

PUBLIC ADMINISTRATION & REGIONAL STUDIES

3 rd Year, No. 1 (5) – 2010

Galati University Press, ISSN 2065 -569X

PRIVATIZATION OF ENTERPRISES IN POLAND

1. The nature and methods of privatization in Poland
2. Privatization in Poland between 1990-2008
3. Privatization plan in Poland between 2008-2011

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Abstract

The main purpose of the article is to describe the ownership transformation, implemented in Poland. Privatization processes and actions taken to accelerate changes were analysed.

Keywords: ownership transformation, privatization process, indirect privatization, direct privatization, liquidation.

JEL Classification: D21, D29.

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Introduction

Since the early eighties of the twentieth century, privatization has become a global trend. The wave of privatization coexisted with the liberalization of many markets (e.g. the telecommunication, energy, fuel, finance). The positive experience of the British in this respect has encouraged the governments of Western Europe and other countries to undertake the process of privatization. The trend of reducing the share of state-owned firms in the Polish economy began in the nineties of the twentieth century. Competition has led to improvements in business efficiency and economy and accelerated development, improved quality and lowered prices of many services. There have been made efforts to intensify the process of privatization and raise public confidence. Currently, the process of privatization in Poland has slowed down due to the occurrence of the global financial crisis.

1. Privatization produces a number of specific changes in all areas of business. The aim of privatization¹ is to achieve a better strategic position on the market, and consequently to achieve better economic performance in the long term.

Privatization of state enterprises can be attributed to two goals [S.T. Surdykowska, 1997]:

- macroeconomic – in which the privatization changes the ownership structure in the economy;
- microeconomic – increasing efficiency and competitiveness of privatized enterprises, attracting new investment to the company, introducing new management methods.

Consequences of the privatization process of the enterprise are as follows: diversification of activities and modernization of production structures, implementation of new techniques and technologies of production, improved product quality, sales activation. The process is curbed by the economic and social barriers, and above all, distrust to

¹ Privatization means the transformation of the public sector to the private sector; it means to transfer state ownership of public assets in a specific physical or legal entity to a private party. Privatization concerns changes in the ownership structure of enterprises and aims to forge a strong system of government capital in the company. It is connected with limitation of power and responsibility of the state.

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ownership transformation.

Currently, privatization in Poland is carried out mainly on the basis of the Commercialization and Privatization of Enterprises Act¹ of 30 VIII 1996, and the National Investment Funds and their Privatization Act² of 30 Apr 1993.

On the basis of legal acts in force in Poland there are three basic ways of privatization of state enterprises:

- commercialization of state enterprises, i.e. the conversion to company of the Treasury;
- direct privatization;
- liquidation of the company for economic reasons.

Each technique privatization can be realized through a definite path of privatization, i.e. a procedure based on specific, existing legislation. Selection of the ownership transformation method is dependent on company size, type of business, its economic standing, as well as strategic importance for the economy of the state.

The following ways of privatization will be described in the next part: **indirect privatization, direct privatization and liquidation.**

Indirect (or capital) privatization involves a transfer of ownership of state enterprises to private owners in return for their invested capital. That means disposing of shares (stakes) of companies of the Treasury in the way of public announced bid, public tendering, negotiations undertaken on the basis of public invitation, acceptance of an offer made by an entity announcing the auction or publicly announced auction³.

The first stage of indirect privatization is the commercialization, or conversion of a state enterprise into a sole shareholder Treasury owned joint-stock company or limited liability company. The Treasury holds 100% shares or stocks in the company resulting from the commercialization, until the privatization [Prywatyzacja przedsiębiorstw 2008]. Prior to offering to sell shares of the company, a detailed analysis of the legal property of the

¹ Dz. U. z 2002 r., Nr 171, poz.1397.

² On the basis of which 15 national investment funds (NFI) were established as joint stock companies to which the Treasury has made a contribution in the form of stocks of 512 state owned companies.

³ Ustawa z dnia 30 sierpnia 1996 r. o komercjalizacji i prywatyzacji , Dz. U. 2002 r. Nr 171 poz. 1397, z póź. zmian

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company, the state and development prospects, valuation and evaluation of the implementation of the obligations arising from environmental protection requirements is made.

