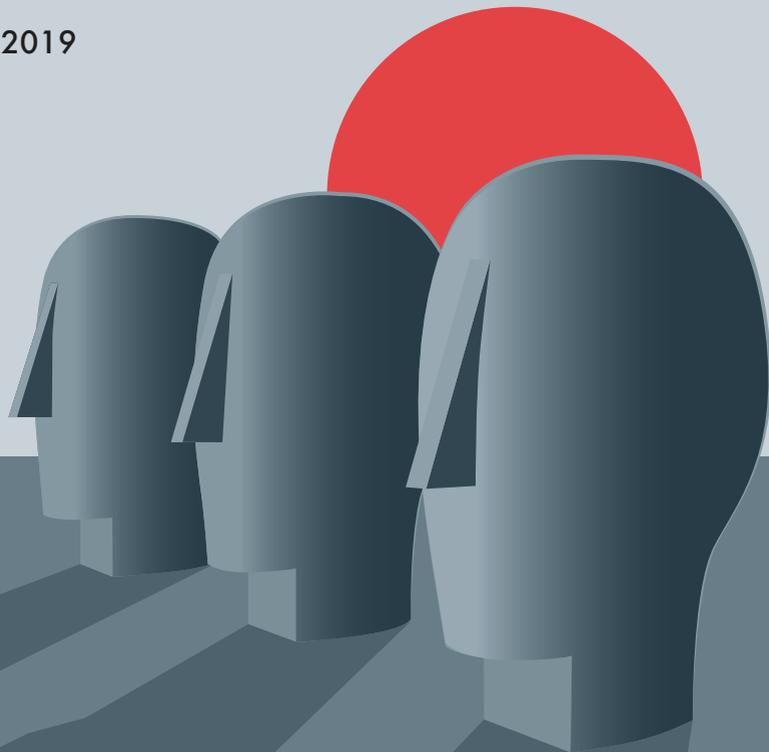


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Who's governing there?

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Introduction

Governance in public enterprises and independent state bodies is closely linked with the general state of good governance in the country. Their number, prevalence and availability of public resources pose questions such as, who governs these entities, how they are selected and how it can be ensured that they will be governed by qualified persons in line with the needs of the institution.

The current legal framework as regards the appointment of governance structures in public enterprises and independent state bodies only insufficiently defines the selection criteria. A general conclusion is that criteria are not precise enough and that there is a lack of fair and transparent merit-based procedure when it comes to the selection. In addition to the appointment criteria, there are

shortcomings and deficiencies in terms of the dismissal criteria based on the performance of appointed persons.¹

The number and fees of members of governance structures² together with the insufficiently precise legal regulation criteria make these institutions points of risk of partisanship and clientelism which influences the quality of their governance. Thus, they are often a public target when it comes to the practice of appointing people in governance structures, availability of public resources and their operation.

¹ For further information about the legal framework, see: Jugoslav Gjorgjievski „Legal criteria for the appointment of management of public enterprises, regulatory and independent bodies”. Institute for Democracy: November 2018. Available at: https://idscs.org.mk/wp-content/uploads/2018/11/A5_GoodGovernanceMK1.pdf. Accessed on: 15.02.2019

² „Analysis of appointed and elected persons – Monitoring report”. Center for Change Management: March 2018. Available at: http://www.cup.org.mk/publications/Imenuvani%20i%20izbrani_za%20web_02.pdf. Accessed on: 15.02.2019

Goal of the analysis and approach

The goal of this analysis is insight into the situation when it comes to qualifications of persons managing public enterprises and independent bodies in the sense of legal criteria, as well as the established practice at the time of appointment.

With a view to determining the state of affairs, there were requests for public information sent to all public enterprises, state-owned companies, regulatory bodies³, independent state authorities and independent management bodies. Professional biographies (CVs) of CEOs, members of management boards and members of supervisory boards were requested. Of the biographies obtained, the database was filled with information about the level of education, field of studies and years of experience in the field of operation of the enterprise or the independent body.

A database was set up of the process of gathering information containing data on a total of 1206 members of governance

structures. The level of available data is different for different members.

