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INSTITUTE FOR ADVANCED STUDIES



# Management of Publicly Owned Enterprises



## ACRONYMS

<b>CEO</b>	Chief Executive Officer
<b>KEC</b>	Kosovo Energy Corporation
<b>KLMC</b>	Kosova Landfill Management Company
<b>RWMC</b>	Regional Waste-Management Company
<b>RWC</b>	Regional Water Company
<b>IC</b>	Irrigation Company
<b>MED</b>	Ministry of Economic Development
<b>POE</b>	Publicly Owned Enterprise
<b>PMUPE</b>	Policy and Monitoring Unit of Public Enterprises
<b>PK</b>	Kosovo Post
<b>PTK</b>	Post and Telecom of Kosovo
<b>OPM</b>	Office of Prime Minister
<b>WWRO</b>	Water and Waste Regulatory Office

Since the board is my employer,  
I have no power to resist the  
pressure from their side for  
politically based employments.



## Executive summary

The practice of corporate governance in Publicly Owned Enterprises (POEs) in Kosovo **so far showed that the independence of POEs boards in relation with the state as the owner of POEs has been violated**, despite the fact that their independence is envisaged by the corporate governance principles of the Organization for Economic Cooperation and Development (OECD), upon which the applicable law has been developed.

Non-compliance with the principles of corporate governance in the election of boards has resulted in violation of the enterprises' independence and negatively impacted their efficiency. The chain of the political influence goes through the shareholder down to the boards and then to the Chief Executive Officer (CEO) of the POE. A CEO expressly stated during an interview *"since the board is my employer, I have no power to resist the pressure from their side for politically based employments"*. Based on interviews with POEs, **at least six of the CEOs** of the POEs being interviewed stated that they **are members of a political party**.

According to officials of public enterprises, most of these enterprises are **overstaffed** and **political influence** is one of the main factors that influenced the growth of staff. In addition to staff overload, many enterprises face **problems in recruiting and motivating staff** either due to low salaries or lack of professional cadre.

In order to minimize the impact of the politics on boards and increase the quality of members of the boards of directors of POEs, GAP recommends to:

- Publish the online assessment methodology and biographies of candidates for director of boards
- The Law on POEs to allow inclusion of specialised recruiting agencies in the recruitment process
- Diversify voices in decision-making boards, allowing the election of one or more employees on board as an independent member of the board
- Empower the competences and changing the way of appointing the CEO.

Along with the decline of political influence, it is necessary to develop **plans to gradually reduce the number of staff**, and these plans should envision measures for workers' compensation either through payment, retraining or assignment to another public institution.

In order to increase the monitoring quality and transparency of POEs, GAP recommends increasing human resources within the Policy and Monitoring Unit of Public Enterprises (PMUPE) for this unit to be able to monitor and publish documents and analyses on the performance of local public enterprises.

Public enterprises within a short period of time should create their own websites and publish the necessary documents such as annual report, financial report, and audit report.

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# 1. Introduction

The corporate governance of publicly owned enterprises in Kosovo is regulated by the Law on Publicly Owned Enterprises.<sup>1</sup> According to the law, **POEs are Joint Stock Companies and operate in accordance with the Law on Business Organization.**<sup>2</sup>

On the basis of ownership, POEs are organized at central and local government, where the former are owned by the Government of Kosovo, while the latter are owned by one or more municipalities.<sup>3</sup> The government and municipalities exercise their rights as shareholders in a POE, through the election of the board of directors. In some countries,<sup>4</sup> based on their function, the boards are divided into two levels (two-tier): “supervisory boards» consisting entirely of non-executive members, and “managerial boards» consisting of members who have executive powers. In Kosovo, boards have only one level of mixed competencies.

According to the OECD, an organization that significantly influenced the philosophy of corporate governance, corporate governance principles are evolving and that there is not any “ideal” model for corporate governance.<sup>5</sup>

The purpose of this paper is based on the delays and problems in implementing the principles of corporate governance of POEs in Kosovo, to offer alternatives in order to improve their performance based on best practices from the documents of the OECD. Specifically, this study addresses the issue of electing the boards and their powers, problems with the monitoring of enterprises, competences and the method of selecting the Chief Executive Officer, as well as the issues related to the management of human resources in public enterprises.

Findings of GAP Institute show that political influence in the election of boards and POE officials violated the basic principle of corporate governance, which is the independence of POEs. This influence transformed these enterprises into institutions of “comfort” for the bureaucrats and political partisans and not into enterprises that compete for cost efficiency and improved public services. Internal problems have been identified regarding the recruitment and motivation of staff in public enterprise, whether due to the low salaries or lack of cadres. Finally, very bad situation with regard to transparency to the public and stakeholders is found especially in local public enterprises.

1 Law nr.03/L-087 on publicly-owned companies, Source: <http://bit.ly/VEld4r>, and Law no. 04/L-111 on amendment of Law no. 03/L-111 on publicly-owned companies, Source: <http://bit.ly/1zhhaHM>

2 Law nr. 02/L-123 on Business Organizations. Source: <http://bit.ly/1pK6Nf3>.

3 Local enterprise is that enterprise that offers service in at least three municipalities or it is a waste collection company.

4 Czech Republic, Germany, Poland.

5 OECD, Principles of Corporate Governance, Source: <http://bit.ly/1jY1bHJ>.

## 2. Methodology

This analysis uses primary and secondary sources of data as a basis to identify problems of public enterprises.

Given that public companies are directly involved in the management of enterprises and cope with the daily problems of enterprises operation, the primary data to identify the main problems were collected by conducting interviews and developing a questionnaire with public enterprises.

In addition to open questions, the questionnaire includes statements which then officials may have chosen the degree one to five if they agree or disagree with the statements.

A total of 22 enterprises were interviewed and the sample is divided evenly between POEs in central and local ownership.<sup>6</sup> The questions included in the questionnaire dealt with topics on the quality of legislation and rule of law, POEs' cooperation with other institutions, etc.

Secondary sources used in this paper include Law no.03/L-87 on POEs, POEs' annual reports, PMUPE's annual reports, regulatory offices reports, reports of other non-governmental organizations, and documents of the Organization for Economic Cooperation and Development (OECD) and other international institutions about corporate governance practices.

