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Project:

***Global Development Network South East Europe and
the research project on Long-term Development of
Southeast Europe***

Privatization in Montenegro

Podgorica, May 2001.

Preface

This paper is done as part of Project “Global Development Network South East Europe and the research project on Long-term Development of Southeast Europe”

Objective of the paper is presentation of privatization process in Montenegro in terms of basic results, problems and experience from privatization in Montenegro.

Paper consists of seven parts.

It begins with legislative framework for privatization and chronology of privatization process in that area. Then, strategies and approach to privatization is presented and some technical procedures in operation of privatization strategies. Two different periods will be analyzed:

1. Until 1999
2. After 1999

In fifth part some opinions and remarks regarding privatization process are presented, in sixth part experience from Montenegro but under lights of experiences from other countries and finally, at the last part, questions how we should proceed further.

My associates, Dragana Ostojic, M.sci and Maja Bacovic, have done collection of research materials; both of them are assistant lecturers at the Faculty of Economics in Podgorica.

1. Legislative framework

Privatization process in Montenegro has been conducted in several phases, which are connected with changes made in legislative framework regarding privatization.

Beginning of privatization in Montenegro (first phase of privatization), as in all other former Yugoslavia states, had been connected with Federal Legal Act on Social Capital (1989), which is based on model of internal privatization. But, ideological campaign against privatization had disabled enforcement of this Law in Montenegro (except in few companies)¹.

Montenegrin legislation in this area had been established in 1992. Before this, we had strong expert and political discussion. Legal Act on Property and Management Transformation passed the Parliament. According to this Law, all companies had obligation to become corporate (become public companies – share company), to make estimation of value of capital and to make, until depersonalized, capital with personalized ownership structure. Capital was distributed on:

1. Workers (10% free + 30% under specific privilege conditions)
2. Three state funds (Development Fund, Pension Fund and Employment Fund)

So, with this Law social ownership in Montenegro was eliminated and capital had been shared between workers and state. (Ratio was 60% and more in favor of Funds and 40% or less for workers).²

Privatization Law passed the Parliament in June 1996 represents beginning of new, third phase of privatization process in Montenegro.³ This Law has been focused on privatization of state capital in public companies and state capital in funds. Also, in this Law mass voucher privatization was introduced - distribution of shares to all-mature citizens for free.

Also, faster privatization was tried to be influenced by obligation of funds to offer their shares on market. Law insists on increase of effective demand: shares can be bought by old foreign currency saving and Government bonds.

Above this Law, Government adopted two decrees: Decree on Shareholder's registry (December 1996) and Decree on privatization coupons (December 1996)⁴.

1At first multy praliament elections in Montenegro the Comunist Party won and that was the only Republic from Former Yugoslavia where comunists nominaly stayed at power.

2 The amount of shares per worker was limited at 18.000 DEM.

3 This Law is brought after adoption of the Federal Law on basis of change of ownership

4 The work on Decree on foundation ans functioning of privatization funds (December 1996), but in that concept it was never finished.

At the end of 1996. Government establishes relationship with Know How Fund and precedes expertise of current legislation. At the beginning of 1998. cooperation with USAID (Barents group) has been established⁵. During 1998. together with foreign advisers we had strong discussion related with privatization law and its changes. Speediness, transparency and publicity were issues had been insisted on.

Parliament adopted: Amendments on Privatization Law (February 1999.)⁶. According to this Law, privatization regulative and legislation was insisted on. Followed with Law, were adopted Decree on dematerialization of securities and vouchers, Decree on privatization vouchers, Decree on Privatization funds and special management companies, Decree on share selling by publicly announced tender, Decree on Central register of shares, Decree on buying shares with old foreign currency saving. By this Law new authority was established, Privatization Council of Government of Montenegro. With this Law power of Government in privatization policy decision-making becomes stronger with obligation to adopt privatization plans for each year. Understandable and clear procedures were entered, model for privatization of state capital in public companies, introduction of mass voucher privatization (free distribution of voucher to all citizens older than 18), position of funds has been changed. Some models from previous period were canceled; specially sell of control package of shares to management of companies, which is resulted with serious problems. Privatization legislation from 1999. insist especially on transparency and publicity of all procedures and conditions regarding privatization and making better conditions for foreign investors. This has resulted with avoiding privatization affairs and lower corruption, which was present in previous period.

During 2000. and 2001. several decrees changed especially in area of regulation and control of privatization funds.

Privatization legislation passed in 1999 is still valid in Montenegro.

For privatization process in Montenegro, above privatization legislation, are very important other systems legal acts, passed also by Parliament of Montenegro, especially:

1. Law on Securities.
2. Law on Banks.
3. Law on Central bank.
4. Foreign Investment Law.

And several laws related with fiscal reform.

⁵ Before all, Ph.d Robert Stone from Know How Fund and Ph.D Erwin P. Geiger, who with their expertise, experience and efforts gave large contributions to preparation of privatization legislation in Montenegro.

⁶ It is about completely new Law, but politicians have insisted on "continuity", what resulted that it is named Changes and Amendments of Privatization Law.

Enterprise Law, Bankruptcy Law and Public Procurement Law are under procedure.

Foreign experts and advisers have very positive attitude toward privatization legislation and it's enforcement.

The most important, still non-solved issues regarding privatization legislation are:

1. Restitution
2. Protection of minority owners
3. Competition law

These laws are under preparation.

2. Strategy and principles of privatization

Montenegro is in favor of privatization policy in all areas, if private capital is interested to be invested in them.⁷ Rights of domestic and foreign investors are equal⁸. Montenegro is the first country in region with no-visa regime for foreigners. Montenegro as small state develops model of open economy and crucial philosophy of its privatization process is: "We don't sell our companies, we buy good owners".

But, realization of the strategy, as mentioned before, has been passed several phases. Or, conditions for strategy realization have been created evolutionary.

Perhaps, based on analyses, Montenegro is state with least prejudices about private property and open economy and integrations with region, at Balkans.

It is probably influenced with tradition of clear establishment of ownership in Montenegro (First Law was enforced in 1888.)⁹, also Montenegro is small state and liberal economy and open society are approved by it's elite, specially by economists.¹⁰ Of course, further development of economic reforms process will test real straight of willingness for market economy and internationalization.

In Montenegro we insist on entrepreneurial approach to privatization¹¹. Entrepreneurship is energy for creation and development. Privatization has to create environment for entrepreneur and on the other side, all privatization revenues are predicted for development of new private companies and improving of infrastructure. 20% of privatization revenues are invested in social policy and social consequences of privatization.

Ownership democracy is one of strategic goals. It means all citizens of Montenegro will become owners of shares. This is good way to make wider democratic base of politics and entrepreneurial base of economy¹².

Even Montenegro is small state, connection of privatization and capital market development is strongly emphasized. Privatization should influence trade with

⁷ However, there are in the practice resistances from certain political parties concerning "privatization" of strategic enterprises (Elektroprivreda, Jugopetrol, Luka Bar, ...).

⁸ Some political parties are stressing the need to "protect" the land from foreigners!

⁹ Valtazar Bogišić: General assets law for kingdom of Montenegro, Cetinje 1888. So, for example in article 5, it is written that "this law is in power as for Montenegrin as for foreigners"; and in article 15. "anybody's property is saint and untouchable".

¹⁰ That was a reason to speak about "Montenegrin economic school" stressing at that way very liberal approach to economy and insisting at development of entrepreneurial economy. That is not by many economist possible at Balkans, because the dominant participation of the state and state control is required.

¹¹ For example Development Fund had invested up to now 14 million DEM in new privatization projects;

¹² 43% of total capital in Montenegro will be privatized through: 28% through vouchers distributed to 450.000 citizens and 15% to workers and pensioner (250.000 persons).

property rights and related with it development of capital market compatible with regional, especially these from Former Yugoslavia countries.

Protection of property rights is important principle of privatization. Even this is more declarative than practically shown by now; willingness to improve this is obvious. Strikes of employees and protection of social peace influenced brake up of many contracts; even new owners filed all conditions. In case of foreign investors, they have right, before contract is signed, to select arbitrage from domestic or international court.

