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it's our business

newspad of the Employee Share Ownership Centre

Could more widespread eso help save EU economies?

Employee share ownership (eso) was pushing itself towards the top of the agenda in terms of helping to prevent deeper economic and social divisions from developing in EU member states, Centre chairman, **Malcolm Hurlston CBE** told a European Commission-backed international workshop in London.

Delegates from seven EU nations, who gathered at **Linklaters,** heard a series of informative presentations on how eso could provide a range of potential solutions to the haemorrhage of jobs, future careers and hope from local communities in the bulk of member states.

Mr Hurlston, who chaired the workshop entitled: *'Shares into Ploughshares: Helping employee financial participation to boost economic growth'*, said that the Centre's programme asked to what extent eso could preserve or even increase employment in companies, while at the same time preserving social values.

Among the issues discussed were the use of eso in business succession; community shares in micro businesses; the track record of public sector mutuals; whether union members at the Royal Mail would one day enjoy a collective voice in its affairs throughout share ownership and what eso progress was being made in France, Germany, Italy and Spain.

Mr Hurlston told delegates that the focus in the Commission was now on SMEs and the problem of business succession. The declining state was the new factor, so we were all under great pressure to work with the trade unions and the EU institutions. Workshops like this helped to create an agenda for the unions to understand how share schemes worked.

"It is very important to fight for a collective voting power for union member employee shareholders. Throughout the corporate world, people are worried about the silent shareholders. They want to see more involvement," he said.

"Furthermore, eso presents a great opportunity to the unions, especially in the private sector, to help them gain new members. We all have to get together to foster a fairer future for Europe."

He explained that there was no model esop which could apply to every EU member state because they were all different. Tax reliefs enjoyed by employee shareholders were sometimes oversold. They were a form a publicity, in effect governments were saying – 'Eso is a good idea' but it was all too easy to get hung up on the idea of tax relief.

From the Chairman

Let's hope we can finally knock on the head the old question about whether esops work. Add the exemplary study for Computershare by the London School of Economics to the Craddock survey of academic evidence for the Centre's EU Shares into Ploughshares event and we need never again cite universities nobody is convinced by... To close the door we need more companies to follow the Computershare lead with LSE and the National Institute for Economic and Social Research. It not only provides proof but clear pointers towards next steps.

Malcolm Hurlston CBE

"Large companies used to work hard to make their international share plans tax efficient but now they tend to concentrate on the corporate glue of share schemes, not the national tax breaks," Mr Hurlston added.

Governments could help eso by 'nudge' and by publicity. "Our message to the Commission should be that tax reliefs for schemes are not necessarily essential and that the award of share options is a good thing to promote, not least for the low paid and part-timers. The options mechanism is exceptionally good because it does not expose employees to any financial risk. We need to think in the longer term about how pensions and share schemes can sit side by side and how their relationship might be made closer."

William Franklin of **Pett Franklin & Co.** said: "Employee owned companies have grown significantly faster than the rest of the economy. They are resilient companies which have enjoyed steady organic growth rather than takeovers. However, these are the muddy waters of social science and we can never be sure about what causes what.

"The biggest barrier to the wider spread of eso is that people are not generally aware of employee ownership and share ownership and some of the worst offenders are lawyers and accountants – the advisers – in some cases because there are less fees in it for them in advising companies which might want eso or employee ownership."

The ESOP Centre Ltd, 65 Kings Cross Road, London WC1X 9LW
tel: 020 7239 4971 fax: 080 8280 1938 e-mail: esop@esopcentre.com
www.esopcentre.com

Mr Franklin said that there was a danger of the *clogs to clogs* cycle within three generations in such companies as enthusiasm faded gradually over the years. Could we reverse that tendency, he asked? We needed to because eo released employee energies, he added.

Graeme Nuttall of **Fieldfisher** said that the UK coalition government had introduced many schemes to help employees have a much greater role in the ownership of their company after decades of little concrete help. He discussed the different structures in the mutuals Central Surrey Health (CSH) and CHCP which had spun out of local health trusts.

CSH was a limited liability company with an overlay of social provision – the provision of services to charities and local communities. All employees paid in a symbolic penny each which was kept in an office jar.

CHCP was a co-operative where everyone paid a pound each and was 75 percent owned by a trust which held the shares collectively for the employees. Both companies had maintained their staff levels and had gained new contacts and revenues by spinning off from their NHS Trusts. In both cases they ploughed any profits back into the community.

Now there were 100 public service mutuals delivering £1.5bn of public services and employing 35,000 people, said Mr Nuttall. Most such entities were asset light and almost all the new ones and gone down the route of the Community Interest Company. The state had provided help by usually letting them stay in the same buildings and giving some financial backing.

There had been good support from trade unions at a local level but they were reluctant at a national level to support employee ownership because of the wider policy implications.

Catherine Gannon of **Gannons** (solicitors) said that some financial companies were now switching to social enterprise financing via either debt finance, equity or community finance and through grants. Certain tax reliefs like the Community Interest scheme had not been well promoted.

David Gorman of Capital for Colleagues**,** which invests in employee owned business and social enterprises, said that his organisation had so far made nine investments in SME companies. Methods of financing them include crowd-funding, issue of social bonds, community shares for shops, and pubs which become social centres saved by local volunteers. The Saddleworth Community Hydro was a good example opened last September and now generating electricity, part financed by North West Utilities and by the EU Agriculture Fund.

Martyn Drake of **Computershare,** which has 3.7m share scheme participants worldwide, presented the research carried out for his own company by the London School of Economics and the National Institute for Economic and Social Research. Nearly 10,000 Computershare employees had taken part in the 2014 research phase. The independent survey participation rate in the nine countries chosen was almost 40 percent. They spent on average £95 per month buying shares in Computershare which were matched on a 1:1 basis. The results showed that employees stayed longer in the company, worked longer hours, were more motivated and took less unplanned absence. The more shares employees had, the less likely they were to be absent.

Thirty-eight percent of survey respondents said they thought that share plans attract future employees; 42 percent said that share plans were their second most valued incentive after pensions. A strong minority believe that employee equity scheme participation affects motivation. Of those who didn’t participate in the share schemes 44 percent said that it was too expensive for them and 16 percent said they didn’t understand the plan enough to join. One in ten didn’t know they could vote at agms. Almost three-quarters of those who had never joined a share scheme said they would if it had offered a 50 percent discount. Clearly, they weren’t aware that the Computershare plan already did offer a 50 percent discount, said Mr Drake. Mr Hurlston congratulated Computershare on commissioning research from internationally recognised experts: it was the best practical proof that employee share ownership was effective and gave at the same time guidance on how to make it work better.

