

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (93) 7

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

#### ON PRIVATISATION OF PUBLIC UNDERTAKINGS AND ACTIVITIES

*(Adopted by the Committee of Ministers on 18 October 1993  
at the 500th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,  
Considering that the aim of the Council of Europe is to achieve a greater unity between its members,  
Recommends the governments of member states to be guided in their law and administrative practice by the principles set out in the appendix to this recommendation;

Invites the Secretary General of the Council of Europe to bring the terms of this recommendation to the notice of the governments of the other European states.

Appendix to Recommendation No. R (93) 7

#### *Scope and definitions*

The present recommendation sets out certain principles by which member states should be guided in the interests of natural and legal persons (including groups of persons) in connection with privatisation.

For the purpose of this recommendation:

*a.* "privatisation" means:

- i. the total or partial transfer from public to private ownership or control of a public undertaking so that it ceases to be a public undertaking;
- ii. the transfer to a private person of an activity previously carried on by a public undertaking or public authority, whether or not accompanied by a transfer of property;

*b.* "public undertaking" means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- i. hold the major part of the undertaking's subscribed capital; or
- ii. control the majority of the votes attaching to shares issued by the undertaking; or
- iii. can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;

- c. "public authority" means:
- i. any entity of public law of any kind and at any level;
  - ii. any private person, when exercising prerogatives of official authority.

#### *Section 1 : Protection of the democratic rights of citizens*

Where proposed privatisation or a programme of privatisation is important, whether by reason of its scale or of the number of the public undertakings or the nature of the activities involved, the public authorities should ensure that the general public receives the information necessary for the effective exercise of democratic control. Information should be given on the reasons for the decision to privatise and the conditions under which the privatisation is to take place.

The disclosure of such information should only be limited to the extent that the general interest or requirements of confidentiality guaranteed by law render this necessary.

The public authorities should indicate the reasons which have led them not to disclose such information, unless such indication would of itself prejudice the interests which gave rise to such non-disclosure.

#### *Section 2 : Protection of users' and consumers' rights*

In the case of privatisation concerning:

- a public utility, such as the provision of public transport, telecommunications, water, gas, electricity, as well as any other activity determined by national law to be in the nature of a public utility, or
- a monopoly providing goods or services to a large public which will continue to be a monopoly after privatisation,

the conditions of the privatisation should be determined with due regard to the continuity, accessibility (including price) and quality of the service in the public interest. Consultation of consumers or users should take place where this is appropriate.

The interests taken into account pursuant to the previous paragraph should, if necessary, be safeguarded by means of a regulatory authority with effective possibilities to compel compliance on the part of the privatised undertaking or on the part of the person carrying out the privatised activity, or by other effective means including, where appropriate, the availability of speedy and inexpensive judicial or administrative remedies or arbitration.

Before proceeding to such a privatisation, the public authorities should inform, by any appropriate means, the users or consumers of the ways in which they intend to protect the interests taken into account pursuant to the two preceding paragraphs.

#### *Section 3 : Protection of employees' rights*

Where privatisation involves the transfer of employees to a new employer, particular regard should be had to the protection of the rights and interests of those employees.

In such a case, the employees' representatives should be provided with full information concerning the conditions of the privatisation which are relevant to the employees' interests.

The information mentioned in the preceding paragraph should be given in due time before privatisation so as to allow the presentation of observations concerning the effects of privatisation on employees' interests and the measures planned concerning them.

#### *Section 4 : Protection of the environment*

The conditions imposed on the privatised enterprise or on the person carrying out the privatised activity should have due regard to the necessity to protect the environment.

The privatisation should not jeopardise the possibility of obtaining compensation for damage caused to the environment by the undertaking or activity in question by reason of its operations prior to the privatisation.

#### *Section 5 : Protection of potential purchasers*

The procedures for privatisation should be established with due regard to the need for transparency and equal treatment of potential purchasers. These aims may be achieved by a variety of means, for example, public tender or competitive sale.

Where privatisation involves, in particular, sale by public tender or competitive sale:

- a.* potential purchasers should receive adequate information to enable them to assess their interests in the privatisation;
- b.* potential conflicts of interest involving those concerned with the privatisation should be avoided.