Key principles of privatization are:

- a) **Publicity**, availability of all information to citizens.
- b) **Equality**, all citizens are involved in process.
- c) **Transparency**, clear and understandable procedures.
- d) **Protection of property rights**, Government (state) guaranties, trough it's bodies and agencies, protection of property rights.
- e) **Transferability of property rights**, providing conditions for trading with shares at capital market.
- f) **Control**, precise mechanism for control of privatization process by Government and Parliament (special committee established).

3. Technical procedures and conduction of privatization strategy

Until 1989. in Montenegro two types of property were dominant: state and social ownership.

There are some differences in terms of privatization techniques and authorities of some institutions regarding state and social ownership. But they are not so important and won't be presented here. Both types of ownership (state and social) pass similar methodological procedures. They will be explained under part explains general methodologies.

If we exclude influence of Law on Social capital (Federal Law from Former Yugoslavia legislation), process of change of ownership in Montenegro has been started with Law on property and management transformation (1992)¹³.

There are two phases in process of change of ownership in terms of legislation:

1. Transformation.
2. Privatization.

Transformation included several steps:

I step. Estimation of value of capital in company, which will be transformed by combination of methods:¹⁴:

1. Net asset method.
2. Discounted cash – flow method (income based method).

II step. Company creates program of transformation based on one of the eight methods:

1. Sell of state capital for full prize and/or under special conditions.¹⁵.
2. Increase of capital and selling of shares for full price and/or under special conditions¹⁶.
3. Selling of enterprises.
4. Buying up of companies by management or by foreign experts groups.
5. Capital investment of foreign or domestic investors.
6. Conversion of debt into shares.
7. Transfer of shares on Development fund, Pension fund and Employment fund¹⁷.
8. Identification of state capital in enterprises¹⁸.

¹³ Yet, according to the Consittution of SR Jugoslavije (founded 27.04.1992) property transformation and privatization are in exclusine authority ot republics members - Serbia and Montenegro. That is the reason for existing completely different laws in Serbia and Montenegro in area of privatization.

¹⁴ In practice, method of net assets is usualy dominant having in mind many instabilities in Montenegrin economy in last decade.

¹⁵ In case of method (1) incomes from sales goes to state funds in proportion: 60% Development Fund, 30% Pension Fund and 10% Employment Fund.

¹⁶ In case of method (2) sales income goes to company.

¹⁷ In proportion 60% Development fund, 30% Pension fund and 10% Emploument fund.

Above this, possible model was leasing contract, management contract or franchising.

III step. Government Agency for reconstruction and foreign investments approves program of transformation.

IV step. Operating the program of transformation.

Special conditions for transformation are:

- a) All companies had to distribute 10% of their capital to employees or ex-employees without charge with high limit of 3000 ECU per employee.
- b) Companies can sell shares under limit of 30% of total value of capital to employees with discount of 30% and additional discount of 1% for each year of work. Limited value of shares, which employees can buy according to this method, is 10.000 ECU per employee. Shares have to be paid for ten years.

According to the Law from 1996. employees who don't buy discounted shares have right to get some additional percentage of these shares for free (to convert them).

Also, shares, which are not bought or converted by employees, can be sold to citizens with discount of 30% and have to be paid for 10 years also. For cash payments citizens can get additional discount of 10%.

Other shares were transferred on three state funds and funds have had obligation to sell shares for four years. This obligation was delayed because of sanctions from UN.

Second step is privatization. Privatization is related with shares transferred on funds (Development fund, Pension fund and Employment fund). Privatization includes state capital in public companies, which are under management of Agency for reconstruction and foreign investment.

Phases of transformation and privatization in Montenegro had been conducted during the same time. Actually, during transformation employees registered their shares, either those, which are free, and those, which can be bought under special conditions (discount). Internal privatization was conducted at the same time as transformation.

Empirical results of transformation

In period from 1992-2000 347 social companies were transformed under model of transfer of social capital on funds. Estimated value of capital of enterprises was 5.152.830.495 DEM.

¹⁸ This is related to fix assets or part of capital of companies that from certain reasons couldn't be privatized.

Transformation of these 347 enterprises by years was conducted as presented in following table:

Year	Percentage of transformed companies	Estimated value of transformed companies (DEM)
1994. and earlier	5,19	584.031.439,91
1995.	35,45	1.836.497.011,45
1996.	18,86	1.426.441.187,00
1997.	14,70	1.067.217.151,19
1998.	11,82	390.275,49
1999.	14,98	34.253.530,00
TOTAL	100,00	5.152.830.495,47

Ownership structure of transformed capital by model of transfer of shares on funds is presented in following table:

	Capital value in DEM	%
<i>Total social capital</i>	<i>5.152.830.495,47</i>	<i>100,00</i>
<i>Owners</i>		
Development fund of RoM	1.818.695.436,03	35,3
Employment fund of RoM	313.333.913,42	6,08
Pension fund of RoM	941.300.245,02	18,27
Employees	1.154252.796,10	22,40
State	456.747.840,34	8,86
Banks	98.140.876,04	1,90
Other	370.359.388,52	7,19

This table presents results of first phase of transformation and privatization of social capital.

The estimation value of state capital (Telecom, Electrical Power Company of Montenegro) is about 4 millions DEM.

4. Privatization

4.1. Privatization until 1999.

4.1.1. Internal privatization

As already mentioned, employees had rights on free shares with value of 3.000 ECU, and shares sold under special conditions (with discount of 30% plus 1% for each year of work) with payment obligation for ten years and limited value of purchase of 10.000 ECU per employee.

This right had all employees and pensioners. With this method 15% of state and social capital had been privatized. Employees elected their representatives in management boards.

4.1.2. Selling of control package of shares

It was model, according to which Funds sold, for cash or on delayed payment, at least 51% of shares.

Control package of shares was sold in 84 companies, where total selling value was 55.930.626 DEM.

Management was mainly buyer, at more then 80% of cases.

4.1.3. Selling of ideal package of shares

Management of company had a right to buy 35% of shares of company at delayed payment (5-7 years), with the fact that in the meantime while is paying back the loan had 51% of managing rights.

12 companies were sold according to this model, of total value about 23.000.000 DEM.

4.1.4. Auction sale

According to the Privatization Plan, auction sale has been organized. Priorly, list of companies whose shares are sold with the selling prices of shares would be published.

If the price wasn't reached at the auction, the new auction was organized for at least one month with the price decreased for 20% comparing to price at prior auction.

Companies sold at auction were sold with average discount of 45%.

4.1.5. Results of the privatization process: Development Fund, Pension Fund and Employment Fund

a) Development Fund

Development fund has sold shares of 111 companies from 1995 until end of 2000.

The following table is showing the dynamics of privatization.

Table: Dynamics of privatization of Development Fund

Year	Value of privatized companies (million DEM)	Number of privatized companies
1995	1.55	6
1996	7.96	19
1997	38.37	51
1998	20.95	26
1999	3.73	8
2000	0.09	1
Total	72.65	111

The mentioned data are showing that development fund has sold shares, from its portfolio, of value 72.647.647 DEM (value expressed in DEM is value at the day of signing the contract for sale of shares). Having in mind that these contracts were nominated in dinars and that revaluation of dinar values was done according RPI in SR Yugoslavia that were not following the inflation rate, the realised income of Fund of these sales is much lower.

b) Pension Fund

The largest number of companies was privatized during 1997, what is shown at following Table:

Table: Dinamycs of privatization of Pension Fund

Year	Value of privatized companies (million DEM) ¹⁹	Number of privtized companies
1995	2.2	6
1996	6.2	18
1997	17.3	50
1998	9.3	27
1999	2.4	7

The presented data are showing that Pension Fund has sold shares of 108 companies from its portfolio of value 37.482.672 DEM.

c) Employment Fund

Dinamycs of privatization of Employment Fund is shown at the following table:

Table: Dinamics of privatization of Emploument Fund

Year	Value of privatized companies (million DEM) ²⁰	Number of privtized companies
1995	0.6	10
1996	2.0	37
1997	7.8	51
1998	2.5	31
1999	0.9	8

The presented data are showing that Employment Fund has sold shares of 137 companies from its portfolio of value 15.672.909 DEM.

¹⁹ The numbers per years are rounded.

²⁰ Same as previous.

4.1.6. Tender sale

Through tender procedure were privatized:

- (1) Brewery "Trebjesa", Niksic. The 53% of shares was sold, respectively 15.000.017 DEM. The buyer is Inter Brew from Belgium.
- (2) Institute "Dr Simo Milosevic" (health spa). The 33% of shares was sold. The buyer is ICN Galenika, Belgrade.