Prof Andrew Pendleton, speaking from the audience, said that recent research in which he had been involved suggested that for 40 percent of participants share scheme membership was the only form of regular saving. If there had been no share plan, 50 percent probably would have saved nothing at all. Viewing eso as a wealth accumulator would help the Centre and others when lobbying the governments.

David Craddock of **David Craddock Consultancy Services** presented a compendium of the academic evidence that Eso produced results. He said that research since the 1980s had suggested that eso alone was not the answer: it had to be combined with open management systems and people development policies. Recent US studies implied that companies with a history of installing eso plans saw fewer staff absences, enhanced job satisfaction, higher staff retention rates and a greater capacity to create jobs than non Eso companies. The Hewitt Associates study of 1998 showed that for the 303 of the esop companies that survived a four year test period, Return On Assets (ROA) was 14 percent higher than for the comparator group; for the initial 382 esop companies as a group, ROA was 6.9 percent higher in the four year period; and for the 382 esop companies as a group Total Shareholder Return increased by 12 percent compared to the peer group over the period.

The CASS Business School report, published in 2012, in conjunction with the Department for Business, Innovation and Skills, concluded that employee-owned businesses performed better during periods of economic recession. During the recent downturn, the research demonstrated that employment increased by 13 percent in employee-owned businesses between 2008 and 2009 whereas for non-employee-owned businesses employment increased by only 2.7 percent. The research suggested that the productivity of employee-owned businesses is between nine and 19 percent higher than non-employee-owned businesses, said Mr Craddock.

Ivan Walker of **Walkers Solicitors** had played a key role in the share ownership and working agreements between Royal Mail management and the Communications Workers Union (CWU). Industrial relations had been a running sore at RM in a heavily unionised workforce, so much so that they couldn't even agree what the problems were! The CWU had not signed a no-strike deal – but a legally binding deal which led to mediation in the event of severe difficulties.

Employees' share voting rights had been vested in the SIP trustee, Equinti, which was not really involved in how RM was being run. The terms of the trust were fairly standard – it had to vote the shares 'in the best interests' of the beneficiaries. The big problem about voting rights was apathy – it had been shown in other companies that about 50 percent of employees never exercised their vote. He claimed the fiduciary duty of the trustee was a bit like 'legal Polyfilla.' The purpose of the Share Incentive Plan (SIP) programme was to bring benefits to the employee which gave them a continuing stake in the company and it could have no other purpose. However a Law Commission report five years ago had opened the door to a consideration of what the long-term interests of the employees really were, because securing the best *realistic* rate of return implied that the trustee had to consider the risk factor too. Surely sound environmental and labour relations policies would be good for the long term value of the company? "The legal profession is riddled with people who think that long-term value is only financial value, but that is over-cautious and the wrong long-term view," said Mr Walker.

While there was no mechanism within the RM structure through which the CWU could pass on – to the trustee - its views on how the company should be run, an HMRC model document had been published to assist employee shareholder relations in a tax-approved scheme. The document created an advisory committee, which contained elected members of the workforce, and that could direct the votes of the majority of RM employees, though individual employees would have the right to opt out of a collective vote. The committee should act as a quasi trustee – in this case by canvassing the views of employee eso plan participants. Mr Hurlston said: "We are close to a situation in which CWU members become empowered shareholders" Trades unions were asking for votes at US agms, by putting up shareholder resolutions.

Janet Willamson, senior policy officer on corporate governance at the TUC, said that whether or not the TUC supported eso schemes depended upon the circumstances. It was easier to support schemes which were inclusive, gave employees a voice and which offered free shares to workers who could not afford to buy shares. Real wages had fallen again last year – by 1.6 percent on average – and there was financial risk on top of that. Many eso schemes had no room for the 'collective voice' element, which was a wasted opportunity, and such schemes should be the result of consultation between the company and the workforce. Eso should not be used to sideline trade unions, as was happening in the UK. As to whether esops increased productivity or not, the jury was still out and more detailed up to date research was needed. The old saying went: *pay today, pensions tomorrow,* so eso could not replace pay rises, she said.

The TUC drew a clear distinction between esos in the private sector, which might or might not win union approval – and eso as a vehicle to help the creation of public sector mutuals, involving removing assets from the state sector, which shouldn't happen, she maintained. "Many public sector mutuals are privatisation by the back door," she added.

Sarah Bell of architectural practice **Cullinan Studio** explained in a cameo intervention how its cooperative style business had grown to 36 employees, of whom 28 were classified as 'directors'. A trust operated by five trustees was the back-stop for the business, which had generated massive staff loyalty. "Everything is transparent – we have a maximum salary ratio of 3:1 – top to least paid employee," Sarah explained. "We all know what everyone gets and that does not cause problems. Our structure gives me a voice in the company; we meet every eight weeks and I have set up a mental health policy," she added.

Marina Monaco of **ETUC** and **Francois Longerinas** of **L'Ecole des metiers de l'information** presented the growth of the co-operative movement in France – now 2,500 companies employing 45,000 people in industry and commerce. New legislation had recognised social enterprises and co-operatives. The *right for information* required companies to tell employees about the possible sale of their company at least two months before the event. French regional bodies and cities encouraged local investment, helping buy-outs to occur and encouraging the self-employed to get together. Local shop stewards had helped rescue stricken plants when the alternative was closure, he said. "Trade unions in France used to be uninterested in company buy-outs, but they are now," said Mr Longerinas.

Heinrich Beyer of **AGP** explained how employee financial participation was a lot more popular in Germany than it used to be. More than 50 percent of companies with more than 500 employees now had at least a profit-sharing scheme, he said. Eso now involved 1.2m employees in 700 companies, but only 17 percent of the German work-force were employee shareholders, compared to the EU member state average of 28 percent. The constraints on eso in Germany however included: many family owned companies with traditional scepticism and with unsuitable legal structures, poor tax incentives *(only a maximum €360 per year free of tax and social contributions),* the competition from company savings plans / old-age saving schemes and less support from political parties, trade unions and employers associations. On the other hand, Germany had a lot more work councils, supervisory boards and so on than many other EU member states.

Francesc Abad of ProEFP partner **Confesal** said that *dialogue* was now the magic word in Spain, where they were trying to develop the concept of the self-managing company. Information sharing was a critical factor and companies which had this model were generally more durable. Committed employees were sometimes even investing the collateral of their homes into their companies to help keep them alive.

