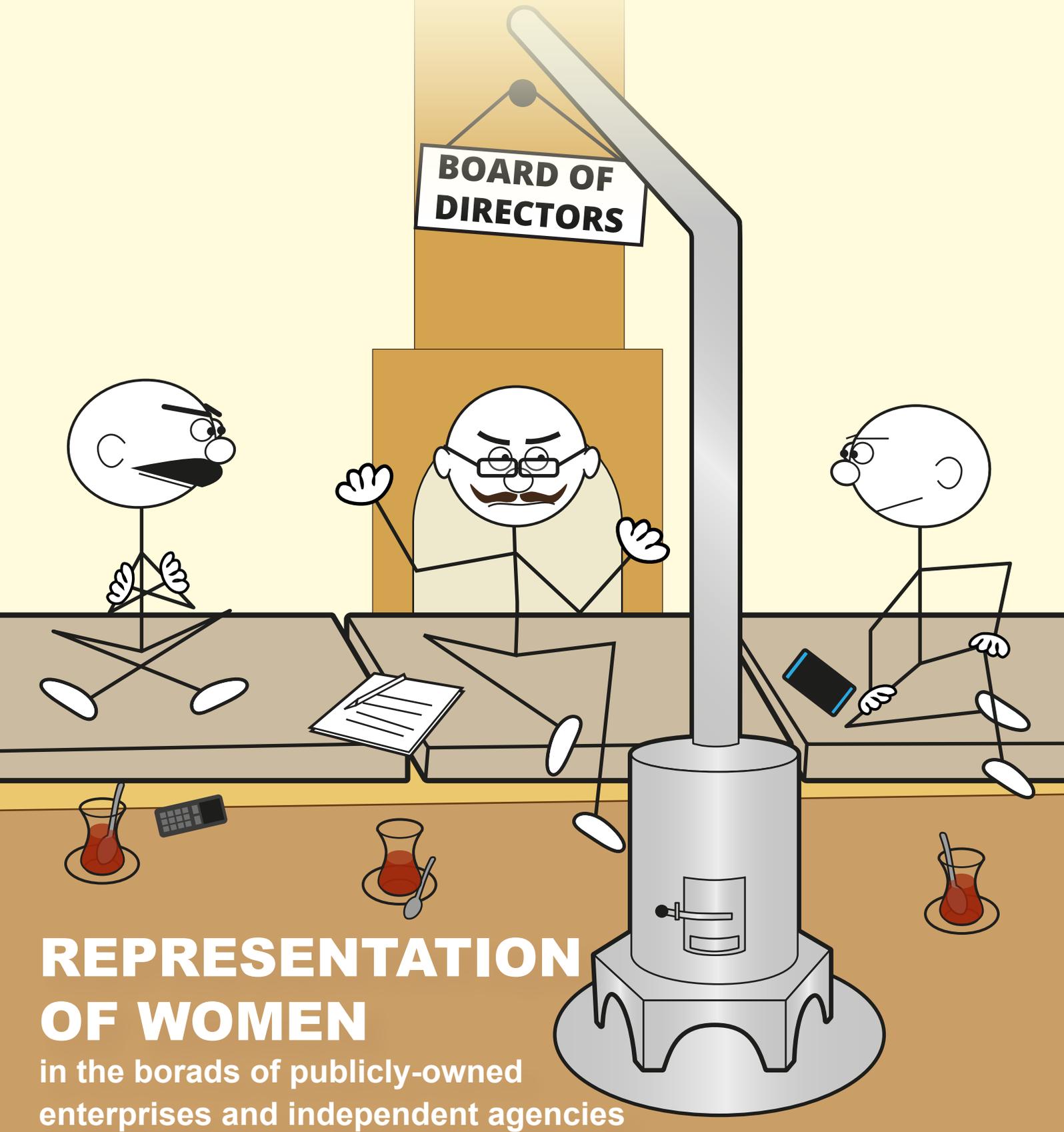


June 2017

gap | analysis



REPRESENTATION OF WOMEN

in the boards of publicly-owned
enterprises and independent agencies

This research is enabled through the support of Engagement for Equality - E4E Program, funded by the United States Agency for International Development (USAID) and implemented by the Advocacy Training and Resource Center (ATRC). The content is the responsibility of the GAP Institute and does not necessarily reflect the views or opinions of USAID, the United States Government or ATRC.



