide.
- Regarding participation via shareholder voting rights, employee shareholders represent the type of investor, concerned with the long-term performance of the firm, not the short-term fluctuations, which may occur from year to year. Thus, ESO may involve participation in decision-making through voting rights, which—depending on their structure—may be executed individually or collectively via an intermediary entity. Employee shareholders as the natural stewards of their firms will support management's sustainability-oriented policies. In discussing participation via shareholder rights, it is important to emphasise that the EU trend towards using an intermediary vehicle, e.g., a trust, as the custodian of employee shares, allows pooling of voting rights.²⁵

c) ESO contributing to remuneration policy reforms

Executive compensation structures are often cited as one cause of the recent financial and economic crisis. The pre-crisis executive compensation structures are criticised for putting too much emphasis on short-term variable compensation, thus leading to myopic management decisions (Teichmann 2009). Furthermore, by rewarding risk and short-term results with out-size bonuses while not penalizing high-risk management practices with compensation cuts, they created *moral hazard*.²⁶ Examples from different countries show that when employees control a significant proportion of shares, they make effective use of their say on pay.²⁷

As financial participation is promoted, it fosters a change in the orientation of the remuneration system from short-term to long-term. Even if initially limited in extent, employee shareholding can be an important support of transparency, eventually be-

²⁵ These indirect share ownership schemes utilise an intermediary entity to manage the shares held in trust for employees. In Britain and Ireland this intermediary vehicle is often an ESOP. At the enterprise level, it may also take the form of a combined savings plan and mutual investment fund (e.g., in French FCPEs). Pooling voting rights and voting for a trustee to execute them can "professionalise" the management of employee voting rights. Eventually employee-voting shares may become large enough to secure representation on the company board. See also the 2010 European Economic and Social Committee Own-Initiative Opinion SOC 371 on EFP, CESE 1375/2010, OJ C 51, 17.02.2011, p. 1–7.

²⁶ Empirical evidence from management boards in Sweden (Oxelheim, Wihlborg and Zhang 2010) as well as supervisory boards in Germany (Koch and Stadtmann 2012) support these findings.

²⁷ In the U.S.-based firm Wal-Mart, a group of employee shareholders placed a proxy regarding compensation (Rodgers 2012). The employees demanded an annual analysis with which the board should ensure that Wal-Mart's compensation schemes discourage managers from making capital investments, which might lower the company's returns. The British ESOP Centre calls these series of actions the "shareholder spring" and further notes that employee shareholders might be the protagonists of "the most capitalistic of the revolutions" (ESOP Centre 2012).



coming, as the employees' equity and voting rights increase, an influence on compensation systems. If employee shareholders constitute a small minority, as is usually the case, then they will serve as a party of interest. Companies embracing EFP, are more likely to be transparent and share information with employees, including information on executive compensation. Although the extent of shareholding generally will be too small to influence compensation packages through voting, employee shareholders can put the issue on the agenda of the general assembly. Once employees gain a significant minority of shares, they will be able to influence the compensation package as institutional shareholders.

Empirical evidence suggests that employee shareholders being risk averse and having their job tied to the fate of their employer face significant incentives to reduce risk and are able to influence decisions relating to firm risk (Bova et al. 2012). Employee shareholder voting rights along with higher transparency of remuneration schemes will give employees closer scrutiny of executive compensation decisions. This should have a more positive impact on the orientation of executive compensation toward the long-term than the vote of an average shareholder:

- The average shareholder, in general, has a diversified portfolio of shares. He does not invest in one single firm only, but in several firms. With his diversified portfolio, he is not concerned about the performance of an individual firm, but is rather interested in a satisfactory relationship between risk and return (Markowitz 1952). In addition, for this type of shareholder, the transaction cost of share trading is low and when the stocks he holds are not performing as desired, he can sell them and invest somewhere else.
- For an employee shareholder the situation is different: His is a non-diversified position with his job as well as his previous savings linked to the survival of the firm. Depending on the provisions of a specific EFP scheme, employees might well invest more heavily in company shares since they are often discounted and thus more attractive than shares of other firms. If shares are a compensation component, there could be restrictions on the time of sale. Furthermore, the employee shareholder would have higher transaction costs and thus, is less able than the average shareholder to sell his shares. These considerations give employee shareholders a vital interest in executive compensation that is oriented toward the long term because this fosters a balanced attitude on risk.

It is sometimes argued that employee shareholders do not have the expertise to execute their voting rights so as to achieve the beneficial influence described. However, this possibility should be to some extent mitigated by the probable presence of a compensation expert on the remuneration committee, which will be present at the annual general meeting where remuneration is decided.

2. Current challenges of EFP

In deciding to actively encourage EFP throughout the European Union and to identify and investigate potential obstacles to transnational EFP schemes, the Commission has taken an important step. However, serious challenges remain.

By raising productivity, stimulating economic growth and stabilising employment, EFP can help to expand the single market, thus contributing to the goals of the Europe 2020 strategy. But in order to achieve these goals, EFP itself requires a single market. As European 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.

Recent research depicts very diverse scenarios throughout the European Union; while some Member States have introduced legislation and tax incentives to promote the development of employee financial participation, this practice is much less popular in others (for an overview of the status quo in the EU-28 see the table in Annex 1). The costs, administrative burdens 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.²⁸ Research undertaken for this Study confirms this analysis.

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, Belgium, the United Kingdom, Ireland and Slovenia—provide detailed rules on and considerable support for EFP schemes, while a large number of Member States, including Germany, the Netherlands and Poland, stipulate only a few rules for the implementation of EFP schemes. Some countries, such as Luxemburg, Portugal and Sweden, have been passive with no specific regulations on EFP (for details see the overview table on Table 1). 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 about a third of the total.

It is important to stress that the update of the country data since the PEPPER IV Report, which is undertaken in this Study, seems to indicate a West-East divide with respect to share ownership which however 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.

²⁸ Report of the High Level Group of independent experts, on cross-border obstacles to financial participation of employees for companies having a transnational dimension, Commission of the European Communities, December 2003.



- A quite different situation prevailed in the countries, which have joined the European Union since 2004. Few laws specifically address employee financial participation, 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 companies, the purpose was not to motivate employees to become more efficient and productive. Occasionally the issue of social justice (the fact that workers had suffered under the socialist regime and therefore should be compensated) was raised. But, on the whole, 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, 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 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 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 promote the spread of EFP effectively²⁹ but they

²⁹ 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 quite recent, e.g., Austria. In France, legislation on voluntary employee financial participation without tax incentives of 1959 and even legislation on compulsory employee financial participation 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 Würz 2003 p. 39). 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, especially Revenue Approved plans (see Würz 2003 p. 130; www.ifsproshare.org).



do not appear to be a prerequisite to the development of financial participation³⁰. 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.³¹ Generally, attention is centred on tax incentives, which are often considered the State's main instrument for promoting employee financial participation. 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):

- 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 taken into account 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 represents another very important barrier to the implementation and spread of these schemes.³² 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 re-

³⁰ 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 per cent of enterprises and 6 per cent of the workforce participated in employee share ownership plans in 2005, tax incentives for which were introduced in 2001, whereas 25 per cent of enterprises operated profit-sharing plans without tax incentives (see Kronberger, Leitsmüller and Rauner (2007) pp. 11, 17, 162). In Germany, 2.4 per cent of enterprises had an employee share ownership plan in 2001, supported by (marginal) tax incentives, whereas at the same time 8.7 per cent of enterprises operated profit-sharing plans without tax incentives (see Würz 2003 p. 59).

³¹ 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.

³² 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. 6, 24, 26. 51.



strictions on the exercise of the fundamental EU Treaty freedoms.³³ 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.

³³ The Court of Justice of the EU has ruled that double taxation resulting from the parallel exercise of taxing rights by Member States, is not per se contrary to EU law. However, the Commission considers it an obstacle in the Single Market.



Table 1. Classification of EU Member States based on regulatory density and support measures for EFP

EU Member States	Legal framework		Fiscal incentives		Political support, social dialogue		Rating	
	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
Croatia	0	2	0	1	0	1	0	4
Czech Rep.	1	1	0	1	0	0	1	2
Denmark	0	1	0	0	0	0	0	1
Germany	0	2	0	1	0	2	0	5
Estonia	0	1	0	-1	-1	0	-1	0
Ireland	2	2	3	3	3	3	8	8
Greece	1	1	0	1	2	2	3	4
Spain	1	2	0	3	0	1	1	6
France	3	2	4	3	3	2	10	7
Italy	1	2	1	2	2	2	4	6
Cyprus	0	1	0	1	0	0	0	2
Latvia	0	1	0	1	1	1	1	3
Lithuania	0	1	0	1	0	0	0	2
Luxembourg	0	1	0	1	0	0	0	2
Hungary	0	2	0	1	0	1	0	4
Malta	0	1	0	1	0	1	0	3
Netherlands	1	2	0	0	2	2	3	4
Austria	0	2	0	3	2	2	2	7
Poland	1	2	0	2	0	0	1	4
Portugal	1	1	1	0	0	0	2	1
Romania	0	2	0	1	0	0	0	3
Slovenia	3	3	3	3	3	3	9	9
Slovakia	0	1	0	1	1	0	1	2
Finland	3	1	3	1	3	0	9	2
Sweden	2	1	1	0	0	0	3	1
UK	0	3	0	4	0	3	0	10

Source: Own research based on the PEPPER IV country profiles updated as part of the Pilot Project.



The analysis in Table 1 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 ++ and +++) 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.



Although the scope of the above-mentioned different types of obstacles is rather 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, as well as 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 companies, especially SMEs, may not be able to overcome. For a more detailed discussion of the implications of differences between national legal frameworks on EFP for European firms see Chapter IX 2 b).

The findings summarised here are supported by the results of a set of surveys conducted in 2008 among companies in several EU Member States of Eastern Europe and the Baltics in the context of the PEPPER IV Report.³⁴ Companies asked to identify the greatest obstacles to the implementation of EFP schemes other than opposition of 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.

³⁴ This was a survey of firms with more than 200 employees in six countries, i.e., Lithuania, Malta, Poland, Portugal, Romania and Croatia. The planned number of firms in each of these countries was 100 in larger and 50 in smaller counties, randomly selected. In practice, the total number of observations in these countries was 533—in Malta, in particular, the number of firms interviewed was 17 (and for this reason, the information on Malta should be treated with caution). Furthermore, given that the number of large firms in some of these countries (Latvia, Lithuania, Malta, in particular) was small, firms with less than 200 employees were also included in the sample. For details see the PEPPER IV Report (*Lowitzsch, Hashi and Woodward 2009*).





III. Empirical evidence on EFP according to the 2nd (2009) and 3rd (2013) European Company Survey

Information on the scale of EFP in European 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.³⁵ 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 (including some non-EU countries). It covers the total population (universe) of EU companies (with ten or more employees) of approximately 1.65 million.³⁶ 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.³⁷

1. Scale of EFP in EU companies

a) Employee share ownership (ESO)

Despite the period of economic and financial crisis in EU countries, companies continue to offer share ownership schemes to their employees. As Figure 2 shows, for the sample as a whole, the average proportion of private companies offering ESO schemes has increased from 4.7 per cent to 5.2 per cent (a growth of about ten per cent) since the 2nd European Company Survey (ECS).³⁸

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 UK have experienced an expansion of ESO schemes while those in Belgium, Bulgaria, Denmark and Romania have witnessed significant declines.

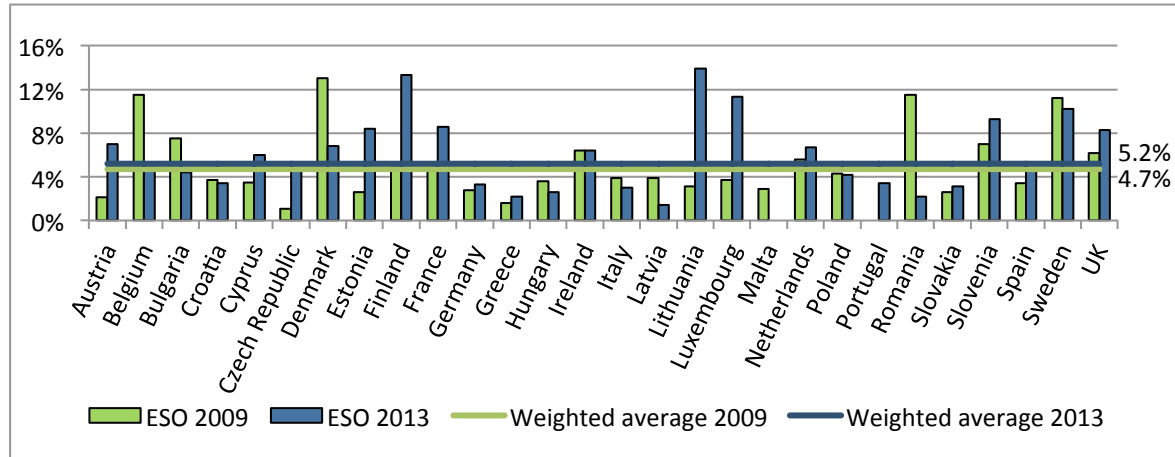
³⁵ Two other surveys, the European Working Conditions Survey (EWCS) conducted by the Eurofound and the CRANET Survey of Human Resource Managers conducted by a network of universities coordinated by Cranfield University, U.K., are examples. For more information see footnotes 12, 13.

³⁶ 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.

³⁷ 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 14). The figures and data mentioned here refer to EU-28 (for 2013) and to EU 27 plus Croatia (for 2009).

³⁸ In the 2009 ECS sample, 1,388 of 20,828 private firms (weighted average, 4.7 per cent) 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; therefore Chapter III reports on EFP schemes in general.

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

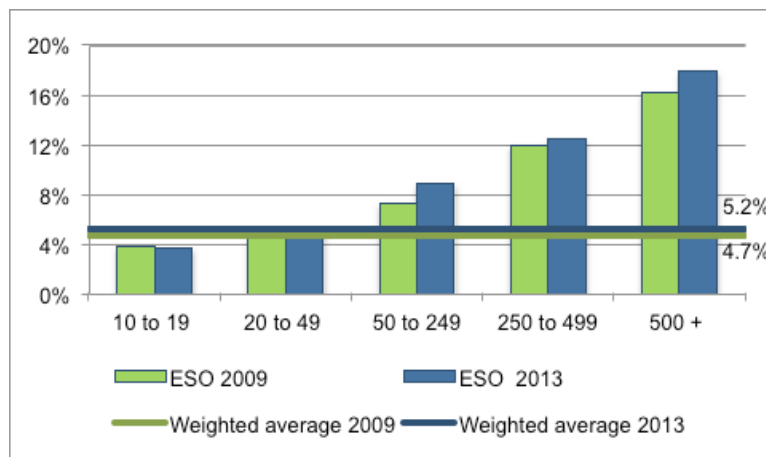


Source: ECS 2009 and 2013.

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.³⁹ As Figure 3 shows, the adoption of ESO schemes in the EU is positively correlated with firm size, both in 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 4 shows, companies in the Financial Intermediation sector and Real Estate and Business Services sector are much more likely to offer their employees an ESO scheme than those in other sectors.

Figure 3. Proportion of private companies offering employee share ownership schemes by size class in EU-28 in 2009 and 2013 (%)

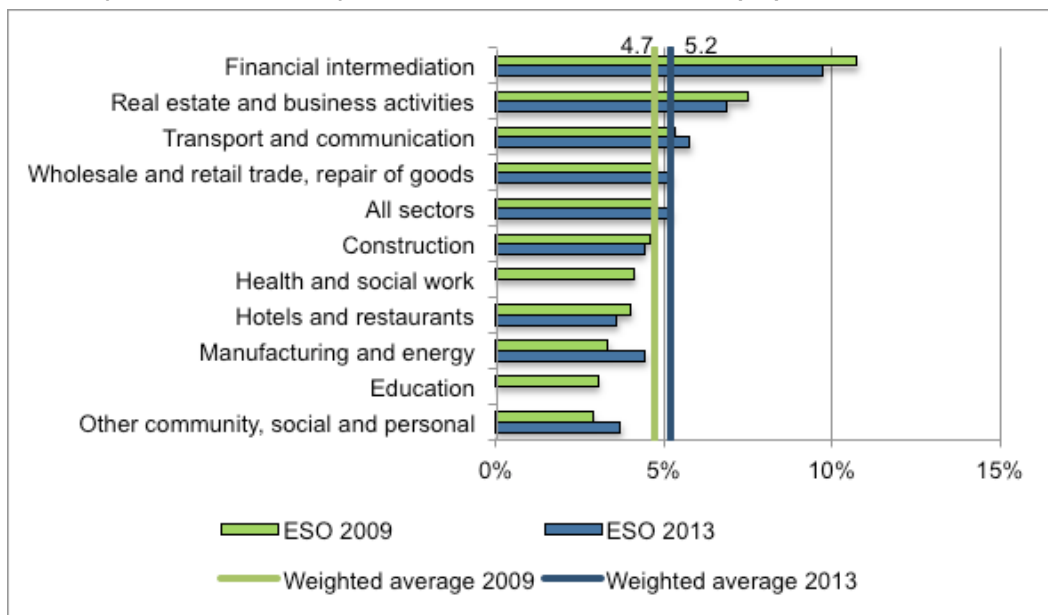


Source: ECS 2009 and 2013.

³⁹ 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 companies offering employee share ownership schemes by sector of activity in EU-28 in 2009 and 2013 (%)



Source: ECS 2009 and 2013. Note: Sector classification were different, i.e., NACE Rev. 1.1 in 2009 and NACE Rev. 2 in 2013. Sectors were matched using broad one-to-one correspondence between sub-sectors. There were no private firms offering ESO in the 'Health and social work' and 'Education' sectors in the 2013 survey.

Although the adoption of ESO schemes has increased overall, it has marginally declined in few sectors, including the two leading sectors with highest incidence.

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 per cent. In 2013 the bottom three countries were Malta, Romania and Italy while the top three countries were Luxembourg, UK 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 (%)

Size-class	2009			2013		
	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%

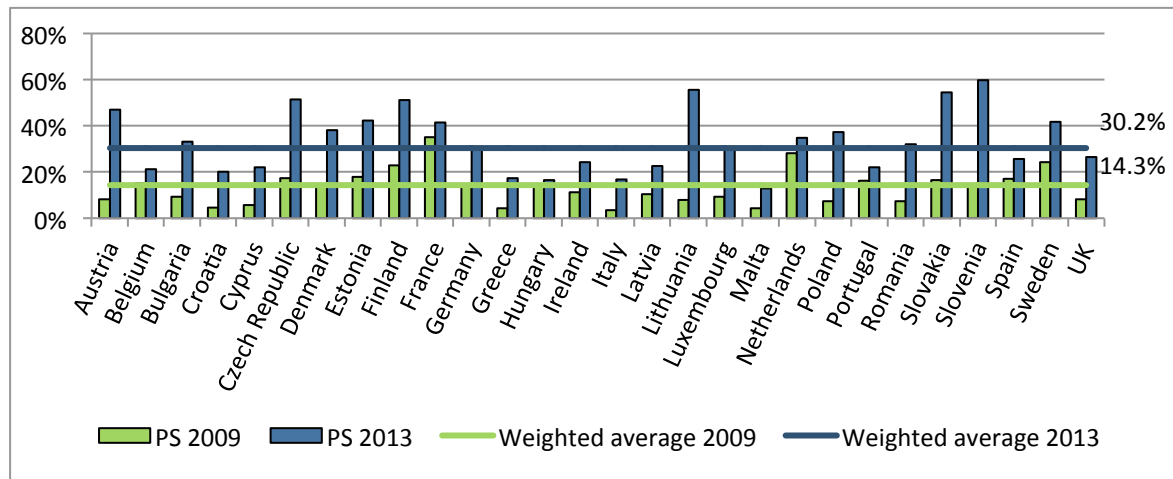
Source: ECS 2009 and 2013.



b) Profit sharing (PS)

Profit-sharing schemes became even more popular than ESO schemes between the 2nd and 3rd ECS, with the average proportion of private firms offering PS schemes to their employees more than doubling, rising from 14.3 to 30.2 per cent. As Figure 5 shows, their popularity increased in all EU members.

Figure 5. Proportion of private companies offering profit-sharing schemes in EU-28 in 2009 and 2013 (%)



Source: ECS 2009 and 2013.

The adoption of PS schemes increased in all EU countries despite the fact that there was no general improvement in the legal/policy environment across the EU. One possible explanation is that during the financial and economic crisis, in an environment of increased profit volatility risk, employers used PS schemes as a mechanism 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 experts⁴⁰, as well as findings from the European Restructuring Monitor (Hurley et al. 2009) and a study investigating – among other issues – the relationship between financial participation and the evolution of wages.⁴¹ However, when looking at countries individually, there is no strong explanation for variations between countries. 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 trebled during the period under consideration.

⁴⁰ 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.

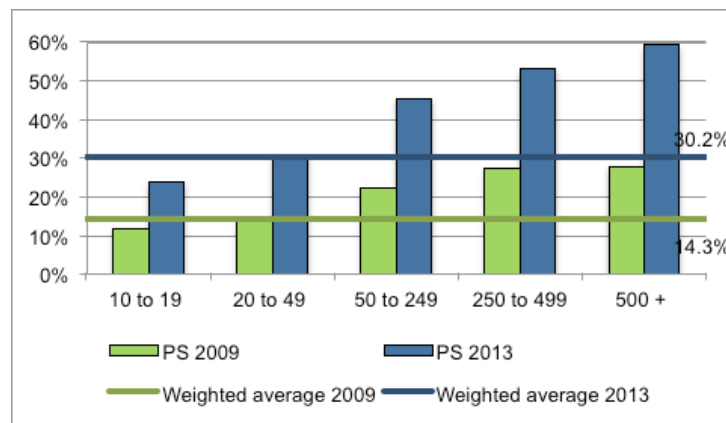
⁴¹ See Employment Studies Centre (CEE) (2014), which suggests that financial participation goes along with wage moderation that is compensated by bonus payments. However, the study uses older data that cover the period prior to the crisis (1999-2007).



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 these schemes. Figure 5 presents the proportion of companies of different size classes offering PS schemes to their employees.

As Figure 6 shows, the adoption of PS schemes in the EU is positively correlated with company size in both 2nd and 3rd Surveys. The proportion of firms offering PS schemes has increased in all size classes with the largest size class showing a slightly larger proportionate increase than other size classes.

Figure 6. Proportion of private companies offering profit-sharing schemes by size class (number of employees) in EU-28 in 2009 and 2013

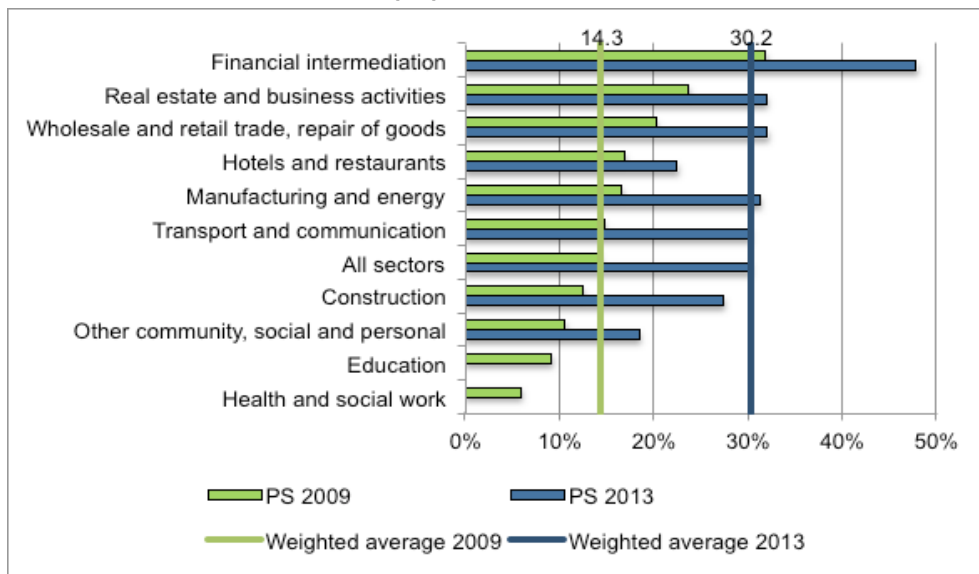


Source: ECS 2009 and 2013.

Figure 7 illustrates the adoption of PS schemes in different sectors of activity. These schemes are most commonly employed in the Financial Intermediation sector, followed by the Real Estate and Business Activities sectors (as is also the case for ESO schemes). Profit-sharing schemes have become more widespread in all sectors in 2013 in comparison with 2009, though the proportionate increase across sectors varies greatly. Again, the aggregated data cannot depict the disparities between countries.

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.

Figure 7. Proportion of private companies offering profit-sharing schemes by sector in EU-28 in 2009 and 2013 (%)



Source: ECS 2009; 2013. Note: Sector classifications were different, i.e., NACE Rev. 1.1 in 2009 and NACE Rev. 2 in 2013). Sectors were matched using broad one-to-one correspondence between sub-sectors. There were no private firms offering PS in the 'Health and social work' and 'Education' sectors in the 2013 survey.

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 per cent. In 2013 the bottom three countries were Cyprus, Greece and Hungary while the top three countries were Finland, Czech Republic and Slovakia.

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

Size-class	2009			2013		
	All companies	Without employee representation	With employee representation	All companies	Without employee representation	With employee representation
10-19	11.9%	10.7%	16.4%	23.9%	22.7%	29.4%
20-49	14.1%	11.9%	17.8%	30.9%	29.3%	34.3%
50-249	22.3%	14.7%	27.2%	45.4%	38.8%	50.5%
250-499	27.5%	11.8%	31.4%	53.3%	42.9%	56.2%
500+	28.0%	13.6%	30.1%	59.3%	44.0%	62.0%
Total	14.3%	11.4%	20.4%	30.2%	26.8%	38.2%

Source: ECS 2009 and 2013.



2. The impact of EFP on productivity and employment levels

Econometric analysis of the 2nd and 3rd European Company Survey data makes it possible to estimate the impact of EFP schemes and other firm characteristics (including location) on firm performance measured in terms of 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 Section I. 4 a), which indicate that employee financial participation 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 European Company Survey is based on a large sample (over 30,000 firms from both rounds of surveys) and all 28 EU countries. This wider coverage makes the results highly significant and ensures external validity of inferences.

Companies have other characteristics (e.g., their size, the proportion of highly qualified or educated staff, sector of activity, the presence of other forms of participation such as a system of employee representation, location, etc.), which may also influence the likelihood of their offering an EFP scheme. Thus the impact of an EFP scheme is affected by not only the presence or absence of EFP schemes but also by other company characteristics as well. The impact of these factors on the performance of companies was estimated by relevant econometric models presented in Annex 4. 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 on company performance in companies with different types of characteristics. There are, of course, many possible combinations of firm 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. Table 4 demonstrates how ESO schemes affect the performance (productivity improvement and employment increase) of 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.

⁴² For details of the econometric model underlying the analysis in this section, see Annex 4.1.

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 Q7 (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 on productivity improvement and employment increase

No.	Scenario	Probability of improving productivity			Probability of increasing employment		
		A	B	C	D	F	G
		Without an ESO scheme	With an ESO scheme	Proportionate increase from A to B	Without an ESO scheme	With an ESO scheme	Proportionate increase from D to F
1	A large firm in manufacturing in Western Europe in 2013, without a system of employee representation	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	3.29%	7.09%	116%	1.41%	4.34%	208%
5	Same as 1 but in CEE countries	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 per cent for productivity and 162 to 350 per cent 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 and increases employment. Here, too, the proportionate increase in the probability of performance improvement as a result of adoption of a PS scheme varies from 255 per cent to 426 per cent for productivity and from 70 per cent to 114 per cent for employment. The probability of an increase in employment is smaller than was the case with an ESO scheme (Table 4).



Table 5. The impact of PS schemes on productivity improvement and employment increase

No.	Scenario	Probability of improving productivity			Probability of increasing employment		
		A	B	C	D	F	G
		Without a PS scheme	With a PS scheme	Proportionate increase from A to B	Without a PS scheme	With a PS scheme	Proportionate increase from D to F
1	A large firm in manufacturing in Western Europe in 2013, without a system of employee representation	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	9.51%	24.23%	255%	7.95%	14.88%	87%
5	Same as 1 but in CEE countries	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 and 2013.

3. 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

⁴⁴ For a technical discussion of the econometric model underlying the analysis in this section, see Annex 4.2.



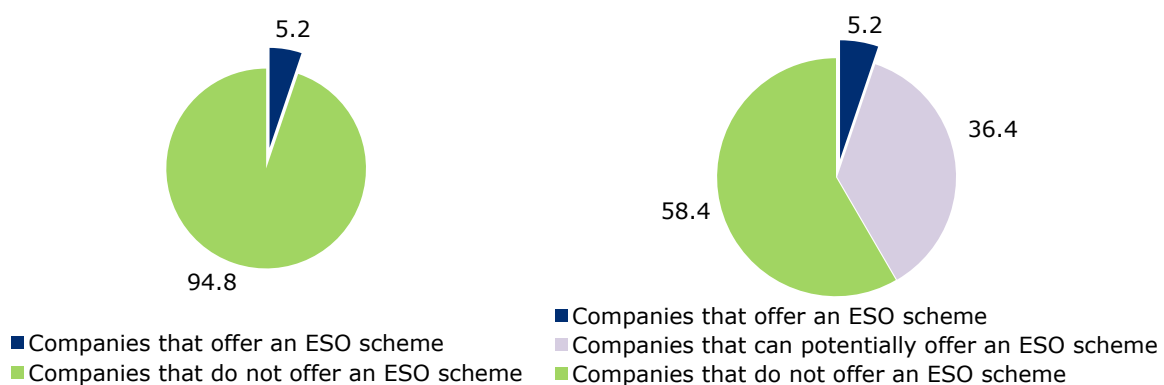
Furthermore, given that the ECS sample is a statistically representative sample of EU companies, once the number of companies in the sample which could potentially offer EFP schemes to their employees is estimated, it would also be possible to estimate the number of firms in the population of EU companies that could potentially adopt an EFP scheme.

a) 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 comparator group.⁴⁵ Using this technique, we find the number of companies matched against the group offering ESO schemes to be 15,185 (out of a total of 41,751, i.e., 36.37 per cent of all private companies in the pooled 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 36.37 per cent figure to the total population of private companies in the EU (1.65 million companies), one arrives at a total of 600,111 companies that are likely to offer ESO schemes based on the matched observed characteristics. Figure 8 compares the actual and potential proportions of companies offering an ESO scheme.

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 pooled sample, the number of matched companies is 5,460 (i.e., 24.41 per cent of 22,368 small firms in the pooled dataset). Applying the 24.41 per cent figure to the total population of small companies in the EU (around 1.38 million), one arrives at a total of 336,856 small companies that are likely to offer ESO schemes based on the matched observed characteristics.

Figure 8: The actual and potential distribution of firms offering ESO schemes in 2013



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

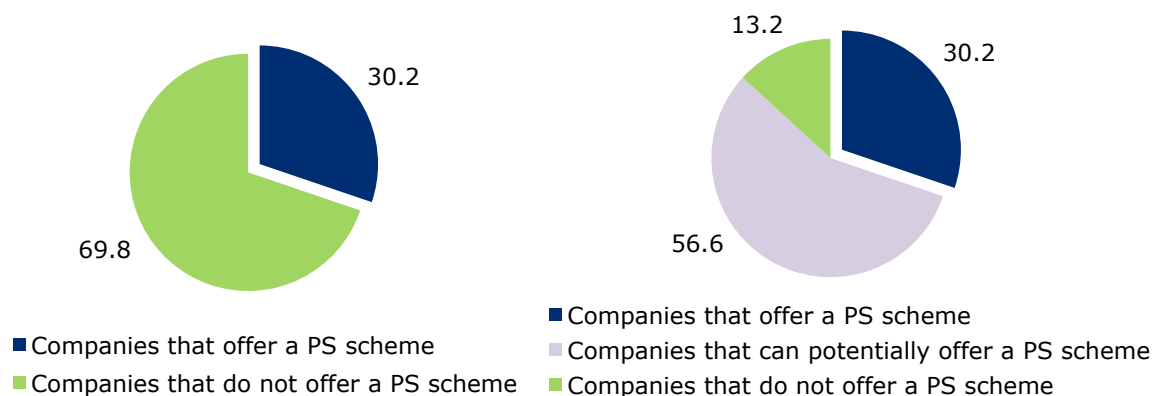
⁴⁵ For this exercise, the data from 2009 and 2013 were pooled together.



b) Profit sharing

The number of companies in the European Company Surveys 2009 and 2013, 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 this technique, we find the number of companies matched against the group offering PS to be 23,636 (out of the total of 41,751, i.e., 56.61 per cent of all private companies in the pooled sample). 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 56.61 per cent figure to the total population of private companies in the EU (around 1.65 million companies), one arrives at a figure of 934,095 for companies that are likely to offer PS schemes based on the matched observed characteristics Figure 9 compares the actual and potential proportions of companies offering a PS scheme.

Figure 9. The actual and potential distribution of firms offering PS schemes in 2013



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

Using the same method, it is possible to estimate the number of small companies (10 to 49 employees) that can potentially offer PS schemes to their employees. For the small size companies in the pooled sample, the number of matched companies is 9,602 (i.e., 42.93 per cent of 22,368 small firms in the sample). Applying the 42.93 per cent figure to the total population of small companies in the EU (around 1.38 million), one arrives at a total of 592,398 small companies that are likely to offer PS schemes based on the matched observed characteristics.

c) Potential for 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 per cent 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 em-



ployees. 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	
	Percentage of companies	Number of companies	Percentage of companies	Number of companies
Number of companies in the ECS sample currently offering a scheme	5.2% in 2013	1,195 in 2013	30.2% in 2013	6,938 in 2013
Number of companies in the sample which can potentially offer a scheme	36.37%	15,185	56.61%	23,636
Number of companies in the population which can potentially offer a scheme	36.37%	600,111 (300,056*)	56.61%	934,095 (467,047*)
Number of small companies in population which can potentially offer a scheme	24.41%	336,856 (168,482*)	42.93%	592,398 (296,199*)

Notes: * Potential number of companies with a margin of error of 50 per cent to account for the unobserved characteristics. 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.



