

INTOSAI Working Group on the Audit of Privatisation

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PRIVATISATION The German example

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Contents

1. Introduction

- Germany's 'economic constitution'
- Bases of external government auditing
- Audit philosophy of the German SAI
- Advisory work of the German SAI

2.

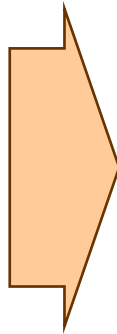
- Budgetary law, sections 7 and 65 Federal Budget Code
 - Vision of the state as a stimulating agent
 - Organisational privatisation
 - Substantive privatisation
 - Audit at "state enterprises"
 - Public Private Partnership

Germany's Economic Constitution

- ◆ The German Constitution has not opted for a particular economic system
 - ◆ Art. 2 para 1 protects the general freedom of action including economic activities, within the constitutional framework
 - ◆ Art. 14 of the Constitution guarantees property and the right of inheritance, subject to an unspecified 'social obligation' and allows expropriation if that is in the public interest.
 - ◆ Art. 15 of the Constitution allows for land, natural resources and means of production to be transferred to public ownership.
 - ◆ The European Union Treaty has established the objectives of creating a European single economic and social area, a monetary union and a European Union citizenship

Legal Bases of External Government Auditing

German Constitution Art. 114 Para 2



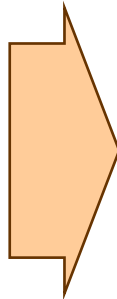
- ◆ Institutional guarantee of Bundesrechnungshof
- ◆ Judicial independence of its Members
- ◆ Audit of Fed. Govt. financial management
- ◆ Performance, regularity and compliance
- ◆ Reporting to Federal Government and both Houses of the Federal Parliament

Federal Budget Code (FBC)
sections 88 ff

Budgetary Principles Act
sections 53 ff

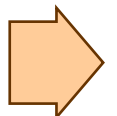
Specific legislation on
individual public bodies

Bundesrechnungshof Act



Complementary provisions on

- ◆ Audit mandate
- ◆ Audit subject
- ◆ Audit criteria
- ◆ Audit procedure
- ◆ Reporting



Bundesrechnungshof's internal organisation,
procedure, Audit Rules

Audit philosophy

Historical approach

The annual report serves as a basis for the procedure of discharge by Parliament, expresses an opinion on the Government's financial management and makes recommendations for the future.

Current approach:

First priority is on preventing shortcomings or indicating the impact of shortcomings

Audit of projects, decisions about parts or stages of projects after or even before they have had a financial impact

Advisory work of the Bundesrechnungshof

Independent Advisory work of the Bundesrechnungshof

outside the course of audit work,
based on previous experience

oral or written advice
provided in the course
of normal audit work

Comments on

- proposed legislation
- procurement projects
- public works projects

audit-linked advice
provided in the course of
audit work

Recommendations made in the
annual report on government
financial management,
especially with a view
to avoiding weaknesses or
preventing shortcomings

Section 7 Federal Budget Code

Efficiency and economy, cost and performance accounting

- (1) When the budget is being prepared and executed, the principles of economy and efficiency shall be observed. These principles impose an obligation to consider the extent to which government functions or commercial activities serving public purposes may be reassigned and performed by means of denationalisation and privatisation.
- (2) Cost-benefit analyses shall be carried out for suitable measures of considerable financial importance. In suitable cases an interest notification procedure shall be undertaken to ascertain whether and to what extent private sector arrangements are feasible.
- (3) Cost and performance accounting is to be introduced in suitable areas.

Shareholdings in private-law business entities

Section 65 Fed. Budget Code

1. Important interest of the State
2. Best value for money
3. Limitation of obligation to contribute capital
4. Adequate influence in company's supervisory board
5. Financial statement, annual report and annual audit as for „large“ limited liability companies

Procedure:

Agreement of Federal Ministry of Finance ('FMoF') (Section 65 II Fed. Budget Code)

Indirect shareholding:

Approval by FMoF (Section 65 III Fed. Budget Code)

Supervisory body:

special Federal Government Interest

“Guidance on the management of Federal Government shareholdings”,
Federal Cabinet resolution adopted in 2001

Section 65 Federal Budget Code

Abs. 2: The responsible federal ministry shall obtain the **consent** of the Federal Ministry of Finance ..., **before** the federal government acquires any shares in an enterprise, increases its holding or sells all or part of it.... The Federal Ministry of Finance shall be involved in the negotiations.

