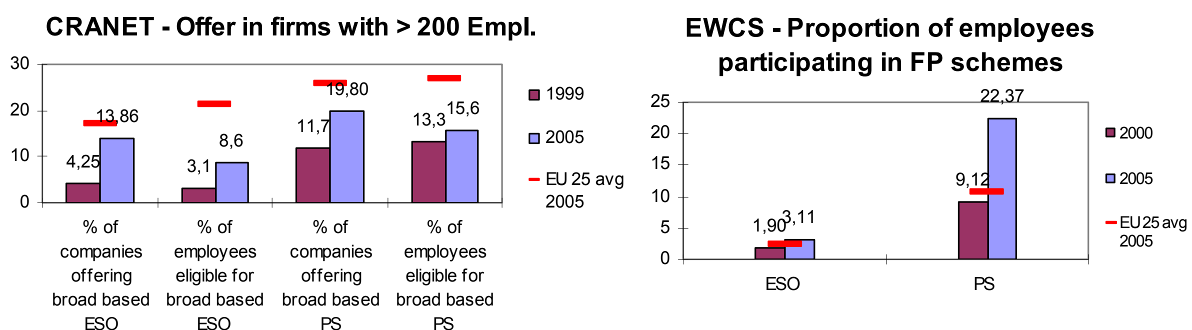
XXV. Slovenia

Slovenia has a long tradition of employee participation, starting with employee self-management in the 1950s. The strong tradition of employee involvement in corporate affairs is reflected in both the Slovenian model of privatisation and in the development of Slovenian company law. Furthermore, in contrast to other Eastern European countries, Slovenia has retained relatively strong political support for the financial participation of employees up to the present time, with draft laws being presented in 1997, 2002 and 2005. Although Parliament did not pass any of the draft laws, supporters of financial participation have established associations to promote a legal framework. Their efforts finally led to success: on 29 February 2008, the Law on Employee Share Ownership and Financial Participation was adopted by the Parliament.

Damijan et al. (2004) reported that insider ownership decreased by more than 10 per cent in the period 1998-2002 (from 38.52 per cent to 26.17 per cent). The number of firms predominantly owned by employees (managers excluded) declined from 74 to 26. Of these firms, 10 per cent had no employee owners; in 25 per cent employees held less than 5 per cent of shares, while in half of the sample, the aggregate level of employee ownership did not exceed 18.4 per cent. There were only 25 per cent of firms in the sample with employee ownership exceeding 40 per cent of company capital. By contrast, profit-sharing schemes are rare. Kanjuo-Mrčela (2002) finds that only about 7 per cent of the 41 largest Slovenian firms have actually constituted a 'fund of own shares' in order to remunerate their employees. About 32 per cent of the firms introduced the possibility of employee profit-sharing in their Articles of Association. This possibility, however, often remains unexploited (in 22 per cent of firms in the sample).



1. General Attitude

Debates over the establishment and continuance of employee ownership and other forms of financial participation began in the early 1990s. In 1995 a group of enterprise representatives, union representatives, journalists and academics established the DEZAP (Em-

ployee Ownership Association). DEZAP's main task is to encourage employee ownership in Slovenia – its inception, growth and effectiveness. In pursuit of these objectives, the Association promotes the adoption of suitable legislation on employee ownership, provides professional assistance to and training and education of employee owners, develops networks of employee-owned firms, and promotes co-operation with other firms and international organisations. A similar organisation, the Association of Works Councils (Studio Participatis), currently consisting of 100 members, supports all forms of employee participation.[179] Trade unions, however, have varying views. For example, they opposed the 1997 profit-sharing law because it linked the introduction of profit-sharing with wage concessions, a connection which explained why the law as rejected. Finally, the promotion of employee financial participation, for example, by tax allowances, is one of the stated objectives of the Slovenian Association of Managers for 2005 (Združenje Manager).[180]

Tax issues were the main obstacle to the adoption of the Law on Employee Financial Participation in 1997. In October 2002 the Slovenian Economic Ministry established an expert group to prepare the regulations on employee share ownership and other forms of financial participation. A new draft Law on Employee Financial Participation, submitted to Parliament by the Social Democrats in 2005, was rejected. These draft laws made employee financial participation plans compulsory; consequently employer groups strongly opposed these laws, all of which were proposed by centre-left governments. The 2006 draft law, however, was prepared by the first centre-right government in co-operation with the social partners and agreed upon in the Economic Social Council in December 2007. This draft law was adopted by the Parliament on 29 February 2008.