IV. Description and assessment of policy options for the promotion of EFP

As described in Chapter I, section 5, a number of steps have already been taken during the past decade to promote EFP. This chapter considers a wide range of policy options in order to evaluate which measures would be most feasible and appropriate to promote EFP in the short, medium and long term. The range of options available to the Commission, together with related activities and the instruments to implement them, are discussed in this Chapter.

Taking into account the proposals for the promotion of EFP made during the last decade⁴⁶, four **main policy targets**, each with a range of corresponding **instruments and activities for implementation**, can be identified:

- a) Assessing the current situation:
 - a report assessing EFP in the 28 Member States.
- b) Identifying best practice:
 - co-ordination initiatives by the Commission (e.g., as in the area of social policy the Open Method of Co-ordination) with regard to EFP;
 - a Commission Recommendation proposing best practice examples on EFP;
 - a Code of Conduct for EFP.
- c) Raising awareness and sharing information:
 - the launch of an information sharing strategy (e.g., Information Centre(s) for EFP; an Effective Tax Rate Calculator);
 - an Action Programme to raise awareness for EFP.
- d) Establishing a legal framework at the EU level:
 - a European Framework Directive on EFP;
 - the optional Common European Regime on EFP.

Table 7 charts these policy options that are discussed in more detail below.

⁴⁶ See e.g. the results of the pilot project's conference on *Promotion of Employee Ownership and Participation* on 30 January 2014 (<http://www.intercentar.de/en/conference/download-the-materials/>), the 2014 EP Resolution on EFP in companies' proceeds (P7_TA(2014)0013), the PEPPER Reports I-IV (1991, 1996, 2006, 2009), Lowitzsch et al. (2008), The Nuttall Review (2013).

Table 7. Mapping of policy options to promote EFP at EU level: Aims and corresponding instruments

INSTRUMENTS*	NON-BINDING						Commission Expert Group on EFP		
	BINDING		Treaty-based		Non-Treaty-based				
	Regulation	Directive	Commission Recommendation	Council Recommendation	Commission Co-ordination	Steering Instruments Conclusions, Declarations, Resolutions, Codes of Conduct		Preparatory Green Papers, White Papers, Action Programmes	Informative Measures (Commission Communication and other)
AIMS									
Assessing the current situation								Report	
Identifying best practices			Best practice examples / preparation of (legislative) measures	<i>as part of co-ordination</i>	Elaboration and regular evaluation of best practice	Code of Conduct		Communication on EFP	Elaboration Code of Conduct
Raising awareness and sharing information								Information sharing strategy: Virtual Centre for EFP & Effective Tax Rate Calculator	Regular policy recommendations
Establishing a legal framework at EU level	Common European Regime for EFP	European Framework Directive						Action Programme to raise awareness (Green / White Paper)	Verify legal basis / prepare legislative proposal

* Only those instruments eligible to promote EFP. The term 'instruments' refers to the instruments, measures or acts through which a policy aim can be achieved. It includes all forms of legislative and non-legislative, binding and non-binding legal and political instruments at the EU's disposal.

Source: Own elaboration.



1. Assessing the current situation

The assessment of the current situation has several objectives: Firstly, to facilitate the analysis of the reasons for the wide divergence in approaches between Member States and the existing barriers to cross-border implementation of EFP schemes. Secondly, to inform about the different national EFP schemes, especially with respect to taxation and social security contributions; this information is crucial to firms that actually plan to implement a new or expand an existing EFP scheme. Thirdly, to provide background information for all other activities promoting EFP which are discussed in this Study.

To achieve these objectives, it is crucial that the results of this Study **assessing the development of EFP in the EU-28**, analysing potential policy options and giving concrete policy recommendations be made available to as many interested parties as possible, e.g., via publication online. In the past 25 years, several studies on the development of EFP in EU Member States have been conducted (see an overview of these studies in Annex 2). This Study updates the previous ones. It will make an updated summary of national legislation on EFP available to all stakeholders in an official EU document, describing current status as well as presenting proposals for the promotion of EFP. Country profiles of the 28 Member States on EFP and especially ESO, which are part of the deliverables of this Study, include all relevant legal and factual data as well as information on taxation and social security contributions.

However, in order to widely disseminate the information and recommendations contained therein simple publication would fall short. The objective of promoting EFP widely at EU and national levels, particularly to companies and their employees unfamiliar with the concept, requires measures that go far beyond mere publication.

Furthermore, such a study might have divided influence beyond small circles of experts. Therefore it should be combined with other policy options discussed below.

Table 8. SWOT analysis on assessing EFP in the 28 Member States

<p>Strengths</p> <ul style="list-style-type: none"> - easy to execute; - low cost; - can build on existing studies 	<p>Weaknesses</p> <ul style="list-style-type: none"> - info dated; no continuous updates possible - mere publication may have limited influence beyond small circles of experts and policy makers - limited direct value for firms and employees
<p>Opportunities</p> <ul style="list-style-type: none"> - analysis of the reasons for the wide divergence in approaches between MS - information about the different EFP schemes in the Member States - background information for all other activities promoting EFP 	<p>Threats</p> <ul style="list-style-type: none"> - low impact if not combined with other policy options - not appropriate to reach companies and their employees unfamiliar with the concept - not an innovative approach; may not be noticed among plenitude of existing other reports

2. Identifying best practice

A periodic evaluation of best practices from all 28 EU Member States along with reports on policy development is another important method of promoting EFP. Any best practice approach should include schemes for information sharing as well as policy learning among the Member States. This could lead to closer alignment of national rules. The following policy options regarding the on-going formulation of best practice of EFP could be considered:



- co-ordination initiatives by the Commission;
- a Commission Recommendation promoting best practice examples identified in this Study;
- a Code of Conduct to be compiled with on the basis of best practice examples identified in this Study (see Annex 3).

In this context, the question arises as to whether or to what extent the issue of taxation should be included in the formulation of best practice for EFP. Questions concerning **taxation and levies** related to EFP are complex and touch upon areas of competence traditionally reserved for national sovereignty. Even non-binding recommendations on this subject have been viewed sceptically by some Member States. However, the European Parliament explicitly stresses the relevance of tax incentives for EFP in its 2014 Resolution on EFP in companies' proceeds⁴⁷, calling

"on the Member States to provide tax incentives, in line with best practice principles, when promoting employee ownership schemes" (P7_TA(2014)0013, recital 8).

Tax incentives—although not a prerequisite for EFP—have been shown to be the most effective and most commonly used instrument to promote EFP across the EU (Lowitzsch 2008, Annex II) and the U.S. (Freeman, Kruse and Blasi 2013). The European Parliament identifies the national differences in tax treatment as an obstacle to EFP uptake, both for companies with cross-border operations and their "employees, for whom double taxation may represent an infringement of the right to freedom of movement" (P7_TA(2014)0013, recital 1). Consequently, the EP

"is of the view, therefore, that the Commission should present guidelines on the taxation of EFP" (P7_TA(2014)0013, recital 10).

In view of this, the following assessment of the future formulation of best practice includes taxation and social security contributions related to different EFP schemes. However, it should be stressed that due to the above-mentioned difficulties in agreeing on taxation issues across the 28 Member States—whether binding or non-binding—the inclusion of taxation guidelines/recommendations in any form of best practice scenario may involve difficulties.

a) Co-ordination of initiatives by the Commission (e.g., OMC)

The Commission collaborates with Member States to establish guidelines and promote the exchange of best practices by conducting analyses and consultations and providing statements on the results.⁴⁸ An example for this procedure in the area of social policy is the Open Method of Co-ordination (OMC).⁴⁹ Commission co-ordination may there-

⁴⁷ 2014 EP Resolution on EFP in companies' proceeds (P7_TA(2014)0013) recital 9: "[The EP] points out that precisely targeted tax incentives could increase employee financial ownership in various Member States and even add to economic growth."

⁴⁸ All relevant stakeholders are included and a regular information sharing procedure is put in place. The Council provides then, upon proposal from the Commission, detailed recommendations for achieving these objectives. This is supported by dialogue between social partners in the Member States and promoted by the governments' mutual recognition of existing best-practice models.

⁴⁹ The method was first introduced in the European Commission "White paper – Growth, competitiveness and Employment" from 1993. With the Reform Treaty Art. 156 TFEU codifies the Open Method of Co-ordination practiced in social policy under the label "social protection and social inclusion".



with contribute directly to the standardisation of political practices on EFP in the Member States including determination of best practice for taxation of EFP. This procedure would provide a regular assessment of current conditions in the 28 Member States (assuring the comparability of the data collected, e.g., through Eurostat), which could prove useful for the comparison of best practices of EFP from different countries as well as for information sharing and policy learning; Member States would be obliged to report to the Commission.

Although avoiding any binding agreements, the OMC in principle might lead to an eventual approximation of standards and the reduction of cross-border obstacles to EFP. However, the OMC is mainly an intergovernmental procedure and as such heavily dependent on the co-operation of the Member States. As for the differences between existing EFP schemes throughout the Member States and the relevance of the subject in different countries, political motivation to co-operate would differ significantly. When it comes to concrete recommendations within the OMC procedure concerning national EFP policies to be implemented by a Council Recommendation on a proposal by the Commission, it is doubtful that the Member States would arrive at a political consensus on any far-reaching measure. In fact, experience in other policy areas has shown the limits of this approach (Threlfall 2007 pp. 271, 285). In addition, progress in this respect would take several years at least.

Table 9. SWOT analysis on co-ordination initiatives by the Commission

<p>Strengths</p> <ul style="list-style-type: none"> - facilitates information sharing and policy learning among MS - regular assessment of current conditions in 28 MS, assuring comparability of data - avoids binding agreement - high degree of flexibility for national actors 	<p>Weaknesses</p> <ul style="list-style-type: none"> - political motivation to cooperate would differ significantly among MS - mainly intergovernmental procedure, thus heavily dependent on cooperation of MS - limited scope for EU coordination on taxation issues
<p>Opportunities</p> <ul style="list-style-type: none"> - approximation of EFP standards - closer alignment of national rules through mutual adjustment - reduction of cross-border obstacles to EFP 	<p>Threats</p> <ul style="list-style-type: none"> - risk that the MS would not arrive at political consensus - progress would take several years at least - difficulties in agreeing on taxation issues across the 28 MS

b) Commission Recommendation including best practice on EFP

A Commission Recommendation could make policy recommendations to Member States and stakeholders on the basis of results derived from this Study. By communicating its view on EFP, thus pointing toward a future policy direction, and taking into consideration the Member States' duty of co-operation and inclusion of Recommendations in the ECJ jurisdiction, a Commission Recommendation could—in the long term—lead to closer co-operation (or even alignment) of the relevant national policies.

Although—given the experience with the 1992 Council Recommendation—a Commission Recommendation might not prove to be a very strong instrument to promote EFP, it could have a certain political effect; it could be also be used, in addition to other policy instruments, to facilitate the process, to give political weight to the topic and to make policy recommendations through an official EU document. However, a Commission Recommendation proposing best practice examples of EFP—in view of its non-



binding nature—would most likely provide limited incentives for Member States to act, thus having a weaker impact than binding legislation described in section (d) below.

Table 10. SWOT analysis on a Commission Recommendation proposing best practice examples on EFP

<p>Strengths</p> <ul style="list-style-type: none"> - facilitates policy learning among MS - points toward a future policy direction - MS's duty of cooperation and inclusion of Recommendations in ECJ jurisdiction 	<p>Weaknesses</p> <ul style="list-style-type: none"> - limited effect - weaker impact than binding legislation - limited incentives for Member States to act
<p>Opportunities</p> <ul style="list-style-type: none"> - gives political weight to the topic of EFP - policy recommendations on EFP through official EU document - closer cooperation or even alignment of the relevant national EFP policies 	<p>Threats</p> <ul style="list-style-type: none"> - limited scope for Union coordination regarding taxation and levies related to EFP - might not prove to be a very strong instrument to promote EFP if not accompanied by other measures

c) Code of conduct and guide on EFP for employees

Another potential option for the Commission could be to develop a Code of Conduct providing (i) a standard template for companies that want to implement EFP schemes which spells out the details of best practice examples of EFP and (ii) a guide for employees on EFP.

- The **standard template for EFP** schemes underlying such a Code of Conduct could provide a “EFP toolkit” covering general considerations relevant for the implementation of an EFP scheme, similar to the one introduced in the UK.⁵⁰ This “off the shelf” template could only be of a very general nature considering the diverging legal frameworks, forms and traditions of EFP in the 28 Member States as well as the different types of firms. While perhaps not an adequate tool to develop concrete taxation guidelines, it could provide common definitions as well as a model for EFP schemes based on best practice and applicable in most Member States, including, e.g., a guide to the constitution of a company with EFP. By providing common definitions, it would contribute to increasing clarity, as requested by both politicians and stakeholders.⁵¹
- Together with a standard template for EFP schemes, a **guide on EFP for employees** could clearly describe the concept of EFP, the options employees have, as well as explain the standard template.

However, the impact of a Code of Conduct may be limited due to its entirely voluntary nature and lack of awareness of the stakeholders concerned about EFP. Nevertheless, appropriately promoted, it could have both political and practical effects. By using best

⁵⁰ See e.g. the 2013 Model Documentation for a Company with Employee Ownership of the UK Government, Department for Business, Innovation and Skills (URN BIS/13/948), available under: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210449/bis-13-948-model-documentation-for-company-with-employee-ownership.pdf.

⁵¹ See e.g. the results of the pilot project’s conference on *Promotion of Employee Ownership and Participation* on 30 January 2014 (available under: <http://www.intercentar.de/en/conference/download-the-materials/>).



practice examples to construct a model EFP scheme, the Commission would prescribe a certain political direction for future actions while the model scheme would potentially reduce costs for businesses utilising it. Furthermore, especially in Member States with very little regulation on EFP, the Code of Conduct could fill the vacuum, and even lead to national legislation once demand reaches a certain level.

The general nature of the template would ensure that existing national models and traditions of EFP would not be affected. A Code of Conduct would supply stakeholders all over Europe with a common toolkit that could be continuously amended and improved, thus encouraging continued involvement. In order for such a voluntary Code of Conduct to achieve maximal impact, it would have to be widely disseminated and “made public” by broad awareness-raising measures.

A Code of Conduct as an entirely voluntary tool providing a standard template for EFP and a guide on EFP for employees would be relatively easy to implement, especially as some of the information needed for its development will already be provided by this Study (see, e.g., Annexes 1 and 3); the Code could be rapidly compiled and then subjected to a consultation process. A **Commission expert group on EFP**—be it formal or informal⁵²—could for instance, be involved in developing such a Code of Conduct. The establishment of a permanent Commission expert group on EFP would ensure regular feedback and involvement of relevant stakeholders; it could also be part of a broader policy programme of the Commission to promote EFP. Such an expert group could take on the following tasks:

- identify detailed best practice examples for EFP from the sampled information at regular intervals and make policy recommendations;
- update the information on EFP to be made available through the *Virtual Centre for EFP* on a regular basis;
- prepare the elaboration of a Code of Conduct for EFP, compile standard EFP templates, create an employee guide to EFP, and continuously improve this toolkit;
- assist the Commission in determining the feasibility of and preparing a draft of potential future legislation on EFP.

The following stakeholder organisations could be represented in such a Commission expert group:

- employers’ organisations;
- employees’ organisations;
- civil society organisations close to SMEs (e.g., chambers of commerce);
- interest groups and associations dealing with EFP;
- companies offering best practice models of EFP schemes;
- research organisations/universities, involved in the update of country data;
- chosen organisations from the aforementioned willing to participate in the pilot phase of the *Virtual Centre for EFP* and the *Effective Tax Rate Calculator*.

⁵² The former being set up by a Commission decision adopted by the college of Commissioners, whereas the latter, by an individual Commission department with the formal authorisation of the Secretariat General; See the Framework for Commission Expert Groups (C(2010)7649 final: 8).



Participation of a diverse group of stakeholders as well as researchers in the Commission expert group would not only provide the necessary expertise for development of the described tools and measures, but would also assure political acceptance of the results as well as subsequent recommendations and actions.

Table 11. SWOT analysis on a Code of Conduct for EFP

<p>Strengths</p> <ul style="list-style-type: none"> - bottom-up method, auto-regulation - spells out the details of best practice - direct value added for firms / employees, in addition to experts and policy makers - supplies stakeholders across the EU with a toolkit that could be continuously amended - easy implemented, based on existing information 	<p>Weaknesses</p> <ul style="list-style-type: none"> - standard template could only be of a very general nature considering different legal frameworks, traditions and types of firms - potential lack of acceptance by stakeholders - impact may be limited due to entirely voluntary nature
<p>Opportunities</p> <ul style="list-style-type: none"> - provides standard EFP templates for firms - a model EFP plan would potentially reduce costs for businesses utilising it - may fill vacuum especially in MS with low regulatory density on EFP - may trigger changes in national EFP legislation once demand reaches a certain level 	<p>Threats</p> <ul style="list-style-type: none"> - lack of awareness about EFP could make wide dissemination difficult - standard template not an adequate tool to develop taxation guidelines for EFP - does not address lack of transparency about national fiscal treatment of EFP - possible conflict with existing national EFP schemes or practices

3. Raising awareness and sharing information

The concept of EFP suffers from limited awareness at the EU level due in part to a lack of information about its scope and benefits. This lack of information on EFP (especially among SMEs) has been repeatedly identified by stakeholders and policy makers as a major reason for the low incidence of EFP throughout the EU. The European Parliament has stated that:

"the lack of information about existing financial participation schemes could be offset by increasing the quantity of information lending itself to comparison at international level, which would reduce costs for both larger companies and SMEs, enabling them to offer employee participation schemes that meet their particular needs" (P7_TA(2014)0013, recital 4).

Not only does the level of awareness of EFP need to be raised, but information sharing needs to be reinforced as well. In this context, a strategy designed to raise awareness and to facilitate information sharing would be important elements in promoting EFP across the EU. Such a strategy would also be of crucial importance for the implementation of other non-binding measures, e.g., a Code of Conduct for EFP, as these can only have significant effects if accompanied by awareness raising actions. It is recommended that such a strategy include customised practical activities, with special attention paid to coverage, accessibility and costs, designed to reach out to key stakeholders, i.e., employers and employees, on the one hand, and policy makers on the other.



a) Information centre(s)

The establishment of one or several information centres, called for in the 2012 EP Public Hearing and explicitly referred to in the subsequent tender for the Pilot Project and this Study, is seen as a key element to any awareness raising and information sharing strategy.

Overall, as a one-stop source of all necessary information of EFP and respective legislation, especially for SMEs and their employees, as well as for policy makers, an information centre(s) would directly reach the key target groups in an awareness raising and information sharing strategy. In addition to providing general information and raising awareness, such a centre(s) could offer current information on differing national legislation on EFP. This information would be particularly useful for SMEs that operate cross-border and plan to implement EFP schemes. The creation of such an information source would also meet the policy objective of reducing cross-border barriers. A central EFP source could also have a certain political effect, as it would provide vetted information sharing and identify best practices which could spread knowledge in countries with low EPF take up. This effect might be limited, however, if making information available is the only measure undertaken.

The form of implementation can vary from one online platform to centres in each Member State, i.e., 28 different information centres (Chapter VI provides an analysis of the forms, cost and benefits of each variant). A virtual centre was anticipated in the 2014 EP Resolution⁵³ and then presented at the Brussels Conference on employee financial participation on 30 January 2014, receiving positive feedback from the stakeholders present (Chapter V summarises the results of this event).⁵⁴ Furthermore, a virtual centre for EFP as an awareness raising and information-sharing tool has already been mentioned by several policy actors (European Parliament, European Commission, High-Level Expert Group, European Economic and Social Committee) and can thus rely on broad support from these actors and relevant stakeholders.

Following the above, the authors of this Study would suggest creating a **Virtual Centre for EFP** to provide general information about EFP. This web application can be integrated into the websites of a multitude of partners, such as national chambers of commerce, employers' associations and trade unions, the Commission, taxation consultants and/or existing local centres with EFP expertise. The concept for such a *Virtual Centre for EFP* has two parts, each of which builds upon the other:

- an *Information and Country Comparison Tool*, which would provide all necessary information on EFP in the 28 Member States in an easily accessible, comparative and dynamic way, and
- an *Effective Tax Rate Calculator* as a simulation tool (see section (b) below and the detailed description in Chapter VIII).

The *Information and Country Comparison Tool* would encompass both employee share ownership and profit-sharing schemes in the European Union, following the structure

⁵³ 2014 EP Resolution on EFP in companies' proceeds (P7_TA-PROV(2014)0013), recital 15: "[The EP] anticipates the results of the pilot project, notably the development of a Virtual EFP Centre."

⁵⁴ The *Virtual Centre for EFP* has been presented in the form of a "plug-in" that can be implemented on any existing website and thus uses existing information channels that are already widely used by the target groups, resulting in large-scale effects; for details see Chapter VI below.



of the country profiles in the PEPPER IV Report. For instance, users could select specific topics related to ESO and EFP in a given country, in particular (a) national legal and fiscal frameworks regarding employee involvement and EFP; (b) applicable tax rates, i.e., income tax, social security contributions and incentives offered through the taxation system for EFP plans, and (c) an overview of governments' and social partners' attitudes to EFP. This would include the possibility for both full-text search and advanced search within the country profiles. It would further provide the possibility to benchmark this comparative information. Making comprehensive information available at low cost, a *Virtual Centre for EFP* would serve as an efficient first step for companies and employees considering EFP in general or a particular scheme.

Conducting a pilot phase of such an online centre is suggested as the next short-term step, especially because of the relatively low costs and large coverage.⁵⁵ The **launch of a pilot phase** would be easy to implement, especially since an online prototype is available with updated information already provided as part of the deliverables of this Study. Country profiles could regularly be updated. The establishment of a Commission expert group to organise these updates and present policy options on a regular basis would be very helpful, and therefore is recommended.

Table 12. SWOT analysis on information centre(s) for EFP

<p>Strengths</p> <p>Physical centre(s)</p> <ul style="list-style-type: none"> - raise awareness, reach out to stakeholders and reduce the lack of information - one-stop source of all necessary information especially for SMEs and their employees <p>Focus: Virtual centre</p> <ul style="list-style-type: none"> - web application with like-to-like comparison tool has large coverage, easy access, low costs, - plug-in allows use of well-known established information channels, dynamic - central and flexible administration 	<p>Weaknesses</p> <p>Physical centre(s)</p> <ul style="list-style-type: none"> - costly in set up and maintenance - exit costly, high expense of unwinding centre(s) as a consequence of institutional funding - lower degree of flexibility <p>Focus: Virtual centre</p> <ul style="list-style-type: none"> - much less of a local approach - no physical drop-in-centre - no personal support service and less opportunity for personal feed back
<p>Opportunities</p> <ul style="list-style-type: none"> - visible first step for further promotion of EFP across EU that signals commitment - useful for firms that operate cross-border and plan to implement EFP schemes - supports the implementation of other non-binding measures 	<p>Threats</p> <ul style="list-style-type: none"> - employers and employees might not take up service as EFP is still little known in some jurisdictions - effect might be limited if making information available is the only measure undertaken - needs stakeholder support to spread knowledge in countries with low EPF take up

⁵⁵ Cost estimations indicate that independent centres in each Member State would cost roughly EUR 3.9 million per year, whereas centralised information centre's yearly costs would amount to about EUR 1.4 million and those of the Virtual Centre for EFP to about EUR 250.000 per year; for details see chapter VI.



b) Calculating effective tax rates for EFP schemes

An important element of an awareness raising strategy would be to highlight the tax and social security treatment of different EFP schemes in different countries. The European Parliament stresses in its 2014 Resolution on EFP in Companies' Proceeds that:

"further transparency is needed in national employee ownership schemes and especially in calculating the effective tax burden across the EU-28 in order to prevent double taxation and discrimination" (P7_TA(2014)0013), recital 6).

Responding to this call, it would be crucial also to provide up-to-date information on taxation, social security contributions and specific tax incentives relevant to different EFP schemes in the 28 EU Member States, in addition to general information on EFP, through the above-mentioned information centre(s). This data would facilitate companies' decision-making when implementing EFP schemes, especially those having cross border operations.

For instance, this data could be used to calculate the effective tax burden of different EFP schemes for employees and employers. In this way, the effective tax burden of applying different EFP schemes in different countries could be simulated for different scenarios, and making a like-to-like comparison available to all stakeholders. Furthermore, the resulting transparency of taxation of EFP schemes could facilitate mutual recognition among Member States. Finally, providing governments with information to simulate the fiscal impact of tax incentives for EFP would contribute to regulatory impact analysis.

A decision-making tool in the form of an effective tax rate calculator has already been proposed in the 2010 EESC Own-Initiative Opinion on EFP⁵⁶ as a soft measure to accompany the current policy initiatives. In its 2014 Resolution the European Parliament referred explicitly to an Effective Tax Rate Calculator⁵⁷ and both stakeholders and policy-makers welcomed this approach at the pilot project conference in January 2014.

Therefore, the authors of this Study suggest using the effective tax rate calculator **CETREPS** (*Calculating Effective Tax Rates for Employee Participation Schemes*) to provide EFP relevant tax information. For a detailed description thereof see Chapter VIII.

SMEs expanding their operations cross border and not yet having subsidiaries in other Member States would especially benefit from this online calculation tool. Providing transparency for taxation across the EU-28 would also help to avoid double taxation and discrimination between resident and non-resident employees and facilitate mutual recognition. Up-to-date information on general taxation, social security contributions and specific tax incentives relevant to different EFP schemes from all 28 EU Member States would be used to calculate effective rates for different taxes, personal status and situations. This would be necessary to quantify the tax burden and to allow for a representative comparison of tax systems as well as of specific tax incentives. The system would provide users with a range of assumptions to choose from, such as (a) salary levels; (b) the value of the EFP arrangements as a percentage of annual in-

⁵⁶ SOC-371, CESE 1375/2010; see recital 2.2.3 "Promoting optional tax incentives".

⁵⁷ EP Resolution on EFP in companies' proceeds (P7_TA(2014)0013), recital 15: "[The EP] anticipates the results of the pilot project, notably the development of [...] the CETREPS Effective Tax Rate Calculator."



come; (c) holding periods for shares; (d) types of EFP plans (cash profit sharing, share ownership, stock options, etc.), and (e) the concerned Member States. From a long-term perspective, this dynamic and flexible tool could also be extended to other areas, e.g., pension schemes.

Such a calculator could be **made available through the online Information Centre** mentioned above. This database with its like-with-like comparison tool would provide the background and the necessary information for the calculator.

Furthermore, the operating costs for such a calculator would be relatively low (for details see Chapter VI.). The launch of a pilot phase would be easy to implement, especially as an online prototype also of the calculator is available with necessary updated information provided as part of deliverables of this Study.

Table 13. SWOT analysis on the Effective Tax Rate Calculator as part of a virtual centre

<p>Strengths</p> <ul style="list-style-type: none"> - potential for feedback, regular updating and on-going adaptation to user needs - central and flexible administration - reactivity to real time evolution - low operating costs, easy launch 	<p>Weaknesses</p> <ul style="list-style-type: none"> - data base needs to be updated regularly - representative comparison of tax systems and of specific tax incentives only approximation - technical support and adaptation to new developments of software necessary
<p>Opportunities</p> <ul style="list-style-type: none"> - systematic up-to-date information on fiscal treatment for different EFP schemes in all 28 MS becomes easily accessible - facilitates decision-making in SMEs operating or planning cross-border EFP schemes as well as communication to employees - transparency of taxation of EFP schemes may facilitate mutual recognition among MS - regulatory impact analysis: enables simulation of fiscal impact of tax incentives for EFP 	<p>Threats</p> <ul style="list-style-type: none"> - underlying information on national EFP plans (legal, fiscal, taxation) not easily available - limited professional use if not linked to platform providing access to raw data - relies on broad support of political actors and stakeholders to reach EU firms - might be wrongly perceived as a tax planning tool

c) Action Programme to raise awareness of EFP

Another recommended mechanism is an Action Programme to raise Awareness of EFP embarked on by the Commission. This could provide general information on the activities of the Commission in the area of EFP, hopefully starting a dialogue between other EU institutions and leading to co-operation on the proposed activities.

In terms of content this Action Programme could include a number of different activities to increase awareness of EFP such as:

- **Allocation of the EFP dossier to one specific Commissioner** to increase the visibility of the topic, and to link responsibility for the EFP dossier to one political office. The appointment of a political steward is crucially important since the personal involvement of individual actors is a proven factor in moving initiatives forward. In this regard, it would be necessary to update the responsible Commissioner regularly with information on EFP and to involve him/her as much as possible in all on-going EFP-related activities. It is through this political office that information on current initiatives on EFP could be spread, possibly connecting EFP to other policy initiatives or messages.



- **Development of a network of officials and politicians at the EU level.** Because EFP is a cross-sectorial topic, the individual actors from different political bodies and their network can have a considerable effect. Furthermore, benefits from sharing knowledge of the different aspects of EFP and synergies from working together on wider awareness-raising activities could be gained from such a network.⁵⁸ The benefits of direct contact with Member of the European Parliament, EU officials and other individual stakeholders should not be underestimated; of equal importance is ensuring the continuity of knowledge within the political bodies. The Commissioner responsible for EFP could initiate a network like this.
- **A European EFP Day and additional publicity actions.** Establishment of a European EFP Day could be an occasion for enhancing visibility and media coverage, e.g., events at both the EU and national levels, press releases, speeches of high-level EU politicians or personalities, etc. The organisation of an EFP Day would of course require a certain budget to be successful.

The concrete impact of specific actions depends on the extent of their implementation and on the commitment of the individual actors involved, e.g., the establishment of an EFP Day could only be effective if policy-makers and stakeholders were motivated to use the suggested instrument for individual initiatives. The presentation of such a package of awareness raising measures could in itself have a political effect by signalling the Commission's intention to promote the concept of EFP.

Implementation of the Action Programme to Raise Awareness for EFP would meet a policy objective emphasised by stakeholders and policy makers; it follows that most of could be expected to be in favour of it, including the European Parliament who in its Resolution on EFP⁵⁹ explicitly called on the Commission to launch an information campaign.

Table 14. SWOT analysis on an Action Programme to raise awareness for EFP

<p>Strengths</p> <ul style="list-style-type: none"> - concise information on concrete activities of the Commission in a policy area - network of officials and politicians at the EU level gain benefits and synergies - large scale visibility and perceivable signal of Commission commitment 	<p>Weaknesses</p> <ul style="list-style-type: none"> - involves substantial personal and material resources to be effective in the mid term - relies on broad political support from stakeholders to unfold its potential
<p>Opportunities</p> <ul style="list-style-type: none"> - conceptual framework that connects EFP to other policy initiatives or messages - a dialogue between EU institutions ignites cooperation on proposed EFP activities - a European EFP Day and publicity actions could create visibility and media coverage 	<p>Threats</p> <ul style="list-style-type: none"> - the concrete impact of specific actions depends on the extent of their implementation and on the commitment of the individual actors involved, - policy-makers and stakeholders are not motivated to use it for individual initiatives

⁵⁸ Cf. a similar network created by the UK Government, Department for Business, Innovation and Skills, on ESO in 2013.

⁵⁹ EP Resolution on EFP in companies' proceeds (P7_TA(2014)0013), recital 26: "[The EP] calls on the Commission and the Member States in this regard to better organise information campaigns"



4. Establishing a legal framework at EU level

Establishing a binding legal framework at the European level would be the ultimate action to promote EFP within the hard law instruments. Two policy options can be identified:

- A **European Framework Directive** setting minimum requirements for national legislation on EFP to be implemented by the Member States.
- An optional **Common European Regime on EFP**. The EU rules governing EFP would be implemented in parallel to existing national legislation, with employers and employees free to choose between the two legislative systems. A Common European Regime on EFP would offer an “opt-in” alternative, i.e., the national rules are standard, but private parties would have the right to choose the alternative law rooted in EU legislation. This common regime could be implemented through either a Directive or a Regulation.

The “Common European Framework on EFP” proposed in this Study is similar to that in the Commission proposal for a Common European Sales Law. Although it stems from 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, the legal concept has been developed in other contexts (for details see Chapter IX).

a) European Framework Directive

A European Framework Directive would establish the minimum mandatory requirements to be implemented by Member States within a certain period of time. Being a hierarchical approach the flexibility for national actors to deviate from these requirements would be relatively low. By defining only basic aspects—e.g. general European guidelines—European Directives may provide flexibility to follow previously agreed standards. This could be a first move towards a common European fiscal treatment of EFP not previously available at the EU level. Succeeding national laws could then support the process facilitating further political integration. This approach might be particularly suitable for the issue of taxation since taxation is subject to national sovereignty. However, any European Directive including taxation issues would most likely require consensus, which in the past has proven difficult to attain and in particular hampered the introduction of Directives concerning company taxation or the coordination of direct tax systems.

As a Directive involving taxation issues appears to be unlikely, a European framework Directive on EFP, excluding taxation issues, could be considered. The harmonisation of national regulations on EFP through a Directive would create an effective instrument to lessen cross-border obstacles to EFP. Barriers to the Single Market, e.g., legal risks and costs created by differences in national law would be overcome. Businesses aiming at introducing cross-border EFP schemes would profit from significant cost savings (IAFP 2010). However, as with any European framework Directive defining minimum requirements for legislation implementation might be impeded by a collision with national law mainly caused by differences in national traditions. Furthermore, for businesses that only offer EFP at national level or already have implemented a cross-border company plan the additional costs of adapting their scheme to the new European regulations must be taken into account.