The tender was published for several companies, but there were no interest.

4.2. Privatization from 1999.

4.2.1. Key problems in privatization until 1999 and their consequences later

Several problems followed model and concept of privatization until 1999, which influenced enforcement of new Privatization Law, passed by Parliament in February 1999.

1. Privatization from this period was focused on employee (internal privatization) and domestic buyers, before all management. Privatization was characterized with selling with high discounts and delayed payments. All this didn't result with quality improvement of management. Contrary, new management boards were unable to solve basic problems in companies in terms of organization, reconstruction, etc. By the rule, Management board was controlled by management, not opposite, as it should be. Management elected members of management board usually. Managers got significant power and they were free of any control. They behaved as owners without any risk. With real limitations under which Montenegrin companies operated (political instability, macroeconomic instability, inflation, unemployment). This fact influenced negative results of companies, included those, which were privatized.
2. Privatization process, especially according to model of control package of shares, wasn't transparent enough. Transparency is issue, which is specially insisted on from foreign advisers. Transparency lack results in unclear procedures and rules, closeness of process and advantagable position for management: lack of information about companies and hidden problems in companies, lack of clear payments procedures, direct deals and negotiations with partners.
3. Insufficient protection of property rights. In several cases employees asked from new owners additional requests, out of those contracted by sales contract and collective contract (wages, employment protection, other benefits)²¹. Some buyers were enabled to come to company they bought, because employees didn't want them there.²² Under this circumstances state authorities usually decided to break up contracts, usually not in favor of buyer. Those situations encouraged employees to be against privatization or other techniques related with new management of company.²³

²¹ For example Zanatsko Lovcen. Even though owner has fulfilled his obligations, the contract has been broken under pressure.

²² Special case of Autoservisa from Podgorice.

²³ The specific is case of HTP "Budvanska rivijera". After one year negotiations with French firm ACCOR, the management contract has been signed that should last for 15 years from six hotels at Montenegrin coast: Sveti Stefan, Milocer, Maestral, Kraljicina Plaža (hotels from Budva), Fjord from Kotor and Plaža, HTP Boka Herceg Novi. The members of negotiating team that was led by Minister of tourism, were our international legal advisors: Denton Hall Lupicino, Madrida and Mark Harrison, lawyer from Londona.

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4. Low quality of information mechanism²⁴, unclear and non-understandable contracts²⁵, non-transparent procedures²⁶, and restitution problems²⁷ have opened many discussions related with privatization, which influenced image of privatization
 5. Insufficient demand for shares. Actually, privatization model until 1999 favored domestic buyer. But, domestic saving was very low, extracted by political and economic crisis. Also, some individuals and banks took out capital from the country²⁸. Quality of domestic banking sector was low²⁹.
 6. Potential foreign investors, having in mind political situation, were cautious. Also, to their cautions contributed unclear legal procedures, low level of property rights protections and contracts protection and speediness of economic reforms in Montenegro. Also, orientation on open economy and equal treatment of foreign and domestic investors has started at the end of 1999.³⁰
 7. Institutional and legal framework for privatization was insufficient to provide radical privatization. Management was dispersed (Agency for reconstruction and foreign investment, Development fund, Pension fund, very shortly – 3 months – Minister for Privatization). Foreign consultants pointed necessity of centralization and stronger control of privatization process.

Even many of mentioned problems appeared in 1999. and 2000. Their base is in models, which were actual before 1999. But we cannot be unjustified with previous period because some positive results were achieved. Before all, concept of social state was destroyed and political attitude in favor of privatization was built. Also, attitude that private property can be only base for market economy and democratic society. In this period we believed

According to the management contract, ACCOR would take management of hotel for certain fee, that is basically connected with business results. ACCOR didn't have financial obligations concerning investments into hotels. That was obligation of Government of Montenegro. Board of directors and workers of Budvanska rivijera were against that contract, under motive that it is inconvenient for "Budvanska rivijera" (that made losses for years and without investments into hotels and each year received subventions from Government), and that ACCOR is investing nothing! Investments through image of ACCOR, including Montenegrin hotels into their network of 3.600 hotels all around the world, transfer of management technologies, training of workers from Budvanska rivijera and set of other favourabilities, were not enough for making decision! Even they didn't have economic alternative to answer the question: how to improve the business of company, all were against contract. Dissussions in public quickly received political character! Skillfull politicians from opposition (and position) have presented in public that: "our best hotels are sold to foreigners for free". What were the motives for resistance can be assumed. Before all, if we know that this company has favored the model of sale of part of assets of company (total amount was about 8 million DEM) and receiving subventions from Government (about 11 million in last few years).

This was one of the hardest attacks at privatization and reforms in Montenegro!

²⁴ "Crnogoracoop", Danilovgrad

²⁵ "Trebjesa", Nikšić

²⁶ Institute "dr Simo Milošević".

²⁷ Public discussions and presentation of association of citizens for returning the property to former owners.

²⁸ Estimation is at 200 million DEM.

²⁹ Banking sector comprehends: eight domestic and one foreign bank.

³⁰ Npr. Platform for regulation the relation between Montenegro and Serbia.

Washington consensus is efficient and it is great therapy for all problems.³¹. We learnt about importance of institutions and institutional framework. This is approved by Montenegrin experience.

This entire problem initiated question: how to transit to new privatization models, which is approved by international standards and understandable for foreigners, challengeable for investors and more transparent.

Or, how to transit from closed and distributive model of privatization to open and more marketable model?

It was key question, which was tried to be answered on with Privatization Law from 1999.

4.2.2. Basic characteristics of new concept of privatization from 1999.

Privatization Council was established by decision of Government of Montenegro from September 1998. It is body established to manage, control and operate privatization process in Montenegro. This was way to create privatization power ("single authority") or better: unified chain of command over privatization in Montenegro³². Reason for establishment was dispersed management of privatization process in Montenegro, difficulties in contacts and communication with other authorities, unclear responsibility, etc.³³.

In cooperation with experts from Barents group and Know How fund, Privatization Law was prepared, or Amendments on Privatization Law. Base for this was "Saint Stefan agreement" from July 1998.³⁴.

After establishment of Privatization Council, procedure relating preparation of new Privatization Law has started and Law passed by Parliament in February 1999.

New concept has promoted a concept of "centralized decentralization". That means that Privatization Council has been given executive and supervisory function, and for the rest of institutions (Agency, Funds, as well as the

³¹ Believing that macroeconomic stabilisation, deregulation and privatization are enough for quick transition.

³² A. Lojpur, M. Dragašević, D. Jankovic: Understanding privatization, Official Gazette of Montenegro, Podgorica, 1999., str 286.

³³ About motives see: Ph.D Veselin Vukotic: Initiative for speeding and improving privatization process in Montenegro, Development Fund of Montenegro, 1998. (internal publication).

³⁴ Difficulties in communication with foreign advisers and big disagreement between participants in privatization process caused organization of meeting in Saint Stefan where participated representatives from Government, Agency, Funds, independent experts, political parties and USAID, Barents group and Know How Fund. It was meeting where we discussed should foreign agencies continue to provide technical support in privatization in Montenegro, or, is Government of Montenegro ready to change concept and procedures in privatization. Meeting was very difficult. We were several times in different position. Many domestic participants didn't realise they were tested, they and Government in terms of willingness for privatization process. They insisted on small details, interference of politics into privatization. Foreign advisers were against this approach. They asked for implementation of international standards in privatization process.

companies themselves) authority, responsibility and rights has been clearly defined. However, previously started process of “spontaneous privatization”, in which management boards, commissions and funds had been selling physical assets of the companies, has been stopped.

The Law did not provide some techniques of “spontaneous privatization” like selling ideal part of companies or controlling packet of shares to management (which have been dominant method of privatization in Montenegro prior to 1999). Model of internal privatization has been finished, and model of so called “crosswise ownership” has been abandoned³⁵. Privatization model of debt – equity swap was made almost impossible. That model could be implemented only if shares are not sold through other models (tender, auction, etc). Model of selling company by direct negotiation has been made viable only in cases and procedures provided by the Law. The Law brought in obligation of making annual Privatization Plan, which include methods of privatization for each company and timetable for certain activities. Privatization Plan has to be made public. The Law provided for the following methods of privatization:

1. Sale of shares,
2. Sale of assets,
3. Exchange of shares for privatization vouchers,
4. Recapitalization through new issue of shares,
5. Joint venture,
6. Debt-equity swap.

