



EUROPEAN FEDERATION OF EMPLOYEE SHAREOWNERSHIP

Alberto Parenti
Securities Markets
European Commission - DG Internal Market

Brussels, May 5, 2008

EFES Position Paper on Prospectus Directive
(about prospectus requirements for employee share plans)

1. The European Federation of Employee Share Ownership (EFES) was set up in 1998. EFES represents companies – large ones as well as small and medium sized. EFES' objective is to act as the umbrella organization of employee owners, companies and all persons, trade unions, experts, researchers, institutions looking to promote employee ownership and participation in Europe. EFES gathers some 150 members on which some 80 organizations and companies. EFES was recognized by the European Commission – DG Enterprise and Industry as the European Business Representative Organization in the field. An inquiry about representativeness was organized by the Commission some years ago, which showed that EFES represents directly and indirectly some 117,500 companies across Europe.

2. EFES set up a database which enabled the collection of detailed information about employee ownership and employee share plans in each of all the 2.500 largest European companies, employing 31.5 million people. The database was conceptualised and tested in 2005. Then the database was set up in 2006 with the support of the European Commission – DG Employment and Social Affairs, and it was later fully completed and updated for year 2007.

Over the last 20 years, some European reports have occasionally given information about employee ownership and its development across Europe. The most important reports were: the PEPPER I Report in 1991, PEPPER II Report in 1996 and a Report named "Recent trends in employee financial participation in the European Union" by Professor Erik Poutsma in 2001. At this time, these reports were practically the only source of information regarding the extent of employee ownership in the European Union.

However, they were based on partial information (mainly enquiries) which was not made available immediately and often only after long delays. For instance, the 2001 Report was "based on the findings of the 1996 EPOC survey (Employee Direct Participation in Organisational Change), conducted on behalf of the [Dublin] Foundation." Finally, information was not available for all countries of the European Union (for instance, the 2001 Report gave information only on 10 countries).

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The need for more accurate and more recent information was crucial. On the one hand, it was known that employee ownership was developing. However, information was not made available without long delays. This led to the conclusion that a hiatus was probably growing between companies and practitioners on the one hand, and social and political actors on the other hand, resulting in an incorrect picture of employee ownership in Europe.

For this reason it was necessary to set up this new database. Furthermore, this database is based on information produced by the companies themselves in their Annual Reports and this has meant very timely access to high quality information.

3. Based on the database, EFES is going to publish the first "Annual Economic Survey of Employee Ownership in European Countries". The full survey will be published during the Seventh European Meeting of Employee Ownership in Brussels on May 23, 2008.

4. Employee share plans multiplied explosively in large European companies during the last twelve years. Most large companies have now employee share plans: In 2006/7 80% of all large European companies had employee share plans. This was an increase from 50% in 2000, 20% in 1994, and only 10% in 1986. It is therefore considered to be a rapid and recent development.

The average year of their first employee share plan was 1997 for the average of all largest European companies (see graph in appendix).

Summarising European employee ownership – there are 8.2 million employee owners holding 259.5 billion in assets in 2007. These numbers, can be compared with USA, as a result of the National Center for Employee Ownership recently updating its "Statistical Profile of Employee Ownership" in USA. In USA, Employee Stock Ownership Plans (ESOPs) are the most popular employee ownership schemes, with now 9.774 ESOPs, involving 11.2 million employee owners, holding 630 billion Euro in assets. Taking into account all other employee ownership schemes besides ESOPs, the USA has some 25 million employee owners holding more than 1.000 billion Euro in assets. As a consequence, Europe is still far behind the USA regarding employee ownership.

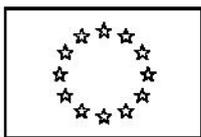
However, this seems largely due to the fact that most European companies hadn't launched employee share plans before 1997, while American ESOPs developed earlier, mainly between 1975 and 1990. The average starting date for ESOPs in USA was 1984 compared to 1997 for the first employee share plans in European listed groups, a 13 years lag.

5. Some years ago, in its Communication "on a framework for the promotion of employee financial participation" COM(2002) 364 of July 5, 2002, the Commission recommended that "there should be an exemption from prospectus requirements for employee share plans" (see on next page).

However, the idea of such exemption didn't find its place in the "Prospectus Directive".

On the other hand, the Commission organized a "High Group of Independent Experts" in 2003 which expressed a number of recommendations (see appendix).

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.07.2002
COM (2002) 364 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE ECONOMIC AND SOCIAL COMMITTEE AND
THE COMMITTEE OF THE REGIONS**

On a framework for the promotion of employee financial participation

Legal differences

Legal differences between Member States also play a role in impeding the introduction of financial participation at a transnational level.

In the case of share-ownership plans, differences in securities laws and in particular in relation to prospectus requirements can be problematic. In accordance with Council Directive 89/298/EEC there should be an exemption from prospectus requirements for employee share plans. However, in practice this may not cover all schemes, the exemption may not be automatic, and the details of this exemption may differ from one country to another.

6. Recently, EFES organized an inquiry about prospectus requirements amongst its member organizations and some 100 large companies. Surprisingly, this inquiry didn't get much attention. Surprisingly again, EFES received a number of answers, saying that prospectus requirements are generally not considered as a real obstacle.

Why?

7. Most large companies have well now employee share plans. Large European companies are usually considering employee ownership as a way for greater involvement, higher performance, increased motivation, greater participation, etc.

However, this is a recent development. Furthermore, this is not to say that all plans are for all employees ("broad based" plans) and in all countries.

When developing such plans, most companies usually begin by first launching share plans for a small number of top executives. The next stage usually are share plans for senior managers (often 1% of all employees). Then, share plans are extended to middle managers (often 10% of all employees). Finally, most companies then offer "broad based" employee share plans, for all employees. In 2006/7, 51.15% of all large European companies have broad based employee share plans.

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Furthermore, companies are firstly designing plans for their "parent" country. Then, along years, they are applying these plans, with local adaptations, to 2 countries, 3, 5... and finally 40, 50 countries or more.

As a consequence, those companies having a long experience and having employee broad based plans in many countries are probably still a minority.

On the other hand, most companies have multiple plans. Additionally, most plans imply yearly grants or purchases of shares or options. Multiple plans, in many countries, every year. This is clearly the common way.

Prospectus requirements and prospectus directive were not designed for such things. We can assume that operations regarding employee share plans are much higher in numbers than any other operations (those calls to the financial markets for which prospectus requirements and directive were really designed).

8. So again, why this paradox: Multiple operations, while prospectus requirements not seen as a real obstacle ?

We can already point out that it is a sudden and recent development, and that companies having broad based plans in many countries are still a minority.

Furthermore, plans seem usually designed so that prospectus requirements could be avoided. This behavior appears in many answers (see testimonies in appendix). It means that plans for a small number of employees will be applied preferably to plans for a larger number (including broad based plans). It also means that countries will be severely selected.

Seeing this, we can assume that prospectus requirements as they are managed at this time disturb employee share plans. Companies are shaping their employee share plans in such way that prospectus requirements can be avoided or limited.

Prospectus requirements are not seen as a real obstacle, but everything seems to be done to avoid it !

9. Another point is that employee share plans are not for the "market". They are not for anonymous people. They are for insiders (a small number of employees in one country or a in a small number of countries, or a large number or all employees in a large number of countries).

Information and communication are a major point in such plans. Companies set up adequate information and communication tools, even dedicated websites or intranet sites, training and learning.

In fact, employee share ownership is a master way for learning finance and economics. When holding shares, people are probably more interested in such matters.

Considering those information and communication efforts, prospectus requirements seem not really adding information, or better information. They seem not to be adapted to the needs. Employee share plans involved much more information and communication than those organized by prospectus requirements and directives.

10. As a conclusion, prospectus requirements could be reviewed in two different ways, regarding employee share plans:

10.1 "There should be an exemption from prospectus requirements for employee share plans" as recommended in the Communication "on a framework for the promotion of employee financial participation" COM(2002) 364 of July 5, 2002.

On the other hand, dedicated requirements or directive should be designed for employee share plans. We think that this would probably be the right way, in order to avoid disturbances in employee share ownership policies in large European companies.

10.2 Should the Prospectus Directive be maintained as the way to regulate requirements regarding employee share plans, then prospectus requirements should be specifically adapted to employee share plans, going to a short form of disclosure across the board for employee offers, rather than a full prospectus.

Marc Mathieu
Secretary General

Testimonies

Baxi Partnership Ltd - UK

Baxi Partnership Ltd is an investment fund specialized in employee buyouts for small and medium sized companies in UK, mainly in Scotland.

To: Hugh Donnelly

Subject: RE: Prospectus Directive

Hugh

This has not affected Baxi or any of the companies I deal with to date because either the 2.5m Euro limit exemption has applied or (where a trust has acquired shares with a value in excess of this) the offer to less than 100 people exemption has applied.

However, I can foresee it's application in the future in respect of some of the SAYE / Partnership Share schemes where a company with a large number of employees (i.e. more than 100) decides to offer a large number of shares to employees (e.g. if the company decided to offer the full £1,500 of Partnership shares to 1,300 or more employees you would be bumping up against the 2.5m Euro limit) - or where you have an employee buyout where a large number of employees are contributing to the buyout by directly acquiring shares. However, most companies when offering Partnership Shares / a SAYE arrangement / raising funds for an employee buyout would prepare something akin to a prospectus anyway to inform employees of the details of the scheme - and it is probably not unreasonable to place additional obligations on companies looking to raise 2.5m Euros or more of capital from their employees. Having said this, a formal prospectus agreed with the FSA can be quite a burden and may discourage certain companies from offering certain share incentives - but I have not come across this yet.

It is worth highlighting that in the UK (but not in all EU countries I understand) it is the price being paid for the shares rather than their value that is relevant to the 2.5m limit - which means that Free Shares offered under a SIP for zero consideration are exempt from the Directive - even if the value of shares awarded under the scheme exceeds the relevant thresholds.

Ewan Hall, Associate

Wright, Johnston & Mackenzie LLP, Glasgow

Ashurst - UK

Ashurst is a major advisor and service provider for employee share plans in UK.

Dear Marc,

Paul is currently away on holiday but has asked me to respond to your message.

I think the issues which we and our clients still encounter with the prospectus directive are:

1. The exemption for offers to employees where only a brief information document is required works well for companies listed on an EU regulated market but the exemption is not available for companies listed outside the EU who may have to issue a full prospectus.
2. The various exemptions and exclusions are still interpreted differently within EU member states e.g. there are still some countries which do not accept that non-transferable options are outside the directive and there are different views on whether the consideration for securities (when deciding whether the consideration is less than 2.5m euros) means the price payable or their value. As a result, a company may need to re-work a proposed plan to avoid difficulties under the directive which would not arise if there were genuine harmonisation.

CESR published a statement last December saying that it would look at having a short form of disclosure across the board for employee offers, rather than a full prospectus, and I think we would support that, short of a general exemption for employee share plans.

I hope this will be of some help in preparing the position paper.

Best regards.

Elizabeth Bayliss
Professional Development Lawyer, Ashurst LLP

Swiss Re

Dear Marc

I would certainly appreciate to have these requirements amended. They are way too cumbersome and thus limit employees participation possibilities.

Best regards

Fritz

Alexander Corporate Finance Oy - Finland

Alexander Corporate Finance Oy is a major advisor for employee share plans in Finland.

Dear Marc,

Thank You for Your message. I am happy to hear that employee ownership is doing well and going forward in Europe.

In Finland we have been able to slowly but steadily take forward employee funds as a form of financial participation and employee ownership. Today we have 55 companies with employee funds. Roughly 150.000 employees are participating. Last year the companies transferred over 100 million euros to these funds.

We are seeing the actual share or option plans being targeted to fewer people than before. Usually they are targeted to the top management and 50-100 key employees in each company. Hence the prospectus directive has not been a key obstacle for initiating new plans.

However the potential threat of having to do a prospectus is a real obstacle to cases where this applies. Therefore I strongly urge You to influence the commission to take necessary steps to avoid this obstacle of a cause which we all support - expanding employee participation and ownership.

Yours

Erkki Helaniemi, Partner

Alexander Corporate Finance Oy, Helsinki

Essilor - France

Essilor is one of the largest French companies with a long tradition of employee ownership, the 30.000 employees holding about 10% of the shares (plans since 1972).

Bonjour Marc,

Essilor n'est pas concerné puisque nous ne faisons pas de plan d'actionnariat global mondial qui nécessite un prospectus à déposer.

Nous avons des systèmes locaux sans augmentation de capital dans les pays hors de France et pour la France nous utilisons les Fonds relais à rouvrir tous les 6 mois pour lesquels il y a maintenant une démarche simplifiée.

Best regards

Chantal Gibert Sander

Essilor, *Employed Shareholders Dpt*

Rolls Royce - UK

Rolls Royce is one of the largest British companies, 38.000 employees holding about 3% of the shares (first plan in 1995).

There were several factors in the end that meant we did not have a problem with the Prospectus Directive:

- UK listing and issue of shares

- Move to a cash plan

- Complied with requirement to point potential participants to the location of information on the shares being offered (SIP)

- Translated the brochure (but not the Accounts or Summary) where necessary.

