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„Hlídáme veřejný zájem, hájíme efektivní a  
odpovědnou správu země.“

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**Final Report.**

# SOEs and MOEs Transparency index (SAMET Index - PETRA) ●

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December 2019

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## SOEs and MOEs Transparency index - SAMET Index

Praha, Belgrade, December 2019

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Ministry of Foreign Affairs  
of the Czech Republic

**TRANSITION**

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## Summary and Key Findings

Index transparency of public enterprises and state-owned enterprises (PETRA<sup>1</sup> 2019 - Public Enterprises Transparency Index 2019) is the evaluation and ranking of 40 companies at national and local level, based on 37 indicators. The study includes an analysis of the legal framework (primarily the Law on Public Enterprises), the realization of the obligation of bylaws' adoption and the creation of conditions for the professionalization of the management of public enterprises.

The project is implemented in cooperation with Transparency International of the Czech Republic, which made identical analysis, and includes the exchange of experiences related to legal frameworks and their use and the abilities of acceptance of good legislative solutions and/or practices. Rating and ranking in both countries is conducted with identical indicators, so it is possible to compare enterprises' transparency as a whole as well as by specific companies. Namely, in most cases, sample included companies in the same field of action and with the same or similar responsibilities.

In relation to fact that at the sample are also enterprises at the local level, comparisons are possible not only between two countries but also within the country – between PE and state- owned enterprises or mutual comparison between companies at the same sector, in the various towns.

Indicators, 37, are divided into four categories – Position of the enterprise, Operation, Procedures and Availability of data. Data were collected from web sites of companies and by requests for free access to information. For all indicators, it is possible to get 0 points (information or required procedures, practice does not exist or it is not publicly available; 1 point – exists or is available partially or 2 points – information is found or obtained completely.

After collecting of data, the results are verified, all companies had opportunity to indicate if any information is available but the researchers did not find it and then, final table was made.

To the letters related to the verification, there are replies from ten enterprises – five SOEs and five MOEs. There were four more replies received after the table and the ranking was finished and those answers were not included.

An analysis of legal framework has been made and it will be followed by the roundtable with the participation of the guests from the Czech Republic, comparison of solutions in both countries and making of suggestions for the improvement of legislation and practice. In Serbia was made a special analysis concerning the professionalization of management of public enterprises, as one of the key issues that should be addressed both the Law on PE from 2012 and 2016, and as one of the most important, if not the major among promises in election campaigns in the past decade. It was found that in the seven years since the adoption of the previous Law on PE, until today, and in the meantime was adopted a new law – there are no adopted acts to regulate the awarding of professional management for results and act to regulate the training of members of the supervisory board in the area of corporate management.

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<sup>1</sup> Official abbreviation is SAMET – SOE (Stated Owned Enterprises) and MOE (Municipalities Owned Enterprises) Transparency Index.

The part of the research was check whether despite mentioned the leaders got stimulation and if there were any training.

## Findings

The enterprises<sup>2</sup> were ranked by the percentage of the maximum number of points (0-100%), and all of them are divided into five categories: fully transparent (81-100%), mostly transparent (61-80.9%), partly transparent (41-60.9%), mostly nontransparent (21-40.9%) and nontransparent (0-20.9%).

There are no SOEs or MOEs from both Serbia and Czech Republic in the first category.

<b>Serbia</b>	Total	SOEs	MOEs
fully transparent	0	0	0
mostly transparent	11	6	5
partly transparent	15	3	12
mostly nontransparent	5	3	2
fully nontransparent	9	3	6

Best ranked enterprises in Serbia are Srbijavode i Toplana Šabac<sup>3</sup>. In the category "Mostly transparentna" are also Srbijakargo, Vodovod Subotica, Vodovod i kanalizacija Kragujevac, Emisiona tehnika i veze, Transnafta, Putevi Srbija, Beogradski vodovod i kanalizacija, Elektroprivreda Srbije and JKP Šumadija Kragujevac.

The worst ranked enterprises (category "Nontransparent") are MB namenska (0%), Komstan Trstenik, Gradska toplana Kruševac, Aerodromi Srbija, JKP Naš dom Požega, Novi dom Vranje, JP NP Kopaonik, Vodovod Vranje and Vodovod Zaječar.

In comparison of the cities that had at least two enterprises in the sample, the best average have Kragujevac, Subotica and Šabac, and the worst has Vranje. Three PLS were worse than Vranje but sample included only one MOE.

Ranking (with all the indicators) is located in the excel table accessible at the web site of TS, and a copy with a rating and assessment (the percentage of the maximum) in the table in the annex of this analysis.

When looking at indicators, the best grades in Serbia are in the area of public procurement. This is a regular occurrence in transparency studies (such as LTI). The reason is that the law sets obligations in this area, it envisages penalties, and SAI regularly fills misdemeanor or criminal charges and penalties are, finally, imposed for violations of regulations in this area.

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<sup>2</sup> Hereinafter the term "enterprise" refers, unless it is not specifically highlighted also to PE, PCE and state owned enterprises that are legally organized in some other way (LC etc).

<sup>3</sup> This company should be particularly pointed out because in response to the verification letter, it not only indicated that some of the requested information or documents could be found on the site, but it also placed some documents that were not available until then and announced the placement of several more , which, unfortunately, was not completed by the end of the entry, on November 12th.

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The worst situation is in the areas of publishing contracts for legal services, consulting services, advertising (0%).

20 out of 23 Czech companies ranked in preliminary results in the category D – “almost nontransparent”.

The overall results are ranging between 14% and 40%. Czech companies were broadly consistent across the topic, best performing in category Settings, worst in Disclosure. The best results were concerning public calls for recruiting, public procurement of number of employees on the other side, no company has a financial plan, annual work plan, representation costs or sponsorship information published on the website.

The results are mostly reflecting the lack of legislative oversight over the SOE and MOE, which would set a bar for important information to be published and maintained. The best performing questions are tied to several law obligations, whereas the lack of information about the company spending shows how little is transparency promoted in the SOE and MOE sector.

The comparison between similar companies in respected countries shows supporting results - Serbian companies perform better in areas where they are obliged by the law to do so, although it is surprising how many examples of law disobedience was gathered within the Serbian companies. Czech companies tend to go beyond very low legislative standards for transparency in SOE's and MOE's, their steps is usually drawn from other trends.

The results in Czech companies show similar approach in the majority of researched categories, but this approach cannot be perceived as a good practice. Every company shows some crucial flaws in at least one of the categories, which prevent citizens to have a better idea about the economy and administration of the publicly owned companies. There are no distinct results showing difference in transparency between state and municipal level, which further supports the argument that transparency is not promoted across public companies.

Czech Republic doesn't have a specialized law for all state or municipally owned enterprises, they obey in the most part the same rules as private companies or the disclosure policies and legislative acts regarding the public procurement or freedom of information. On the other hand, they largely fulfill the obligations from the state or municipality, whereas Serbian companies, despite the bigger score results tend to omit some of the lawful obligations.

In Serbia, the Law on Public Enterprises prescribes these obligations and, although a relatively high number of companies fulfill these obligations, dark side of this statistics is the fact that there are those who directly violate the law, and their number in these areas varies between 25 and 32.5%.

These findings are consequence of the fact that there is no unique law in the Czech Republic to regulate the obligations of SOEs or MOEs, but they are subject to the same regulations as for private companies and additional obligations under public procurement law or free access to information law.

To conclude, Czech SOEs and MOEs do not have much, or enough, of the obligations prescribed as good practice examples, but generally respect the few obligations that exist, while in Serbia there is a firm legal framework that is not respected by SOEs and MOEs.

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## About the project

Project “Transparency Index of Public Enterprises and State-Owned Enterprises”<sup>4</sup> was realized by Transparency International Czech Republic and Transparency Serbia with the support of the Ministry of Foreign Affairs of the Czech Republic, and from the transition program (Transition Promotion Program).

The project aims to increase the transparency of public enterprises and state-owned companies through changes in the legal framework and practice. The changes would be based on the proposal formulated and advocated after research and comparison between the situations in both countries. The product of this project is universally applicable methodology for future measurement, evaluation and ranking of transparency of PE and state-owned enterprises.

Public enterprises in Serbia have been identified as one of the most problematic areas in the fight against corruption. The system of party control and management companies, shared between parties or other informal power centers, which operate for decades, have not stopped nor by the adoption of two new laws on public enterprises during the past seven years. Law of 2012, which “declared” depoliticization and greater transparency and accountability, in practice, made a noticeable shift and was a significant disappointment, as shown by the survey of Transparency Serbia from 2014. The law has left empty space for non-transparent behavior and consequently, corruption. Poor formulated regulations or loopholes were not so much a problem as a lack of (political) will to implement it. Two years after its adoption, in 2014, the Fiscal Council concluded that “the state and public enterprises threaten to consume Serbian public finances” and “party management of state enterprises is one of the main causes of the current problems” in PE. The problems are only partially (normative) resolved by the new Law on Public Enterprises from 2016. Some of the suggestions put forward by the TS included in the provisions of the new law, but many problems remained, and some new problems have emerged because of imprecise or blurred formulated provisions. In 2017, TS has conducted a new survey of law enforcement, in which transparency was one of the four main aspects in focus. The conclusions of this research stated that transparency was an area in which it is achieved gradual progress at least on the observed sample, but it was largely influenced by the research. In fact, at the beginning of the research just one of 30 PE published all the documents and information required by law. After TS sent numerous letters to PE and their founders, this obligation was, at the end of the monitoring, completely filled by eight enterprises, while another ten established a system of regular publication, although the disclosure of certain documents was delayed.

Bad situation in this area is confirmed by the study of TS for measuring the transparency of municipalities and cities (Local Transparency Index - LTI) where transparency of PE was one of the eight areas. Indicators relating to the PE had the lowest average rating - only 35% (compared to 46% for the transparency of the budget or 85% for public procurement).

But, even if obligations relating to the transparency of the law are fulfilled, it does not mean that transparency of PE and state-owned enterprises will be satisfactory. The reason for this is the law

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<sup>4</sup> At the level of the Republic and local self-government.



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itself: it lacks some of the solutions (such as full transparency of appointments of managers and supervisory board members, the centralized publication of aggregated data for all public enterprises, data analysis, report on the work, publishing a narrative report on the work and fulfillment of work plans of PE (instead of just financial data, disclosure of evidence on fulfillment of conditions for membership in the supervisory board etc.) and has holes that have lowered certain standards established by the previous law (appointment of the Acting Director).

Therefore, a comparative study of the legal solutions in the Czech Republic and Serbia, research practices and exchange of experiences with the participation of key stakeholders, including representatives of PE, state-owned enterprises and decision-makers, can contribute to initiate changes that would result in increasing transparency and thus preventing corruption.

Its goal is a product that can be used to improve the transparency of PE and state-owned companies - a comparative study based on research and objective ranking, with specific recommendations for changes to the legal framework and practice, based on the experiences of the two countries.

The results of this project are:

a tool or mechanism for objectively measuring the transparency of JP that will continue to be able to be used in national and international comparative studies

- the ranking of transparency of the PE and state-owned companies' samples
- a comparative study of regulations and practices will indicate the differences and possible areas for positive change in the program of fight against corruption in this area
- concrete proposal for changes in legislation and practice initiated to all relevant stakeholders
- raising of awareness and directing of media to this problem.

## Methodology

PETRA transparency index is a tool for the measurement and evaluation of transparency and of the ranking of public enterprises and state-owned companies, which is jointly composed by the organization Transparency Serbia, and Transparency International Czech Republic. It has been complied with respect to the 10 Anti-corruption principles for State-Owned Enterprises published by Transparency International in 2017

It was jointly determined 37 indicators (indicator issues), which are divided into four categories - Position of the enterprises, Operation, Procedures and Availability of data. Answers to the indicators' questions were required on the websites of enterprises or by requests for access to information of public importance. If the information is not received or the request is not answered, the score is 0, when the information was partial, score was 1 and if complete responses and information are available in full, it was granted to score 2.

These are indicators, by categories:

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## **A – The settings**

1. Is there a document with clearly described set of authorities (duties) of the company/owner strategy available on its website? (this includes both primary and secondary business fields)
2. Is there a clear company's development strategy that describes its purpose and the vehicles of the company how to fulfil the strategy available on its website?
3. Have public competitions for the selection of directors been conducted?
4. Is the data on the number of employees available on the website?
5. Is there basic information (names, position, contacts) about management (structure of the management depending on the legal framework) posted on the website?
6. Is there a profession CV of the management (structure of the management depending on the legal framework) published on the website?
7. Are the information on procedure for appointment of members of governing, supervisory and audit bodies of the company available on web page?
8. Are minutes of governing, supervisory and the audit committee meetings from the past 12 months publically available?
9. Is there an inventory (or information on major assets – real estate/properties, vehicles) published on the website?

## **B – Economics**

1. Is there a financial plan/budget of the company published on its website?
2. Is there an annual work plan published on the website of the SOE/MOE?
3. Is there an annual report on the work published on the website of the SOE/MOE?
4. Is the pricelist of services provided by SOE/MOE available on the website?
5. Are there reports of audit for past 3-5 years published on the website?
6. Is there information about discounts and benefits available on the website? (including employees)
7. Is there information about MOEs and SOEs debts and loans on the website?
8. Is there information about SOEs and MOEs financial claims published on the website?
9. Is there a policy on collecting financial claims published in the website?
10. Is there a public procurement (PP) plan for current year published on website?
11. Are there public calls for PPs published on the website?
12. Are there elaborated decisions on awarding PP contracts published on the website?
13. Did SOE/MOE present evidence on satisfactory execution (fulfilment) of PP contract (FOI request for one randomly selected PP)?

## **C – Compliance**

1. Is there an open channel for anonymous complaints and policy – procedure for dealing with complaints? (we look at the website, and we send FOI asking for policy – procedure for dealing with complaints)
2. Is there a SOEs/MOEs individual policy regarding representation costs? (FOI request)
3. Is there SOEs/MOEs individual policy regarding using the company owned cars?
4. Is there a rulebook/guidebook on whistle blowing published on the website?
5. Is there information (contact) about person in charge of dealing with whistle blowers' complaints?
6. Are there public calls for recruitment published on the website?

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## D – Disclosure

1. Is the act that sets internal structure of SOEs/MOEs, number of employees and description of their jobs published on the website?
2. Has the elaborated decision on appointment of the director been published on the SOE/MOE website?
3. Are there representation costs published on the website?
4. Is there a separate (sub) page on the website dedicated to public procurement?
5. Is there data on sponsorship costs published on the website? (if there is no sponsorship policy clearly stated, that should be full points score)
6. Is there data on advertising, consultancy services and marketing costs published on the website?
7. Is there advertising, consultancy services and marketing contracts published on the website?
8. Are there legal services contracts (purpose, amount etc.) published on the website?
9. Are there procedures of choosing outsourcing contracts (where public procurement rules do not apply) published on the website?

The scores are added and divided by the theoretical maximum number, and thus the index is obtained which is practically the percentage of the maximal possible score.

During data collection was also performed verification - all enterprises were informed by letter about the research, it was pointed to them that information is not found and they were invited to submit a response where information can be found in the event that the researchers made an oversight (or in the case that in was set in the meantime).

The sample of included public enterprises is made so that it contains the state enterprises from both countries engaged in the same or similar activities, which allows comparison of the interstate level, then several companies from the largest cities, allowing comparisons of PE within a city and a number of local public companies from Serbia engaged in the same activity, which allows comparison of municipalities and cities, relating to their PCE.

These are enterprises included in the sample:

Serbia:

National:

*JP Elektroprivreda Srbije, JP Srbijagas, JP Srbijašume, JVP Srbijavode, Srbija kargo ad, JP Pošta Srbije, MB namenska ad, Aerodromi Srbija, Agencija za osiguranje i finansiranje izvoza Republike Srbije ad, JP Transnafta, JP Službeni glasnik, JP Putevi Srbija, JP za podzemnu eksploataciju uglja Resavica, JP Nacionalni park Kopaonik, JP Emisiona tehnika i veze.*

Local:

*KP Gradska čistoća Beograd, JKP Gradsko saobraćajno preduzeće Beograd, JKP Beogradski vodovod i kanalizacija Beograd, JKP Beogradske elektrane Beograd, **JKP Mediana Niš**, JKP Naissus Niš, JKP Gradska toplana Niš, **JKP Čistoća Novi Sad**, JKP Vodovod i kanalizacija Novi Sad, JKP Novosadska toplana Novi Sad, **JKP Vodovod i kanalizacija Subotica**, JKP Subotička toplana, **JKP Vodovod i kanalizacija Kragujevac**, **JKP Šumadija Kragujevac**, JP Vodovod Vranje, JP Novi dom Vranje, **JKP Vodovod Šabac**, JKP Toplana Šabac, **JKP Vodovod Zaječar**, **JKP Gradska toplana Kruševac**, **JKP Usluga Priboj**, **JKP Senta**, **JKP Naš dom Požega**, JP Komunalac Dimitrovgrad and JKSP Komstan Trstenik.*

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Czech Republic:

National:

Budějovický Budvar, národní podnik, ČD Cargo, a.s., Česká pošta, s.p., ČEZ Distribuce, a.s., ČPP Transgas s.p., DIAMO, státní podnik, Exportní garanční a pojišťovací společnost, a.s., Lesy České republiky, s. p., Letiště Praha, a. s., MERO ČR, a.s., Povodí Labe, státní podnik, Povodí Vltavy, státní podnik, Pražská plynárenská, a.s., Státní tiskárna cenin, s.p., VOP CZ, s.p.

