

Policy brief 19/2018

Legal criteria for the appointment of management of public enterprises, regulatory and independent bodies

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November 2018



British Embassy
Skopje



*This publication has been funded by UK aid from the UK government;
however the views expressed do not necessarily reflect the UK
government's official policies*

Impressum

Title: Legal criteria for the appointment of management of public enterprises, regulatory and independent bodies

Publisher: Institutit për Demokraci
"Societas Civilis" - Shkup

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Design: Dejan Kuzmanovski

The publication can be downloaded from:

<http://www.idscs.org.mk>

Introduction

The subject of this analysis are the laws and bylaws, changes, legal uncertainties and unregulated areas, which refer to the work and activities of public enterprises, state-owned enterprises, independent regulatory bodies, independent state bodies and state administration bodies. This analysis also covers the legal framework governing the appointment of members of management boards and directors in public enterprises, state-owned enterprises and independent regulatory bodies with an additional focus on discretionary appointments.

The analysis covers 173 public bodies, as well as 48 laws regulating the work of these bodies, and it can be concluded that there is no single and unified approach with regard to the establishment of these public bodies, as well as in terms of their operation and management. Also, there is no adequate classification of public authorities that prevents systematic

monitoring of their work. Even in cases where there is systemic legal regulation for certain types of public bodies, such as public enterprises and state-owned trade companies, there is, still, a fragmentation of the regulation, as in the systemic laws themselves, but also in the adoption of additional laws for certain public enterprises. The wide possibility left by laws, with internal acts (statutes) to regulate issues of a status character, is an additional problem in terms of establishing a clear and precise framework for the day-to-day functioning of these institutions.

Common legal framework

Regarding the legal framework of measures and activities for prevention of corruption in the exercise of power, public authorizations, official duty and policy, measures and activities for prevention of conflict of interests, measures and activities for prevention of corruption in the performance of activities of public interest, it should be borne in mind that the Law on Prevention of Corruption covers all public bodies that are subject to this analysis, so in that part there is a systemic solution, and all the problems in the implementation of this Law, in principle, are related to all the bodies covered by the analysis.

In terms of financial performance, there is no one single approach in regulating the work of the bodies covered by this analysis. Namely, the public enterprises and trade companies in full state ownership, accounting management, preparing and submitting the annual

report and financial statements, perform them in accordance with the Law on Trade Companies and the adopted international accounting standards and the international financial reporting standards published in the "Official Gazette of the Republic of Macedonia".

On the other hand, other state bodies covered by this analysis, in terms of financial performance, accounting management, preparation and submission of the annual reports and financial statements, perform them in accordance with the Law on Accounting of Budgets and Budget Users.

Regarding the system of public internal financial control covering the financial management and control, the internal audit and their harmonization, established in accordance with the international standards for internal control and internal audit, as well as the conditions and the manner of conducting the procedure for taking an exam for an authorized internal auditor in the public sector, the Law on Public Internal Financial Control, which formally covers all European standards in this area is applied for all public bodies

covered by this analysis.

Regarding the governance of the public authorities covered by this analysis, the situation is completely uneven, ie there are many different models of governance and management, which will be presented within the framework of the analysis.

Public Enterprises

Public enterprises are regulated by the Law on Public Enterprises. Public enterprises are established for the purpose of performing activities of public interest. On behalf of the Republic of Macedonia, public enterprises are established by the Government of the Republic of Macedonia, on behalf of the municipality, the council of the municipality and on behalf of the City of Skopje, the Council of the City of Skopje. Bodies of the public enterprise are: The Management Board, the Director and the Supervisory Board.

The fee that is paid for the membership in the Management Board makes the Management Boards attractive for everyone that meets the minimum legal requirements.

Given the lack of appropriate legal criteria, as well as the large number of members, it is practically impossible to carry out in practice the competences of the Management Board. On the other hand, the fee paid for being a member in the management boards, which is determined by the members of the board, makes the management board attractive to anyone who meets these minimum legal requirements. Namely, if the competencies of the management boards determined in Article 19 of the Law on Public Enterprises are analyzed, it can be concluded that they have highly professional work, such as passing a statute, deciding on spending of funds, determining the business policy, adopting the reports for working and determining the organizational structure of the enterprises. Pursuant to Article 17 of the Law, the management board of the public enterprise may consist of at least five, and up to 15 members, in which the

members of the management board may be all citizens of the Republic of Macedonia who have a university degree, have not received a final verdict with which they have been sentenced, have a university degree and have three years of work experience.

