

**COMMON ELEMENTS OF AN ADAPTABLE
MODEL PLAN FOR
FINANCIAL PARTICIPATION IN
THE EUROPEAN UNION
(DRAFT)**

1 Introduction

The International Association for Financial Participation (IAFP), in agreement with the European Commission, undertook to draft a model plan for financial participation in EU Member States, so as to fulfil one of the recommendations of the High Level Group of Experts on transnational barriers, under the chairmanship of M Jean Baptiste de Foucauld (France). It is intended that this Model Plan would be used mainly by transnational enterprises, operating within the European Union, but also by small and medium sized enterprises operating transnationally. Its goal would be to promote greater cross-border financial participation and to make the application of the main forms of financial participation easier to introduce and implement, as cross-border schemes, within transnational enterprises.

The process adopted by the IAFP to fulfil this commitment was to bring together national experts from across the Member States for two drafting seminar. These experts came from some twelve countries and from a range of areas of expertise, from the social partners' organisations, human resource/personnel management and from service providers.

Having examined the High Level Group report and having had a series of intensive debates on what might constitute a *Model Plan* the IAFP came to the conclusion that the removal of certain barriers to transnational arrangements for financial participation could only be addressed at the political level within Member States and at the EU level and, therefore, outside its remit. Consequently, it was subsequently decided that this document should identify a set of principles that could be incorporated into an EU Model Plan which would be common in all Member States.

These principles would recognise the different legal, financial and employment relations traditions within the Member States.

These elements of a Model Plan are primarily directed to the governments of the Member States and to the management and employee representatives in EU transnational enterprises and are aimed at assisting enterprises in introducing transnational financial participation arrangements. The draft Model plan, therefore, provides a set of operating practices or guidelines for enterprises considering implementing financial participation and also other interested parties, such as the social partners.

2 A Review of Financial Participation in the EU

The issue of employees participating in the financial benefits of their company's performance has become an important political issue across the European Union. It is seen by many as a means of promoting greater co-operation between management, owners and the workforce, providing a common purpose, reducing workplace conflict and, consequently, increasing efficiency, productivity and flexibility.

In the light of the findings of many recent studies and as a follow up to its two PEPPER reports ¹ published by the European Commission during the 1990s, the Commission, in its Social Policy Agenda 2000-2005, undertook to 'launch a Communiqué and action plan on the financial participation of workers'.

To advance this objective, a Communiqué was published in 2002.² In it the Commission focuses on three general strands which it considered are the main challenges to a greater diffusion of financial participation across the EU:

The identity of general principles which should apply to national policies;

How should the EU deal with transnational barriers, such as taxation, the social and cultural environment and differing social security arrangements?

¹ *Promotion of Employee Participation in Profits and Enterprise Results*

² *Communiqué on a framework for the promotion of employee financial participation* Commission of the European Communities (Brussels), COM(2002)364 final.

What role can the Commission have in improving understanding of the different systems of financial participation?

3 General Principles

Recognising the importance of subsidiarity in EU policy making, the Communiqué draws on a number of general principles from the PEPPER reports and the Council Recommendation (1992), which it considers still apply in the present environment and which can be a guide to Member States in the framing of policies and/or legislation. The experts found that many of these *General Principles* are incorporated into the national laws of many Member States, but other countries have not supported these principles through legislation.

The *General Principles* are:

Financial participation schemes should be introduced voluntarily at company level and employees should not be obliged or forced to join;

Complementary to the first principle, the benefits of financial participation should be available to all employees in an enterprise, including those working on part-time, fixed-term or temporary contracts (broad-based) and not just for a selected group of senior managers and top professional staff (narrow-based). Other forms of discrimination should also be avoided, such as the exclusion from participation in a scheme on the grounds of gender, race, ethnicity, religion, disability, age, etc.

The rules of schemes should set out in a clear, predefined formula, linking financial participation to enterprise results. These rules should establish the start of each reference period and show the formula used to calculate the funds allocated to the employees' shareholding;

If financial participation schemes are to be effective, they should be applied regularly and continuity should be ensured;

Schemes must be transparent, with clear and comprehensive plans;

In the interests of transparency, employees should be made aware of the risks resulting from investment decisions and, consequently, possible fluctuations in income from the schemes;

There must be a clear distinction made between the normal, regular, remuneration of employees and any payment which might derive from their participation in financial participation schemes. Financial participation is not a substitute for, or a part of, wages but should be seen as complementary to normal pay;

Schemes should be developed in a way that is compatible with the mobility of employees, both internationally and between enterprises. Financial participation plans should avoid creating further barriers to the mobility of workers.

4 Transnational Barriers

The Communiqué identifies a number of barriers to the co-ordination of financial participation arrangements at EU level:

- the lack of co-ordination of taxation policies and the different treatment by the Member States of the financial benefits from the various schemes;

- a lack of legal clarity on the payments of social security contributions on any income from membership of financial participation arrangements;

- the legal differences between the Member States in, for example, securities laws (in relation to share ownership plans) and employment legislation (in relation to termination of contracts and severance pay);

- the cultural differences, national traditions and the attitudes of employees towards financial participation schemes;

The general lack of information about existing schemes or policies towards financial participation.

The Communiqué considered that the solution to these obstacles is a gradual convergence of national systems and this might be achieved through the exchange of information, a definition of common objectives and regular monitoring of progress by the Member States.

5 EU-level Actions

There are a number of possible actions, suggested by the Communiqué and built around the general principles, which might be taken at EU-level with the aim of promoting a more extensive application of financial participation within the Member States. First, the Commission undertook to set up a working group of independent experts to identify and analyse the transnational barriers in more detail and explore different options for overcoming them. Second, a system of benchmarking should be developed to provide for a better exchange of information on national policies and practices and greater comparability of financial participation practices in the Member States.

High Level Group

The first action which the European Commission committed itself to in the Communiqué has been completed. A number of experts in financial participation were brought together, under the chairmanship of M Jean Baptiste de Foucauld (France), to address the second of the three strands of the Communiqué, that is to analyse the transnational barriers to financial participation and to recommend measures to overcome them.

This group reported in January, 2004, and, having undertaken a comprehensive study of the range of financial participation plans in the Member States and all aspects of the obstacles to the dissemination of these plans across borders, it identified six broad categories of obstacles:

The diversity of legal, fiscal and social frameworks in the Member States;

The variety of rules laid down by stock exchange authorities;

The number of ways labour legislation considers financial participation, in particular around the provision of information and the consultation of trade unions and other employee organisations;

The different approaches to corporate governance, in particular the different roles of the general assembly of shareholders in relation to the introduction of financial participation schemes;

The different traditions, cultures and practice of industrial relations in the Member States;

The costs of implementing participation plans, especially for SMEs.

