

GEORGIAN YOUNG LAWYERS' ASSOCIATION

CROATIAN ANTI-CORRUPTION PROGRAMME
FOR STATE OWNED COMPANIES

APPOINTMENT OF
DIRECTORS/MANAGERIAL BOARD IN STATE
OWNED COMPANIES (COUNTRIES OVERVIEW)



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DAVOR DUBRAVICA, CROATIA

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Author: DAVOR DUBRAVICA, CROATIA

Editor: KHATUNA KVIRALASHVILI

Tech. Editor: IRAKLI SVANIDZE

**Responsible for Publication: TAMAR GVARAMADZE
SULKHAN SALADZE**

Was edited and published in the Young Lawyers' Association
15, J.Kakhidze st. Tbilisi 0102, Georgia
(+995 32) 295 23 53, 293 61 01
Web-page: www.gyla.ge
E-mail: gyla@gyla.ge

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Croatia – country overview

After declaration of independence from Socialist Federative Republic of Yugoslavia in 1991, Croatia faced the War for Independence (1991 – 1995) which caused huge damage to national economy and society. As Croatia abandoned socialist economy after 45 years, it was necessary to build new economic system based on open market. Nevertheless, the privatization process from state to private property during 1990s was marked with politicisation, irregularities, nepotism and corruption. After war damages, mistakes during transition process affected the economy and society causing the increase of bribery and irregularities.

Positive steps came with Croatian approach to EU during 2000s. Since its application to join EU and start of negotiation process in 2005, Croatia took necessary reforms to comply with EU laws. Corruption was one of the main obstacles to Croatia's accession to EU. A large number of measures were taken to strengthen legal and institutional framework for fight against corruption including building law enforcement agencies, building systems to promote integrity and transparency, access to information, suppression of conflict of interest, control of party funding etc. Negotiations for Croatian EU membership finally concluded in June 2011 and from 1st July 2013 Croatia became a 28th EU Member State. After EU accession Croatia continued to take actions in suppression and prevention of corruption.

Table 1. Georgia and Croatia - comparison of country profiles

	Croatia	Georgia
<i>Year of independence declared</i>	1991	1991
<i>Size km2</i>	56,594	69,700
<i>Population</i>	4,267,600	4,490,700
<i>GDP per capita 2012 US\$ (World Bank)</i>	13,879	3,507
<i>Corruption perception index - ranking 2013</i>	57 (score 48)	55 (score 49)
<i>Global Competitiveness Index 2013–2014 rankings</i>	75	72
<i>Doing business rank 2013</i>	89	8

Type of companies and company bodies in Croatia

According to the Croatian legislation, a company means a legal person the establishment and organization of which are regulated by the Act on Companies. A company may be founded for the purpose of conducting economic or other activities.

State majority-owned companies in Croatia are established as joint-stock company and limited liability company under Act on Companies provisions.

A joint-stock company is a company in which members (stock holders) participate with their shares in the stock capital divided into shares and they are not responsible for the obligations of the company.

A limited liability is on company into which one or several legal or natural persons have invested their basic shares, participating in the stock capital which was agreed upon earlier. Members of the company are not responsible for company obligations.

Joint-stock companies and limited liability companies are companies of capital with their own bodies.

Those bodies are:

- Management - conducts company business and represents the company
- Supervisory Board - controls the Management of the company's business
- Assembly - stockholders of joint-stock companies and company members of limited liability companies realize their rights related to the company business through the general Assembly and make decisions

I. ANTI-CORRUPTION PROGRAMME FOR STATE-MAJORITY OWNED COMPANIES ADOPTION

The Anti-Corruption Strategy was adopted in 2008 by the Croatian Parliament with the aim of strengthening responsibility and transparency, creating preconditions for preventing corruption on all levels, and affirming a zero-tolerance approach to corruption.

The main focus of the Strategy is on strengthening the legal and institutional framework, strengthening all forms of corruption prevention, strengthening repression, improvement of international cooperation, and civil society cooperation. The obligation of all public authorities in the Republic of Croatia is to adopt and implement measures of systematic corruption elimination, including all omissions which benefit corruption.

This also refers to systems managing significant public resources and assets, those conducting public procurement procedures of high value and those with a large number of employees. Management structures in such systems have an exceptionally significant role and responsibility in fighting corruption.

Specific reasons for adopting ACP:

- State owned companies are permanent element of the economy, in particular in its areas that are generally recognized as strategic because of the public interest in the broad sense like water, forests, energy, railways, highways, finance, shipbuilding, science, defense, ports, airports etc.
- State owned companies in Croatia operate with big assets and incomes:
 - total revenues: 7.033.080.724 € / Assets: 37.300.025.428 € (2011)
- Large number of employees working in this companies : - 85234 (2012)
- Bad economic results of caused by bad management and non economic spending of assets
- Need of more responsible and transparent management of assets in companies
- High number of discovered corruption scandals in companies during previous years

This is why the Croatian Government decided to also implement the realisation of anti-corruption measures and goals based on Strategy principles, in companies in majority ownership of the state (hereinafter: companies) through the **Anti-Corruption Programme for state-majority owned companies for 2010-2012 (hereinafter: ACP)**. The ACP was an integral part of the Action Plan along with the Anti-Corruption Strategy, adopted on 18 March 2010 as measure 37.

The application of main elements of fighting corruption in companies, as defined by the Anti-corruption Strategy, means the following:

- the obligation to respect the legal procedure, principles and limitations, which comprises respect and implementation of the existing legislation in Croatia (principle of the rule of law);
- obligation of aligning operational policies with the best practice necessary for an efficient fight against corruption in Croatia (principle of good practice);
- assuming full responsibility by the executive level in creating operational policies and its efficient implementation (principle of responsibility);
- the obligation to adopt and implement measures for a systematic elimination of corruption causes, including the elimination of all flaws which benefit corruption (principle of prevention);
- achieving permanent improvement in the creation and implementation of measures for preventing corruption (principle of efficiency);
- obligation of joint action in implementing anti-corruption policies (principle of cooperation);
- obligation of ensuring transparency in decision-making and enabling access to information in accordance with the Right to Information Access Act (principle of transparency);
- the obligation of improving cooperation with the civil society (principle of cooperation with the civil society);
- consistent and regular monitoring of the implementation of operational activities, assessment of corruption risk and taking adequate measures (principle of self-assessment)

ACP mandates competent bodies within companies to develop adequate management practices guided by the main elements of the fight against corruption, the compliance with which is a precondition for creating a modern legal system. Moreover, companies must be active in accomplishing priority goals of the anti-corruption policy of the Government through active cooperation and partnership with all entities charged with anti-corruption measures, particularly to accomplish the following goals:

Goal 1 - To strengthen integrity, responsibility and transparency in work

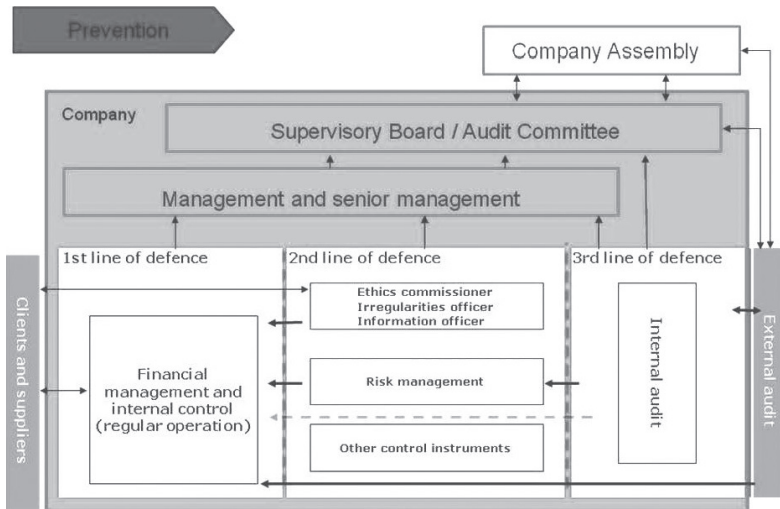
Goal 2 - To create preconditions for preventing corruption on all levels

Goal 3 - To affirm a zero-tolerance approach to corruption

For the purpose of accomplishing the goals of this Programme and the general Strategy goals, the main emphasis of the Programme is on five target (thematic) areas:

- improving services in the public sector with an emphasis on strengthening the responsibility for a successful performance of tasks and for promoting the development of integrity and transparency,
- conducting activities in a proper, ethical, economic, efficient and effective manner,
- aligning activities with the laws and regulations, policies, plans and procedures,
- protecting property and other resources against losses caused by poor management, unjustified spending and usage, and against irregularity and fraud,
- timely financial reporting and monitoring of operating results,
- and eighteen measures for the systematic elimination of corruption causes.