Local:

Dopravní podnik hl. M. Prahy, akciová společnost, Dopravní podnik města Brna, a.s., Jihlavské vodovody a kanalizace a.s., Kongresové centrum Praha, a.s., Plzeňské městské dopravní podniky, a.s., Severočeská vodárenská společnost a.s., VODÁRNA PLZEŇ a.s.,

Given that the research includes the analysis of the legal framework (primarily the Law on Public Enterprises), the realization of the obligation to adopt bylaws and the creation of conditions for the professionalization of the management of public enterprises, the relevant data required from the authorities - the Ministry of Economy, Government of Serbia. On the issue of professionalization of management of PE, data are sought from some PE surveyed by transparency indicators, but also from other companies, which were involved only in this area.

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# Analysis of the legal framework of SOE/MOE in the Czech Republic

## Outline of legislation

Under Section 28, Article 1 of Act No. 219/2000 Coll., On the Property of the Czech Republic and its Representation in Legal Relations, as amended, *the state may establish a company or participate in its foundation only in the form of a joint stock company. The state may be a shareholder of a joint stock company which it has not established or whose establishment it has not participated in... The prior approval of the government is necessary for the establishment of a joint stock company or participation in the formation of a company; the government determines whether the shares will be registered shares or bearer shares.* It follows that the Czech Republic may only establish (or participate in the establishment of) a joint stock company. However, it means that the Czech Republic can acquire ownership interests in other forms of companies and be their shareholder. Thus, the state can only be a (co)founder of a joint stock company but it can also participate in other forms of companies. The ministry carries out the position of the founder of the joint stock company for the state and the assets of the company are deposited by the ministry. For these purposes, the ministry uses the assets, which are its own, or are managed by the organizational unit established by it. The rights of shareholders in a joint stock company founded by the state are executed by an employee of the founding ministry authorized in writing. He/she shall proceed in accordance with the legal regulations and with the written instructions of the minister, who may be provided with reports on its activities at regular intervals set by him/her. Assets can be invested in commercial companies and state ownership interests in commercial companies can be disposed of only with the prior consent of the government.

On the contrary, municipalities or cities are not limited in relation to companies. They may found, co-found or participate in all forms of business, without limitation.

The basic legal regulation in this area is Act No. 89/2012 Coll., The Civil Code, as amended, and Act No. 90/2012 Coll., On Business Companies and Cooperatives (Business Corporations Act), as amended. For state-owned enterprises, the key is Act No. 77/1997 Coll., on state-owned enterprises, as amended. Besides these three acts, Act No. 125/2008 Coll., on transformations of companies and cooperatives, as amended, is also significant. We may also mention Act No. 134/2013 Coll., On Certain Measures to Increase the Transparency of Joint Stock Companies and on the Amendment of Other Acts, and Act No. 627/2004 Coll., On European Company, as amended.

## Commercial companies

Commercial companies (hereinafter also referred to as the "*companies*") under the Corporations Act may be a public owned company and a limited partnership company, also referred to as partnership, a limited liability company and a joint stock company, also referred to as capital companies and a European company. A partnership may be established only for business purposes or for managing own property. Activities that only natural persons may carry out under the legal regulation may be the subject of a business or a business activity of the company, provided that such activity is carried out by persons authorized under the legal regulation.

Companies as legal entities are formed by founding legal acts. The company is established by a memorandum of association. The memorandum of association establishing a capital company requires the form of an authentic instrument, i.e. a notarial deed. If it is possible under a legal

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regulation for a company to be established by a single founder, it shall be established by a foundation deed in the form of an authentic instrument. The founding act must be in writing and must specify at least the name, registered office, and scope of business. It also determines who the first members of the statutory body are. If the period of time is not stated, it follows that the company is established for an indefinite period. The company is established on the day of its entry in the Trade Register.

The company is wound up by legal action, expiration of time, decision of public authority or achievement of the purpose for which it was established and for other reasons stipulated by law. A liquidation of the company is required after its winding-up, unless all of its assets are acquired by a legal successor or unless otherwise provided by law. The company expires on the day of its deletion from the public register. A company may have a single member, if permitted by law. In such a case, the single member of the company cannot terminate his/her membership of his/her own accord unless a new person enters their place. If the number of members of the company falls below the number stipulated by law, the court will cancel it even without a motion and decide on its liquidation. First, however, it will give it a reasonable period of remedy.

A single founder may establish a capital company. The capital company may also have a single shareholder as a result of the concentration of all the shares in their hands. The competence of the supreme body in a one-member company is exercised by its shareholder. If the law requires that the decision of the supreme body of the company is certified by an authentic instrument, the decision of the sole shareholder shall take the form of an authentic instrument. A contract concluded between a one-member company represented by a single shareholder and that shareholder requires a written form with officially authenticated signatures, except in the ordinary course of business and under the usual conditions therein.

Legal acts relating to the foundation, formation, alteration, liquidation or dissolution of a company require a written form with officially authenticated signatures, otherwise they are invalid; the court shall take this invalidity into account of its own motion. An exception to this is the decision of the supreme body.

### Bodies of a commercial company

The law stipulates or the founding legal act determines in what way and to what extent members of company bodies decide and act for it. A company may have bodies with one (individual) or multiple (collective) members. A natural person who is a member of a body and who is elected or appointed to office must be legally competent. A member of the company body must also have a clean criminal record. A person who has been convicted of an offense committed intentionally, if the offense was committed in connection with business or with the object of business, unless the person is regarded as not having been convicted, shall not be considered as having a clean criminal record. The conditions of legal competence and integrity also apply to the representatives of a legal entity which is a member of an elected body of another company. If another legal entity is a member of an elected body, it shall authorize a natural person to represent it in the body, otherwise the legal person shall be represented by a member of its statutory body. If the body is a collective body, it shall be able to take decisions in the presence or other participation of a majority of the members and shall decide by a majority of the votes of the members present. The founding act may provide for a higher quorum for the institution's ability to take decisions, request a higher number of votes to take decisions, or provide for a procedure by which the organ's decision-making process can be changed. The founding act may allow the

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decision-making of the body even outside the meeting in writing or by using technical means. The founding act may determine that the chairman's vote decides in the event of equality of votes in the decision of the elected body of the company. Whoever accepts the position of a member of an elected body undertakes to exercise this position with the necessary loyalty and with the necessary knowledge and diligence. It is believed that a person is acting negligently, if they are unable to act with due diligence, even if they had to find out when taking up the office or in the performance of their duties and would not draw the consequences for themselves. A member of an elected body shall perform the position in person; however, this shall not prevent a member from authorizing another member of the same body to vote on his/her behalf in the event of his/her absence. Whoever is to become a member of a company body informs the founder or the company in advance whether insolvency proceedings have been conducted or whether there is another obstacle to his/her assets or the assets of the company in which he/she has been a member of the body for the past 3 years. The highest body in a partnership is all its partners, in a capital company the general meeting. The company's supervisory body means the supervisory board, the supervisory commission or any other similar body. The collective body shall elect a chairman, whose vote shall be decisive in the event of a tie, unless otherwise provided in the memorandum of association, except in the case of a partnership. A member of a company body may resign. However, he/she must not do so at a time that is inappropriate for the company.

A member of a company body is obliged to act with due diligence. In assessing the fulfilment of this obligation, consideration shall always be given to the care that a reasonably diligent person would have incurred in a similar situation if they were a member of a similar body of the company. If it is assessed in a court of law whether a member of a company body has acted with due diligence, the burden of proof lies with that member, unless the court decides that it cannot be fairly demanded of him/her. If a member of a company body becomes aware that his/her interest may conflict with the interest of the company in the performance of his/her duties, he/she shall inform the other members of the body of which he is a member without undue delay and the supervisory body, if any, or the supreme body. He/she shall also indicate the conditions under which the contract is to be concluded. This shall similarly apply to contracts between the company and a person close to a member of its governing body or a person affected or controlled by him/her. This does not apply to contracts concluded in the ordinary course of business. The rights and obligations between a company and a member of its body shall be governed, as appropriate, by the provisions of the Civil Code on orders, unless the contract of performance of office, if concluded, or law imply otherwise. The contract of performance of the position in the capital company is negotiated in writing and is approved by the supreme body of the company, including its changes. Unless remuneration is stipulated in the performance contract in accordance with the law, it applies that the performance of the position is free of charge.

### Statutory body

The statutory body shall have all powers that the founding legal act, law or decision of a public authority does not confer on another body of the company. A member of the statutory body may represent the company in all matters. If the competence of the statutory body belongs to more than one person, they form a collective statutory body. Unless the founding legal act determines how its members represent the company, each member shall do so separately. If the founding act requires the members of the statutory body to act together, the member may represent the company as an agent only if he/she has been authorized to perform certain acts. The company is also represented by its



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employees to the usual extent in terms of their position or function, while the state as it appears to the public decides. This shall similarly apply to the representation of a company by its member or a member of another body not registered in the public register. Restrictions on the authority of the organ by a memorandum of association or another agreement or a decision of the organ of company are not effective vis-à-vis third parties, even if they have been disclosed. The company is bound by an unlawful act committed against a third party in the performance of their tasks by a member of an elected body, an employee or another representative.

The statutory body of a partnership consists of each of its members. The statutory body of a limited liability company is each executive, unless the memorandum of association provides that more than one executive is a collective body.

### Transformations of a company

The transformation of a company may take the form of a merger, division and a change of legal form. The company may change the legal form only if provided by law.

The merger shall be effected by merging or consolidation of at least two participating companies. In the case of a merger, at least one of the persons concerned shall cease to exist; the rights and obligations of dissolving persons are transferred to the sole participating company as the successor company. Upon consolidation, all participating companies cease to exist and in their place, a new one is created as a successor company; the rights and obligations of all dissolving companies are transferred to it.

A company splits up with the formation of new companies or splits while merging with other companies. A company can also be established by dividing or joining several ways of division.

Companies may merge and divide in different legal forms only if so provided by law.

When a legal form is changed, the company whose legal form is changing does not dissolve or disappear, only its legal relations change.

### Registered capital, deposit and share

The registered capital of a commercial company is the sum of all deposits.

The deposit is a monetary expression of the value of the object of contribution to the registered capital of the commercial company. For a joint stock company, the deposit is referred to as the nominal or book value of the share. The contribution is an item that the shareholder or future shareholder (depositor) undertakes to invest in the company in order to acquire or increase his/her participation in the company. The deposit obligation can be fulfilled in cash (cash deposit) or by introducing other items valued in cash (non-cash deposit). Non-monetary contribution does not include work or services.

A share represents the participation of a partner in the company and the rights and obligations arising from such participation. Each partner may only have one share in the same company, except in a capital company and a limited partner's share. The profit share shall be determined on the basis of the ordinary or extraordinary balance sheet report approved by the supreme body. Upon the termination of the shareholder's participation in the company during its duration other than by the transfer of the share, the shareholder or his/her legal successor has the right to settlement (settlement share). Upon winding-up of a company in liquidation, each member has the right to a share of the liquidation



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balance; unless otherwise stipulated in the memorandum of association or partnership agreement, that proportion shall be paid in cash. Upon the death or demise of a partner, his/her shareholding in the company passes to the heir or legal successor, unless the memorandum of association prohibits or limits the transfer. The prohibition or restriction on the transfer of a shareholding in a joint stock company shall be prohibited. In the case of a division, the share of a public company partner and the share of a general partner cannot be divided. The share of a limited partner and the share of a shareholder in a limited liability company may be divided only in connection with the transfer or transition thereof, unless otherwise specified in the memorandum of association. The approval of the supreme body is required to divide the share.

#### Public company, limited partnership company

A public company is a company of at least two persons who participate in its business or in the management of its assets and guarantee its debts jointly and indivisibly.

A limited partnership is a company in which at least one partner has limited liability for its debts (limited partner) and at least one partner has unlimited liability (general partner). The statutory body consists of all general partners, the memorandum of association may determine that the statutory body of the company are only some of the general partners.

#### Limited liability company

A limited liability company is a company whose debts are guaranteed jointly and indivisibly by the shareholders to the extent that they have not fulfilled the deposit obligations according to the state entered in the Trade Register at the time when they were invited by the creditor to perform. The shareholder's share in a limited liability company is determined by the proportion of his/her shareholding in that share attributable to the amount of the share capital, unless the memorandum of association provides otherwise. The memorandum of association may allow the creation of different types of shares. Shares entailing the same rights and obligations shall constitute one kind. The share that does not entail any special rights and obligations is the ordinary share. If so determined by the memorandum of association, the shareholder may hold several shares, even of different kinds.

The shareholders are entered in the list of shareholders managed by the company. The minimum deposit is CZK 1, unless the memorandum of association stipulates a higher deposit. The amount of the deposit may be determined differently for individual shares. A non-monetary deposit will be appreciated by an expert selected from the expert list.

The memorandum of association also includes the form of the company, the scope of business or activity of the company, the identification of shareholders by name and domicile, the determination of the types of shares of each shareholder and the rights and obligations attached thereto, the amount of the contribution or deposits attributable to the share or shares, the amount of the share capital and the number of executives and the way in which they act on behalf of the company. The memorandum of association may be amended by an agreement of all shareholders, for which an authentic instrument is required. If so stipulated in the memorandum of association, it may also be amended by the decision of the general meeting.

The shareholder has the right to request information about the company at the general meeting and outside, to inspect the company documents, to check the data contained in the submitted documents

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and other rights to information determined by the memorandum of association. This shall apply similarly to the shareholder's representative if he/she is bound to at least the same level of confidentiality as the shareholder and he/she proves this fact to the company. Executives may refuse to provide information in whole or in part only if it is classified information under another legal regulation or the requested information is publicly available. The shareholders participate in the profit determined to be distributed among the shareholders in proportion to their shares by the general meeting, unless otherwise specified in the memorandum of association.

Shareholders exercise their right to participate in the management of the company at or outside the general meeting. The shareholder attends the general meeting in person or by proxy. Unless otherwise specified in the memorandum of association, the general meeting shall have a quorum if shareholders with at least half of all votes are present. Each shareholder has one vote for every CZK 1 deposit, unless the memorandum of association specifies otherwise. The general meeting decides by a simple majority of the votes of the present shareholders, unless otherwise stipulated in the memorandum of association. The consent of at least two-thirds of the votes of all shareholders is required to take a decision, inter alia, to change the content of the memorandum of association, to a decision that has the effect of amending the memorandum of association, to decide to wind up a company in liquidation. In order to approve a decision to amend the memorandum of association, which would affect the rights or obligations of only certain shareholders, their approval is required. If the amendment of the memorandum of association affects the rights and obligations of all shareholders, the consent of all shareholders is required. The general meeting decides by resolution. The powers of the general meeting include, in particular, decisions on changes in the content of the memorandum of association, if so determined by the memorandum or law; decisions on changes in the registered capital; election and dismissal of the executive or supervisory board, if established; decision to wind up a company in liquidation, if so determined by the memorandum of association; approval of ordinary, extraordinary, consolidated financial statements; distribution of profit or other own resources and settlement of losses. The general meeting may reserve the decisions of cases falling under the competence of another company body under this Act. Any shareholder, executive, member of the supervisory board, if any, or liquidator may invoke the invalidity of the resolution of the general meeting.

The statutory body of the company consists of one or more executives. If stipulated in the memorandum of association, more than one executive is a collective body. The executive is responsible for the business management of the company.

The company shall set up a supervisory board if provided by a memorandum of association or another legal regulation. A member of the supervisory board may not be a company executive or another person authorized to act on behalf of the company pursuant to an entry in the Trade Register.

Each shareholder may transfer his/her share to another shareholder. The memorandum of association may make the transfer of shares conditional on the approval of one of the company's bodies. Unless otherwise stipulated in the memorandum, the shareholder may transfer the share to a non-shareholder only with the consent of the general meeting. By acquiring a share, the transferee accedes to the company's memorandum of association. The transferor is liable to the company for the debts which have been transferred with a share to the transferee.

### Joint stock company

A joint stock company is a company whose registered capital is divided into a number of shares. The

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registered capital of a joint stock company is at least CZK 2,000,000 or EUR 80,000. The issue price of a share may not be lower than its nominal value. The issue price of a single share may not be lower than its book value. The book value of a single share is determined by dividing the amount of registered capital by the number of single shares issued. The establishment of a company requires the adoption of statutes. The person who has accepted the statutes and participates in the subscription for shares is the founder. The statutes also include the company and the scope of its business or activity; the amount of registered capital; the number of shares, their nominal value, the determination of whether and how many shares will be registered shares and bearer shares, or whether they will be issued as registered securities, or an indication of restrictions on the transferability of the shares, or whether the shares are immobilized; if shares of different types are to be issued, their name and description of the rights attaching thereto; the number of votes attached to one share and the method of voting at the general meeting; if shares of different nominal value are to be issued, the statutes shall also contain the number of votes relating to a given nominal value of the shares and the total number of votes in the company; an indication of which of the company's internal structure systems has been chosen; and rules for determining the number of members of the board of directors or supervisory board.

A share is a security or registered security to which are attached shareholder rights to manage the company, its profit and liquidation balance upon its dissolution by liquidation in accordance with this Act and the statutes of the company. If stipulated in the statutes, the company may issue shares that do not have a nominal value and represent equal shares in the company's share capital (individual shares). The statutes may provide that employees of the company may acquire its shares or shares of companies affiliated to it on preferential terms. The share shall contain a designation that it is a share, a unique identification of the company, the nominal value, an indication of the form of the share, unless the share has been issued as a dematerialized security and, in the case of a registered share, an unambiguous identification of the shareholder and details of the type of share, including, where appropriate, a reference to the statutes. The share also includes the numerical designation and signature of the member or members of the board of directors. The signature may be replaced by its imprint if the document is accompanied by safeguards against forgery or falsification. If the share is issued as a dematerialized security, it is sufficient that the information given is detectable from the register of dematerialized securities. Shares of the same company may have different nominal value. The share may be in an ordinary or bearer form; this applies similarly to dematerialized shares. Shares in the form of a bearer security are referred to as bearer shares. The company may issue bearer shares only as a dematerialized security or an immobilized security; this also applies to changes in the form or shape of shares. Shares in the ordinary form are referred to as registered shares. Registered shares are entered in the list of shareholders maintained by the company. If the company has issued dematerialized shares, the statutes may provide that the list of shareholders is replaced by the register of dematerialized securities. In relation to the company, it is understood that the shareholder is the one who is included in the list of shareholders. The company will enter the new owner in the list of shareholders without undue delay after the change of shareholder has been proven. Registered shares shall be transferred by endorsement, which shall clearly identify the acquirer. The effectiveness of the transfer of a registered share to a company requires notification of a change in the person of the shareholder of the company and the submission of a registered share in company's name. The statutes may limit the transferability of registered shares, but not exclude them. In the event that the transferability of registered shares is subject to the approval of the company body, the contract for the transfer of such shares shall not take effect before the approval has been granted. The bearer share is

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transferable without limits. Bearer shares may be issued only as a dematerialized security or as an immobilized security. Dematerialized shares are transferable without limit, unless the statutes limit their transferability. The transfer of dematerialized shares is effective for the company, if the change of a shareholder is proven by the statement of the owner's account or the day of delivery or receipt of the statement of share issue records under the law regulating business on the capital market. Shares with special rights, which carry the same rights, form one type. Shares not associated with any special right are ordinary shares. In particular, shares with special rights may be linked to a different, fixed or subordinate share of the profit or liquidation balance, or to a different weighting of votes. Various special rights may be attached to shares of the same nominal value. A share that has preferential rights in respect of a share of profits or other equity or the company's liquidation balance is a preference share. If the statutes so provide, the rights and obligations associated with the outstanding share may be linked to the interim certificate. The company may not subscribe for its own shares. The company may acquire its own shares only under the conditions stipulated by this Act.

The shareholder shall pay the issue price of the shares subscribed by him/her at the time specified in the statutes or in the decision of the general meeting to increase the registered capital, but no later than 1 year from the date of foundation or from the effective date of the increase of registered capital. The shareholder cannot be exempted from the deposit obligation, unless the registered capital is reduced. The shareholder has the right to a share in the profits approved by the general meeting for distribution among the shareholders. Unless the statutes provide otherwise in relation to a particular type of share, this proportion is determined by the ratio of the shareholder's share to the registered capital. Unless stipulated otherwise in the statutes, a share in profit is paid in cash. A shareholder is entitled to attend and vote in the general meeting. The statutes may limit the exercise of the right to vote by fixing the highest number of votes per shareholder, to the same extent for each shareholder or even the persons controlled by him/her. At the general meeting, a shareholder is entitled to request and receive an explanation from the company about matters relating to the company or its controlled entities, if such explanation is necessary for the assessment of the content of matters included in the general meeting or for the exercise of his/her shareholder rights therein.

The system of internal structure of the company in which the board of directors and the supervisory board is established is a two-tier system. The system of internal structure of the company, in which the board of directors and the statutory director is established, is a one-tier system. In doubt, a two-tier system is chosen. The company may change the system of its internal structure by changing its statutes.

Shareholders exercise their right to participate in the management of the company at or outside the general meeting. The shareholder attends the general meeting in person or by proxy. The general meeting is convened by the board of directors at least once per accounting period, unless the statutes stipulate that the general meeting is to be convened more frequently. The members of the board of directors always attend the general meeting. The member of the board of directors must be given the floor whenever he/she so requests. In the event that the company does not have an elected board of directors or the elected board of directors fails to fulfil its obligations in the long term and the general meeting is not convened by its member, the supervisory board convenes the general meeting. It can also convene the meeting, if required by the company interests. The convener shall publish an invitation to the general meeting on the company's website at least 30 days before the date of the general meeting and at the same time sends it to shareholders holding registered shares or dematerialized shares to the address indicated in the list of shareholders or in the register of

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dematerialized securities or in the records kept by the custodian safekeeping the immobilized shares. The general meeting has a quorum if shareholders holding shares whose nominal value or number exceeds 30% of the registered capital are present, unless the statutes state otherwise. The general meeting decides by a majority vote of the shareholders present unless this Act or the statutes require a different majority. The consent of at least two-thirds of the votes of the shareholders present (qualified majority) is required for a decision to amend the statutes, a decision which, in effect, amends the statutes, the decision to authorize the board of directors to increase the registered capital, the possibility of offsetting a monetary claim against the company with a receivable to repay the issue price, the issue of convertible or priority bonds, the winding-up of a company in liquidation and the decision to distribute the liquidation balance. The decision of the general meeting by a qualified majority and other facts, the effects of which occur only after the entry in the Trade Register, is certified by an authentic instrument. The content of the authentic instrument is also the approved text of amendments to the statutes, if they are amended. Decisions to change the type or form of shares, to change the rights attached to a particular type of share, to limit the transferability of registered shares or dematerialized shares and to withdraw participation securities from trading on a European regulated market shall also require the consent of at least three-quarters of the votes cast by the shareholders present. The general meeting decides by resolution. The powers of the general meeting shall include the decision to amend the statutes, if so stipulated by the statutes or by law; deciding on changes in the amount of registered capital and on authorizing the board of directors to increase the registered capital; election and dismissal of the members of the board of directors or the statutory director, unless the statutes stipulate that this competence belongs to the supervisory board; election and dismissal of members of the supervisory board or board of directors and other bodies designated by the statutes with the exception of members of the supervisory board not elected by the general meeting; the approval of ordinary, extraordinary or consolidated financial statements and, in cases where their preparation is stipulated by another legal regulation, interim financial statements; a decision to distribute profits or other own resources or to settle losses; the decision to wind up the company in liquidation; appointment and dismissal of the liquidator, if the statutes so provide; approval of the proposal for the distribution of the liquidation balance; other decisions that this Act or the statutes entrust to the competence of the general meeting. The decision of the general meeting, which results in a change in the content of the statutes, supersedes the decision to amend the statutes. Such a decision of the general meeting shall be certified by an authentic instrument.

The statutory body of the company is the board of directors (two-tier system). The board of directors is responsible for the company's business management. No one is authorized to give instructions to the board of directors regarding its business management. The board of directors ensures proper accounting, submits the ordinary, extraordinary, consolidated or interim financial statements to the general meeting for approval and, in accordance with the statutes, a proposal for profit distribution or loss settlement. Members of the board of directors are elected and removed by the general meeting, unless the statutes stipulate that this competence belongs to the supervisory board. Unless otherwise stipulated in the statutes, the board of directors has 3 members. The board of directors elects and removes its chairman. The board of directors shall decide by a majority of the members present, unless the statutes determine a higher number. Each member of the board of directors has 1 vote. A member of the board of directors may not conduct business in the scope of the company's activities, either for the benefit of other persons or mediate the company's business for another. A member of the board of directors may not be a member of the statutory body of another legal entity with the same or similar

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subject of activity or a person in a similar position, unless it is within a group. A member of the board of directors may not participate in the business of another business corporation as a partner with unlimited liability or as a controlling person of another entity with the same or similar subject of activity.

The supervisory board oversees the performance of the board of directors and the company's activities. No one shall be entitled to give instructions to the supervisory board regarding its statutory duty to control the powers of the board of directors. The supervisory board is entitled to inspect all documents and records relating to the company's activities and to check that the accounting records are kept properly and in accordance with the facts and whether the company's business or other activities are conducted in accordance with other legal regulations and the statutes. The supervisory board reviews the ordinary, extraordinary, consolidated and, where appropriate, interim financial statements and the proposal for profit distribution or loss settlement and submits its comments to the general meeting. Unless stipulated otherwise in the statutes, the supervisory board has three members. Members of the supervisory board are elected and removed at the general meeting, unless stipulated otherwise by law. In the case of a company with more than 500 employees, two thirds of the supervisory board members are elected at the general meeting and one third by the company's employees. The statutes may determine a higher number of members of the supervisory board elected by employees, but this number may not exceed the number of members elected at the general meeting. Unless the statutes or the contract on performance of office include the term of office, it applies that it has been agreed for 3 years for each individual member of the supervisory board. A member of the supervisory board may not at the same time be a member of the board of directors or any other person authorized to act on behalf of the company pursuant to an entry in the Trade Register. The members of the supervisory board attend the general meeting and an authorized member of the supervisory board acquaints it with the results of the supervisory board's activities. The supervisory board decides by a majority of the members present, unless the statutes determine a higher number. Each member of the supervisory board has 1 vote. A member of the supervisory board may not conduct business in the scope of the company's activities, either for the benefit of other persons or mediate the company's business for another. A member of the supervisory board may not be a member of the statutory body of another legal entity with a similar subject of activity or a person in a similar position, unless it is within a group. A member of the supervisory board may not participate in the business of another business corporation as a partner with unlimited liability or as a controlling person of another entity with the same or similar subject of activity.

In the one-tier system of the internal structure of a joint stock company, the position of the board of directors is held by the statutory director or another body of the company having similar powers. The position of the supervisory board shall be held by the board of directors or by the chairman of the board of directors or any other body with similar supervisory powers. The board of directors has three members, unless otherwise provided in the statutes. The board of directors determines the basic focus of the company's management and oversees its proper performance. The competence of the board of directors includes any matter relating to the company, unless the law delegates it to the general meeting. The board of directors shall elect and remove its chairperson. The term of office of the chairperson shall not exceed the duration of their term of office as a member of the board of directors. The chairman of the board of directors may only be a natural person. The chairman of the board of directors organizes and manages its activities and supervises the proper performance of the function of company's bodies subordinate to the board of directors. He/she shall inform the general meeting



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of the findings and of the activities of the board of directors. The company's statutory body is the statutory director appointed by the board of directors. The agreement on the performance of the office of the statutory director shall be approved by the board of directors. The statutory director may only be a natural person meeting the conditions of the law for membership in the board of directors. The statutory director may also be the chairman of the board of directors. The statutory director is responsible for the company's business management.

## State enterprise

A state enterprise (hereinafter also referred to as "*the enterprise*") is a state organization and a legal entity through which the state exercises its property rights. The enterprise conducts business on its own behalf and under its own responsibility for the fulfilment of significant strategic, economic, social, security or other state interests. The company has the right to manage state property and does not have its own property. The capital of an enterprise is the sum of monetary expression of the value of immovable and movable assets set out in the foundation deed which the enterprise has the right to manage upon its establishment. The capital and its minimum amount are recorded in the Trade Register. The founder may increase the capital of the company by assets that the company acquired during the course of its business activities. In the course of the business, the founder may reduce the capital of the enterprise in order to cover the losses of the enterprise, if the need to reduce the capital of the enterprise results from a special law or from the decision of the competent public authority. The reduction in the capital of an enterprise shall not affect the minimum amount of capital of an enterprise laid down in the foundation deed at the time of its establishment. The property of the enterprise are the assets of the state which the enterprise has the right to manage. The worth of the enterprise are the assets and liabilities of the enterprise. Designated assets mean the property of the state, which is defined as the designated assets of the enterprise in the foundation deed. The designated assets of the enterprise are recorded in the Trade Register.

The founder of the enterprise is the state. Unless otherwise provided by law, the ministry responsible for the business activities of the enterprise shall act as the founder on its behalf. The enterprise is not liable for state debts and the state is not liable for the company's debts, unless otherwise provided by law. The position of the founder of an enterprise providing, to a certain extent, tasks related to the defence of the state may be performed by another ministry, if not the Ministry of Defence, only with the prior consent of the Ministry of Defence. An enterprise may be established only with the prior consent of the government. The enterprise is established by a foundation deed issued by the relevant ministry on behalf of the state. The enterprise is established on the day of its registration in the Trade Register. The founder submits the application for registration. The enterprise is dissolved by the founder's decision to dissolve the enterprise with or without a legal successor. The founder decides to dissolve the enterprise only with the prior consent of the government. The founder dissolves the enterprise if the enterprise loses the authorisation for business activity for which it was established, or if the prerequisites required for the enterprise to operate by the law cease to exist. In particular, the founder may cancel the enterprise if the establishment or transformation of the enterprise violated the law, the enterprise violates the provisions of the foundation deed relating to its business, there is a minimum capital or disposing of assets of the enterprise in violation of legal regulations, or for other reasons on the basis of a proposal by a person who certifies a legal interest. When liquidating an enterprise, the liquidator monetizes the assets of the enterprise by public auction. The liquidator may dispose of the assets of the enterprise in other ways only with the prior consent of the founder. The

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enterprise ceases to exist as of the date of its deletion from the Trade Register.

The enterprise's bodies are the director and the supervisory board.

The director is the statutory body of the company, who manages the activities of the company and decides on all its matters, unless they are reserved by law for the founder. The director shall be appointed and removed by the minister or by the government in cases when it reserves this right. The director shall appoint and remove the deputy director of the enterprise, who shall fully represent the director in his/her absence. If he/she appoints more than one representative, he/she shall determine their order at the same time. The director issues the organizational rules of the enterprise, which regulate the internal organization of the enterprise and organization of internal management. The director may, with the prior approval of the founder, determine which internal organizational units shall be entered in the Trade Register as branch offices. The director is obliged to act with due care and to ensure that the fulfilment of important strategic, economic, social, security and other interests of the state is realized efficiently, economically and effectively. If he/she breaches the duty of care of a proper manager and consequently gains benefit, he/she is obliged to give the benefit to the enterprise. If giving the benefit is not possible, he/she will replace it in cash. In assessing whether the director has acted with due diligence, the care taken by another reasonably diligent person in a similar situation or position would always be taken into account. If any harm arises in connection with the conduct of the director of the enterprise, the director shall compensate the company for the damage caused to the extent according to the Labour Code.

The supervisory board approves, to the extent determined by the founder, the fundamental issues of the enterprise development (especially the strategy of production and service development, investment and scientific and technical programs, utilization of the company's know-how, joint venture programmes with domestic and foreign entities etc.) and the disposal with the assets of the enterprise (excluding designated assets); discusses the annual report, the annual financial plan, the interim financial results and reviews the company's annual financial statements and the proposal for distribution of usable profit (loss settlement), it submits its opinion to the director and founder; supervises the exercise of the director's authority and the conduct of the enterprise's business, in particular whether the undertaking's business is carried out in accordance with the law and the foundation deed; expresses its opinion on the founder's proposal to wind up or transform the business; has the authority to inspect all documents and records relating to the enterprise's activities and to check that the accounting records are kept properly in accordance with the facts; is obliged to notify the director and the founder of any deficiencies found, and may propose remedial measures to the director; is obliged to provide information or investigations to the founder upon request within the time limit set by the founder; may recommend the founder to dismiss the business director; expresses its opinion on the draft statute and its amendments; performs other activities determined by the founder in the statute of the company. The supervisory board must have at least three members. One third of the members of the supervisory board are employees of the enterprise, who are elected and removed by employees of the enterprise based on the results of the elections. Two thirds of the supervisory board members are appointed and removed by the founder. The members of the supervisory board are appointed and elected among experts and employee representatives from the enterprise. The performance of the office of member of the supervisory board is irreplaceable. Neither the director nor his deputies may be members of the supervisory board but may be invited to the supervisory board meetings. The supervisory board decides based on the consent of the majority of its members. The members of the supervisory board are obliged to exercise their powers with the care of



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a due manager and to maintain confidentiality about confidential information and facts, the disclosure of which to third parties could cause harm to the enterprise. The obligation of confidentiality continues even after termination of the membership in the supervisory board.

The director of the enterprise, his deputies and members of the supervisory board may not conduct business or engage in any other gainful activity in the business of the enterprise, either for the benefit of others or mediate the business of the enterprise for another; be a member of the statutory or supervisory body of a legal entity with the same or similar scope of business; to participate in the business of a corporation with the same or similar business or to pursue another gainful activity for the benefit of that legal entity, except for ownership of shares acquired in the voucher privatization. If the founder discovers or becomes aware of a breach of this prohibition of competition, he/she shall remove the director or a member of the supervisory board from his/her office. If those persons obtain a benefit as a result of breaching the prohibition of competition, they shall give the benefit thus obtained to the enterprise; if the giving of the benefit obtained is not possible, it shall be replaced in cash.

The founder establishes and dissolves the enterprise and issues decisions on the transformation of the enterprise; appoints and dismisses the director, except for the appointment of the director by the government, members of the supervisory board and liquidator; approves the supervisory board's rules of procedure, determines the number of its members, the term of office and the minimum number of meetings per year; he/she defines dedicated assets including their item specification in the annex to the foundation deed; he/she may change the foundation deed with the exception of the deprivation of assets which the company has the right to manage at the time of its establishment or at the moment of the change of the foundation deed in the Trade Register, unless otherwise provided by law; has the right and obligation to request information about the business activity and the state of assets of the enterprise and to check and verify this information in a manner stipulated by a special regulation; controls whether the needs of the state, which the enterprise ensures in its business activity, are effectively and economically provided; approves the financial statements and annual report; decides on distribution of usable profit (loss settlement); exercises the right to manage the state's assets, in particular the economical, efficient and effective use of such assets in the course of carrying on business; and controls how an enterprise disposes of those assets.

The founder of the enterprise may withdraw the assets of the enterprise only in cases and under the conditions stipulated by law. The enterprise exercises the rights of the owner in managing the assets of the enterprise, acts in its own name in legal relations concerning the assets of the enterprise and participates in proceedings before courts and other authorities in matters concerning the assets of the enterprise including proceedings to determine whether or not there is a state property right to the assets of an enterprise. Legal acts relating to the assets of the enterprise made by the enterprise without the prior approval of the founder prescribed by law or statute are invalid; such invalidity may be invoked within six months of the date on which the beneficiary became aware or should have become aware of the invalidity, but no later than ten years after the date on which such conduct occurred. If an enterprise acquires assets from a person other than the state, it acquires them for the state and the enterprise has the right to manage those assets. The enterprise is liable for the debts by its assets. An enterprise may only make donations from the enterprise's assets for the purposes and to the extent that, under a special law, the value of the donation can be deducted from the corporate tax base. An enterprise may acquire from legal or natural persons, other enterprises, organizational units of the state or other governmental organizations only the things that it needs to carry on its

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business. An enterprise may acquire an ownership interest in other legal entities only with the prior approval of the founder. The enterprise is obliged to use the assets of the company efficiently, economically and effectively for its business. The enterprise manages and disposes of the property in such a way that it does not damage it and does not unreasonably reduce its size and value or the proceeds from such property. The enterprise shall take care of the preservation and maintenance of the property and, if its nature so permits, its improvement or reproduction. It protects it from damage, destruction, loss, theft or misuse.

The enterprise creates a reserve fund, a cultural and social needs fund, a founder's fund based on the founder's decision. The reserve fund for enterprises established under the State Enterprise Act is intended to cover losses and risks, to finance business fluctuations and to cover the basic allocation to the cultural and social needs fund for those enterprises that do not have enough profit or show a loss. The minimum amount of the reserve fund shall be 10% of the capital at the time of foundation, unless otherwise stated by the founder, and at least 10% of the net profit shall be added annually up to the amount set out in the foundation deed. The cultural and social needs fund is created and used by the enterprise in accordance with a special legal regulation. The founder may decide that the enterprise is obliged to create and manage the founder's fund. If the founder decides to create the founder's fund, the rules of its creation and use will be added to the statute of the enterprise. The enterprise transfers to the founder's fund a part of retained earnings from previous years determined by the founder, usable profit of the enterprise and the funds of the enterprise, with the exception of reserve fund and cultural and social needs fund. At the discretion of the founder, assets in this fund may be transferred to the state budget, to the budget of state funds to carry out activities under other legal regulations or released to cover the justified business needs of the enterprise. An enterprise may generate additional funds from its usable profit.

### Special cases of subjects

A special position among the "state" companies is held by the joint stock company Czech Railways (České dráhy, a.s.), which is regulated by Act No. 77/2002 Coll., On the joint stock company Czech Railways and on the state organization Railway Infrastructure Administration, as amended. Budweiser Budvar (Budějovický Budvar), which has the form of a national enterprise for reasons of legal continuity, and Saaz hops (Žatecký chmel), a national enterprise, also occupy a special position. However, the special legislation that was supposed to regulate the administration and management of national enterprises has never been issued. Therefore, national enterprises are governed by the specific provisions of the State Enterprise Act based on the reference in Section 46 of Act No. 109/1964 Coll. which is no longer effective. The Railway Infrastructure Administration (Správa železniční dopravní cesty), a state organization, also has a special legal form.

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# Analysis of the environment of SOE/MOE in Serbia

## Obligation of reporting and disclosure of information about public enterprises

### The obligations of disclosure under the former and the new law

Law on Public Enterprises from 2012, provided that the public in the work "provides regular reporting to the public on the program of work of enterprises and implementation of programs, as well as about other facts that may be of interest to the public, and in particular: on the audited annual financial statements, as on the opinion of the authorized auditor on the report, the report of a special or extraordinary audits, the composition of the supervisory board, the names of the directors and executive directors; on the organizational structure of the company or the company's capital, as well as on the mode of communication with the public."

Public enterprises were obliged to publish on its website **adopted annual business program and quarterly reports on the implementation of the annual program**, the audited **financial annual reports**, as well as **the opinion of the authorized auditors** on those statements, **the composition and the contacts of the supervisory board and the director**, as well as other issues of importance to the public.

The new law from 2016 prescribes some additional elements. Transparency Serbia during the working indicated that the obligations relating to transparency could be further expanded. This is primarily related to the documents concerning the procedure for election of director (records of the meeting of the Commission for the election of directors, programs submitted by the candidates, etc.). These proposals were respected neither by the relevant ministry nor even during the parliamentary procedure.

The current law, Article 71 ("Public in work") provides that a public enterprise is obliged to publish on its website: **CVs** of the members of the supervisory board, directors and executive directors; **organizational structure**; annual or three-year **business program**, as well as any amendments thereto, and a extract of the program if a public enterprise has competition in the market; quarterly **reports on implementation** of annual or three-year business program; **annual financial reports with the certified auditor**; other information relevant to the public.

The Government may determine other elements of operations of a public enterprise that will be published, and which are of particular importance to the public. For non-fulfillment of this obligation, a fine of 50.000 to 150.000 dinars is provided for the responsible person in public enterprise.

The novelty in relation to the Law of 2012 is that there is now obligation of disclosure of biographies and organizational structure of enterprise. On the other hand, eased are the obligations regarding the disclosure of annual business program (ABP), so the PE that have market competition have **ability** to publish "extract of ABP". Since it is not specified **what must include the extract**, in many cases are not available some important data, such as those relating to sponsorship and donations.

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Although the law left the possibility for going in another direction - to increase transparency, by government's determination of other elements of the business that will be obligation to be published, until now it has not happened. However, despite failing to pass a special act of the publicity of operations of public enterprises, on providing on transparency of public enterprises has a major influence other Government Act, which determines the content of the annual business program<sup>5</sup>. Elements of the annual and three-year business program are elaborated in the Guidelines<sup>6</sup>.

### Guidelines for business programs

Public companies have to, in the preparation of these acts, come out of the objectives and guidelines of the economic and fiscal policy of the Government, and to adhere to the strategic acts and regulations, to "carry out a comprehensive business analysis for the year 2019", so they can plan realistically. Business program is delivered to the founder.

Although by its name regulations and guidelines refer public enterprises only to point which information should be found in their business programs, these bylaws in fact set the limits for the planning of the individual segments (employment, certain types of expenses). However, only it is up to the will of the Government and the other founders of public enterprises whether possible deviations from the guidelines will result in disapproval of the business program.

At the program, as the first are presented general data (form and activity of the enterprise, long-term strategies, organizational chart, names of executives and date of appointment of directors and members of SB and of the Assembly).

In the analysis of business for the current year, public enterprises show the estimated physical range of activity, balance sheet, income statement and cash flow report, analysis of the performed business indicators, the reasons for deviations from the planned indicators, implemented activities aimed to improve business processes, realized activities in the field of corporate managing.

When it comes to plans, they should demonstrate the objectives (which should be measurable, time-framed, realistic, specific and achievable), the key actions required to achieve the objectives, market analysis, business risks, plan / map of risk management, planned indicators as a base on which will be determined the progress in business of public enterprises and activities that a public enterprise is planning to implement in order to improve corporate management.

It is particularly pointed out that public enterprises should state the planned sources of revenue and expenditure positions by purposes. There is a need, inter alia, that public enterprises detail state elements for comprehensive overview of the products' and services' prices as well as the current price list on which is accounted operation income, to show the amount and dynamics of budget revenues and to present the purpose of the use of funds from budget by details.

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<sup>5</sup> REGULATION ON DETERMINATION OF ELEMENTS OF THE ANNUAL BUSINESS PROGRAM FOR 2020, IE THREE-YEAR BUSINESS PROGRAM FOR THE PERIOD 2020-2022 FOR PUBLIC ENTERPRISES AND OTHER FORMS OF ORGANIZATION THAT PERFORMING THE ACTIVITY OF GENERAL INTEREST ("Off. Gazette of RS", no. 74/2019)

<sup>6</sup> [http://www.eupropisi.com/dokumenti/smernice\\_74\\_2019.pdf](http://www.eupropisi.com/dokumenti/smernice_74_2019.pdf)

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Public enterprises must show the resources planned to be spent on business trips, compensations under the service contract, under the copyright royalties, under the contract of temporary and casual jobs and compensation to individuals based on other contracts, as well as funds designated for professional development and similar purposes. The amount for these positions must not be higher than that one for the current year, "with prior analysis of options for rationalization".

Enterprise (regarding the plan for 2020) should also present planned manner of profit distribution or planned way of coverage of the loss, where it is necessary to adhere to the laws and decisions on the budget and to show how was spent income for 2014, 2015, 2016, 2017 and 2018.

Enterprises are also obliged to indicate the number of employees by sector / organizational units, their qualification, age and gender structure, structure of the work experience of employees, as well as qualification and gender structure of managers, the dynamics of employment (which must be in accordance with legal limits) funds for salaries, the amount that will be paid to the budget, the range of paid and projected earnings, compensation for managers, remuneration for members of the Audit committee, credit debt, and a detailed explanation of the planned procurement of goods, works and services.

In particular, in the context of procurement, public enterprises must rationally plan the purchase of official vehicles, stating the type, the basic characteristics of the vehicles, the estimated value of procurement, as well as explain why the purchase is necessary. While procuring the car certainly does not represent the largest item of expenditure of public enterprises and perhaps not the type of procurement in which usually happens abuse, there is no doubt that the decision makers in the Government recognized precisely this point as the most vulnerable in the eyes of the public, because this is where abuses most easily be seen. Conversely, promotion of the act by which the Government restricts this form of consumption of public enterprises, undoubtedly brings some points at voters.

Public enterprises have to show the plan and the dynamics of investment, and to explain started or planned but unrealized investments from the previous period in detail.

An important segment of the plan is the "use of funds for specific purposes", which should be stated and explained in detail (the planned funds for sponsorships, donations, humanitarian activities, sports activities, entertainment, advertising and propaganda and other assets). " And these costs must be planned the most up to the level of funds planned for 2019, with a pre-assessment of the possibilities for further rationalization." Public enterprises that use the funds from the budget to fund current operations (salaries, material costs, etc.), as well as public enterprises that were operating at a loss according to the last published financial report, "are not able to plan funds for sponsorship and donations."

The Government recalls that by the changes of the annual business program public enterprises must comply with Article 60 / 2 of the Act and that all amendments must be published on the website of a public enterprise.

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It also indicates that in addition to these guidelines, which are mandatory for all public enterprises, autonomous provinces and local government can also submit to their public enterprises other guidelines that are relevant to their business.

### Rules on reporting

Reporting on the work of public enterprises is closely regulated by an ordinance of the Ministry of Economy from 2016<sup>7</sup>. Ordinance obliges all public enterprises in the country, corporations and economic entities. These rules are also applied to "economic entities of strategic importance for the Republic of Serbia" in which is the Republic of Serbia, directly or indirectly, controlling member of society.

Reporting is being done in 12 forms that enterprises submit completed and printed, within 30 days after the quarter, to the Ministry of Economy and relevant provincial and local authorities. Regional and local authorities submitted summary information to the Ministry of Economy on the degree of compliance of planned and implemented activities of public enterprises in their areas. With the report is also submitted following letter of competent body of enterprises about adoption of the report. Republican enterprises are required to submit reports electronically<sup>8</sup>. However, do not require that reports be submitted in the form in which they occur, so that it leaves the possibility that firms submitted reports in the form of scanned documents.

Reporting forms generally follow, but not completely, mandatory content of the annual business program. A total of these reports is 14 (**labeled** are they that have "counterparts" in the annual business program).

- **Form 1. Income Statement**
- **Form 1A. Balance Sheet**
- **Form 1B. Cash Flows Statement**
- **Form 2. Employees Costs**
- **Form 3. Employees Dynamics**
- Form 4. Flow of products' and services' market prices
- **Form 5. Subsidies and other revenue from the budget**
- **Form 6. Funds for specific purposes**
- Form 7. Net profit
- **Form 8. Credit indebttness**
- Form 9. Cash equivalentents and cash
- **Form 10. Report on investments**
- Form 11. Gross receivables of public enterprise for given credits and loans, sold products, goods and services and advanced payments and other receivables
- **Form 12. Report on the degree of compliance of planned and implemented activities under the business program**

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<sup>7</sup> REGULATION ON THE FORMS OF QUARTELY REPORTS ON THE REALIZATION OF ANNUAL, THREE-YEAR5 BUSINESS PROGRAM OF PE ("Off. Gazette of RS no. 36/2016)

<sup>8</sup> <https://privreda.gov.rs/wp-content/uploads/2017/05/Uputstvo-O-Nacinu-Dostavljanja-Tromesečnih-Izvestaja.pdf>

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Perhaps the greatest difference between the prescribed plans and reports make data on procurement. Namely, the programs are to separately present and explain the means for certain types of purchases (e.g., the official vehicle), which is not required here. True, public enterprises must prepare and send reports on planned and conducted public procurements to another body - the Public Procurement Office - but it is also the case with the plans of public procurements, and yet there is a duty of detailed planning in the business program. In addition to these mismatches, this code would soon be amended because of a prosaic reason - forms imply that the activities carried out in the years starting with "201\_".

Bearing in mind the obligations of public enterprises and widespread doubts about the misuse of funds allocated through "funds of special purpose", it should be noted that the reporting forms seek to enroll who were the recipients of sponsorships, donations and humanitarian activities, which was the purpose and which amount is assigned to them. There is not, however, the section which would indicate the legal basis for the allocation of the fund exactly to some exact subject.

An even greater disadvantage is that the funds allocated for the "sports", "national team", especially for "Advertising agencies" are displayed only as the summary (planned / implemented). Thus, the public, even when it comes to the report, has no idea where and for what purposes conducted advertising public enterprises.

Form 12 for the reporting on "the degree of compliance of planned and implemented activities under the business program" is not also complied with the content of the plan itself.

At the program are presented:

- Total capital
- Total assets
- Business income
- Business expenses
- Business result
- Net result
- Employees' number at the end of the year
- Average net salary
- Investments
- EBITDA
- ROA
- ROE
- Operating cash flow
- Debt / capital
- Liquidity
- Share of wages in the business income
- Credit indebtedness (with and without state guarantee)
- Subsidies
- Other income from the budget

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On the other hand, the report consists of reasoned:

1. INCOME STATEMENT
  2. BALANCE SHEET
  3. CASH FLOW REPORT
  4. EMPLOYEES' COSTS
  5. EMPLOYEES' DYNAMICS
  6. PRODUCTS' AND SERVICES' PRICES FLOW
  7. SUBSIDIES AND OTHER INCOME FROM BUDGET
  8. FUNDS FOR SPECIAL PURPOSES
  9. INVESTMENTS' REPORT
- as well as "CONCLUSIONS AND NOTES".

The larger problem of the incompatibility of the program structure of business and reports on the work of public enterprises is the fact that there is no obligation to plan and report on the realization of the reason of establishment of public companies - to meet specific needs of citizens and businesses, and the degree to which those very targets realized or not.

### Further lines of reports

The law stipulates that the Ministry of Economy for the Government constitutes information about the work of public companies based on data from quarterly reports. Earlier experiences (when various ministries were responsible for drawing up such reports) was such that the reports were made in various ways that they did not always contain conclusions about what to do and similar. Therefore, Government should prescribe closer, by its act, the content of these reports and the obligation of disclosure of these "information".

In practice, the Ministry of Economy irregularly publishes this information (at the moment when we visited website of the Ministry in November 2019 and their analysis were related to the work of public enterprises in the first half of 2018). However, much bigger problem is a low informative value of these reports. The analysis is not performed (or at least not published) for each company, but only for all national enterprises together. At the analysis it can be found out how much were the total planned revenues and expenditures in the public sector, where the percentage of those achieved during the first half of the year, what is the business profit "from operations" on regular basis and also how much was "net profit". Nothing more informative was not the last published report for the full year. The report for 2017 (3.5 pages) presents the basic financial indicators numerically and graphically, but without any further analysis which was much needed. Specifically, the report says that the income of public enterprises was for negligible 6% lower than planned. Expenses were lower as much as 8% of the planned and it makes that business profit was still higher of expectations at the end. There is no summary data on which revenue had shortfall and which expenditures achieved savings.



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## Law on free access to information of public importance

### The obligations of public enterprises under the Law

Law on Free Access to Information of Public Information<sup>9</sup> in 2004 predicted a number of obligations on public authorities, including public companies, as well as other state-owned enterprises. The performance may be divided into three groups: 1) dealing with requests for access to the information; 2) disclosure of certain information before anyone asks them; 3) determining the persons who will be authorized to conduct, organize training, reporting on the implementation of the law.

The legislator, however, was inconsistent. As a result, while the obligation of complying with the requirements relates to all these companies, only some of them also have to publish information proactively. The reason is the definition of „state authorities“ and „authorities“ in Article 3 of this Law. Based on this article, some public companies have the status of "national authority" within the meaning of that Law, and to them are applied all obligations, including proactive disclosure of documents (the informants of the work). These are the public companies to which is entrusted "execution of public authorities". Since the public authorities may be entrusted exclusively by law, from this circle are excluded all provincial and local public enterprises. Also, this concept does not cover the many state-owned enterprises that have substantial public funds, but they are primarily established for profit.

Shortlisted obligations under this Law shall have all other companies, founded by the authority of the Republic of Serbia, the province or local government, or a public enterprise with public authorities. It should be noted that the term "establishment" can be interpreted in two ways, to include the adoption of the founding act (law, decision), but also the factual status of "founder", which is in the Law on Companies synonym for property. When taking into account both of these meanings, the obligation of complying with requests for access to the information have economic entities in whose ownership structure participatie state or municipalities, even when they are not directly established by them. It remains controversial (depending on interpretation) whether such an obligation have enterprises in which the state holds only a minority stake. Also, companies may be the authorities and on the basis of more than half of financing by state, province, local authority or holders of public authorities.

Information of public importance that all the information available to public enterprises, if they are formed in their work or in connection with their work and if they are contained in a document. It is not relevant whether the company itself is the creator of some of the information or is it someone else (e.g. a state body), whether it is a printed document or other type of record (Art. 2). It is assumed that there is a legitimate public interest to know and the authority to derogate it on the ground on the provisions of this law (Art. 4, 8, 9, 12, 13, 14).

Obligation to act on requests for access to information includes the duty to facilitate access to information and the right to obtain a copy, at the option of asylum (Article 5). The right of access to information belongs to everyone under the same condition (Art. 6), and the applicant does not have to state the reasons for this (Art. 15).

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<sup>9</sup> "Off. Gazette", no. 120/2004, 54/2007, 104/2009 i 36/2010)

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A public authority can restrict information access by decision, with the need to appeal to some of recognized legal bases (threatening the security of a person, compromising the procedure, jeopardizing of the country's defense, security and international relations, impairing of ability of the state to manage economic processes in the country, hindering the implementation of justified economic relations, disclosure of information that is declared as secret, privacy protection etc.). It is important to point out that in determining the reasons for denying the information, the enterprise must prove the necessity of such measures and provide the right of access to information to the possible extent (eg. the submission of the document without protected parts). In any case, dissatisfied claimant of the information has the right to claim on denial decision to independent body – the Commissioner for Information of Public Importance and Personal Data Protection (Art. 16), and then to initiate an administrative proceeding at the Administrative Court.

Enterprises are obliged to act without delay and not later than 15 days. When the information is related to the protection of life, the protection of public health and the environment, the deadline is 48 hours from receipt of the request. When the enterprise is not able to provide the information within the period because of justified reasons (e.g. a large number of documents), it is possible to determine additional period, to 40 days. Request is free of fees' payment, but only a necessary cost of copying and submission (Art. 17) have to be paid, and journalists do not pay for that either.

The director of a public enterprise shall designate one or more persons authorized to act on requests or he himself carries out such activities (Art. 38).

Based on Articles 39 and 40 of the Law as well as to instruction of the Commissioner<sup>10</sup>, those enterprises with public authorities, have an obligation to disclose information booklet as a separate publication on its website and to update it monthly. This document contains a description of powers, responsibilities and organizational structure, budget data and means of work, data on services provided to interested parties; decision-making process and appeals, review of claims, complaints and other direct measures undertaken by interested parties, data on the types of information that they have and the information which provide insight, names of the executives and a description of their authorizations and duties and the rules on transparency.

These companies are also obliged to submit annual reports on the implementation of the Law to the Commissioner (Art. 43).

All public companies are also obliged to maintain the information media "to enable the realization of the right to access to the information of public importance" (Art. 41).

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<https://www.poverenik.rs/sr/publikacije/%D0%BF%D1%80%D0%B5%D0%B7%D0%B5%D0%BD%D1%82%D0%B0%D1%86%D0%B8%D1%98%D0%B5/1896-%D1%83%D0%BF%D1%83%D1%82%D1%81%D1%82%D0%B2%D0%BE-%D0%B7%D0%B0-%D0%B8%D0%B7%D1%80%D0%B0%D0%B4%D1%83-%D0%B8-%D0%BE%D0%B1%D1%98%D0%B0%D0%B2%D1%99%D0%B8%D0%B2%D0%B0%D1%9A%D0%B5-%D0%B8%D0%BD%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%82%D0%BE%D1%80%D0%B0-%D0%BE-%D1%80%D0%B0%D0%B4%D1%83-%D0%B4%D1%80%D0%B6%D0%B0%D0%B2%D0%BD%D0%BE%D0%B3-%D0%BE%D1%80%D0%B3%D0%B0%D0%BD%D0%B0.html>

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## Planned amendments to the Law and “corporations”

The long-awaited changes and amendments to the Law on Free Access to Information of Public Importance (planned already for 2014) have brought an unexpected problem in 2018, when it was finally published the first draft of such changes.

Among them was the provision according to which under the authorities does not imply corporations "that operate in the market in accordance with the rules of the companies", even when the state is a member or shareholder of such enterprise. Thus, from the obligation of providing access to information are exempted numerous enterprises that dispose of significant public property only because of their change of legal form of organization at some point. Most often it is a transition from a public company into a corporation, to open possibilities for privatization and recapitalization. As an example may be cited enterprises such as *Telekom Srbija*, *Air Serbia*, *DIPOS* and *Železnice Srbije*.

The decision on which enterprise will change the form of ownership is largely discretionary. It depends on appreciation of the Government of Serbia and the local assembly about point is it appropriate to change the form of organization of enterprise. After the change of form of organization, the enterprise can remain wholly or predominantly owned by the state indefinitely.

Therefore, the exclusion of this category of state-owned enterprises would lead to a drastic reduction of the transparency of the work of the public sector, and based on the discretionary policy decisions.

From the point of view of satisfying the public interest when it comes to enterprises owned by the state, legal reform should in the opposite direction, so as to permit access to data of the enterprises in which the state has only minority ownership, but which dispose of substantial public resources or produce debts whose return is guaranteed by the state.

At the Opinion of November 2018 SIGMA organization's experts pointed out that “this article is completely different from almost all legislations in comparative law, reducing the current level of access to information in the Republic of Serbia, it opens possibility of abuse and potential concealing of illegal activities in work of these companies, and it is contrary to the principle of openness and transparency of European administrative space, to whose fulfillment the Republic of Serbia strives towards full membership in the European Union. Therefore, this solution should be entirely excluded from the draft.”

The most important positive change in the law draft is the repeal of the distinction between categories of state authorities and other authorities. Due to these changes, among other things, all authorities will be obliged to prepare, publish and update the business information booklet.

The danger is, after numerous reactions of domestic public and the Commissioner for information as well as SIGMA / OECD (that reported about these reforms to the European Commission) – largely eliminated, but not completely. Namely, in early November 2019, the Ministry of State Administration and Local Government announced<sup>11</sup> a new version of the draft of amendments to the Law. According

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<sup>11</sup> <http://mduls.gov.rs/javne-rasprave-i-konsultacije/informacija-o-radu-na-izmenama-i-dopunama-zakona-o-slobodnom-pristupu-informacijama-od-javnog-znacaja/>

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to this version, as authority would be considered every public enterprise as well as any other enterprise established by regulation or by decision of the authorities of the Republic, province, municipality or city municipality. However, after these changes, some state-owned enterprises would remain out of the circle of authorities and some of them some are bonds to the provisions of the current law.

Thus, the binding of the term "establishment" exclusively for the decision does not give more space to interpret this concept in terms of the Law on Companies, as a share of enterprise's property. Consequently, those companies that are actually owned by the state (for example, due to the conversion of debt into capital), but it was initially founded by someone else, would not bond of the law. Conversely, companies that founded the state authority, but were privatized, they would be taxpayers! True, there remains the possibility that some of the companies from this circuit could be covered by other legal basis, if they are funded by a state body predominantly.

The second, even more significant shortcoming lies in the fact that the criterion of "establishment of enterprises" considers only at the first step. If some enterprise, established by state, establish its subsidiary, it would be no more payer of providing the information to citizens. This is illogical, because it is also the case of companies that dispose of substantial public resources.

It should be pointed out that a new law also brings expanding of the concept of the authorities in several directions. Thus, according to the new, there will also exist "partial" authorities. Private enterprises and entrepreneurs engaged in activities of public interest, would also have to provide information, but only one "that are related to the performance of such activities".

## Professionalization of management in practice

The Law stipulates the obligation of adoption of several bylaws that should contribute to the professionalization of management in state-owned enterprises, or in public companies.

One of these acts is a Program for further training of the President and members of the supervisory board in the area of corporate management<sup>12</sup>, and other Bylaw regulating the conditions and criteria for determination and amount of stimulation for the CEO and Executive Director of PE<sup>13</sup>.

In this research, TS requested from the Ministry of Economy and the Serbian Government mentioned acts or the information about phase of drafting or adoption of these acts. TS was interested in adoption of these bylaws and two years earlier, in June 2017, and then we got response from the Ministry of Economy (no. 3-00-103 / 2017-02 dated 5 July 2017) which states that bylaws will be adopted **after the development of Guidelines for the promotion and strengthening of corporate management in public enterprises**, and that the Guidelines will be done after the completion of the **Study of corporate managing** which was, according to that information, at work at that moment in cooperation with the International Finance Corporation.

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<sup>12</sup> Adoption predicted by Article 18, paragraph 3 of the Law on Public Enterprises (Off. Gazette 15/2016).

<sup>13</sup> Adoption predicted by Article 29, paragraph 2. on Public Enterprises (Off. Gazette 15/2016)

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Therefore, there was the request to the Ministry to supply us with either mentioned documents or the information about the phase of their development:

- Guidelines for the promotion and strengthening of corporate management in public enterprises
- Study of corporate managing, made on basis of measuring of the level of corporate managing in 25 public enterprises within the project of introduction of corporate managing in PE, in cooperation with IFC.

We did not get an answer.

The same request was sent to the Government, the answer is not reached, after which it is also addressed urgency. Even after urgency there was no response from the Serbian Government.

With aim to determine also the way of the implementation of the provisions on the necessary expertise in the management of PE, we asked the Ministry of Economy and the Government of Serbia for the following information:

- Information about of the chairman and the members of the supervisory boards of public enterprises founded by the Republic of Serbia during 2017 and 2018. The law, in fact, prescribed in the transitional provisions that the members of the supervisory boards and representatives of the founder at the assembly of corporation that do not meet the requirements of Article 18 of the Law 14, will be resolved and a new appointed, not later than six months from the date of entry into force of this Law.

We also asked for the information on the dismissal of the directors of public enterprises founded by the Republic of Serbia during 2017 and 2018, in accordance with Articles 49 and 50 LoPE.

The Government of Serbia has not responded to the request, for which was also sent the urgency, but the answer is not thereafter arrived. The Ministry of Economy has formally responded to the request, but did not provide the requested information essentially, but it is stated that the acts of dismissal are to be published in the Official Gazette and on the website of the Government so they are “publicly available the applicant for the information”. The fact is, however, that the Official Gazette is available only to subscribers, so there is not a publicly available information, and the personnel decisions of the meetings of the Government are published on the website at the package of decisions from the meetings that are “zipped” and unsearchable, so finding of decisions on dismissals requires manual search of thousands (or tens of thousands) of pages.

TS found, by search, that during these two years, one retired director and seven acting directors of PE. Director of *Srbijavode* was dismissed without explanation in December 2018 (by the date of the

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<sup>14</sup> Article 18, paragraph 1, of the Law on PE, among other things, stipulates the following conditions for the members and the Chairman of SB:

- to have acquired higher education at the undergraduate studies for at least four years, or at the undergraduate level in a minimum of 240 ECTS, master studies, master professional studies, specialist academic studies or specialized professional studies (point 2)
- to have at least five years of work experience in jobs requiring higher education from point 2 of this Article
- to have at least three years of work experience in jobs that are related to the affairs of public enterprises
- to know the area of corporate managing or the finance area.

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decision it can be concluded that his mandate was up, given that he was appointed to the five-year term in November 2012) and then he was re-appointed, after an open competition, under the new law. Acting directors were dismissed without explanation, with aim to appoint directors elected at the competition (mostly former acting directors) or to re-appoint acting directors.

To verify is, regardless of the failure in adoption of appropriate bylaw, practice of incentive payments to management for good performance established, TS requested data or documents that contain information about incentives and other emergency fees paid to the director and / or executive director of the company from 10 PE and state-owned enterprises: *JP Aerodrom Niš*, *JP Zavod za udžbenike*, *JP NP Fruška Gora*, *JP Skijališta Srbije*, *JVP Vojvodinavode*, *JP Vojvodinašume*, *Društvo "Železnice Srbije" ad*, *Društvo za upravljanje železničkom infrastrukturom „Infrastruktura železnice Srbije“*, *Društvo za železnički prevoz putnika "Srbija voz"* and *Jugoimport SDPR*. Four of six PE and all of the four state-owned enterprises responded.

*JVP Vojvodinavode* and *JP Skijališta Srbije* did not provide answers.

In one response, from *Infrastrukture železnica Srbije ad*, states that "stimulation of Board of Directors is generated". From the submitted excel table it can be concluded that the executive directors exercised stimulation of 20% from September 2015 to January 2019 with interruptions September-December 2017 and February-March 2018. TS has not received from this enterprise any document that would show which was the basis for determining of stimulation. In this company stimulation is received by: Dušan Garibović from September 2015 to March 2016; Milan Šegan from September 2015 to August 2017; Mira Vukmirović from April 2016 to August 2017; Dragana Lalošević from January 2018 to January 2019; Milan Maksimović from January 2018 to January 2019 (not counting interruptions referred to in the previous paragraph).

Most other enterprises have responded that they are not paid incentives or other extraordinary compensation to the director or to the executive director of the company.

The exception is Company *"Železnice Srbije" ad* which was unable to provide data on the incomes of **the current** acting director general and CEO, **because they do not have access to required information**. The reason is, as stated, that the Acting General Director Goran Adžić employed part-time, starting from 8 April 2019, and Nataša Aleksić Kapetanović is employed with *"Železnice Srbije" ad* as Executive Director since 23 April 2019 as well as Svetlana Jelić-Burić, from 25 April 2019.

*"Železnice Srbije" ad* did not, however, make an effort to provide information and answers to the question whether the incentives have been paid to previous directors in the period on which are related the requirements. What is further interesting about this letter is that the answer stating that neither earnings nor incentives paid to director Adžić – was just signed by Adžić.

Although essentially the same - the incentives are not paid - slightly differently was worded the response from the enterprise *Jugoimport SDPR*. It, in fact, states that the salaries of director is calculated and paid in accordance with the determination of the maximum wage in the public sector ("Official Gazette of RS", no. 93/12), by the appropriate conclusion of the Government of the Republic of Serbia which follows the said law, by the Law on an appropriate editing of base for the calculation and payment of salaries or wages and other regular income in public funds ("Official Gazette of RS", no. 116/13 and 95/18) and the Law on amendments to the Law on labor ("Official Gazette RS ", no.

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75/14). "In this regard, director has not been paid by incentives or other extraordinary charges because their payment would exceed the maximum allowed amount of earnings of director".

Of the 10 public enterprises, the information was required about any additional professional training in the field of corporate management, which was organized for the members of the Supervisory Board in 2017 and 2018, and attended by members of the Supervisory Board in 2017 and 2018, in accordance with Article 18, paragraph 2 of the Law on Public Enterprises.

It was about the following enterprises: *JP Aerodrom Niš*, *JP Zavod za udžbenike*, *JP NP Fruška Gora*, *JP Skijališta Srbije*, *JVP Vojvodinavode*, *JP Vojvodinašume*, *JP Pošta*, *JP Službeni glasnik*, *JP Putevi Srbija* and *JP Emisiona tehnika i veze*.

Eight PE responded, and in this case, answers are not provided by *JVP Vojvodinavode* and *JP Skijališta Srbije*. One answer (*JP Nacionalni park Fruška Gora*), only formally can be treated as a response, while the remaining seven confirmed that there was no organized training. At two PE it was pointed to what is stated in this analysis – it has not yet been adopted bylaw that should regulate this question.

*JP Nacionalni park Fruška Gora*, in response stated that "request for submission of information is related to the work of the Supervisory Board of *JP Nacionalni park Fruška Gora*", the authority of the public enterprises that its views, opinions and decisions makes collectively at the meeting. Your request for information was forwarded to the chairman of the Supervisory Board, which will put it at the first next session of the Supervisory Board and submit an answer". The answer is not subsequently delivered.

*JP Zavod za udžbenike* answered that "as far as they know the act that regulates questions on this topic has not been passed". Something more extensive was the response from *JP Putevi*: Program for professional training in the field of corporate management organized for members of the Supervisory Board is under competency of the Ministry of economy, and concerning that program is still in work – that is the reason why it was not implemented in *JP Putevi Srbija*".

Otherwise, in a study on the implementation of the Law on PE published by TS in 2017, it was indicated that the annual business program of *JKP Parking servis* for 2017 states the importance of corporate management, the fact that the training is required by law, that the chairman and members of the Supervisory Board have a duty that, in the course of performing their functions, have additional professional trainings in the field of corporate management.

"Bearing in mind the above stated, chairman and members of the Supervisory Board of the Company in 2016 began additional professional training in this field. Intensive training will be continued in 2017, concerning the importance and growing influence of corporate management in public enterprises, because the application of corporate management is crucial if we want to successfully lead the company with a well-defined strategy. Everything that applies to the corporate management for the Supervisory Board, also applies to the directors of the enterprise".

In business program or 2018 was announced: "Chairman and members of the Supervisory Board of the enterprise in 2016 started expert training in this field and continued throughout 2017. In 2018, the company will give special importance to the growing influence of corporate management in the enterprise, because the same is the key to successfully managing the company with well-defined



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strategies. Everything that applies to the corporate management for the Supervisory Board, also applies to the directors of the enterprise".

In business program for 2019 was mentioned the realization of improving corporate management for the first time, but it is not visible what is being done in particular in relation to training for board members and director. It can be read that the enterprise in 2018, among other things, determined and implemented "more active relation of the chairman and members of the Supervisory Board and director in respect of additional professional training in the field of corporate management in the company".

Again, it is determined what is written in the Law on PE and said: "Chairman and members of the Supervisory Board of the enterprise in 2016 started expert training in this field and continued throughout 2017 and 2018. Everything that applies to the corporate management for the Supervisory Board, also applies to the directors of the enterprise".

## Enterprises' transparency – research, evaluation and ranking

Within the research of the work concerning scoring and ranking of transparency, from PE, and state-owned enterprises certain information are required by request on the information of public importance.

In the first phase of the research seven information were required. The six are directly related to the indicators. We asked for:

- Information, or document, containing information about the discounts and benefits that the company provides to its customers, and (eventually) to its employees and, if so, the information where on the website of the enterprise can be found these data. (This information have been searched for on the websites of the companies. The information found on the site means a rating 2 on this indicator, but obtained only upon request – grade is 1).
- Information, or document, containing information about the balance of debt and loans of the company, on 31 December 2018, including information on claimants, or lenders. (This information have been searched on the websites of the companies. The information found on the site means a rating 2 on this indicator, but obtained only upon request – grade is 1).
- Information, or document, containing information about the claims of the company to the clients, on 31 December 2018, including the data about payers (by categories, titles of legal entities etc.). (This information have been searched on the websites of the companies. The information found on the site means a rating 2 on this indicator, but obtained only upon request – grade is 1).
- Rules or other internal companies act which regulates the use of expense account resources.
- Rules or other internal companies act which regulates the use of official vehicles.
- Information, or document, containing information about the number of new employees in 2018 and data about public competitions announced for the admission of new employees in 2018.

The seventh request that is sent to all PE from the sample relates to the submission of documents proving that the contract (randomly selected public procurement) is fulfilled or performed in a satisfactory manner. Before that, at the public procurement portal were selected one PP for each of the PE from the sample.



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Responses to requests for access to information of public importance in which were requested several documents (the employment of discounts, debt, claims, regulations on the use of official cars in relation to the costs of representation) are not provided by: *JP Srbijagas, JP Srbijašume, JP Pošta Srbije, MB namenska ad, Agencija za osiguranje i finansiranje izvoza Republike Srbije ad, JP za podzemnu eksploataciju uglja Resavica, JP Emisiona tehnika i veze, JKP Beogradski vodovod i kanalizacija Beograd, JKP Beogradske elektrane Beograd, JKP Čistoća Novi Sad, JKP Novosadska toplana Novi Sad, JKP Gradska toplana Kruševac, JKP Usluga Priboj, JKP Senta, JKP Naš dom Požega and JKSP Komstan Trstenik*.

*Srbija kargo ad* replied that the discounts given to their clients are marked as confidential, while on the other questions submitted responses and documents. *JKP GSP Beograd* denied the request explaining that the applicant has abused the right of access because “the request is irrational, often” since “the repeated requests for the same or already obtained information” or “too much information requested”. *Vodovod Šabac* replied that all requested information are published on the website of the company, which is not true. Several PE did not answer to some questions from the request, and provided all the other answers.

There was also request on the evidence on the implementation of a public procurement (randomly selected).

The answers are not provided by *JP Srbijagas, JVP Srbijavode, MB namenska ad, JP Transnafta, JP Službeni glasnik, JP Putevi Srbija, JP za podzemnu eksploataciju uglja Resavica, JP Nacionalni park Kopaonik, JKP Gradska čistoća Beograd, JKP Beogradski vodovod i kanalizacija Beograd, JKP Naissus Niš, JKP Čistoća Novi Sad, JKP Vodovod i kanalizacija Novi Sad, JKP Subotička toplana, JP Vodovod Vranje, JKP Gradska toplana Kruševac, JKP Senta, JKP Naš dom Požega and JKSP Komstan Trstenik*.

*JP Elektroprivreda Srbija* has responded that it does not possess the requested information, because procurement has not been realized, after which it sent a new request for another PP and answered.

*JP Novi dom Vranje* responded that there are dispatches that are paid, but they did not deliver them.

From some PE in the second phase of the research by request are sought additional information related to one indicator. It is an indicator that is graded in two steps - first, it is determined if there is a channel for anonymous complaints / grievances, and in cases where it exists, additional information is asked for - a document which contains established procedures for handling appeals / complaints. The existence of channel is assigned by score of 1, and the existence of channel and established procedures was determined by 2.

For the remaining indicators the data are required on the websites of PE, or state-owned enterprises.

The results (all indicators for all companies) are in detail presented in excel table which is available on the website of TS, which is appended to this study. They are presented in tabular form (collectively) in the annexes, which are an integral part of this report.

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From the responses of enterprises was observed that in the most cases there is no announcement of public competition for hiring of employers.

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## Findings by companies

### 1. JP Elektroprivreda Srbije

The statute is located on the website, it regulates issues of business, management and organization and defines industry. For the indicator concerning business target and the way to achieve the objectives it would be necessary to find a founding act, although part of the data is in the three-year business program.

At the site were found the following documents (but not the founding act): Energy Law, Decision on the harmonization of operations with the Law on PE to JP EPS, Publication on Regulation on public procurement procedure in JP EPS, Regulation on public procurement procedure in JP EPS, Rules on amendments on Regulation on public procurement procedure in JP EPS, Rules on Regulation on public procurement procedure in JP EPS, Internal plan for preventing corruption in public procurement, The Agreement on the termination of the Agreement on the centralization of public procurement in JP EPS, Decision on the procedure for internal alert system, Decision on determining of the person for the information receipt and the conduct of proceeding in relation to alerting, Rules on work of the distribution system and technical recommendations.

The competition for the election of director is not executed. Director is on the position of Acting Director since 15 March 2016, and competition was announced two and a half years ago and it has not been completed.

Data on the employees' number is available in the business program (estimate) and in quarterly reports on the work (the exact number).

On the website are listed the names and biographies of the members of the Supervisory Board on the page "Supervisory Board". The names and biographies of directors are listed on the page "Contact". Biographies, however, are not professional in form - the individual functions and works are listed, but in the form of PR text, and not as a professional biography - CV.

EPS has used a provision of the Law on Public Company that enables him not to publish the report on the work already extract from the report. This exception applies to enterprises that have market competition<sup>15</sup>.

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<sup>15</sup> Public companies are required to on its website published:

- 1) curriculum vitae of supervisory board members, directors and CEOs
- 2) the organizational structure
- 3) an annual or three year business program, as well as any amendments thereto, and an extract of the program if a public enterprise has competition in the market
- 4) quarterly reports on the realization of annual, or three year business program
- 5) The annual financial report with the certified auditor's opinion
- 6) other information of importance to the public.

The Government may determine other elements of operating of a public enterprise that will be published, and which are of particular importance to the public.

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Reports and programs are images converted to PDF format and are unsearchable.

Data on debt are aggregated in the program and reports on work. Cumulative claims and claims of the biggest debtors are published. There is no information about the billing policy (suing, etc.). Not found a channel for complaints and appeals on the website. On the site there is a Decision on determining of the person for the information receipt and the conduct of proceeding in relation to alerting (in all branches), but not the rules set or guide that deals with this issue. At the site were found ads for employment.

No systematization. It is clear that it is for the EP, as an enterprise with more than 23,000 employees, very required indicator, but the very structure and size thus negatively affects to the transparency through this indicator.

Data on sponsorships were published in the reports only summary. The same is case with advertising and propaganda, while consulting services are not mentioned. JP Elektroprivreda Srbija responded to all requests for access to information and to the additional letter of scores' verification. Based on the letter several indicators are restated. For some indicators, it was confirmed that the documents are not available on the site.

## **2. JP Srbijagas**

On the site there is a special page "Strategic Goals". It briefly presented a deals of PE, its duties and a basis on business policy. It has a mission, vision and strategic objectives presented shortly.

Data on the number of employees at the website are from 2016, the program contains a plan for the end of 2018, there are no fresh reports nor data.

No biography of SB members and there is inactive link for chairman's biography. The same case is about biographies of all directors, including the managing director. Director's term expired two years ago, but he remains the head of the company. The open competition was announced in March 2017. There is contact of Managing Director and CEOs. No contacts for SB.

As in the case of EPS, there is published the except from a business program. The last financial report is for 2017. The latest report of an auditor is for 2015.

There is a detailed price list in the informer, and the price of gas at the site separately. The basic data on revenues and expenditures are in the informer. There are also direct links to PP plans, there are data on summary indebtedness.

About the property – there is only a summary value, accounting. There is a page for employment but it is said that currently there is no open competition. No systematization. It is clear that also for Srbijagas, as a company with more than 1,000 employees it is required indicator, but the very structure and size, thus negatively affects to the transparency through this indicator.

Representation expenses are visible through the program of work (also published criteria), but there are no reports on realization because there are no published last financial statements.

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There are criteria for sponsorship but no data about plans and implementations. There is no information on the realization of funds for marketing (advertising). These shortcomings stem from failing to publish reports on the implementation of the business program.

Srbijagas has not provided answers to both requests for access to information of public importance.

### **3. JP Srbijašume**

Acting Director is in acting state since December 2017. In March 2017, a competition was announced. The enterprise had not a director for years, but the deputy was representative with full rights and obligations, except for obligations under the Law on Agency for the fight against corruption.

Public records are available through the banner on the front page, there is no access through the main menu. Here are all relevant documents: Long-term and medium-term plan on business strategy and development 2017 – 2026, business programs, annual and quarterly reports on operations, PP plan, financial statements, information booklet.

The company did not provide the answers to a request for free access to information, so the indicators that required responses in this way are estimated with zero. On the second request was submitted a response.

### **4. JVP Srbijavode**

The most important activities of general interest defined by the Law on Water are stated and there is written that others are listed in the Statute. The Statute is available at the website.

There is Regulation of Procedure of the internal alarm. There is an employment page, but there is no competition, but e-mail address for sending of biographies and postal address.

Professional CVs of the management are at the tables form.

Claims are summary, accounting, in quarterly reports.

All documents are unsearchable, in form of scanned photos.

In the informer there is a list of buildings owned by enterprise. There is a tabular overview of total value of official vehicles, vessels, office furniture, etc.

Director was appointed in December 2017, on the contest announced in March 2017. Former Acting Director was elected among six candidates.

The company did not provide the answers to a request for free access to information, and to the second request it was submitted a response. The response states the Ordinance which regulates the company's use of representation resources from previous years and is currently working on its harmonization, as well as the regulations on the use of official cars. The enterprise has submitted a response to a letter in relation to the verification findings. Some indicators are re-evaluated. The response states that the website provides information on the person responsible for dealing with complaints of whistleblowers, but the exact address is not specified. TS researchers could not find this

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information.

To a few inquiries is answered that the requested information is not disclosed “because there is no legal requirement”.

### **5. Srbija kargo ad**

Dušan Garibović, Acting Director General, from April 2016 to September 2017, was acting director of Infrastrukture železnica and then was appointed acting director of Srbija kargo ad. The former acting director of the enterprise Srbija kargo was appointed acting director of enterprise Infrastrukture železnica.

Contests for the elections of directors of all three “railroad” enterprises were announced in May 2017. They are not ended. The media has published (daily Blic<sup>16</sup>), with reference to the source from the Serbian Government that the reason for such action regarding the contest and “exchange” of acting directors was that there is still no agreement about the people who should lead these enterprises in the next four years, but also the fact that it is waiting for some of the candidates to meet the legal requirements for these positions.

Biography of the director or other members of the Board of Directors not available at the website. Biographies of Assembly members are not made by type, vary in quality and information on expertise.

On the site there is a long-term and medium-term business plan and development strategy Srbija kargo ad 2017-2027, also Decision on the Establishment and Statute. The Bulletin states the number of employees by organizational units.

Published program of business and quarterly reports in unsearchable form - images in pdf.

On the site are also available Action plan for the implementation of anti-corruption measures for 2016, the Decision on determining the person authorized to receive information and conduct proceedings related to the internal alert system, Rules on gifts to employees in Srbija kargo ad, Rules on sponsorship

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<sup>16</sup> Daily released: “For the people on the first place in these companies there are a lot of candidates, but there are certain political disputes who will be appointed to which position. It is primarily about staff SPP where some do not meet the legal requirements for the directorship. Namely, the Law on Public Enterprises stipulates that the choice is not enough college degree, but applicants must have at least five years of work experience on the position with higher education, as well as three years of practice in occupations related to public enterprise. Some of these conditions do not meet even Garibović not Jevtić, staff of SPP. Jevtic came to “Železnice” in 2015 and lacks a few months to a qualifying period of three years, as is the case with Garibović, who additionally lacks the time spent on the site with higher education. This acrobatic exceeds it, on the positions of acting directors they will remedy these deficiencies – explains our source”.

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and donations, Rules on alert system- changes, Rules on alert system, Manual for training of employees in Srbija Kargo ad, on the realization of zero-tolerance to corruption in the Republic of Serbia.

The company has submitted the answers to both requests for information, wherein in response to one question is said that the discounts given to their clients are official secret. It is also delivered the reply to the letter related to the verification. For some indicators, it was confirmed that the documents are not publicly available, some estimates have been corrected on the basis of the submitted data.

## **6. JP Pošta Srbije**

There is the possibility of filing a complaint or objection through the website. It is possible to file a complaint against an employee. This is the specificity of this PE because it operates in accordance with the financial regulations governing the National Bank of Serbia. Thus, for example, on the site can be found information on filing a complaint to the Financial Services of Pošta. None of these mechanisms does not provide, however, an anonymous grievance.

There are very scarce biographies of acting director and SB members. Acting Director is in this state since 14 September 2016. The competition was announced on March 10, 2017.

There is publication "Company profile" where are also stated the strategic directions for achieving the vision and mission of the company. Claims and credit debts are presented summarized in the balance sheets. On the site are available Statute, business programs and implementation reports, quarterly for 2018 and 2019, financial statements and audit reports.

There is available Regulation on the organization and systematization of jobs in JP Pošta Srbije. The financial report states the number of disputes that PE has due to the collection of claims and damages and in which value (about 250 million dinars).

Three-month reports are not completed – there are no all prescribed forms. There are special-purpose funds only in the plan, not in the reports.

The company did not provide the answers to the two requests for free access to information, so the indicators that in this way required response are estimated as zero. Responses to the letter in connection with the verification were delivered and some indicators are based on this re-evaluated. For some indicators, it was confirmed that they were not available. The response states that the Rules of Procedure of the internal alert system is posted only on the internal portal, accessible to employees because it is an internal alert system.

## **7. MB namenska ad**

Page site in Serbian does not work. The company did not provide the answers to the two requests for free access to information, so the indicators that in this way required response are also estimated as zero.

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## 8. Aerodromi Srbija

The site has only two sides - public advertisements and public procurement. Public advertisements contain advertisement for recruitment, but not decision on admission. There's also a few ads for the rental of space at the airport "Morava".

The enterprise provided both answers to the two requests for free access to information of public importance.

## 9. Agencija za osiguranje i finansiranje izvoza Republike Srbije ad

Biographies of directors, nor members of the MB and Executive Committee. No business program for 2019 (until October did not show up), there are some for the past few years and are searchable. There is a financial plan for 2019, unsearchable. Annual Report 2018 is Word file that can be opened. Previous are in pdf and are correct. The business report sets out the details of the meetings of the Managing Board. There are financial statements and audit reports.

PP Plan and individual procurements for the last two years cannot be found - the last are for the year 2017.

The company did not provide the answers to the two requests for free access to information, so the indicators that in this way required response are estimated as zero. On the other requirements, for the delivery of a document that confirms that the procurement is conducted, was answered.

## 10. JP Transnafta

There is a form required for a claim, which requires registration. Biographies are in appropriate form, within each individual there is contact information. Detailed contacts are in the newsletter. The Bulletin is also information on the number of employees within the work dedicated to the organization of the company.

On the page "Documents" is the act on the prevention of corruption in the PP. No act on alert, there is no data on the election of directors. Director is appointed in March 2018 after a contest that was announced in February 2017.

Property information collectively, accounting. Business program is extremely detailed and clear, for example, the only objection is that there are not cited the estimated values of investments, or public procurements, which is also the information that is missing in the public procurement plan. Sums planned for particular investments are not disclosed. Plan on PP also nowhere states estimated value.

As for the data on the procedure for appointments – there is table review in the work program with the number of decisions on the appointment.

The company has not filed a response to the request for submission of a document certifying of realized supply and responded to the request to required documents and other information.



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## 11. JP Službeni glasnik

On the website can be found Statute, long-term and medium-term plan of business strategy and the development, resumes are very concise, with lists of the functions. The statute is in the form of pictures set in unsearchable pdf documents.

There are Rules on systematization on the site. There are also Rules on a code of conduct for employees, as well as Rules on the criteria for the selection of commercial banks.

The last report of an independent auditor is for the year 2017. There is no report on operations for 2018. Not found Regulations on internal warning system.

In December 2015 was appointed director Jelena Trivan. The Government's decision on the appointment was of no explanation. In January 2015, former acting director was dismissed "due to retirement," and Prime Minister Vučić presented Trivan to media as a new acting director. In July 2015, was also extended her mandate acting. Then the contest for the election of directors, which was announced even in 2012, was canceled and 13 November 2015 launched a new and after only 40 days Jelena Trivan was elected director (under the Law of 2012).

The company has not filed a response to the request for submission of a document certifying of supply and responded to the request that required documents and other information.

## 12. JP Putevi Srbija

Instead of Director, the company has acting director for almost a decade - after being relieved from the position of Director, Zoran Drobnjak is the acting director from 27 December 2011. Competition for Director was announced in July 2013 and has not been completed and after the adoption of the new law was just announced a new competition, in February 2017. Not completed.

The Bulletin, which is normally updated regularly, at least at the beginning of the date, states the number of employees and the structure on December 2016. Financial statements from 2014 and 2015 are in the Bulletin. Very good page with regulations - laws, decisions, general acts, regulations, standards, technical guidelines, policies and European documents. Among them, systematization, as well as rules on procedure of the internal alert (and several acts related to the prevention of corruption).

No quarterly for the first two quarters of 2019. Very viewed number of employees in the business program. Transparency of the debts in the business program.

Very transparent SB pages. There are records of the sessions, but no records. Biographies on the site are of uneven quality.

The company did not submit a response to the one request, the implementation of public procurements.

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### **13. JP za podzemnu eksploataciju uglja Resavica**

In February 2015, after the arrest of the previous director, as an acting director was appointed Stevan Dželatović, who was deputy director in the past three years. Acting Director status was extended to him in August 2015. After the entry into force of the new Law on PE, on 25 March 2016, it was announced a competition for the director, and the same day Dželatović again appointed as an acting director. The competition, however, has not been finalized but exactly a year later, on 24 March 2017 was announced a new one, without any explanation what happened with the previous one. Then Dželatović was also arrested and a new Acting on 4 May 2017 became Marko Vuković. The competition has not been completed.

On the site there are biographies of five SB members and two executive directors, but not of the acting director. Biographies are in a professional format.

Information Booklet has not been updated for three years. The last business program is for the 2018. There is a review (statutory) of jobs and a comparison of occupancy, with the balance of 2017, as a contribution to the business program for 2018.

In the program there are dates and numbers of decisions on the appointment of management. Uncollected receivables, in tables, are presented summarized by categories (individuals, businesses, companies in state ownership, whereas state bodies, institutions).

In 2018, they did not plan funds for sponsorships, donations, advertising, humanitarian nor sports activities, only for the national team six million, as it was in the previous year.

Under the plan of consolidation in 2013, there are objectives and means of implementation.

Last PP plan on the site is for the year 2016. There is a report on implementation of the business program for the 12 months of 2018.

The company has not filed a response to two requests for access to information of public importance.

### **14. JP Nacionalni park Kopaonik**

On the site there are folders or pages: Laws, Other acts, Procurements, IT, Software, Financial statements, Plans, Regulations and all are empty, without a single document. On the second page briefly about the main objectives and the names and responsibilities of directors and other managers, no biography or contact information.

On the management bodies' page are the dates and numbers of the government's decision on the appointment of directors and SB. CVs of SB members can be considered as professional biographies, in accordance with the set indicator, but cannot be found biography of director. Competitions of directors were announced in July 2013 (not completed) and then in March 2017. Nor this one competition has been completed. According to the data on the site, the current director was appointed in 2008, which would mean that his mandate expired six years ago.

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From the documents was found only the Ordinance on the internal order in the National Park Kopaonik from 2000.

The company has not filed a response to the request for submission of a document certifying of supply and responded to the request that required documents and other information.

#### **15. JP Emisiona tehnika i veze**

Competition for Directors announced in February 2017. The company has acting director since November 2014. One member of SB was changed in August, and by October data is not updated. On the site there is information about the appointment - the number of solutions, a biography is composed of one sentence.

On the website are act of incorporation, statute, ordinance on internal awareness raising, the decision on appointment of a person to receive and conduct proceedings in relation to the awareness, code of business conduct, etc.

Business program operations searchable. There are only carrying aggregated data on claims. There is also information about suing in the financial report, as well as potential revenue of the company. There is information about a debit.

A rare example - the list of assets: Financial statements and acts. Listed as: equipment, inventory, land, buildings, Intangible Assets. One of the few documents that have not been found is the rulebook on systematization.

The company has not filed a response to two requests for access to public information, a reply to the letter in connection with the verification. For some of the information in the letter is confirmed that they are not available. The letter describes place on the site where, as stated, is one with the requested document (Ordinance on systematization), but this document is not, nor is it found elsewhere on the site in the repeated treatment. For certain documents (contracts of indicators 36) states that are not published because there is no legal obligation, but they are available upon request for access to information. We remind that the company previously did not respond to two requests submitted by the TS.

#### **16. JKP Gradska čistoća Beograd**

Quarterly reports contain the required elements, but the report for the 1st quarter of 2019, is not in tables such as prescribed in the regulations. Thus, for example, all funds specific purposes are displayed in tables and no comparison with the previous period. The report for the 4th quarter 2018 and the second quarter are in the prescribed tables, but the whole fit unsearchable image (JPG) converted into pdf.

On page documents can not be entered. On the site there are no representation for employment but an invitation to interested job report and sending of the application form by e-mail.

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The company has not filed a response to the request for submission of a document certifying that for supply and responded to the request that the requested documents and other information.

#### **17. JKP Gradsko saobraćajno preduzeće Beograd (JKP GSP)**

There is an ad for hiring of drivers. On the site there are statutes and rules of the internal warning system. No founding act. No details on the election of directors and board members. The latest work report is of the 9 months of 2018. The latest report of an independent auditor is for 2017.

Competition for Director was announced in May 2019. The Director Momčilović was elected as the only candidate.

There is information on loans in quarterly reports, only about claims collectively, accounting. The property is also just summarily accounted in the business program. The objectives and the realization details surfaced in business program.

The company declined to respond to a request for access to information on the grounds that asking for too many documents, and responded to the request for delivery of a document certifying that the procurement was conducted.

#### **18. JKP Beogradski vodovod i kanalizacija Beograd (JKP BVK)**

They have their own public procurement portal.

The director was appointed in 2016. The former CEO, who held the position from 2014 to 2016 (a year herein above Advisor to the Director, and Acting Director), was appointed chairman of the Supervisory Board. Missing one SB member.

There are separated and reviewed reports - The annual financial report for 2018, the Auditor's Report and the Report on the operations of the company for 2018. Also, the program of business and quarterly reports on implementation of the program. Business report unsearchable - image in pdf. The report on the work of the chapter are devoted to debt, billing and charges being filed. It also mentions the decision of the founders of the terms of the Settlement of debts (from 2017), but the decision has not been found at the site. It also states "problem inability suing after signing a disrespect protocols reprograms and contracts for the debt". A review of the largest debtors.

Very good and review documents - a report on the work program of operations. There is also a special page "Documents", where, among others, the Rules of Procedure of the internal awareness, but could be set and other documents - regulations, decisions of the founders and the like. There is no statute of the company.

The company has not filed a response to two requests for access to information of public importance. Submitted the reply to the letter in connection with the verification and stated that certain documents need not be disclosed because it is not required by law, that some published on other sites, and that the purpose of the site JKP BVK "to meet the needs of consumers, and that it be clearly organized and easy".

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## 19. JKP Beogradske elektrane Beograd

Beoelektrane has also its own public procurement portal. There is a decision on the appointment of the chairman of the SB, but without explanation and number of the decision and the date of appointment of the other board members. There is, however, the biography of SB members. There are biographies of executive directors (majority), but also the acting director.

On the site, on the "Employees" ("Documents" would have been a better choice) are decisions on the establishment and Statute. The Code of Ethics is on the page of Quality Management System.

There is a document that defines the long-term development strategy, mentioned in the business program, but it is not located on the site of: "...it is one of the strategic objectives of the Company as defined plan long-term business strategy and development for the period 2015-2025 . with projections to 2035, adopted by the Belgrade City Council Decision No. 3-839 / 16-S 30 November 2016".

The company did not provide the answers to the request for free access to information, these are indicators that in this way the required response is zero. On the other requirements for the delivery of a document that confirms that the procurement is conducted answered.

## 20. JKP Mediana Niš

Biography of Directors is in the form of story. For one SB member - only a couple of paragraphs, the other two not so much. There are contacts.

Quarterly financial - the last for the third quarter of 2016. Auditor's report for 2015 last year. There is a form on the site to report a problem, all visible to the site. It is available estimate of the number of employees in the business program, but there is no accurate data because there is no report on implementation of the program.

The company responded to two requests for access to information of public importance.

## 21. JKP Naissus Niš

In response to a letter of verification data, the JKP has stated that it is currently developing a new design of the website, it is a successive process, and that all facilities will be available by the end of 2019. This explains the fact that when insight to evaluate a variety of activities was not available.

In fact, the site is a page "Management" under construction, there is no data. Same is the case with the site "Mission and Vision" - very briefly on the subject of the report of the Long-term and medium-term business plan and strategy development is part of the program. OJP stipulates the obligation of enactment of this Act. Almost none of the companies has it published on the site.

There is a customer service page with options for fault notification. All these applications are, logically, stating the name and address. There are no options for other forms of appeals and complaints.

For the expenditure of funds for specific purposes (donations and advertisements) no tabulation nor individual benefits for donations and humanitarian needs, as required by-law.

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The company has not filed a response to the request for submission of a document certifying that for supply and responded to the request that the requested documents and other information.

## **22. JKP Gradska toplana Niš**

There is a contact form. Public Procurement Plan pdf is composed of unsearchable picture. The website is available a huge number of decisions, regulations, see the attempt to sort that seems to be unsuccessful. One of the few PE on which the site is found the business plan and strategy development (and long-term and medium-term). There is, however, the present Regulation on the procedures of internal awareness.

Biography of the chairman of the SB is in the form of story with a lot of irrelevant data. Biographies of the other two members and directors are professional.

The business program table of outstanding claims by categories - individuals, businesses, companies with majority state capital, state authorities and local self-government institutions and others.

Summary table of indebtedness. One of the few in PE samples that still gives money for sponsorships (and donations), although it must be noted that this is a rather small amounts (100,000 or 200,000 pounds). No business report for 2018 with the auditor's opinion, and there is one for the past year.

The company responded to two requests for access to information of public importance.

## **23. JKP Čistoća Novi Sad**

There is no page on the management, only organizational chart. There is a page "Business" where are two quarterly reports for 2018, a business program for 2017 and two reports from that year, and the older documents. Business program for 2019 and quarterly reports by the end of 2018 (but not 2019) are on the "Documents". On this page it can be found the Code of Ethics and Information Booklet, published in November 2018, but no date updates. No Rules of Procedure of the internal awareness system, as well as strategic documents (other than the policy of integrated management system, environmental protection and social responsibility). There are price lists.

At the business program and the bulletin are the names of directors and SB members, and the program can be found and appointment dates and numbers of decisions.

Extremely large amount scheduled for "purchase broadcasting time" - 1.3 million. In fact, it is a company whose activities are of importance for the citizens and the media are therefore regularly transmitted as service information, and it is difficult to understand the need for "purchase broadcasting time".

The report on the implementation of the program for 2018 is not separated, how funds were spent according to the category of special-purpose, nor any other data shown in the tables in the manner prescribed bylaw.

The company has not filed a response to two requests for access to information of public importance.

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#### **24. JKP Vodovod i kanalizacija Novi Sad**

There is an application form defects and problems with water supply and sanitation (five types of applications), as well as a special form for filing complaints or complaints via the website (not anonymous).

No statute nor the decision on the establishment. Activities listed in the annual report on implementation of the business program. The report lists the names of director and SB members and the number of solutions as well as the date of the decision on the appointment.

The observed extremely high cost of service information on the activities of the company (3.9 million), although it is precisely the service information transmitted by the media free of charge because they are of interest to their viewers, listeners and readers. Therefore, it would be useful to publish the contracts by which have been paid to this agent (indicator No. 35)

Biographies very scarce, for two SB members is difficult to determine what experience they have in jobs that are related to the affairs of PE.

The company has not filed a response to the request for submission of a document certifying that for supply and responded to the request that the requested documents and other information.

#### **25. JKP Novosadska toplana Novi Sad**

Most professional biography, and for one SB member is not clear visible any concrete experience, especially no experience in matters related to PE. No information on the election of director and SB members, or data on sessions of SB. On the website accessible medium and long-term business program, and strategy development. No Statute or Regulation of the internal warning system.

The funds allocated for sponsorship (400,000), as well as a high amount of advertising and propaganda (13760000). It is not specified what is a kind of advertising needs. It would be important to publish the contracts by which have been paid to this agent (indicator No. 35)

The company did not provide the answers to the request for free access to information, these are indicators that in this way the required response is zero. On the other requirements for the delivery of a document that confirms that the procurement is conducted – it was answered.

The company responded to the letter in connection with the verification. In reply, it was confirmed that some documents were not placed on the site, but has been indicated that it can receive a request for free access to information of public importance or that, for example, a reasoned decision on the election of director, can be found on the website of the founder or that (as Rules on systematization) available to employees through the (internal) enterprise portal, or one on a public website. On the afore mentioned website (and on the bulletin board) have been published also the Rules of procedure of internal awareness and information on the person responsible for dealing with complaints. For some indicators score is adjusted on the basis of information contained in the letter.

#### **26. JKP Vodovod i kanalizacija Subotica**

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There is a table of complaints and claims, not anonymous. On the site all relevant regulations, only PE in the sample in which it is found on the website of the Ordinance on the method of solving of complaints utilities. On the site are the Rules of Procedure of the internal alert system, as well as several documents relating to the prevention of corruption: Code of conduct for employees, the Code of Ethics of Internal Auditing, the Rules on gifts to employees in the company and the Regulations on Prevention of Conflict of Interest in the company.

Also, the business plans and the Annual plan of internal audit for 2019 and the Strategic plan of internal audit for the period 2019 - 2021. There is, however, act on job classification.

As justification for the cost of advertising, contracts are listed with the media for publication "information of social significance". PP plan was found only in the framework of the business program. In The Information Booklet there is data, a summary of categories of assets of the company, or the means of production.

The company responded to two requests for access to information of public importance.

### **27. JKP Subotička toplana**

Overviewed page "Documents" but poorly filled. In it could be found also the missing documents: statutes, the decision on the establishment, long-term and medium-term strategy, the decision on the appointment procedure for the application of whistleblowers, the decision on the appointment of management.

The last quarterly report for the third quarter of 2018. Latest annual financial report, the auditor's opinion for the year 2017. The company has not filed a response to the request for submission of a document certifying that for supply and responded to the request that the requested documents and other information.

### **28. JKP Vodovod i kanalizacija Kragujevac**

There are two pages devoted to public procurements. From the main, horizontal menu has a page where all the documents are grouped, and the direct link at the bottom of the title page opens on items placed chronologically, individual and non-transparent. PP plan was not found on any page.

This is one of the few PE that has posted a copy of the (unclear why the decision has not been published whole) of the act "Decision on conditions and criteria for the conclusion of the Agreement on the payment of the debt in installments."

PP plan found only in the business program.

The company responded to two requests for access to information of public importance, as well as the letter in connection with the verification findings. Replies to this letter in most cases have confirmed that the requested documents are not available, and given explanations about the procedure, the sites of the other organs of the documents can be found or how the documents were internally distributed (such as the Rules of Procedure of awareness), although not publicly available on site. In accordance



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with the information supplied information for certain indicators is entered in the table that are inapplicable, which improves the evaluation of the company.

### **29. JKP Šumadija Kragujevac**

On the site, there are derives from the strategic development documents, the goals of the company. An extract from the statute is also on site - describes the activity of the company. There are no biographies of director and SB members' biographies are extremely sparsely represented. No plan to PP on the PP page. Data found within the plan funds for the procurement of goods, services and works in the program business. There is present Regulation on the procedure for internal alert or not and of the person in charge. There is information on filing a complaint, in accordance with the Consumer Protection Law.

The company responded to two requests for access to information of public importance.

### **30. JP Vodovod Vranje**

The website did not match any documents whose disclosure is required under the Law on PE - business program, financial reports, quarterly reports. Public procurements are grouped and organized, but the page dedicated to PP there is no PP plan.

Composition of the Supervisory Board is debatable. Employee representative in the body that should supervise the work of the director is a deputy director. It is interesting that the chairman of SB is former director and now an employee, another PE, also founded by the city of Vranje. Biographies of SB members is very scarce, a biography of the managing director of PE is not located on the site.

There is a form for reporting a fault and the form of the complaint on the site. In presenting the company, website states that the Statute, general and other acts of Vodovod, shall regulate the internal organization, scope of authority and other issues relevant to the work and operations of Vodovod in accordance with the law. Some of the activities and objectives of the establishment are stated, but cannot be found on the website of the company.

The company has not filed a response to the request for submission of a document certifying that for supply and responded to the request that the requested documents and other information.

### **31. JP Novi dom Vranje**

On the home page there is a link to a page "Financial Reports" of a folder without a single document.

On the site are arranged chronologically procurement, are not grouped, and the last document (most recent) from October 2018, the Portal JN were found four JN announced in 2019. In the menu, under the category "Technical sector" there are items "Statute" and "Reports" but this site to open. There is price list page with categories, but without a price nor a link to a document with the prices.

The site was found internal competition for employment from April 2018.

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The company responded to two requests for access to information of public importance. However, in response to a request to submit documents confirming that it has been contracted public procurement only answered that there is delivery, but did not deliver.

### **32. JKP Vodovod Šabac**

There is a contact form with mandatory data indicating the person submitting the appeal or complaint. Public procurement grouped on PP page is not in the PP plan. On the "Supervisory Board and Management". Only the names of SB members, no contacts and no biography, and data management. There are annual business programs and quarterly reports on the work, on the "Business". No auditor's report nor the financial statements.

On the "Legal and general acts" there are also four general rules, including the rules of systematization, but not associated with the documents. Page "Prices of services", offered in the drop-down menu, is not active. Pricing can be found in the business and quarterly reports, which is sufficient for assessing the partially transparent.

In the business are presented goals and operational objectives of the ways to achieve them. Program business is unsearchable pdf with pictures page.

The company responded to both requests for access to public information. However, in response to the first request states that all requested information is provided on the website of the company, which is not true.

### **33. JKP Toplana Šabac**

There is a contact form on the site, with necessary entry of the name and e-mail address. On the site are available Statute, the founding act. No data on the supervisory board within the website of the company organization. After the letter of verification - data were set. Professional biography of director. In the business solutions are listed (numbers and dates) on the appointment of director and SB members. There is a page legislation, where could be found and the rulebooks on systematization, internal awareness raising, as well as others that are important or that we were looking for within this research. Currently there are only acts in relation to the supply and service charges. Does not include funds for advertising, though the company in the same industry as well as several others in the sample, which has provided a significant amount of contracts with the media in order to publish service information.

The company responded to two requests for access to public information and a letter in connection with the verification. The letter confirmed that certain requested documents were not disclosed because there is no obligation or it is not regulated by publicly available regulations, and for certain indicators is noted that the order was given for disclosure of information and it will be available "as soon as possible".

By additional checking some data (the meeting of the supervisory board, a reasoned decision on the election of director) were found at the site, while some (Rules for alerting, data on the person responsible for dealing with complaints of alert, the list of assets) have not yet been set. This is an

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example of active participation to increase transparency, initiated by this research. For some indicators has shown that already exist and these estimates were corrected.

#### **34. JKP Vodovod Zaječar**

On the site is not found page information whose disclosure is required under the law of PE - a program of operations, quarterly reports. There is no page with documents and acts related to the work of the company.

There is an application form failure, it is not stated whether it is possible to report other problems, or submit a complaint or appeal. The website lists the names of SB members and the date and number of the decision on the appointment. No biographies. There is a page "Management", but in it there is nothing. There is a page "Billing Service" but is "In progress" and does not contain information about debt collection policy.

Public procurement is transparent, dignified tables, grouped. Not found PP plan.

#### **35. JKP Gradska toplana Kruševac**

Public procurement is transparent, grouped, but not found PP plan. This is in addition to some information from 2017 and the financial statements for 2013, the only thing that is on the website of PE.

The company has not filed a response to two requests for access to information of public importance.

#### **36. JKP Usluga Priboj**

On the site there are the names of director and several executives with phone numbers and name of the chairman of SB. No biographies. In business program are the names of the remaining SB members with numbers and date of appointment.

There is a price list, pages with public procurement, with links to individual procurement to PP portal to and PP without a plan. There is a page with documents on it are statute, city's decisions on communal activities, program of work for 2019 and the city's decision on prices of public utilities, which refers to the prices in the appendix, which is not included.

The company did not provide the answers to the request for free access to information, so the indicators that in this way the required response is zero.

There was an answer to other request, for the delivery of a document that confirms that the procurement is conducted.

#### **37. JKP Senta**

There is the information on management, but no biographies. On the procurement page to completed procurements indicated only with whom the contract was concluded and the amount, but there are no documents. Last PP plan is for 2016.

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On the site there are medium and long-term development plan, statute, ordinance public alert...

The company has not filed a response to two requests for access to information of public importance.

### **38. JKP Naš dom Požega**

On the page "Document is a program of operations for 2017, auditor's report for 2015 and quarterly report for the third quarter of 2017.

PP has a lot during the year, but the site is chaotic - not clustered, mixed all the elements (documents) that are placed along with the plan and plan changes PP. On the page "About us" lists the names of directors from 1953 to 2009. There is no mention Acting appointed in 2018 whose name is found by searching on the Internet.

The company has not filed a response to two requests for access to information of public importance.

### **39. JP Komunalac Dimitrovgrad**

The names of all managers are on the organizational chart, including members of SB. Resumes cannot be found. The Anti-Corruption recommended, otherwise, even in 2013 the dismissal of the current director.

Last part of the quarterly report for the 3rd quarter of 2018, and the last for the financial year 2017. Public procurement decorated tables, transparent, but there is no PP plan. Given the size of the company and the amount of space provided for significant amounts for the nrepresentation (1,000,000) and advertising (500,000).

The company responded to two requests for access to information of public importance.

### **40. JKSP Komstan Trstenik**

The site has a structure, but a large number of pages are empty or filled with test text in Latin (Lorem ipsum). Functional is only page "Contact Us" and the presentation of two of the five business units.

The company has not filed a response to two requests for access to information of public importance.

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# Recommendations

## Directors

- The government should remove **inconsistencies in regulation on the basis of which the directors are elected**, so that the knowledge of all areas of the work of public company have to be checked, a negative assessment of knowledge of the issues to be the reason for the elimination of candidates, to specify what constitutes relevant experience, to check knowledge connected with programs of public enterprises' work, further education and years of experience to be valued in proportion to the importance, that the written test of knowledge of the law are as a rule
- Tighten **the conditions for the election of directors** (in terms of respect for the former anti-corruption legislation, without the possibility of "freezing" of membership in the party)
- Increase **publicity of work of commissions** that carry out the election of directors, establish measures **to prevent conflicts of interest** among commission members and prescribe the **prohibition that commission members are party officials**
- The government should **adopt a bylaw for establishing of incentives for professional and successful performance of directors** of public enterprises. The criteria for awarding incentives should include not only the realization of the planned financial results, but also the implementation of the role for which is a public enterprise founded (meeting the specific needs of citizens)
- Amendments to the Law on Public Enterprises should **limit the duration of the "acting state"**, by specifying the maximum time that may elapse between the dismissal of directors and the end of the contest to elect a new
- Amendments to the Law on Public Enterprises should be made for an obligation that **all data that are relevant** for assessing the legality of the selection process of directors and the merits of the decision on the choice made public, both at the site of a public company, and the site founder. And this practice should be established before a change in the law.
- The Government of Serbia should end in a lawful way **competitions for directors announced on the basis of previous and current legislation** and to publish their outcome, and in the case of suspension of competition also clear reasons for it.
- Each new competition should be organized efficiently, accompanied by **campaign that will encourage quality candidates to apply**, and to inform the public and the candidates duly on all relevant issues
- The government and the other founders of public companies, politicians, but also the media should **stop the practice of promoting the acting directors of public enterprises**. Particularly contentious are situations when one changes the other acting without explanation, and it presents itself as a functioning of the system of accountability.

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## Supervisory Boards

- Specify by amendments to the Law on Public Enterprises and the authentic interpretation of the National Assembly or the opinion of the Ministry of Economy **what would be considered as “experience in operating a public company”**, which is one of the conditions for the election of members of the supervisory boards. The condition should refer to the paramount activity of PE.
- Consider the possibility of **increase in compensation of the members of the SB in the case of achievement of good results, in particular in the case of a proven successful for supervision of the director** (e.g., detected, or prevented substantial gaps and damage), as the current level (the average income) is not in accordance with the responsibility and expertise which is required
- Affirm **the role of whistleblowers and other control mechanisms** within public enterprises and their relationship with the Supervisory Board
- Conduct an analysis of results of the supervisory board and reconsider their role in the following amendments to the Law on Public Enterprises. It is especially important to emphasize that their role is **not only to monitor financial performance, but also the realization of the primary role of the public enterprise** in meeting the needs of citizens.
- Review the **conditions for the election of members of the supervisory boards, set them to include a broader range of expertise** (e.g., at least one member knows each area of PE operations, at least one corporate managing, that all of them have experience in the management or control, that all must attend trainings) and then make a selection of new supervisory boards of all companies.
- The founders should **reassess the meeting of the conditions** for the members of the Supervisory Board of the PE, to disclose data that prove eligibility and to resolve members who are not eligible.

## Transparency

- The Government and the other founders of public companies, relevant ministries and the Government Office for information technology and e-government should influence to **all public enterprises to install website and post there all the necessary data** from the Law on public enterprises, as well as other information necessary for users of their services, **in a form that allows searching and copying to the needs of the user** (machine readability).
- Revise the **content of the program of work and report on the work** of public enterprises so that to the citizens it is clear to what extent they achieve the function for which it was established
- Prescribe an obligation on the periodic **table overview** of PE to **incorporate data on claims, the largest debtors, current billing models, litigations**, etc.
- **Prescribe the mandatory content** of the "information" prepared by the Ministry of Economy, so it is an analysis of all relevant aspects of the work of public enterprises on the basis of their reports and so that the Government is able to react in time and solve problems.

- It would be useful to the Ministry of Economy / Government or bodies at other levels of government, **publish in one place information about all public enterprises** in their jurisdiction (or links that lead to their websites), information on the consideration of the reports on the work (individually), data on the implementation of the competitions, information demonstrating compliance with the conditions for membership in supervisory boards etc. (Examples of this practice already exist in some cities).
- Ensure that, after the amendments to the Law on Free Access to Information of Public Importance, **all public enterprises and all other companies** in the direct or indirect **state ownership** are payers of Law and **make informers about the work**, and to ensure compliance with these rules by audit of administrative inspection or the Commissioner for Information
- **Apply punitive norms** of the Law on Public Enterprises, **particularly regarding violations of the rules on transparency of work**, submitting a request for initiating criminal proceedings by the relevant ministry. Apply other types of sanctions (starting procedures for dismissal because of its continued violations)
- It is recommended to local non-governmental organizations and the media, and other interested parties (citizens, political parties, representatives, unions, potential candidates without the "party hinterland") to **insist on the disclosure of all documents** from the election procedures for directors of public enterprises, on the greater transparency, and to indicate possible irregularities in the upcoming competitions for the selection of new directors of local public companies.
- Within the **implementation of local anti-corruption plans** and other similar initiatives (e.g. Partnership for Open Government) to strengthen the transparency and control mechanisms of the work of public enterprises by the local government and interested citizens and media
- Prescribe the obligation that the informants of work (on the basis of the amended Guidelines Commissioner) **enter information about the person in charge of internal alarm**.

## Advertising, donations, sponsorships

- Review the effects and **re-define policies and rules in the area of donations and sponsorships**, for all public enterprises, not just those that are financed from the budget, because in any case it comes to companies that use significant public resources.
- Define and argue the **needs for marketing of public enterprises**, as the legal level, so by approving financial plans
- Edit **detailed and consistent relations of public enterprises with the media and advertising in the media**, as part of amendments to the Law on Public Procurement, the Law on Public Enterprises, media regulations, the Law on advertising or under a special law that would regulate the advertising of the public sector
- **Pay attention** to advertising issues of public enterprises and state-owned enterprises and **in the final version of the Strategy**, taking into account the results of relevant research and reports
- Prescribe an obligation on **entering data on concluded contracts and payments based on advertising and promotion in the tables for quarterly reporting**.

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## Other issues

- By amendments to the Law on Public Enterprises **prescribe**, and subsequently apply the **penalties for violating the provisions of the Law** on Public Enterprises, where now not provided
- Amendments to the Law on Public Enterprises, **in an unequivocal way, edit the issue of the legal consequences of disapproval work plans** of public enterprises, as well as **decisions in making of participated directors and members of the Supervisory Board who are not eligible** for election
- Prescribe **the obligation of calling a public competition for employment** in the public sector



## Annex no. 1 The average score per indicator

Indicator No.	Indicators	% of maximal result in Serbia	% of maximal result in Czech Republic
32	Is there a separate page on the website dedicated to public procurement?	91,3%	91,3%
20	Are there public calls for PPs published on the website?	88,8%	26,1%
21	Are there elaborated decisions on awarding PP contracts published on the website?	86,3%	4,3%
13	Is the pricelist of services provided by SOE/MOE available on the website?	80,0%	52,2%
5	Are there basic information (names, position, contacts) about management (structure of the management depending on the legal framework) posted on the website?	76,3%	78,3%
10	Is there a financial plan/budget of the company published on its website?	75,0%	0%
11	Is there a annual work plan published on the website of the SOE/MOE?	75,0%	0%
4	Is the data on the number of employees available on the website?	72,5%	84,8%
31	Are there representation costs published on the website?	72,5%	0%
1	Is there a document with clearly described set of authorities (duties) of the company available on its website?	67,5%	56,5%
33	Is there data on sponsorship costs published on the website?	67,5%	0%
34	Is there data on advertising, consultancy services and marketing costs published on the website?	67,5%	6,5%
16	Is there information about MOEs and SOEs debts and loans on the website?	66,3%	45,7%

3	Have public competitions for the selection of directors been conducted?	62,5%	47,8%
12	Is there a annual report on the work published on the website of the SOE/MOE?	61,3%	82,6%
2	Is there a clear company's development strategy that describes its purpose and the vehicles of the company how to fulfil the strategy available on its website?	57,5%	21,7%
19	Is there a public procurement (PP) plan for current year published on website?	52,5%	13%
14	Are there reports of audit for past 3-5 years published on the website?	47,5%	80,4%
25	Is there a SOEs/MOEs individual policy regarding using the company owned cars?	46,3%	10,9%
22	Did SOE/MOE present evidence on satisfactory execution (fulfilment) of PP contract (FOI request for one randomly selected PP)?	45,0%	28,3%
15	Are there information about discounts and benefits available on the website? (including employees)	41,3%	41,3%
6	Is there a profession CV of the management (structure of the management depending on the legal framework) published on the website?	37,5%	39,1%
24	Is there a SOEs/MOEs individual policy regarding representation costs? (FOI request)	33,8%	0%
26	Is there a rulebook/guidebook on whistle blowing published on the website?	30,0%	47,8%
17	Is there information about SOEs and MOEs financial claims published on the website?	25,0%	47,8%
23	Is there an open channel for anonymous complaints? (we look at the website, and we send FOI asking for policy – procedure for dealing with complaints)	22,5%	34,8%
28	Are there public calls for recruitment published on the web site?	19,7%	93,5%

7	Are information on procedure for appointment of members of governing, supervisory and audit bodies of the company available on web page?	17,5%	6,5%
37	Are there procedures of choosing outsourcing contracts (where public procurement rules do not apply ) published on the website?	17,5%	2,2%
29	Is the act that sets internal structure of SOEs/MOEs, number of employees and description of their jobs published on the website?	15,0%	45,7%
9	Is there an inventory (or information on major assets – real estate/properties, vehicles) published on the website?	8,8%	8,7%
27	Is there information (contact) about person in charge of dealing with whistleblowers' complaints?	8,8%	28,3%
30	Has the elaborated decision on appointment of the director been published on the SOE/MOE website?	7,5%	39,1%
8	Are minutes of governing, supervisory and audit bodies meetings from the past 12 months publically available?	5,0%	13%
18	Is there a policy on collecting financial claims published in the website?	5,0%	10,9%
35	Are there advertising, consultancy services and marketing contracts published on the website?	0,0%	4,3%
36	Are there legal services contracts (purpose, amount etc.) published on the website?	0,0%	4,3%

## Annex no. 2 The final score of companies in Serbia

Pos.	Enterprise	Percentage score
1	Srbijavode	69,4%
2	Toplana Šabac	69,4%
3	Srbija kargo ad	66,2%
4	Vodovod i kanalizacija Subotica	66,2%
5	Vodovod i kanalizacija Kragujevac	65,7%
6	Emisiona tehnika i veze	64,9%
7	Transnafta	63,5%
8	Putevi Srbija	63,5%
9	Beogradski vodovod i kanalizacija Beograd	62,5%
10	Elektroprivreda Srbije	62,2%
11	JKP Šumadija Kragujevac	62,2%
12	Gradska toplana Niš	60,8%
13	Vodovod i kanalizacija Novi Sad	60,8%
14	Službeni glasnik	59,5%
15	Gradska čistoća Beograd	56,8%
16	Gradsko saobraćajno preduzeće Beograd	56,8%
17	Pošta Srbije	55,4%
18	Novosadska toplana Novi Sad	55,4%
19	Subotička toplana	54,1%
20	Mediana Niš	51,4%

21	Komunalac Dimitrovgrad	51,4%
22	Beogradske elektrane Beograd	50,0%
23	Srbijašume	47,3%
24	Naissus Niš	47,3%
25	Vodovod Šabac	44,6%
26	JKP Senta	44,6%
27	JP PEU Resavica	40,5%
28	JKP Usluga Priboj	39,2%
29	Čistoća Novi Sad	35,1%
30	Srbijagas	29,7%
31	Agencija za osiguranje i finansiranje izvoza Republike Srbije ad	25,7%
32	Vodovod Zaječar	20,3%
33	Vodovod Vranje	18,9%
34	JP NP Kopaonik	16,2%
35	Novi dom Vranje	16,2%
36	JKP Naš dom Požega	14,9%
37	Aerodromi Srbija	13,5%
38	Gradska toplana Kruševac	10,8%
39	Komstan Trstenik	2,7%
40	MB namenska ad	0,0%

(By yellow are marked the enterprises that responded to the letter in relation to results' verification)

## Annex no. 3 The final score of companies in Czech Republic

1	Státní tiskárna cenin	40,0%
2	Lesy ČR	38,8%
3	Česká pošta	37,5%
4	EGAP	37,5%
5	Plzeňské městské dopravní podniky	36,3%
6	Povodí Labe	35,0%
7	ČD Cargo	33,8%
8	Letiště Praha	32,5%
9	Povodí Vltavy	32,5%
10	VOP CZ	32,5%
11	DPP	30,0%
12	ČPP Transgas	28,8%
13	Severočeská Vodárenská	28,8%
14	Vodárna Plzeň	28,8%
15	ČEZ distribuce	27,5%
16	Diamo	27,5%
17	Kongresové centrum Praha	27,5%
18	DPMB	26,3%
19	Pražská Plynárenská	25,0%
20	Vodovody a kanalizace Hradec Králová	25,0%
21	Budějovický Budvar	23,8%
22	MERO	20,0%
23	Jihlavské vodovody a kanalizace	13,8%



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Transparency International – Česká republika, o. p. s.

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**„Hlídáme veřejný  
zájem, hájíme  
efektivní  
a odpovědnou  
správu země.“**

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Bankovní číslo účtu Transparency International Česká republika,  
o. p. s. vedeného u Fio banky, a. s. (pobočka banky na Praze 1)  
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