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Going 50/50:

Implementing the gender quota on public company boards



June 2021

KOSOVO 2.0

INSTITUTI GAP
GAP INSTITUTE 

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Abbreviations

JA	Justice Academy
ACA	Anti-Corruption Agency
KPCVA	Kosovo Property Comparison and Verification Agency
KMCMA	Kosovo Agency for Management of Memorial Complexes
FLAA	Free Legal Aid Agency
RAEPC	Regulatory Authority of Electronic and Postal Communications
RRA	Railway Regulatory Authority
WRA	Water Services Regulatory Authority
SAPPD	State Agency for the Protection of Personal Data
CBK	Central Bank of Kosovo
CEC	Central Election Commission
KJC	Kosovo Judicial Council
KOSTT	Transmission System Operator
IMC	Independent Media Commission
ICMM	Independent Commission for Mines and Minerals
PPRC	Public Procurement Regulatory Commission
RWC Ambienti	Regional Waste Company Ambienti JSC. Pejë
RWC Bifurkacioni	Regional Water and Sewage Company Bifurkacioni JSC. Ferizaj
RWC Gjakova	Regional Water Company Gjakova JSC. Gjakovë
RWC Hydro Pejë	Regional Water Company Hidrodrini JSC, Pejë
RWC Hydro Prizren	Regional Water Company Hidroregjioni Jugor JSC. Prizren
PHE	Public Housing Enterprise
Gjakova District Heating	City Heating JSC Gjakovë
PRB	Procurement Review Body
PK	Post of Kosovo
TRUST	Pension Savings Fund
UT	Urban Traffic
ERO	Energy Regulatory Office
KRI	Kosovo Railways Infrastructure

Introduction

At the 9th meeting held on 26 April 2021, the Government of Kosovo revoked the decision of the previous government on the appointment of the members of the Board of the Regulatory Authority of Electronic and Postal Communications (RAEPC)¹. The Government justified its decision by saying that the previous proposal of Hoti's Government was in violation of the 50% gender quota provided by the Law on Gender Equality.

The Law on Gender Equality, which has been in force since 2015, requires equal gender representation in all legislative, executive and judicial bodies and other institutions. However, the public institutions have ignored the legal obligation of equal representation thus far, interpreting the provisions of the Law on Gender Equality as non-binding. There is even a court decision on this. In 2019, the Ombudsman Institution filed a claim against the Central Election Commission (CEC), since the CEC had not complied with the Law on Gender Equality while certifying the lists of political party candidates for MPs.² However, the Ombudsman's claim was rejected by the Basic Court in Pristina, on the grounds that the claimant had not offered any evidence on who had been discriminated against and had not been included in the voters' lists.³

Notwithstanding that, the Government decision on the RAEPC board sets out a precedent on how the current government can continue to operate during its mandate, in regard to the appointment of board members. Taking into account that the boards of public institutions in Kosovo are over-represented by men,⁴ we can expect that such restructuring will take place in other boards as well, during the mandate of this government.

In this analysis, GAP Institute will provide an overview of the legal basis for equal gender representation in public boards and present a sample relating to the current composition of the boards of independent agencies and publicly owned enterprises. Taking into account the positions that will become vacant in the years to come and government's precedent in equal gender representation, GAP Institute will present the potential number of seats reserved for women in the boards of public institutions, during the mandate of the present government.

Legal obligation for equal gender representation

There are various laws and regulations in Kosovo that formally protect and promote equal treatment of women and men in politics, education, health, economy, and especially employment, in both private and public sectors. In order to prevent gender discrimination in these areas, the Law on Gender Equality mandates the analysis of the status of women and men and the promotion of plans and policies aimed at their equal representation.⁵ When it comes to the inclusion of women and men in the public sphere, and in public institutions in particular, according to Article 6, Paragraph 8 of the Law, "Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies."⁶

1 Decision of the Government of the Republic of Kosovo. Source: <https://bit.ly/3zivTdd>

2 Ombudsman's Institution. Statement of the Ombudsman on equal gender representation in 2019 Early Parliamentary Elections. 7 September 2019. Source: <https://bit.ly/3gyitCr>

3 Decision C.no.3258/19, 1 October 2019. Source: <https://bit.ly/3q434Nb>

4 GAP Institute - Public Enterprises Legislation and Cooperation with Official Institutions.

Source: <https://bit.ly/3v4zsQC>. See also: Balkans Group - Women in Politics III - Gender Representation at Local Level. Source: <https://bit.ly/3gl5C5d>

5 Law on Gender Equality. Source: <https://bit.ly/3pCV9WX>

6 Ibid., Article 16

However, despite legal obligations, public institutions in Kosovo, such as independent agencies and publicly owned enterprises (POEs) are overrepresented by men in both executive (membership in boards or leadership of those institutions) and managerial positions. An earlier study conducted by the GAP Institute, found that women were under-represented in public institutions in Kosovo, and institutions were managed predominantly by men. According to the study data, women make up only around 15% of board members in public institutions, while only 10% of boards are chaired by women.⁷ Moreover, the same nature of distribution of men and women in public institutions prevails at present.