Colin Whitaker

Director of Compensation and Benefits, Rolls-Royce plc

Saint-Gobain - France

Saint-Gobain is one of the largest French companies, 56.000 employee shareholders holding about 7% of the shares (first plan in 1987).

Bonjour,

J'ai très peu de temps pour rédiger une position actuellement qui nécessiterait d'étudier le contexte de la demande (par exemple cette fameuse Prospectus Directive).

En revanche je suis prêt à vous rencontrer une heure dans les locaux de Saint-Gobain à Bruxelles pour répondre à vos questions et vous faire part de notre expérience étendue au niveau des comparatifs par pays et des difficultés que cela pose.

Cordialement,

Philippe DANCOT

International HR Director, Compagnie de Saint-Gobain

Meeting of the Head of employee share plans of six large European companies on 14 June 2006

Participants: Schneider-Electric, Essilor, Société Générale, Vivendi, EADS, Dexia

"Priority issues

The management of multinational employee share ownership schemes is confronted with a huge range of constraints and changeable national rules for which managers and directors of schemes are poorly equipped and frequent use of expensive legal advice is necessary.

1. Administrative Simplification particularly in respect of prospectus rules

The multiple prospectus requirement is time consuming and expensive. The EU prospectus directive does nothing to improve the situation. Acceptance of a scheme by one national financial authority should be sufficient for EU-wide recognition (subject to the availability of a translation of the scheme in all relevant languages).

When a plan is issued yearly with the same financial terms, a single notification should suffice instead of the issuing of a new prospectus.

Participants remarked:

- "Our Italian prospectus was 160 pages long, that's ridiculous. I had to translate our entire annual report into Italian".
- "In certain cases, we don't even offer the scheme to employees in countries where regulatory requirements are too complex or expensive. If employee numbers are too small in a specific country it can be too much bother to set up a scheme."

Another important issue is that of describing employee share ownership schemes as being public offers. It would be better to have such schemes considered as private offers or raise the funding level at which the public offers criteria were applied."

Irish Proshare Association Submission**Irish Proshare Association promotes employee share ownership in Ireland.****COMMITTEE OF EUROPEAN SECURITIES REGULATORS****Response to call for evidence by CESR on 13 November 2006**

This response is a submission made on behalf of the Irish Proshare Organisation, an independent national association within the Irish Business and Employers Confederation (IBEC), which is engaged in promoting forms of employee financial involvement in Ireland.

This response is specifically related to obstacles to the implementation of employee share schemes in the European Union caused by the Prospectus Directive 2003/71/C and the Commission's Regulation on Prospectuses (EC 809/2004) as currently applicable in the European Union's Member States.

This submission relates primarily to the inappropriateness of applying a prospectus and passport requirement to non-EU parent companies who offer share schemes to their European employees, and divergent practices in Member States in respect of employee share scheme offers.

A) Restriction on Employee Share Scheme Exemption

Employee share schemes currently benefit from an exemption from the requirement to issue a prospectus under Article 4(1)(e) of the Prospectus Directive. However, this exemption is limited to employee share scheme offerings by employers who have shares listed on a "regulated market".

The definition of "regulated market", which is limited to designated stock exchanges of individual European Union countries, is inappropriate in this context, and gives rise to distorting effects in the European Union market. The definition excludes a number of exchanges within the European Union, such as the AIM in London. While this may be justified, the exclusion of all stock exchanges outside the European Union is inappropriate in the context of employee share schemes. This is because non-EU listed companies, particularly those listed in the USA, are more likely to have established remuneration policies under which they make regular offers to employees, usually on favourable terms.

The exemption for employee share schemes should be extended to include, at a minimum, offerings by employers who are listed on the New York Stock Exchange and NASDAQ. In addition, other fully regulated stock exchanges throughout the world, such as the Tokyo, Toronto and Zurich stock exchanges, should be included.

The exclusion of all non-EU exchanges has created unnecessary market distorting difficulties for multinational companies operating in the European Union. We cite a number of particular examples below:

- Offers under an Irish Revenue approved tax-efficient share scheme operated by a US listed company were suspended on the basis that no exemption to a prospectus filing requirement was available. The size-related exemptions for offers to less than 100 people and for consideration of less than €2.5m were too small for this company.
- A pan-European share purchase scheme operated by a US listed company had to be amended, so that employees in certain EU countries only take a cash equivalent, rather than shares in the company, thus discouraging share ownership in the employer.
- A US listed company that has a listing in the EU of a particular type of security (but not its common stock) is able to avail of the employee share scheme exemption in Ireland as the Irish Regulations do not specify that the listing must be the same security as that offered to employees. However, the same company faces uncertainty in other EU jurisdictions as to whether the offer in Ireland must count towards the size-related exemptions in those other countries e.g. in calculating consideration for the €2.5m exemption.