Marco Cilento of **ProEFP** said that to involve people in the enterprise helped create intergenerational commitment and confidence. Of course, the labour market had to be more flexible to meet the needs of companies within the EU, but there was a paradox over

whether training and education could make better conditions for people in the labour market. Investment was needed to improve productivity.
"We have put forward efp to underline how the engagement of workers, which takes into account governance, is essential but complex. The financial partners should be linked by governance, otherwise it won't work," he added. The secretary general of the Italian postal workers federation was attending because they were interested to see how they could be given a voice in the possible partial privatisation of the Italian postal services.
Maurizio Petriccioli of the Italian trades union confederation **CISL** praised the Centre for having organised the workshop and said he was impressed by the Centre's ability to collect all the different opinions. The UniCredit Bank employee share scheme in Italy was an important case study and so far more than 10,000 employees in 13 countries had signed up to it.
The main issue was how to give back value to the labour force and eso allowed an employee to feel responsibility – to share the strategy of his or her company.
Mariano Fandos of French trades union body **CFDT** said that a lot of EU member states had been told to cut state spending and to reform labour markets, but his union was aware of "gross injustices" Often, there was no social dialogue – employees must be involved in the process, he said.
Davide dal Maso of **Avanzi** said that information about eso was not standardised across the EU, rather it was fragmented. He had learned of the Centre's work with Capital Strategies and the London Stock Exchange to produce a quarterly index of stock price movements in eso, as compared to non-eso companies, but this wasn't enough. Causality was the issue – could we generalise from the Computershare study about the impact of eso on staff loyalty, productivity and so on? Were companies which embraced corporate social responsibility more eager to open eso schemes, or were eso companies more likely to be CSR conscious, he asked?
Mr Hurlston plans to visit the Commission later this week to meet **Jeroen Hooijer,** director of unit in the Corporate Governance and Social Responsibility division of the European Commission. This unit now comes under the Justice Commissioner, having moved in its entirety. Mr Hurlston will discuss with him the role of eso under new Commissioner, especially the promotion of share options and give him the Centre's report on *Shares into Ploughshares.* Mr Hooijer's policy officer **Dorota Łyszkowska-Becher** told *newspad*: "As there has been a reorganisation of the Commission services under the new Commission, it is too early to say what possible next steps will be and in particular, which specific measures might be undertaken or whether the Commission would decide to publish an overall document relating to all relevant actions in this area."
Michel Barnier outgoing **Commissioner for Internal Market & Services** delivered a valedictory boost for eso when he said: "Employees' share of national wealth production in OECD countries has declined continually over the last three decades. Employee shareholding schemes can contribute to tackling the rising imbalances in income distribution. They can help us rediscover the foundations of the competitive social market economy which characterises the European model, and can help put our economy on the road to more sustainable growth, starting with local initiatives.
"Since the introduction of these schemes, decades of research have confirmed that undertakings which are partially or entirely owned by their employees are less subject to relocation, generate more profit, create more jobs and contribute more to tax revenue in the regions where they are located. Finally, their employees are generally long-term shareholders and this brings an element of stability to financial markets.
"These forms of employee involvement will have a crucial role to play in Europe in the coming years, as many directors or managers of SMEs retire and must ensure that management succession in their companies is managed well. Employees buying part of the business is an efficient solution – not just for its founders and employees, but for preserving employment and innovation in Europe too.
"Yet, in spite of their positive impact and their existence throughout Europe, employee share ownership schemes cover a significant share of the economically active population in only a handful of member states. In the EU, 68 percent of companies still do not provide employee participation schemes. There is significant room for improvement; we have to translate policy into action at the European level. On this basis, it will be for the new Commission, chaired by Jean-Claude Juncker, to support employment, growth and social cohesion through innovative measures, one of which could be to encourage employee share ownership.
Of course, any EU action should give priority to national action where it is most effective. However, it is not out of the question that we take action also at the European level, starting by encouraging member states that have sound experience of these schemes to share their best practices. I am thinking in particular of France, but also of the UK, which has recently supported employee shareholding schemes as an important element of economic recovery. To take it further, the Commission has recently published a study of some of the ideas for reducing the main obstacles and encouraging cross-border employee share ownership in the EU. These include creating a virtual information centre and developing a European voluntary system of employee shareholding schemes," he added.

Seasonal best wishes to all our members. All at the Centre hope you have an enjoyable time and a good rest during the Xmas and New Year break.
Malcolm, Linda, Fred, Juliet, Geoff and Jacob.

SECONDMENT OPPORTUNITY AT CENTRE

With a new plethora of political parties and the election next year, the Centre will need to step up its lobbying and research activities to get the best results.
Members are invited to second a staff member to the Centre for six months to support employee share ownership and to provide a unique training opportunity.

Secondments will be expected to meet the Centre's usual criteria. Please apply to Juliet Wigzell at: jwigzell@esopcentre.com

Royal Mail to scale back SAYE option awards

Almost one in every four of eligible postal workers applied to join the **Royal Mail's** new SAYE-Sharesave scheme, forcing a major scale-back in share option awards, the company has admitted.

Thousands of postal workers are disappointed after being told that – on average - they will only get about 60 per cent of the SAYE options they applied for.

More than 35,000 of RM's eligible employees - almost 25 percent – applied to join the scheme, which involves monthly savings being deducted from their net pay either every week or month for the next three years.

This participation level is a good result for Royal Mail and its administrator, **Equiniti**, given the hostility of the **Communication Workers Union (CWU),** which represents postal employees, towards the privatisation last year.

However, the unexpectedly high level of employee participation in the SAYE and the amounts employees were prepared to invest, meant that there were not enough share options available to meet the demand, the company revealed on its website.

Save As You Earn share purchase options at 360p each – at a 20 percent discount to the then prevailing share price - were granted to the participating postal employees on October 1 and everyone's valid application was accepted – at least at the minimum level.

"But, there was greater demand for SAYE than the number of shares available, as more than 35,000 employees decided to take part in the scheme. Due to this very high demand, we needed to reduce (scale back) the amount that could be saved so that everyone's application could be accepted," said RM.

The minimum weekly (£1.25) and monthly (£5) savings amount applied for was not reduced, but a reduction of 43 percent was applied to all demands above the minimum.

"For example, if employees applied to save £25 every week, or £100 every month, they will actually save £59 every month following the reduction," added RM.

The SAYE participants received their welcome letter and option certificate at their home addresses. Their SAYE savings contracts began on December 1 and end on the same day in 2017. The current share price is c. 430p.

Royal Mail's free Share Incentive Plan share awards already constitute the UK's largest broad-based employee share scheme as ten percent of the total equity was given to eligible posties in line with the government's pre-flotation promise. Their shares are being held within a trust.

On top of that, 15,000 postal workers *bought* more SIP shares in RM, through the IPO's employee priority offer, to add to their free shareholdings.

Virgin employees get their shares

Virgin Money, the UK bank part-owned by entrepreneur Sir Richard Branson, finally listed on the London Stock Exchange at a price of 283p per share, giving the company a market capitalisation of £1.25bn, below earlier estimates.

About 2,800 Virgin Money employees, many of whom used to work for Northern Rock, will now receive £1,000 worth of shares in the business as a result of the flotation, which had been postponed earlier due to the market wobble.

The bank was expecting to raise £150m from the sale. However, because Virgin Money's listing failed to reach the hoped for valuation of £1.45bn, ceo Jayne-Anne Gadhia may have missed out on more than £2m of bonus share awards. The Virgin Money boss will still receive shares worth £942,998, with 40 percent awarded at IPO, but she was originally entitled to a maximum payout of 0.25 percent, or £3.6m, of the lender's valuation, had it reached a higher price.

The company says it will repay the government the final £50m that it owes for its 2011 purchase of part of Northern Rock. Virgin Money bought the banking and mortgage lending arm of the old Northern Rock bank, which was bailed out by the Bank of England in the autumn of 2007 at the start of the international banking crisis. Northern Rock was nationalised in early 2008, then in 2010 it was split in two - Northern Rock plc and Northern Rock (Asset Management), into which was placed its bad debt. Virgin Money's final £50m payment will take the amount it has paid the Treasury for Northern Rock to £1.02bn.

Sir Richard Branson, who held a 34 percent stake in the business after the listing, trousered £85m through selling off part of his stake and US billionaire Wilbur Ross holds 33 percent.

California-based **National Center for Employee Ownership** added: "When **Virgin America** took its stock public last month (Nov), 13m shares became available to the public markets. In an unusual feature of the deal, an eso plan sold shares worth just under $5m. Virgin America offered its stock at $23 per share, and it closed at $32.68. Its employee ownership is through a limited liability company, VX Employee Holdings, not a traditional equity compensation plan or esop."

Share scheme tax relief soars towards £1bn

The Treasury is on course to forfeit more than £1bn in Income Tax and National Insurance Contributions this year due to the rising cost of reliefs granted across all four of the UK's tax-advantaged employee share schemes.

It will be the first year since the last pre-crash financial year of 2006-7 in which the cost of approved share scheme maturities to UK taxpayers is likely to exceed £1bn.

The key factor in the cost of eso participation to taxpayers has been soaring stock market prices, which are making share scheme maturities, particularly SAYE-Sharesave contracts, much more valuable. The higher the employee saver's profit is on his/her share options, the greater the tax and NIC reliefs are.

The total cost of Income Tax and NIC relief in 2012-13 for all types of approved employee share schemes was £840m, 45 percent higher than in 2011-12 largely due to a large increase in the values of income tax and NICs relief on gains achieved when SAYE scheme options were exercised. "The recent increase in costs is likely to

be significantly due to share prices picking up again making exercises more profitable," said HMRC.
The number of employees exercising SAYE or Company Share Option Plan options rose by 61 percent between 2010-11 and last year, because of rising share prices.
From next year, a new factor will put further pressure on the tax bill for eso participation – the first maturities of Enterprise Management Incentive (EMI) schemes in which the maximum limit of share options awarded (i.e. still outstanding) to key employees had been raised from £120,000 to £250,000 per head.
Even two years ago, the average value – at time of issue- of EMI options awarded to employees was about £14,000 per head. Last year, almost 8,600 UK companies were using EMI to incentivise key employees and that number is unlikely to fall any time soon.

IT glitch at flagship pensions mutual
The government's flagship mutual venture, which pays pensions to more than 1.5m retired civil servants, hit a mini-crisis over delayed payments as a result of a new IT system and moving its payments in-house. MyCSP processes pension payments worth more than £4bn a year.
Employees, formerly civil servants, own a quarter of the company, which in 2012 became the biggest public sector body to spin out from central government as a mutual venture. Ownership was carefully divided between Equiniti, the private sector partner, at 40 percent; the state (taxpayers) at 35 percent and the employees (former civil servants) at 25 percent.
But last October, in an unexpected move, Equiniti increased its holding in MyCSP by acquiring a further 11 percent of the equity from the government to take its stake up to a 51 percent majority holding. The employees still hold 25 percent of MyCSP collectively, their shares being held in an employee benefit trust, but the taxpayers' share in the company has fallen from 35 percent to 24 per cent.
MyCSP has recently been hit by a series of problems, including a fault that meant payments have been delayed to civil service pensioners living overseas. When it was mutualised, MyCSP continued to calculate pensions but payments were still made by **Capita**. Just over a month ago, MyCSP took over the Capita contract for payments. This coincided with the late delivery of a new IT system and preparation for the new alpha civil service pension scheme, which begins next year.
The combined problems have resulted in delays to pensions being paid, extra work for staff and a big increase in complaints, with pensioners struggling to get through to My CSP to get their issues dealt with. Letters were sent out to pensioners to inform them of the change in administration, which said that members of the scheme would continue to receive their pension in the same way on the same day. But MyCSP members living overseas are furious at the lack of response to what the company says is a "small number" of delays. On Twitter, pensioners have resorted to tweeting the Cabinet Office permanent secretary Richard Heaton to get their problems resolved. Former civil servant Evelyn Marshall, who had been due to get a lump sum and a regular pension on her 60th birthday on November 2, was told in September that her pension arrangements were all in order. She then received a letter informing her of the changeover from Capita to MyCSP, but was told no further action was needed. Concerned that she had heard nothing in the week before her payment was due, Marshall attempted to contact MyCSP. She was finally told on November 7 that her lump sum would be in her account within days. "This is a substantial amount of money, and my complaint still stands," commented Marshall. "There has been no communication. This is a shambles."
The PCS union, which represents 160 of the 350 of the staff at MyCSP, is seeking an urgent meeting with the company. A PCS spokesman said: "This is an appalling situation for people waiting for their pension payments and trying to contact MyCSP, as well as for the staff there who, through no fault of their own, are facing mounting backlogs and complaints. MyCSP was mutualised against the will of staff on the premise it would improve efficiency, so the fact this is happening in what remains the civil service's only significant mutual, and hot on the heels of Equiniti taking a controlling stake, looks deeply embarrassing for Cabinet Office minister Francis Maude."
MyCSP said in a statement: "We successfully took over the administration for civil service pensioners and former employees from Capita in September. We are now paying pensions for 660,000 people. However, a very small proportion of our scheme members have been affected by delayed payments. Our members are our top priority and we are doing everything we can to put this right. We have brought in additional staff and are extending our opening hours to deal with queries and to resolve the small number of outstanding payments. We are confident that in the future our service will be more efficient and convenient than ever. We have received an extremely high number of calls over the last few weeks after letters were sent to 1.1m scheme members informing them of the transfer of administration to MyCSP."
A Cabinet Office spokesperson said it was 'simply untrue' that mutualisation was entirely against the will of staff, adding that over 75 percent voted for fellow employees to represent them on the employee partnership council and that there had been a rise in staff engagement and a decline in sickness absence."

UK government loses bankers' bonus cap battle
The UK government withdrew its legal challenge to EU legislation that caps the level of bankers' bonuses. Chancellor George Osborne said he had recognised the challenge was "now unlikely to succeed". The move came after an adviser to the European Court of Justice rejected the UK's legal arguments against the plan.
The cap restricts bonuses to a maximum 100 percent of banker's pay or 200 percent with shareholder approval. The Treasury had argued that the cap would drive talent out of Europe and inflate basic pay, making it harder for banks to trim costs in lean years.
"I'm not going to spend taxpayers' money on a legal challenge now unlikely to succeed," Mr Osborne said. "The fact remains these are badly designed rules that are

pushing up bankers' pay not reducing it. These rules may be legal but they are entirely self-defeating, so we need to find another way to end rewards for failure in our banks."

The banks now face a running battle with regulators over the bonus limit, with Barclays, HSBC, Lloyds Banking Group and Royal Bank of Scotland Group among more than 30 lenders that have tried to circumvent it by introducing so-called role-based pay. The European Banking Authority, which brings together financial watchdogs from throughout the 28-nation EU, said in October that this practice violated EU rules in "most cases" and urged regulators to ensure compliance.

The cap on the ratio is designed to reduce incentives for bankers to take excessive risks, but critics say it will push up basic pay and banks' costs. The first bonuses to be affected will be those paid in 2015 for performance during this calendar year.

Up to 25 percent of the bonus can be paid in long term instruments, notably shares, valued on a discounted basis (to result in an effective ratio of more than 1:2), said lawyers *Freshfields*. If more than 25 percent of the bonus is paid in this way, any excess over the 25 percent will not benefit from the discount; and the rules will apply to EU banks operating in the EU (including in relation to their employees based outside the EU) and to non EU banks operating in the EU. At least 50 percent of the variable remuneration must consist of shares or equivalent ownership interests or instruments which reflect the credit quality of the institution as a going concern or which can be written down or converted to equity in adverse circumstances (eg contingent convertible bonds). At least 40 percent of the variable remuneration must be deferred over a period of not less than three to five years. Where the variable remuneration component is of a particularly high amount (in the UK this is currently set at £500,000), at least 60 percent must be deferred.

The EU legislation limiting the ratio of bonuses compared to basic salary was valid because it didn't amount to a cap on total pay, Advocate General Niilo Jaeaeskinen of the EU Court of Justice said in a non-binding opinion. The Luxembourg-based court follows such opinions in a majority of cases.

"As expected, it looks like the bonus cap is here to stay and that could lead to further regulation if basic, non-performance related, salaries rise as a result," said Paul Randall, head of incentives at law firm **Ashurst LLP**.

Another final-salary pension scheme to be axed

More than 3,400 UK based staff at **Zurich** are being told that they may be unable to make any further contributions to the insurer's two final salary pension schemes. If approved, the proposal will mean all Zurich's UK workforce would be enrolled in a defined contributions pension scheme by next July. Other insurers who have shut their final-salary schemes to existing as well as new members include **Aviva, Axa** and **Direct Line**.

Croda International was until recently the only remaining FTSE 100 company which retains a final-salary scheme for all employees, but it has recently slipped back into the FTSE 250 index. In 2012, a further seven of the FTSE 100, including **HSBC, Kingfisher** and **Sainsbury'**s either closed their defined (final-salary) pension scheme to future accrual or announced proposals to do so. This left only 61 companies with final-salary pension schemes open to future accrual among *existing* employees.

Autumn Statement

The Chancellor's Autumn Statement will be delivered on December 3 at 12.30 pm. The Office for Budget Responsibility (OBR) will publish updated statements on the current state of the public finances and whether the Government is going to meet its fiscal objectives. HMRC's website refers to 'the Autumn Statement *including any plans affecting Stamp Taxes'* (italics added). It remains to be seen whether this is significant, said Centre member **Deloitte.**

CONFERENCES

DAVOS: Feb 5 & 6

US investment bank **ButcherJoseph** has joined **i**nternational oil and gas services giant **Petrofac,** which employs 18,000 staff worldwide, in registering for the Centre's **16th Global Employee Equity Forum,** which takes place at the **Hotel Seehof** in **Davos Dorf** on **Thursday February 5** and **Friday February 6** next year. Almost 40 places at this popular event have been sold and only four remain at the time of writing.

Our Davos e-brochure logo sponsors are **Appleby Global**, **Bedell Group** and **Elian** (formerly Ogier Fiduciary)**:**

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Fourteen speakers have confirmed their presentation topics for Davos. Among the programme highlights will be a share plan case study to be given by **Tony Llewellyn** and **Charlotte Caulfied** from FTSE 250 company, **Imagination Technologies**. The key issue is how a high technology company, dedicated to employee share ownership, copes with a volatile share price.

Another slot to watch will be **Fred Whittlesey** of **Compensation Venture Group** who will reveal latest US executive reward trends and the extent to which performance pay rules the roost in corporate US today. The increased regulation being faced by EBT trustees will come under the spotlight in a joint presentation delivered by **Katherine Neal** of **Ogier Legal** and **Donna Laverty** of **Elian.** They will discuss: **Employee benefit trusts - are current structures being undermined?** (*New challenges for offshore trusts – with case studies*)

Other speakers include: **Alan Judes** of **Strategic Remuneration; Jeremy Mindell** of **Primondell; Justin Cooper** of **Capita Asset Services; Steve Kavanagh & Kevin Lim** of **Solium; David Pett** of **Pett, Franklin & Co; Shervin Binesh** of **Western Union** and **Alasdair Friend** of **Baker & McKenzie. Paul Anderson of Bedell Group** will chair the trustee panel session.

The Davos 2015 package includes two nights' accommodation (February 4 & 5), with breakfasts and lunches provided, in the Hotel Seehof (www.seehofdavos.ch) plus admission to all conference sessions, the annual cocktail party and a bound delegate handbook. There will be an optional pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. Contact Fred to register – as a delegate - at: fhackworth@esopcentre.com.

ROME: June 4 & 5

The Centre's 27th annual conference will again take place at the **Residenza Di Ripetta** in central **Rome** on **Thursday June 4** and **Friday June 5** next year. This excellent hotel is part of the Royal Demeure Luxury Hotel group. A two nights' half-board accommodation + conference package deal rate is offered, with speakers given priority. Contact Fred Hackworth at: fhackworth@esopcentre.com for more details.

