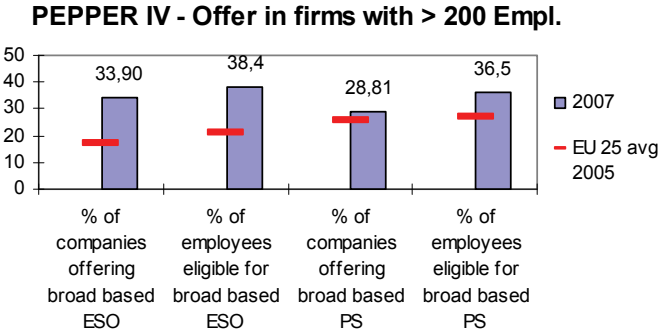
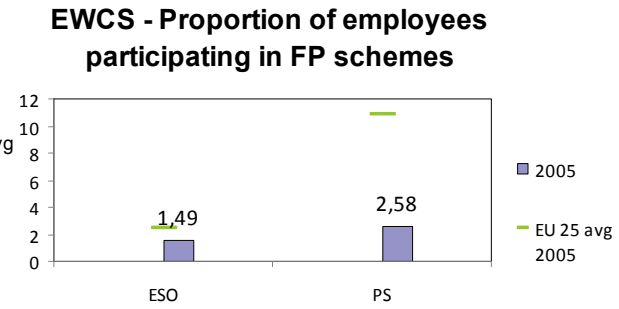
III. Croatia

Despite the fact that the economic and political system of Croatia, while a part of the former Yugoslavia, was based on employee participation for more than 40 years, its role today is relatively minor. Employee stock ownership created in the early stages of privatisation is steadily diminishing; the position of employees, previously strong, has weakened. By 1995, small shareholders owned (bought or subscribed to) about 20 per cent of the nominal value of the enterprises privatised during this first stage. During the second (1995-1999) and third (1999-2002) stages of privatisation, support for employee participation ceased and employee ownership began to decline, falling to only 12 per cent in 1998; the decline continues up to the present moment, and there is little public support for measures which would reverse it. ESOP models, defined as any organised programme involving large numbers of employees as shareholders in the employer company, is almost the only form of employee financial participation to be developed and to gain momentum after privatisation; still, ESOPs are not widely diffused and lack broad support. In a study from late 2003, 'organised programmes of larger involvement of employees in the enterprise ownership' were found in 9.4 per cent of enterprises (52 out of the 552 total surveyed) (Tipurić et al., 2004)[91]. Employees owned 10 per cent of shares in 68 per cent of enterprises reporting; in only 5 per cent of firms did employees own more than 90 per cent. Employees held a majority share (over 50 per cent) in 12 per cent of enterprises (see also Lowitzsch, 2006, pp. 118 f., 123: Table 1). Profit-sharing is rare; there is no mention of it in legislation, legal documents or collective agreements.





91 In many cases analysed in the study, ESOP programmes were stopped or completed, and some programmes had only a few ESOP characteristics in their design.

1. General Attitude

Trade unions had no part in the design of privatisation models, nor did they promote a stronger position for employees.[92] Not until the first two stages of privatisation had been completed did some unions and union leaders begin to advocate employee ownership as a means of privatising remaining state-owned assets, as well as for restructuring distressed enterprises, and to propose models for doing this. Employees are represented by numerous trade unions organised at different levels for various purposes. Employers, represented by the Croatian Association of Employers, have a stronger position in most issues involving the interests of employers and employees. The fact that employers are represented by a single organisation and employees by many only partly explains this disparity in power. On the issue of employee financial participation, employers and their organisation remain publicly non-committed, neither positively in favour nor adamantly opposed.

Croatian governments did not support employee privatisation beyond the first stage. While this policy was entirely consistent with the ideological orientation of the right-wing governments in power during the first decade of transition, it is less easy to explain why the Social Democratic governments, in office from 2000-2004, made virtually no changes in the area of employee participation. Nor has the present government shown any serious intention of introducing measures to promote, or at least to regulate, employee financial participation. Some business spokesmen, representing firms that already have employee ownership in some form, have publicly advocated greater employee participation in the privatisation of the remaining state shares. They have also requested clearer regulation and support of existing schemes. Although these requests are currently being discussed, definitive feedback by either the government or political parties is still pending.

2. Legal and Fiscal Framework

Employee financial participation is at present not explicitly regulated. Privatisation legislation in the past, however, has supported employee share ownership. Various schemes of financial participation, including profit-sharing and ESOPs[93], occur in individual firms despite the absence of state regulation. Amendments to the Privatisation Law, now being drafted, are expected to bring ESOPs into the regulatory fold.

