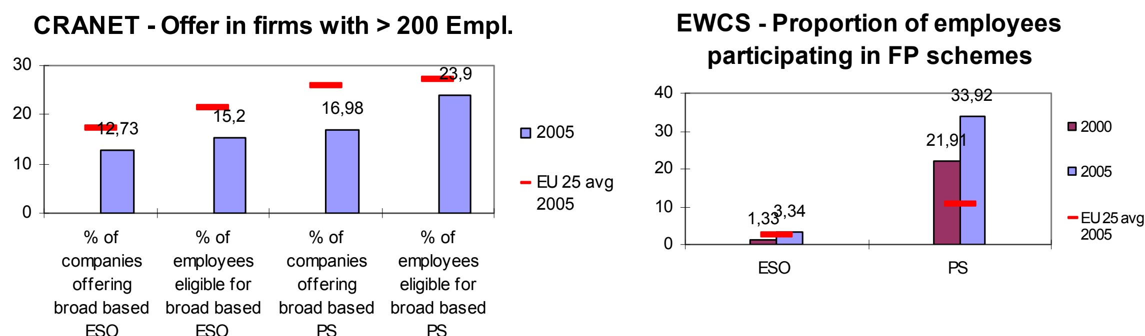
XXIV. Slovakia

Despite political declarations in the mid-1990s, PEPPER schemes have made little progress in Slovakia, while financial participation remains marginal. The environment for employee participation has been generally more favourable than in the Czech Republic due to a major difference in the privatisation plan of Slovakia revised after the split from Czechoslovakia in December 1992. Starting with a focused policy favouring the voucher scheme, the new government switched to traditional privatisation methods – trade sales in particular but also insider privatisation – in its second privatisation wave. The populist government in the mid-1990s used employee shares in conjunction with managerial types of privatisation to facilitate property transfer to members of their party. However, the subsequent reformist government abolished this system; from 1998 on, the *Dzurinda* government focused on revenue-oriented privatisation of the remaining state enterprises, which included telecommunications, gas utilities and large banks. The private ownership structure which emerged from this point is totally dominated by external or managerial ownership.



Note to the reader: The high ranking of Slovakia in the EWCS chart is very surprising, and we suspect that this may be due to the misunderstandings about the nature of profit-sharing schemes and the mistaken treatment of some bonuses as profit-sharing.

1. General Attitude

The general attitudes towards employee participation, current and past, can be summed up as 'unsuitable for Slovak economics'. External ownership is the preferred form of ownership; no incentives to encourage other forms or employee participation are provided. A survey of past and recent literature on enterprise sector development and corporate governance in Slovakia reveals no professional or public interest in employee participation. Moreover, there is no mention of insider shares; at best managerial ownership and buyouts are dealt with. In general, attitudes toward employee participation are similar to those in the Czech Republic.

Trade unions on the whole also seem indifferent. The only document on the website of the Confederation of Trade Unions of the Slovak Republic that mentions employee shares is concerned with social dialogue, not shares as a form of corporate governance; the reference is merely casual, with no apparent implication. Today, political parties seem to ignore this issue, except for the Communist party which explicitly mentions employee shares in a 1994 programme which has not since been modified. Based upon partly anecdotal pieces of evidence, we conclude that the probability that employee shares will become a focal issue of government economic policy in the near future is low; the subject seems of interest only to the far left of the political spectrum and of no concern to trade unions, government or the general public. High unemployment may be the explanation.

2. Legal and Fiscal Framework

Under present Slovak law, which is similar to the Czech Republic, there is no specific employee financial participation programme or any particular law or regulation pertaining to any specific PEPPER scheme. The only form of employee participation in the ownership structure of corporations covered by general laws have been a few regulations on the acquisition of shares by employees and profit-sharing in joint-stock companies.

a) Share Ownership

Privatisation (1995, abolished 1996) – The Slovak Republic National Council Act No. 192/1995 was the basic legal act, which accelerated direct sales primarily, while at the same time subsidising domestic entrepreneurs and enabling them to participate in the privatisation process under favourable conditions. Direct sales were to be used to compel employee ownership, obliging the transferee either to issue employee shares that accounted for 10 per cent of the companies' equity capital, or to enable employees to acquire at least a one third[177] stake in the transferees' equity. Instalment payments scheduled for 5-10 years with the first instalment at about 20 per cent of the purchase price were foreseen in order to off-set the domestic financial capital shortage.