On the move

John Meehan, formerly of **Computershare**, has joined **Global Shares.**

Debi O'Donovan has a new job – as editorial director at **Reward & Employee Benefits Media**

Gavin Oldham of Centre member **Share Centre** has set up and financed **Share Radio**, which provides information on handling money and investments in a mainly talk-based format. It presents programmes designed to give listeners the information they need to help them make better financial decisions. Share Radio is a blend of talk shows and listener call-ins on money issues from investments to insurance. The station is available online. Gavin, who received the 2013 Editor's Award for services to private investors from the Financial Times/Investors' Chronicle, is chairman and founder of Share plc/The Share Centre and Trustee of pfeg, the Personal Finance Education Group. Centre chairman Malcolm Hurlston CBE, wrote to Gavin: "Congratulations on funding and launching Share Radio. It's a great idea and I hope it will be possible to develop a slot for employees in share schemes as well as giving coverage to employee share ownership. For our part we shall certainly publicise the launch in *newspad*"

Graham Ward-Thompson has clocked up his first 18 months as non-executive director at Centre member **Howells Associates**. He was a stalwart of PwC's reward practices in Leeds and Manchester, where he was based for 23 years, specialising in incentive plan design, tax efficiency, performance measurement and developing effective employee communication strategies. Graham, who is attending the Centre's Global Employee Equity Forum in Davos in February, is a chartered accountant and a member of the Chartered Institute of Taxation.

Otto Thoresen, ceo of the Association of British Insurers, is moving to chair NEST. ABI recently passed responsibility for investor protection and its feared guidelines to the Investment Management Association, where regular Centre speaker **Patrick Neave** is now to be found.

Dave Prentis of UNISON trade union spelled out the commitment of its trades union shareholders to **Unity Trust Bank** at a ceremony held at the Imperial War Museum to mark the institution's 30th anniversary. Unity Trust was a founding member of the Esop Centre but the travails of the unions' co-shareholder the Co-operative Bank had created uncertainty. Former Co-op ceo **Sir Graham Melmoth** came to pay personal tribute, along with former TUC general secretary **Lord Monks**. Having instigated esop lending in the UK, Unity started its own esop last year, bringing staff into ownership alongside unions, the Co-op and supportive individuals.

Former Centre director **Frances Walker** celebrated retirement at the London HQ of StepChange the debt charity which she had helped to found while working at the Centre. Guests included radio star and tv trainer **Lady Cindy Gray** and **Gordon Beesley** former md of Unity. In her time Frances arranged for Centre staff to tour Britain on employee owned buses, stopping for interviews on the way. Centre chairman (and StepChange founder) Malcolm Hurlston CBE paid tribute to a consummate professional.

Maoiliosa O'Culachain has been appointed a research fellow of the **Esop Institute.** He was the guiding force behind the Eircom esop which richly rewarded many rank and file employees and is now on the board of Eaga Trust.

Think-tank ignores millions

Centre chairman **Malcolm Hurlston CBE** complained to the **Smith Institute** after its recent report: '*Making work better: an agenda for government'* ignored the role of employee share ownership in the modern workplace.

In his report, **Ed Sweeney**, who formerly chaired the Advisory Conciliation and Arbitration Service (ACAS), showed that Britain had too many poor performing workplaces where employees are often badly treated, underpaid, over-worked and ignored. The report argued that this long tail of broken workplaces was holding back the recovery and costing the nation billions in lost income and welfare benefits to those in work. The report, welcomed by Labour, the TUC, and EEF the employers' organisation, urged the government to do more to narrow the divide between the rest and the best and to intervene to tackle problems at work. It called for a fresh approach to improving employment practices centred on the idea of 'workplace citizenship', with employees having a greater say, new employment rights and support for fair pay: including a right to request extra leave after five years of employment; rights to information on executive pay and low pay; extension of free childcare for working parents and 'use it or lose it' parental leave; reform of the ICE regulations to strengthen employee voice; and mandatory living wage contracts in all public procurement.

Mr Hurlston wrote to Smith Institute director, Paul Hackett, to point out that the report had… "ignored employee SHARE ownership which affects millions and concentrated instead on employee ownership for the *bien-pensants*, which affects only thousands of employees."

A great opportunity had been missed, said the Centre chairman. "Major companies would not spend heavily on share schemes if they did not pay their way with improved productivity and commitment. There is a current trend among multinationals not to tailor their schemes for tax breaks but on their own merits. Unions are beginning to see employee share ownership as an opportunity rather than a threat. They should encourage members to pool their voting rights in order to gain a voice," added Mr Hurlston.

Real earnings recovery 12 years away - claim

Commenting on the latest UK labour market statistics published by the Office for National Statistics, which show improvements to employment rates but very slow wage growth, **TUC** General Secretary Frances O'Grady said: "It's good to see an increase in real wages after so many years of falling living standards, but at today's rate of wage growth it would take another *twelve years* for people's pay to be worth what it was before the recession. And with the recovery looking as if it is already running out of steam, we cannot even be confident of that. Huge concerns remain about the quality of many of the jobs being created, and as the Chancellor has found out to his cost many people are not earning enough to pay much tax, if any."

Bonus corner

Lin Homer, the chief of **HM Revenue and Customs**, was hit by a staff backlash after accepting a £20,000 bonus. She was asked how "you think you can justify" taking the reward on top of a £185,000 salary, while thousands of her civil servants had seen the value of their pay packets shrink in recent years. In a Q & A session on the HMRC staff intranet, one employee pointed out that the package is more than the sum taken home by secretarial staff in a year. Mrs Homer acknowledged that the bonus had "generated some strong feelings", adding: "I do get paid a lot". She is one several senior civil servants to take home five-figure rewards. The questioner added that, if Ms Homer's performance pay was calculated on the same basis as that for all other staff, it would be 1.95 per cent, or £3,607. Homer said that only 'top performers' had received bonuses like hers and the decision was made independently by Cabinet Office officials. "On my visits to our offices and at events many of you tell me the public sector pay cap is making things tough for you financially. I understand why my performance award has generated some strong feelings as I do get paid a lot." Four other HMRC executives earning more than £120,000 took home bonuses worth between £5,000 and £15,000, according to the latest annual accounts. The executive bonus pool of up to £70,000 was higher than last year's of £55,000. It came despite them overseeing a £1.9 bn error that resulted in ministers being misled about how much extra revenue was being collected by UK plc.

Pimco denied a Bloomberg View report that co-founder Bill Gross earned $290m as his year-end bonus in 2013. Bloomberg said its report came from documents provided by an individual with knowledge of the company's bonus policies. Gross now manages bond funds at Janus Capital Group. The report said former co-ceo Mohamed El-Erian took in $230m at the end of 2013. Bonuses for other Pimco executives ranged from $22m to $70m, according to the report.

