

Who will benefit from the debt clearance?

August 2015





Executive summary

One of the challenges that public institutions face after the war is the collections of debts. Non-payment of obligations toward the state arises as a result of difficult economic situations but also because of the poor state administration.

In February 2015, Kosovo Government established a committee to review the possibility of forgiving the outstanding debts until December 31, 2008. Upon the completion of work by the Committee, The Government drafted and proceeded in the Assembly of Kosovo the draft law on debt forgiveness. In July 2015 this law was approved by the Assembly.

GAP Institute has supported such decision. However, six months after this initiative, the Ministry of Finance (MF) still did not provide information on the structure of debts.

In order to inform the public, and to facilitate the public institutions in this area, GAP Institute since February 2015 has submitted requests for information to all public enterprises (PE), municipalities, Ministry of Finance (MF), Customs and Tax Administration of Kosovo (TAK). From all submitted requests, the most completed responses were received by PE's. Municipalities have suggested that the information on debts needs to be obtained from MF, whereas MF suggested these data to be obtained from municipalities.

Based on the obtained information it can be concluded that public institutions were not careful to keep accurate records of the debtors. In addition, the institutions did not follow regularly the legal procedures to sue the citizens and business entities for their debts. In this way, the majority of debts that the Government aims to forgive are in fact a lost debt. So, even if the government aims to sue and collect the debts from citizens and legal persons (entities) through legal procedures, it is impossible since the majority of debts which were not proceeded to the relevant courts, have been **statute-barred**. For example, from 346.3 million euro debt to KEK, claims were made only for 60 million euro. This means that according to the law on debt forgiveness, 60 million euro will be forgiven or only 17% of the debt, while the remaining part of the debt is considered as lost based on Law on Obligational Relationships.

Therefore this analysis finds that the forgiveness of debts is more an administrative remedy (relief) for the respective institutions and better tracking of bad debts rather than a real forgiveness for citizens and businesses. This is because most of institutions did not sue their clients



for debts within the necessary legal deadlines.

However, the Government decision can have a positive effect regarding the debt collection after 2008, as the citizens will be motivated by this act and in addition will be obliged to pay the remaining part. Besides, the decision may give incentive to citizens and business entities are more regular in their payment. Public institutions may benefit from this decision as the collected incomes after 2008 may increase, while their administrative cost decrease by due to clearance of the debt before 2008.

1. Introduction

On 5th February 2015, the Government agreed to establish the Committee for reviewing the possibilities to forgive all debts of citizens and businesses to state institutions and public enterprises in the Republic of Kosovo, accumulated until 31 December 2008.¹ This decision was transformed into a draft law for forgiveness of public debts, and later on was supported by the majority of members of the committee for Budget and Finance as well as from other members of the Assembly of Kosovo.²² The majority of these debts are towards the public enterprises (PE), Kosovo Energy Corporation (KEC), Regional Water Supply Companies (RWSC), Regional Waste Companies (RWC), public heating companies in Pristine and Gjakova, debts to municipalities for property tax, Tax Administration of Kosovo (TAK) and Kosovo Customs.

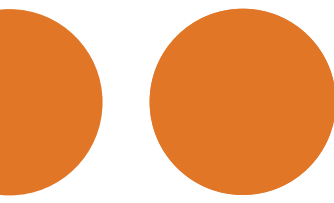
Based on the draft law mentioned above, the entities that benefit from the debt forgiveness are all persons who have outstanding obligations toward state institutions and PEs, on condition that the same carry out full payment of obligations for the period from 1 January 2009 until 31 December 2014. In this case, in addition to the entire debt forgiveness, such persons will benefit also from the forgiveness of fines, penalties, interests and any other obligation resulting from non payment of debts on time, for the period 1 January 2009-31 December 2014. However in order to benefit from the debt forgiveness, natural and legal persons must first bind an agreement with the relevant state institutions or PE for paying debts.

The purpose of this analysis is to provide more information for debts to be forgiven. This analysis will, for the first time provide data for the debt structure and real value of forgiven debts. In addition, the analysis present difficulties faced for access to detailed data on debts, the negligence of public institutions to keep detailed records on debts and to legally prosecute debtors.

