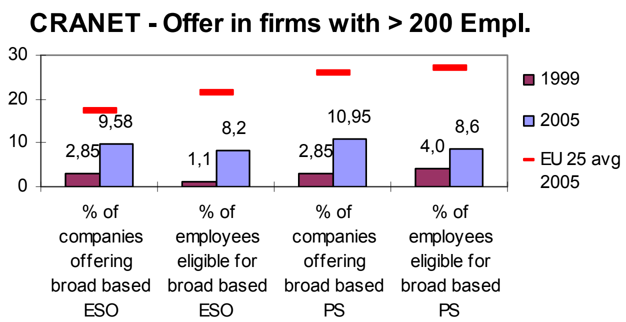
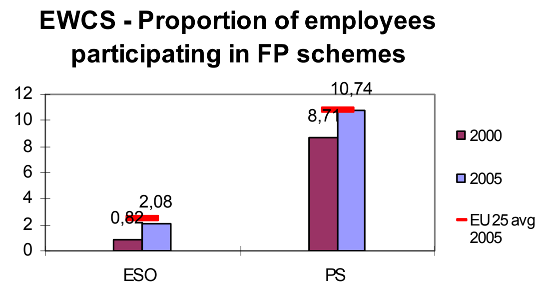
VIII. Estonia

Employee financial participation has made little progress in Estonia. PEPPER schemes did not develop during the period of independence between the two world wars or under the Soviet regime. Although employee participation in decision-making had some role in state enterprises during the Soviet era, it was later dismissed as a relic of that system. Employee ownership was briefly popular as a tool for privatising publicly owned assets in the early stages of privatisation, but turned out to be a temporary expedient. Neither was employee financial participation considered relevant to the solution of employment and social problems. In 1995, 29 per cent of employees were estimated to be owners; by January 1997, this figure had fallen to around 25 per cent (Jones and Mygind, 1998).[111]





In January 2005, out of a sample of 722 firms, 19 or 2.63 per cent were (partly) employee-owned with a share ownership ranging from 20 to 100 per cent (Jones et al., 2005). Profit-sharing is rare in Estonia, but other forms of monetary incentive schemes are used in more than 50 per cent of cases (Mygind, 2002). Some information on profit-sharing in Estonia was found in the Estonian management survey (1997/98), with only 13 instances or 5.9 per cent being reported out of a sample of 220 firms.

1. General Attitude

Currently, social partners are represented by the Confederation of Estonian Trade Unions and the Estonian Employers' Confederation. They do not have equal power; the trade unions traditionally are the weaker party. Recent debates between social partners on employee participation were triggered by the necessity to transform the *aquis communautaire* into Estonian law. The government is waiting for a trade union initiative, but the trade

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

unions are in no hurry to comply. PEPPER schemes have not been on Parliament's political agenda. Only one political party has addressed this issue: the Social Democratic Party. These circumstances make it unlikely that Estonia will adopt new legal regulations on employee participation soon.

2. Legal and Fiscal Framework

No specific legislation on any PEPPER scheme in Estonia exists at present. The legal framework neither creates nor prevents incentives for the development of PEPPER schemes.

a) Share Ownership

Privatisation (1990, abolished in 1993) – Semi-private forms of business ownership ('people's enterprises' and leased enterprises) introduced in the early stage of privatisation under Soviet law (and later legalised under Estonian law), in particular leased enterprises, are assumed to have been a major source of employee ownership in Estonia. In the privatisation of small and medium-sized enterprises, employees were given a pre-emptive right to buy the enterprise at the initial price. By 1993, when all privileges were abolished, small enterprise privatisation was almost complete; an estimated 80 per cent of enterprises had been taken over by insiders. The privatisation programme for large enterprises was finally adopted in 1993. Following the German Treuhand model, it contained no preferential rights for employees. Employee ownership of shares in enterprises purchased during privatisation is decreasing. Enterprises in the energy sector, as well as public utilities, are still partially state-owned; they could be put up for sale in the future. The current Privatisation Law offers no privileges to employees or other potential buyers. The few privileges employees had under Estonian law were abolished as early as 1993.[112]

Private Companies – Estonian Commercial Law contains no special rules on profit-sharing or on employee share ownership with respect to acquisition, limitations on the number of shares, or issuance of employee stock for any specific undertaking; general rules therefore apply. Some employees still hold shares purchased during privatisation and thus have the rights attached to these securities according the Commercial Code (CC) and Securities Market Law (SML). Since employees who became shareholders often acquired minority shares in newly founded limited liability companies and joint-stock companies during early privatisation, provisions concerning the rights of minority shareholders and shares acquired during this period are important.[113] If securities issued by a company are

112 Initially, pre-emptive rights, which often also led to the possibility of buying assets or shares under value, were the most popular mechanism. With regard to privatisation in the industrial sector, most influential political forces were opposed to buyouts by employees.

113 Pursuant to §§ 515 (1) and (2) CC, rights attached to shares issued before 1 September 1995 which do not comply with the provisions of the Commercial Code remain valid, whereas rights not attached to shares are void. Minority shareholders of a joint-stock company can be bought out by a majority shareholder holding at least 9/10 of the shares upon resolution of the general meeting with at least 95 per cent of the votes represented by all shares; in this case a fair compensation to minority shareholders is secured by the provisions regarding takeover bids (§§ 363 2 (2) and 363 7 (1) CC) and the right to lodge

offered solely to its employees or managers, the prospectus need not be made public and registered (§ 17 (1) 2) SML). Consequently employees and management are not entitled to compensation pursuant to § 25 SML on losses resulting from the volatility of acquired securities.[114] Furthermore, if a company provides investment services solely to its employees and management, it does not have to be registered as an investment company (§ 42 (1) SML). Thus it can conduct investment activities without a licence (§§ 48 ff., SML). It is not obliged to report transactions (§ 91 SML) or to have additional reserve and risk funds (§§ 93 ff., SML), nor are there additional requirements for managers (§ 79 SML).

b) Profit-Sharing

Special legislation on profit-sharing with regard to employees does not exist; therefore, there are neither direct incentives nor direct restrictions. For employees it is preferable to receive distributed profits under a corresponding scheme rather than as wages/salaries since they do not have to pay income tax on profits or dividends. Nevertheless, the resident company pays income tax at the rate of 22 per cent on distributed profits (§ (4) ITL), whether the distribution is monetary or non-monetary (§ 50 ITL); this is a disincentive for profit-sharing.

c) Participation in Decision-Making

Although Estonian company law is so strongly influenced by German law that rulings by German courts can be used to interpret provisions of the Estonian CC, special rules on the participation of employees in management and decision-making contained in a special German law (Betriebsverfassungsgesetz) were not considered by the Estonian law-makers. If employees are also shareholders, they have voting rights in each company form, although they generally have no influence on resolutions of the general meeting since they are, in most cases, minority shareholders.

a claim with a court (§§ 363 8 (2) and (3) CC). Minority shareholders have no corresponding sell-out right, that is, they cannot demand that the majority shareholder buy their shares if they wish to sell them.

114 This seems to be justified since management and employees might have insider knowledge, but it could be argued that employees, unlike managers, do not necessarily have full information as to the financial situation of the company. Notably, employees are not deemed insiders, but rather as third persons who could receive information from insiders, under the same law (§ 191 (1), (3) SML).