<sup>6</sup> Annex 1

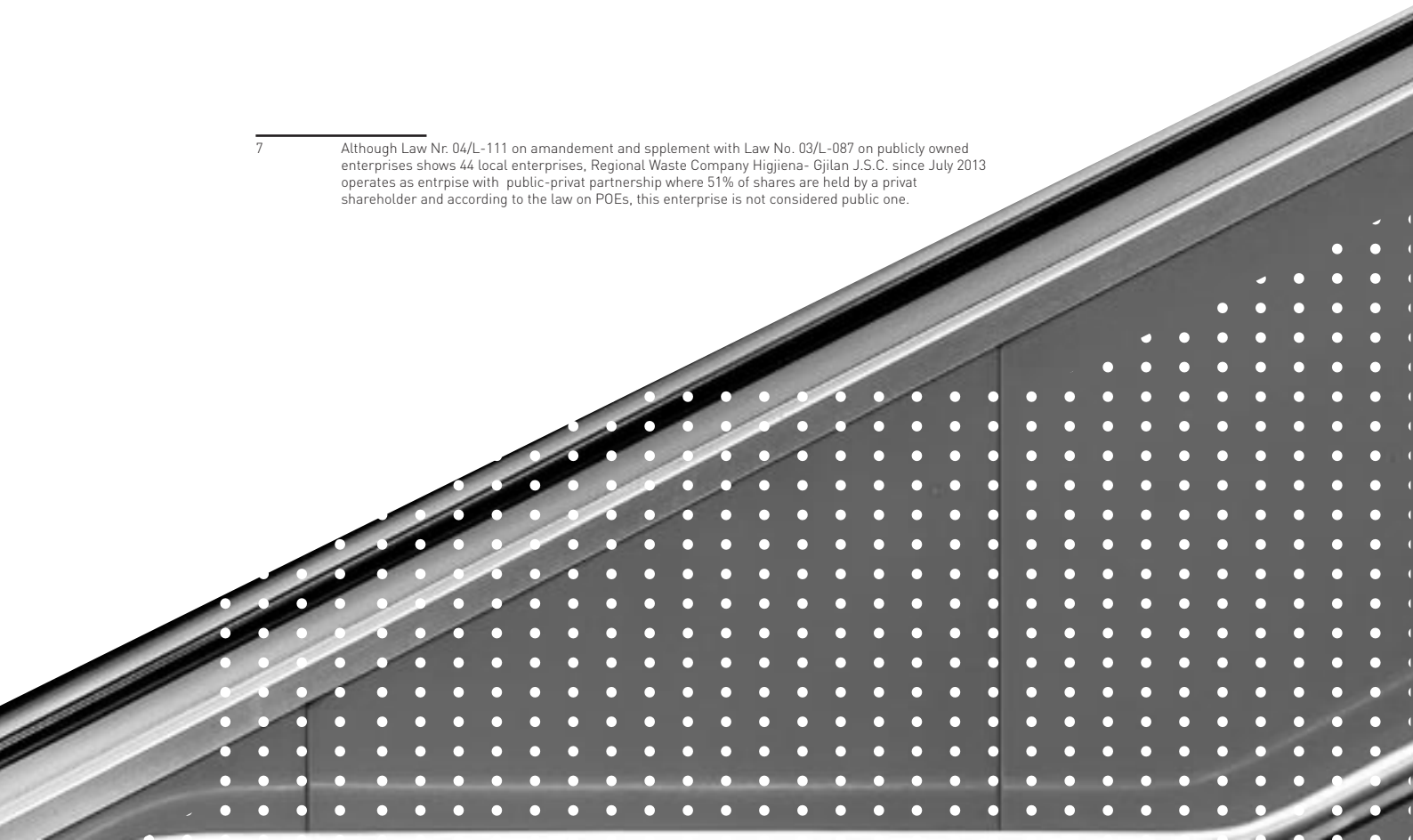
### 3. Organization and the Chain of Management in Publicly Owned Enterprises of Kosovo

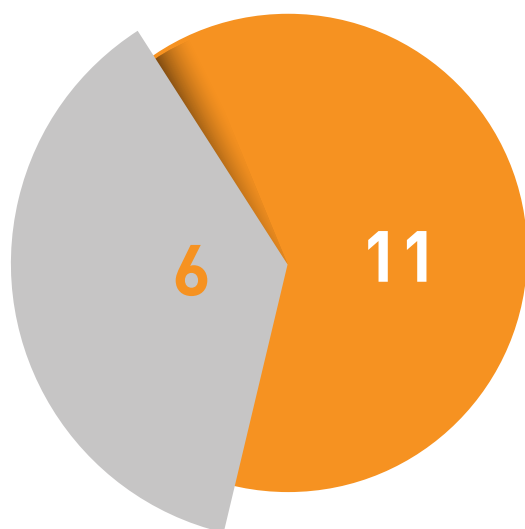
In Kosovo, there are 17 central POEs and 43 local POEs. Six of central POEs are regional enterprises in the field of water and sewage. Other central enterprises operate in the fields of energy, telecom, post, rail, waste collection and water supply.

Out of total 43 local enterprises, 23 are bus stations,<sup>7</sup> eight enterprises operate in the field of waste collection, three enterprises are water supply and waste collection companies (one of them only water supply), two district heating, three enterprises are companies for Housing and an enterprise in each of this fields: greenery, market, recreation and urban traffic.

7

Although Law Nr. 04/L-111 on amendment and supplement with Law No. 03/L-087 on publicly owned enterprises shows 44 local enterprises, Regional Waste Company Higijena- Gjilan J.S.C. since July 2013 operates as enterprise with public-private partnership where 51% of shares are held by a private shareholder and according to the law on POEs, this enterprise is not considered public one.





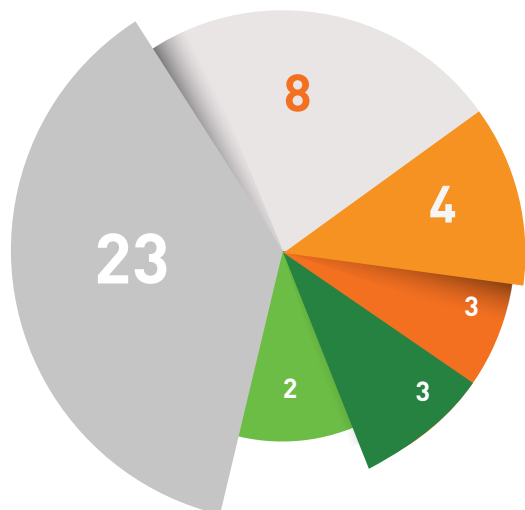
## 17 central POEs

**11**

operate in the fields of energy, telecom, post, rail, waste collection and water supply.

**6**

are regional enterprises in the field of water and sewage.



## 43 local POEs

**23**

are bus stations.

**8**

enterprises operate in the field of waste collection.

**4**

enterprise operate in fields such as: greenery, market, recreation and urban traffic.

**3**

enterprises are water supply and waste collection companies (one of them only water supply).

**3**

enterprises are Housing companies.

**2**

district heating enterprises.

POEs in Kosovo operate under the principles of corporate governance for public companies of the Organization for Economic Cooperation and Development (OECD). These principles are not binding, but they serve as a sound basis for the implementation of best practices from various countries' experiences regarding management issues related to POEs. Briefly, these principles are divided into six groups and include<sup>8</sup>:

**1. Provision of an effective legal and regulatory framework** - that requires separation of the function of the state as owner and other functions of the state, especially those in terms of regulating the market. Additionally, it is noted that the relationship between POEs and state financial and non-financial institutions should be based on commercial grounds.

**2. The state as an owner** - should ensure that POEs; a) are governed accountably and transparently; b) ensure the independence of the board in order to achieve certain objectives; and c) the unit or body which coordinates the management of POEs (regulatory office) should respond to the representative body – Parliament.

**3. Equal treatment of shareholders** - requires that all shareholders of the enterprise are treated equally and have equal access to enterprise information.

**4. Relations with interest groups (stakeholders)** - Legislation should recognize the responsibilities of POEs against stakeholders and boards must also ensure the implementation of internal code of ethics.

**5. Transparency and openness** - POE should be audited by internal and external auditors. Also, POEs should make financial and non-financial information transparent to the shareholder and the public.

**6. Responsibilities of boards** - Boards must have the necessary authority, competences and objectivity to function in the strategic direction and monitoring of management.



### 3.1 Chain of Management of POEs

At the municipal level, the right of shareholder of the POE is exercised by Municipal Shareholder Commission, which consists of: **a) a member appointed by the Mayor; and b) two other members appointed by the Municipal Assembly.** The Commission selects the boards of local POEs and reports to the Municipal Assembly annually on the performance of local POEs. In cases, where one or more of a municipality has shares in a local enterprise, each Municipal Shareholder Committee has the right to elect one director. The representation of each municipality in the board of directors is regulated with an administrative guidance issued by the Government of Kosovo.<sup>9</sup>

At the central level, the exclusive right to exercise shareholder rights in a central POE belongs to the Government of Kosovo. On matters related to public enterprises the Government decides with a simple majority of votes, while decisions are implemented by the Ministry of Economic Development. In addition to implementation decisions, Article 8.1 of the Law on POEs requires the Ministry of Economy and Development and PMUPE to be accountable for reporting to the Assembly on an annual basis on the performance of the central POEs.

