



EUROPEAN FEDERATION OF EMPLOYEE SHAREOWNERSHIP

**Mr Michel Barnier
European Commissioner
European Commission
Rue de la Loi 200
1049 BRUSSELS**

December 22, 2009

Dear Commissioner,

Firstly, may we congratulate you on your designation to the new European Commission.

It is now well established that employee ownership encourages entrepreneurship. It is good for companies and for employees as well, and it brings better economic and social performance. Furthermore, it can contribute to healthier corporate governance and stability. The current financial crisis has highlighted this issue and there are strong calls for such a remedy.

This is why we ask for more support from the European Commission to promote the development of employee ownership across Europe. Our first question to you is: Would you be in favour of this?

Within the Commission, this is an inter-departmental question related to multiple competencies, particularly about Internal Market & Services (MARKT), Industry & Entrepreneurship (ENTR) and Employment, Social Affairs & Inclusion (EMPL),

We have noted that EMPL is entitled to lead in this matter. However, barriers to multinational employee share plans were mostly reduced thanks to MARKT's initiatives (such as the Prospectus Directive, the Shareholders' Rights Directive). Similarly, ENTR was really receptive to employee ownership (notably through questions related to the transfer of business). However, considering the budgets for the promotion of employee ownership, we are still far from what the European Parliament discussed many years ago (see appendix).

We ask for MARKT to be more active in this matter. We particularly suggest that a recurring "Forum on Employee Ownership" should be set up, allowing actors to meet and work together with all interested Directorates' General. This could be organised in the framework of the "European Corporate Governance Forum". Hence our second question: Would you be in favour of such a Forum?

We also call for an adequate, well identified budget line for the promotion of employee ownership across Europe. So this is our third question: Would you be in favour of an adequate budget line in this matter?

Yours faithfully,

Appendix:

Political roadmap for employee ownership in Europe
Proposal to the European Parliament
Analysing European budget
Questions by MEP Ieke van den Burg

**Marc Mathieu
Secretary General**

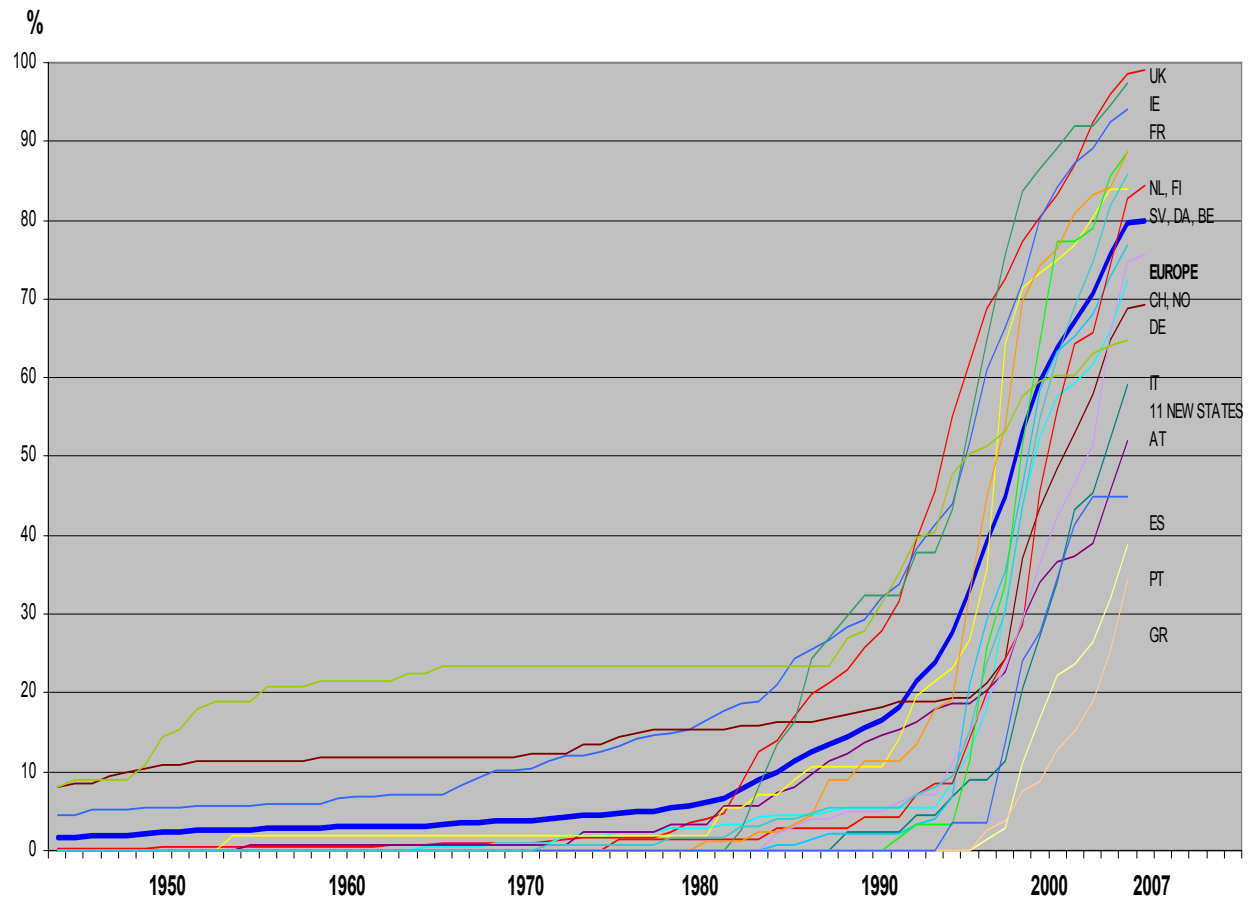
A political roadmap for employee ownership in Europe

What should be done at European level to promote the development of transnational employee share plans across Europe? Should we set up a European model for employee financial participation?

These are the questions answered by Marc Mathieu, Secretary General of the European Federation of Employee Share Ownership, within the framework of the French Presidency of the European Union, organised by the MEDEF in Paris on October 17.

The answer can be seen as a roadmap for employee ownership in Europe on the threshold of 2009.

Let's first and beforehand have a look at the picture of the development of employee share plans in large European companies. This is highly fascinating. It is a general movement, involving all large companies in all countries. A strong, quick and sudden movement. 10% of all large European companies had employee share plans in 1986, 20% in 1994, 40% in 1999, 80% in 2006... When considering recent trends, we can predict that employee ownership is likely to double within the next few years.



Based on this observation, our answer rests on 6 points, Marc Mathieu said.

1. Question number one: Europe must be given competence in the matter. But it is not the case so far. As we can see it all large companies are going in the same direction, in all countries. However, when considering the states, it is still everyone for himself. This general trend does not get any political accompaniment. In a number of states you do have legislations but even there, such legislations and share schemes are of unequal quality. Giving Europe competence means giving Europe a policy, a budget, an administrative body... This the heart of the matter !!! The development of employee ownership has to be encouraged. Employee ownership should more effectively be associated to the governance and management of European companies.

2. Do we need what you call a "European model"? Yes we do. But let's be quite clear about it. France has now a 50-year-old excellent legislation. The United Kingdom has now a 30-year-old excellent legislation. Is France going to put its excellent legislation aside? Are French companies going to abandon their schemes for a new model, even a European one? Of course not. French companies will continue to work first with their basic schemes, those being available for most employees at their main location, and thereafter extrapolate and translate to their other locations in other countries. And this is precisely the place for a common model. Instead of translating in 26 other ways we should have a single, complementary model, available in all countries.

3. Of course, neither the UK nor France would give up decades of excellent legislation. Nevertheless, at the same time, France and UK are the first countries concerned as they host 40% of all large European companies! So the third pillar of my answer is the following one: Reciprocity and mutual recognition. French companies should be allowed to implement their own schemes in the UK, while British companies should be allowed to implement their schemes in France. France and the UK should work hand in hand to that end. You are the parties principally involved, you also both have the most complex and excellent legislations, which you would not give up. I think it is essential that the main parties concerned should develop ways of mutual recognition.

4. What should the above mentioned single European model be like? We can draw our inspiration from the Renault "Logan" model. It is rustic, robust, all-purpose, cheap... This is what we need in Europe. You cannot transfer 50 years of good legislations overnight. Trying to do so would generate monsters. You have to work block by block as in a "building block" approach, with simple blocks. What would be the "Logan" model for employee ownership, the simple, basic block? It should be possible for an employee in each European country to purchase shares in his company, up to 5.000 €, every year, with a 20% discount free of tax and social security. This is the simple model that should be available in all countries. This could be a big step forward for Europe.

5. Let's compare several European countries with respect to this basic 5.000 € block with a 20% discount free of tax. This is far below France or the UK. On such scale, you can see France with 22.000 €, the UK with 12.000 € while many countries have no legislation at all and others are far below: Norway 950 €, Austria 2.500 €... Here is why we urge the European states to take action, with some good success: Slovenia, for example, voted a legislation in February 2008. Until now, Germany was at 650 € (compared to the 5.000 € we are discussing here). It will move to 1.800 € in 2009. It may seem low but it is really a good step forward. Austria will probably move from 2.500 to 5.000 € in the near future. Now it is time for Italy and Spain to wake up !!!

6. My sixth point deals with the SMEs. The USA had a stroke of genius 35 years ago when adopting the ESOP (employee stock ownership plan). This model applies mainly to the transmission of businesses to employees (transmission of family-owned business, rescue of failing businesses). Of course, it can also be implemented in other cases, but this is the biggest part. In this way, in 35 years, the USA were able to develop a strong employee ownership culture, combining information, spirit, finance and management on a wide scale.

There is nothing like this in European countries. Here, we are still on free, open field, all European states being even. This could make things easier.

Of course, you can transfer employee financial participation schemes from large companies to small and medium sized ones (for example the French "intéressement"); it could probably do no harm but this is not the right issue. The needs, the key issues of SMEs are not the same as of the ones of large companies. Schemes, employee participation plans, legislation are totally different. Of course, you can try to transpose, but it is not the right issue, you need something else. This is what the USA did and this is what we lack in Europe. Therefore, here also, there is a space for a European model. We encourage Europe to promote a "European ESOP". For the rebuilding that will follow the present crisis, it will be an extraordinary asset for the USA. We need that too.



Proposal to the new European Parliament

After 10 years of (no) European policy, time has come to assess the situation and to relaunch a dynamic policy for developing employee ownership across Europe.

150 Members of the European Parliament and leaders from all political parties expressed their support to the Employee Ownership Manifesto for the 2009 European elections. Healthier economy, sustainability, better governance are the key points in most supporting messages from all parties.

Let's quote MEP Frédérique Ries : *"I commit myself with my colleagues of the ADLE to convincing the European Parliament that the issue of the development of employee ownership in the European Union should be a priority for the first year of the new legislature."*

The most supportive statements came from the European Liberals and Democrats, from the Greens and from the Group of European Socialists, as well as from the European People's Party and others.

After 10 years of (no) European policy, time has come to assess the situation and to relaunch a dynamic policy. This is a perfect role for the European Parliament. Elements of this assessment:

- 10 years ago, the European Federation of Employee Share Ownership organized a first Conference of the Belgian Presidency of the EU on employee ownership (on the 23.11/2001 at the Egmont Palace). At the same time, Guy Verhofstadt had convinced the Lisbon Summit to ask the European Commission for a communication and an action plan. This plan has never come into being.
- For 10 years the Parliament has voted a (sub-) budget line for the promotion of employee financial participation in Europe. The Parliament counted on an annual budget of one to 2 million euros. Actually, in ten years the Commission has only granted 3 million euros for projects to that end.
- A High Level Experts Group was set up by the Commission. It put forward seven concrete proposals in 2004. In his Report to the French Parliament, Deputy François Guillaume wrote down in September 2006: *"Nevertheless on the date of the drawing up of this report, the implementation of these proposals has not even been initiated"*. Since then nothing has moved.
- Very recently, MEP Ieke van den Burg has put a series of written questions to the Commission. The answers received are distressing. In conclusion Mrs van den Burg says that *"Hopefully DG Employment & Social Affairs will have a new and more ambitious Commissioner after the elections"*.
- Paradoxically, in spite of the do-nothing community attitude, employee share plans have rapidly developed in huge numbers in European companies, but in bad conditions and with multiple discriminations. This wide gap between the dynamics in the companies and the community do-nothing attitude has generated a strong feeling of frustration towards Brussels and Europe.

Among the proposals put forward to break with this acknowledgment of do-nothing attitude, one of them seems of the utmost importance. We need a permanent community body to ensure the promotion and development of employee ownership in Europe on a regular basis.

Within the European Parliament, such permanent body could be an "Interparliamentary group for employee ownership".

At the Commission level, it could be an "European Ownership Forum", following the example of the Forum on Remunerations, the Forum on Restructuring and others. Light structures, but permanent structures ensuring a follow-up.

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)