The final section of the report proposes steps that the High Level Group consider would help to eliminate the barriers and it made a number of general recommendations designed to achieve these steps, such as:

Improving the dialogue between Member States on financial participation issues;

A greater role for the social partners in educating their members and disseminating information on financial participation;

The setting up of an information website to establish links and provide ‘good practice’ examples;

Reduce the complexities of the public offer of shares through the Prospectus Directive;

Introduce a ‘convention’ on the taxation of share options, which would suggest consistent rules on taxation and social security contributions that are clear and easy to apply for employees who change residence;

For other forms of financial participation, introduce a procedure for the mutual recognition between Member States;

Develop a European Model Plan for financial participation.³

A summary of the report can be found in Appendix 2.

Benchmarking

The development of common indicators for the purpose of benchmarking financial participation policies and practice in the Member States was the second action proposed in the Communiqué and this has also been completed through work

³ *Report of the High Level Group of Independent Experts on Cross-border Obstacles to Financial Participation of Employees for Companies having a Transnational Dimension* (de Foucauld Report) European Commission, DG Employment and Social Affairs.
(see www.europa.eu.int/comm/employment_social/labour_law/index)

undertaken by the European Foundation for the Improvement of Living and Working Conditions (Dublin) and the IDEAS Institute (Dublin). The purpose of this project was to develop a tool by which a comparative measurement of the financial participation situation in the Member States could be evaluated.

This exercise produced some sixteen indicators under three dimensions –

The level of usage of financial participation;

The nature of financial participation;

National policies and characteristics.

These dimensions were further divided into *themes* and *sub-themes* within which the sixteen indicators were identified.⁴ These indicators have since been tested successfully in Slovenia. The full list of dimensions, themes and indicators can be found in Appendix 3.

6 Elements of a European Union Model Plan for Financial Participation

Taking up the challenge of the High Level Group of Experts regarding the drafting of a Model Plan, if the operation of such a plan is to be successful there are certain issues that need to be put in place at the EU-level to facilitate the diffusion of financial participation and to encourage transnational enterprises to introduce such schemes, such as the harmonisation of the taxation treatment of remuneration from share ownership and stock options, greater convergence of social security payments and of aspects of labour law. Also, any Model Plan must be framed within the *General Principles* set out in the European Commission's Communiqué (see page 3 above).

Employee ownership and financial participation programmes provide a significant contribution to the economic and social development of the EU. They are good for employees, employers and for national productivity. They benefit employees by providing a flexible and understandable programme of remuneration that is based on recognition of employees' input to the governance and productivity of the enterprise.

⁴ *Development of Indicators for the Benchmarking of National Policies and Practices of Financial Participation across the EU* J McCartney, The IDEAS Institute, Final Report for the European Foundation for the Improvement of Living and Working Conditions (2004)

Financial participation programmes are of benefit to small, medium and large enterprises, whether operating in the public or private sector as they provide an efficient way of attracting, retaining, motivating and empowering high quality employees to higher levels of productivity and a co-operative employment relationship. Financial participation also benefits the economies of the Member States through greater levels of productivity and competitiveness in an era of globalisation.

A company about to introduce financial participation arrangements should outline, in the introduction to its plan, what it sees as the reasons for employees to join such a plan and research and best practice has shown that the following outcomes result from their introduction:

- Improvement in productivity and in making the business more competitive;

- The retention of employees, or at least key employees, by providing an incentive for them so that future rewards can be substantial but only obtainable if the employee remains with the company for a fixed period of time;

- Improvement in staff commitment, morale and a sense of identity with the company objectives;

- Makes employees more aware of the company identity, which is particularly important when a holding group takes over diverse businesses in various countries;

- An emphasis on the role of employees as stakeholders in the future of the company;

- Encouragement of staff to take more interest in the operation/running of the company, its market position and financial situation.

It should be noted that many of these outcomes could be achieved through wider HRM practices, such as participation in decision-making and a policy of information and consultation. Consequently, a combination of various HRM practices has a synergetic affect and financial participation is more effective when it is one part of wider policies on employee involvement, based on clearly stated objectives to achieve these outcomes. The proposed Model Plan is guided by this principle.

7 Definition of Financial Participation Schemes

Several types of financial participation schemes are in use in the European Union. For the purposes of the Model Plan, financial participation includes the following schemes:

Profit-sharing

Regular payments to all employees that are explicitly and directly linked to the profits of the enterprise, or some similar measurement of corporate performance. Payments can be in cash or to funds for the social or other benefits of the workforce.

Employee Share Ownership Plans (ESOPs)

An agreed percentage of the share capital of the company, usually funded through some sort of loan, is held in trust on behalf of the workforce. This share holding can either be in ordinary shares or special shares reserved for employees and shares are administered on behalf of the workforce by elected representatives and/or trade unions, acting as trustees. Management might also be involved in the fund administration, as trustees. This form of financial participation is not common within the EU.

Share based profit-sharing

An agreed percentage of the profits of an enterprise are allocated to the allocation of free company shares for distribution among the workforce, or to be held in trust on behalf of the workforce, regardless of whether the employees are existing shareholders or not. These shares are usually frozen for a certain period before employees or the trust is allowed to sell them.

Share Purchase Plans

A share purchase plan through which a certain percentage of the shares of the company, either ordinary shares or special shares reserved for employees, are made available to individual employees, usually at discounted rates, so that

they can indirectly participate in the performance and results of the company through dividends or the appreciation of employee-owned capital, or a combination of both.

Stock options

Where employees have an option to acquire certain company shares at sometime in the future through agreed arrangements, such as ‘save-as-you-earn’ schemes, which allows them to enhance their share ownership by activating the options. Shares can be ordinary company shares or special shares specifically set-aside for employees, such as preference shares.

The elements of a Model Plan can apply to all these types of plans but the focus of this document is on the last three, as the first two types are not generally found in cross-border financial participation schemes operated by transnational enterprises in Europe.

8 General Principles

The following list of *General Principles* was identified during the detailed discussions at the two drafting seminars and complement the *Principles* outlined in the European Commission Communiqué. These *General Principles* apply to the three forms of financial participation this document is focused on.

