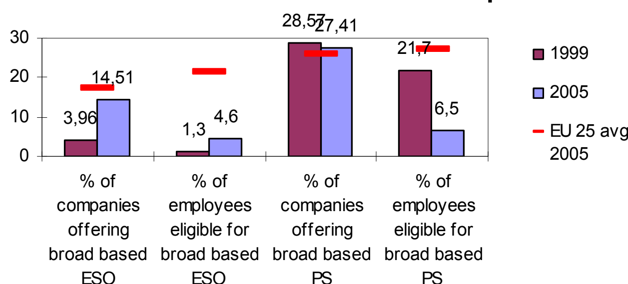
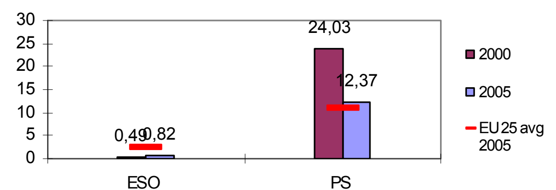
V. Czech Republic

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

CRANET - Offer in firms with > 200 Empl.



EWCS - Proportion of employees participating in FP schemes



1. General Attitude

Trade unions, for example ČMKOSs, do not actively promote employee participation, nor do they plan to do so in future. After the outcome of voucher privatisation, public confidence in share ownership and similar programmes is slight or non-existent. Trade unions see employee financial participation in the near future as extremely limited in both scale and scope. A similar view is held by the Czech Association of Employers/Entrepreneurs SPČR: they have taken no official stand on employee participation models and neither have nor seek to acquire data on its practice by their members. While participation in decision-making – as part of the *acquis communautaire* – has been put on the agenda of tripartite negotiations, financial participation of employees has not. Today employee participa-

tion is no longer a political issue; none of the democratic parliamentary political parties includes it in their programmes. It was last a political issue at the end of the 1990s, when Social Democratic Prime Minister Miloš Zeman tried to move employee financial participation forward on the agenda. Since then, politicians have remained silent on the issue.

2. Legal and Fiscal Framework

Unlike some countries, the Czech legal framework contains no specific employee financial participation measure or regulation of any specific issue pertaining to PEPPER schemes. The only forms of corporate ownership the law makes available to employees are share acquisition and profit-sharing in joint-stock companies, and these only to a limited extent.

a) Share Ownership

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

Private Companies (2000, 2004) – In 2000, Art. 158 of the Commercial Code (CC) was revised in line with the *aquis communautaire* to abolish any type of special share; it also eliminated 'employee shares' as a special type of share. Instead, from then on, joint-stock companies could amend to their Articles of Association to allow their employees to buy company shares at a discount. Previously issued 'employee shares' had to be converted into regular shares by decision of the general shareholders assembly by January 2003. Since dissenting shareholders must be bought out in a public offering according to Art. 186a para. 3 ff. CC, employed shareholders were given the de facto opportunity to cash-out their shares. Acquisition of shares on preferential conditions according to Art. 158 CC is limited to current or retired employees.

As an exception to the general prohibition against acquiring its own stock, Art. 161a para. 3 CC, introduced in 2004, permits a company to acquire its own shares in order to sell them, in accordance with the Articles of Association, to employees of the company. In such case the shares must be transferred on preferential conditions to the employees within twelve months of acquisition. If the transfer is not carried out within the stipulated time period, Art. 161c CC requires that the shares be sold or the share capital be decreased accordingly; if the company does not comply, a court can order its liquidation (Art. 161c para. 2 CC). Furthermore, current legislation permits joint-stock companies to

issue new shares granting employees favourable conditions in the context of so-called mixed capital increases, that is, the capital increase of a company issuing new stock financed by the company's own capital. According to Art. 209a para. 3 CC, 50 per cent of the purchase price must be paid before the capital increase is registered in the commercial register, while the remaining 50 per cent may be paid for in instalments. According to Art. 203 para. 3, 209 para. 2 lit. d) CC, shares issued to be acquired by employees shall not be considered a public offering, provided that the designated employees shall have been identified in the decision of the general shareholders assembly on the capital increase.

In order to facilitate the acquisition of shares by employees, the legislation further permits the company to fully pay for the stock acquired by its own employees. The restrictions on the preferential conditions for the purchase of shares by employees are enumerated in Art. 158 para. 2 CC. As in the previous regulation, the overall value of the granted discount for the issued shares may not exceed 5 per cent of the enterprise's equity capital and must be covered by the company's own resources. In addition, Art. 161e para. 3 of the Czech Commercial Code contains a regulation excepting a company from the general prohibition against leveraging the acquisition of its own stock if these shares are to be sold, in accordance with the Articles of Association, to its own employees. Thus share acquisition by the employees of a particular company may be leveraged by the company's discounting the purchase price within the aforementioned limits, by credit financing, by providing collateral, or by a combination of these three preferential methods.

b) Profit-Sharing

Nothing in the Czech legal system prohibits profit-sharing. The only explicit regulation is Art. 178 para. 4 of the Commercial Code which states that in accordance with the Articles of Association employees may be entitled to a share of company profit (cash-based profit-sharing). According to Art. 158 CC, the Articles of Association may also stipulate that profits allocated to employees be used exclusively to purchase shares on preferential conditions or to offset the discount granted to employees for this purpose (share-based profit-sharing). Share-based profit-sharing is also mentioned in the context of capital increases. A capital increase generally requires the approval of the general shareholders assembly. However, Art. 210 CC, in accordance with the Articles of Association, assumes that this decision will be delegated to the management board. Art. 210 para. 4 CC regulates a capital increase by the issuance of shares to be transferred on preferential terms to employees. It emphasises that this option is especially suitable in cases where the general shareholders assembly has previously directed that profits allocated to employees be used exclusively to purchase these shares. These benefits are all taxable at the progressive personal income rate of 15 to 32 per cent. Therefore as personal income rises, the incentive to provide additional benefits progressively decreases. Benefits from profit-sharing, for example, may be as much as 17 per cent less than the same amount in dividends paid to shareholders.

c) Participation in Decision-Making

Art. 200 CC requires joint-stock companies with more than 50 employees to have one-third of its supervisory board composed of employee-delegated members. There are no special rules on employee participation in decision-making with respect to PEPPER

schemes or privatisation matters. According to Law No. 1/1992 Sb. on Wages, Remuneration for Work Readiness and Average Earnings, as amended, among the negotiable issues in collective bargaining agreements are the amount of and the conditions for providing incentive wages (bonuses, rewards, etc.), which includes participation in company profits. The main structure for representing employees at the workplace is the local trade union group, which needs only three individuals to set it up. Until 2001 this was the only structure; since then it has been possible to set up a works council in companies with more than 25 employees where there is no trade union organisation and where at least one third of the workforce requests such a body. Nevertheless the majority of companies have no representation at all. The most important level of collective bargaining in the Czech Republic is at the company level, although in many companies bargaining does not occur. Industry level agreements cover some industries, and following legal changes in 2005 these can again be extended more widely.