All of those methods have to be conducted in open and competitive procedures. The Law brings in a concept of dematerialization of shares and stipulates for establishing Central Registry, as well as provides possibility for establishing management companies and privatization funds. The Law

On the end the agreement about main issues has been made. Mr. Robert Stone PhD (representative of foreign experts) and Mr. Veselin Vukotic PhD (representative of domestic experts) made a report “St Stefan agreement on privatisation in Montenegro”, which has been accepted by all the participants of the meeting. That document covered all problematic issues about privatisation in Montenegro, putting accent on the control and transparency of the process, organization of the process, institutional support to the process, mass voucher privatisation, etc.

Foreign experts think that adoption of that agreement represent a clear will of Montenegro to enter the new phase of privatisation, which will be technically supported by international institutions, especially US AID and DFID (Know How Fund at that time).

Mr. Kit Sharper, at that time representative of USAID for Yugoslavia, in his letter to Mr. Milo Djukanovic, President of Montenegro, states his content with the St Stefan agreement and expressed will to continue with technical support, putting an accent on the need for setting up an executive body which will conduct the process of privatisation.

Two months latter, The Privatisation Council was set up.

³⁵ That was model in which one state owned company buy shares of or exchange shares with another state owned company. Model was not transparent and raised questions both of evaluation of those companies and managing them. One of cases is exchange of shares between Tobacco factory Podgorica and Mill “Zitopromet”.

provides possibility of establishing Parliamentary commission to follow openness and transparency of the process.

The Law covered privatization of state owned companies, as well as usage of privatization proceeds. Revenues from sale of state owned companies will be used for financing development programs which are of interest for Montenegro. The idea is that the revenues are not used for budget and expenditures. This Law mentioned, but didn't cover in full, restitution, especially agriculture land. That means that Law from 1999 has gave principles of privatization in Montenegro, make switch from concept of "closed privatization" to "open privatization", from workers (insider privatization) to citizens (voucher privatization), from unclear to clear procedures. The Law provide conditions for making new institutional framework and control of privatization, and for making privatization understandable to domestic and foreign investors.

4.2.3. Creating real assumptions for implementation of the new Privatization Law

During the years of 1999. and 2000. at the surface comes the intermission in the privatization. Actually, at the level of real sales, besides few attempts, no real privatization was done. That is the reason for strong attacks at the privatization process, both from the opposition and position.

But, transition to the new, more economically, institutionally and legally based model of privatization, required by itself a large amount of work at creation the institutional assumptions and introduction of stronger order in the privatization process compared to earlier period. Beside that, in the same period different oversights and deficiencies from former period have come up to the surface³⁶. Public was focused at buyers of the few companies, especially »Mercur« from Budva and »Primorka« from Bar³⁷, privatized through the model of purchasing ideal package. At the Parliament of Montenegro specially gall discussion was lead about privatization of Institute »Dr Simo Milošević« (33% of shares were bought by ICN Galenika) and »Trebjesa« from Nikšić (52% of shares were bought by corporation »Interbrew« from Belgium).

Individuals that took part in the privatization, in majority of privatization before 1999, are starting to intensively include in the critic of privatization process, mainly directly and who had because of »conceptual reasons« of new organization of privatization been excluded, as well as part of coalition at power, that has »broken« 1997. To many, critic of privatization has served for covering some personal activities in the privatization process.³⁸

Some decision of the Privatization council provoked gall discussions that was motivated by introduction of larger order and procedures in area of privatization. This is specially related to prohibition of »joint venture« of »Jugopetrol« from Kotor and Russian firm »Lukoil«, unabling the privatization process by model of control stake to company »Ski center Durmitor«, management contract with »Accor« and especially prohibition, preventing sale

³⁶ For example, braking up the contracts made according to the model of ideal part and control stake of shares. So, from 84 contracts 22 have been broken. Many of these brakes up have been followed by the "political affection". For example "Nikšić trgovina"; "Zanatsko preduzeće Lovćen"; "Mašinopromet"; "Bar – bilje".

³⁷ Private company "Mercur" from Budva, has bought six companies according to the model of control stake. It was one of the typical cases that are at the same time showing positive and negative sides of the former model of privatization. Positive side is that one of the most serious and best private companies in Montenegro has included in the privatization process and shown readiness to invest in the companies that had bought. Negative side is that three companies are sold to it in which new owner ("Mercur") couldn't enter because of the former unsolved property relations and that sellers (state, respectively funds) hasn't taken anything in order to solve that dispute, and lately revealed debts of companies; unreadiness of the contract sides to strictly respect the privatization contract and entering "bilateral" negotiations. "Primorka" from Bar has been bought by management buy out. But, management (buyer) wasn't able to respect the contract provisions. Beside that, bank guarantee, of Montenegro bank has shown as not enough secure because of the situation in the bank.

³⁸ For example, individuals from former management of "Kombinat aluminijuma" from Podgorica, some people earlier employed in the Fund and Agency for restructuring.

of hotel »Mogren« and open conflict of the Privatization Council with Board of Directors and management of »Budvanska rivijera«.

Beside that, because of non-satisfaction of certain local cycles, the great discussion has been opened relating the privatization of »Telekom« and specially selection of financial advisor for privatization of »Telekom«³⁹.

More discussion has provoked management contract for KAP with »Glencorn« from 1998. According to majority, it was inconvenient contract for Montenegro. But, time has shown the contrary. It has shown that it was the only way for KAP to survive, and that by reprogramming of debts for 15 years to create conditions for development⁴⁰.

Unfavorable atmosphere was created and everything that was done in privatization automatically provokes polemics.

However, Privatization Council and all others participants in privatization, step by step built and raise confidence in transparency of privatization process, and gradually changed opinion of the public about privatization. So, two periods can be distinguished in the privatization in Montenegro: prior to 1999. and after 1999.

Privatization Council has, together with international advisors, started intensive work at:

- a) legislation;
- b) establishing institutions;
- c) education of human capital;
- d) organization and management of privatization;
- e) preparation of MVP.

Legislation has, beside Law on privatization includes following Decrees

1. Decree for sale of shares through international tender
2. Auction Sale Decree

³⁹ Actually, Tender Commission has sent invitation to 23 companies from all over the world and six foreign ones have shown interest for financial advisor. Opinion of the domestic expertise was that it was not transparent enough and that international tender for financial advisor should have been published. It was lots of discussion in the parliament in order to compromise privatization process. It was very good public cover up for those who has in that seen chance to delay privatization and keep position in their companies and daughter companies or possibility to buy Telecom according to the Serbian model (without tender). Tender commission was at great temptation, before all because some members in order to save their political career "have returned mandate" in commission and started to wash up hands from everything. The same was with some members of the Council. But, international expertise has that Tender Commission made right decisions and that selection of financial advisors was transparent and in accordance with international standards and practice. Process of privatization of Telecom has been carried on, normally with new problems. Credit Ainstalt AG has been selected for financial advisor, Linklaters & Alliance for legal.

⁴⁰ Thanks to the work of KAP-a, whose export was about 80 billion DEM, in war and sanction conditions, that contract was base for reprogramming of debts of KAP for last 15 years, what makes possible for this company to work normally in the next period. International advisor in all transactions relating Kap is Credit Commercial de France.

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3. Decree on Privatization Investment Funds and management companies
 4. Decree about dematerialization of vouchers
 5. Decree about privatization vouchers
 6. Decree about batch sale

Establishing institutions included, before all work on establishing Central Depository Agency.⁴¹ It is one of the key institutions that support capital market in Montenegro.

After that Securities Commission is founded, as top authority at capital market. The work on privatization funds and all documents necessary for their licensing, their work and control took lots of time. There we think before all at:

1. Model of contract between privatization fund and management company
2. Model of Statute of privatization fund
3. Request form for license for foundation of privatization fund
4. Request form for license for manager of privatization fund
5. Recommendation for audit function of Privatization Council
6. Directions for advertising of privatization funds

Agency for regulation of utilities has started with operations according to the Law on Telecommunications, and that is the beginning of conduction of new concept of economic regulation of utilities in Montenegro.