Governance and Fiduciary Responsibilities

Employees should be involved in the making of key decisions relating to the design of the plan, as it is well established that where employees are involved at an early stage in the design, such plans are more successful in the longer term;

There should be an independent fiduciary custodian for deferred stock plans to ensure that the interests of employees are protected;

The company board of directors is ultimately responsible for overseeing the operation of the plan and have a duty of care to all those involved in the plan;

Communications

A company should provide key information on activities, financial results and the company performance to all participating employees before the plan is introduced and annually thereafter;

In the event of an extraordinary event, such as a merger, takeover or other restructuring of the company, all participants should be informed as to how this event will impact on the plan;

There should be a statement of the value of employees' holding, of future key dates, such as when share or option awards will be vested and what is happening to dividends from shares held in trust or re-invested in the plan, at least every year. The use of online access to such information should be available, where possible;

Social dialogue is essential to ensure the success of the plan, so employee representative organisations (trade unions and works councils or other representative bodies) should be involved from the planning stage and in SMEs owner-managers should consult the workforce directly;⁵

All enterprises should strive to communicate information on the plans in the national languages of each Member States in which they have an operation, so as to avoid any misunderstanding or exclusion from vital information on the basis of language skills;

The company should put in place arrangements for training of participating employees and, in this context, should involve, where possible, with social partner organisations about the provision of financial education and economic literacy, which is compatible with national laws governing the provision of financial and investment advice;⁶

The following communication strategies should be considered in the design and implementation of the financial participation scheme:

Company-wide launch;

Two-way briefing in company time;

⁵ While many of these *General Principles* can also apply to SMEs, the specific issues of financial participation schemes for these enterprises are not addressed in this document

⁶ The work undertaken by the European EOLE Project, co-ordinated by the European Federation of Employee Share Ownership is important in the context of educating employees participating in financial participation plans.

Information documentation should, when possible, be sent to both the home and work addresses of the employees;

Regular in-house bulletins (at least quarterly) outlining relevant company performance and other key information on the plan;

Phone help-lines to deal with queries, in particular at the start-up phase of the plan;

The use of internal electronic communications – intranet; e-mail circulars, etc.

9 Essential Elements of a Model Plan

General Rules for a Financial Participation Plan

Financial participation schemes must be open to all employees.

Financial participation plans should clearly state in writing the procedures and rules that govern the operation of the plan. These should be fully explained and communicated to employees.

Remuneration from participation in a financial participation schemes should be distinct from wages and salaries deriving from the contract of employment. Profit sharing or share allocations should be supplementary to, and not a substitute for, normal income from employment.

Employees should be made aware of the investment risk where they acquire or hold shares in the enterprise where they are employed. The potential risks arising from financial participation should be clearly stated and communicated to employees. Employees should have the right to decide on any aspect of financial participation plans that expose them to financial risk. Any element of risk should be a crucial part of any information/education strategy and employees should always have the opportunity to diversify their exposure to minimise any potential risk.

Any relationship between financial participation schemes and other company based forms of employee savings, such as pension plans, should be clearly stated and communicated to employees.

The company should not actively endorse the financial participation plan as a form of investment. It is, however, a legitimate form of savings.

Personal data collected for the operation of the financial participation plan must be treated in accordance with EU and relevant national data protection legislation.

Details of the plan should be made available to and, if possible, discussed with employee representative organisations, such as trade unions and/or works councils, at an early stage and they should be involved in plan design, implementation, communication and monitoring of the plan. Where such bodies do not exist employees should be consulted directly on the proposals and administration of the plan.

Voluntary participation in a plan must always apply and a company should not give advice to its employee that they should or must participate in the plan.

General Rules for the Drafting of Financial Participation Plans

The preamble of a plan should explicitly and clearly state the purpose, objectives and general character of the plan. The benefits foreseen for the company and for all the company stakeholders, including the employees, should be clearly stated.

The plan should state whether shares allocated as a result of profit-sharing, free shares, or the award of stock options is linked to company, group and/or individual performance.

Participation in the plan should be voluntary and employees should have to give their consent in writing to participate in the plan. There should be no discrimination against employees choosing not to participate.

Invitation to employees to participate in a plan should be clear and should set out their obligations and responsibilities, as well as the benefits. Employees must be informed of their obligations if they participate in the plan and they must be reminded of these by the company at least once annually.

- 5 A reasonable period of time must be allowed for employees to decide whether to join the plan or not;

The plan should clearly set out employee rights with regard to participation in the plan;

The plan should clearly and explicitly state the key rules and procedures of the plan, including

minimum and maximum employee contributions,

vesting periods and maturity dates,

holding periods,

key dates,

what happens to those employees who leave the company,

the involvement of participants working in subsidiaries located in other Member States,

tracking rules,

eligibility rules,

headroom limits.

The board of directors is responsible for the overall administration of the plan. Its role should be clearly set out in the rules of the plan.

The plan should include a timetable for the provision of regular information on company activities, strategies and firm performance.

The vesting period should be long enough to separate from normal income arrangements;

The company should provide an annual statement of the value of employees' savings, shares and stock option holdings and indicate whether dividends accruing to shares held in trust are added to employee accounts.

If it is technically possible for an enterprise, the administration of its financial participation plan should provide encrypted personal shareholding accounts for all participating employees.

Rules Relating to the Specific Forms of Financial Participation covered by this document

A Share based profit-sharing

Eligibility

The plan should be open to all employees with an employment contract with the company, subject to eligibility conditions. These conditions should require that all

employees who have passed their probationary period be eligible to join. In any case, all employees with one year's employment or more should be eligible to join the plan.

Distribution

Shares should be distributed according to a pre-defined formula or set of principles. These should be explicitly incorporated in the rules of the plan;

Distribution of shares should ideally be made at regular intervals and the normal period of distribution should be stipulated in the plan;

Explicit consent from employees should be required to receive shares;

Where there is a cash alternative to shares, this should be clearly stated and employees should be clearly informed of this alternative and the tax consequences.

Size of awards

Where there is a maximum individual allocation, this should be clearly stated in the rules of the plan.

Plan termination

The company should clearly outline in the rules of the plan what happens to employee shares that are held in trust or have not fully vested when a plan terminates due to liquidation, merger or takeover.

B Share Purchase Plans

Eligibility

The plan should be open to all employees with an employment contract with the company, subject to eligibility conditions. These conditions should require that all employees who have passed their probationary period be eligible to join. In any case, all employees with one year's employment or more should be eligible to join the plan.

Employee and employer contributions

Maximum and minimum contribution levels must be transparent and must be written into the rules of the plan;

Employee contributions should not exceed 10 per cent of their income or 20 per cent of the national average income in the preceding year, whichever is the lower.

The plan must be transparent about the level of payroll deductions which may be required in certain Member States;

The scheme should be able to offer discounts, matching free shares or both and such offers must be stated by the company in advance;

Employees should be able to suspend their contributions to the plan at any time (but with due notice) without penalties;

Contributions to the plan should be regular but the type of regularity (weekly, monthly, annually) should be subject to agreement between the employees, their representatives and the employer;

Where a discount is offered and/or where matching shares are offered, there should be a minimum holding period for both purchased shares and matching shares. This holding period should be defined in the rules of the plan, and should be clearly communicated to employees at the time of joining the plan.

Investment and diversification

The sponsors of financial participation plans should not act in any way that would take unnecessary risks with the investments made on behalf of participating employees (e.g. through the investment policies of its agents);

There should be a limit to the level of stock in the company that an employee can hold in his or her portfolio, agreed at the design stage of the plan.

