Policy and Process of Privatization Report

The Anti-Corruption Council

Taking into consideration numerous objections suspecting possible corruption and the violation of the process of privatization, the Anti-Corruption Council performed the analysis of the prevailing Law on Privatization, talked to the representatives of the relevant institutions, and elaborated the analysis of the petitions forwarded to the Council, where employee's representatives of the respective companies point out to fraud, or ask for annulment of the sales contract.
We talked to Minister of Economic Affairs and Privatization, Mr. Aleksandar Vlahovic, Director of the Privatization Agency, Mr. Mirko Cvetkovic, and their associates, and studied the documentation. Present report, moreover, represents series of our remarks in relation to the matter:

Analysis of the Law on Privatization (Official Gazette of Republic of Serbia, number 38/2001 and 18/2003) imposed following conclusions:

1. Privatization is completely separated from the complex project of the ownership transformation and social development strategy, because it is not adjusted to the broader context of the institutional and economic reforms (as stated by the prominent economist Mr. Vladimir Gligorov: "One of the problems of the privatization is that it has been performed in the inadequate institutional environment…privatization does not include useful institutional structure, including numerous issues in connection with the capital market" – daily newspaper *Danas*, 27 November 2003).
2. Law on Privatization is contradictory to the provision from the Article 56 of the Constitution of Serbia (recognizing different forms of ownership: social, state, private, and cooperative), and it is not in compliance with European standards, according to which mixed forms of ownership are accepted, because

the current law recognizes only ownership transformation which understands transformation from the social ownership to the private one, ignoring public form of ownership accepted in developed democratic societies. Private owner has, furthermore, more rights then the small shareholders, or common welfare (examples indicate that sale of the strategic and important goods may happen, and that the consortiums with shareholders are not competitive as individual or associated private owners on the tender).

3. Democratic conception of the privatization is, therefore, in question: a) it is completely subordinated to the Government instead to the Parliament, which indicates the position of the Privatization Agency, whose director is appointed by the Government, and the Agency answers to the Government, and to a lesser degree to the Parliament, and the same goes for the appointment of the Tender Commission, where other members of the Government appear, i.e. Government has a broad personal discretion in the choice, thus limiting control by the Parliament , b) the provision from the Law, article 32, giving the tenderers the right to object to the enforced procedure is, hence, unrealistic because the participant may complain only to the Agency for Privatization, i.e. relevant Ministry, c) the absence of the public control by Shareholders and Union Assemblies, which represents the violation of the article 16 of the Law, envisaging that the initiative for the privatization should be submitted to the Union, which has not always been the practice, as well as the approval of the decisions from Shareholders who should, in compliance with article 55 of the Law, sign the contract of organization implementation form, also an often avoided practice, d) the non-transparency in the process of the determination of the bidder's priority (everything is left to the consulting companies chosen by the Ministry of Privatization on the recommendation of the World Bank), and the crash privatization flow makes the analysis and control difficult.
4. Article 3 of the Law stipulates that the subject of the privatization can not be natural resources and welfare of public interest, but it is not precise what does it refer to, and practice shows that such goods, like baking and dairy industry

are in the process of privatization, and privatization of the oil, electrical and mining industry is to be expected.

5. Although the Article 22 of the Law envisages which company data must be presented in the process of privatization, the enormous assets are often reduced in order to lower the assessment of the company's value, and sell it at bargain price.
6. The Article 64 stipulates punishment measures for the violation of the privatization process, but not in case when the buyer fails to fulfill his contractual obligations, nor for the forgery or selective presentation of the information about the company in the process of privatization, which reduces its value.

What problems emerge as a consequence of such poorly conceived and imprecisely formulated Law on Privatization?

- The objections indicate that in regard to the price of the company's capital and terms of payment, consultants have large personal discretion in the choice, concerning the determination of the prospective bidders, which opens the possibility of abuse, i.e. favoritism (the example with the reduced price bids arises suspicion of promoting the favored bidder's advancement)
- The possibility of agreement between the bidders (there were 12 cases annulled by the Agency, because the agreements were made in order to avoid the competition)
- Election of the guidance adviser facilitates the favoritism of the bidders (objections quote that the buyer's guidance adviser is often the same as the Ministry's guidance adviser), because the guidance advisers are the key persons in determining which bids are priority, i.e. which should be accepted. Consultants evaluate companies capital, and may adjust the time of the assessment (for instance, postponement, in order to accrue debts in the meantime, which reduces the capital value of the company), while legal

advisers may, with objections to the presented documentation, exclude the undesirable bidder (objection in the case of the Belgrade Baking Industry), moreover, huge remunerations given to the consultant firms should also be taken into consideration.

- The right protection of small shareholders ownership is not completely stipulated by the Law, and the question is if the Securities and Exchange Commission protects the interest of the shareholders or the interest of the state.
- Also, it is not precise when and how to declare a bankruptcy (in compliance with the procedure when the company's debt tops the company's capital) and which Panel of Judges should handle the bankruptcy procedure (there is a reasonable doubt that there are possibilities of fraud, because the same trustee in bankruptcy appears in several cases, more precisely one trustee appears in 63 cases of bankruptcy, and other in 123), as well as the criterion applied in the election of the trustee in bankruptcy, because the existing Law on bankruptcy is unsatisfactory and allows various abuses, and the adoption of the new one is constantly postponed.
- The question is whether the Agency for the privatization is monitoring and controlling the fulfillment of the undertaken obligations of the new owner, because the property is often ruined after the privatization, economy destroyed, and there are cases of closing up of the production or redirecting the purpose of the bought enterprise or hotel (which according to the Law is illegal up to five years of use), and in certain cases the only impact represents the layoffs of the redundant employees, there are objections that during the evaluation of the bidder's competitiveness selective evaluation of the offered programs occur, or that the priority is given to the bidden price for the company's capital, although the total bid of the competitor who is often rated as second best is more favorable concerning the development programs, it is, hence, possible to manipulate in order to favor a particular buyer.
- There are numerous complaints on the incompetence of the Commercial Courts, and possibilities of abuse, i.e. corruption.

- Ministries of Finance and Privatization are not familiar with the quantity of the illegally acquired capital, and dirty money engaged during the repurchase of the state firms, allegedly, because it would not encourage foreign investors, without taking into consideration negative political impact of resurrection of the Milosevic's supporters.
- The puzzling cases of privatization are the ones where the new owner does not honor the contract of the social program, investments, settlement of the employee's overdue remunerations and insurance of the redundancy workers.
- There are cases of information forging in order to facilitate the advantage of the certain buyer.

Report on the most characteristic cases of the Law violation in the Privatization Process

Veterinary Institute, Zemun

After analysis of vast documentation and the petition, submitted by the Veterinary Institute's Consortium of the employees, together with objections implying violations of Law in the tender privatization process, whereas we have not received specific answers on the most important remarks, we have asked the Privatization Agency as follows:

1. Regarding the objection in point 2, which the Veterinary Institute's Consortium of the employees directed to the Agency, in respect of '' partiality of the state institutions'' in the privatization process of the enterprise in question, quoting the opinion of the Minister of Economic Affairs and Privatization handed to the Government on 30 October 2003, questioning the credibility of the Consortium, because they, allegedly, asked that the payment of the purchased capital should be performed by various installments, Agency responded as follows:'' The

Consortium's quoting in the point 12 of the Objection to the legality of the Public tender's performed procedure of the same petition is intentionally misinterpreted, although it represents the logical consequence of conclusions concerning the handling of the question asked by the Veterinary Institution…"(?) Is that an answer to the objection made, in which, according to the documentation of the Employee's Consortium, in the first place, there were no intention of payment by installments, except for the mere mentioning, and secondly, that the mentioned letter contains warning to the Government that the quoted bidder was financially inadequate to satisfy the terms of the tender? Was the intention to disqualify the Employee's Consortium in advance? The last response of the Agency, quotes:" Veterinary Institute's Consortium of the employees … in lack of arguments begins with accusations", suggests, also, that there was negative attitude towards that Consortium, because not even now the strong arguments from the objections, we refer to, were not taken in account.

2. Did the Agency have a legitimate reason (since no reason was stated) to extend deadline for the purchase of tender documentation till 5 September, 2003, although one bidder already existed, i.e. Veterinary Institute's Consortium of the employees, that paid the required amount – whereas the adviser warned the Agency that the contract for merge of "Bankom" company with the Consortium ""Zekstra" was unauthorizedly signed by the director, stating this a reason on account of which the Court's decision of the entry into the register was not reached till 20 August, 2003, and on 9

July, 2003 the Consortium reached the decision of expansion of its line of business introducing activities similar to the ones of theVeterinary Institute. Is this the question of tender fixing as claimed by the Consortium?

3. Did the Agency determined the fact that the companies "Zekstra" and "Bankom" are not joint companies, for mother company, i.e. the Consortium "Zekstra" -"Bankom" did not exist at the moment of the application to the tender, whereas, it was illegally accepted as a legitimate participant to the public tender, and the decision of all the members of the Consortium on joining the Consortium was not reached prior to conclusion of the contract by the side of the authorized persons from both companies – the conclusion of the financial adviser says: " The decision of the company "Bankom doo Belgrade" on founding of the Consortium was not made by the relevant company's body" and "The delivered contract of Consortium does not meet the terms stipulated by the public tender and manual for the bidders…" Why did the Agency neglect this warning?
4. Did the Agency overstep its legal authorization by changing the terms of public tender regarding the qualification, degrading the identity of the Veterinary Institute, saying that only some terms may be fulfilled, i.e. line of business having to do with the trade activities of the Veterinary Institute, whereas a buyer may become the bidder "at least one member of the Consortium who performed similar trade activities in a period longer than one year", without specification how much may such member participate in the purchase of the social capital (which may also be 1 %). Moreover, as it is stated in the objection of the Consortium

of the employees, in point 2 of the tender, trade activities required from the buyer are as follows: production of animal food, veterinary medicines and shots, but those trade activities are not in the point 4, while “Bankom” as a member of the Consortium “Zekstra – Bankom”, as a first ranked bidder deals only with cattle food trade, and not whole scale trade with cereals, nor does it have license from the Ministry of Agriculture to trade in pharmaceutical products. Did the financial adviser misinform the Tender Commission that both Consortiums fulfill the terms of the qualification? Bearing in mind that the Veterinary Institute is the sole producer on the Balkans of the three-valent shot against specific cattle diseases, and diagnostic means for the detecting of tuberculosis of the cattle and poultry, a negligent sale to such unqualified (non- strategic) partner may jeopardize further work of the Veterinary Institute and lead to contingencies (whereas the activity of the other member of the Consortium, “Zekstra” company is textile industry).

5. What was the Agency’s response to the objection of the Consortium of the employees concerning the discrepancy in data on tender rules given to the bidders, i.e. that the Consortium of the employees was given the information containing reduced total amount of the required investments (3, 380, 00 euros), due to which their offer was reduced, while Consortium “Zekstra-Bankom” made an offer on the basis of 4. 380, 00 euros, meaning that the participants did not have the same information. We asked the Agency how did this happen?

6. Did the Agency reach the decision on whether the bidders fulfill the terms and criteria stipulated in the public tender only on the basis of the opinion and suggestion of the legal and financial adviser of the Agency, and how did the Agency determine the validity of their opinion? According to the record from the second session of the Tender Commission one might conclude that the adviser has more personal discretion in choice than he ought to, which was suggested in the statement made by Mr. M. Marzik: "The only conclusion valid to us is the one drown by our legal and financial advisers", and further: "The Agency does not perform the determining of qualification criteria… The Agency considers them and only our adviser is accountable" i.e. "The thing we present to the tender is just what we get from our adviser ", Mr. K. Toncic:" The adviser takes responsibility giving the statement that all decisions are in compliance with the legal and tender procedure". Responding to the objections from the members of the Tender Commission that they did not received answers to their questions, Mr. Cedomir Jovanovic said in the closing session of the Tender Commission: "We received the reply of the Agency, i.e. legal adviser… and therefore the adviser propose the continuation of the opening of the bid", "legal adviser is accountable … and gave his opinion saying that there is no obstacle to quit the further procedure". Does the above mentioned not show that the Agency has transferred all the responsibility to the advisers as sole relevant persons in evaluation of the qualification terms and ability of the bidders to respond to them? Concerning this matter, a member of the Tender

Commission, Mr. Velibor Pesic said in daily paper “Blic”, on 24 January, 2004,: “There is a possibility that the Agency’s lawyers deceived the members of the Commission, and in this case the decision we reached (i.e. the decision regarding the first ranked bidder) is legally void”. How the Agency determines and controls “the lawfulness of the legal and financial adviser’s opinion and evaluation”?

7. Why did the Agency ignore the violation of the legal provision envisaging that Tender Commissions should be summoned in written form, and in due course of time together with material forwarded before the session, in order for the members of the Tender Commission to study and prepare for the decision making? Contrary to that, and according to the record, the main session on which the decision was made on 25 December, 2003 was scheduled the day before the session was held, without forwarded material and with incorrect information that only offer presentation, and not decision making is to take place in this session. Upon the objection of one member of the Tender Commission that the session was held in haste, and that members were not prepared for decision making, only pro forma response was given, in the sense that it was due to the holidays, and that the director of the Agency signed the document on the day before the convocation, while there was no answer to the question why such rush was necessary when the deadline was not yet due, as well to the suggestion why the session can not be rescheduled for a day or two, allowing the members of the Tender Commission to study the received material. Instead of answer pressure on the

member of the Tender Commission to reach the decision on that session was made, although Mr. C. Jovanovic stated:" We will not be reaching any important decision today". Notwithstanding, in order to reach the decision, the Tender Commission's members behavioral was classified as "unacceptable for normal working conditions" (C.Jovanovic), or that he is a "lawyer acting on one bidder's behalf", which represents the conflict of interest, because everybody knows "what the problems with the Veterinary Institute are" (which represents an implicit disqualification), hence, that the postponement of the session represents a precedent, because "if there are no obvious arguments (a very obvious argument was given – there was no time to study the material), I can not put to a vote to prolong the decision", upon which the chairman of the Tender Commission concluded:" I warn you that this is the last chance to declare the ability and readiness to participate in the work of the Tender Commission… or to say openly that *the reason you are sitting here is to make this Commission unsuccessful* (our italics, because it, it implies boycott of the Tender Commission). And, finally, Mr. Marzik insists members of the Commission should declare themselves "because the decision is definite" (even before the members of the Commission reached any decision). Pointing out that the members of the Consortium of the employees in the Veterinary Institute were the participants in the tender does not explain the lawfulness of the decision, whereas the records from the closing session show how those representatives of the Tender Commission

were treated. How do you explain this kind of pressure, and its impact on the result of the voting (3:2)?

8. Veterinary Institute Consortium of the employees objected the Agency that the principle of the transparency was infringed, and asked: Who ordered the last session of Tender Commission to be open for the public, when unidentified security blocked the entrance to the place where session was held? Our question is: What were Agency's reasons to make such decision?
9. One may also speculate on the role of the consulting company CES MECON, and whether it was granted the concession on the basis of the tender, taking into account the possibility of conflict of interest, whereas there is a connection between Agency director Mr. Mirko Cvetkovic, former executive director and partner of the company CES MECON, as well as between the owner of the company CES MECON, Mr. Dusan Nikezic, whose son, Mr. Zvonimir Nikezic acts as Deputy director of the Privatization Agency. Also, the question of the role of Mr. Dragan Djuric, agent for the Zekstra- Banem Consortium, and member of the management of the football team Partizan who may have aspiration to the land of the Veterinary Institute.
10. Why did the Agency stop the negotiations from 27 January, 2004 till 10 February, 2004, and whether the Veterinary Institute's Shareholders Assembly requested to register free shares before the signed contract on sale of the social capital was pursuant to the legal procedure? In connection with this, the Veterinary Institute made an objection to the Agency, whereas according to the Article 11 of the Law on

Privatization “Transfer of the capital without the compensation is performed after the completion of the capital sale”, asking the Agency not to take any further actions with the first ranked bidder, until the ruling from the Supreme Court on the due process of law of the procedure conducted in the public tender. What does the Agency intend to do about that? Since the Article 1.25a of the Law envisages that the procedure may be stopped if case of new developments, which was not familiar before, the question is which new developments are we talking about? The arrogant response from the Privatization Agency that “the loser is entitled to be sour”, confirms the doubt that the Veterinary Institute employee’s Consortium was discriminated.