A lot has been done at the area of establishing institutions of capital market.

Education has comprehended about 200 younger people, a for new privatization institutions and for work at financial market⁴². A large number of workshops was held addressing questions from area of privatization and regulation⁴³.

⁴¹ Establishing this institution was followed with great difficulties caused by the different interests of different participants in the game, as it was ZOP. Ministry of finance. The fight was in order to find out who is going to be "chef". At the same way, there were two concepts for solution of the problem, what has complicated work at establishing this institution.

⁴² Education was conducted in co-operation with USAID, Barents Group, Price Waters Cooper Part of seminars was held in Sarajevo in Dubrovnik because foreign advisors couldn't stay in Montenegro because of war conditions.

⁴³ In organization of Privatization Council, Institute for Strategic Studies and Prognoses (ISSP), Center for Entrepreneurship and Economic Development (CEED), DFID, USAID, Price Water Coopers several workshops and round tables were held, such as:

- "Reform of fiscal system in Montenegro"
- "Reform of monetary system and introduction of DEM as legal tender"
- "Privatization of Elektroprirrede"
- "Privatization of water supply and waste water utilities"
- "Regulation of utilities"
- "Reform of pension system in Montenegro"
- "Reform of payment system in Montenegro"
- "Law on enterprises"
- "Bankruptcy Law"
- "Securities Law"
- "Privatization fund: foundation, licensing, control".

Beside that a majority of foreign advisors, had constant domestic counterparts, what has contributed to the increase of quality of human capital. A great number of advisors were quest at the press, TV, gave lectures at Faculty and Postgraduate studies. This was important contribution not only for increasing the knowledge of domestic experts, but for widening reform ideas and educating public⁴⁴.

Privatization in Montenegro was conducted as a project, not as a job of certain ministry. Privatization project was and still is managed by Privatization Council. Technical work for privatization Council was done by Government's Agency for restructuring and foreign investments. Three state Funds, according to their legal position, had conducted policy of privatization created by the Privatization Council. Certain Ministries have been included into privatization process through nomination of certain number of staff. Beside Council, following bodies have been formed:

- a) Tender Commission;
- b) Auction Commission;
- c) Commission for privatization through insolvency;
- d) Restitution Commission;
- e) Commission for development of Capital Market;
- f) Commission for Batch Sale Privatization;
- g) Commission for privatization of water and waste water utilities;
- h) Commission for regulation of utilities;
- i) Operation group for mass voucher privatization

Experts from Government and ministries, from University, non-government organizations, companies, banks, and students are included in all bodies. Majority of young experts have been included in this project (about 350 people) and promotion through project of privatization and education of young people is considered as one its great results. Beside that, in each of these bodies were present full time advisors, what has increased particularly to bodies and generally to project of privatization professional competence and transparency in work.

In any case, privatization is organized as a project and that is one of the largest projects ever conducted in the Montenegro.

These are key bodies for conduction of privatization in Montenegro. All these bodies are responsible to the Privatization Council and they are doing all technical and expert jobs and suggest decisions that brought by the Privatization Council.

⁴⁴ Investing into domestic experts is, also according to the evaluation of foreign experts, and generally using foreign technical assistance in order to improve human capital, one of the positive characteristics of the concept of reforms in Montenegro.

All of these bodies have their regulation and rules of work, and few of them conceptual platform of work, that was previously adopted by the Privatization Council.

In the majority of this bodies that are consisted of experts from Government's ministries and funds, foreign advisors were participating. The presence of foreign advisors is beside, increasing the level of expertness, influenced the larger responsibility toward transparency of privatization process and control. Technology of making decisions concerning privatization was developed on the way that at the key points personally engaged foreign advisors, what protected privatization process in the large measure from influence of political and interest groups in Montenegro.⁴⁵.

The example of Montenegro is showing that managing economy and the method of decision-making is important international resource of efficiency and transparency of the process. Through, it has shown also that this model is very vulnerable from aspect of political parties in coalition, that depending on the problem, tried to impose domination of their interest. However, in the struggle of political parties to "make profit" from privatization by making distance from any contestable case in privatization and approach that concrete result with strict respect of the rules is the only argument concerning successful privatization: what was a saying of Privatization Council.

Preparation for MVP was one of the hardest parts of the privatization project in Montenegro. It was necessary to solve the number of conceptual, practical and operational questions. Beside all of this politics and different political interest were very present. Really, it was a real adventure to prepare and start MVP in Montenegro. (More about this in the part on MVP). For conduction of preparation of MVP the special body was formed: Operation group for MVP. After almost two years of work the preparation was finished and about 410.000 citizens (from 445.000) received by end of April of 2001. Vouchers. (The dead line for distribution of vouchers to the citizens is up to middle June of 2001.).

Comprehensive and systematized work during 1999. and 2000. resulted with complete Privatization Plan for 2001. and following years, that was adopted by the Government of Montenegro in April of 2001.

4.2.4. Privatization plan

According to the Law on Privatization, Government has obligation to adopt Privatization Plan that is act of practical character and that contains method and the way of privatization of each enterprise in Montenegro. Privatization plan for 2001 has a character of comprehensive and conceptual act, because

⁴⁵ Many public "discussions" about privatization have been made by individuals and interest groups that want to break down at that way the new model of managing privatization in Montenegro, as their interest would be easily realised in non-transparent procedure.

the complete expert and political consensus about privatization of all enterprises in Montenegro, for 2001 and following years, was reached.

Actually, that act has completely transferred Privatization Law at practical level. Really, by bringing and public announcement of Privatization plan the conditions for acceleration and larger transparency of privatization were created. Final institutional, legislative, and organizational and staff preparation have created conditions to start with so comprehensive privatization plan⁴⁶.

Privatization plan has completely determined future flows of privatization Montenegro.

Following table is showing total capital in Montenegro and method of its privatization.

⁴⁶ I am stressing once more the importance of preparation, conditions for entering the privatization process. This is not understood in Montenegro, respectively in part of public critic that insists at quick privatization.

Category	Value of capital DEM	% Total capital
1 Already privatized	1,971,566,566	21.65
2 For International tenders	3,730,664,224	40.98
3 For MVP program	2,463,326,475	27.06
4 For batch sale privatization	370,704,920	4.07
5 For privatization through auction	282,393,371	3.10
6 For privatization through insolvency	286,016,791	3.14
Total	9,104,672,367	100.00 %

Key principle of Montenegrin model is privatization through development of entrepreneurship. It means privatization through new ideas, new management, new products, new market, new organization, new way of thinking!

Respectively, Montenegrin model is based at sale (strategic partner – owner) and free distribution of shares to citizens and workers.

4.2.4.1. Mass voucher privatization

Privatization Plan has defined the amount of capital and method of privatization of each enterprise, as well list of enterprises for MVP.

However, preparation for MVP lasted about two years. Great discussions whether to go or not for MVP and it is related only to the citizens that didn't get shares through insider privatization preceded MVP. Yet, the model that all citizens older than 18 years got 5.000 of privatization points, which they can invest into companies or privatization funds, was accepted⁴⁷.

Serious discussions about MVP were held even during 2000, whether this model is really good or not. Many bad sides of this process were presented, especially in Russia and Czech Republic. Ambassador Sklar specially insisted on this (special representative of Clinton administration for Montenegro). At the beginning he was completely for revoking the MVP, in order to, after few discussion, modify his attitude and soften his objections.⁴⁸

⁴⁷ Conditionally, there were two ways of thinking concerning privatisation funds. First, was held by then actual minister for privatisation, Jovan Mihailovic who suggested to establish three state funds and that citizens should buy with vouchers their shares, and second approach, that was held by Veselin Vukotic, professor at Faculty of Economics and Chairman of Board of Directors of Development Fund, and PhD Robert Stone, expert of DFID, about market foundation of privatization funds. The second model was later supported by Predrag Drecun, who has inherited ministry for privatization from mr Mihailovica, and by experts from US AID i Barents Group.