The work of the public enterprise is managed by a director, which is elected or dismissed by the Management Board. The director should manage the work of the public enterprise, but the statutory conditions do not prescribe the required competences in order to successfully realize this competence. Pursuant to Article 24 paragraph 5 of the Law on Public Enterprises, the director of the public enterprise ensures the implementation of the decisions and the conclusions of the management board, participates in the implementation of the foundations of the program for work and development, participates in the establishment of criteria for use and disposal of funds and the use of funds generated by the operation of the public enterprise, harmonizes the business activity of the public enterprise and performs other executive matters

related to the work and operation of the public enterprise established by statute. Article 23 paragraph 4 of the Law on Public Enterprises stipulates identical conditions for the director as well as those for members of the management boards, but instead of three, five years of work experience is required, and as an additional requirement is the knowledge of English language.

The control of the material and financial operations requires knowledge of the audit matter, which is something that is not recognized by the Law on Public Enterprises

In order to control the material and financial operations of the public enterprise, a supervisory board for control of the material and financial operations (hereinafter: supervisory board) of five members is formed. The duration of the mandate of the members of the Supervisory Board may not be longer than four years. The members of the Supervisory Board are appointed or dismissed by the founder. Given the competencies of the Supervisory Board, it can be concluded that there are overlaps

with those that the auditors should have in accordance with the Law on Public Internal Financial Control. It must be borne in mind that the control of the material and financial work requires full knowledge of this matter, something that the Law on Public Enterprises does not recognize at all, therefore these supervisory boards do not have any real function in practice. Namely, pursuant to Article 26, paragraph 3 of the Law on Public Enterprises, the conditions for members of the Supervisory Board are identical with the requirements of the members of the Management Board. The Law does not contain any criteria and conditions for dismissal of the members of the management and supervisory boards.

The Public Enterprise “Official Gazette of the Republic of Macedonia” and the Public Enterprise “Macedonian Radio Television” (MRT) are regulated by two separate laws.

The Law on Publication of Laws and Other Regulations and Acts in the “Official Gazette of the Republic of Macedonia” is a legal basis for the work of the Public Enterprise “Official Gazette of the Republic of Macedonia”. But this law does not

contain any conditions for appointing, nor for dismissing the members of the management and the supervisory board, nor the director. Hence, there is a legal gap in this law, which must be overcome, that is, this law must be harmonized with the general law that regulates this matter. As in the Law on Public Enterprises, this Law does not prescribe a measurable procedure for appointing the members of the Management and Supervisory Board or the Director, ie there is no procedure, even an obligation to publish a public announcement for the appointment of these persons.

The Law on Audio and Audio Visual Media Services is a separate law that regulates the work of MRT. This law in Article 115 completely regulates the organization of this public enterprise, which has a program council instead of a management board, and aside from the director there is also a deputy director. Articles 116, 125 and 130 of the Law stipulate minimum criteria for appointing the members of the program council, the supervisory board, the director and his deputy, but these conditions are too general and are not connected with the work of MRT at all. Also, Articles 120, 128

and 131 stipulate some basic conditions for dismissal of the members of the program council, supervisory board, the director and his deputy. In addition, the law does not prescribe any merit procedure for appointing the best candidates.

What is also remarkable is that the law provides conditions and procedures to be prescribed by the Statute of MRT, which is adopted by the Program Council, which is contrary to the principle of legality.

Trade Companies

The state-owned trade companies are regulated by the Law on Trade Companies. The bodies of the companies which are in the ownership of the state are: the assembly of the partners in a limited liability company, that is, the assembly of the company in the joint stock companies. Article 231-a of the Law on Trade Companies contains conditions for appointing a manager, but for all other issues there are no clear rules. In doing

so, these conditions are general and identical to those for appointing a director of public enterprises (citizenship, higher education, five years of work experience, non-conviction and knowledge of English language). Thus, no real competencies are needed to be able to manage these companies, in which the state appears as a full owner. In state-owned trade companies, there are no rules in regard to the employment of workers, since the Law on Labor Relations applies, which is why these companies are the most suitable form for party employments, without clear criteria.

The Law does not contain any criteria for the dismissal of the management bodies in the state-owned trade companies.