Table 15. SWOT analysis on a European Framework Directive on EFP

<p>Strengths</p> <ul style="list-style-type: none"> - minimum mandatory requirements for national legislation to be implemented by MS - harmonisation of national legislation - vertical/hierarchical approach, “top-down” structure based on compliance - defining only basic aspects (e.g., guidelines) Directives may provide flexibility 	<p>Weaknesses</p> <ul style="list-style-type: none"> - might conflict with national models and traditions - uncertain if necessary political majority / consensus for Directive can be obtained - flexibility for national actors to deviate from these requirements relatively low - substantial investment of time and resources needed to prepare and implement
<p>Opportunities</p> <ul style="list-style-type: none"> - harmonisation of national laws on EFP to eliminate cross-border obstacles - succeeding national laws could facilitating further political integration - in countries with no/rudimentary regulation on EFP, creates of a legal framework in first place - it could serve as the first step towards a common European fiscal treatment of EFP not currently available at the EU level 	<p>Threats</p> <ul style="list-style-type: none"> - potential collision with national law mainly caused by different national traditions - complex and lengthy legislative process - potential additional costs to adapt to Directive for companies that only offer EFP on a national scale or already have trans-border company plan

b) Common European Regime on EFP (optional regime)

An optional Common European Regime on EFP was suggested in the 2010 EESC Own-Initiative Opinion⁶⁰ as an entirely new approach for creating a framework for EFP at the EU level. It would constitute an optional second contract law regime parallel to national legislation on EFP, providing employers and employees with an option between two regimes, one originating in national legislation and the other—the Common European Regime on EFP—in European legislation. As a market-based approach it would be implemented by the mode of governance of competition⁶¹, allowing for a higher degree of flexibility for national actors. In its 2014 Resolution, the European Parliament describes a potential Common European Regime on EFP (opt-in 29th Regime) as follows:

“an optional single legal framework open to employers throughout the EU, which would respect areas of Member State competence on fiscal and labour law, in terms of:

a) a set of simple, elementary and basic supportive models developed from best-practice examples for each type and size of company,

⁶⁰ SOC-371, CESE 1375/2010; see recital 4.2.1.

⁶¹ In the multilevel system of the European Union, **hierarchy** refers to the traditional EU legislative procedures, which produce hard law in form of Regulations and Directives and are enforceable by the ECJ (Bähr, Treib and Falkner 2008 p. 93); they have a vertical, “top-down” structure based on compliance. **Competition** is a horizontal form of interaction where the EU is not intervening with regulation; instead, the Member States start—through mutual adjustment—to compete for location advantages and national welfare (Bähr, Treib and Falkner 2008 p. 93), leading to a minimum set of regulations. **Negotiation** is based on the horizontal co-ordination of the Member States by means of best practice and benchmarking procedures or the like which might be supported or monitored by EU institutions and can lead to an approximation of standards through mutual adjustment; as with competition, the actors are (formally) equal.



- b) a market-based approach where only companies finding the single regime useful would use it,
- c) allowing differences in Member States' legal culture in that the national regimes continue to exist in parallel,
- d) improving transparency and access to information to facilitate equal implementation in different Member States,
- e) the applicability at national and/or EU level when needed and not being restricted to cross-border companies, taking into account tax issues as well as financial risk for employees."

Taxation issues would have to be left out of a Common European Regime on EFP, as "a framework for a European model of employee ownership should not override national taxation rules." (P7_TA(2014)0013, recital 7)

The optional Common European Regime would allow businesses to operate an EFP scheme throughout the EU on the basis of a single set of legal rules. In firms operating these schemes, employees would benefit from better portability across the EU. Further it would leave the decision on its application to the market and would therefore only be chosen were interested parties considered it to be an advantage. The individual legal culture of each Member State would be left untouched, making it politically more acceptable. The Common European Regime would not require compromise on the lowest common denominator, thus avoiding the lowering of standards ("race to the bottom"). **In countries that do not provide for any regulation on EFP yet, it would establish a regulatory framework in the first place.** Since it draws basic principles and standards from existing national models, the optional Common European Regime would have the advantage of higher political legitimacy among Member States.

A Common European Framework on EFP would meet the policy objectives in respect of reducing legal complexities and transaction costs. At the same time, companies who would decide not to make use of the regime would not face any costs, as this option would not affect them. However, to unfold its approximation potential the common European regime, above all, needs to be used in practice. Only when market participants, decide to choose it will governments be enticed to adopt legislation that confers with the rules set therein. Should the rules of the common European regime turn out not to be sufficiently attractive the risk of not being taken up by employers and employees arises. This could result either from a lack of awareness about the new instrument or from its contents. Should the Commission decide to pursue this approach, it is therefore of crucial importance to accompany the introduction of the new legislation with an appropriate awareness and information campaign. Furthermore, as a new legislative instrument little experience for practical implementation exists. Therefore, it might prove difficult when formulating the contents of the common European regime to strike the appropriate balance between rules that are neither too detailed nor remain too general.

As the Common European Regime on EFP would aim at the reduction of obstacles caused by the different national frameworks, the establishment and functioning of the internal market could be considered as its main objective, and therefore such a pro-



posal could be based on Art. 114 TFEU as the adequate legal basis.⁶² At the same time the downside of such an approach would be that the regime would be far from all embracing as for example it would exclude labour law or taxation issues (for details see Chapter IX). Therefore, the implementation of such a regime would need to be incorporated into a more comprehensive plan. It would thus important that measures are adopted to lay the foundation for the subsequent design and adoption of such a regime, including an impact assessment. In fact, in its resolution on EFP of 14 January 2014⁶³ the EP also called for an impact assessment and

"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).

Table 16. SWOT analysis on the optional Common European Regime on EFP

<p>Strengths</p> <ul style="list-style-type: none"> - market-based approach to harmonisation triggers competition, flexibility for MS - does not override national legislation; creates optional second parallel law regime - allows differences in MS legal culture; national regimes continue to exist in parallel - does not require as much compromise on the lowest common denominator as a proposal harmonising national laws might do 	<p>Weaknesses</p> <ul style="list-style-type: none"> - as a new legislative instrument little experience for practical implementation exists - regime would be far from all embracing as, e.g., labour law and taxation issues would be excluded - target groups need to be informed properly about the regime, which is unknown - substantial investment of time and resources needed to prepare and implement
<p>Opportunities</p> <ul style="list-style-type: none"> - overcomes barriers to the Single Market, i.e., legal risks and costs for cross-border EFP plans - allows firms to operate an EFP scheme across the EU on the basis of a single set of legal rules - reduces legal complexity / transaction costs of cross-border EFP plans esp. for SMEs - portability across the EU for employees - in countries with no / rudimentary regulation on EFP, creates of a legal framework in the first place 	<p>Threats</p> <ul style="list-style-type: none"> - may not being taken up by employers and employees if awareness remains low - may be ignored by the market participants if EFP rules turn out not to be attractive - only when market participants decide to choose this regime, governments will be enticed to adopt legislation on EFP that confers with rules set therein - complex and lengthy legislative process

⁶² When the proposed activity aims at improving the conditions for the establishment and functioning of the internal market by eliminating or preventing obstacles deriving from disparities or potential disparities between the legislation of the Member States, the activity in question can be considered to fall within the scope of Art. 114 TFEU.

⁶³ Resolution on EFP in Companies' Proceeds P7_TA(2014)0013, recitals 17, 20, 21.





V. Comparative assessment of policy options and recommendations

1. Comparative assessment of the policy options

a) Non-binding instruments

In order to take advantage of the current momentum for EFP, short-term options need to be considered. These can be implemented by non-binding, i.e., soft law instruments. The assessment of the current situation in this Study is a necessary foundation for further policy actions. In order to broadly disseminate these results, however, publication of the Study is not sufficient. Additional actions are necessary (for details see below section 2). Furthermore, various details of the Study and best practice examples would need to be disseminated widely if the policy objectives of promoting EFP at the EU level are to be successful.

Co-ordinating initiatives by the Commission (similar to the OMC procedure) would offer the possibility of regular assessments involving key stakeholders and others. This could help disseminate information and contribute to policy development. But experience from other policy areas casts doubt on the impact of this approach in particular with regard to the actual implementation of policy recommendations; although a convergence of standards in some areas could be achieved in the long term, it might lead to recommendations conflicting with national EFP models in others. However, such a co-ordination procedure could be an adequate tool to prepare and/or accompany further policy actions, especially with a view to stakeholder involvement. As for a one-time promotion of best practice examples, a **Commission Recommendation**, although non-binding, could potentially inspire legislative change. However, a non-binding commitment offers fewer incentives for Member States to initiate pro-EFP policies, thus its impact might be low. Earlier experience with the 1992 Council Recommendation on EFP suggests that this might not prove to be the most effective way to promote best practice EFP models.

A **Code of Conduct for EFP**, offering a template as well as a guide for employees, may be preferable to a Commission Recommendation, as it might stimulate an easier future elaboration and use. Because templates for EFP schemes are general in nature, existing national models and traditions would remain unaffected. Experts should be assigned the responsibility of refining and improving this EFP toolkit. A Commission Expert Group, for example, including relevant stakeholders, could be involved. A model template for EFP schemes could be useful in the context of potential future work on an optional Common European Regime on EFP. Therefore the Code of Conduct for EFP could be considered the best soft law option for identification of best practice, one that could lay the groundwork for subsequent legislation. However, to be successful, a voluntary Code of Conduct would have to be accompanied by extensive **awareness raising and information sharing measures** to ensure that it were broadly applied and amended according to the needs of the users.

A strategy to raise awareness and to share information is of critical importance for the promotion of EFP itself, and as a supporting measure for all policy options. An Information Centre, beginning with a **Virtual Centre for EFP** and including an Effective Tax Rate Calculator, could provide all necessary information on EFP in the 28 Member States in an easily accessible, comparative and dynamic form. The potential for feed-



back, regular updating and on-going adaptation to user needs, plus its low cost easy implementation and wide reach—especially among SMEs—make this policy option the best for information sharing. A prototype for an online platform is included in this pilot project (for details see Chapter VIII). To be sure, the *Virtual Centre for EFP* would need to be supplemented by additional measures to raise awareness as summarised in the proposed **Action Programme** above. These “soft” options are particularly attractive, as they appear to be supported by most stakeholders and policy makers.

b) Binding/legislative instruments

The establishment of a binding legal framework on EFP through hard law instruments, e.g., by means of a Directive, would lead to harmonisation of national legislation. This would clearly have the largest impact on reducing obstacles to cross-border EFP schemes. However, as previously discussed, such an initiative might conflict with national models and traditions. Thus it is uncertain whether the necessary political consensus for a Directive could be obtained, even if the critical issue of taxation were excluded.

Therefore, with regard to EU legislation, an **optional Common European Regime on EFP**, which allows for different national models to remain in place while at the same time offering an optional Regime by means of EU legislation parallel to the national law obtaining in all 28 Member States could present a better solution. Instead of achieving approximation through the top-down harmonisation of national law, the desired effect would be achieved through market mechanisms, i.e., the incentive to harmonise national legislation with the Common European regime when increasing numbers of employers and employees make use of the latter.

Further, a common European regime would trigger horizontal regulatory competition between national legal provisions and the alternative European ones. Since national best practice influencing the Common European Regime would be expected to prevail in this market-based approach, over time, this development could eventually lead to mutual approximation of national regulation. Unlike a binding legal framework introduced by a Directive, the Common European Regime on EFP might not be adopted in every particular, e.g., a model for a particular firm size or EFP type might be ignored by the market participants and thus would not have an approximation effect. The approach is thus much more flexible than imposing a set framework. However, in those Member States where regulatory density is low or no regulations exist, the Common European Regime on EFP would result in immediate harmonisation in the traditional sense. In these countries, the **Common European Regime on EFP would initiate a regulatory framework**.

Companies could utilise the Common European Regime on EFP even in domestic settings. This advantage is of primary importance for SMEs, which could easily extend a plan based on the Common European Regime on EFP across borders as they grow and expand. In short, the approach of a common European regime would provide an alternative form of harmonisation as employers and employees in all EU member states could choose to operate under one single European regulatory framework. Since it would exclude taxation issues, this proposal would also be the least invasive legislative measure; thus it could achieve the necessary consensus within the **ordinary legislative procedure according to Art. 114 TFEU**. Nevertheless, the drafting and implementation of a Common European Regime on EFP remains a medium- to long-term project; thus it should be reined by additional short-term policy measures at the EU level.



2. Five-Point Plan: Recommended measures to promote EFP

On the basis of the assessment of the different policy options described above, and also taking into account the conference results (reported in Chapter VI), it is recommended that the policy options suggested above be phased in according to the following "Five-Point Plan". This is an action programme of short, medium and long-term measures, which build on one another and consist of specific actions to be implemented within a certain period of time. Considering the current interest in EFP, triggered by the 2014 EP Resolution and this project, immediate action is advisable in order to maintain momentum.

a) Short-term measures

The Five-Point Plan begins with the launch of the *Virtual Centre for EFP* and the *Effective Tax Rate Calculator* developed in the context of this Study; details are further developed in Chapter VIII.

b) Medium-term measures

The establishment of a Commission Expert Group is proposed as one of the medium-term measures. The tasks of the Commission Expert Group could include elaboration and on-going amendment of a template for EFP schemes, which would later become the core of the Code of Conduct, another medium-term activity of the Five-Point Plan.

It is suggested that all actions be accompanied by an *Action Programme to raise Awareness for EFP*, another medium-term measure. A PR strategy would also be a useful addition to the awareness raising campaign. It would build on the information dissemination experience of previous EFP projects and be directed to various target groups. This PR strategy could involve, for instance:

– **A new media strategy** – Designed to channel new insights into electronic publications for groups with various interests and levels of expertise, the strategy should focus on people who have not yet been exposed to EFP. This approach would complement the *Virtual Centre for EFP* in integrating diverse media, users and concepts for knowledge transfer. To encourage social partners, companies and related actors to adopt financial participation or increase their involvement, the strategy should be to:

- pass on new data from the project to bloggers and policy analysts to aid in dissemination throughout the EU-28;
- create web-based knowledge resources on EFP in the EU-28.

Among the ways that new insights can be channelled into electronic media for different groups are the following:

- scientific publications available online, preferably in multilingual versions;
- blogs and social media, including Facebook;
- popularisation of EFP via short animated features (as an example, "Capital at Work", available in three language versions, namely EN/DE/FR, at: <https://www.youtube.com/watch?v=yxzxwOcbshM>).



Five-Point Plan to promote Employee Financial Participation (EFP)

Short term

1) Launch a *Virtual Centre for EFP*

Action 1: Provide an **online tool** that could be uploaded on different websites, giving easy access to information on EFP across the EU-28 (country profiles form part of this Study).

Action 2: Include an **effective tax rate calculator** as a complementary decision-making tool comparing social security contributions and taxation of EFP in the 28 Member States.

Medium term

2) Set up a *Commission Expert Group*

Action 3: Set up an expert group on EFP with the following tasks:

- Give regular policy recommendations on EFP on the basis of best practice and update the information on EFP available through the *Virtual Centre for EFP*;
- Prepare the elaboration of a *Code of Conduct for EFP* compiling information on standard EFP templates and on employee guidelines to EFP and continuously improve this toolkit;
- Assist the Commission in checking the feasibility and preparing potential future draft legislation on EFP.

3) Implement an *Action Programme to raise awareness for EFP*

Action 4: Launch an information campaign and engage with employers and workers' representatives and other stakeholders. This should be accompanied by a PR strategy.

Action 5: Implement a package of awareness raising measures, e.g.

- Allocate the EFP-related activities to one specific Commissioner responsible for EFP;
- Develop a network of officials / politicians interested in EFP from political bodies at EU level;
- Popularise EFP in a media-friendly manner (e.g., information leaflets);
- Undertake additional publicity actions, e.g. establish a European EFP Day.

4) Launch a *Code of Conduct for EFP*

Action 6: Elaborate **standard templates for EFP schemes** based on best practice resulting from the EU pilot project. Such 'off the shelf' templates would be of a general nature, taking into consideration different existing national models and traditions of EFP as well as the different types of firms concerned. Common definitions of relevant concepts could be also collected in this context.

Action 7: Develop a **guide on EFP for employees** describing in a clear way the concept of EFP, the options for employees as well as potential pitfalls.

Standard templates & guide for employees could be made available via the *Virtual Centre for EFP*.

Long term

5) Legislative proposal for a *Common Optional European Regime on EFP*

Action 8: Verify the legal basis and feasibility of a **Common European Regime on EFP** as requested by the European Parliament Resolution of 2014. Such a voluntary 2nd regime would function in parallel to national laws and would contribute to creating a level-playing field for EFP.



- **The research community** – Portals for digital archives, research, teaching and public education would be an important complementary element. Relying on know-how from these specific formats of knowledge transfer could be helpful in presenting results to business people, politicians, academics and others. In addition, existing digital platforms could be used to disseminate research results. Interactive use of website based applications could provide opportunities to co-ordinate the work of country expert teams for future information exchange. From experience in previous projects, the large expert network that already exists could employ Web 2.0 and Web 3.0 technologies. Such an expert platform – together with the proposed *Virtual Centre for EFP* - could ensure data access for further interdisciplinary research.

- **The creation of a knowledge database and a distribution network** – In order to advance information sharing about EFP in the EU, an online platform (e.g., the “Virtual Centre for EFP” described in Chapter VI) could be used to store relevant information in an easily accessible and searchable web database. Such a platform can serve as a resource for key groups from government to academia and transnational organizations as they share new information, write papers on the topic and prepare for summits and meetings on the issues. There should be ways to search for relevant information, post comments about current or future research on the same topic, and ways to contact and network with key players in this space. Hosted by existing or new online platforms, this online tool should have built-in functionality to allow feedback from the users. The network’s database of contacts would be seeded with key players and set up so that people could subscribe to news and updates. Establishing this online system may save the expense and environmental costs of using printed-paper newsletters.

c) Long-term measures

Finally, the long-term measures would include verification of the feasibility of a legislative proposal on EFP, e.g. of an optional Common European Regime on EFP; legal basis and feasibility are discussed in Chapter IX.





VI. Outreach event, stakeholder feedback

1. Conference “Taking Action: Promotion of Employee Share Ownership”

In the context of the Pilot Project a conference entitled “Taking Action: Promotion of Employee Share Ownership” took place on Thursday 30 January 2014 in Brussels at the Albert Brochette Congress Centre. With 140 registered participants the event gathered high-level representatives of all relevant stakeholders in EU policy-making to discuss options to promote ESO in Europe (see conference program on the following page). In line with the Commission’s initiative as well as the European Parliament’s resolution of 14 January 2014, the following five priorities broadly shared by the participants can be summarised from the discussions:

- **Promoting the exchange of best practice**

In order to establish a functioning exchange of best practice, it was thought that systematic processing and editing of information was very important. Rather than producing “another study for the shelf”, the creation of one-stop shops was favoured by the conference participants. A “Virtual Centre for EFP” (as presented during the conference) was seen as a potential first step in that direction.

- **Providing transparency with regard to fiscal treatment and tax incentives**

It was discussed whether tax incentives should be seen as a prerequisite for successful implementation of ESO; participants agreed that they were important to effectively promote EFP. Therefore, while harmonisation was not seen as a necessary condition for using the ESO schemes, transparency with regard to the different national fiscal treatment of ESO was thought to be of key importance. An Effective Tax Rate Calculator (as presented during the conference) could provide a useful decision-making tool for companies with cross-border activities that plan to introduce EFP schemes.

- **Combining economic and labour market policies and reducing inequality**

ESO was seen as fitting logically into the EU’s multi-dimensional approach of combining economic and labour market policies as ESO schemes may help to create and secure jobs, reactivate unemployed and facilitate business succession in SMEs. To establish a level playing field, conference participants agreed that it would be useful to develop recommendations at EU level for fiscal and other incentives for SMEs interested in implementing ESO schemes. In this respect, investigating and promoting the transferability of best practice ESO schemes like the Sociedades Laborales and Employee Stock Ownership Plans (ESOPs) was seen as important.

- **Link to Corporate Governance and Long-Term Investment strategies**

It was agreed that ESO can contribute to transparency, sustainability and responsibility in corporate decision-making, all objectives of the EU’s corporate governance policy. Further, as ESO can help to foster growth of SMEs and facilitate business succession, it was thought that financing ESO schemes should become one of the objectives of the Commission’s Long-Term Investment strategy. For instance, it could be considered to integrate ESO in the EIB products for SME financing and take ESO into account in the Commission’s work on European Long-Term Investment Funds (ELTIFs).

- **Establishing a legal framework on ESO**

An optional legal framework at the EU level that in particular could facilitate cross-border ESO schemes was supported. A EU framework was thought to be necessary to establish a level playing field creating especially opportunities for SMEs which are most affected by the financial crisis. It was thought that especially SMEs should receive more policy support, in particular considering the significant unexploited potential for ESO among SMEs. Establishing a Common European regime on EFP appears a promising option. The Pilot Project should include a preliminary impact assessment of such a regime.

Commissioner Barnier’s speech is available at: http://ec.europa.eu/internal_market/conferences/2014/0130-employee-ownership/index_en.htm; a conference trailer and all conference materials are available at: <http://www.intercentar.de/en/conference/conference/>.



CONFERENCE

TAKING ACTION:

PROMOTION OF EMPLOYEE SHARE OWNERSHIP (ESO)



INTERCENTAR

Debating concrete policy options in the context of the EC Action Plan on Corporate Governance

MORNING SESSION – Current Policy Initiatives to Promote EFP

	8:30	<i>Registration</i>	
Welcome	8:55	Day Chair: Jeroen Hooijer, DG MARKT, Head of Unit F2	
Video message	9:00	Michel Barnier European Commissioner for Internal Market and Services	
Keynote speech: Taking action to encourage employee share ownership throughout Europe	9:05	delivered by Olivier Guersent Head of Cabinet of Commissioner Michel Barnier	
	9:20	Q & A	
Combining economic and labour market policies: A challenge for employee financial participation	9:30	Pervenche Berès MEP, Chair Committee for Employment and Social Affairs	
EU Pilot project results: Policy proposals – Overcoming obstacles to cross-border EFP schemes	9:50	Prof. Jens Lowitzsch Viadrina / Freie Universität Berlin	Prof. Iraj Hashi Staffordshire University
	10:20	Q & A	
	10:40	<i>Coffee break</i>	
Panel 1 – Impulses for ESO	–	Chair: Prof. Herwig Roggemann, Freie Universität Berlin	
National EFP-policies: New tax incentives for employee buy-outs / the UK Employee Ownership Index	11:00	Graeme Nuttall UK Government's independent adviser on employee ownership	
The French FCPE de reprise: Implementation via parallel plans – the example of a French/US-ESOP	11:20	Jean-Philippe Debas Equalis Capital	
The Employee Stock Ownership Plan (ESOP) as a vehicle for business succession in SMEs	11:40	John D. Menke CEO Menke Group, San Francisco, CA	
Employee share ownership in the EU, – a U.S. perspective: Policy impulses	12:00	Dr Richard Freeman Herbert Ascherman Professor of Economics, Harvard University	
	12:20	Q & A	
	12:45	<i>Lunch</i>	

AFTERNOON SESSION – Learning from the Best: Debating Examples and Possibilities

Panel 2 – Best practice examples	–	Chair: Prof. Milica Uvalić, University of Perugia	
Implementing employee share plans across borders in a large multinational company	14:00	Philippe Gracia Director of Human Resources AUCHAN	
ESO in micro enterprises: Reactivating unemployed while supporting regional economic development	14:15	Jone Nolte Agrupación de Sociedades Laborales de Euskadi (ASLE)	
	14:30	Q & A	
Panel 3 – Long-term financing		Chair: Prof. Iraj Hashi, Staffordshire University	
ESO and the Commission proposal on European Long-Term Investment Funds (ELTIFs)	14:40	Prof. Jens Lowitzsch Viadrina / Freie Universität Berlin	
Long term financing: The call on the EIB to boost SME lending promoting employee buy-outs	14:55	Patrice Liauzu Adviser, Institutional Strategy & SME expert, EIB	
	15:10	Q & A	
Round Table: Feedback	15:20	Moderator: Ugo Bassi, Director, DG MARKT	
Rapporteur – EP Own-Initiative Report on EFP		Phil Bennion – MEP	
Chambers of Commerce		Iwona Mertin – Advisor EU-Affairs, Eurochambres	
Trade Unions		Marian Krzaklewski – EESC, Workers' Group / NSZZ Solidarność	
Employers' Associations		Adrienn Bálint – Director for social affairs, MGYOSZ	
Interest Groups		Nelly Voyeux – IAFP Bruno Roelants – Secretary General, CECOP	
	16:15	Q & A, closing remarks	
	16:30	<i>Drinks</i>	

Thursday 30 January 2014 in Brussels

08:30-16:30 at Albert Borschette Congress Center, Room OA, 36 Rue Froissart, Brussels



2. Follow-up and consultation on conference results

To receive stakeholder's responses regarding their assessment of the overall feasibility as well as the importance of the main conclusions of the conference an online questionnaire was launched.⁶⁴ Nine of eleven questions (Q1-Q9) aimed at assessing the feasibility of the measures in question and the importance of the next steps to be taken for the promotion of EFP. Participants could choose for each question between five values on a Likert-type scale (see Figure 10). The last two questions (Q10, Q11) aimed at the overall evaluation of the outreach event. The following evaluation takes into consideration 47 responses submitted until 31 July 2014. All responses were considered, including incomplete surveys. Missing values are marked as not applicable.

The results of the survey show a general confirmation of the conclusions drawn in chapter IV of this Study. Respondents showed an affirmative attitude towards all issues raised at the conference. The proportion of respondents ranking different measures aimed at fostering EFP as feasible or somewhat feasible, very important or somewhat important ranges from over 50 per cent (24 respondents) to over 90 per cent (43 respondents).⁶⁵ The assessments of feasibility vary from over 50 per cent (24 respondents) regarding the establishment of a legal framework on EFP at EU level to facilitate cross-border EFP schemes (Q1) to over 80 per cent regarding the creation of one-stop shops for EFP, e.g. a "Virtual Centre for EFP" in a first step (Q3).

Interestingly the viability assessment in relation to the assessment of the importance of different actions differs. At all questions the positive assessment of the importance exceeds the positive responses concerning the feasibility. The most obvious deviance appears at Q1. While over 90 per cent see the importance of a legal framework to establish a level playing field especially for SMEs, only approx. 50 per cent of them do believe that it can be put into practice. However, only 20 per cent marked this question either as somewhat unfeasible/important or not feasible/not important at all. A similar deviation between practicability and significance appears in Q2 concerning a "29th regime on EFP". Although the European Parliament already formulated in its resolution of 14 January 2014⁶⁶ such an optional opt-in single legal framework, respondents were somewhat sceptic with regard to its actual implementation (64 per cent vs. 84 per cent). These results indicate that the formulation of potential new legislative proposals being the most ambitious policy to promote EFP, might also turn out to be the most challenging one.

The deviation of responses between the viability and significance of actions is less obvious at the other questions. Over 79 per cent of the respondents believe that ESO would play an important role in increasing good corporate governance, while 71 per cent believe that this is also feasible (Q6). It looks somewhat similar with Q7 regarding ESO as a business succession tool: While 73 per cent view ESO as an important

⁶⁴ <http://www.intercentar.de/de/pilot-project-efp/questionnaire/>.

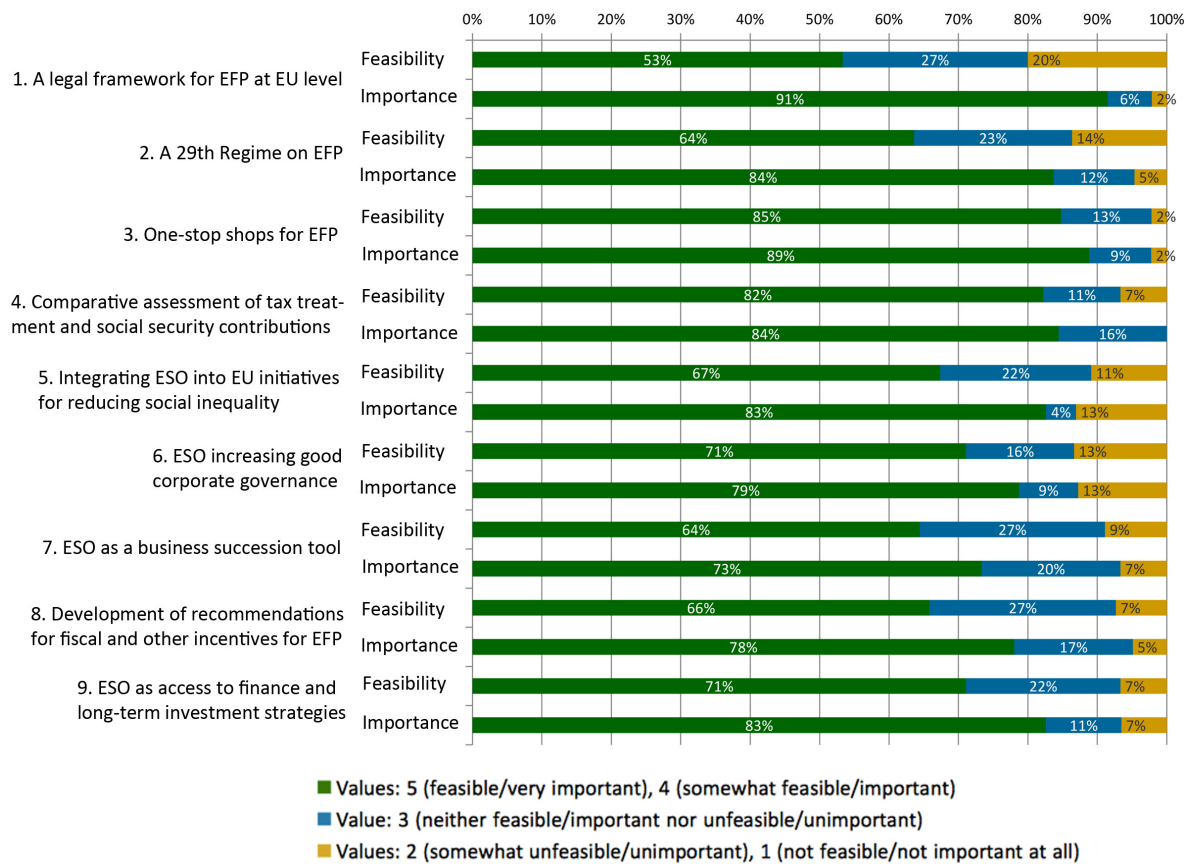
⁶⁵ The second largest group is that of somewhat reserved responses ranging from 6 per cent at Q1 to 27 per cent (questions Q1, Q7 and Q8, which also showed responses of assessing the raised issues neither as feasible/important nor as unfeasible/unimportant highest). The least optimistic view of respondents appears in the question regarding the establishment of a legal framework on EFP at EU level to facilitate cross-border EFP schemes (Q1, 9 respondents).

⁶⁶ Resolution of 14 January 2014 on financial participation of employees in companies' proceeds (2013/2127(INI), P7_TA-PROV(2014)0013).



tool for solving business succession problems, 64 per cent do believe that this would be practicable. The narrowest results between importance and feasibility are found at Q3 and Q4. 89 per cent of the respondents marked one-stop shops as being important for fostering EFP, and 86 per cent also think in the introduction of such (Q3). 84 per cent consider that the “calculation of effective tax rates”, i.e. the assessment of tax treatment and social security contributions would be important to making the different national fiscal treatments more transparent, and with 82 per cent almost all these respondents reckon this would be actually possible to implement.

Figure 10. Results of online questionnaire on the feasibility and importance of the main conclusions of the conference



Source: Online survey.

On the whole, the positive feedback from the Survey indicates the commitment of the stakeholders to take actions to promote EFP in the future. 89 per cent of the participants rated the quality of the overall organisation, the programme and the speeches high or highest.



VII. EFP information centres: forms and feasibility

An important element of an awareness and information campaign, and thus an integral part of the Pilot Project, is the establishment of an information platform for EFP.

Here, European firms could find both general information on national legal frameworks and information on fiscal treatment of different EFP schemes in the EU-28 to assist in deciding whether or not to introduce a cross-border plan. For SMEs especially, the cost of investigating different national fiscal treatment (taxes and social security contributions)—information necessary in order to assess the feasibility of any given EFP scheme—discourages implementation. As a first step in the search for information, available at little or no cost a one-stop-shop information centre(s) should provide an up-to-date EU overview.⁶⁷

The costs, impact and administration of such an information platform would differ according to form. Should these centres be actual or virtual? The following sections present evaluation criteria relevant to this question, e.g., cost, administration, scope or sustainability. Assessment of feasibility is given for each alternative, e.g., economies of scale in costs, knowledge transfer and administration. As local costs differ substantially from country to country, this Study uses average estimates in the following sample calculations intended as illustrations.

1. Forms of information centre(s) and assessments of their costs and benefits

There are three forms an information platform might take:

- one physical information centre in each Member State (i.e., 28 information centres);
- one centralised physical EU information centre;
- an online platform, i.e., a virtual information centre.

a) Setting up 28 physical information centres in the Member States

The concept of 28 physical centres for EFP would include a local office in each Member State, staffed by at least one country expert. The number of experts per country would largely depend on the size of the economy; countries with a large population of enterprises would need more than one. A larger centre would also require more administrative and managerial personnel. To ensure mutual information exchange, co-ordination between the national centres would best be centrally managed, e.g., a hub-and-spoke network.⁶⁸

The local character of the physical centres would be the chief benefit in terms of supplying and obtaining information to and from local firms. On the other hand, economies of scale, in terms of costs and cross-border knowledge or activities, might be

⁶⁷ Resolution of 14 January 2014 on financial participation of employees in companies' proceeds (2013/2127(INI), P7_TA-PROV(2014)0013) recital 27.

⁶⁸ The spoke-hub distribution paradigm is a system of connections arranged like a chariot wheel, in which all information moves along spokes connected to the hub at the centre.



limited. The flexibility of this alternative has two-sides: National changes in the conditions for EFP, e.g., new legislation or fiscal regulations, could be quickly expedited, although this process might move more slowly to other Member States because of a time lag in communication. Establishing and promoting such an on-the-ground network would take considerably more time than setting up a virtual centre. Consulting costs could be recouped by means of fees which firms would be required to pay after consultation reached a certain level. However, there is the danger that local private agents (e.g., taxation or administrative consultants) might view this service as competition to their own services and oppose it.

