

## **Extended Country Report**

# **Financial Participation of Employees in Croatia**

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**2006**

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### 1. Background

The level of participation of employees is relatively low presently, although the economic system in the former Yugoslavia has been based on employee participation for 40 years and the position of employees was strong at the first stage of privatization.

#### a) History

Croatia has had a long tradition of employee participation. On the one hand, it is rooted in the co-operative movement. On the other hand, the unique Yugoslavian model of self-management was an important instrument of employee participation.

The first co-operative in Croatia was founded already in 1862. Co-operative movement gained momentum in the second half of 19th century, so by the end of the century first associations of co-operatives were founded in different regions. At the beginning of the 20th century co-operative sector in Croatia became a significant part of the economy. In the years before the World War I, there were more than 1500 operating co-operatives with more than 250,000 members. After the World War II, co-operative movement in Croatia was experiencing a period of rapid growth, but also significant aberrations from its fundamental principles. In the second half of the 1940ies, the communist government of Yugoslavia carried out a large collectivization campaign following the Soviet model. Especially in the agriculture, farmers were forced to join numerous newly established co-operatives. Socialistic co-operatives functioned similarly to other socialist enterprises. After Yugoslavia's break up with the Soviet Union and the introduction of the self-management model, forced creation of co-operatives was halted, and a part of farmers succeeded in leaving co-operatives, but they lost a part or the whole land they were forced to bring into co-operatives. In the late 50ies and in the 60ies, the co-operative sector was significantly weakened: many co-operatives were dissolved or merged with others; many co-operative associations were closed, co-operative banking system was dismantled, and assets were transferred to socialist enterprises. Many co-operatives that survived left their original production activities and turned mostly to trade. Such situation remained until the end of 80ies and the break up of the former Yugoslavia. At that time, there were only about 200 agricultural co-operatives. After Croatia became independent in 1990, the new government did not support the co-operative sector. Co-operatives were generally seen as an element of the socialist system, so they were left to deterioration in the transition period. The Law on Transformation of Socially Owned Enterprises did not regulate the legal status of co-operatives, so that they remained in a 'privatization vacuum' for almost 5 years. Only in 1995, the Croatian Parliament enacted the Law on Co-operatives, which, despite certain shortcomings, laid solid foundation for the future development of co-operatives.

Croatia as a part of the former Yugoslavia had a long and rich experience with a scheme which was, at least nominally, a model of total employee participation. Self-management model that had been developed in the former Yugoslavia for 40 years involved, at least theoretically, total participation of employees in decision-making as well as in financial results (it is difficult to speak about participation in ownership, because the self-management system was based on a 'non-ownership' concept). The concept of 'social ownership' as an essential part of the self-management model in Yugoslavia tried to go beyond any classical model of ownership of productive means (see for example Kardelj, 1979, a key work on that topic). It declared that ownership in the self-management model could not play any role in decision making nor in profit appropriation and allocation, so there was no need for any 'agent of ownership' in such an economic and social system. In that sense, not only private ownership, but also state ownership of productive means was unnecessary<sup>1</sup>. 'De facto' ownership was in the hands of enterprises (which effectively 'used and abused' productive means and appropriated profits from that). Since those enterprises were managed by their employees, it could be considered as some kind of 'collective ownership', but without any right to any individual claims (as the difference from co-operatives). For that, it is understandable that before privatization (not only in Croatia, but in all former Yugoslavia's successor states), there was a need to create clear ownership – what generally meant state ownership. That actually meant 'nationalization' of former social ownership and expropriation of employees – the act that some contested fiercely (see Horvat, 2001).

Self-management system was the object of many studies, and quite often it was considered to be an example and row model (and even proof of possibility) of a system where employees would have priority in all areas. After 30 years of a dynamic development, Yugoslav self-management model entered a deep crisis in the 80ies. The discussion about the reasons of the crisis has never been concluded. It was not clarified whether the collapse of Yugoslavia was to a great extent due to long-term non-sustainability or inferiority of the self-management model, or to other factors (e.g. political and ethnic). Although the fundamentals and the long-term sustainability of self-management system developed within Yugoslavia have been under discussion through the 1980s (see e.g., Knežević, 1985; Horvat, 1986; Milovanović, 1990), the discussion was not continued in the countries which emerged after the dissolution of the former Yugoslavia. When successor countries entered transition process it was presupposed that market economy was incompatible with the self-management model. It was not considered that some elements and experiences from the self-management model could be embedded in the new models. The self-management bodies were retained in some enterprises until 1992-94 and organised privatization at the first stage. However, the experience of employees with the self-management model determined the attitude of Croatian employees concerning employee participation and their

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<sup>1</sup> Private ownership of 'consumption means', but also of land, housing and some smaller enterprises did exist in Yugoslavia. The state basically owned only buildings and equipment used for its own administration.

expectations regarding the results of transition. On the one hand, employees were convinced that they were those who created (or at least decisively contributed to the creation) of assets/value of enterprises in which they were employed, and hence they should have (possibly even exclusive) right to participate in the ownership or distribution of assets of the enterprise. On the other hand, the employees believed that only those who work create value, and therefore should have the right to participate in the distribution of profit. Thus, an ideological basis for employee ownership as well as for profit-sharing existed at least on the part of employees.

Even before the break-up of the former Yugoslavia, processes were initiated to introduce some elements of market economy and private ownership in Yugoslav enterprises, although the main goal remained transformation and improvement of the self-management system in order to make it sustainable. The last Yugoslav government under the Prime Minister Marković introduced legal acts (e.g. the Law on Social Capital<sup>2</sup>) in 1989 and 1990 that made creation of private enterprises and privatization of the existing 'social' enterprises possible. These laws gave priority to privatizations by insiders (employees and managers). Before the dissolution of Yugoslavia, a small number of enterprises were privatized also in Croatia according to the Marković laws. After Croatia gained independence, the Marković laws were suspended in 1990 and then abolished in 1991. According to the Croatian Law on Transformation of Enterprises in Social Ownership from 23 April 1991 (hereinafter referred to as Transformation Law), enterprises that issued 'internal shares' or were transformed into limited liability of joint-stock companies under the Marković laws had to report that to the Croatian Privatization Fund within 30 days. Early privatizations were partly annulled or revised through different measures.<sup>3</sup> There is no available data<sup>4</sup> about the number of enterprises privatized by employees under the Marković laws, and even less is known about the number of early privatized enterprises which survived the following decade of transition. In any case, it is evident that the number of such enterprises was very small. According to case studies, early privatized enterprises did not change the ownership, survived and even extended their business activities if they had good business results before the privatization, the privatization was initiated by managers and managers (partly in conjunction with employees) became new owners.