Picture 1: Prevention of corruption - persons and bodies within and outside companies



II. ACP MEASURES FOR THE SYSTEMATIC ELIMINATION OF CORRUPTION CAUSES

Goal 1 - To strengthen integrity, responsibility and transparency in work

All company levels must act transparently, predictably and understandably. The management must be responsible to users of services, suppliers, the state and other partners, and must provide reasonable and acceptable solutions for its procedures and decisions. The general requirements are:

Measure 1.1. To define and post on the company website the vision and mission; general and specific goals for the forthcoming three-year period; basic organisational values and basic principles in terms of relations with third parties (service users, suppliers, the state and other partners).

Measure 1.2. To define and publish in the form of a guide (or guidelines) or incorporate into internal organisation regulations the spe-

cific values and rules for preventing corruption and ensuring professional conduct regarding: gifts and remunerations from and to business partners; management of the company funds; confidentiality and impartiality; the possibility of performing extra work (outside office hours), separation of private and official interests, etc.

Measure 1.3. To introduce the obligation to sign the Confidentiality and Impartiality Statement for employees in posts with a high risk of corruption, as determined in the risk analysis and assessment (for example, for participants in public procurement procedures, issuing documents for the exercise of certain rights, etc.). The statement by which employees, under financial and penal liability, confirm that they carried out their jobs in line with laws and regulations in force in the previous year and that in the current year they would continue to act in accordance with the laws and regulations, is signed at the beginning of every year, and at the latest by 31 January.

Measure 1.4. To adopt and to circulate among the employees the Disciplinary Ordinance, establishing the types of disciplinary measures and the procedure for their implementation which may be taken in case of breaches of policy, procedure or rules on ethical conduct, with the purpose of raising awareness about the prohibitions in force and developing awareness about the problems and consequences of unlawful conduct.

Measure 1.5. In the case of procuring goods whose value exceeds HRK 6,000,000.00 (800.000 €) and the value of work exceeding HRK 12,000,000.00 (1.200.000 €), tenderers must sign the Integrity Statement whereby all tenderers guarantee in writing that the procedure was duly carried out and that no unlawful acts regarding the tender procedure had occurred (an act of corruption or fraud, offering, giving or promising an inappropriate advantage which might affect the actions of an employee), and agree to the implementation of an audit procedure by independent experts, accepting liability and specific sanctions (such as penalties, unconditional termination of contract) in case of breach. In addition, the general procurement rules should include an integrity clause which is to apply to all public procurement procedures.

The measure comprises continuous implementation, beginning with the company action plan.

Measure 1.6. To improve the implementation of the right to information access and to set up and publish the Catalogue of Information for this purpose on the company website, as well as to establish the keeping of the Official Register of Requests, Procedures and Decisions on the Realisation of the Right to Information Access, as regulated in the Right to Information Access Act and the Ordinance on the structure, contents and manner of keeping the official register on exercising the right to information access

Measure 1.7. To post information on the company website, in particular:

1.7.1 management decisions and measures adopted with the consent of the Government of the Republic of Croatia;

1.7.2. information about the company operation, including data on activities, organisation, costs of work and sources of financing, and in particular the publication of reports by an independent auditor on the company's financial operation audit;

1.7.3 information concerning the public procurement procedure in accordance with the Public Procurement Act, as follows: announcements of public procurement, tender information and documents for public procurement, minutes on the opening of tenders, information on the status of all initiated public procurement procedures and all decisions of a tender panel/commission in the procedure of implementing public procurement procedures (decision on selection, cancellation, etc.), notices of concluded contracts;

1.7.4 recruitment procedures, including announcements and calls for testing, legal and other sources for preparing candidates for testing, interview times, information on the recruitment procedure status in case of procedure suspension and decisions of tender commissions;

1.7.5 information on other processes evaluated as risky in terms of irregularities or those interesting for the public.

The measure comprises continuous implementation, but information regarding public procurement must be posted on the company website.

Goal 2 - To create preconditions for preventing corruption on all levels

Institutional anti-corruption structures in companies must be established in companies lacking them or strengthened where they exist for each employee to contribute to the general progress with his/her conduct, and to eliminate all situations which lead to criminal acts considered as criminal acts of corruption.

The general requirements are:

Measure 2.1. To appoint an information officer as the person responsible for ensuring the exercise of the right to information access, carrying out the activities of resolving individual requests and regular publication of information, and taking all actions and measures necessary to ensure that the Catalogue of Information and the official register referred to in measure 1.6 are duly kept.

Measure 2.2. To appoint an ethics commissioner as the person responsible for receiving complaints filed by employees, citizens and other persons regarding unethical and potentially corrupt conduct of employees, and for promoting ethical conduct in relations among employees.

Measure 2.3. To establish and/or strengthen the system of financial management and control as stipulated in the Public Internal Financial Control Act There should be an ongoing application of all established control mechanisms to ensure control and monitoring of the business operation and business management, for the purpose of preventing corruption and strengthening control mechanisms regarding the assessment, identification and mitigation of risks.

Measure 2.4. To establish and/or strengthen internal audits as stipulated by the Public Internal Financial Control Act Integrity of the audit process should be ensured, while auditors and accountants will be required to act consistently and in conformity with auditing rules in case of suspicion about fraud and corruption.

Measure 2.5. To establish and/or strengthen the *auditing committees* that monitor the procedure of financial reporting, the effectiveness of the internal audit system, the internal financial control system, the system of risk management, and that supervise the implementation of annual financial report audits.

Measure 2.6. The obligation to prepare annual operation plans for all structures set out in measures 2.1, 2.2, 2.3, 2.4 and 2.5.

Measure 2.7. To create an effective *system for reporting irregularities* by setting up a mechanism which can be used to report irregularities, frauds or suspected cases of corruption. It also implies the establishment of an internal system of reporting which enables employees to report the source of the problem or suspected corruption, without exposing themselves to the risk of revenge. For that purpose, it is necessary to list an e-mail address on the company website, and to appoint an irregularities officer responsible for managing the register of irregularities and for taking actions against irregularities and frauds through procedures and channels which the mechanism foresees.

Measure 2.8. To implement the operation self-assessment process and organisation for the purpose of improving integrity. The self-assessment survey, representing an integral part of the Instruction for drawing up an annual report on internal financial control, can serve as a sample form

Goal 3 - To affirm a zero-tolerance approach to corruption

Raising awareness of anti-corruption and ethics is necessary in the management, but also among employees, since an individual with integrity is crucial in the fight against corruption.

The general requirements are:

Measure 3.1. To evaluate problems and test the knowledge of employees in the fields where weaknesses were identified, in order to ensure their knowledge of the system, for a further development and improvement of the system and for a better knowledge among employees.