Description of advantages and limits of the service

The creation of 28 physical centres would provide one centre per country to function as a direct source of information to local companies. The experts in each centre⁶⁹ would be required to have expertise in both the local culture and EFP regulation, as well as in the cross border implementation of EFP plans. This specific knowledge would be most appreciated by trans-national firms.

Table 17. Sample cost estimation for 28 physical centres

28 Local centres (all figures in column 2 and 4 are EUR)				
	Cost per unit	Units	Total	Comments
Experts	52,722*	37	1,950,714	37 experts for all EU countries: 1 expert for small country (22); 2 experts for mid-size country (3); 3 experts for large country (3)
Support staff	30,160*	28	844,480	1 per country
Overheads	100% staff cost	28	2,800,000	Including office rent, equipment, additional costs
Marketing **	10% of total budget	28	560,000	Online and offline marketing
Total estimate per year			6,155,194	
Average per country			219,821	

* The stated cost of experts is the averaged maximum eligible daily rates for EU staff researchers / EU administrative staff across the EU-28 on an annual basis (21 working days per month, data base of March 2013, Tempus IV Program). ** Based on the so-called percentage approach, marketing costs are calculated at 10% of the overall budget.

Costs

Capital expenses: Twenty-eight local sites would need to be purchased or rented. Alternatively the centres would need to be hosted by local entities e.g., commercial, educational or philanthropic.

Operating expenses: Salaries for each expert (amount depending on size of national economy) and for supporting employees (e.g., administration), as well as experts' travel expenses, would need to be included.

⁶⁹ The estimated number of experts varies per country depending on the number of firms per country, the smallest countries (22) will have 1 expert; mid-sized countries (3) will have 2 experts and larger countries (3) 3 experts (the size classification refers as mentioned to the population of firms).



Impact

Medium-term impact could be expected since the search for a site, training and especially creating awareness are all time consuming activities. On the other hand, the personal service offered by the local centres would be beneficial to and appreciated by local firms.

Management factor

Management would be decentralised, as each branch would consist of its own expert with his own views. However, central management of the local centres would also be necessary, imposing extra managerial and administrative tasks and costs on the concept as a whole. The risk of bureaucratisation and maintenance of transparency are potential problems.

Adaption to change

Delays in adapting to various changes (e.g., at the EU level or concerning transnational issues) can be expected, as changes would need to be communicated to the local experts. On the other hand, the local centres would adapt more quickly to changes in the economy since the experts, being locally based, could create feedback loops.

Ease of promotion

Making local companies and stakeholders aware of the existence of these new centres could well be time consuming. Hence, transition from awareness to action (i.e., actual consultation) may take a long time; firms might be hesitant to utilize the consultation service. Firms may not learn about this new resource early.

Table 18. Advantages and disadvantages of establishing 28 physical information centres

Advantages	Disadvantages
Local approach	High overall costs
Feedback loop from local experts	Decentralised approach
Personal support	Lower degree of flexibility
Physical drop-in centre	Longer lines of communication
	Might be seen as competition by local agents
	Exit costly - high expense of unwinding centres as a consequence of institutional funding

b) Establishing one physical EU centre

The second alternative would be a single physical European Centre for EFP. This would involve a regional approach featuring regional experts instead of country specialists. One expert for a group of Member States, rather than an expert from each Member State, would be advisable and beneficial from several perspectives, among them costs, specialised knowledge and management of cross-border activities. This structure would provide some national market feedback—although less than would be the case with 28 national centres—as regional managers presumably would stay closely attuned to the national markets in their regions. The main advantages of this structure



would lie in cross-border information exchange and economies of scale. Further, this structure would cost less than the Hub and Spoke network due to the number of centres being reduced to one, with a smaller number of experts involved. A disadvantage, though, would be the lesser impact of a system having no local character.

A single European centre for EFP might prove difficult to promote as it is not as close to the market as local centres would be. On the other hand, it would have the advantage of representing a large cross-border expertise. Local private agents would be less likely to perceive such a centre as a competitor to their services, thus more readily accepting it as a partner.

Description of the advantages and limits of services

In this scenario, one physical European Centre would be established to provide information about EFP and consulting services to firms across the entire EU. While cross-border expertise would be necessary, there should be at least one expert for each region, in order to ensure the timely assessment, stock-taking and sharing of all available knowledge on regional/local regulations and business practices. A one-time or annual membership fee might be required for different classes of groups. If fees apply, these could be lower for local support centres on account of lower costs and economies of scale.

Table 19. Sample cost estimation for one physical EU centre

1 European centre (all figures in column 2 and 4 are EUR)				
	Cost per unit	Units	Total	Comments
Experts	90,700*	15	1,360,800	5 regions - 3 experts per region
Support staff	53,928*	5	269,640	1 per region
Overheads	100% staff cost	1	1,630,440	Including office rent, equipment, additional costs
Marketing**	10% of total budget	1	326,088	Online / offline marketing per region
Total per year			3,586,968	
Average per country			128,106	

* Based on the assumption that such a centre would be based in Brussels the cost of experts / administrative staff is calculated using the maximum daily rates for EU staff researchers in Belgium on an annual basis (21 working days per month, data base of March 2013, Tempus IV Program). ** Based on the so-called percentage approach, marketing costs are calculated at 10% of the overall budget (however, the marketing costs of one physical centre might be more as—like the 28 centres—it would still have to reach the whole of the EU).

Costs

Capital costs would be lower as only one location within the EU would be necessary. Using regional experts might decrease expert cost; economies of scale would be possible with regard to support staff and the use of regional experts.

Impact

Medium-term impact would be expected, as the centre would have to be set up, experts trained, and service publicised. As there would be no local representation, this concept lacks the personal touch in its relations with local firms. This missing local element might result in fewer requests for consultation and thus lessen the expected



impact. Consequently, communication gaps between firms/employees and the centre's experts might widen.

Management factor

Management centralisation would make it easier to direct and oversee the activities of experts. Substantial administrative support would still be necessary to co-ordinate team operations and client support.

Adaptation to change

Closer internal communication lines could accelerate the speed of innovation compared to local centres. Regional experts could more readily observe changes in the business environment.

Ease of promotion

The presence of a EU centre might be more visible than individual local centres and the EU centre could be perceived as an important source of knowledge and expertise. However, a single centre would have to accommodate a larger clientele and would be more distant from firms and markets. Partners such as consulting services might be less likely to view the centre competitively and more willing to access it as a source of information.

Table 20. Advantages and disadvantages of establishing one physical EU centre

Advantages	Disadvantages
Medium costs	Lower degree of flexibility
Central management of experts	Larger clientele to deal with while lower reach when promoting centre
Regional approach possible	No local approach
Feedback loop from regional experts	Exit costly - high expense of unwinding centre as a consequence of institutional funding
Personal support	Distance from firms and markets
Physical drop-in centre	

c) Creating a single virtual centre for the entire EU-28

The purpose of a *virtual centre for EFP* would be to deliver conceptual and concrete information on EFP to both companies and their employees. It would be programmed as a web application that can be integrated into the websites of all kinds of different partners, e.g., national chambers of commerce, employers associations and trade unions, the Commission, taxation consultants and local centres of EFP expertise. As an easily accessible online tool, the virtual centre would be highly useful to companies at an early stage of their search for information (i.e., internet research) thus saving both time and expense. The virtual centre would provide background information on EFP, explain differences between European countries, and enable the user to compare various types of EFP across the EU-28. Country profiles could describe the legal frameworks of current EFP schemes, their fiscal treatment, as well as the history and traditions of EFP, which influence the attitudes of government and social partners.



Further, a virtual centre could include an online tool for calculating the effective tax burden of different EFP schemes for employees and employers. Such an effective tax rate calculator would facilitate the implementation of EFP schemes especially in SMEs and companies that operate cross-border and that otherwise might not obtain this specific information in such a clear and low cost way. As previously mentioned, an effective tax rate calculator was explicitly referred to in the 2014 Resolution the European Parliament.

The following section is a description of a model *Virtual Centre for EFP* which the authors of this Study developed and equipped with current country information as part of deliverables of this Study.

Description of the advantages and limits of services

The Virtual Centre consists of a web application to be integrated into the websites of various partners. Feedback would be provided by either experts familiar with the local business environment and regulations, or professionals implementing the application on their website. In the latter case, the pool of experts providing feedback would be larger and more knowledgeable. Consulting costs could be negligible because of the low operating cost. A one-time annual membership fee might be imposed on groups seeking more detailed information. Feasibility of a self-funded tool is more likely due to low costs of operation and membership. An agent license fee might apply as an alternative or option.

Table 21. Cost calculation for a virtual EU centre

1 Virtual centre (all figures in column 2 and 4 are EUR)				
	Cost per unit	Units	Total	Comments
Experts	90,700*	1	90,700	1 expert for research & implementing feedback from local agents
Expert network	7,500	28	210,000	Yearly update of country files
Support staff	53,928*	1	53,928	Administrative and marketing expert
Overheads	100% staff cost		354,628	Including office rent, equipment, additional costs
Marketing**	10% of total budget	28	70,926	Online marketing only
	Total per year		780,182	
	Average per country		27,864	

* Based on the assumption that such a centre would be based in Brussels the cost of experts / administrative staff is calculated using the maximum daily rates for EU staff researchers in Belgium on an annual basis (21 working days per month, data base of March 2013 Tempus IV Program). ** Based on the so-called percentage approach, marketing costs are calculated at 10% of the overall budget (however, the marketing costs of one virtual centre might be more as—like the 28 centres—it would still have to reach the whole of the EU).

Costs

Programming and testing of the web tool would involve a one-time setup expense with low operating costs; rather than a physical infrastructure, a server hosting the application would be sufficient to operate the system while a single administrator would manage the content through a central backend. At the same time, this administrator—an EFP expert—could integrate user feedback.



Impact

The use of established information networks (through host websites of partners already involved in the pilot project) would substantially reduce the launch time. Once the co-operation agreements with the strategic partners were in place, the tool could be launched immediately. The simultaneous use of different agents would produce a large multiplier effect.

Management factor

One individual through a central backend would manage the tool. Although based on a central server, the plug-in would be embedded in an unlimited number of websites graphically mimicking their web-design. The institution employing the management expert could arrange the hosting. Input from external local experts would be centrally fed into the system at the hosting institution to ensure quality.

Adaption to change

Updates would be automatically pushed to the front end on the host websites without risk of human errors. Lines of communication would be as short as possible which would result in a quick response to change. Updates would be automatically be implemented without further maintenance of the web application.

Ease of promotion

Partners involved in the pilot project would expedite promotion of the online tool. Co-marketing is also a possibility, through which the tool could benefit from the sponsorship of an already established partner. Multiplier effects would be generated by both of these methods.

Table 22. Advantages and disadvantages of establishing a single virtual centre for the entire EU-28

Advantages	Disadvantages
Low overall costs – esp. operating costs	Much less of a local approach
Short term impact (shorter start-up phase)	Feedback loop should come over external experts
Centrally managed	No personal support service
Fast adaption to market needs	No physical drop-in centre
Supporting element to local agents	
Better opportunities for self funding due to lower costs	
Resort to awareness of local agents	
Low cost of exit - unwinding centre comparably easy	

2. Comparative evaluation of the options

The main advantage of the *Virtual Centre for EFP*, in comparison with physical centres, would be to provide quality information at low cost (EUR 780,000 compared with EUR 3.6m for one physical centre and EUR 6.2m for 28 centres). The differences between

these would largely depend on the number of experts and the rental cost. The virtual centre is more cost effective since it requires only one central administrator. This facilitates quick response to local market changes via push updates to the web application and shorter communication lines in general. Furthermore, it is easier to promote an online substitute for an actual physical centre because of the ease in enlisting co-operating partners that implement the web-application on their websites as well as local experts from the EFP network.

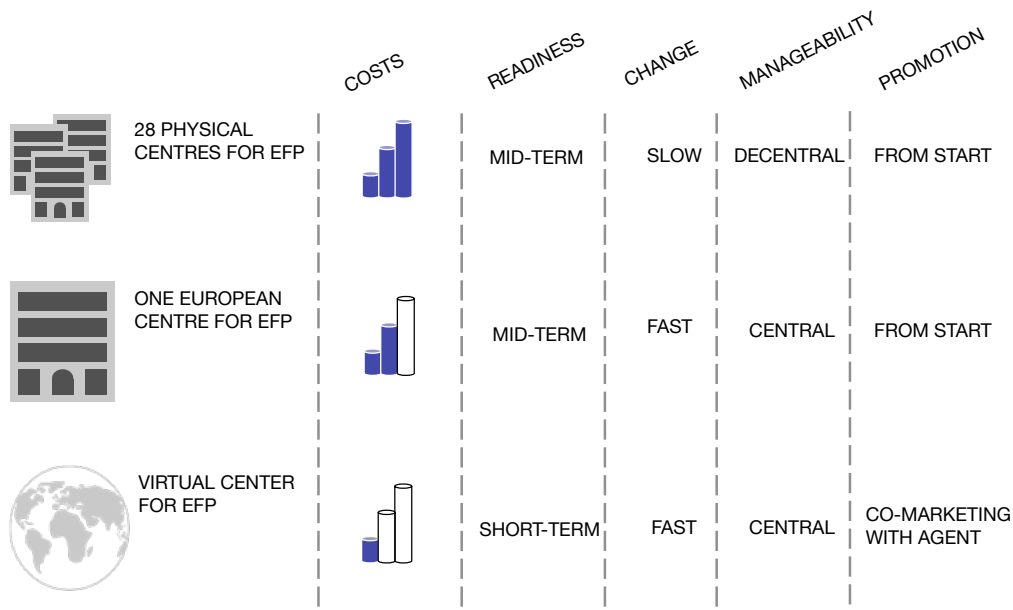
Multiplier effect of the “plug-in” architecture

A further important advantage of a virtual centre is the multiplier effect. Twenty-eight physical centres would involve a heavy volume of communication since there would be no central point of reference (assuming the absence of a hub and spoke network). A virtual centre for EFP would provide clear streams of communication directed from the central administrator to the different local experts through the web-application. A feedback loop to adapt to local markets and to guarantee the quality and accuracy of information would be automatically provided by co-operation with local experts. The presence of the web-application on multiple websites of local partners would also result in an increase in reach to local business owners, improving awareness and accessibility of the information.

Exit strategy

In the event the EFP centre should become obsolete or costs too high, an exit strategy might be necessary. Cost to and impact on stakeholders would depend on the structure. For the 28 national centres, this would mean the loss of jobs for 65 employees and the closure of 28 locales. Closing a *Virtual Centre for EFP* would have a much lower impact since it is staffed by only two regular employees.

Figure 11. Different options for information centre(s) for EFP



Source: Own elaboration.



Summary

In summary, a virtual information centre, particularly the *Virtual Centre for EFP* proposed in this Study, would deliver best results vis-à-vis the given criteria. Physical centres would be significantly more expensive to establish and maintain than a virtual centre. However, the larger and more personal scope of the physical centres could justify their higher costs. Their establishment, however, should be made conditional on self-sustainable financing.

3. Options to provide information on taxation and social security contributions

In addition to the examining alternative types of information centres, this section analyses the various options for providing information on tax and social security contributions, which could be done through all of the above mentioned types of centres.

a) Publication of a comparative study on effective tax rates

The easiest solution would be to compile and publish a new study on the fiscal effects (taxes and social security contributions) of introducing various forms of ESO and profit sharing. Information from country reports could be translated into comparative overviews of countries according to a fixed set of parameters. Distribution would most likely include both paper and e-paper formats, static forms compared to an online tool.

Time to market

Marketing would take somewhat longer time compared to other methods, depending on the publication form. Revisions would also take longer, e.g., when a study needs to be rewritten.

Flexibility and lifetime

Publication would be of limited use in reporting effective tax rates and social security contributions; nor could they be amended or be expanded. Revision or addition of new data would be impossible for already published versions; a new study would need to be undertaken within the same framework. The publication would become obsolete when new data is available.

Impact and user friendliness

A study would be most useful to informed experts in the relevant area. Basic knowledge about and interest in the subject would be needed to fully understand and interpret the information. Therefore, the impact on European companies would be limited.

Table 23. Advantages and disadvantages of a comparative study on effective tax rates

Advantages	Disadvantages
No need for service after published	Short lifetime
	Single topic covered
	Fixed set of parameters
	Low impact



b) Development of an effective tax rate calculator as a static tool

An alternative to the publication of a comparative analysis of the fiscal effects of EFP schemes for a number of scenarios in the EU Member States would be the programming of a tool with all this information, i.e. an “effective tax rate calculator”. This tool would enable the calculation of a comparative overview of the effective tax burden for EFP schemes across the EU Member States. Users could interact with the programme, by changing a number of pre-set parameters. A calculator in this form would, however, not allow for integration of new (additional) characteristics. The tool would be available as a CD-ROM included in the study mentioned above in section a) or as a download online.

Time to market

Marketing would take somewhat longer than would other methods depending on the form of publication.

Flexibility and lifetime

The calculator tool would be more flexible than a static study. Changes in the legal and regulatory environment could be reported via updates, once the user installs the tool. Distribution of a CD-ROM takes longer and its lifetime is shorter than that of an online tool. It would be difficult to integrate the tool into local websites; nevertheless, opportunities to distribute download links do exist.

Impact and user friendliness

The calculator programme would be user-friendlier than a mere study, though more limited in its information base than an online tool (programme size). The data output would be partially customizable and adaptable to user needs, although limitations in parameters may exist.

Table 24. Advantages and disadvantages of an effective tax rate calculator as a static tool

Advantages	Disadvantages
Interactive – user friendly	Hard to update
Framework to be used for other topics	Limited lifetime
	Limited program size
	Need for service to update

c) Launching an effective tax rate calculator as an online tool

This option describes the previously mentioned tax rate calculator as an online implementation, which provides multiple benefits to the user. In addition to possibilities for dissemination on EU websites, the online calculator could also be integrated into the websites of local partners (as described for the *Virtual Centre for EFP*). Hence, among the advantages of the online tool is a multiplier effect both with respect to its range and its power to raise awareness. As the output at the front-end could be flexibly adapted to user feedback, it would be easier to tailor the display of detailed information to the user’s needs. Furthermore, this option would allow for introduction of more parameters and different forms of taxation, thus extending its potential applica-



tion. Targeting different users via different front-ends would allow for more specific interaction. Different groups could select different pre-set parameters so that only those parameters relevant to them were displayed.

Time to market

Once the product is ready to be launched, fast implementation is possible. Increased reach would be possible with distribution of the tool over multiple local partners.

Flexibility and lifetime

Updating the tool instantly provides users with the latest version. The architecture—a “plug-in”—would allow for simple integration into an unlimited number of existing websites. The lifetime of the tool could easily and regularly be expanded by feeding-in new and updated information via the back end. The dynamic nature of the concept allows for the use of different sets of data, making it possible to import tax rates for new eventualities (e.g., the inclusion of pension plans) the tool could be used across other policy areas.

Impact and user friendliness

The tool provides a user-friendly method of communicating complex data. The integration into multiple local websites would achieve a broad reach. Feedback could easily be collected in order to customise the online application to the user’s needs. There would be few technical prerequisites to deal with, since the software would be cloud-based.

Integration in existing online platforms

The integrated online calculator could build on the accessible database provided by the *Virtual Centre for EFP* with single country files containing all raw data involved in the calculation.

Table 25. Advantages and disadvantages of an effective tax rate calculator as an online tool

Advantages	Disadvantages
Interactive – user friendly	Need for service after published
Easy to update	
Framework to be used for other topics	
Easier to expand lifetime	



4. Overview of the options and their main characteristics

Table 26. Overview of the options and their main characteristics

Criteria for evaluation	Information Centre for EFP			Information on taxes and social security contributions		
	<i>Creation of 28 physical centres</i>	<i>Creation of one physical centre</i>	<i>Creation of a "Virtual Centre"</i>	<i>Comparative study on effective tax rates</i>	<i>Development of an "Effective Tax Rate Calculator"</i>	<i>"Effective Tax Rate Calculator" as an online tool</i>
<i>Associated cost vs. impact</i>	High cost / medium-term impact	Medium cost / medium-term impact	Low cost / short-term impact	Low cost / Questionable	Medium cost / user oriented	Medium cost / user friendly
<i>Management</i>	Decentralised / inflexible	Centralised / inflexible	Centralised / flexible	Decentralised / inflexible	Centralised / inflexible	Centralised / flexible
<i>Lines of communication</i>	Long	Medium	Short	-	-	-
<i>Adoption to change</i>	Slow	Medium	Fast	Impossible	Hard	Easy
<i>Accuracy</i>	-	-	-	Out-dated under a year	Only newest version	Up-to-Date
<i>Promotion</i>	From start / time consuming / very costly	From start / time consuming / costly	From start / co-marketing with local partner / low cost	-	-	-
<i>Exit strategy</i>	Very costly / locked-in to institutional funding	Costly / locked-in to institutional funding	No cost / no institutional funding	-	-	-
<i>Feedback</i>	Local experts	Regional experts	External experts or local agents	Impossible to implement	Hard to implement	Easy to implement

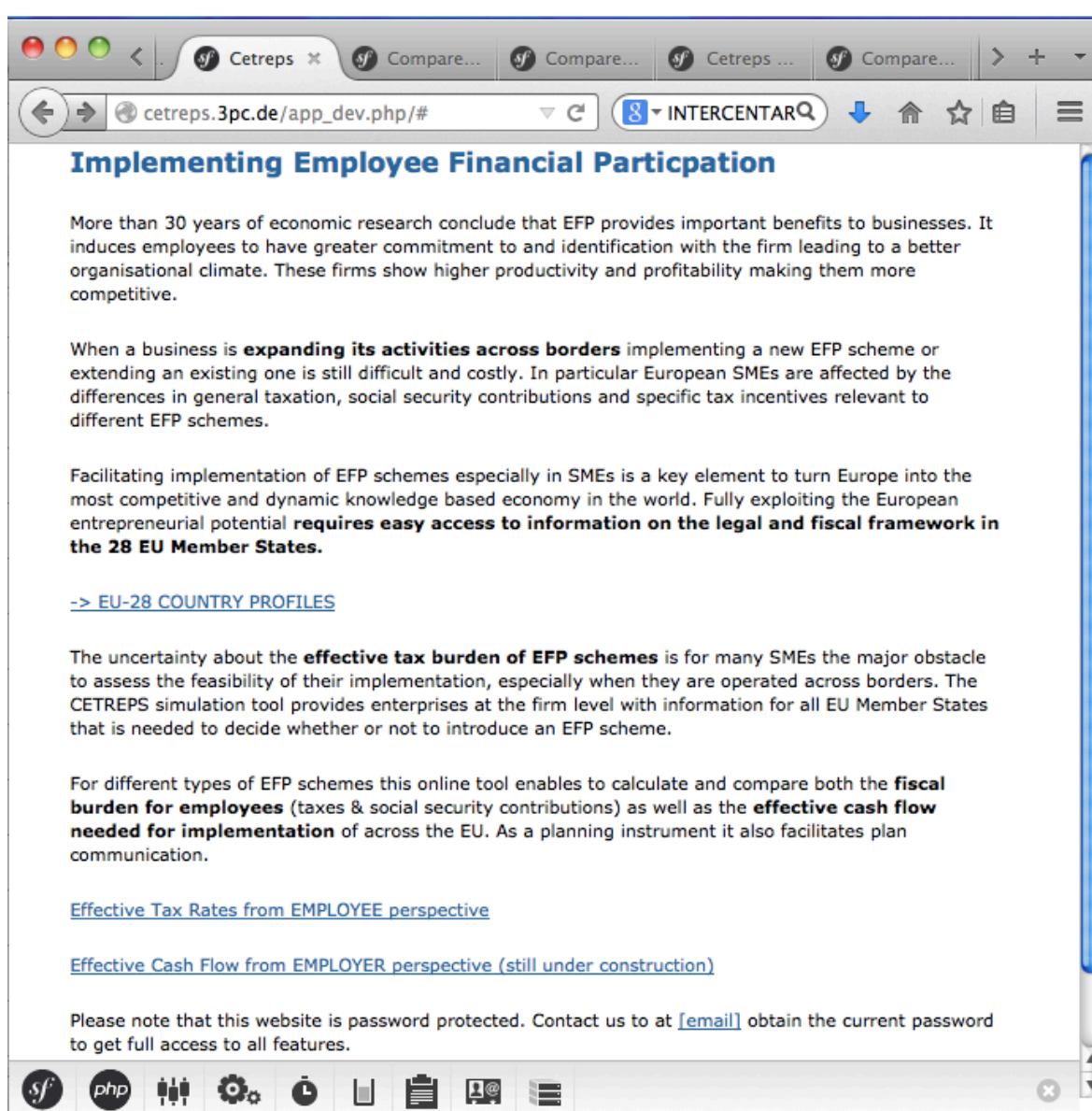
Source: Own elaboration.

VIII. The Virtual Centre for EFP and the CETREPS effective tax rate calculator for EFP schemes

The Inter-University Centre's expert team has developed a prototype of the Virtual Centre for EFP including the effective tax rate calculator CETREPS (Calculating Effective Tax Rates for Employee Participation Schemes) over the past three years. As the contractor implementing the pilot project, Inter-University Centre has made the prototype available online as one of the deliverables of this Study.

1. Description of the prototype available online

Figure 12. Landing page of the Virtual Centre for EFP (programmed as a plug-in)



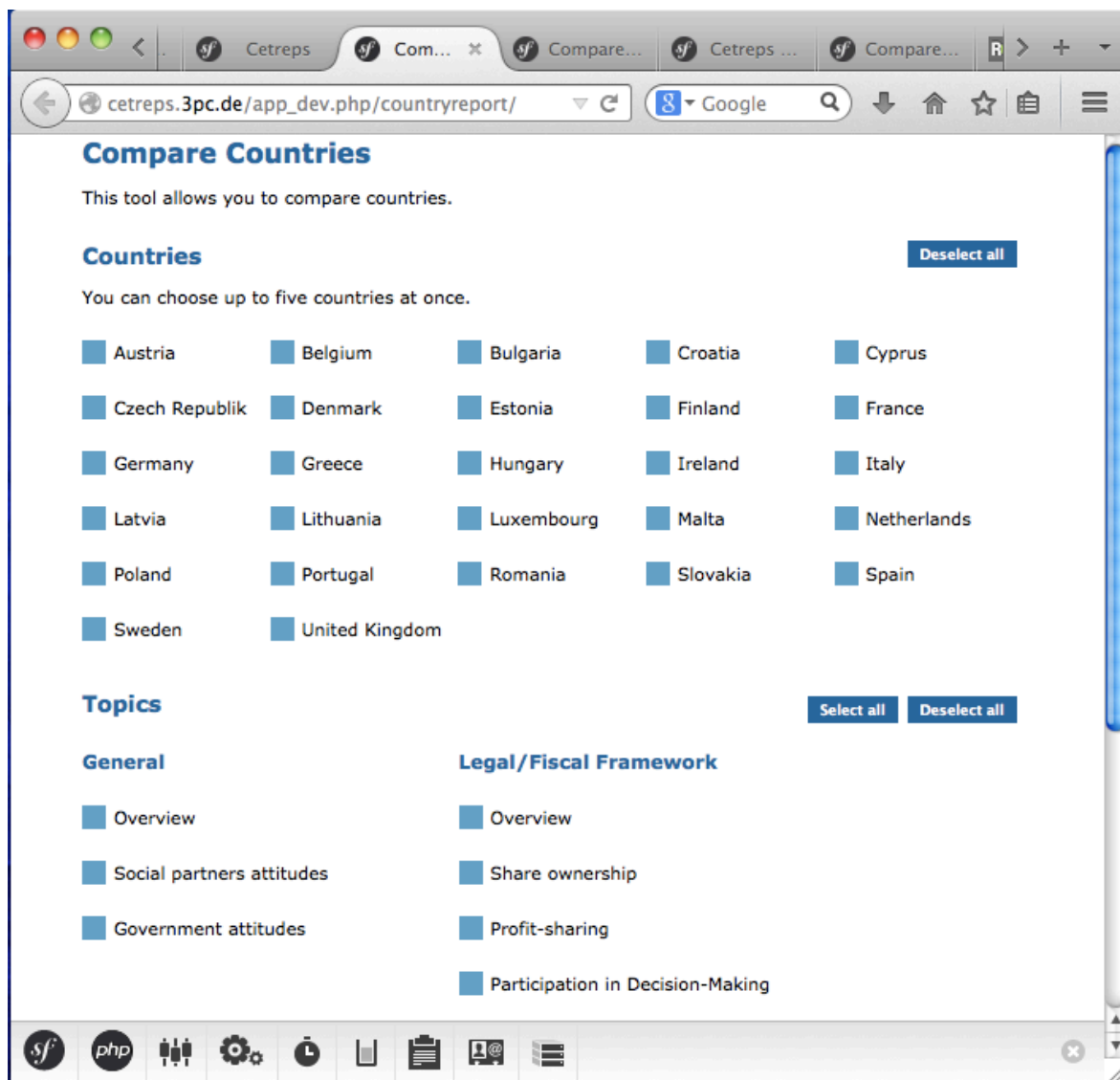
The prototype of the Virtual Centre for EFP has two modules with different functionality: An *Information and Country Comparison Tool* and the *Effective Tax Rate Calculator*.

a) EFP information and country comparison tool

The information and country comparison tool makes it possible to compare all Member States over a range of criteria, e.g.:

- An overview of governments' and social partners' attitudes to EFP;
- The national legal and fiscal frameworks pertaining to employee involvement and EFP;
- Applicable tax rates, i.e., income tax, social security contributions and incentives offered through the taxation system for EFP plans.

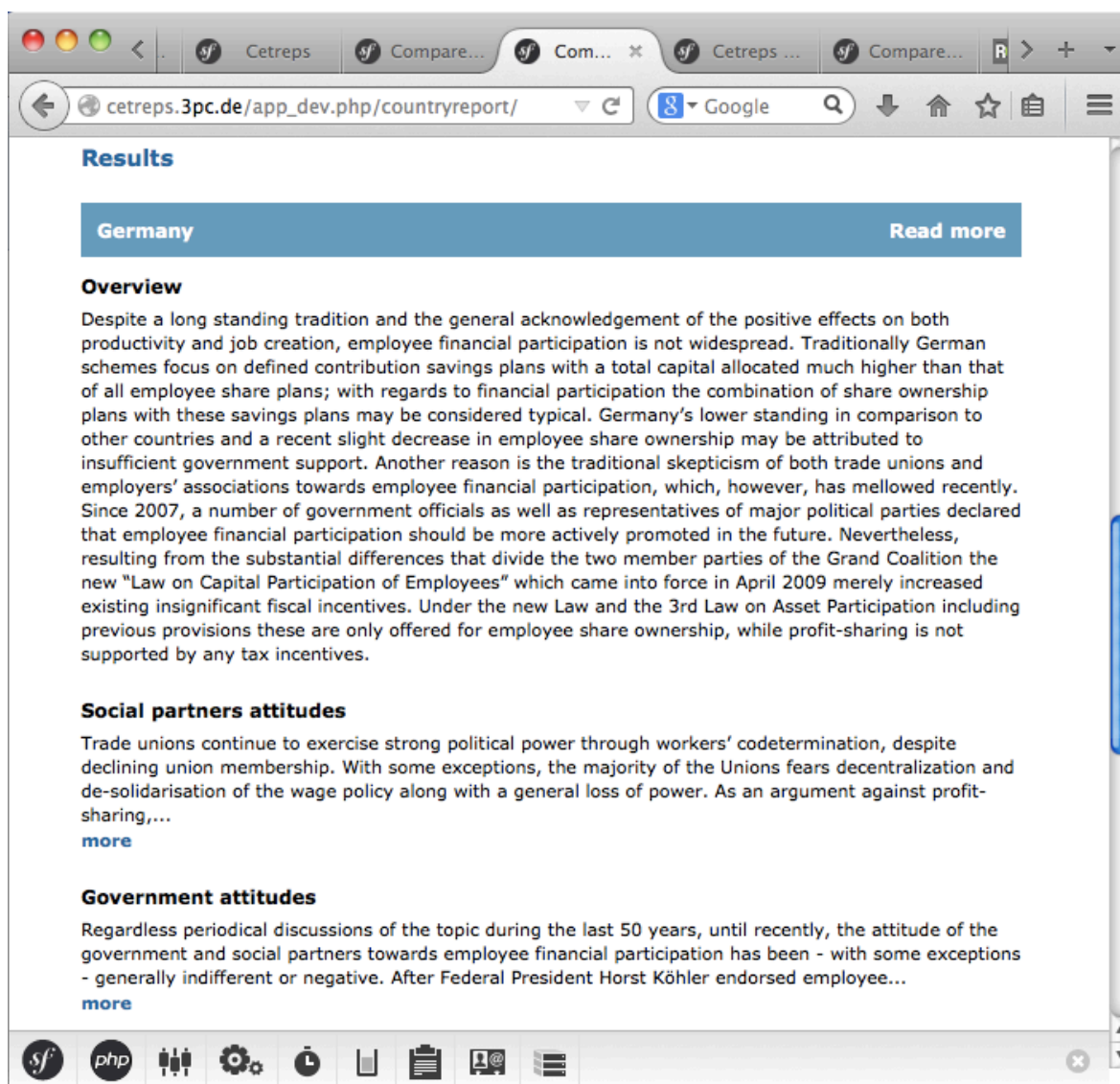
Figure 13. Front end of the Information and Country Comparison Tool



The information collected for this Study (current as of August 2014) would be made available through the Virtual Centre for EFP for all different EFP schemes from all 28 Member States.



Figure 14. Sample output of the Information and Country Comparison Tool



b) CETREPS – Calculating Effective Tax Rates for Employee Participation Schemes

The data entry screen of CETREPS allows the insertion of a set of parameters modeling the economic and other factors of the planned EFP scheme(s). This includes the employee's status, the total value of EFP granted, and general assumptions reflecting the economy and countries of operation. The system provides users with a range of assumptions to select from, e.g.:

- salary levels;
- the value of the EFP arrangements as a percentage of annual income;
- holding periods for shares;
- general assumptions about the economy (average interest rate, increase in share prices, etc.);
- types of EFP plans (cash profit sharing, share ownership, stock options, etc.);
- Member States.