Pursuant to Transformation Law, employees (including managers and former employees) had the right to purchase shares at a discount proportional to the years of

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<sup>2</sup> Službeni list SFRJ, no. 84/89, 46/90.

<sup>3</sup> A typical case is the newspaper company 'Slobodna Dalmacija' where majority share that employees acquired in 1989-90 was first devalued through revaluation of debts that company had with business banks, and then practically erased through bankruptcy caused by the new majority owner. Employees have fought for almost 15 years for restitution of their rights, but only got a minor share in the final privatization at the beginning of 2005.

<sup>4</sup> Due to the fact that Croatia went through the war and economic crisis between 1990 and 1995, there was no systematic data compilation and those data that are available are often not reliable (Šonje and Vujčić, 2000).

employment, starting at 20%, adding 1% for every working year up to a maximum of 60%. If employees paid for the shares in cash, they were given an additional discount of 10%. The payment could also be made in instalments in 5 years<sup>5</sup>. After the first 5% of the total price were paid for, all shares employees were entitled to receive at the discount were transferred to them. According to the amendments to the Transformation Law from 1993, the employees were entitled to purchase not more than 50% of the shares with the value not exceeding Euro 10,000. 1/3 of the remaining shares were transferred to state pension funds and 2/3 to the state Privatization Fund to be sold at public tenders at the market value. They could be bought by outsiders, including foreign investors, but also by insiders, however, without any privileges. By the end of the first stage of privatization, 2,549 mostly small and medium-sized enterprises<sup>6</sup> with the total estimated value of assets of 81,389,769,170 Kn. were privatized. In total, 652,405 persons appeared as buyers of shares (some of them with several contracts). The average value of shares acquired by an individual was 52,130 Kn. Most of those shares were actually subscribed to be bought by small shareholders on instalments. There are no continuous statistics on purchase of shares by small shareholders. However, it is known that there were more than 600,000 small shareholders who did buy only a part of shares they were allowed to buy at the discount. In small enterprises, the value of 50% of shares was much lower than 10,000 Euro. In large enterprises, employees were not interested in acquiring shares even at a discount because most of large enterprises obviously had bad business results and financial problems.

After the privatization of most enterprises according to the Transformation Law was completed, the Privatization Law was adopted on 1 March 1996. However, the Transformation Law was not abolished, and some enterprises were privatized under the Transformation Law after 1996. The Privatization Law did not contain provisions on preferential conditions for employees, but only for war victims and victims of political repressions. Vouchers were distributed among 230,000 war victims and victims of political repression under the socialist regime (refugees, displaced persons, war veterans, war invalids, families of deceased and missing soldiers, political prisoners) who constituted the category 'small shareholders' with the employees. Actually, more than 95% of war victims and victims of political repressions transferred their vouchers to privatization investment funds. Later, most of them sold their shares in the funds at a price from 1/50 to 1/10 of their nominal value. By mid-2005, only about 50,000 from originally 300,000 persons retained their shares in privatization investment funds.

In enterprises where small shareholders owned a significant part of shares, the so-called small shareholders' associations were established. Although these associations did not take the shape of registered associations and the membership was quite

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<sup>5</sup> This period was later prolonged to 20 years.

<sup>6</sup> According to Croatian classification, small enterprises are those with up to 50 employees, medium- sized between 51 and 250 employees, while enterprises with more than 250 employees are considered large.

instable, they gained influence in some enterprises due to their close contacts to trade unions.

The privatization has been partly reversed since 1999 after 22.2% of all privatized companies went bankrupt, and the remaining assets were transferred back to the State Privatization Fund. By 1999, 379,030 from 641,152 sales contracts of employees purchasing shares at a discount on instalment were broken. Since it was recognised that the aims of privatization were not achieved, the Law on Revision of Transformation and Privatization came into force on 16 May 2005. Under this law, privatization of 1,556 enterprises was examined and only in 75 cases no irregularities in privatization procedure were found.

### **b) Social Partners**

The employees are represented by numerous trade unions. After the long period of 'workers' unity' with only one, highly centralized trade union organization imposed and controlled by Communist Party, Croatia has witnessed a 'boom' of trade unions created on different grounds and different levels. Presently, there are four major trade union confederations, and a number of smaller associations and independent trade unions. The numbers of unionised workers fell sharply at the beginning of 1990s – primarily as the reaction to previous system where every employed person had to become a union member. Since that initial fall, the unionization rates have reached quite stable levels. There are no statistics on this issue, but it can be roughly estimated that total unionization rate (counting only active members) ranges between 20% and 50%. Trade unions did not play a role in designing privatization models and did not advocate a stronger position of employees in privatization. Only after the first two stages of privatization were completed, some unions and union leaders started to promote and propose models of employee participation in ownership as the method for privatization of those assets that are still in state hands as well as for restructuring of enterprises in distress.

The employers in Croatia are represented by the Croatian Association of Employers. Not only because employers are represented by a single organization and employees dispersed among a number of unions, employers and their organization have stronger position in most issues of employers/employees common interest. Employers and employers' association did not show a positive attitude; neither did they express their explicit opposition to employee financial participation.

Social partners are authorised to participate in the work of the committees of the Parliament according to the Statute of the Parliament from 2000 and thus can directly influence the content of draft laws concerning employment and industrial relations. Still, they did not use that possibility to promote stronger concept of employee financial participation.

### **c) Current National Policy**

After the first stage of privatization, Croatian governments did not support privatizations by employees, but tried instead, whenever it was possible, to stimulate entrance of outside owners into the enterprise, even at the cost of reducing enterprise activities, loss of assets and working places, and generally worse business results. While such attitude could be logically explained and expected from right-wing governments during the first decade of transition, it is interesting that social-democrat government between 2000 and 2004 did not make any significant change in respect of participation of employees.

The present government has not shown any serious intention to introduce some measures that would promote or at least regulate development of employee ownership and financial participation. Some suggestions have been publicly made by representatives of enterprises that already have some form of employee ownership concerning stronger employee involvement in privatization of the remaining state shares and for clearer regulation and support of employee participation models. Government and major political parties did not show any noteworthy positive feedback on that.