Its rights as a shareholder in a POE, the Government exercises through the election of the Board of Directors. Boards of POEs in Kosovo consist of 5 or 7 persons and under Article 15.12 of the Law on POEs, no member of the board, except the Chief Executive Officer (CEO), has executive powers. At the same time, the law in accordance with the best practices suggested by the OECD stipulates that CEO cannot be the Chairman of the Board. Apart from the board self-assessment, board's performance of the central POE is evaluated by PMUPE. If POE fails to meet the targets set in the business plan for two consecutive years, the shareholder considers dismissal of the board of an enterprise.

With regard to the competences of the board over the COE, Article 18 of the Law stipulates that the board continually oversees the POE officials performance (including the CEO). According to Article 21.4, among other competences of the board of directors is also the appointment of officials of the POEs.<sup>10</sup>

Officials of the enterprise present the last part of the enterprise management chain. Officials are responsible for managing and achieving the targets set in the annual business plan by them and approved by the Board of Directors.

#### The business plan should include among others:

- business and financial goals aimed by the POE and the implementation schedule;
- chosen modes for achieving these goals;
- determining the expenses and mode of financing;
- actions to be taken to achieve the targets;
- POEs obligations towards customers etc.

#### CEO and other officials have the following competences/obligations:

- submission of quarterly and annual reports to the Board of Directors;
- testing of customer satisfaction;
- recruitment of staff;
- determining the level of salary for staff etc.

<sup>9</sup> Administrative Direction on representation of municipalities with the boards of directors of the public, Source: <http://bit.ly/10AlZ4v>.

<sup>10</sup> Pursuant to Article 21.3 of the Law on Public Enterprise the following are considered as officials:  
a) The Chief Executive Officer (CEO);  
b) Chief Financial Officer and Treasurer;  
c) the General Counsel/Corporate Secretary and  
d) the Internal Audit Officer.



## 4. Issues related to the Process of Electing Boards and their competences

### **Bearer of the process of election of members of the boards of directors of central POEs is General Secretary of the Office of the Prime Minister.**

General Secretary is responsible for the rules and methodology for the evaluation of candidates and appointing of a Recommendation Commission consisted of seven persons. Recommendation Commission structure may consist of:

- a) senior civil servants;
- b) external experts from relevant industries, finance and corporate governance; and
- c) a representative from a certain ministry.

**The chair of the commission is elected by the government.** This commission is responsible for identifying and interviewing candidates. After interviewing the candidates, the commission sends the government a written evaluation for at least five more candidates than the number of board members who are expected to be selected. In the end, board members are appointed by the government to run a three-year term with possibility of extension but no more than three mandates.

Under the Law on POE, a person in order to be eligible to be qualified as board members or officials of POE among others should not:

- a) have been an elected public official 36 months before applying;
- b) be a politically appointee; or
- c) have had a decision-making position in a political party.

Even though based on the OECD principles and applicable law, boards of POEs should be independent from the state as owner; so far practice has shown that this principle is broken during corporate governance in Kosovo.

In December 2008, the government as shareholder of POEs had taken a decision to appoint boards'

members in 15 central POEs.<sup>11</sup>

Although, based on law boards mandate lasts three years, after criticism from civil society, opposition and the International Civilian Office for political interference in the election process, the Government took the decision to change some board members from eight POEs who were elected just four months ago.<sup>12</sup> Despite the change of the decision by the government, a number of directors of POEs are recognized as political persons and that some of them clearly were in conflict with provisions which envision conflict of interest and professional criteria specified in the Law on POEs.<sup>13</sup>

**The impact of politics on the POEs boards was also mentioned in the Progress Report for 2009.**<sup>14</sup> According to this report political influence in the appointment of boards of POEs, has damaged the credibility of Kosovo's institutions in managing the appointment process in a fair and open process.

Kosovo government not only failed to take any further steps to address these criticisms, but at the end of the year 2011 it decided to extend mandate to all boards of the central POEs elected in 2009, without making an individual assessment.<sup>15</sup>

A research held a year after the decision, shows that representatives of parliament, media and civil society fully agree that the process of electing the board is non-transparent and that board members depend on political influence.<sup>16</sup>

11 Decisions from the 48th meeting of Government, 24 december 2008, Source: <http://bit.ly/1e7EZUK> (accessed on 22 Septmeber 2014)

12 Decisions from the 48th meeting of Government, 23 april 2009, Source: <http://bit.ly/1eV7ail>, (accessed on 22 September 2014)

13 Kosovar Institute for Research and Policy Development (KIPRED) - Public Managment : Analysis on the POEs Boards and Independent Agencies, Source: <http://bit.ly/1t1EuEY> (accessed on 11 August 2014)

14 European Commission Progress Report for Kosovo Progress 2009 Source: <http://bit.ly/1xp4H8K> , (accessed on 22 September 2014)

15 Decisions of the Government, no.27/53, 2009, Source: <http://bit.ly/1u2PGXx>, (accessed 22 September 2014)

16 Rinvest Institute, The Corporate Governance of the POEs in Kosovo, Source: <http://bit.ly/1yJliBE>

## 4.1 Representation of employees at POEs Boards

**Although one of the OECD principles clearly requires “ensuring of the transparency in the process of nomination and election of the board of directors”, the Law on POEs in Kosovo does not regulate at all the mentioned issue.**

In order to decrease the impact of the politics in the process of the election of boards, the law could be improved by taking examples from the best practices of transparency from other countries. According to the OECD, Netherlands and United States of America can serve as a good practice of opening the process of nominating candidates to the boards. In these two countries, the transparency of the nomination process boards is regulated by law. Among other things, the laws in these countries include disclosure of information related to: the names and experience of candidates, the name of recommenders, the relationship between the candidate and recommenders, the relationship between the candidate and the shareholder, the justification for the nomination etc.<sup>17</sup>

As a way to increase the quality and independence of the process, the Law on POE should allow the inclusion of recruitment agencies in identifying, evaluating and recruiting candidates based on clear and transparent methodology. Application of these practices may bring positive effects in increasing the quality of the nominees and reduce political influence, which as discussed below is one of the key factors with negative impact on the POEs performance.

Although the Law on POEs does not envision the participation of employees in the POE boards, based on the practices of other countries such as Germany, Netherlands, Sweden, etc., we have asked officials of POEs if such a model should be applied in Kosovo.

**Based on the principles of OECD, if a representative of employees was appointed to the board then the law should provide the following:**

- equal competences among board members;
- that the representative of employees in the board should respect the confidentiality of the information;
- should avoid the conflict of interest.

During the interviews with officials, most of them oppose the idea of inclusion of employees within boards, with specific justification that boards bring confidential decisions and employees cannot discuss on strategic matters of a given enterprise. Inclusion is considered to be problematic particularly in cases when board could take decision against the ‘interest’ of employees.

In the context of Kosovo, where boards are politicized, despite deficiencies that representation of employees in boards might bring, if principles of OECD are respected, the representation of an employee within the board may diversify voices on decision-taking of boards. To ensure the independence of employees’ representative with the board, the Law on POE could apply a German model where the employees’ representative is elected directly from the rest of company’s employees.<sup>18</sup> In addition to decreasing the influence of politics on boards, the representation of employees in the board may be used as a way of getting support by the employees in the process of restructuration or privatization of POEs.