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

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

a) Share Ownership

Privatisation (1991, 1996) – The Croatian Law on the Transformation of Enterprises Under Social Ownership 1991 (Transformation Law) gave employees, including managers and former employees, the right to buy shares at a discount proportional to their years of employment, starting at 20 per cent and adding one percent for every working year up to a maximum of 60 per cent. Employees who paid for their shares in cash were given an additional discount of 10 per cent. Payment could also be made in instalments spread over five (later prolonged to 20) years. After having paid five percent of the total price, the employee received all his or her discounted shares outright. Amendments to this Law in 1993 entitled employees to buy no more than 50 per cent of total shares with a value not to exceed Euro 1 million. One third of the remaining shares were transferred to state pension funds and two-thirds to the state Privatisation Fund to be publicly tendered at market value.

After most enterprises had been privatised in 1996, a new act, the Privatisation Law (PL), was adopted, which provided no special provisions or preferential conditions to employees.[94] The Transformation Law, however, was not repealed, and after 1996, some enterprises were still utilising it. In companies where small shareholders owned a significant amount of stock, so-called small shareholder associations were established. Although these did not take the form of registered associations and their membership was unstable, they did gain some influence in some enterprises because of a close relationship with trade unions.

Since privatisation was partly reversed in 1999, many shares of state enterprises still remain to be privatised. After the bankruptcy of 22.2 per cent of all privatised firms, the remaining assets were transferred back to the state Privatisation Fund. By 1999, 379,030 out of 641,152 sales contracts of employees who were buying discounted shares in instalments were in default. Recognising that the objectives of privatisation had not been achieved, a new law, the Law on Revision and Transformation and Privatisation, went into effect on 16 May 2005. The privatisation of 1,556 enterprises was investigated under this law; procedural irregularities were discovered in all but 75.

Private Companies (2003) – According to Art. 233 (2) of the new Company Law from 2003 (CL), a company can issue special employee stock with a value not exceeding 10 per cent of registered capital. Employee shares are non-voting until fully paid for. Further, Art. 313 CL stipulates a 'conditional capital increase' for the purpose of fulfilling the employee acquisition right. In order to facilitate employee acquisition, Art. 234 CL exempts the company from the general prohibition against borrowing in order to acquire its own stock. This exemption is granted on condition that a reserve is created so as not to endanger equity capital by the sale of shares to employees. Since employees, including those who became shareholders during the course of privatisation, are usually minority shareholders, provisions protecting this class are also relevant.[95]

94 Instead vouchers were distributed to 230,000 persons who had suffered under the former socialist regime: refugees, displaced persons, war veterans, war invalids, families of dead or missing soldiers, and political prisoners; these, together with employees, made up the category of small shareholders.

95 A three-quarters majority of votes representing equity capital is required to change the Articles of Association. Shareholders holding at least 10 per cent of the equity capital have a voice in decisions made by the General Meeting on liability of members of the Board of Directors or of the Supervisory Board

Draft Legislation (2006/2007) – Amendments to the PL are planned to provide several different schemes for selling shares to employees on preferential terms.[96] According to the present draft, the State Privatisation Fund would be authorised to sell shares to a joint-stock company on condition that the latter offer these shares to employees on the same or better terms. The ESOP model is an additional option. The management and employees of a joint-stock company could form a new ESOP limited liability company. The new company would take out a bank loan collateralised by the pledged shares and buy the shares from the Privatisation Fund in a single payment. If none of these schemes suit, the Privatisation Fund can sell shares directly to employees; shares thus acquired are voting shares. Enterprises that at the time of privatisation were not under social ownership but were administered by their managers and work force according to 'rights to administer' are a special case. They can transfer these rights back to the company, which, according to the draft, would increase the company's capitalisation. The new shares created would be assigned to the Privatisation Fund, which would then offer them for sale to those employees who were with the company at the time of privatisation. Although the draft was withdrawn from Parliament in 2007, it is still referred to in the ongoing discussion.

b) Profit-Sharing

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

c) Participation in Decision-Making

Employees of a private company employing at least 20 regular employees have the right to a voice in decisions which affect their economic and social rights and interests, under conditions and procedures prescribed by the Labour Law. Employees of such companies are entitled to elect one or more representatives to the employees' council by means of a free, direct and secret ballot. The function of the council is to protect and promote the interests of employees vis à vis the employer. If no employee's council has been established, the trade union assumes its powers. According to Art. 158 of the Labour Law, at least one employee representative is to be a member of the Supervisory Board in companies employing an annual average of more than 200; also in companies which are public institutions, or in which the state owns at least 25 per cent of shares. It should be noted that this provision conflicts with a company law regulation on the establishment of a supervisory board.

(Art. 273 CL); they can also lodge a claim at court to remove a board member for cause. Shareholders owning at least 5 per cent of shares can call the general meeting. A majority shareholder who holds at least 95 per cent of total shares can buyout minority shareholders, at fair compensation, if the general meeting so resolves (Art. 300 CL).

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