## **2. Types of Schemes and their Legal Foundations**

Presently, financial participation of employees is not expressly regulated. However, employee share ownership has been supported by the privatization legislation in the past. Different schemes of financial participation of employees, including profit-sharing and ESOP<sup>7</sup>, are applied by individual enterprises without being regulated by the state. Moreover, amendments to the Privatization Law are planned which should introduce regulation of ESOP.

### **a) Employee Share Ownership and its Legal Foundations**

Since at the early stages of privatization there was strong support of employee share ownership, share ownership is the most wide-spread participation scheme.

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<sup>7</sup> In this context, the term ESOP is applicable to all schemes where employees make an offer to buy shares of the company, the purchase is funded by a special credit and a new LSC is formed in order to administrate the shares.



### (1) Privatization Issues

Since the privatization was partly reversed in 1999, there are still relatively many shares of state enterprises to be privatized. The privatization is presently regulated by the Privatization Law from 19 March 1996, the Law on Takeover of Joint-Stock Companies from 17 July 2002 and the Transformation Law from 23 April 1991. The effective Privatization Law does not contain any preferential conditions for the purchase of shares by employees. However, amendments are planned which include sale of shares to employees on preferential terms under different schemes.<sup>8</sup> According to the draft law, the state Privatization Fund can sell shares to a joint-stock company (hereinafter referred to as JSC) under the condition that the JSC sells these shares to the employees at the same or better terms. Another option is an ESOP model. The JSC can establish a new company for buying shares to be further sold to employees. If these schemes are not applicable, the Privatization Fund sells shares to employees directly. Shares thus acquired by employees are voting shares. If enterprises were not in social ownership, but were used by the management and workforce e.g. on the basis of the right to administration at the time of privatization, these rights could be transferred back to the company according to the draft which will lead to the capital increase. The new shares will be assigned to the Privatization Fund which will offer them to employees who were with the company at the time of privatization.

Currently, there are no incentives for employee share ownership. However, numerous incentives are included in the draft law. Privatization in Croatia is not completed and it is possible that employees will enjoy preferential treatment again after adoption of the amendments.

Employees have had no influence on decision-making in the privatization process. Employee financial participation and participation in decision making have not been linked in any sense. If employees became shareholders in the course of privatization, they enjoyed the same rights as other shareholders. In the hand, there are no records that employee participation in decision-making (introduced in a limited scope by the Labour Law) led to participation in financial results,

### (2) ESOP

Presently, ESOP is not regulated, but introduction of ESOP as a privatization method is planned in the amendment to the effective Privatization Law. According to the planned amendments to the Privatization Law and the effective company and contract law, the management and employees of a JSC can form a new company ESOP limited liability company. The new company should buy shares from the state Privatization

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<sup>8</sup> See the draft law on the website of the Croatian Parliament <http://www.sabor.hr/default.asp?mode=1&gl=200309170000001&jezik=1&sid=>, Log-in: 12 December 2005 (in Croatian). The draft law is prepared by the by the legislative committee of the Parliament in the course of harmonization with the EU law process and is supported by trade unions and employers' associations.

Fund and make sales contracts with employees and managers of the original JSC about the shares with the exception of 10% of shares which remain in the new company as treasury shares. Employees and managers will be able to purchase shares by instalments and on equal terms. The new company will take a credit from the bank, based on the pledged shares and pay off the shares to the Privatization Fund as a single payment. Employees will pay the shares from their salaries and possible future dividends. After the bank credit is paid off, the ESOP limited liability company is to be dissolved. The unsold shares are transferred to the main JSC.

Modifications of the main scheme are also possible. The JSC can take the credit at the bank and then transfer it to the ESOP company or directly to the employees. The JSC can also use the credit to buy its own shares and to transfer them to the employees who will pay for the shares from the salary and dividends. Furthermore, employees can take the credit without involving the JSC or the ESOP company, or with one of them acting as guarantor.

Even if the amendments to the Privatization Law will be adopted, ESOPs might not become wide-spread because no incentives, especially tax incentives, are planned as yet. Moreover, employees might not be interested in buying shares since they will still have to pay for them from their own income. The ESOP model in the planned amendment is not linked to participation in decision-making.

### **(3) Company and Securities Law**

Many employees acquired shares in the course of privatization and became shareholders. For that reason, company and securities law is relevant for the issue of participation of employees. The main regulations of company and securities law are the Company Law from 23 December 2003 as amended (hereinafter referred to as CL) and Securities Market Law from 17 July 2002 as amended.

#### **(a) Corporations**

Since employees are minority shareholders in most cases, regulations on protection of minority shareholders are relevant. For the change of the articles of association, a  $\frac{3}{4}$  majority of votes representing the equity capital is necessary. Shareholders holding at least 10% of the equity capital can influence the decision of the general meeting concerning liability of the members of the board of directors or of the supervisory board (Art. 273 CL) and lodge a claim at a court for revocation of a member of the board with good reason. Shareholders holding at least 5% of shares can call the general meeting. Minority shareholders can be bought out by the majority shareholder holding at least 95% of the shares upon resolution of the general meeting; a fair compensation to minority shareholders should be paid (Art. 300 CL).

According to Art. 233 (2) CL, a JSC can issue special employee stock with the value not exceeding 10% of the registered capital. Employee shares are non-voting shares

## **2. Types of Schemes and their Legal Foundations**

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until they are paid off. Furthermore Art. 313 CL stipulates a 'conditional capital increase' among others with the purpose of the fulfilment of employees' right to acquire shares.

In comparison to some other countries, minority shareholders are quite well protected, but they have no significant influence on the company. Regulations on employee stock, though not detailed, make it possible for the employees to buy shares and for the owner to increase the capital and to retain control. Art. 234 CL contains a regulation permitting the company, in deviation from the general prohibition to leverage the acquisition of own stock, conditional on creation of a reserve and provided for this doesn't endanger equity capital, to do so in order to sell them to the employees of the company. However, there are no further incentives for employees, i.e. discount, payment in instalments or tax allowances, for purchasing the shares.

Participation in decision-making is expressly regulated by the Company Law and by the Labour Law. These laws are almost completely harmonised with the EU law and provide for employee participation in decision-making. If a private employer employs at least 20 regular employees, the employees are entitled to participate in decision-making concerning issues connected with their economic and social rights and interests, in the manner and under the conditions prescribed by the Labour Law. In such cases, employees are entitled to elect one or several representatives to the employees' council by means of free, direct and secret balloting. This body should protect and promote the rights and interests of employees in relation to the employer. The employer has to inform the employees' council on companies' results, amount of overtime work, protection and safety measures etc. (Art. 144 of the Labour Law). It has to consult the employees council on labour regulations, employment plans, re-assignment of employees and dismissals, introduction of new technologies and organisational modifications, annual leave plans, schedules of working hours, planning night shift work, compensations for inventions and technical innovations, and programs for surplus work force (Art. 145 Labour Law). Furthermore, the employer needs an approval of the employees' council for decisions on dismissal of an employee whose working ability is reduced or who is directly in danger of becoming disabled, dismissal of an employee who is representative of the employees in the supervisory board, dismissal of a male older than 60 or of a female over 55, decision on the collection, use and delivery of information concerning employees to third parties, and appointment of a person authorised to supervise collection of personal information concerning employees (Art. 146 of the Labour Law). If the employees' council has not been established, the representative of the trade union should exercise the powers of the employees' council.

According to Art. 158 Labour Law, at least one<sup>9</sup> representative of the employees should be member of the supervisory board if the annual average number of

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<sup>9</sup> A higher number of representatives can be stipulated by a special law, e.g. Art. 17 of the Railway Law prescribes that three out of nine members of the Supervisory Board of the Croatian Railway Company must be elected by employees.

employees exceeds 200 or if the company is a public institution or if at least 25% of company shares are owned by the state. This provision is in contradiction with the regulations of the Company Law concerning the requirement to establish the supervisory board.<sup>10</sup>

### **(b) Co-operatives**

The legal status of co-operatives is regulated by the Law on Co-operatives from 23 May 1995 (hereinafter referred to as CoopL) and by the Law on Obligations from 25 February 2005. In the absence of special regulations, the Company Law from 23 December 2003 is applicable. A co-operative is defined as an association of at least three physical persons or legal entities established in order to support business activities in accordance with the principle of mutual assistance and mutual protection of their interests. Members must directly participate in the activities of the co-operative. Contributions of members to the co-operative can be in cash or in kind. Unless otherwise determined by the foundation agreement, the contributions of the members must be equal. Co-operatives are managed by their members. Unless the foundation agreement provides otherwise, each member has one vote. The bodies of a co-operative are the general meeting, the supervisory board and the manager. The manager is authorized to represent the co-operative. The property of a co-operative is jointly owned by all members of the co-operative who shall be liable for the obligations of the co-operative, generally only with in the amount of their contributions. The profits of a co-operative are divided among its members in accordance with the foundation agreement and the articles of association.

Co-operatives in Croatia represent a business form that is more flexible to organize and operate than classic enterprises (LLC and JSCs). They are primarily used by small producers to join their resources for a more effective production, market access etc. In most cases they remain independent and the co-operative provides services for them. Support for co-operatives' founding and functioning is provided through co-operatives' associations which have a long tradition and moderate help from the state, but generally does not involve any significant financial means and tax incentives. However, most of financial assistance in agriculture is easier to get through co-operatives than for individual farmers. Therefore, the advantage of co-operatives is easier access to resources and markets.

Co-operatives in Croatia, like in other countries, are based on participation in decision-making by all their members (on the 'one member – one vote' basis). Therefore, co-operatives seem to form the basis for participation of decision-making by employees. However, members of Croatian co-operatives are usually not employed in the co-operative itself; on the contrary, employees usually do not have status of a member.

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<sup>10</sup> For details see Barbić, 2003, p. 212.

### **(c) Partnerships**

Generally, partnerships would be an appropriate business form for financial participation of employees, but in Croatia this form is not popular presently. The types of partnerships are general partnerships, limited partnerships and economic interest groups. However, financial participation of employees is typical only of general partnerships which would be addressed below. General partnerships are regulated by Art. 68-130 of the Company Law and the Law on Obligations. A general partnership is a voluntary commercial association of physical persons or legal entities established for the purposes of permanently performing business activities under a joint company name. If the articles of association do not provide otherwise, contributions of the partners have to be equal. Contributions may be in cash, in kind and in labour or services. Partners are jointly and severally liable for the obligations of the partnership with all their property. If a partner joined the partnership after the foundation, he is nevertheless liable also for those obligations which arose before they joined the company. The liability cannot be limited by an agreement of the partners. General partners are free to regulate the internal organization of general partnerships autonomously. On the basis of a profit and loss statement, which is made at the end of each financial year, one third of the profit is divided proportionally according to the share in the capital of the partnership. Every partner is in principle authorised to manage the partnership, unless he is excluded from management by the articles of association. For actions which are beyond the regular course of business, it is necessary to obtain the consent of all partners. Decisions in a partnership are made with the consent of all partners who are authorised to take part in the decision-making process, unless the articles of association provide that the decisions are made by the majority of votes whereby each member can have one vote or a number of votes corresponding to his contribution to the capital.

The advantage of a partnership is participation of partners in the management and control of the company. However, the significant disadvantage is the unlimited liability. For that reason, LLC are much more popular than partnerships. Every partner is in principle authorised to manage the partnership, unless he is excluded from management by the articles of association. For actions which are beyond the regular course of business, it is necessary to obtain the consent of all partners. Decisions in a partnership are made with the consent of all partners who are authorised to take part in the decision-making process, unless the articles of association provide that the decisions are made by the majority of votes whereby each member can have one vote or a number of votes corresponding to his contribution to the capital.

### **b) Profit-Sharing**

There is no legal regulation of profit-sharing in Croatia and, therefore, no incentives. Although monetary incentive schemes are used by individual enterprises, especially in relation to managers of large companies (e.g. 'Agrocor', 'Podravka'), bonuses are

usually not related to company profit and are considered, like salary, to be a part of taxable income. Besides, it is not in the interest of employers to insert profit-sharing in the employment contracts because it would become actionable.

### **c) Taxation Issues**

As mentioned above, there is no special law which expressly regulates taxation of employee financial participation schemes. Taxation provisions important for employee financial participation are contained in the Income Tax Law from 3 December 2004 (hereinafter referred to as ITL) and Profit Tax Law from 3 December 2004 (hereinafter referred to as PTL).

According to Art. 30 ITL, all shares given to employees and executed stock options are part of taxable income. Participation in profit originating from such share transfers also is considered income. More generally, all compensations received by an employee from the employer are considered taxable income under ITL. Dividends from participation in capital as well as gains from shares' sale are exempted from the income tax, so once employee participation in ownership is created, future gains from those origins are not taxable.

Under PTL, there are no exemptions for parts of the profit allocated to employees under the schemes of employee financial participation. Consequently, direct transfer of enterprise's profits to employees (e.g. classic profit-sharing) would be taxed twice: first with the profit tax, and then with the income tax.

## **3. Incidence Now and Over Time**

There is little evidence on financial participation of employees in Croatia. State authorities i.e. the Croatian Privatization Fund, Ministry of Economy, Croatian Chamber of Commerce do not regularly collect statistical data on this issue. Little scientific research has been done on financial participation. However, it can be stated that the most widespread model is employee share ownership which emerged in the course of privatization, followed by programs with elements of ESOP which are implemented in individual enterprises, co-operatives and very few individual cases of profit-sharing.

### **a) Privatization**

At the first stage of privatization, only 41.78% of the initial nominal value of enterprises that were included in privatization was acquired by employees and other buyers; the remaining shares went to the state-owned funds, including the Croatian Privatization Fund, the State Agency for Savings Insurance and Bank Rehabilitation,

the Croatian Pension Fund, and the Croatian Health Insurance Fund. Although small shareholders, especially employees, bought a significant number of shares by instalments, they were not interested in paying off the price of all shares they subscribed to and transferred a part of shares back to the state instead. According to research data (see Jelušić and Perić, 1999; Tipurić et al., 2004), small shareholders held (had bought/subscribed) 20% of the nominal value of 2,586 enterprises that were privatized at the first stage. That share fell to only 12% in 1998, and it continued falling until today. Some authors (see e.g., Gregurek, 2001) claim that this decline shows that the model of participation of ‘small shareholders’ failed.

After the first phase of privatization, many ‘small shareholders’ were selling their shares to buyers who were acquiring majority ownership. That was a quite logical move for ‘small shareholders’ that were not employees of the particular enterprise (pensioners, former employees, employees in public services). Their main interest was purely financial from the beginning. However, employees who were minority shareholders were also interested in selling because they could not influence the decisions of majority owners and, sometimes, because prospective majority owners imposed pressure on employees.

ESOP models were not specifically indicated among the models for privatization of former ‘social’ enterprises, but through the process of privatization certain models ‘spontaneously’ developed that had some characteristics of ESOP or were formally labelled as ESOPs. Since there was no legal regulation and clear definition of a general model, each enterprise had (and was free) to develop its own model. Some enterprises were introducing models that had some characteristics of ESOPs after the first phase of privatization. Some well-known and successful Croatian enterprises (e.g. Pliva, Zagrebačka banka, Kraš, Dalekovod, AD Plastik) have been introducing models with ESOP elements. These models can be divided in two categories: models with the main objective to transfer the majority share to the employees (e.g. in the cases of AD Plastik, Dalekovod), and models without such objective (e.g. in the cases of Zagrebačka banka, Pliva).

The only study on ESOPs based on the data of the survey conducted at the end of 2003 (see Tipurić et al., 2004) is most relevant for the issue of financial participation as a whole because a broad definition of ESOP<sup>11</sup> was used as a basic definition which embraces most forms of financial participation. The survey included 552 enterprises: 205 small ones (but with more than 15 employees, which means that ‘micro’ enterprises were not included in the survey), 211 medium and 136 large enterprises. For the category of medium and large enterprises, this sample was definitely representative, and the absolute number of small enterprises included in the survey was also big enough to produce reliable results also for this category of enterprises. Structural representativeness has been achieved by defining the sample along sectors and regions.

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<sup>11</sup> ESOP was defined as an ‘organized program of larger involvement of employees in the enterprise ownership’.

**Table 1. Employee share in ownership**

% of ownership held by employees	small enterprises	medium enterprises	large enterprises	TOTAL
< 20%	82.5	73.0	69.9	75.4
20 – 50	5.9	10.4	14.0	9.6
50 – 80	4.9	5.2	8.8	6.0
> 80%	5.4	6.6	4.4	5.6
no response	2.4	4.7	2.9	3.4
TOTAL	100	100	100	100

Source: Tipurić et al. (2004).

Employees had less than 10% share in ownership in 68% of enterprises, while only in 5% of enterprises employees had more than 90%. Employees held majority share (over 50%) in 12% of enterprises included in the survey. It is to be noted that the highest percentage of enterprises with majority employee ownership was registered among large enterprises and the lowest among small enterprises (although the difference was not very big – between 10.3% do 13.2%). This could support the thesis that if employees owned a significant part of shares in a small enterprise, the enterprise was transformed in a partnership or the shares were sold by employees to managers.

Evidence of programs supporting the development of employee share ownership has been found in 9.4% of enterprises (52 out of 552 enterprises included in the survey<sup>12</sup>). It is obvious that this is not the same number as the number of enterprises with employee majority share ownership. On the one hand, in some enterprises with employee majority share ownership no program supporting employee share ownership is currently implemented. On the other hand, in some enterprises with respective programmes employee majority share ownership is not yet achieved or is not envisaged.

Although the first ESOP programs were established already in 1992, the majority of programs found through the survey were started in 2001 or later. That confirms the view that the ESOP model was not included in the basic concept of privatization in Croatia<sup>13</sup>. They are obviously developing in time and gaining momentum since 2001.

According to the study, incidence of ESOP programs is higher in medium-sized and especially large enterprises.

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<sup>12</sup> In many cases analysed in the study ESOP programs were stopped or completed, and some programs had only few ESOP characteristics in their design.

<sup>13</sup> Only 9 of 52 cases of ESOP programs found in the research were started before 1996. Those first programs did not have genuine characteristics of ESOPs, but were registered as such because of a broad definition used in this research.



**Table 2. Incidence of ESOPs by the size of enterprises**

	small enterprises	medium enterprises	large enterprises	TOTAL
have ESOP	5.4%	10.0%	14.7%	9.4%
no ESOP	94.6%	90.0%	85.3%	90.6%
TOTAL	100%	100%	100%	100%

Source: Tipurić et al. (2004).

This can be explained by the specific features of privatization of small and large enterprises. Most small enterprises were privatized in the first phase of privatization and achieved a final ownership structure, so there is neither motivation nor possibility for further changes of ownership structure through such relatively complex instruments as ESOPs, while large enterprises were privatized much later and the ownership in large enterprises is not yet concentrated.

In the study, a statistically significant relationship between the dominant share of employees (precisely, ‘small shareholders’) in ownership and the existence of ESOP programmes was found.

**Table 3. Distribution of ESOP programs depending on dominant owner**

Dominant owner	small shareholders	someone else	TOTAL
have ESOP	21	31	52
no ESOP	33	467	500
TOTAL	54	498	552

Source: Tipurić et al. (2004).

It is not possible to determine whether ESOP programmes in the broad sense lead to the acquisition of majority share by employees during privatization, or enterprises in which employees had the majority share as a result of privatization were more likely to introduce ESOPs. Probably, both these assumptions are valid, especially taking into account that in the majority of cases an ESOP programme was introduced after the first phase of privatization.

When the percentage of shares held of employees was investigated, the following distribution was found:

**Table 4. Distribution of ESOP programs depending on proportion of ownership held by employees (%)**

% of ownership held by employees	small enterprises	medium enterprises	large enterprises	TOTAL
< 20%	27.3	38.1	15.0	26.9
20 – 50	18.2	14.3	40.0	25.0
50 – 80	18.2	14.3	25.0	19.2
> 80%	18.2	4.8	15.0	11.5
no response	18.2	28.6	5.0	17.3
TOTAL	100%	100%	100%	100%

Source: Tipurić et al. (2004).

The percentage of enterprises where employees acquired more than 80% of shares through ESOP or during privatization was the relatively smallest. That is quite logical because in situations where ESOP was the tool for gradual building majority employee ownership the time was too short to achieve that goal, especially in medium-sized and large enterprises. In situations where ESOP was the tool for taking control over the enterprise, once the threshold of 50% had been achieved, motivation for further purchase of shares was significantly reduced. In any case, such distribution confirms that ESOP programs in Croatia have different goals and levels of maturity.

In the survey, the questions about motives and initiators of ESOP programs were asked. The answers to the question about the initiators of the ESOP program (in 52 registered cases) produced the following distribution of responses:

**Table 5. Initiators of ESOP programs (%)**

	small enterprises	medium enterprises	large enterprises	TOTAL
Top management	54.4	47.6	65.0	55.8
Owners and their bodies	54.6	38.0	5.0	28.8
Unions	-	14.3	30.0	17.3
'Small shareholders' associations	-	19.0	5.0	9.6
Middle management	-	9.5	10.0	7.7
Workers council	9.1	9.5	5.0	7.7
someone else	-	4.8	15.0	7.7
do not know	18.2	9.5	-	7.7

NOTE: it was possible to choose multiple answers, so sums by columns are bigger than 100.

Source: Tipurić et al. (2004).

### 3. Incidence Now and Over Time

It is obvious that the (top) management was the most frequent initiator of ESOP and similar programs in Croatia (in more than 55% cases, or more than 63% when middle management is added). Owners and their bodies (board of directors, general assembly) were initiators (probably sometimes together with managers) in almost 29% cases. Employees, through unions, workers councils, and small shareholders associations were, of course, quite often initiators of different programs supporting employee ownership (jointly almost 35% cases). It is interesting that the structure of initiators was simpler in small enterprises, where the initiative came evenly from managers and owners. Most differentiated structure of initiators was found in middle-sized enterprises, while in large enterprises the management dominates. Unions were very active in large enterprises, while owners relatively seldom initiated introduction of ESOPs in such enterprises. The state obviously had different positions, criteria and approaches in privatization and restructuring of small and large enterprises. In small enterprises, it preferred insiders, while for large enterprises the state preferred sale to outside owners.

The answers to the question 'how important was a particular motive' for ESOP initiation produced the following average values (on the scale of importance ranging from 1 to 5):

**Table 6. How important were particular motives for ESOP introduction**

Motive	Average mark	Enterprises where employees held less than 50% of ownership	Enterprises where employees held more than 50% of ownership
Protection from external (hostile) takeover	3.31	3.04	3.64
Means for introduction of a desirable partner	2.18	2.37	2.00
Participation of employees in decision making	2.78	2.68	2.91
Solution for treasury shares	2.30	1.95	2.60
Incentive for better and harder work	3.21	3.11	3.32
Fragmentation of ownership structure	2.09	1.88	2.26
Safeguard of management control over the firm	2.73	2.61	2.95

Source: Tipurić et al. (2004).

As supposed, the most important motives for introduction of ESOP programs were protection from hostile takeover and motivation of employees for better work. These are, obviously, both primarily managerial motives to which direct motive of safeguarding managerial control can be added. This is consistent with previous findings that managers were main initiators of ESOP, and could definitely confirm that these programs were primarily oriented towards managerial goals, and, to a lesser extent, towards goals and interests of employees. All motives were stronger in the enterprises where employees had the majority share, with the exception of the motive 'introduction of an external partner'.

From the above study and other available information, it can be concluded that ESOP programmes (in the broad sense) can be divided in three categories:

- programmes introduced during the first phase of privatization (1992-95) did not have characteristics of genuine ESOPs. Those were different models aimed at facilitating payment for shares for the employees.
- programmes introduced in order to prevent hostile takeovers, or generally to keep control over the enterprise in the hands of insiders (mainly management). These were usually combinations of MEBO and ESOP models. The top management usually was the leading force in introduction and realisation of those programs. After the main goal had been achieved, employees (and even managers) often lost their initial enthusiasm.
- programs that were introduced in relatively stable, large enterprises that completed the first phase of privatization, and exited that process with dispersed ownership structure without dominant owner. These programs were primarily aimed at developing the motivation and identification of employees and not at majority ownership of employees.

### **b) Co-operatives**

According to official statistics (see Table A, Appendix), at the end of 2003 there were 2,071 co-operatives (of all types) registered in Croatia, but only 878 of them were operating. Such ratio between officially registered and operating business entities is not unusual; actually, 'activity ratio' of co-operatives (42.39%) was significantly higher than the average for all enterprises (only 17.77%). While co-operatives constituted only 2.7% of the total number of enterprises, they made up 5.9% of operating enterprises. Co-operatives in productive sectors showed even better 'activity ratio'. Even if there are no solid proofs, this could indicate that co-operatives in Croatia that survived the 1990ies were not founded only 'pro forma' (like it was the case with many 'classic' enterprises), and that they show more stability and better survival potential at the market.

However, if the number of employed is observed (Table B, Appendix), it is evident that the co-operative sector is employing very small number of people. One operating

co-operative was employing on average only 3.8 employees, while the total average for an operating enterprise was almost 72 employees. This shows that co-operatives in Croatia most often are not productive, but trading and intermediary organisations. On the other hand, this is certainly connected to the fact that members of co-operatives usually are not employed in the co-operative itself; on the contrary, employees usually do not have status of a member. This disqualifies the majority of co-operatives in Croatia as a form of enterprise based on employee participation.

Employees in co-operatives constitute only 0.31% of the total number of employees in business organisations in Croatia (Table C, Appendix). Here again it should be taken into account that the majority of co-operative members does business transactions with and through co-operatives, but are not employed with them (those are most often individual farmers who sell their products or purchase materials they need through co-operatives). If the total scope of activity and business results of co-operatives is observed (Table C, Appendix), it is obvious that the co-operative sector in Croatia is indeed marginal. Co-operatives made 0.65% in the total number of enterprises for which the State Statistical Office had data on financial results, but employed only 0.39% of the total number of employees and had 0.38% of the total turnover. Co-operatives participated with only 0.22% in total profits and in total losses. This indicates that co-operatives are, on average, doing business less successfully than other forms of enterprises (co-operatives made more losses than profits in 2002, and in 2003). It is possible that, in accordance with their basic (and legal) definition, co-operatives are primarily oriented to creation of gains and benefits for their members (who are mainly not employed in co-operatives), but that does not change the fact that the total power of co-operative sector in Croatia is minor. After almost 150 years of development with numerous ups and downs, the co-operative sector in Croatia has perhaps proven its endurance and ability to survive in different times and systems, but it obviously did not prove its superiority with regard to other forms of business organizations.

#### **c) Profit-Sharing**

Profit-sharing in its classical form has not been registered in Croatian enterprises, at least not in legal acts and collective agreements. That should not surprise, not only because it has not been legally regulated at all, but probably also because that could remind of the socialist self-management system where employees had right to decide autonomously about the distribution of profits in their enterprises (and they usually decided to direct a substantial part to employees' wages).

Direct transfer of a part of profit to employees would be unreasonable for Croatian enterprises for taxation reasons. Under Croatian tax law, such a transaction would be taxed twice: the enterprise will pay the profit tax and the employee the income tax. Not only are there no tax incentives for profit-sharing, but there are tax sanctions.

Some forms of transfer of a part of profit to employees have been used in some enterprises even after the first phase of privatization, but they generally did not have characteristics of genuine profit-sharing. Such practices usually appear as a rise of wages for employees in enterprises that have better business results. Links with profit are most visible when a part of wages is connected directly to financial results, but such practices are very rarely reported.

#### 4. Empirical Evidence of Economic and Social Effects

The evidence of effects of employee participation on the enterprise is limited to a general study by Tipurić (2004) quoted above and several case studies. As explained above, the study of Tipurić (2004) is confined to ESOP programmes, but has significance for employee participation in general because it is based on a broad definition of ESOP including most schemes of employee participation. However, it is only a subjective evaluation by managers and not objective information on the effects.

The managers who participated in the survey by Tipurić were asked how much they were satisfied with the ESOP program in their enterprise. About 56% of managers answered they were satisfied, and 19% were very satisfied with the results of ESOPs. Only 14% managers answered they were not satisfied. This could certainly to a good measure be explained by the fact that (as it was shown before) managers have been active players in most of Croatian ESOPs. It is interesting that the least satisfied were managers in middle-sized enterprises, and the most satisfied managers in large enterprises<sup>14</sup>. Further, the managers were asked how they evaluate the influence of ESOP programs on the improvement of enterprises' business results. The managers gave answers that did not indicate impact that is significant. As it can be seen in Table 7, the majority of answers was concentrated around the judgment that ESOPs had a small influence on the improvement of enterprise results. That still means that managers think ESOPs have a positive impact, but when answers are represented on a standard scale from 1 to 5, the average mark would be 2.77, below 3.0 that would be the central value<sup>15</sup>. Differences in average marks between managers of small, medium and large enterprises were negligible.

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<sup>14</sup> Average mark of satisfaction with the results of ESOP programs (on a scale from 1 to 5) in large enterprises was 4.15, in small enterprises 3.73, and in medium-sized enterprises 3.50.

<sup>15</sup> It could be presumed that the majority of respondents giving their marks treated the middle answer as neutral, although it contained expression that spoke about positive influence.

#### 4. Empirical Evidence of Economic and Social Effects

**Table 7. Influence of ESOP on enterprise results (%)**

	small enterprises	medium enterprises	large enterprises	TOTAL	enterprises without ESOP
no influence	9.1	19.0	10.0	13.5	22.4
small influence	18.2	14.3	15.0	15.4	27.8
medium influence	54.5	19.0	40.0	34.6	25.8
strong influence	9.1	14.3	20.0	15.4	13.2
very strong influence	-	9.5	-	3.8	4.2
no response	9.1	23.8	15.0	17.3	6.6
TOTAL	100.0	100.0	100.0	100.0	100.0

Source: Tipurić et al. (2004).

It is interesting to compare opinions about the influence of ESOPs on business results improvement between managers from enterprises that really have ESOPs and those that do not. Answers of managers from enterprises that do not have ESOPs were more concentrated in the area of lower values, so that their average mark was 2.45. That was indeed lower than from managers from enterprises that have ESOPs, but the difference is not statistically significant.

The answers to the question how much ESOP programs influence the improvement of certain indicators of business results brought the following average values of marks:

**Table 8. Average marks for particular indicators**

	Increase of capital	increase of productivity	Increase of profits	Increase of market value of shares
small enterprises	2.36	3.27	2.91	3.00
medium enterprises	2.62	3.43	3.33	3.25
large enterprises	2.21	3.25	3.05	2.79
Total enterprises with ESOPs	2.41	3.33	3.14	3.02
enterprises without ESOPs	2.19	2.93	2.75	2.50

Source: Tipurić et al. (2004).

Managers believe that ESOP programs contribute most to the increase of productivity, and least to the increase of enterprise capital. It could be said that they do not see ESOP as a tool for raising additional capital, but as a way for additional motivation of employees for better and more productive work, and thus also for the increase of profit. Managers of enterprises that do not have ESOP programs were consistently giving significantly lower marks on all elements; their average marks were

ranging between 2 and 3. That might be attributed to their lack of information and knowledge about ESOP models, but can also signify that there is not much enthusiasm among Croatian managers for further introduction of ESOP systems (there were 10 times more enterprises that did not have ESOP than those that did).