<sup>17</sup> OECD, Board Member Nomination and Election, Source: <http://bit.ly/1uLA5cX>, [accessed on 18 September 2014]

<sup>18</sup> OECD, Board Member Nomination and Election, Source: <http://bit.ly/1uLA5cX>, [accessed on 18 September 2014]

## 4.2 Boards competences over POEs officials

As mentioned above, the board has a number of competences in relation to the POE officials. Starting with the recruitment process, determination of salary grades, termination of contracts. According to some CEOs, election of managerial officials by the board is seen as a deficiency in the work of POEs, as they do not have competencies over their team members recruitment, while the Law on POEs makes them responsible for achievement of goals set in annual business plan.<sup>19</sup>

**The most problematic issue regarding the competences of board related to the POEs is considered Article 21.1 which enables the board to terminate officials with majority of votes, with or without a reason stated (except the Internal Audit Officer).**

According to the officials, Article 21.1 makes the enterprise management dependable on the board and at the same time makes it difficult for the management to refuse the decisions of the board which may be in the conflict with the interest of company. In the context where public enterprises boards are too politicized, the specific case of damaging the interests of POEs, it is reported the impact of boards on POEs to increase the number of employees on POEs for political interests of the shareholder (government or municipalities).

Further empowerment of CEOs in POEs could cause diversification of voices in decision-making and as a result reduce political influence in enterprises. In addition, apart from empowerment of CEOs, independence of CEO from politics is crucial, because from some CEOs is specified that their political membership would cause problems in cooperation with institutions in the cases where the winning party belonged to another political camp. Based on the interviews with CEOs, at least six interviewed CEOs of POEs have stated to belong to one of the political parties. Besides political membership of CEO, it is interesting to point out that half of them before exercising this function have worked in the public administration, military positions or academy. According to OECD, for enterprise to be effective, it is required that board members and management should have experience from the private sector especially in those enterprise where there is a market competition.<sup>20</sup>

Pertinent to the share of competences between boards and officials, although around 80% of interviewed officials think that the competences between boards and officials are separate, in a case it is mentioned that board has taken executive decisions, despite the fact that this is clearly prohibited based on Article 15.12 of the Law on POE.<sup>21</sup>

<sup>20</sup> OECD, Guidelines on Corporate Governance of State-Owned Enterprises, Source: <http://bit.ly/1FSQVhn>

<sup>21</sup> Arben Xhuka- Chief Executive Officer- KEK 16 July 2014

## 5. The Staff of POE's

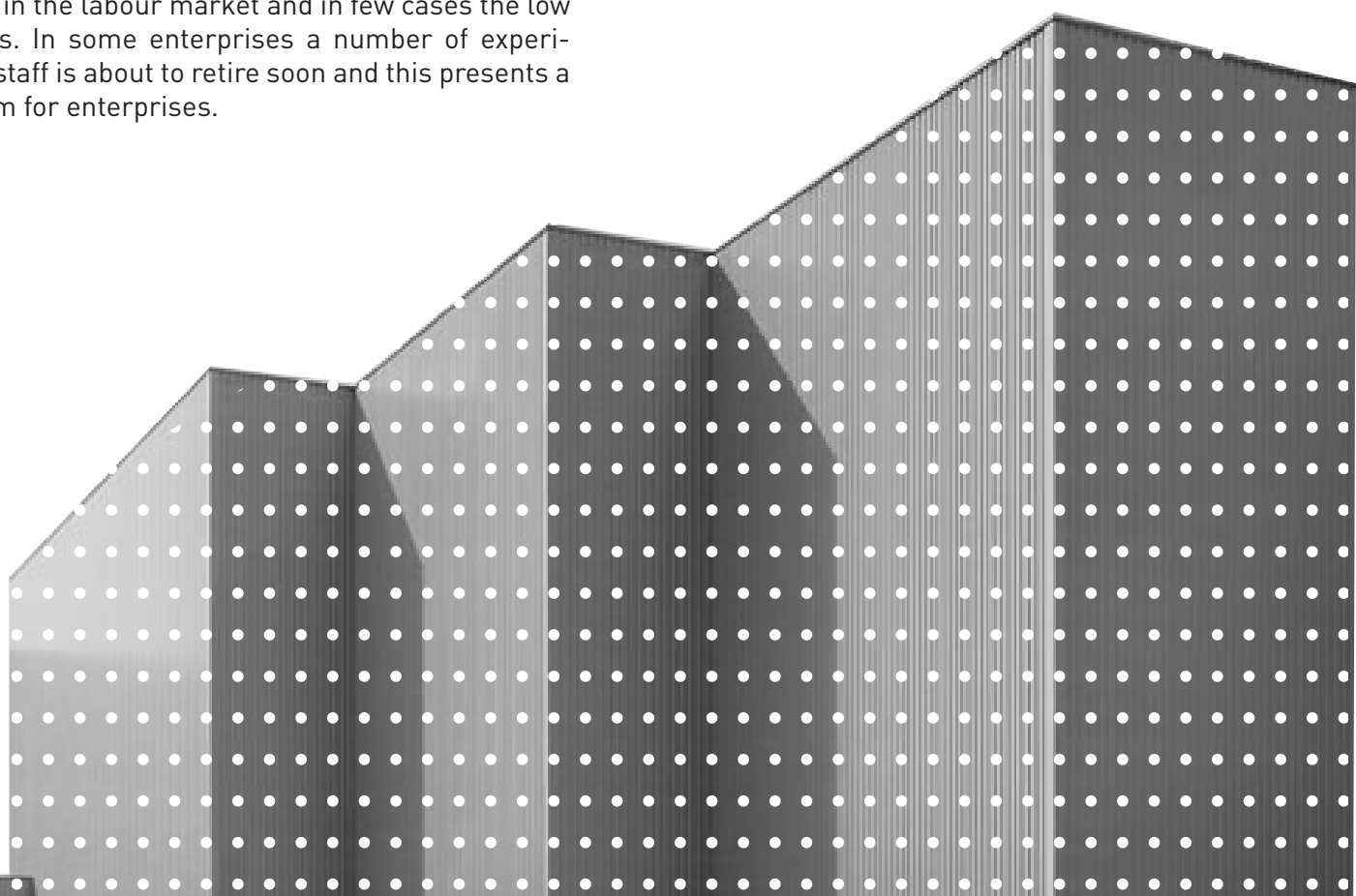
Status of the employees in POEs is regulated with the Law on Labor. Recruitment, salary grade, or approval of employees is under POEs officials' competences based on the internal regulation of respective enterprises. This chapter treats some matters dealing with recruitment and motivation of staff. Additionally, the chapter measures the perception of the officials in regard to the overstaffing in the enterprise.

Initially, around 70% of interviewed officials think that it is difficult to recruit the technical and managerial staff with the enterprise. The common reason in regard to difficulties in recruiting technical and managerial staff it is mentioned to be lack of professional cadres in the labour market and in few cases the low salaries. In some enterprises a number of experienced staff is about to retire soon and this presents a problem for enterprises.

In compliance with practices of OECD, POEs are independent in determination of salaries and bonuses for employees, so POE officials were asked if they use bonuses as a motivation tool which connects objectives of the enterprise with the performance of the employees. Findings show that most of enterprises do not provide bonuses at all for employees whereas in some companies bonuses were given to employees during holiday events.

**Apart from motivation, a factor which may endanger the health of employees in the waste sector is the lack of necessary means to protect health of employees.**

Furthermore, endangered employees do not possess health insurance policy which would cover expenses in case of an accident and some enterprises do not pay hazard in cases of danger.