Abs. 3: The responsible federal ministry should use its influence to ensure that an enterprise in which the federal government holds a direct or indirect majority interest seeks the approval of that ministry before acquiring an interest of more than one quarter of the shares of another enterprise, increasing such an interest or selling all or part of it. Before giving its approval that ministry shall obtain the **consent** of the Federal Ministry of Finance

Privatisation

Vision of the government as a stimulating agent

The Federal Government continues its privatisation policy in the interest of the future of the businesses and their workforces. To achieve long-term job security, businesses must be highly competitive and able to meet the challenges posed by flexible national and international markets.

Flexibility, market orientation and adequate equity capitalisation are decisive factors in this endeavour. Private-sector businesses are better able to meet these challenges than public-sector enterprises.

Extract from Federal Government Report

Substantive Privatisation

- ◆ A function performed so far by the government is no longer seen as a government responsibility.
- ◆ It is transferred to the private sector and the latter assumes the economic risks.
- ◆ If the task has so far been performed by a state-owned business, the government's shareholdings must be sold to the private sector.
 - ◆ Full privatisation: All shares are sold - risk is transferred to the private sector.
 - ◆ Partial privatisation: The government retains part of the share capital (often a majority shareholding to retain government influence). All or part of the risk remains with the government.

Government auditing: is dispensed with after a full privatisation, continues after partial privatisation

Special problem in the case of companies listed at a stock exchange

Organisational privatisation

public sector

government functions or
public-sector business
activities are

activities remain in the
public sector
State has a guarantee
obligation

private sector

transferred to private-law
companies (limited company,
joint-stock company)

State exercises influence
via company's governing bodies

Government auditing

1. within government departments administering shareholdings
2. by information-gathering/audit at the private-law company concerned

Kontrollstufen at government enterprises

External audit by the German SAI

Budgetary control by the sponsoring federal ministry under section 69 Fed. Budget Code

- Extended audit of annual accounts under Section 53 Budgetary Principles Act

Audit of Financial Statements
by private sector auditors

Tax inspection by tax office

Internal audit: Controlling, Revision

So far privatisations have covered:

- ◆ Industrial enterprises
- ◆ Mining companies
- ◆ Port companies
- ◆ Air Lines
- ◆ Airport companies
- ◆ Posts
- ◆ Railways
- ◆ Telecommunications
- ◆ Domestic housing companies
- ◆ Hydroelectric power station
- ◆ Motorway service companies

Unification - Trust agency

Functions:

- ◆ reduce economic government activities by means of privatisation
 - ◆ enhance private sector competitiveness to maintain and create employment
- ◆ hold and acquire properties and facilities for economic activities
- ◆ fund restructuring by means of loans, to be covered by future privatisations

Unification - Trust Agency

results 1

(December 1994)

- ◆ Out of 12,354 former state enterprises (1990 = 100%)
 - 6,321 enterprises have been privatised (= 49%)
 - 225 enterprises have been privatised to a large extent (= 2%)
 - 1,588 enterprises have been reprivatised (= 13%)
 - 265 enterprises have been transferred to local governments (= 2%)
 - 3,718 enterprises have been wound up (= 28%)
- ◆ 192 enterprises are still in existence
- ◆ out of 4.1 million staff (as of July 1990) 159 000 staff have kept their jobs, 2.95 million staff have been sacked
- ◆ expenditures totalling 244 billion DM