Accounts

- At least once annually, employers must give all participating employees a personal statement showing the value of each employee shareholder account and key dates in the life of the plan, such as vesting rules, withholding periods and information about the tax implications of cashing in their employee stock during certain periods.

- In the case of schemes which involve savings plans and diversified portfolios, employees should be given the right at least once annually to meet on company premises and during working hours in order to discuss the policies of the investment trust board.

Distribution

The guiding principle is that distributions to participating employees and/or their beneficiaries should be fair.

Distributions should continue to an employee's beneficiaries after his/her death.

Each Member States' legal code must be respected with regard to the distribution amounts given to employees and their former spouses following divorce.

The indices or reference points used by the company in order to make varying distributions among employees – for example, length of service and/or seniority or superior productivity - should be clearly agreed at the design and incorporated into the rules of the scheme.

The rules must set out the circumstances in which forfeitures of employee stock might occur.

Fiduciary issues

If the company is a listed public company, the administration of the plan should be carried out by an independent organisation, such as a professional administration company,

An independent custodian of the employee shareholders' funds must be appointed.

Employees must be made aware of the maximum and minimum contribution rules in advance of the introduction of the plan.

The plan must list the specific duties/responsibilities of the employer and the employee representative organisations

The expenses incurred in operating the plan must be transparent.

While the company is ultimately responsible for the operation of the plan and for the behaviour of its trustees and any other agents, an independent fiduciary must be appointed.

Termination

- If an employee leaves a listed (public) company, he/she can freely keep or sell his/her shares;
- However, in an unlisted (privately held) company, the employer may require the re-purchase of departing employees' shares. In addition, for social reasons, such as divorce or death, the employee or beneficiary may take the shares, but in all cases the holding period must be respected.
- For its part, the company has the right to terminate the plan at any time, but it must consult with the workforce and its representatives before doing so.
- The rules of the plan should set out the conditions that apply when an employee leaves the company and that matching shares may be forfeited if certain conditions are not met ('good versus bad leavers').

Successor employers

In the event of a takeover, as with other employee involvement rights, financial participation rights should have a legal guaranteed in the new structure. In the event of a hostile takeover, the employees in the company subject to the hostile takeover should have the same rights as a minority shareholder.

C Stock Options

General

An award of stock options to employees cannot replace or be a substitute for wages/salaries;

Companies should make regular grants of options to employees;

Where a savings plan is operated, in conjunction with an options plan, employees should be free to take the accrued benefits of the savings plan without exercising the options.

Communications

The company should clearly explain to participating employees at the point of award and at regular intervals thereafter, the tax implications of the award:

At the point of grant;
At vesting;
When options are exercised;
When exercised stock options are sold.

Accounts

- At least once annually, employers must give all participating employees a personal statement showing the number of shares held under option and key dates in the life of the plan, such as vesting rules, withholding periods and information about the tax implications of cashing in their employee stock during certain periods;
- In the case of schemes which involve savings plans operated by the company or under the general direction of the company, employees should be given the right, at least once annually, to meet on company premises and during working time in order to discuss the policies of the investment trust board.

Distribution

When offering stock options, plan sponsors and their advisors should take full account of ‘headroom’ limits stipulated by other shareholders or their representatives;

The criteria for allocation of option awards must be transparent and should be stated in the plan. Criteria might include equal distribution, distribution according to length of service and seniority and distribution according to performance targets.

In the case of linkage between performance and the allocation of options, targets should be clearly communicated to all employees at a time that allows them to realistically achieve the targets.

Vesting

Vesting periods should be clearly stated in the rules of the plan, as should the existence of any performance conditions. Specific performance conditions should be agreed with employees and their representatives and

clearly communicated at regular intervals and in good time for targets to be achievable. Employees should also be clearly informed when any performance targets have been met and whether the performance requirement for vesting has been met.

Appendix 1

Proposed Model Language / Table of Contents

The most typical transnational plans are a) profit sharing based employer share distributions; b) stock purchase plans involving discounted shares; and c) stock options. Simple immediate cash or deferred financial participation programmes also exists but for purposes of developing a Model Plan, the IAFP Expert Group focused on the three share based plans, since they are the most prevalent in the EU. However, in many EU countries, existing plans combine elements of each of these share schemes.

In order to recognise best practices in the Member States, as well as their tax, securities and employment laws, any Model Plan is simply an adaptable framework, upon which these best practices and legal components may be built, utilising a common framework. As the tax, employment and securities laws of the Member States become more harmonised, it will be possible to also harmonise the provisions of the Model Plan. The IAFP Expert Group has analysed the ‘best practices’ in various Member States and proposes the following *Table of Contents* as a first step in the development of an adaptable Model Plan.

In many parts of this draft the IAFP Expert Group believed it is possible to propose model language that reflect ‘best practice’. However, in other parts the Expert Group recognises that the ‘best practice’ provisions must be adapted to individual Member State’s tax, securities and employment laws so that the maximum benefits are available to the employee, at an efficient cost to the employer and in accordance with national legislation.

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ARTICLE 1 ESTABLISHMENT AND PURPOSE OF PLAN

Establishment of the Programme.

This programme, dated this _____ day of _____, 20____, by _____ Company (the “Company”), a (insert Country) corporation, hereby establishes the (insert name of Programme and Type of Programme) in accordance with the following terms and conditions.

WHEREAS, the Company wishes to recognise the vital role each employee plays in its growth and profitability, and

WHEREAS, the Company wishes to establish a programme to reward employees in recognition of that vital role:

THEREFORE, effective from _____, the Company hereby adopts and establishes the _____ Company (insert name of programme) (the “Programme”) for the benefit of its eligible employees, in accordance with the terms and conditions set forth herein:

The purpose of the programme is to share the profits of the Company with its eligible employees whose efforts are instrumental to Company success, by providing benefits in addition to regular compensation to employees based upon Company profits beginning with the Fiscal Year ending _____, 20____, and thereafter.

ARTICLE 2 DEFINITIONS

2.1 Definitions

Share based profit-sharing

An agreed percentage of the profits of an enterprise are allocated to the allocation of free company shares for distribution among the workforce, or to be held in trust on behalf of the workforce, regardless of whether the employees are existing shareholders or not. These shares are usually frozen for a certain period before employees or the trust is allowed to sell them.

or

Share Purchase Plans

A share purchase plan through which a certain percentage of the shares of the company, either ordinary shares or special shares reserved for employees, are made available to individual employees, usually at discounted rates, so that they can indirectly participate in the performance and results of the company through dividends or the appreciation of employee-owned capital, or a combination of both.

or

Stock options

Where employees have an option to acquire certain company shares at sometime in the future through agreed arrangements, such as ‘save-as-you-

earn' schemes, which allows them to enhance their share ownership by activating the options. Shares can be ordinary company shares or special shares specifically set-aside for employees, such as preference shares.