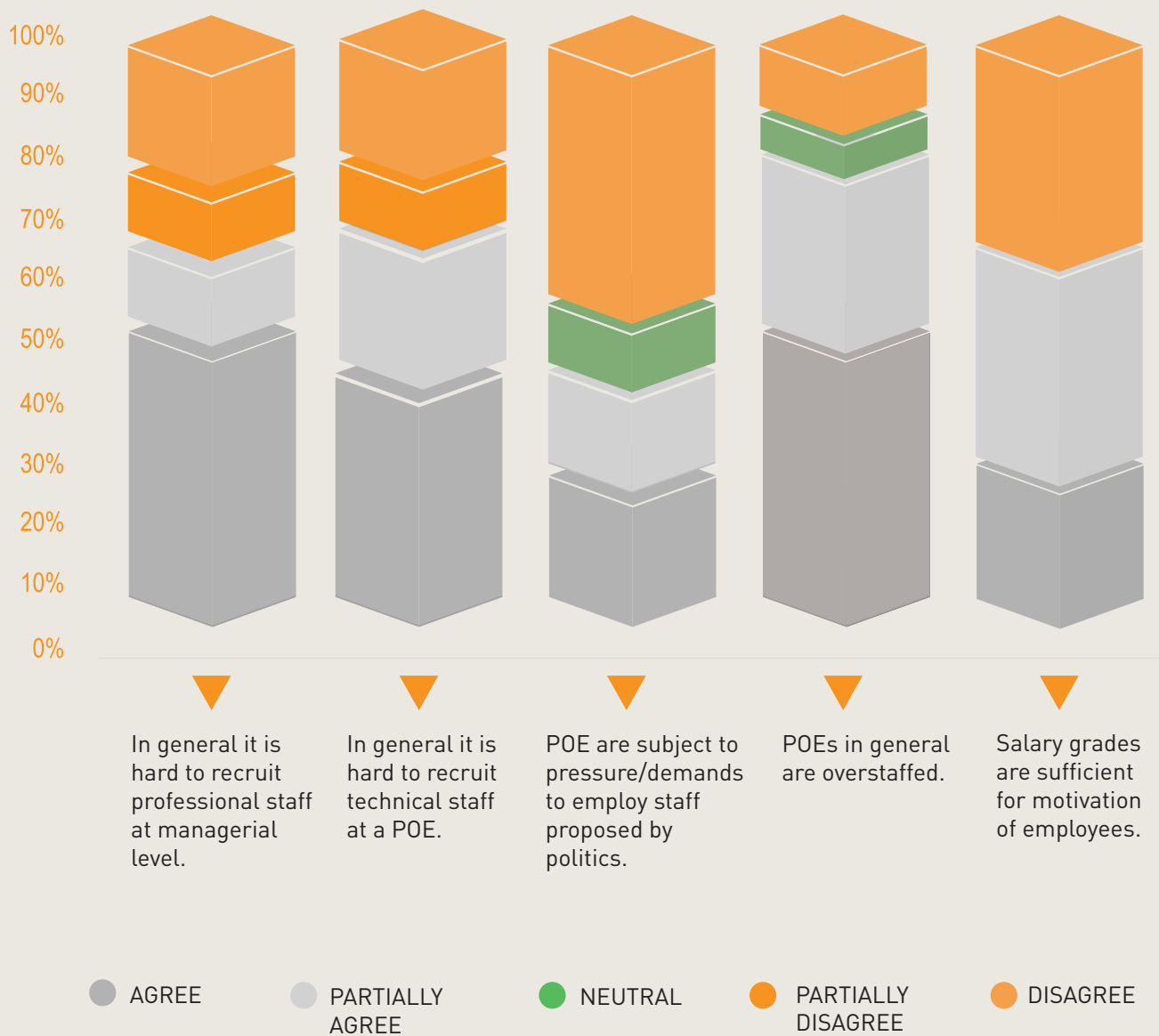


Figure 1. Problems with staff recruitment at the POE

- **42%** of officials fully or partially agree that in POEs there is pressure or demands to employ people from politics.
- Only **28%** of them think that layoffs will occur in the coming years.

In attempting to identify reasons and motives of overstaffing of POEs, 42% of officials fully or partially agree that in POEs there is pressure or demands to employ people from the politics. We have found the same percentage also when the officials have been asked whether they in person were subject to such pressures and demands. A CEO expressly stated during an interview “since the board is my employer, I have no power to resist the pressure from their side for politically based employments”.

On the other side, only 28% of them think that layoffs will occur in the coming years. “Artificial” increase of staff lowers the efficiency of POEs and has an impact in the costs which later on are paid by the citizen in the services price. Overstaffing and the impact in the increase of tariffs are specified in the last reports issued by WWRU in regard with performance of water and waste enterprises.<sup>22</sup>

Overstaffing of POEs, apart from the above mentioned effects, lowers the company’s value and could cause social crises in case of restructuration and privatization of enterprises. For this reason, it is necessary that Kosovo Government create plans which would balance the commercial, social and political needs to gradually reduce the number of staff.

Practices in other countries, show us that in the cases of restructuration and POEs, it is needed to draft strategies for employees communication regarding the benefits of POE reformation and plans for compensation either through paying salaries, training or redeployment into another public institution. Apart from Kosovo Government, in drafting of these strategies enterprises and unions of workers should be included in order to facilitate unification of voices throughout the process.<sup>23</sup>

## 6. Ownership

According to the Law on POE, publicly owned enterprise include all enterprise whose ownership is calculated to be more than 50% of the Republic of Kosovo or/and in ownership of public authorities of the Republic of Kosovo. As explained, POEs in Kosovo are in the ownership of government or municipalities. But the Law on POE allows the sale of government shares in case the decision of government is approved with a simple majority of votes at the Assembly of Kosovo.

Regarding the privatization of POEs, although the percentage of officials who think that enterprises should be privatized is high, around 60% of them think that an overall privatization of the enterprise should not occur. Most of the officials (60%) are against the privatization of POEs despite that 60% of them think that a private operator would be more effective in sector management. Around 70% of interviewed support public-private partnership in that way the state would continue to retain its influence over the enterprise, but this private management would bring additional value to the enterprise.

<sup>22</sup> WWRU, Annual Report of the Performance for Water Suppliers in Kosovo, Source: <http://bit.ly/1eNbpT4>, (accessed on 11 September 2014)

<sup>23</sup> OECD, Privatisation of POEs- General Overview of Practices and Policies in OECD member states. Source: <http://bit.ly/13vxJGV>.

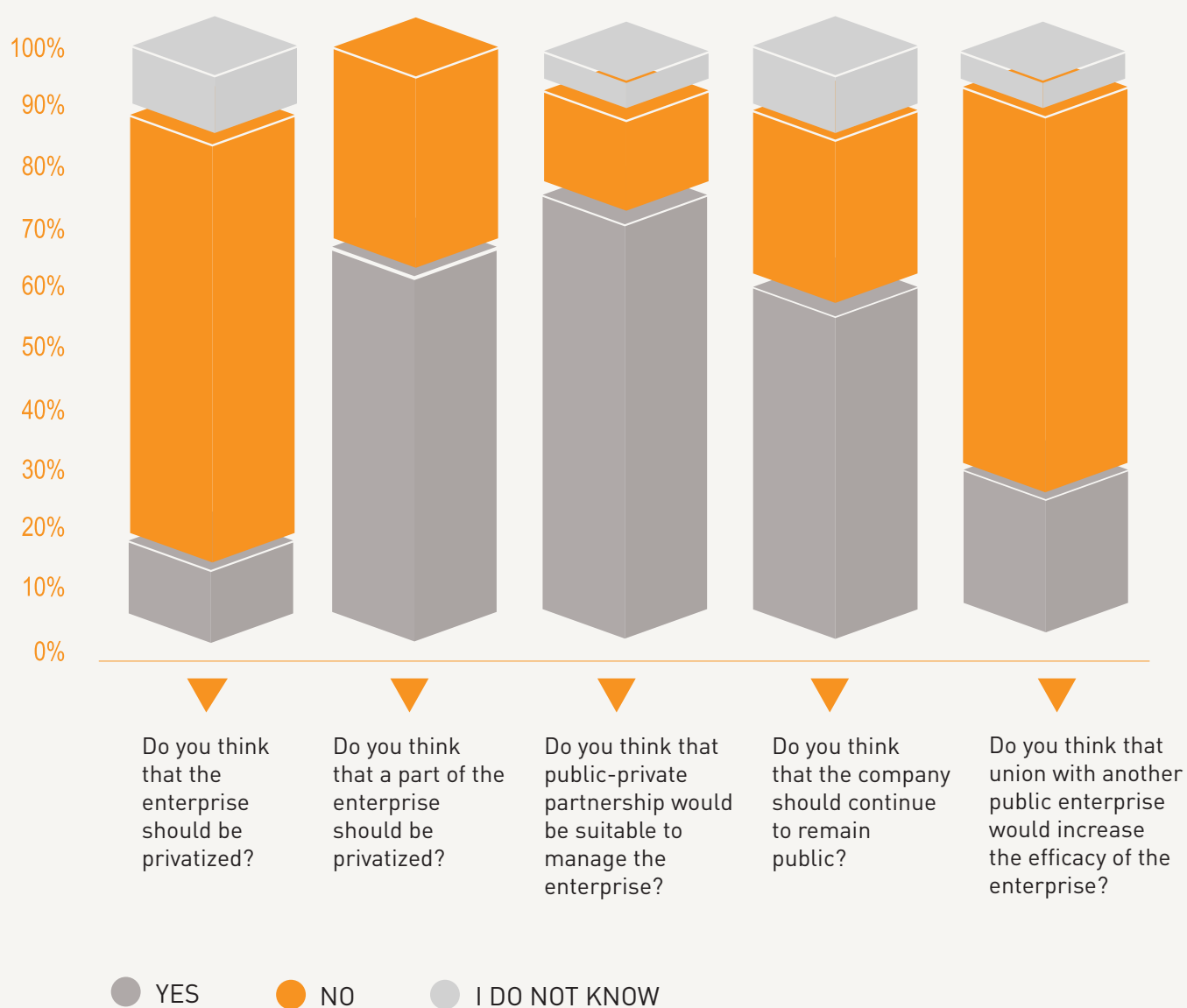
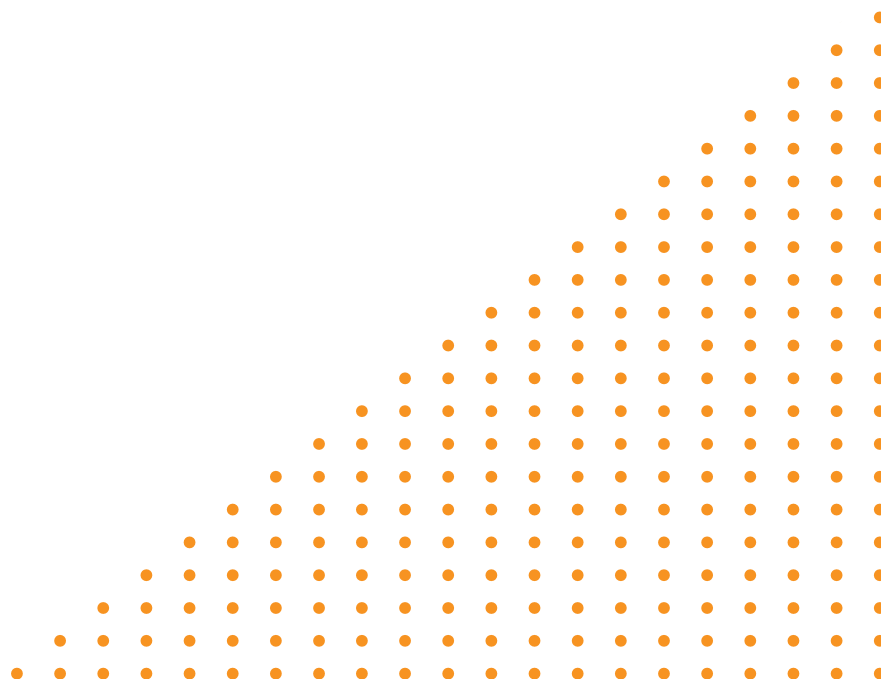


Figure 2. Perception of the POEs Officials regarding the ownvership of POEs





With regard to the partial privatization of the enterprise, officials in the water sector consider that maintenance may be a suitable sector to privatize, whereas the production and distribution are considered as assets which should be kept in public ownership. In the sector of waste, sectors such as transport, maintenance and the services are considered to be departments with greatest interest to become subject to privatization by RWMCs.

With regard to the competition, around 60% of officials of POEs think that the competition in the sector would have positive effects in improving quality of services, whereas a lower percentage of (30%) think that it would have effects in lowering prices or tariffs, this is because that majority of them think that prices are low compared to offered services and the cost to offer these services by POEs.

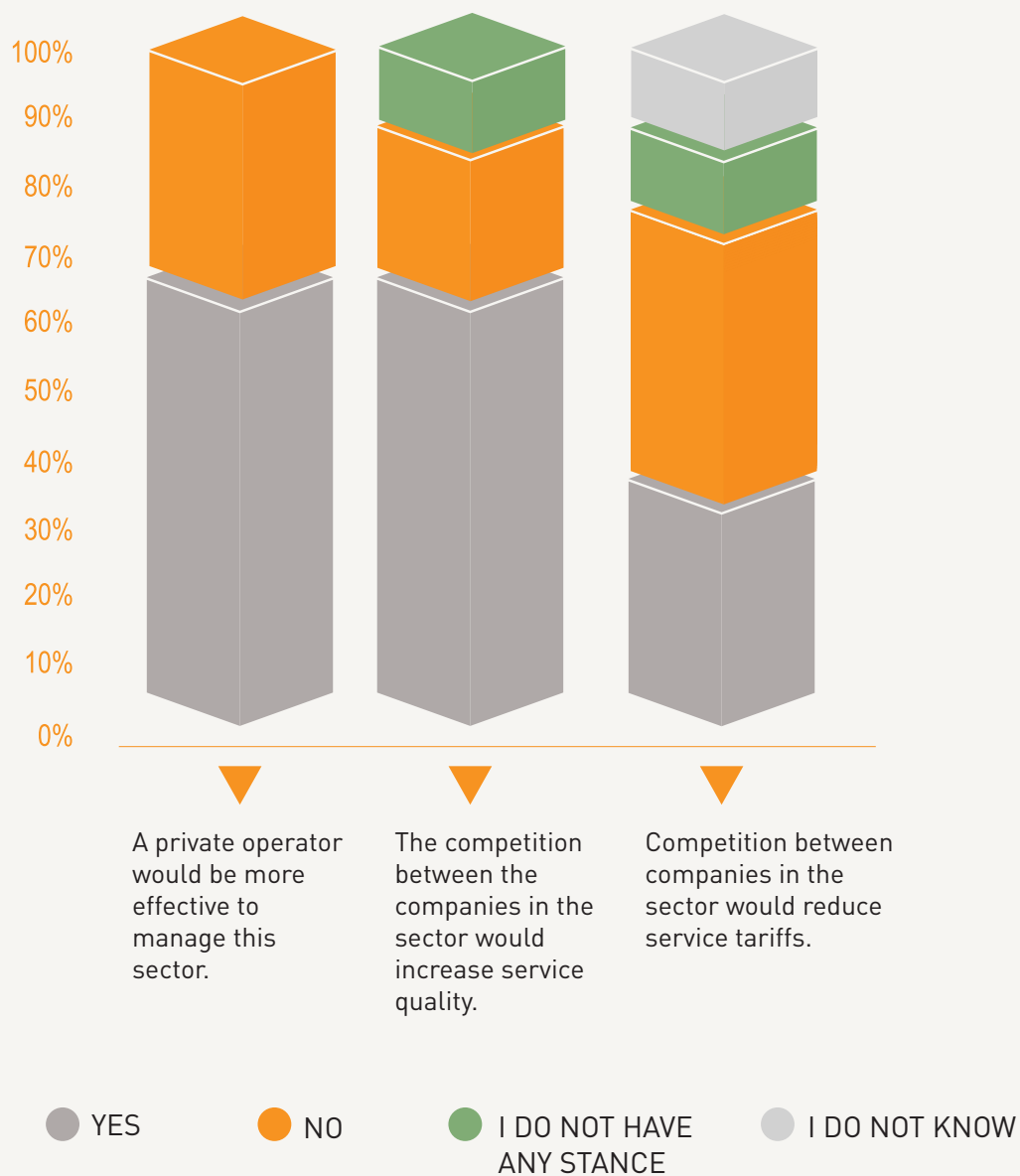


Figure 3. Assessment of the competition effects

## 7. Monitoring the Transparency of Publicly Owned Enterprises

PMUPE is in charge of monitoring the central POEs which functions as department of MED, whereas at the local POEs are monitored individually by municipalities. Among others, PMUPE supports MED in exercising its responsibilities towards the POEs and in the capacity of the observant has the right to participate in the meetings of the boards. Even though, generally the work of PMUPE is assessed well by the officials of the central POE; in some cases it had remarks on failed responses by the latter when POEs requested legal explanations. It should be pointed by decision 02/26 of 2008, the government allowed the MED to increase the number of employees and hire 12 persons due to establishment of the PMUPE, but this number of employees have never been hired since this unit has been established.<sup>24</sup> E.g. the law on Budget for 2014 has allocated salaries for only 7 employees of this unit.<sup>25</sup> According to OECD, the access to information is one of the two basic elements to enable the shareholder to issue decisions in the best interest of public, in this case the increase of budget for PMUPE, as a department which among others ensures information for monitoring of POEs performance, is essential to improve the decision-taking with regard to POEs.<sup>26</sup>

Besides monitoring, PMUPE and POEs are legally abided to be transparent towards the public. The Article 14.3 of the Law on POE requires that each POE after the approval of annual financial statements to publish in an internet website a statement which presents realization of objectives of POEs compared to objectives determined with the Business Plan and all applicable regulations. Whereas Article 31.3, determines the board of the enterprise is in charge of publication of annual report in an internet website. Besides enterprises which are in charge of publication of reports, Articles 31.3 and 32 make PMUPE responsible for publishing these reports as well publication of a compiled financial statement of all central public enterprises. PMUPE has done a good job regarding the publication of documents of central POEs but documents of these enterprises have often not been standardized with regard to the information they serve. Situation is worse at local POEs where only 4 out of 12 enterprises covered by this study have websites, whereas in the cases where websites exist they do not publish financial or annual reports and other documentation related to enterprise.

24 Government of the Republic of Kosovo, Decision 02/26, Source: <http://bit.ly/1v7V8Zq>, [accessed on 11 September 2014]  
 25 Kosovo Assembly. Law on Budget 2014, Source: <http://bit.ly/1pSt0b3>  
 26 OECD-The role of institutional investors in promoting good governance), Source: <http://bit.ly/ZYTm0K>

## 8. Implementation of the Code of Ethics and Problems with Report of Consumers Satisfaction

In compliance with the OECD principles and according to the Law of POEs, all POEs are obliged to approve and implement the Code of Ethics and Corporate Governance Code. The Code of Ethics is of a particular importance because not only it offers instructions regarding the standards of conduct, but also it should contain the program which protects persons within the company who report on abuses with the assets of the company (whistle-blowers).

Based on the interviews with officials, two out of 22 POEs did not have a Code of Ethics at all, whereas five of these companies have informed only verbally the employees about the code of ethics. Whereas three of the enterprises in which interviews were conducted, did not have a Corporate Governance Code.

As a way to hold POEs responsible regarding their services, Article 29 of the Law on POEs envisions that each POE tests and compile a report which measures consumers satisfaction on regular annual basis, whereas the CEO is responsible to finish this report. From the interviews conducted, 7 or 39% of enterprises subject to interviews have not prepared such report, despite the fact that they are legally responsible to do so. For the sake of the credibility and quality of the report, GAP Institute requires that the test on satisfaction level of consumers to be conducted by a specialized company for public opinion research different from POEs as provided with the Article 29.<sup>27</sup>

<sup>27</sup> GAP Institute - Comments of GAP Institute for implementation of Law on POEs steered by Commission on Economic Development (18 November 2013)

at the same time it has not undertaken any actions to improve their performance;

- There needs to be a review of the methodology of the evaluation of boards' performance and a definition of the board's responsibilities;

- PMUPE was founded in 2009 with an inexperienced staff, a problem that still exists; PMUPE is conditioned to publish documents and analysis of public enterprises' auditing reports; PMUPE is engaged in having public enterprises maintain their web-pages;

- Boards have had a negative influence in PMUPE's performance which is not satisfied with the extent that the Code of Ethics is respected;

- Participants have referred to examples from the UK, where the executive and nonexecutive directors of public enterprises are experts and are regularly monitored by Parliamentary Committee;

- The salaries and benefits that the board members of public enterprises in Kosovo receive are unaffordable for certain public enterprises, since they amount up to 30-40% of the revenues;

- The engagement in public enterprises should be the primary job of board members;

- The debate on efficiency should not be diverted to a debate on the ownership of public enterprises;

- Besides the financial interest, there should be a focus on the services provided for the public ;

- There should be a strategic plan to be referred when deciding to establish a new public enterprise. This document should be drafted by a working group from both local and central level of governance;

- Ministry of Economic Development should be more responsive to the requests of municipalities

## 9. Conference Summary and Recommendations<sup>28</sup>

- A good management of public enterprises is crucial since they constitute a large proportion of Kosovo's economy;

- The core of corporate governance lies in maintaining an equilibrium between the owner, the management, the public and other stakeholders. Achieving such equilibrium is a difficult and delicate process;

- In Kosovo, corporate governance started being implemented in 2006. The law on Public Enterprises has partially implemented the principles of OECD but it failed to increase the value of assets. The accountability and independence of the board can also be considered as a failure. The chain of corporate governance is dysfunctional and interrelated with political interests that damaged the public enterprise performance;

- The Assembly of Kosovo has scarce competences on the management of Public Enterprises;

- The Parliamentary Committee on Economic Development, Infrastructure, Trade and Industry has not approved the report on the boards' performance but

<sup>28</sup> Conference was held on 27th of January 2015. Panel members were: Ministry of Economic Development Blerand Stavileci, Head of Assembly Committee for Economic Development, Infrastructure, Trade and Industry Mr. Muhamet Mustafa, Ambassador of the UK in Prishtina Mr. Ian Cliff, Mayor of Prishtina Mr. Shpend Ahmeti and CEOs of most of the public enterprises in Kosovo

with regard to establishment of local public enterprises;

- Prishtina has only 7 public enterprises, which is a very small number compared to other capital cities: Vienna with 70, Zagreb with 40 and Belgrade with 110 public enterprises;
- Many public enterprises operate with losses and the salaries differ largely between different public enterprises;
- For example in Croatia, the budget of Zagreb's local public enterprises is larger than the budget of the municipality;
- There should be a debate whether road maintenance should be done by public enterprises or by public procurement. Public procurement procedures are very slow compared to the efficiency that a public enterprise can offer;
- There is a discrepancy between the competences of the municipalities regarding water supply and their ownership on the RWC (which is fully owned by the central government). RWC's boards are not obliged to report to the Assembly of municipalities. For example, Prishtina has only one representative in the board even though 70% of the consumers are from Prishtina.
- Local public enterprises receive subsidies from the central government but do not report on their performance to those institutions;
- The reorganization of public enterprises in Kosovo has been done without any consulting with the management. For example, Hydrosystem Radoniqi and KU Radoniqi have been separated in two companies regardless of the fact that the same watercourse is used for drinkable water and irrigation water. As a

result of this division, the staff has been doubled in number, for example two guards safeguard the same building.