Private Companies (1989, 2001, 2004) – In 2001 the concept of genuine 'employee shares' as a special type of share was abolished in favour of an option allowing joint-stock companies to include rules in their statutes which allow their employees to buy company shares at a discount. According to § 768c, para. 17, Commercial Code (CC), previously issued 'employee shares' had to be converted into regular shares by a decision of the general shareholders assembly by January 2004. In case the conversion requirement was not met, § 768c, para. 14, CC stipulates the possibility of liquidation of the company by court decision. § 204, para. 4, CC introduced the possibility of employees acquiring shares on preferential conditions to replace 'employee shares'. The general prohibition against a

177 A twist appeared in this year, when all the privatised firms were required to issue 34 per cent of their share capital in employee shares: This requirement was abolished within half a year and the privatisation law then only mentioned an option to issue employee shares, not a requirement to do so.

company acquiring its own stock, regulated in §§ 161a and 161 f CC, is in principle an obstacle to the introduction of employee shares. However, the corporate charter can permit (pursuant to the rules laid down in § 161 a para. 2 lit. a) CC, introduced in 2004) a company to acquire its own stock for the purpose of transfer to its employees; such shares must be transferred within 12 months of acquisition by the company. Under current legislation, joint-stock companies may issue new shares which grant employees favourable conditions in the context of so-called mixed capital increases (according to § 209a para. 1 CC), that is, the capital increase of a company issuing new stock financed by the company' own capital. According to § 204 para. 4, the general shareholders assembly can authorise the offer of a certain number of those shares to employees at a lower price than the offering price, with the difference paid from the company's own resources.

In order to facilitate share acquisition by employees, legislation allows a company to fully pay for the stock acquired by its employees. § 204 para. 4 CC states that a prerequisite to the preferential conditions for the purchase of shares by employees is that the the overall value of the granted discount for the issued shares has to be covered by the company's own resources. The terms will be decided by the general shareholders meeting. In the case of the mixed capital increase previously mentioned, applying § 204 para. 2 CC, and in analogy to § 209a para. 3 and 5 CC, the total discount may amount to 70 per cent of the share price provided that the remaining 30 per cent is paid by the employees at the moment of the transaction, unless the down payment for the acquisition is financed otherwise. In fact, § 161e para 2 CC, introduced in 2004, contains an additional regulation permitting the company, an exception to the general prohibition against leveraging the acquisition of own its stock, to do this in order to facilitate the acquisition of shares by its employees. The company may make loans to employees for the purpose of acquiring newly issued shares or in order to buy them from third persons; also to guarantee such loans from third persons provided that this does not endanger the company's own funds. Thus a company may enable its employees to acquire company shares by discounting the purchase price, by providing credit and financing, by acting as guarantor, or by a combination of all three preferential conditions.

b) Profit-Sharing

Nothing in the Slovak legal system prohibits companies from sharing profits with their employees. The only explicit regulation is provided in § 178 para. 4 CC which states that, in accordance with the corporate charter, employees may be entitled to a share in the company's profits (cash-based profit-sharing). Either the corporate charter or the general shareholders meeting may also stipulate that profits allocated to the employees be used exclusively to purchase shares on preferential conditions, or to make up the discount granted to employees in such a purchase (share-based profit-sharing). Further, share-based profit-sharing is mentioned in the context of capital increases. As a rule, a capital increase requires the decision of the general shareholders assembly, but § 210 CC, in accordance with the corporate charter, allows delegation to the management board. § 210 para. 4 CC regulates a capital increase through issuance of the shares to be transferred to employees on preferential conditions. This possibility is especially emphasised in the case where the general shareholders assembly has previously decided that the part of the profits that it allocates to employees is used exclusively to purchase these shares. All those benefits will be subject to personal income tax of 19 per cent.

c) Participation in Decision-Making

According to § 200 of the Slovak CC, joint-stock companies (similar remnant as in the Czech case due to common initial conditions) with more than 50 employees must have one third representation of employee-delegated members on the supervisory board. There are no special rules for participation of employees in decision-making with regard to PEPPER schemes or privatisation matters. With regard to employee shareholding the general rules of the Commercial Code concerning shareholders rights apply.[178]

[178] For limited liability companies see §§ 114, 122, 123, 125 ff., for joint-stock companies see §§ 178, 179, 180 ff. CC.