Figure 15. Front end of the CETREPS Effective Tax Rate Calculator

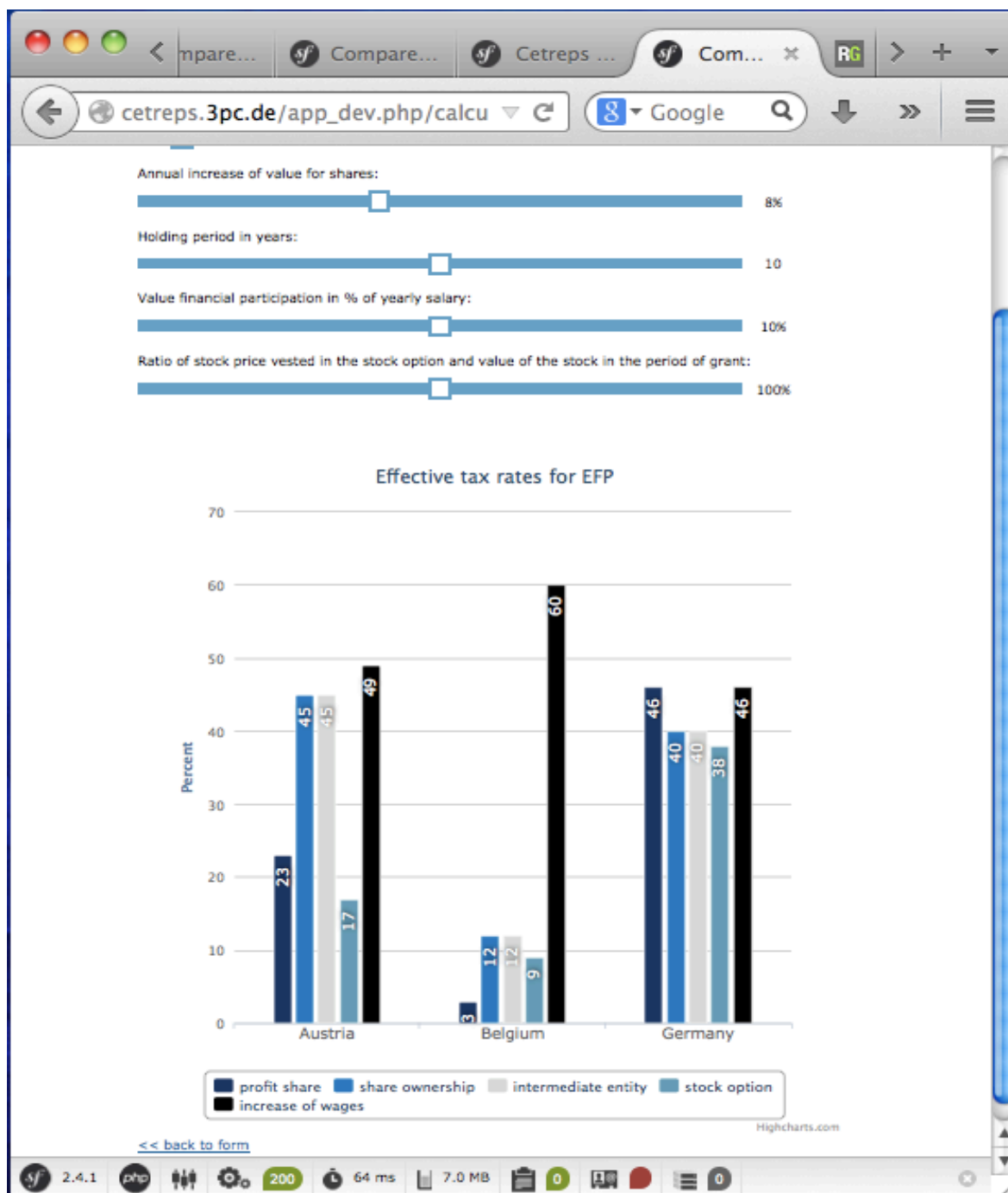
The CETREPS would make information on general taxation, social security contributions and specific tax incentives relevant for different EFP schemes from all 28 Member States for any given scenario (corresponding to the inserted parameters) available in order to calculate effective rates of differing taxation, personal status and situations. This information would be necessary to quantify the effective tax burden and allow for a representative comparison of tax systems as well as of specific tax incentives. In Figure 16, for the purpose of illustration, we have calculated taxes and social security contributions for 1 January 2014.

However, the calculation tool developed for this purpose is a flexible and adaptable instrument that provides comparative calculations of variable values. The **calculations can be performed for any scenario**. The result is a graphic comparative overview of the effective tax burden on different EFP schemes (including social security contributions and other levies; see Figure 16) as a per cent of the final amount of the benefit in the five selected EU countries. To deliver comparable results, simplifications are inevitable; thus the comparative overview represents an approximation.



The calculator is a dynamic and flexible tool, which could be extended to other areas, e.g., pension schemes.

Figure 16. Sample output of the CETREPS Effective Tax Rate Calculator



The calculator would allow real time simulation by changing the parameters above the output chart. It would permit European SMEs to gain a quick and up-to-date EU overview online, providing a cost-effective alternative to buying expertise from private consultancies. Once the decision to introduce an EFP scheme is made by an SME, their accountants could calculate the exact values for the chosen EFP scheme by using the CETREPS database.

c) Timeframe and partners

It is suggested that a pilot phase involving chosen strategic project partners and their members be launched as soon as possible after publication of this Study. This launch would be easy to implement since no new institutions are required. During the pilot phase of around 18 months:

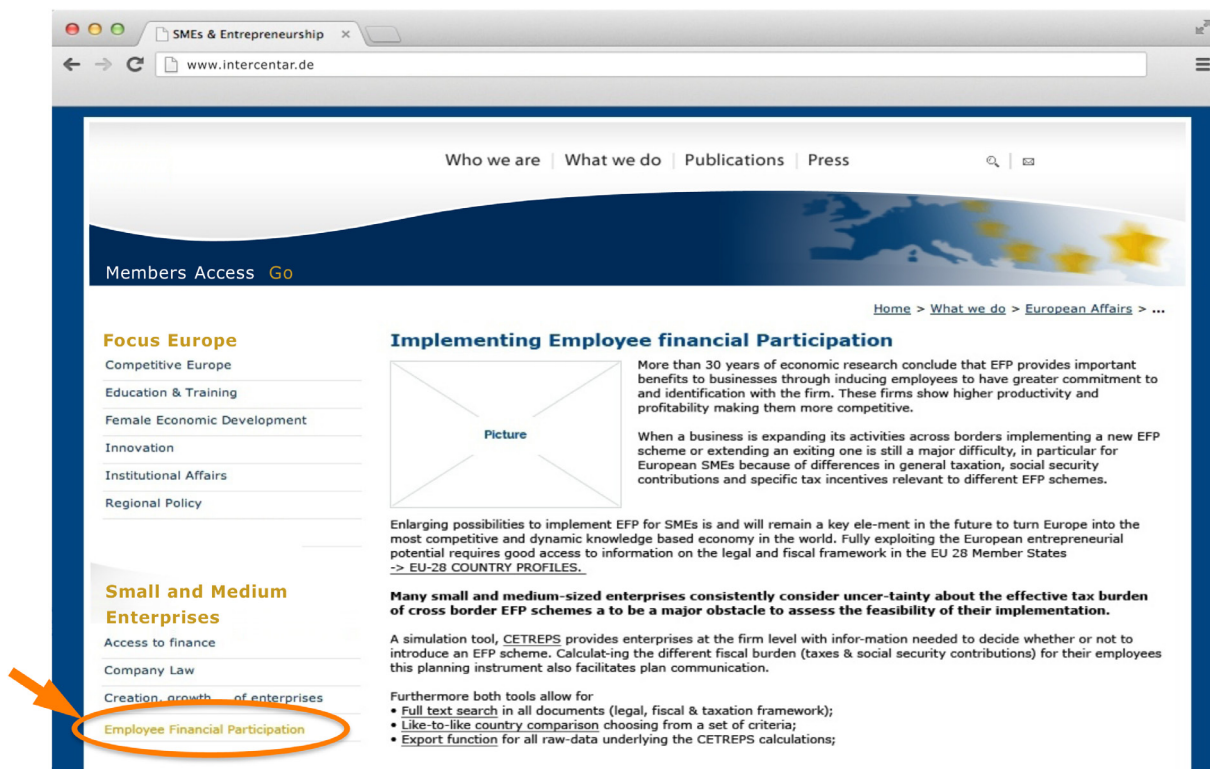
- the *Virtual Centre for EFP* would be made fully accessible, and
- the *Effective Tax Rate Calculator* CETREPS would be password restricted during a 6-12 months test phase

to receive feed back from selected stakeholders.

The cost of launching the Virtual Centre and the CETREPS Calculator for a pilot period of 18 months is estimated at EUR 75,000. Once tested, the operating cost for the Calculator (EUR 100,000 per year) and the annual operating cost of the Virtual Centre (EUR 250,000 per year) are estimated to be roughly EUR 1 million for a pilot phase of three years.

As mentioned above, the *Virtual Centre for EFP* in the form of a widget, i.e., a web-based plug-in, could be easily integrated into an unlimited number of existing websites to make information on EFP broadly available. Since well-established information channels used by the target groups would have a multiplier-effect, the coverage is potentially wide and the cost low. Information would be handled centrally; updates at the backend keep the information current allowing for real time adaption to changes.

Figure 17. Embedding the Virtual Centre – Visualisation for sample host website



The *Virtual Centre for EFP*, with its expected multiplier effect, could be a powerful tool for information dissemination. A prerequisite to success, however, would be a number of strategic partners that would agree to host the tool on their websites during the pi-



lot phase. To attract and convince these potential partners and to market the tool, a promotional film demonstrating the functionality of the *Virtual Centre for EFP* and the *CETREPS Tax Rate Calculator* was produced. This video illustrates how the tool can solve actual problems showing in particular benefits at the firm level. The video is available at: https://www.youtube.com/channel/UCAjGsS9IY-_iN8_B_d47I_Q.

Since both employers and employees will be utilizing this tool, the EESC has already signalled interest in proceeding with the pilot phase by setting up both the *Virtual Centre of EFP* and the *Effective Tax Rate Calculator CETREPS* on several members' websites. Based on the test phase feedback for the virtual centre and the calculator, the question of the centre's long-term supervision should be decided.

2. Pricing and financing strategy

The *Virtual Centre for EFP* could be financed in several ways, although the method chosen will directly affect the rate of adaptation. The service could be offered free of charge or there could be a service fee. Willingness to pay for a service generally depends on how much the customer values the service. Hence, the fee level could limit use if it is too high. The non-profit model, discussed below, combines the best features of both, providing a financing structure and low usage cost by utilising economies of scale.

a) No pay usage or partially paid usage

Of the financing options, the free service for all data would result in the widest usage. The financing of a no-fee structure could be done through a central institution or by the local agents that implement the tool on their website. If a central institution finances the *Virtual Centre for EFP*, it would probably increase both adaptation by local agents (serving as a platform for the Virtual Centre) and by users. Although companies seeking information on EFP/ESO would save money, economies of scale would be sacrificed. Alternatively local partners would have to pay for offering the service on their website. This would limit the likelihood of their implementing the *Virtual Centre for EFP* through their websites, since they would not directly profit from it. A more preferable option might be for users to partially pay for the service that they actually use as shown in table 27).

Table 27. Combining free and paid usage

	Free	Paid
Detailed information on employee ownership	✓	✓
Country reports Basic	✓	✓
Country reports Expert incl. underlying data sheets	x	✓
Effective Tax Rate Calculator Basic/Demo	✓	✓
Effective Tax Rate Calculator Expert/Full	x	✓
Yearly price	EUR 0,00	EUR 50,00

Source: Authors calculations.

For instance, general information on EFP as well as the simulator function of the effective tax rate calculator might be provided free of charge. However, access to the data



underlying the effective tax rate calculator might be made available only by subscription over a certain period. Users requiring a higher level of information and who wish to download this data (i.e., firms that actually plan to implement an EFP scheme) and make it available to their accountants or tax consultants would be charged a fee. The outcome could be a self-funding system, making external funding no longer necessary.

b) Non-profit model – combination with partially paid usage

The non-profit model is based on the principle of economies of scale. Hence, the more firms make use of the service, the lower the cost per company. Users would pay a fixed Europe-wide price for the services of, e.g., EUR 50 for twelve months. If more users register and pay for the service than necessary to cover all costs, registered users could be reimbursed for the difference. With an estimated cost of roughly EUR 250,000 per year (for all EU countries), the break-even point would be as low as 5,000 companies per year from the entire European Union.

At the country level, adjusted to country size, this would amount to roughly three companies in the smallest country (Malta) and 928 in the largest (Germany). It is estimated that, on average, 10,000 companies per year would use the effective tax rate calculator. That would result in an actual cost per company of EUR 25, implying a profit of EUR 25 per company, which could be refunded under a non-profit structure. Assuming these economies of scale, the calculator would finance itself at a cost of EUR 25 per company user. A guarantee could also be provided so that if the user were not satisfied the fee would be refunded. With the broad spread between initial and subsequent costs, the offering price of the programme could later be adjusted depending on how many companies subscribe.

A combination of the non-profit and partial payment models would seem most feasible. Company owners would be able to obtain all information necessary to consult with a local professional. By comparison, the fully paid service model might result in making the *Virtual Centre for EFP* less effective.



IX. EU legislative proposal for a Common European Regime on Employee Financial Participation

The main barrier to implementing cross border EFP schemes is the patchwork nature of the national rules for schemes already in place. These schemes reflect the different political and economic histories of the 28 Member States. Their legislative and regulatory frameworks are necessarily diverse; some are advanced; others are rudimentary (for a mapping of the diversity of regulatory density across the EU-29 see Table 1). As mentioned earlier, difficulties occur in particular from both different range of application and different regulatory density of national legislative frameworks as well as from differences in legislative requirements, which have been identified as a major factor hampering the implementation of EFP schemes.⁷⁰ Amending present laws or passing new ones for this purpose would be a cumbersome process that could take years, even decades, to accomplish.

To overcome this barrier, one of the options discussed in Chapter IV could be 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 framework for EFP⁷¹ referring to the suggestions of the EP resolution on EFP of 14 January 2014⁷² and further developing the approach⁷³ therein postulated. As the name suggests, this would be a second contract law regime parallel to national legislation on EFP.⁷⁴ 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 2014⁷⁵ the EP—referring to the Pilot Project and its interim report—also called for an impact assessment and

“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).

Against this background a discussion of a potential future legislative proposal for an optional “Common European Regime on EFP” follows.

⁷⁰ See the Report of the High-Level Group of Experts (2003), p. 6 ff.

⁷¹ 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”.

⁷² Resolution on EFP in Companies’ Proceeds P7_TA(2014)0013, recitals 7, 16.

⁷³ 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.

⁷⁴ 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.

⁷⁵ Resolution on EFP in Companies’ Proceeds P7_TA(2014)0013, recitals 17, 20, 21.



1. Legal basis and content of a potential European legislative proposal on EFP

A EU legislative proposal creating uniform rules for EFP schemes could be based on Art. 114 (1) TFEU. Art. 114 serves as the legal basis for approximating national laws, which directly affect the establishment or the functioning of the internal market.⁷⁶ The proposal could further be based on Art. 352 TFEU, whereas Art. 81 TFEU would not be eligible.⁷⁷

a) Classification of the instrument proposed

There have already been several initiatives to create European optional Regimes⁷⁸, i.e., the European Company⁷⁹, the European Economic Interest Grouping (EEIG)⁸⁰, the European Co-operative Society (SCE)⁸¹, and the Community Trademark⁸². There were also proposals on the implementation of a Common European Sales Law (CESL)⁸³, a European Private Company⁸⁴, a European Foundation Statute and a European Union Patent⁸⁵. These legislative initiatives appear to involve two types of proposals:

- Introducing a supranational European regime to create a genuine European legal form sui generis (as in the case of the proposal for a European Company Statute, a European Co-operative Statute, and a European Foundation Statute), which would exist in parallel to national legal forms and as a voluntary option. This type of proposal would have to be introduced through European legislation because Member States themselves could not create such a supranational form through national legislation.
- Introducing, through an EU level proposal, the creation of 28 identical laws on a particular issue (e.g., the European sales law) which are to constitute a second legal regime within each Member State, parallel to existing national laws on this issue and providing national stakeholders a choice between the two.

⁷⁶ Art. 114 TFEU serves as legal basis for approximating laws, which “directly affect the establishment or functioning of the Common Market” and in particular are aimed at creating an area without internal frontiers in relation to the free movement of goods, persons, services, and capital.

⁷⁷ While Art. 81 TFEU offers widespread competences to regulate cross-border conflicts to the EU, its core areas are the international civil procedure and private international law. It aims at a more transparent design of judicial and extrajudicial procedures. Therefore, Art. 81 TFEU does not cover the regulation of substantive law.

⁷⁸ These are characterised by a regulatory nature but only come into effect if the parties agree on their application and are derived from the principle of private autonomy; see also Regulation (EC) No 593/2008 on the law applicable to contractual obligations, OJ L 177, 17 December 2009, p. 6, Recital 11; (Streinz 2012 Art. 16 GRC margin no. 6).

⁷⁹ Council Regulation 2157/2001 of 8 October 2001 on the Statute for a European company, OJ L 294, 10 November 2001.

⁸⁰ Council Regulation 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), OJ L 199, 31 July 1985.

⁸¹ Council Regulation 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society (SCE), OJ L 207/1.

⁸² Council Regulation 207/2009 of 26 February 2009 on the Community trade mark, OJ L 78/1.

⁸³ Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law, COM(2011)0635 final, 11 October 2011.

⁸⁴ Proposal for a Council Regulation 2157/2001 on the statute for a European Private Company (SPE), COM (2008) 396.

⁸⁵ Proposal for a Council decision authorising enhanced co-operation in the area of the creation of unitary patent protection, COM(2010)790, 14 December 2010.



Member States themselves could also—at least in theory—introduce this type of proposal by the simultaneous adoption of identical national legislation; in practice, however, this eventuality is most unlikely and therefore, EU legislation has to be introduced equally.

The distinction between these two proposals is of particular importance in light of the European Court of Justice decision on the European Co-operative Society (Case C-436/03)⁸⁶ holding that Art. 114 TFEU could not be referred to as legal basis in the context of a supranational European regime, because the introduction of a new legal form differs from approximation of laws and thus falls under Art. 352 TFEU.

As in the case of the CESL proposal, a potential legislative proposal on a “Common European Regime on EFP” would not constitute a new legal form within the meaning of the Court’s decision. While there was no way that a new form of co-operative society could have been created by equivalent legislation by each Member State⁸⁷, the situation appears to be different for a “Common European Regime on EFP”. The Member States could, hypothetically, establish an identical legal regime on EFP schemes by independently adopted national law. Therefore, this Study argues that this proposal could be based on Art. 114 TFEU introducing the “Common European Regime on EFP” as a second regime at the national level.

b) Objective: Approximation measures aiming at the establishment and the functioning of the internal market

In pursuit of internal market integrity⁸⁸ this potential legislative measure would create a regulatory framework for EFP schemes, creating consistent rules across the EU. Within a single EFP scheme, the contractual parties would have to choose between entire instruments, i.e., the current national regime or the new EU regime, thus precluding “cherry-picking”.⁸⁹ The proposed common European regime would create a robust, yet flexible, set of rules that correspond as closely as possible to cross border plans. They would enable employers to operate an EFP scheme throughout the EU on the basis of one set of rules. Furthermore, employees of firms implementing these schemes would be assured their contractual claims to be portable across the EU.

The proposed rules would also establish a level playing field between companies of differing size. Reducing complexity would lower transaction costs; this would benefit SMEs, which are presently disadvantaged. Harmonising the operating conditions for all players in the area of EFP would benefit all types of companies and their employees, thus enabling the single market to function more smoothly and efficiently. Companies could also utilise these rules in domestic situations; this would facilitate EFP, especially in SMEs, as they could extend their EFP scheme across borders as the firm grows and expands.

The European Court of Justice has established that EU legislation may rely on Art. 114 when there are **disparities** or **potential disparities** between the national rules of

⁸⁶ ECJ decision of 2 May 2006 *Parliament v. Council* (2006) ECR, p. I-3733.

⁸⁷ See the justification of the Council in Case C-436/03 for declining Art. 95 EG (Art.114 AEUV) as legal basis for the European Co-operative Society.

⁸⁸ It is settled case law that legislation only may rely on Art. 114 TFEU only for the adoption of measures that genuinely aim at the improvement of the functioning of the internal market.

⁸⁹ Cf. EESC Own-Initiative Opinion INT/499, 2010 The 28th regime – less lawmaking, recital 18.



Member States, which obstruct fundamental freedoms or create distortions of competition.⁹⁰ Furthermore, the European Court of Justice requires that the purpose of the measures in question is to improve the conditions for the establishment and functioning of the internal market by **eliminating** or **preventing obstacles** resulting from the multifarious development of national laws.⁹¹

(1) Disparities between the national rules of Member States obstructing the fundamental freedoms and creating distortions of competition

Thirty years of research has confirmed the positive effects of EFP for European enterprises (see Chapter I 4a above and Annex II). In fact, approximately 31 per cent of EU private firms offer some form of EFP, i.e., either employee share ownership or profit sharing (ECS 2013). 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 more complex and costly than operating a plan in one Member State.⁹² This situation is exacerbated by the fact that EFP in some Member States is not regulated, or if so only to a very limited extent, thus adding to the uncertainty.

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 EFP plans to their employees. In cases where a successful EFP 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 EFP plan based on one uniform contract law for all cross-border transactions could achieve.

Differences in national laws governing the two main forms of EFP, i.e., employee share ownership (ESO) and profit sharing (PS) are therefore major **barriers, which prevent both employers and employees from reaping the advantages of the internal market**. Those civil law barriers would be significantly reduced, if EFP 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 EFP scheme and thus would include provisions most important to contractual agreements on EFP. 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

⁹⁰ This includes even measures whose aim is “[...] to prevent the heterogeneous development of national laws leading to further disparities”; cf European Court of Justice. 1995, C-350/92. *Spain v Council*. 1995. ECR I-1985.

⁹¹ cf European Court of Justice. 2002, C-491/01. *British American Tobacco*. 2002. ECR I-11543. margin no. 60 and 2000, C-376/98. *Tobacco Advertising*. 2000. ECR I-8419. margin no. 84

⁹² See the Report of the High-Level Group of Experts (2003), pp. 7, 24, 26, 28, 30.



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 in the area of 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.

(2) Elimination of obstacles resulting from the multifarious development of national laws

The “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 Annex 1).

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 Regime on EFP” (i.e., 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., Estonia, Luxembourg; for a mapping of the diversity of regulatory density across the EU-28 see Table 1 (p. 25). Such the “Common European Regime on EFP” 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 Regime on EFP” concerns a legal area where wide national differences (with regard to company, tax and contract law) exist. But regulation of EFP 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 Regime on EFP” 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 Regime on EFP” would induce governments to amend national law in line with the newly introduced EU-wide rules.



c) Content of the proposed potential legislative proposal

The scope of the Common European Regime on EFP would be limited, as it would not include some areas of law, due to either a lack of necessity or a lack of competence.

- Despite differences in the company laws of the Member States, no regulations prohibiting different forms of EFP are observed.⁹³
- Laws governing taxation and social security contributions are difficult to harmonise and EU competence does not extend to direct taxation.
- Labour law and laws governing employee participation in decision-making also remain under exclusive national jurisdiction.

Thus employee rights under labour law would not fall under the Common European Regime on EFP. Rules regarding participation of employees or their representatives in decision-making when introducing an EFP scheme or those linking specific consequences to changes of the labour contract, e.g., right to sell shares upon termination, would remain to be governed by national law. This applies to all rules/laws that only indirectly affect the EFP scheme while primarily concerning the underlying employment relationship, which would continue to follow national labour law. Furthermore, the Common European Regime on EFP would exclude taxation issues and thus impose no tax incentives; national taxation rules would apply. An explanatory section could recommend tax incentives as identified from best practice across the EU-27.⁹⁴ Therefore, the content of the Common Regime on EFP described above would also be within the scope of application of Art. 114 TFEU, as they would not touch upon any of the matters enumerated in the derogation of Art. 114 (2) TFEU, namely fiscal provisions, those relating to the free movement of persons or those relating to the rights and interests of employed persons, which would exclude its application (Herrnfeld 2012 Art. 114 AEUV margin no. 18).

Consequently, and as a first step towards a uniform set of EFP rules the Common European Regime on EFP would harmonise the contract laws of the Member States by creating within each Member State's national law a second contract law regime for contractual arrangements for EFP schemes within its scope.⁹⁵ As such it would not require amendments to existing national contract law. The requirements under this second regime would be identical throughout the Union and would exist alongside the already existing rules of national laws governing EFP schemes. The Common European

⁹³ In fact a rare example of a legal "common ground" for EFP rooting in the *acquis communautaire* are some of the national rules on listed and unlisted joint-stock companies originating in the implementation of European Law, i.e., the Second Council Directive on Company Law 77/91/EEC, dating back to 13 December 1976, *OJ L 26, 31 January 1977*. Articles 19 para. 3, 23 para. 2 and 41, para. 1 and 2 of the Directive allow Member States to deviate from the European legal framework of joint-stock companies in order to encourage EFP. Although primarily referring to share ownership schemes these—optional—regulations also leave room for combination with profit-sharing schemes. For details see Lowitzsch et al. (2008) pp. 36 pp.

⁹⁴ The 2014 EP Resolution on EFP in companies' proceeds (P7_TA(2014)0013) also postulates taxation issues to be left out of a Common European Regime on EFP as "a framework for a European model of employee ownership should not override national taxation rules" (P7_TA(2014)0013, recital 7).

⁹⁵ The proposal follows the rationale of the ECSL proposal; cf. European Commission (2011), p. 8: "[An optional regime on CESL] harmonises the national contract laws of the Member States not by requiring amendments to the pre-existing national contract law, but by creating within each Member State's national law a second contract law regime for contracts covered by its scope that is identical throughout the European Union and will exist alongside the pre-existing rules of national contract law."



Regime on EFP should apply on a voluntary basis, upon an express agreement of the parties, to a cross-border EFP plan.

The structure of such a potential legislative proposal could follow that of the ECSL in that the main body of legislative proposal would confine itself to specifying certain definitions and rules while the provisions of the “Common European Regime on EFP” could be set out in the annex. Stressing common definitions—and not, for example, a new form of EFP—as the core of the proposal and leaving the different models derived from best practice in the Member States to the annex would signal the priority for creating “common ground” instead of establishing an entirely new concept.

For instance, the main body of the legislative proposal could cover the following issues:

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

In turn, the Annex could contain the “Common European Regime on EFP” defining a set of model rules for the different forms of EFP as identified in the Commission funded “Building Block Approach to EFP” (Lowitzsch et al. 2008 pp. 27). The model schemes contained therein could be derived from best practice across the EU-28 and are formulated according to firm size (i.e., large, small and medium, micro) as well as with regard to the different forms of EFP (four basic building blocks profit sharing / ESO / stock options / ESOPs).

2. Choice of the legal form

The selection of an instrument for the implementation of a legal act is left to the institutions unless the legal basis does specify the instrument (Craig and Búrca 2011 p. 104). They have, as a rule, discretion for the choice of one instrument while, of course having to observe the principles of subsidiarity (Art. 5 (3) TFEU) and proportionality (Art. 5 (4) TFEU) (Rossi 2012).

a) Instruments for implementation

The Common European Regime on EFP could be introduced either by a Directive or a Regulation. The authors of this Study would suggest the legislative proposal to be established by means of EU Regulation in order to avoid any national discrepancies due to transposition work.



The proposal for a Common European Regime on EFP would apply only to contractual arrangements between private parties, i.e., EFP schemes, introducing uniform requirements (similar to the CESL proposal). With the aim being an optional regime to be used throughout the EU-28 ensuring that the wording and thus the content and scope of the proposed regime would be the same in all Member States is of particular importance (Staudenmayer 2011 p. 3496). Since this proposal would confine itself to a set of definitions and principles, it would be even more important that they are identical across the EU-28. Therefore, direct applicability of the regulation would be of crucial importance for the assumption of a swift approximation of national laws. Given its direct applicability, a Regulation would be suitable to achieve these aims. Implementation via a Directive could be more complex and difficult, as the room for national transposition might conflict with the aim to establish a set of uniform rules and definitions.

However, Directives in general might be more suitable to ensure the observance of the principles of proportionality and subsidiarity. As they only set the aim, not the measures to reach it, Member States would be left with some flexibility to find the best way to implement the measure into their national systems. On the other hand, experience shows that Directives may not suffice to fulfil the internal market's needs in some fields (Tuleasca 2011 p. 448). Furthermore, the resulting differences in national regulations might in turn cause obstacles for the internal market, exactly what the proposal would aim to eliminate. In particular if the Directive were to be based on minimum harmonisation giving Member States some leeway for differences legal uncertainty is likely to remain. This, of course, could be avoided by choosing maximum harmonisation, which, however is not the aim of the proposal for a Common European Regime on EFP. Furthermore, attempts at maximum harmonisation have proven to be politically difficult.⁹⁶

Finally, a disadvantage of Directives might be considered that the Member States often transpose them too late or incorrectly into national law. While the transposition deficit in the EU is at an average of 0.7 per cent and therefore is in line with the set target of 1 per cent, there are five Member States, which exceed it.⁹⁷ The Commission proposed a target of 0.5 per cent for the compliance deficit in the 2011 Single Market Act.⁹⁸ Only eight Member States meet that target or stay below it.⁹⁹ A Regulation, on the other hand, would in this case only introduce an optional instrument parallel to existing national legislation, with limited impact on the Member States' legal systems.

However, it is not within the scope of this Study to analyse in detail which legal instrument is best suited; this question could therefore be looked upon in the context of a future impact assessment.

⁹⁶ European Commission, *Report from the Commission on Subsidiarity and Proportionality*. COM(2010)547 final, 8 October 2010 p. 9; see also European Commission, *Communication from the Commission to the Council and the European Parliament on European Contract Law*, COM(2001)398 final, 11.07.2001 p. 62–65; Heijden and Keirse (2011) p. 573–574.

⁹⁷ The Member States need an average of 7.5 months to transposition overdue Directives although some need 10 months or more.

⁹⁸ European Commission, *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions*. COM(2011)206 final, p. 21.

⁹⁹ The overall performance of three Member States is below average, eight are average and 11 perform above average.



An advantage of both instruments would concern legal protection, as the proposal for a Common European Regime on EFP would introduce an alternative national law rooting in European legislation. The parties to a legal dispute would not need to plead or prove the law that applies to their case; the principle “*iura novit curia*” (“the court knows the law”) would apply, courts could not treat it as a chosen “foreign” law and access to national Supreme Courts as well as the ECJ would be unrestricted; this is often not the case when foreign law or general principles are applied.¹⁰⁰ The jurisdiction of ECJ in relation to the Common European Regime on EFP would ensure its uniform application within EU.

b) Subsidiarity

Pursuant to the “principle of conferral” codified in Art. 5 (2) TEU the EU is only allowed to act in those areas where the Member States transferred their competences to the EU in the Treaties to attain the objectives set out in them. The Common European Regime on EFP would aim at a removal of obstacles to the internal market, an area of the shared competences according to Art. 4 (2) lit. a TFEU where the principle of subsidiarity (Art. 5 (3) TFEU) must be adhered to. Thus a regulation introducing the Common European Regime on EFP would only be possible “if the proposed action cannot be sufficiently achieved by the Member States individually and, therefore, can be better *achieved by the EU due to its scale or effects*” (Art. 5 (3) TFEU).

(1) Shortcomings of national solutions

National regulatory approaches are inherently limited to the Member State in question. As of today, national regulations of EFP schemes in the EU Member States vary greatly. While some states like Belgium, Ireland and Slovenia show a good regulatory density and support measures, others like Bulgaria, Estonia and Cyprus only have little to no regulations and support measures. But however high or low the regulations are, they all have one thing in common: their use is limited to their implementing Member State. Regulating the product profile of an EFP scheme only at national level and then using it in a cross border context entails the risk of different EFP plans all being offered as cross border plans with different characteristics. There would be as many different EFP plans offered, as there are Member States. This would create employee confusion and would impede the emergence of a EU-wide level playing field for those companies wishing to offer EFP schemes to their employees on similar terms across the EU. This problem is exacerbated by the lack of common definitions, which in practice leads to the result that mutual recognition or exchange of best practice is a rare exception.¹⁰¹

As the operation of European firms is essentially cross-border in nature, the current lack of common definitions, the fragmentation of the rules for EFP and their different regulatory density has prevented the spill-over of best practice from one country to another. In contrast to the U.S., the potential of EFP for enhancing the competitive-

¹⁰⁰ Equally, institutions offering out-of-court complaint and redress mechanisms could not refuse to hear a case using the argument that it would be submitted to foreign law; See the Own-Initiative Opinion INT/499.

¹⁰¹ However, mutual recognition of EFP schemes has been postulated for many years; see, e.g., the Report of the High-Level Group of Experts (2003), pp. 9,10.



ness of European firms has not been harnessed yet.¹⁰² As a result EFP schemes operate below the efficient level (see above b) (1)) although their benefits have been widely acknowledged. In contrast, the proposed harmonised and sustainable framework covering employee share ownership as well as profit sharing schemes will act as a source of modernisation for the European economy. Based on best practice the new framework would ensure a high level of protection for employees in their position as contractual partners of EFP schemes (which would leave the relationship from their employment contract untouched). It would apply to various sizes of firms and sectors and may potentially provide stable sources of capital especially for European SMEs.

(2) Need for the proposed EU approximation mechanism

This proposal would aim to achieve the desired approximation effect through the introduction of an optional Common European Regime leaving the incentive to harmonise national legislation with the newly introduced European rules to the market mechanism of competition. The rationale behind the idea of competition would be the same for both vertical (meaning competition between supranational EU law and national legal systems) and horizontal (meaning competition between different national legal systems) competition is the same. Private actors would tend to choose to move to the Member State whose national legal systems offer them the best advantages for their undertaking. This would put competitive pressure on the Member States to adapt their laws as to attract foreign parties as well as to keep their own actors within their own borders.

In practice, however, the situation presents itself differently. Many parties prefer to stay in their own jurisdiction simply because that is the one they are familiar with, even if a preferable one exists. If they do try to compare systems coincidental factors figure in. A jurisdiction that is already known to the party for some reason or on which information is accessible in their own language will rather be chosen than one completely unknown. Enterprises might choose the satisfactory alternative or the one, which is easier to understand instead of the best possible one. Furthermore, information on all options available cannot be readily accessed so that it is unlikely that firms will have knowledge of all available choices. The amount of choices might even lead to a choice overload resulting in the party keeping their national law (Low 2013 pp. 295). Here, multinational firms are at an advantage since they are better acquainted with choosing between different laws while SMEs will tend to know only those they have already worked with, namely their own national laws and would most likely not have been in a situation where they had several laws to choose from.

Due to all of the factors mentioned above, the number of actors who do chose another jurisdiction is comparatively small and their reasons for opting into or out of a law are not obvious. Consequently, there is little incentive for national legislators to act, which is why optional instruments at the EU level become necessary. The most obvious advantage is that information on European instruments is available in the 24 official lan-

¹⁰² In the U.S., 46 per cent of employees are participating financially in the employer firm through either a profit sharing or an employee share ownership scheme; cf. Blasi, Kruse and Freeman (2013).



guages of the European Union¹⁰³, instead of only in the national language of one Member State.

Therefore, an optional European legal framework for EFP schemes can be deemed necessary and the proposed legislative measure would be consistent with the subsidiarity principle set out in Art. 5 (3) TEU and the Second Protocol on the Application of the Principles of Subsidiarity and Proportionality.¹⁰⁴

c) Proportionality

Pursuant to the “principle of proportionality” codified in Art. 5 (4) TEU the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.¹⁰⁵ Thus, measures of the EU have to be suitable, necessary, and proportionate *stricto sensu*.

Suitability – A measure is suitable if it causes or supports the attainment of its aim. While the range of its impact remains to be seen, the Common European Regime on EFP could in principle improve the functioning of the Single Market. A regulation at the EU level would provide all concerned parties with a set of rules valid throughout the Union thus making it easier and more attractive for companies to make use of their freedom of establishment (Art. 49 TFEU), as they could apply their EFP schemes in every Member State without being faced with obstacles resulting from national laws. Additionally, the free movement of workers (Art. 45 TFEU) would be supported as employees could rely on the EU regulations, instead of having to work through national laws to find out about national regulations, if they would want to participate in an EFP scheme used by a company in another Member State. Thus, the measure in principle would be suitable.

Necessity – A measure is necessary if a less severe measure is not able to reach the aim with the same success. The Common European Regime on EFP retains party autonomy, as it would only be applicable if the parties of a contract decide so. It leaves the decision on its application to the market and would, therefore, only be chosen where interested parties considered it to be an advantage. The individual legal culture of each Member State would be left intact, making intrusion of the measure far less drastic than that of traditional harmonization and thus rendering it more politically acceptable. The requirements imposed on the different parties concerned—if they choose to make use of the optional regime—have to be carefully calibrated. Whenever possible, requirements should be crafted as minimum standards (e.g., eligibility criteria, vesting periods, diversification limits, blocking periods) and regulatory requirements should be tailored so as not to unnecessarily disrupt existing business models. Existing business models should not be disrupted more than absolutely necessary and only when they are extended to cross border use (this, however, would also be necessary in this case without the introduction of the Common European Regime on EFP). To do

¹⁰³ Regulation No 1 determining the languages to be used by the European Economic Community. OJ P 017, 06 October 1958

¹⁰⁴ Protocol No 2 on the application of the principles of subsidiarity and proportionality annexed to the Treaties.

¹⁰⁵ This principle was further defined by the ECJ ruling that “when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued”; European Court of Justice. 1990, C-331/88. *The Queen v Ministry of Agriculture, Fisheries and Food, ex parte FEDESA and Others*. 1990. ECR I-04023 p. para. 13.



less than what is proposed would mean not regulating at all. Therefore, the measure would appear also necessary.

Proportionality *stricto sensu* – Proportionality *stricto sensu* refers to the respective interests of the public and of the parties concerned to be weighted against each other and is given when the disadvantages of one do not outweigh the advantages of the other. The proposed rules would seek to create common “EFP product rules” for which there is a solid public interest and which would lay down a foundation for a common, competitive and cost-efficient framework for EFP schemes across the Union. At the same time, its optional nature would not require compromise on the lowest common denominator, thus avoiding the lowering of standards and would be less intrusive than traditional harmonization. Furthermore, the cost of implementation would be significantly lower than that of a full harmonisation Directive as its optional character would not require compulsory compliance but only when chosen in the individual case.

Prudential rules of application—deriving basic principles and standards from existing national EFP models—would establish rights and limit risks linked to participation in EFP schemes that are targeting mainly (but not exclusively) cross-border situations. As such, these rules would not cover problems of tax law or touch upon labour law or employment law in force in the Member States but would govern the contractual way EFP schemes are offered. Such they would provide a level playing field for employers and employees, while at the same time ensuring protection of the weaker contractual party of EFP schemes. This in turn would underpin the correct functioning of the internal market and in particular remove obstacles to the single market. In particular, the proposed Regulation would combine different parameters suitable for specific EFP schemes and specific firm sizes, by taking into full account the Commission principles for EFP schemes as put forward in the 1992 Recommendation on EFP and as reiterated in the 2002 Communication on EFP relating to employee protection. The Proposal therefore would not go beyond what is necessary to achieve a common legal framework for EFP schemes, while at the same time addressing the regulatory issues, which would affect the reliability of a European optional framework.

Therefore, as regards proportionality, set out in Art. 5 (4) TEU, the proposal in principle would be both suitable as well as necessary and would strike the appropriate balance between the public interest at stake and the cost-efficiency of the measure.

3. Specific factors influencing the impact of the proposal

In summary, an optional regime on EFP introduces a “market approach” to harmonisation as it triggers competition between the existing national regulation and the newly introduced second EU-wide regulation similar to the approach for a Common European Sales Law. The Common European Regime on EFP would thus provide for an alternative form of harmonisation as employers and employees in all EU member states could choose to operate under one single European regulatory framework. At the same time it would do without the conventional EU harmonisation procedure. Excluding taxation issues, this proposal would be the least invasive legislative measure and thus could be expected to achieve the necessary consensus within the **ordinary legislative procedure according to Art. 114 TFEU**.

Against this background there are a number of specific factors, which differ from the mentioned proposals using the mechanism of an optional European regime that could have a major influence on the impact of this proposal and thus should be considered separately:



- **Limited regulatory scope to contractual issues** – As mentioned above the scope of the Common European Regime on EFP would be limited as some areas of law are not included either due to a lack of necessity (i.e., company law) or a lack of competences (taxation, social security contributions, labour law). Of the areas excluded from the Common European Regime on EFP, in particular taxation could benefit from the harmonisation effect at a later stage.
- **Differences in Regulatory density as a driver for approximation** – The spread of the use of the “Common European Regime on EFP” in a growing number of companies across an increasing number of countries would create in the process an increasingly favourable environment. The pro-activism of countries with an advanced tradition like France or the United Kingdom would at the same time encourage others to emulate them and thus directly contribute to approximation of national laws. Over time this development could eventually lead to mutual approximation of national regulation as national best practice influencing the Common European Regime may prevail in this market-based approach. Unlike in the case of a harmonisation Directive it is possible that parts of the Common European Regime, e.g., a model for a particular firms size or EFP type, which are ignored by the market participants will not unfold an approximation effect.
- **“First Regime” in Member States having low regulatory density or no regulation on EFP at all** – In those Member States that only have low regulatory density or no regulation on EFP at all, the Common European Regime would mean immediate harmonisation in the traditional sense. In these countries, the Common European Regime on EFP would establish a regulatory framework in the first place.
- **Obstacles to the implementation of the proposal** – Of course, optional instruments bare the risk of being viewed as being too complex and difficult to understand and apply resulting in them not being chosen (Rühl 2012 p. 148). Furthermore, firms might choose the satisfactory alternative or that which is easier to understand instead of the best possible one. In these cases the contract law market in the EU would not be competitive and as a result there would be no improvement or innovation of any of the legal products currently on offer due to the introduction of an optional instrument (Low 2010).

These difficulties could be considered in the context of the preparation of a regulatory impact assessment for the Common European Regime on EFP as requested by the European Parliament.





X. Conclusion

Employee share ownership is a time-tested idea, which has been highlighted as crucial to motivating production, providing economic opportunity and fostering institutions, which support political democracy and social cohesion. In 1885, John Bates Clark, founder of the American Economics Association, wrote that “productive property owned in undivided shares by labouring men” is an ideal which humanity has never abandoned. France’s “la Participation”, inaugurated by President de Gaulle, Spain’s Mondragon Co-operative, the U.K.’s John Lewis Partnership, and most recently the United States’ Employee Stock Ownership Plan, exemplify the power of this ideal and its potential for Europe.

The Commission has pursued the idea of employee share ownership and participation for almost forty years now. From the Green Paper on Employee Participation in November 1975 and the Memorandum on Employee Participation in Asset Formation in August 1979, it has reached a point where the promotion of employee ownership and participation is included in the Action Plan to reform European company law and corporate governance. In the aftermath of the financial crisis, employee shareholding is receiving serious attention as a stabilising factor on the capital market, a counter balance to the speculative short-term investment, which caused havoc on capital markets in 2007-08. Employee share ownership is, by its very nature, a long-term investment, which reduces the impact of shareholders and managers with short-term focus.

Against this background, this Study is different from previous studies in that it is linked to a Pilot Project and follows the Action Plan in which the Commission committed to investigate potential obstacles to cross-border ESO schemes and to encourage ESO and other forms of EFP throughout the EU.

Benefits of EFP and employee share ownership in particular

As highlighted in this Study, thirty years of research on the impact of various forms of EFP have confirmed that enterprises partly or entirely owned by their employees are more profitable, pay more taxes, create more jobs and are more resilient to economic fluctuations than their competitors without employee ownership. Moreover, since employees are long-term shareholders, broadening employee shareholding also tends to stabilise capital markets. For example, the official index of share price movement for employee owned companies (those with at least 10 per cent of shares belonging to non-board member employees), calculated by the London Stock Exchange, indicates that firms with employee ownership have consistently performed better than companies without employee ownership.¹⁰⁶

As the largest employers, SMEs and micro-enterprises are crucial to economic and labour market policy. According to 2011 figures, each year some 450,000 firms in the EU look for successors, affecting up to 2 million employees. Every year, there is a risk of losing approximately 150,000 companies and 600,000 jobs due to inefficient business transfers. The Commission, the European Parliament and the European Economic and Social Committee (EESC) have highlighted employee buyouts as one possible solution to the business succession problem of European SMEs.

¹⁰⁶ http://www.employeeownershipindex.co.uk/wiki/index.php5?title=The_Employee_Ownership_Index.



The growing income inequality and the concentration of wealth in fewer and fewer hands is a threat to the social cohesion of the European countries. The employees' share of national income, according to the OECD, has steadily declined over the past thirty years. (OECD 2011) At the same time the social strata of society, which are financially well off increase their wealth through capital income rather than through wage income. The ownership of capital is highly concentrated in Europe and so is the income from these assets. This development is particularly worrisome in the light of the current discussion about increasing wealth concentration.¹⁰⁷ Employee share ownership can contribute to halting or even reversing this trend.

A field for EU action

Despite the positive effects and the widespread use of ESO throughout the EU, as described in this Study, only few EU Member States have they been extended to a significant proportion of the work force. France and the UK are positive examples; both grant generous incentives for the promotion of EFP schemes. The UK Government has just committed a wide range of resources to increase the number of employee-owned businesses, especially for business successions (The Nuttall Review 2013).

Today about 68 per cent of companies in the EU do not offer any form of employee financial participation to their employees¹⁰⁸ but many of them have the potential to do so if their knowledge of the relevance and usefulness of EFP is enhanced by information and awareness raising measures. Moreover, ESO is much less common in Europe than, for example, in the U.S. and therefore there is much room for it to grow. This becomes particularly relevant as the European Company Survey (ECS) data indicates a highly significant rise in the likelihood of improvement both in productivity and employment in firms with ESO or PS schemes.

Using the ECS data, this Study has estimated the number of firms that have the potential to introduce ESO at around 300,000 (including 170,000 small firms) across the EU-28. This is a considerable number and, given the positive effect of ESO on productivity and employment, the adoption of an ESO scheme by these firms could have a significant effect on employment and income for European workers and on productivity and competitiveness for European firms.

Potential policy options

If this still largely unexploited potential is to be harnessed to stimulate sustainable and inclusive growth of the European economy, the further promotion of financial participation, ESO in particular, should be part of an overall strategy. Two important potential policy fields, namely to create a level playing field through an optional common European legal framework and to establish transparency with regard to taxation and social security contributions were identified during the Pilot Project. The European Parliament emphasised these two points in its resolution of 14 January 2014 on financial participation of employees in companies' proceeds.

¹⁰⁷ On the inequality and concentration of wealth, see Thomas Piketty's "Capital in the 21st Century" (2014), which has caused a widespread debate in the media and academia.

¹⁰⁸ The companies that offer either ESO or PS or both schemes are 31.7 per cent of all private companies in the EU-28 (ECS 2013).



Above all, the knowledge of ESO and EFP amongst both employers and employees should be further improved, and we hope that the publication of the results of this Study can contribute to this as part of potentially a wider awareness-raising programme. In the short-term, the information made available in this Study could be launched and made accessible through a centre for EFP.

A "Virtual Centre for EFP" as presented in this Study could be the first step to establish one European physical centre or even 28 national ones. This would make the results of the Pilot Project both tangible and visible, and perceivably different from previous initiatives in the field. The cost of launching the Virtual Centre and the CETREPS Calculator for a pilot period of 18 months is estimated at EUR 75,000.

Sharing best practices is another measure suggested by this Study. It would not only enhance the stakeholders' understanding of EFP and its many features, but also encourage employee shareholding across the EU-28, thereby contributing to making the European economy more competitive. One important element of best practice is to be completely transparent about how the tax, social security contributions and incentive issues are dealt with for different EFP schemes in different EU countries and how these may affect companies with cross border operations and their employees located in different countries.

The "CETREPS effective tax rate calculator", presented in this Study, would allow quantifying the effective tax burden for EFP schemes across the EU-28 and thus provide a representative comparison of tax systems as well as of specific tax incentives. However, the tool would need to be tested with stakeholders and practitioners.

The adoption of a Code of Conduct on EFP, offering a template for different EFP schemes and a guide for employees, is another useful policy option for the Commission. Given the experience with the 1992 Council Recommendation on EFP, this approach may be preferable to a new Recommendation.

A Commission Expert Group could be assigned the responsibility of refining and improving such an EFP toolkit.

In the long-term creating a level playing field for EFP through a European legal framework is an important policy option proposed by this Study.

The elaboration and implementation of an optional Common European Regime for EFP either through a Regulation or a Directive would present the most ambitious policy option in the long term.

As an overall approach, an Action Programme to promote EFP with package of different short, medium and long-term initiatives, coordinated and promoted by the Commission is suggested.

Combined in a "Five-Point Plan to promote EFP", parallel measures to raise awareness, e.g., a European EFP Day, could accompany and frame the above measures.



Outlook: The future role of ESO

Employee financial participation may be associated with a more equitable distribution of wealth and support social cohesion. As the *Economist* recently stated: “a good antidote to labour’s falling share of national income would be to boost ordinary workers’ share of capital.”¹⁰⁹ It can also play a role in the long term financing of European companies, particularly the SMEs. While in the past employee ownership has been an aspect of social policy, it has now moved to be a part of economic and enterprise policy and can also play a part in the European Union’s labour market policy.

Given the various parallel initiatives and developments it seems that the conditions for improving the legal framework for financial participation of employees in general and employee share ownership in particular are now more favourable than ever. Therefore, it is even more important to make employee share ownership a positive policy priority, not only highlighting obstacles but instead concentrating on benefits.

The promotion of EFP can contribute to a number of elements of the EU policy agenda, most notably to improve competitiveness, corporate governance and working conditions in European companies.

¹⁰⁹ See “A shrinking slice – Labour’s share of national income has fallen. The right remedy is to help workers, not punish firms”, *The Economist*, 2 November 2013.



Appendices

ANNEX 1 – Overview of the updated EU-28 country profiles on EFP: Government and social partners' attitudes, legal framework, incidence

Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
EU-15			
Belgium	<p>[A] TU opposed, but do support ESO to a certain extent; EA in favour;</p> <p>[B] Since 1982, legislation for ESO; amendment 1991; since 1999 legislation for SO; since 2001 new law on ESO and PS, 2002 Royal Decree on EFP.</p>	<p>All plans: EmpC up to 20% of after tax profit per annum; up to 10% of total gross salary;</p> <p>ESO: discounted ES in JSC, financing by firm possible; in capital increases: up to 20% of equity capital, ES discount limit 20%; (restricted stock grant) value reduced by 16.7%, taxation deferred if 2 years not transferable, 15% tax on benefit, no SSC; (stock purchase plan) benefit tax base 83.33% of fair market value;</p> <p>SO: since 1999 taxed at grant on a lump-sum basis, no SSC;</p> <p>PS: tax 15% for PS in an investment savings plan, 25% for other plans.</p>	<p>2013 ECS: ESO 5.2%, PS 21.2%;</p> <p>2010 Cranet: ESO 16.7%, PS 19.1%;</p> <p>2010 EWCS: ESO 4.18%, PS 12.49%;</p> <p>firms involved mainly from financial sector, large firms and multinationals;</p> <p>SO 2005 Cranet: 2%; EU Report 2003: 75,000 employees benefit; most of 20 largest Belgian firms operate plans; 40% of firms with more than 50 employees.</p>
Denmark	<p>[A] TU indifferent to EFP; EA opposed to any extension of EFP;</p> <p>[B] Employee Funds discussed in 1970-80s, PS popular; later support for ESO and SO; in 2000s Government support for share-based schemes; all incentives abolished in 2012.</p>	<p>All tax incentives repealed in 2012: ESO, SO and PS taxed as income with progressive tax rate from 24% to 56%;</p> <p>SO: subject to PIT on exercise, no SSC; on sale subject to 27% CGT (above DKK 48,300 gain 42% CGT);</p> <p>PS: none.</p>	<p>2013 ECS: ESO 6.8%, PS 38.2%;</p> <p>2010 Cranet: ESO 22.7%, PS 7%;</p> <p>2010 EWCS: ESO 9.09%, PS 18.56%;</p> <p>SO 2005 Cranet: 2%; EU Report 2003: 20% of 500 largest firms by 1999, one-third of quoted firms 2000.</p>
Germany	<p>[A] TU partly sceptical/partly hostile because of 'double risk', recently growing interest; EA support individual firms;</p> <p>[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</p>	<p>ESO: discounted ES in JSC, financing by firm possible; state savings bonus of 20% of up to EUR 400 (EUR 80 per annum) invested in employer stock; 6-year blocking period; no tax/SSC on up to EUR 360 per annum employer matching contribution; no PIT on contributions from salary reduction; since 2009, law provided for Special Employee Participation Funds, but repealed in 2013;</p> <p>PS: none.</p>	<p>2013 ECS: ESO 3.3%; PS 30.5%;</p> <p>2010 Cranet: ESO 11.8%; PS 45.6%;</p> <p>2010 EWCS: ESO 1.89%, PS 11.63%;</p> <p>2005 IAB: ESO 3%, PS 12%;</p> <p>2003 WSI: PS in one-third of firms;</p> <p>SO: EU Report 2003, in over two-thirds of DAX-listed firms;</p> <p>ESO: 2006 AGP, 3,000 firms, 2.3m employees, EUR 19bn; to date (2014) Special Employee Participation Fund not accepted by markets.</p>



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
	Participation of Employees.	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.	
Ireland	<p>[A] EA strong support; TU support if financial and intrinsic reward to employees; managers/employees pragmatically motivated; Lobby groups/institutions (e.g., banks) support ESO;</p> <p>[B] Support in privatisation; improvements in 1995 and 1997; promoting voluntary adoption of SPS, e.g. Approved PS Scheme (APSS).</p>	<p>ESO: PrivL - 14.9% ESOT stock paid for by loan/by state; ES/SPS in JSC, financing by firm possible; New shares: limited PIT tax base deduction for Empl., no SSC; tax incentives abolished for shares subscribed as of 8 Dec. 2010;</p> <p>SO: Savings Plan: bonus/ interest on savings tax-free, no PIT on grant/exercise, no SSC; exemption of SSC abolished;</p> <p>Approved Plan: no PIT at exercise, no SSC; tax incentives abolished for options subscribed as of 24 Nov. 2011;</p> <p>ESOP: Trust Act - taxed 15% interest / 10% investment;</p> <p>ESOT: tax incentives as for APSS if ESOT part of APSS; no CGT on disposal of shares;</p> <p>PS: APSS: at transfer no PIT, no SSC up to limit; salary foregone - up to 7.5% of gross salary deductible.</p>	<p>2013 ECS: ESO 6.4%, PS 24.2%;</p> <p>2010 Cranet: ESO 39.3%, PS 27.6%;</p> <p>2010 EWCS: ESO 3.92%, PS 7.45%;</p> <p>SO: 2002 IBEC: 90 firms with SAYE, 15 firms with Approved Share Option Schemes;</p> <p>PS: 2002 IBEC: 400 firms with APPS;</p> <p>ESOP: n.a.</p>
Greece	<p>[A] TU moved from scepticism to support since 1990s; EA indifferent, not a current topic; collective bargaining includes facilitation of EFP;</p> <p>[B] Some regulations on CPS (1984) and ESO (1987); since 1999 more attention on SO; not a current issue.</p>	<p>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;</p> <p>SO: since 2014 profit at exercise subject to PIT, but no SSC;</p> <p>PS: up to 15% of company profits, 25% of employees' gross salary; subject to PIT and SSC; as of 1 Jan. 2012 tax incentives for SO and PS repealed; special tax of 25 % and full SSC for ESO</p>	<p>2013 ECS: ESO 2.2%, PS 17.3%;</p> <p>2010 Cranet: ESO 15.7%; PS 6.9%;</p> <p>2010 EWCS: ESO 0.21%, PS 3.33%;</p> <p>SO: 2005 Cranet 2%; EU Report 2003: only a limited number of firms.</p>
Spain	<p>[A] Low priority: TU only support plans on top of regular wages; EA indifferent to broad-based plans;</p> <p>[B] Government constitutionally obliged to facilitate ESO; long tradition of social economy: COOPs new law 1997 and EBO;</p> <p>PS supported in 1994 then shift to ESO / SO; active support.</p>	<p>ESO: ES/SO in JSC, financing by firm possible; tax benefits on PIT after 3-year holding period; no SSC if benefits per annum, not more than EUR 12,000;</p> <p>PS: NLL;</p> <p>SO: after 2-year holding period 40% reduction of taxed plan benefit; subject to SSC;</p> <p>EBO: 'Workers Companies' with more than 51% ESO, 20% of profits in Reserve Fund; Protected Co-operatives 30% of profits in two reserve funds; 'Workers'</p>	<p>2013 ECS: ESO 4.7%, PS 25.7%;</p> <p>2005 Cranet: ESO 2.5%, PS 17%;</p> <p>2010 EWCS: ESO 1.6%, PS 4.94%;</p> <p>SO: 2005 Cranet: 19%; EU Report 2003: plans in 40 firms of which 50% in IBEX 35;</p> <p>ESO: 2003 CNMV 20% of large firms with share purchase plans;</p> <p>EBO: 2011 13,465 Workers' Companies</p>



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
		Companies" tax exempt from: capital transfer tax, tax on formation/capital increase, and notary fees; Protected Cooperatives – CIT reduced by 50%; NSL: unemployed can receive unemployment benefit as a lump sum, if they invest it into a "Workers' company" or a Protected Co-operative.	
France	<p>[A] TU show mixed attitudes: sceptical but actively involved, favour if not substitute to pay; EA generally in favour, especially if voluntary;</p> <p>[B] PS/ESO strong continuous support since 1959; also in privatisations; climate friendly toward EFP, focused policy.</p>	<p>ESO: PrivL- 10% ES reserve, up to 20% discount; discounted ES in JSC, financing by firm possible, also capital increase; reduced SSC of 8% and 13,5% tax on returns; free ES and SO taxed at 2.5% for employees if benefit per annum less than EUR 35,352 (if higher 8%);</p> <p>SO: capital increase; tax on exercise gain 26-30% after 4-year holding period;</p> <p>French Qualified SO Plan: spread and capital gain subject to PIT and CGT; reduced tax base if conditions met;</p> <p>BSPCE: at least 25% of company capital; at sale benefit subject to 19% PIT and SSC;</p> <p>ESOP/EBO: Law on Trusteeship 2007; special reserve for EBO possible;</p> <p>PS: DPS compulsory/CPS voluntary; DPS: 2% special tax for employers and SSC of 8% on 97% of employee's contribution, special SSC of 13.5% on returns;</p> <p>PEE broad-based, 5-year blocking period (PERCO until retirement); no PIT, special SSC of 8% and 13.5% on returns.</p>	<p>2013 ECS: ESO 8.6%, PS 41.3%;</p> <p>2010 Cranet: ESO 11.9%, PS 69.5%;</p> <p>2010 EWCS: ESO 7.65%, PS 26.02%;</p> <p>2004 FONDACT: DPS covered 53% of non-agriculture private sector firms employees (that is 6.3m);</p> <p>SO: 2005 Cranet 3%; SO EU Report 2003: approx. 50% of quoted firms and 28% of limited companies, total approx. 30,000 employees;</p> <p>ESO/PS in savings plans: AFG 2009: 230,000 companies with 11.8m employees; EUR 84.8bn assets in 2009, of which 41% shares of EmplC and 59% in diversified funds.</p>
Italy	<p>[A] TU mixed attitudes, recently interested in topic / EA divided, but mostly supportive;</p> <p>[B] Trilateral agreement 1993 supported PS; then shift to support ESO/SO; recently discussed on political agenda; Code of Participation in 2010.</p>	<p>ESO: CivC - discounted 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 2,066 after 3-year holding period; in limited liability companies free share up to EUR 7,500 tax and SSC exempt;</p> <p>PS: tax and SSC exempt on up to 3% of total pay;</p> <p>SO: no tax or SSC on grant if the option is non-tradable; on exercise subject to PIT, no SSC.</p>	<p>2013 ECS: ESO 3%, PS 16.8%;</p> <p>2010 Cranet: ESO 7.3%, PS 5.8%;</p> <p>2010 EWCS: ESO 2.06%, PS 8.12%;</p> <p>SO: 2005 Cranet 1%; EU Report 2003, approximately 6% of employees involved.</p>



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
Luxembourg	[A] TU/EA growing interest in 1990s, not supportive of share schemes; [B] EFP not a current issue.	ESO: ES in JSC, financing by company possible; SO: subject to PIT, but no SSC; tax relief of 5-20% per annum depending on vesting period; PS: none.	2013 ECS: ESO 11.3%, PS 30.2%; 2010 EWCS: ESO 7.02%, PS 18.5%; SO: EU Report 2003, estimates 25% of firms - mainly financial sector; PS: PEPPER II, 1995 CPS in 25% of firms, mainly banks.
Netherlands	[A] TU/EA generally in favour; TU support if supplement to pay, prefer PS to ESO; [B] Traditional focus on savings plans; support for SO in 2003.	All tax incentives were abolished as of 1 Jan. 2012. ESO: ES in JSC, financing by company possible; PS: none; SO: specific tax incentives abolished in 2005; IntE: Qualified Savings Funds.	2013 ECS: ESO 6.7%, PS 34.8%; 2010 Cranet: ESO 4.6%, PS 23.5%; 2010 EWCS: ESO 4.9%, PS 25.25%; ESO: 2009 Kaarsemaker for SNPI 3.6% of all companies have broad-based ESO plans; 2009 Poutsma / Braam for SNPI 13% of all AEX companies have broad-based ESO plans; SO: 2005 Cranet 4%; EU Report 2003, more than 80% of all listed firms; 2009 Kaarsemaker for SNPI 1% of all companies have broad-based SO plans; 2009 Poutsma/Braam for SNPI 16% of all AEX companies have broad-based SO plans; PS: 3m participants (2000); 2009 Poutsma / Braam for SNPI 7% of all AEX companies have broad-based PS plans.
Austria	[A] TU/EA currently support EFP and cooperate; different views about participation in decision-making [B] Legislation since 1974; first tax incentives since 1993; more active support since 2001; 2014 Parliament motion to increase tax incentives.	ESO: discounted ES in JSC; financing by company possible; PIT/SSC allowance for benefit up to EUR 1,460 if conditions are met; CGT or 1/2 PIT for dividends; tax exemption for share sale gain; IntE: Employee Foundation: EmpC buys own stock, sheltered in Intermediary Entities, dividends paid out; EmpC: contribution to Intermediary Entities, setting-up/operation cost deductible; Intermediary Entities: tax allowance on contributions; Employee: CGT on dividends; SO: capital increase: nominal amount max. 10%, increase max. 50% of equity capital; max. 20% of equity capital for total amount of shares receivable; 10% of benefit per annum, max. 50% of total benefit tax free and carry forward of taxation for the remaining amount; tax incentives for SO abolished as of 1 April 2009; PS: none.	2013 ECS: ESO 7%, PS 47%; 2010 Cranet: ESO 9.4%, PS 42.4%; 2010 EWCS: ESO 1.6%, PS 9.06%; 2005 WKÖ/BAK: ESO 8%, PS 25%; SO: 2005 Cranet: 2%; 2005 WKÖ/BAK: 1%.



