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CORPORATE GOVERNANCE IN PUBLICLY OWNED ENTERPRISES IN KOSOVO

Improving transparency and governance
of public funds in Kosovo

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Corporate Governance in Publicly Owned Enterprises in Kosovo

This study analyzes the challenges faced by the Kosovo government in the process of strengthening corporate governance in Publicly Owned Enterprises (POEs). Riinvest Institute, through the support given by Center for International Private Enterprise (CIPE), within 'Improving Transparency and Governance of Public Funds' project has compiled a follow-up report to analyze the developments in corporate governance of POEs from the last report published in 2008. POEs analyzed in this report are Post and Telecommunications of Kosovo (PTK) and Kosovo Energy Corporation (KEK). Both enterprises offer basic public services for citizens; consequently, the way in which they are managed poses great importance to the public at large. The study analyzes the legal and institutional framework and views of interest groups in this process, including: board members of these enterprises, monitoring unit within the ministry for economic development, members of parliament (MPs), civil society, media and international institutions. Research finds that progress has been made in the legal and institutional framework; however implementation of legal provisions, including monitoring of implementation, shows evident stagnation. At this instance, it is recommended to strengthen monitoring mechanisms (within the government, independent agencies, parliament and civil society organizations) in order to ensure effective corporate governance based on advanced international principles.

Riinvest Institute remains committed to playing an active role in promoting corporate governance which ensures qualitative and transparent management of these enterprises in order for them to be competitive and to offer better services for citizens. Riinvest Institute thanks CIPE for the support offered during this project and for their continuous support for over a decade in order to advance transparency and improve the governance of public funds and public ownership in Kosovo. We also want to thank everyone included in this project during the research and report writing phase. Riinvest Institute assumes full responsibility for the conclusions and recommendations of this report.

Prishtina, 2012

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Abbreviations

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| CIPE | Center for International Private Enterprise |
| CSDE | Company for Supply and Distribution with Energy |
| AGM | Annual General Meeting |
| ICO | International Civilian Office |
| IFC | International Finance Corporation |
| KTA | Kosovo Trust Agency |
| KEC | Kosovo Energy Corporation |
| MEF | Ministry of Economy and Finance |
| MED | Ministry for Economic Development |
| OAG | Office of the Auditor General |
| OECD | Organization for Economic Cooperation and Development |
| POE | Publicly Owned Enterprise |
| PTK | Post and Telecom of Kosovo |
| SME | Small and Medium Size Enterprises |
| SDC | Swiss Agency for Development and Cooperation |
| PMUPE | Policy and Monitoring Unit of Public Enterprises |
| UNDP | United Nations Development Programme |
| UNMIK | United Nations Interim Administration Mission in Kosovo |
| USAID | United States Agency for International Development |

1. Executive Summary

The purpose of this study is to analyze the challenges faced by the Kosovo government (as an owner in trust) in the process of strengthening corporate governance in central Publicly Owned Enterprises (POEs). The study also aims to increase the awareness of stakeholders regarding the achievements to date and offer recommendations towards improving corporate governance in these POEs. Lack of sound corporate governance, especially for POEs which have natural monopoly features, enables distortion of the market and in turn deprives citizens of qualitative public services. Furthermore, in a situation when there are plans to introduce private sector in these industries, lack of good corporate governance discourages sound investors, especially foreign investors, slowing down the evolution of ownership and contributing to economic stagnation.

By using primary and secondary data, this study evaluates the developments achieved from the last evaluation done in 2008. This study analyzes the viewpoints of all stakeholders, including: board members of these enterprises, Policy and Monitoring Unit of Public Enterprises (PMUPE), members of parliament (MPs), civil society representatives, media and international institutions. Results show that progress has been made in the legal and institutional framework; however implementation of legal provisions, including monitoring the implementation, has stagnated.

Riinvest Institute throughout several years of partnership with Center for International Private Enterprise (CIPE), since 2006, has been engaged with three projects in the promotion of modern corporate governance in Kosovo.¹ These projects have been focused on the application of advanced international practices, known and summarized in the OECD principles for corporate governance. Activities within these projects have created a positive difference in this field in Kosovo by increasing the awareness for corporate governance; they have improved the legal framework and they have also managed to achieve positive changes in the implementation of OECD principles. This report is part of the project 'Improving Transparency and Governance of Public Funds in Kosovo', which besides tackling the issue of corporate governance in POE-s, analyzes also the segments that are interconnected with the process of public procurement in Kosovo.

Corporate governance principles for enterprises under state/public ownership drafted by OECD in 2005 represent a good benchmark that helps states evaluate and improve the method of exercising the property rights in enterprises under public ownership. This study analyzes advancement and stagnation in corporate governance of public enterprises in comparison with the principles drafted by OECD. Key elements of the OECD principles related to public enterprises include:

- a. **Ensuring an effective legal and regulatory framework.** This legal and regulatory framework has to ensure creation of an equal market for economic agents (private and public) in order to avoid distortions in competitive market conditions.
- b. **State to act as an owner.** The state should act as an active and informed owner and develop clear and consistent ownership policies. This would ensure transparent and accountable

¹ Projects developed until now by Riinvest Institute in cooperation with CIPE include: Corporate Governance and Transparency in POE-s in Kosovo 2005-2006; Corporate Governance and Transparency in Financial Institutions and Follow-Up Report on Corporate Governance in Kosovo 2007-2008; Regional Project on Corporate Governance and transformation of state property in Iran, Pakistan, Turkey and Kosovo 2010-2011.

- governance of public enterprises with the required level of professionalism and effectiveness.
- c. **Equal treatment of all shareholders.** State and state enterprises should recognize all the rights of shareholders and in accordance with the OECD Corporate Governance Principles should ensure equal treatment of all shareholders.
 - d. **Relationships with other stakeholders.** State ownership policy should fully recognize the responsibilities of public enterprises towards all stakeholders involved.
 - e. **Transparency and disclosure.** Public enterprises should respect high transparency standards in accordance with the OECD Corporate Governance Principles.
 - f. **Responsibilities of boards.** Boards of public enterprises should have the necessary level of authority and competencies in order to perform their strategic leadership functions, to monitor the management and to be responsible for their actions.

Kosovo Government as the owner of central POEs has made it clear that its position is to introduce private sector in industries that are part of this study: telecom and energy sector. During the privatization process, two enterprises have been created from Post and Telecom of Kosovo (PTK), namely the (i) Kosovo Telecom and (ii) Post of Kosovo. The latter as a new public enterprise (established on 21st of December 2011, with government decision number 16/53) will remain under public ownership, meanwhile Kosovo Telecom (which includes the sector of landline and mobile telephony) will be privatized. The process of privatization in this enterprise has advanced a lot and it currently is in the final stage. In the energy sector, the government has almost completed the process of introducing private sector in the chain of distribution and supply of electricity. The privatization process in these two sectors has constantly been accompanied by great controversy and criticism from civil society, opposition parties and other interested parties. Efforts made by the opposition parties, trade unions and some civil society representatives to suspend the process, until conditions for a basic social consensus are created, remained unsuccessful.

Although the major parts of enterprises analyzed in the report are in the middle of the privatization process (Telecom from PTK and Distribution from KEK), the implications drawn out of this report are also applicable to other enterprises. Besides, the recommendations of the study are equally applicable to public enterprises of Kosovo, at central as well as regional and municipal level.

Some of the main findings of this study include:

- **In the legal framework:**

- The law on POEs approved in 2008 regulates the issue of corporate governance by relying on the principles of OECD and other international practices.
- The law foresees that all shareholders, regardless of their size of ownership, are to be treated equally and that POEs are subject to the same treatment and same legal framework as private enterprises.
- With regards to the selection of the board of directors of POEs, the law mandates the application of the one-tier model of the board, also known as the Anglo-American model. The issue of the acceptability and eligibility of the board members is explained within the law. It specifies that, among others, the board members need to demonstrate sufficient professional competence and should be independent individuals (except for the executive director).
- Nevertheless, the law does not clarify sufficiently the issue of independence. On this matter,

the law fails to specify the cases when candidates for board member have run for political office but have not been elected. As members of political parties their political independency is questionable, even though they were not elected for office.

- The law on POEs has been amended in 2012 (referred hereafter as the new law) after the end of supervised independence to accommodate restructured governmental departments. The new law restricts board involvement in micro-management of enterprises. It eliminates the conflicts with the law on local governance as well as reduces the compensations/bonuses that can be paid to board members. The new law requires that the business plan of POEs must be in harmony with the development policies of the sector and allows for the review of these business plans on set periods. Besides, these amendments allow for the government, parliament or auditor general to undertake any kind of audit that is considered necessary.
- Despite the amendments to the law, the identified flaws regarding the clarification of the independence of board members remain unaddressed.

- In the institutional framework and supervision of POEs:

- The PMUPE has been established to monitor the proper functioning of POEs and to support the government in exercising property rights over these enterprises.
- The PMUPE has created an official website on which it is obliged to continuously upload and update all important documents and information of POEs. These documents have to be kept in public domain for a five year period.
- The PMUPE monitors and analyses the work of the boards and publishes evaluating reports for each enterprise on their websites on an annual basis.
- The PMUPE was intended to employ 12 officials to cover all its sub-units. However, according to the approved budget the PMUPE functions with only six officials including its director. Due to this deficiency, the monitoring and auditing of the POEs remain poor and with it the information delivered to the government limited. As a result, the government, which has the legal obligation to exercise the property right over these enterprises in a well-informed manner, does not possess the necessary information to devise measures to improve the governance.
- Nevertheless, the PMUPE has achieved to produce some important documents, critical for the advancement of corporate governance of the POEs. This unit has drafted and approved the Code of Ethics and Corporate Governance for POEs as well as has delivered evaluating reports of the performance of POEs, including the performance of the boards, as well as the guideline for board members of POEs.
- The Code of Ethics and Corporate Governance for POEs drafted based on Article 35 of the law on POEs is the essential document regulating the functioning of the POEs. In general, the code summarizes the key topics, which are also covered in similar codes in other countries. The code meets the legal requirements of the applicable laws in Kosovo and takes into account the principles of the OECD for corporate governance.
- With regards to the assessment of the performance of POEs, the PMUPE has drafted the first report for 2010, which has been published in October 2011 (while the report for 2011 has not yet been published). Regarding only the issue of reporting (and not their quality), our research finds that POEs in general have met the legal requirements of reporting. Nevertheless, a fact that needs to be emphasized is that the reporting suffers from considerable delays,

both in publishing of the reports on official websites as well as in delivering these reports to the PMUPE. This delay prevents the PMUPE, the government and the parliament to monitor and evaluate the work of POEs effectively.

- In general, the boards of POEs have made attempts to present good performance on their annual self-evaluation reports.
- The PMUPE finds that not all POEs have met their fiduciary duties towards the shareholder and have not met the objectives set in respective business plans.
- The PMUPE has organized annual trainings for corporate governance, which, due to the low professionalism of board members, have mainly been basic trainings.

- **Views of actors involved in this subject:**

- Representatives of the government, members of boards, parliament, media and civil society representatives agree that law on POEs is in accordance with the OECD principles of corporate governance; however, there are mixed beliefs about the level of implementation of these principles.
- The issue of the selection of board members remains one of the most contested issues as regarded by the majority of the actors. This process is accused of lack of transparency and that it is tainted by great political influence. The majority of actors think that the board members are not politically independent and that their professional expertise is inadequate.
- The civil society and the opposition parties think that the monitoring of POEs by the government is inadequate and that the POEs have been turned to means to please the political interests of the parties in power.
- The civil society also criticizes the parliament for their passive supervision approach with regards to the government in issues related to POEs.
- The performance of POEs is criticized by the majority of respondents, while the majority agrees that the PMUPE has demonstrated positive performance given its limited capacities.

Recommendations

- **For the government and the PMUPE:**

- A higher level of transparency and a minimization of political influence in the selection of board members has to be ensured.
- A higher level of integration of the governmental strategies in the business plans of POEs has to be ensured.
- PMUPE should have sufficient budget for exercising its duties as anticipated by law on POEs.
- Corrective mechanisms for situations when POEs deviate from their business plans have to be created and promoted.
- It has to be ensured that the boards will not interfere in issues of micro-management of POEs.
- Delays in reporting from POEs have to be penalized.
- Protective mechanisms for whistle-blowers have to be created.
- The biographies of board members have to be published.
- The institute for corporate governance in Kosovo has to be established by the government.
- Advanced trainings for corporate governance and risk management have to be organized.
- The inclusion of members of the under-represented gender in the boards of POEs has to be promoted.
- It has to be ensured that in the commission for the selection of directors is independent and reliable as well as include representatives of the civil society (even if only as observers).

- **For the community of donors:**

- It has to support the PMUPE to strengthen its supervising capacities.
- It has to offer support in the organization of trainings for corporate governance and risk management for the board members.
- It has to support the government of Kosovo in establishing the institute for corporate governance in Kosovo.
- It has to support research in this field. It has to support the creation of a study program at the university level in order to create expert groups in the field of corporate governance.

For opposition parties and the civil society:

- They have to require more thorough supervision and better performance of the POEs from the government by increasing public pressure.
- The civil society and media have to play an active role in the supervision and signaling of mismanagement of POEs. Besides, they have to reinforce the concept of corporate governance as a mechanism that enables more efficient managing of POEs.

- **For the parliament:**

- Using the created legal space, it has to undertake more active supervision towards the government and the POEs with regards to (i) achieving the objectives set business plans as well as with (ii) integrating governmental strategies in the business plans.
- It has to include other actors in public hearings that are related to the management of central POEs.
- It has to initiate legal modifications to clarify the political independency of the board members for central POEs.

2. Introduction

Corporate governance refers to structures and tools, through which an enterprise is governed: its governing bodies, rights and obligations of these bodies, the treatment of shareholders and creditors and the relationship between management and other stakeholders. Good corporate governance framework enables the company to have: an effective system of the board; a well-defined relationship between the board and management; well-defined obligations and duties of management; well-protected interests of shareholders (including minority shareholders), investors and creditors; and takes into account the general interest of other stakeholders. It also gives a positive signal to potential investors and lenders (especially to foreign ones); signaling that the investments or loans in well-governed companies are safe enabling companies to have greater access to external sources of finance. Well-governed companies also attract more strategic investors in the process of privatization.

The concept of corporate governance in Kosovo is relatively new. Although corporate governance is addressed in the discussions and debates of the post-war period as part of the analysis regarding the privatization policy, this concept has not been the focal point of the debate and is mainly used to highlight some of the consequences of alternative methods of privatization (for details see: Riinvest, 2002; 2004). In this discussion, Riinvest Institute supported by Centre for International Private Enterprise (CIPE) has been a leader in conducting research on corporate governance and in organizing seminars and conferences on this subject. The main focus has been in public enterprises as the main providers of public services to citizens. Public enterprises during UNMIK administration were explicitly excluded from privatization process and were left under the auspices of KTA to go through a restructuring and reforming process.² In 2004 these enterprises were corporatized by vertically unbundling process and the resulting units were organized as separate entities. During this process, the first systematic efforts were made to address the issue of corporate governance of these enterprises.³ Public Enterprises in Kosovo remained under the supervision of KTA until the Independence of Kosovo in February of 2008.⁴ After the Independence of Kosovo, respectively in June 2008 the Law on POEs was approved (Law number 03/L-087). In this period the ownership of central public enterprises was transferred to the government of Kosovo. The latter, is obliged to supervise the governance of these enterprises and report to parliament for this matter on annual basis. Furthermore, the government has a mandate to initiate the introduction of the private sector in these companies (through concessions or privatization of various segments within these companies).

The services offered to citizens by the central POEs that are part of this analysis (PTK and KEK), are, at large, considered to be inadequate (for details see: Riinvest, 2009). Specifically KEK which, in absence of disciplining effects of competition, continues to have a low level of performance (for details regarding the level of satisfaction of SMEs for public services in Kosovo offered by these two companies, see Riinvest, 2008; 2009; 2009a; 2011. For satisfaction of public at large, see UNDP,

2 KTA was established to conduct the privatization of socially owned enterprises (SOEs) and restructuring of POEs. The same was established by UNMIK Regulation 2002/12.

3 KTA at that time has prepared a Code of Corporate Governance for POEs, which is basically a sub-group of the OECD Guidelines for Corporate Governance of State Enterprises.

4 For further details regarding the structure and channels of supervision of the POEs by KTA, see report 'Corporate Governance in Kosovo', published by Riinvest Institute in 2006.

various years).⁵ Moreover, given that the government has decided to introduce private sector in these sectors, companies in question have not made serious efforts to further restructure to increase their attractiveness to foreign investors. They remain over-employed and are used mainly to accommodate the interests of the ruling party (Riinvest, 2009).

Corporate governance of public enterprises which is the focus of this analysis is of a particular importance since these companies have a dominant role in providing public services to citizens. Consequently, the way in which these companies are governed should be treated with great caution. In this context, this report addresses the progress and setback towards advancement of corporate governance of these enterprises. This report is organized as follows: initially the research methodology is presented followed by a summary of developments in the legal and institutional framework. The following section deals with corporate governance and supervision of public enterprises. Here we discuss topics related to the exercise of property rights by the government, supervision of POE, and appointment of POE board members. The following section deals with the perceptions of representatives of institutions and other informed stakeholders. The final section concludes.

⁵ Performance of KEK has increased in recent years; however it still relies heavily on state subsidies and grants. In absence of these subsidies and grants KEK would be a loss making enterprise.

3. Methodology

This report has been prepared by using primary and secondary sources of data. Secondary data include reports of POEs, PMUPE reports, analysis of the legal framework and other published reports from Riinvest Institute and other organizations. Primary data includes interviews conducted with senior officers of PMUPE, chairmen and board members in KEK and PTK, with members of Kosovo Parliament (chairmen of the commissions for legislation and economy), the representative of the International Civilian Office (ICO), representatives of the media and civil society. These interviews analyze the relevant stakeholders' views on governance of POEs focusing, among other, in the issue of legal and institutional infrastructure, corporate governance operation, functionalization of boards and the issue of supervision. Respondents were asked to express their level of agreement with some of the statements/assertions made by the interviewer regarding the governance of POEs and the work of various institutions in this context. The respondents were asked to rank their responses according to the Likert scale from 1 to 5 (level of agreement with the statements; where 5 represents full agreement). Further, responses are used to calculate the level of agreement with various assertions in the questionnaire. For each response the ranking (from 1 to 5) is multiplied by the weight (1 to 5), where the higher level of agreement is given higher weight. Weighted average is then divided by 5 (maximum level of agreement) and multiplied by 100 to produce the percentage which shows how close to full agreement is the average response. The scale is calculated using: $s = (\sum wixi/n) * 100/5$, where $w_i = x_i$; s is the degree of agreement with the statement, w is the indicator of the weights, x is the ranking given by each respondent and $i = 1, 2, \dots, n$ represents the respondents.

4. Developments in legal and institutional framework

According to the comprehensive plan for the Kosovo status settlement (referred to as President Ahtisaari's plan), public property belongs to the people of Kosovo. The law on POEs which emerged from this plan and approved by Parliament of Kosovo in June 2008 specifies the property position of these companies and assigns, in the case of central POEs, Government of Kosovo as the owner of 100 percent of their shares. The latter is obliged to monitor the governance of these companies and to report to the Parliament of Kosovo regarding this matter on annual basis.

The law of POEs approved in 2008, displays progress towards the advancement of corporate governance. This law internalizes good international practices on corporate governance and overall can be considered as positive. It affirms the importance of corporate governance and demands the adoption and implementation of the corporate governance code in public enterprises. It specifies issues related to the functioning of POEs starting from: definition of property and shares, establishment of new POEs, establishment of PMUPE, financial reporting, selection of board members in central POE as well as local and regional POEs, selection of POEs' officials, enforcement of fiduciary duties, compensation of board members, operation and competences of audit committees, provision of services, monitoring and reporting, external audit and other transitional provisions.

The law clearly defines reporting channels of POEs towards passing the information to the Parliament of Kosovo. As presented in Figure 1, firstly, the POEs should systematically report to the PMUPE regarding their performance and should meet other reporting requirements as stated by law (discussed in greater detail in the following section). Secondly, PMUPE prepares and submits to the government the analysis and evaluations of POEs' performance which is then presented by the government to the parliament in their annual reporting. The data from these reports should provide sufficient information to ensure that the government exercises its property rights in an informed manner as suggested by the OECD standards mentioned earlier.

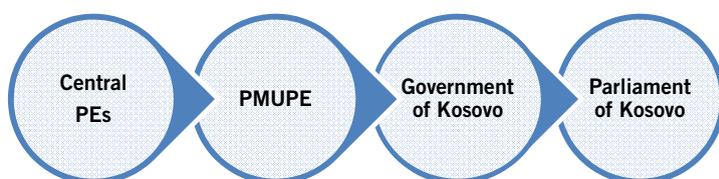


Figure 1. The reporting cycle from POEs to the Parliament of Kosovo
Source: Authors based on current legal framework

On the issue of ownership, the law stipulates that the central POEs are the property of the Republic of Kosovo. Consequently, the Government of Kosovo has full and exclusive authorization in exercising property rights, and that with a simple majority vote. The Government also has the full authorization to establish new public enterprises or to initiate the introduction of private sector in existing enterprises (through concessions or privatization of different segments within these enterprises or enterprises as a whole). Public enterprise is an enterprise where the Government of Kosovo is the owner of over 50 percent of shares (article 3 of the law on POEs). In case that the government sells over 50 percent of shares of any public enterprise, the latter cannot be treated as a public enterprise any longer and the remaining shares shall be governed by the Company Law (Article 40 of the law on POEs).⁶ Government is not obliged to finance POEs, except if this is authorized with another law approved by the Parliament of Kosovo. In particular, the government must not transfer the profits of a public enterprise to another enterprise, either through borrowing or cross-subsidy.

According to the law on POEs, the main element towards advancement in monitoring the corporate governance of central and local POEs is the obligation of the government to establish PMUPE. The latter is in charge with monitoring the operation of POEs and to support the government in exercising the responsibilities and property rights over POEs as stipulated by law. This unit was initially established within the Ministry of Economy and Finance (MEF) and after the restructuring of ministries it was transferred under the auspices of the Ministry of Economic Development (MED). As presented in Figure 2, PMUPE has 5 sub-units.

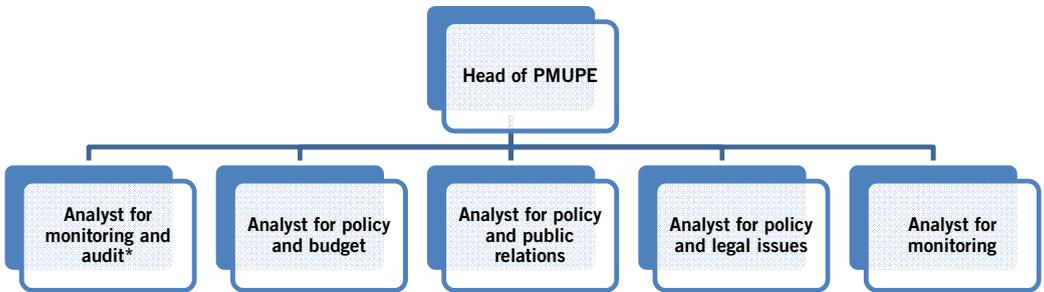


Figure 2. Organizational Chart of Policy and Monitoring Unit of Public Enterprises - PMUPE

Source: Official Webpage of PMUPE

Note * Position of analyst for monitoring and audit of POEs is still vacant due to budgetary limitations.

PMUPE according to the law on POEs (article 37) is obliged, among other, to prepare and submit to the minister, for transmitting to the government, analysis and recommendations regarding the performance of POEs. PMUPE should create an official web-page in which it is obliged to present all documents and important information of POEs and keep them in public domain for a minimum period of five years.

⁶ Sale of shares of central POEs must take the approval of a simple majority from the Parliament of Kosovo.

According to the law on POEs, PMUPE is obliged to publish all primary and secondary legislative acts, templates of code of ethics and corporate governance and other regulations as well as reports of POEs. All public documents must be disclosed in accordance with the law on access to official documents.

As far as the rights of shareholders are concerned, the law on POEs stipulates (article 12) that all shareholders, regardless of their size, should be treated equally. Currently, all shares of POEs are owned by the Government of Kosovo; however, this legal clause could be important in the future, after the entry of private sector (at less than 50 percent) in one of the central POEs. Also, this clause is important for some of the regional public enterprises where some of the municipalities are co-owners with non-equal shares (for further details on the regional public enterprises and ownership structure of municipalities, refer to the adjacent list on the law on POEs). Article 13 of the law on POEs stipulates that public enterprises should be subject to, without exception, the same treatment and the same legal framework as private enterprises. This provision is in full compliance with the guidelines issued by the OECD principles of 2005, specified in the first chapter of these principles that aims at creating an equal market for all economic agents.

As for the system of the board of directors, the law mandates one-tiered model of the board, or the Anglo-American model. According to the law, public enterprises should engage to maximize the long-term value of shares of enterprises. Legally, boards must have 5 or 7 members. Except from one them, all of the remaining members of the board must be selected from the government with a three year term. The last member, who is also an executive director of the POE, is elected from the board. Government selects only from the list recommended by the commission for recommendation which is established by the permanent secretary within the Prime Minister's Office. Members of the commission for recommendation can be senior civil servants or outside qualified experts with an expertise in a specific field in which the POE operates, in finance or corporate governance. In cases when relevant ministry has a pivotal role in relevant sector, another member from the ministry can be appointed in the commission for recommendation.

Acceptability and eligibility of the board members has an important status in the law on POEs. The law specifies that board members should have, among others, professional qualification and all of them (except the chief executive) should be independent. Furthermore, the law stipulates that at least two members of the board should have solid knowledge in accounting, whereas all members should follow trainings on corporate governance at least once a year. PMUPE is in charge to organize these trainings and in case when a board member does not follow these trainings, it must be reported to government and the same will lose the right for reelection at the end of the term. Board members should not have had any business relations with the POEs in recent years nor received any income from them. Also, the law limits application of candidates that may have conflict of interest which obstructs independent and objective exercise of the duty. In this regard, most important limitation that the law foresees is related to the political independence of board members. The law stipulates that persons, who in the past 3 years have been elected for a public office or have leadership or decision-making position in a political party, cannot be appointed as board members. However, the law fails to specify the cases where candidates ran for office but failed to be elected. As members of political parties, although they failed to be elected, their political independence remains questionable.

The board of directors is legally obliged to monitor continuously and rigorously the operation of the POE and the work of the executive staff. POE executives, until the 31st of October of each year, must prepare

a business plan for the following year. This plan is initially submitted for approval to the board of directors. After this approval, the same must be sent to the government for information purposes only. Given this level of competencies of the board members, their political independence and limitation of conflict of interest is essential. Their decisions shape the operational path of the enterprise, which, in case that the board members are not independent, can be used to accommodate the interests of small groups.

The board of directors also measures the performance of POEs in relation to the approved business plan and if there are divergences from the plan, the executive director of the POE should clarify the reasons of these deviations and must take measures to improve the situation. If POE fails to meet the goals of the business plans in two consecutive years, board of directors has the obligation to consider the replacement of chief executive director. In this case board must verify that the deviation from targets set in business plan were not as a result of restrictive circumstances that objectively are outside the competence of the POE.

Board is obliged to prepare an annual self-assessment report. Chairman of the board has the obligation to ensure that the evaluation is carried out in a timely and proper manner. Evaluation should analyze the overall performance of the board and the contribution of each member separately. This assessment is submitted to the government. Similarly, PMUPE analyzes the performance of boards in annual basis and publishes the evaluation report for each enterprise on their official website. POEs are required to submit quarterly financial statements to the board of directors which are later passed to the PMUPE. The latter prepares annual consolidated financial statements for each POE which are then published on their official website. POE must also annually commission an independent external audit.

Each POE is required to develop, adopt and implement a code of ethics and corporate governance. The same should be fully detailed by clarifying the responsibilities of all parties and should ensure the creation of a program that protects whistleblowers. Board members must sign a declaration under oath that they will comply with these codes thus assuming responsibility of any violation. PMUPE has the authorization and duty to develop a template of code of ethics and corporate governance, which can be used by POE with necessary changes to accommodate the specifics of each enterprise. The code of corporate governance should be in accordance with existing laws and internalize the best international practices.

In 2011 the need of amending the law on POEs became evident and the reasons were several-fold. First, the law that emerged from President Ahtisaari's package could not accommodate the situation created after the end of supervised independence. The existing law was also in conflict with the law on local governance and with the Office of the Auditor General (OAG). There was also a need to improve the deficiencies that emerged during its implementation in cases of poor performance of POEs. The amended law Nr. 04 / L-111 was approved by the Parliament on 20th of April 2012 and was ratified by the president in May of the same year.

The new law limits the involvement of the board of directors in micro-management and reduces the bonuses that can be paid to members of the board from 100 percent of their basic salary to 50 percent of this amount. The initial law did not require the business plan of POEs to be in line with sector development policies. This issue is addressed in the new law which requires that business plan has to internalize development policy of the sector prepared by the line ministry. Furthermore, the new law

allows the review of business plan after the first six months of the year. It also creates the opportunity for the government, parliament or auditor general to perform any audit that they consider necessary.

The law on POEs takes into accounts most of the OECD principles on Corporate Governance. It creates conditions for: the state to act as an effective owner of these enterprises; transparency of the management; equal treatment of shareholders and defines, to a large extent, the duties and responsibilities of the board. However, the law does not address sufficiently issues related to political independence of board members and their professionalism. The law should specify the need for the involvement of civil society (even only as an observer) in the process of recruitment and selection of board members.

5. Corporate governance and supervision of publicly owned enterprises

Government as an owner

Corporate governance and transparency, based on the advanced international principles, remains a big challenge for POEs and the Government of Kosovo. As discussed in the previous section, the Government of Kosovo is the owner of central POEs since 2008 and is legally required to effectively exercise the property rights. Although, to a large extent, the legal infrastructure (the company law, law on POEs and other laws that regulate some of the sectors where these enterprises operate) and the necessary institutions are established (the establishment of PMUPE), a lack in implementation of legal provisions and a qualitative supervision from stakeholder remains evident. As a consequence, central POEs that are part of this analysis (PTK and KEK), have continued to provide low quality services to the citizens. Especially KEK which, in absence of disciplining effects of competition, continues to have a low level of performance (for details regarding the level of satisfaction of SMEs with public services in Kosovo offered by these two companies, see Riinvest, 2008; 2009; 2011. For satisfaction of public at large, see UNDP, various years). Moreover, given that the government has decided to introduce private sector in these sectors, companies in question have not made serious efforts to further restructure to increase their attractiveness to foreign investors. They remain over-employed and are used mainly to accommodate the interests of the ruling party (Riinvest, 2009). A summary of the performance of these companies is presented in Appendix 1.

The Government of Kosovo as the owner of central POEs has made clear its position to introduce private sector in these industries. During the preparations for the privatization process, two companies were created in the telecommunication sector, Telecom and Post of Kosovo. The latter created as a new public enterprise (established on 21 December 2011, the government's decision number 16/53) will remain in public ownership, while Telecom of Kosovo (including fixed and mobile telephony sector) will be privatized. The privatization process in this enterprise has advanced a lot and now we are in the final stage of the process. The privatization of Telecom failed in October of the last year since only one bidder (Austrian Telekom) remained in the competition. This was after the withdrawal of the second company Hrvatski Telekom (main shareholder of which is Deutsche Telekom AG). The company's withdrawal from competition was related to the investigation process and allegations of corrupt practices in the PTK (for further details see Weber, 2011). The process resumed again this year and currently five bidders are pre-qualified as potential buyers of the company; (i) Albright Capital Management (ACM) in cooperation with Portugal Telecom; (ii) Twelve Hornbeams, UK (Innova Capital) and Avicienna Capital, UK in cooperation with Sofrecom (part of France Telecom); (iii) Columbia Capital, USA and Axos Capital, in cooperation with British Telecom Poland (part of British Telecom); (iv) M1 Group, Lebanon; (v) Turkcell, Turkey. This process now

is in its final phase and is expected to be completed during the first months of the following year.

In the energy sector, the government has almost completed the process of introducing private sector in the chain of distribution and supply of electricity. In June of this year, the government announced the winning company Limak Yatirim Enerji & Çalik Enerji Sanayi as the preferred bidder in the privatization process of the Company of Electricity Distribution and Supply (CEDS), which offered a price of 26.3 million Euros. The second bidder was Elsewedy Electric SAE which offered 22.8 million Euros. This process has been criticized by the majority of relevant stakeholders who have questioned the transparency of the process.

The privatization process in these two sectors is constantly accompanied with major controversy and criticism from civil society, opposition parties and other stakeholders. Riinvest (2009) finds that the inefficient management and poor corporate governance in PTK and KEK, which is mainly due to political influence, has made these enterprises unattractive to serious investors. Furthermore, the process of inefficient management has systematically reduced the value of these enterprises. On the other hand, the government as owner in trust of these enterprises has not exercised properly the property right, allowing systematic mismanagement influenced by close political and business groups. As for the privatization of Telecom, relevant stakeholders contest the legal basis on which this process is carried out. Telecom privatization was introduced as part of the 2011 budget law. This law expired on 31st of December 2011 and as such cannot be used as the base for further continuation of this process. Regardless of this, the government is in the final stage of the privatization of Kosovo's Telecom. PMUPE is not directly involved in the privatization process. This process is carried out exclusively by the Government Privatization Commission (about the competences of these committees, see the Riinvest, 2009). Attempts of the opposition parties, trade unions and civil society representatives to suspend this process until basic social consensus is created have remained unsuccessful.

Although the main parts of enterprises that are part of this study are in the process of privatization (Telecom from PTK and the distribution and supply from KEK), the implications that are derived from this report are applicable to other enterprises and that the recommendations of this study can be applied more broadly in public enterprises in Kosovo, both at central, regional and municipal level.

Performance supervision of POEs

The creation of the monitoring institutions is a positive step towards bridging the gap between the government and POEs. The creation of PMUPE enables the government to obtain synthetic data which can be used in better exercising property rights. After the approval of the law on POEs, and according to the decision of the MEF, PMUPE was intended to employ 12 workers to cover its sub-units (detailed in Figure 1). However, according to the approved budget PMUPE operates with only 6 employees; this number also includes the head of the unit. Due to budgetary limitations monitoring and auditing sub-unit remains vacant (Sejdiu, 2012). According to the legal provisions, this sub-unit is obliged, among others, to coordinate the operations of internal and external

auditors of POEs and in cooperation with OAG review and monitor the audit reports. Moreover, this sub-unit collects documentation and proposes procedures for supervision of POEs. In absence of these officers, POEs monitoring and auditing is incomplete and this limits the information received by the government. As a consequence, the government, which has the legal obligation of exercising its property rights in a well-informed manner, does not have the sufficient information to take measures which would improve governance.

Nonetheless, PMUPE has managed to produce important documents for advancing corporate governance of POEs as required by law. PMUPE has designed and approved the code of ethics and the code of corporate governance and has drafted performance evaluation reports for POEs including: report of the board performance and a guideline for board members of POEs. The fulfillment of legal requirements by PMUPE remains only the first step towards improving corporate governance. However, the capacities of PMUPE to better supervise operation of POEs are still limited. More capacities are required to enable greater support for POEs and more rapid response to irregularities in governance.

The code of ethics and corporate governance of POEs designed based on article 35 of the law on POEs is the core document in governing POEs. This document helps enterprises by establishing the principles and core practices that should be adhered by in enterprise governance. This code (i) obliges POEs to maintain the highest level of corporate behavior and business practices and (ii) gives clear guidance to the expected behavior of all board members, officials, employees and POE consultants. The code in its 72 pages, among others, addresses the following: the purpose and implementation of the code; corporate books and dossier; confidentiality; communication channels; enterprise asset management; conflict of interest; corruption; business policy and enterprise management; human rights and public interest; government property rights; objectives and principles of sound corporate governance; the obligations, rights and responsibilities of the board members, chairman, secretary, auditing and other commissions and of the chief executive officer; board meetings; performance valuation; reporting and rewards. This code, produced with the technical assistance from USAID, includes the main issues addressed in similar codes in other countries. It fulfills legal requirements of laws applicable in Kosovo and, to a large extent, it considers OECD principles on corporate governance.

As for the evaluation of the POEs' performance, PMUPE has produced the first report for 2010 which was published in October 2011, while the report for 2011 has not yet been published. This report includes information regarding the functioning and development of POEs while noting advancements and shortcomings on their business plans. The report assesses individual and overall performance of POEs. Our research finds that POEs have complied with legal requirements in terms of preparation of the reports (not referring here to the quality of the reports). As for the quality of the reports, our research finds that reports prepared by POEs are not standardized and to a great extent are not self-explanatory. For the reader, in most cases, the reports are vague because they contain only few tables without proper description (see for example the PTK document 'Business Plan, approved on 2010' in the PMUPE website). Nevertheless, it should be noted that reports are sent to the PMUPE and published on official web-sites with considerable delays. According to the head of PMUPE, delays in publishing the annual report from the latter is related to the delays that POEs have in preparing their own annual report which in turn is related to the audit report.

The preparation of the annual reports by POEs is supposed to be completed within 90 days after the end of the calendar year, and auditing is supposed to be performed after this period. Due to limited capacities OAG was unable to complete the audit report for each POE at local and central level causing delays in preparation of the POEs annual reports (Sejdiu, 2012). This issue has been addressed in the new law by allowing POEs to procure private licensed auditing services. The 2011 reports are not yet completed even though 11 months have passed since the end of the reporting period. The delay obstructs PMUPE, the government and the parliament, to effectively monitor the operation of POEs. At this instance, PMUPE should be more active in holding accountable those responsible by exercise its disciplining powers. PMUPE should also improve its technical infrastructure considering that many files in its webpage are dead links. POEs, on the other hand, do not publish in their official website most of the reports they send to PMUPE.

The law on POEs assigns to the PMUPE the responsibility to supervise and assess the operation of POEs. PMUPE monitors the operations of the board by analyzing the records of board meetings and by participating in these meetings as observers. Initially, the board conducts an annual self-assessment report. Self-assessment can help the board, or any of its members, to become aware of the progress or shortcomings in the execution of the business plan. Self-assessment is done with the help of PMUPE. PMUPE prepares a sample questionnaire on how the report should be prepared. These questionnaires are reviewed in the PMUPE and board meetings and then are filled and handed in at PMUPE. Overall, POE boards have tried to present their performance as being satisfactory in their self-assessment report (PMUPE, 2011).

Apart from self-assessment, PMUPE assesses each POE individually by analyzing whether the operations of the board are in accordance with the business plan. It also analyzes board meeting and meeting records, the operations of board committees, audit reports and other reports based on legal provisions. According to the performance assessment of boards for 2010, on the one hand, KEK is among enterprises that have managed to complete their fiduciary duties. There were positive indicators in achieving objectives set in the business plan as well as in respecting the law on POEs and code of ethics and corporate governance. KEK has also managed to report regularly to PMUPE. The professional auditing team in KEK has performed the internal reporting control resulting in increased accountability. On the other hand, PTK falls among enterprises that have managed to partially carry out their fiduciary duties. PMUPE reports that PTK has not managed to achieve their business plan objectives; specifically it failed to improve the financial performance as set in their business plan. As for the corporate governance, PTK board has been subject to criticism for delaying the approval of legal acts and code of ethics and corporate governance. These important documents have been approved with two years delay even though they have received a cautionary note from the shareholder (PMUPE, 2011).

Given that a large number of the board members do not have any previous related experience, PMUPE has prepared a guideline to define the role and responsibilities arising from the board member position. This guideline is designed based on the company law and the law on POEs. The guideline was considered as necessary given that in the past the board members, at large, diverged from their responsibilities (Sejdiu, 2012). The guideline is in line with the code of ethics and corporate governance. It also addresses the issue of conflict of interest. The selected board members and appointed directors have signed the declaration under oath to respect the code of

ethics and corporate governance hence assuming responsibility for any violation of these codes. PMUPE in its 2010 report (page 19) notes that the cases of noncompliance with the code have been addressed to the responsible institutions which define conflict of interest, but the report gives no further details on those cases.

PMUPE, as required by the law on POEs, since 2009 organizes, on annual basis, trainings for board secretaries aiming at improving internal control. The training of these secretaries is important since they bridge the communication channel between board and PMUPE and they also prepare the meeting minutes. During the last year's trainings, among others, the reporting forms have been standardized to simplify the reporting procedure. This proved to be useful for both secretaries as well as the PMUPE itself. PMUPE, in cooperation with USAID and IFC from the World Bank, has also organized trainings for the board members. These trainings are now organized in cooperation with Swiss Development Corporation (SDC). Given the current composition of the boards and the low level of expertise and experience on corporate governance, the trainings on 2009 and 2010 have been at basic level related to the concepts of corporate governance and management of POEs. This year, PMUPE in cooperation with SDC is implementing a project aiming at increasing capacities within PMUPE but has also organized trainings for the board members. In 2010 trainings focused on public-private partnership, reading and interpreting financial statements, audit reports, business plans and strategic plans. Interviewed board members as well as the representatives of PMUPE consider that the trainings should be intensified and, apart from board members, they should also include PMUPE officials. For the former, risk management trainings are especially recommended.

The law on POEs (article 29) requires that POEs produce a report regarding the level of consumers' satisfaction with the services they provide. This report should be published in the official pages of enterprises and PMUPE. According to this study, POEs conduct their own consumers' satisfaction survey. Consequently the survey results could be biased given that they evaluate themselves. Riinvest has continuously solicited the views of SMEs regarding their satisfaction with public services. These services, according to our previous research, are among the main impediments to conducting successful business in Kosovo. Similarly UNDP, in their periodical studies, show that private consumers are not satisfied with the quality of public services, especially with the energy supply.

The government, other than through PMUPE, holds the boards accountable for their performance through the Annual General Meeting (AGM). AGM is an official event in which the government, as a shareholder, has the opportunity to ask questions related to the reported performance and expected performance, and to vote on key issues important for the future of the enterprise. Even though the AGM is supposed to be a public meeting, it is not publicized; hence the public is not well informed with its proceedings.

Selection of the board members

Selection of the board members remains one of the most contested issues on POEs' governance in Kosovo. This process has continuously been criticized for lack of transparency and for being tainted with political interference. The commission for selecting board members is consisted of

government officials; hence there is a risk of politically motivated selection. While the selection of board members is conducted through evaluation process of competing candidates, still there is political influence. The process is centralized under the auspices of the permanent secretary from the Prime Minister's Office. Even though the candidates are supposed to be chosen based on previous related experience, our research finds that majority of selected candidates are political partisans of one of the coalition parties.

According to the recruitment procedures, a selection commission is created to review the applications and interview candidates and then recommends to the government a list of the best candidates. This commission consists of government official, university professors from the public university, civil servants, permanent secretaries, and heads of departments in different relevant ministries. There are no civil society representatives in the commission. The names of recommended candidates are not sent individually to the government. They are sent *en block* and as so are voted by the government in the following meeting.

The selection process for board member position was twice annulled within one year period. As a consequence, the current board members of POEs continue to govern these enterprises even though their legal term has ended. The first call for applications announced on October 2011 was cancelled on November 2011. The reasons for this decision were not made public by the government. However, according to PMUPE the process was cancelled because of the conflict that law on POEs had with the law on local governance as well as the ambiguities that law on POEs had related to selection of board members of regional POEs. The second call for applications announced on March 2012 was cancelled on May of the same year, after the selection commission had already sent to the government the list of recommended candidates. According to the government, the reason for cancellation was because the legal amendments related to the selection of the board member (especially for local and regional POEs) had not yet been approved by the parliament. However, during that period, the media had reported that the process was cancelled after the intervention of the International Civilian Office (ICO) due to irregularities in the process, and had ICO not intervened the government would have proceeded with the selection process. In an interview conducted with ICO representatives, the latter denied to have had any influence in the cancellation as was reported in the media. ICO maintained that all they did was to recommend to the government not to proceed with the selection procedure without approving the amendments (Nr. 04/L-087) (Zeqiri, 2012). Despite the ICO's denial, the fact that the government decided to proceed with the selection process, shows that they were fast-tracking the process even though they were well aware that the amendments were not yet approved by the parliament and signed by the President.

The selection criteria and the procedures of selection are not well defined nor well implemented. The permanent secretary should set the rules that should be followed by every commission for recommendation, including rules regarding avoiding conflict of interest and the methodology for weighting candidates' attributes. These rules and criteria are not available for the public hence judging their adequacy is impossible. However, the main responsibility in the appointment process falls on the commission which recommends the government on the best candidates. Great influence on the selection process is often exercised by business or political interest groups who try to take advantage of their presence on the boards to steer the decision-making in a way that

serves their interests. In most cases, the board members are individuals affiliated with coalition parties. Kipred (2011) finds that the selection process of 2009 was not transparent and tainted with political interference. This triggered ICO's intervention which asked the government to replace 12 POE board members because of their political affiliation. According to this report, the list of candidates was not sent to the government from the selection commission as required by legal provisions. Irregularities in the selection process of 2009 were also confirmed by the ICO representative during our interview (Zeqiri, 2012).

The law on POEs has significant shortcomings in regulating the political affiliation of candidates for board members. While the law requires that the candidates are politically independent; it is not clear what this independence entails. As a consequence, some board members of central POEs are even officially political party members (for details see the Kipred report, 2011; pages 28 and 29). The law does not specify what should be done in cases when candidates had previously run for public office but were not elected. As party members, even though not successful in elections, their political independence is questionable.

Another issue that remains problematic is the skill and expertise of board members in the field of governance, economics or finance; which are crucial in ensuring proper corporate governance. The law stipulates that the board members should have at least 5 years of experience on managerial positions such as business administration, corporate finance, finance, treasury, banking, consultancy, accounting, law, or any other subject related to the activities of the particular POE. Article 17.4 of the law on POEs also requires that at least two board members are experts on accounting. Our research finds that the resume of none of selected candidates is published. Their qualification, experience and professional expertise are known only to the selection commission. The absence of transparency at this instance fuels negative perceptions for the process. Lack of information on the background and expertise of the board members represents a big concern for the civil society and the public at large given the importance of services that these POEs deliver.

Board member position is very attractive and the number of those applying for this position is significant. This position is especially attractive because of the benefits that board members receive (basic salary and allowable bonuses). The compensation of board members is regulated by the government decree. The Government of Kosovo with its decree no. 07/56 of February 18th of 2009 has set the salary level of board members of central POEs at 750 Euros per month while the Chairman can be paid up to 850 Euros per month. Other than salary the law entitles board members to incentivizing commissions and other perks in according with compensation declaration prepared by the auditing commission. According to law on POEs (article 20), auditing commission should make a declaration to justify the commission based on the fact that the board members have fulfilled their duties in a professional and responsible fashion. The new law limits the commission level as a percentage of the base salary. The commission level has been brought down from 100 percent to 50 percent of the base salary. PMUPE as a supervisory body should analyze and value the accuracy of these incentive payments and other perks. Kipred (2011) finds that aside from the salary, commission and other incentivizing income board members use the POEs' funds for trips abroad, and they use company vehicles. This is in violation of law on POEs which prohibits other benefits for POE board members.

In the last call for application for board members in March 2012, KEK received 140 applications of whom 133 were men and only 7 were women, whereas PTK has received 112 applications, of whom 102 were men and 10 were women. The selection of women for board members of POEs is rare and they remain under-represented in all POEs at both central and local level. Under-representation of women in boards is a consequence of many factors among which are historical, cultural and government representation quotas. In addition to these factors, the irregularities in selection process, including the political interference, contribute greatly to the problem.

6. Perceptions of institutional representatives and other informed actors

The following section presents the perceptions of informed actors regarding some aspects of corporate governance of POEs. The respondents were asked to express their agreement with some statements related to governance of POEs and the work of other related institutions. The respondents were asked to rank their answers according to Likert scale from 1 to 5 (5 representing full agreement). This ranking is used to find the weighted average by giving more weight the answers expressed more strongly. Weighted answers are then converted to a unit, with maximum value being 100 meaning that the respondent fully agrees with the statement made. The first set of answers is summarized on Figure 3.

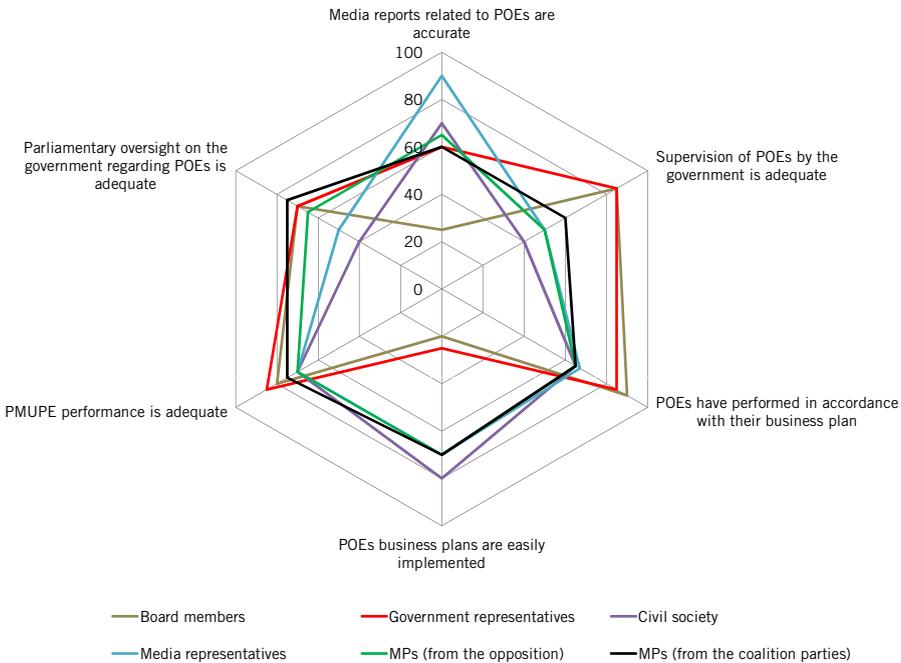


Figure 3. Statements regarding selected areas of central PE Corporate Governance
Source: Author's Calculation

On the statement that 'Media reports related to POEs are accurate', media representatives and civil society representatives give affirmative answers (90 and 80, respectively). Parliament representatives from the opposition parties partially agree with the statement (65), followed by coalition parliament representatives and the government (60). Board members, on the other hand, do not agree that media reports are accurate (25). On the statement 'Supervision of POEs by the government is adequate', most respondents, excluding the government and board members, do not agree with the statement. Civil society members, media and the opposition express great disagreement with the statement while maintain that POEs' government supervision is not efficient and that the government uses POEs to accommodate their partisan members. On the statement, 'POEs have performed in accordance with their business plan', board members and the government representatives strongly agree, but other respondents seem to partially agree as well. However, this relates to the statement that 'POEs business plans are easily implemented', statement on which civil society, media, and parliament representative seem to agree. However, government representative and board members express strong disagreement by stating that the POEs' business plans are challenging to implement and their implementation requires great efforts. On the PMUPE's operations, respondents share mainly concurrent opinion and generally agree with the statement that 'PMUPE's performance is adequate'. On the 'Parliamentary oversight on the government regarding POEs is adequate' statement, there are different opinions. While the parliament and the government generally agree, the media and civil society show disagreement with the statement. The second group of statements is summarized on Figure 4.

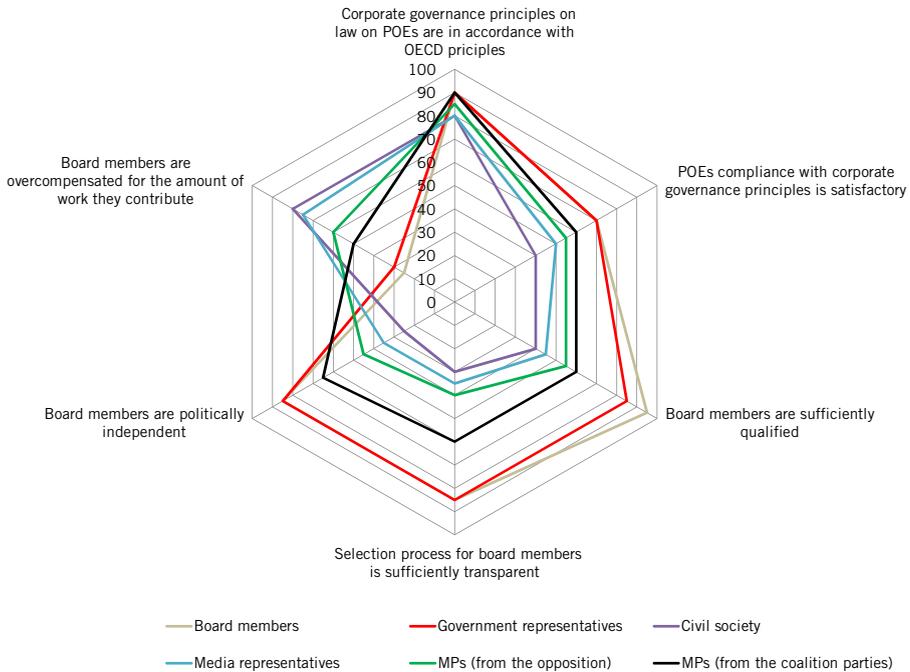


Figure 4. Statements regarding selected areas of central PE Corporate Governance
Source: Author's Calculation

On the statement 'Corporate governance principles on law on POEs are in accordance with OECD principles', the majority of respondents seem to agree and the level of concurrence is high (average over 85). However, the difference of opinion is evident on the statement 'POEs compliance with corporate governance principles is satisfactory'. Board members and the government partially agree with the statement meanwhile opposition members, media and civil society are skeptical. Difference of opinion is also evident with the statement that 'Board members are sufficiently qualified'. Similarly, board members and the government strongly agree with the statement while other respondents disagree. On the 'Selection process for board member is sufficiently transparent' statement, government representative and board members think that the selection is sufficiently transparent. This opinion is not shared with parliament members and even less with media and civil society representatives who show almost complete disagreement. The greatest difference of opinion is evident on the statement 'Board members are politically independent'. While the government, board members, and to a lesser degree, coalition parties representatives, agree with the statement, opposition representatives, media and especially civil society express deep disagreement with the statement. According to civil society representatives, POEs, and especially their boards, are exploited as 'hiring agencies' for the coalition political parties. The majority, except for the board members themselves and the government, agree that 'Board members are overcompensated for the amount of work they contribute'.

7. Summary of the conference proceedings

Riinvest has organized a conference on Corporate Governance in Publicly Owned Enterprises in Kosovo (focusing on Kosovo Energy Corporation and Post and Telecom of Kosovo). The event was held on 13th of November 2012, presenting the findings of the research report.

Riinvest representative started the conference by presenting in great length the findings and recommendations of the research report. The findings and the recommendations of the report were, in general, validated by all participants. The presentation was followed by discussion from panelists and other participants at the conference. The conference was attended by over 60 participants representing various institutions, including among others, Kosovo Parliament, General Auditors Office, Kosovo Anti-Corruption Agency, IFC, board members of local, regional and central POEs, civil society organizations and universities. The report was very well received by the participants. It is important to note that representatives of the Monitoring Unit within the Ministry of Economic Development (in charge of monitoring POEs as a Government representative) did not participate at the conference despite the fact that they initially confirmed the participation. The event attracted great attention from the media. It was recorded by BIRN and some parts of it will be broadcasted in a special edition of their show 'Life in Kosovo' by the end of December. In that edition of 'Life in Kosovo' show, panelists will be invited again to discuss the main points of the report. Parts of the conference were reported in the news by all major national TV stations and newspapers. Two newspapers articles were published in local newspapers. The lead researcher from Riinvest has participated in a TV debate to present the findings of the report.

Panelists:

- Mr. Sejdi Osmani – President of Riinvest
- Mr. Alban Hashani – Research Director, Riinvest
- Ms. Hykmete Bajrami – MP, opposition party
- Mr. Visar Ymeri – MP, opposition party
- Mr. Flamur Keça – Board Member, KEK
- Mr. Avni Zogjani – Çohu – Civil Society Organization
- Moderator: Muhamet Hajrullahu – BIRN

8. Conclusions

This study analyzes the challenges faced by the Kosovo government in the process of strengthening corporate governance in Publicly Owned Enterprises (POEs). Riinvest Institute, through the support given by Center for International Private Enterprise (CIPE), within 'Improving Transparency and Governance of Public Funds' project has compiled a follow-up report to analyze the developments in corporate governance of POEs from the last report published in 2008. POEs analyzed in this report are Post and Telecommunications of Kosovo (PTK) and Kosovo Energy Corporation (KEK). Both enterprises offer basic public services for citizens; consequently, the way in which they are managed poses great importance to the public at large. The study analyzes the legal and institutional framework and views of interest groups in this process, including: board members of these enterprises, monitoring unit within the ministry for economic development, members of parliament (MPs), civil society, media and international institutions.

Research finds that progress has been made in the legal and institutional framework. The law on POEs approved in 2008 and amended in 2012 regulates the issue of corporate governance and relies on the principles of OECD and other international practices. However, there are mixed beliefs among stakeholders about the level of implementation of these principles. Despite the amendments to the law, the identified flaws regarding the clarification of the independence of board members remain unaddressed. The issue of the selection of board members remains one of the most contested issues as regarded by the majority of stakeholders. This process is accused of lack of transparency and that it is tainted by great political interference. The majority of stakeholders think that the board members are not politically independent and that their professional expertise is inadequate. The civil society and the opposition think that the monitoring of POEs by the government is inadequate and that the POEs have been turned to means to please the political interests of the parties in power. The civil society also criticizes the parliament for their passive supervision approach towards the government in issues related to POEs. Similarly, the performance of POEs is criticized by the majority of stakeholders that were part of our research.

At this instance, it is recommended to strengthen monitoring mechanisms (within the government, independent agencies, parliament and civil society organizations) in order to ensure effective corporate governance based on advanced international principles. At institutional level, transparency and a minimization of political influence in the selection of board members is recommended. Capacities of PMUPE should be increased to ensure effective oversight of POEs. Also, corrective mechanisms for situations when POEs diverge from their business plans or do not meet reporting deadlines have to be created and promoted. The donor community should support PMUPE and the government in establishing the institute for corporate governance in Kosovo and should also support research in this field. The opposition parties and civil society has to increase public pressure to ensure better supervision and performance of POEs. The parliament and other independent agencies should use the created legal space to have more active supervision towards the government and the POEs with regards to (i) achieving the objectives set in business plans as well as with (ii) integrating governmental strategies in the business plans. Similarly, parliament has to ensure greater inclusion of other stakeholders in public hearings that are related to the governance of central POEs and in future legislative amendments related to this issue.

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Appendix 1:

Performance of (i) Kosovo Energy Corporation (KEK) and (ii) Post and Telecom of Kosovo (PTK)

Table 1: Financial and operative performance of KEK (2008-2011)

| Category | Year 2008 | Year 2009 | Year 2010 | Year 2011 |
|---|----------------|----------------|----------------|----------------|
| Revenue (including grants and subsidies) ('000) | 217,647 | 237,908 | 238,827 | 256,835 |
| Sales ('000) | 163,043 | 174,392 | 192,757 | 215,960 |
| Grants and subsidies ('000) | 47,695 | 58,472 | 44,055 | 38,033 |
| Other income ('000) | 6,909 | 5,044 | 2,015 | 2,842 |
| Revenue (excluding grants and subsidies) ('000) | 169,952 | 179,436 | 194,772 | 218,802 |
| Costs ('000) | 218,841 | 232,895 | 224,865 | 240,979 |
| Profit/Loss (including grants and subsidies) ('000) | -1,194 | 5,013 | 13,962 | 15,856 |
| Profit/Loss (excluding grants and subsidies) ('000) | -48,889 | -53,459 | -30,093 | -22,177 |
| Number of employees | 7529 | 7800 | 7749 | 7676 |
| Total loss (%) | 42.82% | 42.80% | 41.22% | 38.06% |
| Commercial loss (%) | 25.77% | 24.75% | 24.11% | 21.30% |
| Technical loss (%) | 17.05% | 18.05% | 17.11% | 16.76% |

As can be seen from table 1, KEK in the last four years has had an average annual profit of over eight million Euros. However, this profit includes grants and subsidies received from the government. In absence of these grants and subsidies, KEK would have made an average annual loss or around 39 million Euros. The level of financial loss has been dropping and in the last year it amounted just over 22 million Euros. As for the number of employees, KEK has maintained a roughly same level in the last four years. The main problem that KEK faces is technical and commercial loss. Total loss amounts around 40 percent with a dropping trend mainly in the level of commercial loss.

Table 2: Financial and operative performance of PTK (2007-2011)

| Category | Year 2007 | Year 2008 | Year 2009 | Year 2010 | Year 2011 |
|---------------------------------|------------------|------------------|------------------|------------------|------------------|
| Revenue ('000) | 191,686 | 172,962 | 157,783 | 154,049 | 164,297 |
| Costs ('000) | 94,181 | 92,131 | 108,218 | 116,393 | 112,763 |
| Net profit ('000) | 50,137 | 60,125 | 44,377 | 33,396 | 46,116 |
| Percentage change of profit (%) | 0.0 | 19.9 | -26.2 | -24.7 | 38.1 |
| Number of employees | 2,514 | 2,556 | 3,205 | 3,384 | 3,349 |

Source: PTK – annual reports (various years)

As can be seen from table 2, PTK has had a high level of profit in the last five years. On average, PTK had around 47 million Euros of profit. However, the profit levels suffered significant drop during 2009 and 2010 when the percentage drop of profit was 26 and 25 percent respectively compared to previous years. Despite this drop in profit, PTK has increased the number of its employees significantly, precisely during this downturn. In the last year PTK has started to improve its financial performance.



This study analyzes the challenges faced by the Kosovo government in the process of strengthening corporate governance in Publicly Owned Enterprises (POEs). Riinvest Institute, through the support given by Center for International Private Enterprise (CIPE), within 'Improving Transparency and Governance of Public Funds' project has compiled a follow-up report to analyze the developments in corporate governance of POEs from the last report published in 2008. POEs analyzed in this report are Post and Telecommunications of Kosovo (PTK) and Kosovo Energy Corporation (KEK). Both enterprises offer basic public services for citizens; consequently, the way in which they are managed poses great importance to the public at large. The study analyzes the legal and institutional framework and views of interest groups in this process, including: board members of these enterprises, monitoring unit within the ministry for economic development, members of parliament (MPs), civil society, media and international institutions. Research finds that progress has been made in the legal and institutional framework; however implementation of legal provisions, including monitoring of implementation, shows evident stagnation. At this instance, it is recommended to strengthen monitoring mechanisms (within the government, independent agencies, parliament and civil society organizations) in order to ensure effective corporate governance based on advanced international principles.

Riinvest Institute remains committed to playing an active role in promoting corporate governance which ensures qualitative and transparent management of these enterprises in order for them to be competitive and to offer better services for citizens. Riinvest Institute thanks CIPE for the support offered during this project and for their continuous support for over a decade in order to advance transparency and improve the governance of public funds and public ownership in Kosovo. We also want to thank everyone included in this project during the research and report writing phase. Riinvest Institute assumes full responsibility for the conclusions and recommendations of this report.

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