Finally, managers were asked how much ESOP programs influence the increase of employee participation in decision-making. Table 9 shows their answers.

**Table 9. Influence of ESOPs on employee participation in decision-making (%)**

%	small enterprises	medium enterprises	large enterprises	TOTAL	enterprises without ESOP
no influence	9.1	19.0	15.0	15.4	10.4
small influence	45.5	9.5	15.0	19.3	25.0
medium influence	18.2	33.3	15.0	23.1	33.4
strong influence	9.1	19.0	35.0	23.1	20.8
very strong influence	9.1	-	-	1.9	6.2
no response	9.1	19.0	20.0	17.3	4.2
TOTAL	100.0	100.0	100.0	100.0	100.0

Source: Tipurić et al. (2004).

Managers from enterprises that have ESOPs were not strongly convinced that ESOP programs contribute significantly to the increase of employee participation in decision-making. On a scale from 1 to 5, their average mark was 2.72 (i.e. well below central mark). Managers from large enterprises are a little more optimistic, but their average mark is still only 2.82. It is interesting that managers from enterprises that did not have ESOPs have better marks on this question (their average mark was 2.87). That could mean that managers from enterprises that already have ESOPs are better informed and know the real situation and effects better, while those from enterprises without ESOPs still have some illusions about ESOPs.

Assessing to which extent ESOP programs influence particular variables, managers gave the following marks:



#### 4. Empirical Evidence of Economic and Social Effects

**Table 10. Influence on particular variables (average marks)**

	Employee involvement in realization of the enterprise goals	Improvement of efficiency of compensation system	Attraction of quality managers and professionals	Retention of the best employees	Improvement of enterprise's public image
Enterprises with ESOP	3.46	3.10	2.76	2.98	3.58
Enterprises without ESOP	3.10	3.17	2.91	2.92	3.09

Source: Tipurić et al. (2004).

The highest marks managers of enterprises that have ESOP programs gave to ESOPs' influence on the improvement of enterprise's public image, and then to the involvement of employees in realisation of the enterprise goals. Managers do not believe that ESOPs contribute to attracting excellent managers and professionals. This is, again, consistent with the previously noticed fact that the management was the initiator of ESOP with the aim to retain, directly or indirectly, control over the enterprise in most cases. It seems that managers of enterprises that do not have ESOP programs see ESOPs' effects much more balanced.

Several conclusions on the effects of financial participation of employees could be drawn:

- in general, enterprise efficiency, productivity and profitability in Croatia have not been significantly improved through the process of transition and ownership transformation. On the contrary, for almost a decade there has been a significant fall at the level of national economy (measured by the GNP). That can be, to a great extent, attributed to war and war damages, but the fact is that majority of medium and large enterprises have had very poor results even in those parts of Croatia that were not affected by the war. Employment fell significantly too, and unemployment boomed. In the period 1990-97, fall of employment was almost 500,000 (out of 1,509,488 working places in 1990), mostly in industry and services. Recovery in Croatian economy began, according to different indicators, between 1998 and 2001 (Croatian Chamber of Commerce, 2004), but the results of that recovery have not been as spectacular as it was the downfall movement in the 90ies. From that, it could be said that, even if the basic model of privatization included elements of (financial) participation of employees, they did not contribute significantly (at a general level) to the successful transition of Croatian economy and individual enterprises.

- starting from the fact that majority or at least significant employee share in ownership was achieved most often in small enterprises, it should be noted that small enterprises in Croatia show significantly worse business results than middle-sized and especially large enterprises (see Table D, Appendix). That cannot be attributed directly and exclusively to enterprises with employee majority ownership, because there is no such evidence (that would distinguish enterprises with employee majority from all others). The majority of small enterprises that operate today in Croatia were founded as private enterprises. Therefore, there is no clear evidence that (small) enterprises with employee majority ownership have worse business results than those with 'classic' ownership structure.
- the majority of medium-sized and large (former self-management) enterprises have not (yet) performed necessary revisions and changes of their organisational and business strategy and structure. They were mainly concerned with survival, and organizational changes were chiefly directed toward cost cutting, reducing work force, and closing plants. In such a situation, even if some elements of employee financial participation existed, they could not have any significant influence on enterprises' business results. So, again, there is no evidence whether the existence of employee financial participation really influenced, positively or negatively, enterprises' business structure and financial results.

## 5. Conclusions

Current level of development of employee financial participation in Croatia could be assessed as relatively low. Employee share ownership which emerged in the course of privatization is decreasing constantly and does not have significant support. ESOP models defined as every organized program of larger involvement of employees in the enterprise ownership are almost the only form of employee financial participation that is developing after privatization, but they are rare and also without broader political support. The incidence of profit-sharing is negligibly small. Lack of political support to financial participation of employees is due to the liberalistic approach of the government during the transition and to mistrust to any concept showing similarity to the self-management system. Co-operatives have a long tradition, but represent a marginal segment of Croatian economy.

Employee ownership could emerge at the first stage of privatization (1991-1995). At this stage, employees and former employees were entitled to buy up to 50% of shares at a discount and could pay for them in instalments. However, in many cases employees did not buy up the maximum quotas. By 1995, small shareholders held about 20% of the nominal value of enterprises that entered the first phase of privatization. During the second and third stage, support for employee participation ceased and employee ownership gradually declined.

Schemes of financial participation of employees are not expressly regulated. Employees who are mostly minority shareholders have only restricted possibilities of influence under Croatian company law. Tax legislation, if applied consistently, would, in fact, hamper employee financial participation, because such transfers to employees would be taxed twice – first under the Profit Tax Law, and then under the Income Tax Law – without any exemptions and alleviations.

As an EU candidate country, Croatia gradually transfers *acquis communautaire* into national law. However, no regulations on employee participation have been transferred. Western European firms doing business in Croatia do not use employee participation schemes. However, Western experts helped to design ESOP models in Croatian enterprises.

Future development of employee financial participation in Croatia is difficult to envisage. Although there are plans to create legal regulation supporting the development of ESOPs, at this stage, it is not clear if the legal acts will be adopted and implemented. If this will not be the case, only spontaneous emergence of a small number of financial participation schemes, especially employee ownership, in individual enterprises should be expected.

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