The Law on Trade Companies, in a separate chapter, foresees the so-called companies owned by the state and companies with state participation. However, these companies cannot be said to be separate forms of trade companies, but represent a special kind, given the entity that appears as a founder, that is, a participant with a particular share or shares. Thus, Article 660 of the Law

determines the types and the notion of these companies that states that “the Republic of Macedonia can establish limited liability companies and joint-stock companies in state ownership. Companies owned by the state are companies in which the Republic of Macedonia has acquired all stocks, ie shares”.

If a comparative analysis of our legislation with the legislation of the Republic of Croatia and that of the Republic of Slovenia is conducted, then it can be seen that there are differences in the regulation of public enterprises.

Unlike the Republic of Macedonia, all public enterprises in Croatia are regulated by the Law on Trade Companies.¹ In this law, there are now no additional rules for public enterprises in complete or in dominant state ownership. This means that public enterprises have identical status as all other companies, both in terms of management and in terms of

material and financial performance. From the data of the Ministry of Finance of the Republic of Croatia, it can be seen that in 2016 there were 54 state-owned enterprises.² If all public enterprises in Croatia are taken into account, including those established by the municipalities, in Croatia in 2016 there were 1149 public enterprises.³ In Croatia, public enterprises are those in which the state (central, federal, local or regional) has complete, dominant or minority ownership. Public enterprises can be organized as joint stock companies or as limited liability companies. They are divided into financial and non-financial. Financial public enterprises are mainly public finance institutions such as the central bank, the state development bank and other similar financial institutions that perform financial and fiscal services for the state. Non-financial public enterprises provide services of non-market principles, thus distorting price competition on the market. In 2013, the Government established enterprises and other legal

¹ https://narodne-novine.nn.hr/clanci/sluzbeni/2011_12_152_3144.html

² <http://www.mfin.hr/hr/financijska-izvjesca-javna-poduzeca-2016>

³ <https://www.ijf.hr/upload/files/5.pdf>

entities of strategic and special interest, in which the state (as a shareholder) achieves economic and strategic goals. The Law does not contain clear criteria for the election and the dismissal of the management bodies in the state-owned trade companies in Croatia.

Same as in Croatia, in Slovenia, too, public enterprises are established as trade companies. Public enterprises in full and partial state ownership are present in most industries in Slovenia. The state has never been subjected to a wholesale privatization program, retaining significant ownership shares in many large companies since its independence. Sectors considered to be of strategic national interest are dominated by state-owned enterprises, such as energy, transport, banking and insurance. Other sectors of the economy, including retail, entertainment, construction, tourism and manufacturing, include important companies that are either fully state-owned or in which the state has a controlling interest by having the largest single block of shares. In general, state-

owned enterprises do not receive most of the contracts/business activities from private sector competitors in sectors open to private and foreign competition. Social companies receive goods and services from private and foreign companies. State-owned enterprises must follow a strict procurement law that requires transparent procedures available to all companies. Private firms can compete according to the same conditions in terms of market share, products and incentives. All firms have the same access to funding. Public enterprises are subject to the same laws as private companies. They must submit their books for independent audits and publish annual reports if needed. The reporting standards are comparable to international financial reporting standards. State-owned enterprises must fully comply with all legal obligations. Slovenia is a member of the Public Procurement Agreement (PPA) within the World Trade Organization (WTO). Public enterprises are covered by the agreement. The Law does not contain clear criteria for the election and the dismissal of the management bodies in the state-owned

trade companies.

Following the OECD's recommendations, the government established the Capital Aid Management Agency (AUCN) in November 2010 to increase transparency and promote more efficient State owned enterprises (SOE) management. In 2013, the authorities transformed the AUCN into the Slovenian State Holding (SDH). More than 95 percent of SDH funds have been invested in the country. The SDH is an independent state body that is accountable to the National Assembly of the Republic of Slovenia. It submits to the National Assembly annual reports on the implementation of the Annual Plan for Corporate Capital Investment Management from the previous year. The government then submits the Annual Plan for Corporate Capital Investment Management based on the suggestion of SDH.⁴

Regulatory bodies, state bodies and state administration bodies

The analysis of the laws regulating the work and the activities, the appointment of members of the management boards and directors of the independent regulatory bodies, the state bodies and the state administration bodies, shows great heterogeneity with regard to the regulation. Namely, there is no universal principle or systemic legal solution regarding the manner in which the governance and management of these public institutions is regulated.

Ten regulatory bodies are in place and functioning in the state: the Agency for Audio and Audiovisual Media Services, the Agency for Electronic Communications, the Postal Agency, the Agency for Regulation of the Railway Sector, the Agency for Supervision of Fully Funded Pension Insurance, the Insurance

⁴ <https://www.export.gov/article?id=Slovenia-State-Owned-Enterprises>

Supervision Agency, the Civil Aviation Agency, the Securities and Exchange Commission, the Regulatory Commission for Housing, the Energy Regulatory Commission. As it can be seen, of the ten regulatory bodies, seven are established as agencies, and three as commissions. The way in which regulatory bodies are managed is different. What is interesting is that all regulatory bodies have a collective management body (council, expert council, committee or management board) and a non-executive governing body. The agencies are managed by a director, and in some of these agencies there is a deputy director. The commissions are headed by a president. In view of the fact that these regulatory bodies are established primarily for the purpose of harmonizing domestic legislation with international standards, in particular with the *acquis communautaire*, it can be noted that all regulators have legal requirements for the selection of the managing authority (director, deputy director, or president). The conditions for the election of members of the management body (council, council of experts, management board or committee) are more general than those for the management body.

These laws also contain conditions for dismissal of the governing bodies, which are connected primarily with the general legal requirements for termination of employment (death, retirement, loss of working ability, serving a sentence of more than six months of imprisonment). Additionally, there are cases of conflict of interest, due to which a certain person cannot be a managing authority in the regulatory bodies.

What is lacking in all these laws is fair, transparent, and measurable procedure for the election of members of the management body and the governing body. There is an obligation to publish a public announcement, but there is no procedure in which the best candidate would be elected as a member of the managing body, that is, the governing body.

In all these regulatory bodies, the Parliament of the Republic of Macedonia is responsible for the election of members of the managing body, while the managing body is the one that appoints the governing body. Given the regulatory competencies that these bodies should

have, this arrangement corresponds to the needs.

What is absent in all of these laws is fair, transparent and merit procedure for selection of management and governing body's members. There is an obligation to publish a public announcement, but there is no procedure through which the best candidate would be selected for a member of the management body, that is, the managing body.

However, if the legal competences are analyzed, it can be concluded that the Railway Regulation Agency as well as the Housing Regulatory Commission do not have clear regulatory competencies, ie they are bodies that are competent only for enforcement of the laws, and therefore their positioning is disputable in the system of state bodies. All laws contain the basic conditions for dismissal of the director, deputy director and members of the management bodies, which are partly related to their performance.

If comparative analyses is made, it can be concluded that in the Republic of Croatia, as in the Republic of Macedonia, several regulatory bodies have been formed. These regulatory bodies are formed as agencies and commissions. From the analysis of the manner of managing the Croatian Energy Regulatory Agency (HERA)⁵ and the Croatian Regulatory Agency for Networking (HAKOM)⁶, it can be concluded that both in Croatia and in Macedonia there are different ways of managing these regulatory bodies. Namely, HERA has a management board that manages the Agency, while in HAKOM there is an assembly that elects a director who heads the expert service. In both cases, the Assembly of the Republic of Croatia is the one that elects the members of the management board, that is, the assembly, and it has quite high criteria for the election of candidates. In general, our legislation is similar to that in Croatia, with respect to regulatory bodies.

In the Republic of Slovenia, as in the Republic of Macedonia, several regulatory

⁵ https://narodne-novine.nn.hr/clanci/sluzbeni/2012_10_120_2584.html

⁶ https://www.hakom.hr/UserDocsImages/2011/propisi_pravilnici_zakoni/1.%20Zakon%20o%20elektroni%C4%8Dkim%20komunikacijama%20NN%2073_08.pdf

bodies have been established. These regulatory bodies are formed as agencies and commissions. From the analysis of the manner of managing the Agency for Communication Networks and Services (AKOS)⁷ and the Agency for Market Safety (ATVP), it can be concluded that in Slovenia, the regulatory bodies are managed by the council and the director. In both cases, the Assembly of the Republic of Slovenia is the one that elects the members of the management board, that is, the assembly, and it has quite high criteria for the election of candidates. The Council appoints the Director. In general, our legislation is similar to that in Slovenia, with respect to regulatory bodies.

Therefore, it can be concluded that in terms of regulatory bodies, our legislation is largely similar to that in Croatia and in Slovenia, which are EU Member States. However, it should be borne in mind that our country, as well as Croatia and Slovenia, have identical legal inheritance, which makes these regulatory bodies a novelty in all our systems, hence the public

debate about the systemic regulation of these new authorities in our legal systems is lead across the board.

Independent state bodies are those whose competences belong mainly to the executive power, but who, due to the specific nature of those competences, should have a special degree of independence, hence the hierarchical ones are subordinated to the Parliament of the Republic of Macedonia, and not to the Government. Namely, we start from the assumption that these bodies would have greater independence if they answer to Parliament. Regarding many of these bodies, there are international standards that require full autonomy of some of these bodies, especially in the areas of personal data protection, auditing, competition protection, corruption prevention, public procurement, elections, etc.

In all of the cases the procedure foresees publishing of a public

⁷ https://www.akos-rs.si/files/APEK_eng/Legislation/electronic-communications-act-zekom1.pdf

announcement, but in none of the cases there is prescribed procedure for fair, transparent and merit selection of those governing positions. The criteria for dismissal are in relation to the termination of the employment, in accordance with the Law of Labor Relations (death, age, and six months imprisonment, loss of business ability or resignation). There are no conditions for dismissal based on poor performance.

According to the legislation in the Republic of Macedonia, ten independent state bodies have been established, such as the Agency for Administration, the Directorate for Personal Data Protection, the State Audit Office, the State Election Commission, the State Appeal Commission for Public Procurement, the State Commission for Decision Making in the Second Instance in the Area of the Inspection Supervision and the Misdemeanor Procedure, the State Commission for Decision-Making in Administrative Procedure and the Labor Relations Procedure in the Second Instance, the State Commission for

Prevention of Corruption, the Commission for Free Access to Public Information and the Commission for Protection of Competition.

Just like in relation to regulatory bodies, and in relation to autonomous state authorities, there are three types of bodies that are established, such as agency, institution and commission. The agencies are managed by the director and the deputy director. The State Audit Office is managed by a Chief State Auditor who has deputies. The commissions are composed of members, and are managed by the president. The legal requirements for the election of directors and their deputies, that is, members of the commission are identical, ie, they are required to be citizens, to have higher education, to have certain work experience, not to be banned for performing a profession, activity or duty and knowledge of certain levels of a foreign language. In this part, there is one body, which is the State Election Commission, in which the members are appointed by the political parties, on the basis of the legal distribution of the number of members, which means that it is a full political authority, which requires

no expertise and competence, although this body is responsible for one of the most important democratic processes in the country, and these are the elections. In all cases, a public call is announced, but in no case is there a fair, transparent and measurable procedure for the selection of these management posts. The conditions for dismissal are related to the termination of employment in accordance with the Law on Labor Relations (death, old age, six months imprisonment, loss of business ability or resignation). There are no conditions for dismissal based on poor performance.

If, however, an analysis of the legal competences of these independent state bodies is made, it can be concluded that these are part of the executive, not the legislative authority, with three of these bodies (the Agency for Administration, the Second Instance Commission for Decision-making in the field of inspection supervision and misdemeanor procedure and the State Commission for decision-making in administrative procedure and procedure of labor relation in the second

instance) it is necessary to reevaluate their systematic position, because the efficiency of the work of the government, which has no formal mechanism to control them, directly depends on their efficient work.

Regarding the comparative experiences, it can be concluded that in the Republic of Croatia as well as in the Republic of Macedonia there are several independent state bodies. The Agency for Protection of Personal Data has been taken for analysis.⁸ This Agency is managed by a director and his deputy, who are appointed and dismissed by the Parliament of the Republic of Croatia, and for which legal criteria for selection are prescribed, which are similar to the criteria in our regulation. And there are no criteria for dismissal based on poor performance in Croatia.

In the Republic of Slovenia, as in the Republic of Macedonia, there are several independent state bodies. The Anti-Corruption Commission has been taken for analysis.⁹ This Commission is managed by the president, who has

⁸ https://narodne-novine.nn.hr/clanci/sluzbeni/2018_05_42_805.html

⁹ <https://www.kpk-rs.si/en/commission/about-us/>

two deputies, and precise legal criteria for selection and the appointment of members of the Commission are prescribed, in contrast to our law that contains minimum legal criteria. And there are no criteria for dismissal based on poor performance in Slovenia.

The biggest legal inconsistencies with regard to the regulation of the work and the activity, the appointment of members of the management boards and directors is with the independent bodies of the state administration. From the analysis of the regulation it follows that in the Republic of Macedonia there are 30 independent state administration bodies, which are regulated by 28 laws. These bodies are established as agencies, directorates, commissions, institutes, offices, one audit body and the state prosecutor's office. There is no single way of managing and governing these bodies, but most often they are managed by a director, who has a deputy, while the commissions are headed by a president, the audit body is headed by a chief auditor with a deputy, the state prosecution is headed by the state

prosecutor. Some of these authorities even have management boards, although there are no legal criteria to determine in which cases a management boards are needed. If the legal competences of the independent state administration bodies are analyzed, it can be concluded that they are ordinary executors of laws, and hence the existence of management boards with these bodies is pointless.

The Agency for Youth and Sport and the Emigration Agency derive directly from the Law on Organization and Work of the State Administration Bodies. Meanwhile, there is no regulation who will be managing those bodies, nor there are any kind of legal conditions for selection of the managers.

Regarding the legislation, the Agency for Youth and Sports, the Emigration Agency and the Commission for Relations with Religious Communities and Religious Groups, which do not have a material law by which they have established, must be listed. Namely, the Agency for Youth and

Sports and the Emigration Agency derive directly from the Law on Organization and Work of the State Administration Bodies. However, it is not regulated who will lead these bodies, nor are there any legal requirements for the election of the managers. But in spite of the legal gap in practice, these two agencies apart from the director have a deputy director, whereby anyone can be assigned to these positions, without any legal procedure. On the other hand, the Commission for Relations with Religious Communities and Religious Groups operates without any legal basis, which means that for this commission there are no legal requirements for president and members, no legal competences, no legal status, ie it functions only on the basis of an established legal practice, which is not a source of law in our legal system.

In all other cases, the independent bodies of the state administration are established with special laws, whereby the appointment of a director and his/her deputy is envisaged to be announced in a public call, but there is not, in any case a fair, transparent and measurable procedure for selection of these

managerial positions. The conditions for dismissal are identical as the ones for the regulatory bodies, i.e. related to the termination of employment in accordance with the Law on Labor Relations (death, old age, six months imprisonment, loss of business ability or resignation). There are no conditions for dismissal based on poor performance.

In the Directorate for Technological Industrial Development Zones, the Institute for Accreditation, the Institute for Standardization, the National Agency for European Educational Programs and Mobility, the Energy Agency, the Agency for Real Estate Cadastre, the Agency for Spatial Planning, the Agency for Support of Entrepreneurship, the Agency for Incentive of the Development of Agriculture, the Agency for Promotion and Support of Tourism, the Agency for Foreign Investments and Export Promotion, the Agency for Management of Confiscated Property and the Film Agency, besides a director and/or deputy director, it is envisaged that there should be a management board or other collective management body. In these bodies, the managing body is the one who elects and

dismisses the director or his deputy. There is no logical explanation of why there is a collective management body in these bodies, and there isn't one in other state administration bodies. There are minimal legal requirements for selection and dismissal of members of the governing body, which are identical to those of the Law on Labor Relations.

As is the case with the Republic of Macedonia, Croatia, too, has a large number of state administration bodies. These bodies have many different names, but the most common name of the independent state administration bodies is an office, but there are also commissions and directorates. Offices are established for various matters, inter-ethnic relations, gender equality, refugees, borders, national minorities, human rights, the suppression of drug abuse and other areas. There are no clear legal criteria for selection and dismissal of the managers of these bodies.

There are no independent state administration bodies in the Republic of Slovenia. Namely according to the Law on Public Administration.¹⁰ According

to this law, in the Republic of Slovenia, administrative affairs are performed by ministries, bodies within ministries and administrative units. Ministries are formed in order to carry out administrative affairs in one or more administrative areas. Bodies within the ministries are established to carry out specialized tasks requiring expertise, executive and development administrative affairs, inspections and other supervisory matters and operations in relation to public services, provided that it ensures greater efficiency and quality in the execution or if necessary a greater degree of expertise and independence due to the nature of administrative matters. Administrative units are formed to perform administrative matters that require territorial organization and operation. This is a completely different concept from our own, which due to the strict hierarchical setup, accountability and responsibility is much more efficient. Otherwise, there are no legal requirements for appointing the managers of these bodies.