Unification - Trust Agency

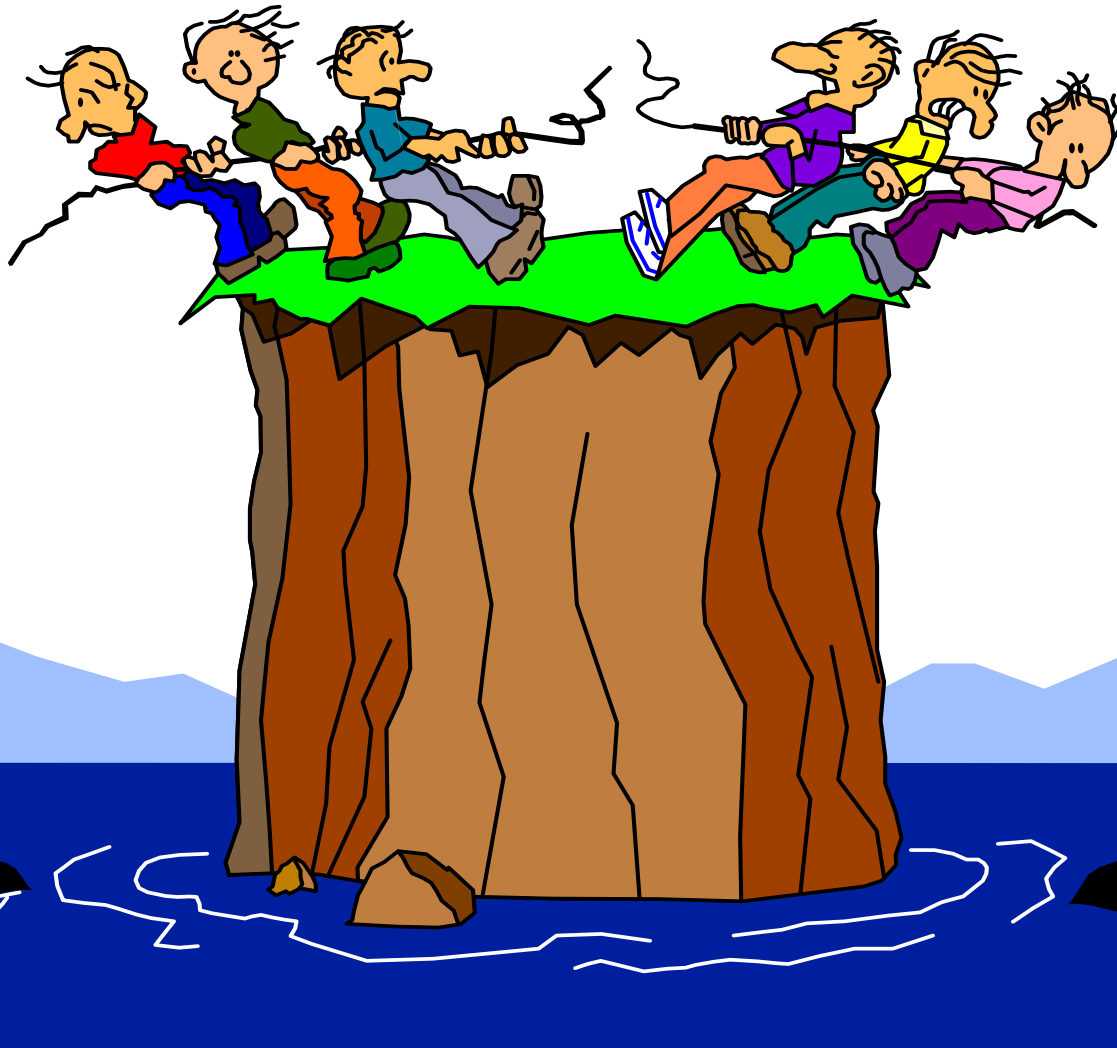
Results 2

(December 2000)

- ◆ concluded its activities except for some minor issues
- ◆ some 3000 remaining contracts need to be settled
 - ◆ overall expenditure 332 billion DM

The Trust Agency has been dissolved, remaining tasks notably those in the field of property management have been transferred to the succeeding private sector institutions.

Relations between all players



**Thank you very much for your
kind attention**

**I will be happy to answer your questions,
listen to your comments and discuss any
other issues arising.**