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
Portugal	[A] TU / EA indifferent, low priority: TU prefer PS to SO; [B] ESO mainly supported in privatisation, especially around 1997; not on the Agenda; EFP is generally ignored.	ESO: PrivL - discounted ES; ES in JSC, financing by firm possible; in capital increase: suspension of pre-emptive right of shareholders for 'social reasons' possible; PS: NLL - not considered remuneration, no PIT and SSC; SO: subject to PIT, no SSC.	2013 ECS: ESO 3.4%, PS 21.9%; 2010 EWCS: ESO 1.72%, PS 3.26%; 2008 PEPPER IV: ESO 5.3%, PS 28%; SO: EU Report 2003, from 60 firms listed at Euronext Lisbon Stock Exchange, about 22% have implemented SO.
Finland	[A] TU/EA generally support EFP, especially desire to improve the environment for personnel funds; other forms not discussed; [B] Discussions on EFP since 1970s; 1989 Law on Personnel Funds (major form until now); 2010 amendments to the Law on Personnel Funds.	ESO: discount tax free, no SSC; earnings tax exempt if less than 9% per share and less than EUR 90,000 total; SO: none; PS: CPS none; SPS 'Personnel funds': in firms with more than 10 employees, if all participate, registration with Ministry of Labour, up to 15% per annum can be withdrawn; 20% of payments to employee tax free; earnings of fund tax free.	2013 ECS: ESO 13.3%, PS 51%; 2010 Cranet: ESO 9.3%, PS 71.4%; 2010 EWCS: ESO 2.07%, PS 27.27%; SO: 2005 Cranet 5%; 2003 EU Report: 84% of companies listed at Helsinki Stock Exchange; PS: 2007 54 Personnel Funds with 126,000 members.
Sweden	[A] TU neutral/opposed, advocated Wage Earners' Funds; EA favour PS for wage flexibility, but no active support; [B] In 1992–97 tax incentives for PS in firms; since then no support.	ESO: ES in JSC, financing by company possible; in capital increase suspension of pre-emptive right of shareholders possible; PS: CPS none; SPS 'Profit-Sharing Foundations': one-third of employees on similar terms, after dissolution assets to be distributed; for the employer 24.26% payroll tax instead of 32.28% SSC; SO: none.	2013 ECS: ESO 10.2%, PS 41.7%; 2010 Cranet: ESO 7.8%, PS 15.8%; 2010 EWCS: ESO 8.15%, PS 35.92%; PS: 2003 Heissmann: 15%; Wage Earners' Funds created in 1983, abolished in 1991.
UK	[A] Climate friendly and supportive toward EFP; TU involved, but reservations: prefer SO to PS; EA positive, favour flexibility with regard to form of schemes; employees interested; [B] Long tradition of EFP, especially ESO and ESOP; now more active support for SO that is SAYE and Sharesave; 2000 new of Enterprise Management Incentives; very little participation in decision-making; 2012 Nutall Report	ESO: Share Incentive Plan (Share Incentive Plans) discounted: no PIT/SSC; no dividend tax if dividends reinvested in shares, generally no SSC; no CGT if sale immediately after taking shares out of the plan; Employee Ownership Trust (EOT): if controlling interest is transferred to EOT, no CGT for selling owners; no PIT for up to GBP 3,600 of bonus payments per employee in EOT owned companies; SO: Savings-Related SO-Plan, Firm SO Plan: generally no PIT at grant or exercise, no SSC; SAYE: tax bonus on savings; Enterprise Management Incentives: no PIT, no SSC at grant or	2013 ECS: ESO 8.3%, PS 26.5% 2010 Cranet: ESO 30%, PS 9.8%; 2010 EWCS: ESO 5.16%, PS 12.78%; ESO/SO: 2006 ifsProShare: approved plans in 5,000 firms, some with ESOPs ; Share Incentive Plans in 830 firms; SPS: 2002 1m employees under approved schemes, average per head less than GBP 700; ESO: 2010 HM Revenue and Customs: Share Incentive Plans in 840 companies; SO: 2005 Cranet: 2%; 2006 ifsProShare: SAYE in 1,300 firms, 2.6m employees; Company Share Option Plans in 3,000 firms; Enterprise Management Incentives in 3,000 firms; 2010 HM Revenue and Customs: SAYE in 600 companies; Com-



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
	sparked new activities and legislation on ES.	exercise; (Employee Benefit Trust); ESOP: up to GBP 125 per month shares for pre-tax salary in Trust, EmpC up to 2 matching shares / share worth up to GBP 3,000 per annum; shares exempt from income tax and SSC after 5 years; EmpC contribution to trust tax deductible; PS: approved PS; tax benefits abolished in 2002.	pany Share Option Plans in 1,490 companies; Enterprise Management Incentives in 10,610 companies.
EU-13			
Bulgaria	[A] TU open to EFP, EA indifferent; not a current topic on either of their agendas; [B] ESO strong support 1997-2000, then ignored; in 2002 PrivL incentives abolished; EFP generally ignored.	ESO: none; uniform 7% dividend tax; SO: on exercise 10% flat tax and 30.3% SSC; transactions of shares listed on regulated markets are PIT exempt, no SSC; PS: none; SPS PIT exempt.	2013 ECS: ESO 4.4%, PS 33.2%; 2010 Cranet: ESO 15.8%, PS 12.3%; 2010 EWCS: ESO 0.73%, PS 7.99%; 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 survey evidence.
Croatia	[A] TU recently promote ESO in revision of privatisation; EA indifferent to FP; long tradition of self-management ; [B] ESO supported until 1995, since then FP ignored; ESOPs planned in PrivL 2010 and in 2012;	ESO: ES in JSC: financing by firm possible; dividends tax exempt; profits from sale of shares not taxed; up to 10% of capital may be special ES ESOP: general rules of NCL apply; PS: none.	2013 ECS: ESO 3.4%, PS 20.1%; 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.
Czech Republic	[A] TU / EA indifferent to EFP, not a current topic on their agendas; [B] ESO discussed in 1990; EFP ignored after introduction of voucher concept.	ESO: Discounted ES/SPS in JSC; not considered public offering; ES discount limit: 10% of equity capital, financing by company possible; uniform 15% dividend tax; PS: CPS/SPS in JSC; PIT of 15%.	2013 ECS: ESO 4.7%, PS 51.4%; 2010 EWCS: ESO 0.98%, PS 20.74%; 2005 Cranet: ESO 7.4%, PS 11.1%; SO: 2005 Cranet: 3%; ESO: insignificant; 0.31% of the privatised assets; PS: AI, insignificant.
Estonia	[A] TU indifferent to EFP, EA opposed to any extension of employee participation; [B] PrivL supported ESO until 1992; after 1993 EFP ignored.	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: 22% on distributed profit, only 'bonus issue' in capital increase exempt; SO: spread subject to PIT and SSC; PS: none.	2013 ECS: ESO 8.4%, PS 42.2%; 2010 Cranet: ESO 10.5%, PS 5.3%; 2010 EWCS: ESO 1.17%, PS 12.23%; ESO: 2005 2% (1995 after privatisation 20%) of firms majority employee-owned, 20% minority; PS: AI, survey evidence, very few cases.
Hungary	[A] TU lobbied ES/ESO in privatisation, recently only	ESO: PrivL - preferential sale; discount up to 50% of share price and 150% of annual mini-	2013 ECS: ESO 2.6%, PS 16.4%; 2010 Cranet: ESO 22.9%, PS 2.9%; 2010 EWCS: ESO 0.85%, PS 9.15%;



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
	sporadic support; EA indifferent; [B] ESOP/ES strong support in PrivL until 1996; climate friendly towards EFP.	mum pay, instalments; Decree 'Egzisztencia' Credit; specific 'ES' in JSC, discounted/free, up to 15% of equity capital, financing by company possible; since 2003 tax-qualified stock plans, first HUF 1m free, then 20% CGT; SO: PIT base is value at exercise; ESOP: ESOP Law 1992; preferential credit; corporate tax exempt until end 1996; contribution to plan up to 20% tax deductible; subject to 16% CGT; PS: none.	SO: 2005 Cranet 27%; ESO: 2010 HWERS 7% of companies; 2009 Labour Force Survey of the Hungarian Central Statistical Office 0.4% of employees; ESOP: initially 287 companies employing 80,000, in 2010 79 companies left; PS: 2010 HWERS 7% of companies (plan pre-defined and broad-based).
Cyprus	[A] EFP not an issue on TU / EA agendas; [B] EFP so far ignored.	ESO: discounted ES in JSC; financing ES by company possible; dividends/gains from share sale tax-free; PS: none.	2013 ECS: ESO 6%, PS 22% 2010 Cranet: ESO 3.9%, PS 7.7%; 2010 EWCS: ESO 2.2%, PS 4.61%; SO: 2005 Cranet: 4%; ESO/PS: AI only, insignificant.
Latvia	[A] TU / EA traditionally indifferent to EFP; 2011 bilateral agreement to put on agenda; [B] Few support for ESO in PrivL; EFP so far ignored.	ESO: PrivL - up to 20% ES, but abolished in 1997; Specific ES in state / public firms; preferential ES in JSC free/discounted, in capital increases up to 10% of equity capital non-voting stock; PS: none, subject to 25% PIT.	2013 ECS: ESO 1.4%, PS 22.5%; 2010 EWCS: ESO 1%, PS 9.04%; 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.
Lithuania	[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.	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; after holding period profits from sale of shares not taxed; PS: none, subject to 15% PIT.	2013 ECS: ESO 13.9%, PS 55.4%; 2010 CRANET: ESO 7.3%; 2010 EWCS: ESO 0.56%, PS 12.52%; 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); DPS few cases 2005 linked to employee savings plan.
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/investment rules; up to 10% discount, financing by company possible; SO: only taxable at exercise; tax limited to 42.85% of the tax rate on the excess of share market value at exercise over the option price; ESOP: Trust Act refers to EFP; taxed 15% interest / 10% investment; PS: mentioned in NLL.	2013 ECS: ESO none, PS 13%; 2010 EWCS: ESO 1.53%, PS 4.21%; ESO: AI; banking sector: ES, SAYE, SO; ESOP: AI, Trust Funds in Bank of Valletta / Malta Telecom; PS: AI; 2004 public sector (Shipyard 1,761 employees); private (foreign) firms, mostly reserved for management.
Poland	[A] TU/EA indifferent to EFP; managers/employees pragmatically motivated; lobby	ESO: PrivL - 15% ES for free, 2 years non transferable, up to value 18 months minimum pay, <i>National Investment Funds</i>	2013 ECS: ESO 4.2, PS 37.2%; 2010 EWCS: ESO 1.49%, PS 13.8%; 2008 PEPPER IV: ESO 40%, PS 26%; ESO: low and declining; AI in privat-



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
	<p>groups/financial institutions supportive to ESO;</p> <p>[B] EFP supported in early privatisation period; ESO in most privatisations, since mid-1990s more and more ignored; PS increased emphasis in the context of collective bargaining agreements; in 2009-11 on political agenda.</p>	<p>1995, shares for symbolic fee; ES/SPS in JSC, financing by company possible; uniform 15% dividend tax;</p> <p>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 govt. program "Supporting Privatization through Granting Sureties and Guarantees to employee companies and civic activity companies" state guarantees possible if at least 33% ESO.</p> <p>PS: CPS/SPS in JSC.</p>	<p>ised firms, 2000 approximately 11.4% (1998 12.7%); NIF adult citizens 1 share in 15 funds;</p> <p>EBO: LLBO 2002 one-third of privatisations, most frequently used single method, 1,335 firms employing 162,000, 14% over 250 employees;</p> <p>PS: AI, limited to management.</p>
Romania	<p>[A] TU support individual cases; EA avoid topic; tripartite council tackled EFP sporadically; Collective Labour Contract 2007-2010 social partners committed to sustain employees' shareholder associations in privatisation;</p> <p>[B] ESO supported until 1997 especially MEBO; then support declined; current government gives little support.</p>	<p>ESO: PrivL - aim 30% of privatised assets vouchers/ES; vouchers free; 10% discount ES; ES in JSC, financing by company possible; 10% dividend tax;</p> <p>ESOP: PrivL on Employee Shareholder Associations; leveraged transaction, preferential credit, up to interest rate 10%; 30% minimum participation of workers in ESOP;</p> <p>PS: Ordinance - CPS compulsory in state/municipal firms, maximum pay-out of 10% of overall profits.</p>	<p>2013 ECS: ESO 2.2%, PS 32%; 2010 EWCS: ESO 1.97%, PS 5.68%; 2008 PEPPER IV: ESO 6%, PS 42%;</p> <p>ESO: ES 10% of shares issued at privatisation, decreasing;</p> <p>ESOP: 1998 one-third of privatisations, most frequently used single method 2000: 2,632 firms, average 65% ESO, 1,652 majority ESO;</p> <p>PS: estimated 1.2m employees in public sector covered; AI, phased out in some enterprises.</p>
Slovakia	<p>[A] TU/EA indifferent to EFP, not a current topic on their agendas;</p> <p>[B] ESOP discussed in 1990; EBO concept failed 1995; EFP now generally ignored.</p>	<p>ESO: discounted ES and SPS in JSC; up to 70% discount and financing by company possible;</p> <p>PS: CPS/SPS in JSC, subject to 19% PIT.</p>	<p>2013 ECS: ESO 3.1%, PS 54.3%; 2010 Cranet: ESO 26.9%, PS 6.7%; 2010 EWCS: ESO 3.31%, PS 25.62%;</p> <p>SO: 2005 Cranet 10%;</p> <p>ESO: insignificant; AI, banking sector / new privatisations;</p> <p>EBO: AI, in privatisation, usually management-led.</p>
Slovenia	<p>[A] TU/EA very supportive to EFP; Employee Ownership Association lobbies legislation; active support by Works Councils/Managers Association;</p> <p>[B] Strong political support to EFP; draft laws 1997/2005 in parliament rejected; new Law on EFP in 2008.</p>	<p>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 employee;</p> <p>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;</p> <p>EBO: up to 40%, shares 4 years</p>	<p>2013 ECS: ESO 9.3% PS 59.8%; 2010 Cranet: ESO 8.5%, PS 20.8%; 2010 EWCS: ESO 3.74%, PS 23.17%;</p> <p>SO: 2005 Cranet 4%;</p> <p>ESO/EBO: 90% of privatised firms; CS 1998 60% majority; ESO while only 23% of capital (2004 18% strong decline);</p> <p>PS: CS, in statutes of 32% of firms, but unexploited in 22%; for board members 20% of listed firms.</p>



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
		non-transferable; Worker association proxy organisation under Takeover Law; PS: SPS/CPS; up to 20% of net profits.	
Benchmark countries			
Turkey	[A] TU supportive, EA sceptical, partly opposed; [B] EFP issue 1968 in Tax Reform Commission; some attention in individual privatisations; 2002 program, lack of concrete measures	ESO: PrivL decrees for individual firms; discount/installments; NTL - after 1 year share-sale profits not taxed; 10% of share buy-backs for ESO; for SO limited tax on dividends/profits from sale; conditional capital increase for employee SO; IntE: NCL/CivC “welfare/mutual assistance funds” of firms; financing by firm profits / contributions; PS: NCL/CivC both CPS and SPS; up to 10% prior reserve	2005 Cranet: ESO 4.4%, PS 8.9%, SO 1%; 2005 EWCS: ESO 1.3%, PS 2.4%; ESO: AI, PrivL 12 cases 9-37% ESO, 1 case majority, up to 15% discount; SO/ESO private firms mostly foreign (26 registered, 35 applications); 2007 survey evidence: 3-4% of publicly traded companies; IntE: N.A.; PS: AI, retained profits from dividends widespread; CS 38 out of 50 listed firms; 2007 survey evidence: 20% of publicly traded companies.
Norway	[A] TU traditionally opposed; [B] Controversial political issue, few attention by government; 1984 tax exemption for discounted stocks introduced.	ESO: difference between market value and subscription price is subject to PIT and SSC; if broad-based, benefit is tax-exempt up to NOK 1,500 per annum; financing by company possible; SO: difference between market value and subscription price is subject to PIT and SSC on exercise; if broad-based, benefit is tax-exempt up to NOK 1,500 per annum; PS: none.	2010 EWCS: ESO 2.7% PS 9%; 2005 Cranet: ESO 2.3%, PS 7.4%; .
USA	[A] After legalization of unions in 1935, collective bargaining for fair wages by union and non-union companies increased the acceptance for CPS/ GS. [B] Long-standing government efforts (Republicans and Democrats alike) since Internal Revenue Act 1921 to provide greater financial participation and retirement benefits for citizens, ESOP authorised by Employee Retirement Income Security Act (ERISA) in 1974, enabling legis-	ESO: Qualified Stock Bonus Plans – since 1921 Internal Revenue Act, tax-exempt trust, deductible company contributions limited to 25% of eligible payroll, proportionate allocations up to USD 260,000, earnings of trust are tax-exempt; <i>Direct stock purchases</i> – CGT, after 1 year; <i>Employee stock purchase plans</i> (ESPPs) – not taxable at grant / exercise; taxation as long-term gains subject to holding period and conditions; ESOP: exempt from prohibition of direct or indirect lending of money to a qualified plan; since 1974, any sale of stock to an ESOP taxed at CGT if the purchase leveraged - interest and principal is tax-deductible; since	ESOPs: 2011 NCEO estimate is 6,941 ESOPs and 1,985 ESOP-like plans for a total of 8,926 plans; 14.7m participants in ESOPs; held USD 995.3bn in assets; 2010 General Survey (GSS): ESOPs, 401(k) plans, SO and similar grants as well as employee stock purchase plans (ESPPs): ESO: 18.7m employees, i.e., 17.4% owned company stock; SO: 9.3m employees = 8.7%. Considering the companies, which have stock, 36% of employees, i.e., 28m employees own company stock through different benefit plans; 2011 Annual Survey of PS and 401(k) Plans conducted by the Plan Sponsor Council of America: 686 IRS qualified PS plan, cover 10.3m participants, held USD 769bn in plan assets.



Country	General attitude [A] Social partners [B] Government	Legislation and fiscal or other incentives	Schemes and their incidence CRANET: Offer in firms > 200 Empl. EWCS: Take-up rate of employees
	<p>lation for 401(k) plans in 1978, further ESOP incentives passed in 1984 and 2001.</p>	<p>1984, "tax-free rollover" tax-deferral for seller, when min. 30% of stock and reinvested in "qualified replacement securities" within 1 year; dividends paid to ESOP participants or to service loan deductible; since 2001, ESOPs qualify as shareholders of S corporations, exempted from unrelated business income tax; S corporation 100% owned by ESOP tax-exempt; SO: <i>Incentive Stock Option Plans</i> – CGT subject to conditions; <i>Nonqualified Stock Options</i> – taxed at exercise; at sale, CGT after holding period; PS: since 1921 Internal Revenue Act, tax-exempt trust, tax-deductible contributions to plan up to 25% of payroll, trust earnings are tax-exempt; investments must be diversified; <i>Qualified Profit Sharing Plans</i> - exemptions from diversification requirement. <i>401(k) plans</i> - since 1978 Revenue Act, deductible salary contributions to plan (for 2014, max USD 17,500); since 2006 company matching contributions after 3 years of service; <i>DPS</i> – deferred taxation of cash bonuses and cash PS amounts;</p>	

Source: PEPPER I-IV and: CNMV 2003; CRANET 2010/2005 (firms with more than 200 employees); 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;

Abbreviations: 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; 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; m = million; MEBO = management-employee buyout; NCL = national company law; NLL = national labour legislation; NSL = national social benefit legislation; NTL = national tax 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.



ANNEX 2 – A brief review of literature on employee financial participation

1. Main benefits of EFP for employers and employees

The main argument in favour of introducing EFP schemes is that they provide a solution to the agency problem (McNabb and Whitfield 1998). Companies seek to create mechanisms, which ensure that the interest of workers as agents is aligned with that of companies as principals (Robinson and Wilson 2006). There is a rich body of academic literature on employee participation in ownership and enterprise results going back as far as the 1950s and 1960s, although the bulk of theoretical and empirical research has been conducted in the last 30 years. It is important to point out that much of the empirical investigations in a variety of countries and different forms of employee participation have concluded that EFP has a positive influence on the performance of companies. This Annex provides a brief summary of the literature highlighting the benefits of EFP scheme under several main headings, followed by a discussion of the main problems associated with employee ownership and participation.

a) Improved efficiency, labour productivity and competitiveness

In the theoretical literature, the most often cited reason for improved efficiency, labour productivity and competitiveness is that employee financial participation creates incentives for workers to be more involved in their firms, identify with and have stronger commitment to them. Giving workers a stake in the success of the firm will motivate higher levels of effort, generate more positive attitudes and more cooperative behaviour, and also help realign employee interests with those of the firm (Poutsma and Huijgen 1999). All of these contribute to higher labour productivity and improved overall enterprise efficiency, which make the company more competitive (Ben-Ner and Jones 1995; Bryson and Freeman 2007; Oxera 2007a, 2007b; Jones, Kalmi and Kato 2010; Kruse, Blasi and Freeman 2010; Poutsma and Bramm 2011 among others).

Kruse (2002), summarising 31 studies on employee attitudes and behaviour under employee ownership, found that most of these studies showed a higher commitment to and identification with the company, with others showing mixed results ranging from favourable to neutral with regard to job satisfaction, motivation and other behavioural measures. More recently, Guedri and Hollandts (2008) investigated listed French firms and found that the positive impact of employee ownership on company performance is related to positive changes in attitudinal behaviour of employees, e.g., an increase in motivation, involvement and job satisfaction, and a reduction in turnover and absenteeism rates.

A meta analysis of 48 early studies of the impact of different forms of EFP by Doucouliagos (1995) found that EFP was positively associated with productivity. Another 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 these scheme had led to an average rise in productivity of 4 per cent, return on equity (ROE) of 14 per cent, return on assets (ROA) of 12 per cent and profit margins of 11 per cent. Later on, Kaarsemaker (2006), also reviewing some 70 papers found that 48 of the 70 studies had shown that EFP had a positive effect on firm performance, while only 6 studies had found negative



effects. Another survey of the literature on employee-owned firms by Freeman (2007) supports the earlier survey results that firms with EFP schemes were more productive and profitable, survive longer, and result in better shareholder returns.

b) Recruitment and retention, absenteeism and labour turnover

Financial participation can also help recruit and retain qualified employees, especially in SMEs (IAFP 2010). SMEs typically lack the well developed and extensive internal labour force found in many large firms, thus opportunities for promotion can be limited or non-existent. The challenge for SMEs is to attract and retain experienced managers and other personnel (Postlethwaite 2004). If the company is listed on the stock market, a successful firm may offer shares to its employees as an incentive to retain existing employees and attract new ones. This is especially true of firms where the employees' know-how is important, e.g., small and medium-sized high technology firms. In this case, employee share ownership can bridge the gap between the need for greater employee effort and commitment on the one hand, and potential labour turnover on the other. EFP can help retain the most valuable employees by "locking" them into the firm through deferred reward schemes (Sen Gupta, Whitfield and McNabb 2007; Marsden 1999; Morris, Bakan and Wood 2006) or by linking the reward to the business cycle (share values tend to be highest when alternative employment opportunities are greatest) (Oyer 2004).

Another benefit arising from EFP is reduced absenteeism and labour turnover (Robinson and Zhang 2005). Wilson and Peel (1991) find that firms with financial participation schemes had significantly lower average absenteeism and quit rates than firms without such schemes. A lower turnover rate, of course, reduces recruitment and training costs and improves firm competitiveness. The change from a fixed-wage system, where rewards are independent of efforts expended, to a system that provides an income more directly linked to enterprise performance anticipates greater employee commitment, lower absenteeism and labour turnover, greater investments in company-specific human capital and reduced conflict within the company (Festing et al. 1999).

c) Source of income after retirement

One of the most important benefits of EFP schemes (particularly ESO) for employees is savings for future. It is well known that the European population is aging and that governments are finding it increasingly more difficult to maintain pensions at current levels. EFP schemes can be a source of additional income, which could be put aside in a savings scheme, to increase the income available for retirement. EFP schemes may be embedded in retirement plans or investment funds in which not only employee shares but also other contributions from profit-sharing schemes can be invested. Deferred profit-sharing schemes can be allocated to savings accounts with certain retention periods or can be invested in assets, including shares in the employer company. In the U.S., for example, 401(k) plans¹¹⁰ are the most popular type of defined contribution retirement plans (IAFP 2010).

¹¹⁰ A 401(k) plan is a qualified profit-sharing plan allowing employees to contribute salary deferral (salary reduction) contributions on a post-tax and/or pre-tax basis often involving employer's matching contri-



d) Wage flexibility and stability of employment

In addition to productivity enhancement, firms may adopt EFP schemes to introduce greater wage flexibility in the employees' remuneration package and to help stabilise employment (Weitzman 1984; Harbaugh 2005). The importance of remuneration flexibility becomes clear in times of recession (e.g., the recent financial crisis). When confronted with unanticipated aggregate demand or aggregate supply shocks, compensation would respond more quickly under profit sharing than under a fixed wage system set by long-term contracts. A firm utilising profit sharing would exhibit less employment variability than a firm with fixed wages (Weitzman 1984). In a survey of over 40,000 employees in 14 firms and 323 worksites, conducted as part of NBER's "Shared Capitalism" project in the U.S., Kruse, Blasi and Freeman (2010) found that EFP schemes are associated with higher job security.¹¹¹

Empirical studies on the relationship between EFP and employment have generally arrived at positive results. Kruse (1991), using a sample of 3,000 firms, found that the decline in employment in profit-sharing firms during business downturns was lower than in other firms. Similarly, Kruse (1998) reviewed 19 studies, which examined Weitzman's predictions that profit sharing would stabilise company employment levels. The majority of these found that when making employment decisions, firms view profit sharing differently from fixed wages. Of the 12 studies directed to employment stability, six found greater employment stability under profit sharing, four showed greater stability in some but not all the firms in the sample, and two showed little or no difference. Blair, Kruse and Blasi (2000) found higher job stability in U.S. companies with broad-based employee ownership plans as compared to firms with no employee ownership plan in the same industries. Similar results have been reported for UK employee owned firms by Lampel, Bhalla, and Pushkar (2010).

e) Economic resilience

According to Lampel, Bhalla, and Pushkar (2010), employee-owned firms not only demonstrate greater employment stability but also greater resilience compared to investor owned firms. The authors maintain that employee owned firms focus on long term operations, avoiding excessive risk taking and excessive risk aversion in different phases of the business cycle which is typical of the short term focus of non-employee-owned firms. Using sales growth, they show that for a sample of UK companies, employee-owned firms had a more stable and less fluctuating sales growth in comparison with their non-employee owned competitors. They experienced a slightly slower average annual growth rate during the expansion phase (10.04 per cent vs 12.10 per cent) and a relatively similar but much larger rate of growth during the slow-down phase (11.08 per cent vs 0.61 per cent). The authors' view about the long-term focus of employee-owned firms was corroborated by the submissions of these firms to the Nuttall Review of employee ownership set up by the UK Government (Nuttall, 2012, paragraph 2.15, p.25). Earlier, in a study involving 27 employee-owned firms (with em-

butions; the allocated sums are generally invested over a specific period of time until they can be withdrawn.

¹¹¹ For details of this Study, see Kruse, Blasi and Freeman (2010). The companies had a variety of EFP schemes. About 90 per cent of the workers surveyed are in five Fortune 500 multinational firms where employee ownership accounts for a minority stake of the firm's equity, workers do not elect board representatives, and employee ownership is combined with cash profit sharing or broad-based stock options.



ployees owning more than 20 per cent of shares) and 45 investor-owned firms, Blair, Kruse, and Blasi (2000) had shown that employee-owned firms were less likely to be taken over. In another study of U.S. firms with share option plans for employees, Kramer (2008) had found that the chances of survival of employee-owned firms are higher than those of non-employee owned firms.

f) Business succession

As the Commission Communication (2006)¹¹² emphasises, with the ageing of Europe's population, "one-third of EU entrepreneurs, mainly those managing family enterprises, will withdraw within the next ten years". This portends an enormous increase in business transfer activity, which in 2002 was estimated to potentially affect up to 690,000 SMEs and 2.8 million jobs every year.¹¹³ More recent figures from 2011 anticipate that each year some 450,000 firms in the EU look for successors, affecting up to 2 million employees. Every year, there is a risk of losing approximately 150,000 companies and 600,000 jobs due to inefficient business transfers.¹¹⁴ It is anticipated that as a consequence of the new forms of business finance now coming into use, transfers within the family will decrease, while sales to outside buyers (such as private equity funds¹¹⁵) will rise. This process is likely to threaten the successful regional structure of European (family-owned) businesses (Deutsche Bank Research 2007 p. 1) and thus will profoundly affect the European Union itself. The Commission, the European Parliament and the European Economic and Social Committee (EESC) have highlighted employee buyouts as one possible solution to the business succession problem of European SMEs. Appropriately designed long-term EFP models could also contribute to the retention of these small firms and strengthening regional economies and employment throughout the EU.

The EESC emphasises the potential usefulness of Employee Stock Ownership Plans (ESOP models), which have already demonstrated their effectiveness (see best practice cases in Annex 3). An important characteristic of the ESOP model is that it is especially tailored to the needs of unquoted companies. It encourages business owners to sell their enterprise to their own employees instead of a third party and facilitates the gradual acquisition of up to 100 per cent of company stock by employees. Employees do not have to invest their savings, since the employee stock purchase generally is financed by a profit share paid in addition to salary. Thus, employees do not incur personal debt or additional risk.

The ESOP creates a market for the shares of retiring shareholders at a price acceptable to the owner—a market, which otherwise might not exist. At the same time, when

¹¹² Implementing the Lisbon Community Programme for Growth and Jobs, on the Transfer of Businesses – Continuity through a new beginning, from 14 March 2006 COM(2006)117 final.

¹¹³ 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 was estimated for Germany around 354,000 over the next five years (Institut für Mittelstandsforschung Bonn (IfM) 2005), for France around 600,000 for the next decade (Vilain, 2004).

¹¹⁴ See European Commission 2011, Business Dynamics: Start-ups, Business Transfers and Bankruptcy, final report for DG Enterprise, p. 95, 96 and 100.

¹¹⁵ The volume of private equity transactions in Europe has been rising over the last years with EUR 126 billion in 2005 and a new peak of EUR 178 billion in 2007 (Incisive Financial Publishing, 2007).



a change of control is appropriate, ownership can be transferred to motivated employees who have a vital interest in the firm's long-term success.

2. Potential drawbacks of EFP schemes

Empirical studies, showing the positive effects of various forms of EFP on firm performance discussed above, also suggest that EFP may be associated with problems for both firms and workers. These issues are investigated in the literature, which is summarised below.

a) Free riding

The most often cited criticism of employee participation in the literature is the free-rider problem, which is likely to be present in any group-incentive system. In EFP schemes, workers receive only a small fraction of any additional income resulting from their own increased efforts, but gain benefits from the collective effort. This may then result in a temptation for free riding, shirking and on-the-job leisure (Kruse 1996). But EFP and other forms of employee involvement can help foster greater trust, co-operation, and identification with the firm, which reduce the incidence of free riding. Employees in firms with EFP schemes also have an incentive to monitor their colleagues—as well as managers—thus further minimising the free-rider problem (Park, Kruse and Sesil 2004). When individual pay is computed on the basis of the aggregate performance of a group, everyone has an incentive to monitor co-workers to avoid decreases in output (Bryson et al. 2011).

Empirical studies previously mentioned, showing the positive effects of various forms of EFP on firm performance, suggest that firms and workers have developed mechanisms to reduce free riding which enable EFP schemes to succeed. Among such mechanisms are mutual monitoring, peer pressure and social norms (Falk and Ichino 2006; Mas and Moretti 2009). Pendleton et al. (2001) found no evidence of any free-rider effect in companies with 250 or more employees. It is expected that free riding is less common in smaller companies, due to more effective peer monitoring. Furthermore, the free-rider problem is one reason why the literature emphasises the importance of participation in decision-making and complementary human resource management practices to accompany EFP in order for employees to develop co-operation and an ownership culture (Kaarsmaker, Pendleton and Poutsma 2009).

b) Interference with management

Other authors have argued that the financial participation of employees, particularly employee ownership, can adversely affect the performance of enterprises because managers might find it harder to exercise their authority when people they manage are also partial owners of the firm. Jensen and Meckling (1979) have emphasised the impact of the involvement of ill-informed employees on decision-making and their interference with the work of the management. Hansmann (1990 and 1993) has drawn attention to the cost of "collective governance" and the impact of conflict between heterogeneous groups of employees (young and old, skilled and unskilled, etc.) with different interests and objectives on company performance. However, in practice, the potential conflict with the management autonomy might be less problematic if employees consider that their company has to compete with other firms in the market and that any interference in the work of management may affect the company performance, and its position in the market, adversely, resulting in losses to themselves.



Some of these problems can also be avoided if employee share ownership is organised through an intermediary institution—such as an ESOP—without direct employee involvement in the decision-making process.

c) Risk for employees

From the employees' standpoint, one of the oldest commonly cited drawbacks to employee ownership is that holding shares of their own company is a poor portfolio decision, involving the "double risk" of becoming unemployed and losing their savings—which are invested in the company—if the company experiences financial difficulties. On the other hand, employees and their representatives are likely to know the firm they work for well, which enables them to assess the investment opportunity better than would otherwise be the case, e.g., on the stock markets. Nevertheless, as employees may not be able to sell their shares at once¹¹⁶, the problem of risk remains. In reality, however, shares of the company form only a small part of an employee's savings, and EFP schemes do not prevent employees from having other forms of saving (such as home ownership).

The already mentioned NBER study of employees' attitudes towards EFP, shows that this issue—and more broadly speaking the issue of risk aversion—is not a barrier to EFP (Kruse, Blasi and Park 2008). Using the same dataset, Kruse, Blasi and Freeman (2010) found that employees' attitudes to EFP schemes and preferences for variable pay depend on how secure they feel about the future.¹¹⁷ The more secure employees feel, the more willing they are to participate in EFP schemes. Furthermore, employees feel secure when there is a greater sense of empowerment and involvement in the company's activities.

¹¹⁶ This is also an obvious disadvantage of deferred profit-sharing plans with sometimes onerous restriction on withdrawals. Most schemes impose retention periods before benefits become available to employees.

¹¹⁷ They developed an "index of economic insecurity", which consists of three components: the size of each worker's fixed annual pay, the ratio of each worker's wealth (minus debt) to his/her fixed annual pay, and the extent to which each worker perceives that he/she is competitively paid by his/her firm.



ANNEX 3 – Examples of best-practice models for ESO

1. ESO in micro-enterprises – Spanish *Sociedades Laborales*

The Spanish concept of ***Sociedades Laborales (Workers' Companies)*** is the only ESO plan across the EU implemented at large scale in small and smallest companies, which makes it of particular interest for policy making.

a) Legal framework

A *Sociedad Laboral (SL)* is a specific form of corporation in Spain, with no exact parallel in other countries. It is an inexpensive form of incorporation, majority-owned by its permanent employees: Permanent workers must own more than 50 per cent of company shares while no single owner may own more than one third (33 per cent) of the company's stock (except for public organisations, which may own up to 49 per cent). Unlike co-operatives, it is based on share ownership and is permitted to utilise non-employee capital. Providing stable employment for their worker-owners, who control the company's directive bodies, they may be founded as SLs, or conventional companies may convert to this form.

Sociedades Laborales are governed by the Law on Workers' Companies of 1986, substantially amended in 1997 (Law 4/1997, of 24 March).¹¹⁸ They can be founded as a Worker-owned Company or a conventional firm can qualify as a Worker-owned Company when fulfilling certain prerequisites. There are two forms: *Sociedad Anónima Laboral (SAL)* with minimum equity capital of EUR 60,000 and *Sociedad Limitada Laboral (SLL)* with minimum equity capital of EUR 3,000. Permanent workers must own more than 50 per cent 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 per cent). The number of hours worked by permanent workers who are not simultaneously owners of the company cannot exceed 15 per cent of the total hours worked by worker-owners (25 per cent when the SL has less than 25 worker-owners).

The articles of association must contain regulations on transfer of shares when an employee shareholder leaves the company with an established order of preference to sell his or her shares. Firstly, these shares must be offered to permanent workers who are not worker-owners (to promote maintaining broad worker ownership). Secondly, shares must be offered to existing worker-owners. Thirdly, shares must be offered to owners who do not work in the organization. Finally, the company itself can acquire shares.

Each Workers' Company must establish a special fund for the compensation of losses amounting to 20 per cent of its profits (the compulsory 10 per cent for normal companies plus an additional 10 per cent for Workers' Companies). The remaining 80 per cent of the profits can be distributed between the members of the workers' company

¹¹⁸ Legislation applicable to SL in Spain can be found, among others, in the web page of The *Observatorio Español de la Economía Social* <http://www.observatorioeconomiasocial.es/area-juridica-sociedades-laborales.php?PHPSESSID=f1163852650a6c4a09a960b8d1ae99e6>.



or attributed to a voluntary reserve to increase the company's own capital and thus the value of its shares. If the compensation fund amounts to 25 per cent of annual profits the company benefits from a 99 per cent tax exemption from capital transfer tax (this affects primarily acquisitions of real estate by the workers' company). Unemployed persons that wish to join a Workers' Company have the possibility to receive their public unemployment benefits as a single lump-sum payment (instead of as monthly payments for the duration of unemployment) conditional on contributing the sums to the capital of the Workers' Company.

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 per cent 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 per cent tax reduction when the Workers' Company 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.

b) Incidence

In 2013, there were a total of 11,557 Workers' Companies providing 63,931 jobs. In the first trimester of 2014 employment in SL has increased by 1,4 per cent, which finally reversed the negative tendency since 2009.¹¹⁹ Andalusia, Madrid and the Basque Country have been the regions where this increase has been highest. In the last trimester, of 2013 the rhythm of SL creation has doubled as compared to 2012.¹²⁰ Furthermore, 78 per cent of the employment is permanent and the decrease of employment has been 8.5 per cent less compared to that in other entities.¹²¹ In 2012 (last year available), 79,61 per cent of the total SL members (i.e., workers or investors) were workers members.

