



Republika e Kosovës
Republika Kosova-Republic of Kosovo
Qeveria - Vlada - Government
Ministria e Zhvillimit Ekonomik
Ministarstvo Ekonomskog Razvoja-Ministry of Economic Development

CONCEPT DOCUMENT FOR PUBLICLY OWNED ENTERPRISES

Chapter 1

Introduction

The Government of the Republic of Kosovo through strategic documents adopted so far, aims to improve the performance of Publicly Owned Enterprises, increase the value of assets as well as provide quality services to the public. Harmonization and implementation of the basic principles of corporate governance, such as the ownership framework, effective monitoring mechanism, efficient operation of the POE Boards, reporting and integrity, strengthening the shareholder role vis-a-vis POEs, financial audit, risk management vis-a-vis the foreseen objectives and plans and the unpredictable factors, transparency and accountability, the relationship with shareholders and other stakeholders, are a prerequisite for the realization of the objectives of POEs.

Documents related to the concept of Publicly Owned Enterprises:

Program of the Government of the Republic of Kosovo 2015 - 2018 in column 1. **economic development, employment and welfare** in the point 1.13. Improving public enterprise performance, provides that the Government will strengthen the responsible and professional corporate governance, which ensures sustainability of publicly owned enterprises, high-quality services to citizens. In order to improve the performance of publicly owned enterprises, the Government will review the legal grounds and justification, which divides public enterprises in central and local ones, to insure that stakeholders that are affected by the activities of these enterprises are involved in their decision-making.

National Development Strategy (2016-2021) – Column 3, Measure 24 provides that through this document the Government will improve the efficiency of publicly owned enterprises in accordance with the principles of corporate governance of the Organization for Economic Cooperation and Development (OECD).

National Program for the Implementation of the Stabilization and Association Agreement (NPISAA) 2017-2021 - Publicly Owned Enterprises are treated with Policies of competition and State Assistance. One of the SAA requirements is that Kosovo applies the EU rules on state assistance including exemptions in block, de minimis aid, the general economic interest services, as well as transparency rules for public enterprises.

The Economic Reform Program - In the framework of this program, the Government will consider the possibilities for sectoral approach to monitoring and management of publicly owned corporations. In addition, the lack of a due process for the risk analysis of

state-owned enterprises in regards to the budget and economy, has resulted in poor development of the enterprises.

The Annual Work Plan of the Government of Kosovo for 2017, with this plan the Government has defined the drafting of the Concept Document for Publicly Owned Enterprises for the period January - December 2017, which is also included in the list of Concept Documents for 2017.

Chapter 2

Description of the main issue/problem

(the duration and the magnitude of the problem/issue)

Publicly Owned Enterprises since 1999 have been under the supervision of UNMIK. Whereas, after the establishment of the Kosovo Trust Agency in June 2002, they were placed under its management. KTA has incorporated all POEs (25 in total) that were in its portfolio and has established a new corporate governance structure. The Government took in possession the Publicly Owned Enterprises (with the exception of KEK) on July 1, 2018.

Currently all Publicly Owned Enterprises are organized as Joint Stock Companies in accordance with the Law on Business Organisations. Central Publicly Owned Enterprises in Kosovo are owned by the Republic of Kosovo in accordance with the applicable Law on Publicly Owned Enterprises. Whereas, all Local POEs are owned by the municipality or municipalities, and the ownership percentage of each municipality is defined in the provisions of the applicable Law on Publicly Owned Enterprises. The Government has exclusive authority to exercise the shareholder's rights in the Publicly Owned Enterprises at the central level (with the exception of enterprise Trepça J.S.C which is regulated with Law No. 05/L-120). Whereas, the exclusive authority to exercise the shareholder's rights at the local level, belongs to the respective Municipalities.

One of the problems identified so far in the functioning of POEs is the fact that the Government of the Republic of Kosovo has no **long-term** strategy for the management of its assets. According to the applicable law, the Government is obliged to adopt an ownership policy. With all enormous importance that has this policy document, as from here derive all policies for publicly owned enterprises, it is worth noting that there is no specification of the purpose of this document, terms and conditions of its review, as well as set targets of the scopes and the types of enterprises according to the specific nature of the enterprises. An enterprise policy document was adopted by the Government in 2008 and since then it has never been reviewed nor has been discussed whether there is a need for it or not.

One of the OECD principles involves the identification of ownership policies as well as the objectives of SOEs. Therefore, the State (or the Shareholder) should establish a framework of State Ownership Policies (SOP) which, *inter alia*, will determine the general rationale for state ownership of POEs, the role of the state in the governance of POEs, how it will implement the state ownership policy and relevant roles and responsibilities of governmental actors involved in its implementation. The ownership policy should be subject to appropriate political responsibility procedures and presented to the general public. The Government should regularly review its ownership policy over POEs, define the reasons for each POE's ownership and subject them to periodic revision.

Based on the State Ownership Policy (SOP), the POEs develop their individual strategies, derived from the POE Management Board, which are subject to approval by the POE Board of Directors. POE strategies, *inter alia*, should include mid-term or long-term plans, identifying enterprise development objectives, challenges and risks in implementing the strategy, as well as the budget/financial framework for the implementation of the Strategy. Performance indicators set out in the POE Strategy, *inter alia*, serve the State (Shareholder) to monitor and evaluate the Board of Directors in the implementation of the objectives defined by the POE. Regarding the establishment of the *performance framework*, it remains a challenge for the Government, due to the fact that POEs are created and remain in state ownership to meet the commercial and non-commercial objectives. In many cases non-financial objectives and targets bear in themselves financial costs, a fact that creates additional difficulties to determine conflicting priorities. The asymmetry of the information is an additional aggravating circumstance to determine the elements of the *performance monitoring* in a proper manner. Establishing an adequate institutional framework for measuring and monitoring performance requires sufficient capacities and expertise as well as close coordination between the owner and POEs. It is important that the expertise is also in the aspect of sectors in which POEs operate (sectoral organization of the unit and sectoral departments participation in various stages of performance monitoring). Another problem is the failure to have a strategy by each of the POEs, which would be aimed at measuring the performance. The lack of this strategy makes it difficult to measure the operating and financial performance of Publicly Owned Enterprises. Whenever we come across cases of different objectives which may be controversial in terms of policies, regulation and commercial aspects, they should be identified very clearly.

In regards to the transparency and accountability, it can be considered that there is no genuine transparency by the Board in relation to the Shareholder. Another problem is non-regular publication of financial reports by POEs in accordance with international standards. In this regard, it is considered that the qualifications of the board members, the selection process, salaries, remuneration and allowances are not transparent. The transparency is sufficiently covered by Article 7 of the Law on Publicly Owned

Enterprises. However, the ambiguities detected in this Article make impossible its full implementation as well as the access to accurate information on the company for shareholders and the public. Deficiencies arising from the implementation of this Article make impossible the complete execution of this principle and increase the tendency of publicly owned enterprises to hide unfavorable facts.

When *it comes to annual reporting of POEs* there is a lack of inclusion of environmental and social aspects (especially with energy sector companies). On the other hand, the Shareholder has not defined a general reporting standard for Publicly Owned Enterprises, and there is no deadline for approving the POEs performance report in the Assembly. In addition, there is no implementation of monthly and annual reports in practice by POEs, as provided by the applicable legislation. Shortcomings: Several parameters in the POEs reports are inaccurate, because when you analyze them the reports of the regulatory offices differ from the reports by POEs.

In the annual reports of POEs, the issue of the *risk management* is not defined. Risk Management is a process implemented by the Board of POEs to identify, assess and manage the risks that are over the level of risk tolerance to the levels that do not pose a threat to the achievement of organizational objectives. Publicly Owned Enterprises are responsible for the implementation of their procedures for risk identification, assessment and mitigation. Risk Management by the Board of Directors would in itself contain objectives such as the protection of financial interests, securing fulfillment of objectives, protection of human resources, drafting of an alternative plan that does not impair directly the operation of the Enterprises.

Another problem is lack of *punitive* provisions. Therefore, in this regard, we should find a modality to sanction by law non-reporting and data inaccuracy.

Current policy

The applicable law for Publicly Owned Enterprises aims to define the legal framework regarding the ownership of Publicly Owned Enterprises, in which case it has also defined

the exercise of shareholder rights, the election of the board of directors and management as well as their obligations.

The Ministry of Economic Development through the Unit for POE Policies and Monitoring (“Unit for POE”) is responsible for the publicly owned enterprise sector in accordance with the Law on Publicly Owned Enterprises, in order to support the Minister and the Government in exercising their responsibilities for POEs, which were granted to them in accordance with this law.

Inter-ministerial Committee for POEs, which is comprised of relevant ministers, MED as chair and MF, MESP, MI and MTI as members. This Committee examines the main issues regarding the POEs, in order to prepare the debate in the Government.

Government reports to the Assembly regarding the manner in which the Ministry and the Unit for POE Policy and Monitoring exercise the authorities and responsibilities granted to them by the Law on Publicly Owned Enterprises. The Assembly of the Republic of Kosovo has the authority to review and approve the annual report of each POE.

The Board of Directors is appointed by the Government of Kosovo (Shareholder) to represent the shareholder rights in the relevant POE. The Board is responsible for execution of the Enterprise’s plans, however it does not manage the Enterprise. The Board should identify the business and its competition, focus on strategic problems and manage the risk as well as establish high performance standards, including ethical behavior and the operational and financial performance.

The Audit Committee is selected by the Minister of Economic Development and this committee has the exclusive right to select the Internal Auditor in a POE.

Laws and bylaws

Basic Law on Publicly Owned Enterprises in the Republic of Kosovo is Law No. 03/L-087 on Publicly Owned Enterprises (OG No.31/15 June 2008). This law establishes the legal framework regarding the ownership of Publicly Owned Enterprises and their corporate governance in accordance with internationally recognized principles for corporate governance of Publicly Owned Enterprises.

Law No. 04/L-111 Amending the Law No. 03/L-087 on Publicly Owned Enterprises- The purpose of which was the amendment of the Basic Law on POEs and regulation of several issues that are recognized as problems and have not found adequate implementation with the Basic Law on Publicly Owned Enterprises.

Law No. 05/L -009 Amending the Law No 03/L-087 on Publicly Owned Enterprises Amended by the Law No. 04/L-111(OG/ No. 10 / 07 May 2015)- This law aims to amend the Law No. 03/L-087 on Publicly Owned Enterprises, promulgated in the Official Gazette of the Republic of Kosovo, No.31, 15 June 2008.

Law No.02/L-123 on Business Organizations (OG. 39/01 October 2008) - The purpose of this law is to define the types of business organizations through which commercial activities can be performed in Kosovo; designate the applicable registration requirements for each type of business organization; define, for each type of business organization, the legal provisions for their capacity and legal structure as well as the rights and obligations of owners, managers, directors, legal representatives and third parties; and establish legal provisions that promote and facilitate the regular and effective establishment, operation and dissolution of business organizations.

Law No. 04/L-006 Amending the Law No. 02/L-123 on Business Organizations(OG. 6/22 July 2011)- The purpose of which was the amendment of the Basic Law on Business Organizations and regulation of several issues which were recognized as problems and have not found adequate implementation with the Basic Law on Business Organizations.

Law No. 03/L-048 on Public Financial Management and Accountability (OG. 27/03 June 2008) – and all its amendments.

Pursuant to the Law on the POE, the following bylaws were issued:

Regulation No.02/2013 on criteria for establishment of local publicly owned enterprises and participation of municipalities in the boards of directors of regional water companies- This Regulation establishes the criteria for establishment of local publicly owned enterprises and participation of municipalities in the boards of directors of regional water companies, for the purpose of corporate governance of publicly owned enterprises operating in the municipality. The provisions of this Regulation shall determine the criteria for establishment of local publicly owned enterprises; and participation of municipalities in the boards of directors of regional water companies.

Regulation (GRK) No. 19/2015 amending Regulation No. 02/2013 on criteria for establishment of local publicly owned enterprises and participation of municipalities in the boards of directors of regional water companies - This Regulation aims at

amending Regulation No.02/2013 on criteria for establishment of local publicly owned enterprises and participation of municipalities in the Boards of Directors of Regional Water Companies.

Administrative Inst- The purpose of this Administrative Instruction is to determine the manner of representation of municipalities on the boards of directors of Local Publicly Owned Enterprises.

Regulation on the Work of the Committee of Ministers for Publicly Owned Enterprise (2011) - prot.no. 1674 dated 28.09.2011, issued by the Chairman of the Committee for POEs and Minister of Economic Development - The purpose of this Rules of Procedure is to regulate the composition of the Committee of Ministers for Publicly Owned Enterprises (hereinafter CMPOE), define the duties and responsibilities of members, as well as the manner of decision making and reporting.

Other documents:

Code of Ethics and Corporate Governance for Publicly Owned Enterprises.

Ownership Policies for Publicly Owned Enterprises - adopted with the decision of the Government of the Republic of Kosovo no.11/39 dated 08.10.2008.

Procedures for the supervision and monitoring of Central Publicly Owned Enterprises - with Prot.no.238 dated 09.02.2012 issued by the PMUPOE Director.

Sectoral legislation:

Law No. 04/L-060 on Waste (OG. No.17 / 29 June 2012)- This law aims: the eradication and reduction of waste generation, reuse of usable waste components, sustainable development through protection and conservation of natural resources, prevention of the negative impact of waste on the environment and human health, the final disposal of waste in an acceptable environmental manner.

Law No. 04/L-109 on Electronic Communications (OG/ No. 30 09 NOVEMBER 2012,) The purpose of this law is to regulate electronic communications activities based on the principle of technological neutrality and EU regulatory framework for electronic communications, by promoting competition and efficient infrastructure in electronic communications, as well as ensuring the necessary services appropriate in the territory of the Republic of Kosovo.

Law No.03/L-173 on Postal Services (OG. No. 69 / 20 May 2010)- The purpose of this law is to ensure the provision of a universal postal service and other postal services, protecting the interests of users, ensuring their equal and non-discriminatory treatment,

promoting free and effective competition in the provision of postal services, promoting continuous improvement of service quality and ensuring the correspondence confidentiality for users throughout the territory of the Republic of Kosovo.

Law No. 04/L-147 on Waters of Kosovo (OG. No. 10 / 29 April 2013)- The purpose of this law is to: ensure sustainable development and utilization of water resources, which are essential for public health, environmental protection and socio-economic development of the Republic of Kosovo; establish procedures and guiding principles for the optimal distribution of water resources based on the use and purpose; ensure protection of water resources from pollution, over-exploitation and abuse; determine institutional structures for the management of water resources.

Law No. 04 / L081 - On Energy (GZ No. 24/13 July 2016) - The law defines the powers, duties and functions of the Energy Regulatory Office, including the conditions for issuing licenses to carry out energy activities, certification of transmission system operators, procedures for granting authorizations for the construction of new generating capacity, the creation and efficient functioning of competitive energy markets, and the criteria for regulating tariffs and the conditions of energy supply.

Law No.03/L-085 on Electricity (OG. No. 26 / 21 July 2016)- The purpose of this law is to define rules and measures for the functioning of the electricity sector, to ensure a safe, reliable, regular and quality electricity supply, with realistic prices, having taken in consideration conservation of the environment and its efficient use.

Law No. 04/L-063 on Railways of Kosovo (OG. No. 28 / 16 December 2011)- The purpose of this law is regulation and development of the railway sector, improvement of the safety system, an open and non-discriminatory access for operators and the provision of services in the railway sector market.

Law No.03/L-163 on Mines and Minerals (Law No.03/l-163 on Mines and Minerals- The purpose of this law is to promote, in accordance with the accepted environmental standards, the exploration and mining of Minerals by regulating and supervising persons engaged in the mining industry; facilitation and support of the participation and greater competitiveness of the private sector in the mining industry; maximizing the exploration and utilization of Minerals; as well as regulating the collection, management and archiving of geo-scientific data for the benefit of the Republic of Kosovo.

Law No. 04/l-158 Amending the Law No. 03/l-163 on Mines and Minerals (OG. No. 11 / 02 May 2013)

-Law No.06/L-120 on Trepça (No. 36 / 31 October 2016)- This law aims at creating the legal infrastructure aimed at sustainable economic development through opening the way

for investments, increasing the value of assets and promoting the technical and technological capital as a prerequisite for the revitalization of Trepça as an enterprise of special importance, vital to the welfare of workers and the general public interest.

Law No. 04/L-042 on Public Procurement of Kosovo (OG No. 18/19 September 2011) - The purpose of the present law is to ensure the most efficient, cost-effective, transparent and fair use of public funds, public resources and any other funds and resources of contracting authorities in Kosovo by establishing the requirements and rules that shall be observed, the procedures that shall be followed, the rights that shall be respected, and the obligations that shall be performed, by persons, economic operators, undertakings, contracting authorities, works concession aires, and public bodies conducting, or involved, participating or interested in, a procurement activity involving or relating to the use of such funds and/or resources.

Law No. 04/L-237 amending the Law on Public Procurement,

Law No. 05/L-068 amending the Law on Public Procurement,

Law No. 05/L-092 amending the Law on Public Procurement.

Law on Public-Private-Partnerships – The purpose of this law is to establish the legal framework for Public Private-Partnerships, including procedures for the award of a Public-Private-Partnership, the content and structure of a Public-Private-Partnership Agreement and the institutional framework responsible for the management and development of Public-Private-Partnerships in the Republic of Kosovo.

Law No. 05/L-100 on State Aid (OG No. 03/17 January 2017) - This Law defines the principles and procedures, general conditions and authorization rules, monitoring and revocation of state aid.

Law No. 04/L-063 on Kosovo Railways (OG No. 28/16 December 2011) - The purpose of this law is the arrangement and development of railways, improvement of rail security system, open access and nondiscriminatory operators and offering services in the railway sector market.

Law No. 04/L-147 on waters of Kosovo (OG No. 10/19 April 2013) - Purpose of this Law shall be to provide sustainable development and utilization of water resources that are necessary for public health, environmental protection and social-economic development of the Republic of Kosovo; establish procedures and guiding principles for the optimal distribution of water resources, based on the use and purpose; ensure protection of water resources from pollution, overuse and misuse; determine the institutional structures for managing the water resources.

Administrative Instruction (MTI) No. 03/2015 on the Determination of Taxes for Services Provided by the Business Registration Agency.

Administrative Instruction (MoF) Nr. 02/2013 on the structure and content of annual financial reporting.

Pursuant to the legislation for POEs we have observed many shortcomings that need clarification and definition of the many issues that have been obstacles to the functioning of the POEs. There is confusion between the Law on POEs and the Code of Corporate Governance regarding the functioning of the Central Publicly Owned Enterprises.

It has been noted that the Regulation on the Work of the Committee of Ministers for Publicly Owned Enterprises still has as a legal basis for its issuance the UNMIK Regulation No. 2001/19 “on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo”, which makes it unenforceable and non-functional and we must consider the adoption of new legislation for POEs.

Current Law on Publicly Owned Enterprises does not define clearly the procedures to be followed when establishing a Central Publicly Owned Enterprise, and consequently a lack of a separate legal act on this issue is noted.

The current provisions of determining the ownership policy (Article 6) are too general. These provisions do not give ownership policy makers (Government) criteria on which Government should be based when determining the overall Objectives of the Republic of Kosovo in relation to the POEs ownership. The publicly owned enterprises have different features, hence the ownership policies should take into account these features and this should be reflected in the law. The ownership policy for enterprises operating in conditions of competition differs from the enterprises operating outside the trade competition.

The Law also lacks provisions defining principles, requirements and responsibilities related to the Intergovernmental Committee and the Ministry. It is not sufficient to be sanctioned only by the fact that the special legal act regulates the functioning of the Intergovernmental Committee.

The Law should clearly determine the right of the Shareholder to give a preliminary opinion before the adoption of the relevant POE Strategy, in order to take into account the enterprise ownership policies as well as sectoral development policies in order to harmonize in advance the development policies and those for publicly owned enterprises.

Some of the Legal problems encountered during implementation, presented in detail:

In Law 04/L-111, the Article 18.1 of the Basic Law was amended which states that: The Board of Directors of a POE shall exercise continuous and rigorous oversight, in particular of the conduct of POE officials, however this does not mean involvement in micro-managing. Lack of a clearer definition of this provision has made such a difference to have no effect, and such practices not to be eliminated.

Article 15 of the LPOE, determines the selection of BD with a 3-year term and the expiry of the BD mandate is regulated in the Law on Business Organisations, which specifies - that despite the expiry of the mandate until the successor is elected. This practice until now has presented difficulties because it has created an undefined time period where POE remains without an effective and decision-making oversight by the BD.

In the LPOE, article 21.1 provides for the election and appointment of senior POE officials. Pursuant to this law, namely this article, the appointment of senior officials by the board and the possibility that the board at any time and by the majority vote can terminate their contracts with or without statement of the reason - has been seen as discriminatory and pressuring on senior officials.

In Law 03/L-087 (LAP), Article 21.4 and in Law 04 L-111 amending Law 03/L087 on POEs, Article 13 defines the manner of Senior Officials selection by the Board of Directors based on an open, transparent and competitive procedure for the purpose of selecting persons based on merits. However, this article does not define the term of office for senior officials and also does not clearly define as to what procedures should be followed after the expiration of their contract. In practice, the lack of a clear definition of these issues has brought confusion in the selection of senior officials.

In Law 03/L087 on POEs, Article 12.1 defines the general obligations of a POE and its directors, which focuses only on the long-term growth of the value of the enterprise and its shareholders. However, this article does not provide the provision of genuine services to citizens as a general obligation.

Current program

The current program is the training of the Boards of Directors for Corporate Governance in Publicly Owned Enterprises through the Publicly Owned Enterprises Policy and Monitoring Unit. These training courses are held once a year and are intended to improve the performance of the Board Members.

Actual expenditures

<i>Expenditure categories</i>	<i>Actual expenditures in the previous year</i>	<i>Budget this year</i>	<i>STEF for next year</i>
<i>Budget of the Ministry: (note each type of expenditure) total budget of the Ministry including capital expenditure, goods and services, salaries, per diem and expropriations</i>	78,819.81	85.813	85.813
<i>Salaries and per diem</i>	0	0	0
<i>Goods and Services</i>	0	0	0
<i>Utilities</i>	10,754,755.21	1,800,000	1,800,000
<i>Subsidies and Transfers</i>	13,137,950.70	4,270,000	4,270,000
<i>Capital expenditures</i>			
<i>Other budgets: (note each type of expenditure)</i>			
<i>Funding from borrowings, goods and services and capital</i>			
<i>Funding from donors, from goods and services line, salaries and per diem as well as capital investments</i>			
<i>Direct expenditures by the Ministry of Finance</i>			

Complementary evaluation of the current policy (additional elements of the dysfunction of the current policy)

- The provisions of the current law do not stipulate clearly which corrective measures the shareholder(s) should undertake in case the Board of Directors fails in the implementation of business plans or in meeting the deadline for the decision or corrective measures. This is one of the key points that obliges the Board to act and also determines the future of the Board and should therefore be clearly defined and determined.
- The duties and obligations of the Members of the Board are not clearly defined in the current law. This gap has left enough space for the Board to undertake steps or seek accountability for issues that are not under their scope.
- The position of senior officials is not clear because the Law determines that they serve the Board of Directors. However, the mixture of executive and non-executive posts could lead to a conflict of interest and is in contradiction with the principle of accountability (Article 21).
- Having four officials serve the Board of Directors is in contradiction with the principle of the non-intrusion by the Board of Directors in the micromanagement of the company , which is the duty of the company Chief Executive Officer or CEO. The company CEO is responsible for the company's management and, as necessary, seeks accountability from the Directors within the company with respect to internal operations. Interferences or requests for consultation made by the Board and addressed to officials, represent a conflict of interest that should be prevented by law.
- The primary interest of the shareholder(s) should be ensured by monitoring and implementing the governance code, the approval of financial statements, decision on dividends, approval of various amendments to laws/bylaws or changes to the structure of the capital, appointments and dismissals of the Board, payments, bonuses and compensations, at all levels of the company.
- This in order to make sure that the interest of the Government/Shareholder is primary and that the shareholder has the final say when it comes to important company matters. The shareholder's role should be strengthened through a new law giving full authority to the Board of Directors to act on shareholder's behalf, as in the current law the shareholder has a passive role.
- The law did not indicate the method of inclusion of sectoral policies into the policies of enterprises.

- In order to exercise the appropriate influence and authority in the annual Board meetings where the shareholder participates, it should be stated that this role may not be delegated to anyone below the level of the Minister or Deputy Minister.

Experiences in other countries

Slovenian model

Managerial structure

Slovenia has a two-level management structure. Shareholders have the right to appoint the Supervisory Board and, in turn, this Board appoints the members of the Managerial Board.

The shareholder may discharge the Supervisory Board with a qualified majority of votes if there is no justification or with a simple majority if there is a justification. Members of the Managerial Board may only be discharged by the Supervisory Board if there is justification. The vote of no confidence by shareholders represents sufficient grounds for discharge.

Challenges

The general problems that Slovenia confronted, which are similar to the challenges faced by the publicly owned enterprises in Kosovo, include:

- The accumulation of loss and the drop in asset value;
- The losses and the large amount of loans indicate that there is a risk of lack of solvency (insolvency), which has a direct impact on the state's public finances;
- The transfer of capital to enterprises that operate with a loss (which contributed to the budget deficit of 6.4% of the GDP in 2011);
- State guarantees for POEs contributed to the level of 25% of the GDP (2011), etc.

Croatian model

Managerial structure

Croatia has a two-step structure for the management of publicly owned enterprises, namely the Supervisory Board and the Managerial Board. The Managerial Board is responsible for the business, as well as for diligently directing the enterprise.

Challenges

Since Croatia is challenged with problems similar to other countries that incorporated the principles of a market economy, the state has undertaken the following measures:

The initiation of the restructuring process and the resolution of the issue of publicly-owned enterprises financial obligations in the field of transport (re-finance, concessions, etc.).

Portugal

An independent committee (CReSAP) selects the boards, ensuring increased transparency, impartiality, justness and independence in the selection of candidates for these posts.

Romania

Based on the legislation on POEs, an external independent advisor is required to develop the selection process for executive and non-executive Directors. Governing codes in other countries differ in the short and medium terms, in order to adapt to the changes in reality and socio-economic changes in the country.

OECD member state practices:

Transparency and the disclosure of information represent complex and sensitive issues for all modern publicly owned enterprises, therefore enterprises, globally opt to disclose as much information on the way in which they operate, financial statements, environmental and social aspects of corporate governance, as they can in order to win the trust of their investors and consumers or clients. The integrated publication of financial reports/statements, as well as narrative non-financial statements, is considered one of the main aspects related to transparency and the sustainable governance of enterprises.

In the POE corporate governance model in other countries, the Enterprise Board has the key role in ensuring compliance of the corporate governance and operation based on the corporate governance code. The transparency of the Board of Directors, acting on behalf of the shareholder, exposes the Board to the liability risk for failing to formally monitor the company, and also encourages the Board to focus on the essence of their corporate governance practices. In the case of non-fulfillment of obligations by the Board, or in case of dissatisfaction with the Board, the shareholder can take corrective/punitive measures, which should be specified by law.

Governing codes in other countries differ in the short and medium terms, in order to adapt to the changes in reality and socio-economic changes in the country. In Spain, Estonia, Lithuania and Hungary, enterprises are obliged to publicize how they fulfilled the obligations that emerged from the corporate governance code, or their compliance with the corporate governance code, in special segments of the reports, Annex or in tabular form.

It is considered that modern companies should not only give economic value to society, but also social and environmental values. The fulfillment of these three criteria is otherwise considered as responsible and sustainable corporate governance, which is otherwise a good practice that contributes to increasing the value and reputation of the company.

The company's success also depends on the ability of its internal structures to forecast and eliminate predictable risks and losses through responsible initiatives within the company. Risk management is another principle which contributes to accountability and which should be included in the annual report together with the financial and non-financial reports.

More and more studies show that there is a positive correlation between a larger number of women in senior positions and the company's financial performance. Other researchers point out that the greatest diversity is linked to more complex group dynamics in achieving consensus and that there are higher expectations from the leader to organize an effective discussion.

Good international practices emphasize the use of new technology for strengthening accountability. The publication of all relevant data, regularly, on the POE websites and the sites of other related companies, which apply corporate governance criteria, will increase the citizens' trust in the services provided as well as the company's reliability.

Chapter 3

Goals and Objectives

Goal

The general goal of this policy is to improve the performance of publicly owned enterprises through the appropriate and proactive management of the Shareholder, in line with corporate governance standards of the OECD, which would result in the increased

value of POE assets and provision of quality services for the public. The specific objective of his policy is to remove the legal gaps and start with the application of the legal provisions by consolidating them with bylaws, as associated acts.

Objectives

1. The proactive and professional role of the Shareholder in the sustainable leadership of the POE, in order to preserve its value;
2. Empowering the monitoring role of the shareholder vis-a-vis the POEs, in increasing public assets and the provision of public services;
3. Increasing Board responsibility and accountability vis-a-vis the Shareholder;
4. Creating sustainable economic policies that enable the increased value of the shares;
 - a. Ensuring sustainable and predictable financial returns to POEs, while keeping financial risk at a reasonable level.
5. Increasing the POE contribution to socio-economic and environmental values of the state.

Chapter 4

Options:

Option 1: Status quo option (no change)

The current legal framework in the field of Publicly Owned Enterprises would continue with legal challenges and uncertainties if a new policy on public enterprises is not drafted. Besides this, such a situation prevents alignment with the best OECD practices.

The status quo option, with respect to the functioning of publicly owned enterprises, could result in the overall reduction of the value of assets in public ownership. Consequently, this potential situation regarding public assets could seriously jeopardize the quality of services provided to the citizens of the Republic of Kosovo. Furthermore, the lack of a general public policy regarding the strategic direction for the development and organization of publicly owned enterprises in the market, could have negative consequences on the country's economy.

On the other hand, failure to reform the organizational structure of publicly owned enterprises, makes it impossible for them to function effectively and efficiently.

Failure to fully integrate the principles of corporate governance in normative acts and their implementation in the organization consists with the lack of responsibility, division of responsibilities, accountability and control.

The current situation with respect to reporting by publicly owned enterprises has made it impossible to monitor the achievement of objectives and the respective actions undertaken by the organization.

The lack of the preliminary identification of external and internal threats, as well as the prediction of the instruments for the prevention of possible consequences at the level of the enterprise, has resulted with failure in attempts to achieve goals related to the projects that were planned.

The lack of sanctions regarding the non-implementation of the applicable legislation represents a gap between legal obligations, their implementation and punishment, in case of illegal actions. As a result, such actions affect and increase irresponsibility, negligence and the lack of action in accordance with legal competencies.

The unsatisfactory level of transparency in decision-making and accountability, result with the lack of trust by shareholder, stakeholders and citizens in general. Publicly owned enterprises should improve the current level of transparency, in terms of the disclosure of information that is of public interest.

The absence of full legal competencies and their respective instruments for purposes of monitoring the performance of publicly owned enterprises has had an effect on the creation of the current situation, based on which the POEs operate.

Option 2: Changes to the existing policy

The existing situation must be changed with the development of the primary and secondary legal framework for publicly owned enterprises, which could be used to clearly regulate the responsibilities and constraints of each mechanism in the exercise of ownership rights.

The primary reason for changing the existing policy is the shift in responsibilities and authorizations with the aim of strengthening and increasing the shareholder's monitoring role towards POEs, as well as addressing the responsibility and accountability of the Board of Directors vis-a-vis the Shareholder and other stakeholders.

The recommended policy consists of the following key changes:

- Upon the Government's proposal, the Assembly of the Republic of Kosovo should adopt ownership policies for the management of state assets, as strategic orientation policies that will affect the more effective functioning of Publicly Owned Enterprises;
- The shareholders role should be strengthened through a new law, that is, a more proactive approach in decision-making and monitoring, in accordance with the strategic objectives of the POEs;
- The shareholder's monitoring mechanism for publicly owned enterprises should be strengthened with the new changes to the legislation. The changes would consist of the structure, the issuance of authorizations and increased professional human resource capacities within the monitoring mechanism itself;
- Enforcement of principles of Corporate Governance according to the OECD or introduction of the British model "comply or explain" in case Corporate Governance principles are not enforced
;
- The selection method of the board of directors, be it the supervisory or the managerial board, should be developed in full compliance with OECD principles of corporate governance. The new law on public enterprises should provide, in a decisive way, for the criteria, qualifications and responsibilities in the exercise of their competencies;
- The procedure for discharging the board of directors and managers, including senior officials of publicly owned enterprises, should change with the new Law on Publicly Owned Enterprises;
- Performance monitoring of publicly owned enterprises should be regulated based on the system established for monitoring performance, which would include the following steps: The determination of objectives for monitoring performance, getting basic information on Publicly Owned Enterprises, the determination of the mandate (mission), strategies and objectives, the structuring of deals for measuring performance, the development of key performance indicators and the setup of targets.
- The recommendation is to select indicators that show the true value of the Enterprise, so as not to create excessive confusion and in order to attempt to measure values that are often immeasurable instead of creating a clear overview of the situation and the future of the companies, or in our case POEs. The indicators and measures undertaken should create incentives for improvement and positively affect the performance of POEs.

- The standardization of the reporting procedure, in accordance with the applicable Law on Accounting, Financial Reporting and Auditing, is a precondition for the setup of control mechanisms and increased responsibility with respect to the shareholder and other stakeholders.
- The legal provisions should serve to strengthen accountability at both levels of the steering boards because it enables the retention of responsibility and accountability for the targets set by the highest levels inside and outside the publicly owned enterprises. Besides this, accountability enables the adaptation and making of timely decisions to eliminate the risks or obstacles for the achievement of certain plans and objectives (improvement of the quality of decision-making);
- The compensation policy for POEs, namely the board of directors and the managerial one, as well as internal POE staff, should be at the sole discretion of the shareholder, based on the objectives. This policy should be harmonized according to the POE value in the market, as well as the importance of providing services/products (stimulating policies by companies);
- The Statute's approval and any amendment to it should be done with the prior approval of the shareholder in the annual meeting;
- The quality of services provided by POEs, besides being a legal obligation for Publicly Owned Enterprises, should still aim at the standardization and objective assessment of the services provided. Regular standardized annual reports regarding the measurement of satisfaction with the services provided, should be assessed by the Shareholder, and will also be used to measure the performance of the Board;
- Risk management should be one of the main pillars of POE reporting. Aside from other annual financial and non-financial reports, POEs should also include a risk management plan that would contain the cycles such as Risk identification, the Assessment of risks effects, the interpretation of risk assessment results, Risk reduction actions and the monitoring of the implementation of the risk control system, in itself. The drafted annual plan for risk management should be assessed and approved at the end of the year by the shareholder. The monitoring mechanism of the shareholder shall especially monitor risk management for each POE.
- Sanctioning provisions should be foreseen, including corrective measures and penalties, methods and forms of sanctioning, as well as the time lines for the shareholder to reach a decision on imposing a sanction;
- The clarification of procedures and criteria for the establishment of Central and Local POEs and the manner of their supervision by the shareholder.

- The authority of the POE Monitoring Unit should not be empowered with sanctioning provisions for cases when the official memos of this unit are not taken into account. In addition, the authority of this entity in the future will be strengthened through legal provisions which will allow capacity building and increased responsibilities of POEs.

The Government (Shareholder) and MED are responsible for drafting and implementing normative policies and acts. The MED shall act on behalf of the Shareholder through the monitoring mechanism.

This law will be also implemented by the Central and Local POEs, as well as other stakeholders, as third parties.

Option 3: Changes to the existing implementation approach

The third option can not be applied because the existing policy in among other things, does not provide strategic orientation in relation with the assets in public ownership and the strategic orientation in the provision of quality services. Furthermore, the legal framework currently in force contains a lot of gaps and does not address some of the key issues for the functioning of POEs and the functioning of the shareholders’ competencies vis-a-vis the POEs.

Chapter 5

Summary of Options

This section will be completed after the initial review of the first draft.

Below you will find a table, with the summarized options:

Summary of options			
Main features	Option 1	Option 2	Option 3
<i>Main features of the option</i>			
<i>Segment of the population / sector / targeted</i>			

<i>area</i>			
<i>Implementation characteristics - who is responsible - a Government department (which), the private sector, citizens</i>			
<i>The program or service administration or implementation</i>			
<i>Laws, bylaws, changes and amendments to the existing laws, as well as enforcement and penalties</i>			
<i>Incentives or non-economic incentives - subsidies or taxes</i>			
<i>Education and communication campaigns</i>			
<i>Instructions</i>			
<i>Time lines - when the option enters into force</i>			

Chapter 6

Option analysis

Benefits

Benefits of Option 1: (Status quo)

This option does not foresee the achievement of benefits through the retention of the existing situation. The legal framework in force makes it impossible for publicly-owned enterprises to function, achieve their goals as well as meet their obligations with respect to the provision of quality public services and the maintenance of public property.

Benefits of Option 2: (RECOMMENDED)

The development of the new primary and secondary legal framework makes it possible to define the duties and responsibilities of the mechanisms that exercise this right and to raise the level of accountability associated with POEs performance. The drafting of the new law and bylaws, makes it possible to harmonize the business plans of enterprises with general and sectoral developmental policies, makes it possible to increase the efficiency and quality of the governance of publicly owned enterprises and enables the achievement of the highest level of transparency in Publicly Owned Enterprises, as well as enables the increase in the level of trust among consumers/clients.

Improved accountability helps in achieving and measuring progress, because POEs continuously assess the results and progress achieved in certain phases. As a result of the selection of the recommended option, benefits related to public ownership contribute to the achievement of the strategic vision of each POE.

Benefits of Option 3:

The lack of implementing provisions of the current applicable legislation, impedes the successful implementation of this option. As a result, the change of legislation implementing instruments in this area does not contribute positively to the process of improving the existing situation with regard to POEs, due to the lack of provisions within the legal framework.

The negative consequences of Option 1 (Status Quo)

Continuation of the existing situation may adversely affect not only the performance of publicly owned enterprises and the value of publicly owned assets, but also the economic development of the country.

The negative consequences of second option

No negative consequences.

The negative consequences of third option

The implementation of legislation in general is deficient in the absence of clear legal provisions within the existing legislation. This impedes the successful implementation even in the case of redesigning of the mechanisms for implementation of the existing legislation.

Distribution effect

As a result of the change of the legislation for publicly owned enterprises, the effect will appear in all sectors in which publicly owned enterprises operate, namely in the sectors of energy, mining, telecommunications, postal services, waste, water, etc.

On the other hand, the effect will also appear in terms of public finances, namely the gradual reduction of budgetary implications for financial support to publicly owned enterprises.

Cost

The table below contains the annual cost of the services for the law enforcement:

Summary of Financial Impact Assessment				
	(000 euros)			
	Current year	Year 2	Year 3	Year 4

Option 1				
Net expenditure allocation difference	0	0	0	0
Net income revenue difference	0	0	0	0
Funding expected by donors	0	0	0	0
Option 2				
Net expenditure allocation difference	0	0	0	0
Net income revenue difference	0	0	0	0
Funding expected by donors	0	0	0	0
Option 3				
Net expenditure allocation difference	0	0	0	0
Net income revenue difference	0	0	0	0
Funding expected by donors	0	0	0	0

Chapter 7

Consultation

Based on Regulation No. 09/2011 on the work of the Government of the Republic of Kosovo Government and Regulation No. 05/2016 on Minimum Standards for the Public Consultation Process, a process of preliminary and public consultation has been conducted. The draft was sent for consultation to institutions such as OPM, GCS, MoF, MEI, MLGA, MESP, MI, MoJ, MAP, Association of Municipalities, OSCE etc. from 23.05.2017 until 13.06.2017.

We have received comments by institutions such as: Legal Office of the Office of the Prime Minister, Government Coordination Secretariat, Ministry of Public Administration, RWC "Hidromorava" in Gjilan, IFC, EU Office, Gjakova Airport.

Meetings were also held with all parties that have contributed to the draft such as with IFC experts, the Association of Municipalities, the Ministry of Public Administration and all necessary clarifications were provided.

All comments received during the consultation process have been reviewed and have become part of the Concept Paper. Also, all accepted comments are presented in the Report where detailed information is provided to contributors, justifications for accepted and rejected responses

Chapter 8

Comparison of options

Option 1, Status Quo (no change), according to the assessment negatively affects the performance trends of the Publicly Owned Enterprises, namely the decline in the value of the assets and the decline of the quality of the offered services/products.

Option 2, The drafting of the new Law enables the harmonization of business enterprise plans with the general and sectoral development policies; the increase of the efficiency and quality of Publicly Owned Enterprises governance; the achieving of a higher level of transparency of Publicly Owned Enterprises; enables the increase of the level of customer/client confidence.

Option 3. With the current law, as well as the applicable by-laws, there is no possibility for a new approach to implementation.

Chapter 9

Recommendation

Based on a comprehensive analysis of the existing legislation, Law

No. 03/L-087 on POE, Law No. 04/L-111 on Amending and Supplementing the Law No. 03/L-087 on POEs of 2012, as well as Law No. 05/L-009 Amending the Law No. 03/L-087 on POE, amended by Law No. 04/L-111 of 2015, we recommend to the Government of the Republic of Kosovo the adoption of the option 2 as proposed in this Concept Paper, respectively the recommended option for drafting a new Law on Publicly Owned Enterprises. The Government of the Republic of Kosovo is recommended to approve the second proposal, because by changing the existing policy we will enable to enhance responsibilities, capacities and powers of the monitoring entity and thus strengthen and increase the shareholder's role vis-à-vis POEs. Changing existing policies aims to address the accountability and responsibility of the Board of Directors to the Shareholder and other stakeholders as well as the establishment of sustainable economic policies that allow for the value of the POEs to increase.

The Ministry of Economic Development will submit to the Government of the Republic of Kosovo this Concept Paper for approval by December 2017. The estimated cost of this Concept Document by the Ministry of Finance is in the amount of..... Following the adoption of this Concept Paper, the Ministry of Economic Development will start the process of drafting the law on Publicly Owned Enterprises in accordance with the Government's Regulation for drafting normative acts and legal services.

The Ministry of Economic Development will submit to the Government of the Republic of Kosovo a draft Law on Publicly Owned Enterprises by Q4 2018.

Chapter 10

Communication

The Ministry of Economic Development will focus on communicating this policy to the public administration bodies as well as to the general public in the provision of information on the details of the process of drafting the Law on Publicly Owned Enterprises through an open communication process and exchange of information, taking into account all relevant stakeholders' proposals, consultations with experts in the given field, and consultation with civil society.

Communication will be facilitated through various forms such as: comprehensive meetings and special meetings with stakeholders, publications on the MED website, public consultation platform, printed and electronic media, public workshops and public meetings, etc.