Agroseme, Sremska Mitrovica

The response of the Privatization Agency quotes that the court proceeding is being conducted for the termination of contract with the Commercial Court in Novi Sad, moreover, that the Court sentenced the temporary restriction measure for the company assets management, which does not indicate the phase of the court proceeding, as well as the assets in question (movable or real estate), because if they are real estate, that derives from the sale contract.

1. Why did the Agency wait till 20 January, 2004 to initiate the proceeding against the new owners (i.e. persons formerly under investigation) because of dishonor of the contract, at the moment when the buyer is supposed to pay the second installment in the amount of 30 million dinars, postponable in case of court proceeding?

2. Why was the ban not placed on the sale of the profitable real estate (seed goods), used by the buyer for the repayment of the purchased company, as well?
3. What was done regarding the buyer's manipulation with regard to the increase of capital stock, which he attempted to achieve by artificial fertilizer, and not by amount of money, performing criminal act with the help of the company Pedja- Komerc, which issued the false storage certificate for 450 tons of fertilizer (in fact only half of it), pursuant to which, the Commercial Court registered the increase of capital stock, increasing the buyer's share in ownership for 64 %. When the employees warned the Agency accordingly, they received the response that the Agency is not competent in this matter . In the interest of the privatization process, does the Agency have to answer the question: Who is competent, and to direct the employees to the measures which could be taken?
4. Is the Agency familiar with the fact that the District Attorney pressed charges with the District Court in Novi Sad against Mr. D. Djermanovic, and Mr. I. Sabo, due to the violation of the Article 27, point 2 in relation with point 1 of the Law on money laundry prevention (signature of Deputy District Attorney Ms. Tatjana Lagumdzija)? Has the Agency considered this while initiating action for the cancellation of the contract?
5. What was done in order to stop the leasing of agricultural pharmacies, out of work, and with unemployed workers?
6. Is it in compliance with the legal provisions regarding consortium founding to introduce new person in exchange for Mr. Djermanovic (who spent seven years in jail), with additional annex, and subsequent to the purchase, and whether the Agency done something about it?
7. Is the Privatization Agency familiar with the fact that the Agency from Novi Sad suggested its employees to buyout the contract from "Panonija", by paying the first installment of 30 million dinars, plus 6 million of interest, presumably for the lost profit, which the workers found unacceptable? In our letter from 2

March, 2004, we suggested the Agency to ban the sale of the movable assets, until the settlement of the legal suits, because the company is on the brink of ruin.

PKB Transport, Kragujevac

Agency's response to the objection of the employees in this process of privatization was that the Agency's Control Department took the necessary measures, within the scope of its competence, in order to determine the factual status of the legal side of the objection regarding the breach of the legislation in the process of privatization. In relation to the matter, we asked the Agency to advise on the measures taken, when it was obvious from the on-sight documentation inspection (verified in the relevant institutions), that the buyer used false information in the auction dossier (and the legal suit regarding the determination of the forged documentation is being dragged with the Public Prosecutor in Kragujevac).

The letter also quotes that the Agency wrote to the Commercial Court in Kragujevac to obtain authentic information on the registered data for the Socialy-owned Company Kragujevac and PKB Transport, but settled with the Court's response that they were unable to supply the required answers. We asked the Agency if it tried to determine who is responsible for passing such information.

The same letter says that they are still conducting the process of the control of the fulfillment of the buyer's contractual obligations, but the questions arise: first, how was the control performed? And, secondly, how long can it last (taking into account the negative consequences for the survival and life of the company)?

Agency's response that there was no objection regarding the unauthorized profit the director was making by rent of the company's facilities, "whereas, that represents the company's income used and allocated in compliance with the law…" is vague, and contradictory to the actual status, because the worker's request to pay out the redundant workers from the rental, was not accepted by the buyer.

The question arises regarding the expressed doubt that the mentioned buyer, Mr. Milovanovic is favored and that there is a conflict of interest, whereas the same is connected with the president of the Independent Association of the Unions, who was the president of the Board of Managers:

1. Whether Mr. D. Milanovic, in earlier consultations with the Agency, prior to the auction, received information regarding the absence of other bidders, and, on the last day for the application to the auction, submitted the documentation with significantly reduced percentage of the sales price?
2. Whether the Agency is aware that the Commercial Court in Kragujevac determined that Mr. Milanovic did not have the legal foundation for the purchase of certain buildings pertaining to PKB Kragujevac, since the company represents a specific legal subject, leaving workers from that company (employees' objection quotes that sales price of only one exclusive restaurant is above the sales price for PKB Transport)?
3. Whether each mentioned violations were enough to break the contract with the new owner, and why the Agency asked on 9 September, 2003 to compromise with Mr. Milovanovic, provided he gives employment to the workers of Socially-owned company Kragujevac till 30 September, 2003, when he did not honored other contractual obligations? In our letter from 2 March, 2004 we asked the Agency to respond if there were progress regarding the problem solving. We have not yet received the answer.

