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Interdepartmental Action Programme on
Privatization, Restructuring and Economic Democracy



**Enterprise Privatization and
Employee Buy-Outs in Poland:
An Analysis of the Process**

Rainer Schliwa



Enterprise and Cooperative Development
Department

International Labour Office - Geneva

**The Interdepartmental Action Programme on Privatization, Restructuring
and Economic Democracy**

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Preface

This study is based on a series of inquiries in Polish companies conducted in late 1995 as a follow-up to a regional tripartite conference organized by the ILO's Poverty-oriented Banking Unit in Bratislava (25-27 May 1994): "Bottom-up Privatization, Finance and the Role of Workers' and Employers' Organizations in Central and Eastern Europe".

Similar assessments were prepared in Hungary and Slovakia in the course of 1995. Together these reports led to the formulation of a regional programme to address the financing problems of SMEs emerging out of enterprise restructuring. At that time, the companies analysed were undergoing or had undergone privatization by employee buy-out. Initially, the study was only designed to assess the actual level of participation in the decision-making process by employee representatives in situations where the entire workforce had decided to become involved in stock ownership and where participation in management of the take-over was required. The study was to examine to what extent employees' representatives would need guidance and support at every stage of the process in order to bring in the interests of the workforce and contribute effectively to the success of privatization.

In fact, the insights gained from these Polish employee buy-out schemes allowed for a broader analysis of the role of employees' participation in privatization and of the capacities and institutions necessary for success including how possible deficiencies could be remedied. These enterprise-level analyses of employee involvement in privatization became an important tool to disseminate knowledge about what works, focusing on effective ways to represent employees' interests, different forms of employee stock ownership, employees' involvement in restructuring and other labour management issues.

This paper describes and analyses the tasks of employee representatives in the privatization process, taking into account the various stakeholders: employees, management, the privatization agency and potential outside investors. This leads to a definition of what social partners can do to support employee participation at enterprise level. The findings also shed light on difficulties employee-owned companies are likely to face in terms of ensuring adequate financial means for the acquisition of assets, elimination of old debt, and longer-term liquidity and solvency.

The study has been finalized as a contribution/component of the ILO's Interdepartmental Action Programme on Privatization, Restructuring and Economic Democracy (IPRED). A major objective of this Programme is to promote economic democracy through the participation of employees in restructuring and privatization. This implies taking into consideration both social considerations and the need for enterprises to be competitive. In turn this calls for an enhanced capacity by constituents to adopt participative approaches. The conclusions drawn from these Polish employee buy-outs help to ask the right questions when designing participative approaches to privatization elsewhere and assist in becoming aware of the requirements in terms of skills, behaviour and attitudes for all actors involved. This can be of interest and use to ILO constituents in other countries undergoing similar transformations.

The paper has been written by Rainer Schliwa and reviewed and edited by Bernd Balkenhol (ENTREPRISE).

Max Iacono,
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Executive summary

1. The context of the study

Based on surveys in eight Polish companies, this study represents an enterprise-level analysis of lease buy-outs in Poland. In Poland, there are more than ten different privatization methods. In some 1,100 cases since 1990, state enterprises were directly privatized, i.e. *sold, contributed in kind to a new company or leased to their employees*. Employee lease buy-outs were used in 70 per cent (some 800 cases) of these "direct" privatizations.

Direct privatization is carried out in a *decentralized manner*, i.e. the initiative to privatize comes directly from the company concerned. Almost the entire process is carried out by the various stakeholders at local level. Only the final approval is given by the Ministry of Ownership Transformation in Warsaw. Employees are involved in the initiation, decision-making and financing of the take-over.

The role of employee representatives and "employee councils" in direct privatization is the object of the analysis. Do employee councils have access to relevant information? Do they have the potential to analyse it? How do they contribute to decisions in the privatization process? If there is indeed a deficit in this regard, which advisory services, training and institutional capacities need to be built up and by whom?

2. The process of employee privatization in Poland

Direct privatization is initiated by the company through a request to the representative of the responsible governmental agency in the region, the so-called "*founding body*". This first step to privatize is usually initiated by the *company's board of directors*.

Experience with successfully completed processes confirm the need for early consultation between the board of directors, the employee council and the workforce. An exchange of views from the top to the shop-floor level and in reverse ensures that the whole company sees privatization as its own affair.

The founding body requests the enterprise (the workforce, the board of directors and the employee council) to formally approve the privatization procedure, to carry out a company valuation, and to prepare a business plan. In these tasks, except for the valuation, companies rely on their own staff and financial resources. In the sample of enterprises reviewed, between 75 to 95 per cent of the employees formally approved the privatization. Special committees for privatization were frequently set up. They were established to gather information from outside and also to collect suggestions from inside the company. The committees were open to any company employee.

The *valuation of the companies' assets* is a key element that lays the ground for the company's position in negotiations with the present owner at a later stage of the privatization process. Methods used are based on book value, discounted earnings and current market prices. It is often difficult to estimate the value of corporate assets. The valuation, which is usually carried out for an entire company, does not always allow to differentiate between various enterprise components.

Employment, wage policy and social concerns are a major responsibility of the employee council. Therefore, a so-called "social pact" can be concluded between an outside

investor and the employee council. The social pact may comprise employment guarantees for the period following privatization, conditions for termination of employment, a wage plan, a share plan for profits and a general social arrangement for the workforce. It may also cover training and retraining.

Since consultations at advanced stages of the process may take place without the employee council, consensus in decision-making depends, to a large extent, on the policy of the board of directors towards the employee council and the style of consultations at company level. In addition, when the workforce is unable to pay the leasing fee, the founding body may prefer to sell the company instead of implementing an employee lease buy-out. Regional development strategies may also alter the privatization prospects and methods for a company.

Generally, radical changes in employment envisaged after privatization will make it more likely that the founding body will seek the advice of employee councils. The same applies when high proportions of worker ownership are contemplated in the privatization deal.

3. Financing the process

The financial dimension of the ownership transformation can be analysed in terms of capital formation and leveraged-debt financing.

The Polish employee lease buy-out scheme offers a compromise between the need to quickly find an accountable company management and the fact that insider ownership does not necessarily allow raising sufficient capital to acquire full legal ownership. However, employee savings *can be* the main source of initial capital formation. Outside investors are represented only in 20 per cent of employee-leased companies. No financial institution is involved in the ownership transformation process. Usually, only after having undergone ownership transformation and after having paid the leasing instalments, can the privatized company apply for a loan.

After take-over, long-term liabilities often represent more than 80 per cent of the assets. In addition, as liabilities are paid off from the company's current net profits, internal financing becomes limited. Investments are postponed and depend on the reimbursement of the liabilities to the Treasury. Interest rates for investment loans stand at around 40 to 45 per cent. Thus, the problem of external finance is not only one of access but also of cost.

4. The role of the employee council in the privatization process

The representatives of the workforce play an important role in the preparation of the workforce towards the privatization of the company. The main responsibility of the employee council is to define the objectives of the workforce within the framework of the privatization plan and to mediate between the board of directors and the workforce itself throughout the process.

The initiation of privatization and decision-making at enterprise level is intended to be a joint process between the employee council and the board of directors. Employee councils therefore need to know how to develop economic arguments to support their interests and how to formulate realistic demands regarding employment and wage matters. A manual explaining different privatization options in relation to the size of a company, its market potential and its restructuring needs can be a useful tool. A check-list comprising relevant

items of enterprise status in order to facilitate collaboration with external advisers could be another.

During the negotiation process, there also may be a need for a mediator between the workforce, the board of directors and the regional representative of the privatization agency. The employee council has to make sure that its suggestions are reflected in the company's positions. From the company's perspective, a coherent position as regards different groups within the company is also important in its own negotiation strategy.

Employee councils are also in charge of arranging the financial participation of the workforce, i.e. the subscription of employees to share capital. Wage policies after the take-over, mixed forms of rewards including dividends as well as the trade-off between wages and corporate investment capacity can also be on the agenda of the employee council. Finally the future trading modalities for shares also have to be satisfactorily established.

5. The activities of trade unions and employers' organizations and other organizations in support of the process of employee privatization

The role of trade unions in employee privatization is based on cooperation between company employee councils and regional trade unions' representatives. The influence of the unions also depends, to a large extent, on the relationship between the employee council and the board of directors, as the latter can decide on the degree of information and involvement given to the former. Thus, assuming an active role of the unions in privatization, this must go hand in hand with a consensus between the board of directors, the employee council and the unions. Of course, union members also can be members of the employee council.

Cooperation between the unions and the representatives of the workforce consists in economic and legal consultations on traditional union issues such as wages, working conditions and lay-offs as well as regarding assistance in negotiations with the privatization agency and specific project-related interventions by regional or national experts. Managerial skills in quality improvement, training and development and other human resource management practices relevant to privatization and restructuring are usually hardly available to employee councils. Financial issues such as the raising of internal funds for acquiring employee shares are also an issue for the employee representatives on which assistance is needed.

Employers' organizations in Poland work in the field of labour policy and legislation including participation in tripartite bodies. Programmes for management training and small enterprise development are also assisted by the various international contacts of these organizations. Emphasis is also placed on the promotion of entrepreneurship in Poland and on the perception of entrepreneurs in society at large.

Local employers' organizations assist privatization projects by way of business advisory services, networking, international contacts in the field of foreign investments and know-how transfer. The activities of employers' organizations are only indirectly linked to the promotion of employee privatization and relate mainly to the post-privatization phase. Hence, the roles of employers' organizations and unions can be seen as complementary, at different stages.

Structural changes in Poland led to the creation of regional development agencies. They also are involved in training and consulting (enterprise creation), financing at regional level (funds for enterprise creation) and in small-scale infrastructure development (business

incubators and technology parks). These programmes help to create integrated and coordinated approaches to achieve a balanced structural change under very difficult conditions. While mainly aimed at the creation of new enterprises, their influence on the development of private sector institutions is also vital and relevant to various forms of newly privatized companies.

6. Conclusions

Where companies are directly sold through the privatization agency, employee councils will serve mainly to protect workers' interests in terms of preservation of employment. If privatization is initiated by the enterprise itself, employee councils will look after the social consequences of restructuring and the search for strategic investors. In both cases, the role of the employee representatives should — and can be — constructive in terms of contribution to the privatization effort.

The commitment, effort and creativity of all stakeholders can be enhanced through regular consultations which clearly create a sense of ownership.

Employee councils also need analytical tools in the form of manuals and guidelines that can be used as check-lists to design technical assistance to employee privatizations and to the restructuring of companies.

1. Introduction

1.1 Privatization, employee buy-outs and the ILO

Privatizations in Central and Eastern Europe evolved on different paths and at different speeds. Some privatization methods, such as buy-out, buy-ins and other forms of privatization from inside or from below are of particular interest for both equity and efficiency considerations.

The ILO has an ongoing concern for social issues in privatization and for the active participation of workers' and employers' organizations in the formulation and execution of privatization programmes. Participation means improved access to relevant information, building up capacity to effectively analyse such information and to formulate suggestions. Effective participation requires that individuals and organizations can identify and mobilize intellectual and material resources needed to overcome problems and to pursue opportunities related to changes in the environment.

Within the framework of the ILO's "Action Programme on Privatization, Restructuring and Economic Democracy". Case-studies of enterprises are carried out where workers and managers have been actively involved in the privatization process. Poland, like several other Central and Eastern European countries, has given much consideration to employees' involvement in the national privatization programme and uses more than ten different privatization methods. "Direct privatization",¹ one of the methods (article 37 of the Polish Act on Privatization), means that an enterprise is privatized without prior transformation into a state-owned joint-stock company. Instead, the enterprise is simply struck off the register of state enterprises ("liquidated") and is then either: (1) directly sold; (2) contributed in kind to a new company; or (3) leased. Direct privatization has been applied in more than 1,100 cases in Poland mainly through employee leasing (some 80 per cent of all direct privatization cases). Companies are privatized using a decentralized approach, i.e. the initiative to privatize comes from the company itself, which requests decision-making and through savings from its employees. In many cases, the absence of an outside investor makes this type of privatization difficult.

Other privatization methods applied to larger enterprises also involve some kind of internal ownership. Polish citizens can buy investment vouchers in the so-called "mass privatization programme". Employee ownership is also achieved by means of "give away shares" to employees. But, in these cases, employees do not have a say in the initiation or implementation of the privatization process.

The provision of technical advice to employee councils is an important area of technical assistance to trade unions, particularly in countries where the economy is in transition and where business organizations, trade unions and employers' organizations are being established or are in a process of strategic reorientation and change. A comprehensive understanding of the role of employee councils in privatization is an important step towards institutional

¹ This method is also called "privatization by liquidation" (a misleading translation of the Polish term for "to strike off" which does not mean that the enterprise is liquidated.)

capacity building within trade unions. This study distinguishes between the role of the employee council and that of social partners in privatization at company level. From a legal perspective in Poland only employee councils are directly concerned with privatization at company level.

1.2 Organization and content of the study

The study is based on eight visits to firms in the three Polish *voivodships* of Łódź, Wałbrzych and Gdańsk. The companies have undergone direct privatization in the form of employee lease buy-outs, in two cases with the participation of outside investors. Share capital was always dominated by inside ownership. Consultations at company level were guided by a questionnaire about privatization issues of direct concern to the workforce. The workforce representatives, i.e. the "employee councillors", were requested to indicate their degree of influence and power at particular stages in the privatization process (see questionnaire — Annex 1). Open interviews were conducted with the management of the firm either while it was still state-owned or after it was privatized. Issues raised included experience with financial institutions and the role of support structures (particularly employers' organizations) both during and after privatization.

In addition, visits to trade unions and employers' organizations were carried out in Gdańsk (National Committee of Solidarnosc Trade Union) and Warsaw (All Polish Trade Union Alliance, OPZZ, and the Confederation of Polish Employers) as well as to the local trade union offices and regional employers' organizations in the three regions. Visits were also paid to *voivodship* offices, i.e. the decentralized governmental agencies responsible for privatization. They act as so-called "*founding bodies*" and represent the State Treasury or the branch ministry which is the owner of the state enterprise. Questions were raised regarding negotiations and factors influencing the decision of the Founding Body to approve a privatization proposal forwarded by a state-owned company. The study tour ended with a visit to the Ministry of Ownership Transformation in Warsaw.

The main issue examined was the role of employee councils in direct privatization: Did the employee council have sufficient information on the status, potential and needs of the company to initiate or to approve the decision to privatize? Was the employee council aware of the different forms of privatization available in Poland and could it form a realistic judgement? How can employee councils contribute to operational and strategic decisions in the privatization process? What is the role of the employee council in the process of negotiation with the privatization agency? Which advisory services, training and institutional capacities need to be provided? Furthermore, based on recent research of the Polish Academy of Sciences, the financial dimension of employee privatization was also analysed.

The study is organized as follows: Chapter 2 describes the stages of direct privatization and identifies problems in the process. Chapter 3 looks at the procedure from a financial perspective and also describes important details regarding the financial position of the companies after privatization. Chapter 4 analyses the role of employee representatives, issues they have to deal with and specific shortcomings related to these issues — as well as suggestions as to how their situation could be improved. Chapter 5 describes the activities of workers' and employers' organizations in the process of internal privatization, points out shortcomings at company level and provides conclusions from the different regions visited. Chapter 6 provides an overall summary and points to possible follow-up activities.

2. Stages of the privatization process

Unlike in other countries of Central and Eastern Europe, privatization in Poland is not administered by a single privatization agency. The decentralized approach, typical of the direct privatization category, means that the process is initiated by the enterprise concerned. The Ministry of Ownership Transformation comes into the picture only at the later stage of approval. Almost the entire process of privatization is carried out by the various stakeholders at local level.

2.1 Initiation

The "founding body" of the enterprise concerned, i.e. the *voivodship* or the responsible branch ministry representing the owner of the company in the region takes the initiative. The term "founding body", translated from Polish (*organ założycielski*), means that this body administers the foundation of a new private company from a formerly state-owned company.

This initiative can be taken respectively by either:

- the company board of directors;
- the employee council;
- the founding body itself.

Consultations at company level precede the request for privatization. The decision to privatize is mostly based on a collective will to pursue company privatization in an independent manner. Private ownership comes to acquire a positive connotation, i.e. there emerges an understanding among the actors that they are somewhat "better than the State". Three scenarios can be distinguished:

- the board of directors takes the initiative prior to consulting the employee council;
- the employee council takes the initiative in consultation with the trade union and then approaches the board of directors;
- outside investors are interested in the company. Consultation takes place with the founding body and the board of directors. The employee council of the company concerned is then later informed by the board of directors.

In most observed cases, the board of directors took the initiative. When it was the employee council's decision, trade union advisers played a role in initiating the process. In some cases, the initiative originated from personal contacts of company employees with other companies already privatized

In all three scenarios, there is usually little ex-ante information about the likely concrete outcome of the whole process. It is generally not clear to the actors within a company which privatization method is best suited to their particular case. Moreover, it is not clear whether the method suggested by the initiators will finally be adopted or whether any plans or

preferences concerning the privatization of the enterprise already exist at the respective founding body.

There are also cases where enterprises are pushed to privatize. In such cases, financial difficulties, e.g. the withdrawal of banks from financing current operations can trigger the founding body's decision to privatize or liquidate the company. Enterprises that had undergone privatization in the past were in comparatively better shape with more promising market prospects. Remaining companies are more likely to be pressured to privatize.

Successful experiences confirm the need for early consultation between the board of directors, the employee council and the workforce. An exchange of information from top to bottom and reverse was considered very important. In such cases, preparing the workforce for privatization through information sessions and research on which steps to take first, contributed to reducing fears about the outcome of privatization. Not only were expectations better managed but also, and perhaps most importantly, management and the workforce considered privatization as their jointly-owned affair.

2.2 Decision-making by the state-owned company

Once the process is initiated, the founding body requests the enterprise to formally approve the privatization, choose the modalities of privatization, evaluate the company and prepare a business plan. The documentation requested from the company consists of approximately 40 separate documents. At this stage, it is up to the company to present its privatization project. Here the companies rely on their own personnel and financial resources.

A company's formal approval has to be at three levels:

- general workers' assembly (simple majority);
- employee council;
- board of directors.

In the cases reviewed, between 75 and 95 per cent of the workforce formally agreed to start privatization. During the same referendum decisions on the form and future ownership structure of the companies were also taken. Employees were also asked if and to what extent they intend to purchase shares.

The employee councils frequently set up a special committee on privatization to gather information from outside and also to collect suggestions from inside the company. The committees were open to any employee of the company irrespective of function, job or union membership.

In some cases, when an outside investor was to take a stake in the company, the employee council sought legal advice from a specialized jurist. Other advisory resources were private sector consultants or trade union experts. Assistance in the preparation of the business plan was requested only rarely.

2.2.1 Valuation

The valuation of enterprise assets determines how the board of directors, the employee council and other stakeholders would position themselves in negotiations with the *voivod*. This phase seemed to call for external assistance most urgently.

Three methods are generally used in the valuation of corporate assets: book value, discounted earnings and current market prices:

- irrespective of their real market value — under current market conditions — assets are primarily valued as of their date of acquisition;
- non-physical assets, such as goodwill, while difficult to evaluate, are also taken into consideration;
- the discounted earnings method is used with often highly speculative assumptions, e.g. successful diversification into new markets;

Other problems of valuation remain: currency adjustments, inflation, the company's responsibility for old liabilities, and so on.

The valuation of the company is carried out for the company as a whole. Assets are usually not divided. In some cases, this was not compatible with the required downsizing. In the past, redundant assets could not necessarily be sold after privatization as the company is not (yet) the legal owner nor is there necessarily a demand for such assets. Asset sale also needs a clearance by the Ministry of Finance which retains proceeds.

2.2.2 The "social pact"

Major restructuring and significant downsizing of production and employment can be part of many privatization projects. Hence, issues of the social pact may also become relevant in the case of employee privatization with or without the involvement of strategic investors. The social pact is a commitment between incumbent and future stakeholders of a state-owned company. It does not have a legally binding character.

While the founding body primarily wants to see financial and legal data on employment, wage policy and other social concerns, a social pact between an investor and the trade union on behalf of the employee council tends to ensure continuity of employment and social protection in the process of ownership transformation. The social pact may provide for employment guarantees for the first years following privatization, conditions for termination of employment, a wage plan, a share plan for profits or a social arrangement for the incumbent workforce with regard to the future enterprise. It may also cover training and retraining needs. In addition, issues related to union activities such as physical or financial resources for unions in the new company may also be raised. Generally, the social pact is worked out by the employee council with assistance from the trade unions. It constitutes a form of codification of the employees' rights which, once approved by the board of directors, becomes a joint commitment between the stakeholders inside the company and any external investors.

Social pacts are reported to be frequently violated. The Ministry of Ownership Transformation itself, among others, while in principle not against social pacts, occasionally views them as obstacles to privatization since potential investors may be discouraged from investing in companies where ex-ante restructuring and employment adjustment agreements may create human resource or management constraints or social conflicts after privatization.

2.2.3 Consensus in decision-making

Although the decision-making process at company level is the most appropriate time to articulate employees' concerns, the Polish Privatization Act does not make any explicit provisions for participation of the employee councils in consultations with the founding body. Consequently, consensus depends, to a large extent, on the personal goodwill and positive disposition of the board of directors towards the employee council.

Box 1

Some general guidelines on valuation

The State Treasury is the legal owner of the state-owned enterprise.

Protection of the interests of the State Treasury is ensured by the provision of a decree of the Minister of Finance of 10 November 1990. The Ministry of Finance is responsible for the enterprise's funds until the moment of liquidation, i.e. the enterprise being struck off the register of state-owned enterprises. It holds accounts reflecting the book value of the enterprise and deals with questions concerning valuation.

The above-mentioned decree stipulates that:

- the enterprise has to be taken over with its assets and liabilities;
- in the case of leasing, the leasing arrangement has to cover the whole state-owned company. It is not possible to lease parts of a state-owned enterprise;
- the Treasury should obtain a sale revenue from a state-owned enterprise's privatization that is equivalent to what it had received from current fiscal income prior to privatization.

The founding body acts on behalf of the Treasury. It disposes of data concerning the book value and the funds of the state-owned enterprise in accordance with the data from the Ministry of Finance.

The founding body requests the state enterprise to carry out the valuation on its own behalf and costs.

The founding body is entitled to nominate a consultancy firm to carry out the valuation.

In the case of disagreement over the findings of the valuation, the founding body can request a second valuation for which it nominates the consultancy firm.

There are no legal provisions on the method of the valuation.

Source: Baehr, Jerry (1993): *Companies with employee participation*, Friedrich Ebert Foundation, Warsaw Office, 1993. pp. 68-106.

The employee council can reject the position of the board of directors. However, such an occurrence inevitably lengthens the privatization process and weakens the company's position. It can also provoke a unilateral decision from the founding body.

2.3 The founding body's decision

The owners of the state-owned enterprise send the valuation results and other documents to the founding body, which verifies the legal and financial status of the enterprise including all relevant data on production, employment, real assets and other assets that belong to it (e.g. housing for employees). It then gives its opinion, discusses outstanding issues with representatives of the enterprise and prepares the documents for final approval by the Ministry of Ownership Transformation. The founding body decides on behalf of the owner of the company. Negotiations entail a preliminary decision on the price and the concrete form of ownership transformation. The Ministry of Ownership Transformation only approves the founding body's decision by signature and generally does not make any substantial amendments.

The enterprise has a say in the choice of the privatization method although the founding body may have a different preference. The main criteria for selecting the appropriate method for a given company are shown below. The final decision on the concrete form often comes

down to a choice between selling or leasing the enterprise. In the case of leasing, the founding body's approval depends primarily on the company's capacity to pay the leasing fee from its current cash flow since no additional capital is likely to flow into the company. As a result, only 10 to 20 per cent of enterprises in the three *voivodships* visited were judged by the *voivods* to be potentially viable for leasing.

Table 1. Criteria for selecting the appropriate method for a company

Direct sale (internal)	Sale to outside investor	Leasing
Major replacements of assets/substantial investment required	Limited specific needs for restructuring and modernization	Practically no need for restructuring and modernizing
Diversification of production	Diversification required only on a limited scale; no need to reorganize production	Diversification presently not required
Production is loss-making	Production at least covers costs or is moderately profitable	Production is profitable
Without major investments, few prospects for development after privatization	Modest prospects for development after privatization	Good prospects for development after privatization

2.3.1 Sale negotiations

Obviously, the valuation of corporate assets is a complex exercise, leaving room for considerable subjective judgement, for instance, as regards sales prospects or interest rates in the case of discounted cash flow projections.

The institutional framework within which the valuation takes place is therefore of decisive importance. Databases containing book values can serve as reference for the founding body's approval although they may have been established under a completely different business environment. In several cases, the founding body requests a second opinion from a consultancy firm. The often countervailing interests of the Treasury and the Ministry of Ownership Transformation also often influence the respective founding body's negotiating power.

2.3.2 Regional factors

Differences in regional development strategies also have an impact on privatization. The decision on whether or not to privatize enterprises which need substantial investment depends on their place — present and future — in a regional development strategy. It is therefore important to prepare privatization proposals in the light of such considerations.

Box 2

The example of Wałbrzych voivodship

The Wałbrzych *voivodship* is located in south-west Poland in the region of lower Silesia. The region consists of six mining districts; it is one of the regions most heavily affected by structural unemployment (the current unemployment rate stands at 26 per cent). It receives various government assistance as well as assistance from the EU PHARE programme. The mining sector and related enterprises will be liquidated. This sector employs 12 per cent of the labour force in the region. Thirty-seven per cent of industrial workers are employed in uncompetitive industries which need comprehensive restructuring measures.

On the other hand, 45 per cent of the industrial production is considered as having good market prospects, providing for about 50 per cent of the jobs in industry: electrotechnical, metal production and precision and measurement electronics, but also traditional industrial branches like porcelain, glass and textiles.

It is from this latter group that most companies were selected for privatization by a lease buy-out method. For the majority of companies the prospects for survival after privatization depend on the availability of outside investors, due to lack of financial and managerial resources.

In the case of the Wałbrzych region strategic preferences in privatization and restructuring included:

- activities possibly attractive to foreign investments, export industries or other local industries considered as good prospects;
- environment protection activities, related to conversion of energy production and use;
- activities using local and natural resources, e.g. tourism, spas;
- instances where promotion of management development and local entrepreneurship were likely as opposed to the predominance of large companies where prospects for management development were considered limited.

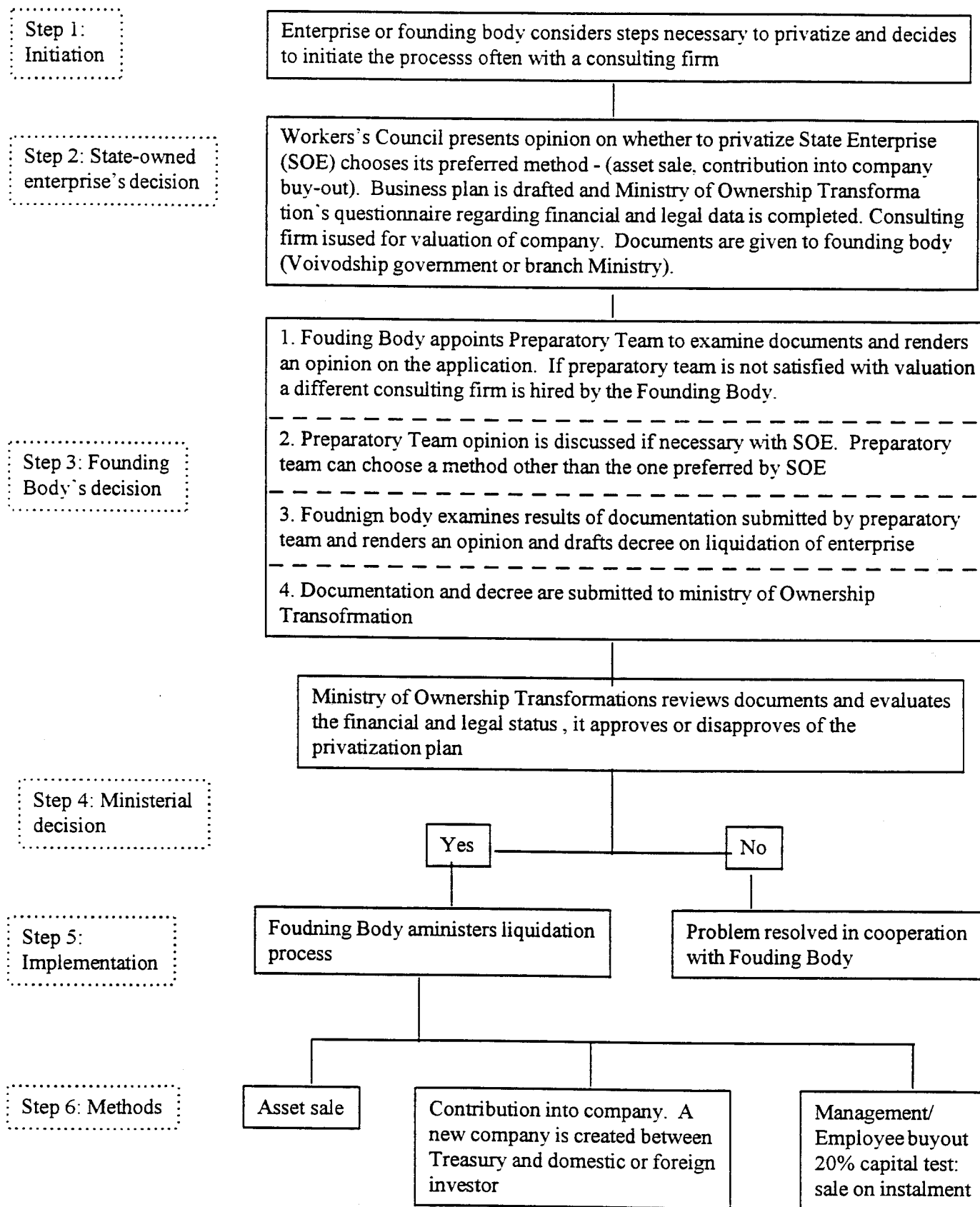
Regional strategic considerations are of particular importance for privatizations in areas with major structural problems. Government support in such regions may include tax reduction and assistance in retraining and enterprise restructuring. Other concessions may include lowered requirements for start-up capital in a lease buy-out, i.e. from 20 per cent to only 10 per cent of the enterprises' assets.

2.3.3 Partners in negotiations

Once the employee council, the workers' assembly and the board of directors have agreed on privatization, management will represent the enterprise in the subsequent negotiations. Voivod officials in charge of negotiations with state-owned companies state that much emphasis was placed on consensus with the employee council during negotiations. Generally, the greater the changes in production and employment planned after privatization, the more *voivodship* offices were interested in some informal involvement of employee councils and trade unions. Also, the importance of the employee council in negotiation increased with the portion of employee shares in the privatization deal.

Once the founding body has taken a decision on the method of privatization, the package is submitted to the Ministry of Ownership Transformation for approval. The Ministry does not directly negotiate with the enterprise concerned but requests the founding body for further negotiation in case of differences of views. Thus, in Poland the founding body, i.e. the *voivodships'* office or the branch ministry acting on behalf of the Treasury is, in fact, the most decisive actor in this process of direct privatization.

Privatization through Liquidation



3. Financing the process

The financial dimension of ownership transformation is also a problem of capital formation and of high leverage debt-financing.

The legislators of the Polish Act on Privatization were aware of the major problem which would arise in employee buy-outs, i.e. lack of capital. The Polish lease buy-out scheme¹ therefore offers a compromise between the need to quickly find accountable management and ownership control at company level and the fact that management and employees do not necessarily have sufficient capital to acquire full legal ownership immediately.

Ownership of assets is thus linked to future liabilities in the form of leasing rates which, when paid off in full, constitute full legal ownership of the company.

The leasing contract can be signed if 50 per cent of the company's employees become shareholders.

3.1 Capital formation in lease buy-out

While normally 20 per cent of share capital is required, an amount equivalent to 2 per cent to 10 per cent of the company's value can also be paid by shareholders on a blocked account in the name of the company and the new company can then be registered. The company has one year to raise share capital until the amount corresponding to 20 per cent is fully met.

Employees' savings are one source of initial capital. From a legal viewpoint, there is no distinction between the employees' shares, i.e. the workers of a company and those of managers since they too are employees. However, there are companies with almost complete "worker ownership".

In some cases, state-owned enterprises used their own funds, i.e. their reserve accounts for raising the initial capital for the new company. Also, the social funds of the state-owned company were sometimes set aside as resources for share acquisition.

In other cases profits made by a state-owned company were used for setting up a loan fund open to all employees intending to become shareholders. After paying a subscription fee to become borrowers, employees were entitled to take out loans from this fund of 12, 24 or 36 months' duration.

Despite these initiatives to raise internal capital, the trend is for companies to also call on external investors to raise the needed capital and/or to allow for further investments.

Financial institutions are not involved at the early stage of ownership transformation. Only after formal incorporation can the private company apply for a bank loan. The reasons for this are legal. At the time of ownership change, the state enterprise ceases to exist legally and

¹ A leasing rate is calculated from total value of the state-owned enterprise, i. e. the total value is divided into quarterly or monthly instalments which have to be paid back over a period of up to ten years. The leasing rate is to be paid from the company's net profits after tax.

Interest is due on the remaining principal. This rate is calculated on the basis of 50 per cent of the official discount rate of the National Bank of Poland. Currently the rate stands at 38 per cent. Following the Act on Privatization, the interest rate applied to the lessee cannot be higher than 20 per cent even if the official discount rate of the National Bank of Poland is above 40 per cent. Interest rates on the remaining debts are considered as costs and can thus reduce the company's pre-tax benefits.

In order to establish the new private company, which leases the assets of the former state-owned company, the registration of share capital equivalent to 20 per cent of the value of the state enterprise is requested from the new company. This amount can be reduced to 10 per cent under certain circumstances (see regional aspects of privatization).

the new company takes over the old company with its assets and liabilities. But although the state enterprise disappears, the old company cannot apply for a loan until the signature of the Minister of Ownership Transformation is followed by a notary act between the founding body and the lessee. Hence for a period, there is no legal basis for a loan contract for the new company either. The ownership transformation process has to be completed before debt finance can be considered.

Table 2 gives a rough estimate of capital formation on the basis of 20 lease buy-out companies.

Table 2. Initial capital formation on the basis of 20 lease buy-out companies

Source	Percentage on initial capital	No.
Employees' saving	50-100	20
Management savings	3-10	20
Loans from any fund set up for privatization (including state-enterprise funds)	30-70	4
Normal bank loans	55-65	2
Other (investor/joint venture partner)	30-40	2

Source: Own inquiries.

3.2 Financial diagnosis after the take-over

After subscription of the initial share capital, the new private company leases the assets. The contract is an exchange of economic ownership rights against liabilities to the Treasury. Obviously, the leasing arrangement has an impact on the company's financial viability, profitability, liquidity and solvency, i.e.:

- debts represent up to 80 per cent of the liabilities;
- the assets leased cannot be used as loan collateral after the take-over;
- since liabilities are paid off from the company's current net profits, capacity for raising internal funds for investment is very limited.

Current asset financing, i.e. working capital, is very expensive and other forms are preferred. Various funds established for privatization, e.g. the Polish American Enterprise Fund or the Polish Development Bank do not seem to play a significant role in employee buy-outs. Credit lines established for financing privatization and regional development also are not used to their full extent. Important parts of donor assistance (the EU PHARE/STRUDER programme) are geared more towards enterprise creation or infrastructure than small-scale privatization. Moreover, the current market interest rates to enterprises is between 40 and 45 per cent. Hence, the problem of external finance is not only one of access but also one of cost.

Box 3

**Financial diagnosis based on a sample of about 100
enterprises in the framework of a research project carried
out by the Polish Academy of Sciences**

1. Stocks

1.1 Debt-equity ratios

Debt-equity ratios are generally very low. Average values found in the company sample stand at below 15 per cent. Moreover, as a consequence of the leasing contract most of the debts are long-term liabilities (instalment payments over several years). The average ratio of long-term debts to equity for the companies is 2.47 (with a high variance, i.e. in some cases enterprises have more than seven times long-term debts than equity). Differences exist in equity growth. Larger companies employing more than 300 persons, companies with dominant management ownership or strategic investors have above average equity growth rates. On the whole, the financial position of these companies, measured by their equity position does not allow meeting long-term liabilities — or does so for only very short periods

1.2 Investments

A relatively high level of completion of investments already started was observed in almost all of the companies reviewed. Smaller companies of up to 100 employees and companies in trade and services have lower investment rates than bigger companies employing more than 300 persons.

2. Flows

2.1 Current assets and liquidity

The share of current assets (using 1993 data) in total assets is 61 per cent on average. There is generally a high percentage of receivables and claims (between 40 and 60 per cent), high stocks in trade and services (on average 55 per cent of current assets) and an average of 20 per cent in cash. With regard to the liquidity position of these companies, it is important to analyse the high proportion of receivables and claims. These current assets cannot easily be converted into cash.

Current assets are financed to a great extent by different forms of liabilities, e.g. trade creditors. The proportion of bank financing is below 15 per cent, in the case of small enterprises even well below 10 per cent. Throughout the cases equity is used for financing current assets.

On average, current ratios, i.e. the ratio of current assets to current liabilities stands at above the "1" safety margin. However, using only the liquid part of the assets in the ratio (i.e. the quick ratio which does not take into account stocks) the corresponding values are below "1" which means that companies may not always be in a position to meet current liabilities out of their current assets. This is consistent with the above-mentioned fact that equity is used for financing current assets.

2.2. Turnover

Figures indicate a slow circulation of stocks. In addition, the cycle of collection of receivables is long. There is a general tendency for the collection of receivables to be longer than the stock turnover (measured in days). Together with a high liability turnover rate this is an indicator of inter-firm borrowing making up for lacking or inappropriate financial sector services.

Source: Pietrewicz, Jerzy: "Direction of transformation of employee-owned companies", in Jarosz, Maria (ed.): *Management employee buy-outs in Poland*, Polish Academy of Sciences, Warsaw, 1995, pp. 21-55.

3.3 Transfer or sale of shares

The question of transfer or sale of shares is often not explicitly regulated. Shareholders of the company can take over shares from other shareholders.

Ownership of the company and employment in the company are not necessarily correlated. A person who has assigned shares in a company can remain a shareholder even if he or she is laid off or retired. The requested share capital of 20 per cent of the enterprise's value must be held for the duration of the leasing contract. A person who wants to transfer or sell shares must theoretically find a successor to invest in the company.

4. The representatives of the workforce in the privatization process

As stated earlier, privatization in Poland is, to a great extent, a decentralized process initiated by enterprises themselves. This does not mean enterprises are always well prepared and this raises the following questions:

- What are the issues faced by the representatives of the workforce?
- What is the influence of workforce representatives at different stages of the privatization process?
- How can workforce representatives best be assisted?

Box 4

Who are the representatives of the workforce?

1. The employee council

The Law on Workers' Representation in State Enterprises (1981) stipulates that state-owned enterprises have three bodies:

- the general workers' assembly;
- the employee council;
- the board of directors.

Members of the employee council are elected for two years by all employees employed in the company regardless of their duration of employment. The employee council controls the board of directors. Members of the employee council can be members of a trade union committee of the company but employee council members do not qualify as union but company members. However, there are usually close contacts between employee councils and local trade unions' activists.

2. The supervisory board

State-owned enterprises operate under a supervisory board which is elected partly by the Ministry of Ownership Transformation, by the board of directors, and by the employees. Members of the supervisory board do not have to be employees of the company. There are also trade union representatives as well as employers' organizations' members on the supervisory boards who may not necessarily work at the enterprise. The supervisory board has no direct influence on the privatization process. However, this body is entitled to have access to documents prepared by the board of directors. It can make suggestions and give its opinion.

4.1 Initiation

The most important task of the employee council is to prepare the employees of the company for privatization. This may include:

- explaining the reasons for privatization;
- presenting its advantages and risks;
- formulating the company's objectives in privatization;
- defining social objectives;
- discussing with potential investors;

- sharing information with employee counsellors from other companies that have undergone privatization;
- managing expectations and any apprehension vis-à-vis privatization;
- acting as an intermediary between the board of directors and the workforce.

Discussions with employee counsellors about privatization tend to be dominated by simple considerations about who holds power. Privatization, and especially the issue of insider ownership is often misunderstood. Deeper understanding of economic and institutional issues is often lacking. In addition, it is also difficult for employees' representatives to call upon external assistance.

Assistance to the employee council in the process of initiation could consist of:

- listing examples of different privatization options in relation to the size of companies, prospects of current and future production and restructuring needs;
- a check-list comprising the enterprise status to collect various data relevant to external advisers;
- assistance in placing the enterprise in the proper context of market opportunities and risks;
- listing available subsidies, grants, etc. from regional and local development organizations;
- listing advisory agencies available locally, nationally or in Europe.

Knowledge regarding privatization, especially on how to finance employee buy-outs/ins is very limited in regions with a low level of privatization activities. External advisers can expect a climate of mistrust towards "outsiders", especially if they come from state agencies. Personal relationships play an important role and are often more decisive than technical expertise.

4.2 The company's decision

In principle, the employee council takes part in the decision-making process on an equal basis with the board of directors. However, with the state enterprise's transformation into a private company, the activities of the employee council (organ of the state enterprise) will cease. The new company will elect a supervisory body according to prevailing private company law. The persons on the old and new staff councils are not necessarily the same. Consequently, the decision-making stage is crucial to carry out the employee council's upstream suggestions into subsequent negotiations.

At this stage, therefore, the most important task for workforce representatives is to take a position on the privatization method and to play the role of effective intermediary between the workforce and the board of directors.

To the board of directors, the employee council should communicate:

- the social concerns and any apprehension of the workforce;
- any information gathered from the trade unions and/or contacts and supporting organizations;
- any concrete suggestions regarding lay-offs, retraining and early retirement.

Vis-à-vis the workforce, the employee council's role consists of:

- organizing a referendum within the company on the approval of privatization;
- forwarding information on the status of the privatization process to the workforce.

Employee councils do not seem to be involved in valuation of companies or in the preparation of business plans. However, in most companies employee counsellors indicated they have open access to these documents.

External assistance can focus on the lack of transparency of the valuation procedure by providing, for example:

- relevant documentation on general methods used in valuations;
- examples of different methods in discounting cash flows;
- spreadsheets containing priced assets of different branches which show the effects of different depreciation rates used in asset pricing similar to those used for corporate tax declarations;
- available information on how valuations should be carried out;
- examples of projected profit and loss analysis under different scenario/options.

The employee council and board of directors must cooperate. Although they may not have the same interests after privatization, it is important for the company to adopt a common position in negotiations. This should be taken into consideration by any external advisers as well as sensitive institutional aspects, for instance, the influence of particular company directors or the position of the *voivod*. For the time being, trade unions or specialized supporting organizations in the field of employee privatization are the only channel for directing technical assistance to employee councils.

4.3 The founding body decision

As the employee council begins to reduce its activities, its influence diminishes and, depending on the privatization method, it may cease to participate in the final negotiations prior to requesting the approval of the Ministry of Ownership Transformation.

Under these circumstances, the board of directors remains the only agent influencing both the internal position of the company during negotiations (which can take months) and vis-à-vis the founding body. In some cases, the employee council is left with only its veto right.

The employee council's tasks during the negotiations stage are as follows:

- ensure that its positions are taken into consideration by the founding body;
- act as a mediator between the workforce and the board of directors;
- contribute to a coherent position of the company as regards different external groups and interests within the company.

Assistance in negotiation is, in principle, available from the trade union. Trade union consultants who previously elaborated social pacts in cooperation with the employee councils were entitled to participate in negotiations with the founding body, especially in large privatization projects. *Voivodship* officials stated that a more active and constructive participation from trade unions would be welcome.

The problem seems to be the limited number of persons with technical skills and familiar with the political and institutional background under particular local circumstances. In this context, external assistance can facilitate contacts between employee councils and trade union experts at headquarters or employers' organizations or specialists of organizations in support of employee ownership.

4.4 Financing

In employee buy-outs/ins, the majority of the employees can become shareholders. This underscores the important role of workers' representatives, especially if workers are unable to raise the necessary equity, as is the case in four out of five enterprises.

Issues in financing employee buy-out/in that can be addressed by the employee council are:

- preparation and implementation of workers' assemblies concerning financial participation of the workforce in the privatization process;
- organization of the subscription of workers to share capital and use of corporate profits for loans to employees, or the use of the state enterprises' own funds;
- strategic planning for the post-privatization agenda and share-based remuneration including dividends.

Experience has shown the following:

- Good companies try to shorten the leasing period in order to acquire full ownership as soon as possible. Only then does their position on the financial markets improve significantly in terms of credit guarantees, etc. There is also a need for a moderate wage policy.
- Substantial investments are usually not carried out within the first three years. Investment increases only after all leasing rates have been paid off. If earlier, investment is only possible with outside investors.
- Excessive debt/equity ratios can be barriers to privatization. In the case of many remaining state enterprises, the survival prospects of an enterprise hinge on the cancellation of old liabilities. Enterprise councils often do not seem to grasp this.
- In a lease buy-out assets may be oversized for a viable business. Employee councils and supervisory boards must therefore also deal with questions of small enterprise creation as

a result of enterprise restructuring. Workshops can be set up as separate businesses, retail shops can be opened or other businesses subcontracted. These businesses can be part of the privatization plan or, in many cases, appear spontaneously.

Good bank/company relations require a solid financial position by the company; it is not the role of a bank in ownership transformation to provide financial re-engineering. In many cases, bank contacts improved when foreign partners were brought into the privatized companies.

With regard to other issues in financing privatization, only a limited number seem relevant to the representatives of the workforce:

- models for raising internal funds in the context of share capital formation using tax incentives and regional assistance funds;
- studying possibilities of using savings facilities in banks in connection with share capital formation with a possible link to long-term external financing.

Discussions with directors of enterprises and individuals involved in corporate finance often centered around the issue of credit guarantee facilities. A draft law enabling non-financial institutions (e.g. business or employers' organizations) to set up guarantee funds is under preparation. Two topics have priority on the agenda, with regard to post-privatization financing:

- guarantee schemes managed and owned by non-financial institutions;
- special investment funds for equity capital.

One can grade the level of influence of employee councils in decision-making in the following way:

- Level 1 None or minimal information: none or very little information about the respective stage of the privatization process was given to the employee council
- Level 2 Information: fairly detailed information was made available but there was no say in decisions
- Level 3 Opportunity to give advice: the management explained the problem to the employee council at the respective stage of privatization and asked for advice
- Level 4 Advice is taken into consideration by the management: as above, but the management's decision fully reflected the advice it received from the employee council

- Level 5 Joint decision-making: management and the employee council came together and analysed the problem. Management had as much influence and information as the employee council
- Level 6 Complete control by the employee council: the employee council was given its own authority to deal with the problems occurring in privatization

Based on this grading pattern, the influence of employee councils at the various stages of privatization in the enterprises studied was as follows:

Table 3. Influence and power of the employee council

Stage of privatization process	Involvement of the employee council (from 1 to 6)	Explanation
Initiation and elaboration of the privatization project	Mean value: 4-5	In most cases, comprehensive consultations took place, low involvement or information (2 or 3) was not reported in any case
Valuation of the company	Mean value: 1-2	Low information and involvement at this stage but strong concern expressed by employee councils
Amendments to the project after consideration by the founding body	Mean value: 3-4	In many cases same involvement as under initiation; however, influence diminished
Arrangements for employee shares	Mean value: 5	Clearly a concern of the employee council
Final negotiations with the founding body including price and/or leasing fees	Mean value: 2-3	Low influence; in five out of 20 cases only information was provided
Negotiations with banks, financial institutions or others	Mean value: 2	The employee council was involved in two cases at level 3

This model of the influence-power-continuum is taken from Heller F.; Koopmann, P.J.D.; Rus, V. (1988): "Decisions in organizations: A three-country comparative study" (London, Sage Publications), p. 66.

5. Trade unions, employers' and other organizations in support of employee privatization

5.1 The unions

There is no legally defined role for unions in employee privatization or even privatization in general. Union activities are generally governed by separate laws¹ which provide for a general legal framework at company level. The role of the unions in privatization depends

¹ These are the Massive Lay-offs Act (1990), the Employment and Unemployment Act (1990), the Trade Unions Act (1991), the Act on the Settlement of Collective Disputes (1991), the Act on Employee Benefit Funds, the Social Fund Act, the Ordinance on the Tripartite Commission on Socio-Economic Issues, the Labour Code.

on cooperation between employees' representatives and trade unions. Some employee representatives in state or private sector companies are unionized, others are not. When unions have representatives, especially in large enterprises, these shops are considered part of the trade union, not of the company.

As the employee council depends largely on the distribution of information within the company and good relations with the board of directors, the degree of trade union involvement is often a question of the goodwill of management.

Unions can assist employee councils in the following areas:

- economic and legal consultancies;
- assistance in negotiations with the founding body;
- participation in major regional plans such as the "Plan for Silesia" which deals with a significant restructuring of a whole industrial region — upper Silesia, the Katowice region — including closing down mines, restructuring steel plants, energy re-engineering, environmental issues and the related social dimensions, i.e. displaced workers, pension schemes, creation of employment societies, and so on;
- participation in the drafting of the Labour Code or in the Tripartite Committee on Socio-Economic Issues.

With increasing requests for assistance from employee councils, unions will be confronted with the need to redefine their role beyond the protection of workers' rights and the preservation of employment, to also encompass worker ownership in capital and profit-sharing schemes.

Up to now, unions provided more assistance on legal issues than on economic ones like wages, working conditions and lay-offs. The unions themselves lack staff with specific managerial skills and knowledge relevant to privatization and restructuring like quality improvement, training and development, and other human resource management issues.

Timing matters: contacts between the employee councils and the union's technical advisers usually were established at very short notice, sometimes leaving hardly any time to bring in substantial suggestions from the employees. In other cases, expectations from the employees were not realistic or union interventions did not live up to the expectations of employees. Providing assistance is closely related to the responsiveness of the partners and to being able to ask for timely advice.

Post-privatization involvement by trade unions is linked to changes in employee representation once the company is privatized. The supervisory board, as the representative body after privatization, represents the owner of the company. Its main task is to supervise the board of directors. It also has a veto right. However, the supervisory body has no statutory right to make suggestions or take initiatives. The representation of union members in supervisory boards is significantly low and more than 60 per cent of private sector companies are not unionized.

Deficits in terms of skills, knowledge, experience and competence affects union staff called to advise on the analysis of financial statements. Development of such skills would enhance the unions' credibility in commenting on privatization proposals.

Legal advice, while generally more readily available, tends to be given in abstract terms, based on legal text references; a more case-oriented approach emphasizing best practices would be more effective. The raising of internal funds to acquire the requested portion of

employee share ownership is primarily a question addressed by employee councillors, or by special committees set up under their guidance. This was an important issue for the employee council where assistance from unions would also be needed.

Box 5
The Gdańsk Bank for Employee Ownership
(Bank Własności Pracowniczej, Gdańsk, S.A.)

The Gdańsk Bank for Employee Ownership was founded in 1990. Its main shareholders are 14 organizations in service and manufacturing and among them seven financial institutions from different regions of the country.

The Bank has specialized in the financing of employee lease buy-outs and has so far carried out some 40 such operations. The Bank has developed a financial technique adapted to this process:

- a company interested in leasing privatization buys certificates of deposit from the Bank;
- based on this the Bank extends a loan to the company at well below market conditions. The loan is to be repaid within three years. The money can be used for share acquisition or payment of leasing rates;
- the state-owned company is transformed into a private sector company;
- after three years the certificates of deposit are refunded to the company with interest;
- the money can be used for paying subsequent leasing rates or for financing new investments.

No guarantee is requested for the loan, taking account of the certificates of deposits. The Bank requests personal liability from the creditors in the form of savings accounts, which can be used as collateral.

The Bank exerts close monitoring and supervision of the current affairs of the client organizations. Moreover, it offers business advisory services when requested.

5.2 Employers' organizations

The Polish Employers' Confederation consists of 52 local and regional employers' organizations. Employers' organizations are new institutions in Poland with comparatively small full-time staff and limited capacity. Employers' organizations see their role in privatization within the broader context of legal and institutional transformation of the Polish economy. They seek to have their views reflected in reporting the legal environment and in new labour relations practices. An employers' organization which represents the interests of free market enterprises is an institutional innovation.

In Poland employers' organizations are active in:

- influencing parliament in the field of labour policy and legislation and in participation in tripartite bodies that formulate legal texts on labour relations;
- influencing the administration and trade unions in restructuring processes;
- developing training materials, human resource management methods and the creation of conditions for productivity improvement and for development of small enterprises;
- public relations including promoting a culture of entrepreneurship in Poland.

When questioned on employee buy-outs/ins, employers' organizations mentioned a number of problem areas:

- the length of the procedure required to reach full legal ownership;
- diffusion of share-ownership;
- insufficient autonomy of the board of directors;
- weak cash-flows and thus difficult financial relationships with banks;
- poor management.

Other problems were seen in the legal environment:

- the new labour code is heavily influenced by trade unions;
- there is an asymmetry of influence between employers' organizations and trade unions;
- tripartite consultations do not always bring the expected results and cooperation with unions in the field of privatization could be improved.

Local employers' organizations occasionally provide assistance in employee privatization projects. They provide business advisory services, information on suppliers of goods and services and consulting services in marketing. International contacts also are provided in the field of trade, investments, and know-how.

Concerning more direct interventions at corporate level, the contributions of employers' organizations are more focused on post-privatization issues such as networking, market access, and influence on the business environment.

5.3 Regional development agencies and regional strategies

The STRUDER programme (structural adjustment in selected regions) which operates in six Polish *voivodships*¹ is of nationwide importance. Regions were chosen both for their extent of restructuring problems and their potential for recovery. In order to support the restructuring process of a region and to ensure coordination, regional development agencies have been founded. The STRUDER programme operates in four areas:

- (1) regional development:
 - creation, initiation and strengthening of regional development agencies, foundations and councils, and long-term technical assistance promotion to the regions.
- (2) training and consulting:
 - courses on enterprise creation and consulting by a specifically created consulting network.
- (3) regional financing:
 - setting up grant schemes for enterprise creation and a credit guarantee fund that works in cooperation with selected banks in the regions;

¹ These are Katowice, Rzeszow, Olsztyn, Łódz, Suwałki and Wałbrzych.

(4) small-scale infrastructure:

- financing and implementing projects aimed at facilitating creation and management of small- and medium-scale enterprises (business incubators, technology parks) as well as improvement of physical infrastructure and telecommunications.

While the STRUDER programme is not explicitly directed at privatization projects, it has helped to create a supportive private sector environment, through the availability of rapid administrative services, business advice, and the creation of groups of individuals and organizations with similar interests. This is particularly the case in Łódź.

The Polish Government's regional development policy is based on investment/income tax reduction measures, accelerated asset depreciation and guarantees for loans from investment banks.

People involved in employee buy-outs/ins are not always aware of these opportunities and there is need for more transparency and information on opportunities for local networking, fact sheets and bulletins and reports of regional and local development organizations.

6. Conclusions

6.1 Main outcomes of the study

At the initiation of the privatization process, the workforce is often not aware of options available between various methods of privatization. Companies that have undergone privatization earlier are the main source of information. Even where information on different privatization models is available, the representatives of the workforce often do not have the capability to analyse these different methods with regard to their own company.

While the pre-privatization stage is characterized by a spirit of joint decision-making between the board of directors and the employee councils, after the take-over interests often diverge particularly when it comes to negotiating employment, wages, social plan, lay-offs, etc.

The negotiation of the take-over itself is highly influenced by political and institutional factors. Where the company is represented only by its board of directors, the influence of the employee council depends on the internal information policy of the enterprise.

There is no direct relation between workforce representatives and financial institutions. Financial aid for ownership transfers is very difficult to obtain. In view of the difficulties in obtaining external financial resources, experience in savings mobilization for internal capital formation are all the more relevant.

6.2 Prospects of employee privatization

Two different types of employee privatization are likely to have different impacts on the role of workforce representatives, the focus of the assistance needed and the management of the privatization process as a whole:

- (1) When the initiative to privatize comes from the privatization agency in the form of a direct sale of the enterprise concerned, the representatives of the workforce will be requested mainly to protect the workers' interests and may be urged by the workforce to reject suggestions or concrete actions not believed to be in their interests.
- (2) When the initiative comes from the enterprises themselves the focus of advice needed is on the privatization proposal. Employee privatization may be difficult when restructuring is needed and privatization proposals will have to deal with the search for strategic investors. The role of the employee representatives is more likely to be constructive in terms of its contributions to the privatization project.

6.3 Tools for the design of employee involvement in privatization

The design of these tools should be oriented by replies to the following guiding questions:

- Do employees identify themselves with the company's objectives in privatization and is there a positive attitude towards privatization? (good conditions for mobilizing savings for capital formation)
- Is privatization perceived as a trade-off or as a means to avoid closure while few or no alternatives are available? Will people leave if effective alternatives arise? (this will lead to "calculated" involvement only)
- Is the attitude towards privatization passive? (this will lead to limited financial contributions only)
- Is there a negative attitude towards privatization, i.e. participation in the process only because of a lack of alternatives? (effort is likely to be minimal and employee actions may attempt to undermine the process)

These different attitudes and conditions need to be addressed by different strategies.

In order to increase involvement, the following questions may be raised on how consultations can be made more effective:

- Do consultations make full use of the technical and managerial expertise available amongst employees?
- Do employees feel like saying "I could have told them that if they had asked me"?
- Do consultations allow for an honest discussion of the objectives of privatization?
- Do consultations create a sense of ownership?
- Do consultations allow for the articulation of diverging, or even opposing points of view between different groups?
- Are consultations structured in such a way that they lead to increased influence over decisions?

Involvement strategies in privatization

Approach	Used when -	Advantages	Disadvantages
Education and communication	there is lack of information or available information cannot be analysed in order to make a decision	Once persuaded, people will often participate in the process	Time-consuming, difficult when many people are involved
Participation; information is taken into account	one party (management) does not have all information or power necessary to design and carry out the process	Participation can create commitment to change; information and assistance may be provided	Time-consuming information; suggestions can be inaccurate or false
Negotiation; collective agreements	groups resist; (employees) may clearly lose in a change	Provides a way to avoid major resistance; conciliatory way to solve interest clashes	Requires resources to be available to safeguard employment, or fund early retirement.
Explicit or implicit coercion	Speed is essential; initiators of privatization possess considerable power		

Adapted and taken from: Kotter, J.P. and Schlesinger, L.A. (1979): "Choosing strategies for change", in *Harvard Business Review*, Mar.-Apr., pp. 106-114.

Evidence from Polish privatization suggests that the following can undermine consultations:

- fear of threat to individual or group power and status;
- mistrust or the withholding of relevant information;
- antagonistic labour relations;
- very hierarchical organizations;
- limited flexibility in the management of the process or lack of autonomy of the parties involved.

Conversely, factors that can enhance consultations are:

- good relationships between management and representatives of the employees prior to privatization;
- involvement at an early stage;
- clarity of strategy;
- access to information;
- experience with teamwork at the plant level;
- comparatively good market performance of the company.

6.4 Technical issues to be addressed by employee representatives

Employee representatives should address the following issues at different stages of the privatization process. The list can be used as a check-list to design technical assistance to employee privatizations and restructuring.

STAGE: Initiation and decision-making within the company:

- provide examples of different privatization options in relation to size of company, market prospects, and restructuring needs; develop economic arguments in support of privatization options;
- work out a check-list of enterprise-level data and its environments of relevance to external advisers; acquire the capacity to identify needs and to call the most suited external expertise;
- review regional strategies; assess the specific local context of the enterprise and its risks and opportunities; identify available support from regional and local development organizations;
- prepare profiles of locally available advisory agencies;
- develop a handbook for non-specialists on methods used in valuations; enable employee councils to assess valuation methods and results, and defend their choice in disagreements with the privatization agency;
- collect and disseminate examples on profit and loss analysis; analyse labour cost in the corporate cost structure to strengthen arguments regarding social concerns.

STAGE: Negotiation with the privatization agency:

- work out a strategy for employment guarantees and conditions for termination of employment after privatization;
- review the structure of contracts after ownership transformation for both permanent staff and contract staff;
- prepare a wage plan, including profit sharing plans;
- ensure access to information and codetermination issues at enterprise level;
- provide a framework for activities of trade unions and other interest groups;
- plan training and human resource development strategies for employees.

STAGE: Internal fund raising and external financial relationships:

- collect information about models for raising internal funds within the context of share capital formation;
- collect information about available tax incentives and regional development funds;
- study savings facilities in banks in connection with share capital formation and possible links to long-term external financing;
- examine the applicability of existing credit guarantee schemes in non-financial institutions;
- review the feasibility of special investment funds for equity capital.

STAGE: *Training and organization development:*

- analyse training needs;
- suggest restructuring options, e.g.: work group team-building; task reorganization and special purpose teams; departmental reorganization; spin-offs;
- suggest individual job redesign;
- suggest a new incentive-based remuneration system;
- work out social plan measures, retraining and early retirement.

Annex 1

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Questionnaire

This is an inquiry on privatization of companies in Poland having undergone the "privatization through liquidation way" according to article 37 of the Act on Privatization. The International Labour Office (ILO), in its capacity to support the activities of workers' and employers' organizations is interested in the role management, employee council and the workforce have played in the privatization process of companies in different sectors and regions in Poland. In order to strengthen and focus the guidance and support of the ILO to social partner organizations in Poland we ask you to fill in this questionnaire. The information provided will be kept strictly confidential. Thank you.

(A) General information about your company

Name of the company		
Location/Voivodship		
Branch(es) of activity		
Number of employees		
one year before privatization		
at the time of privatization		
at present		

(B) Information about the privatization of your company

- (1) Who took the initiative to privatize the company (for example the management, the supervisory body, other)?
- (2) Referring to article 37 of the Act on Privatization, which is exactly the type of ownership change your company has undergone? Please specify the percentages, if possible.

Direct sale to management and/or employees	
Joint venture with Polish investor	
Joint venture with foreign investor	
Leasing	
Mixed form of the above	

- (3) Who decided on the concrete form of privatization your company has undergone (for example, Ministry of Ownership Transformation, other)?
- (4) We would like to know to what extent the representatives of the workforce (the employee council) have been involved at the different stages of the privatization process in your company. There are six possible levels of involvement of the employee council and/or amount of information received.
1. No or minimal information
 - no or very little information about the respective stage of the privatization process was given to the employee council
 2. Information
 - fairly detailed information available but no say in decisions
 3. Opportunity to give advice
 - the management explained the problem to the employee council at the respective stage of the privatization and asked for advice
 4. Advice is taken into consideration by the management
 - as above, but the management's decision fully reflected the advice it has received from the employee council
 5. Joint decision-making
 - management and employee council came together and analysed the problem. The management hereby had as much influence and information as the employee council
 6. Complete control by the employee council
 - the employee council was given the authority to deal with the problem occurring in the privatization on its own

What was, in fact, the involvement of your employee council?

Stage of the privatization process	Involvement of the employee council (from 1 to 6). Give details, if possible
Initiation, elaboration of privatization project	
Valuation of the company	
Amendments of the project after consideration by the founding body	
Arrangements for employee shares	
Final negotiations with the founding body including price and/or leasing fee	
Negotiations with banks, financial institutions or other?	

(C) Privatization and finance

(5) Where is the capital for financing the privatization provided from?

Source of financing	Percentage (%)
Personal savings of the employees	
Personal savings of the management	
Loan from any fund set up for privatization	
Normal bank loans	
Other	

(6) What is the experience of the employee council in relation to banks and other financial institutions, where do you need assistance and guidance? Please also explain the main problems for the employees in financing the requested amount of employee shares in the privatization deal.

(7) In the following you will find a number of current issues in business management. If you think the respective issue is **currently** of high priority for the company and thus also for the employee council, mark a "1" in the corresponding box, if you consider the issue of lower priority but still needing advice, mark a "2", if you think your company copes quite well with the issue, mark a "3".

Issues	Priority
Providing training in connection with privatization	
Finding new markets, increasing exports	
Finding partners for joint ventures	
Financing new capital investments	
Paying the leasing fee and other charges	
Getting affordable business advice (marketing, finance, legal problems, etc.)	
Other (please specify)	