2. Legal basis for obligational relationships

¹ Decisions of the Government Meeting, no. 03/12, date: 05.02.2015; Source: <http://bit.ly/1c0n5fU>.

² Draft law on public debt forgiveness: Source: <http://bit.ly/1JACcGz>



Although the Assembly of Kosovo has approved the Law on Obligational Relationships in 2012,³ provisions of this law do not apply in the obligational relationships incurred before this law entered into force.⁴ Thus, the issue of debt forgiveness in this case is treated according to applicable law in Kosovo, Law No. 3/3/1978 on Obligational Relationships⁵, which was in force until 31.12.2012.

Among others, this law regulates two aspects: 1) categorization of fees and timelines for fines and 2) interest rates for sued entities. Also, based on this Law, there are two categories defined by legislations in relation to categorization of fees and timelines for fees: a) for natural persons; and b) for legal persons-business and institutions.

- a) Regarding fines and interest rates for the sued citizens in court, the legal terms of limitations and the legal terms for requests by public institutions toward citizens is 12 months⁶. Regarding the interest rate applied for delayed payments, the courts have applied an interest of 3.5% per year for the amount of debts⁷. In addition to interest rate, the debtor or the sued citizen will be charged with court administrative costs.
- b) The same law applies for legal persons (trade associations-business entities) for the period 1999-2011. In such cases, the legal term of limitations and the legal terms for requests by public institutions/enterprises toward legal persons for paying the debts is 36 months⁸. Whereas, the interest rate for legal persons is the same as with natural persons, 3.5% per year for the amount of the debt⁹, by charging the legal person with court administrative costs.

According to the law in question, the decision of Government practically is valid only in cases when the PEs and other institutions claims are made within the legal term and the term of limitations did not expire. However, it should be taken into account that the number of sued entities /debtors filed in the court and the value of debt is very low in relation to legal and natural persons' value of debt

³ Law No. 04/L-077 on Obligational relationships: <http://bit.ly/1U5O3DU>

⁴ Law No. 04/L-077 on Obligational relationships, Article 1057

⁵ Law No. 04/L-077 on Obligational relationships (Official gazette of SFRY, No. 29/78, 39/85, 57/89)

⁶ Law No. 04/L-077 on Obligational relationships: article 378

⁷ Law No. 04/L-077 on Obligational relationships: article 277

⁸ Law No. 04/L-077 on Obligational relationships: article 374

⁹ Law No. 04/L-077 on Obligational relationships: article 277



toward public respective institutions.¹⁰

In general, out of the number of court claims, institutions have usually have sued the big debtors-business entities. Thus since the amount of the debt of a citizen is usually significantly lower than the debt of business entities, and as such it is cheaper and faster to proceed in the court with cases of big debtors. On the other side, in total, the amount of debts of citizens is bigger than of institutions and enterprises. Another reason why institutions have filed small number of claims is due to expectations that legal procedures are slow and costly. Therefore, practically it can be said that most of the debts are de facto forgiven as institutions haven't filed claims and that the debts have been accumulated.

The initiative for debt forgiveness confirms that the local institutions acknowledge their delays in implementing rule of law at the right time, and failure to follow legal procedures within an appropriate time. Moreover, this initiative could be considered as unfair toward disciplined consumers who have paid all their obligations during the abovementioned periods.

3. The amount of debts

Based on MF statements, the total amount of debts to be forgiven is 670 million euro. Out of this, 465 million euro (69%) are debts to PE's, 148 million euro (22%) belong to debts of active business entities toward TAK and 57 Million euro (9%) debts to Kosovo Customs.¹¹

Since the initiation of the draft law, GAP Institute has collected information and data on citizens, businesses and institutions' debt toward public institutions, municipalities and TAK. During data collection it was noted that public institutions have no official data for the debt to institution. Therefore, if for nothing else, the Government's decision for the possibility of debt forgiveness has set into motion the institutions which were so far negligent to at least collect accurate data on debts which households, businesses and

¹⁰ Also it is worth mentioning that in case a PE didn't file the claim against a natural or legal person for debts for the period of time resulting after the date of filing the claim, the PE's had to again follow and comply with deadlines for the continued period of debts which have not been paid by debtors, thus PE's were obliged to file an appeal to extension of claim, including the period of debt after filing the claim. Also in such cases, there is a small number of procedures and legal terms followed by PE's and in most cases they have allowed debt forgiveness to debtors. Law No. 3/3/1978 on Obligational Relationships: Article 374.

institutions owe them.

Also, GAP Institute has required from PE's access regarding the value of claims made for such debts, however so far no response was received from them. Whereas regarding the debt on property tax, GAP Institute first addressed the municipalities which claimed that all these data are with MF, on the other hand MF claimed that these data should be requested from municipality.

3.1. PE's Debts

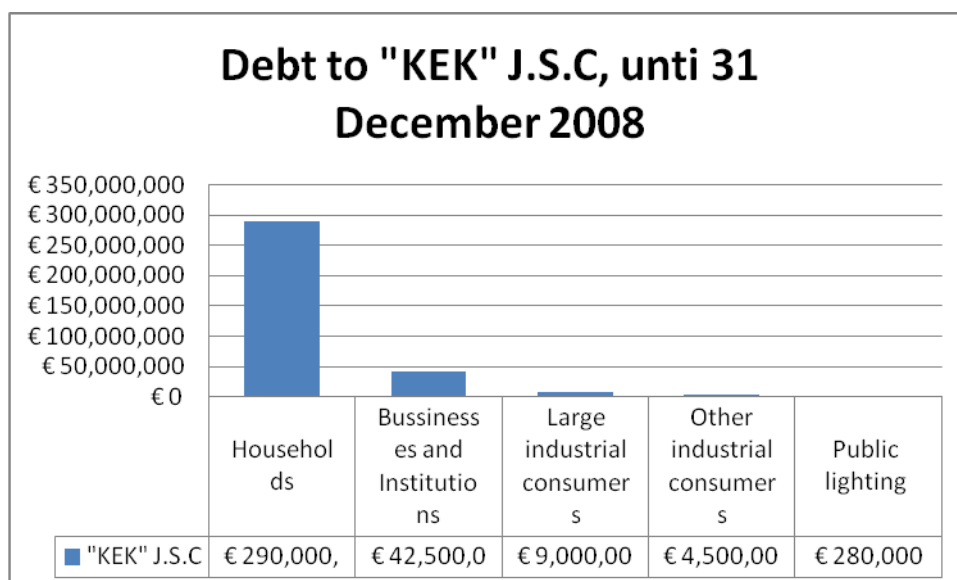
The below figures present the data on structure of PE's debts until 2008, expressed in percentages and monetary value.

KEK has the biggest amount of debts toward the company with the value of 46.3 million euro. At the same time, the amount of KEK's forgiven debt constitutes 52% of forgiven debts or 74% of total PE's debt. The biggest KEK debtors are households with nearly 84% of the total debt, followed by businesses and institutions (12%), big industrial consumers (3%), other consumers (1%), and public lighting (0.08%).

Based on the responses from KEK officials, out of 346 million euro debts until 31 December 2008, claims were filed only for 60 million euro.¹¹¹² According to KEK, a problem with regard to the law on debt forgiveness is the lack of accuracy as to who exactly carried the costs of legal obligations for debts which the institutions have sued natural or legal persons.

Figure 1. Debt structure to KEK until 31 December 2008

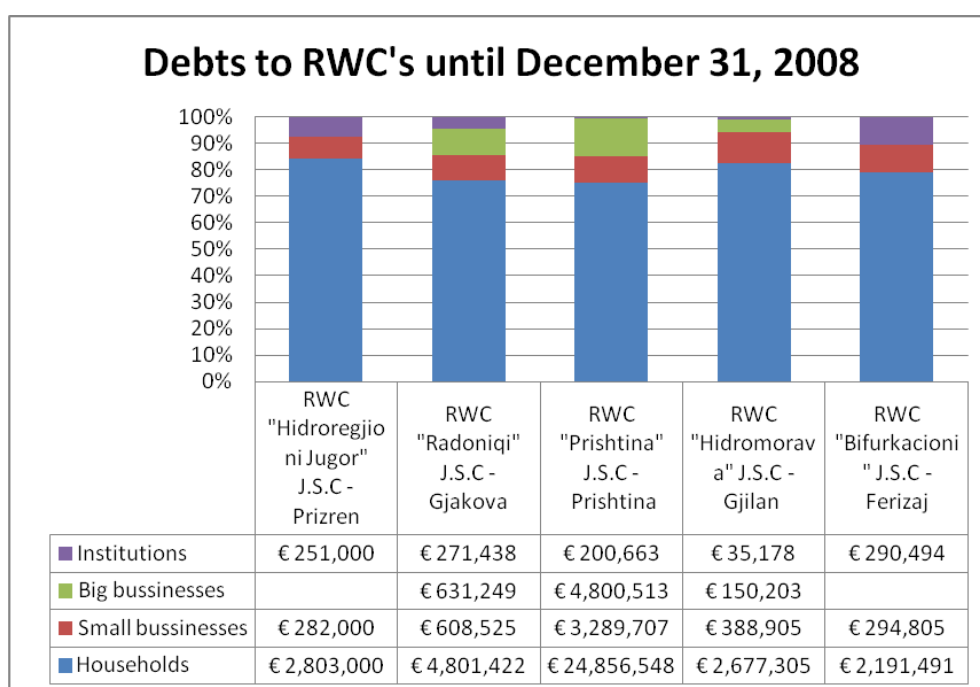
¹¹ Interview with Edmond Nulleshin, Director of Services in KEK, 22 July 2015



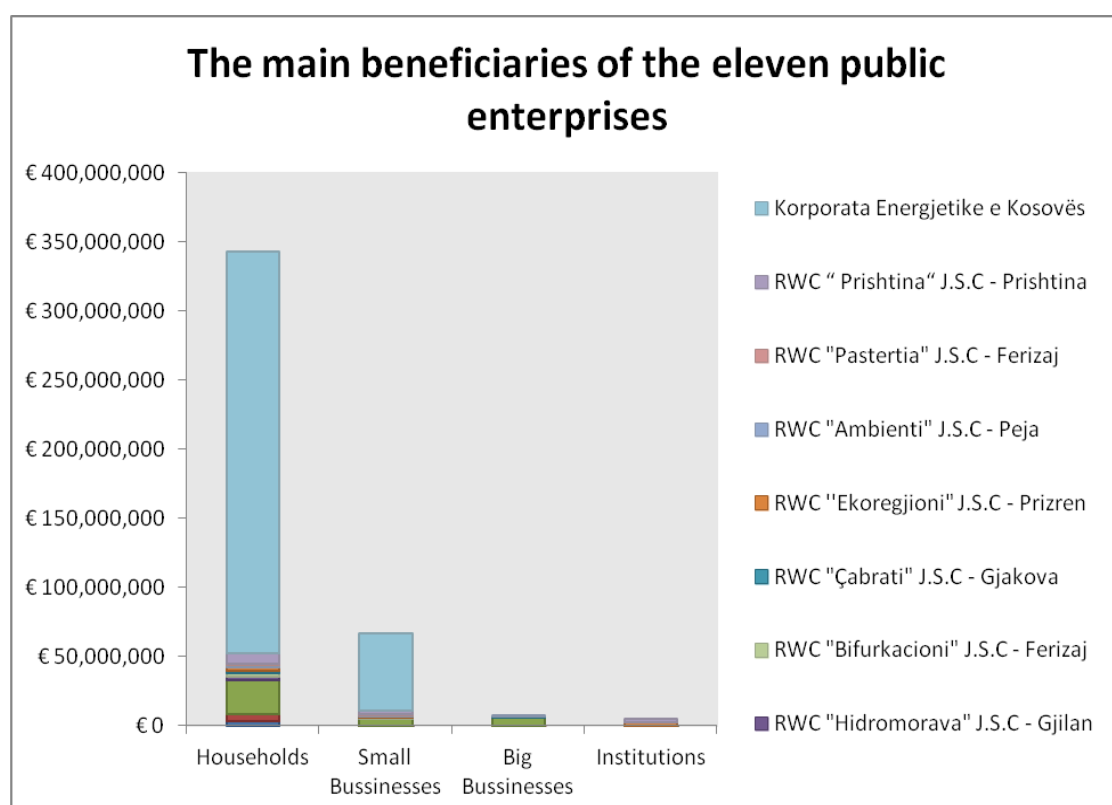
According to responses of five out of seven regional water companies, it appears that the debt to them is 48 million euro. Among them, the company with biggest outstanding debt is RWSC Prishtina with around 3 million euro. From the figure below we can notice that each company has the biggest debt from households 76%, big businesses with 11% (exception is Ferizaj and Prizren where the small businesses dominate with 10%) and public institutions are the last category of debtors with 2%.¹²¹³

¹² In cases when the public enterprises have sent data on small and big businesses together, in tables (charts) they are presented as debts of small businesses.

Figure 2. Debt Structure to RWCs

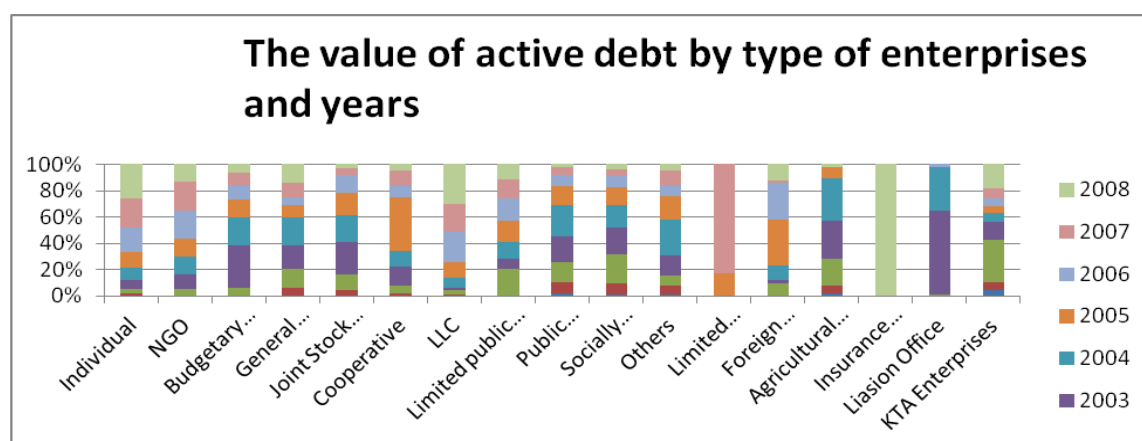


Based on responses of five out of seven Regional Waste Companies (RWC), the total amount of their debt is around 23.4 million euro. The company with the highest level of debt is RWC "Prishtina", because of the number of consumers. If you look at it in percentages, the biggest debtors are households with 63%, then small businesses with 22%, public institutions with 15% and big businesses with only 1%.

Figure 4. PE debts according to category of consumers

3.2. Debts toward TAK

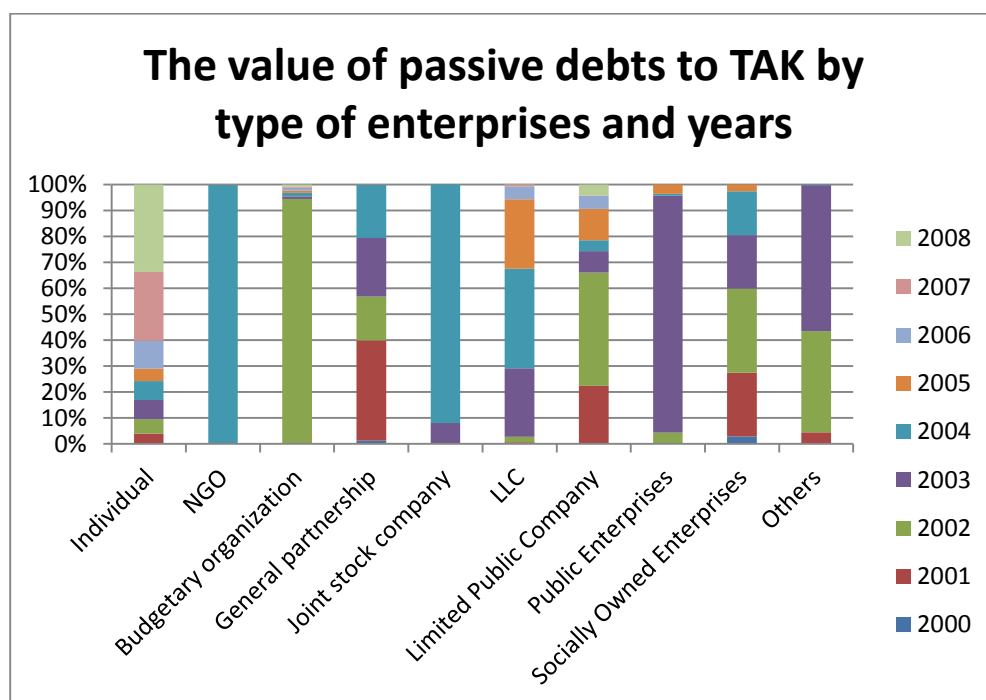
Taking into account active and passive businesses, the total debt amount towards TAK until the end of 2008 is 168.6 million euro. The majority of this debt or 88% is from active businesses. Figure 5 presents the values of passive and active debt in percentage toward TAK, as per the type of enterprises and years

Figure 5. Debt of active businesses toward TAK

Year 2004 has the highest value of outstanding obligations toward TAK reaching the value of 22.4 million euro (15%) out of total of 148 million euro. Regarding the type of enterprises, the highest active debt belongs to individual businesses with 32.3% and social enterprises with 19.6%.

Passive debts reached the highest level in 2006 with the amount of 6.7 million euro (32.6%) out of total 20.7 Million Euro. Type of enterprise with the highest passive debts are trade associations with 41.7% and individual businesses with 27%. It is worth mentioning that GAP Institute has requested from TAK that they categorize the data based on the size of businesses, however such data were not provided by this Institution.

Figure 6. Passive debts toward TAK



4. Conclusions

Debt forgiveness is an appropriate initiative of the Government of Kosovo. However, since the beginning of this process, from February 2015, six months have passed and the Government still didn't come up with detailed data as how much will be the real value of the debt. Based on the Law on Debt Forgiveness, which is expected to enter into force in the beginning of August 2015, state institutions have a month time to present the exact figures of debt to be forgiven.

GAP Institute considered that such data should have been available to public and members of the Parliament since the beginning of the discussions on draft law.

Through this report, by publishing data on real debt which will be forgiven, GAP Institute made efforts to cover such gap of information,.

After many requests addressed to public enterprises, municipalities, Customs, TAK, we managed to decode the nature of debt and the main beneficiaries.

The main finding presented in this report is that based on the Law on Obligational Relationships, the majority of debt to be forgiven is in fact outdated debt or statute-barred. This results from the fact that public institutions have not followed legal procedures to sue the debtors.

As a result, debt forgiveness firstly is an administrative relief to the institutions itself. Secondly, only a small percentage of assumed debt can be collected (cashed) debt through legal procedures.

In order not to statute-barring the debt toward public institutions, legal offices of these institutions should regularly file claims against debtors. Therefore, once the accumulated debts are forgiven until 31 December 2008, the Government should initiate a process of strengthening and increasing professional capacities of legal offices of such institutions.



Institute for Advanced Studies GAP is a local think-tank founded in October 2007 in Kosovo. GAP's main purpose is to attract professionals by creating a professional research and development environment commonly found in similar institutions in Western countries. This will include providing Kosovars with an opportunity to research, develop, and implement projects that would strengthen Kosovo society. A priority of the Institute is to mobilize challenges. GAP's main objectives are to bridge the gap between government and people, and to bridge the gap between problems and solutions.

Institute for Advanced Studies GAP is supported by:



This project is supported by:



