



Fourth Study Commission
Public and Social Law

Meeting in Montevideo, 20 - 24 November 2005

Conclusions

**WHAT ARE THE CONSEQUENCES OF PRIVATISATION OF PUBLIC COMPANIES AND/OR PUBLIC
FUNCTIONS REGARDING THE PARTIES RIGHTS IN LABOUR RELATIONS?
WHAT ARE THE CONSEQUENCES OF THE CHANGE OF LEGAL STRUCTURES OF A PRIVATE
ENTERPRISE REGARDING THE PARTIES RIGHTS IN LABOUR RELATIONS?**

Questions asked

They were asked to answer three questions:

1. Are public entities in your Country, or public functions within them, facing a phenomenon of privatisation? Is it possible to quantify it? Did the legislator in your country provide for any kind of legal restriction?
2. Has your country a specific set of rules concerning change in legal structures of public or private companies?
3. In the affirmative, please describe the conditions for the application of such rules and their consequences in the relationships between the employer and the workers.

Regulations quoted in the reports:

European level:

Council Directive 2001/23/EC relating to the safe guarding of employees rights.

National level:

Laws, statutes and regulations vary from country to country, and also vary in some cases on communal and federal or state levels.

Summary of the answers

1. Are public entities in your Country, or public functions within them, facing a phenomenon of privatisation? Is it possible to quantify it? Did the legislator in your country provide for any kind of legal restriction?

In most countries there exist no reliable statistics on privatised public companies (Argentina, Austria, Belgium, Germany, Ireland, Japan, Netherlands). In some countries there has been a decline in the number of privatisations and no great increase is expected (Netherlands). In other countries it has been promoted recently (Austria, ROC Taiwan, Cameroun). Even in some countries there is a discussion about re-nationalization (Argentina).

Usually important state owned enterprises were privatised mostly by share or asset selling (Argentina, Austria, Belgium, Brazil, Cameroun, Ireland, Italy, Taiwan).

In some countries also privatisation of public services such as water supply, electricity, where no state authority is required, happened (Austria, Germany, Italy, Switzerland, Uruguay). But in these cases it is regarded to be essential that the supply of public services is maintained. In some countries this is achieved by the local authority controlling a majority of the shares (Austria, Germany, Switzerland). Usually central aspect of exercising the public power must be secured to the state.

In some countries, there is a move to contract out public sector work in such areas as cleaning, catering and security (Austria, Ireland, Uruguay).

In almost all countries there exist some restrictions which concern labour law .

In some countries there are also exist restrictions on anti-trust law and the law on legal form of societies. This also may concern labour law.

2. Has your country a specific set of rules concerning change in legal structures of public or private companies?

In all countries there exist laws at the communal, county or federal level. In several countries one can find a decisive distinction between public servants and other employees (Austria, Germany, Netherlands).

In all Member States of the European Union but also in Switzerland there is a strong impact of the Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees` rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses. It applies to both private and public undertakings and has to be implemented by the Member States of the European Union.

In some countries this directive is also applied if it renders rights against the state and if there is no proper implementation by national statutes (Austria).

In some countries there are also special statutes passed for privatisations of specific public enterprises like the federal mail or telecommunication companies (Austria, Germany, Italy, Switzerland, Taiwan).

3. In the affirmative, please describe the conditions for the application of such rules and their consequences in the relationships between the employer and the workers.

In some countries the old and the new employer have to inform workers` representatives of the reasons and legal, social and economic implications of the transfer (Austria, Belgium, Germany, Ireland, Switzerland).

In many countries employees are transferred to the new company by law (Austria, Belgium, Germany, Netherlands, Spain, Taiwan). Contracts cannot be terminated on the grounds of the transfer (Austria, Belgium, Germany, Ireland, Netherlands).

In some countries those employees who refuse to sign a contract with the new company have to leave (Japan, Macedonia). In the Netherlands employees who are not willing to transfer to the new company have to retire. In some countries public servants may face dismissal. In Taiwan the employee is granted severance pay if he is laid off within 5 years after the transfer. This severance pay is calculated due to seniority, salary and years of service.

In most countries basically all rights and obligations are transferred from the transferor employer to the transferee employer (Austria, Belgium, Cameroun, Germany, Netherlands, Switzerland, Japan - not in the case of transfer of businesses).

Employees are transferred to the new company by law.

In several countries existing collective agreements remain in force, unless the new company has its own collective agreement. But usually there exist no limitations to renew or renegotiate the collective agreements. In some countries any change in labour conditions or collective agreements has to be agreed between the employer and the works council. This agreement has to ensure the survival of the enterprise. In some countries special collective agreements are also necessary to transfer working conditions granted by an statute which is only applicable for public enterprises to the new employment relationship.

In some countries specific problems arise from public servants rights and obligations (Austria, Germany, Netherlands). In some cases the new company is not liable for labour or pension related obligations prior to the privatisation. These obligations still exist against the state. In some countries public servants are not obliged to work for private companies and are not willing to give up their status. They are seconded to the private company by the ministry and maintain the civil servant status (Germany, Austria). In Taiwan employees will lose the civil servants status after a transfer and therefore lose rights and benefits. Employee who are not transferred or are unwilling to do so will receive additional salaries and severance pay. Any loss in pension rights occurring after the transfer shall be compensated. Other specific obligations include advance notice or job transfer training.

In several countries the employee is granted the right to a specific form of termination if the new working conditions include a substantial change to the employees' detriment. In this case of termination the employer is regarded as having been responsible for the termination of the employment (Austria, Argentina, Brazil, Cameroun, Germany, Ireland, Netherlands, Spain, Uruguay)

In almost all countries employees can take collective actions against privatisations.

Conclusions.

The reports did not contain enough data to conclude safely one or more trends regarding privatisation. There seems to have been a small wave in the 70s and 90s and in the early 2000s in some countries.

Most countries have national laws, statutes and regulation in force, or soon to be in force covering the privatisation of public companies. EC countries also follow EC directives.

In some countries civil servants will lose their status and will become ordinary employees. Many do, however, retain rights and privileges they enjoyed when they were civil servants, e.g. pensions. In some countries public servants are seconded to the private company by the ministry and maintain their civil servant status.

If collective agreements exist, they are typically transferred from the public company to the private enterprise, unless another collective agreement is already in place at this private enterprise.

If there are special statutes the provisions are sometimes transferred by a collective agreement to the private enterprise.

All countries allow individuals and collective workers to protest or stage collective action against privatisation. In some countries individuals can protest against a transfer and remain an employee of the 'old employer'.

Recommendations

In the event of transfers of businesses from the public to the private sector all employees or their representatives should receive in due time appropriate information especially regarding the legal consequences.

The rights of the employees should be safeguarded. But their representatives should have the possibility to negotiate about the consequences of the transfer in order to ensure the survival of the new enterprise.

In the event of transfers of businesses from the public to the private sector the new employer has to be furnished with sufficient means and there should be regulation which provides a liability of the former employer (the state) for all claims arising from the transfer which are not paid by the new employer.

Topic for next year

Do we need specialized labour courts ?