Measure 3.2. To introduce mandatory specialised training for employees in order to build ethical competence. It is necessary to provide additional training in the fields of ethics, financial management, internal supervision and control, public procurement and the protection of injured parties and persons who report corruption in good faith, as well as in providing information.

The measure comprises continuous implementation.

Measure 3.3. To adopt training plans

III. MONITORING OF ACP IMPLEMENTATION

According to ACP the Croatian Government mandated competent authorities in companies to prepare action plans according to measures from Programme. The Action Plan enables systematic monitoring of the Programme implementation and represents a control mechanism which shows whether a certain measure is implemented in full or whether it needs redefining based on different needs. It also represents technical assistance for reporting of ACP.

Competent bodies in companies were mandated to adopt action plans and to submit them to the competent ministry. Managements had to implement and supervisory boards had to monitor the implementation of measures and goals from ACP.

Soon after the beginning of the implementation of the ACP some shortcomings have been detected in the monitoring system foreseen by the ACP:

- Since, at the time, the Central Register of the State Assets was not established, it was not possible to determine which companies are majority state-owned, and therefore obliged to implement the ACP
- It was not known for which companies is a respective Ministry competent
- It was not known who has the competence for monitoring of companies within the Ministries
- There were big differences among State-owned Companies regarding their structure and size (e.g. HEP Group- electro supply had 13684 employees in 2012, while some other companies only around 10 employees)
- It was difficult to establish effective monitoring system in some companies because of their low capacity
- Part of companies was in the privatization and insolvency proceedings
- It was not known who has the competence for implementation of the ACP within companies
- Initial Action plans and reports submitted varied a lot and it was

not possible to get a clear picture of the Programme implementation

- Companies had no one to advise them or help them regarding the Programme implementation
- Lack of coordination between companies, competent Ministries and the Government

The detected shortcomings in the beginning of the implementation of the ACP indicated the need for a prompt change of the monitoring system.

Independent Anti-corruption Sector of the Ministry of Justice, as central place of prevention of corruption in Croatia, took coordinative role in implementation of ACP by establishing monitoring system as it follows.

1. Identification of competent ministries and appointment of Coordinator for ACP implementation in ministries

After analysis are identified ministries who are in charge for certain State Owned Companies: Ministry of Finance, Ministry of the Economy, Ministry of Maritime Affairs, Transport and Infrastructure, Ministry of Defence, Ministry of Agriculture, Ministry of Tourism, Ministry of the Interior, Ministry of Health, Ministry of Science, Education and Sports. (*e.g. Ministry of Maritime Affairs, Transport and Infrastructure is in charge for companies dealing with highways, railways, ports, etc.*)

2. Establishing of Coordination for the Monitoring and Advancement of the Anti-Corruption System for State owned companies

Under presides of Independent Anti-corruption Sector of the Ministry of Justice the Coordination for the Monitoring and Advancement of the Anti-Corruption System for Companies (hereinafter Coordination) was established. Members of Coordination were appointed Coordinators from competent ministries + representative of State Audit Office.

Role of Coordination:

- the introduction of effective monitoring of anti-corruption measures
- to design operational methodology for implementation ACP
- the strengthening of implementation of anti-corruption procedures by the state administration (coordinators at competent ministries), which supports the coordinated monitoring of anti-corruption efforts by including all appointed persons within companies (ethics commissioners, irregularities officers, information officers) and their bodies (company management, supervisory boards, auditing committees, internal audit units, financial managements), which secures preconditions for the effective and coordinated prevention of corruption, creating a prevention system,
- to design the survey for monitoring the anti-corruption programme implementation and to prepare the final version of the survey,
- to eliminate shortcomings noticed during the monitoring of implementation, i.e. to resolve specific issues,
- to continue harmonising the documents adopted with acts and the existing solutions in practice,
- to stimulate further improvement of the forms, means and terms of programme implementation reporting,
- to determine deadlines for survey completion by companies and for data consolidation.
- the monitoring of how the system in place functions, by measuring quantity data

3. Operational methodology

It was recommended for companies to primarily use internal audit in self-assessment. If it had not been established yet, the assessment was carried out by the self-assessment team.

Internal audit is an independent, objective activity of providing expert opinion on the adequacy and efficiency of the internal control system in the operating processes, with the aim of providing added

value and improving operation. The objective of internal audit was to assess the effectiveness of the ACP implementation, in accordance with relevant national regulations (existing solutions), as well as to provide recommendations for the system improvement through:

- harmonisation of the implementation with the ACP goals and measures + regulations dealing with specific measures:
- establishment of the system and appointment,
- effectiveness of implementation (training, reporting, improvements).

The recommended composition of the group for monitoring ACP implementation consisted of professionally-qualified internal auditors.

Self-assessment is an objective activity of providing information about the state of internal control system in operation. The goal of the self-assessment was to assess the ACP implementation status with respect to the relevant national legislation (or successful solutions and good practice) by means of:

- harmonising the implementation with the ACP goals and measures + regulations dealing with specific measures:
- establishment of the system and appointment,
- documents on implementation (training, reporting, improvements).

4. Survey

In order to get clear results of ACP implementation Survey was designed with clear questions for ACP implementation in each company and in whole, and identification of risks and red flags, by analysing almost all measures in detail, so that the document would confirm the implementation. Through ACP coordinators in ministries Survey was sent to all companies with strict completion deadlines.

The ACP implementation survey for April 2012 consisted of 183 questions of which 133 covered the execution of measures (YES/NO answer) and 50 questions required quantitative and informative data.

Companies could provide a YES/NO answer to questions regarding the execution of measures. However, to verify the accuracy of answers, companies were required to list the document or website address with their answer which prove the ACP measure implementation.

Table 2. e.g. Hoteli Makarska d.d. survey

Goal / measure / questions	Answer (YES/NO)	Referenced documents (Memo, decision, acts, document page etc.)
1.6.2. Is the Catalogue of Information posted on the company website?	YES	http://www.hoteli-makarska.hr/files/File/opce-informacije/antikorupcijski-programi/2306.pdf

In addition to questions on the implementation of measures, the survey contained certain questions with numeric data, in order to verify whether the ACP system functions in practice. Information about the right to information access, strengthening ethics and the system of reporting irregularities was of particular importance.

Table 3. e.g. of Survey questions

<i>Measure 2.1. To appoint an information officer as the person responsible for ensuring the exercise of the right to information access, carrying out the activities of resolving individual requests and regular publication of information, and undertaking all actions and measures necessary to ensure that the Catalogue of Information and the official register referred to in measure 1.6 are duly kept</i>
2.1.1. Has a person responsible for ensuring the exercise of the right to information access - information officer - been appointed in compliance with the Act? (if yes, please provide link to company web page)
2.1.2. Is the information officer's contact information (seat address and post office number, e-mail, phone, fax) available on the company website?

2.1.3. Did the information officer report on the performance of tasks under his/her authority to the supervisory board on a quarterly basis?
2.1.4. Did the information officer report to the competent authority as stipulated by Art. 25 of the Right to Information Access Act?
2.1.5. How many applications for the right to information access were received in 2011?
2.1.6. How many applications for the right to information access were resolved in 2011?
2.1.6. How many of the resolved applications were approved?
2.1.6. How many of the resolved applications were denied?
2.1.6. How many of the resolved applications were forwarded?

The structure of companies implementing ACP differs quite significantly in terms of size, number of employees and financial indicators. In order to identify the differences, the survey included questions regarding the number of company employees, incomes, expenditures, claims, assets and company liabilities and daughter companies¹.

Responsibility for a successful ACP implementation in companies - In order to stimulate the transparency of companies and identify persons authorised for the implementation and monitoring, questions were included in the survey requesting companies to submit data regarding the composition of their managements and supervisory boards, and data about remuneration amounts, if any, of supervisory board members. In addition to determining responsibility for ACP implementation, this list also enabled an easier identification of potential conflicts of interest.

¹ A significant number of companies implementing ACP have dependent (daughter) companies, and the issue was raised by some companies whether ACP implementation pertains to daughter companies as well. The Coordination reached a joint position that the implementation and monitoring of the implementation of anti-corruption measures is under the authority of parent companies.

5. Consolidated report

Based on a review of all documents, the teams evaluated the implementation of each measure, and after reporting to the managements, supervisory boards and auditing committees, results were submitted to coordinators in competent ministries, who consolidated the information and submitted it to the team for consolidation and preparation of consolidated report, drawn up by the Independent Anti-Corruption Sector in the Ministry of Justice.

Reporting period was every six months (May and November). Based on that interval there were five consolidated reports (2010-2012). During implementation of ACP Coordination was improving monitoring mechanism, adding new questions in Survey and resolving issues and problems that occurred during implementation.

After completion of Consolidated report Anti-corruption Sector of MoJ reported to the Government of the Republic of Croatia about ACP implementation.

Analysis of situation and recommendations for improving specific issues were included in Reports. A review of results for companies of all activities stipulated by the programme also indicated which companies were most successful in implementing the ACP measures. By including questions of financial indicators and company size in Survey it was easier to make comparisons of a successful implementation among similar companies and to make comparison between success in ACP implementation and positive financial results.

Because of absence of clear registers, privatization process and bankruptcy processes number of state-majority owned companies has varied from 86 in 1st report to 71 in 5th.

All Consolidated reports were presented publicly on conferences organized by Anti-corruption Sector and competent ministries. Furthermore all consolidated reports and for each company were posted on the anti-corruption website administered by the Independent Anti-Corruption Sector of the Ministry of Justice.

Picture 2. – ACP implementation reporting scheme



IV. EXECUTION OF MEASURES

A review of completed surveys indicated that almost all companies completed the survey at a high-quality level, although individual negative examples were noted.

A review of the percentages of executed measures showed that ACP was implemented successfully. The sum of executed measures for all companies indicated which measures were best implemented, and which were not implemented satisfactorily, thus requiring more effort.

Example of 10 ACP measures with the successful execution rate (4th Report):

- a supervisory board was appointed for monitoring ACP implementation (94,19% of all companies)
- the vision and mission were defined and posted on the website (90,70%)
- document is in place which regulates matters regarding gifts and remuneration from business partners and to business partners; the management of company funds; confidentiality and impartiality; the possibility of performing additional work; the separation of private and official interests, etc. (89,53%)
- information officer was appointed - (89,53%)
- an ethics commissioner was appointed (88,37%)
- all company employees have been informed about ethics commissioner (88,37%)
- general and specific goals for the forthcoming 3 year period have been defined and published on the website (87,21%)
- the Catalogue of information has been published on the company website (87,21%)
- basic organisational values and principles in terms of relations with third parties have been defined and published on the website (86,05%)
- an irregularities officer has been appointed (86,05%)

1. Company success in implementing measures - *selection of specific ACP measures*

1.1. Company operation transparency and the right to information access

Operation transparency as a key for successful corruption suppression is one of the main ACP goals. The entire ACP contains measures the goal of which is for companies to publicize:

- information about their work, including data on activities, organisation, costs of work and sources of financing, and in particular the publication of reports by an independent auditor on the company's financial operation audit;
- information about the public procurement procedure, announcements of public procurement, tender information and documents for public procurement, minutes on the opening of tenders, information on the status of all initiated public procurement procedures and all decisions of a tender panel/commission in the procedure of implementing public procurement procedures (decision on selection, cancellation, etc.), notices of concluded contracts;
- recruitment procedures, including announcements and calls for testing, legal and other sources for preparing candidates for testing, interview times, information on the recruitment procedure status in case of procedure suspension and decisions of tender commissions;
- information on other processes evaluated as risky in terms of irregularities or those interesting for the public.

It was noted that ACP implementation showed a shift and increase in company operation transparency, which was also visible in the high-quality completion of measures in this field and in an update of company websites in comparison to the situation before implementing ACP.

Table 4. e.g. Public procurement/procurement transparency.

Total number of concluded contracts in 2011 - 7161
59.30 % of companies have a website with public procurement/procurement announcements,
62.79 % companies post information about tenders and tender documentation on their website.
43.02% of companies posted minutes on the opening of tenders on their website.
51.16% of companies have notices about concluded contracts (2011) on their website.

Table 5. e.g. Transparency of recruitment procedures

Companies conducted 650 recruitment procedures in 2011, of which 449 were announced publicly
75.58% of companies posted information about recruitment procedures on their website.
43.02% of tender notices contain announcements and calls for testing, legal and other sources for preparing candidates for testing, interview times, information on the recruitment procedure status, and notices in case of procedure suspension.
36.05% of companies posted decisions of tender commissions on their company website.

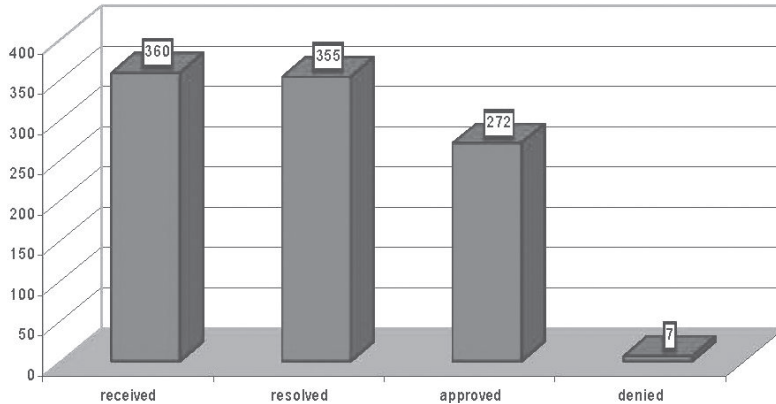
Recommendation (4th Report): Although the results obtained are primarily satisfactory, transparency needs to be further strengthened, particularly in the field of public procurement/procurement, employment procedures and financial expenditures.

It was ordered that companies implementing ACP must establish and publish an Information Catalogue and appoint an information officer.

A review of results indicates a successful implementation of measures in this field. 86.05% companies established an Information Catalogue and posted it on their website. 89.53% of companies appointed an information officer, and 84.88 % posted his/her contact information on their website.

According to numeric indicators in to Survey it was possible to monitor numbers of received requests for the right to information access including resolved, approved and denied requests.

Picture 3. received requests for the right to information access in 2011.



1.2. Donations and sponsorships

Questions regarding Donations and Sponsorship were included for the first time in the 4th Survey. Results were surprising and significant system disadvantages were discovered.

Results showed that **53** companies had expenditures for sponsorships and donations. The total amount of expenditures for sponsorships and donations amounted to **19.285.744 €** in 2011. Despite of the significant amounts and the large number of companies with such expenditures, it was **concerning** that among the 53 companies listed only **15.09%** post information about sponsorship and donation recipients on their website (**10.47%** of all companies). Furthermore, the fact that only **36.05%** of companies had a written procedure in place for providing sponsorships and donations, and that only **13.95%** of all companies published this procedure on their website indicated a **significant lack of transparency** in this area. It was completely unclear based on which criteria and to whom most companies grant financial resources.

Recommendation - for all companies to adopt a clear procedure

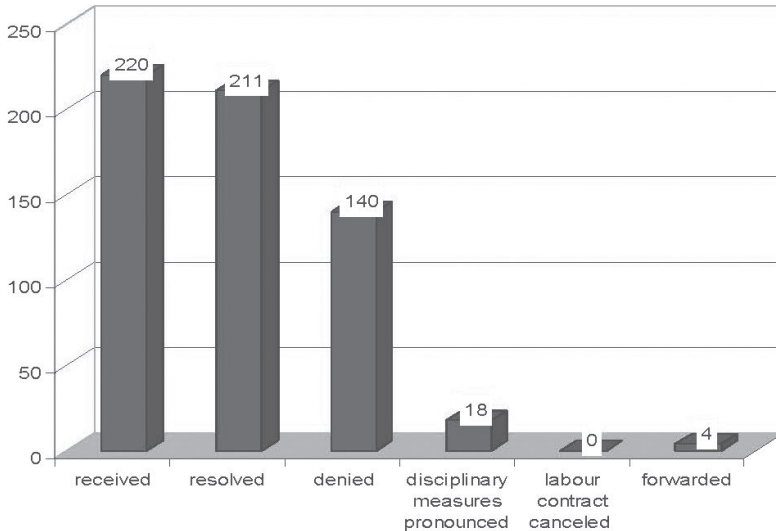
for providing sponsorships and donations, and to post it on their websites, as well as all such expenditures, in order to increase transparency, establish clear criteria for the allocation of resources, identify the recipient and eliminate any doubt about irregularities when granting sponsorships and donations. (4th Report).

1.3. Strengthening ethics and integrity

ACP analysed a range of measures for accomplishing this goal like issuing guides (or guidelines) about specific values and rules for preventing corruption and ensuring professional conduct, adopting a disciplinary ordinance, signing a statement on integrity for purchasing goods of high value and appointing an ethics commissioner as a person in charge for receiving complaints of employees, citizens and other persons regarding unethical and possibly corruptive conduct of employees, as well as for the promotion of ethical conduct among employees. Measures were implemented successfully.

Survey results showed number of ethics complaints. It is important to stress that **the number of complaints does not imply that ethics violations actually occurred in a company**. In order to get the full picture of the system functioning and the actually determined cases, it was necessary to analyse other indicators as well, including the number of cases resolved, rejected, and those for which disciplinary measures were issued.

Picture 4. : Numeric indicators in companies which in 2011 dealt with complaints on ethics violations



1.4. Managing irregularities

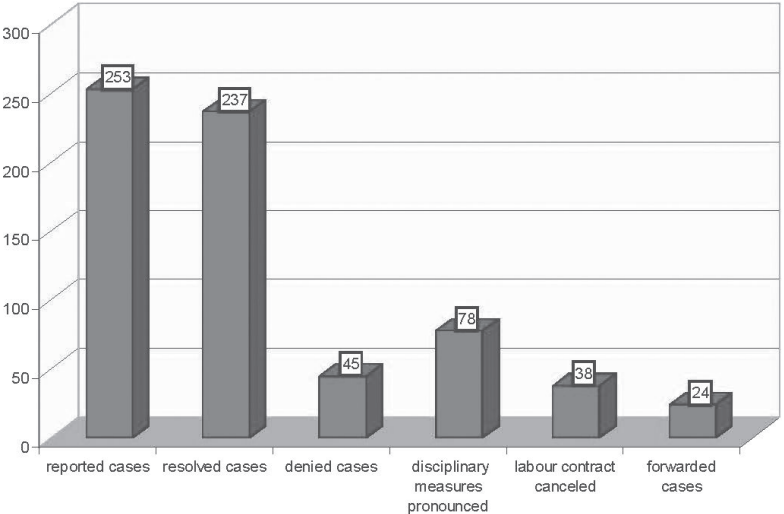
In order to protect assets and other resources from losses caused by bad management, unjustified spending and usage, as well as from irregularities and fraud, ACP envisages the establishment of an efficient mechanism through which it is possible to report irregularities, fraud or suspicion of corruption. It also implies the establishment of an internal system of reporting which enables employees to report the source of the problem or suspected corruption, without exposing themselves to the risk of revenge. For that purpose, it is necessary to list an e-mail address on the company website, to appoint an irregularities officer responsible for managing the register of irregularities and for taking actions against irregularities and fraud through procedures and channels which the mechanism foresees. Measures were implemented successfully.

In 86.05% of companies a person in charge of irregularities was appointed, and in 77.91% of companies his/her information was posted on the company website. In 83.72 % of companies an internal report-

ing system (for ex. procedure) was in place, allowing employees to report the source of the problem or suspicion of corruption without risking revenge, and all employees were familiar with the procedure and contact information of the irregularities officer. A Register of Irregularities was established in 75.58% of the companies (4th Report).

According to numeric indicators, in 2011 reports of irregularities and fraud were submitted in 26 companies. Different disciplinary measures were issued for ethics violations, and in certain cases resulted in employment termination. In order to get the full picture of how successfully the system for reporting and sanctioning irregularities functions and the actually determined cases, apart from the number of reports, it was necessary to analyse other indicators as well, including the number of cases resolved, rejected, and those for which disciplinary measures were issued.

Picture 5. : Numeric indicators in companies which in 2011 dealt with irregularities reports



V. EDUCATIONAL AND PUBLIC AWARENESS ACTIVITIES

After completion of Consolidated reports (2nd, 3rd and 4th) Ministry of Justice, together with partners, organized conferences intended for representatives of companies in majority ownership of the state and those in the private sector. The goal of the conferences was presentation of consolidated reports, an exchange of experience and good practice among companies in ACP implementation, to draw media attention on ACP, to discuss prevention of corruption in the business sector, to promote responsibility, integrity and transparency in business and to strength relations between companies. Average attendance of these conferences was around 150 participants. All relevant media in Croatia reported about conferences and ACP results.

Education team organized by Anticorruption Sector of MoJ held number of anti-corruption educations for top management of major state owned companies during ACP implementation period.

Training regarding the access to information was organized for information officers in companies implementing ACP. The main goal of the training was to acquaint information officers to the Access to Information Act and to obligations of public authorities stipulated by this Act.

All Consolidated reports and for each company were posted on the anti-corruption website administered by the Independent Anti-Corruption Sector of the Ministry of Justice. It ensured full transparency of ACP implementation and visibility of good and bad examples in implementation.

ACTIVITIES AFTER ACP 2010 - 2012. EXPIRATION

After ACP expiration, the Government of the Republic of Croatia adopted final report about ACP implementation on 1 February 2013. The period of implementation was finished in 2012., so the state owned companies were asked by the Ministry of Justice to, as a way of continuing effective anti-corruption policy in the state owned companies, elaborate their own so-called 'mini anti-corruption action plans' and publish sponsorships and donations on their web pages. This included not only state majority owned companies, but all of the companies in which the Republic of Croatia has a share property (from 0,1 to 100%)- in total - more than 600 companies.

Around 120 companies elaborated their own action plans. The analysis of the results showed that the emphasis in most of these action plans was given to transparency (publication of relevant data on company's website), building integrity within the company (educations, appointment of ethics commissioners etc.) and establishing a clear procedure for reporting of irregularities.

The government of the Republic of Croatia adopted the third Action plan of the Anti-Corruption Strategy in November of 2012. This Action plan contained 173 measures which were under the authority of different public administration bodies. One of the measures was "*Coordinating publication of data for the purpose of transparency in the work of public administration bodies*". The measure consisted of numerous researches for which the competent body was the Ministry of justice.

Firstly, bearing in mind an unorganized situation on local level in the Republic of Croatia, very big number of units on local and regional level (in total 429 municipalities, 126 cities, 20 counties and the City of Zagreb) and in order to achieve better transparency, the Ministry of Justice elaborated a survey in cooperation with the Ministry of Administration that was sent out to all local units.

The Survey consisted of following areas: basic data on local units, objectives and plans, integrity and ethics, access to information, financial and work reports, public procurement, employment, financial management and control, internal revision, ssponsorships and donations, system of irregularities and local self-government.

All local units submitted their fulfilled questionnaires within 6 months from receiving. The results showed that there is still lack of transparency in the work of public bodies on local level and that there is a room for improvement.

One of the major concerns was the budget for the salaries, which had no uniformed criteria, the result being that the majority of the total budget of some of the local units was intended for payment of salaries of public officials.

Other issues that need to be dealt with are the conflict of interest and especially the determination of criteria regarding donations and sponsorships given by local units. Since the big amounts of money are being donated it is clear that there should be put in place the highest level of transparency.

In the same time the list of all the companies owned or shared by the local units was made. Local units sent the data on companies that were under their authority- overall, there were 654 companies. Subsequently, the aforementioned questionnaire (with slight amendments) was sent out to those companies as well. The research lasted for four months and all of the 654 companies owned or shared by the local units submitted their fulfilled questionnaires to the Ministry of Justice.

As was the case with the local units, the lack of transparency regarding donations and sponsorships was the major problem within these companies. The clear procedure for giving donations and sponsorships was published on websites of only 18% of the companies, while the list of beneficiaries of the amounts granted by the companies was published on the 6% of all of the companies' websites. Therefore, the overall conclusion was that there is a need for more transparent in the future allocation of funds.

The results showed that many companies appoint management and directors without public competition procedure. Since this is the matter of public interest, the recommendation was made that this should be amended.

All this data is published on the website of the Independent Anti-Corruption Sector of the Ministry of Justice: with the aim of strengthening the transparency of work at both the national and local level, as well as in the companies.

Conclusions

Through ACP and established monitoring system the goals achieved were:

- Identification of State owned companies, management, financial and employees data
- Strengthening of transparency, integrity and accountability in companies
- Identification of corruption risks areas
- Identification of successes and problems in ACP implementation
- List of measures according to implementation
- Numeric data for monitoring the functioning of the established system
- Ranking of companies according to implementation
- Full transparency of process - all reports are published on the web and publicly presented
- Media attention through transparency system, conferences and press releases
- Public awareness on necessity of anti-corruption measures in companies
- Public and media „pressure“ on management and supervision boards to improve ACP implementation and anti-corruption activities in companies

After expiration of period ordered for implementation of ACP, state owned companies continued to implement measures promoted by ACP regarding transparency, integrity and accountability.

ACP principles and Survey methodology were used for screening of situation on local level. After completion of result corruption risks and situation were identified on local level and can be used as basis for further improvement and development of anti-corruption plans. Furthermore, for the first time all companies in ownership of local unit were identified and listed.

State Office for Management of State Assets was established as co-ordinated body for state property management and in 2014 for the first time functionally established and published Register of State Property where all state owned companies are included.

The establishment and implementation of ACP was also monitored during negotiations for EU accession regarding the fulfilment of benchmarks from Chapter 23 - Judiciary and Fundamental Rights, and the European Commission 2011 Progress Report for Croatia indicated the need for further ACP implementation. Furthermore, in April 2012 the European Commission adopted the Report on Monitoring the Preparation of the Republic of Croatia for Full EU Membership, which strictly indicated the necessity of establishing a strong corruption prevention system in companies.

ACP and the established system of implementation monitoring were presented at the OECD meeting in Paris on 30 September 2011, and at the Second Preparatory Meeting of the 20th OSCE Economic and Environmental Forum entitled Promoting Good Governance and Combating Corruption in support of Socio-Economic Development, held in Dublin on 23 April 2012, where the programme generated a significant interest, and a discussion on the applicability of ACP solutions in other countries.

APPOINTMENT OF DIRECTORS/MANAGERIAL BOARD IN STATE OWNED COMPANIES

Introduction

In some countries, state-owned companies make a significant part of national economy and they regulate an area of strategic importance for the country and its' citizens. Even though these companies are owned by state, the principles that apply to state administration can not be entirely applied to them as well. The reason for this is that in the field of economy, objectives and regulations of which can be different from everyday political ones, some companies operate on an open market that demands fast reactions and adjustments, creating the need for constant making of efforts in successful management. That is why the facts of utmost importance are: who is in charge of these companies, what is the procedure for election and appointment of management, which qualifications are needed and how much can business and politics be separated in the election of management and everyday activities of the company.

As any other company State Owned Companies has their owner with their basic shareholder rights:

- to participate and vote in shareholder meetings;
- to obtain relevant and sufficient information on the corporation on a timely and regular basis;
- **to elect and remove members of the board;**
- to approve extraordinary transactions

Like any private company owner, the State acting in its capacity as shareholder needs to form ideas about whom it wants on the board to act in his and company's best interest. But unlike the private sector, the ministers are not the "owners" of SOEs.² The nomination of SOE management should be transparent, clearly structured and based on an appraisal of the variety of skills, competences and experiences required.

Risks of bad selection policy:

² OECD, Board of Directors of State-Owned Enterprises: An Overview of National Practices, 2012

- Politicization of companies
- Non-professional and inefficient management
- Non economic spending of assets
- Irresponsible and nontransparent management of assets
- Bad company results
- Irregularities
- Nepotism and patronage
- Corruption and conflict of interest
- Use of company assets for illegal party funding

Some of the classic effects of politicised nominations are: 1) the changing of the board with a change in political powers; 2) excessive turnover of board members; 3) or, alternatively, insufficient turnover, and lack of fresh blood and innovation on the board; 4) friend appointments and patronage; 5) changing members without good reason; and 6) the inability to get desired profiles.³

This analysis consist overview of appointment systems in transition countries of central and east Europe (Croatia, Poland, Serbia) and established systems from other parts of the world (Chile, Israel, New Zealand).

Croatia

State Office for Management of State Assets is defined by the Act on the management and disposal of assets owned by the Republic of Croatia (2013) as the central authority for the management and disposal of state assets and coordination of management and disposal of assets owned by the Republic of Croatia in relation to the central state administration bodies and other bodies or legal persons established by special laws, who hold or dispose of property owned by the Republic of Croatia.

The same Act prescribes that the Government of the Republic of Croatia, by decision, appoints the Committee of the Government of the Republic of Croatia for Managing Strategic Companies. The mem-

³ W. Richard Frederick, "Enhancing the Role of the Boards of Directors of State-Owned Enterprises" (2011).

bers of the Committee are: Vice-president of the Government in charge of economy, minister of finance, minister of economy, minister of maritime affairs, transport and infrastructure, minister of agriculture, minister of entrepreneurship and crafts and minister of labour and retirement system. Among other powers, the Committee has the authority to propose to the Government of the Republic of Croatia the candidates for members of supervisory boards and managements of companies and other legal persons of strategic and special interest for the Republic of Croatia. State Office for Management of State Assets performs technical tasks for the Committee.

The Decision on Determination of Conditions for Candidates for Members of Supervisory Boards, Management Boards and Managements of State-Owned Companies prescribes the following requirements for the candidates:

- he has completed professional study or undergraduate university degree or undergraduate and graduate university study or integrated undergraduate and graduate studies
- has at least five years experience in the respective positions in the profession
- as a member of the company, the executive director, board member or member of the supervisory or management board has not been convicted on the compensation for damage to the company or its creditors
- he is not engaged in business operations from the subject of business activity of the company, either as a natural person or a member, executive director, member of the management or supervisory board of a legal person
- he is not in conflict of interest by virtue of his membership in the management or supervisory board

Although the Act on the management and disposal of assets owned by the Republic of Croatia foresees the possibility of conducting the public competition procedure for the appointment of the members of Supervisory Boards and Managements of state-owned companies, the bylaw regulating this matter has not yet been adopted. Since the public competition procedures are not being conducted, the Committee proposes to the Government of the Republic of Croatia to propose to the supervisory board of the company the appointment of members of the company's management. It is worth mentioning

that the Committee consists of 7 ministers who propose the adoption of the decision to the Government, of which they too are members. This whole process gives the impression of the politicisation of the appointments and the election of candidates according to political criteria, instead of the professional ones.

Poland

In the state-majority owned companies, management board members are appointed and removed from the office by the supervisory board. Appointment of a board member takes place after the qualification procedure by the supervisory board.

The appropriate procedure for interviewing and recruiting the president and members of management board in state-majority owned companies the qualification procedure is organized and conducted by the company's supervisory board or shareholder's proxy.

The Minister of Treasury, guided by the best standards of regulations developed, among others, by market players presented Good Practices, setting the anticipated standards for selection of candidates for managerial and supervisory positions of 19 companies of key importance for the State Treasury.

Proceedings in selection of members of the Companies' authorities must be based on clear and precisely defined substantive criteria, with particular attention paid to the following requirements: knowledge, experience and skills, as well as the Company's individual character. The above-mentioned criteria must not, however, be defined ad hoc but taking into account the need to ensure the Companies stable management and supervision in the long term.

In matters related to selection of members of the Companies' authorities, they should cooperate with advisors - businesses dealing in professional identification and recruitment of specialists. The advisor's task should be to search and verify candidates meeting requirements and criteria specified for the proceedings, to receive the required documents from them and accept their statements. For entities not obliged to apply provisions of the Public Procurement Law Act of 29 January 2004 advisors should be chosen in conformance with fair competition conditions in an open reliable, transparent and non-discriminatory procedure.

Selection and evaluation of candidates should be made on the basis of all materials available, in particular documents and relevant statements received from the candidate, consulting company, public administration bodies and the concerned Company.

Persons to be appointed as members of a Company's authority shall have higher education or an equivalent degree obtained abroad and recognized in the Republic of Poland pursuant to separate regulations, and shall have in particular:

- experience in enterprise management or supervision over the activities of management bodies of enterprises, or
- experience in the functioning of the industry in which the Company conducting the proceedings operates, or
- experience in economic, legal or other consultancy relevant to operations or needs of the Company conducting the proceedings, or
- qualifications in accounting or financial auditing, as stipulated in the Act of 7 May 2009 on Certified Auditors and Their Self-Government, Entities Authorized to Audit Financial Statements and Public Supervision

Persons to be appointed as members of a Company's authority shall need to, apart from having knowledge, experience and skills:

- enjoy a spotless reputation and guarantee impartiality;
- have a security certificate authorising access to classified information marked as "secret" or agree to undergo the proceedings to issue such a certificate;
- enjoy full civil rights.

Persons to be appointed as members of a Company's authority must not cause a risk of a conflict of interests or raise suspicions about partiality or self-interest, in particular in relation to kinship, membership in the bodies or acting under a mandate won in direct or indirect elections in a local government body, or conducting specific gainful, social or political activity.

Polish Oil & Gas Company practice - pursuant to the Articles of Association supervisory board appoints as a management board member one person elected by the employees. A person is considered to be a Management Board candidate elected by the employees

if, during the election, 50% of valid votes plus one were cast in favour of that person, with the reservation that the election results are binding on the Supervisory Board if at least 50% of the Company's employees participated in the election. The rule on qualification procedure by the supervisory board does not apply to a management board member elected by employees. Management Board members are appointed for a joint term of three years.

Serbia

Serbian Law on Public Enterprises was adopted in 2012. The main reasons for the adoption of the new Law on Public Enterprises were the need to render operations in public enterprises professional; to appoint Directors through the public competition procedure in order to ensure the best possible management and to comply with the Law on Business Companies.

The public enterprises in the Republic of Serbia can be founded by the Republic of Serbia, local self-government units or the autonomous province. According to the Law, Public enterprises are enterprises performing activities of general interest founded by the Republic of Serbia, local self-government units or the autonomous province.

The management in public enterprises can be organized as unicameral or bicameral. The criteria for this classification are determined by the Government by special act. In case of unicameral management the bodies of the public enterprise are the Supervisory Board and the Director, while in case of bicameral management these bodies consist of the Supervisory Board, Executive Board and the Director.

The Executive Board consists of executive directors appointed by the Supervisory Board on the proposal of the Director of the public enterprise, who is also a chairperson of the Executive Board. The maximum number of executive directors is 7, and they all have to be employees of the public enterprise. Also, to be appointed as an executive director, one has to meet the same requirements as for an appointment of the chairperson and members of the Supervisory Board.

The Director of the public enterprise is appointed by the Government (or by the body determined by the statute if the enterprise is founded by the autonomous province or the local self-government unit) on the basis of public competition procedure for a period of 4 years.

The Director must meet the following requirements:

- to have attained the age of majority and be capable of doing business;
- to be expert in one or several areas related to activities of general interest for the performance of which the public enterprise is founded;
- to have third or second-degree higher education or first-degree higher education lasting at least four years;
- to have at least five years of work experience, of which at least 3 years in one or several business areas or lines of business of the public enterprise or at least three years of work experience on managing positions
- not to be a member of a political party or organization, or that inaction in performance of functions in political party's body has been determined
- not to be convicted to sentence for criminal offences against the economy, legal procedures or official duty;
- not to have a security measure of banning the activity that is the predominant activity of the public enterprise imposed

The public competition is conducted by the selection Commission of the Government (or the body determined by the statute of the autonomous province or the local self-government unit). The Commission consists of the chairperson and four members. Chairperson and two members are appointed by the Government for a period of 3 years, one member is appointed by the National Assembly Committee in charge of the economy sector for a period of 3 years and one member is appointed by the Government for every individual appointment of the Director (he also has to be a member of the Supervisory Board of the enterprise where the Director is being appointed). The chairperson and members of the commission can not be members of the Parliament, members of the Parliament of the autonomous province or members of the Assembly of the local self-government units or appointed to government administration bodies, bodies of the autonomous province or local self-government.

The Commission compiles a list of applicants meeting criteria for appointment and conducts the selection procedure. The selection procedure implies evaluation of qualifications, knowledge and skills,

benchmarking results of applicants according to prescribed indicators for appointment of the Director of the public enterprise.

Applicants are included on a ranking list by the Commission. The list for the appointment consisting of maximum of 3 applicants with their results is submitted to the competent Ministry or to the administrative body of the local self-government unit or the autonomous province.

Based on the submitted list and the minutes on selection procedure the competent Ministry or the administrative body prepares the proposal on the appointment and submits it to the body responsible for the appointment of the Director of the public enterprise (Government or the body determined by the statute if the enterprise is founded by the autonomous province or the local self-government unit). Upon reviewing the submitted list and the proposal, that body decides on appointment of the Director of the public enterprise by passing the decision on appointment of the proposed applicant or some other applicant from the list. The decision on appointment of the Director is final and submitted to a person appointed and published in the "Official Gazette of the Republic of Serbia" or the gazette of the local self-government unit or the autonomous province.⁴

Chile

System of Enterprises (SEP) is a Committee created by the Production Development Corporation (CORFO in Spanish; Chilean governmental organization established to promote economic growth in Chile) which does not have its own legal personality. As a constituent of the Corporation, the knowledge and resolution of certain matters related to the goal or aim of the Corporation in the development of the production in several national activities has been delegated to it.

SEP is a technical adviser body of the State regarding management assessment of the companies of the state sector which are related to the Government, through the different Ministries and whenever it

⁴ Transparency International Serbia has reported on numerous violations of this Act, lack of public competition procedures for appointment of directors and violations of terms, "Monitoring of the transparency of work of the Government of Serbia", TI Serbia, September 2013.

is deliberately required to do so. Currently, there are 22 companies (owned by state, or the state is a shareholder in these companies) under its' management.

SEP has the power to propose the people who have to integrate the Managements or Directories of the companies of the state sector and an obligation of preparing and presenting an Annual Memory to the President of the Republic and the Presidents of the Senate and Chamber of Deputies, about their activities and the results of the companies in which they interfere.

The Council of SEP is a collegiate body, composed of 9 members, three of which are appointed by the President of the Republic, two by the Minister of Finance, one by the Minister of Economy, and three by the vice-president of CORFO.

Israel

The Government Companies Authority (GCA) was established under The Government Companies Law (1975). The GCA is a professional unit of the Ministry of Finance, which carries out the role of the government as a shareholder in all government companies, which includes privatizations and managing structural changes. The GCA is responsible for the activity of approximately 100 companies, which include commercial and non-commercial companies, government subsidiaries and mixed companies.

Among these companies are some of the biggest and most complicated companies in the Israeli economy: The Israel Electric Corporation, Israel Aircraft Industries, Israel Military Industries, Rafael Advanced Defense Systems, Mekorot Water Company, the Ports companies, The Railways Company, Oil Infrastructures, The National Road Company, the Housing Companies and more.

Sector Ministers are usually responsible for initiating nominations, but the GCA plays a central role in managing the process. The GCA establishes the qualification criteria for the SOE members and coordinates the vetting of candidates by the Appointments Examination Committee, providing the Committee with both professional and administrative assistance. The GCA provides an opinion on candidates' suitability and reviews of previous tenure, where candidates have served as a director on behalf of the state in the past.

The Minister of Finance appoint a Committee to examine the suitability of candidates. Committee is composed by: The Chairman of the Committee determined by the representative of the Attorney General qualified to serve as a judge of the District Court, it may be someone who served as a judge or a person who has retired from his position in the civil service or public service; a public figure determined by the Chairman of the Committee, as applicable, from a list of public figures set by the Minister of Finance and Minister of Justice for this purpose;; a representative of the Government Companies Authority (GCA).

The tasks of the Committee is to check whether the candidate meet conditions set out in the Government Companies Act and to advise ministers on the candidate's suitability for the position, taking into account the company's special needs, size, and composition of the Board of Directors at the time of appointment.

The Government Companies Law prescribes condition for the director for the State Government company:

- a resident of Israel who is at least 25 years ,
- holds a degree in one of the following subjects: economics, business administration, law, accounting, public administration, engineering studies, or has another academic degree or has completed other higher education studies , all in the company 's main business ;
- has five years experience at least one of the following, or a cumulative experience of five years, at least two or more of the following:
 - senior position in the business management of a corporation with a significant volume of business;
 - a senior public office or a senior position in the public service matters economic, commercial, administrative or legal
 - a senior position in the main area of the company.

New Zealand

The Crown Ownership Monitoring Unit (COMU) is a unit within the Treasury and provides shareholding Ministers with advice on the performance of the SOE. COMU provides advice to Shareholding Ministers and Responsible Ministers on candidates suitable for appointment to the boards of entities such as State-owned enterprises, the Crown financial institutions, other Crown entity companies and statutory entities.

Board directors are selected and appointed based on their skills and the needs of a particular entity's board. It is important that the board comprises a balance of skills and experience that matches the strategic direction and needs of the entity. The emphasis is on appointing the best-qualified person for each position. A best-qualified Crown director is generally defined as the candidate whose skills and experience best meet the Ministers' assessment of the skill profile for the director vacancy.

How to Apply ? COMU operates an on-line database where candidates can express an interest in board positions and upload and maintain their CV. Interested person can apply for specific directorships which are listed on the Board Appointment or can register themselves as a potential candidate in data base.

Appointment process:

1. *Skills Profiling* - In conjunction with Ministers and the chair of each company board where a vacancy arises, COMU will analyse the board's make-up to determine the general skills and experience required and those that would be ideal in any new appointee. A position specification will be prepared.
2. *Candidate Identification* - COMU's primary tool for identifying candidates is appointments database (Board Appointments website). Candidates are able to apply directly for specific positions or register their details on the system in order to be considered for future opportunities. COMU also search database for candidates matching the requirements of each board.
3. *Short-listing* - Ministers consider all applicants for each role and short-list possible preferred candidates that appear to match the skill needs for each board.

4. *Due Diligence and Identification of Conflicts of Interest* - Short-listed candidates have the opportunity to undertake a due diligence process before final decisions are made. This is a chance for the candidates to assess whether they will accept a role if offered. This process also allows COMU and the board chair to form a view about each short-listed candidate's suitability. Due diligence will allow a candidate to determine whether or not he or she can add value to a board, the degree of risk entailed in the appointment, and whether or not there are any known or potential conflicts of interest. The chair will review possible conflicts of interest from the company's viewpoint.

Conflicts of interest occur when a director, or a prospective director, has personal or business interests in common (or could be perceived to be so) with the operations of the company. The law requires directors not to place themselves in a position of a conflict of interest. Examples of situations that can lead to conflicts of interest include:

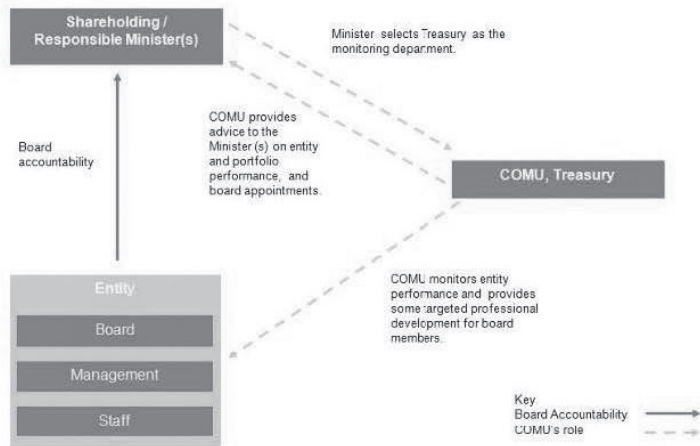
- directorship of, employment with, shares in, or ownership of another company that undertakes work for the entity;
- existing personal or professional links with the entity or its management; and/or
- family connections.

Where a conflict is identified, a decision will be made as to whether that conflict renders the appointment unmanageable, or whether the appointment can proceed with appropriate conflict of interest management regimes in place.

5. *Appointment* - After the preferred candidate has confirmed his or her availability to serve on a board, the Shareholding or Responsible Ministers will advise the Cabinet Appointment and Honours Committee and Cabinet accordingly. Following this, the appointment will be confirmed by a notice of appointment to the successful candidate. For the majority of appointments, after further consideration by the full Cabinet, the Shareholding or Responsible Minister makes the appointment and the entity and successful candidate are advised accordingly.

Diagram: COMU in relation to the Minister(s) and the government entities

COMU as the Minister's monitoring agent



Conclusion

Appointment of directors is, in almost every case, responsibility of relevant minister or some form of inter-ministerial process. It provides political legitimacy to the appointment process.

Nevertheless, the politicization of the whole process of the appointment of directors can provide undue advantage to politically suitable candidates, instead of the expert ones. Therefore, it is necessary to carefully approach the whole process. Except for the risks of bad human resources policy mentioned in the introduction, these kinds of appointments can affect the successful conducting of business operations of the company and the owner (the state). They can also affect all citizens by creating financial losses in companies and not providing the services they were created for in the first place.

Possible appointment solutions:

- robust nomination framework
- clear and determined requirements and procedures ; avoid ad hoc interventions
- transparency of nomination process
- open competitive process
- the use of professional staffing agencies (headhunters)
- database of qualified candidates
- authority that will formally exercises, oversee or audit the nomination process, and warrant a formal, competitive and transparent recruitment process

Taking into account the specificities of different systems, the recommendation is that the election and the appointment of directors in state-owned companies is based on: principles of transparency of the whole process; open public competitions for all those interested; the principle of choosing the best and most qualified candidate according to predetermined criteria and minimizing the political influence to the whole election process.

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