Information drawn from CVs is available in 641 of the cases, in 323 cases there is a lack of information due to “administrative silence”, in 235 cases there is information about the level of members of governance structures in terms of their name and surname, whereas in seven cases the request for information had been rejected.

With regard to transparency and supply of information, four conclusions may be drawn from the process of gathering information. Firstly, the cases of “administrative silence” are rarer among commissions and agencies than with public enterprises. Secondly, a higher level of diligence in supplying biographies was noted among state-owned companies and independent bodies than with public enterprises. Thirdly, when it comes to public enterprises, smaller local public enterprises provided answers in more cases than large public enterprises. Finally, on various occasions there was responsibility-shifting between founders

³ The request for public information contained a request to submit CVs of the entity's chief executive officer, members of the management board and members of the supervisory board.

(for instance, the Government, the Parliament and the units of local self-government) and the entities themselves on who should possess that information. The initial impression is that the biography as a source of information about the appointed persons is something which is rarely a part of the files, that is, the documentation that institutions keep. This suggests that the appointment is more a formal procedure than a process of selection filtering the best candidates through a competitive procedure. Particularly problematic is the situation in management and supervisory boards, where information being maintained is sparse.

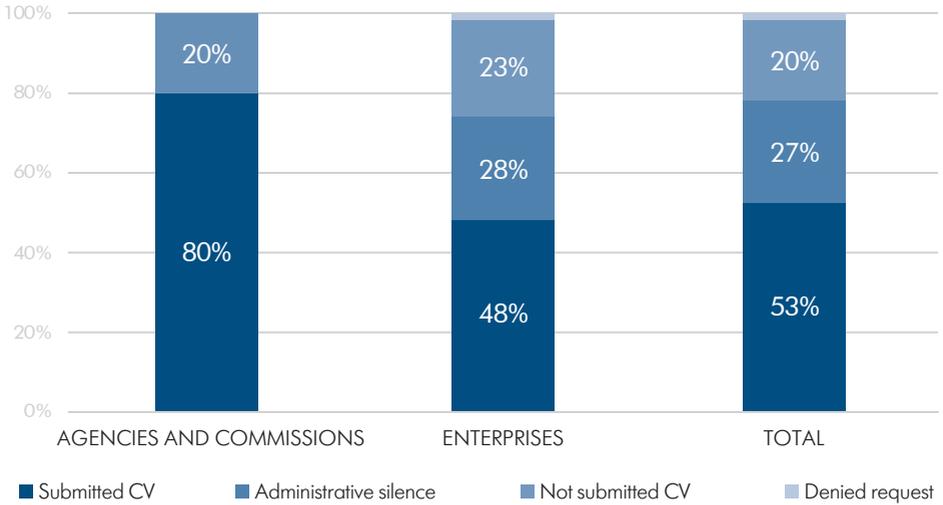
The following part of the analysis encompasses the main findings of the conducted research and offers recommendations on how to improve the legal framework with regard to criteria, transparency and monitoring of the operations of governance structures. It can be noted that of the submitted

requests for supply of biographies (CVs), we received information only for somewhat more than a half of the participants in governance structures. In 19% of cases, there was information submitted about the governance structures, but the institutions do not submit biographies.

There is a significant difference as to how institutions submit information. Public and state enterprises submitted information to a smaller extent, unlike independent or regulatory institutions.

The period of data gathering was between August 2018 and January 2019. Thereby, it is important to emphasise that the data does not refer to a certain period, but to the information submitted. This means that the analysis was performed on the basis of submitted information, which could have changed in the meantime with those institutions that had submitted their data earlier. ►

Figure 1. Submitting of information according to institution type



► In the following text results will be commented in those cases where information is at hand.

Experience – the greatest deficit of appointment criteria

The greatest shortcoming in the process of appointment of management structures is the experience. According to analysed biographies, in 51% of cases the persons

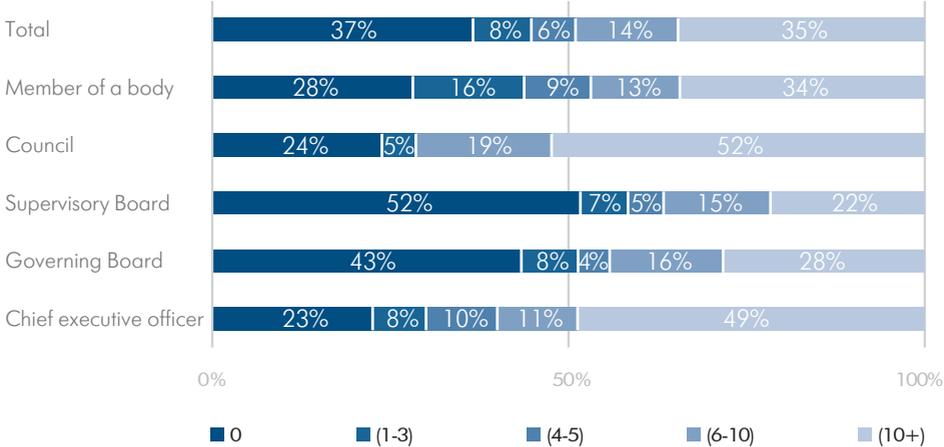
appointed had had no experience in the field of operation of institutions, or that experience amounted to a maximum of five years. As expected, the best suited as to experience are members of councils in agencies, where criteria are more specifically proscribed. In this case, 71% of counsellors have experience of at least six years, and with more than a half within this group, the experience gained is longer than 10 years. The situation is similar

with chief executive officers of public enterprises and state-owned companies (60%), as well as with members of commissions (47%).

As opposed to them are members of management and supervisory boards. Weak experience is what dominates here. So, 63% of members of supervisory

boards have experience of up to five years, and even one half have insignificant experience. A high 43% of members of management boards have no experience. Even though there are differences in practice, what is still visible is the considerable number of inexperienced persons who are members of governance structures of all these different types of institutions.

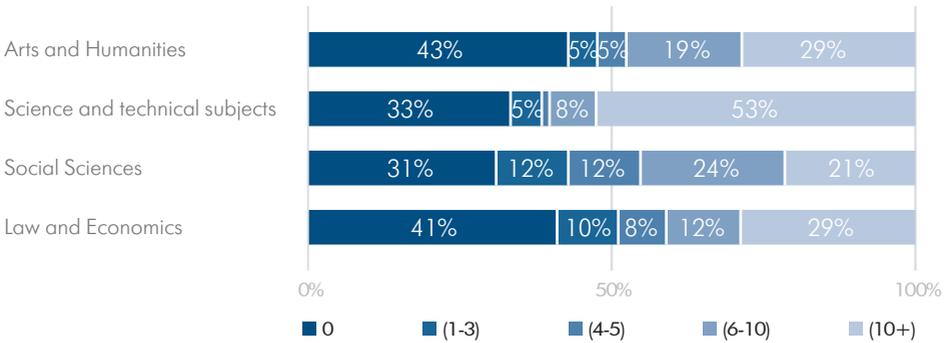
Figure 2. Experience in the field of the institutions



Taking into account the experience according to the field of education, it can be seen that long-standing experience is most represented among members of scientific-technical education. More than half of them have more than 10 years of

experience, whereas additional 8% of them have at least six years of experience. On the other hand, almost one half of the governance structure members are lawyers and economists, but among them 41% have an experience longer than six years. ▶

Figure 3. Experience according to the field of education



► A consequence of this is the gap between the experiential capacity of the management and the challenges of the task which means leading the institution.

To lead and develop public enterprises and to practise the competences of other institutions requires a vision which arises from a previous long-standing experience.

Incidental shortcomings in criteria implementation cast the whole process in the shade

The biography analysis shows that 5% of members of governance structures have secondary education. What causes

concern is that CEOs and members of supervisory boards are persons with secondary education which is contrary to the legal criteria, where higher education is mandatory. Thus, 2% of CEOs and 7% of members of supervisory boards have secondary education.

Education is a clear formal criterion for appointment, defined in the legal framework. Meeting this criterion is easily determined by examining diplomas, whereas different interpretation is

pretty hard. Therefore, the existence of such cases casts a shadow on the appointment process and puts into question the basic integrity of the process.

Analysed according to the level of education, one can see that legal and economic studies dominate the governance structure. These are followed by science and technical studies, and social science takes the third place. What is interesting is that in supervisory boards, which should be above all represented by people of legal

and financial background, there are 22% technical persons, 12% are persons with social scientific background and 4% with art or human science studies. Supervisory boards have the function to monitor the material and financial operation of institutions. Thus the question, what is the capacity of supervisory boards to appropriately fulfil their competences?

Figure 4. Educational structure (out of 661 member)

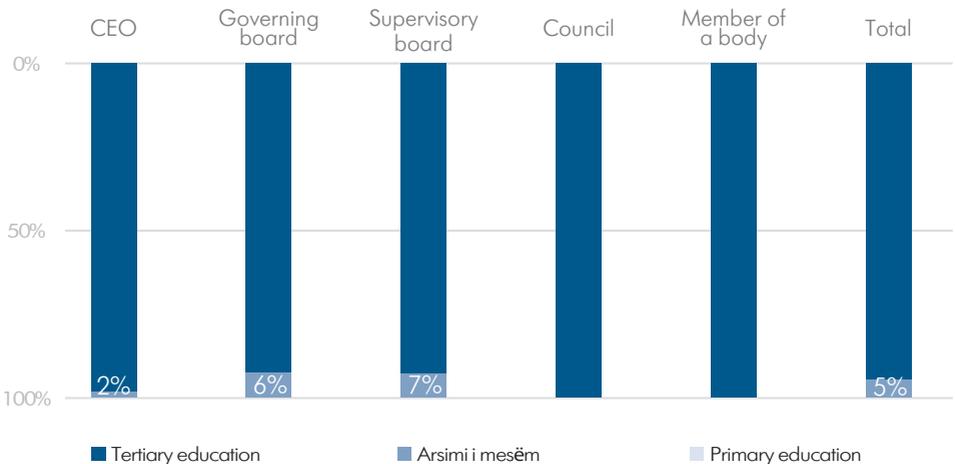
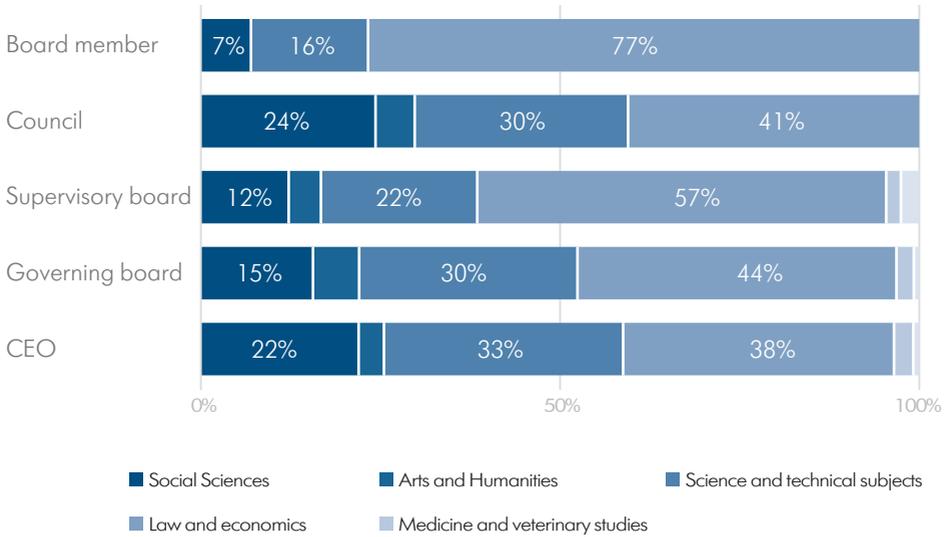


Figure 5. Governing structure according to the field of study



Imbalance in favour of men

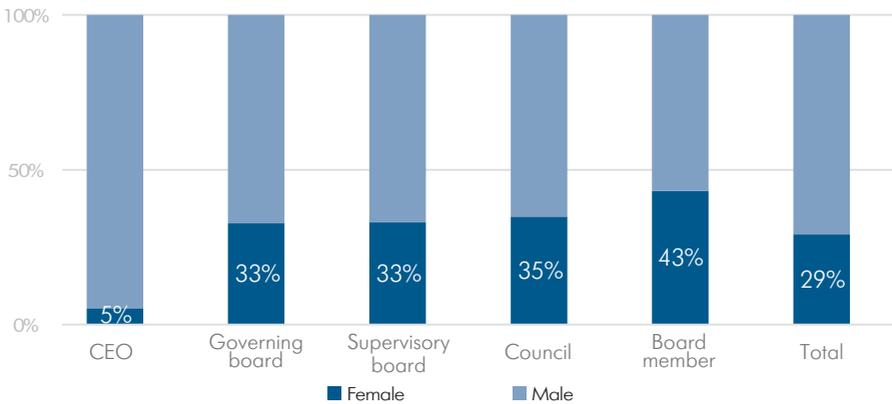
Data point to a significant imbalance in terms of gender structure in institutional management. The differences between the different types of institutions are not significant which highlights that gender imbalance is the result of a

systemic carelessness about rightful representation in this sense. So, only 29% of governance structures include women, which is contrary to the gender equality promotion policies.

The greatest imbalance is noted among CEOs of institutions, where only 5% of appointed persons are women. Opposite are collective authorities, where 43% of members are women. The results

suggest that in these cases, most often commissions, greater care is being taken of gender representation, so the procedures and the practice in these institutions have a better outcome.

Figure 6. Share of women and men in the governing structures



How to improve the appointment process?

The results show a lack in two dimensions of the process of appointment of management structures:

1. Unclear general selection principle
2. Inconsistent implementation of procedures

For starters, it is necessary for the Government, but foremost the Parliament, to work on changing the paradigm in laws on how the eligibility of appointed persons is determined. Legally defined criteria favour education as opposed to experience.

► The assumption is that the educational process is sufficient for persons to get acquainted with the topic and that this makes them sufficiently capable to govern institutions. However, in this way two issues are ignored.

The first issue is that the educational process does not produce staff prepared for work and they need to pass several years working in the field. The on-the-job-training itself lasts ideally at least one year, and this is already 20% of the criterion for becoming, e.g. a CEO of a public enterprise. In other words, until you become capable of working independently in the institution as a beginner, you are already formally close to being a serious candidate for a managing position.

The second issue is in that the focus on education can lead to the possibility of disqualifying staff that has experience in the field of operation of the institution, but has inappropriate education. An illustration about this is the latest example with the selection of the members of

the State Commission for Prevention of Corruption (SCPC). Candidates with known experience in the field of anti-corruption were disqualified or could not apply because they did not have education in legal, economic, political or communication sciences.

When drafting the new Law on Prevention of Corruption, the proposal for higher education without specifying a field to be a condition to apply was rejected. The reasons were that this would open the possibility for many people to qualify. This is partially correct since the risk increases for many to qualify who are waiting for an appointment by means of clientelism connections or who will not be on the level of the task because of their lack of expertise.

Nevertheless, this risk exists because of the shortcomings in the instruments of checking the experience of candidates. Appointing persons in governance structures rarely resembles a hiring process in the private sector, that is to

say, as much information as possible about the candidate and an interview to see who the best is. In order to open the possibility for experience to be a key criterion, transformation is necessary in the appointment procedures precisely in that direction.

It is necessary for executive management candidates (CEOs and members of commissions) to prove their experience and vision for the institution they will manage by means of a transparent and competitive procedure. The competitiveness of the process means that without exception for one position there will be several candidates taken into consideration who have applied in an open advertisement. The process should involve an interview with the candidates and a detailed - not formal - examination of their experience.

The key to the whole appointment process is transparency

However, citizens have no confidence in the present process. In several public opinion surveys it is notable that citizens believe that in North Macedonia people are predominantly employed by help of connections.⁴ Therefore, the interview is necessary to be public so that the process of return of confidence starts. At the same time, the documentation of the whole process, candidates who have applied, their competences and rankings at selection should be publicly accessible.

The initiated process aimed at drafting regulation for the selection of the high administrative service is a step forward in the right direction. But at this moment it refers above all to ministries and independent authorities of the state government. In parallel to this, ►

⁴ Informal life of political parties in the Western Balkans, Inform, 2017. Page 17. Available at: <https://bit.ly/2C27jkD>. Accessed on: 20.02.2019

- ▶ due diligence is required also for the institutions which are of interest to this brief.

When it comes to management (executive and non-executive) with regulatory, independent state authorities and public enterprises, it is necessary without exception to introduce a public advertisement which will set the opportunity for several persons to apply and compete. With the state-owned companies it is necessary to introduce a registry of interested experts which will be continuously updated, and wherefrom founders will draw information and invite experts for interviews. Following OECD's⁵ recommendations, even though the responsibility for appointment of these persons often lies with ministers, it is necessary to introduce a transparent and separated process of prior selection of candidates from this registry by an independent body which will influence the reduction of factual politicization.

With regulatory and independent state authorities, transparency should be

met by organizing an interview similarly to the selection of members of SCPC with participation of other stakeholders who will be able to ask questions and the interviews will be broadcasted on television.

Public interviews should be also practised when appointing CEOs, management and supervisory boards of enterprises. The interviews to be conducted by the management board or representatives of the founders could be broadcasted in local media. The process should at least be open for the public, civil society and other stakeholders who can observe.

This change should be independent of the determination whether these institutions will be viewed as entities functioning alone and are entirely led by a merit-based system, or within a broader political programme of the majority among the founders. Reforms must start from the position that at the moment there is a lack of trust in the integrity of the recruitment process. Under such circumstances, there needs to be trust restored that the

⁵ OECD guidelines of corporate governance of state-owned enterprises, 2015. Available at: <http://dx.doi.org/10.1787/9789264244160-en>. Accessed on: 22.02.2019

appointed persons, regardless whether they have been politically appointed to represent the interest of the founder or have been selected only because of their expertise are factually the best ones with the experience and vision how to lead the institutions.

Following procedures

Competitiveness and transparency of the process are in practice a good way to prevent inconsistent implementation of appointment criteria. Insight into biographies showed that the number of appointed persons not meeting the legally defined criteria is not small. It is the duty of the founders and the bodies making the selection to establish procedures which will elaborate to a great detail the examination of applications and will ensure legality of the process.

Who should do what?

MEASURE 1

INCREASE THE SELECTION CRITERIA FOR GOVERNANCE STRUCTURES WITH A FOCUS ON EXPERIENCE

Where

Law on Public Enterprises

Responsible

Ministry of Economy (ME), Ministry of Local Self-Government (MLS), Ministry of Information Society and Administration (MIOA)

MEASURE 2

INTRODUCTION OF A TRANSPARENT APPLICATION AND SELECTION PROCEDURE BY INVOLVING THE PUBLIC

► **Where**

Law on Public Enterprises

Responsible

ME, MLS, MIOA

.....

MEASURE 3

INCREASE THE SELECTION CRITERIA FOR GOVERNANCE STRUCTURES WITH A FOCUS ON EXPERIENCE

Where

Material laws of independent state administration authorities (SODU), independent state organization authorities (SDO) and regulatory bodies

Responsible

MIOA (within the functional analysis and in line with the proposal for a High Management Service)

MEASURE 4

INTRODUCTION OF A TRANSPARENT APPLICATION AND SELECTION PROCEDURE BY INVOLVING THE PUBLIC

Where

Material laws of SODU, SDO and regulatory bodies

Responsible

MIOA (within the functional analysis and in line with the proposal for a High Management Service)

.....

MEPKA 5

PREPARATION OF DRAFT BY-LAWS AND PROCEDURES FOR PUBLIC AND TRANSPARENT APPOINTMENT OF GOVERNANCE STRUCTURES

Where

New

Responsible

MIOA

.....

MEASURE 6

CHECK-UP OF THE FULFILMENT OF CRITERIA AMONG EXISTING APPOINTED PERSONS

Where

New

Responsible

SCPC

MEASURE 7

CHECK-UP OF THE IMPLEMENTATION OF JUST GENDER ETHNICAL REPRESENTATION POLICIES IN GOVERNANCE STRUCTURES

Where

Preparation of a report

Responsible

Secretariat for Implementation of Ohrid Framework Agreement, Ministry of Labour and Social Policy (MLSP)

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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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:

- <https://idscs.org.mk/en/portfolio/whos-governing-there/>

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