ARTICLE 3 PARTICIPATION

The experts group recognizes that local laws and customs may dictate the details of this provision. Broad-based participation provisions in consultation with social partners is a recommended best practice.

ARTICLE 4 EMPLOYEE CONTRIBUTIONS

Dictated by local law and plan design. The Expert Group recognises that where employee contributions are utilised there is a fiduciary responsibility by the plan administrators to disclose information, educate employees as to the risk and rewards of the programme and to safe-keep the programme assets to the highest fiduciary principles.

ARTICLE 5 EMPLOYER CONTRIBUTIONS

Model Language:

ARTICLE 6 INVESTMENT OF CONTRIBUTIONS

Model Language:

ARTICLE 7 ACCOUNTS

7.1 Separate Accounts

Model Language: (Dictated by local laws and customs and plan design)

7.2 Adjusting the Value of the Account

Model Language: (Dictated by local laws and customs and plan design)

ARTICLE 8 DISTRIBUTIONS

8.1 Timing

8.2 Permanent Disability

8.3 Other Termination of Employment

8.4 Designation of Beneficiary

Model Language: (Dictated by local laws and customs and plan design)

ARTICLE 10 PROTECTION FROM CREDITORS

ARTICLE 11 THE TRUST (Scheme)

- 11.1 Creation and Acceptance of Trust
- 11.2 Trustee Capacity; Co-Trustees
- 11.3 Resignation and Removal; Appointment of Successor Trustee
- 11.4 Expenses and Compensation of Trustee
- 11.5 Fiduciary Responsibility
- 11.6 Rights, Powers and Duties of Trustee

Model Language: (Dictated by local laws and customs and plan design)

ARTICLE 12 MANAGEMENT AND ADMINISTRATION

- 12.1 Administrator
- 12.2 Claims Review Procedure

Commentary: Given the high level of fiduciary responsibility of the plan administrator, it is essential that the programme contain clear provisions for resolving disputes with participants and beneficiaries.

Claims Review Procedure: A participant or beneficiary shall make all claims for benefits under the Programme in writing, addressed to the Administrator at the address of the Company. Each claim shall be reviewed by the Administrator within a reasonable time after it is submitted, but in no event longer than ninety (90) days after it is received by the Administrator. If a claim is wholly or partially denied, the claimant shall be sent written notice of such fact. If a decision on a claim cannot be rendered by the Administrator within the ninety (90) day period, the Administrator may extend the period in which to render the decision up to one hundred and eighty (180) days after receipt of the written claim.

In the event of the claim been rejected, a denial notice, which shall be written in a manner calculated to be understood by the claimant, shall contain (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Programme provisions on which the denial is based; (c) a description of any additional material information necessary for the claimant to perfect his claim and an explanation of why such material or information is necessary; and (d) an explanation of the Programme's claim review procedure.

Within sixty (60) days after receipt by the claimant of written notice of the denial, the claimant or his duly authorised representative may appeal such denial by filing a written application for review with the individual or individuals to whom the power to review claims has been delegated by the Company. Such application shall be addressed to the Company and may include a statement of the issues and other comments. Each such application shall state the grounds upon which the claimant seeks to have the claim reviewed. The claimant or his representative shall have access to all relevant documents relative to the claim for the purpose of preparing the application. The delegated reviewer shall then review the decision and notify the claimant in writing of the results of the re-determination within sixty (60) days of receipt of the application for review. This decision shall be in writing, written in a manner calculated to be understood by the claimant and include specific reasons for

the decision and specific reference to the pertinent Programme provisions on which the decision is based. The sixty (60) day period for the decision of the delegated reviewer may be extended if specific circumstances require an extension of time for processing, in which case the decision shall be rendered as soon as possible, but no later than one hundred and twenty (120) days after receipt of the application for review.

12.3 Expenses of Administration

Model Language: (Dictated by local laws and customs and plan design)

ARTICLE 13 RIGHTS OF EMPLOYER, PARTICIPANT AND SOCIAL PARTNERS

13.1 Social Partners' Interest in Programme

13.2 Inspection of Records

13.3 Amendment of Programme

Model Language:

Amendment of Programme: The Company alone reserves the right by action of the Board to amend the Programme at any time and from time to time. The Company shall promptly notify the Trustee of any amendment. However, the Trustee's duties and responsibilities may not be increased without their consent and no such amendment shall vest in the Company or any other employer any right, title or interest in and to Trust assets, divest participants or their beneficiaries of any vested rights in their accounts, or allow any part of Trust assets to be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries except to the extent necessary to conform the Programme and Trust to the requirements of any applicable future legislation, regulation or other rule of law.

13.4 Employer Liability

Model Language: (Dictated by local laws and customs and plan design)

ARTICLE 14 TERMINATION OF PROGRAMME

14.1 Event of Termination

14.2 Effect of Termination

Model Language: (Dictated by local laws and customs and plan design)

ARTICLE 15 SUCCESSOR EMPLOYER

Model Language: (Dictated by local laws and customs and plan design)

ARTICLE 16 INTERPRETATION OF AGREEMENT

16.1 Interpretation of Programme

16.2 Forms

16.3 Applicable Law

Model Language: (Dictated by local laws and customs and plan design)

Appendix 2

Report of the High-Level Group on cross-border obstacles to financial participation by employees in enterprises established in several Member States of the European Union

SUMMARY

In July 2002, the Commission of the European Union adopted a communication, ten years after the 1992 communication, in which it proposed a general framework for promoting financial participation in Europe. The communication stresses, in particular, the need to reduce, through concrete measures, the obstacles to the introduction of financial participation throughout the Union for enterprises established in several countries. It is against this background that a Group of seven independent experts was set up in September 2002. Their report is made up of three parts.

1. The various forms of financial participation used in the European Union

In order to reduce the obstacles to the spread of financial participation across borders, it is necessary to analyse the various forms that such participation takes. Two basic categories emerge:

– On the one hand, **profit-sharing or gain-sharing**; this involves giving a bonus to all or part of the staff of an enterprise, generally on the basis of a pre-determined formula, which may or may not be negotiated with staff representatives; this bonus may be paid in cash or securities (shares or bonds), either immediately or after a holding period; profit-sharing is particularly developed in France, where more than five million employees benefit from it through both *participation* (compulsory in enterprises with over 50 employees) and *intéressement* (optional, but subject to the agreement of staff or their representatives); it is also widespread, largely due to tax relief, in the United Kingdom (originally through the “Approved Profit Sharing Plan”, and now through the “Share Incentive Plan”) and, through normal pay negotiations, hence without any specific incentives, in the Federal Republic of Germany. The cross-border aspects of these schemes are currently very limited;

– On the other hand, employee share ownership, which takes on three forms: firstly, the purchase by employees of shares of the enterprises that employ them, this purchase generally being made on favourable terms (at a discount to market value) and the shares themselves being subject to a holding period: share purchase plans, which make it possible for employees to benefit from rises in the stock market value of the enterprise, are often used by enterprises established in several countries and wishing to offer a common saving product on favourable terms to the employees of all their subsidiaries. Secondly, free distribution of shares by an enterprise to its staff; free share plans are widely used in the United Kingdom and Ireland. Lastly, share option plans, whereby employees of an enterprise are granted an option which entitles them to purchase its shares during a given period at a price fixed in advance, which will be profitable if the share price rises above this price during the period in which the option may be exercised: share option plans are sometimes linked to a saving contract (“Save As You Earn” in the United Kingdom) and are often used by start-ups

of “new economy” enterprises, and have also become a common form of remuneration and incentives for managers of large enterprises quoted on the stock exchange and established in several Member States of the European Union.

Financial participation is developing in Europe, albeit not to the same extent in all countries: it covers 19% of private sector employees in the four largest Member States of the Union, which is probably more than in the USA. The objectives pursued are both numerous and varied and may concern the enterprise or the employees, often both at the same time.

Governments may also set general macroeconomic objectives, such as competitiveness and employment. Links between, and hybrid forms of, plans develop or are produced from the various possible forms of financial participation, which are themselves affected by innovations in the financial markets and by changes in markets conditions. Enterprises established in several countries increasingly wish to spread financial participation among the employees of their various subsidiaries in order to establish a common philosophy and improve their performance in the single market. However, their efforts to spread to other countries a financial participation plan initiated in the country in which they have their headquarters are fraught with obstacles.

2. The obstacles to cross-border spread of financial participation

Three monographs have been produced, two on large multinational enterprises (Shell and DaimlerChrysler) and one on a smaller enterprise with foreign subsidiaries (Steria). They show that the establishment of a cross-border share plan within a group requires considerable energy to overcome burdensome and costly complexity, without it being possible to guarantee legal security or to avoid the disparities in fiscal treatment from one country to another. This makes it very difficult for small and medium-sized enterprises to gain access to schemes of this kind.

The two studies that have been conducted — one in 1999 involving 500 European enterprises and the other in 2003 involving 900 European enterprises — confirm this state of affairs. Most of the enterprises that responded wish to be able to export to the employees of their subsidiaries the participation plans set up or to be set up in the country of their headquarters. All of them encountered difficulties due, in order of importance, to the differences in the legal framework for participation; the lack of fiscal or social security incentives in certain countries; the numerous formalities to be completed with each national stock exchange authority; the different rules for consideration of financial participation by labour law and collective labour relations; finally, the widely varying impact of social and cultural traditions, which, in some cases, are favourable and accustomed to financial participation, but, in others, are far more reticent in this respect. The obstacles to the spread of an existing plan are, firstly, the lack of tax incentives, followed by legal difficulties and, lastly, the cost and complexity of the operations to be carried out.

The list of obstacles and difficulties to be overcome is indeed considerable. A distinction should be made between the general obstacles, which apply in all cases, and the more specific obstacles, which apply to each type of plan.

a) *The general obstacles can be classified into six broad categories*

1. The diversity of the legal, fiscal and social framework in force in the various Countries. This diversity makes it difficult to implement a uniform financial participation plan in all the Member States of the Union: certain Member States have defined a legal framework, which, in some cases, provides incentives (France, United Kingdom, Ireland) and, in others, disincentives, due to the complexity of the arrangements (Belgium, Germany). In some cases, the lack of a legal framework constitutes an obstacle, if only because of the resulting legal insecurity and the lack of incentives (Luxembourg, Portugal, Sweden). Where national legal frameworks exist, they are based on different approaches and differ widely in several respects: whether they are compulsory — which is the exception — or optional, whether the management of an enterprise has to obtain the agreement of the staff concerned or its representatives, the way in which participation is calculated, the scope of staff eligible, any rules on holding periods, and the saving instruments that may be used.

There is no less variety in the rules on taxation and contributions to social security schemes, for, where they are defined, they range from complete exoneration to complete consideration as remuneration, with numerous specific intermediate systems; the time of taxation may also vary. In certain cases (especially share options), this may lead to double taxation, or to a complete lack of taxation, for employees who do not live in the country in which they work or who change their tax residence.

2. The variety of rules laid down by the stock exchange authorities of each of the Member States. This concerns the nature and extent of the information, often in national languages, that has to be provided to subscribers when shares are issued.

3. The many ways in which labour law takes account of financial participation. Labour law can make it compulsory for the trade unions or works councils to be consulted or for negotiations to be conducted with them; it can oblige enterprises to provide detailed information on the implementation of the plan and on the arrangements for managing the funds allocated to employees; it can lay down rules concerning the impact of participation on pension rights and on the rights of employees in the event of redundancy or a reduction in staff numbers.

4. The different conceptions of the governance of enterprises. In particular, national law on enterprises requires, or does not require, the approval of the general assembly of shareholders for the introduction of financial participation plans or the issue of new shares or options, depending on whether or not the enterprises concerned are listed on the stock exchange.

5. The wide variety of systems of industrial relations and of the cultural conceptions underpinning them. The role of negotiations between the social partners varies in

importance between the Member States, and such negotiations may be formal or informal in nature. Trade unions vary in their support for financial participation. There are differences in the extent to which employee share ownership is part of the culture of the country concerned and is encouraged by the public authorities, which affects the response rate of employees to the offers made to them.

6. The costs of implementing the participation plans. For all the reasons mentioned, these costs are high and constitute a real obstacle, especially for SMEs. These costs vary depending on the participation plan implemented and the strategy chosen by the enterprise. In any case, an enterprise has to devote time and resources to the plan, draw on a wide variety of skills (human resources, legal and fiscal advice) and conduct a major communication campaign in order to spread a plan that already exists in one Member State of the Union to all the other countries in which it is established.

b) The various types of financial participation also all encounter specific obstacles

– Profit-sharing or gain-sharing at cross-border level also encounters numerous obstacles: what definition of the group should be used and what level of performance should be measured (at group level or at national entity level). These plans are generally linked to tax and social security incentives with precise rules (such as blocking of funds, consultation or agreements of employees), which apply in one country but not in the others. That is why these plans operate almost exclusively at national level. Nevertheless, certain enterprises established in several countries are giving thought to a method for putting their plans on a European footing.

– Although the purchase of shares by employees is easier, it is hampered by a number of technical problems related to the differences in the company law applied in the various Member States, as well as by the general problems mentioned above: to what extent may an enterprise buy back its own shares? What collective investment instruments are available? What are the rules on holding periods and withdrawals? What role do the shareholder employees play in the governance of the enterprise?