2. Legal and Fiscal Framework

The new Law of 29 February 2008, which took effect in April 2008, regulates share ownership and share-based profit-sharing plans (though not stock option plans) and offers strong tax incentives for the schemes eligible. However, the Ministry of Finance has yet to issue the Order authorising these incentives. When the Order is issued, interested companies will be obliged to register with the Ministry to become eligible for tax incentives. However, privatisation law, on the basis of which employee ownership first emerged in Slovenia, and general company law contain regulations with regard to Financial Participation.

a) Share Ownership

Privatisation (1993, 1997) – Privatisation was introduced by the Law on Ownership Transformation of 1992[181] (hereinafter referred to as LOT), which authorised the sale of

179 <http://www.delavska-participacija.com>.

180 <http://www.zdruzenje-manager.si>.

181 Of 5 December 1992, OG RS 55/1992, as amended. However, a special form of participation of workers was already regulated by Art. 168 Company Law as amended in August 1990 (labelled 'the begin-

companies and social capital to workers or third parties, and defined a special form of workers' participation in social capital. Companies under social ownership were transformed[182] into corporations and issued shares in the amount of the value of the social capital. The shares could be distributed or sold internally, sold to outsiders, and assets sold to outsiders. The LOT provided for the mandatory distribution of 40 per cent of the social capital to different funds (10 per cent to the Pension Fund, 10 per cent to the Restitution fund[183] and 20 per cent to the Development Fund for subsequent sale to Privatisation Investment Funds). The firms were then entitled to distribute (in exchange for employee vouchers) up to 20 per cent of ordinary shares amongst current and former employees, including retired employees. Registered shares obtained by workers could not be transferred for a period of two years after the issue date, except as an inheritance. In practice, however, employees found ways to sell their shares before this period was up, and many sold them immediately.

Furthermore, companies had discretion over the allocation of the remaining 40 per cent of their capital (after the distribution of 40 per cent to various funds and 20 per cent to inside owners); they could either sell to insiders (internal buyouts) or outsiders (outside privatisation). In an internal buyout, workers could buy shares with the profits of the companies owned by participants in the internal sale programme, as well as with their salaries or other sources. The workers could also obtain a part of the shares to satisfy salary claims or other legitimate claims against the company. Further, the option of the so-called 1/5 company model was introduced in order to support employee participation in ownership. For privatisation purposes, Slovenian citizens were granted vouchers; the value of vouchers granted to each individual depended upon the length of employment (Art. 31 LOT). Vouchers could be used to obtain shares in the employer company within the limitations of internal distribution (the initial 20 per cent), to obtain shares of Privatisation Investment Funds, to purchase shares of other companies privatised by public sale, and to purchase shares or other property of the Republic of Slovenia and state-owned companies offered to the public in return for vouchers (in the latter case, vouchers could not be freely traded).

Certain measures were taken to preserve employee ownership after privatisation, beginning with the two-year restrictions on trading shares gained from internal distribution (respectively four years for the case of an internal buyout). To prevent decline in employee ownership, some firms decided to limit trading by internal acts, namely through 'shareholder agreements' prohibiting the sale of employee shares to outsiders and providing for employee representation of employees in the company's decision-making process. However, shareholder agreements proved easy to abandon and difficult to administer (Mrčela, 2002). Upon the proposition of DEZAP, the Slovenian Chamber of Commerce

ning of capitalism'), which authorised the managing body of socially-owned companies and public companies to offer the employees the possibility to buy the assets of the company under the conditions defined in the Articles of Association.

182 The LOT emphasised ownership transformation rather than privatisation, which, nevertheless, was the final goal of the law. Transformation was the interim stage, allowing for the acquisition of ownership by workers and other Slovenian citizens of existing social capital (public funds).

