# MISSION REPORT

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## 1 -THE LAW ON PUBLIC ENTERPRISE (LPE)

### Principles for a new Law on Public Enterprises and its secondary texts.

Some basic principles are first to be agreed. The question is to ensure that this text has a clear, adaptable approach and provide room for development by stage in the public utilities sector, especially when are at stake:

- Consistency of this draft Law with sectors Laws and local self-government Law. Especially for water and wastes.
- Consistency of this draft Law with the regulation issues (existing legal rules and institutions, and foreseeable rules and institutions to be adopted such as the Energy Regulatory Committee) such as rules on tariffs, control, judicial recourses;
- The taking into account of the "acquis communautaire" in the field of public utilities (Universal Services) and State aids related matters, keeping in mind the necessary progressive approach.
- Consistency of the secondary legislation with the primary Law .
- Besides the new Law on concession, It is important to stress that contractual schemes and arrangements with private operators, taking into account that many of such schemes and arrangements are often to be agreed at a local (self government) level. Thus, LPE must not only be consistent with the Law on concession, but leave room to the experience gained in the Western Europe Countries, by taking advantages of contractual practices and tools, in each public utilities sector and sub-sector.

### The Constitutional background.

According to its Article 56, the Macedonian Constitution provides that *«all the natural resources of the Republic of Macedonia,... are amenities of common interest for the Republic and enjoy particular protection."* Therefore, it leaves room for the State to determine how and by whom the natural resources will be used. It is clear, there no obligation arising out of the Constitution

### Overview of the current Law

The Law on Public Enterprises (LPE) of 1996 contains the legal framework for defining, establishing and functioning of the public enterprises. It is, apparently intended to be a framework Law for all the public enterprises.

If articles 1 to 4 may be seen as organising the general structure of public enterprises in Macedonia according to the system and principles of "economic activities of public interest", those articles must be read together with the other parts of the Law, even if those part provide contain regulations which are not touched and affected by EU-regulations. Therefore there is a need to consider the Law as a whole.

In accordance with article 1 of this Law[1], for the purpose of performing "economic activities of public interest", public enterprises are being established. Paragraph 2 of this article defines the economic activities of public interest as activities that are an irreplaceable condition for life and work of the citizens, for the legal persons and for the state bodies.

In article 2 of this Law also are listed the economic activities of public interest which concern public Utilities such as Energy, railway transportation and public transport of passengers, air transportation, telecommunications and postal service, pipeline transportation of oil and gas, as well as administrative, social ,tasks as the system of radio and TV links, management with forests, waters, pastures and other kinds of natural wealth, spatial planning and regulation, communal activities, veterinary services, and Sport.

At this stage, some observations are to be made.

- The domain or the Law is not limited to the sectors expressly listed in article 2. Laws (other Laws) may define other economic activities.
- The Law is rather unclear and may give room for contradictory interpretation. Thus it is not clear if it is an option or not, for the State or municipalities to establish public enterprises when activities in the areas mentioned mentioned in article 2, are at stake.
- A public enterprise is not only a company fully owned by the State or a municipality, but can also be a limited company or a joint stock company, in which the government or a municipality could detain only a minority of the capital (article 4).
- Thus article 2 paragraph 2 states that:

  *"The conditions and ways of carrying out these activities, as well means for carrying out the public interest from the paragraph 1 of this article shall be regulated by a Law"*

  Article 3 para. 4 states that:
  *"Legal and natural persons can carry out activities of public interest under conditions and in a manner defined in this Law and in other Laws".*

  This is confirmed by article 49 para. 2 (Transitional and final provisions), according to which:
  "*The enterprises performing economic activities of public interest are obliged to harmonize their organization and operation with this Law and with the Law that regulates the conditions and manners for carrying out economic activity of public interest, within 6 months from the day when this Law enters into force".*

[1] "Article 1: The public enterprises are established for the purpose of carrying out economical activities of public interest. Economical activities of public interest are activities who are indispensable for the life and work of the citizens, for the life and work of the legal entities and for the state institutions and bodies."
"Article 2: Under "economical activities of public interest" are considered activities or specific actions of these activities, through which the public interest is being carried out in: the energy sector, railways traffic and public transport of passenger, maintenance of the travel network, the air traffic, the telecommunications and postal services, the system of radio and TV links, the pipeline for oil and gas, utilization of forests, waters, pastures and other kinds of natural resources, planning and arrangement of areas, public utilities, veterinary and sports, as well as in the other economical activities defined by Laws".
The conditions and ways of carrying out these activities, as well means for carrying out the public interest from the paragraph 1 of this article, will be defined with separate Law.