– The free distribution of shares is often included in profit-sharing plans or employee share ownership plans and therefore comes up against the same obstacles.

– The spread of share option plans, which are the most widespread system for managerial staff, to all the subsidiaries of an enterprise is hampered primarily by the differences in business law referred to above concerning employee share ownership, but also by a specific taxation problem: while most Member States tax the option when it is actually exercised, certain Member States give beneficiaries the possibility of lower taxation when it is granted (Belgium) or as soon as it may be exercised (Netherlands). This leads to risks of double taxation or lack of taxation in the event of changes of residence, which, by nature, are frequent for staff in this category.

3. Proposals that would help to reduce the obstacles and promote financial participation at Union level

There are several reasons why it is essential for the Commission and the Member States to act to reduce the obstacles to the spread of financial participation across the Union. Firstly, there is a tendency for enterprises to “Europeanise” by acquiring, establishing and developing subsidiaries in the various Member States of the Union; accordingly, the obstacles identified hamper an increasing number of enterprises and employees, and reforms carried out in one country have an indirect effect on the employees in the other countries; these reforms can therefore no longer be considered in isolation. At the same time, European enterprises face an increasing need to implement a common management and apply similar motivational programmes across the Union in order to compensate for an increasing diversity and heterogeneity at the social, managerial and cultural level. The shortcomings of the single market in the area of financial participation make European enterprises less competitive than enterprises in more unified economic areas such as the USA.

This is all the more regrettable since many studies have indicated that financial participation can improve the productivity, competitiveness, and profitability of enterprises and contribute to greater social cohesion. The development of financial participation can help to achieve the ambitious objectives of the Lisbon European Council of March 2000 and must be vigorously promoted.

To this end, seven recommendations are made, the first three being general in nature and intended to improve the consideration of financial participation by the Union, whereas the next four are concerned with action to combat existing obstacles.

General recommendations

1. Firstly, it is necessary to improve the dialogue between Member States

To this end, it would be desirable to set up, in the next Commission, an advisory committee on financial participation, to be made up of permanent representatives from all the Member States and the social partners. Its tasks would be to disseminate information, to monitor developments in the rules in each country, to commission research and to analyse the practices used with a view to recommending the best practices.

This committee, which would be run by a steering group, should, among other things, report to the Parliament, the Council of Ministers and the Economic and Social Committee at least once in each legislative period and organise an annual forum to present its work and a discussion on topical issues.

2. Secondly, the social partners, employers and employees’ representatives should attach greater importance to financial participation

The social partners have an important role to play in educating their members and disseminating information on financial participation, all the more so since studies

show that its impact on productivity is enhanced when employees are well informed and take part in the governance of the enterprise. For this reason, the social partners should put the question of promoting financial participation across Europe on the agenda of their working meetings.

Since European works councils now exist, it would be conceivable, for example, for the question of the introduction of financial participation at group level to be mentioned on a regular basis, for example every five years.

3. Thirdly, an informative website should be created

In order to facilitate access to the information specific to each Member State and to lower the cost of such access, a website should be created by the Commission's Directorate-General for Employment and Social Affairs, for which it will need the corresponding budgetary resources.

This site would establish links with the sites of the Member States, would organise a network of government officials with responsibility for these areas in each Member State and would contain helpful examples of plans set up by enterprises across the Union.

4. Fourthly, reducing complexities through the Prospectus Directive

The Prospectus Directive should facilitate financial participation across the EU by bringing in a common approach to public offers of shares and in particular to the requirements of publishing a prospectus.

It is essential therefore for the Member States to take account of the current and potential obstacles to the spread of financial participation when they transpose this Directive into their legislation. In this connection, it would be desirable for the Commission to draw up guidelines in order to ensure that the provisions of this Directive actually reduce the current complexities and streamline future regulatory requirements.

5. Fifthly, introducing an EU convention on the taxation of share options

The Member States should consider the introduction of an EU-wide Convention that would agree on consistent rules on taxation and social security contributions that are clear and easy to apply for employees who change residence. This approach could equally apply to all types of financial participation, but as the concept of a share option is simple and options are frequently used, it justifies the signing of a fiscal convention between the Member States on share options before the Protocol to the OECD Model treaty is forthcoming.

6. For the other forms of financial participation, a procedure for mutual recognition between Member States should be introduced

A simplified form would involve allowing an employee who changes residence and becomes a resident of another Member State to continue to be covered by the initial fiscal and social arrangements for the remaining duration of the plan.

A more ambitious form of mutual recognition could be for Member States to recognise a plan drawn up under the laws of another Member State as equivalent to a plan drawn up under its own laws and provide equivalent benefits.

This voluntary cooperation would be facilitated by a special directive ensuring freedom of movement for bodies involved in the collective management of funds collected through financial participation; thus, the UCITS Directive guarantees freedom of movement only for undertakings for collective investment that are open to the public and that spread their risks, these conditions not generally being met by undertakings that manage funds collected through financial participation.

This form of mutual recognition obviously implies a high degree of cooperation between Member States. This is however already happening in the area of pensions. Mutual recognition could work, especially in Member States which already have considerable experience with financial participation and which could encourage the others by endeavouring to reduce the existing barriers between themselves through this procedure. Moreover, in the long term, this procedure should lead to gradual harmonisation of national law.

7. Finally, a European model should be developed

Instead of, or in addition to, the mutual recognition procedure proposed above, *a European model plan for financial participation* could be drawn up by the Committee on Financial Participation. This Community-wide instrument would serve to remove barriers and also promote cross-border financial participation.

As a first step, such a plan could however incorporate some or all the principles set out by the Commission in its communication and relevant Community-level law. The model plan would initially be adaptable in each Member State to cover national tax and social security law, in a similar way to the European Company Statute.

As a further step towards greater coordination, the model could incorporate a set of taxation and social security principles. These would determine whether income arising in a Member State was to be treated as employment or investment income or as a capital gain and when the incidence of the taxation arose. Member States would remain free to decide whether or not to offer enterprises that adopted the model plan any specific tax or social security rules or incentives.

As a next step, however, a Member State could decide to award the model plan “most favoured nation” status (this would mean that an enterprise adopting the model plan, and the employees participating in this, could not be treated any less favourably than

that Member State treats its own nationals). If no national laws provide tax or social security benefits, Member State would then have to provide it for the model plan.

The model plan might streamline a blueprint for the main types of financial participation (profit and gain sharing, share purchase, share award and share option). It should be available to any enterprise, even if its activity is currently restricted to only one Member State, in order to prevent enterprises having to adapt their plans if they expand across the EU.

Conclusion

The Group believes that its recommendations would reduce many of the barriers and provide significant opportunities to align the benefits from financial participation across the EU. However, they recognise these cannot remove all of the fundamental differences between Member States where such differences arise from very different national policy considerations.