⁴⁸ At May 2000. At state villa at Njivice (near to Croatian border) the meeting was held and from Montenegrin side there were: Filip Vujanovic, Prime Minister, Miško Ivanišević, Minister of Finance, PhD Veselin Vukotic, Vice – president of the Privatization Council, and Darko Uskokovic, chief of cabinet of Prime Minister. From American side there were: Dik Sklar, ambassador and special representative of Clinton administration for Balkan, Paul Davis and

Really, after material »MVP as a part of Integral Concept of Privatization in Montenegro«, which gave answers for Sclar's objections and meeting in London (representatives of US AID, DFID i State Department), attitude toward MVP has changed and work on it was continued⁴⁹. Beside that, in the Montenegro, before all from political reasons, MVP was litigated⁵⁰.

In each phase of preparation of MVP there were different resistances⁵¹. US AID, respectively Barents Group, did Establishment of the first institutional infrastructure. Ph.D. Erwin Geiger was responsible for MVP, who has done a lion part of work concerning explanations to the people why the voucher privatization is important at all. By bringing Privatization law (beginning of 1999.) the legal assumption for preparation of MVP were created. During 1999. and 2000. that process was heavy⁵².

Bill Gelman from US AID. Beside other expert issues, the discussion about privatization started. Ambassador Sclar was very cleverly and diplomatically breaking the concept of MVP, basically inviting to text of J. Stiglec "*Where are going reforms in Eastern Europe*", that was already familiar to me, and also to wider expert public, because it was translated and published by magazine "Financing" by the end of 1999.

After long discussion, between Sklar and Prime Minister and consensus not to go for MVP was almost reached. But, for my question "what si an alternative", Sklar didn't have answer, because the attempt to find solution through auction in the condition of weak buying power in Montenegro, has shown more dangerous than then MVP. Actually, at auction the companies would be bought for less then 10% of estimated value, what beside all transparency, would lead that just small nubmer of people buy Montenegrin companies, what would create no sustainable resistance against privatization in public.

⁴⁹ "Method of privatization that is conducted in Montenegro and Privatization Plan suggested by prof. Vukotic are among best I have seen up to now for such programs in transition countries ... That is why I am not suggesting the change of program, but timing of one step: distribute the vouchers to the citizens today, and let them exchange for shares of companies two years later. Let's help citizens to minimize risk and so decrease political risk!" Ambassador Sclar. After London meeting, Robert Stone wrote in his report: "Dick Sklar has confirmed that he has asked Prime Minister and professor Vukotic to delay offer of the shares for MVP. Even though he thinks that mass voucher privatization was real "disaster" in many transition countries, recognizes that Montenegrin program is the best, because the majority of shortfalls of other programs had been avoided (what is encouraging, especially if we take into consideration fact that MVP is created with help of consultants from Know How Fund / DFID).

⁵⁰ Delaying MVP, because of attitude of Privatization Council and international advisors to go with MVP when all technical, organisational and expert assumptions are made, has made impression in public that coalition at power doesn't want to conduct MVP even though it has announced it. Opposition parties have publicly stressed their non-approval and criticism in order because of delay of MVP and were convincing citizens to prevent MVP, supporting MVP as method of privatization. When MVP has started, it was to late to mine the model (membership of some parties, thruth unsuccessfully, was convinced not to accept the voucher).

⁵¹ For example. Discussion was constantly stimulated whether technical provider should be Ministry of Finance, ZOP, Secretariat for Development or someone else. Even laic was clear that only ZOP had that possibilities, but including ZOP consequently broke interest of certain bodies, groups and parties that wanted to use MVP for different purposes (personal and parties).

⁵² Because of bombing and political relations with SRJ, foreign advisers were not able to come to Montenegro. That was reason that meetings with foreign advisors were held each week first at Sarajevo, and later in Dubrovnik. That had influence at total speed of economic reforms. This fact has been concise of unconsciously forgotten when estimation about speed of economic reforms in Montenegro.

Preparation of documents for MVP comprehended accuracy of data from companies. Actually, neither one state body had the data on companies. Official data from ZOP were not credible. How to make data accurate, especially for MVP? It was necessary to provide database that would serve to citizens as base for decision-making. The special query was prepared, that consisted about 15 groups of 15 key information on companies⁵³. It was very hard job, and representatives of Operation group for MVP had to directly visit each company, separately and to spend few days, even weeks for collecting data for each company particularly.⁵⁴

The problem of building institutions for need of MVP, before all central register, capital market, making software, concept of Montenegro Stock Exchange, were question that spent and poured lots of energy⁵⁵.

Data about citizens again were the subject of discussion, especially at institutions responsible for these data⁵⁶.

Discussion about many question concerning MVP were held in Sarajevo, Dubrovnik, Podgorica and especially in Herceg Novi by the end of 1999. Differences in interest and concepts between parts of coalition, before all Peoples Party, and concept of Privatization Council, were more than obvious.

Actually, Peoples Party had concept of delaying, and Privatization Council for accelerating MVP⁵⁷. Thanks to the great participation of new advisor Price Waters Coopers, everything was prepared for conduction of MVP in 2001.⁵⁸

⁵³ (1) Shares offered for exchange for vouchers (nominal value, % total value of the company); (2) Description of basic activities, products and services; (3) Equipment and real estate; (4) Structure of shareholders; (5) Number off employees and average monthly income in last 3 years; (6) sales income (separately domestic and foreign market); (7) Shares (number of shares, nominal value and total value); (8) Accounts payable for loans (short-term and long-term in last three years); (9) Data from balance sheet (last three years); (10) data from profit and loss account (last three years); (11) Detailed overview of accounts payable at 31.12.2000. (Short-term and lantern, towards individuals and companies); (12) Overview of accounts receivable at 31.12.2000. (Ranging buyers toward situation and sales); (13) Overview of status changes of real estate (land and buildings) positioned in balance sheet at 31.12.2000. (Real estate and especially land where mortgage has been put); (14) Overview (separately) of real estate and land that has entered valuation of capital of company.

⁵⁴ The low level of documentation has came in Montenegro has came to surface! It was one of the key limitations for conducting MVP that their criticisers had forgotten! We shouldn't forgot that first step in forcing management of companies to report lots of things that were in last few years, especially during hyperinflation, hidden or taken out of Montenegro. At the same way, hardening and dragging to submit information about company was one of the methods of fight against privatization.

⁵⁵ Through that discussion party and political interest were shown.

⁵⁶ According to the old practice, people from state administration had great fear from giving secrets to foreigners (foreign advisors), giving elementary data that are published for example. Statistic yearbook, voting list etc.

⁵⁷ Predarag Dreun, minister at Government of Montenegro and member of the Privatization Council: "I don't agree with Vukotic"; "Vijesti", 19.02.2000. (That was a reason why MVP suggested for 28.04.2000. was delayed till further, and because of the peace in company).

⁵⁸ Great contribution to this was made by Price Waters Coopers and advisors for this area: Fletcher Hodges, Milka Lukic i Andrej Alejkin.

However, adoption of the Privatization Plan for 2001. was kept back. The reason was, before all, fear of MVP. It was specially contributed by Social Democratic Party (part of coalition at power) and Chamber of Commerce of Montenegro through their representatives in Privatization Council. Normally, the fight against MVP was very subtle and it was not easy to recognize⁵⁹. However, thanks to the support of the President of Montenegro the Privatization Plan was accepted and first vouchers were distributed to the citizens at April 17th of 2001. MVP process was planned in 4 phases:

- I Phase of distribution of vouchers to citizens of Montenegro⁶⁰.
- II Phase of transfer of voucher to the privatization funds and members of family⁶¹.
- III Auction phase: exchange of vouchers for shares of companies.
- IV Phase: post privatization period; registration, announcements to citizens and funds and introduction of new owners into companies.

For conduction the special Expert coordination body was formed⁶². Critical point of MVP was privatization funds. Regulation for privatization funds was long prepared and with participation of foreign advisors. We tried to avoid that privatization funds play negative role as in the privatizations in other countries (for example Russia). Four privatization funds were established what is, having in mind size of Montenegro, was enough.

Portfolio for Montenegrin model of MVP was following:

Table: Portfolio for Montenegrin model of MVP

No	Category	No. Of companies	Capital for MVP in DEM<	% Of total capital for MVP
1.	Companies that will dominantly be privatized through MVP	190	323,243,883	13.12
2.	Companies for MVP that will dominantly be privatized through batch sale	32	475,500,257	19.30
3.	Companies for MVP that will dominantly be privatized through international tenders	17	1,664,582,335	67.57
Total		237	2.463.326.475	100,00

Not entering analysis of portfolio of Montenegrin model MVP we should stress few facts, and from aspect of objections to method of mass voucher privatization.