Disposal of shares (stakes) of sole shareholder companies of the Treasury may be carried out in the way of:

- publicly announced offer, which should include the relevant provisions of agreements on the transfer of shares and enable its conclusion without the need for lengthy negotiations between the parties as to the terms of the contract; [Chróściński, 2001]
- public tender, which consists of a public invitation for potential buyers to submit bids for the purchase of shares of the Treasury. In the invitation to tender, the Minister of the Treasury determines: the number and type of shares being tendered, the minimum selling price, the minimum requirements for investment and social commitments and the amount of securities and the date, place and form of its contribution, the tender submitting method and the information submitted by the bidder. After the deadline for submission of tenders, the committee appointed by the Minister of the Treasury in an open mode opens all submitted bids by potential buyers and assesses their compliance with the announcement. In an implicit mode, it evaluates the tenders submitted and chooses the best bid or withdraws from the auction without a choice. When choosing the best bid, the committee is guided by the criteria set out in the tender notice, in particular the price, method and date of payment of the price; [Chróściński, 2001]
- negotiations undertaken on the basis of a public invitation, which are applied to the privatization of large and medium-sized companies, the controlling stakes of shares which are sold to strategic investors. The negotiations concern the terms of acquisition of shares of the company. When the parties reach agreement on all essential terms of acquisition of shares of the company, the contract follows; [Chróściński, 2001]
- acceptance of an offer made by an entity announcing the auction. The Minister of the Treasury, acting on behalf of the Treasury may sell the shares of public companies in response to the bid published

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under the Public Offering, the conditions for Introducing Financial Instruments to Organized Trading System and Public Companies Act. This mode applies only to listed companies;

- publicly announced auction, i.e. that potential investors are invited to participate in the auction on the basis of the notices of the Minister of the Treasury published in the countrywide newspaper. Auction can be conducted if the subject of a sale is shares of a company in which Treasury holds no more than 10% of the capital, while the selling price is not lower than the book value of shares. The announcement of the Minister of the Treasury shall include the number and the type of shares subject to the auction, and their participation in the capital of the company, the nominal value of one share/share and a minimum sale price, a payment of money, the amount of the securities and the date, place and form of its contribution. Affixing occurs at the time of signing by the vendor and the participant in the auction a contract of sale of shares with contents as specified in the invitation to participate in the auction; [Prywatyzacja przedsiębiorstw 2008]
- selling shares on a regulated market – regulated securities market is the most prestigious segment of the securities market, which may include buying and selling by individual and institutional investors. Privatization can be done by way of sale of shares which are admitted to trading on a regulated market.

Embracing shares in the increased capital of state companies by private entities is also an indirect form of privatization. In this way the company is able to raise additional capital, while stressing that the Treasury does not achieve any revenue – new shares/shares issued/provided by the company are sold.

Direct privatization of state owned enterprise means disposing of all components of the tangible and intangible assets of state enterprises by selling the company, bringing enterprise to the company, putting the company to be used for consideration [Prywatyzacja przedsiębiorstw 2008].

The main goal of direct privatization is to create a direct possibility of rapid changes in ownership of state enterprises, defined as small and medium-sized. Privatization is direct, that means it is implemented without the adoption by the state-owned enterprise of a legal form of a sole

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shareholder state-owned company. Actors involved in the process of direct privatization of state enterprises can be both natural and legal persons. A distinguishing feature of direct privatization is its accomplishment by the founding bodies of state enterprises on behalf of the Treasury, with the consent of the Minister of the Treasury. The Minister of the Treasury in the statutory range controls and supervises the privatization by agreeing to launch the implementation of individual projects.

Direct privatization is implemented through:

- **sale of an enterprise**, which can be applied to all enterprises, especially the economically weaker ones, which require investment. It is carried out in a mode of a public tender or negotiations undertaken on the basis of public invitation;
- **bringing enterprise to the company**, it is to bring by the Treasury into a company formed with the participation of other shareholders (employees, state enterprises or investors) a contribution in the form of an enterprise and taking in return the appropriate number of shares or shares. This mode of privatization is used in particular for small and medium-sized enterprises, requiring substantial investment. It is geared to ensure the entry into the company reliable strategic investors (domestic and foreign). The staff and other stakeholders may also join privatized companies;
- **putting the company to be used for consideration**, privatized enterprise may be transferred to individuals' companies, with the participation of workers of state owned enterprise. Agreement on giving an enterprise to be used for consideration is concluded for a period not exceeding 15 years. Application of this path of privatization is connected with the requirement of the company to incur fees to the Treasury. Putting the company to be used for consideration by employees' company in many cases may not provide an adequate flow of capital for development and investment in newly created business entity.

Liquidation of state owned enterprises is a process carried out in companies doing business with the loss involving disposing of tangible and intangible assets and its deletion from the register of state enterprises, after settling issues with creditors. [Ustawa z dnia 30 sierpnia 1996 r. o komercjalizacji i prywatyzacji]. It is the procedure followed in the case of a

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poor economic condition and without promising opportunities for improving it. The decision to liquidate is made by the initial body. The initial body also appoints a liquidator of the enterprise, which by managing the assets satisfies or secures the claims of creditors, and then ends the business. Liquidation ends up with removing the enterprises from the business register.

2. Between 1990-2008, the privatization process in Poland covered the 7463 state-owned enterprises, of which 1701 were commercialized, 2184 were directly privatized, 1924 were raised in the liquidation for economic reasons, and 1654 were liquidated state owned agricultural enterprises, whose property was taken over by the Agricultural Property Agency.[Prywatyzacja przedsiębiorstw, 2009]. Most companies were subject to the process of ownership transformation in the initial period of transition (1258 companies in the years 1990-1991 and 1402 in 1992). In subsequent years, their number decreased to 35 in 2006. In 2008, the process of transformation covered 72 companies.

In the years 1990-2008, 388 sole shareholder Treasury owned companies were privatized indirectly, including 10 in a mode of free of charge disposal of shares for local government units. In 115 companies the privatization was made with the participation of foreign capital. Last year, 10 companies were privatized including 6 through the free of charge disposal of shares for local government units and in 1 company shares belonging to the Treasury were contributed to another company in exchange for shares in the increased share capital of that company. A company privatized in 2008, operated as a sole shareholder Treasury owned company for an average of about 4.8 years. Figure 2 shows indirectly the privatized companies in 1990-2008.

In the years 1990-2008, the direct privatization covered 2184 state enterprises (including 10 in 2008), and the process of privatization was completed in 2105 enterprises, i.e. 96.4% of enterprises privatized this way. Average process of taking up the privatization until removing from the National Court Register lasted for about 4 months. The largest number of companies subjected to direct privatization in the early period of the transition process, i.e. till the end of 1991 (416), from which 243 (58.4%) were privatized. (Figure 3) According to the Ministry of the Treasury, revenues from direct privatization in 2008 amounted to 160.4 m. zł (in 2007 - 219.4 m. zł).

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Among the companies privatized in a direct way, 36.1% were operators engaged in the processing industry, 22.5% - construction activity, and 16.4% - associated with trade and repairs. Most of the companies privatized in this way are the entities with up to 249 employees [Prywatyzacja przedsiębiorstw, 2009].

The process of liquidation is carried out in enterprises having a bad economic condition and may result in placing the company into bankruptcy. In the early years of ownership transformations, liquidation for economic reasons was the most frequently used form of transformation. By the end of 2008, for 1924 companies that underwent a process of liquidation in 1073 units (55.8%) this process is completed. In subsequent years, the number of state enterprises undergoing liquidation for economic reasons was decreasing to 10 in 2008.

Liquidation procedures in state-owned enterprises whose liquidation was completed in 2008 lasted for an average of 5.5 years. The largest number of companies subjected to liquidation in the early period of the transition process, i.e. till the end of 1993 (1091), of which 226 (20.7%) were liquidated. State-owned enterprises subject to liquidation and liquidated in the years 1990-2008 are presented in Figure 4.

In the initial period of transformation, the sale of Polish companies to foreign investors provided businesses access to new technologies and global distribution channels and the introduction of modern management methods. As a result, enterprises could not only survive, but also develop activities, introduce new products, gain markets and increase the number of attractive jobs. Investment by foreign firms had a key influence on the dynamics of Polish exports, and thus on the economic growth.

The impact of privatization on the Polish economy, even if there were thousands of transactions less successful, is unambiguously positive. The privatization process in Poland is slow. In addition, privatization in Poland cannot be a way to finance budget deficits. These deficits must be eliminated by balancing economy, both in its exchanges with foreign countries, as well as budgetary expenditure. Comprehensive action is needed to balance the socio-economic development of the country. [Prywatyzacja, a Polska Racja Stanu] Polish economy needs stimulus and action to increase and develop the economic potential of the country and its ability to participate in global scientific and technical progress. The funds from the privatization should be allocated for development (e.g. education,

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roads and highways, government computerization, etc.). Simultaneously conditions must be created for enhancing and extending the capabilities of private companies of the Polish capital – so that this capital dominated in the national economy.

3. Privatization plan for 2008-2011 has been developed by the Ministry of the Treasury and approved by the Council of Ministers in April 2008. It assumes the privatization of 802 companies operating in over 40 sectors of the Polish economy. Entities included in the plan are the company resulting from commercialization (transforming the state enterprise into a commercial company)¹.

The privatization in the years 2008-2011 requires the adoption of amendments prepared by the Ministry of Treasury to the Commercialization and Privatization Act, which assume to:

- increase openness and transparency of privatization processes;
- extend the possibility of making a free transfer of shares of state-owned units to local government for all the companies with Treasury shareholding;
- adjust the rules of salaries of members of Board of Directors in state-owned companies to market reality;
- sell the shares of companies in a publicly announced auction;
- simplify privatization procedures;
- reduce the costs of privatization;
- shorten the duration of privatization processes.

Privatization of various industries will be implemented in accordance with governmental programs and sector strategies, both existing and being amended and adopted during the program. Privatization plan for 2008-2011 aims to accelerate privatization in Poland. It includes companies from such important industries as financial institutions, energy, chemicals and petroleum industry - where privatization will be initiated or continued - as well as industries: machinery, metal, electronic, electrical, spirits, food, pulp and paper, furniture, clothing and raw materials clothing, transport and shipping.

1

http://prywatyzacja.msp.gov.pl/portal/pr/141/4047/Plan_prywatyzacji_na_lata_20082011.html z dnia 12.10.09

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The Plan also includes information and promotional activities regarding privatization, which include:[Kierunki prywatyzacji, 2008]

- **educational projects** - devoted to issues of privatization and various aspects of ownership transformation, especially private property and its importance for the economy of the state. These actions will aim to build trust and public acceptance of privatization in Poland by raising public awareness of economic issues and understanding the importance of the privatization process. Educational projects are targeted to different groups and backgrounds;
- **actions addressed to investors** - to encourage potential investors to actively engage in the privatization program and to facilitate their access to information on sectors of interest to them or privatized companies;
- **creating cards of privatization** - the card of privatization is to be conducted since the inception of the privatization process of the company and will contain information on basic data of the privatized entity and the various stages of privatization. This is to ensure the transparency of the privatization process.

These activities are conducted under the conditions of international economic crisis. Its effect is loss of interest in investing in Polish companies, especially because of the downturn on the stock exchange; as a result, the Ministry of the Treasury introduced the principle of actively searching for investors:

- From 2008 onwards the new website of the Ministry of the Treasury operates service designed for investors;
- Ministry of the Treasury opens Center of Investor Relations. Its main purpose is to inform potential investors of the privatization processes;
- Privatization Plan was presented to potential investors, including during an economic forum in Krynica, and a seminar in Brussels in November 2008, the meetings with representatives of the Open Pension Funds and Private Equity funds organized in the Ministry of Treasury in the spring of 2009, as well as meetings with foreign investors in London, Saudi Arabia, Qatar and Kuwait, United Arab Emirates and Japan and Singapore.

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The plan of privatization in Poland for 2008-2011 aims to define a clear ownership perspective and privatization schedule. Thanks to that, the credibility of privatization processes and their effectiveness will be increased. In addition, supervision of companies of considerable importance for the Treasury will be strengthened.

Since 2008, the Ministry of the Treasury has carried out projects to promote economic education, private property and privatization. Diagnosis of the knowledge of the society and the perception of the privatization process undertaken in 2008 by research firm SMG / KRC Poland Media SA reaffirmed the need to take action to raise awareness of Poles of the positive consequences of privatization and their impact on the current socio-economic development of Poland.

The sharp economic depression on world financial markets in the second half of 2008 resulted in a very significant deterioration in terms of privatization, and consequently a shift in time or temporary suspension of some privatization projects.