That could mean that the criteria to define a public enterprise is the following: All activities (of public interest) carried out in the areas mentioned in article 2, lead the enterprise undertaking these activities (which may be a legal (private) or natural person) to be submitted to the scope of application or the LPE and to the (specific) mentioned Law. There is no distinction in this text between purely private owned enterprises, purely State owned companies and public-private owned companies. Therefore **every enterprise operating in the said areas would be submitted to the public enterprise regime**.

We can interpret the "separate Law" mentioned in article 2.2 as being the Law regulating the considered sector (energy, railways traffic, etc).

- The Law starts from a functional approach ("Economic activities of public interest"), to define its scope a application, in order to finally submit to a poorly defined public enterprise regime, every company carrying out activities as defined in its articles 1 and 2. *("The conditions and manners of carrying out these activities*" according to article 2 para.2 and article 3 para.4)

- This leads to a legal uncertainty and to possible contradictions between the LPE and sectoral Laws. The latter can provide with rules contradicting the ones of the LPE, as regards for example the statute, the organisation, the bodies, the status of the employees, of the enterprise.

- These contradictions are or will be obvious in the case of private companies operating public utilities. Contradictions with the new Concession Law are to be highlighted.

- Article 5 paragraph 2 leave open the possibility, to grant State aid (or municipal aid) to Public enterprises, in accordance with the Law that regulates the conditions and manners for carrying out economic activity of public interest. That does not meet the requirements of the EEC Directive on the transparency of financial relations between Members States and public undertakings.[2]. The same can be noticed for article 30

- Submission to a public enterprise status of every company carrying out activities as defined in its articles 1 and 2, is subject to the regime of public enterprises provided for in Articles 5 to 42 and 43 to 48 of the LPE.

In other words, according to the LPE a public enterprise is defined by the fact it is carrying out a public activity of a public interest (Article 1 of the Law: *"The public enterprises are established for the purpose of carrying out economic activities of public interest"*). It would follow that any enterprise operating in a domain so defined by the Law is subject to the whole LPE and become a public enterprise. In a sense, LPE may be considered as Nationalisation Law. This Law is a fortress standing again any move to commercialisation and privatisation of public enterprises in Macedonia. This public enterprise definition is also not in compliance with the EU Law which makes a difference between public enterprises within a private market organisation and public enterprises operating specific public service obligations.

This Law creates a permanent confusion between economic activities of public interest which have to be performed according to the criteria of continuity, equality, affordability, universal

[2] Commission Directive 80/723/EEC amended by Directives 93/84/EEC and 2000/52/EC (OJEC L 29.7.2000).

service, and Public enterprises. One should avoid reference to non defined other laws or non defined other provision of the same Law as it is often the case in the LPE. The LPE should, for these grounds, be restructured on the basis of a clear definition of what a public enterprise is[3], governing only public enterprises and not addressing topics which should be dealt with by others Laws. Separate Laws such as a Law for granting licences (which can be included in the Law on Concession), or rules on the regime of Services of General Economic Interest (this wording, being the EU one, could be retained instead of "economic activities of public interest") or on the control of State aid, inserted in transversal or Sector laws, should strictly be based on the EU legislation and documents[4].

As for the LPE provisions on granting the licences, there might also be a conflict with EU-law.

Many provisions, viewed in the LPE and never taken, could be on this occasion, detailed and adopted in a set of legislation, including the new Law and implementing regulations.
This set should be limited to precise rules on :

- Establishment of Public undertakings (Procedures, creation act, statutes defining its powers and competency);
- Organization, (rules and principles of organization).
- Establishement of Branches and subsidiaries
- Institutional relations or kind of association with other enterprises
- Rules on governing bodies (general management, board)
- Rules on conflict of interest
- Rules and procedures for public aids in accordance with EU legislation.
- Respective powers of these bodies
- Working relations, personnel statute
- Accounting and reporting
- Internal audit
- Public control.

A general procedures manual (to be adapted by each kind of public undertakings) should be adopted, as well as a guide describing the articulation of the new public undertaking Law, on other Laws (Which and when rules of Public Procurement Law, of the Concession Law, of the commercial or Company Law, for example, should be implemented by the public undertaking).

**General context of the Law justifying changes: The needs and limits for a Law on Public Enterprise.**

In modern economies, complex set of Government bodies have been created on a case by case basis, without a global and systematic reflection. This is the case, in many west European counties , where law on public enterprises owes a lot to the Case Law developed by Courts.

**The criteria to be taken into account when drafting a Law on public enterprises.**

[3] The EU definition of «public undertakings» could be usefully retained. According to the Directive 2000/52/UE amending Directive 80/723/EEC on the transparency of relations of financial relations between members States and public undertakings, a public undertaking means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, thier financial participation therein, or the rules which governs it. Definitions of public authorities (which includes State, regional, local and all other territorial authorities, and definition of dominant influence are further given in the Directive.

[4] The Green paper on services of general interest. COM/2003/0270/ Final, presented by the Commission

The needs for the public enterprise

These needs are based on:

- Variety
    - of individual situations for PE, rules of organisation and accountablility mechanisms;
    - of control and accountability mechanisms, the central reporting ministry has to manage.

- Readability/clarity of the institutional system for citizens's trust in the institutional system.

Limits of a Law on Public Enterprises

For many reasons (need of efficiency, of long term fundings, etc), the trend in developed economies, is to transfer activities of public interest, undertaken before by public entities, to private sector enterprises Therefore, there is a strong need to start with a different approach of the legislation applicable to the public sector. It does not concern only the Law on public enterprises, but also the Law on public procurement, Law on concession, Law on local governments.

The EU rules applies, not based on the Public or private status. Article 295 of the Treaty provide that that the Treaty is in no way to prejudice the rules in Members States governing the system of property ownership.

From the Organic criteria to the functional criteria to decide the applicable rules

Progress of the European Union legislation has highlighted this approach; In the procurement area for exemple, the UE rules are to be implemented, without regard to the status of the enterprise. The above remarks on the current Macedonian LPE go in the same direction.

**The functional approach of the EU Law versus the traditional institutional approach in planned or semi-planned economies.**

The term «public sector» covers all public administrations together with all enterprises controlled by public authorities (There is often confusion between the term «public service» and the term «public sector»). The term «public undertaking» is normally also used to define the ownership of the service provider. The Treaty provides for strict neutrality. It is irrelevant under Community Law whether providers of services of general interest are public or private; they are subject to the same rights and obligations. One could even says that the question of a law on public enterprise is irrelevant to EU law problematic and approximation.

**The core matter of regulation**

Consistency of this Law with the regulation issues should be considered (existing legal rules and institutions, and foreseeable rules and institutions to be adopted such as the expected Energy Regulatory Committee) such as rules on tariffs, control, judicial recourses;

The taking into account of the “acquis communautaire” in the field of public utilities (Universal Services) and State aids related matters, this being balanced by a necessary progressive approach should also be carefully considered.

There are also substantial reasons to draft a new Law. It must be stressed that the existing legal framework for public utilities in Macedonia may be an obstacle for operating within the framework of the EC Law. Its unclear aspects, contradiction with other Law (concession Law) do not provide for legal security and predictability, which are major subjects

Service of General Economic Interest (SGEI) and exemption from application of the Treaty rules

Article 16 of the Treaty confers responsibility upon the Community and the Member States to ensure, each within their respective sphere of competencies, that their policies enable services of general economic interest to fulfil their missions. It spells out a principle of the Treaty although it does not go far beyond. Article 86(2) implicitly recognises the right of the Member States to assign specific public service obligations to economic operators. It sets out a fundamental principle ensuring that services of general economic interest can continue to be provided and developed in the common market. But providers of services of general interest are exempted from application of the Treaty rules only to the extent that this is strictly necessary to allow them to fulfil their general interest mission[5].

Therefore, in the event of conflict, the fulfilment of a public service mission can effectively prevail over the application of Community rules, including internal market and competition rules, subject to the conditions foreseen in Article 86 (2)[6] .Thus, the Treaty protects the effective performance of a general interest task but not necessarily the provider as such.

**Rules needed in a Market Economy Legislation (flexibility)**

Confusion on the notion of public service and public enterprise

The wording "Economic activities of public interest" used in the Law on Public Enterprises (LPE) of 1996, appears to be close to the one «service of general economic interest», used in the Treaty, in Directives and recently in the Green paper on services of general interest[7]. However, the term «services of general interest» is used in the Green Paper only where the text also refers to non-economic services or where it is not necessary to specify the economic or non-economic nature of the services concerned.

It can have different meanings and can therefore lead to confusion. The term sometimes refers to the fact that a service is offered to the general public, it sometimes highlights that a service has been assigned a specific role in the public interest, and it sometimes refers to the ownership or status of the entity providing the service.

[5] Article 86 (2) provides: «Undertakings entrusted with the operation of services of general economic interest ... shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in Law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community»

[6] In its Communication on Services of general interest in Europe of 2000 the Commission explained the three principles that underlie the application of this provisions, i.e. the principles of neutrality, freedom to define and proportionality

[7] Green paper on services of general interest/* COM/2003/0270 final (Presented by the Commission)

The following definition can be accepted: Public service means, for all sectors, services provided to the public in the exercise of governmental authority, which means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

The green paper must also not be taken as the definitive view of the EU, since it is not exempt from contradictions

The term «public service obligations» used in the Green Paper refers to specific requirements that are imposed by public authorities on the provider of the service in order to ensure that certain public interest objectives are met, for instance, in the matter of air, rail and road transport and energy. These obligations can be applied at Community, national or regional level.

- Need to establish limited types of agencies, public bodies or authorities, as appropriate, justifying the choice of their organisational fom and to set government wide criteria for their establishment, principles for their good governance, and their accountability mechanisms
- Need to establish a clearer division of responsabilities, roles funcitons and relationships between the board, the Chief Executive, and the line Ministry and to adress the need of a real power for the Board, political accountability and control by the line ministries.
- Strengthening their accountability for the management and performance of this latter bodies
- Need to establish mechanisms to improve the transparency of nominations of chiefs executive and board members, independant and regular review mechanisms.
- Need to provide for regular publication of senior managers and boards members private and professional interest
- Need to provide management autonomy , to implement result oriented management and budgeting
- Need of transparency as regards appointment of Board members, their capacity, and their selection for professional capacities rather than their representativity of a Party or other interest group.
- Need of strategic management by kind of activity in order to allow a more proper allocation of human and financial ressources.
- Need of clearly defined indicators, outcomes and outputs
- Need of multi-year financial and budgeting systems
- Need for monitoring mechanisms
- Need of regular report on outputs and outcomes
- Need to provide policy documents such as corporate and business plans, statements of intent, review of activities, performance against targets and future stategy.

## 2. OTHERS LAWS RELEVANT TO PUBLIC ENTERPRISES: TRANSVERSAL LAWS

The Law on Public Enterprises is not the only Law referring aspects of public enterprises. Other Laws are linked with the legal environment of public enterprises are in particular

- the Law on Self-government,
- the Law on Concessions,
- the Law on Communal Activities and
- the Law on Public Administration and Public Bodies.

Articulation, consistency of these Law with LPE and consistency of these Laws themselves with the requirements of UE Law must be developed and should be part ofa specific project.

The service of general public interest (public services) in the municipalities

To estimate the needs of reform it is necessary to face the status of the public utilities in the municipalities of Macedonia. There exists a big non-profit sector which is partly organised in different manners laid down in the Law on Communal Services. The substantial difference between these types of organisation, particularly between public enterprises and public utilities often is not clear. But in general one may say the typical aspect is the public ownership of public undertakings as well as of public utilities. Nevertheless, for the purposes of this project it would be useful to clarify the different terms.

The Law on Communal Activities of 1997 regulates the elementary conditions and the manner of performing of the communal activities, financing of the communal activities and other issues of importance for the communal activities. It has to be pointed out that the list of communal activities, which is defined in Article 3 of the Law on Communal Activities, is partly overlapping with the definition of "economic activities of public interest" of Article 2 of the Law on Public Enterprises.

In addition to these lists of communal activities further duties and rights of the municipalities are stated in Article 17 of the Law on Local Self-government, which defines the original responsibilities of the municipalities which also are carried out partly by public utilities.

Characteristic for all activities of the municipality is that they have to be carried out in accordance with the law. That means that they are limited by the laws which define the conditions and the manner of operation. Within these borders the competences of the communal services are specified by communal orders.

There is no doubt that the existing legal system of the communal activities partly is hindering the efficiency of their work. But it must be pointed out clearly that all these questions, which are to be resolved in the near future, do not touch the framework of the EU-law. In the praxis of the public utilities on communal level there are only two aspects which might be controversial to EC-regulations. The first is the practice of cross-subsidies which takes place between the branches or divisions of public utilities and which equalizes profits and losses. There is no doubt that this is against the principle of transparency which is stipulated in several EU-regulations.

The other problem is the way in which concessions and licences are granted, which, it may be assumed, is not always in line with open tendering procedure. This should be a question which should be clarified also in the framework of the Macedonian Law on Concessions.
It is a fact that presently the legal fundaments of local self-government are undergoing a process of great changes. Thus, it is difficult to specify the actual necessity of a reform vis a vis the law regarding the public utilities, public enterprises and public services of the local self-government.

On the other side it has to be taken into consideration that nowadays there is a big shift from carrying out all activities of public interest by municipalities by themselves towards transferring these activities to private entities under the flag of commercialisation, separation and privatisation. The content of these terms is defined in different ways, of course. Thus privatisation does not mean to privatise the ownership of the municipalities in the different sectors of public services but to give concessions to private entities for operating these services. However, there aren't any obstacles of general background against the idea of involving private enterprises to carry out "economic activities of public interest".

Given these reasons it is necessary to stipulate some legal milestones in the Law on Public Enterprises which has had to be amended so far. These milestones could also define the dimensions of privatisation and specify the sectors which should not be privatised in any way, such as water supply.

**The need for a Law on Public-Private local Companies (Société d'économie mixte locale).**
General interest Services could be performed at the local level by Joint Stock companies or limited liability companies. Article 4 of the LPE lays out this possibility in a very general manner, which prevents any satisfactory development of such local joint stock company. Experience in other European countries with such institutional forms has proven to be very successful in providing general interest Services, which otherwise would not have been provided or would have been provided at a much higher cost[8].
A specific Law is necessary. Such a Law could provide flexibility and a lot of opportunities for investment, financing, better management. Such companies could use the form of commercial companies, whose stock could be shared between Municipalities or a Municipality and public or private partners. Foreign municipalities or foreign local governments could also be partners. Majority of the Capital should stay with Macedonian municipalities. Such companies could benefit from the flexibility provided by the application of laws applicable to private companies, except the rules specially laid down in the Law to protect public interest. Municipalities could grant concessions or licences to such companies, thus having a control over these general interest services, as grantors of licence or concession, as well as a direct control as dominant shareholder. Such companies could be used to manage such or such services in a given area (for example water supply or road maintenance). The law could foresee that the company may intervene for municipalities or any person who is not a shareholder, thus having profit activities which can help to their profitability. Legislative provisions on shareholder current accounts could generate flexibility in financial management, while respecting EU rules on State aid. Such legislative instruments need of course to be supplemented by rules to prevent corruption and possible misuses or mismanagement of public funds. Therefore a precise and comprehensive law is needed to render such local development tool operational, in the context of Macedonia

## 3. OTHERS LAWS RELEVANT TO PUBLIC ENTERPRISES: SECTOR LAWS

Many public enterprises with special issues are organised in special Laws. According to its Article 2 of the LPE, the conditions and ways of carrying out, as well means for carrying out the public interest from the paragraph 1 of this article, will be defined with separate Law. So the list of economic activities of public interest which are described in Article 2 of the Law on Public Enterprises in many fields, is transmitted and implemented by special Laws such as:

- the Law on Energy,
- the Law on Macedonian Railways,
- the Law on Public Roads,
- the Law on Telecommunications,
- the Law on Broadcasting Activity, etc.

[8] See for example in France the Law on the Sociétés d'Economie Mixte locales N 83-597 of 7 July 1983 as amended, which has permitted the development of a full range of general interest services, (Articles L.1522 and following of the 'Code des collectivités territoriales")

These specific Laws must be drawn into consideration when dealing about the necessity of a reform of the public enterprises legislation, because they are based on the LPE. Indeed, the Law on Public Enterprises is an Umbrella Law. The LPE takes a very large view of "economical activities of public interest" and considers as such, activities which go far beyond activities in the sector of public utilities[9].

Articulation, consistency of these Law with LPE and consistency of these Laws themselves, with the requirements of UE Law must be developed in the framework of other projects related to each specific sector. It must be stressed that a better coordination between donors should be encouraged.

**Privatisation Law and regulations.**

**Historical and legal background**

(See annex for the historical background)

Approximately 100 public companies were for the time being excluded from privatization in accordance with existing legislation. These were enterprises and organizations of special national interest, public utilities, enterprises and legal entities engaged in the preservation of water, forests, land and other public goods, and monopolies which were to be privatized under separate legislation. The large majority of these entities were municipal public utilities.

The core matter is the readiness of FYROM to ensure the transparency of its ongoing privatization programme.

**The Concession Law and its limits**

An implementing legislation as well as advice on regulatory matters (e.g. tariffs) and contractual schemes (concessions, BOT-like schemes...)are strongly needed. The law on concession should be revised to include rules on licensing and any other manners for performing general economic interest services.

Within this activity a task should be to assist and train in issues of definitions and reception/incorporation of notions. In many sectors harmonization directives are to be taken into consideration, and among others the following:

- Procurement directives
- Transport sector directives,
- Access and Interconnection Directive,
- Universal Service Directive and Communications Data Protection Directive.

[9] The LPE take a very large view of "economical activities of public interest" and considers as such “activities or specific actions of these activities, through which the public interest is being carried out in: the energy sector, railways traffic and public transport of passenger, maintenance of the travel network, the air traffic, the telecommunications and postal services, the system of radio and TV links, the pipeline for oil and gas, utilization of forests, waters, pastures and other kinds of natural resources, planning and arrangement of areas, public utilities, veterinary and sports, as well as in the other economical activities defined by Laws”.

- Energy sector, EC -Electricity and -Gas Directives and other EC rules - in particular, concerning transparency and non-discriminatory requirements.
- awarding concessions
- Directive 92/96 for the internal market of electricity.
- Memorandum and Strategy Paper the Regional Electricity Market in South East Europe and its Integration into the Internal Electricity Market".
- Setting-up a energy regulatory body with clear competences concerning concessions/licensing vis ´a vis other authorities;
- Improving appeal procedures of authorities' decisions to grant/deny a concession/licence

## Conclusions

The Law On public Enterprises, as said above, creates a confusion between economic activities of public interest which have to be performed according to the criteria of continuity, equality, Universal Service, quality of service, and Public enterprises. The LPE should, for these grounds, be restructured on the basis of a clear definition of what a public enterprise (undertaking) is, governing only public enterprises and not addressing topics which should be dealt with by others Laws. Separate Laws such as a Law for granting licences (which can be included in the Law on Concession), sectoral or transversal Laws, and above all, which is currently crucial in Macedonia, a law on public-private local companies, should be based on or take into account the EU legislation and its prospective. Rules specific to Services of General Economic Interest , base on UE law and practice, should be dispatched and inserted, as appropriate in the LPE , transversal or sector Laws. In addition, and it is common sense in a country like Macedonia, one should take advantage of the legal material already developed, discussed and experienced in EU countries having a long standing tradition of public enterprises inserted in a market economy, of the dynamic of public-private partnerships at the central level as well as at local governments level. This is true also for EU legal concepts which have to be utilised as such in a new LPE and other law.

## ANNEX: Privatisation in Macedonia

Privatization had begun prior to independence with the passage of the Law on Social Capital (Official Gazette No. 84/89) by the former Federal Parliament. However, immediately after independence in 1991, the FYROM Government had announced that the federal Law was no longer in force and that a new Law would be promulgated shortly thereafter. Parliament had accordingly enacted the Law on Transformation of Enterprises with Social Capital (Official Gazette Nos. 38/93, 48/93, 21/98, 25/99, 39/99, 81/99 and 49/00) in June 1993. Other Laws relevant to the privatisation process were the Law on Transformation of Enterprises and Co-operatives in the Agricultural Sector (Official Gazette Nos. 19/96 and 25/99), the Law on Privatization of the State Capital in Companies (Official Gazette Nos. 37/96 and 25/99), the Foreign Investment Act (Official Gazette No. 31/93), the Law on Concessions (Official Gazette No. 25/02) and the Securities Law (Official Gazette No. 5/93). Privatization was entrusted to the Agency for Transformation of Enterprises with Social Capital, established in October 1993 (Official Gazette No. 38/93). The Government had taken a strategic decision not to embark on mass privatization, for example through the distribution of privatization vouchers, as it believed this would delay the primary objective of the transformation process – to make enterprises more efficient.

1. The Law on Transformation of Enterprises with Social Capital stipulated different privatization methods depending on whether an enterprise would be classified as small, medium sized or large. The criteria determining the size of an enterprise were based on the number of employees, annual turnover, and the book value of operating assets. Small enterprises could be privatized through employee buy-out or sale of an "ideal" part of the enterprise through a public call for bids (and subsequent auction) or, until 2000, by direct agreement with a prospective buyer. Medium sized enterprises could be privatised in the same manner through the sale of an "ideal" part, by leveraged management buy-out or management buy-in, debt/equity swaps, or shares sold through a public offering, which would be considered successful if resulting in the sale of at least 51 per cent of the value of the social capital. Medium sized enterprises could also be privatized through the subscription of fresh capital. If a new issue represented more than 30 per cent of the appraised value of the company, the privatization agency would offer the investor an opportunity to increase his stake to 51 per cent of the company within a period of maximum 5 years.
2. The privatization of large enterprises followed the same procedures as for medium sized enterprises, except that the minimum required down payment for management buy-out or buy-in was lower (10 per cent instead of 20 per cent), and the fresh capital requirement was minimum 15 per cent rather than 30 per cent required for medium sized enterprises
3. Irrespective of size, publicly owned enterprises could also be transformed through leasing agreements, asset sale upon voluntary liquidation, or bankruptcy proceedings. Foreign investors were granted national treatment, and could thus participate in all transactions not specifically forbidden by Law, including in the privatization programme. The Law on Transformation of Enterprises with Social Capital provided special discounts for employees taking a stake in their company. An employee could buy shares at a discount to the value of maximum DEM 25,000; employees as a group could not purchase discounted shares representing more than 30 per cent of the appraised value of the company. Payment could be made in five annual instalments without down payment and with a two-year grace period. In addition, prior to launching its privatization, each enterprise was required to transfer 15 per cent of its social capital (in the form of shares or stocks) to the Pension and Disability Fund free of charge.

4. According to statistics collected by the privatization agency, nearly 1,700 enterprises (1,262 non-agricultural and 426 agricultural) had been subject to privatization by the end of March 2002.