The appointment of board members of these public institutions is regulated by specific laws. The Law on Publicly Owned Enterprises regulates the issue of ownership and corporate governance of central and local publicly owned enterprises. Local POEs are owned by the municipality or municipalities as shareholders. On the other hand, central enterprises are owned by the Republic of Kosovo, where the government enjoys exclusive rights, in terms of the management and exercise of shareholder's rights. As regards corporate governance, shareholders are entitled to appoint the members of the boards of directors of the POEs.

Boards of directors in central publicly owned enterprises are composed of 5 to 7 members, and boards of local POEs are composed of 5 members. These boards, among other things, exercise the right to continuously oversee the work of the POE officials and approve their business plans, which set out their goals for a single financial year. Consequently, the members of the boards of publicly owned enterprises have a very high decision-making power.

In May 2015, following the amendment of the Law on Publicly Owned Enterprises, an important paragraph on the composition of the boards of directors of POEs was added to the previous version. Article 6 obliged the shareholders of publicly owned enterprises to appoint the members of the boards of POEs in accordance with the Law on Gender Equality.⁸ This paragraph clarified that the gender quota was met, when 50% representation of each gender was achieved. The purpose of the amendment was to increase representation and promote gender equality in decision-making in publicly owned enterprises.

Dominance of men in publicly owned enterprises and independent agencies

The current composition of the boards of publicly owned enterprises and independent agencies is dominated by men. Women are under-represented in almost every leadership position. Table 1 presents gender representation in the boards of the majority of publicly owned enterprises and independent agencies.

In average, 28 percent of board members in independent agencies and respectively 27 percent in publicly owned enterprises are women. 6 of 12 agencies listed below have no women on their boards. This gender gap is also present in central and local POEs, where five out of 14 enterprises have only men on their boards.

The difference is even more profound, when it comes to the position of the Chief Executive Officer (CEO), where only 2 out of 32 public institutions are led by women. On the other hand, women are better represented in terms of other managerial positions, compared to the boards of directors, however they are still far from equal representation, stipulated by the Law on Gender Equality.

⁷ GAP Institute. Publicly Owned Enterprises - Legislation and Cooperation with Official Institutions. Source: <https://bit.ly/3v4zsQC>

⁸ Law No. 05/L-009 on Amending and Supplementing Law No. 03/L-087 on Publicly Owned Enterprises, as amended and supplemented by Law No. 04/L-111. Source: <https://bit.ly/2TAzIde>

Table 1. Gender representation on leadership positions of publicly owned enterprises and independent agencies

Institution	Board of Directors			Managerial position			
	Women	Men	Representation of women %	CEO	Women	Men	Representation of women %
1. Independent agencies	16	42	28%	B	59	131	31%
1.1 JA	3	6	33%	B	3	2	60%
1.2 KPCVA	3	-	100%	B	6	11	35%
1.3 RAEPC	2	3	40%	B	1	6	14%
1.4 RRA	0	4	0%	B	2	5	29%
1.5 KOSTT	2	4	33%	B	3	13	19%
1.6 IMC	2	4	33%	B	4	5	44%
1.7 ICMM	0	5	0%	B	1	9	10%
1.8 TRUST	0	6	0%	B	0	6	0%
1.9 ERO	0	2	0%	B	1	5	17%
1.10 PRB	-	-	-	-	2	3	40%
1.11 KMCMA	-	-	-	-	3	4	43%
1.12 ACA	-	-	-	-	7	9	44%
1.13 KJC	-	-	-	-	4	8	33%
1.14 WRA	-	-	-	B	1	4	20%
1.15 CBK	0	2	0%	B	19	34	36%
1.16 PPRC	0	3	0%	-	-	-	-
1.17 SAPPD	-	-	-	B	1	5	17%
1.18 FLAA	4	3	57%	G	1	2	33%
2. Publicly owned enterprise	16	44	27%	-	28	42	40%
2.1 IHK "INFRAKOS"	2	2	50%	B	-	-	-
2.2 KEK	2	2	50%	-	-	-	-
2.3 RWC "Ambienti"	0	4	0%	B	1	2	33%
2.4 RWC Bifurkacioni	2	2	50%	B	2	7	22%
2.5 RWC Gjakova	0	4	0%	G	10	10	50%
2.6 RWC Hidro. Peje	0	6	0%	B	2	1	67%
2.7 RWC Hidro. Prizren	1	3	25%	B	1	6	14%
2.8 RWC Hidro. Gjilan	2	4	33%	B	2	2	50%
2.9 Gjakova District Heating Company	0	4	0%	B	3	0	100%
2.10 KP	2	2	50%	B	-	-	-
2.11 "Trepça" JSC	0	5	0%	B	-	-	-
2.12 UT	1	2	33%	B	1	2	33%
2.13 RWC "Çabрати"	2	2	50%	B	2	7	22%
2.14 PHE	2	2	50%	B	4	5	44%
Total	32	86	27%	8%	87	173	33%

Source: GAP Institute⁹⁹ The GAP Institute, based on the responses given by the institutions, upon the request dated 21 May 2021. The

Equal representation is not only a legal obligation and a right on its own, but has also proven to improve decision-making. Many studies assess that women are in general more educated, accountable, and less corrupt than men.¹⁰ Organization for Economic Co-operation and Development (OECD) maintains that promoting gender equality in enterprise boards improves decision-making.¹¹ According to the OECD, states should aim to set gender quotas and targets to achieve more equitable gender representation at board levels and in decision-making in general.¹²

However, with the current composition of enterprises, it will take some time to achieve a more balanced gender representation. According to the Law on Publicly Owned Enterprises, selected board members serve a three years mandate. However, shareholder (s), such as the government or municipality (s) reserve the right to dismiss and replace board members in the event of breaches of law. In addition, after the expiry of the mandate of the selected members, the government and municipalities may restructure the boards and independent agencies in order to achieve equal gender representation therein, in accordance with the Law on Gender Equality. Chart 1 presents the number of the members of the boards of POEs and independent agencies in the months when their mandate is expected to expire. Consequently, 40 board members may be replaced by the end of 2021, and if the Law on POEs and the Law on Gender Equality are complied with, it is possible to improve the current gender balance in public boards.

data on the composition of boards and leadership positions in publicly owned enterprises and independent agencies were received electronically, from 18 independent agencies and 14 publicly owned enterprises.

10 Gender Equality in Decision-Making Positions: The Efficiency Gains. Author: Paola Profeta.

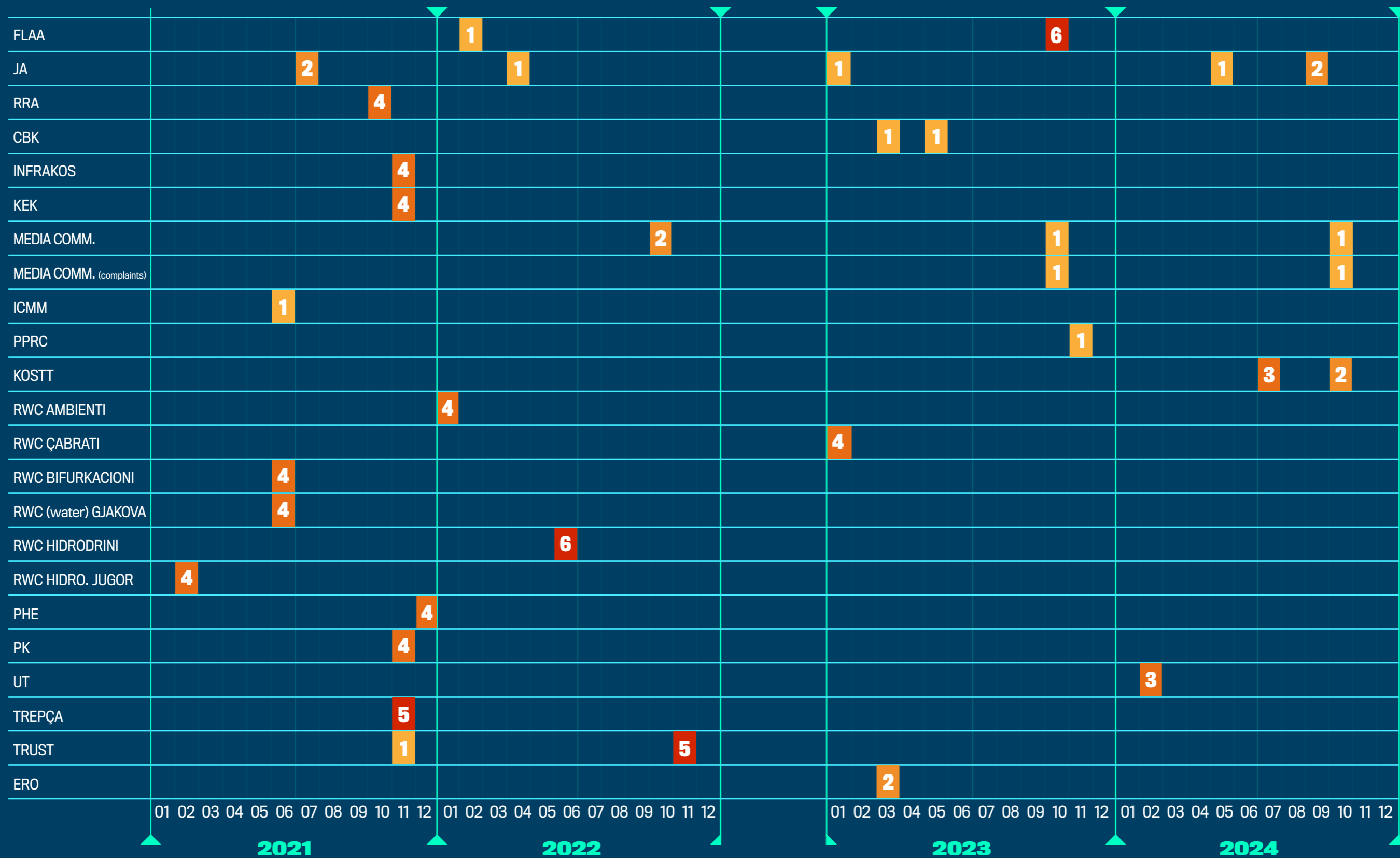
Source: <https://bit.ly/3g8kovP>

11 Principles of Corporate Governance. Organization for Economic Cooperation and Development.

Source: <https://bit.ly/3chosyh>

12 Ibid.

Chart 1. The number of board members in publicly owned enterprises and independent agencies, according to the date of expiration of their mandates



Source: GAP Institute¹³
¹³ GAP Institute, based on the replies provided by the institutions, upon the request dated 21 May 2021. The data on the composition of boards and leadership positions in publicly owned enterprises and independent agencies were received electronically, from 20 independent agencies and 13 publicly owned enterprises.

Conclusions

A decision on the appointment of new board members was revoked for the first time ever on grounds of failure to abide by the Law on Gender Equality at the 9th meeting of the Government of Kosovo. However, the fact that the Law on Publicly Owned Enterprises provides for an odd number of board members in a publicly owned enterprise paired with the duty to ensure equal (50%) gender representation, renders the achievement of these two goals mathematically impossible. Yet, the 50 percent gender representation may be achieved in average, in compositions of all publicly owned enterprises, by appointing one more man and in some others one more woman, in some companies or institutions. Thus, this would provide for equal gender representation even with an odd number of leadership positions.

There is currently a deep gender representation gap in the boards and managerial positions of publicly owned enterprises and independent agencies. In average, 27% of the boards of most publicly owned enterprises and respectively 28% of independent agencies are made of women. Women are not represented at all in 5 out of 14 publicly owned enterprises. Only 33% of managerial positions in POEs and independent agencies are held by women, and there are only two women COEs out of 32 analysed institutions.

The current Law on Publicly Owned Enterprises provides a 3-year mandate for selected board members. However, legal violations enable the government and municipalities to dismiss the boards and restructure them in compliance with the Law on Gender Equality. Moreover, more than 50 mandates of the boards of POEs and independent agencies are set to expire by the end of 2021. This allows the government and municipalities to improve and enhance equal gender representation in decision-making. Equal representation is a legal right and, according to the OECD, it improves the performance of an enterprise. Therefore, the decision of the government to revoke the proposal of the previous government on the appointment of the members of the Board of the Regulatory Authority for Electronic and Postal Communications should set a new rule of complying with the Law on Gender Equality.

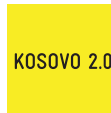
Moreover, given that institutions do not publish accurate data on the gender composition in the boards and the government, the POE Policy and Monitoring Unit (POEPMU) should publish accurate data on the composition of publicly owned enterprises and managerial positions by gender, and review whether legal acts have been adhered to, in the appointment of POE board members.



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