15 Septembar, Valjevo

In its response to the objections of the employees in this company the Agency determined that the buyer did not fulfill the contractual obligation of forwarding bank guarantee for the investments not even after the second warning, but it is not clear why the deadline was not prolonged and the guarantee obligation altered into delivery of performed payment evidence, and it is not clear whether this was performed.

On the objection regarding the incorrect information in the documentation submitted by director Mr. Filipovic as a potential buyer of the company, the Agency responds that the buyer guaranteed the authenticity of the assets documentation under material and moral obligation, which, according to the prior experiences in the privatization process, may prove to be an insufficient guarantee and the Agency itself, concludes that in the case of giving the inaccurate data charges shall be brought, but it is not obvious when this shall be done, and how long would it last. Henceforth, we have asked the Agency to advise about what was done respectively. We have not yet received any answers from the Agency.

According to the manner in which the Consortium of 81 employed worker was established, headed by Mr. Filipovic and Mr. Slobodan Djukic, then Deputy Minister of the Economic Affairs and Tourism (with 35 % of capital share), and who, together with 6 employees, hold 58% of the shares, there was a doubt that the process of privatization was not in compliance with the law, because:

1. According to the employees 'objection they were not familiar with the possibility of purchase of the second share part on installment in five annual payments, and Mr. Filipovic gave false information to the public, saying that the workers purchased the company (while in fact 300 of the small shareholders were left out due to the inaccurate information).
2. The buyer did not fulfill the payment for the investment in the amount of 13. 260,00 dinars within the deadline, and instead he offered to build gas boiler-room which could not be an equivalent to the investment obligation.
3. Mr. Filipovic asked the small shareholders to sign the statement that they were not interested in further increase of capital stock, which they refused because they were not familiar with the sales contract.
4. Agency's web site shows only part of the company's assets, although company was bought as a whole (8 buildings were missing), and there is a doubt that it was done in order to reduce the capital value during the purchase, but also to sell the unregistered assets outside the provision envisaged by the law (warehouse in Lajkovac, not on the real estate list, and announced for the sale

at the slightly reduced price than the selling price of the company, is mentioned as an evidence), and pay out the increase of the capital stock by this sale.

5. Contrary to the legal right of trade union organization and action, Mr. Filipovic, the Director, suspended trade union leaders, and fired the President due to the petition sent to the Anti-Corruption Council.
6. There is a doubt of conflict of interest, taking into account that the Mr. Slobodan Djukic a member of the Consortium, and in possession of 35 % of shares, acts as a Deputy Minster for Economic Affairs and Tourism, who hired his son as a manager in this company.
7. In order to reduce the company capital value, Mr. Filipovic gave a false information that the equipment is over fifty years old, and it was not hard to check that new and modern machines were bought, on account of which employed workers brought charges with the Municipal District Attorney, and since they did nothing, charges were brought with the Republic District Attorney.
8. Charges for abuse of office were also brought against director Mr. Filipovic, in compliance with the Article 242 of the Criminal Law, for conclusion of a harmful contract, with the Municipal District Attorney in Valjevo (and the Deputy District Attorney's response, Ms Ana Nikic, was that those are not criminal actions sanctioned ex officio (in the line of duty), as well as the criminal charge with the Republic District Attorney from 26 February, 2004.
9. Is the Agency familiar that the investigating authorities found shortage of 160 tons of wheat after the process of privatization, whose value tops the company's sales price (criminal charge with District Attorney was brought). Since the Agency got familiar with this objections from the documentation delivered, on 2 March 2004 we asked the Agency to advise how they intend to act further on in relation with this case of privatization.

Nisal, Nis

The Anti- Corruption Council received the request to reinvestigate sales contract. On 13 August, 2003 and on the basis of the public tender the company was bought by "Domal-Inzenjering", with a director of one Nisal's section as a co-owner. Capital value was estimated in 1999 at 75,048,000 dinars, i.e. 12,809,000 USD. But the company was sold to "Domal" for only 325,000 euros, with mandatory investment of 3,100,000 euros and with minimal social program. Although the company was not money-losing, and salaries were paid without delay, in 2003 before the privatization a loss was fixed (evidences submitted), to reduce the capital value on the sale. Workers have mentioned that they built the company themselves, without any loans. There is a doubt that the privatization was fixed in favor of "Domal", with help of the Deputy Director of Nasal, who portrayed that company in positive light, at the expense of Nisal, as member of the Agency Mr. Ljubomir Djurovic, who was pushing the interest of the new owner. That doubt was initiated by the fact that all previous solvent bidders were refused, and Ms Katarina Toncic from the Agency informed the Tender Commission that the company was not profitable and that workers did not receive their salaries. The Privatization Agency stopped the Consortium of the employees to apply as bidders, estimating the sum required to be paid in the amount of 2,500,000 euros, meaning 2,000 euros per worker, which made them quit. It was also suggested that workers should give company in mortgage in order to receive the necessary credit.

It is said that the Government by sales contract performed the change of Law on Privatization when they deposited social program on one year instead on five years. The employees raise the question: How did "Domal" buy this company when its monthly realization was much lesser then the one Nisal had, i.e. in five months of the year 2003 the buyer cashed 18,000.000 dinars, and at that time Nisal was cashing 60,000,000 dinars per month. The petition quotes following contractual obligations unfulfilled by the new owner:

1. Contrary to the obligation of nondismissal of the workers, employees with longer years of service are being pressured to take a paid leave of absence with 45 % of salary, already achieved in one number of cases.
2. Director is performing the distribution of the company's assets without public tenders, and uses those funds to pay out the workers.
3. Director refused to brief small shareholders on the sales contract, declaring it a state secret(evidence submitted).
4. Director suspended President of the Union due to the objection on the work of the new owner, and banned Union meetings. Apart from that, security service was replaced with private security. There is a doubt that there is conflict of interest, because although the employees could not get the information on share distribution, they found out that Mr. Slobodan Petkovic, Deputy Minister for Economic Affairs and Privatization has 35 % shares in the new ownership structure. As for the condition of the company after the privatization, employees claim that the factory is ruined: there are no favorable business, and the ones already concluded are poorly realized, new technologies are not being introduced, strategic investor is not being attracted, and the production is falling to pieces, only halls are being built, because there is an intention to redirect company's line of business.

Nemetali, Vranjska Banja

Sales contract concluded on 14 October, 2003 with the buyer Mr. Rajkovic Gojko, who immediately dismissed the director and appointed the ex director who was retired. Nematali are one of the most successful companies in the county of Pcinj, with strategic importance and broad implantation, and the company which toped annual production plan and paid the workers on a regular basis, which was significantly changed in the post privatization process, whereas the company is not in

a position to achieve the former production, and is practically without business, except one facility with 12 to 14 workers, out of 87 employees.

Because of that and on the account of the determined violations in the privatization process the Consortium of the employees submitted the request with the Privatization Agency on 5 December, 2003 for termination of the sales contract, quoting as follows:

1. The buyer did not submit the bank guarantee on behalf of the agreed investment not even after the warring of the Agency (confirmation).
2. The buyer stopped the privatization process. Contractual obligation towards the buyers were not realized, and there were no investment regarding the improvement of the production.
3. Worker's salaries are not paid out from the agreed privatization.
4. The buyer himself said at the Meeting of the employees that his target was to sell the company.
5. Large number of workers are either on forced leave or threatened with dismissal.
6. The buyer is selling the company's assets against the legal provision (add for the sale of a business premise in Belgrade dated 15 January 2004).
7. In order to achieve the guarantee the buyer mortgaged the company (petition with the District Court in Vranje on 26 February 2004).
8. There is a doubt that the buyer was convicted twice to a prison penalty due to the business activities, and that he was sentenced with the ban on performing business activities.
9. The buyer transferred company's financial funds to his private current account, as "loans". As a result, actual production started to fall (the damage amounts to 6,079,652 dinars) and endangers the complete production. On 3 February, 2004 the Privatization Agency, regional office in Nis performed a check up of the subject of the privatization, Nematali, Vranjska Banja. Their report says that the buyer forwarded the guarantee of the bank "Kulska Banka", branch office, and on all other objections (violation of worker's right, money transfer from

the giro account AD Nemetali to private accounts), employees “were instructed to turn to relevant authorities”. As far as the discontinuation of the production process is concerned, Agency’s report is contradictory, because, under “Economic aspects” (third side of the report), point 3, Business Continuity, states that the” company is active”, and comment:” Scope of production and profit reduced for approximately 30 % with respect to the privatization period). Prior to that, nevertheless, on the first page of the Repot, section “Summary of the problems”, states, also:” Scope of production and profit reduced for approximately 30 % with respect to the period prior to the privatization. The reasons are partly objective (market reductions, technological problems), and, partly, subjective (discontinuity in the production process, noncompliance with the specified terms of delivery, organization problems).

Zupa, Krusevac

Chemical Industry Zupa in Krusevac, with more than 1 300 employees, was sold on 13 January 2004 to the company “Vektra M” from Belgrade, at a low price of 3, 8 million euros, in the procedure where two weeks prolongation of deadline for privatization process was applied, and the reason was that at its Meeting of the employees, company “Zupa” did not reach the decision on the share issue, which was contrary to the legal provision. Henceforth, and due to other violations of the privatization process, Consortium of the employees asked for reconsidering of the decision on privatization due to the vital violation of the rules of the procedure, and erroneous and incompletely determined factual status.

The employees forwarded several petitions regarding the irregularities in the course of tender procedure (see the documentation), and made following statements:

1. There is a doubt of abuse during guarantee acquisition, i.e. that the purchased company was given as a guarantee (document in which the owner of “Vektra M” thanks the director of the Commercial Bank).

2. The Privatization Agency did not forward the settlement of the sales contract, only the notice on the conclusion of the contract with the first ranked bidder, which was contrary to the Article 196 of the General Administrative Procedure Act.
3. Since the first ranked bidder was not ready to provide the guarantee within the deadline (till 3 December, 2003), the buyer secured the prolongation of the deadline for reasons not envisaged by the law.
4. Privatization procedure was continued on 22 December, 2003, when the factual status was determined erroneously, on which the objection was made, and the Agency irregularly left to the financial adviser to estimate whether there were irregularities in the privatization process, for which he had no competence, because the objections referred to the disregard of the procedure and not the finance.
5. The President of the company "Vektra M" performed an illegal influence on the employees in the regional office of the company in Novi Sad in favor of their program, which was not allowed before the termination of the privatization process.