Executive Summary

The representation of women on boards of publicly-owned enterprises and independent institutions and agencies is very low. Of 159 board members in 31 public companies, 135 are men and 24 women. Only five boards are chaired by women. Among 184 board members in 31 independent institutions and agencies, 149 are men and 30 are women, and there are five members, details of whom are unknown. The chairperson's position is exercised in 23 cases by men, in three cases by women and for five other cases it is not known since those boards currently have no chairperson.

Representation of women in managerial positions in publicly-owned enterprises and independent institutions and agencies is very low. Of the 299 managerial positions in publicly-owned enterprises, 252 of them are exercised by men, and only 47 by women. In independent institutions and agencies, out of 24 senior management positions, 19 are exercised by men, and only 5 by women, whereas out of 156 leadership positions, 107 are exercised by men and 49 by women.

Some members of the European Union (EU), such as France, Sweden and Italy, have set up quota for women's representation on boards of publicly-owned enterprises. At EU level, the European Commission's Directive, which sets the target of reaching the quota of 40% for women's representation on boards, has found great support in EU countries, it has been supported by the European Parliament and is now in process of adoption by the EU Council.

Gender diversity also affects the performance of a company. Studies show that the gender diversity of the board has had an impact on a better performance of the company in three aspects: the company's economic performance has increased, the quality of decision-making in the company has increased and the governance performance and ethics within the company have increased.

Kosovo applies quotas for the representation of women in the electoral lists of political parties and in the representation of women in the Assembly of Kosovo as well as municipal assemblies. Quotas have contributed for women to get the deserved space on the electoral lists and legislative institutions. Poll statistics show that since 2007, when the electoral lists were opened, the number of votes for women have increased steadily, and in the 2014 elections, 36% of women have become members of the Assembly without the help of quotas.

Given the low number of women on boards and managerial positions in publicly-owned enterprises and independent institutions, based on examples of EU countries and on the success of quotas on electoral lists, the GAP Institute recommends the application of quotas for representation of women on boards.

Introduction

Until May 2017, Kosovo has established 31 independent institutions and agencies and 39 publicly-owned enterprises¹. While the governing structure of publicly-owned enterprises is regulated by Law on Publicly-Owned Enterprises², the governing structure of independent institutions and agencies is regulated by separate laws on establishment of agencies.

The majority of publicly-owned enterprises and independent agencies are governed by boards, as the highest decision-making bodies. Depending on the functions of a publicly-owned enterprise or an independent agency, board members are selected by the government, the municipalities and the Assembly of Kosovo, following an open competitive process. All citizens of Kosovo are encouraged to apply in calls for application for board members, regardless of gender, party affiliation or ethnicity.

However, while recruitment laws and rules do not discriminate on the basis of gender, party affiliation and ethnicity, in practice institutions favor male candidates, candidates associated with ruling political parties, and candidates from the largest community. In February 2016, the Anti-Corruption Agency (ACA) has ascertained that the Government of Kosovo has selected at least 17 board members in violation of the provisions of the Law on Publicly-owned Enterprises, which prevents the selection of board members if within three last years they have held party posts³.

This report analyzes the participation of women in the boards of publicly-owned enterprises and independent agencies, the gender structure of the employees in these institutions, and in particular the number of women in managerial positions. Data for this research were obtained directly from independent institutions and agencies as well as publicly-owned enterprises⁴. The findings of this report indicate that

¹ There are 38 publicly-owned enterprises according to the Annex presented in Law No. 04/L-111 on Amending and Supplementing the Law No. 03/L-087 on Publicly-owned Enterprises. Source: <http://bit.ly/2nLcP53> (last accessed on 22 April 2017). Although not foreseen by the Law on Publicly-owned Enterprises, the Government has also elected the board of Gjakova Airport, which increases the number of POEs to 39.

² Official Gazette of the Republic of Kosovo. Law No. 03/L-087 on Publicly-owned Enterprises, amended and supplemented by Law No. 05/L-009 and Law No. 04/L-111. Source: <http://bit.ly/2nLcP53> (last accessed on 22 April 2017).