- The government and public enterprises should create mutual funds for the early retirement of the employees to accommodate for the excessive number of employees;
- The Government's Program for 2015-2018 foresees changing the law on public enterprises taking into consideration the needs of municipalities, reorganization etc.
- The National Strategy on Transparency envisaged the increase of transparency of public enterprises. The main developments are: 1) the board members CVs will be published, 2) the public will attend the board meetings and 3) there will be access to the minutes of these meetings
- WWRO sets the tariffs based on the costs of supplying with water in regional level. As a result, some municipalities whose costs are lower, are penalized by this methodology.
- Public Enterprises have many unresolved cases in courts, dating back to the after-war years;
- Public Enterprises should be subsidized to cover the needs of social cases.

## 10. Conclusions

Corporate governance model in POEs of Kosovo is not the best possible model. According to the findings of this study, strong influence of politics over nomination of board members and officials of enterprises, who then through these nominations increase the number of staff of POEs, has impaired the efficiency of POEs. Besides the political influence, the lack of diversification of voices as a consequence of the lack of independent directors, and the dependence of CEOs on the boards may be another factor that has negatively impacted the efficiency of POEs.

Internally, POEs face several issues such as lack of ability to recruit staff, either due to low salaries or the lack of professional cadres, whereas part of experienced staff is about to retire. The lack of fulfilment of obligations regarding transparency remains to be an additional concern especially by local POEs.

Based on these findings, GAP Institute recommends that:

### **The Government of Kosovo and Assembly:**

1. The Government of Kosovo should reform the process of electing boards. As a way to avoid the politi-

cal influence and improve the professionalism of the process:

- a) to consider the possibility of including the recruitment companies in this process;
- b) to make the process of election of boards transparent;
- c) to publish the online evaluation methodology and the candidates resume;

2. The Government of Kosovo, as a way to diversify voices at the enterprises and increase of support during the restructuration processes, should consider the possibilities to have POE employees represented in board, with the right to vote in the boards;

3. As a form of increasing independence and empowerment of CEOs: a) The Assembly should amend Article 21.1 of the Law on POEs so that CEOs cannot be fired without any reason; and b) CEOs should be elected, through a public job vacancy, by a specialized agency of recruitment and under the supervision of the Assembly and public;

4. The boards with extended group mandate, to be assessed individually and transparently, in order to be elected new members as required by the procedures of the Law on POEs;

5. The Government of Kosovo should compile an urgent plan to gradually reduce the number of staff at the POEs. In case of a later privatization, gradual decrease of the number of employees would:

- a) avoid the massive job terminations and as result increase of the number persons under social scheme;
- b) increase the efficiency and value of enterprises;

6. The Government of Kosovo should increase the number of staff in PMUPE, as required in the decision on establishment of the unit. In compliance with best practices in other countries, PMUPE should be allowed to have flexibility in the budget which would enable to recruit external experts;

7. The Government along with municipalities should increase the financing for PMUPE, as to increase capacities of this unit with aim to include local enterprises in monitoring process;

8. The law on POEs, should specify time limits for publication of documents which include: organization structure of POEs, review of business and financial performance, court procedures, transactions etc., specified with Article 31 and 32 of the Law on POEs;

9. The Commission on Economic Development should initiate the process of amending of Article 29 of the Law on POEs that the report of consumers' satisfaction should be conducted by a specialized company and not from the enterprise. This would increase the trust of public and quality in reports regarding the POEs;

#### **For Publicly Owned Enterprises:**

1. Due to the lack of professional staff in the labour market and considering that a number of experienced staff is about to retire soon, POEs should compile the long term plans regarding the preparation and training of the new staff along with the Profes-

sional Training Centres, the University of Prishtina and other private universities;

2. To ensure that during the recruitment process, apart from interviews candidates undergo written and other forms of testing;

3. During the staff recruitment to ensure the anonymity of candidates in order avoid the political influence;

4. To find ways to link the employees performance with bonuses as a way to increase the efficiency of enterprises;

5. All enterprises are obliged by law within a short time limit to create their websites and publish necessary documents such as annual report, financial report, audit report etc., and regulations required with the Article 34;

6. In the context of high political influence with the enterprise, the latter should make sure to implement the Code of Ethics;

7. Local enterprises which have not carried out legal obligations to conduct the report on consumers' satisfaction, should do it



## Annexes 11

Table 1- Interviews conducted at POEs

Publicly Owned Enterprise	Date of Interview	Job Position	Interviewee's Name
Kosovo Railways -InfraKos J.S.C.	2/7/2014	Chief Executive Officer	Agron Thaçi
Kosovo Railways -InfraKos J.S.C.	3/7/2014	Chief Executive Officer	Betim Gjoshi
Regional Water Company "Radoniqi" J.S.C.	26/5/2014	Manager of Admin /Secretary	Saranda Vehapi & Faruk Polloshka
Kosovo Landfill Management Company J.S.C.	10/7/2014	Assistant	Betim Smakaj
Regional Waste Company Ambienti J.S.C., Peja	3/7/2014	Chief Executive Officer	Nexhat Abdullahu
Regional Waste Company Çabratish. A Gjakovë, Gjakova 100%	24/6/2014	Secretary	Nehar Gerqari
Regional Waste Company Eco-Regjioni J.S.C., Prizren	25/6/2014	Chief Executive Officer	Nehat Basha
Regional Waste Company Higjiena J.S.C., Gjilan	26/6/2014	Financial Director	Burim Kastrati
Regional Waste Company Pastërtia J.S.C., Ferizaj	27/6/2014	Chief Executive Officer	Nazmi Jashari
Regional Waste Company Pastrimi J.S.C., Prishtina	10/6/2014	Chief Executive Officer	Feim Salihu
Regional Waste Company Uniteti J.S.C., Mitrovicë	2/7/2013	Chief Executive/ Technical Assistant	Skender Tahiraj/ Linda Haxhimehmet
Regional Waste Company Bifurkacioni J.S.C., Ferizaj	27/6/2014	Chief Executive Officer	Faton Frangu
Regional Waste Company Hidrodrini J.S.C.	3/7/2013	Chief Executive Officer	Agron Tigani
Regional Water Company, J.S.C.	26/6/2014	Chief Executive Officer	Bashkim Halabaku
Regional Water Company Hidroregjioni Jugor J.S.C.	25/6/2014	Chief Executive Officer	Besim Baraliu

Publicly Owned Enterprise	Date of Interview	Job Position	Interviewee's Name
Regional Water Company Mitrovica J.S.C.	2/7/2014	Chief Executive Officer	Faruk Hajrizi
Regional Water Company Prishtina J.S.C.	17/6/2014	Chief Executive Officer	Gjelosh Vetaj
Kosovo Energetic Corporation J.S.C. (KEC)	16/7/2013	Chief Executive Officer	Arben Gjuka
District Heating Gjakova J.S.C. Gjakova 100%	24/6/2014	Chief Executive Officer	Admir Shala
District Heating Termokos J.S.C. Prishtina, Prishtina 100%	19/6/2014	Chief Executive Officer	Arsim Janova
HE Iber Lepenc J.S.C.	16/6/2014	Secretary	Bajram Jashari
Post and Telecommunication of Kosovo J.S.C. (PTK)	8/7/2014	Chief Executive Officer	Ejup Qerimi





GAP Institute for Advanced Studies is a Think Tank established in October 2007 in Kosovo. GAP's main goal is to attract professionals in creating an environment of development and professional research, which may be found at other similar institutions in western countries. This also provides possibilities for Kosovars to research, develop, and implement projects aiming to advance Kosovar society. GAP's priority is to mobilize professionals in addressing state's economic, political and social challenges. GAP Institute aims to bridge the gap between the governance and citizens and between problems and solutions.

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