Employees asked the Agency for the privatization as follows:

- Is it possible that the firm with less than 900,000 euros of annual revenue, and less then 10 employees, becomes a first ranked bidder for the purchase of the factory with total traffic over 25,000,000 dollars and 1 400 employees?
- If the Agency checked the capital origin of the company "Vektra M" invested into the purchase of company Zupa?

The Agency did not respond, nor did they forward the information on the applied criteria according to which the ranking of the bidders was conducted. Documentation regarding the objections made was forwarded to the Anti-Corruption Council.

Since the company “Vektra M” was not yet registered with the Commercial Court in Kragujevac, although the new owner already changed the factory management and appointed a new one, Consortium of the employees expects their demand to question this privatization process to be satisfied.

Seme, Beograd

The company “Seme” Joint –stock company in Belgrade submitted a request (under the number 07 7557/2003) to reconsider and annul the privatization of 70% of the capital value, held on 19 March 2003, because capital evaluation did not comprise total company’s assets, and, moreover, no adequate capital value was determined, whereas the evaluated assets of the business premises was evaluated at only 100 euros per square meters (enclosed capital evaluation by CES MECON). The petition states that the new owner has moved into two halls in Makis, BK Studio, and part of Telekom, and changed the purpose of the company, that instead of processing and packing of seed vegetables in warehouse in Zemun he performs other activities, as well as that he closed down the section for processing and packing of seed vegetables in the warehouse in Zemun and knocked down part of the business premises in Jagodina. It is said, furthermore, that the new owner made significant violations of the Law on Companies and Privatization by summoning and holding the Shareholders Meeting against the Article 250, point 4 of the Law on Companies and acted arbitrarily while choosing the Management Bodies, for he did not have the majority of the present shareholders. Because of that, in the letter number 2669 from 23 October, 2003, shareholders requested to see the documentation, which they are entitled according to the Law, but received no answer till today, and due to the damage done to the shareholders they demanded the revision of mentioned facts and action in compliance with the Law.

The mentioned analysis shows that there are many unsolved questions in the policy and procedure of privatization, due to which abuse and violations may occur:

1. The Government makes the decree on privatization procedure with legal force, and in such manner determines special programs of some company, which is against the law and creates conditions for voluntarism.
2. Means from the privatization are not used for the incentive of economic development, because they were mostly invested in restructuring of gigantic companies and budget filling in.
3. It is not established whether there are off-shore companies behind the fictive buyer, nor does the Ministry and the Agency have insight whether and how much “dirty money” and illegally acquired capital was used for purchase of socially-owned companies and whether there are cases of economic rehabilitation of the representatives of the former regime.
4. It is not defined which companies of the public and national significance can not be privatized, and which ones must be transformed into public good, i.e. may be given in the concession.
5. It is not clear whether there is a system control of how much are the buyers investing in specific companies, namely, investments, social programs, existence of the dismissed workers, and similar (only the general data was given that 700 million euros was agreed for the investments, and out of the Development Fund 25 million euros was earmarked for the loans, which opened 70 000 new working positions).
6. There is no explanation for the cases with the objections of tender fixing, on the basis of which the impression is created that there are no will of the main actors of the privatization to reconsider their actions.
7. No account is taken regarding the estimation time of the company’s assets, whereas consulting companies perform such estimation, they may, in agreement with the favorite buyer, postpone the evaluation, in order to accrue company’s debts and reduce the selling price.
8. Law on bankruptcy facilitates abuses because it is not precise: what are the criteria when Panel of judges, dealing with the bankruptcy files, is to be determined, how is a trustee in bankruptcy chosen (there is a case that the same

trustee in bankruptcy acts in many bankruptcy cases), certain individuals are overpowered and overpaid, without control of either Ministries or Agency.

9. There are no envisaged sanction for breach of privatization process regarding the non fulfillment of the contractual obligations by the buyer, or for the incorrect information supply regarding capital value and assets of the company.
10. Scope of activities of the Ministries and Agency are not defined, while control of the consulting companies with broad personal discretion in the choice while determining the estimation of the company's capital under process of privatization, and offers ranking, which, it seams, is completely left to the World Bank.
11. There are undefined relations between the Privatization Agency and Commercial Court which conduct the procedures arbitrary and with inefficiency contribute to the bankruptcy of the companies under privatization.
12. Ministry and Privatization Agency take this numerous objections much too lightly , and do not express readiness to question this cases seriously.
13. Small shareholders' rights are not protected, due to the imprecise contents of the sales contracts, which is why, they are often concluded to the disadvantage of the employees, furthermore, obligations and responsibility of the signatories to the contract (Agency for privatization and the buyers).
14. There is no insight into the means that the buyer gives as guarantee for bank loan, hence he often gives the very company he is purchasing as a guarantee, and the relationship between privatization bodies and banks in not legally regulated in a way that could put an end to it.
15. There is no insight in violations when buyers engage themselves into illegal sale of the assets of the purchased company, not envisaged by the Law.