⁵⁹ Representative of Social Democratic Party in the Privatization Council asked that from list for MVP all trade firms be excluded, and immediately suggested that it should be all 7 firms from his town, and that they should be given for auction. Proposition could be reasonable, that through MVP doesn't exit fear that all citizens of Montenegro can be owners of the firms in his town.

⁶⁰ Principe of dematerialisation has been adopted, meaning that all citizens received notices that account with 5.000 voucher points has been open for them at ZOP.

⁶¹ The sale of vouchers was not permitted.

⁶² At that body were representatives of all ministries and institutions that had participation in MVP.

First objection was dispersity of ownership that MVP is bringing. However, Montenegrin model is specific by fact that the largest part of capital for MVP (not companies) was in companies that are supposed to be privatized through tender sale and providing the strategic partner - owner (about 87% of capital for MVP is in those companies).

No meter of objection on MVP, that is method that broke up static, as well as opened possibilities for other models of privatization.

At the same way, this method of privatization contributes to larger interest for privatization and larger knowledge about privatization among citizens.

4.2.4.2. Sale of capital to strategic owners

Montenegrin model has stressed the importance of strategic partner for 30 largest companies. We think before all at famous foreign companies. For providing the strategic partner there are two key methods of privatization:

- a) International tenders;
- b) Batch sale tenders.

The difference is that for companies at international tender the control stake is offered (more than 51% of shares), while batch – sale is sale of shares of company (between 30 – 35% of shares) with right of additional emission of shares at the same time (at least difference between 51% and amount of bought shares)⁶³. As additional emission is treated all investments into revitalization and development of company by the new owner.

Sale of companies to strategic owners is done at basis of clear conceptual platform⁶⁴. Actually, this conception is based at saying that »companies are not sold, but good owners bought«. The set of few criteria was worked out. The price wasn't always dominant criteria. Each selection of strategic partner included, beside (1) price, (2) image and track record of company⁶⁵; (3)

⁶³ At the list for Tender Sale are largest companies as for example: Telekom, Elektroprivreda, Duvanski kombinat, Kombinta Aluminijuma, all hotel companies...

Batch – sale tender includes middle companies, that have great potential value.

⁶⁴ Privatization Council as document that is giving conceptual basis for sale of capital to strategic partners adopted platform for negotiation teams.

⁶⁵ At this we way we wanted to avoid phantom companies and firms of "new rich man" especially from transition countries.

business plan⁶⁶; (4) solving unemployment issues⁶⁷ and (5) ecological problems⁶⁸.

Tender sale is done according to the clear tender rules. The essence of that rules is to make sales process maximally objective and avoid as much as possible direct negotiations. The space for corruption is narrower at that way.

It was necessary to select the international financial and legal advisor for sale through tender. Their selection was done by invitation or by international tender⁶⁹.

Transparency of process has been increased by the fact of including a large number of international advisors⁷⁰. Their presence has increased as transparency of process as increased the whole process of decision making at higher level of expertness and competentness. All of this had influenced at increase of confidence at transparency of the process in the last two years. The process of tender sale is pretty long. After bringing decision about sale of the company, the tender for selection of international financial and legal advisor is published.

International advisors have been with the help of the people from company, Agency for restructuring and foreign investments, Privatization Council, Funds preparing information memorandum and strategy of privatization. All of this lasted for 10 – 15 months⁷¹. It was necessary to prepare completely data about company, privatization strategy, criteria for selection of strategic advisor, provide conditions for due diligence, to make new tariff system, regulation system etc. It has been shown that speed is not good ally, neither to selection of good strategic partner or to transparency. From the other side, the pressure from Government to speed up the process was large! That was and remained the case of classic off!

⁶⁶ Efforts have been made that new owner invests in companies and increase its development performances, in order to avoid cases that buying the company is only buying the market and closing the company.

⁶⁷ All Montenegrin companies, as well companies in other transition countries have over employment. Potential investors have possibility that through new programs, requalifications etc to solve that problem, what automatically decreases price he pays. And reverse, if business plan has lay off, then its solution takes up the state from the price that investor paid for company.

⁶⁸ Ecological problems in Montenegro are large, its orientation toward development of tourism, as well concept of Montenegro as ecological state, required that privatization doesn't put in danger modern ecological standards.

⁶⁹ As international advisors in Montenegro were engaged Merrill Lynch, Deloitte & Touche, Denton Hall, Price Waters Coopers, Barents Group, KPMG, Credit Ainstalt Investment Bank, Raiffeisen Investment AG, Credit Commercial de France.

⁷⁰ Tender Commission has like body that made initial proposal to Privatization Council and Government, had two full time consultants from London: Ph.D. Robert Stone, in front of DFID and representative of lawyer office "Mark W. Harrison" from London. Beside them, for larger privatisations strategic advisors were included through US AID (whose task was to give to body that makes decisions expert opinion about prepared tender documentation) as well as international financial and legal advisors. So, during meeting of Tender Commission, beside members of commission, are present international advisors from at least five institutions.

⁷¹ For Elektroprivreda it last for 18 months.

Yet, Plan predicts 19 companies and about 40% of total social and state capital in Montenegro for tender sale.

Political conditions in country (bombing, conflicts between Serbia and Montenegro) have influenced that few tenders were unsuccessful⁷². Change of political power in had influence at improvement of situation in the country. But, at the same time the war in Macedonia starts. Really, the influence of political occasions in region at success of tender sale is very large⁷³.

4.2.4.3. Auction sale

Auction sale includes the sale of property and shares of companies.

Key criteria for selection of buyer is price.

Auction sale is done according to the rules of sale that were set by Privatization council and is conducted by Auction Commission.

This method of privatization has a row of problems that are specially rising from non-satisfying buying power in Montenegro. Large discounts that followed sale of some companies provoked great discussion in Montenegro.

⁷² For example, in 1999. The tender for UTIP "Crna Gora", "Gornji Ibar", Rožaje; in 2000. Was published tender for 23 companies for Batch Sale but unsuccessfully.

⁷³ Few information memorandums were in phase of preparation during 2000. and 2001. The tender for "Telekom", "Duvanski kombinat", few hotels at Montenegrin coast and for 17 companies dedicated for batch sale privatization was published.

5. Few notices about privatization in Montenegro

In this part, I would shortly present:

- a) Some evaluations about flow and results of privatization program;
- b) Opinion and some attitudes of the citizens about the process.

5.1. Few valuations and notices about results of privatization in Montenegro

Results of privatization reached up to now are under those expected in public.

This is specially related to: (1) delaying MVP; (2) slowness of tender sale; (3) braking contract in previously privatized companies.

The question that is set: whether gap between real results and expected results of privatization is consequence of low realization or exceeded high expectations from privatization? According to my opinion, the size of gap is under influence of both determinants. Beside all problems (political instability, war, bombing) larger determination of Government for privatization at the practical level (specially state bodies) would, even in that conditions, gave better results. From the other side, it was too much pointed that privatization will solve many problems. In the mind of ordinary man, privatization is usually understood as form of renewal, i.e., if someone who buys the company brings the money, salaries and debts are paid and all remains the same: management, number of employees, production program ... That understanding is result of many renewal programs that were conducted in previous system in Montenegro and Yugoslavia.

A non-doubtful result of the process is increased participation of private sector in GDP and growth of employment in that sector (about 30% of GDP).

At the same way, privatization has encouraged creation of new enterprises and development of those enterprises. So, among ten most successful companies in Montenegro in 2000. are Pro Monte, Exal, Montri.

Privatization and generally development of private business in Montenegro had influenced the understanding of major part of population (especially young) that it should expect only from the state to solve the problems, but that each individual should seek solution for itself!

As result of change of property structure the change of attitude toward foreigners and foreign investors can be stated. The fear of foreign investors is smaller and smaller, however it still exists in some state and political groups and is motivated by their fear that foreigners could put in danger their interest sphere, then they really think that presence of foreigners is bad by itself. Existence, respectively acceptance of Privatization Plan and providing that everything can be private (there is no priory enterprises that can not be privatized), and that foreigners have national treatment, as well as determination that property and contracts can be protected at first step

international courts, are also important result whose consequences can be important for next phase of privatization.