Currently, a slowdown of the process of privatization in Poland may be noticed. The first half of 2009, in response to the global financial crisis, has been dominated by a significant reduction in investment decisions, and privatization advisers have suggested withholding major projects until the market boom. One of the effects of the financial crisis is the significantly reduced access to financing for investment by potential strategic investors, who in other circumstances might be interested in the privatization offer of the Treasury. In many cases, economic and financial situation of companies under privatization has worsened and that as well had an impact on shifting deadlines for various projects. [Ocena Przebiegu, 2009]

Summary

The primary objective of privatization is to increase the economic efficiency of enterprises and thus the competitiveness of the economy. What is important is the positive impact of privatization on market functioning and improved conditions for competing companies. The knowledge acquired in the course of privatization processes in different countries, and further projects based on the best practices allows minimizing risks and maximizing the benefits from privatization. The swift completion of this process would improve the competitiveness of Polish

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economy, economic growth and employment creation. However, unexpected changes in the business environment such as the global financial crisis may stop the privatization. Therefore, it is necessary to implement the appropriate tools and actions that will accelerate these processes.

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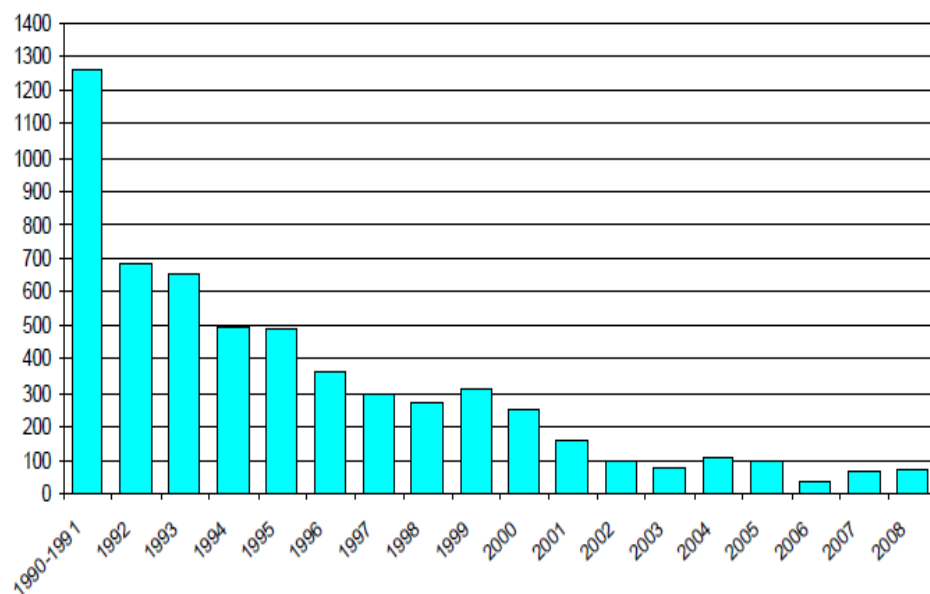


Figure 1. Public enterprises under the ownership transformation process in the years 1990-2008 (without a state-owned enterprises farming)

Source: Prywatyzacja przedsiębiorstw państwowych w 2008r, 2009.

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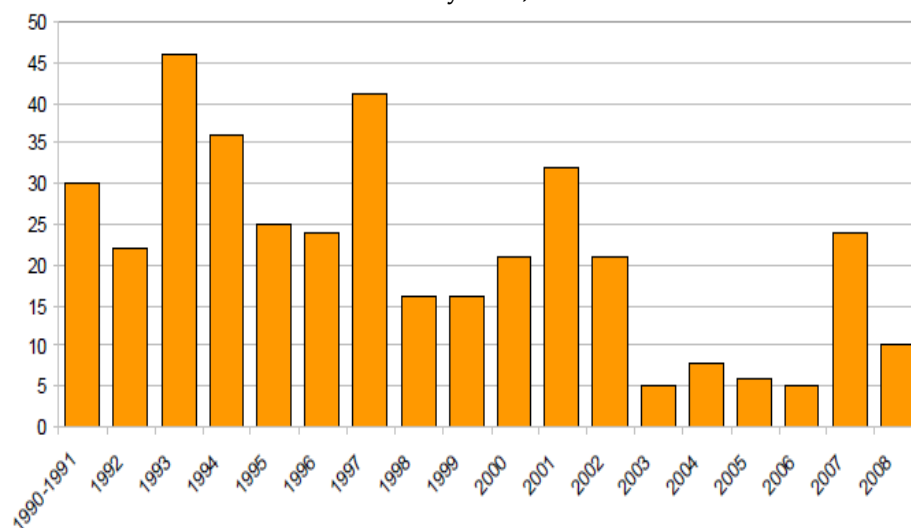


Figure 2. Indirectly privatized companies between 1990-2008

Source: Prywatyzacja przedsiębiorstw państwowych w 2008r, 2009.

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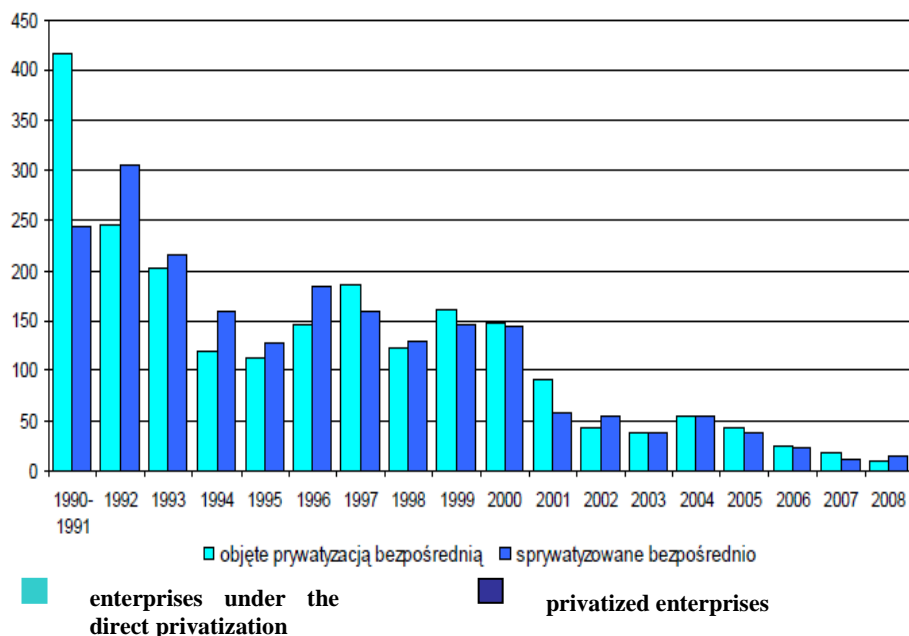


Figure 3. State enterprises under the direct privatization and privatized between 1990-2008

Source: Prywatyzacja przedsiębiorstw państwowych w 2008r, op. cit., s.29.

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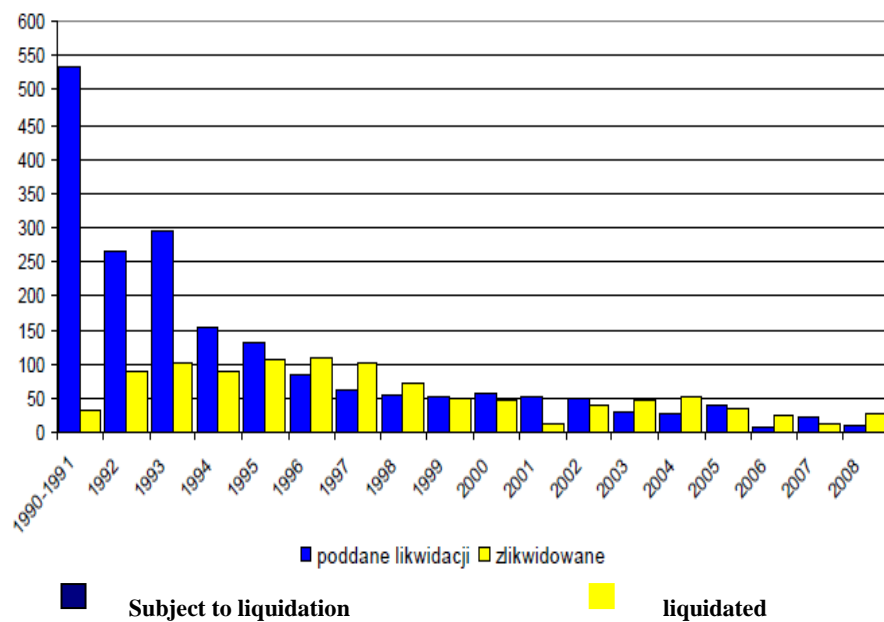


Figure 4. State-owned enterprises subject to liquidation and liquidated between 1990-2008

Source: Prywatyzacja przedsiębiorstw państwowych w 2008r, op. cit., s.34.