The creation of barriers to employers with non-EU listings offering employee share schemes to their European staff will potentially detract from inward investment into the European Union and serves no positive regulatory purpose. It also discourages employers with non-EU parent companies from offering EU employees regular investment opportunities in the company's shares e.g. on an annual basis, as the costs of preparing a prospectus each year are perceived to outweigh the benefits of the employee offers.

B) Repeat Offers to Employees

If a prospectus is to be filed, it would be preferable for a company to have to file only once in respect of a particular scheme, so that all subsequent offers under that scheme are covered by the prospectus, provided all terms and conditions remained the same, with the exception of the relevant price payable, if any, for the shares for a particular offer.

C) Variations in Interpretation by Member States

Other issues that have arisen in the context of employee share schemes relate to variations of interpretation between EU Member States. For example:

- CESR has offered guidance on stock options (Ref: CESR/06-296d), in particular to confirm that employee share options should not be regarded as transferable securities. However, as you will be aware this guidance was subject to a caveat as Germany, Italy and Poland have diverged from this position.
- CESR has not recognised that employee share schemes may offer other types of share based award apart from share options. This has resulted in uncertainty in many jurisdictions as to whether the guidance on share options can be extended to other non-transferable employee awards.
- The uncertainty about the availability of the employee share scheme exemption means that companies are looking to other exemptions for their employee share offers, in particular the 100 person limit and the €2.5m limit. However, in many cases because it is not possible to ascertain whether a particular employee offer should count towards either of these limits, it is difficult to ascertain whether those other exemptions are available.
- We are aware of differences of opinion between jurisdictions as to whether the employee share scheme exemption is available only in respect of offers of securities of the same type as those listed in the EU, or whether a company with any listing of any type of security on a recognised exchange in the EU is sufficient.

The CESR, as the organisation which has taken the most positive and pro-active approach to the Prospectus Directive to date, is requested to put its authority behind calls to amend this particular provision of the Prospectus Directive. In the interim, it would also greatly assist companies and their advisers if further and more extensive guidance can be given in this area.

D) Q&A Section on the CESR Website

We wish to confirm that the CESR's Q&A on prospectuses is an extremely useful document, and one of the most helpful that has been published since the implementation of the Prospectus Directive. We would encourage the CESR to continue to provide such helpful guidance in the future.

December 18th 2006

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, December 18, 2003

Report**of the High Level Group of independent experts, on cross-border obstacles to financial participation of employees for companies having a transnational dimension**Action to combat existing obstacles4. *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.

3.1.2. *Securities Law*

Each Member State has its own securities laws which can mean substantial differences in the obligations on enterprises to provide information to employees when offering shares in different Member States. Typically, if an offer of shares is made to the public (which an offer of shares to employees is generally considered to be) there is an obligation to provide some form of prospectus or other document. Some Member States allow a full or partial exemption from this obligation for employees share plans if certain conditions are met (e.g. the UK but not Finland). However, notwithstanding this, an enterprise currently offering share plans to its employees across the EU will have to consider and comply with the securities laws in each Member State in which the offer is made. This results in increased complications and administration costs. As we will see in Chapter 4, the recent adoption of the EU-Prospectus Directive will help alleviate this situation for companies listed in the EU, as it contains special provisions that relate directly to public offers of shares to employees.

- 3.1.3. Labour Law and other employment related issues.
- Language and translations: in some Member States there is a requirement to translate the prospectus (if one needs to be provided), the plan rules and other documentation into the national language (e.g. in France and Belgium). Furthermore the national language may vary depending on the region of the Member State in which the company operates or the employees are based (e.g. in Belgium), and this increases costs and administration accordingly.

⁴⁵ An example would be the EU Prospectus Directive which will have a significant impact on employee share plans, as it will remove the need to obtain approval for, or exemption from, issuing a prospectus to employees in every Member State in which the offer to employees is made.

4.3.2. *Recommendations on removing existing barriers*

4.3.2.1. *Tackling the current differences in securities laws*

Rules governing the issuing of shares to the public, which includes employees, affect every share-based financial participation plan offered to employees in the EU. The need to issue a prospectus to employees, what it must contain and whether there are any exemptions for offers to employees, vary considerably across the EU and are seen as a major barrier to cross-border financial participation. This is because complicated requirements may lead to considerable extra expense and can delay implementation, and may even result in a plan not being offered in a particular Member State.

As part of the creation of the Single Market within the EU, the EU Prospectus Directive will bring in a common approach to public offers of shares and in particular to the requirements of publishing a prospectus. This will have major implications for all financial participation plans, whether or not they go across borders.

Because of the additional cost and time involved, enterprises would generally favour a complete exemption across the EU from the requirement to issue a full prospectus to their employees when introducing a share-based financial participation plan. The majority consensus of Member States however was that some measure of investor protection was desirable, especially when employees are being asked to contribute to the cost of acquiring shares. The final Directive does however include a number of exemptions and exceptions that may be used for financial participation plans as well as a specific exception for shares provided to employees.

There is a general exemption from the Directive where the shares are part of an offer, or offers, where the total consideration is less than € 2.5 million in any 12-month period.

In this case the offer will be dealt with under the domestic law of each Member State in which the offer is made. We would recommend **that Member States should consider carefully the potential barriers to promoting cross-border financial participation when drawing up the national legislation necessary to implement this Directive**. Ideally we would like to see Member States introduce either a clear exemption for employee share plans in these circumstances or a shortened document of the form outlined below.

There are also two general exceptions where the offer is one that falls within the Directive but there will be no obligation to produce a prospectus. These will apply where the offer is addressed to less than 100 persons per Member State or where the offer has a total consideration of less than €100,000 over any 12-month period. These exceptions will be

helpful to smaller companies and to those offering discretionary plans to limited numbers of executives, but will not help larger companies with all employee plans.

The specific exception from the obligation to publish a prospectus for employee financial participation plans is available when shares in the enterprise are already listed on a stock exchange in the EU and provided that a shortened form of prospectus document is made available to the employees "containing information on the number and nature of the securities and the reasons for and details of the offer"⁴⁷.

This should be helpful in reducing the burden on enterprises wishing to put in place all employee plans. However there are two remaining issues to be resolved.

Firstly, there is no requirement within the Directive for the Commission to adopt any implementing measures in relation to the shortened form of prospectus. Without any further guidance from the Commission, Member States will be free to interpret this as they wish. Our concern is that this may re-introduce some differences of view and approach and will not remove the complications that currently exist. We therefore recommend that, with the assistance of the proposed Committee on Financial Participation, **the Commission should prepare guidelines on this document, which could be adopted by the competent authorities in each Member State.** The Expert Group has already considered a number of criteria that the Committee could include in its discussions⁴⁸.

Secondly, enterprises whose shares are not listed on an exchange within the EU, such as private companies or large multinationals with shares listed outside the EU, will be required under the Directive to produce a full prospectus whenever they offer shares to their employees based in the EU unless they fit within any of the other exemptions or exceptions. For some plans, this could be as often as every month. This will be a major barrier to many enterprises and will seriously hinder the development of financial participation generally by these types of enterprises, depriving many employees in the EU of this opportunity. We therefore recommend that, when drawing up the national legislation necessary to implement this Directive, **the Member States should allow such enterprises wishing to use a shortened form of prospectus, equivalent to that applying to enterprises that qualify under the Directive for this exception, to do so.**

⁴⁷ This exemption is found in Article 4.1(e) in relation to an offer of shares to the public and in Article 4.2(f) in relation to shares admitted to trading on a regulated market in the EU.

⁴⁸ The criteria are as follows:

In relation to large enterprises or in the case of an all employee plan, employees should each receive a concise summary of the plan, including an explanation from the enterprise on the motivation for offering shares to them. Subject to any existing rules on language, it would be best practice for this to be provided to employees in their local language or languages. This should be available to employees either electronically or in paper form as appropriate.

Alternatively, where the number of employees employed in a particular Member State is small, documents could be provided in another language if employees or their representatives agreed to this, again subject to any existing rules on language provision.

There should be an exemption from the requirement to translate documents in the case of SMEs and in respect of discretionary plans.

Employees should have access to the “fundamental documents” including financial reports either themselves or through their appointed representatives – including trade unions, employee representatives, or trustees where shares are held in a trust for the benefit of employees.

As provided for in the Directive, documents can be made available through a website or company Internet. Any employee or any of their representatives that has difficulty in accessing electronic documents should be able to obtain paper copies on request.

Any exemption from a full prospectus or shortened document would not affect the employee’s rights once he becomes beneficially entitled as a shareholder to receive subsequent documentation and reports in whatever format is normally available to shareholders.