Established basic institutional framework of privatization, as well as expert basis are without doubt important result that will influence further reforms in Montenegro. There are few indicators of economy effects that are showing at insufficient results in this process:

- ◆ Even there are changes in the property structure; still participation of state sector in total economy is large.
- ◆ Participation of foreign investments in Montenegro up to now is very low, much lower than in Croatia and Slovenia, and not to speak about Hungary, Poland, and Check Republic.
- ◆ Privatization incomes are modest, and are basically from two bigger privatizations: brewery »Trebjesa«, Nikšić (about 25 million DEM including investments) and Institute »dr Simo Milošević« (33% of estimated value)
- ◆ Recent level of privatization didn't have influence on the development of efficient capital market.
- ◆ Corporate governance is much more showing as problem even in private companies.
- ◆ Insider privatization as dominant model of privatization in Montenegro hasn't up to now gave results in new investments, restructuring enterprises and improving corporate finance.
- ◆ Problem of restitution remains open and unsolved, what creates unpleasant climate for complete privatization process.
- ◆ The number of companies at bankruptcy or entering zone of bankruptcy is increasingly larger.

5.2. Some social – psychological attitudes of citizens as indicators of their readiness for privatization

We are stating few results of research that was conducted in cooperation with Center for psychology from Belgrade. The research about social and psychological attitudes of citizens was done at sample of 611 participants, where 200 participants were from Montenegro (Podgorica), and other from Belgrade and Banja Luka⁷⁴.

Interest for privatization. More than 70% of citizens in Montenegro (similar to Republic Srpska and Serbia) are highly interested for privatization. Only 10% of people are not interested for privatization, and manly these participants are belonging to the age group below 20 years.

Information and sources of information. Each third participant from Montenegro estimates that has weak information about privatization (similar as in Belgrade), while in Banja Luka it is each fourth citizen. Still. Answer like

⁷⁴ Research in Montenegro was done before MVP.

this is indicating uncertainty of citizens concerning privatization, and not only weak information.

How much citizen knows about privatization. The certain number of questions has been set in order to test knowledge of citizens about privatization. The percentage of correct answers about privatization from Podgorica was 74,3% (Banja Luka 76,9%, Belgrade 62,1%).

Attitude toward privatization. Almost 70% participants from Podgorica have positive attitude toward privatization with relatively small participation of those with negative attitude.

Expected effects of privatization. About 65,8% participants from Podgorica expect increase of unemployment because of privatization (in Belgrade 70,7%, in Banja Luka 80,9%); to solve problems of old foreign saving thinks 42,1% (in Banja Luka 25,1%, in Belgrade 42,9%); fear that by fraud in privatization small number of favored people will become rich thinks 78% (in Banja Luka 73,2%, in Belgrade 60%), that privatization will results with membership in the international community 51,4% (in Banja Luka 19,3%, in Belgrade 55,5%); all that is worth will buy foreigners 61,3% (in Banja Luka 35%, in Belgrade 69%); employees will finally be paid for their work thinks 33,6% (in Banja Luka 54,5%, in Belgrade 24,3%); honest people won't get anything from privatization 35,4% (in Banja Luka 15,8%, in Belgrade 32,8%).

Attitude toward property. This dimension has been measured with range of attitudes with score from 5 to 30. Valuation was done so that higher score represents more positive attitude toward private property positive attitude is higher in Montenegro 21,7 (Banja Luka 19, Belgrade 21,5).

Relation between individualism and collectivism. It was measured with the same range as attitude toward private property. Tendency toward individualism is higher in Podgorica (20,1) then in Belgrade (19,5), but lower than in Banja Luka (20,7).

Generally, nothing better predicts the readiness of people for changes that is privatization bringing than readiness to change property relations. From the other side, from all social demography indicators, education and working place are in certain measure connected with acceptance of privatization. What is level of education higher, the readiness of people to accept changes that is privatization bringing higher, as well as level of information they have is higher.

Concerning working place, for privatization is most interested, best informed, have largest knowledge and most positive attitude those who have already entered privatization process.

This research has shown that information needs, respectively needs for higher education of public in area of privatization in Montenegro are large need.

Beginning of MVP in Montenegro has exactly marked comprehensive education campaign of wide layers of population.

6. Some messages from Montenegrin experience

Modest experience of Montenegrin privatization gives few messages:

1. Political structure at power has to be truly dedicated to privatization which is mirrored at accepting and stimulating the process in all state bodies. Exactly many conscious or unconscious obstructions from state administration at all levels had negative influence at this process.
2. Political stability is important factor of privatization. Not just political stability in region, but before all unsolved political status of Montenegro has influenced interest of foreign investors for investments into Montenegro.
3. Importance of institutions and institutional framework is key condition for privatization. Missing the institutional framework until 1999 had influence at creation of some problems and cases, what had negative impact at image of privatization.
4. Protection of property is crucial for investor's decision whether to or not to invest into company. More then twenty broken contracts resulted with the feeling insufficient protection of private investors and their great prudence and restraint.
5. Insider privatization gives limited results and can be efficient only in combination with other model of privatization.
6. Transparency of privatization is, especially at Balkans, and in so small country as Montenegro, very important and only at basis of transparency healthy economic and political society can be built. Transparency means replacement of personal relations, which are dominant in small environments in solution of general problems (everyone knows everyone) with relation of institutions. In last two years, and with few gall discussion, level of transparency of Montenegrin privatization has been increased at high level, where as proofs serve estimations of international advisors.
7. Importance of technical assistance for conduction of privatization process is crucial. It is hard to provide expertness and efficiency of process without it. Montenegro had technical assistance, but for commercial privatization through tenders had to pay from its own resources financial and legal advisors. It is amount of few million of DEM that Montenegro had to pay from its scarce resources.
8. Human capital basis, respectively education of, specially, young people is necessary precondition for privatization and its successfulness in long term.
9. Strong and professional state administration can be crucial in privatization. Actually, many problems in privatization in Montenegro are result of weaknesses of state administration.
10. Participation of workers and dedicated management in companies in privatization process, in order to protect their interest and accept the privatization process in their company, is important for later work of company. So, where it didn't exist, new owner always had problems. Same, the cooperation with Workers Union.

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11. Privatization has to be followed by reforms in all areas. Privatization is not objective but mean, respectively, it together with all other macroeconomic reforms makes conditions for economic rehabilitation.
 12. Late solutions of restitution problem make additional problems and creates bad image about privatization, what has happened in Montenegro.
 13. Considerably more attention should be paid to education of citizens and their informing. Only by giving through and timely information, privatization can get ally in public. Danger for privatization exists when it becomes instrument in hands of political parties and their unscrupulous fight for power.
 14. Experience of Montenegro shows that it is very hard to conduct privatization and reforms without support of international financial institutions (World bank, IMF, European bank). Fact that Montenegro still is not member of these institutions is strong barrier for up to date and also for future reforms.

7. How to proceed?

Political elite in Montenegro has to be aware that without increasing efficiency of privatization there is no economic or political transformation of Montenegrin society.

Generally, it means that political sphere has to pay more attention on its effects at privatization. Long and fruitless political discussions, delaying solution of many political problems, accepting politics as sphere that is objective to itself and that is self-sufficient, does not create conditions nor enforce the powers for acceleration of total reform processes, and the privatization. The change of political powers (position and opposition) and their greater responsibility for economic reforms are a precondition for privatization. After completing the MVP process it is especially important to concentrate at:

1. Privatization of public enterprises.
2. Privatization of banking sector.

Privatization of public enterprises have to provide following effects: (1) restructuring, improvement of competitiveness and efficiency of public sector; (2) increase of the participation of foreign investments, respectively foreign investors; (3) transfer of new skills of management, capitalization of knowledge and top technology; (4) demonopolisation of market and improvement of market competition; (5) protection of consumers rights.

Privatization of banking sector should lead to: (1) increase of liquidity, efficiency and competitiveness; (2) entrance of international financial institutions into ownership portfolios through sale and additional emission; (3) market restructuring of the banks through sharpening financial discipline, improvement of efficiency of audit system, monitoring and control; (4) reduction of inconvenient political influence of the state at business decision of banks.

Conduction of privatization of public enterprises and banking sector will create conditions for conduction of other key reforms, and especially for implementation of reform of pension system.

Restructuring enterprises, especially few large, should be easier from moment of Montenegro becomes a member of international financial institutions.

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