Appendix 3

Benchmarking of National Policies and Practices of Financial Participation across the EU

Summary of Main Indicators

Dimensions	Theme	Sub-theme	Indicator No.		
Levels of Usage of Financial participation	Incidence		1	The percentage of enterprises using financial participation	
	Coverage		2	The percentage of employees covered by financial participation schemes;	
The nature of Financial Participation	Extending benefits to all employees	All employees test	2	The percentage of employees covered by financial participation schemes	
			3	The percentage of enterprises offering financial participation to different occupational grades;	
			4	The percentage of enterprises that use the same formula to calculate financial participation bonuses for all occupational grades;	
	Clarity and Transparency			5	The percentage of enterprises where employees and their representatives can actively participate in the choice and design of the financial participation scheme;
				6	The number of training hours enterprises provide that are specifically related to financial participation;
				7	The percentage of employees regularly receiving information on performance measures relevant to the financial participation scheme;
		Pre-defined formula		8	The percentage of employees whose financial participation bonuses are calculated on the basis of a pre-defined formula;
		Regularity		9	The percentage of employees participating in financial participation schemes which measure performance and disperse bonuses at regular and pre-defined intervals;

	Avoiding unreasonable risks	Form of payment	10	The percentage of employees who have a choice about the form in which they receive financial participation bonuses;
	Distinction between wages and salaries and income from financial participation		11	The percentage of employees where financial participation is completely distinct and separate from normal pay bargaining;
National Policies and Characteristics	Taxation	Tax treatment of financial participation	12	Five point scale measuring legislative and fiscal support for financial participation;
	Cultural differences	Other direct participation	13	The percentage of enterprises using direct participation mechanisms
			14	The percentage of citizens holding company shares directly
	Institutional differences	Stock market listing	15	The percentage of enterprises with a stock market listing
		Enterprise size	16	Average number of employees per enterprise

Appendix 4

RECOMMENDATIONS

As it is not possible for the Member States to reach overall agreement on the harmonisation of taxation by qualified majority vote, we recommend that a 25 Member State (or as many Member states as possible) *Tax Treaty* be agreed, specifically dealing with the taxation and the application of social security to remuneration from stock options.

For the successful implementation of a ‘Model Plan’, taxation rules on the granting of stock options, in particular, need to be harmonised across the Member States. It is the view of the IAFP Expert Seminars that taxation should not apply to stock options at grant but only when the option is exercised and/or on the income from the eventual sale of shares.

Likewise, it is the view of the Expert Seminars the application of social security contributions should also be harmonised across the EU Member States with regard to income from any financial participation schemes.

- 2 The dangers of over-investment in shares by employees in the stock of the company they are employed in should be explicitly referred to in the rules of the plan and it should be a requirement of such plans that the administrators of the plan, working with the employee representatives, should periodically review whether the levels of investment in company shares are appropriate.

It is an important principle of financial participation that the ownership of shares confers voting rights, so in cases where 10% or more of company equity is reserved for employees, it should be a requirement of such a plan that board-level representation should be reserved for appointment by the workforce, proportionate to the amount of employee share ownership. This requirement should not replace the existing principle of employee board-level representation

found in eighteen EU Member States ⁷ and in the Directive for employee involvement in the European Company (SE). ⁸

- 4 In the event of an extraordinary event, such as a merger, takeover or other restructuring of the company, all participants should be informed as to how this event will impact on the plan. This *Principle* should be incorporated into the proposed corporate governance Directives on shareholders rights and mergers.
- 5 In the event of a takeover, as with other employee involvement rights, financial participation rights should have a legal guaranteed in the new structure. In the event of a hostile takeover, the employees in the company subject to the hostile takeover should have the same rights as a minority shareholder.
- 6 A European Commission Communiqué should be drafted setting out *Guidelines* for the relationship between financial participation plans, pension arrangements and other saving schemes and how these can be used to complement each other.
- 7 The proposed Directives on shareholders rights ⁹ and on cross-border mergers, ¹⁰ proposed as part of the European Commission's Action Plan on corporate governance, ¹¹ should include articles save-guarding the rights of employee shareholders to be informed on how any company re-structuring, such as a merger or takeover, will impact on the financial participation plan.
- 8 All employee share schemes should be approved by the annual shareholders meeting, in line with Paragraph 10 and Section IV of the Commission Recommendation (2004/913/EC). ¹² While Article 6.6 of this Recommendation

⁷ see www.seeurope-network.org

⁸ Directive 2001/86/EC of 8 October, 2001

⁹ European Commission Consultation Paper on *Fostering An Appropriate Regime for Shareholders' Rights* (MARKT/13.05.2005)

¹⁰ Proposal for a Directive on *Cross-border Mergers of companies with Share Capital* (COM (2003) 703 final)

¹¹ European Commission Communication *Modernising Company Law and Enhancing Corporate Governance in the European Union – A plan to Move Forward* (COM (2003) 284 final)

¹² Commission Recommendation *Fostering an appropriate regime for the remuneration of directors of listed companies* (2004/913/EC)

exempts such schemes from its scope, it is the view of the IAFP Expert seminars that it should also apply to employee share schemes.

9 Organisations that provide financial advice, education and economic literacy courses in good faith to employee participants in financial participation schemes, such as social partner organisations, should be exempt from responsibility for the consequences of that advice, as outlined in the laws governing the provision of financial and investment advice.

10 The European Commission should draft EU-wide *Guidelines* setting out common understandings of aspects of labour legislation which might be used by Member States and transnational enterprises when introducing financial participation plans. These *Guidelines* should incorporate and clarify a number of key issues, such as:

A common definition of ‘an employee’, in terms of eligibility to participate in a company plan;

A common definition of income, wage / salary for the EU;

A clear statement that remuneration from financial participation schemes is not part of, but additional to, normal wages/salaries;

A common minimum eligibility term for participation in a plan should be set. Eligibility criteria must be non-discriminatory;

Regardless of the type of employment contract an employee is employed under, all employees working under recognised contracts of employment, having met the required eligibility criteria, should be eligible to participate in a plan – full-time; part-time; temporary workers; fixed-term contracts, etc.;

Participation in a financial participation scheme should not interfere with the acquired employment rights of employees;

A common definition of a corporate entity and group should be set out, in line with Article 48 of the Treaty on European Union;

The situation of posted and cross-border workers should be clarified and their participation in a transnational financial participation scheme should be on the same basis as those employed in the ‘home’ location – an amendment to Article 3.1 (c) of

the Posted Workers' Directive (Directive 96/71/EC) may be required to include protection of financial participation rights;

The conditions for payroll deductions of contributions to a share-savings plan, in particular as these relate to Member States where such deductions are normally unlawful (e.g. Belgium and Italy).

Kevin P O'Kelly/Andrew Pendleton
September, 2005