

Ieke van den Burg, Member of the European Parliament
Questions to and answers from the European Commission – DG Employment & Social Affairs

Below you will find the disappointing answers of Commissioner Špidla on the written questions of MEP Van den Burg. Hopefully DG Employment & Social Affairs will have a new and more ambitious Commissioner after the elections.

Subject: Cross-border obstacles to financial participation of employees

At the end of 2003 the Commission published the report of the High-Level Group of independent experts on cross-border obstacles to financial participation of employees of companies with a transnational dimension. So far the obstacles identified and the recommendations on how to overcome those obstacles have not received much follow-up from the Commission. European enterprises still have problems introducing financial participation because of differences in the legal, fiscal and social framework, the differing rules of stock exchange authorities, labour law, governance and cultural conceptions. Besides this, I have the impression that support for research and other projects in this field from the Commission's budget has come to a halt.

1. Does the Commission still endorse the potential benefits of financial participation of employees as a means of improving the productivity, competitiveness, profitability, sustainable management and social cohesion of the enterprise, in particular in this time of recession?
2. Does the Commission agree that the (cross-border) obstacles previously identified in the legal, fiscal and social frameworks of the Member States still exist? If so, is the Commission willing to start a consultation with the social partners to look at these obstacles and possible solutions?
3. Is the advisory committee on financial participation that was created as a sub-group of the Group of Directors-General for Industrial Relations still functioning? Is the Commission willing to set up a broader advisory committee covering more relevant Directorates-General (JUST, TAXUD, ECFIN, etc.) that is competent to deal with, for example, legal and fiscal barriers and other issues which are vital to promoting and supporting European financial participation schemes?
4. Is the Commission prepared to include the issue of financial participation in its consultation on the Prospectus Directive 2003/71/EC⁽¹⁾? If not, why not?
5. Is the Commission prepared to promote an EU convention or other instrument on the taxation of share options? If not, why not?
6. Is the Commission considering establishing a European model on financial participation of employees as a potential 28th regime that EU companies may opt for? If not, why not?

Answer given by Commissioner Vladimir Špidla (13.5.2009)

The Commission has promoted wider knowledge of employee financial participation schemes in the European Union and will continue to do so. It provides financial support for seminars and conferences to exchange information and best practice involving such schemes, raise awareness and improve knowledge of them, contribute to a better understanding of their benefits and the obstacles to their further development, and provide training for the social partners in operating them.

As research by the European Foundation for the Improvement of Living and Working Conditions shows, employee financial participation schemes continue to be little used in most

Member States and are very unevenly distributed across the EU^{1[1]}. The development of financial participation schemes is strongly influenced by the existence of the right legal framework, tax incentives and other financial advantages, which are laid down at national level. The Commission's work programme makes no provision for consulting the social partners on this issue.

As regards a European model for financial participation of employees, any taxation aspects would have to be primarily dealt with in the context of the analysis made in the study on "Company taxation in the Internal Market", as the Commission stated in the Communication of 5 July 2002 on a framework for the promotion of employee financial participation^{2[2]}. Not only the taxation consequences for individuals but also the position of the companies themselves would have to be considered. When companies operate incentive schemes for their employees involving the issuing of shares or share options there is generally no specific tax incentive for the company in Member States.

The services of the Commission have established a sub-group of governmental experts on employee financial participation within the Group of Directors-General for Industrial Relations. The experts have met a few times to assess progress in promoting financial participation schemes in the Member States. However, given the group's membership, its work has been confined to such schemes' social aspects. There are no plans to establish an advisory committee covering other policy areas and the Commission's work programme makes no provision for this.

The public consultation on the review of the Prospectus Directive^{3[3]} launched by the Commission on 9 January 2009 extensively covered the issue of financial participation of employees. Under the Directive, companies offering securities to their employees are exempt from the obligation to publish a prospectus only where such securities are traded on a regulated market. The Commission has proposed that the Prospectus Directive be amended to extend that exemption to all employee share schemes in the EU. Such a change would ensure that EU employees working in: (i) companies listed in third countries; (ii) non-listed companies; and (iii) companies listed on non-regulated markets could all enjoy the benefits of financial participation schemes. The respondents to the public consultation generally supported that proposal.

The study which the Honourable Member refers to suggested that Member States should consider the introduction of an EU-wide Convention on the taxation of share options that would establish consistent rules on taxation and social security contributions that are clear and easy to apply for employees who change residence.

The Commission is aware that the incompatibility of Member States' taxation systems in many areas, including employee share options, may cause double taxation and constitute a barrier to cross-border economic activities.

However, in the absence of unifying or harmonising measures at Community level, direct taxation falls essentially within the competence of EU Member States. Thus, Member States remain largely free to design their direct tax systems so as to meet their domestic policy objectives, including as regards the tax treatment of employee share options.

The Commission and several EU Member States participated actively in discussions at the Organization for Economic Cooperation and Development (OECD) which led in 2004 to agreement on amendments to the Commentary on the OECD Model Double Taxation Convention so as to ensure a common interpretation of how tax treaties apply to employees

^{1[1]} <http://www.eurofound.europa.eu/publications/htmlfiles/ef0772.htm>.

^{2[2]} COM (2002)364 final.

^{3[3]} Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L 345, 31.12.2003, p. 64.

or directors who receive stock options as part of their remuneration. The Commentary is not binding, but it gives guidance to governments on how to interpret and implement the provisions of the Model Tax Convention.

Furthermore, the Commission considers that improved coordination between Member States' national tax systems could resolve double taxation problems such as those raised by the Honourable Member. That is why, in its Communication of 2006 on coordinating Member States' direct tax systems^{4[4]}, the Commission announced its intention to consider the need for a specific coordination initiative in various areas including on bilateral tax treaties. The tax treatment of employee share options could form part of this general bilateral tax treaty coordination exercise. It would not, however, be feasible to have a Convention on the taxation of share options alone since it would be technically difficult to address only one portion of Member States' regulation of private income taxation of individuals.

^{4[4]} Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – Co-ordinating Member States' direct tax systems in the Internal Market (COM/2006/0823 final)