183 The Slovenian Restitution or Compensation Fund has to issue debenture bonds to re-privatisation claimants who did not get their nationalised property returned in kind. The Slovenian Compensation Fund obtained funds from the non-distributed public funds.

and the Association of Free Trade Unions, an amendment was introduced to the Takeover Law of 1997; this provided for the possibility of an institutional organisation of inside owners in the company's Workers Associations and exempted them from public bids (Art. 81). By the amendment to the Take-Over Law, Worker Associations became professional proxy organisations and, as such, had to act in accordance with the Takeover Law (Art. 298) and the provisions of the Company Law. The earlier laws regulating transformation and privatisation, although not abolished, are no longer in practice since privatisation is generally complete.

Private Companies (2004, 2008) – The transposition of the Second Council Directive 77/91/EEC of 13 December 1976 into Slovenian CL 2004, allowed companies to buy their own shares up to 10 per cent of the subscribed capital for distribution to their own employees and employees of associated companies within a one-year period (Art. 240 CL). This provision applies to both joint-stock companies and limited liability companies; tradability is unrestricted for shares thus acquired. Further, Art. 241 CA allows companies to advance funds, make loans, and provide security for the acquisition of company shares by their own employees or employees of an associate company. Pursuant to Art. 318 CL, part of the profit can be distributed to employees in the form of new shares if the general meeting so decides.

Under the new Law of 29 February 2008, employees are granted a 70-per-cent tax relief on distributed shares held for one year, and a 100 per cent tax relief on shares held three years, up to an annual maximum of Euro 5,000. In addition, no social security contributions are imposed on the benefit. In the original draft law, only employees covered by collective agreements, that is, with the exception of management and other key personnel under individual contract, were eligible for tax incentives. However, the version of the Law finally adopted includes all personnel categories, but only for a limited amount. The annual amount for financial participation may not exceed 20 per cent of company profit or 10 per cent of the employees' total gross salary. The employer company may deduct the value of distributed shares from the corporate income tax base.

b) Profit-Sharing (1993, 1993)

The new Law of 29 February 2008 also applies to share-based but not cash-based profit-sharing. The rules of the Law explained in the section on share ownership also apply to share-based profit-sharing. Further, general provisions of company law may also apply. In Art. 228, the new CL of 1993 regulates the use of net profit. This profit must primarily be used for covering losses and creating legal and statutory reserves. The remaining net profit not exceeding 50 per cent may be used for other reserves; if the Articles of Association so provide, a part may be distributed to employees and members of the management and supervisory boards.[184] These matters are decided by the general meeting in determining distribution of profit. In summary, the CL makes profit-sharing possible provided that there is enough profit to cover losses, legal and statutory reserves, that the Articles of Association allow some use of profits for employees, and that the general meeting ap-

[184] Only the Articles of Association can grant members of the management board the right to participate in profit-sharing in recognition of their work contributions (Art. 252 (1) CL).

proves the decision.[185] The participation amount is usually determined as a percentage of the annual profit of the company.

c) Participation in Decision-Making

Art. 75 of the Constitution specifies the terms and conditions of employee participation in management. It was implemented by the special Law on Workers' Participation in Management of 1993[186], which regulates workers' participation in the management of economic units regardless of ownership form, including co-operatives.[187] According to this law, workers may participate in management by submitting initiatives, by demanding information, by consultations with their employer, and by participation in decision-making, including the right to reject employers' decisions. In particular, workers are entitled to nominate from one third to one half of supervisory board members and, in firms with more than 500 employees, one member of the management board. Since employees who obtained shares in the course of privatisation are as a rule minority shareholders, special provisions of the CL on the protection of minority shareholders apply. These special rights relate to the general meeting, the right to information, the right to examine the books, and the right to lodge a complaint against the decisions of the general meeting. On the other hand, these rights do not include the right to replace management.

[185] It is also possible that participation in profits is defined by the meeting of shareholders (Art. 276 CL), but, by systematic interpretation of special provisions in conjunction with general provisions, it can also be concluded that in this case the general meeting has to amend the Articles of Association.

[186] Of 6 August 1993, OG RS 42/1993, as amended.

[187] Individual specific provisions on employees' co-management are integrated into the special laws for different economic sectors, for example, the Energy Law, Banks and Savings Banks Law, Insurance Company Law.