Clearly, the preferred legal form is the Sociedad Limitada Laboral or SLL (Limited Liability Worker-Owned Company), employing an average of 4.6 workers. Between 1999 and 2011, the number of workers in SLLs increased by 161 per cent. The general trend followed by SLs mimics that of mercantile companies since they are basically economic equals. They face the same problems as other SMEs, mainly to become suf-

¹¹⁹ In general, compared to conventional firms, SLs have grown in greater numbers (see CONFESAL "Report regarding changes to the Law governing Sociedades Laborales" from October 2006, p. 6), yet recently their number has decreased (as compared to approx. 20,000 firms, employing 125,000 workers in 2007) though as has the number of their conventional competitors due to the general economic situation.

¹²⁰ <http://www.confesal.com/home/index.php/component/jnews/mailling/view/listid-0/maillingid-111/listtype-1/Itemid-191.html>. Other sources for statistical data: *Instituto Nacional de Estadística*: www.ine.es; *Ministerio de Empleo y Seguridad Social*: http://www.empleo.gob.es/es/sec_trabajo/autonomos/economia-soc/EconomiaSocial/estadisticas/index.htm; *Observatorio de Economía Social en España*: <http://www.observatorioeconomiasocial.es/>; *Confederación Empresarial Española de la Economía Social*: <http://www.cepes.es/>).

¹²¹ http://www.confesal.com/home/index.php?option=com_content&view=article&id=389:2014-05-22-18-32-20&catid=36:noticias-economia-social&Itemid=196.



ficiently competitive. Compared to conventional companies, SLs have grown in greater numbers, yet the net increase is negative. However, in many cases, they have converted to conventional companies (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 per cent. 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 per cent of which only 8 have closed down.

Despite the lack of sound fiscal incentives, SLs have flourished over the past 15 years and have demonstrated their ability to generate stable employment and endure over time. The survival rates are slightly higher than those of conventional companies: More than 50 per cent of SLs survive the first five years. The reason for their success is that since 1985, unemployed persons can capitalise their unemployment benefits as a lump sum instead of monthly payments in order to start a new Workers’ Company or to recapitalise an existing one. However, the number of start-ups subsequently declined when this benefit was extended to self-employed workers. Organisations such as ASLE (Agrupación empresarial de sociedades laborales de Euskadi) and CONFESAL (Confederación Empresarial de Sociedades Laborales de España) have played a key role in the support and promotion of Workers’ Companies in Spain.

2. Re-launching a share economy – UK

Successive United Kingdom Governments have committed themselves to supporting employee financial participation 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. 2011 the Office of Tax Simplification (OTS) started reviews into the complexities of ESPs, both tax advantaged and non-tax advantaged. This work of the OTS has enabled the Government to undertake the most significant package of reform to the tax rules for ESPs for many years. These reforms have simplified the tax rules and made it easier for private companies to introduce tax advantaged ESPs.

In 2012, the Government commissioned the Nuttall Review of Employee Ownership that provided a comprehensive appraisal of the situation of employee share ownership in the country and proposed a wide range of initiatives to promote, in particular, the employee ownership business model in the British economy (Nuttall Review 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 reforms¹²². Amongst other initiatives, in October 2012 the Government adopted an Action Plan on Employee Ownership and included into the Budget 2013 the provision of GBP 50m annually 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 ESPs and in 2014 introduced tax exemptions for “indirect” ownership of shares on behalf of employees, through EOTs. This is a significant change in emphasis from only

¹²² Nuttall Review of Employee Ownership – a guide to source materials <http://tinyurl.com/FieldfisherEO18>.



supporting the ownership of shares directly by employees and means there are now tax advantaged arrangements for all the main forms of employee share ownership in operation in the United Kingdom.¹²³

a) Legal framework

All employee financial participation 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; 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. In recent years, all tax advantaged employee financial participation plans have been ESPs. This changed in 2014, as a result of the findings of the Nuttall Review, with the introduction of an income tax exemption for certain qualifying cash bonuses paid by companies owned by EOTs.

Recent Governments, including the Coalition Government formed in 2010, have promoted the concept of what is now 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 employee share ownership. The Mutuals Information Service managed by the Cabinet Office’s mutuals team, encourages and supports the establishment of public service mutual.¹²⁴ By July 2014 there were 100 public service mutual.¹²⁵

b) Reform of the legal framework for ESO 2012-14 – focus tax incentives

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). SIP and SRSO are broad-based “all-employee” plans, while CSOP and EMI may be restricted to selected employees. Some forms of non-tax advantaged plans are quite widespread: Long-Term Incentive Plans (LTIPs), Restricted Shares Plans and Unapproved (i.e., non-tax advantaged) Option Plans. LTIP and Restricted Shares Plans are predominantly confined to executives.

¹²³ The United Kingdom introduced an additional tax advantaged arrangement in 2013. “Employee Shareholder” is an employment status with different employment rights to employees. In exchange for giving up certain employment law rights an individual must be awarded at least GBP 2,000 of shares in their employer or parent company. There is a capital gains tax exemption when these Employee Shareholder shares are sold. Only a very small number of the responses to the Government consultation on implementing this proposal welcomed the scheme and this “shares for rights” scheme has been widely criticised.

¹²⁴ Mutuals Information Service <https://www.gov.uk/government/groups/mutuals-information-service>.

¹²⁵ Cabinet Office Press Release (23 July 2014) <https://www.gov.uk/government/news/cabinet-office-mutuals-reach-century-success>.



Unapproved Option Plans may be used to “top-up” awards under a tax advantaged plan. The following section will cover only rules concerning these tax advantaged plans. In addition, there is the Employee Shareholder status tax advantaged arrangement.

The past two years have seen some crucial legislative reform in the field of employee share ownership 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. (The Nuttall Review 2013)

Further, the Government has 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 (No. 2) Bill 2013/14 Sch 33 Pt 1) and is unlimited in amount. Instead of a trade sale or other conventional forms of exit, owners may now opt for an EOT buyout as their succession solution. There is also from 1 October 2014 (Finance (No. 2) Bill 2013/14 Sch 33 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 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 initial indications are that 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 par-



ticipators. 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 has currently deferred action on this idea.¹²⁶

c) Existing ESO plans in detail

Apart from this legislation several tax-advantaged ESPs operate in the United Kingdom to promote direct employee ownership:

Tax-advantaged Share Plan – *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 per cent 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 the em-

¹²⁶ <http://www.fieldfisher.com/publications/2014/06/the-employee-ownership-business-model#sthash.vXBk0AIB.dpbs>.



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 partnership shares are acquired. The holding period is the same for matching shares as for free shares.

Up to GBP 1,500 of 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*, introduced by the Finance Act 1980, is currently the most popular plan judged by the number of participants. 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 500) by deduction from after-tax remuneration for 3 or 5 years (a 7-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 always includes 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. The share exercise price can be up to 20 per cent 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 bonus in cash. These requirements fulfilled, the employee is not liable for personal income tax at grant or exercise. However, he 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 value¹²⁷ 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 ten years after grant.¹²⁸ These requirements fulfilled, the employee is not liable for personal income tax at grant or exercise.

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 em-

¹²⁷ The value is equal to the number of shares multiplied by the exercise price.

¹²⁸ Before 2003, an additional requirement had to be fulfilled: the exercise period had to be not less than 3 years after any previous tax-free exercise. This requirement was abolished.



ployees. It applies to companies with gross assets of less than GBP 30 million.¹²⁹ The plan can be selective. Approval of the HM Revenue & Customs is not required, but it must be notified of each stock option grant under EMI within 92 days. Options granted must not exceed a total market value of GBP 250,000 per employee (including any amount granted under a CSOP) or GBP 3 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. However, they must pay capital gains tax at the sale of shares.

d) Incidence

Profit-sharing plans first appeared in the UK at the end of the 19th century, while employee share plans (ESPs) were introduced in the 1950s. These plans, however, remained small in number until the introduction of tax incentives in 1978. By 2012/2013 10,160 companies maintained HM Revenue & Customs tax advantaged employee financial participation plans.¹³⁰ Following the abolition, from 2000, of a tax-advantaged cash profit sharing plan (Profit-Related Pay Scheme), the remaining tax advantaged plans were all share-based until the introduction of an income tax exemption for certain qualifying bonuses paid by companies owned by employee-ownership trusts (EOTs) in 2014.

Four tax-advantaged ESPs operated in the 2012/2013 tax year and their breakdown is as follows: Share Incentive Plans (SIPs) were operated by 820 companies; Savings-Related Share Option Schemes (SRSOs) (also known as Sharesave or SAYE Schemes) by 460 companies; Company Share Option Plans (CSOPs) by 1,110 companies, and Enterprise Management Incentives (EMI) share option arrangements by 8,590 companies. A substantial decline in the number of SAYE Schemes (from 1,110 to 460) and CSOPs (from 4,270 to 1,110) can be seen since 2001, but the number of EMI arrangements has risen rapidly (from 870 to 8,590) while the number of SIPs has remained stable over recent years.¹³¹

Many companies combine one or more tax advantaged plans with non-tax advantaged plans (no statistics are available). 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.

According to the European Company Survey, a survey of more than 27,000 human resource executives across Europe conducted in 2013, 8.3 per cent of companies in the United Kingdom offer their employees stock-ownership schemes and 26.5 per cent offer some form of profit sharing. The European Working Conditions Survey, a regular household survey which in 2010 covered 43,816 randomly selected individuals in 34 countries, shows that 5.16 per cent of British employees were taking part in employee share ownership schemes while 12.78 per cent of them were participating in profit-sharing.

¹²⁹ Originally, the volume of assets was GBP 15 million (until 2003), but it was considered necessary to substantially increase it.

¹³⁰ Employee Share Schemes Statistics for 2012/13, HM Revenue & Customs, United Kingdom, Released 26 June 2014, p. 7.

¹³¹ Employee Share Schemes Statistics for 2012/13, HM Revenue & Customs, United Kingdom, Released 26 June 2014, p. 8.



3. Focus: ESO via intermediary entities and trustee plans

There is a European trend towards using intermediary entities as a vehicle for share transfer in employee share ownership plans (ESOP schemes) because they limit risk of investment for employee shareholders, allow to implement leveraged investment and to pool voting rights after the shares are acquired. On the macroeconomic level, ESOPs support productivity and growth as well as strategic stabilisation of ownership contributing to the aims of the Europe 2020 strategy.

a) Employee Stock Ownership Plans as a vehicle for business succession

A full or partial Employee Stock Ownership Plan (ESOP) buyout provides an ideal vehicle to facilitate transitions in ownership and management of **closely held companies**. An ESOP usually involves a loan to an employee benefit trust, which acquires company stock and allocates it through periodic contributions to each employee's ESOP account. The loan is serviced by payments from the company out of company profits and out of dividends paid on the stock held by the ESOP. This field of action has been highlighted as one of the main objectives of the Council Recommendation of 7 December 1994 and recently by the Commission, explicitly stressing the importance of ownership transfers to employees as a specific measure for facilitating business succession in SMEs.

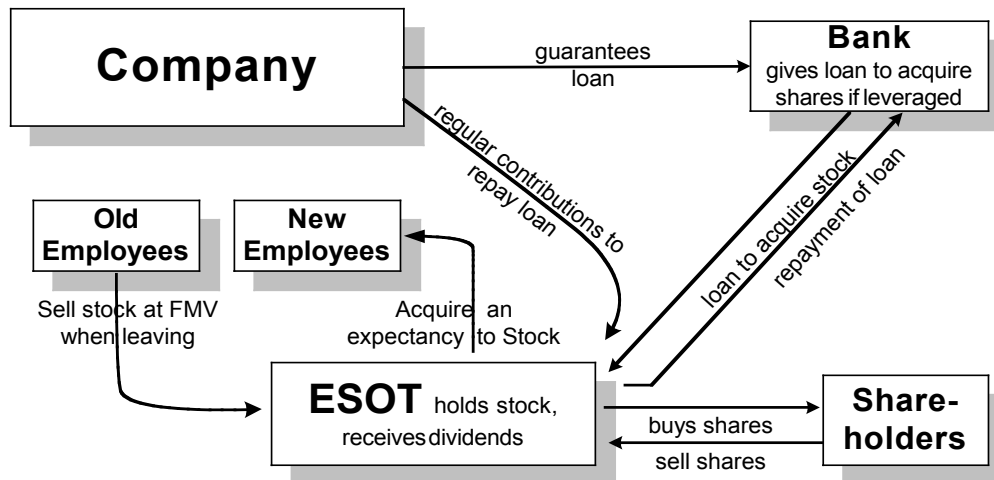
Creating a market for retiring shareholders' shares

ESOPs may easily buyout one or more shareholders while permitting other shareholders to retain their equity position. Furthermore, 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. In this way the ESOP creates a market for retiring shareholders' shares at a price acceptable to the owner—a market which otherwise might not exist. At the same time, when a change of control is appropriate, ownership is transferred to motivated employees who have a vital interest in the company's long-term success.

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. **As a trustee plan**, the ESOP is designed to pool employee's voting rights. The trustee exercises the voting rights while the employees are the financial beneficiaries of the trust. Of course, most ESOPs make some arrangement for the presence of employee representatives on the plan committee.

While share ownership generally involves additional risk for employees, the ESOP avoids this consequence. Although employees, as in other share ownership schemes, are encouraged to allot part of their wealth into the shares of their own companies rather than those of other companies, resulting in concentrated rather than diversified risk, there is this fundamental difference: ESOP debt is funded by appropriately timed contributions from the company to an employee trust (ESOT). Thus the scheme provides an additional benefit to basic wages. The employee's salary remains unaffected.

Figure 18. ESOP as a vehicle for business succession



Source: Lowitzsch et al. 2008.

Furthermore, ESOPs make employees more motivated and productive while at the same time making enterprises more competitive.¹³² Finally, there is an additional advantage to the company: shares are not sold to outsiders; thus there is no risk of loss of control and the company remains local. As such ESOPs could **strengthen bonds between enterprise and community**, while keeping jobs local and more wage income spent at home.

Facilitating SME lending to finance business successions in SMEs can increase ESO. 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 (buy-out) of established mature companies. 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 the experience from the U.S.—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. A related SME loan facility could be embedded, for example in the EIB's JEREMY programme.

¹³² For a recent, comprehensive overview of the positive economic evidence (esp. for ESOPs) see Blasi, Kruse and Bernstein (2003); they find an average increase of productivity level by about 4 per cent, of total shareholder returns by about 2 per cent and of profit levels by about 14 per cent compared to firms without PEPPER schemes.



Incidence of ESOPs in the U.S.

A recently completed study by the National Center for Employee Ownership found that as of the end of 2011, the number of ESOP and ESOP-like plans in the U.S. was 8,926. These plans covered 14.5 million participants and held USD 994.8 billion in assets:

Table 28. Number of U.S. ESOPs and ESOP-like plans in 2011

Type of Plan	No of Plans	No of Participants	Employer Securities*	Total for plans*
Literal ESOPs	6,941	13.5m	214.4bn	942.5bn
<i>Large public-company ESOPs¹³³</i>	68	6.7m	90.3bn	548.9bn
<i>All other large ESOPs (>100 participants)</i>	2,832	6.7m	114.9 bn	382.0bn
<i>Small ESOPs (<100 participants)</i>	4,041	165,000	9.2 bn	11.6 bn
ESOP-like plans	1,985	1.2m	18.6bn	52.8bn
Total	8,926	14.7m	233bn	995.3bn

Source: National Center for Employee Ownership 2011; * columns 4 and 5 in USD.

Other EFP plans are less widely diffused. According to the Annual Survey of Profit Sharing and 401(k) Plans conducted by the Plan Sponsor Council of America in 2011, there are 686 IRS qualified profit sharing plan in existence. These plans cover 10.3 million participants and hold USD 769 billion in plan assets.

Furthermore, it seems that EFP plans are becoming more and more important with regards to retirement. According to the U.S. Pension Benefit Guarantee Corporation, as of January 23, 2013, the number of defined benefit pension plans covered by the Pension Benefit Guarantee Corporation's single-employer insurance program fell to an all-time low of 22,700, which is about 50 per cent of what it was in 1977. In addition, there were approximately 1,400 multi-employer plans in existence as of January 12, 2013.

b) Employee buyout mutual funds in France – the “FCPE de reprise”

In 2006, the so-called “FCPE de reprise” (employee buyout mutual fund) was introduced into the French system of EFP in order to allow employees to take over their employer company under preferential conditions.

In France, employee share ownership is mostly acquired by means of profit-sharing plans as part of the overall system of EFP composed of the following major plans: “in-téressement” profit sharing, “participation” profit sharing, short-term savings plans

¹³³ Large public company plans are defined as ESOP plans with more than USD 3.1 billion in total assets and not privately held. This definition is based on the DOL definition of “mega plans,” as adjusted for inflation.



(Plan d'épargne d'entreprise—PEE) and long-term savings plans (Plan d'épargne-retraite collectif—PERCO). 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—FCPE), 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"—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"—all assets belong to employees planning to participate in a leveraged buyout.

The new business succession vehicle is a specific form of FCPE to facilitate business succession in non-quoted SMEs: The **"FCPE de reprise" is invested in unlisted securities** with the aim to acquire shares of the employer company or of a holding company set up in view of its acquisition reserved to the employees. It can be invested up to 95 per cent in shares of the purchased company vs 67 per cent in the case of the regular non-diversified FCPE. Thus, the liquidity reserve is limited to five per cent. The blocking period of sums allocated to the fund is until the completion of the takeover of the company but not less than five years. There are three cases of early release, i.e., disability, death and retirement, to ensure longevity and stability, in order to strengthen it as a business succession device and to reassure partners of this undertaking. A holding company is created to carry the debt needed to buy out the company. At least 15 employees—or one-third of employees in firms with fewer 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 is offered to all employees.

In essence, the "FCPE de reprise" as the new French vehicle—both, with regards to legal structure as well as financing mechanism—is very similar to its Anglo-American cousin, the Employee Stock Ownership Plan (ESOP). Both are share ownership schemes where the acquisition of shares via a trusted fund (as intermediary entity) is financed by a profit share paid in addition to wages. Both may use borrowed funds on a leveraged basis, and both have the capacity to create substantial employee ownership and can be used to finance ownership succession plans. Just as the ESOP, which is primarily popular as a business succession vehicle for SMEs¹³⁴, 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.

However, in 2012 only a couple of "FCPE de reprise" were reported. Given the described advantages and the long tradition of EFP in France, the scarce incidence of is surprising. Large asset management companies are more interested in private equity transactions and the management of diversified employee savings plans, which is probably one of the main reasons why this device has not been often implemented yet. However, this essentially appears to be a problem of the limited knowledge of its existence among professionals in the concerned financial sector.

¹³⁴ As of 2010, there were approximately 11,500 ESOPs in the U.S., covering approximately ten million employees, most of them originating in a business succession transaction; for details see 3.2.2. above.



c) Employee ownership emerging from privatisation – Hungarian ESOPs

In the course of transition, instruments for broad individual and collective participation of employees have been introduced. During the first stage of privatisation, the support of social partners and political parties, on the one hand, and the actual development of employee ownership, on the other, seemed to be promising. However, on the long run, the attempt of policy makers to turn a considerable proportion of Hungarians into owners, i.e., into small capitalists, and to establish an economic balance did not bring the desired outcome. Since then only about 300 ESOPs were established in total and less than one quarter is still functioning today.

The legal framework for the Hungarian ESOPs, which already existed in practice, was laid down in Law XLIV of 1992 on the Employee Share Ownership Programme. Deriving from the U.S. ESOP model, the Hungarian ESOP structure simulates the Anglo-American trust. It served a dual purpose: It transformed employees into owners of state-owned companies while accelerating the privatisation process. The legal framework of the ESOP today largely retains its original form, though it has been amended several times, most recently in 2003. The ESOP Act enabled employees to acquire state property under preferential conditions, which were significantly limited by Law XXXIX of 1995 on Realisation of Entrepreneurial Property in State Ownership providing (i) credit facilities of up to 50 per cent of the value of the respective property to be purchased, with a ceiling of HUF 50 million; (ii) a discount corresponding to 150 per cent of an annual minimum wage. The total equity purchased by an ESOP was not to exceed 15 per cent of the nominal value of the company. The legal incentives are based on a governmental decree of 1991 on "Egzisztencia" credit and the amendments of the ESOP Act of 1992 still in force. The fact that no ESOP loans have been granted since 1998, although the decree is still in force, shows that these conditions need revision, in particular abolishing the link of preferential credit conditions to the nearly terminated privatisation process.

After 1996, one year after the amendment of the ESOP Act, the absolute number of ESOP organisations declined continuously. Following 1998, no more ESOPs have been established, and from 1996 on the number of ESOPs shrunk until 2010 to approximately one-fourth, which is also the lowest point.

The primary cause for the decrease of Hungarian ESOPs was the lack of commitment to this idea and the lack of sufficient far-sightedness of political institutions. This is even more regretful, as companies in majority ownership of employees did not perform worse than other private economic entities. The Hungarian ESOP was a premature model, because policy makers did not change the provisions early enough and thus permitted the abuse of the original concept behind it. For these reasons, ESOP schemes were not as successful as they could have been in the long run, as they lacked the necessary sustainable provisions in the post-privatisation era. Furthermore, the time window of three to four years, when SMEs were privatised, was a period too short to be able to measure the real outcomes of ESOPs and to make policy amendments to foster employee ownership.

d) Strategic shareholding – employee shareholder's foundations in Austria

By the end of the 1990s, the Austrian government had become more supportive of employee financial participation. 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 compa-



nies (e.g., voestalpine AG, Vienna Airport, Saline AG, AMAG, AUA, OMV). Both the trade unions and employers' associations strongly support employee financial participation and co-operate 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 2014¹³⁵ while the latter is a project associated with the Christian Democratic faction.

Legal framework for leveraged share ownership plans

The Law on Capital Market Offensive of 5 January 2001 amended the Austrian Income Tax Law (ITL) 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 of the leveraged employee share ownership plans. Whereas many large privatised enterprises use a private foundation under the Law on Private Foundations as an intermediary company (e.g., voestalpine AG, Saline AG, AMAG), some utilise a new form "employee participation foundation" (Belegschaftsbeteiligungsstiftung) defined in § 4, para. 11, no. 1(c), ITL (e.g., Vienna Airport).¹³⁶

The "employee participation foundation" holds and purchases the shares, exercises voting rights, and transfers returns to the employees.¹³⁷ 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. A foundation can only be used for shares of domestic companies; the definition of affiliated companies in connection with the foundation was not extended in 2005. The employer company can deduct 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 from the tax base of the corporate income tax.

The foundation distributes the amount of contribution by the employer company over nine financial years, and EUR 1,460 per employee per annum is tax-free (§ 13, para. 1, last sentence CTL). Dividends on shares held by the foundation are also tax exempt (§ 10, para. 1 CTL). However, the capital gains tax is imposed on contributions used for administration. The employee pays a capital gains tax on returns transferred by the foundation of up to EUR 1,460 and full personal income tax, but no social security contributions on the amount in excess thereof.

The example of voestalpine Mitarbeiterbeteiligung Privatstiftung

Voestalpine AG, headquartered in Linz, is principally engaged in the production and treatment of steel. As successful international corporate group with some 500 produc-

¹³⁵ 626/A(E)XXV.GP, EntschlieBungsantrag.

¹³⁶ In the literature it is objected that law restricts the economic activities of "employee participation foundation" so that it cannot create reserves and make investments. In addition, this form cannot be utilised by small companies due to administrative complexity and prohibitive costs, therefore they use business forms as associations (Vereine), trusts (Treuhandschaften) and partnerships under civil law (GbR) instead.

¹³⁷ In some companies, the shares are possessed by employees, whereas the "employee participation foundation" only accumulates and exercises the voting rights. In such cases, the taxation is different.



tion and sales companies in more than 50 countries, it has nearly 48,000 employees (fewer than half in Austria). In conjunction with discussions about full privatisation of the corporate group undertaken at the beginning of 2000, the group's Management Board, in co-operation with employee representatives, developed and later implemented an employee participation scheme, which was unprecedented in Austria. The result is that as of 2014 a large percentage of the group's workforce, together with a small group of former employees currently holds a 13.8 per cent ownership stake, i.e., approximately 23.9 million shares (22.1 million from the scheme for the active and 1.8 million from former employees) held by 23,500 employees which are administered by a private foundation. This foundation, **voestalpine Mitarbeiterbeteiligung Privatstiftung**, representing the employee shareholders, has been the most stable core shareholder for years. Today, it is the second largest shareholder after the Raiffeisenlandesbank Oberösterreich Invest GmbH & Co. (nearly 15 per cent). The chairman of the foundation's governing body represents 13.8 per cent of the voting rights within the General Meeting of Shareholders. In addition, the foundation has had the power to nominate a representative to the Supervisory Board, a power it has had since 2004.

The foundation not only administers the acquired stock, but also exercises all individual voting rights due to a transfer of the ownership's civil claim, governed by integrated trust agreements. This ensures the workforce an important vote within the General Meeting of Shareholders. Individual employees, however, retain their right to receive dividends. Fully utilising tax incentives and savings on social security contributions, shares were allocated to employees up to a maximum limit of EUR 1,460 per year. Employees' shares remain within the foundation for the entire period of employment. The two principal bodies of the foundation are the Management Board and the Advisory Board. The group's Management Board and Works Councils appoint an equal number of representatives. A representative for the employees chairs both bodies and casts the deciding vote in the event of a tie. 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 foundation's Management Board.

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 2014, it distributed a total of net EUR 76 million in dividends (after 25 per cent deduction CTL) to participating employees. Demonstrating confidence in their capital investment, 15 per cent of them (3,450 individuals) have elected to re-invest their dividends. 3,600 individuals already separated from the voestalpine AG, exercise their option to keep their "private shares" (around 1.8 million shares).

4. Employee-owned SMEs – Polish spółki pracownicze

The most significant form of EFP in Poland today is employee ownership. 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)**. Contrary to expectations, ownership structures in these companies have, on the whole, been relatively stable, with non-managerial employees retaining, on average, a significant portion of enterprise shares. Although all current forms of financial participation may also be used in employee



compensation schemes outside of privatisation, there are no tax incentives to encourage this.

Legal framework

Polish 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 (PrivL¹³⁸) since 1997 requires: 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 2 million of equity consisting of two enterprise funds; willingness of management and employees to assume the financial risk involved in undertaking a 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.¹³⁹ The interest payment was set at 30 per cent (75 of 40 per cent) if the central bank refinance rate exceeded 40 per cent; in 1993 this was lowered to 50 per cent of the refinance rate.¹⁴⁰ 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 per cent 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 credit-worthiness 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.¹⁴¹

Incidence

By 2002, the most common way to manage a privatised enterprise was to lease it to an "Employee Company". From 1990 until 2010, 62.4 per cent of enterprises undergoing "direct privatisation" were transferred into private hand through this concept resulting in a total of 1,563 Employee Companies with a population of 852 in the end of 2010 employing a total of 131.5 thousand workers and an average size of 150 employees. (Lowitzsch and Wojtkowski 2014) Between 2000 and 2007 out of 185 leasing

¹³⁸ 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.

¹³⁹ 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).

¹⁴⁰ 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.

¹⁴¹ 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 per cent of the net value of the object of the lease stated in Art. 51 para. 1 No. 3 PrivL to 15 per cent. 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.



agreements with a total value of PLN 658 million 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.¹⁴²

Until the end of 2010, their population decreased to 852 employing a total of 131.5 thousand workers with an average size of 150 employees. It is difficult to obtain information on the reasons for the decline of employee ownership as Employee Companies are not a specific legal form of enterprise but registered together with all other corporations. It was certainly not economic distress: In 2010, Employee Companies have achieved a positive gross profit of PLN 2,322 million (as compared to 2,106.7 million in 2009) with an average gross turnover profitability rate close to five per cent.

Reacting to this decline, in the end of 2009, the Polish Government launched the current programme to support Employee Companies entitled Supporting Privatisation Through Granting Sureties and Guarantees to Employee Companies and Civic Activity Companies. Beyond a system of guarantees for Employee Companies, the programme defines the Company of Civic Activity, a joint-stock company or limited liability company where 33 per cent shares belong to at least 30 per cent of the active employees of a privatised enterprise.

Ownership structures in these employee companies have, on the whole, 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 per cent immediately after privatisation to 31.5 per cent in 1999. Approximately 32 per cent 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) had begun to be felt in a minority of firms by the end of the last decade (see Lowitzsch 2006, p. 237: Table 3).

¹⁴² "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.



ANNEX 4 – 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 independent 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 $E(u_{1i}) = E(u_{2i}) = 0$, $\text{var}(u_{1i}) = \text{var}(u_{2i}) = 1$, and $\rho = \text{cov}(u_{1i}, u_{2i})$. 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:

$$\begin{aligned} EFP &= \left(\frac{P_i}{1-P_i} \right) = \\ &\beta_0 + \beta_1 \text{Medium} + \beta_2 \text{Large} + \beta_3 \text{Southerneurope} + \beta_4 \text{Baltic} + \beta_5 \text{Iberia} + \beta_6 \text{Nordic} + \beta_7 \text{CEE} + \\ &\beta_8 \text{Construction} + \beta_9 \text{Electricity} + \beta_{10} \text{Financial sector} + \beta_{11} \text{Wholesale and trade} + \\ &\beta_{12} \text{Real estate and transport} + \beta_{13} \text{Other services} + \beta_{14} \text{High skilled workers} + \\ &\beta_{15} \text{Employee representation} + \beta_{16} \text{Teamwork} + \varepsilon_i \quad \dots \end{aligned} \quad (q1 \text{ equation})$$

The performance model of this Study is as follows:

$$\begin{aligned} \text{Improvements in Labour productivity or Employment} &= \left(\frac{P_i}{1-P_i} \right) = \beta_0 + \beta_1 EFP + \beta_2 \text{Medium} + \\ &\beta_3 \text{Large} + \beta_4 \text{CEE} + \beta_5 \text{Southerneu} + \beta_6 \text{Baltic} + \beta_7 \text{Iberia} + \beta_8 \text{Nordic} + \beta_9 \text{Construction} + \\ &\beta_{10} \text{Electricity} + \beta_{11} \text{Financial sector} + \beta_{12} \text{Wholesale and trade} + \beta_{13} \text{Real estate and transport} + \\ &\beta_{14} \text{Other services} + \beta_{15} 2013 + \varepsilon_i \quad \dots \end{aligned} \quad (q2 \text{ equation})$$



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.

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 (Czech Republic, 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
Teamwork	1 if a company organises 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 ratio 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 presence of 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***	Prob > chi2 = 0.000	-0.395***	Prob > chi2 = 0.000
	chi2(1) = 39.58		chi2(1) = 33.09	
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 presence of 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	0.953***	0.000	0.520***	0.000
Medium	0.062***	0.001	0.162***	0.000
Large	0.089***	0.001	0.205***	0.000
Southern EU	0.024	0.342	-0.154***	0.000
Baltic	0.093***	0.002	-0.151***	0.000
Iberia	-0.194***	0.000	-0.247***	0.000
Nordic	0.221***	0.000	-0.017	0.489
CEE	0.107***	0.000	-0.238***	0.000
Construction	-0.198***	0.000	0.069**	0.007
Electricity	-0.053	0.377	-0.032	0.611
Financial sector	0.059	0.193	0.255***	0.000
Wholesale	-0.037**	0.039	0.082***	0.000
Real estate and transport	0.013	0.557	0.294***	0.000
Other services	0.096***	0.000	0.299***	0.000
_2013	-0.240***	0.000	-0.136***	0.000
Constant term	-0.138***	0.000	-0.592***	0.000
PANEL 2 (q1 equation: reduced form equation for the potentially endogenous dichotomous variable; PS in this case).				
	Improvement in labour productivity		Improvement in employment	
Profit sharing				
Medium	0.295***	0.000	0.296***	0.000
Large	0.452***	0.000	0.457***	0.000
Southern EU	-0.292***	0.000	-0.300***	0.000
Baltic	0.031	0.351	0.045	0.164
Iberia	-0.153***	0.000	-0.150***	0.000
Nordic	0.216***	0.000	0.218***	0.000
CEE	0.051**	0.013	0.034*	0.095
Construction	-0.169***	0.000	-0.153***	0.000
Electricity	0.159**	0.011	0.139***	0.023
Financial sector	0.080***	0.085	0.078*	0.088
Wholesale	0.038*	0.054	0.037*	0.057
Real estate and transport	-0.114***	0.000	-0.122***	0.000
Other services	-0.436***	0.000	-0.445***	0.000
Proportion of high-skilled workers	0.007***	0.000	0.007***	0.000
Teamwork	0.236***	0.000	0.191***	0.000
Employee representation	0.221***	0.000	0.231***	0.000
Constant term	-1.167***	0.000	-1.144***	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	32,928		34,050	
Wald Chi 2	5499***	0.000	3995***	0.000

* p<0.05, ** p<0.01, *** p<0.001. Source: ECS 2009 and 2013.



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.¹⁴³ 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. .

$$\begin{aligned} \text{Propensity Score EFP} = & \beta_0 + \beta_1 \text{Medium} + \beta_2 \text{Large} + \beta_3 \text{Southerneurope} + \beta_4 \text{Baltic} + \beta_5 \text{Iberia} + \\ & \beta_6 \text{Nordic} + \beta_7 \text{CEE} + \beta_8 \text{Construction} + \beta_9 \text{Electricity} + \beta_{10} \text{Financial sector} + \\ & \beta_{11} \text{Wholesale and trade} + \beta_{12} \text{Real estate and transport} + \beta_{13} \text{Other services} + \\ & \beta_{14} \text{Employee representation} + \beta_{15} \text{Teamwork} + \varepsilon_i \end{aligned} \quad (\text{q3 equation})$$

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 activi-

¹⁴³ 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.



ty; presence of an employee representation arrangement; and whether work organised 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 is 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 overestimates the number of matching firms with similar propensity scores. For this reason, in Chapter 3, we have allowed a 50 per cent margin of error to account for such unobservable characteristics.





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