¹⁰ <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN015728.pdf>

Summary and Recommendations

From the analysis of the overall legal regulation that regulates public enterprises, state-owned enterprises, independent regulatory bodies, state bodies and state administration bodies, there is no systematic regulation of the work and operation, the appointment of members of the management boards and directors in these institutions of the public sector, as there is no systemic regulation nor a horizontal and vertical organizational setup of these public institutions.

Regarding the public enterprises and companies in full state ownership, there is a dualism in the regulation, although both of them carry out economic activity. Namely, unlike the Republic of Croatia and the Republic of Slovenia, where all public enterprises have the status of trade companies, which means that under equal conditions they can perform the activity for which they are established, in the Republic of Macedonia, public enterprises

have a different status from the trade companies. Namely, in 109 public enterprises there is a different legal regime for selection and dismissal of members of administrative, supervisory and managerial bodies and a different legal regime regarding staff recruitment, even though they should perform a economic activity.

The Law on Public Enterprises prescribes minimum legal requirements for appointing and dismissing members of the management and supervisory boards and directors, which do not reflect the real need and do not correspond to the competencies that these bodies should perform.

Regulatory bodies are also not systematically regulated, ie they are established primarily for the purpose of harmonization of the national legislation with the EU legislation. These contain a more detailed conditions for the selection and the dismissal of the administrative and management bodies in these bodies. Independent state bodies as well as state administration bodies are regulated by special laws, which contain minimal

legal criteria for selection and dismissal of management and governing bodies. In certain bodies, one can observe the inconsistency of their vertical position, ie the current vertical position should be re-examined. Within the framework of the analysis, three bodies have been established in which there is no legal regulation either in terms of their management or in terms of the conditions for the managers.

A general conclusion is that there is a lack of fair, transparent, and measurable procedure for the selection of management, governing and supervisory bodies everywhere.

Recommendations

In order to overcome the established situation, it is necessary to undertake the following activities:

- 1. To reevaluate the legal status of public enterprises in relation to fully state-owned companies.***
- 2. To reassess the manner of managing and supervising the work of all the bodies in which administrative and supervisory boards are established and functioning, both from the aspect of the professional qualifications that should be given to the people who will be appointed in these bodies, and from the aspect of efficient performing of the legal competencies of these management and supervisory bodies in an efficient and economical way.***

3. *Establish systemic legislation in relation to regulatory bodies.*
4. *Establish precise legal requirements for selection and dismissal of the managers in the state bodies, which will be related to the competence of those bodies, as well as the performance of these persons in their work.*
5. *Ensure a fair, transparent and measurable procedure for the selection of candidates for managerial positions.*
6. *Make a vertical and horizontal legal analysis of the competencies of the regulatory bodies, the independent state bodies and the state administration bodies, out of which recommendations for internal reorganization of these institutions will transpire.*

Information about IDSCS

IDSCS is a civil think-tank organization researching the development of good governance, rule of law and Macedonia's European integration. IDSCS has the mission to support citizens' involvement in the decision-making process and strengthen the participatory political culture. Through strengthening of liberal values, IDSCS contributes to coexistence of diversity.

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Jugoslav Gjorgjievski graduated from the Faculty of law "Iustinianus Primus" in Skopje in 2005 as a third student in his generation. He has twelve years of work experience in the reform of the administration, firstly as a civil servant in the Ministry of Justice, at State Administrative Inspectorate and in the Ministry of Information society and administration, and then and as a consultant. He worked on many laws and regulations in the area of administrative procedures, status of officials, the organization of state bodies, inspection services, etc.

Information about the project

Improved good governance of state owned enterprises and independent state bodies” is funded by the UK Aid from the UK Government. The project will analyze the performance of public enterprises (PE) state owned enterprises (SoE), as well as independent state bodies (ISB) with regards to the competences of their management boards and the established procedures. It will assess whether there are procedures in place which make the managers of these institutions resistant to clientelism and corruption. The project aims at initiating change in the governance culture of the target institutions as a sustainable basis for their long-term growth as well as a basis for improved self-reporting.

Link

This publication is available at:

- idscs.org.mk/en/2018/07/11/improved-good-governance-state-owned-enterprises-independent-state-bodies/

Policy brief 19/2018

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November 2018



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Skopje