On the basis of the above, following recommendations are due:

1. Reconsideration of the privatization cases where there is a doubt of a breach of the law.

2. Reinforcement of the role of the National Assembly of Republic of Serbia, in a manner that would facilitate the Assembly and the relevant working bodies to perform the systematic control over the overall privatization process, the suggestion is to have the Assembly consider Government's report and inform the public at three months intervals.
3. Regulation of the deadlines and privatization process by legal decisive standards in order to prevent the possibility to suspend the application of the law by de facto decrees.
4. The Government should, within the scope of its activities, support the permanent work of the Commission for supervision over the Commercial Courts.
5. To foresee the capital control mechanisms used in sale in order to exclude possibility of money laundry, and legalization of the illegally acquired capital, and annul any such contracts.
6. To define without a doubt what is considered a public welfare pursuant to the Law on Privatization, in order to clear the indistinctness which companies, falling into category of public welfare, may be privatized, i.e. which goods may be a subject to the concession contract.
7. To define by law the control mechanisms of the Ministries and Privatization Agency regarding the decisions made by consulting companies, in order to prevent possible abuse trough their connection with the favored buyer.
8. Investigate the cases where state officials act as buyers and sanction existing conflict of public and private interest.
9. Legally regulate the influence on the new owners by envisaging the sanctions in case of non fulfillment of the sales contract obligations and foresee the binding standards

for their entrepreneurial behavior for the purpose of development of the business activities and respect of the employee's rights.

10. To ensure better functioning of the privatization process the Government should insist on enactment of new, i.e. review of the existing lass, namely: Law on Value Added Tax, Law on Return of the deprived assets, Antimonopoly Act, Law on Prevention of money laundry, Law on Concessions, Law on Bankruptcy.
11. To immediately stop the privatization by means of off-shore companies.

Present analysis shows that a successful ownership transformation depends on precise estimation of the failures of the Law on Privatization, as well as the irregularities in the existing procedures. We suggest the revision of the objections regarding privatization process sent to the Anti-Corruption Council, and decisions making regarding further procedures. We, also, expect to be posted of actions taken.

We, hereby, forward you the list of the petitioners who addressed the Anti-Corruption Council regarding the problems in privatization process pursuant to the Law from 2001:

1. GP Zlatibor, Užice
2. Bačka, Čonoplja
3. Bezdan, Sombor
4. Dunav, Bezdan
5. Gradina, Užice
6. Napredak, Ratkovo
7. Beogradska pekarska industrija, Beograd
8. Jafa, Crvenka
9. Bora Kečić, Obrenovac
10. Univerzal, Lozovik, Velika Plana

11. 2. Oktobar, Vršac
12. Slavica-Parafarm, Subotica
13. Strela, Aranđelovac
14. Ineks Stjenik, Čačak
15. PIK Takovo, Gornji Milanovac
16. Meteor, Subotica
17. Merkur, Bačka Palanka
18. Morava, Čačak
19. Polet, Novi Pazar
20. Jelak, Tutnin
21. AU sistem, Beograd
22. Novitet, Novi Sad
23. Agrohem Novi Sad
24. Luka Dunav, Pančevo
25. Fabrika Vagona, Kraljevo
26. EMS KIJEVO, Obrenovac
27. Laminat, Bajina Bašta
28. Duvan, Čačak
29. Vetprom, Sombor
30. Seme, Beograd
31. Hempro, Beograd
32. Argopromet, Požarevac
33. Dunav, Čelarevo
34. Nisal, Niš
35. INIS, Niš
36. Brodogradilište Apatin, Apatin
37. Banini, Kikinda
38. Hladnjača, Kraljevo
39. Biopak, Beograd
40. GPD Dom, Petrovac

41. Izolma, Rača
42. Nemetali, Vranjska Banja
43. Dunav, Novi Sad
44. Diskos, Aleksandrovac
45. Prima, Kikinda
46. Zdravlje, Leskovac
47. Timok, Zaječar
48. Autocentar Balkan, Subotica
49. Borac, Krupanj
50. UTP Vojvodina, Šid
51. Zaštita, Pres Beograd
52. Kosmaj, Mladenovac
53. Tisa, Novi Kneževac
54. Eltek, Kovačica
55. Prehrana, Sombor
56. Vrenja, Beograd
57. Frad, Aleksinac
58. Niteks, Niš
59. Jugolek, Beograd
60. Autoprevoz, Vrnjačka Banja
61. Šećerana Jedinstvo, Kovačica
62. Usluga, Aleksandrovac
63. Jelen Do, Jeleno Do
64. Izvor, Paraćin
65. Agroseme, Sremska Mitrovica
66. Veterinarski zavod, Zemun
67. PKB Transport, Kragujevac
68. Litopapir, Čačak
69. 15. septembar, Valjevo
70. Uzor, Valjevo.

71. Radnik, Nova Varoš
72. Župa, Kruševac
73. Erdevik, Erdevik
74. Banat, Zrenjenin
75. Sremput, Ruma
76. Avalaguma, Beograd
77. Sportstar, Beograd
78. Metalseko, Gornji Milanovac
79. Bratstvo, Subotica
80. Mehanika, Aleksinac
81. Atelje Stari Grad, Beograd
82. Tehnoservis, Beograd
83. Bioprotein, Obrenovac
84. Montaža, Beograd
85. 14. decembar, Sombor
86. Jugometal, Beograd
87. Podrinje, Ljubovija
88. ŠIP Nikola Nikolić, Kragujevac

Ms Zagorka Golubovic — Belgrade, 15 March 2004
Member of the Anti-Corruption Council

Forwarded to:

1. The Government of Republic of Serbia, Prime Minister Mr.Vojislav Kostunica
2. Ministry of Economic Affairs, Minister Mr. Dragan Marsicanin
3. The National Assembly, Board for the Economy
4. The Privatization Agency, Director Mr. B. Pavlovic