³ Anti-Corruption Agency. Opinion given on 15 February 2016. Source: <http://bit.ly/2pWaBRe> (last accessed on 8 May 2017).

⁴ Out of all institutions and independent agencies, Constitutional Court of Kosovo and Radio Television of Kosovo did not respond to the GAP Institute for access to data, whereas out of all publicly-owned enterprises, data was not provided by the Publicly-owned Enterprise for Housing Ltd. Peja, Waste Company JSKP Standard Mitrovica, Waste

institutions that select board members do this based on gender discrimination. Finally, the report provides a comparative overview with other countries regarding the participation of women on boards, and provides concrete recommendations for increasing the number of women on boards of public institution.

Boards of publicly-owned enterprises and independent agencies

Boards of publicly-owned enterprises

The form of publicly-owned enterprises governance is regulated by the Law on Publicly-owned Enterprises. Under this law, all publicly-owned enterprises are organized as joint stock companies. The Board of Directors is the highest governing body of publicly-owned enterprises (POEs). Boards consist of five or seven members who are selected by the shareholders, which may be the government or the municipalities. The selection of board members is carried out by a commission established by the Office of the Secretary General of the Office of the Prime Minister. The Commission then recommends the names for final approval by the government.

Until the declaration of Kosovo's independence on 17 February 2008, publicly-owned enterprises were managed by UNMIK through the Kosovo Trust Agency (predecessor of Kosovo Privatization Agency). The Government of Kosovo for the first time selected members of publicly-owned enterprises boards on 24 December 2008, where selection of board members for a total of 15 different boards was made through 15 separate decisions⁵. In this case, only 4 out of 76 members of government-appointed board members were women, or only 5.3%. Five months later, following the pressures of the International Civil Representative, due to the politicization of boards with members of political parties from the ruling coalition, the government was forced to replace some of the board members⁶.

Most of the boards were extended their mandate by a government decision until January 2015, when the new government after the June 2014 elections opened a competition announcement for board members of 15 public companies. In this case, 1,814 people applied for

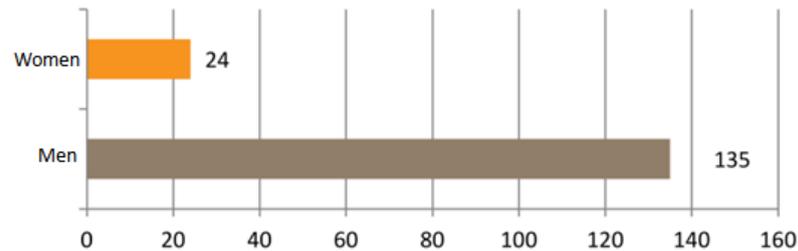
Company JSKP Standard Zvecan, Water and Waste Company Ibri Zubin Potok and Water Supply and Waste Company 24 November Leposaviq.

⁵ Government of the Republic of Kosovo. Decisions of the 48th meeting, dated 24 December 2008. Source: <http://bit.ly/1vbbkFC> (last accessed on 8 May 2017).

⁶ For this see the report of the GAP Institute. GAP Monitor, April 2009. Source: <http://bit.ly/2qhwsDP> (last accessed on 8 May 2017).

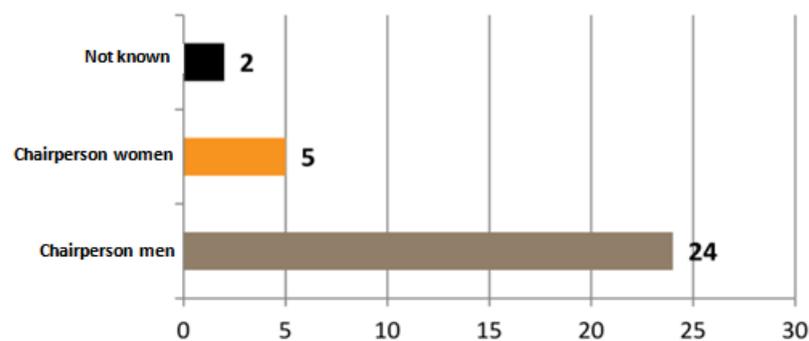
88 board member vacant positions. Out of 14 interviewing committees for the selection of board members, with seven members each, only in two commissions there was a female interviewer, meaning that 98% of the interviewing panels were made up of men.

Following the interviews, the Secretary General preceded the names of 197 candidates for approval to the government, with only 17 of them being women. By the end of 2015, the government selected 82 board members, among them only ten women.



GRAPH NO. 1: NUMBER OF MEN AND WOMEN IN BOARDS OF PUBLICLY-OWNED ENTERPRISES

Regarding the gender of the chairperson of the board, excluding two public companies that currently have no chairperson, in 24 enterprises chairpersons of boards are men and only in five companies, board chairpersons are women.



GRAPH NO. 2: NUMBER OF MEN AND WOMEN IN THE POSITION OF CHAIRPERSONS IN PUBLICLY-OWNED ENTERPRISES BOARDS

Boards of institutions and independent agencies

The independent agencies established by the Assembly of Kosovo are established based on Article 142 of the Constitution of Kosovo. In this research we have included 31 independent institutions and agencies, as not all institutions under the Kosovo Assembly are agencies.

For example, this group includes the Kosovo Prosecutorial Council, Radio Television of Kosovo and even the Constitutional Court, which are

not established based on Article 142. For this reason, this group has been referred to as independent institutions and agencies. This section deals with gender representation in the boards of these independent institutions and agencies.

Independent institutions and agencies are mainly governed by collegial bodies, which are known by different names such as board, commission, committee, panel, but essentially are bodies comprised of more than one or two persons and the decision-making for the institution/agency is competence of the members of this body. Of the 31 institutions and agencies involved in the research, only six have no boards⁷. There is no single legal framework that regulates the composition and organization of both the board and the rest of the institution (organizational levels), the selection of members and the duration of the mandate for independent institutions and agencies. However, with some exception⁸, each institution is established by a special law and none of the laws establishing them has any provision on the level of women representation either at the board level or at the administrative level.

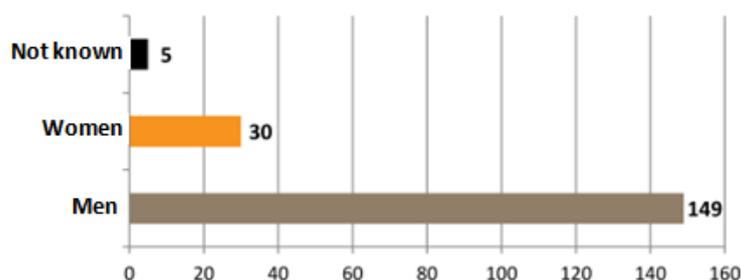
The number of the board members of these institutions and agencies is different and ranges from at least three, for example the Public Procurement Regulatory Commission (PPRC), to 13, for example the Kosovo Prosecutorial Council (KPC). The mandate of members in some cases is set, for example, four to five years with a possibility of re-selection for only one more mandate, whereas in others the duration of the mandate differs between members, and likewise the possibility of renewing the mandate is not set. Moreover, the competences for proposing and selecting members on boards are divided between the government and the assembly. In some cases, the government proposes board members as a package and the assembly approves it, as is the case with the Kosovo Competition Authority (KCA), where the KCA committee (or board) is proposed by the government and is approved by the assembly⁹. On the other hand, members of the Independent Oversight Board for Civil Service (IOBCS) are selected through an open competition by the assembly, are assessed by the relevant parliamentary committee and finally voted in plenary session.

⁷ Anti-Corruption Agency (AMK), Memorial Complex Management Agency (AMKM), Kosovo Environmental Protection Agency (AMKM), Water and Waste Regulatory Authority (ARRU), The Ombudsperson Institution and the Office of the Auditor General are institutions or agencies that are led by individual bodies.

⁸ For example: The Public Procurement Regulatory Commission (PPRC) and the Procurement Review Body (PRB) are established based on the Procurement Law, then the Central Election Commission (CEC) and the Election Complaints and Appeals Panel are established based on the Law on General Elections, etc.

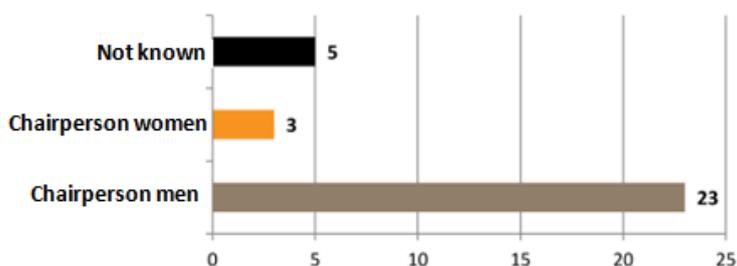
⁹ Even if the Assembly does not express the readiness for their approval of this issue in the first session, the same names continue to be casted for voting in the Assembly until one day the whole board receives the consent of the Assembly.

In total, 31 independent institutions and agencies involved in this research, have 184 board members and each board has one chairperson who is selected from among the board members. Of these 184 members, 149 (80.9%) are men and only 30 (16.3%) are women. For five other members there is no information as at the time of the research, the Kosovo Property Comparison and Verification Agency (successor of the Kosovo Property Agency) does not have a completed board (three are men out of total five) and the Academy of Justice (successor of the Kosovo Judicial Institute) at this time has only three men out of six total members.



GRAPH NO. 3: DISTRIBUTION OF 184 MEMBERS OF BOARDS IN 31 INDEPENDENT INSTITUTIONS AND AGENCIES

As far as the board chairperson is concerned, in 23 cases this position is exercised by men, while only three boards are chaired by women¹⁰. Three collegial bodies chaired by women are: The Central Election Commission (CEC), the Election Complaints and Appeals Panel (ECAP) and the Constitutional Court of Kosovo.



GRAPH NO. 4: DIVISION OF 31 POSITIONS OF THE CHAIRMAN OF BOARDS IN 26 INDEPENDENT INSTITUTIONS AND AGENCIES

Women in managerial positions

Publicly-owned enterprises

Publicly-owned enterprises have a relatively large number of employees and position titles. Publicly-owned enterprises are not part of the Law

¹⁰ There is no information for other three boards as the boards are not completed.

on Civil Service and their employees are not civil servants. Consequently, employees in publicly-owned enterprises cannot be grouped by following the logic of functional categories as in the case of most independent agencies that apply the Law on Civil Service.

According to the data that 31 publicly-owned enterprises have provided us, there are a total of 5,042 employees with different job titles. We have focused only on managerial positions, such as: directors, heads, managers, leaders, etc., in order to see the gender representation.

The table below shows that out of 5,042 employees in publicly-owned enterprises there are 299 managerial positions, out of which 252 are exercised by men and only 47 by women.

TABLE NO. 1: MEN AND WOMEN IN MANAGERIAL POSITIONS IN PUBLICLY-OWNED ENTERPRISES

Position	M	F	Total
Director	21	5	26
Head	114	12	126
Manager	69	19	88
Leader	12	4	16
Secretary	14	7	21
Supervisor	3	0	3
Chief executive	19	0	19
Total	252	47	299

Based on these data, it is evident that women are underrepresented in managerial positions in publicly-owned enterprises.

Independent agencies

Apart from the low participation of women in the boards of independent institutions and agencies, they are also underrepresented in managerial positions. Based on the data sent by these institutions, the GAP Institute has grouped all positions divided into two categories according to the Law on Civil Service¹¹.

Accordingly, two categories within which fall the managerial (or governing) positions are: senior management level and management level. For the sake of clarity, below we have given in brief the positions and features of the positions for these two categories.

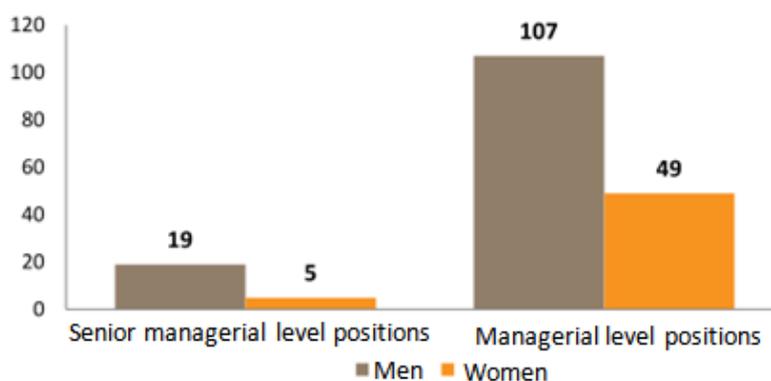
¹¹ There is no information for other three boards as the boards are not completed.

TABLE NO. 2: MANAGERIAL POSITIONS BASED ON THE TWO FUNCTIONAL CATEGORIES IN INDEPENDENT INSTITUTIONS AND AGENCIES

Functional categories	Jobs within this category	Description of the category
Senior managerial level	Secretary General of the Assembly, the Presidency, the Office of the Prime Minister, the Ministry, the General Director of the Assembly or the Government Agency.	It is the chief position for the overall administrative management of the institution
Managerial level	Director of the Department, Deputy Director of the Department, Head of the Agency Directorate within the Ministry, Head of Division and Leader of the Sector.	It is the chief position for managing and coordinating work in a particular field of an institution's activity

Of the 31 independent institutions and agencies involved in this research, only four of them do not apply the Law on Civil Service and consequently classification of positions based on the two categories above was impossible. These are: Central Bank of Kosovo (CBK), Radio Television of Kosovo (RTK), Energy Regulatory Office (ERO) and Pension Savings Trust.

In 27 institutions and other agencies, based on the classification of positions by categories above, there are 24 senior managerial positions and 156 managerial positions. Out of 24 senior managerial level positions, 19 are exercised by men and five by women, whereas out of 156 managerial level positions, 107 are exercised by men and 49 by women.



GRAPH NO. 5: SENIOR MANAGERIAL LEVEL AND MANAGERIAL LEVEL POSITIONS IN INDEPENDENT INSTITUTIONS AND AGENCIES

Representation of women on boards of EU public companies

Representation of women in boards and public companies is a good practice that has developed over time in many of the European Union (EU) countries. According to the EU data regarding the representation of women and men in decision-making¹², in 2016 the average participation rate of women on the boards of the largest companies in the EU was 23.3%. This figure has increased significantly if compared to 2010, when it was only 11.9%. However, at EU level it has been assessed that this is not sufficient and legal and non-legal initiatives have been taken to increase participation of women in boards of public companies.

In 2010, the European Commission (EC) issued the Strategy for Equality between Women and Men 2010-2015¹³, placing this issue as a part of its agenda and at the same time the agenda of member states. Then, in 2011, the EC had asked companies to establish internal rules to increase the representation of women on boards of public companies. However, after one year it was assessed that the results were not very satisfying and this had pushed the EC to find a solution to this issue through legal measures, namely through the drafting of a directive which was proposed in 2012¹⁴. Although this directive has not yet entered into force, it has found support from the European Parliament (EP) in November 2013, and is also supported by most EU member states and now is being discussed at the EU Council.

The directive does not propose a uniform way that should be followed by all Member States, leaving each country to decide on the best approach, depending on its legal tradition. What the directive proposes is a measure (objective) of 40% representation of women in the boards of publicly-owned enterprises to be reached by 2028. Although the Directive is not yet in force, it is interesting to see in what way many of the EU Member States have implemented various measures to increase women's participation on boards of public companies. Those with the highest percentage of representation have mostly set a quota and have issued a regulation or code where the rule of representation has been encoded. Following the adoption of the directive in the future, states that have been most successful and those behind in regards to the representation of women on boards of public companies, will adopt measures in line with the Directive and the 40% objective.

¹² European Institute for Gender Equality, Gender Statistics Database: <http://bit.ly/2qR26bu> (last accessed on 19 May 2017)

¹³ European Commission, Strategy for Equality between Women and Men 2010- 2015: <http://bit.ly/2hMsCLT> (last accessed on 19 May 2017)

¹⁴ COM (2012) 614 final: <http://bit.ly/18Zfvjt> (last accessed on 19 May 2017)

Of the 28 Member States of the EU, countries like Sweden, Italy, Finland and the Netherlands have achieved the highest rate of representation of women on boards of public companies in comparison to other countries. The common feature of these countries is that most have set quotas and written rules for achieving the objective. The table below presents these states and the rule based on which the objective or quotas are set. As shown in the table, states have set different quotas. However, these will all be unified with the adoption and entry into force of the Directive, when the 40% quota will be common for all countries.