Pay TV multinational **Sky** was hit by a pay revolt as 55 percent of independent shareholders failed to back the remuneration report. The influential US shareholder watchdog ISS and British advisory group Pirc had recommended that investors abstain because of a lack of transparency over bonus targets. Pirc described potential long-term awards for ceo Jeremy Darroch and chief financial officer Andrew Griffith as "excessive". Minimum bonus targets were also viewed as "not challenging". Thirty per cent of all shareholders failed to back the remuneration report, after the votes of the top shareholder, Rupert Murdoch's 21st Century Fox, were included. Nearly 14 per cent voted against and 16 per cent abstained. Sky insisted it was not overly concerned, but it was a significant revolt by City standards. Mr Darroch, speaking after the agm, promised: "We'll engage with shareholders." He earned £4.9m in the year to June but has a bonus scheme that could earn him far more. He collected £17m a year earlier after a previous award paid out. Darroch defended Sky's decision to publish only limited information about bonuses because it is "commercially sensitive" and could help rivals such as BT. "You've got to be careful you don't give your sensitive information away," he said, adding that investors had given "strong support for most of our resolutions", including the recent merger with Sky Italia and Sky Deutschland to create a pan-European company.

Airbnb plans massive employee stock sale

Airbnb's valuation is set to rise to $13bn, up from $10bn earlier this year, as it prepares an employee stock sale, according to internal sources. The valuation would make the accommodation website second only to Uber in the rankings of Silicon Valley's most valuable private companies, at a time when some venture capitalists are becoming concerned about the rate at which start-ups are spending capital.

To allow employees to cash in on some of their stock in the meantime, Airbnb is talking to its existing investors about allowing them to buy back tens of millions of dollars' worth of shares. The funds would go to staff rather than raising new capital for the company and the terms are still being finalised, said the sources. Airbnb declined to comment.

Momentum in private tech companies' valuations shows no sign of slowing despite recent gyrations on the public markets. Earlier, e-commerce company Square raised $150m from investors at a valuation of $6bn, which has doubled in two years. Uber, whose offices are in the same building as Square in San Francisco, raised $1.2bn in fresh capital at a $17bn valuation this summer.

Airbnb, which was founded in ceo Brian Chesky's bedroom in 2008, raised almost $500m in April from TPG, T Rowe Price and Dragoneer Investment Group, taking its total raised to around $800m. Like Uber, Airbnb continues to face regulatory challenges around the world. New York attorney-general Eric Schneiderman said that nearly three quarters of Airbnb rentals there were illegal, in what is the company's largest market. By contrast, in its home town of San Francisco, Airbnb will soon become more legitimate – and more regulated – with a new law allowing short-term rentals by homeowners. However, the law is proving controversial, with California state senator Dianne Feinstein calling the action "short-sighted" for driving home rental costs higher and threatening a "blanket commercialisation of our neighbourhoods". Airbnb's funding talks were earlier reported by the *Wall Street Journal*.

No hiding place

In the latest twist in the ongoing saga of **country by country reporting**, the UK announced it would be the first OECD territory to implement the controversial measure, said *Taxand*. The UK re-affirmed its commitment to tackling tax avoidance, while at the same time risked angering multinationals, already fearful of the measure designed specifically to increase detection risk of tax-driven structures. In a statement released by the Financial Secretary to the Treasury, David Gauke announced that the UK would spearhead the global adoption of the OECD's country by country reporting template. This template, gaining significant attention in recent months as part of the Base Erosion and Profit Sharing (BEPS) initiative, is designed to report numerous components of a multinational's business model typically only available to a fiscal authority previously in the event of an audit. While the specific components of the template may still be subject to change (and indeed a specific timeframe for UK legislative adoption has not been released), the components are anticipated to include:

- The number of staff in a given territory (split per entity)
- Profits attributable
- Revenues
- Tax paid

The logic being that if a company has the majority of staff and significant revenue in a territory, yet minimal profits and tax in that same territory (particularly if significant profits are being declared in an additional territory with very few staff), the tax authority may wish to look into the structure further. While it may come as a surprise that the pro-business UK has chosen to stick its head above the parapet in this instance (becoming the first of any of the 44 OECD territories to adopt country by country reporting), if the history of the template is taken into consideration, this decision becomes slightly more expected. The UK was the first territory to suggest the implementation of the template during its G8 presidency in 2013, in light of significant negative media coverage around whether (usually foreign) companies were paying their 'fair share' of tax on UK based activities. As such, considering the timing of the OECD's own initiative regarding BEPS, the UK lobbied the OECD to include such a template in the ultimate BEPS deliverables. The lobbying was successful, and the template is now a core feature of the deliverables, despite its relative unpopularity.

Multinationals and advisors alike have generally criticised the template, noting the vastly increased compliance burden it could create and the superficial nature of the information offered. Many multinationals have expressed significant concerns that systems across the globe may not be aligned to produce such a global overview consistently, and as such significant efforts will be required to render the data cohesive to fit into a global comparison matrix. This is despite the Treasury claiming in its press release that the template will give tax authorities the information they need and minimise the additional administration burden on businesses.

Further, the view has often been expressed that while such a template may raise a red flag to tax authorities about tax-efficient structures, it will also raise needless questions about conventional structures. Without, for example, a loss brought forward column (arguably the most overlooked tax reduction method by modern media) – how can a fiscal authority truly place a value on the taxable profits attributable to a territory?

While the UK has chosen to lead this campaign, it will most certainly not be alone for long. Germany in particular has already expressed strong support for the template, and is typically only too eager to legislate against tax avoidance. Further, considering the quantity of multinationals with operations in the UK, which will become required to produce this information for HM Revenue & Customs, it is all too likely that other nations will consider it low risk to bring in the same template locally. This will become a component of annual reporting going forward, and the only impact will be further scrutiny. Unfortunately for

multinationals, the war against country by country reporting has been lost.
On October 29 the UK, alongside 50 other countries and jurisdictions from across the globe, took the next step in stamping out tax evasion by signing a new agreement at the Global Forum in Berlin to automatically exchange information. Under the agreement, unprecedented levels of information, including account balances, interest payments and beneficial ownership, will be shared with the UK from countries across the world in an international clampdown on tax evasion. This will increase the ability of HMRC to clamp down on tax evaders, providing HMRC with the details of billions of pounds of assets held overseas by UK taxpayers.
Speaking ahead of the signing ceremony in Berlin the Chancellor of the Exchequer, George Osborne, said: *"Today marks a negotiating triumph for Britain, and our close ally Germany, in the fight against tax evasion. It was three years ago when, with my German colleague Wolfgang Schäuble, I launched a campaign for a new international deal to catch people who evade their taxes by hiding their money overseas. I never expected that within such a relatively short period we would succeed in getting 51 countries to sign up to this agreement."*
"Today we strike a blow on behalf of hardworking taxpayers who are cheated when rich people don't pay their taxes. Today we send a clear message to those who still think they can escape making a fair contribution to our public services and to reducing our deficit: you can hide no more; we are coming to get you."

Share plan changes Down Under

The Australian Government has issued some detail about the much anticipated changes to the employee share scheme tax rules, said lawyers *Minter Ellison*. Although the focus in the Government's announcement is on start-ups and emerging businesses, some of the changes will apply more broadly. The changes will apply to offers of shares or rights from July 1 2015. There is no mention of the changes being retrospective or being grandfathered for existing unvested offers. There is also no draft legislation yet – all that has been released is a press release, fact sheet and the broader *Industry Innovation and Competitiveness Agenda*.
Treasury will be consulting on the changes throughout late 2014 and early 2015 and legislation will be introduced after that. We would expect an exposure draft will be issued before any Bill is introduced, given the changes that are being proposed and the recent history of government attempts to reform the rules applying to share plans.
What is being done about share options? Much of the publicity around the changes has centred on share options and the tax changes introduced in 2009. The Government's clear priority is to reverse those changes to ensure that options are not taxed when they are acquired or when they vest, but are instead taxed at exercise. This will apply to all companies. Eligible start-ups may also be able to access further tax concessions, discussed below.
"This is a welcome change and will ensure Australia's rules are consistent with the rules used by many of our major trading partners. It remains to be seen whether this will reignite Australian option plans, which have been less common since 2009, or whether we will continue to see Australia follow the global shift towards offering performance rights and other automatically vesting awards," added Minter Ellison.
There is some suggestion that companies, not just eligible start-ups, will be able to offer tax-deferred options without needing any forfeiture risk, which is welcome.
What are the other proposed changes?

Maximum tax deferral

*There is a proposal to extend the maximum deferral period from seven years to 15 years, although again it is unclear whether this will apply to all companies or only start-ups.

Further tax concessions for start-up employees

*Employees of eligible start-ups will be able to defer tax on 'qualifying' options or shares until the shares are sold, not when the options are exercised or when share restrictions are lifted, and will also not pay tax on the discount.
*There may be a cap on the maximum discount that can be offered – the example in the fact sheet suggests 15% off the share's market value as the benchmark.
*Criteria will be established to determine which companies will be eligible for the start-up concessions. The only conditions specifically mentioned include having a turnover of not more than $50 million, being unlisted and being incorporated for less than 10 years. No other qualifying criteria is flagged. There were rumours that the rules would borrow from the UK's Enterprise Management Incentive Scheme but the EMI regime contains a number of other entry conditions, based on such things as employee numbers, share value limits and gross assets. Some of these may be adopted as part of the final reform package.

Valuation rules

*The valuation rules will be revisited to ensure they 'reflect current market conditions'.
*This was flagged by the Board of Taxation almost five years ago but at the time the decision was made to re-introduce the old rules as a 'safe harbour' for valuing unlisted rights.
*Many valuers see the current rules as being fairly generous to employees so it will be interesting to see what models are proposed, and whether some of the more accepted option models are part of the mix.

Template documents?

*The Government wants the Australian Taxation Office to work with industry to develop and approve standardised documents for the establishment and maintenance of plans. ASIC will also be involved in this process.
*This is obviously an attempt to reduce compliance costs for employers, which is encouraging, although there will be some who question the effectiveness of this – templates have been tried without real success previously. There are also obvious risks for enterprises who use standardised documents for plans that need to meet legal and tax requirements, but who also need those plans to fit their commercial/remuneration goals.

To that end, there is no mention of whether employers who use these templates will need to go through any formal regulatory approval/review process, similar to the process used for some UK plans.

France blunders into insider trading trap

France has introduced new rules obliging smaller companies to provide increased information to their employees regarding prospective takeovers and ownership changes and also regarding opportunities for the staff to make acquisition offers themselves. The laws are a part of the *Lois sur l’économie sociale et solidaire*, a scheme of reforms designed to strengthen economic social responsibility through increased employee share ownership, said lawyers *Squire Patton Boggs*.

The new law forces companies to inform employees of proposed shareholder takeovers and changes in ownership at least two months in advance of the deal, so that they may have an opportunity to make their own offers. The rule applies to French companies with less than 250 employees (and meeting certain turnover/balance criteria) and applies to deals from November 1 2014.

The law applies when there is a sale of more than 50 percent of the shares of a limited liability company (*SARL*) or transfer of shares or securities in a stock company (*société par actions*) where the majority ownership would change.

The current legislation already provides that in companies that have a Works Council (*Comité d’entreprise*), the Council must be informed and consulted on transactions. The mandatory time period for that process ranges between one to four months. The new law creates a further obligation for companies to inform their employees direct at the same time as they inform their Works Council or other employee representatives.

A similar obligation is placed on companies with fewer than 50 employees or those with between 50 and 249 employees but without a Works Council or employee representatives. In such companies, the employees must be informed of the transaction but with a time limit of at least two months prior to the transaction. The transaction can happen before the expiration of the two months if each employee was correctly notified and each consequently decided not to make an offer. The result is a bizarre situation where small companies could have more onerous time obligations to inform employees of proposed changes in ownership than larger companies.

The proposed transaction to the third party must take place within two years of the notification to the employees. If it does not, a fresh round of information and consultation must take place.

If the rule is not complied with the deal can be declared null and void in its entirety, so the adverse impact on both buyer and seller could be huge. It is not yet clear how tolerant the law will be of minor or inadvertent omissions in the information and consultation process, but one must hope for some flexibility given the draconian sanctions for failure.

As a result of this new law, the confidentiality of proposed deals is at stake. Though employees must keep the information confidential, there is no prescribed sanction for those who break the obligation, even if it were possible to identify them in the first place. An employee who leaks the information could still be sued for damages yet this is hardly ideal for either party. It seems unfair to burden all employees with highly confidential information (of no likely interest to them in the great majority of cases) and then sue them if they share it.

It then puts the onus on companies to take legal action when most companies do not want to be seen to be the litigious ogre, especially when the financial compensation is impossible to quantify and in any case very unlikely to be large given that it is coming from an individual.

The risks are worrying for companies and buyers in terms of repercussions in the market place, amongst other things. However well-intentioned, the provision of this information is bound to create alarm amongst employees regarding job security.

Though not as cumbersome but rather procedural and superfluous, the second prong of the new law forces companies with fewer than 250 employees to inform employees at least once every three years of the scope for takeovers by the workers themselves. This information, though also subject to confidentiality obligations, raises all the same concerns discussed above.

The justification for these new obligations is that it will allow employees to make an offer to acquire the shares of the business themselves. This is hoped to reduce the number of potentially healthy businesses failing for want of robust buyers, and this problem will become more apparent with retiring company directors in the future. This may be so, but frankly, the obligations are ill-fitting and a very blunt tool to achieve that objective.

The decrees to specify the precise terms and conditions of this new obligation have not been published yet.

The Employee Share Ownership Centre Ltd is a members’ organisation which lobbies, informs and researches on behalf of employee share ownership