

Privatisation and the Broadening of Ownership of State-Owned Enterprises

Stocktaking of National Practices

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Foreword

Privatisation is coming back into focus in a number of countries. Following an initial weakness in the wake of the international financial crisis, estimates of global trends indicate that privatisation activity is now on the rise. Privatisation revenues have risen from around USD 110 billion in 2008 to USD 266 billion in 2016. Governments, already under pressure to raise fiscal revenues and reassess the role of the state in the commercial economy, have increasingly chosen to take advantage of opportunities for privatisation that have emerged with internationalisation, market de-regulation and technological progress. Also, the internationalisation of state-owned enterprises (SOEs) themselves raises important new issues in relation to cross-border investments, disclosure practices and structure of domestic financial systems.

This report analyses the evolving privatisation process as part of an effort to ensure an effective corporate governance framework for SOEs. It documents the main findings of the OECD Working Party on State Ownership and Privatisation Practices' ongoing project on privatisation and broadening of ownership of SOEs. The report is based on questionnaire responses received from 20 OECD and partner countries: Argentina, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Israel, Italy, Japan, Kazakhstan, Latvia, Lithuania, Mexico, the Netherlands, Norway, Poland, Sweden, Turkey and United Kingdom.¹ Of these, 15 countries were able to provide data on privatisations undertaken since 2008.² The report was prepared by Hans Christiansen and Chung-a Park of the Corporate Affairs Division of the OECD Directorate for Financial and Enterprise Affairs. The authors are grateful for valuable assistance provided by Pamela Duffin, Anne Nestour, Lynn Kirk, Edward Smiley and Arianna Ingle who assisted with editing and typesetting and prepared the manuscript for publication.

The report builds on earlier work by the Working Party which developed a report in 2009 titled "Summary of Recent Experiences with Privatisation Practices" which was subsequently synthesised into a summary of best practices titled "Privatisation in the 21st Century" (OECD, 2010). The Working Party at the time decided not to proceed with developing guidelines for privatisation practices. Moreover, a more narrowly focused study of experiences with listing SOEs in stock markets in five countries was undertaken in 2015 and published in 2016 (OECD, 2016). As of early 2018, the OECD is synthesising the findings of these reports in the form of a best-practice guidance.

¹ The authorities of Belgium, Iceland and Switzerland notified the OECD Secretariat that they were unable to contribute responses due to a lack of recent privatisation experience.

² These countries are the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Israel, Italy, Japan, Latvia, Lithuania, The Netherlands, Norway, Sweden and Turkey. Argentina (which has not privatised recently) reported data related to privatisation transactions that took place well before the period reviewed in this report.

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1. Recent privatisation in OECD and partner countries: Reviewing the evidence

Chapter 1 aggregates information on privatisation proceeds and presents country-specific information about privatisation from each of the fifteen countries that provided data.

Global trends and estimates

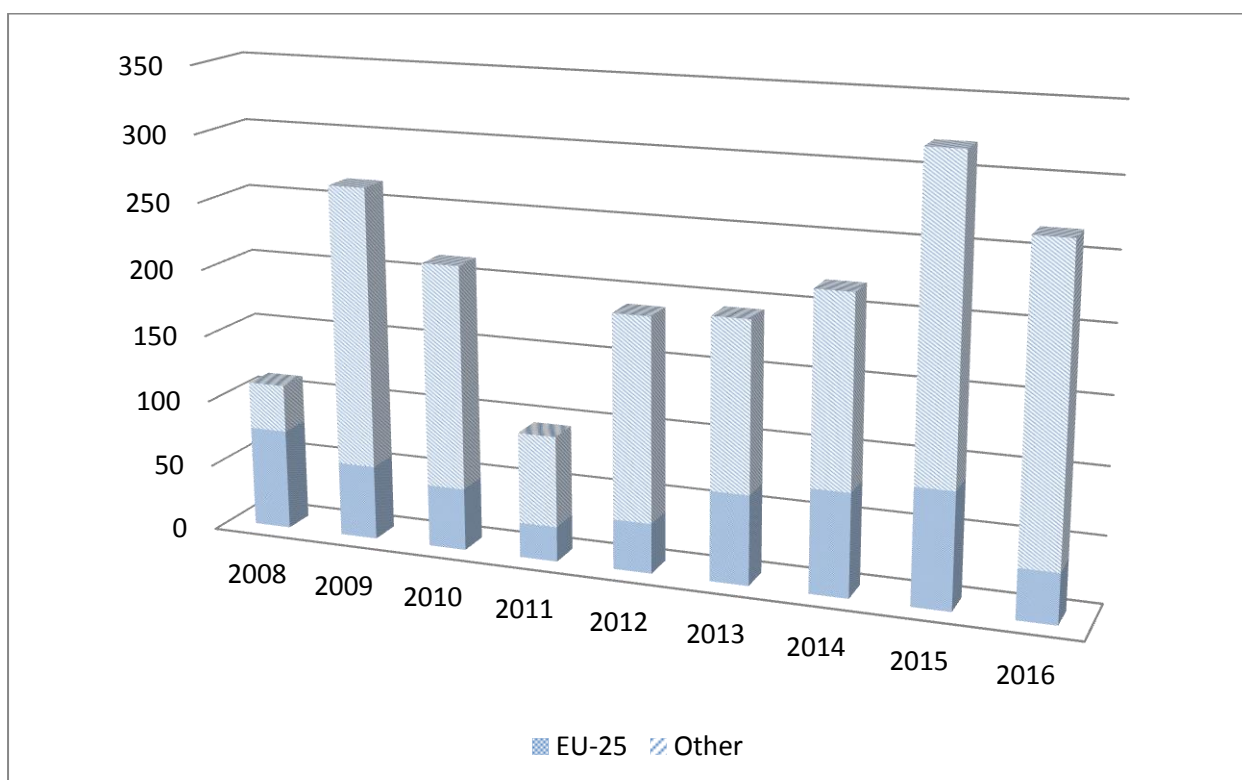
Estimates of global trends in privatisation³ indicate that, following an initial weakness in the wake of the international financial crisis, privatisation activity is now trending upwards (Figure 1.1). Privatisation revenues have risen from around USD 110 billion in 2008 to USD 266 billion in 2016. This development was accompanied by a marked regional shift. Figure 1.1 illustrates how E-25 countries (the first 25 members of the European Union) accounted for over half of all privatisation revenues in 2008 down to just over 14% in 2016 (Privatisation Barometer, 2017).

Most of the shift is due to the growing magnitude of privatisation within China (including Hong Kong, China). During a record-high 2015, Chinese authorities received divestment revenues estimated at USD 173 billion and recorded more than 40 individual transactions exceeding USD 1 billion each. Most of these asset sales related to companies in the financial and manufacturing sectors and the transaction method was mostly initial or secondary share offerings in stock markets. In 2016, total amounts receded only slightly to USD 148 billion. In 2016, however, most transactions took the form of private placements, which points to a methodological issue in assessing the data: the Privatisation Barometer applies a very broad definition of privatisation, according to which any divestment of directly state-owned assets is included – even if they are sold to another state-controlled entity.⁴ A relatively large share of recorded Chinese “privatisations” consisted of transactions effected between different parts of the public sector.

³ This Chapter aggregates information from an external source (the “Privatisation Barometer”) on privatisation proceeds, etc. The word privatisation is taken to mean the divestment – entirely or partly – by governments of incorporated assets. By this definition even the sale of a small minority stake in an SOE where the state retains a significant stake is considered as “privatisation”. Conversely, the sale of physical assets by SOEs, or the transfer of activities to the private sector through instruments such as concessions and public-private partnerships, would normally not be considered as privatisation.

⁴ In the case of China, this is consistent with national statistical practices according to which enterprises owned by an SOE are not generally considered to be an SOE.

Figure 1.1. World annual privatisation revenues, USD billion



Source: Privatisation Barometer, various issues.

Outside both China and the European Union, the largest single transaction in 2015-16 was the Russian state's trade sale of a minority stake in the petroleum company Rosneft for USD 12 billion to a group of foreign investors. The combined effect of several transactions in the Japanese postal sector was of a similar magnitude (discussed further below). Several large concession and leasing contracts in the Australian utilities sectors are further recorded as privatisations, which is not strictly in accordance with definitions applied by the present report.

Privatisation in Europe

Since 2008, the bulk of privatisation within the OECD area took place in European economies. In 2015, privatisation in the EU-25 reached a historically high USD 87 billion. Revenues were boosted by, among other things, divestment of financial sector assets that had fallen into state ownership at the beginning of the financial crisis in the United Kingdom, as well as other countries. The year 2016 saw a continued large number of transactions, but a significantly reduced average deal size. Privatisation revenues reached USD 38 billion, mostly related to divestments in the public utilities and infrastructure sectors.

Since the onset of the financial crisis in 2008, privatisation and divestments within the EU-25 have affected a large number of individual countries (Figure 1.2). France and the United Kingdom, with total transactions close to USD 80 billion for the entire period, are at the top of the league table, each accounting for around 18% of EU totals. However, a third methodological caveat is warranted here: in addition to factors listed above, the dataset

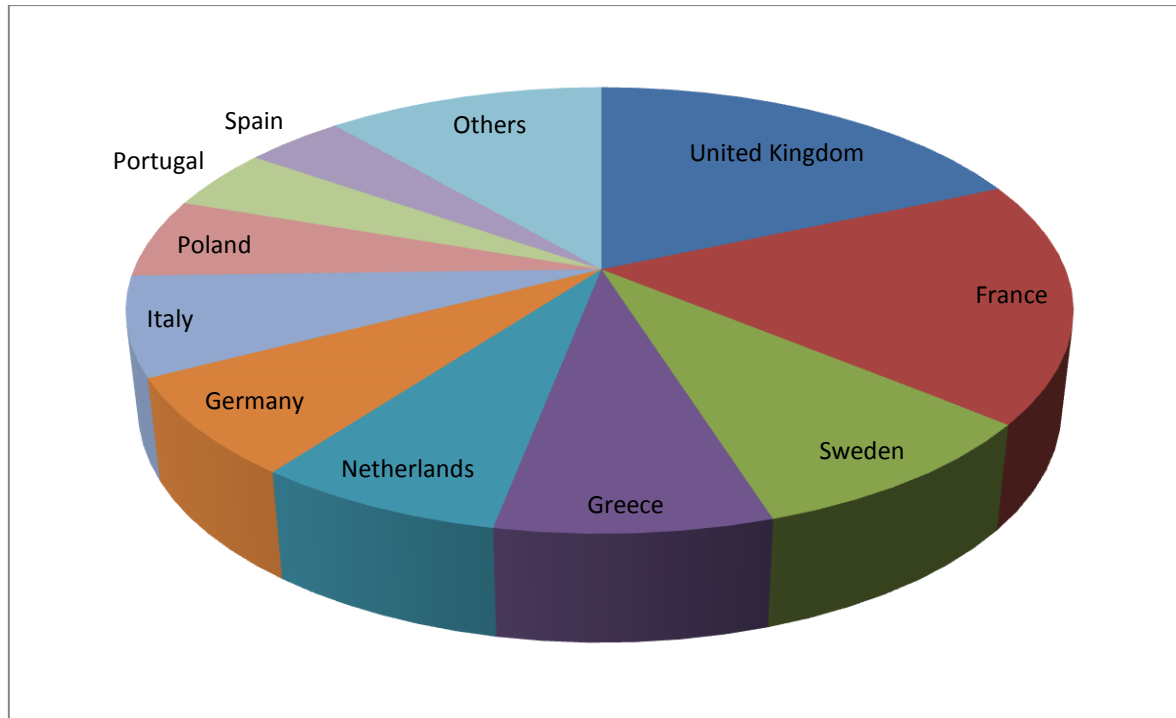
includes divestment by foreign state-controlled investors – including pension funds and sovereign wealth funds. For example, one of the largest individual transactions recorded for the United Kingdom was the sale of a stake in the London Stock Exchange by the Qatar Investment Authority. Smaller countries, such as Greece and Sweden, have also figured prominently in recent years – in the case of Greece, triggered by measures to stem the debt crisis and meeting obligations vis-a-vis international creditors.

In recent years, the sectoral distribution of privatisation within Europe has been strongly tilted towards the financial and real estate sector (Figure 1.3). Divestment in this sector between 2008 and 2016 is estimated at USD 206 billion, which accounts for 47 % of total revenues. This mostly reflects governments’ efforts to “draw a line under” the financial crisis by disengaging from financial institutions that they had part-nationalised and/or efforts to recapitalise financial institutions (including through the issuance of non-voting shares) with a continued government stake. Moreover, the number is influenced by the fact that a number of governments have turned to privatising governmental real estate management firms and/or unincorporated real estate portfolios.

Among the other important sectors are public utilities (26% of totals; USD 117 billion) and the transportation sector (8%; USD 34 billion). This is in line with trends in the preceding decade where (as described in OECD, 2009), the growing exposure of these sectors to competition from the private sector and market-based regulation has, in the eyes of many governments, gradually eroded the rationale for state ownership.

Figure 1.2. Geographic distribution of privatisation in EU-25 countries, 2008-2016

(by total revenue)

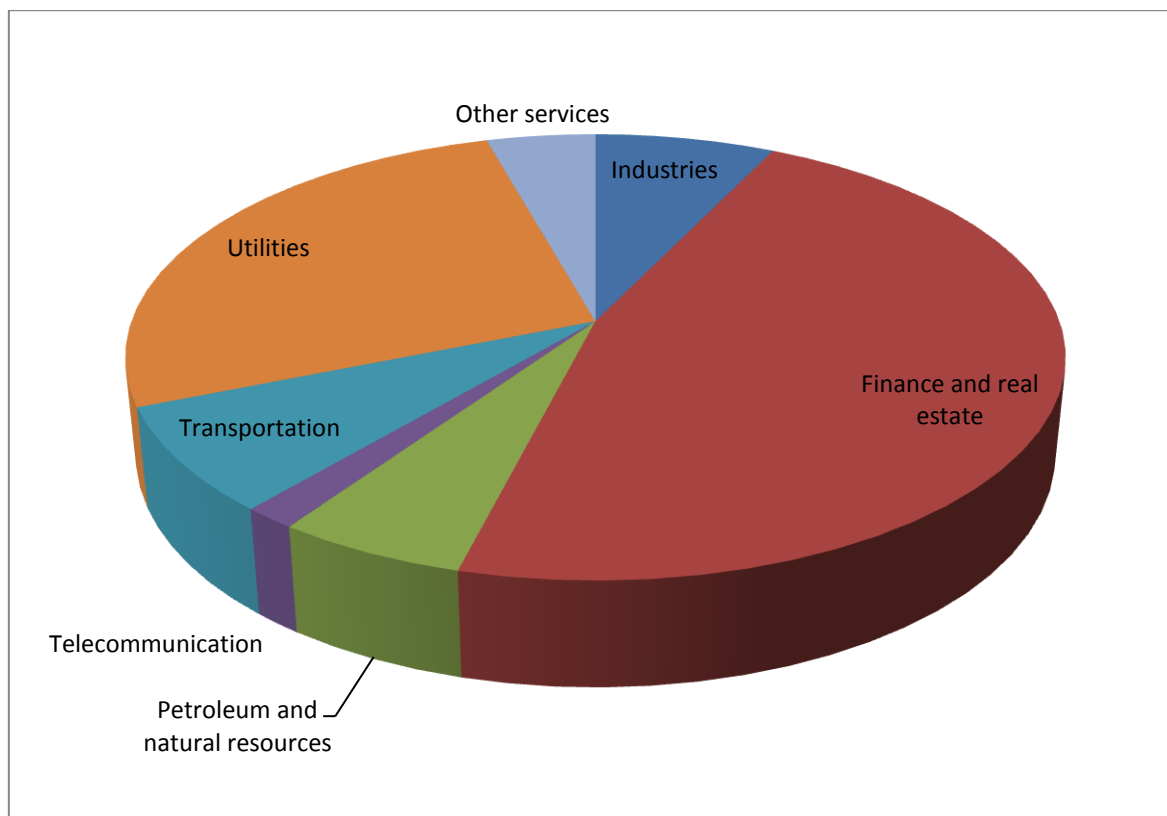


Note: Only “large” privatisations with revenues exceeding USD 500 million are included.

Source: Privatisation Barometer, various issues.

Figure 1.3. Sectoral distribution of privatisation 2008-2016 in EU-25 countries

(by total revenue)



Note: Only “large” privatisations with revenues exceeding USD 500 million are included.
Source: Privatisation Barometer, various issues.

A granular look at privatisation in individual countries

This section provides a brief overview of privatisation history in the 15 countries that provided information. With data from only 15 countries (including Germany who did not report actual privatisation proceeds in money terms), the information reviewed serves, at most, as an indication of recent trends.

In the Czech Republic, by far the largest transaction was a share offering in the energy company CEZ a.s. in 2008. The state raised USD 1.8 billion selling just over 4.5% of the company’s share, thereby reducing public ownership to 69.4%. This is seen as part of a sequential privatisation of the company through the stock-market, which commenced in 1992. Other transactions included trade sales of some relatively small export-import companies.

In Denmark, the main transaction in the period under review was the initial public offering (IPO) of the large energy company DONG Energy A/S in 2016. In 2014, the government had previously instructed the company to broaden its ownership and raise additional capital from private investors (the privatisation of DONG Energy is described in Section 5). At the time of the IPO, the government’s share of the company’s equity was 58.8%; after the

transaction it stood at 50.4%. Other transactions included the trade sales of two SOEs in the medical sector.

In Estonia, the largest transaction during the period under review was the finance ministry's selling of the country's stake in Eesti Telekom to the majority owner, and Nordic region's largest telecoms firm, Telia Sonera, at the end of 2009. The decision was largely seen as part of the government's drive for the country to meet the Maastricht criteria and hold the budget deficit at, or below, 3% of gross domestic product (GDP). The transaction brought the government proceeds of USD 267 million in total. Other transactions in the period included the trade sales of four SOEs in IT solutions and services, television and radio signal transmission, technical inspection and testing services and transportation/highway maintenance.

In France, the largest transaction during the period under review was the government's sequenced public offerings of shares of Safran – a leading company in aerospace and defence electronics. Between March 2013 and November 2015, the government's share was gradually reduced from 30.2% to 15.4%. The transactions raised a total of USD 3.4 billion. Following the merger between Gaz de France and Suez (later renamed Engie SA) in 2008, a transfer of GDF-Suez shares to the market took place from 2014 -15. At the end of 2015, the government retained a 32.8% stake in the company. In 2010, Areva shares were offered to the market, and the state ownership agency sold shares in La Poste (postal services) to an investment company controlled by another part of the public sector. During the period under review, some trade sales were also affected, notably of ADIT (a company specialised in economic intelligence), as well as various airport assets in Toulouse. Moreover, the French government announced a EUR 10 billion (USD 12 billion) state asset sales plan in July 2017. The proceeds of this operation will go towards the planned fund for innovative start-up companies. As the first step of the plan, the government conducted the sale of a 4.5% stake in gas utility Engie SA (ENGIE.PA) for EUR 1.53 billion (USD 1.82 billion) in September 2017. The state remains the leading Engie shareholder, with 24.1% of the capital and 27.6% of the voting rights.

In Germany, there have been no major transactions in value terms since 2008. A couple of relatively small real estate firms were sold, for an undisclosed amount. The country's two largest "unfinished" privatisation projects, the utilities Deutsche Post and Deutsche Telekom, did not see any major transactions. However, the development bank KfW occasionally sold stocks and convertible bonds.

Hungary has not carried out any "classic" privatisations – such as the massive transfer of corporate assets from the public to private sector prior to the mid-2000s – during the period under review. However, two economically significant transactions took place, namely the sale of the remaining state-owned shares in two stock-market listed companies. In 2013, the state accepted an offer from the majority shareholder in Egis plc (pharmaceuticals) to take the company private. In 2015, the state divested its shares in OTP Bank through a public share exchange bidding process. Previously, the government's official privatisation was carried out and finalised by the State Property Agency and its successor organisation (State Privatization and Holding Inc. – SPH) in the mid-2000s.⁵

⁵Between 1990 and 2003, more than 2,700 privatisation transactions were implemented by privatisation organisations and the banks involved, and revenues of the SPH and its legal predecessors amounted to USD 6.68 billion.

The Israeli state undertook six privatisations during the period under review, all of which were trade sales with undisclosed proceeds. In 2009-10, a development bank and the seaport of Eilat were sold to strategic investors in the private sector. In 2016, the state sold its share in three companies in the tourism sector, which were jointly owned with local municipalities. The municipalities remained shareholders, in some cases with an increased share. In 2011, the central government transferred all of its shares in a software company to the Federation of Local Authorities in Israel, which had previously jointly owned the company with the government.

In Italy, the largest transaction during the period under review was the divestment of the export credit agency SACE to the CDP Group, which brought revenues close to USD 7.7 billion. The sale, like several other transactions in Italy, was effected when the acquirer exercised a purchase option previously issued by the state. The Italian state further reduced its stakes in some companies in which it held minority stakes, including ENEL and Finmeccanica and, in 2015, listed 35% of the national postal service on the stock exchange. Since 2008, a total of 12 transactions raised an estimated USD 18 billion.

In Japan, the largest transactions since 2008 have been the 2015 and 2017 divestments of assets in the postal sector. Through IPOs of the three companies of Japan Post Group in 2015, shares of Japan Post Holdings held by the central government decreased to 80.5%, and shares of Japan Post Bank and Japan Post Insurance held by Japan Post Holdings decreased to 74.2% and 89.0% respectively. The total transaction was valued at USD 11.5 billion. The shares of Japan Post Holdings owned by the central government were further reduced to 56.9% through a secondary share offering in 2017. The transaction was valued at USD 12.5 billion. In addition, the state's share of Japan Tobacco was reduced from 50.01% to 33.4% through a share offering and the state has periodically divested shares in the telecom firm The Japan Telegraph and Telephone Corporation (NTT) to maintain an unchanged ownership share amid the company's share buy-backs. Finally, the Japan Railway Construction, Transport and Technology Agency (JRJT), which had 100% ownership of Kyushu Rail Company, sold all stocks in 2016. Total market value was USD 4 billion.

In Latvia, the privatisation of wholly-owned SOEs has almost come to a halt. Privatisation transactions (of which there were 13, following the definitions set out above) mostly related to the sale of residual stakes in limited liability companies. These transactions occurred in a wide range of economic sectors. In addition, the privatisation agency sold assets on behalf of municipal owners and the government social insurance agency.

In Lithuania, the state has undertaken 11 privatisation transactions since 2008. They were mostly small (the largest individual transaction netted around USD 4 million) and related to the sell-off of stakes in companies where the state was not the sole owner. Two IPOs took place in 2008, both concerning manufacturing companies in which the state was a minority shareholder.

In the Netherlands, the second largest bank ABN AMRO and a major insurance company ASR, raised money in an IPO, allowing the government to recoup some of the funds spent bailing out the lender and the insurer's parent, Fortis, during the financial crisis. The total proceeds of ABN AMRO were USD 4.1 billion and USD 1.14 billion for ASR. According to the government, the proceeds were used to reduce the national debt, in line with budgetary rules. As there are no specific post-privatisation government controls, all institutions are required to abide by general financial sector regulations. Holland Casino and Staatsloterij are planned for full privatisations via a private sale.

The Norwegian authorities undertook two privatisations in 2014. One concerned the aquaculture company in which the government owned 59% of the shares. A trade sale of the shares netted the equivalent of USD 720 million. The real estate company Entra ASA was listed on the stock exchange through an IPO, including 50.4% of the company's shares. This transaction brought the state around USD 450 million in revenue. In September 2016, the Norwegian state, represented by the Ministry of Trade, Industry and Fisheries completed a secondary placement of 30 million shares in Entra ASA, representing 16.3% of the share capital and voting rights in the company. Following completion of the placement, the government will own 33.4% of the share capital and voting rights in the company. Proceeds from the share placement amounted to around USD 319 million. Subsequently, in October 2016, the Norwegian state sold 9.2 million ordinary shares in SAS AB through an accelerated book-building process. After the transaction, the Norwegian state holds 11.5% of the shares in the company. Proceeds to the government amounted to around USD 17 million (NOK 132 million).

The government of Sweden has been very active in privatisation since 2008, both in numbers and in value terms. The alcohol producer V&S Group (V&S Vin & Sprit AB) and a real estate company were trade sold in 2008, netting USD 10.2 billion in proceeds. Staggered share offerings of the state's 19.7% stake in Nordea Bank in 2011 and 2013 brought an additional USD 9.1 billion. Moreover, trade sales of another two smaller SOEs were undertaken in 2011 and 2013. In 2016, Norway and Sweden together sold 7 % of shares in the airline SAS through an accelerated book-building process netting USD 40 million.

Turkey has undertaken a larger number of privatisations (with no less than 54 individual transactions) than any other OECD country in the period under review. Most of these transactions relate to trade sales of power generation and electricity distribution companies throughout the period. A number of seaport companies were also sold in the period 2010-15. The shares of the national telecommunications company, a petrochemical firm and the bank, Halkbank, were offered publicly. For the first two cases, this was in the form of secondary offerings in companies where the state had previously sold a controlling stake to a private sector strategic partner. The total proceeds from these transactions are estimated to be close to USD 37 billion.

2. Framework for the privatisation process

Chapter 2 reviews and compares national frameworks for the privatisation process in the reporting countries. This includes (i) objectives that have been invoked, formally or informally, as reasons for privatising; (ii) laws, regulations and publically announced policies directly addressing the privatisation process; (iii) additional rules (laws and regulations) not directed at privatisation but having an impact; (iv) rules bearing on the post-privatisation treatment of employees; and (v) administrative responsibility for privatisation – notably the government agency(-ies) charged with carrying out the process.

Motives for privatisation

Motives for privatisation are similar across countries, but certain tendencies can nevertheless be ascertained. Two of the main dividing factors are; 1) whether the privatising country has a large and sophisticated economy, and 2) whether or not the government has issued a state ownership policy. Where an ownership policy exists, the privatisation of an SOE will typically be justified by the fact that the company no longer falls within the rationale for state ownership established by the policy. In mature economies, the rationales for ownership are mostly limited to the need to remedy market failure and to provide goods and services for which there is no likely private supplier. Privatisation has typically been motivated by changing market conditions where SOEs operate, typically including the entrance of private competitors. An overview of national motives for privatisation is provided in Table 2.1.

In emerging economies, the rationales for ownership are sometimes defined more broadly, and may, for instance, include the role of SOEs in national development strategies, the provision of a broader palette of public services, safeguarding national ownership of enterprises and, especially in post-transition economies, an ongoing effort to rebalance the public and private shares of the productive economy. Countries also differ with respect to the “rigour” they apply when assessing what to do with an SOE no longer fully complying with the stated rationale for ownership. Many governments would tend to see such companies as merely “candidates” for privatisation. At the other extreme, a country such as Germany conducts a two-yearly review of its portfolio of SOEs during which it must be justified why each company should remain in state ownership, failing which it will be privatised.

Table 2.1. Synthesis of national motives for privatisation since 2008

	Rationale for ownership no longer fulfilled	Improve market structures or economic efficiency	Raise fiscal resources	Improve corporate financial or non-financial performance	Overall policy to reduce the state's role in the economy	Ownership of SOE was intended to be temporary
Czech Rep.		●	●			
Denmark	●			●		
Estonia	●		●			
France	●		●			
Germany	●			●		
Hungary	●	●				
Israel	●					
Italy		●	●	●		
Japan		●	●			
Kazakhstan		●			●	
Latvia	●				●	
Lithuania			●	●	●	
Netherlands	●					●
Norway	●					
Poland	●				●	
Sweden	●		●			
Turkey		●	●		●	
United Kingdom	●			●		●

Source: Table 2.2 and author's assessments.

In countries without an ownership policy, the decision to privatise can sometimes be more ad-hoc or opportunistic. Fiscal concerns are often cited, whether to raise revenues from the privatisation itself, or to stop fiscal haemorrhaging from certain loss-making SOEs. Also, the need to improve functioning of the privatised company itself, including its access to capital, sometimes plays a role. And, especially in post-transition economies, the need to improve the functioning of the private economy through a transfer of corporate assets is sometimes cited. In the past, an often-heard motivation (OECD, 2009), partially related to the previous point, was the intention to deepen national stock markets through the listing of SOEs. However, this was not, or is no longer, the case in countries surveyed for this report, possibly reflecting the financial sector's weakness following 2008. Examples (further summarised in Table 2.2) from individual countries include:

- The Argentinian government has not privatised SOEs for the last 16 years but, based on previously applied practices, the main motive for privatisation was derived from the purpose of state ownership. SOEs were expected to control natural resources, remedy market failure and promote select industries and activities. As a corollary, SOEs that were not, or no longer, contributing to these objectives were considered for privatisation. In addition, privatisation was sometimes motivated by fiscal deficits.
- In the Czech Republic, privatisation has mostly been motivated by two considerations, namely reducing public debt by monetising corporate assets and influencing market conditions in sectors where SOEs operate. These are seen as elements of a comprehensive approach towards privatisation, which is closely linked to the transformation of the Czech economy in the aftermath of central planning. These objectives have been enunciated by the government and communicated to the general public.
- Denmark has only seen three privatisations since 2008 (the largest of which is reviewed in a later section). Following the state's ownership policy, the rationale for continued ownership of every SOE is considered by the state. In the absence of a clear rationale, a given company becomes a candidate for privatisation. The rationales for privatising were different for each case. One company was performing poorly and needed outside assistance and expertise to trigger a turnaround. Another was in need of additional resourcing to finance further growth that could best be obtained in the private sector. One was operating in markets that had become fully competitive, thus making state ownership unnecessary.
- In Estonia, most of the privatisations during the period under review were motivated by considerations that the state's participation in an SOE was no longer required for public purposes and should operate in a competitive market. In the case of the state's sale of shares in Eesti Telekom which took place in 2009, the main purpose of the transaction was to raise fiscal resources in the short term. To support the decision-making process, shareholding ministries are required to provide an annual evaluation and an analysis on the Government's state ownership objectives. Such annual evaluations by shareholding ministries and government decisions about privatisations with justifications are made public through a consolidated report.
- In France, privatisations are often decided on a case-by-case basis, and sometimes to meet multiple objectives. Privatisation may be envisaged to generate additional public resources to reinvest them in the economy in accordance with State

Shareholder Guidelines,⁶ and to improve the financial structure of an enterprise by providing private capital. In accordance with Article 22, I and VI of the Ordinance dated 20 August 2014, in certain cases a transfer of the majority of a company's capital to the private sector must be authorised by law. In the event of legislative authorisation, the explanatory memorandum of the authorisation law (ensuring parliamentary debate) may indicate the rationale and objectives pursued by the state at the time of privatisation. Capital transactions are conducted in accordance with the aforementioned State Shareholder Guidelines. For example, recently the state decided to sell its shareholdings in Toulouse, Nice and Lyon airports, in accordance with the Guidelines. The government considered that the state did not need to retain its majority interest in the airport companies' capital to ensure that these airports remained strong operators. As mentioned earlier, in July 2017, the government also announced a EUR 10 billion state asset plan so that the proceeds of the operation can go to the planned innovation fund. According to the government statement, it wants to redeploy state funds locked up in companies in non-strategic, mature industries to invest in innovative start-up companies.

- The German government has issued an official ownership policy which, among other things, establishes a purpose of state ownership. If the purpose is not, or no longer, applicable an SOE will, in principle, be privatised. The Federal Budget Code establishes that there must be “an important interest” in ownership on the part of the state and this purpose “cannot be achieved better and more efficiently in any other way”. In addition, principles of good corporate governance in SOEs exist and the understanding is that if a company cannot, or will not, abide by these then it is a candidate for divestment.
- In Hungary, the Fundamental Law affirms that state and municipal government property be considered as national assets. Parliament defined the criteria of transparent and responsible management of national assets, in Act CXCVI of 2011 on National Assets, to ensure the use of national assets for the sake of public interest and public needs. Other rationales for state ownership include preservation and safeguarding of natural resources with the intention of ensuring the needs of future generations. Privatisation is considered when the government wants to set up a more efficient and cost-effective way to manage and utilise state property and national assets.
- In Israel, the decision to privatise an SOE is most often motivated by the consideration that state ownership is no longer needed for public or strategic purposes. Also, the privatisation objective can be devolution of certain functions to lower levels of government by transferring ownership in an SOE to a local government entity.

⁶ In 2014, the State Shareholder Guidelines set out to clarify its policy guidelines with four key objectives, including: (i) to ensure that the government has a controlling interest in companies of strategic public interest operating in critical areas for France's sovereignty; (ii) to guarantee the existence of resilient corporations so that they can fulfil the country's basic needs; (iii) to support corporate growth and consolidation, especially in sectors and industries that are important for French and European economic growth and, (iv) to bail out companies on an ad-hoc basis and in compliance with EU regulations in cases involving systemic risk. Please see: <http://www.economie.gouv.fr/agence-participations-etat/notre-strategie>.

- In Italy, the government's implementation of a broad process of divestment of public companies was driven by the need to significantly reduce national debt, pursued in the light of an in-depth cost-benefit analysis. This process was also seen to be useful in developing the capital market, facilitating share purchases among investors, and increasing the efficiency of companies.
- In Japan, the ownership of SOEs is not anchored in a formal ownership policy or "owner's expectation" manual, so the decision to privatise is largely discretionary. The five divestments during the period under review were either motivated by a need to raise fiscal revenues or, in one case, to improve market structures and competition in the sectors (postal and financial) where the SOE operated.
- In Kazakhstan, the government issued a Resolution in 2015 which, among other things, sets out a privatisation programme for 2016-2020. It identifies the following main rationales for privatisation: (1) strengthening national entrepreneurship; (2) lowering the state's share of the economy; and (3) further development of the business sector through the transfer of state assets to more effective owners. The Resolution is publicly disclosed, and so is the list of state assets slated for privatisation which is published online. Direct bidding for state assets is possible through an Electronic Trading Place operated via internet.
- In Latvia, the State Administration Structure Law, effective from 1 January 2016, stipulates that, unless otherwise prescribed by law, the state may establish a company or acquire shares in an existing company only if: (1) this leads to the elimination of market imperfections; (2) the goods and services provided by the company are deemed of strategic importance⁷ or pertain to national security; (3) corporate properties themselves are of strategic importance to national security. The Law further provides that state participation shall only be retained in companies which meet these provisions; all other participation shall cease. As criteria for privatisation are established by law, they are fully transparent and communicated to the general public. Pursuant to the Governance Law (described in the Overall Laws, Rules and Policies section below), the state's direct participation in a company shall be assessed no less than once in five years.
- In Lithuania, one of the major goals of privatisation is to monetise corporate assets in order to free up funds for other public interest needs. It also serves to increase the profitability of privatised entities and open them for foreign participation. These objects are partly reflected in the current government's policy programme for 2012-16 which makes reference to a "stabilisation reserve" resourced with the proceeds from privatisation.
- The Mexican government did not conduct privatisations during the period under review. Rules and procedures are therefore considered as unchanged from the ones previously applied. According to the Federal Law on Parastatal Entities, divestiture shall take place when an entity is no longer suitable for its purpose or for the purpose of the national economy and public interest. In practice, this leaves quite a high degree of discretion in deciding whether or not to privatise. The decision to privatise is transparent in the sense that the political and legislative processes involved (see below) are subject to public disclosure. In addition, plans to privatise

⁷ The concept of "strategic importance" is narrowed by the law as pertaining to "the development of the state or municipal administrative territory".

SOEs are sometimes disclosed in policy documents, such as the National Development Plan and the annual reports of the Executive Government.

- In the Netherlands, the decision to maintain ownership or privatise depends on whether or not a public interest needs to be safeguarded through shareholdership. The Dutch state enterprises' portfolio can be divided into three categories: *permanent*, *non-permanent* and *temporary enterprises*. *Temporary enterprises* include financial institutions such as ABN AMRO, ASR and SNS Reaal. According to the government, they should be returned to the private sector when the financial sector is sufficiently stable and the market shows sufficient interest and they themselves are ready for this transition. So far, the government has announced the sale of *non-permanent* enterprises such as Holland Casino and Staatsloterij.
- Norwegian motivations for privatisation have changed somewhat in the period under review. They are derived from the state ownership policy according to which there are four categories of SOEs with different objectives for ownership. SOEs where the government has only commercial interests (category 1) are normally considered to be candidates for privatisation. The ownership policy is developed, and revised at regular intervals, by the government. The ownership policy is passed by parliament and communicated to the public.
- Privatisation in Poland is motivated by the consideration that a state-owned company is no longer needed for public purposes and/or does not fulfil its economic or social objectives. Usually decisions on the sale of shares are made based on a cost-benefit analysis, taking into account the state treasury's interests. State-owned shares can only be sold with approval from the Council of Ministers. So far, the Polish government has completed two decades of ownership transformation processes, which has resulted in a significant change in the state treasury portfolio and a decrease in the number of entities with state treasury shares.
- In Sweden, objectives are largely applied on a case-by-case basis. They are based on the basic position that government ownership should not occur in companies operating in competitive markets, except where these have specific public service assignments that could not be well exercised otherwise.⁸ Objectives are communicated to the general public by the government when seeking parliament's mandate to privatise. Announcements can be rather generic, stating that a review of state ownership has been carried out and there are no reasons for continued ownership, or they can be more explicit.
- Turkish privatisation objectives are laid down in the national Privatisation Law of 1994, according to which the process of privatisation aims to: minimise the industrial and commercial activities of the state in the economy and contributing to a competitive market economy; reduce the financial burden of SOEs on government budgets; and improve capital markets and re-channelling resources towards new investments. In practice, privatisation has become seen increasingly as a welcome source of fiscal revenues.
- In the United Kingdom, privatisations are largely politically motivated and backed by a strong belief that provision of public services can be more efficient if managed and delivered by the private sector, given the profit incentives, the reduction in

⁸ For further details, see OECD (2015).

political interference and a diverse shareholder base. The government will often review its state-owned businesses and ask whether they would function better with the input of private finance and/or in the private sector. More recently, the state of the economy has played its part with proceeds from privatisations being seen as a means of reducing the government's deficit and easing the future financing burden on the state. Further details are provided in Box 2.1.

Box 2.1. Examples of recent sale objectives in the United Kingdom

This text box summarises the main sale objectives put forward by the UK government as justification for three main privatisations in recent years. Individual transactions were described in the previous chapter.

Green Investment Bank:

The government's primary objectives were to achieve value for money for the UK taxpayer and reclassification of GIB to the private sector. It was the government's intention that GIB should continue to focus on green sectors and play a role in accelerating the United Kingdom's transition to a more sustainable low-carbon economy.

Royal Mail:

The government secured the universal postal service for the benefit of all users by ensuring Royal Mail's future through the introduction of private sector capital and associated disciplines. This was achieved by:

- delivering a sale of shares in Royal Mail within parliament;
- creating an employee share scheme that, as decided by parliament, will lead to at least 10% of the company in employee ownership, to drive stronger staff engagement; and
- delivering a financial outcome for the taxpayer, which when considered in the context of the overarching policy objective, represents overall value for money.

Eurostar:

The government's main objective was to maximise value for money by:

- maximising net proceeds (sale proceeds less transaction costs);
- maximising certainty of deal closing; and
- minimising post-sale residual risks to the government.

Source: Submission by the UK authorities.

Overall laws, rules and policies

Laws and other formal rules on privatisation vary considerably across jurisdictions. Some countries, especially those that still have ongoing privatisation programmes, have one unifying privatisation law while others have a mosaic of laws. More infrequent privatisers mostly have no overarching law but, in many cases, pass a privatisation bill for each transaction. A variation of the last point is Japan which needs legal authorisation for privatisation, but may combine this with other legislative acts. Finally, some countries apply a more “public finance approach” according to which the conversion of corporate assets into financial assets is mostly a question of value-for-money which does not require legal measures. In these cases, however, parliamentary approval is usually required.

Relatively few countries have a formalised, recurrent review procedure to establish whether individual SOEs should be privatised. In addition to Germany, (mentioned above), Latvia conducts five annual reviews of its SOE portfolio. Other countries which have issued a state ownership policy may review this policy regularly and, in the process, reassess the relevance of its SOE portfolio. One example is Norway which, since 2002, has revised its ownership policy every four years. Other examples from individual countries include:

- In Argentina, there is no overarching legal and regulatory framework for guiding privatisation. However, it is important to note that Law 23696 (the “State Reform Law”) was approved in 1989 and established procedures for privatisation of the majority of the country’s SOEs. It has also guided organisational reforms that companies should go through in order to be privatised, different divestiture modalities, special shareholder initiatives for employees of privatised companies, and a monitoring mechanism. In addition to privatisation, the Law also allowed the merger and dissolution of a number of public sector entities. Corporate and public administration laws can also be applied to privatisations.
- In the Czech Republic, the 2005 Act on Abrogation of the National Property Fund of the Czech Republic and on Competences of the Ministry of Finance in the Privatisation of Assets basically ushered in the post-transition era by terminating the country’s privatisation agency and transferring its powers to the ministry of finance. The ministry conducts periodic assessments of the suitability of its SOE portfolio and issues reports on this topic to parliament and the general public.
- In Denmark, the rules bearing on privatisations draw largely on EU regulations, including those on state aid and competition. In addition, the state cannot reduce (or increase) its ownership of a company without consent from parliament which is obtained by getting a “mini bill” approved by the parliamentary finance committee. According to government preferences, privatisation has, in the past, been either encoded in formal policy programmes or approached on an ad-hoc basis.
- In Estonia, the government provides a legal and regulatory framework for the state’s participation in companies and the sale of shares of SOEs with the State Assets Act (SAA). The Act establishes a codified list of rules for management and operating principles of SOEs, including a yearly evaluation of the state-owned enterprise ownership portfolio and procedures for the sale process. Usually, it is the shareholding ministry which is responsible for conducting the sale. The State Assets Act also requires that results of transactions be communicated to the public and all transactions described in annual consolidated reports on SOEs.

- In France, capital transactions in public enterprises, including privatisations and transfers of government securities, are governed by the Ordinance of the Decree No. 2014-949, dated 20 August 2014. These texts have clarified and simplified the law applicable to capital transactions. The jurisprudence of the Constitutional Council and the Council of the State may also clarify the interpretation of certain provisions of French law. The legal framework for governing transactions in the capital of public enterprises does not provide for a periodic evaluation of the portfolio of state holdings. However, the government shareholding agency (APE: Agence des Participations de l'Etat), which is in charge of management of the public holdings portfolio, is responsible for making any relevant proposals to the government within its scope. In this respect, it regularly conducts strategic and financial reviews of portfolio companies ("business review") with the objective of having a diagnosis of valuation and profitability, as well as assessing the value of a possible change in the capital composition of these companies.
- In Germany, the main legal basis for deciding on privatisation is provided by the aforementioned Federal Budget Code. Several other pieces of legislation and regulation apply, including (as included in a "guidance note" used as a yardstick by government ministries), the Code on Public Governance and resolutions adopted by parliament, parliamentary committees and the state audit institution. The privatisation process is the responsibility of the Ministry of Finance on behalf of the Federal Government of Germany. The continuation of ownership is reviewed every two years relative to the Budget Code. Outcomes are published in a "Report on the Reduction of Government Holdings", which is addressed to parliament and disclosed publicly.
- In Hungary, the Act CVI of 2007 on State Property governs accomplishment of a broad-scale privatisation with a view to managing state property more efficiently and cost-effectively. For its enforcement, the Government decree No. 254/2007 (X. 4.) was enacted with detailed regulations on exercising ownership rights relating to state property. The general aim of the legislation is to formulate a system of management for preserving the most important national assets, the effective operation and acquisition of state property and to facilitate public duties. Within the legal framework, the state may sell stakes in an electronic auction in order to ensure transparency of the transaction. In the audited web-based electronic auction information system – operated by Hungarian National Asset Management Inc. (HNAM) – auctions are published and bids are electronically submitted.
- In Israel, the Government Companies Law defines how privatisation processes are executed and authorises the ownership agency (Government Companies Authority (GCA) - which is likewise established by the Law) to carry out the decision. Further clarity has been created through a government resolution establishing a policy for privatisation reports about the implementation of the privatisation process which are forwarded to the Ministerial Committee for Privatisation Matters on an ongoing basis. Further information is disclosed via GCA's annual aggregate reporting.
- In Italy, the general frame of the privatisation process is stated in the Deliberation n. 96/1992 set by the Inter-ministerial Committee for Economic Planning (CIPE). It concerns methods of sale, pricing procedures, recourse to consultants and incentives for retailers and employees. In addition, Decree Law No. 332, dated 31 May 1994, provides specific decrees on the methods of sale, tariffs of public utilities services and specific rules for privatising companies. The Decree Law no. 332/1994 also

assigns an administrative responsibility for implementing and managing the process to the Department of the Treasury of the Ministry of Economy and Finance (MEF) and requires government to send a report to parliament on privatisations undertaken. However, there are no specific provisions relevant for the legal and regulatory framework for privatisation.

- In Japan, there is no overarching privatisation legislation. The authority to, and in some cases procedures for, privatising an SOE is derived from specific legislation. This can take the form of a privatisation bill, as was the case with the “Postal Services Privatisation Act”. In some cases, the authorisation to privatise has been included in a fiscally related bill, stipulating that the funding for public spending shall be obtained from the divestment of certain corporate assets.⁹ Other applicable laws include rules for the handling of public property. The objectives of privatisation are mostly set on a case-by-case basis in conjunction with compiling the government’s fiscal budgets. The budget information is open to the public.
- In Kazakhstan, the aforementioned Resolution establishes a privatisation plan, in accordance with the 2011 Rules of Sale of Entities of Privatisation (itself another resolution). The current privatisation plan establishes a list of 783 entities to be divested. Other legislation directly bearing on privatisation includes the state property law and general corporate law, as well as public procurement and competition laws.
- In Latvia, during different parts of the period under review, several laws and regulations have applied to privatisation. Some laws dealing directly with privatisation date to the post-transition selloff of public assets. A new Governance Law¹⁰ came into force on January 2015, replacing previous legislation. The aforementioned State Administration Structure Law guides the state’s involvement in the productive economy. The Cabinet of Ministers is further empowered to issue subordinate regulation based on these laws. Regulations issued so far have included, but are not limited to, rules for the procedures employed for transferring assets and employment conditions during and after privatisation. The institution empowered to carry out privatisations is (as established by the Privatisation Law) the Latvian Privatisation Agency (LPA). The LPA is delegated powers, by the Law, to undertake a wide range of all required activities to ensure the privatisation, not only of SOEs but of all classes of state non-financial assets. Assets slated for privatisation are transferred to the portfolio of LPA, which makes proposals for their disposal and executes these subject to the approval of the Cabinet of Ministers. During this period, all ownership rights pursuant to the respective laws are executed by the LPA, which implies that the process is conducted in separation from the line ministries that hold regulatory powers over SOEs and other state assets. Reporting to parliament and the general public about completed privatisation is mostly the responsibility of the LPA, along with Cross-Sectoral Coordination Centre (CSCC – Latvia’s state coordination agency) which provides aggregate information as part of

⁹ A recent example was the “Act on Special Measures concerning the Securing of Financial Resources to Execute Measures Necessary for Recovery from Great East Japan Earthquake” which stipulated that resources should be obtained from selling shares in Japan Tobacco.

¹⁰ The full name of the Law is “Law on Governance of Capital Shares of a Public Person and Capital Companies”.

its regular annual reporting. In addition, the LPA which is itself an SOE is required to engage in its own financial and non-financial reporting.

- In Lithuania, the main rules bearing on privatisation are laid down in two laws, a Privatisation Law and a Law on Centralised State-Owned Property Management, and three Government Resolutions bearing on the approvals procedure for objects of, and the methods for, privatisation. Within the Cabinet, the Minister of Economy is responsible for the privatisation process. All non-confidential information is disclosed to the public through the publication of a regular information bulletin.
- In Mexico, actual privatisation is normally conducted in one of two ways. First, it can be conducted by decree of the Federal Executive, in accordance with the Federal Law on Parastatal Entities. In this case, the ministry charged responsible for the SOE in question must publish the specific terms for the divestiture process in the official gazette. Secondly, it can be conducted by decree or law issued by parliament, in which case the Federal Executive – in terms of transparency and accountability – is only required to demonstrate adherence to the instructions established by parliament. In addition to the aforementioned Law (and subordinate regulation), the privatisation processes must also accord with the Organic Law of Federal Public Administration. Other laws may apply on a case by case basis. Moreover, a standing inter-ministerial commission has the power to establish additional conditions for divestiture. No specific procedures are established for regular assessment of the SOE portfolio or regular reporting on the privatisation process.
- In the Netherlands, based on the main findings of the parliamentary enquiry by the Dutch State Senate into privatisations and agencification of central government, a privatisation framework is provided for privatisation of SOEs. This framework can be used by parliament to analyse proposals made by the government for privatisation. Parliament is closely involved in the decision making process and all participations are subject to evaluation at least once every seven years. The evaluation focuses on assessing the public framework, corporate governance, business position, the company's strategic environment and the manner in which the public objectives have been achieved.
- According to Norway's constitution, it is not within the powers of the national executive to alter the state's capital investments in companies. For such actions, the government must obtain a special mandate from parliament. Parliament normally issues a mandate annually to privatise any given SOE to the ministry that is delegated the responsibility for exercising ownership over that company. This happens yearly as part of the state budget approval process and within the framework of a white paper.
- In Poland, the current legal and regulatory framework for state ownership and disposal of state-owned shares is provided by the 2016 Act on the Principles of State Property Management. The Act is a key part of the government's reform of the Treasury's exercise of state ownership and it has led to a significant change in the ways of undertaking disposal of state-owned shares. At end-2016, the Ministry of Treasury was liquidated and SOEs were moved to appropriate sectoral ministries. In line with the new system of state property management, the prime minister coordinates the ownership policy and has issued a document indicating the direction of ownership policy including the process of the sale of the shares owned by the

Treasury. The document is addressed to the members of the Council of Ministers, the government officials and the state legal entities, to which the Prime Minister has delegated the ownership rights.

- In Sweden, the assessment of whether continued state ownership is justified relies on individual bills passed to parliament. As of 2017, the government has a mandate from parliament to reduce state ownership in five SOEs. Every year, the government reports on changes and developments on SOE ownership through an annual aggregate report and half-year activity reports. After a privatisation takes place, the government issues a short press release.
- In Turkey, the privatisation process is guided by the Privatisation Law of 1994. The Law establishes a Privatisation High Council (PHC) charged with selecting state assets for privatisation, deciding on the methods of privatisation and overseeing the divestment procedures and associated financial arrangements. The PHC is chaired by Prime Minister and includes the Minister of Finance and certain line ministers.
- In the United Kingdom, regular reviews and an annual assessment is conducted of the portfolio of state-owned enterprises. The reviews include an assessment of potential privatisation options. The privatisation processes involve reporting to parliament and are subject to parliamentary scrutiny based on reports prepared by the state audit office.

Additional or specific rules

In addition to the examples mentioned above, countries mostly have few additional or specific rules applying to privatisation. Public procurement rules, securities laws (in the case of public offerings) and general company law may naturally have ramifications for privatisation. Moreover, a few countries have rules for the disbursement of the revenues from privatisation. Examples from individual countries include:

- The Danish privatisation framework relies on the parliamentary Finance Committee's decision making on a case-by-case basis. Therefore there are few concrete rules other than concerning the treatment of privatisation proceeds.
- In Estonia, there are no additional rules except for those concerning the treatment of privatisation proceeds. Under the State Budget Act, the privatisation proceeds are treated in the same way as all other state revenues.
- In France, the state is usually surrounded by external legal and/or financial advisors to assist it in the preparation and implementation of privatisation operations. These councils are selected according to the rules for competitive tendering applicable to public procurement. Furthermore, Articles 25 to 28 of the Ordinance No. 2014-948 of 20 August 2014, provide for the intervention, in certain cases, of an independent commission named the Shareholdings and Transfers Commission. When it is seized, this Commission must give an assent to the privatisation operations, particularly on the sale price and, if applicable, on the privatisation procedure implemented. An evaluation of the privatised enterprise is carried out by the Commission and the transfer price cannot be less than the one suggested at the assessment. It is also worth noting that the government's strategy regarding its public sector shareholdings was outlined for the first time in May 2013, with the goal of ensuring profitability and striking a balance between the amount of share capital owned, governance rights and the pursuit of government targets (particularly

in strategic sectors), while complying with the capital ownership thresholds established by law.

- In Germany, the major privatisation processes in the past were accompanied by special privatisation laws. As these divestments mostly concerned public offerings of shares, they also needed to comply with German securities laws and relevant EU regulations.
- In Hungary, as a general rule of law only the organisations exercising ownership rights have the right to transfer shares of SOEs, unless specific legislation provides otherwise. To conduct a sales transaction, an institution entitled to exercise ownership may commission third parties in accordance with the legal provisions of public procurement.
- In Italy, legislation enacted in 1993 established the Government Bond Sinking Fund (hereinafter the “Fund”). Based on the regulatory framework that governs its functions, the sums accredited to the Fund must be used to repurchase government securities on the market or to reimburse securities reaching maturity, as well as to purchase shares in companies in which the treasury is already a stockholder, with the view to their subsequent disposal. The Department of Treasury is responsible for monitoring and management of SOEs, the exercise of the rights of the shareholder, the management of the processes of transformation of state-controlled organisations into companies, their privatisation and disposal, inclusive of the preliminary analyses and the preparatory aspects.
- In Japan, there are few rules in addition to the laws referred to in the previous section. However, in some cases where the Ministry of Finance is the holder of the shares to be divested, the Ministry of Finance hosts an influential Fiscal System Council that has sometimes imposed additional criteria for privatisation.
- In Kazakhstan, a large individual SOE portfolio is held by the sovereign wealth fund (or industrial holding company) Samruk-Kazyna (SK). It is ruled by a specific law “On the National Welfare Fund” which among other things specifies how SK may divest assets to non-state investors.
- The Latvian Privatisation Law stipulates that six methods of divestment may be applied – separately or in combination: (1) trade sales of a controlling interest to one investor; (2) sale to incumbent and retired employees; (3) management buy-outs; (4) public offerings (5) private capital attraction; and (6) debt capitalisation. In practice, trade sales have been predominant (often in combination with sales to employees and/or managers), mostly because this method is perceived as simpler, speedier and more comprehensible. Public offerings, where used as a privatisation method, have also often involved the issuance of privatisation vouchers to corporate employees and managers, in effect combining three privatisation methods. Private capital attraction, observationally equivalent to “private equity”, consists of inviting an outside investor into a SOEs shareholding prior to a subsequent sale of shares. It was rare in Latvia and apparently not used after 2008. The procedures involved in privatisation, as established by the Privatisation Law, are reproduced in Box 2.2.
- In Lithuania, there are several laws which, indirectly or occasionally, impact on privatisation processes. Regardless of the stipulations of the Privatisation Law, a privatisation may be halted according to the Law on Enterprise Bankruptcy if the SOE to be privatised is perceived to be insolvent. Privatisation is also sometimes

affected by the Law on Securities' rules regarding mandatory bids. The valuation of a privatisation object is carried out pursuant to a separate law. The Law on Public Procurement applies to the relationships between state and external advisors and other non-state parties to the process. And, like all transfers of ownership, privatisation is subject to the Civil Code except where stated otherwise in the Privatisation Law.

- In the Netherlands, for each privatisation a valuation will be done in advance by an external adviser. The rules for target investor profiles depend on the way of selling; there are no such rules for an IPO, but there are for private sales. In large privatisations, the ministry hires a financial and/or legal advisor to manage the whole process of privatisation. There are no rules which are applicable to all cases, but there are conditions which should be met before a privatisation can be done. The cases of the aforementioned financial institutions provide relevant examples.
- In Sweden, there are no formal rules regarding privatisation processes, which generally follow business logics and private sector best practice. The Budget Law sets out some specific rules concerning the treatment of privatisation proceeds. Also, there are criteria for potential buyers of SOEs. Bidders have to fill out a Corporate Conduct and Compliance Questionnaire that was developed with the assistance of an international law firm. The Questionnaire aims at identifying any history of corporate law breaking as well as the bidders' adherence to UN and OECD backed standards of corporate ethics.
- In Turkey, privatisation proceeds accrue to a Privatisation Fund which administers them subject to specific rules and disburses surplus funds to the national treasury. In addition, privatisation processes in the recent past have been significantly influenced by sectorial laws in the SOEs' areas of operations, especially with regards to improving the scope for competition.
- The UK privatisation processes are subject to the following additional rules established either by law or regulation: (1) criteria imposed on potential bidders to ensure credibility and future solvency; (2) value for money to the taxpayers; (3) public sector and public procurement laws, including relevant EU legislation; (4) transfer of privatisation transfers to the treasury; and (5) restrictions related to national security concerns and/or essential services or supply in certain sectors.

Box 2.2. Privatisation in Latvia: Legally required steps

1. The privatisation process commences with a privatisation proposal which includes review of the state's need for ownership in state capital shares (filed by a natural or legal entity).
2. The Latvian Privatisation Agency (LPA) prepares the draft order by the Cabinet of Ministers on the designation of the state capital shares for privatisation (or refusal thereof), which is submitted to the Ministry of Economics for forwarding to the Cabinet of Ministers for decision making.
3. The Cabinet of Ministers issues order on designating the state capital shares for privatisation (or refusal thereof). The order is announced in the official gazette. The Cabinet order may include principles or conditions of privatisation of the state capital shares which it is entitled to amend until the privatisation regulations of the respective state capital shares have been approved. Also, the LPA may propose a change of conditions should it deem that the approved conditions cannot be met.
4. Within two weeks after the Cabinet order has been issued, the institution holding the respective state capital shares transfers those to the LPA based on a deed. From the point of signing the deed, the LPA performs all the functions of a holder of state capital shares stipulated by the Governance Law.
5. After the takeover of the state capital shares, the LPA begins the privatisation of the state capital shares, advising the relevant authorities and publishing an announcement on the commencement of privatisation in the official gazette, other relevant media and online. The announcement shall include, among other things, an invitation for creditors and persons with the pre-emption right to apply (until 1 January 2015), and for any other interested persons to submit a privatisation proposal (proposing the privatisation method, price, payment means, etc.).
6. Procurement for the purpose of concluding agreement for the valuation of the state capital shares is announced in the procedure stipulated by the Public Procurement Law and valuation is undertaken in accordance with the law "On the Procedure of Valuation of State and Municipal Property Objects designated for Privatisation".
7. Should no outstanding issues be established for the privatisation of the state capital shares, to be solved first and foremost, the privatisation regulations of the state capital shares are drafted. Pursuant to the Privatisation Law, regulations contain information about the state capital shares, the preliminary price, privatisation method and means, the procedure for exercising pre-emption rights, allocation of capital shares among the groups of buyers (controlling interest, employees, management, public offering, state pension special budget), the procedure for bidder selection, the procedure of making payments, the transferable rights and liabilities, conditions pertaining to workforce, investment conditions, environmental protection conditions, other provisions and guarantees, auction regulations. The privatisation regulations describe the procedure on how the sale of the state capital shares is performed in consecutive steps. Namely, what is performed first and foremost and what are the consecutive steps.¹¹
8. The LPA Executive Board approves the privatisation regulations and sets the application term for purchase of the state capital shares. Pursuant to the provisions of the Privatisation Law, a trade union representative of the capital company shall be invited to the approval of privatisation regulations. After one week, and no later, the LPA publishes an announcement on the approval of privatisation regulations and the application by interested parties, in the official gazette, other relevant media and online. Information about regulations are delivered to the capital company, persons with pre-emption rights, entities who submitted privatisation proposals and the trade union of the capital company. Depending on specifics of the state, capital shares information is mailed to professional unions of the respective sector. Privatisation regulations are published on

¹¹ For instance, in one object the controlling interest of the state capital shares is being sold, then the employees apply for the purchase of the state capital shares and the state capital shares are transferred to the pension special budget, whereas in another object the share public offering at stock exchange is executed or the management method is applied first and foremost.

the LPA's homepage. Sometimes the LPA also organises informational events dedicated to the particular object designated for privatisation, inviting potential interested purchasers of state capital shares to participate. Information is also sent out to venture capital funds and other activities aimed at investor attraction.

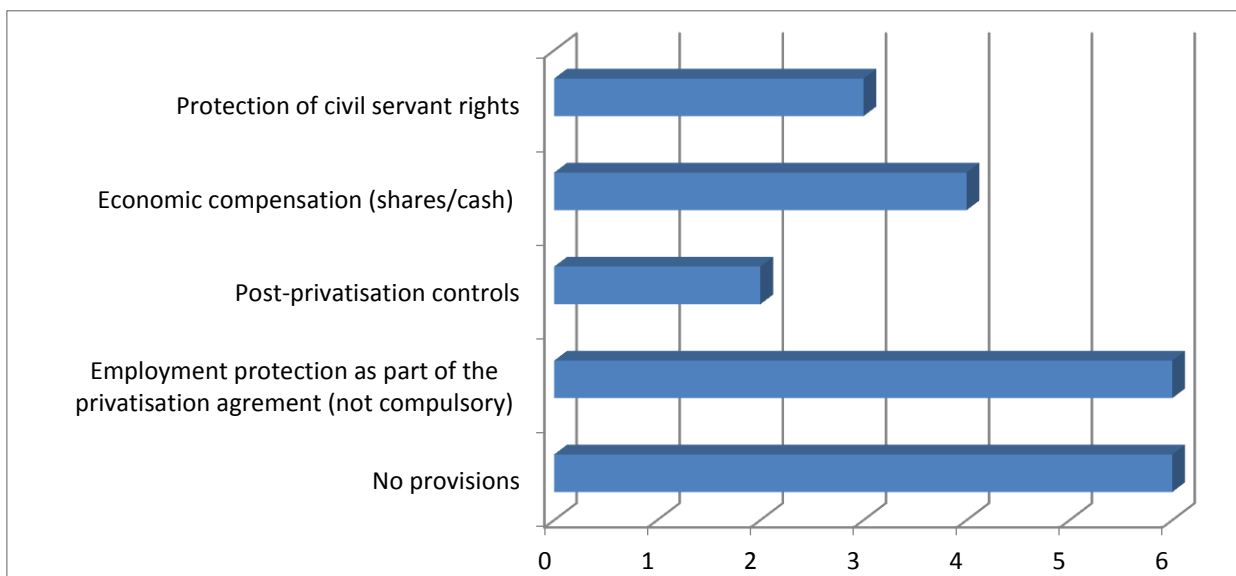
9. All consecutive steps for the sale of state capital shares are undertaken pursuant to the approved privatisation regulations by organising auction, concluding agreements, registering commercial pledges (if any are foreseen) etc. After the purchase agreement comes into force, the LPA publishes an announcement in the official gazette, other relevant media and online, detailing to whom and based on which conditions the state property has been privatised.
10. Should state capital shares be sold on credit and/or other privatisation conditions (e.g. employment) be defined, the LPA undertakes the post-privatisation control until all the conditions have been met and the whole purchase price has been settled. Should it be required (or stipulated by agreement), a buyback is performed or other activities are undertaken. In accordance with the Privatisation Law, privatisation of state capital shares is completed upon passing of the decision about completion of privatisation.

Source: Submission by Latvian authorities detailing the provisions of the Privatisation Law.

Employment conditions, post privatisation

The treatment of SOE employees during and after the privatisation process varies significantly across countries, inter alia reflecting national labour laws and civil service codes. For example, in some North European and other countries, civil service status cannot be rescinded, so if employees of an SOE, prior to privatisation, have civil servant contracts then these contracts must either be grandfathered post privatisation, or the individuals must be offered alternative employment. In other countries, the SOE employees' contractual situation and salaries are adapted to conditions in the private sector, but they are offered mitigation measures such as direct financial compensation or employee shares.

Figure 2.1. Types of employment mitigation measures, by number of respondent countries



Note: Some countries are listed in more than one category

Source: Table 2.2 and author's assessments.

In some countries retaining actual privatisation programmes, an element of job security is offered to SOE employees. This can either take the form of employment retention guarantees as part of the state's agreement with the buyer, or post privatisation controls. Such measures may be either generally offered or, more commonly, the state may have the option of applying them. Examples from individual countries include:

- In Argentina, there are no general rules relating to post-privatisation employment conditions, which are generally guided by ordinary private sector labour law. At the same time, collective agreements negotiated prior to the privatisation must be upheld. The government furthermore has some options for mitigating the effects of privatisation, notably by mandating the issuance of shares to incumbent employees. In some cases, golden shares in the privatised entities also allow the state to continue to block politically unacceptable corporate decisions.
- In the Czech Republic, there are no general rules relating to post-privatisation employment conditions. However, as part of the terms of privatisation an obligation to assume responsibility for existent staff is often imposed on the buyers.
- In Denmark, there is no specific rules framework establishing the rights of employees in case of privatisation, but generic labour market laws establish employee rights in the case of corporate transfers. A separate legal framework establishes the rights of persons with civil service contracts.
- In Estonia, there are no specific rules or conditions concerning the rights of the incumbent staff of a privatised company. According to the State Assets Act, the pre-conditions regarding post-privatisation employment can vary on a case-by-case basis. In addition, there is no special treatment of post-privatisation successors nor disclosure of post-privatisation successor rights.
- In France, the legal framework applicable to privatisation does not include any special provisions for the treatment of privatised workers. This treatment is subject to the common law of companies and to labour law (in particular where there is a transfer of an undertaking), or public employees may be the subject of discussions by the state and such personnel with the acquirer of the public shareholdings in question. However, in certain procedures for the sale of securities, the state may wish, before the transfer, that the purchaser define a social project in his offer, including information on changes in employment in the company. Thus, in the specifications published by the state concerning the privatisation of the airport companies of Lyon and Nice, the state asked the purchasing candidates to present their views on prospects for employment within the airport company with regard to their proposals on wage policy, profit-sharing and employee participation.
- In Germany, there is no general provision. As far as members of staff are civil servants benefitting from a permanent appointment, their contractual entitlements have to be respected and preserved. Provision of employment of civil servants post privatisation would necessitate a specific legal framework. Examples in the past have included the transfer of civil servants to SOEs not slated for privatisation.
- In Israel, there is no specific rules framework establishing the rights of employees in case of privatisation, but generic labour market laws establish employee rights in the case of corporate transfers. A special case relates to privatisations that are structured as a “structural change” of the company, in which case specific staff protections apply. No differentiation between civil servants and other types of contracts is

practiced. In addition, an agreement on a privatisation deal of the state in "private sale" processes often includes an obligation of the buyer to maintain certain obligations of the company towards its employees in the industrial relations area.

- In Kazakhstan, there is no overall framework for employee protection, but an individual approach is applied to privatisation cases. The Commission on Privatisation decides on the methods of privatisation and, if jobs need to be saved, methods of trust management or targeted sales to a preferred bidder may be applied. Alternatively, or in addition, post privatisation controls are used.
- In Latvia, the privatisation-related legislation empowers the Cabinet of Ministers as well as the LPA (when drafting and seeking approval for privatisation regulations) to impose employment retention guarantees, such as the obligation to retain or establish a certain number of jobs. However, neither body is required by law or otherwise to impose such guarantees. There are no special provisions allowing the extension of existing entitlements (such as paygrades or civil servant status) following the privatisation of an enterprise.
- In Mexico, there are no specific rules for employment protection in the case of privatisation, but generally applicable labour market law establishes a number of protections. Additional economic compensation to affected employees may occur. The terms established for the process of divestiture may, moreover, provide for the granting of an additional economic compensation to affected employees.
- In the Netherlands, the government gives special attention to consequences for the concerned enterprises and its stakeholders, including its employees in the privatisation framework. The legal framework for employees does not differ from private sector sales processes and the Ministry of Finance upholds the position that the role and view of the enterprise involved should be taken into account.
- In Poland, the government's proposal on the sale of state-owned shares to the Council of Ministers requires submission of documents specifying economic and social consequences of the sale, including a description of its potential impact on incumbent staff of a concerned company and the importance of the company for the local labour market.
- In Turkey, the Privatisation Law establishes a number of compensation and mitigation schemes available to SOE employees that lose their jobs due to privatisation. These include a special "job loss compensation" in addition to the redundancy payment rules generally in force; rules on the reassignment of redundant staff within the affected organisation or among public institutions; social assistance supplements to eligible individuals; and pension bonuses to staff qualifying for early retirement.
- In the United Kingdom, it is usual for incumbent staff to transfer to the newly privatised body on their existing Terms and Conditions under the Transfer of Undertakings (Protection of Employment) [TUPE] Regulations 2006 (updated by new regulations in 2014) which applies to organisations of all sizes and protects employee's rights when an organisation they work for transfers to a new employer. Following a transfer, employers have often found they have employees with different terms and conditions working alongside each other and wish to change/harmonise terms and conditions. However, TUPE protects against change/harmonisation for an indefinite period if the sole or principal reason for the change is the transfer.

Administrative frameworks and procedures

One of the main differences, in terms of administrative frameworks, is whether or not the state has a specialised body in charge of undertaking privatisation. This is the case in several of the post-transition economies, whereas others have converted their privatisation agencies into ownership units for the remaining SOEs. In some countries (e.g. Israel), it is the ownership unit that carries out the privatisations. Most other countries have either centralised the exercise of privatisation processes in the ministry of finance (most common in countries with a relatively centralised ownership) or vested the powers in the line ministries that used to exercise the state's ownership rights. Overall, it can be concluded that privatisation has, in most countries, become so infrequent that governments rely increasingly on ad-hoc approaches. Examples from individual countries include:

- In Argentina, where the ownership of SOEs is widely dispersed, individual ministries are mostly in charge of the privatisation of SOEs under their control. In exercising this power, they are monitored by the presidency of the republic. Moreover, the Privatisation Law established a parliamentary Bicameral Commission, with a mandate to coordinate privatisation policies and practices between legislative and executive powers. The Commission is kept continually informed of ongoing privatisation activities. The law also provided oversight powers to the National Audit Agency (Auditoria General de la Nación) and the SOEs General Audit Agency (Sindicatura General de Empresas Públicas”).
- In Denmark, there is no formal administrative framework in place defining the privatisation process. Each privatisation is prepared and executed following a process tailored for each case. Despite a dispersed state ownership model, the Ministry of Finance is generally involved in privatisation regardless of ownership ministry.
- In Estonia, the general framework for managing and implementing the privatisation process is provided by the State Assets Act. The Act allows for the government's engagement with external consultants when carrying out the privatisation process while not making it mandatory. Under the Act, a government ministry with an ownership function is charged with a responsibility for implementation of privatisation. Usually, the Ministry of Finance has a formal responsibility to oversee these processes and report them in consolidated annual reports.
- In France, according to Article 2 of Decree 2004-963 of 9 September 2004, the Government Shareholding Agency implements capital operations for public enterprises under the control of the Shareholdings and Transfers Commission.
- In Hungary, Hungarian National Asset Management Inc. (HNAM) exercises state property ownership rights over a portfolio with a value of more than USD 58.6 million. The HNAM's tasks include asset management, portfolio rationalisation, real estate management, increasing the effectiveness of national companies and maintenance and enhancement of SOEs in accordance with government policies and regulations in force. As of 2016, HNAM oversees more than 500 SOEs and exercises nearly 450 proprietary rights. Upon completion of institutional privatisation, HNAM aims to achieve effective management of assets, which entails the possibility of selling shares of SOEs in some cases. However, these transactions are called “portfolio cleaning” and not deemed as privatisation or privatisation contracts. Also, the follow-up of these transactions goes beyond the responsibility of implementing the standard contracts obligations for execution.

- In Israel, the GCA is the organ that exercises (or coordinates) the state ownership function and, as established by the Government Companies Law, it is likewise in charge of implementing privatisation decisions.
- In Italy, the Department of Treasury, Ministry of Economy and Finance, is responsible for monitoring and management of SOEs, the exercise of shareholder rights, the management of the processes of corporatisation of SOEs (where necessary), their privatisation and disposal, as well as preliminary and preparatory aspects of the privatisation process.
- In Japan, there is no formal administrative framework in place defining the privatisation process. Each privatisation is prepared and executed following a process tailored for each case.
- In Kazakhstan, the Ministry of Finance is the government body authorised to manage, and divest, state assets. These powers are vested in the Committee on State Property and Privatisation, which is an agency of the Ministry. The Committee provides guidance in the sphere of managing state property as well as privatisation. The Committee's role is detailed in Box 2.3.
- In Latvia, the privatisation process is guided largely by applicable law and overseen by the LPA. Few additional administrative procedures and frameworks are involved. In particular, the Cross-Sectoral Coordination Centre (CSCC) – Latvia's state coordination agency – is not involved in the privatisation process, except with regards to coordinating with the LPA as representative of the state as an owner.
- The Lithuanian state applies a three-level hierarchy of responsibilities to its privatisation processes. Overall political oversight is exercised by the Privatisation Committee which consists of representatives of government ministries and parliament. The Ministry of Economy, which also is responsible for the ownership of SOEs, is the government agency charged with implementing the privatisation of state property. The actual process of privatisation, as well as temporary asset ownership, is carried out by the state-owned Turtos bankas which also hosts the Government Coordination Centre.
- In the Netherlands, all privatisations are done by the same department which carries out the ownership function. There is no specific legal framework that assigns this function since the ownership function is the task of a ministry, not a separate unit. The exception is applied to 'temporary enterprises'.¹² For 'temporary enterprises', the ownership function lies with a separate unit (Netherlands Financial Investments – NLFJ). They receive their mandate through a separate law. The ultimate decision to privatise still lies with the responsible minister – the Minister of Finance in this case. The steps of the privatisation process include: objective-setting for privatisations; informing parliament and stakeholders; decision to privatise; execution of the decision involving cooperation among different stakeholders including parliament, ministries and the relevant organisations; and evaluation.

¹² As mentioned above, the portfolio of the Dutch state enterprises can be divided into three portfolios: permanent, non-permanent and temporary enterprises. The *temporary enterprises* include financial institutions such as ABN AMRO, ASR and SNS Reaal. According to the government, they plan to return them to the private sector when the financial sector is sufficiently stable and the market has a sufficient interest and is ready for such transition.

- In Poland, shares owned by the State Treasury may be sold by an entity entitled to exercise the ownership rights with an approval from the Council of Ministers, which also determines the procedure for the disposal. The decision on the sale of state-owned shares is made based on a cost-benefit analysis by the Council of Ministers. The proposal on disposal from a state-ownership entity to the Council of Ministers requires submission of documents specifying the disposal procedure, including a description of procedure for selecting buyers; valuation managed by at least two methods; draft contract; and a substantive analysis related to the economic and social consequences of the sale, including a description of its potential impact on the Treasury and employees of the concerned company. The SOEs which are considered to be of significant importance for the national economy are subject to specific regulations under Article 13 of the law on management of state property.
- In Sweden, the Cabinet of Ministers has delegated the responsibility for executing the ownership role of different SOEs to different ministers. However, most of the companies (especially those deemed to be “commercial”) are the responsibility of one single ministry. This ministry is responsible for all ownership-related matters including privatisation.
- In Turkey, the privatisation procedures are the responsibility of the Privatisation Administration which also serves as the secretariat of the Privatisation High Council (described above).
- In the United Kingdom, the responsibility for “large and complex” privatisation processes is vested in the UK Government Investment, an incorporated centre of excellence located within the public sector.

Box 2.3. Kazakhstan's Committee on State Property and Privatisation

Pursuant to the Law "On State Property", the Committee on State Property and Privatisation performs the following functions:

- 1) develops and approves normative legal acts in the sphere of managing state property within its competence;
- 2) exercises control over proper and effective use of state property;
- 3) conducts privatisation of state property, including adoption of decisions on privatisation of state property, as well as entities such as a property complex, which are not natural monopolies or market participants with a dominant or monopolistic position on the market; ensures safety of republican property in pre-sale preparation of privatisation entities, attracts an intermediary for organisation of the process of privatisation, provides for evaluation of the privatisation entity, conducts preparation and conclusion of sale and purchase agreements, and has control over compliance with the terms and conditions of the sale and purchase agreement;
- 4) performs proprietor rights, with respect to republican juridical persons, on behalf of the Republic of Kazakhstan;
- 5) upon proposal of the authorised body of the relevant sphere (line ministry), determines the field and aims of activity of republican state enterprises, type of enterprise, and approves the charter of republican state enterprises, amendments and addenda to it;
- 6) in agreement with the authorised body of the relevant sphere, performs removal or reallocation of the property, transfers to a republican juridical person or acquired by it as a result of its economic activity;
- 7) performs removal of unnecessary, unused or improperly used property of republican juridical persons, revealed as a result of control of proper use of state property, six months after the moment of conducting control without agreeing with the authorised body of the relevant sphere;
- 8) establishes for the republican state enterprise, the term of maintenance and ensuring of safety of removed property before its transfer to other person with the subsequent write-off from the balance;
- 9) gives republican property for lease, trust management to individuals and non-state juridical persons without the right to subsequent purchase, with the right to subsequent purchase, or right of subsequent transfer to ownership of small entrepreneurs on a gratuitous basis;
- 10) gives consent to the authorised body of the relevant sphere for performing reorganization and termination of a republican juridical person;
- 11) gives consent to the republican state enterprise for sale or disposal by another way of the property reserved for it (except for sale of its products), creation of branches and representations, as well as transfer and write-off of the debt receivables;
- 12) represents interests of the state on issues of state property, performs protection of property rights, possessed by the Republic of Kazakhstan;
- 13) conducts analysis of leasing of the property, reserved for republican juridical persons;
- 14) performs control over timeliness and fullness of distribution of dividends on the shares owned by the Republic of Kazakhstan and their payment, as well as over distribution of net income between participants of a limited liability partnership, rights of participation which belong to the Republic of Kazakhstan;
- 15) performs state monitoring of property in the spheres of economy with strategic significance, in accordance with the law of the Republic of Kazakhstan "On State Monitoring of Property in the Spheres of Economy With Strategic Significance";
- 16) conducts organisation and performance of monitoring of functioning and effectiveness of managing republican state enterprises, joint stock companies and limited liability partnerships with participation of the Republic of Kazakhstan;
- 17) performs control over implementation of liabilities of the trust manager under the contract of trust

management of the republican property;

18) upon decision of the Republic of Kazakhstan, serves as a founder of joint stock companies and limited liability partnerships, as well as of republican state enterprises;

19) upon the decision of the Government of the Republic of Kazakhstan, performs payment of placed shares of JSCs and payment of contribution to the charter capital of LLPs through payment of money in accordance with the Budget Code of the Republic of Kazakhstan, as well as of republican property, including shares, rights of participation in the charter capital;

20) performs on behalf of the Government of the Republic of Kazakhstan, rights of the shareholder (participant) on participation in management of a joint stock company (limited liability partnership);

21) appoints its representative to the members of the relevant board of directors (supervisory board) of joint stock companies (limited liability partnerships) where the sole shareholder (participant) is the Republic of Kazakhstan, and in another JSCs and LLPs with state participation proposes for approval of the general meeting of shareholders or participants of the limited liability partnership candidates to the membership in the board of directors or a supervisory board;

22) repays compensation for nationalised property in cases and conditions stipulated in the Law “On State Property”;

23) develops rules for maintaining the Register of State property;

24) maintains the Register of State property in order, determined by the Government of the Republic of Kazakhstan, and supplies information to the users of the Register of State property;

25) coordinates and organises work on ensuring single recording of state property in the Register of State property;

26) conducts tender pursuant to the Law “On Government Procurement” for determining a periodical for publishing notices on sales of republican property;

27) performs other competences, foreseen in the Law “On State Property”, other laws of the Republic of Kazakhstan, acts of the President and the Government of the Republic of Kazakhstan.

Source: Submission by Kazakh authorities.

Table 2.2. Privatisation frameworks

	Objectives	Laws, regulations, policies and other rules	Employment conditions post privatisation	Administrative frameworks and procedures
Argentina	Derived from the motives for state ownership: controlling resources, remedying market failure and industrial promotion. In addition privatisation was sometimes motivated by fiscal deficits.	There is no overarching regulatory framework for privatisation. Privatisation during the 1990s was guided by a specific privatisation law (the “State Reform Law”). Corporate and public administration laws also apply. Sector regulations, generally entrusted with the same ministries that exercise SOE ownership, may moreover impact the privatisation process.	Employment post-privatisation according to private labour law. Collective agreements must be respected. The state may impose mitigation measures such as employee shares. During privatisations in the 1990s, labour responsibilities would be absorbed by the concessionaire as mandated by the State Reform Law.	Privatisation is conducted by individual ministries, under the oversight of the presidency as well as a parliamentary commission.
Czech Republic	Privatisation is mostly motivated by fiscal concerns and the purpose of changing market conditions in the sectors where SOEs operate.	A law issued in 2005 abrogated the privatisation agency and established competencies for the Ministry of Finance to conduct privatisation.	The new owners are usually required to assume responsibility for all employees.	Nothing beyond what was established in the 2005 law.
Denmark	The state issues an official ownership policy. SOEs whose purpose does not coincide with the policy are candidates for privatisation	EU regulations. Each privatisation moreover requires parliamentary approval.	No privatisation-specific rules. General laws about staff rights in case of takeovers, as well as the rights of civil servants.	No formal administrative framework. Each process is tailored.
Estonia	Most of the privatisations during the period under review were motivated by considerations that the state’s participation in an SOE is no longer needed for public purposes and the country’s fiscal resources should be raised in the short term.	A legal and regulatory framework for the state’s participation in companies and the sale of shares of SOEs is provided by the State Assets Act (SAA). The Act establishes a codified list of rules for management and operating principles of SOEs, including a yearly evaluation of the state-owned enterprise ownership portfolio and the procedures for the sale process.	There are no specific rules or conditions concerning the rights of the incumbent staff of a privatised company.	The general framework for managing and implementing the privatisation process is provided by the SAA. Under the Act, a government ministry with an ownership function is charged with a responsibility for implementation of privatisation.

	Objectives	Laws, regulations, policies and other rules	Employment conditions post privatisation	Administrative frameworks and procedures
France	Mostly decided on a case-by-case basis in pursuit of several objectives. For example, privatisation may aim to raise fiscal revenues and at the same time strengthen the corporate capital base.	Transactions are governed by the Ordinance of the Decree No. 2014-949 dated 20 August 2014. These very recent texts have clarified and simplified the law applicable to capital transactions. The Government Shareholding Agency, which is in charge of the management of the portfolio of public holdings, is responsible for making any relevant proposals to the government within its scope. Furthermore, in certain cases, an intervention by an independent commission named the Shareholdings and Transfers Commission is guaranteed by law.	No special provisions for the treatment of privatised workers. This is subject to ordinary company and labour law. In practice consultations with public employee representatives take place, and in some cases the state may ask, before the transfer, that the purchaser define a social plan, including information on changes in employment in the company.	According to Article 2 of Decree 2004-963 of 9 September 2004, the Government Shareholding Agency (APE : Agence des Participations de l'Etat) implements capital operations for public enterprises under the control of the Shareholdings and Transfers Commission.
Germany	The state issues an official ownership policy. SOEs whose purpose does not coincide with the policy are candidates for privatisation.	The Federal Budget Code sets rules for state participation in private-law enterprises. A review of ownership takes place every 2 years. The result of the review is publicly disclosed. Large privatisation processes involve separate privatisation laws.	No general provisions. However, civil service status cannot be rescinded. Grandfathering, where applicable, must be separately legislated.	Privatisation procedures are the responsibility of the Ministry of Finance.
Hungary	Privatisation can be considered when the government wants to set up a more efficient and cost-effective way to manage and utilise state property and national assets.	Act CVI of 2007 on State Property governs an accomplishment of a broad-scale privatisation. For its enforcement, the Government decree No. 254/2007 (X. 4.) was enacted with detailed regulations on managing state property. Only organisation(s) exercising ownership rights have the right to transfer shares of SOEs, unless specific legislation provides otherwise.	No specific rules.	HNAM exercises state ownership rights over a large portfolio of SOEs and other assets. HNAM combines the roles of ownership function, portfolio manager and, when necessary, privatisation agency.

	Objectives	Laws, regulations, policies and other rules	Employment conditions post privatisation	Administrative frameworks and procedures
Israel	The government's decision to change state ownership can be motivated by a consideration that a state-owned company is no longer needed for public or strategic purposes. Also, privatisation can be sometimes motivated by the government's plan for transferring state assets, and any associated public policy objectives, to the local government entity.	Government Companies Law in conjunction with a more recent policy for privatisation practices established by government.	Employment conditions are covered by collective bargaining. No special treatment of civil service contracts post privatisation.	The GCA is in charge of both ownership and privatisation practices.
Italy	Mostly motivated by a need to reduce public debt. In some cases also capital market development and increasing corporate efficiency.	Privatisation processes were established by the Inter-ministerial Economic Planning Committee (CIPE) and by Decree Law 332 of 1994. The Law establishes methods of sale, tariffs of public utilities services and post-privatisation government powers in the divested companies.	No specific rules.	The Decree Law assigns responsibility for the process to the Department of Treasury of the Ministry of Finance, subject to regular reporting to parliament.
Japan	Recent privatisations have been motivated either by the generation of fiscal revenues or the promotion of market diversification and competition. Information disclosure on a case-by-case basis.	Privatisation pursuant to specific laws. Can be either a privatisation bill or a fiscal bill referencing the budgetary impact of impending privatisation.	No specific rules.	Privatisation is placed mostly in a fiscal context overseen by the Ministry of Finance.
Kazakhstan	Main priorities are: (i) strengthening national entrepreneurship; (ii) reducing the state's share of the economy; (iii) raising corporate efficiency.	A national Privatisation Plan provides most of the directions. A state property law, corporate and administrative codes and a specific law establishing Samruk-Kazyna also apply.	A case-by-case approach. Concerns for employees may affect privatisation methods or lead to post-privatisation controls.	The Ministry of Finance is charged with privatising centrally held state property. It is assisted by a specialised committee.

	Objectives	Laws, regulations, policies and other rules	Employment conditions post privatisation	Administrative frameworks and procedures
Latvia	As of 2016, SOEs that are not either correcting market imperfections or serving strategic and national security purposes should normally be divested.	Specific privatisation laws, plus laws on SOE governance and public administration. State ownership is assessed every 5 years. Implementation is vested in a privatisation agency. The Privatisation Law prescribes six privatisation methods that can be applied separately or in combination. Various laws establish a sequencing of procedures.	Contractual relationships are not grandfathered after privatisation. The state has the right, but not duty, to impose employment retention guarantees.	The privatisation agency operates independently from the state ownership (coordinating) function.
Lithuania	The generation of fiscal revenues. Other objectives are the improvement of the efficiency of privatised enterprises and opening them to foreign participation.	Laws on privatisation and state ownership as well as government resolutions on selection and procedures. Several other applicable laws, including company law and laws pertaining to insolvency, public procurement, asset valuation and securities trading.	No specific rules.	Oversight by an inter-ministerial Privatisation Commission. The Ministry of Economy is charge of privatisation policy. The SOE Turto bankas operates the privatisation procedures.
Mexico	According to applicable law, divestiture shall take place when an entity is no longer suitable for its purpose or for the purpose of the national economy and public interest.	Based on laws bearing on parastatal entities and public administration. No specific privatisation law. However, parliament can legislate about divestiture of specific SOEs.	No specific rules, but applicable labour market law establishes a number of protections. Additional economic compensation to affected employees may occur.	No specific rules for the role of the state and an enterprise owner. Hence decisions are mostly on a case-by-case basis.
The Netherlands	The decision on maintaining ownership and privatisation depends on whether or not a public interest needs to be safeguarded through shareholdership.	Based on a parliamentary enquiry, a framework for privatisation of SOEs is developed. Any privatisation proposal is analysed by means of this framework. Parliament is closely involved in the decision making process. Also, all state participations are subject to evaluation at least once every seven years. Rules for target investor profiles exist, depending on the selling method.	The government gives special attention to consequences for enterprises and its stakeholders in the privatisation framework. However, the legal framework for employees does not differ from private sector sales processes.	All privatisations are generally done by the same department which carries out the ownership function. An exception applies to statutory corporations of which the ownership function lies with a separate unit (NLF). The decision to privatise these lies with the Minister of Finance.

	Objectives	Laws, regulations, policies and other rules	Employment conditions post privatisation	Administrative frameworks and procedures
Norway	Derived from the categorisation of SOEs by the state ownership policy. Purely commercial SOEs are normally candidates for privatisation.	A parliamentary mandate is required for each individual privatisation transaction. Mandates are considered and approved each year as part of the state budget process. The state ownership policy serves as a framework.	No specific rules.	No additional frameworks or procedures. The state ownership policy is quite comprehensive in this regard.
Poland	Privatisation is motivated by a consideration that a state-owned company is no longer needed for public or strategic purposes.	The current legal and regulatory framework for state ownership and disposal of state-owned shares is provided by the 2016 Act on the principles of state property management and its provisions. At end-2016, the Ministry of Treasury was liquidated and SOEs were moved to appropriate sectoral ministries. In line with the new system of state property minister coordinates the ownership policy.	The government's proposal on the sale of state-owned shares to the Council of Ministers requires submission of documents specifying economic and social consequences of the sale, including a description of its potential impact on incumbent staff of a concerned company and the importance of the company for the local labour market.	Shares owned by the State Treasury may be sold by an entity entitled to exercise the ownership rights with an approval from the Council of Ministers. The latter also determines the procedure for the disposal.
Sweden	Developed on a case-by-case basis to establish whether a cause for state ownership no longer exists.	A parliamentary mandate is required for each individual reduction in state ownership. The state ownership policy serves as a framework. Specific rules apply to the treatment of proceeds and the pre-qualification of bidders.	No specific rules.	The ownership of most SOEs is exercised by one ministry which is also responsible for privatisation.
Turkey	Established by law. Aimed mostly at minimising the role of the state in the competitive economy, secondarily at reducing fiscal losses and improving capital markets.	The Privatisation Law of 1994 provides criteria for selecting assets to be divested, establishes an administrative and political framework for privatisation and establishes social safeguards.	Rules are in place for compensatory payments for job losses, reassignment to other government institutions, social assistance supplements and early retirement.	The Privatisation Administration undertakes privatisation under the oversight of the inter-ministerial Privatisation High Council.

	Objectives	Laws, regulations, policies and other rules	Employment conditions post privatisation	Administrative frameworks and procedures
United Kingdom	Developed on a case-by-case basis. Based primarily on hoped-for efficiency gains through privatisation, secondarily on fiscal revenues to reduce public debt.	Regular reviews of the portfolio of state-owned enterprises. The reviews include an assessment of potential privatisation options. The privatisation processes involve reporting to parliament and are subject to parliamentary scrutiny based on reports prepared by the state audit office.	Government regulations apply to SOE employees when the organisation they work for transfers to a new employer. This can effectively lead to a grandfathering of existing rights and employment conditions.	Most privatisations are undertaken by UK Government Investments, a “centre of excellence” located within the public sector.

Source: national questionnaire responses.

3. The process of privatisation

This chapter reviews and compares the actual process of privatisation in the reporting countries. This includes: (i) how the abovementioned “objectives” have translated into actual privatisation decisions; (ii) the choice between full and partial privatisation, as well as the decision to carry out a full privatisation sequentially; (iii) the choice of divestment methods (e.g. IPO, trade sale, management buy-out); (iv) whether or not pre-privatisation restructuring is carried out; (v) methods for carrying out a valuation of SOEs prior to privatisation; (vi) the role of external advisors; and (vii) whether and how SOE managers and board members are incentivised to stay engaged during the privatisation process.

The decision to privatise

The decision to privatise companies in most countries has, unsurprisingly, been taken consistently with the “motivations” outlined above. The most frequently cited reason (in ten respondent countries) is changing market competition and/or a wish to reduce the state’s role in the productive economy. In three of these cases, decisions were based on a rigorous analysis of the state’s SOE portfolio and/or the development of a formal privatisation list. Six of the countries (some of which also cited market conditions) mentioned generation of fiscal revenues as one of the driving forces. Some countries have further privatised because they estimated that a transfer of ownership would enhance corporate efficiency and/or improve its access to finance and capital markets. Examples from individual countries (a synthesis is provided in Table 2.2) include:

- In Argentina, the last bout of privatisation (which was quite some time before the period under review in this report) was motivated by fiscal concerns – both with regards to revenues that privatisation could bring, and because many of the existing SOEs at the time were a source of fiscal haemorrhaging. The divested companies were mostly found in the public utilities and network industries. The State Reform Law established a list of companies to be privatised in the 1990s.
- In Denmark, the decision to privatise in recent years has mostly followed the motivations listed in the previous chapter. Mostly, a changing market structure has removed the rationale for state ownership and/or created a need to bring strategic partners to the SOE. A need for new capital and better access to capital markets have also sometimes been a factor.
- In Estonia, the government decides to privatise an SOE when it is no longer needed for public policy purposes and/or when it is required to operate in a competitive market. In the case of Eesti Telekom, privatisation was motivated by a consideration to raise fiscal resources in the short term. A one-time acquisition of dividends, together with the sale proceeds, was considered a preferred option

compared to an annual acquisition of dividends over many years. An objective to meet the EU Maastricht Criteria was also reflected in the decision to privatise.

- In France, as indicated above, capital transactions are conducted in accordance with the aforementioned State Shareholder Guidelines. In recent years, for example, the State has decided to sell its shareholdings in the airports of Toulouse, Nice and Lyon according to the Guidelines. The government considered that it was not necessary for the state to retain its majority interests in the capital of airport companies to ensure that these airports remain strong operators. The decision was also in line with the objective of its public service mission within a regulated tariff framework.
- In Germany, decisions to privatise have been taken when the review procedures in connection with the fiscal budget procedures mentioned above have concluded that a rationale for state ownership was no longer present.
- In Israel, the government may opt for full privatisation if company should be operating in a free and competitive market and if it does not have strategic significance to the country. Privatisation can also be chosen to correct market failure. In other cases, companies would stay in government ownership.
- In Italy, subject to the fiscal objectives outlined above, SOEs have been mostly selected for privatisation based on their degree of market orientation – that is, commercially operating firms were selected in preference over others. The decision on whether or not to gradually privatise was sometimes made with a view to maximising fiscal revenues.
- In Japan, as mentioned earlier, recent privatisation was triggered either by a decision that an SOE could be run more efficiently in the private sector (the postal privatisation), or because fiscal funds were needed for a specific purpose (Japan Tobacco).
- In Kazakhstan, a large-scale privatisation programme has been underway since 2008, pursuant to an explicit government policy aiming to foster competition, lower the state share in the economy and transferring SOEs to more efficient productive ownership. Those SOEs which are not on a list of “strategic enterprises” can, and should, be privatised pursuant to the establishment of a privatisation commission by the part of the state that exercises the ownership rights.
- In Latvia, the basis of a relatively active privatisation programme was a “privatisation list” identifying SOEs that do not, or no longer, fulfil the government’s criteria for continued state ownership.
- In Lithuania, the decision to privatise is normally taken on the basis of financial considerations, but occasionally government strategic objectives and/or some more political positioning have also played a role.
- In Mexico, privatisations have been rare, but when they occurred this was mostly motivated by a wish to enhance their efficiency and thereby contribute to modern service delivery and higher economic growth.
- In the Netherlands, the general motivation for maintenance of ownership depends on whether or not a public interest needs to be safeguarded through shareholdership. For ABN AMRO and ASR, an IPO was chosen as the sales method so that the government could maintain a significant part of the shares for the public’s interest. .

- In Poland, the decision to privatise usually takes into account the economic and financial situation of the incumbent company; the potential impact on the incumbent staff of a privatised company; the importance of the company for local labour market; the interest of potential investors; time frame; and the cost of ownership supervision. Based on the analysis of these factors, the Council of Ministers evaluates the appropriateness of the sale of shares owned by the State Treasury.
- In Norway, the decision to privatise relies on an assessment of both market-related and company-specific factors. The government will not make any changes to state ownership or support any transactions that are not considered financially beneficial to the state.
- In Sweden, previous governments from 2006 until 2014 had a specific policy to reduce state ownership in the economy. Privatisations have occurred in alcohol production, real estate, telecom, banking, insurance, securities trading, car testing and consultancies. The current government carries out privatisation on a case-by-case basis.
- As mentioned above, privatisations in Turkey tend to be wholly or partly motivated by fiscal concerns (stemming losses and/or raising divestment revenues). Based on such considerations, the Privatisation High Council decides to transfer SOEs from the control of the national treasury to the privatisation administration.
- In the United Kingdom, decisions on whether to consider a state asset for privatisation are typically initiated by the treasury. Important considerations for evaluating the merits of introducing private capital are the extent to which the private sector could replicate provision of the goods or services in a competitive environment. Or, if the provision of goods or services is a monopoly, will regulatory, legislative or contractual measures protect consumers whilst improving service levels. Key tests in assessing options, including privatisation, are whether an option achieves policy objectives and maximises value for money.

Box 3.1. Overview of recent Norwegian divestments

The Government is open to a number of possible privatisation methods, but the goal is always that the privatisation should be considered financially beneficial for the State in each individual case. Below are a few examples of methods used in the recent years.

Cermaq ASA – sale of the State's shares: The State announced in the last white paper on State ownership that its 59.17 % stake of the shares in the listed company Cermaq ASA was not a strategic holding. The Storting had also before this given its consent to a reduction or a termination of this ownership, in connection with an industrial deal. As a listed company with many shareholders, Cermaq itself was in lead in evaluating strategic opportunities and having contact with potential buyers. Following a bid from Mitsubishi Corporation on 22 September 2014, Cermaq's Board of Directors recommended the bid to its shareholders. The State accepted the bid on 20 October 2014, and a sufficient share of the shareholders did the same, where after the State (and all other shareholders) sold all of its shares to Mitsubishi. The State received NOK 5 254,2 million as payment for the shares.

Airline SAS – sale of the State's shares: In 2016 Norway and Sweden together sold 7 % of the shares in the airline SAS through an accelerated book-building process netting USD 40 million. Sweden's shareholding in the Scandinavian Airlines parent was reduced to 17.2 % from 21.3 % and Norway's to 11.5 % from 14.2 %. Denmark, which owns 14.2 % of the SAS, did not participate in the book-building process. The two countries also plan to ultimately exit their stakes entirely, a move that could potentially result in the company's consolidation into one of Europe's bigger airline groups.

Entra dual IPO and strategic mergers and acquisitions (M&A) process: An invitation was sent to 30 potential buyers in April 2014 and the State received 4 indicative bids in round 1 and 3 in round 2. The government negotiated with one buyer, performed due diligence, established a Share Purchase Agreement and a Shareholding Agreement. However, M&A-process was stopped late August when a direct sale was considered less economically attractive than an IPO. Entra ASA was listed on the Oslo Stock Exchange in October 2014. In September 2016 the Norwegian state completed a secondary placement of 30 million shares in Entra ASA, representing 16.3% of the share capital, netting approximately USD 319 million. The state now holds 33.4% of Entra.

Mesta strategic M&A process: This was a broad and thorough M&A process conducted from February to December 2014. The Ministry of Trade, Industry and Fisheries engaged a legal and a financial advisor to help in the process. The first phase was about whether and how to privatise, while phase two was execution. Teasers were sent out to 61 potential buyers and an information memorandum to 28 buyers. The State prepared financial, legal and environmental vendor due diligence, including establishing a detailed data room. A detailed management presentation was prepared. 3 committed offers were received. However, none of the offers were considered attractive for The Ministry of Trade, Industry and Fisheries based on valuation – the sale process was therefore stopped January 2015. Since this date Mesta has performed trade sales involving non-core real estate assets, yielding a higher pay-off than the highest bid for the company.

Source: submission by the Norwegian authorities and Swedish authorities.

Box 3.2. Overview of recent French divestments

The government's privatisation policy is in line with its state ownership policy which is aimed at safeguarding the government's strategic interests and assets, while mobilising resources for investment and debt reduction in the businesses and sectors that are of importance for the country's economic and social development. Some recent examples are shown below:

SAFRAN – sequenced public offerings of the State's shares: Between March 2013 and November 2015, the government's share in Safran was gradually reduced from 30.2 % to 15.4 %. In March 2013, the government sold 3% of Safran's share capital on the market followed by 4.7% in November 2013, 4% in March 2015 and 2.6% in November 2015. The sale still leaves the government as the biggest shareholder, with a 15.39% equity stake and around 23.9% of voting rights. The transactions raised a total of USD 3.4 billion – the largest sum among all transactions that took place during 2008-2016.

ENGIE SA (former GDF-Suez) – sale of the State's shares: Following the merger between Gaz de France and Suez (later renamed Engie SA) in 2008, a transfer of GDF-Suez shares to the market took place during 2014-2015. On 16 June of 2015, the government sold 0.48% of the company's total share capital at a non-discounted price and under favorable market conditions. In September 2017, as the first step of the government's newly-announced EUR 10 billion (USD 12 billion) state asset sales plan, the government sold a 4.5 % stake in Engie SA for EUR 1.53 billion (USD 1.82 billion). The operation also included the sale of a 0.46 % stake to ENGIE itself, which will be used for employee share awards. Following the 2017 stake sale – which included the sale of a 4.1 % stake to institutional investors at EUR 13.80 (USD 16.5) per share – the APE (Agence des Participations de l'Etat) will hold 24.1 % of Engie's capital and 27.6 % of the voting rights. The government still remains the leading Engie shareholder.

Overhaul of nuclear industry: On 3 June 2015, the government announced its plan for a new venture that would unite project design and management businesses of EDF and Areva as well as the marketing of new reactors. This move is in line with the government's export policy and its plan for renovation of nuclear power plants. The government expects that the venture will result in a comprehensive strategic industrial and financial partnership agreement between Areva and EDF. The Government also plans to recapitalise Areva.

Trade sales of airport assets: On 10 March 2016, the government began disposing of shares in Aéroport de Lyon and Aéroport Nice Côte d'Azur. The government sold the shares in close consultation with local partners throughout the process. The government drafted a set of detailed specifications that required potential investors to submit a business plan that met industrial, social and local development criteria. The purpose was to ensure continued growth of both airports, as well as to enhance governance rights of minority public shareholders by giving them a greater say.

Source: submission by French authorities and the 2015-2016 Annual Report of the Government Shareholding Agency (APE); The APE press release dated 05 September 2017, <http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/22654.pdf>.

Retaining a stake in the SOE?

There are basically two rationales for selling only part of a company: (1) an ex-ante decision to exercise a sequential privatisation that will eventually lead to full divestment; (2) political or strategic imperatives dictating a continued majority or significant minority stake by the state. In practice, a number of transactions have, of course, begun (or been communicated to the public) as belonging to the second category, but subsequently were transformed into the first step of a full divestment.

A relatively limited number of countries have specifically opted for partial privatisation. Those that have (e.g. Argentina, Denmark, Kazakhstan, Lithuania, Norway and Poland) cite a variety of reasons, many of which relate to the SOEs size and systemic or strategic significance. Politics has also played a role, with some parts of the political spectrum being willing to contemplate divestment only if the state remained a dominant owner.

Sequencing has been slightly more common, especially where the privatisation of particularly large SOEs occurred. These privatisations took the form of IPOs and a number of subsequent share offerings. The pace of privatisation was determined mostly by an assessment of how many shares the stock markets could absorb, as well as opportunistically taking advantage of periods of favourable share prices. Examples (a synthesis is provided in Table 2.2) from individual countries include:

- In Argentina, minority stakes have sometimes been retained, for “strategic” reasons, after divestment of SOE shares. These reasons have sometimes been backed by the maintenance of golden shares, as was the case, for instance, in the energy company YPF. During the privatisation process, SOEs of Argentina would first be transformed into limited liability companies (“Sociedades Anónimas”) with different types of shares. These shares would then be offered, through different mechanisms, to the market. In some cases, for instance, in the freight railway industry, the government maintained a minority stake. In the case of America Latina Logística S.A., one of Argentina’s freight railway private operators, the state maintained 16% of total shares. The State Reform Law (Law 23696) also established special share programmes for workers of the company. Unions would normally represent these shareholders at the board of privatised entities.
- In Denmark, the decision on whether to maintain government ownership after (initial) divestment depends on a mix of political and strategic considerations. Where privatisation is motivated by a changing competitive environment, there is generally no need for a continued government involvement. Conversely, where strategic interests are at stake (a recent example in the energy sector is described in Chapter E), political agreements concerning privatisation sometimes foresee a continued partial or majority state ownership.
- In Estonia, at end-2016, the new government coalition announced its plan to sell off minority stakes in Tallinna Sadam AS (Tallinn Port), Enefit Taastuvenergia (Enefit Renewables) and AS EVR Cargo (railway cargo operator). For the Port of Tallinn, up to 30% of shares were available for sale, up to 49% for Enefit Taastuvenergia and also for EVR Cargo. In these cases, maintenance of the state’s stake is based on a political agreement which upholds the view that these SOEs are of great public importance, as well as strategic importance.
- In France, the maintenance of the state’s shares in a company after privatisation is most often based on social, political and strategic motivations. The decision usually accompanies inter-ministerial discussions. Regarding the privatisations of regional airport companies, the tender specifications for the framework under which the State sells its shares was drawn up in a close consultation with the minority public shareholders. In the case of Toulouse airport, for example, this led the state to divest only a fraction of 49.99% of the company’s capital, so that public shareholders (the state, the Chamber of Commerce and Industry of Toulouse and local authorities) retain the majority of the company’s capital. In addition, there is no rule for sequencing. For regional airport companies, different sequences have been implemented – complete privatisation for the airports of Nice and Lyon and partial

privatisation for Toulouse airport, which may lead to a full privatisation if the state chooses an option of sale.

- In Germany, sequencing of privatisation has occurred where particularly large SOEs were being divested. For example, the postal utility Deutsche Post AG has been under privatisation since November 2000. It is deemed that the stock market's capacity to absorb new equities is such that a gradual process is needed to obtain the best price for the state's shares. In 2012, in response to favourable capital market conditions, an accelerated bookbuilding was used to sell an additional tranche of 60 million shares, reducing the state's stake down to 21%.
- Japanese privatisation has mostly involved sequenced sales of large SOEs via the stock markets. The pace of the processes has usually been determined opportunistically, influenced by both market conditions and the prevailing political realities.
- In Kazakhstan, the decision on whether or not to retain a state ownership stake is made on a case-by-case basis, in a process involving the privatisation commissions that are established to oversee each transaction.
- In Latvia, given that the country is engaged in a continued process of transferring ownership from public to private, the state usually does not seek to maintain minority shares. Exceptions mostly relate to SOEs whose shares were difficult to sell on market terms.
- In Lithuania, following a period of mass privatisation the government retains majority ownership in some SOEs in the energy sector. The divestment of some other SOEs in the utilities sectors which have been privatised through stock market offerings have been staggered reflecting the Lithuanian stock market's limited absorptive power.
- In the Netherlands, as mentioned above, the government maintains its ownership in a company after privatisation if it decides that a public interest needs to be safeguarded through shareholdership. For instance, an IPO was chosen as a sales method for privatisations of ABN AMRO and ASR. This indicates that they are still considered as not yet ready for being strong operators in the market and the Dutch shareholder still has a significant part of the shares which will be sold in the future. Holland Casino and Staatsloterij are planned for full privatisations via a private sale.¹³
- The Norwegian government decides whether or not to retain minority shares in privatised SOEs according to what is considered the most financially beneficial for the state in each individual case.
- Most Swedish privatisations have been 100% in one transaction. In the few cases where the state has retained a minority stake, no rationale has generally been communicated to the public.
- In the United Kingdom, decisions on whether to maintain an ownership stake would be reliant upon options evaluation as part of an established business case process. Motivations behind such a decision would include: (1) benefiting from a share of

¹³ One specific example is the airline company KLM, in which the state retains a small shareholding because of nationality clauses in a number of international "open sky" treaties.

potential upside from a potential improvement in performance; (2) retaining levers for example to ensure continued adherence to key policy objectives; (3) ensuring continued involvement in a strategically important activity or for national security reasons; and (4) for commercial reasons, for example if proceeds could be maximised by sale in more than a single tranche. More generally the sequencing of privatisation depends also on the political landscape and the “market appetite” for the type of corporate assets potentially on offer.

Privatisation methods

Privatisation methods have varied according to the size of the SOEs privatised and the relative maturity of the economy in which the privatisation took place. The post-transition economies, as well as Mexico, have mostly sold off rather small SOEs through trade-sale auctions to strategic private investors. Most other countries have relied on share offerings to privatise large companies and trade sales to privatise smaller firms. Privatisation through management buy-outs has become rare, but still occurs. A more unusual case is found in the Czech Republic where companies have been thrown off the state’s balance sheet by transferring them to municipalities. Examples (a synthesis is provided in Table 3.1) from individual countries include:

- In Argentina, the State Reform Law (Law 23696) established divestiture modalities including: sale of assets, as a total unit or in separate parts; sale of shares; leasing, with or without the option to buy; establishing the price of the potential purchase; management (“administración”), with or without the option to buy; establishing the price of the potential purchase; and concession or license. These modalities were implemented through the use of one or a combination of the following procedures: public tender; public contest (“concurso público”); public auction (“remate público”); public offer of shares in the stock market; and non-competitive contracts (“contratación directa”).
- In the Czech Republic, the privatisation laws allow the transfer of state-owned assets to other entities through the following means: (i) public auction; (ii) public tender; (iii) direct sales to a previously determined owner, (iv) transformation from state entity to a public company; and (v) free-of-charge transfer to municipal ownership. In the case of a direct (trade) sale the agency undertaking the privatisation must submit to an approvals procedure.
- In Denmark, privatisation methods are generally chosen to ensure that the state receives the best possible offer. In a recent case from the energy sector, a two-step method was chosen where initially a small group of strategic investors were brought into the shareholding to help prepare a subsequent IPO in the stock market. Smaller privatisations of (parts of) SOEs operating competitively have been done through trade sale auctions.
- In Estonia, the most commonly used privatisation method is a trade sale auction to the highest bidder. The sale of Eesti Telekom shares took place in 2009 in a voluntary takeover bid by Telia Sonera, the majority owner and the largest telecoms company in the Nordic region. Other frequently used methods include IPOs. For instance, a government decision was made in late 2016 to privatise minority shares in Tallinna Sadam and Enefit Taastuvenergia via IPOs.

- In France, the criteria for privatisation methods is the size of the company, its ability to be listed and the type of investor it is likely to attract. The Government Shareholding Agency (APE) uses all available methods including sale by mutual agreement after tender as used in the case of regional airports in 2016, IPO for EDF in 2005 and Aeroport de Paris (ADP) in 2006, sale of blocks for companies already listed, just like in the case of Safran from 2013 to 2015. For example, the transfer of state shareholdings to the capital of regional airport companies was subject to tendering procedures on the basis of specifications entailing divestiture process, the state's patrimonial interests as well as the long-term interests of investors. This procedure can enhance governance rights of minority shareholders as they can participate in the drafting of specifications as well as the assessment of bids.
- In Germany, privatisation of SOEs of a limited size usually takes the form of trade sale auctions. Larger SOEs are usually divested through an open competitive process whereby shares are floated on the stock market. In the past, Germany has seen IPOs as well as secondary and tertiary offerings of several public utilities.
- In Israel, two methods of privatisation have been employed since 2008: direct sales to investors and initial public offerings. IPOs are chosen following an evaluation by the ownership function of whether the company is capable of operating in post-privatisation without corporate reorganisation. In the case of trade sales, an auction is normally conducted among pre-qualified bidders, who are vetted according to their financial ability, potential synergies and business plans.
- In Italy, the potential methods of sale were initially established by the CIPE Deliberation n. 96/1992. The Deliberation provides for share offerings in the market (including IPO's, secondary offerings and accelerated book-building), trade sales (in the form of private placement and of trade sale auction) and mixed sales.
- In Japan, privatisation has mostly taken place via stock markets and sometimes involved complexly designed transactions. For instance, the fourth disposal of Japan Tobacco shares involved a share repurchase by the company and a share offering through a bookbuilding process involving major Japanese and foreign investors.
- In Kazakhstan, different privatisation methods have been employed. Stock market listings have occurred, but currently the most common is trade sale auctions. When price is the sole bidding criteria, auctions are normally conducted electronically. A first bidding round is conducted by the English method, based on price increases. If no buyer is identified, a second and possibly third round is conducted by the Dutch method, based on price decrease. If no purchaser is found during the three rounds then the SOE is subject to liquidation.
- As mentioned earlier, Latvian law allows for a wide variety of privatisation methods, most of which have been employed since 2008. Most common were trade sales to one investor, sometimes in combination with share offerings to incumbent employees and/or management.
- The Lithuanian privatisation process continued rapidly after 2008. A total of 786 objects (mostly unincorporated real estate) were sold off, but generated relatively limited privatisation revenues. The privatisation methods are described in the following table.

Method of privatisation:	Number of privatised objects:	Proceeds from transactions (EUR million)
Public auction	782 (of which 741 real estate)	30.6
Direct negotiations	1 (real estate)	1.8
Public offering	3	32.4

- In Mexico, the preferred privatisation model in the past has been trade sale auctioning. Procedures are established consistent with public procurement rules, where proposals are submitted to the state in sealed envelopes.
- In the Netherlands, share offerings and trade sales are normally employed as methods for conducting privatisation. Recently, an IPO was chosen as a sales method for privatisations of its major financial institutions ABN AMRO and ASR.
- In Norway, the choice is mostly between stock market listing and trade sales pursuant to a tender or auction. The preferred model is the one that is considered most financially beneficial to the state. Recent examples are provided in Box 3.1.
- In Poland, shares owned by the State Treasury may generally be sold by the ministry or other state institution exercising ownership rights with approval by the Council of Ministers. The latter determines the procedure for the disposal. However, the approval of the Council of Ministers is not required in certain cases.
- In Sweden, a large majority of recent privatisations have been trade sales to strategic investors. In three cases of SOEs that were already listed in stock markets, divestment occurred through accelerated book-building processes.
- In Turkey, most of the privatisation transactions have, as mentioned earlier, concerned trade sales of SOEs in the utilities sectors. Stock market offerings have also occurred. In some cases these were part of staggered mixed transactions where some tranches of shares were block-sold to strategic investors and other were listed in the stock markets through either IPOs or secondary offerings.
- The UK privatisation methods, consistent with the rationale for privatisation, are influenced by government objectives and value-for-money considerations. This is then typically overlaid by factors such as the type of assets, market conditions and investor appetite.

Table 3.1. The privatisation process in overview

	The decision to privatise	Partial privatisation or sequencing?	Privatisation methods
Argentina	Mostly fiscal concerns, related to both loss making SOEs and the revenues from privatisation	The state has sometimes retained a stake for “strategic” reasons.	Not applicable (N.A.)
Czech Republic	N.A	Sequencing occurs on an ad-hoc basis.	Public auctions, tenders, direct sale to a pre-determined owner, conversion to public company and transfer to municipality.
Denmark	Recent reasons have been: (i) capital needs in the SOE; (ii) growing market competition; (iii) SOE in need of strategic partners.	Depends mostly on: (i) politics; (ii) market structure; (iii) whether the SOE is considered “strategic”.	Two methods have been employed: (i) two-step privatisation, first tranche to strategic investors followed by IPO; (ii) trade sale auctions.
Estonia	The government decides to privatise an SOE when it is no longer needed for public purposes and when it should operate in a competitive market. In the case of Eesti Telekom, the privatisation was motivated by a consideration to raise fiscal resources in the short term.	The maintenance of the state’s stake is based on a political agreement which upholds the view that these companies are of significant public importance as well as strategic importance.	Two methods have been commonly employed: (i) trade sale auctions; (ii) IPOs.
France	Recent reasons have been: (i) the fact that SOEs operate in competitive markets.; (ii) combined economic and social objectives; (iii) and meeting fiscal objectives	There is no rule for sequencing. It occurs on an ad-hoc basis, depending mostly on social, political and strategic motivations.	The APE uses all the available methods, recently including sale by mutual agreement after tender, IPOs and secondary offerings in companies already listed in stock markets.
Germany	In response to the findings of regular procedures for evaluating whether a rationale for state ownership is still present.	Mostly a decision is made to privatise entirely. Sequencing occurs in the case of large SOEs.	Two methods have been employed: (i) one-off or sequential share offerings in the stock markets; (ii) trade sale auctions.
Israel	Recent reasons have included mostly the fact that SOEs operate in competitive markets.	In practice, most companies have been partially privatised.	Two methods have been employed: trade sales and initial public offerings.
Italy	Mostly fiscal concerns (reducing losses; raising sales revenues). Commercially operating SOEs are the top candidates for divestment.	Sequenced privatisation preferred when likely to increase total privatisation revenues.	The rules provide for listing (IPO; SPO; ABB); trade sales through auction or other means; and mixed sales.
Japan	Recent reasons have been: (i) changing market conditions: and (ii) a need to raise fiscal resources.	Sequencing has been common, partly due to the large size of the SOEs.	IPO and subsequent offerings of shares via the stock markets.
Kazakhstan	Based on a privatisation list comprising companies no longer deemed suited for state ownership.	Partial state ownership is decided on a case-by-case basis.	Mostly trade sale auctions, using online bidding. Some IPOs of large SOEs have also occurred.

	The decision to privatise	Partial privatisation or sequencing?	Privatisation methods
Latvia	Based on a privatisation list comprising companies no longer deemed suited for state ownership.	The state has rarely maintained majority or minority stakes post divestment.	Several methods employed. Most common is trade sales, sometimes combined with share issuance to employees or management.
Lithuania	Mostly for financial reasons. Strategic and political concerns have sometimes played a role.	Partial privatisation of some energy companies. Sequenced privatisation of large utilities companies.	Mostly public auctions. Some secondary offerings of listed shares.
Mexico	Mostly to raise the economic standing, and other efficiencies of privatised entity.	Does not occur.	Trade sale auctions consistent with public procurement rules.
The Netherlands	Recent reasons have been: (i) the fact that SOEs operate in competitive markets; (ii) changing market conditions; and (iii) a need to raise fiscal resources.	The government maintains part-ownership in a company if it has identified a public interest that needs to be safeguarded through shareholdership.	Share offerings and trade sales are normally employed as methods for privatisation.
Norway	The main trigger has been first a conclusion that state ownership is not necessary, then a consideration of the company's maturity for sale and market conditions. In addition, that state privatises only if it is financially beneficial to itself.	The decision is based largely on the expected financial benefits	Two methods have been employed: (i) stock market flotation; (ii) trade sale auctions.
Poland	The decision to privatise is usually based on several factors, including the economic and financial standing of the SOEs, the potential impact on the incumbent staff of a privatised company, the importance of the company for local labour market, the interest of potential investors, time frame, and the cost of ownership supervision.	N.A.	The shares owned by the State Treasury may be sold by a state-ownership entity based on an approval from the Council of Ministers. The latter also determines the procedure for their disposal.
Sweden	Recent Swedish governments had as a policy objective to reduce the state's share of the economy.	Partial or sequential sales have been rare.	Mostly trade sales to strategic investors, plus two secondary public offerings involving book-building processes selling shares to institutional investors.
Turkey	Mostly fiscal concerns (reducing losses; raising sales revenues). SOEs to be privatised are transferred to the Privatisation Authority and transformed to joint stock companies.	N.A.	Mostly trade (block) sales to strategic investors. IPOs or secondary offerings of a few large firms.

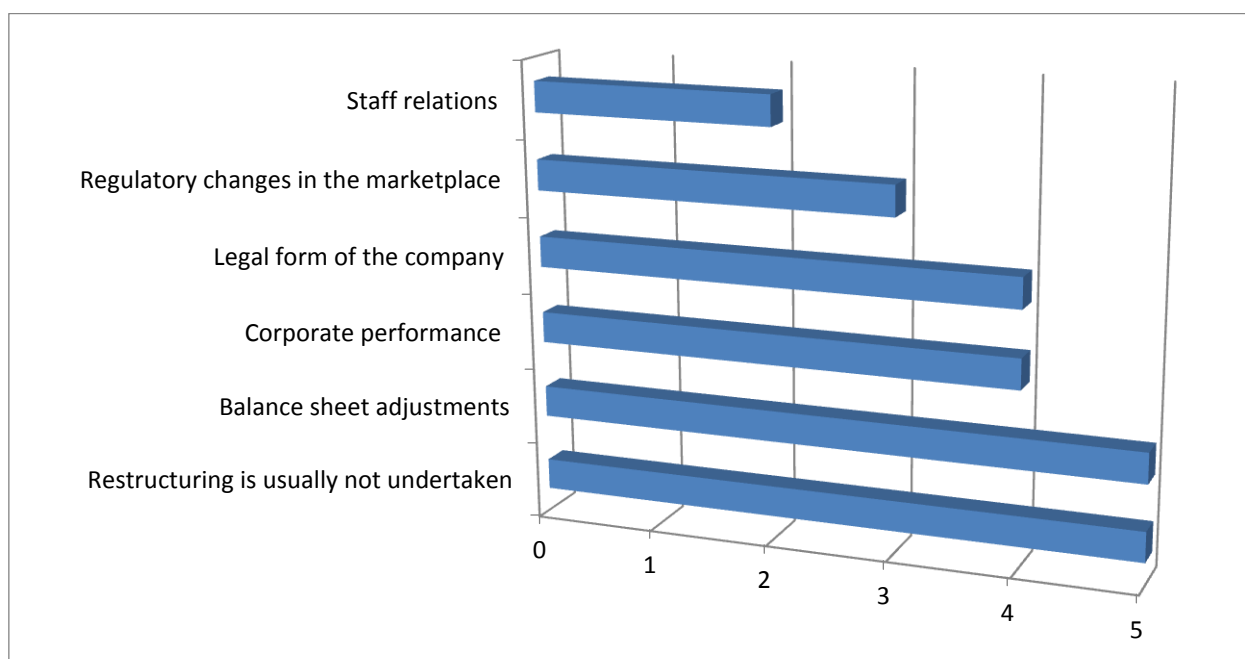
	The decision to privatise	Partial privatisation or sequencing?	Privatisation methods
United Kingdom	Initiated by the Treasury. An important consideration has been the extent to which the (1) private sector could replicate provision of the goods or services; or (2) regulatory and other measures could protect consumers post privatisation.	Partial or sequenced transactions have been used mostly to ensure (1) a share in the upside when SOEs' value was expected to appreciate after IPO; (2) secure a continued government influence in strategic or politically important firms.	Methods are selected based on value-for-money considerations. In practice a wide selection of methods have been applied in the recent past.

Source: National questionnaire responses.

Pre-privatisation restructuring

In general, pre-privatisation restructuring of SOEs is more commonplace prior to IPOs than in the case of trade sales where acquirers presumably will want to make their own arrangements. However, some respondents also noted that a modest amount of restructuring may help attract more bidders to a trade sale auction and hence boost the proceeds.

Figure 3.1. Types of pre-privatisation restructuring, by number of respondent countries



Source: Table 3.2 and author's assessments

Where restructuring occurs, it frequently concerns either the balance sheet or the payroll of the privatised company. Regarding the latter, some of the responding countries have either strict employment protection laws or special employment regimes for public employees. In these cases, it may be more efficient to let the state undertake restructurings while it is still in charge. Restructuring the corporate balance sheet to align the debt-equity ratio with the prevailing levels in the private sector may also facilitate privatisation. Moreover, during the recent bout of privatisations in the public utilities sector it has sometimes been necessary to

separate monopoly elements or “strategic” activities from SOEs prior to privatisation. Examples from individual countries include (a synthesis is provided in Table 3.1):

- In Argentina, restructuring in preparation of privatisation has in the past mostly focused on adapting the labour force to commercial viability. SOEs of Argentina would normally be transformed into limited liability companies (“sociedades anónimas”) and their shares sold to the market. SOEs would be also “intervened” by the Executive through a high ranking public official in charge of conducting major restructuring reforms. The decree of the Executive branch declaring a government enterprise subject to privatisation would also entail deregulation policies for the sector in which privatisation would take place.
- In the Czech Republic, pre-privatisation restructuring sometimes occurs, based on the operating performance of the SOE. In case restructuring occurs it includes changes to the board and management.
- In Denmark, recent privatisation has focused on an infrastructure company (energy) and two smaller companies in the medical sector. The energy company was restructured to separate critical infrastructure (to remain in state ownership) from the privatised entity. The other two companies were trade-sold with any restructuring left for the buyers to undertake.
- In Estonia, there are no specific procedures for engaging in restructuring of SOEs slated for privatisation. A decision on whether or not the incumbent company should be restructured prior to privatisation can be made on a case-by-case basis. The State Assets Act requires that all SOEs be valued prior to the government’s decision on privatising the SOEs. In every case, a separate evaluation takes place on whether or not the concerned SOE should be sold fully or partially to targeted strategic investors. At the same time, there are no pre-determined rules regarding investor profiles.
- In France, companies are in general already in line with the criteria required for privatisation, notably for a quotation on the stock exchange. However, preparation for privatisation of a public company sometimes requires an adoption of a number of laws or regulations to accompany its transformation before the opening of its capital. For example, in the telecommunications, postal services and energy sectors, it was necessary to adjust the status of employees, some of whom were in the public service, or the functioning of their pension system, prior to the entry of private capital. It should also be stressed that, for regulated sectors, a stable and legible regulation is also a precondition for privatisation. As an example, regional airports have undergone an important reform of their status with the law of 20 April 2005 on airports, which allowed them to be exploited by private companies. Since 2007, the state has accompanied these companies in their transformation and development, prior to the privatisation operations, in particular by adapting their governance to incorporate the best practices developed in private companies.
- In Germany, problems with restructuring have arisen where previously shielded SOEs were to be exposed to competition. In many cases this implied initial (though often not permanent) reductions in employment, which was politically complicated and implied a relatively long transition period. Action is also sometimes taken to address balance sheet weaknesses prior to privatisation.

- In Israel, the general policy is to execute most of the reorganisation activity prior to privatisation. This could include settlement of debts with the government and collective agreements with staff. The Israeli authorities consider that this benefits the privatisation process by reducing uncertainty and, hence, helps maximise privatisation proceeds.
- In Italy, SOEs that are destined to be privatised undergo different steps of valorisation. These include “transformation” from a public body into a stock company; “restructuring” to improve governance, setting up of administrative and planning instruments, and qualifying and orienting management; “full or partial privatisation” the time and techniques are chosen according to company characteristics and market trend.
- According to Latvian privatisation law, the main corporate restructuring foreseen relates to any outstanding “denationalisation” (restoration of post-communist ownership rights), which must be settled before divestment can proceed.
- In Lithuania, a need for pre-privatisation restructuring arises only when an SOE needs to be converted to a limited liability company prior to divestment. This is typically the case when it is initially incorporated in the distinct “state enterprise” form. A detailed procedure has been established, guiding the valuation, conversion and subsequent corporate articles of association.
- In Mexico, restructuring prior to privatisation is consistently not undertaken. In the past, privatisation consisted of trade sales of enterprises for which there was no longer a justification for state ownership. Under the circumstances, it was more efficient to let the acquirer undertake any necessary restructuring after the transaction.
- In the Netherlands, restructuring of SOEs prior to any form of sale is done by the management of the company and closely monitored by the shareholder(s). Buyer(s) may decide to pursue further restructuring if necessary.
- In Norway, SOEs have sometimes been restructured prior to privatisation. If considered value added, companies have streamlined their operations, shedding non-core activities prior to the final divestment. In one case, the preparation for privatisation also included restructuring to cut costs.
- In Turkey, the most frequently occurring restructuring of SOEs is a conversion to joint stock companies following their transfer to the Privatisation Administration.
- In the United Kingdom, the key steps taken to prepare a body for privatisation are broadly similar regardless of method. These would include: (1) ensure the business has a sustainable capital structure; (2) ensure the business has a robust and deliverable Business Plan; (3) potentially vesting the business from a trading fund or arms-length body of government into a fully corporatised SOE with greater commercial freedom; (4) explore reduction of liabilities that private sector would not absorb (e.g. environmental, pensions etc.); (5) consider need for enabling legislation and introduce as appropriate; (6) allow business time to build a track record of success increasing attraction; (7) build a stable Board and strong corporate governance structure to ease transition to buyer increasing attractiveness to bidder; (8) assess market appetite through testing and discussions with potential bidders; and (9) Consider offer of employee shares or other form of employee ownership to ease a sale.

Valuation

Almost all respondents report that a valuation of SOEs prior to privatisation is customary, and in some cases mandatory. In a large majority of cases this involves one or several external advisors with expertise in corporate finance and the sector in which the SOE in question operates. In some cases this is supplemented by valuations undertaken by the company itself, the national comptrollers and/or the ministry of finance. Examples from individual countries include (a synthesis is provided in Table 3.1):

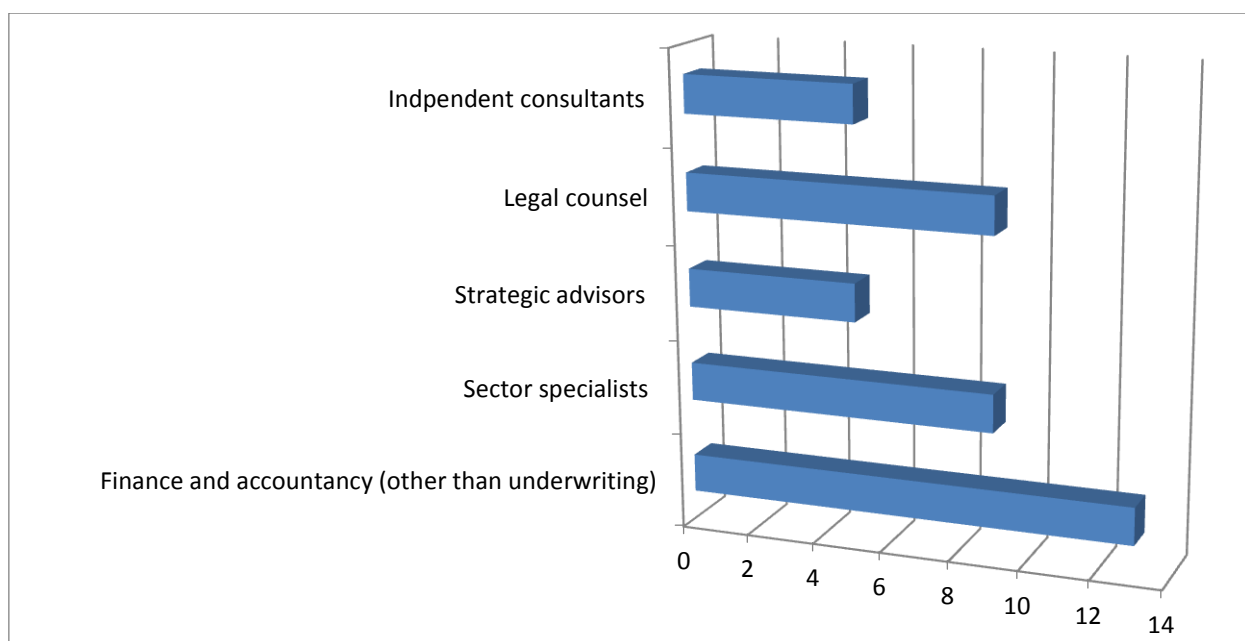
- In Argentina, the following valuation methods have been employed in the past: (i) stock market valuation, estimated through metrics such as PE and price/cash-flow relative to comparable companies; (ii) sale value of assets net of liabilities; (iii) discounted flow of funds. In some of the largest privatisation projects, the methods yielded broadly similar results. Law 23696 established the obligation of valuation of the company. It also gave priority to specialised agencies of the public sector. Exceptionally, in cases where the public sector was not able to conduct the company's valuation, government could hire international organisations or private consulting firms. Private companies hired to conduct the valuation of companies' assets were prohibited from participating in public tender and/or any other selection modality.
- In the Czech Republic, external advisors are usually employed to develop and apply valuation methodologies.
- In Denmark, a valuation is systematically undertaken prior to privatisation, either by the state's financial advisor or, in the case of larger transactions, by specially retained advisors. In the case of stock market flotation, syndicate banks involved in the transaction also establish their individual valuations.
- In Estonia, the State Assets Act requires that all incumbent SOEs be valued prior to the government's decision on privatisation. In every case, the value of an incumbent SOE has to be evaluated prior to the government decision. The State Assets Act encourages an engagement with financial advisors for conducting such evaluations.
- In France, with the support of its external financial advisers, the government systematically conducts a valuation analysis of the privatised company, since the state cannot sell its securities for less than their value in accordance with Article 29 of Ordinance No. 2014-948 (dated 20 August 2014). Pursuant to the Article 27 of the Ordinance, the Shareholdings and Transfers Commission is responsible for determining the value of the company in accordance with the objective methods applied. In the case of a total or partial sale of company assets, market conditions should be taken into account at the date of the transaction, along with the value of the assets, the realisable profits, the market value of the securities and the optional elements attached to them.
- In Israel, the law stipulates that prior to every privatisation two external valuation experts are hired. These experts should be autonomous and independent, and without a financial interest in the privatisation process itself. Based on these assessments the government formulates its own approximate valuation. In suitable cases, the government also considers minimum price.
- In Italy, valuation is mandatory and it is usually undertaken by external consultants.

- In Japan, a valuation example of a company (Japan Tobacco) is seen in its IPO. A number of securities firms and institutional investors performed a valuation of the shares and reported to the Ministry of Finance, which formulated an official assessment based on these estimates.
- In Kazakhstan, the valuation of each SOE is at first done by the company itself, based on an analysis of its balance sheet. During the privatisation process, the Ministry of Finance, and where applicable sub-national executive bodies, make their own assessment on the basis of which the initial price is set. In the case of particularly large transactions the authorities retain the services of an external advisor to help conduct the valuation.
- In Latvia, the practice is to hand over the valuation of all shares to certified valuers. Procedures for engaging with valuers are set out by the privatisation law, and the valuation methods are established by separate legislation.
- In Lithuania, the valuation of privatisation objects is performed by independent property or business appraisers. Legislation bearing on the privatisation process stipulates that the initial selling price must be equal to the value established by the appraisers.
- In Mexico, the valuation of SOEs is done inside the public administration, by a specialised institution (which is also responsible for value assessment of government property not slated for privatisation) in collaboration with the national comptroller.
- In the Netherlands, in all privatisation processes an external financial advisor is hired by the shareholder(s) to determine the value of the concerned SOE(s).
- In Poland, a state-ownership entity's proposal on sale of shares of an SOE to the Council of Ministers should include an overview of valuation managed by at least two methods.
- In Turkey, a valuation is legally required and subject to the oversight of a Value Assessment Commission operating within the Privatisation Administration. The valuation is based on (at least two) internationally recognised methods, including discounted cash flows; book value; net asset value; depreciated replacement value; liquidation value; price/profit ratio; market capitalisation; market/book value; expertise value; and price/cash-flow ratio.
- In the United Kingdom, the authorities have often had to contest with the fact that there is a lack of relevant comparators to benchmark the valuation. The valuation process starts at an early stage of the privatisation process, undertaken by the in-house team. For asset sales, a guidance named *Managing Public Money* is available, which provides a framework for the valuation. The financial advisors are commissioned to provide their advice on what the asset is worth to the government. Sometimes, an independent advisor is also appointed to provide independent advice on valuation. Valuation processes take into account the market feedback for assessing the value. This finally goes through an independent clearance and scrutiny process.

The role of external advisors

It follows from the previous section that at least one type of external advisor is almost always employed, namely the one involved in the pre-privatisation valuation. Beyond that, the extent, and types, of external advice depends on the privatisation method. In the case of IPOs, it normally involves investment banking and legal counsel. In the case of trade sales, expertise may be sought regarding the sector in which the SOE operates, including due diligence, corporate social responsibility, etc. but also more sales-specific services such as identification of potential buyers. The degree to which different countries involve external advisors seems to depend on the level of corporate expertise retained within the public institutions involved in privatisation. Some respondents report that they also contract external services in areas such as accounting, communication and developing the necessary documents, whereas others perform such tasks in-house.

Figure 3.2. Types of external advisors involved in the pre-privatisation valuation, by number of respondent countries



Note: Some countries are listed in more than one category.

Source: Table 3.2 and author's assessments

The process for appointing external advisors is established, in almost all cases, by national procurement rules. In European countries, these are consistent with, or complementary to, EU legislation regarding the European Single Market. In at least one country (Kazakhstan), privatisation-related legislation provides specific rules for the retention of external advisors. Examples from individual countries include (a synthesis is provided in Table 3.1):

- In Argentina, the terms for engaging with external advisors is guided by the privatisation law. Advisors are involved in selecting the most appropriate privatisation method and designing procedures for the transfer. They are mostly remunerated through a fixed, rather than variable, fee.

- In the Czech Republic, external advisors are selected according to the applicable law on public procurement. They usually include financial and other advisors who assist the government in identifying a suitable acquirer for privatised assets.
- In Denmark, external advisors play an important role in privatisation. An extensive knowledge of the industry/sector concerned as well as extensive experience with all aspects of the privatisation process are prerequisites for being hired in an advisory capacity. The appointment takes place through an open and competitive public procurement process. Advisors may receive either fixed or variable remuneration. In the largest recent transaction (an IPO), the financial advisor received a base fee whereas syndicate banks received incentive pay.
- In Estonia, when recruiting external advisers, main targeted skills include financial expertise in valuing the companies; legal competence for carrying out due diligence; and M&A skills to attract potential bidders, etc. Recruitment takes place through an open and competitive procurement process, for example, at least three offers should be made. During the privatisation process, external advisers engage with the government stakeholders including the shareholding ministry and the concerned SOEs. The external advisers receive either fixed or performance-based fees.
- In France, as indicated above, external consultants are selected according to the rules for competitive tendering applicable to public procurement, as stipulated in the Ordinance 2015-899 (dated 23 July 2015). In addition, clauses related to the prevention of conflicts of interest are provided for the contracts concluded between external consultants and the Government Shareholding Agency. External advice is directly managed by the Government Shareholding Agency, in particular by the team in charge of the privatisation operation. The external consultants are responsible for the preparation of the upstream operation (for example, drafting of specifications) as well as for the concrete implementation of the operation. The expertise sought by the boards depends on the characteristics of the proposed operations. It could include competence in stock exchange law, legal expertise on market transfer and appeal procedures. The remuneration of external advisors may vary depending on the outcome of the transaction.
- In Germany, external advisors are mostly consultancy firms who are selected using standard public procurement practices. As recent privatisation has mostly taken the form of share offerings in stock markets, consultants have been requested to develop a “story” and develop strategies for the road to the market. They have also sometimes been involved in the restructuring efforts mentioned above.
- In Israel, advisors are assigned roles to support the privatisation process “behind the scenes”, from inception to conclusion. There are many types of advisors, in addition to the aforementioned valuation experts. These include economic advisors, real estate consultants, accountants, legal advisors and, in the case of stock market offerings, underwriters. Advisors are chosen in a competitive process, the main criteria being former expertise and cost rates. They are mostly paid a fixed fee, but the remuneration of underwriters also depends on the relative success of the transaction.
- In Italy, the Decree Law No. 332 of 31 May 1994 states that the MEF may use consultants, including a mandatory evaluator. Financial, legal and industrial advisors are appointed during the privatisation as well as appraisers, advertising

agencies, etc. Privatisation law expressly requires that advisors involved in the privatisation processes are external and independent. Advisors are selected in a competitive way based on experience, team work, fees required, etc. As an incentive, advisors involved in privatisation process may receive success fees based on a percentage of the deal value. The seller (MEF) adopts a well-established internal procedure, which complies with national and European Community procurement legislation. Moreover, before taking a final decision, the MEF has to consult a board of experts called the “Privatisation Committee” (established in 1993). Advisors are bound to declare that no conflict of interest may arise in the privatisation process and must communicate every change that may possibly occur. The MEF is in charge of controlling declarations. Generally SOEs have their own advisor. If they have one, it must be different from the MEF advisor.

- In Japan, external advice has been mostly legal. Law firms undertake tasks including preparing the purchase agreements contracts and providing advice on prospectuses.
- In Kazakhstan, external advice is mostly categorised as “independent consultants”, the employment of whom is subject to a specific law. The law contains detailed prescriptions for ensuring the competence, integrity and independence of the consultants. The assignment process can include tending, or the government may decide to engage with a preferred bidder based on additional criteria including the bidder’s previous involvement in privatisation projects. The independent consultant may be retained for the duration of the privatisation project, including identification of potential purchasers. The remuneration of independent consultants is subject to a negotiated contract. It may include success incentives.
- In Latvia, external advisors (in addition to the valuers mentioned above) have been engaged in privatisation processes related to large SOEs. Foreign and/or local experts were retained and given an extensive number of tasks, including the identification and attraction of potential investors, drafting the relevant documents for commencing a public offering, etc. The selection of advisors is based on an open and competitive public procurement process. They receive a fixed remuneration and, in most cases, an additional “success fee” as established by the service contract between the advisor and the state for large or systemically important SOEs.
- The Lithuanian authorities make extensive use of external advisors. These include the aforementioned value appraisers as well as representatives of advisory enterprises and/or research institutions which the property manager may choose to appoint. In the past, external advice has been sought mostly in the areas of due diligence, legal matters and environmental and financial auditing. External advisors often form a consortium which could, for example, include a local law firm and an international auditing company.
- In Mexico, external advisors may be retained depending of the type of assets to be privatised. They could typically include consultants and financial agents. Advisors are hired by the line ministry responsible for the SOE to be privatised, subject to the approval of the inter-ministerial commission in charge of privatisation. The law on public procurement is applied to tendering for external advisors.
- In the Netherlands, for any privatisation process both a legal and financial advisor are recruited. An advisor is hired depending on the size of the asset and the

envisioned method of sale. For IPOs, typically a merchant bank is hired. For trade sales, advisors with relevant network are hired. Advisors are always hired through a tender process. Tender documents explicitly mention that the recruitment is subject to an open and competitive public procurement process. External advisors engage both with the shareholder and the company. They are primarily engaged for the actual sales process. Financial advisors usually receive a success fee which is disclosed to the general public. This may be a variable or a fixed amount.

- In Norway, the state and the SOE slated for privatisation normally retain separate external advisors. In the case of share offerings, the state uses external advisors to consider areas such as corporate governance, capital structure and dividend financing, documentation and due diligence, marketing and distribution, communication/retail offering and M&A process. External advisors are hired in an open and competitive procurement process if the case is publicly known in advance. If not, and when the case is considered sensitive, the state usually invites only a few pre-qualified potential contenders to submit bids, on a confidential basis. Advisors may be paid a fixed fee or receive incentive-based remuneration. This is decided by the state on a case-by-case basis.
- In Sweden, the involvement of external advisors depends on the method of privatisation. In the case of stock market flotation, it mostly takes the form of investment banking and legal counsel. In connection with trade sales, advice may, for instance, include due diligence, valuation, communications and corporate social responsibility. Advisors are selected in accordance with public procurement rules.
- In Turkey, the Privatisation Administration has devoted an entire department to deal with advisory services, which operates subject to a number of specific rules and guidelines (aspects of which are described in Box 3.3). The sourcing of external advice is subject to extensive procurement and conflicts-of-interest rules. When establishing a joint stock company, the external advisors usually cover the fields of legal counsel, auditing investment banking and environmental review.
- In the United Kingdom, privatisation processes involve, at a minimum, legal advisors and investment bankers. Complex privatisations may also involve management consultants, accountancy firms and specialists with sectoral knowledge. Advisors are selected in accordance with public procurement rules. Advisors are usually paid a fixed retainer; success fees for financial advisors have been used in the past but are not widespread.

Box 3.3. Selecting external advisors in Turkey

The Advisory Services Department of the Privatisation Administration (PA) is basically responsible for hiring advisory firms and/or consultants via international tenders, according to the needs of the projects in the privatisation process. These advisory firms assist the PA during the privatisation process according to the characteristics of the project and to the sale strategy (IPO, block sale, asset sale, transfer of management rights, etc.) of the SOEs.

The PA is accustomed to using advisory firms for a widevariety of functions, ; investment banks and/or corporate finance teams are used as advisors for the evaluations, marketing and promotions of SOE's for their block sales, as well as underwriters for their IPO's. The PA also works with project and sector-specific strategic, management and organisational, legal, environmental, real estate evaluation and/or technical, advertising and public relation advisors and auditors according to the needs of the projects.

In recruiting external advisers under the relevant legislation, the Department has developed its own "databank" containing and classifying advisory firms with respect to their sector and work specifications. Tenders are opened by inviting advisory firms, in the short list determined by the PA, via prepared tender documentation, including job description (Project-Sector Specific), TOR (Terms of References) (generally standard), draft contract and standard forms.

TEvaluation of bids is executed by the Tender Committee in two stages; the first is technical and the second is financial. Total scores of bidders are determined by adding up their technical and financial scores which are found by multiplying technical and financial points by weighting coefficients announced in the TORs. The PA determines the weighting coefficients by considering the specifications and quality of the advisory service taken. According to legislation, the technical weighting coefficient should be 51% minimum and 80% maximum.

The technical criteria used during the evaluation of the bids generally include:

- sector and job specific relevant experience and references,
- institutional success, technical skills and capability,
- qualifications of the proposed team and organisational structure
- Project specific job-plan, approach and methodology to be used by the team for the privatisation project.

If the PA decides it is necessary, , prequalification can be performed using newspaper and web advertisements before the tender in order to determine the eligible firms that will be invited.

In order to prevent conflicts of interest in the engagement of external advisers in the privatisation process, the PA is responsible for procuring consultancy needs of the privatisation projects with appropriate conditions and in time. The tender for consultancy services, should include conditions for transparency, competition, reliability, public supervision and efficient usage of resources while performing the consultancy..

Source: Submission by the Turkish authorities.

Incentivising managers and board members

Relatively few of the responding countries have incentive schemes in place for managers and board members of SOEs slated for privatisation. In some North European countries, stay-on bonuses, in the form of cash or stocks, are sometimes offered to keep management engaged. General schemes, such as employee stocks or post-privatisation employment guarantees, are in place in some countries, which can also provide incentives for managers. In Israel, managers and board members are legally required to stay engaged during the privatisation process. Examples from individual countries include (a synthesis is provided in Table 3.2):

- In Argentina, Law 23696 mentions the possibility for workers of the company to buy shares of the enterprise. The proportion of shares would be determined by a coefficient representative of the worker's years in the company, his salary and position. The privatised company's annual dividends would then be used to pay for the shares.
- In a recent Danish privatisation, a share programme was in one case (in the lead-up to an IPO) used to incentivise employees, managers and board members to remain engaged throughout the process. In the case of trade sales, no incentive programmes were introduced.
- In Estonia, when necessary, additional agreements on fees for managers and board members can be made but usually no special measures are taken.
- In France, variable remuneration arrangements are included in the consultation documents sent to candidates when recruiting boards. In the case of over-the-counter sales by tender, the management of the concerned undertaking is most often associated with the entire privatisation process. In the case of listed companies, these transfers are made in accordance with the rules applicable to financial markets.
- In Germany, incentives are generally not offered to boards and management of SOEs slated for privatisation. As the sole or dominant shareholder prior to privatisation, the state ensures that the board is composed of persons willing and competent to oversee the transition.
- In Israel, managers and non-executive directors are legally obligated to remain engaged throughout the privatisation process. A compensation mechanism exists for SOE employees, who may receive up to 3% of the sale value.
- In Kazakhstan, there is no comprehensive programme. However, in the case of trade sales, there is a guarantee that a new owner will maintain or increase employment, which is considered by the Kazakh authorities as helpful in ensuring that managers and board members remain engaged.
- In Latvia, there is no incentivisation of the board and management of SOEs slated for privatisation, but the privatisation agency maintains active communication with them throughout the process. Also, employees in the company have a right to buy up to 20% of the shares in the company, which is seen as an incentive for staff and managers to remain engaged.
- The Netherlands does not provide retention packages or special incentives to personnel as a shareholder.
- In Sweden, incentives have sometimes been offered to ensure continued engagement during the privatisation process. These have included stay-on bonuses to managers and increased board fees to non-executive directors. This has happened in trade sales of wholly owned SOEs.
- The UK authorities rely on active communication practices (sometimes involving government ministers) between state and SOE management/board to keep the latter engaged during the process. Often there is a transaction board which includes membership from the previous SOE board and shareholder representatives. Guidelines and protocols have been established to discuss matters related to sale process and manage potential or perceived conflict issues.

Table 3.2. Selected aspects of the privatisation process

	Restructuring as part of the privatisation	Valuation of the SOE	The role of external advisors	Incentivising managers and boards
Argentina	Restructuring mostly concerning the size and composition of the work force.	Valuation according to commonly accepted corporate norms.	External advisors involved in selecting and designing privatisation methods.	N.A.
Czech Republic	Restructuring is sometimes undertaken, in response to weak operating performance by the SOE.	Valuation is performed by external advisors.	Advisors are hired through the public procurement process. Their main role is the identification of potential acquirers.	N.A.
Denmark	Limited restructuring in some cases to separate strategic assets from the company.	Valuation always undertaken. By the state's own financial advisor and/or specific privatisation advisors.	Advisors are hired through the public procurement process. They receive either fixed or performance-based fees.	Stock incentives sometimes used to keep employees, managers and boards engaged throughout the process.
Estonia	There are no specific rules or conditions for pre-privatisation restructuring. A decision on whether or not the incumbent company should be restructured prior to the privatisation can be made on a case-by-case basis.	The State Assets Act requires that all SOEs be valued prior to the government's decision on privatising SOEs. In every case, a separate evaluation should take place on whether or not the incumbent SOE should be sold fully or partially to the targeted strategic investors.	When recruiting external advisers, main targeted skills include financial expertise in valuing the companies; legal competence for carrying out the due diligence; and M&A skills to attract potential bidders, etc. The recruitment takes place through an open and competitive procurement process. They receive either fixed or performance-based fees.	When necessary, additional agreements on fees for managers and board managers could be made but usually no special measures are taken.
France	Restructuring is sometimes undertaken through an adjustment of laws or regulations related to the status of employees or the functioning of their pension system, to accompany the company's transformation prior to the entry of private capital.	With the support of its external financial advisers, a valuation analysis of the privatised company is always undertaken.	External consultants are selected according to the rules for competitive tendering applicable to public procurement. The expertise sought by the boards could include competence in stock exchange law, legal expertise on market transfer and appeal procedures. The remuneration of external advisors varies depending on the outcome of the transaction.	Variable remuneration arrangements are offered to boards. In the case of over-the-counter sales by tender, the management of the concerned undertaking is most often linked to the entire privatisation process.

	Restructuring as part of the privatisation	Valuation of the SOE	The role of external advisors	Incentivising managers and boards
Germany	Restructuring occurs mostly in connection with the staffing of SOEs and sometimes regarding their balance sheets.	N.A.	Advisors are hired through the public procurement process. They are mostly consultancies involved in preparing SOEs for stock market listing.	N.A.
Israel	Pre-privatisation restructuring usually takes place.	Valuation by two independent external experts.	Advisors are hired through the public procurement process. They include economic advisors, valuation, real estate services, accountancy, legal counsel and underwriting.	Legal obligation to stay on. Employees can be compensated with a share of the privatisation proceeds.
Italy	Transformation from a public body into a stock company, establishment of administrative and planning instruments and various measures toward restructuring corporate governance.	Valuation is mandatory; usually undertaken by external consultants.	Financial, legal and industrial advisors are appointed during the privatisation as well as appraisers, advertising agencies and sometimes others.	N.A.
Japan	N.A.	Valuation by securities firms and institutional investors, consolidated by the Ministry of Finance.	Mostly legal advice pertaining to sales agreements and prospectuses.	N.A.
Kazakhstan	No general practice. Each SOE is free to decide on restructuring.	An evaluation is conducted by the SOE itself based on its balance sheet. This serves as input to the Ministry of Finance's valuation of the company.	The advice of independent consultants is contracted, subject to a specific law.	No comprehensive programme. Employment guarantees are sometimes issued in the case of trade sales.
Latvia	Mandatory restructuring of in case of denationalisation claims.	Valuation by certified experts is mandatory and conducted according to specific legislation.	Foreign and domestic advisors involved in identifying investors for large SOEs and developing the necessary documents.	An employee share purchase plan in privatised SOEs.
Lithuania	Mandatory restructuring where the SOE has the corporate form of a "state enterprise"	Valuation by independent property or business appraisers.	Advisors are hired through the public procurement process. They cover areas like due diligence, legal advice, environment and financial auditing.	N.A.

	Restructuring as part of the privatisation	Valuation of the SOE	The role of external advisors	Incentivising managers and boards
Mexico	Restructuring is not undertaken.	Valuation by a specialised public institution in cooperation with the national comptroller.	Variable. In the past, consultancies and financial institutions have been retained as advisors.	N.A.
The Netherlands	Restructuring of SOEs prior to any form of sale is done by the management of the company and closely monitored by the shareholder(s). Buyer(s) may decide to pursue further restructuring if necessary.	For each privatisation a valuation will be done in advance by an external adviser.	For any privatisation process, a legal and/or financial advisor is recruited through a public procurement process. An advisor is hired depending on the size of the asset and the envisioned method of sale.	Does not provide retention packages or special incentives to personnel as a shareholder.
Norway	Restructuring sometimes takes place if it is considered value added, but is normally not directly linked with the privatisation process.	The state uses external advisors for valuation.	External advice in areas like corporate governance, capital structure and dividend financing, documentation and due diligence, marketing and distribution, communication/retail offering and M&A process.	Variable. The board of directors is expected to consider the state's general policy on executive salaries for SOE top management.
Poland	N.A.	A state-ownership entity's proposal on sale of shares of an SOE to the Council of Ministers should include an overview of valuation managed by at least two methods.	N.A.	N.A.
Sweden	Normally some work is done in order to ensure a smooth divestment process and good price.	Both internal and external valuations are carried out.	In the case of selling shares in listed companies, investment banks and legal counsel. If trade sales, various industry-specific advisory services.	Variable. There have been cases of stay-on bonuses for managers and increased board fees for non-executive directors.
Turkey	Conversion of corporate form to joint stock companies.	Mandatory valuation is government by law and overseen by a Commission hosted by the Privatisation Administration (PA). The valuation is conducted according to at least two internationally recognised methods.	A specialised unit in the PA is in charge of overseeing advisors. When establishing a joint stock company external advise usually cover the fields of legal counsel, auditing investment banking and environmental review.	N.A.

	Restructuring as part of the privatisation	Valuation of the SOE	The role of external advisors	Incentivising managers and boards
United Kingdom	Relative extensive restructuring is considered to make the SOE attractive to a wide range of buyers. May include capital structure, business plan, contingent liabilities, board structure and incentivisation of SOE employees.	External advisors followed by an intra-government scrutiny process. In the case of asset sales, valuation is further subject to existent government guidance documents.	Legal advisors and investment bankers are almost always involved. In addition, the advice of management consultants, accountancy firms and specialists with sectoral knowledge may in some cases also be retained.	Variable. The state mostly relies on oversight and communication rather than financial incentives to keep boards and managers aligned.

Source: National questionnaire responses.

4. Post-privatisation experiences and impacts

This chapter provides a brief overview of the post-privatisation situation in the reporting countries. This includes: (i) methods for verifying and controlling the privatisation process, including through auditing; and (ii) post-privatisation impact assessment and reporting.

Control and verification

Information about control and information is somewhat patchy because a number of respondents apparently misunderstood the Secretariat's question which applied to post-privatisation controls such as "golden shares". In almost all countries, the national state auditors or comptrollers are empowered to audit any given privatisation transaction or parts thereof. Additional controls are in place in some countries, for instance through internal audits in the responsible ministries and, in a few countries, governmental committees overseeing the privatisation process. Countries differ with respect to whether the state auditors may only carry out ex-post auditing or are empowered to intervene during the privatisation process. Examples from individual countries include (a synthesis is provided in Table 4.1):

- In Argentina, the ultimate responsibility for overseeing privatisation procedures resides with a parliamentary commission. The state auditor assists the commission both in the course of the privatisation process, during which it has powers of intervention, and through post-privatisation assessments. The State Reform Law established a mandatory engagement of both the National Audit Agency (Auditoria General de la Nación) and the SOEs General Audit Agency in overseeing and monitoring privatisations procedures in Argentina. The law would give both agencies ten business days to express their objection and observations before formalising the concession contract or other privatisation modality. If objections occurred, the parliamentary commission would address the case. If the line Minister did not agree with the commission's statement, the case would be defined by the president.
- In the Czech Republic, privatisation processes are overseen by the internal auditor in the privatising authority. Moreover, the Supreme Audit Office (SAO) is mandated to audit the issuance of securities by government and privatisation through public tender. The SAO further issues opinions at the request of parliament as well as executive bodies.
- In Denmark, the state auditor is empowered to conduct audits of privatisation projects, or parts of privatisation projects.
- In Estonia, in recent years, there have been no privatisations with conditions that required ex-post controls.

- In France, privatisation processes are subject to specific controls by the Court of Auditors or by the Parliament.
- In Italy, the state auditor (“Court of Auditors”) is authorised by law to audit all aspects of government finance, including privatisation transactions and proceeds. The last report by the Court regarding privatisation is dated 10 January 2010.
- In Japan, the Board of Audit (the state audit body) is empowered to audit privatisation projects. The recent divestments in Japan Tobacco, NTT, Japan Post, and Kyushu Railway Company were subject to audits as well as requests for written submissions and on-site inspections by the Ministry of Finance.
- In Kazakhstan, the Committee on State Property and Privatisation conducts control of compliance with the terms of the sales agreements. A similar role is filled by executive agencies at the sub-national level of government.
- In the Netherlands, authorities pursue a privatisation only when the public interest is sufficiently safeguarded without an (controlling) interest in the company. This implies that the applicable laws and contracts should be changed (if necessary) prior to privatisation. As there are no specific post-privatisation government controls, all institutions are required to abide by general financial sector regulation.
- In Turkey, the Privatisation Administration includes a Post Privatisation Department, which exercises post-privatisation oversight of fully divested enterprises. The Department monitors whether parties to past privatisations fulfil their obligations (and are granted their rights) under the contracts and agreements entered as part of the divestment. The Department further monitors the privatised enterprises with respect to such criteria as profitability, employment and investment. It carries out studies and assessments with the purpose of providing proposals concerning future privatisations.
- In the United Kingdom, all major privatisations are reviewed by the National Audit Office (NAO – the state audit body). Following the NAO report it is normally the case that the Public Accounts Committee (a cross-party parliamentary body) will also review the transaction drawing on the NAO report and then producing its own report on the success or otherwise of the privatisation.

Assessments of privatisation policies and practices

Few countries have engaged in regular or even topical post-privatisation assessment of outcomes.

- In France, the Shareholdings and Transfers Commission is responsible for supervising and assessing the privatisation operations and publishes opinions in the Official Gazette of the French Republic at the end of each transaction.
- In Japan, in the cases of recent stock offerings of JT, NTT, JP, and Kyushu Railway Company, the outcomes of privatisation are subject to assessment in the annual Policy Evaluation Reports of the Ministry of Finance.
- In Lithuania, the past privatisation processes have been continuously monitored and assessed by experts from the World Bank, the International Monetary Fund and various agencies of the European Union.

- In the Netherlands, the Senate has regularly performed a parliamentary enquiry of the Dutch privatisation practices¹⁴.

Table 4.1. Action taken following privatisation

	Control and verification	Assessment of privatisation practices and outcomes
Argentina	The state auditor conducts reviews during the privatisation process as well as post-privatisation assessments.	N.A.
Czech Republic	Internal audit at the authority undertaking the privatisation as well as the state auditors.	N.A.
Denmark	The state auditors can audit a privatisation process, or parts thereof	N.A.
Estonia	In recent years, there have been no privatisations with conditions that required ex-post controls.	N.A.
France	Privatisation process may be subject to specific controls by the Court of Auditors or by the Parliament.	The Shareholdings and Transfers Commission is responsible for supervising and assessing the privatisation operations and publishes opinions in the Official Gazette of the French Republic at the end of each transaction.
Israel	N.A.	Not yet. A supervision and examination programme for past privatisations will be implemented.
Italy	No regular procedures. The Court of Auditors may assess privatisation processes and proceeds.	N.A.
Japan	Board of Audit (the state audit body) can audit privatisation.	In certain cases, assessments were performed as part of the Policy Evaluation Reports by the Ministry of Finance.
Kazakhstan	The national privatisation committee conducts control over compliance with terms and conditions of privatisation.	No specific evaluation. Privatisation statistics are made available on an ongoing basis.
Lithuania	The legal acts bearing on privatisation process establishes safeguards and controls.	Post privatisation evaluations have been undertaken by various international organisations.
The Netherlands	As there are no specific post-privatisation government controls, all institutions are required to abide by general financial sector regulation.	The Senate regularly performs a parliamentary enquiry of the Dutch privatisation practices
Sweden	Government reporting to parliament on past privatisations. The state auditor, at its discretion, may audit the privatisation process.	N.A.
Turkey	The Post Privatisation Department of the Privatisation Administration exercises post-privatisation oversight of ex-SOEs.	N.A.
United Kingdom	All major privatisations are reviewed by the state auditor. The audit report is subsequently reviewed by a parliamentary committee, which may choose to issue its own assessment of the success or failure of any given privatisation.	N.A.

Source: National questionnaire responses.

¹⁴ English translation www.eerstekamer.nl/behandeling/20121030/lost_connections_summary_of_main

5. Privatisation in practice: selected national privatisation projects

To illustrate concrete examples of national privatisation practices, two concrete case examples from Denmark and Poland are provided in this section, with a broader presentation of the opening of the Mexican airports sector to private investment. Information was provided by the reporting countries; it has not been independently verified by the Secretariat.

Denmark: the privatisation of DONG Energy

The Danish state-owned company DONG Energy (initially under the name Dansk Naturgas A/S) was founded in 1972 to manage gas and oil resources in the Danish sector of the North Sea. It subsequently acquired corporate assets in the power generation and distribution sectors.

The decision to privatise DONG Energy was basically a confirmation of a decision taken back in 2004. Due to different reasons the IPO had not been completed in the years following the original decision and it was part of the shareholders agreement that an IPO should be pursued no later than in the first quarter of 2017.

In the interim, as part of a restructuring plan (among other things intended to reduce debts and increase investments) the share capital was increased in January 2014. The new shares were acquired mostly by the US investment bank Goldman Sachs who became a 18% shareholder in DONG Energy, in addition to two Danish pension funds.

The intention to pursue an IPO of DONG Energy within that timeframe was confirmed by a political majority in September 2015. This decision followed a pre-study (road map) for an IPO conducted by the company, the Danish State and other major owners in collaboration and a decision by the Danish government to pursue an IPO.

As part of this political agreement in September 2015 it was announced that it was the intention to sell three infrastructure assets to Energinet.dk (the state-owned transmission system operator) as a political majority wanted these assets to be kept under public ownership and control. Apart from the intended sale of these assets there were no major restructurings of DONG Energy before the IPO.

The Danish State engaged both a financial and a legal adviser to assist the State in the IPO process. It was important for the State to have advisers with extensive knowledge of the energy sector as well as experience with IPOs in order to deliver high quality advice. The advisers worked closely with the State in all aspects of the process including establishing a valuation of DONG Energy and identifying a reasonable pricing of the shares. Neither the financial adviser nor the legal adviser had any mandate to participate in the share sale and they were therefore seen as independent and with no conflict of interest in the process.

The IPO process started with the establishment of an “IPO Committee” which was to prepare the IPO. The committee consisted of representatives from the largest owners and the company. The Committee also had the task to appoint syndicate banks on the different levels (joint global coordinators, co-lead managers, book-runners). The IPO Committee also had the task of considering whether any restructurings of DONG Energy were needed or appropriate in order to create the best possible conditions for the IPO.

In the final weeks before the IPO the syndicate banks reached out to a large number of investors identified by the banks and financial advisers in order to secure a sufficient demand for the shares. The financial adviser was deeply involved in this part of the process closely to ensure the best possible outcome for the State. The total proceeds for the State were USD 1.3 billion (DKK 8.1 billion). These proceeds are considered a financial transaction and are as such used to lower the national debt.

The IPO was completed in June 2016 and at the time of writing this report there had not yet been any post-privatisation controls.

Opening the Mexican airports to private investment

The Mexican Airport System was a structural change derived from the National Development Plan 1995-2000, which considered priority to retain, modernize and expand the airport infrastructure, raise security levels, as well as improve the quality, access and efficiency of services.

This above, allowing participation of private capital in airport operations, in accordance with the procedure laid down in the General Guidelines for opening investment in the Mexican Airport System (Lineamientos generales para la apertura a la inversión en el Sistema Aeroportuario Mexicano), published in the official gazette on February 9, 1998.

In this sense, in the process of opening up investment in the Mexican airport system, the following actions were taken:

1. The Federal Government was authorized, through the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes –SCT), to constitute temporarily three Companies of State majority participation as holding companies, one for each group of airports;
2. Temporarily constitution of a State majority participation company for each of the airports that integrate each group, and
3. The constitution of a State majority participation company for each of the three holding companies, responsible for providing administrative services.
4. Sale of airport groups, in order to recover the liability assumed by the Federal Government.
5. Therefore, by a network of 58 airports, privatisation process of the 35 most profitable airports began in 1998.

Table 5.1. Mexican airport privatisation and private partnership

Holding company (variable capital corporation)	Airports (variable capital corporation)	Providing administrative services (variable capital corporation)	Current situation
Airport Group of Mexico City (Grupo Aeroportuario de la Ciudad de México)	Mexico City International Airport (Aeropuerto Internacional de la Ciudad de México)	Airport Services of Mexico City (Servicios Aeroportuarios de la Ciudad de México)	Was intended to transfer the shares to the ASA, but the operation was not approved by the SHCP because the necessary information was not provided.
Pacific Airport Group (Grupo Aeroportuario del Pacífico)	Tijuana Airport Mexicali Airport Hermosillo Airport Los Mochis Airport La Paz Airport San José el Cabo Airport Puerto Vallarta Airport Manzanillo Airport Guadalajara Airport Aguascalientes Airport Bajío Airport Morelia Airport	Airport Infrastructure Services of the Pacific (Servicios a la Infraestructura Aeroportuaria del Pacífico)	Pacific Airport Group, S.A.B. de C.V. Shareholders: - Mexican Pacific Airports (15%) - Airport Concessions Development (5%) - Airports Corporation (5%) - AENA Internacional (5%) - Investing public (85%)
North Central Airport Group (Grupo Aeroportuario del Centro Norte)	Juárez Airport Chihuahua Airport Culiacán Airport Mazatlán Airport Torreón Airport Durango Airport Monterrey Airport Reynosa Airport Tampico Airport Zacatecas Airport San Luis Potosí Airport Zihuatanejo Airport Acapulco Airport	North Central Airport Services (Servicios Aeroportuarios del Centro-Norte)	Mexican airport operator shareholders: - ICA Aeroinvest (42%) - Airport technology services, S.A. de C.V. (16.7%) - Investing public (41.3%)
Southeast Airport Group (Grupo Aeroportuario del Sureste)	Veracruz Airport Minatitlán Airport Oaxaca Airport Huatulco Airport Villahermosa Airport Tapachula Airport Mérida Airport Cozumel Airport Cancún Airport	Southeast Airport Services (Servicios Aeroportuarios del Sureste)	Southeast Airport Group, S.A.B. de C.V. (Grupo Aeroportuario del Sureste, S.A.B. de C.V.)

Poland: The privatisation of Siarkopol S.A.

This case example concerns the privatisation of “Siarkopol” Mines and Chemical Plants, joint-stock company S.A., with its registered office in Grzybów (hereinafter also referred to as the Company or Siarkopol S.A.). The Company was included in the Privatisation Plan for the years 2008-2011, and subsequently in the Privatisation Plan for the years 2012-2013 (documents drafted by the Minister of Treasury, adopted by the Council of Ministers).

Prior to the launch of the privatisation process, a privatisation advisor was selected - the agreement with the advisor was signed on 15 July 2011. This agreement was concluded as a result of the public contract awarding procedure conducted pursuant to Article 39 of the Act of 29 January 2004 on Public Procurement Law. The subject matter of the Agreement included:

- Performance of pre-privatisation analyses comprising:
 - determining of the legal status of the Company assets,
 - evaluation of the value of the Company enterprise,
 - assessment of the implementation of the Company obligations arising from the environmental protection requirements,
 - drawing up of a report on the analysis of deposits and exploitation rights,
 - drawing up of the Memorandum of the Company - a document issued to investors participating in the privatisation process.
- (optionally) Providing services by the advisor under the process leading to concluding of the transaction - preparation and service of the disposal process of the Company shares to third persons under the procedure of negotiations undertaken based on public invitation, including the preparation of procedure for their disposal, identification and selection of potential Purchasers, examining their financial reliability, as well as advice related to negotiations concerning the sales of shares, verification of bids, preparation of the draft sale agreement.

Prior to the launch of the privatisation process (publication of the invitation to submit bids) analyses of the Company referred to in Item 1. were performed. The privatisation process was conducted under the procedure of negotiations undertaken based on public invitation. The Minister of Treasury used advisor’s services referred to in item 2. All parties interested in the purchase of the Company shares had the opportunity to participate in the process.

The Minister of Treasury decided to sell the overall possible block comprising 85% of shares (the remaining 15% of the Company shares were allocated for employees). In accordance with Article 36 of the Act on commercialisation and privatisation, authorised employees were entitled to acquire free of charge, 15% of the shares taken up by the State Treasury on the day of registration of the Company. The right of free purchase of shares arises after the lapse of a period of 3 months following the day of disposal of first shares by the State Treasury under general rules and expires upon the lapse of a 24-month period as of the day of arising of this right. The Minister of Treasury envisaged the disposal of the shares which had not been taken up by authorised employees to the entity selected through the procedure of those negotiations, in case of expiry of the authorised employees' right to acquire such shares free of charge. The stages of the privatisation process, indicating the dates, were:

- 13 January 2012 - invitation to negotiations concerning the purchase of 85% of the Company shares was published.
- 16 February 2012 - deadline for submission of initial offers - 7 offers were submitted.
- 1 March 2012 - the decision was made on admission of 4 entities whose offers were most favourable in terms of prices, as well as from the point of view of continued performance of the Company, to the further stage of the privatisation process, i.e. to the examination of the Company and submission of binding offers for the purchase of shares.
- 6 April 2012 - termination of a limited examination of the Company by investors.
- 24 April 2012 - deadline for submission of binding offers - 4 offers were submitted; 3 investors were admitted to the next stage - one entity offering the lowest price was excluded from the further process.
- Subsequently, negotiations with 3 investors were carried out. As a result of negotiations and the decision of the MSP Management, all investors participating in the negotiations adjusted their binding offers twice, in particular, in the scope of price offers (by 14 June and by 5 November 2012).
- 7 December 2012 - the Minister of Treasury withdrew from negotiations with one of potential investors due to the failure to document a possibility to finance the purchase transaction of Siarkopol S.A. shares.
- The Ministry of Treasury continued negotiations with two other investors.
- 27 December 2012 - one of potential investors informed of withdrawing from the negotiations.
- The negotiations conducted with the last investor remaining in the process, i.e. Azoty Group, joint-stock company, led to initialling of the draft agreement for the sale of 85% of Siarkopol S.A. shares on 4 June 2013 by representatives of the MSP negotiation team and investor's representatives.
- As a consequence of the foregoing, the Investor and representatives of Siarkopol S.A. employees obtained the approval for the commencement of talks related to the protection of employee rights, i.e. the so-called social package.
- 30 August 2013 - the social package regulating the Company employee rights was concluded between trade organisations and Azoty Group joint-stock company and Siarkopol S.A. as the employer.
- 25 September 2013 - the agreement for the sale of the Company shares was signed between the State Treasury and Azoty Group joint-stock company.
- The agreement was contingent - the prerequisite for the transfer of shares was the approval of the President of the Office for Competition and Consumer Protection (UOKiK) for concentration in connection with the purchase of the Company shares.
- 30 October 2013 - the President of UOKiK issued the decision accepting concentration, consisting in taking over of control over Siarkopol S.A. by Azoty Group joint-stock company.
- 21 November 2013 - following the payment of the price for shares purchased, the transfer of shares to the benefit of Azoty Group joint-stock company took place.

The purchase price of 4,675,000 shares constituting 85% in the share capital of the Company amounted to PLN 320,003,750.00; price per share - PLN 68.45. In the privatisation agreement the Investor undertook, inter alia, to fulfil the so-called non-price obligations - e.g. to implement investment and the so-called passive obligations in the Company, such as refraining from the disposal of the Company shares and decrease of its share capital, in the period of 36 months following the acquisition of the Company shares.

In accordance with the privatisation agreement the investor accepted drafting of reports on non-price obligations by the Company. Moreover, the privatisation agreement defines that the Ministry of Treasury has the right to conduct an inspection in the Company in the scope of the method of the arising obligations. The privatisation process was controlled by an internal unit of the Ministry of Treasury and the external control authority, i.e. the Supreme Audit Office.

Turkey: The sequenced sell-off of Türk Telekom

Türk Telekom is the national telephony company in Turkey and the legacy fixed-line telephony providers. In 2005, 55 % of the company's shares were privatised through a block sale to the Lebanese-owned Oger Telecom. This was at the time the largest-ever foreign direct investment transaction into Turkey (USD 6.55 billion). It was considered that bringing in a private partner before its stock-market listing would result in increased efficiency, productivity, and service quality, which could impact the revenues that could be raised through the IPO. So the IPO was the second phase of the government plan for the privatisation of Türk Telekom in 2008.

a) Reasons for the IPO

The fundamental rationale of an offering by the Turkish government in Türk Telekom was not only to increase transparency, accountability, disclosure standards in Türk Telekom, but also broaden the ownership base, enhance development in capital markets and raise governance standards. It was aimed that after the block sale the private sector synergy would be transmitted to the company resulting in an increase in efficiency and productivity, service quality and variety. The company value would then increase, meaning that through the IPO the Turkish government would be able to raise more revenue over the transaction. At the time of the IPO the value of the company reached USD 13.2 billion while at the time of the block sale to Oger the implied transaction value was USD 11.2 billion.

b) Leading Up to the Process of Listing

Under Turkish law, companies wishing to be listed are required to qualify under the Capital Markets Law, thus before the IPO necessary filings and procedures were undertaken by Türk Telekom. In addition, as mentioned earlier, specific legislation applies to the privatisation processes – which could, in principle, allow for divestment via public offering, block sale, convertible bonds etc. The law foresees the establishment of independent tender and valuation committees composed of representatives from the Privatization Administration; Treasury and the Ministry of Communications, where secretarial functions shall be carried out by the Privatisation Administration. Thus every decision pertaining to the IPO process including the strategy setting; design of equity strategy, discounts, incentive schemes are assumed by the Tender Committee and pricing is assumed by the Valuation Committee. The strategy and pricing decisions are approved by the Council of Ministers at the final phase.

This law also stipulates that 5% of Turk Telekom shares would be allocated to Türk Telekom workers, Postal Services Administration (PTT) employees and small scaled investors in case of an offering. Thus, the special law encouraged the participation of the employees and small scaled investors to an offering to be undertaken by the Treasury. The law also states that discounts and instalment payment mechanisms may be used during the course of the offerings to encourage the participation of the said parties.

At the end of 2007 when the government issued a Council of Ministers Decree stipulating that; 15% of Turk Telekom shares would be offered to the public and the Turk Telekom Tender Committee would determine the use of overallotment option, as well as the utilization of various incentive mechanisms and instalment payment schemes. The Decree also regulated that 3% of Türk Telekom shares will be allocated to the Turk Telekom and PTT employees and small retail investors. Investors in the domestic offering were provided with certain incentives like the employees of the Company or PTT and small investors were entitled to discounts of 4% to 7%, retail investors with significant purchasing power will be entitled to a discount of 2% to 5%.

According to Turkish Law the IPO was overseen by the Privatisation Administration. And according to capital markets regulations, financial advisors and capital markets licenced intermediary banks were mandated as well as Turkish and local lawyers, media and PR advisors. Joint global coordinators, international book-runners and local book-runners assisted the Privatisation Administration in the IPO.

It should also be noted that the active participating of Oger, as the majority shareholder, in the IPO had been ensured already at the time of the initial block sale. Since IPO was planned in advance by the Turkish government, as the “second phase of privatisation”, necessary stipulations were incorporated into the agreements undersigned by the Turkish government and the buying party at the time of block sale in 2005. In this context, the cooperation and involvement of the Oger Telecom to a listing to be undertaken by Turkish Treasury was guaranteed under the Shareholders’ Agreement whereby the controlling shareholder was made liable to undertake certain actions (like taking necessary decisions about listing at the board level, voting for changes in the Articles of Association, complying with auditing requirements etc.) with regards to a listing. The agreement further regulates the distribution of the costs pertaining to a listing.

Thus in the case of Türk Telekom whereby the state is a minority shareholder, the second phase of privatisation was accomplished via IPO with the cooperation of the majority shareholder, under a successfully structured shareholder arrangement. This constitutes the only example of the Turkish state acting as a minority selling shareholder in an IPO.

c) Going to the stock market

For the IPO of Türk Telekom, Privatization Administration launched the process of IPO preparations with the selection of reputable financial and legal advisors. The Articles of Association of Turk Telekom were amended and necessary fillings were made to the Capital Markets Board (CMB). Group D bearer shares with a total nominal value of TL 525 million which belonged to the Turkish Treasury and which corresponded to 15% of Türk Telekom’s paid-in capital were publicly offered following the authorization of the sale by the CMB. The due diligence took almost 1.5 months and the official start of the IPO was given with the analyst presentation that took place in London.

During the public offering, “on the spot” publicity meetings and roadshows were conducted in six countries (Germany, USA, Sweden, UAE, UK, and Saudi Arabia). The

pre book-building took place between April 28, 2008 and April 30, 2008. The bookbuilding was May 7-8-9 2008 where the floor and cap prices set for the public offering were TL 3.90 and TL 4.70 respectively. The total size of the offering amounted to USD 1.9 billion (TL 2.4 billion). 6 months lock up period as granted.

On the basis of the finalized bids that were received during the course of the process it was decided to revise the allocation for domestic investors to 40% and the share for foreign non-resident institutional investors to 60% which constitutes one of the highest proportion allocated to domestic investors in the Turkish history. Of the listed shares, 30% were allocated for Türk Telekom and PTT employees and for small investors, 3% for major individual investors, 2% for institutional investors, and 65% for foreign non-resident investors.

Of the total international sales of shares, 30% went to the UK, 15% to the UAE, 11% to the United States, 10% to Sweden, 9% to Lebanon, and 6% to Singapore while the remaining 19% were bought by investors in other countries. All of the bids submitted by PTT employees, Türk Telekom employees, and small investors were satisfied. In the case of institutional investors and individual major investors, the satisfaction rates were 95% and 6% respectively. In consequence, close to 30,000 new domestic retail investors entered into the shareholding of Türk Telekom.

The Treasury continues to own 31.68% of the common shares of Türk Telekom. Following the offering, the Treasury is entitled to nominate 5 out of the 12 members of the Board. Due to the Shareholders' Agreement that was signed between the Treasury and the buyer, the Treasury shall have veto powers as long as it owns 25% or more shares in Türk Telekom over supermajority decisions at the Board and General Assembly level. On the other hand, pursuant to Law No. 406, the Treasury has a non-transferable right (golden share) to opine on and approve the following matters for the purpose of protecting the national interest in issues of national security and the economy:

- any proposed amendments to the Company Articles;
- the transfer of any registered Shares in the Company which would result in a change in the management control of the Company; and
- registration of any transfer of registered shares in the Company's shareholders' ledger.

United Kingdom: The privatisation of Royal Mail

An Independent Review under the Chairmanship of Richard Hooper (former Deputy Chair of the UK telecommunications' regulator, Ofcom) concluded in 2008 that the UK's universal postal service was under threat unless Royal Mail was modernised. This Review recommended that Royal Mail needed access to capital; a strategic partnership to bring in expertise; removal of its approximately £12 billion pension deficit; and a new regulatory approach. An update of the Review in 2010 endorsed the original recommendations but concluded that a strategic partnership was no longer necessary (as Royal Mail had recruited a new CEO from Canada Post) and that capital should be raised from the private sector as this would:

- Ensure that cash was available when needed to fund the accelerated modernisation programme on a commercial basis;
- Inject private sector disciplines into the business;

- Reduce the risk of political intervention in commercial decisions; and
- Encourage Royal Mail to develop a more customer-focussed commercial strategy/diversification for the digital age.
- Primary legislation was required to take forward all the Hooper recommendations. This was introduced in the UK Parliament in October 2010 and was passed in June 2011. The government's stated objectives for the sale published in July 2013 were:

“The Government will secure the universal postal service for the benefit of all users by securing Royal Mail's future through the introduction of private sector capital and associated disciplines. This will be achieved through:

- *delivering a sale of shares in Royal Mail within this Parliament;*
- *creating an employee share scheme that, as Parliament has decided, will lead to at least 10% of the company in employee ownership, to drive stronger staff engagement; and*
- *delivering a financial outcome for the taxpayer, which when considered in the context of the overarching policy objective, represents overall value for money.”*

Royal Mail had already been restructured from a public corporation to wholly government owned public limited company in 2001 to make it more arms' length from government. To enable the sale, it was necessary to separate the post office business from the mail operations as the Government's intention was to keep the post office business operated by Royal Mail's subsidiary Post Office Limited (POL) in public ownership. The separation was completed in April 2012. Also in April 2012, the government relieved Royal Mail of its historic pension deficit of approximately £12 billion by transferring pension benefits accrued up to that date to a new government pension scheme. The government transferred approximately £28 billion of assets and approximately £40 billion of liabilities. The management of the ongoing Royal Mail Pension Plan would be a matter for Royal Mail and its Pension Trustees.

To support this work and preparation for a sale, the government procured a number of advisers including an independent advisory bank to advise on the strategic options (Lazard); legal advisers (Freshfields); and financial/accountancy advisers (Deloitte). For the execution of the sale, the government recruited a syndicate of seven investment banks with Goldman Sachs and UBS acting as global co-ordinators.

The method of sale selected from a range of options was an Initial Public Offering (IPO). A normal IPO process was followed. Government announced its Intention to Float on 12 September 2013 and this was followed by the launch of the Offer setting out price range and offer size on 27 September 2013 (Royal Mail also published its prospectus on this date). The Offer closed on 8 October and the final price was announced by government on 10 October. Initial trading began on 11 October and formal trading on 15 October.

The Offer was open to institutional investors and retail investors (i.e. members of the public). Engagement with potential investors (“pilot fishing”) began as early as November 2011. This was partly to educate investors about Royal Mail and to obtain feedback on their interest. Such engagement continued throughout the process and there was a wider formal roadshow by Royal Mail prior to the IPO to reach a broader range of investors. A website was set up for retail investors and advertisements were placed in leading newspapers. There was a high demand for shares from institutional and retail

investors during the Offer period. Members of the public could buy shares through a broker or they could apply direct. 60% of the shareholding was sold and a further 10% was gifted to Royal Mail's eligible UK employees.

The proceeds from the IPO were £1,980 million. These funds were transferred to the UK Treasury's Consolidated Fund to be used for general government expenditure. The government retained a 30% stake in Royal Mail at the time of the IPO. No controls were put in place other than the normal rights that came with this minority shareholding. In June 2015, the government sold 14% of its remaining shareholding raising £750 million and at the same time gifted a further 10 million shares to Royal Mail's eligible UK employees. In October 2015, the government sold a further 13% of its shareholding raising £591 million and gifted its final shareholding of 10m shares to employees. The government no longer owns any shares in the company.

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