TABLE NO. 3: PARTICIPATION OF WOMEN ON PUBLIC COMPANY BOARDS, QUOTA AND MEASURES TO ACHIEVE THE OBJECTIVE OF 40% IN 10 COUNTRIES OF THE EU¹⁵

Country	Participation of women on boards	Quota	Measures to achieve the quota
France	37.1%	40%	Law
Sweden	36.1%	X	Corporate Governance Code
Italy	30%	33%	Law
The Netherlands	28.1%	30%	Corporate Governance Code
Finland	27.9%	X	Corporate Governance Code
Latvia	27.7%	X	Yes
Germany	27.2%	30%	Yes
United Kingdom	27.1%	X	Corporate Governance Code
Denmark	27%	X	Yes
Belgium	26.6%	33%	Corporate Governance Code
Slovenia	23.9%	X	Regulation on public companies

Performance of boards with balanced gender composition

As the boards of public companies in Kosovo have a very low representation of women and as a consequence there are no studies on the effect on companies with board gender diversity, the following section deals with this issue based on international studies. The effect of gender diversity on boards of public companies is mainly based on economic arguments as well as other arguments. Various studies have concluded that gender diversity in a company has been the driving force for a better performance of the company and that higher gender diversity on corporate boards has the potential to increase the company's economic performance.

¹⁵ European Commission, Gender balance on corporate boards, fact sheet, July 2016: <http://bit.ly/2pVMY7y> (last accessed on 22 May 2017)

Arguments used to support the hypothesis of the effect of gender diversity on boards in the company's success are:

1. The company's performance has increased;
2. There was a better quality in decision making;
3. The performance of governance and ethics within the company was raised¹⁶.

According to the study by McKinsey¹⁷ consulting firm, companies with gender diversity, especially on the board level, have shown an increase in organizational and financial performance over the years. A similar conclusion was also made by the Catalyst organization through the 'Bottom Line' study of 2007 that measured the financial performance, based on several indicators and in a grouping of 520 companies, and concluded that companies with gender diversity on the boards did have better financial performance than those without gender participation in their boards¹⁸.

The impact of quotas on increasing the representation of women in the Assembly of Kosovo

In order to increase the representation of women in national parliaments, in 1995, the UNDP had suggested that all countries should try to reach a minimum of 30% of women's representation in their parliaments¹⁹.

In Kosovo, women's representation quota of 30% has been applied since the first national elections held on 17 November 2001. This quota obliges political parties to nominate 30% women in their total lists of candidates for the Assembly of Kosovo. Some countries apply quotas only on the lists of political parties and not in the election for parliament, as this is left to the choice of the voters. In Kosovo, the binding quota is valid both for party lists and for representation in the Assembly.

¹⁶ These arguments are derived from the studies of organizations such as: international consultant firm McKinsey, the non-profit organization Catalyst with a mission to increase women's participation in employment and the Deloitte. The Deloitte study on corporate governance focusing on "Women on boards: a global perspective" ¹⁶ includes all countries in the world divided into three major regions: the Asia and Pacific region, the North and South America region, and the third region, Europe, the Middle East and East Africa.

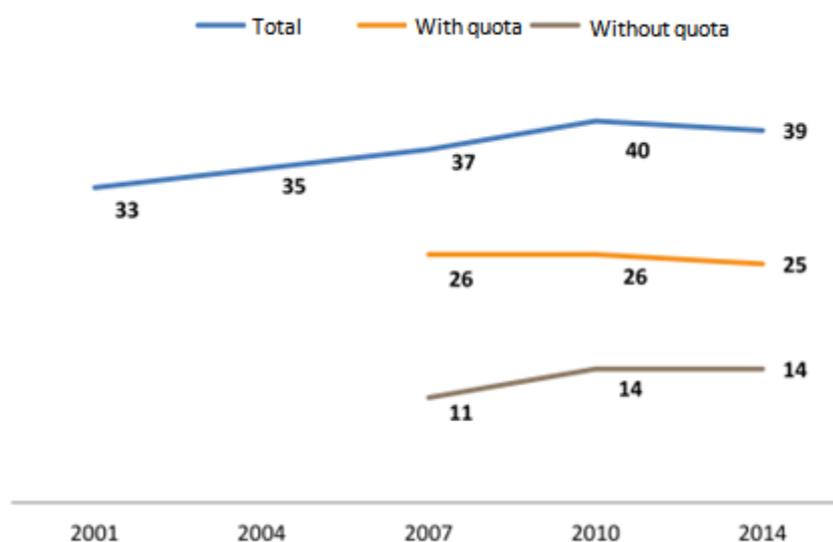
¹⁷ McKinsey & Company, Women Matter 2016 – reinventing the workplace to unlock the potential of gender diversity: <http://bit.ly/2hZrX89> (last accessed on 18 May 2017)

¹⁸ Catalyst, the Bottom Line: corporate performance and women's representation on boards: <http://bit.ly/1PozcWm>

¹⁹ Joni Lovenduski. Women and Politics: Minority representation or critical mass? Parliamentary Affairs. Vol.54, pg.744.

In the first two elections for the Kosovo Assembly, when the closed lists were applied, it was not clear as to how much were women voted, as the vote was given only to the party and based on the total number of votes won by a given political party, it reserved places for women. However, with the change of the law on elections and the opening of lists since the 2007 parliamentary elections, it is possible to calculate exactly as to how many women represented in the Kosovo Assembly are there thanks to quotas.

The data show that quotas have contributed in women being voted more and more in parliamentary elections. In the third legislation emerged after the 2007 elections, out of the 37 women represented in the Kosovo Assembly, 29.7% of them had won their seats without the help of quotas; in the fourth legislation emerged from the December 2010 elections, out of 40 women in the Kosovo Assembly, 35% of them were part of the Assembly without help of the quota; whereas in the fifth legislation emerged from the June 2014 elections, out of 39 women parliamentarian, 36% of them were part of the assembly without the help of quotas.



GRAPH NO.6: IMPACT OF QUOTAS IN WOMEN'S REPRESENTATION IN THE ASSEMBLY

These data show that quotas have given women the space to compete equally with men in parliamentary elections, and voters are increasingly convinced that women should be seen as equal in electoral competitions and political representation.

Similarly, quotes on boards of publicly-owned enterprises may also contribute to equal opportunities for women, and after a period of time for women to gain experience in running publicly-owned enterprises and independent agencies. This would enable them to compete on equal grounds with men.

Conclusions & Recommendations

Based on the analysis of the above elements, we can draw some conclusions and recommendations.

Conclusions:

- Representation of women on boards of publicly-owned enterprises as well as independent institutions and agencies is very low. The representation of women as chair of boards is also very low when it comes to boards of publicly-owned enterprises and independent institutions and agencies;
- The low number of women on boards has also contributed for the representation of women in managerial positions in publicly-owned enterprises and independent institutions and agencies to be too low;
- A significant number of EU countries have set up a 40% quota for women's representation on boards of publicly-owned enterprises and have drafted codes for achieving this objective;
- The European Commission's directive, which places a quota of 40% on women's representation on boards, has found an immense support by the EU countries;
- A number of studies have confirmed the link between the gender diversity on board and the company's better economic and financial performance;
- Setting the quota for women's representation in the assembly has had an impact and as a result of the quota on the electoral list, more and more women become assembly parliamentarians by receiving more votes than men.

Recommendations:

- The Law on Publicly-owned Enterprises should be supplemented/amended and the quota for representation of women on boards of public enterprises should be set;
- Likewise, laws on the establishment and functioning of independent institutions need to be amended in order to foresee quotas for representation of women on boards of independent institutions;
- The European Commission's directive on setting a quota at 40% should be consulted. In fact, the part of the Law on Publicly-owned Enterprises that talks about the gender representation and quota-setting should be in accordance with this directive;
- Law on Civil Service, which is being supplemented and amendment should contain provisions in the form of a quota for gender representation in institutions that have civil servants;
- Both laws should contain bylaws that address the details of the representation process of women on boards of publicly-owned enterprises and civil service institutions.



The GAP Institute is a Think-Tank established in October 2007 in Kosovo. The main goal of GAP is to attract professionals in order to create an environment of professional development and research, which is encountered in similar institutions in western countries. This also provides the opportunity for the people of Kosovo to research, develop and implement projects with the aim of advancing the Kosovar society. The priority of this Institute is to mobilize professionals in addressing the economic, political and social challenges of the country. The main goals of GAP are to fill the gaps between the Government and the citizens, and also fill the gaps between problems and solutions.

GAP Institute is supported by:

