

Functional review of agencies

Several proposals upon functioning and reporting of agencies which report to the Parliamentary Committee on Economic Development, Infrastructure, Trade, Industry and Regional Development

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Executive Summary

The main findings according to the order to agencies presented in this paper are:

CAA Civil Aviation Authority

CAA has the majority of functions which are classified as executive and/or administrative; its primary reporting targets are the Ministry and the Government. The Board and the Director General are appointed and dismissed by the Ministry and Government whereas the CAA is classified as independent agency under and reporting to the Assembly;

Stabilization and Association Agreement (SAA) and National Plan for the Implementation of the SAA (NPISAA) do not refer to the independence of CAA and the need for CAA to function and report independently to the Assembly of Kosovo. In the multilateral agreement of European Common Aviation Area (ECAA), the generic term for all signing parties of the agreement is the "competent authority" for civil aviation;

The European Commission (EC) Guide on the main administrative structures required for implementing the EU acquis, when referring to the structure on civil aviation, points out that the structure can be either within or separate from the Ministry of Transport, but does not stress the need for an independency in the organisational term for CAA which can be then interpreted as a separation of CAA from the executive;

Civil Aviation Authority in Albania functions under the Ministry of Infrastructure and Energy with a status of a dependent institution and is accountable to the Minister. Also, the Civil Aviation Agency in Montenegro functions under the Government, respectively under the Ministry of Transport and Maritime Affairs. In Croatia, Civil Aviation Agency is a governmental agency, respectively under the Ministry of the Sea, Transport and Infrastructure. In none of the cases the respective laws mention the reporting lines of these agencies to the Assembly;

KCA

Kosovo Competition Authority

Kosovo Competition Authority has regulatory functions and has a great role to play in the protection of competition and its independence both functional and organisational is not complete;

In the law changing and supplementing the Law on the protection of competition, the clause "public competition" has been removed and now members of the Commission for the protection of competition are not selected based on a public competition but they are proposed from the Government and appointed by the Assembly. This regulation has created more space for the Government to influence the selection process of these members and through this to affect the independence of KCA from the Government;

SAA/NPISAA and the EC guide reiterate the need that KCA should have a functional independence, meaning also independency in decision-making. The fact that the Government proposes the members of the committee to be nominated in the Assembly is in contradiction with the call to strengthen the independence of this body. A good example of proposing the candidates to be nominated by the Assembly is that of Albania where: one member is proposed by the President, two from the Council of Ministers and two others from the Assembly;

Competition Authority is independent and reports to the Assembly in the three countries brought here: Albania, Montenegro and Croatia;

KPA

Kosovo Privatisation Agency

Functions of Kosovo Privatisation Agency do not relate to any functions which could be linked with its management from the Assembly of Kosovo. SAA and NPISAA do not consist of any reference related to the functioning and organisation of the KPA. The EC Guide mentions the existence of a privatisation agency in the central level but do not include any reference related to the functioning of the agency outside or separate from the Government. In this document, the agency is even mentioned in the chapter related to industrial and entrepreneurship policies;

The privatisation function in Albania is exercised by the Directorate for the Administration of Public Property within the Ministry of Economy and Finance. The Directorate is equal to a department in Kosovo. In Albania, the National Privatisation Agency has existed until 2006 which at that time has been merged into the Directorate of Public Property while the latter has been transformed in 2013 in the Directorate for the Administration of Public Property under the Ministry of Economy and Finance;

The privatisation function in Montenegro is exercised by the Council for Privatisation and Capital Investments which is a governmental institution and its mandate derives from the Privatisation Law and is chaired by the Prime Minister. Members of the Council are a number ministers and relevant institutions in the field of economy. The Council drafts annual plans for privatisation which are later approved by the Government;

RAEPC

Regulatory Authority for Electronic and Postal Communications

Functions of RAEPC are typically regulatory and its independence from the executive has to be ensured. On the other side, the fact that the Minister recommends the Board members while the Government proposes them to be appointed by the Assembly, without a prior public competition, creates a great chance for the Government to influence/impact the selection of Board members. This fact impedes the independence of the regulatory authority from the Government;

SAA/NPISAA and EC Guide recognize the importance for the authority to function independently in this sector and call upon the countries to raise capacities in these regulators in order to also be able to cooperate under the Body of European Regulators for Electronic Regulators (BEREC);

RAEPC functions independently from the executive and report to the Assembly in the case of Albania, Montenegro and Croatia. In the case of Croatia, Agency for Post and Electronic Communications and Railway Regulatory have been merged into one institution, the Regulatory Authority for Network Industries;

ICMM

Independent Commission for Mines and Minerals

Independent Commission for Mines and Minerals has functions which are classified as administrative and service delivery since its primary function is to issue licences and permits for the exploration and exploitation of mine resources in Kosovo. On the other side, policies such as the Law on Mines and Minerals and the Mining Strategy are drafted by the Ministry for Economic Development (MED), respectively the mining department. Based on this, there is no reason to justify the reporting of ICMM to the Assembly of Kosovo;

SAA/NPISAA and EC Guide do not refer to the functioning of ICMM. In Albania, the similar functions to ICMM in Kosovo are exercised by the Mining Directorate under the National Agency for Natural Resources within the Ministry of Infrastructure and Energy. The similar function in Montenegro is exercised by the "competent authority" which based on the Mining Law in Montenegro and organized under the Ministry of Economy and does not have reporting lines to the Parliament. In the case of Croatia, the mining department within the Ministry of Economy, Entrepreneurship and Labor is the competent authority which has been given this mandate by the Mining Law;

RRA

Railway Regulatory Authority

General Director of RRA is selected according to the rules and procedures of Civil Service Law, it is a civil servant, and at the same time, he/she is the fifth member of RRA's Board. This practice has not been found in any of the regional countries neither in other agency models in Kosovo;

Given that railway infrastructure and transport services in Kosovo are managed by public enterprises (Infrakos and Trainkos) which receive public money from the state and both the infrastructure and trains are state property, the regulatory function of the RRA is questionable. The function would be regulatory if a private company either on infrastructure or transportation would be entering into the market and thus competing with public ones;

SAA/NPISAA do not have any articles where the functioning of RRA is mentioned and the need for the RRA to report to the Assembly separately from the executive. The EC Guide mentions only the fact that such Authorities should be separate from the service providers. There is not enough publicly available information for the way of functioning of the Regulatory Authority in Albania even though the Railway Code approved in 2012 provides for such an Authority to exist in Albania. In Montenegro, the regulatory and management function of the railway functions are in the form of a Directorate for Railways under the Ministry of Transport and Maritime Affairs. In Croatia, as pointed out earlier, the Railway Regulatory Authority and the Regulatory Authority for Post and Electronic Communications have been merged into a single regulatory authority, the Regulatory Authority for Network Industries;

ERO

Energy Regulatory Office

Functions of the Energy Regulatory Office are regulatory and based also on practices of other countries, this institution has to be kept independent from the executive and full independence especially in decision-making has to be provided;

The selection of board members through a public competition is positive especially given the fact that under the former law, this process has not included the public competition and the board members have been proposed by the Minister instead. However, the fact that the selection procedure is developed within the Ministry for Economic Development and it is not known who takes part in the selection committee, should be addressed;

The selection of the board in the Energy Regulatory Body in Albania ensures a greater independence in the selection of board members especially compared to that in Kosovo. In Albania, the board comprised of five members are selected from a Selection Team which is composed of three people: the Chair of the Committee for Economy and Finance, Chair of the Committee which covers the energy area and the Minister who has the energy field under its portfolio;

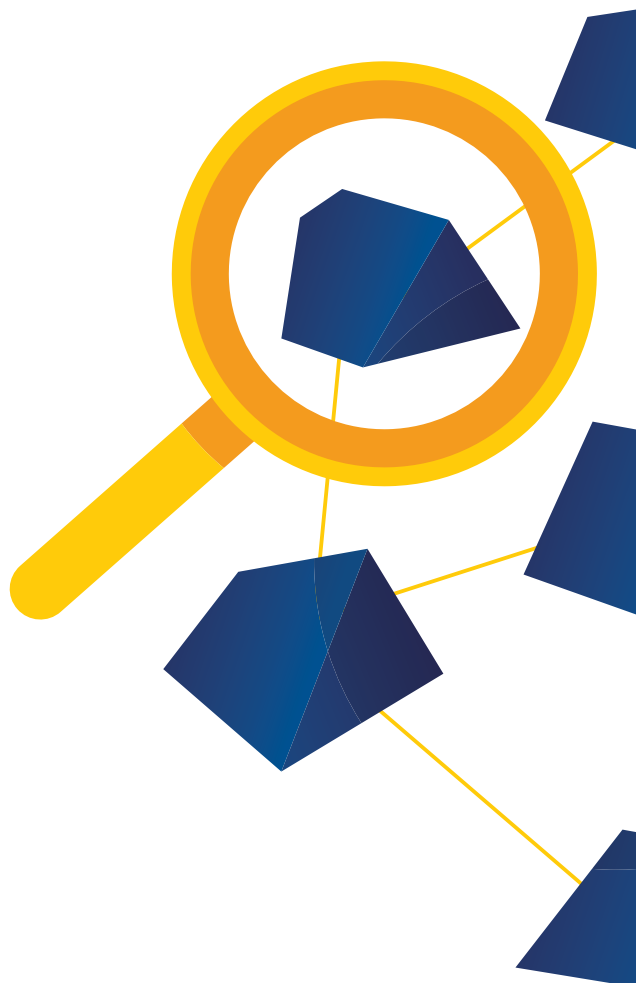
Energy Regulator is independent with reporting lines towards the Parliament also in the three countries presented in this report: Albania, Montenegro and Croatia.

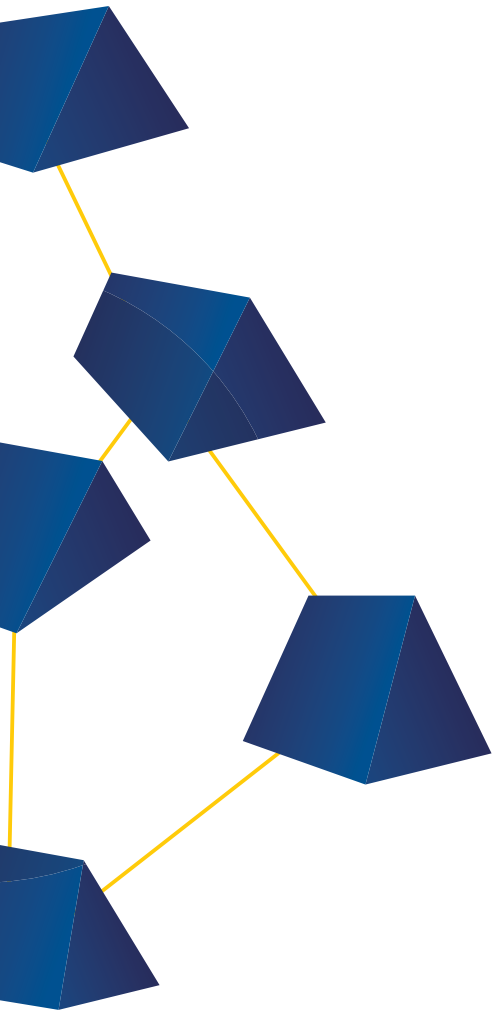
Problem definition

The problem elaborated in this work is part of a larger problem which is about the number of independent agencies reporting to the Assembly of Kosovo. According to the European Commission country report on Kosovo for 2018, the Assembly does not have the capacity to effectively oversight 32 independent agencies reporting to the Assembly. Also, the respective report calls upon the need to transfer the accountability lines of several agencies from the Assembly to the Government in order to achieve greater efficiency in public administration, better lines of accountability and better oversight from the Assembly to the Government.

This report elaborates upon seven agencies which report to the Assembly of Kosovo through the Committee for Economic Development, Infrastructure, Trade, Industry and Regional Development. According to the request of the respective committee, the research question is twofold: first, do these agencies need to exist and operate in Kosovo, and second, if so, should they be managed by and report to the Assembly of Kosovo? The problem already created is that there have been a number of agencies created under the Assembly of Kosovo from the end of the war in Kosovo and these agencies in most cases have functions which do not relate at all to the functions of the Assembly. Until the Constitution entered into force, such agencies have been established by UNMIK Regulations and thereafter have been transformed with laws approved by the Assembly of Kosovo and the need for their existence has never been questioned. After the Constitution entered into force, based on Article 142 on independent agencies, a number of other independent agencies have been established under the Assembly and separate from the Government.

The agency concept generally means a structure or organisational unit which is established to implement policies and programs that they are in nature executive tasks. As such, these agencies are established under the Government as part of line ministries pursuant to the Law on state administration, the dispositions on central state administration bodies. The department is tasked to draft policies whereas the agency is tasked to implement/execute them. Only in this relation there is a meaning for the agency under the Government with executive responsibilities to exist and in many cases they have a temporary mandate, defined budget and in several cases get abolished afterwards. In contrast to this, the situation with agencies in Kosovo does not recognize agencies which have had a temporary mandate and have been abolished after the mandate has expired.





Research framework and methodology

The report has been drafted by taking into account two factors: first, what are the functions of agencies and how much they are linked to functions of the Assembly of Kosovo, especially to the oversight function? Moreover, a part here is dedicated to how board members are selected and how agencies report to the Assembly. Second, the Stabilisation and Association Agreement and the National Plan for the Implementation of the SAA (2017-2021) have been analyzed in order to see if such documents have any requirement which has to do with the functioning and organisation (independency) of these agencies. After this analysis and for the purpose of further analysis related to the administrative structures need to implementing the EU acquis, the report analysis the EC guide on the main administrative structures required to implementing the EU acquis.

For better and more complete landscapes on the organisation, functioning and reporting of the agencies elaborated in this report, three regional countries have been analysed: Albania, Montenegro and Croatia. Also, principles and best practices of the Organisation for Economic Cooperation and Development (OECD) have been provided with a focus on the organisation and functioning of the seven agencies. Findings in the three countries have already confirmed that several agencies under the group of seven agencies, especially those which do not have regulatory functions, should be executive since they play executive functions at large. OECD principles have been analysed only as far as regulatory agencies are concerned and due to the fact that three out of seven agencies elaborated here are regulatory agencies. According to such principles, even though an agency has regulatory functions, it should not be automatically managed the Assembly in order to grant independency to such an agency. Independency has to do with the influence exercised in decision making and very little concerns if a certain agency in under the Government or Assembly. Regulators may function as departments within Minsitries and enjoy a large degree of independence.

An overview of functions, reporting and appointment of boards in seven agencies according to actual legislation

This part of the reports provides three elements for each agency: functions of the agency, reporting and appointment of the board for the seven agencies. This is followed by a discussion upon the functions of the agencies in order to see what functions they exercise, executive or regulatory. A regulatory function may to some extent justify the need for the agency to function under and report to the Assembly.

CAA

Civil Aviation Authority

CAA has been established in 2008 as independent agency pursuant to the Law on Civil Aviation¹. The law is approved according to Article 130 of the Constitution which defines the scope of work of CAA in the field of civil aviation and as provider of air navigation services as provided by the law².

Functions

CAA is one of the four authorities in the field of civil aviation in the Republic of Kosovo: Ministry of Infrastructure, Ministry of Interior and the Aeronautical Accident and Incident Investigations Commission. In this aspect, the CAA is responsible for: 1) implementation of policies and legislation approved by the Ministry and Government, 2) it provides advices to the Minister, Government, Assembly in relation to these policies and policy proposals, 3) issuance of regulations for the implementation of orders of air navigation in accordance with the Law on civil aviation, 4) issues licences, certificates and permits, 5) safety regulation of air transport in the Republic of Kosovo and regulation of economics of airports and air navigation services, 6) oversights the implementation of the respective legislation and rules and standards and 7) carries out investigations, inspections and also issues rules and regulations for the implementation of the legislation.

Appointment of the board

The bodies of CAA are the Board and General Director. The Board has supervisory roles, members of the board do not have a full time job, have meetings once in three months and oversights the CAA in its exercise of functions (administrative, executive, regulatory and licencing). The Board is composed of five members who are appointed by the Government of Kosovo after the proposal and advice of the Minister. This means that the selection and appointment procedures are developed by the Government. On the other side, the potential candidates for the position of General Director are selected from the Minister (Minister of Infrastructure) and the respective Minister proposes to the Government a short-list with potential candidates

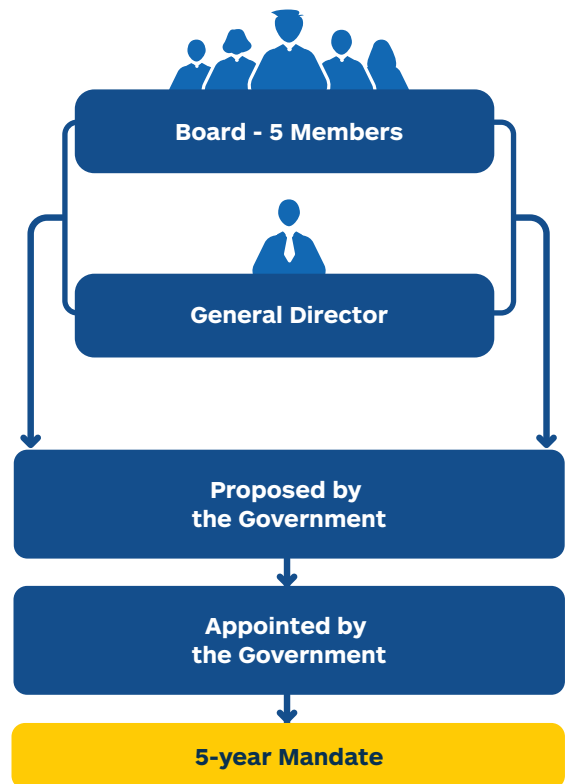
1 Law no. 03/L-051 on Civil Aviation: <https://bit.ly/2HzYhjs>

2 Constitution of the Republic of Kosovo, Article 130: <https://bit.ly/2tl4tC6>

to be nominated by the Government. In this case, the Minister delivers to the Government a recommendation for each short-listed candidate and therefore the Government approves one of the candidates in the position of General Director of CAA. The Director has a full time job with a mandate of five-year term and is responsible for the day-to-day management and decision-making in the CAA.

Reporting

In contrast to other practices where boards of agencies (usually the head of board) reports to the Assembly, in the case of CAA, it is the General Director who until the end of March each year, prepares a comprehensive annual report for the Board, Minister, Government and Assembly. Also, based on Article 26 of the Law on Civil Aviation, the General Director is accountable to the Assembly of Kosovo also in relation to the compliance of CAA with civil aviation policies and laws and international obligations which are applicable in the Republic of Kosovo. In practice, the CAA reports to the Committee through the Committee for Economic Development, Infrastructure, Trade, Industry and Regional Development.



Discussion points

CAA functions numbered from 1 to 5 are functions which can be exercised from the agency no matter if the agency is under the Government or Assembly. This is because CAA implements policies (function 1) while the Ministry drafts these policies³ and this is in harmony with the relation ministry - agency, where the ministry drafts policies and the agency implements/executes them. Function 2 is a service delivery function for the relevant stakeholders and as such it is not a function which should be exercised by an agency under the Assembly only. Function 3 is a function shared among the Ministry of Infrastructure and the CAA which drafts and issues regulations in order to implement the legislation, an authority which has been given to CAA by law. The service delivery function (issue of certificates, licences and permits) is an administrative function and normally can be exercised by an administrative/executive structure (agency) under the Government.

The only function which makes CAA to have regulatory functions (which may justify the CAA to be managed by the Assembly) is the regulation of air transport safety and regulation of economics of airports and air navigation services. However, the regulatory function is a function which falls under the executive functions and as such does not necessarily mean that CAA should not function and report to the Government. Functions 6 and 7, the conduct of inspection and investigation are also functions which can be exercised by the Government itself also because inspectorates are organized and function within the executive branch.

In relation to the appointment of the Board and General Director, it is clear that the process belongs to the Ministry, Government and for such an appointment the consent of the Assembly is not required. Also reporting of CAA has the Government in focus because the General Director prepares and submits a report to the Board, Minister, Government and then Assembly. This means that also the reporting of CAA has the Government in focus which appoints the Board and the Director and the reporting to the Assembly is formal.

³ Law n. 03/L-051 on Civil Aviation, Article 6.

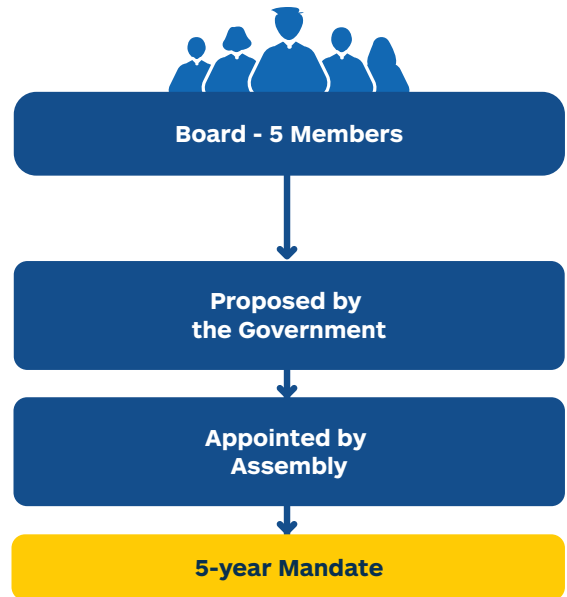
As Kosovo Competition Committee (the decision-making body of KCA), it has been established in 2004 with the Law on Competition⁴ and supplemented in 2010 with the Law on the Protection of Competition. The institution responsible is recognized as Kosovo Competition Authority and the Committee is recognized today as the decision-making body⁵. KCA is responsible to protect the competition in compliance with general principles on economic relations according to the Constitution of the Republic of Kosovo⁶.

Functions

Responsibilities of KCS are the following: 1) proposes endorsement of secondary legislation pursuant to this law, 2) makes decisions through which KCA initiates and directs the process to define the distortion of competition, 3) pronounces punitive measures for violations of this law, 4) defines deadlines and conditions for their execution, 5) provides opinions for the compatibility of draft laws and other regulations with this law, 6) defines regulations and measures for protection of competition, 7) promotes the information and knowledge for market competition and by the request of the Assembly, Government and other central and local level public institutions, provides professional opinion on issues related to policies and market competition rights and obligations.

Appointment of the board

Committee for the Protection of Competition is the collegial and decision-making body which manages the KCA, it consists of five members, and they are proposed by the Government and nominated by the Assembly. They have a five year mandate with the possibility of re-appointment for one more time through the proposal of the Government. According to the basic law on competition, the head and other members of the KCA are appointed by the Government following an open competition, and the short-listed candidates are submitted to the Assembly for the final approval. According to the supplementation of the law, the word open competition has been removed from the text law and now the Government proposes them to the Assembly without a prior open competition process.



4 Law no. 2004/36 on Competition: <https://bit.ly/1Let9mf>

5 Law no. 03/L-229 on Protection of Competition: <https://bit.ly/1Let9mf>

6 Constitution of the Republic of Kosovo, Chapter IX on Economic Relations.

Reporting

KCA reports to the Assembly of Kosovo through an annual report for the previous year which is submitted to the Assembly by the 31st of March of the actual year. In practice, KCA reports to the Assembly through the Committee on Economic Development, Infrastructure, Trade, Industry and Regional Development.

Discussion points

By analysing the functions of the KCA from the point of what functions are regulatory which should be exercised by from a regulatory institution and which are executive and/or administrative which can be exercised by a ministry and executive agency, it comes out that KCA has regulatory functions which have to be exercised by an institution separate from the Government. For instance, the function to define when there is a distortion of competition (function 2) and the definition of measures to re-establish the effective and free trade competition (functions 3 and 4) are regulatory functions aimed at the protection of free competition. Then, functions like the provision of the professional opinion for the harmonisation of draft laws and other regulations with the law on protection of competition (function 5) and the definition of rules for the protection of competition (function 6), are also regulatory functions aimed at protecting the free market competition.

In regards to the appointment of the board (the Committee), in comparison to the CAA, there is a more balanced approach between the Government and the Assembly when it comes to the board appointment. However, given the fact that the open competition has been taken out with the change and supplementation of the basic law, the Government has in its discretion the proposal of candidates to be appointed as members of the KCA's board. As much as the reporting of KCA to the Assembly is concerned, the KCA reports to the Assembly (not to a certain Ministry and the Government) as in the case of CAA. Also, in contrast to CAA where the General Director reports to the Assembly, in the case of KCA, it is the board which reports through annual reports to the Assembly of Kosovo.

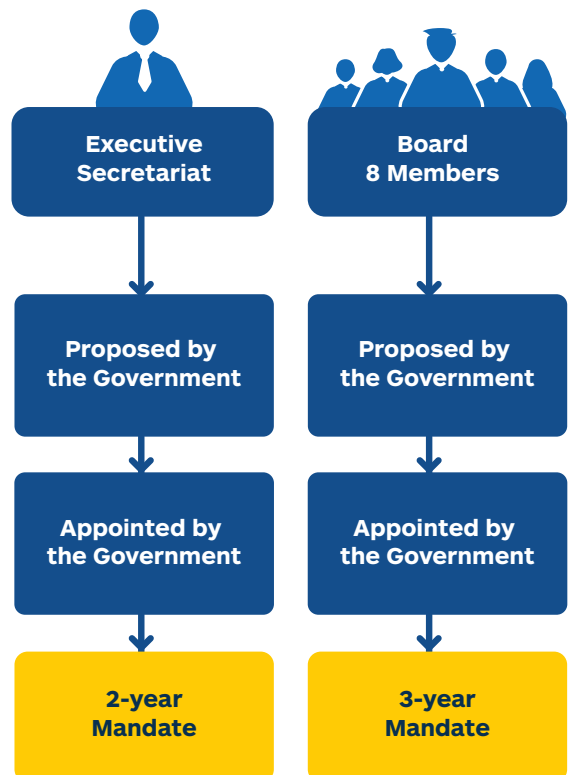
Kosovo Privatisation Agency has been initially established in 2002 as Kosovo Trust Agency (KTA) through UNMIK Regulation. The Regulation has been abolished and the KPA was established with the Law on the KPA by the Assembly of Kosovo in 2008. The latest law which defines the duties and responsibilities of KPA, board composition and reporting has been approved in 2011 and later supplemented in 2012 and 2015⁷.

Functions

The main function which relates to the establishment and the actual mandate of the KPA is the transformation and privatisation of socially-owned enterprises which have been a state property before or after 22 of March 1989, with the exception of cases where after 10 of June 1999 there have been a regulation issued from a public authority in Kosovo which defines the responsibility for the administration of those assets to another public body in Kosovo. Pursuant to the actual law, the KPA has exclusive competences to administer: 1) socially-owned enterprises no matter if they have undergone a transformation process or not, 2) all assets which are in the territory of Kosovo, no matter if they have been organised as subjects or not, which have been under state property before or after the 22nd of March 1989 and 3) all shares in enterprises and depending enterprises which have been established pursuant to this law.

Appointment of the board

KPA's board is composed of eight directors which are proposed by the Government and appointed by the Assembly of Kosovo, one representative for the non-majority community and one representative from labor unions in Kosovo. Also, by a proposal of the Government, the Assembly appoints the head of the board and then the board appoints one of the members as deputy. According to the law, the head, deputy head and the director of the executive secretariat is nominated for the three year mandate while the rest of the directors are appointed for a two year term. All directors can be re-appointed and this is not defined with the law, once or more than that.



7 Law no. 04/L-034 on Kosovo Privatisation Agency: <https://bit.ly/2oEKLjb>

Reporting

The board reports in annual basis through the annual report to the Assembly of Kosovo through the Committee on Economic Development, Infrastructure, Trade, Industry and Regional Development.

Discussion points

The three functions listed here of the KPA has one element in common: transformation and privatisation of socially-owned enterprises which as function does not necessarily mean that it should be exercised by an agency managed the Assembly. KPA has been established to be managed by Assembly also due to the fact that institutions of Kosovo (meaning the provisional institutions and notably the Government in the beginning), were recently established, weak and could not be trusted to carry out the privatisation process. For KPA, one approach for sure can be followed: a) KPA can be transferred to the Ministry for Economic Development (MED) since MED is the line ministry and deals also with public enterprises in Kosovo. MED monitors the performance of central level public enterprises in Kosovo through the Policy and Monitoring Unit of Public Enterprises under MED. This unit reports also to the Assembly of Kosovo, meaning to the Committee for Economic Development, Infrastructure, Trade, Industry and Rural Development through annual reports which are basically drafted based on the reports of public enterprises delivered to the unit. Except the main function mentioned above, the KPA has in its scope of work also competences in the administrative field⁸ which as a category of functions, they fall under the competences and responsibilities of the executive branch.

In regards to the appointment of the board, there is also a shared competence between the Government and the Assembly since the Prime Minister proposes the directors and the Assembly appoints them. However, if we take into consideration the fact how much the Assembly may impact from a practical point of view the appointment or non-appointment of board directors (and also approval or not approval of the annual report), it is easy to conclude that the process belongs more to the Government than to the Assembly. KPA reports to the Assembly and there have been cases when the report of KPA has not been approved either by the functional Committee or by the plenary session (in 2015) and the same composition of the board or the same board has continued the mandated and its expiry pursuant to the law⁹.

⁸ Law nr. 04/L-034 Kosovo Privatisation Agency, Article 6.

⁹ Ministry of Public Administration (MPA), Review of independent institutions and agencies or the Assembly and central bodies of the Government, December 2016, available at: <https://bit.ly/2MRMsEh>

RAEPC

Regulatory Authority for Electronic and Postal Communications

RAEPC has been established in 2012 by the Law on electronic communications¹⁰ while it has been initially established in 2004 in the form of Regulatory Authority for Telecommunications (RAT) through the Law on telecommunications. Pursuant to the actual law, RAEPC is the successor of RAT.

Functions

RAEPC has a number of duties and responsibilities which make RAEPC to be classified as regulatory authority in the field of electronic and postal communications in Kosovo. From the long list of duties and responsibilities listed for RAEPC, the most important ones are: 1) in joint cooperation with the Ministry, it prepares the National Plan of Radio Frequency, 2) makes decisions related to definition of the market, 3) makes decisions related to provision of universal services and definition of duties and obligations for them, 4) monitors and regulates public electronic communications of networks and services, 5) approves the National Numbering Plan, the Plan for the use of Radio Frequency (channels) and the Plans for the Development of Radio and Communications, 6) makes decisions related to grants, transfers and revocation of individual licences for the usage of radio-frequencies spectrum based on the public tender and public auction procedures, etc.

Appointment of the board

RAEPC's board consists of five members who are recommended by the Minister, proposed by the Government and appointed by the Assembly of Kosovo. They have a five year mandate with a possibility of re-appointment for another five years. One of the members serves as head of the board and it is proposed to this position from among the members of the board recommended by the Minister and proposed by the Government.

¹⁰ Law no. 04/L-109 on electronic communications: <https://bit.ly/2EGx3L4>



Reporting

RAEPC reports to the Assembly of Kosovo through the annual report which is submitted to the Assembly during the first part of the actual year, for the previous year. It reports to the Assembly through the Committee on Economic Development, Infrastructure, Trade, Industry and Regional Development.

Discussion points

According to the functions listed above, RAEPC has regulatory functions and managed by the Assembly. On the other side, in order to rationalize a few technical and administrative services, a merger of two or more regulators can be considered for the future. However, this merger should not limit the independence of regulators to make decisions separately on their own. In regards to appointment of the board, there is a common element among RAEPC and CAA. Even though in the case of RAEPC, candidates to become members of the board are appointed by the Assembly, they are initially recommended by the Minister and proposed by the Government. In this case as well, the Assembly comes into play only formally because the selection procedure is in fact developed among the Ministry and Government. In regards to reporting, only the timeframe when it delivers the report to the Assmelby differs with that of other agencies. Head of the board reports to the Assembly through the annual report submitted and presented to the Committee on Economic Development, Infrastructure, Trade, Industry and Regional Development.

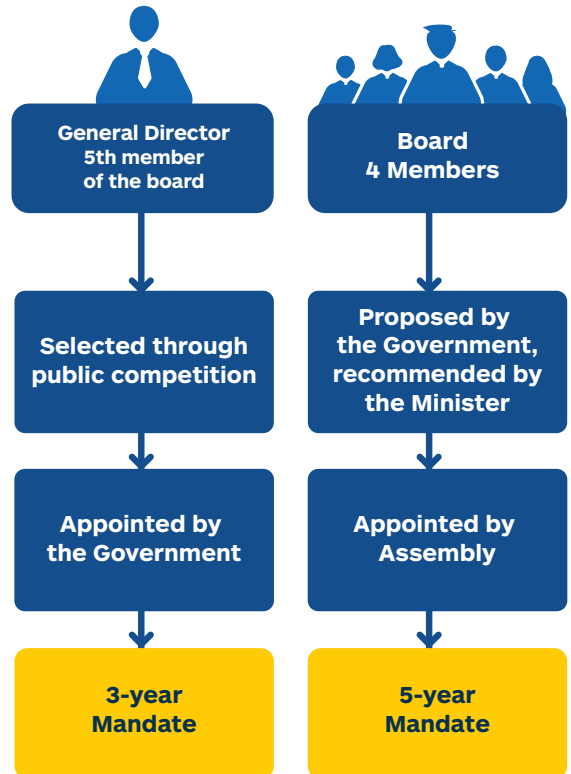
Functions

RRA has a number of functions which are exercised by four departments organized under RRA. The law on railways¹¹ does not list the functions to be exercised by RRA but based on the law and duties and responsibilities of departments, a number of duties and responsibilities for RRA can be summarised. Through the licensing department, RRA licences or not the machines, railway enterprises which are necessary for the operation of railway services and management of railway infrastructure, it suspends and revokes the licences given before. Through the market department, RRA ensures that fees defined from the manager of the infrastructure are not discriminatory (market regulation function). Manager of railway infrastructure is the enterprise which manages the railway infrastructure and have been licenced for this function by RRA and also has the safety authorisation from RRA (safety department) in order to provide secure railway services. In the actual case in Kosovo, manager of railway system (infrastructure) is the public enterprise called Infrakos which operates in market (comercial) basis and has the licence and safety authorisation from RRA. On the other side, the railway transport again in the case of Kosovo is exercised from a public enterprise called Trainkos which also functions in market (comercial) basis, has the licence as well as the safety authorisation from RRA. Both public enterprises are governed by the Law on public enterprises¹².

By analysing the duties and responsibilities as above, it can be said that there are four main functions of RRA: 1) licensing of companies for the management of railway infrastructure and companies to provide transport services, 2) provision of safety authorisations (permits) for these companies, 3) market regulation in order to ensure that the company/enterprise to provide transport services is applying fees which are not discriminatory and in line with policies defined by RRA. The fourth function defined by the law, that of interoperability, is the function which enables the railway system in Kosovo is meeting the conditions for interoperability with other countries and that Kosovo railways are becoming part of the European railway zone.

Appointment of the board

RRA's board consists of four members and the General Director who is the fifth member of the board. Board has the oversight function, does not work full time, has a five year mandate and members can be re-appointed for one more time. The General Director serves as the Chief Executive of RRA, who no matter the case that he is the fifth member of the board, he is appointed and dismissed from the board according to the rules and procedures set out in the civil service law. One of the members is appointed as the head/chair of the board.



11 Law no. 04/L-063 on Kosovo Railways: <https://bit.ly/2tvNyN9>

12 Law no. 03/L-087 on Publicly Owned Enterprises: <https://bit.ly/1vs647w>

Reporting

RRA reports through an annual report and upon request of the Assembly of Kosovo in the Committee on Economic Development, Infrastructure, Trade, Industry and Regional Development.

Discussion points

The problem which can be mentioned here in relation to the functioning and existence of RRA under the Assembly is that both, the railway (infrastructure) and trains (transport) are under the management of public enterprises which are governed by the Law on public enterprises. These enterprises are licenced, get authorized and their fees are regulated from RRA, but there is no competition in this regard from other private companies which besides the assets under public management (state property), would be providing other railway lines and transport services to citizens. The same can be concluded for the transport services (the other public enterprise called Trainkos) which is a public company and there is no other private company to enter into market relations and compete with the public enterprise, where the RRA on the regulation of this sector would come into play. This means that for now the RRA does not regulate a market and due to the lack of competition, the regulatory functions of RRA are questionable. Moreover, the railway system in Kosovo receives public money even though this financial assistance is not meant (according to the law) to distort the competition in the railway sector.

What can be summarized for RRA is that it is tasked to licence the public enterprises (Infrakos and Trainkos) and does a market regulation to the extent it oversees the fees which are applied by both public enterprises, but does not regulate the market between the public and private enterprises. Also, the interoperability function of railways in Kosovo with other railways outside Kosovo is a function which is not functional today. In regards to the appointment of the board, there is a common element between the board of CAA and the board of RRA in the sense that both structures are of oversight role and do not work in full time basis. On the other side, there is one distinctive element with the RRA's board given that the General Director is also the fifth member of the board. On one side, it is said that the board consists of four members which are approved by the Assembly, on the other side, the general director is a civil servant, serves as chief executive of the RRA and it is appointed according to the rule and procedures defined by the civil service law.

ICMM

Independent Commission for Mines and Minerals

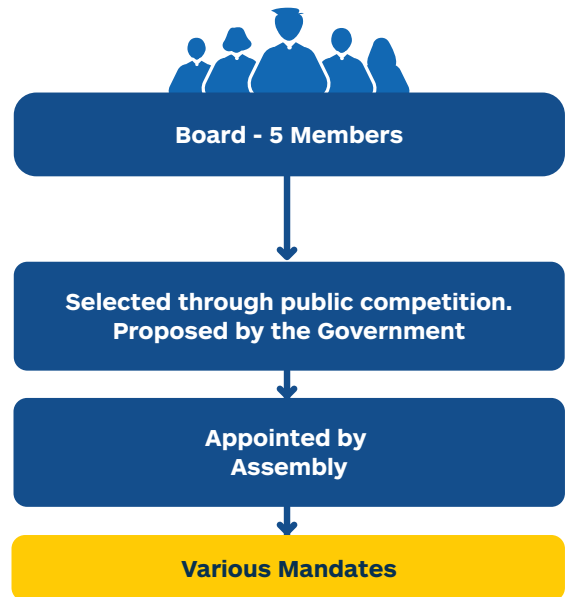
ICMM has been established in 2005 through the UNMIK Regulation which has been changed and supplemented with the Law approved by the Assembly of Kosovo in 2008. ICMM operates pursuant to the Law on mines and minerals approved in 2010¹³ which has been partially abolished by the Law on geological service approved in 2014¹⁴.

Functions

According to the actual law, ICMM has two responsibilities and three tasks related to mining resources. ICMM is responsible to ensure: 1) the regular exploitation of mining resources in Kosovo and their optimal exploration in order to ensure compliance with the law on mines and minerals and mining strategy; and 2) compliance of mining exploitation according to permits and licenses issued. In line with these two responsibilities, ICMM exercises these competences: a) issues, transfers, extends, revokes and suspends permits and licences, b) establishing and maintaining of a GIS database with geographic and geodetic data with all titles of existing minerals in Kosovo and 3) drafting of regulations for the internal organisation and functioning of ICMM.

Appointment of the board

ICMM's board consists of five members which are selected from the Government and appointed by the Assembly. The selection procedure begins by opening a public competition by Secretary General of the Government (Office of the Prime Minister) and candidates are selected based on their applications and fulfillment of the criteria pre-defined. Candidates are assessed from an ad-hoc committee established by a Government decision. The committee selects two candidates for each position and submits to the Government while the latter submits to the Assembly. The Assembly is entitled to choose one among the two candidates or it can also refuse the proposed candidates. In the latter case, the procedure turns back to be early stages and the whole procedure has to be re-initiated by the Office of the Prime Minister. The mandate of members is not the same for all of them: one of them has a four year mandate, two of them have three year mandates and two others have two year mandates. Except the first round of appointments, the terms of the mandates are the same for each member, four year mandate. None of the board' members can serve more than twice as a board member.



13 Law no. 03/L-163 on Mines and Minerals: <https://bit.ly/1IMZv2c>

14 Law no. 04/L-232 Kosovo Geological Service: <https://bit.ly/1IMZv2c>

Reporting

ICMM reports to the Assembly of Kosovo, through the Committee on Economic Development, Infrastructure, Trade, Industry and Regional Development. According to the law, the ICMM within 90 days after the end of the year submits to the Assembly an annual report which consists of a number of elements described by law.

Discussion points

By analysing the ICMM's functions, it comes out that ICMM does not draft policies in the field of mining and minerals because this is covered by the Ministry for Economic Development (mining department). The main function of ICMM is to issue permits and licences for the exploration and exploitation of mines and minerals according to the law on mines and minerals and the mining strategy approved by the Assembly. On the other side, the ICMM ensures that mining activities are in compliance with permits and licences issued previously. This means that this function relates very much to inspection because the ICMM inspects if the explorers are carrying out activities according to the permits and licences issued before. At first, it issues permits and licences according to the law and mining strategy and second, makes sure that operators or explorers which have been given the licences are exploring and exploiting in a regular manner the mines and minerals as natural resources in Kosovo. The first part (function) is an administrative function (issue of licences and permits) and the second part (function) is an inspection function which as function itself is carried out by a number of other inspectorates in Kosovo which are organized as part of a number of ministries.

According to this, there is no reason why the ICMM should be managed by and report to the Assembly. The connection in the Ministry for Economic Development (MED) between the mining department which drafts the mining strategy and the ICMM which would carry out the executive and administrative function (issue of licences and permits) is a good combination and in harmony with the report between a ministry and agency. Moreover, given the existence of ICMM and close link between ICMM and Kosovo Geological Service (KGS), there should be considered a merger of these two bodies under MED.

In relation to the appointment of the board, the ICMM differs from all agencies elaborated so far in two aspects: the application of an open competition in selecting the board members of ICMM and 2) the Government selects two candidates for each position and the Assembly decides upon one of the candidates proposed. As provided above, if none of the candidates proposed is voted in the Assembly, the procedure turns to the beginning of the process.

ERO

Energy Regulatory Office

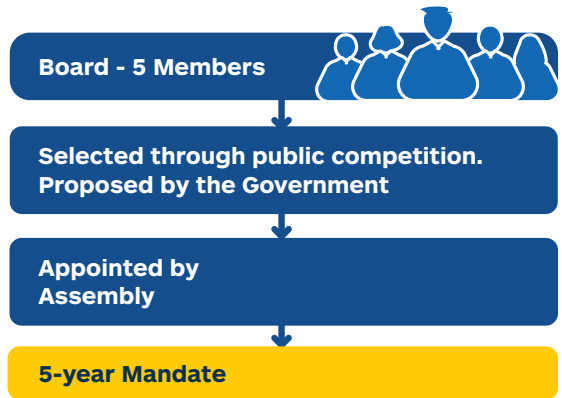
ERO is established in 2004 through the Law on energy regulator. The energy regulator now functions according to a new law, the Law on the energy regulator approved by the Assembly in 2016¹⁵.

Functions

ERO is a regulatory agency and this is proved through a number of deputies and responsibilities. Among others, ERO has the following duties and responsibilities: 1) ensures a transparent and non-discriminatory functioning of energy market based on free market principles, 2) monitors and improves the security of supply with electricity including maintenance by having the necessary capacities of generation, transmission, distribution and interconnection capacity, 3) to ensure that tariffs for activities in energy are reasonable and established based on sound methodology, 4) to ensure the protection of consumers, 5) to ensure that consumers have their rights to connect their premises with energy systems and receive the energy supply and 6) to promote a competitive internal energy market by also ensuring an effective openness of the market for all consumers and providers, etc.

Appointment of the board

ERO's board consists of five members while one of them is selected as Chair of the board. The selection procedure is developed by the Ministry responsible for energy, by MED in this case, through an open competition. After receiving the applications, the Government (Ministry in this case) selects two potential candidates for one position. The Assembly appoints one of the two candidates proposed to become a member of the ERO's board. The mandate of the board's members is five year but the termination of the mandate is not the same for all members. Board's members can be re-elected for another term of five years.



Reporting

ERO reports to the Assembly of Kosovo through the Committee for Economic Development, Infrastructure, Trade, Industry and Regional Development. The chair reports to the Assembly through an annual report no later than three months after the end of the year.

Discussion points

Functions of ERO prescribed by the respective law are functions of a regulatory agency, in this case of the energy regulatory office which exercises this mandate through at least establishment of energy tariffs, free market, promotion of a competitive energy market, freedom of consumers to connect with energy systems according to their preferences, etc. Based also on many practices of other countries, the energy regulator is managed by the Assembly by ensuring an independence from the executive. In relation to appointment of the board, the procedure is similar to that of ICMM but the open competition in this case is developed by the ministry (MED in this case). In this case there is a balance in between the two players, while the Government proposes a short list of candidates (two per one position), it is up to the Assembly of Kosovo to appoint one of the candidates proposed. In case none of the candidates is voted by the Assembly, the procedure turns to the beginning. In this aspect, it is also important to bring the point of view of the Energy Community Secretariat as much as the independence of the energy regulatory is concerned. According to this, the organisation, competences and independence of the regulatory is in compliance with the EU acquis, however, from a practical side, it is assessed that the functioning of the regulator has been blocked in April 2017 because of the lack of quorum and consequently the impossibility to make decisions¹⁶.

15 Law no. 05/L-084 on Energy Regulator: <https://bit.ly/2tSjW8e>

16 Energy Community Secretariat, Regulatory Authority, State of Compliance: <https://bit.ly/2ëëciKf>

Obligations deriving from European Integration process in terms of policies and institutional framework in the areas covered by the respective agencies



Certain policy areas as well as their institutional framework, functioning of these institutions, are not elements which are determined from one side only; thus not following the conditions and criteria which derive from the EU integration process of Kosovo. Under this framework, the EU Acquis has established rules which for Kosovo at this stage have been defined through the Stabilisation and Association Agreement (SAA). The SAA represents the contractual relations between the EU and Kosovo and that Kosovo will have to meet all the conditions which derive from SAA during a ten year period. To this aim, under the coordination of the Ministry for European Integration (MEI), the institutions of Kosovo have drafted the second national plan for the SAA implementation.

However, from the aspect of institutional/administrative structures which a country should have for implementing the EU acquis, there is an EC guide on the main administrative structures which a country should have in order to implement the EU acquis. Even though the Guide has been drafted in 2013 has not been updated so far, it still represents a good guiding document for the main administrative structures required including their independence. Under this framework, the following section covers the requests which derive from the implementation of these two documents in regards to the level of independence of institutional structures (agencies) which are elaborated in this work. These two documents are: 1) the SAA and the National Program for the Implementation of the SAA (NPISAA) and 2) the EC Guide on the main administrative structures requires for implementing the EU Acquis.

Stabilisation and Association Agreement (SAA) and National Plan for SAA Implementation

The SAA has been signed on the 27th of October 2015 in Strasbourg between Kosovo and the EU. It has been approved by the Government on the 30 of October¹⁷ and ratified by the Assembly on the 2nd of November 2015¹⁸. The SAA has entered into force on the 1st of April 2016. In order to address the requirements deriving from the SAA, in 2016 and later in 2017 the Government has drafted and approved the National Program for the Implementation of the SAA (NPISAA)¹⁹ and European Reform Agenda (ERA). The ERA has been prioritised and the latest document so far with key priorities has been approved in November 2017 covering priorities for 2018. The SAA and NPISAA consist of certain formulations in the form of requests and requirements in relation to policies which relate to the respective agencies and elements which should be taken into account about their institutional operation.



In relation to the Civil Aviation Authority (CAA), the SAA covers the air transport in Article 60 and that refers to the Multilateral Agreement on European Common Aviation Area (ECAA). Kosovo is a signing country of this agreement and the concept used in this agreement for the institution/authority which functions in the country level for civil aviation is the "Competent Civil Aviation Authority"²⁰ and does not say anything if this authority should be managed by the Assembly, Government or any other specifics. According to the concept used which is the same for all signing countries, competent authority means a Government authority or another entity which exercises the legal rights on civil aviation granted by the law. NPISAA in the section of policies and legislation in the civil aviation field mentions the achievements so far and at the same time refers to steps which need to be undertaken for a transposition of EU directives and the stages for the implementation of the ECAA.

In relation to policies and institutional framework which are relevant as far as the functioning of Kosovo Competition Authority (KCA) is concerned, the SAA and NPISAA refer to the importance of mechanisms for the protection of competition and set rules in relation to the state aid and the institutional structures which should be dealing with. In the sense of the structure (agency) which a country should have in order to protect the competition, Article 75, point 3 of the SAA defines that there should be a functionally independent authority to take decisions in order to protect the free market competition. None of the dispositions in this article deal with the agency in the sense if the agency should be managed by the Assembly, the Government or separated from one or another body.

In relation to policies on privatization and the institutional framework in this regard, the SAA does not consist of any articles which refer to the privatization or to Kosovo Privatisation Agency (KPA) and if such a mechanism should be functioning according to this or that rule. The NPISAA in the privatization section and KPA provide the steps that privatization has undergone so far and how many assets have remained to be privatized. There are no such dispositions which could be interpreted as requirements for the functioning of KPA, however, given the remaining socially-owned enterprises to be either privatized or transformed (approximately 290), it can be easily concluded that KPA will be needed

17 Decision no. 02/55 of 30 October 2015: <https://bit.ly/2vYt4Be>

18 Law no. 05/L-069 of 2 December 2015: <https://bit.ly/2HYpeNr>

19 National Program for Implementation of the SAA (2017-2021): <https://bit.ly/2tVqk3m>

20 Multilateral Agreement on European Common Aviation Area (ECAA), October 2006: <https://bit.ly/2JGvPt9>

to operate for some time. However, in what shape should it function, to be managed by the Assembly, transferred to the Government, for what period of time should it exist, are all elements which need to be discussed from decision-making institutions in Kosovo.

In relation to the electronic communications field and the Regulatory Authority for Electronic and Postal Communications (RAPEC), Article 111 of the SAA refers to the fact of increasing the independence of relevant regulatory authorities in the field of electronic communications. However, this does not specify if that independency should be ensured by functioning under the Assembly, the Government or else. In relation to the fields which are covered by the Independent Commission on Mines and Minerals (ICMM) and the Railway Regulatory Authority (RRA), the SAA does not have any articles through which it refers to the existing and the way of functioning of these two bodies. The NPISAA in the energy field and railway transport refers only to the main institutions which already exist and does not refer to any specifics in relation to how these institutions should operate. In relation to the Energy Regulatory Office (ERO), the SAA does not have any specifics related to the functioning of the ERO besides the fact that the cooperation in the energy field should be functioning according to the market and the Treaty establishing the Energy Community. The NPISAA refers to the fact of keeping the independence of the energy regulator and the establishment of transparent mechanisms for the energy prices.

EC Guide on main administrative structures required for implementing the EU Acquis – focus given to the respective agencies

A guiding document in the sense of what administrative structures a country should have in order to implement the EU acquis is represented by the EC guide on main administrative structures required for implementing the EU acquis²¹. This guiding document has been analyzed and the focus has been given to the structures (agencies) which are elaborated in this work. The following section deals with that aspect in the order the agencies are presented in the report.

In relation to the air transport and the structures a country should have, which in our case are connected to the Civil Aviation Authority, the guide refers to the necessity of having a civil aviation body which can be either within or separate from the Ministry of Transport²². This body is meant to be dealing also with the economics of airports, oversight over the implementation of the rules issued pursuant to the law, etc. Besides this body, the guide refers the need to also establish an investigation body which should be independent and permanent and should be dealing with investigations of incidents and aeronautical accidents. In relation to the latter, there exists a Commission for the Investigation of Aeronautical Incidents and Accidents established under the Office of the Prime Minister (OPM) and represents an executive agency under OPM²³. However, it is unclear how duties and responsibilities on civil aviation are divided in Kosovo among the Civil Aviation Authority and the Agency for Air Navigation Services²⁴ under the Ministry of Infrastructure.

In relation to competition policies and in this case for Kosovo Competition Authority (KCA), the EC guide requires a competent body which would have the power to decide upon the protection of competition, to investigate activities which harm the free competition and the right of the authority to impose sanctions in favor of protection of competition. In this aspect, the guide does not have any details related to the level of independency that

21 EC Guide on main administrative structures required to implementing the EU acquis, 2013.

22 EC Guide on main administrative structures required to implementing the EU acquis, 2013, p. 61.

23 Office of the Prime Minister, Aeronautical Accident and Incident Investigations Commission: <https://bit.ly/2NmuMkx>

24 Law no. 04/L-250: <https://bit.ly/1MhAk9Y>

such an institution should have, meaning should it operate under the Assembly, the Government or else. On the other side, the guide refers also to the establishment of a national authority on state aid and to this aim does not mention the institutional framework where such a national authority should operate. In the context of Kosovo, both authorities exist, the Competition Authority and the Commission on State Aid. The latter has existed until recently under the Competition Authority as an office for state aid but with the supplement of the Law on state aid, the office has been removed and transformed as a department for state aid under the Ministry of Finance. This tells also that Kosovo has established both structures, they operate separately and the guide does not go further, if one or the other should function/operate under the Assembly or the Government. What is basically required is the functional independence, to be independent in decision-making and this does not at all mean that the institution is meant to be managed by Assembly. Institutional independence means having the institution in place to exercise its functions freely without any impacts from other sides, to propose and spend the budget on its own without any interferences from outside, to draft and execute the action plan without interferences from outside and all these to be guaranteed, it does not mean that the institution in question should be managed by the Assembly.

In relation to privatisation and in this case to Kosovo Privatisation Agency (KPA), this is covered by the guide and specifically by the chapter on entrepreneurship and industrial policies²⁵. According to the guide, there is not any request in terms of administrative structures which should be functional in order to implement the respective chapter of the EU acquis. However, the guide orients what policy making structures and executing agencies should exist on this matter. In relation to policy making, the guide defines the Ministry for Economic Development as the central body and responsible for policy formulation and coordination and it also recognizes the fact of existence of the Ministry of Trade and Industry in several cases. In this case (including Kosovo), the area of policies related to economic development with a focus on policies related to small and medium enterprises is separated into two ministries. In countries where a similar situation is faced, it is supposed that there is a close cooperation between the ministries mentioned above. In relation to agencies which have to execute the pol-

icies drafted by one or the other Ministry, the guide puts an order to the following agencies: 1) privatisation agency, 2) competition authority, 3) agency for business development, 4) responsible agency for small and medium enterprises, 5) chamber of commerce and 6) business association.

In relation to positioning and functioning of these agencies, the guide does not go further to explain if these agencies should be managed by the Assembly, the Government or else. In the case of Kosovo, Privatisation Agency is separate and managed by the Assembly, as well as the Competition Authority whereas agencies/structures under 3 and 4 function under the Ministry of Trade and Industry with slightly different names. Also, the chamber of commerce and the business association are functional in Kosovo. However, if we turn back to what is the central focus in this work, that if these seven agencies need to be managed by and report to the Assembly of Kosovo, in the specific case to KPA, it does not at all mean that it should be managed by and report to the Assembly of Kosovo. If we refer once again to the guide, the Privatisation Agency should be functioning under the Ministry for Economic Development and policies related to economic development will be drafted by this Ministry in close coordination with the Ministry of Trade and Industry.

In relation to electronic communications and in this case to Regulatory Authority for Electronic and Postal Communications (RAEPC), the guide covers this element under the media and information society chapter²⁶. The guide recognizes the independence of RAEPC and similar institutions in other countries which are required to cooperate with the Body of European Regulators for Electronic Communications (BEREC) which body assists the parties for an open competition and a consistency in regulating the sector in the whole EU²⁷. From 2009 when BEREC has been established and the initiation of the reform packages in this sector, the independence of regulatory authorities has been further strengthened and has always been called for non interference from politics to regulatory authorities and that these institutions should have the necessary budget and the qualified staff in order to be able to exercise the duties provided by law.

In relation to mining and minerals area and in this case to Independent Commission on Mines and

25 EC Guide, Entrepreneurship and industrial policies, Chapter 20, p. 81.

26 EC Guide, chapter 10, pp. 36.

27 BEREC is an EU agency based in Riga, Latvia: <https://bit.ly/2jjaoD0>

Minerals (ICMM), the guide does not give any orientation in relation to functioning or structures in this regard. On the other side, in relation to policies and structures in railway transport, in this case related to Railway Regulatory Authority (RRA), the guide has a number of recommendations in this direction. In this regard, the guide recommends the existence of an authority which provides the railway transport services having the licensing authority for the transport service providers²⁸. The guide recognizes also the regulatory function of the licensing body which should also serve as the body to review the complaints, to discuss the tariffs, structure of tariff, etc. On the other side, what the guide really recommends is the functional separation between the regulatory authority and the services provider. Moreover, the guide does not say if the service provider functions in the form of a public enterprise under state management (as state property), the regulatory and licensing authority should be managed by the Assembly. The importance here relies upon the functional separation of two bodies, separate in decision-making and organisation but does not interfere in the aspect of where and under what branches of power one or the other institution should operate.

In relation to energy policies and in this case to the functioning of the Energy Regulatory Office (ERO), the guide requires from states which actually implement the EU acquis to establish a regulatory institution which is fully independent from other institutions and interests in the energy field which among others are responsible to set and approve the distribution and transmission tariffs, monitoring the planning for investments of transmission operators and so on. In the case of other structures, the guide refers to the need to function also independently both the transmission operator and distribution operator but does not go further to explain in what sense the independence of the operators is meant. In the case of Kosovo, ERO is the energy regulatory authority independent from the Government and thus managed by the Assembly of Kosovo. KOSTT (transmission operator) is organized in the form of a public enterprise with reporting lines to the Assembly of Kosovo, and KEDS (the distribution operator) is also organized as public enterprise but privatised and KEK (Energy Corporation) is organized as a central level public enterprise with reporting lines towards the Ministry for Economic Development.

28 EC Guide, chapter 14.2, pp 58.

Analysis of regional practices on the functioning and reporting of respective agencies

Besides the requirements for the way of functioning of the respective agencies that derive from the EU integration process of Kosovo, this work brings and analyzes also the practices of other countries especially from the region. Moreover, with the exception of Bosnia and Herzegovina, regional countries have the status of candidate countries for membership in the EU and have signed the Stabilisation and Association Agreement (SAA) which can in a nutshell be said that these countries are also closer to the EU compared to Kosovo and this makes their practices even more important. Countries which have been selected in this work are Albania, Montenegro and Croatia. The latter is important for at least two reasons: first, it shares a similar future with Kosovo and second, it is an EU member state. This section elaborates the way or the model of functioning of the respective agencies, meaning how they function, what is their level of independence, are they managed by the Assembly or the Government and other elements which have been mentioned earlier.



Albania

A similar structure related to civil aviation exists in Albania as well: the Civil Aviation Authority (CAA) but the institutional functioning of this body is different compared to that in Kosovo. While the CAA in Kosovo is established with the Law on civil aviation, the CAA in Albania is established by a special law, the Law on CAA²⁹. However, this makes a small difference compared to other elements. The CAA in Albania operates under the Ministry of Infrastructure and Energy with the status of a dependent institution (parallel to an executive agency under ministry in Kosovo), accountable to the Minister and does not have any accountability lines towards the Assembly in Albania³⁰. In Kosovo, CAA is separate from the Government, finds place in the Constitution and also reports to the Assembly. Moreover, while the CAA in Kosovo is chaired by the board and managed by the General Director, the CAA in Albania is chaired by the Steering Board and managed by the General Director. The manner how the collegial body is appointed is the same in two countries: members are proposed from the Minister and appointed by the Government or the Council of Ministers. On the other side, while the General Director of CAA in Kosovo is proposed by the Minister of Infrastructure and appointed by the Minister, the executive director of the CAA in Albania is appointed directly by the Minister³¹. The main difference and what in fact is the most important element here is the institutional framework where the CAA operates; as said before the CAA in Albania is part of the executive under the line Ministry whereas the CAA in Kosovo is an independent agency/authority established pursuant to the Constitution and based on Article 142 on independent agencies of the Constitution of Kosovo.

In the field of protection of competition, the responsible institution for the protection of free competition is the Competition Authority (CA) established pursuant to the Law on competition³². The way of functioning and the institutional framework where the CA operates is quite similar to that in Kosovo. The Competition Authority is the name of the institution whereas the decision-making body of the au-

29 Law no. 10 233, date 11.2.2010 on Civil Aviation Authority <https://bit.ly/2rl6jmv>

30 Law no. 10 233, date 11.2.2010, Article 20, Reporting of the Authority.

31 Law no. 10 233, date 11.2.2010, Article 12, Executive Director.

32 Law no. 9121, date 28.7.2003 for Protection of Competition: <https://bit.ly/2J9LCjg>

thority is the Commission on Competition. However, the difference between the Kosovo Competition Authority in Kosovo and the Competition Authority in Albania relies upon the proposal of candidates to be selected as members of the decision-making body: while in Kosovo the candidates are proposed by the Government and appointed by the Assembly, candidates of the CA in Albania are proposed from three institutions. One candidate is proposed by the President, two are proposed by the Council of Ministers and two others are proposed by the Assembly³³. The proposed candidates are either appointed or not by the Assembly and the body reports to the Assembly by the end of March the latest for the previous year. In relation to independence, the law for the protection of competition provides that the CA is independent in carrying out its tasks as defined by the law³⁴, however, the law itself does not provide any further elements in relation to organisational or financial independence.

In relation to privatisation and the responsible institution in this regard, the situation is different in Albania compared to Kosovo. While this task has been left to the Kosovo Privatisation Agency in Kosovo (KPA), the privatisation in Albania is covered by the Directorate for the Administration of Public Property (DAPP) which operates under the Ministry of Finance and Economy³⁵. The directorate is not even a dependent institution but it is organized in the form of a directorate which is similar to a department in Kosovo. However, based on a transcript from the meeting of one Assembly Committee in Albania³⁶, it can be easily identified that there has existed before a National Agency for Privatisation (NAP). In 2006 the NAP has been merged into a directorate responsible for the administration of the public property which lastly in 2013 became recognized as the DAPP under the Ministry of Finance and Economy. The former NAP does not have a web page to see any organisational chart and if the agency has had accountability lines towards the Assembly. Based on the same transcript of the meeting mentioned above, there is not any reference or links of NAP to the Assembly in Albania.

33 Law no. 9121, date 28.7.2003, Article 21.

34 Law no. 9121, date 28.7.2003, Article 18.

35 Ministry of Finance and Economy, Directorate for the Administration of Public Property: <https://bit.ly/2ul7oep>

36 Assembly of Albania, Committee on Economy and Finance, transcript, date: 03.02.2015: <https://bit.ly/2jm3nkV>

In the field of electronic communications, a similar regulatory body operates in Albania, the Authority for Electronic and Postal Communications (AEPC)³⁷ and the institutional framework where AEPC operates is the same with RAEPC in Kosovo. AEPC is separated from the ministry, is a regulatory body, independent in decision making under its competence and its members are proposed by the Council of Ministers and reports to the Assembly. The differences which can be noticed in between the RAEPC in Kosovo and AEPC in Albania have to do with the selection of members of the steering body (board), the chair of this body and reporting lines. As far as the selection of members is concerned, the members of AEPC are proposed by the Council of Ministers and appointed by the Assembly³⁸ whereas in the case of RAEPC in Kosovo, the candidates to be appointed as members are proposed by the Government with the recommendation of the Minister, in fact with the recommendation of the Minister of Infrastructure. As far as the appointment of the Chair is concerned, in the case of AEPC in Albania, he/she is appointed by the Assembly in between the candidates proposed whereas in the case of RAEPC in Kosovo, he/she is proposed by the Minister among the candidates and appointed by the Assembly. In the two countries, the decision-making body or the board consists of five members who have the right to be re-appointed for one more time. The third element, that of reporting, while in the case of RAEPC the reporting to the Minister is not mentioned in the respective law, in the case of AEPC, one copy of the annual report is submitted to the Minister as well³⁹. As far as independence of the authority is concerned, almost the same sentence is provided in two laws: the authority is a legal person and independent in decision-making on issues that are under its competence.

In the mining sector, the tasks in this field are exercised by a different institutional structure in Albania compared to Kosovo. This field in Albania is exercised within the Ministry of Infrastructure and Energy which drafts policies in the mining sector and the National Agency for Natural Resources (NANR)⁴⁰ with the status of a dependent institution under the same Ministry, executes policies in the mining sector in accordance with the Law on the mining sector in the Republic of Albania⁴¹. NANR is organized

37 Law no. 9918, date 5.5.2008 for Electronic Communications in the Republic of Albania: <https://bit.ly/2zn7esl>

38 Law no. 9918, date 19.5.2008, Article 114.

39 Law no. 9918, date 19.5.2008, Article 9.

40 Ministry of Infrastructure and Energy, National Agency for Natural Resources: <https://bit.ly/2N2zcMo>

41 Law no. 10 304, date 15.7.2010 for Mining sector in the Republic of Albania: <https://bit.ly/2N2zcMo>

into four directorates: renewable energy, hydrocarbons, mining and hydropower sidebar⁴². Therefore, whereas the activities and policies in the mining sector in Albania are exercised by the Ministry and its dependent institution, the same are exercised in Kosovo by the Ministry for Economic Development (mining department) and Independent Commission on Mines and Minerals (ICMM). The latter is considered as an independent agency established according to Constitution articles 119 and 142. The geological service is organized separately from the above mentioned institutions in the two countries: as central body or executive agency in Kosovo under the Ministry for Economic Development and as dependent institution in Albania under the Ministry of Infrastructure and Energy.

In relation to the railway sector, the situation seems less formal in terms of institutional structures operating in this sector. In the legislative aspect, in Albania there is the Railway Code which lists a number of authorities as structures to be established according to the Code and responsible for the following areas: regulation of the sector (Railway Regulatory Authority), safety (Railway Safety Authority), licensing (Railway Licensing Authority) and investigation of accidents (National Authority for the Investigation of Railway Accident and Incidents)⁴³. The Code defines the duties for the Authorities and shows a connection in the railway sector between the minister responsible for transports and other authorities in the railway sector but does not provide further elements related to their organisation. Moreover, there is no other information under the Ministry of Infrastructure and Energy to see if these bodies are organized as directorates, dependent institutions or separate from the Ministry. However, the Code defines that the Minister responsible for transports appoints the Chair of the Railway Regulatory Authority⁴⁴ and this can be meant that the Authority is organized under the Ministry and not separate from the Ministry. Also the law does not refer to any communication among the Authority and the Assembly in the sense that the body reports to the Assembly and so on.

In the energy field, the institutional framework in the level of the regulatory institution is similar be-

tween Kosovo and Albania. In Albania there exists the Energy Regulatory Entity (ERE) which regulates the energy sector, is organized outside the Government, reports to the Assembly and has been established by the Law on Power Sector⁴⁵. The difference between the ERO in Kosovo and ERE in Albania is the way how members of the board are selected. The four members and the chair of ERE's board are selected by a Selection Team which is consisted of three people: two representatives from the Assembly (Chair of the Committee on Economy and Finance and Chair of the Committee responsible for energy) and the Minister responsible for energy. In the case of ERO, the competition is open as in Albania but the selection process in Kosovo is implemented by the Ministry for Economic Development and the law does not provide who takes part in the selection committee established under the ministry. As far as reporting is concerned, ERE reports to the Assembly through the annual report submitted until the end of March the latest for the previous year. Boards in the two countries consist of five people and both have a five year mandate including the Chair with the possibility to be re-appointed for one more time. In relation to the state of compliance from the Energy Community Secretariat, the organisation, competences and independence of ERE are in compliance with the EU acquis, however, this assessment provides that rotation scheme in between the members of the board is not defined by law but is, nevertheless, applied in practice.

ly/2u61z5A

42 National Agency for Natural Resources, Directorates: <https://bit.ly/2N2zcMo>

43 Ligji nr. 142/2016 Kodi Hekurudhor i Republikës së Shqipërisë: <https://bit.ly/2rgBOOH>

44 Law no. 142/2016 on Railway Code of the Republic of Albania. Article 55.

45 Law no. 43/2015 on Power Sector: <https://bit.ly/2zsQxwg>

Montenegro

In the area of transport in Montenegro there exist several state institutions which exercise different tasks but the important ones for this report are: Ministry of Transport and Maritime Affairs and the Civil Aviation Agency (CAA). The CAA is established by the Law on Air Transport⁴⁶. Policies in this sector are drafted by the ministry whereas the agency as part of the ministry is competent to implement the law and policies drafted by the ministry. The report between the ministry and agency has the following meaning: the agency is independent in the exercise of competences pursuant to the law but the members of the Council as a managerial body of CAA are selected by and report to the Government. The Council selects the Director with the consent of the Minister for Transport and Maritime Affairs. Based on this, it can be said that CAA is an executive institution under the Government because the board is appointed by and reports to the Government⁴⁷.

In the area of protection of competition, the Agency for Protection of Competition (APC) is the responsible institution in order to ensure a free competition. APC is established by the Law for the protection of competition⁴⁸ in Montenegro and has two bodies: Council and Director. The APC is an agency under the Government because the bodies of the agency are selected from the Government in this way: the council consists of the chair and the two members and the Government appoints the chair and one of the members with the proposal of the Minister whereas the other member is also appointed by the Minister but with the proposal of the state administration body competent for state aid. Before the supplement and change of the Law for the protection of competition, APC has reported to the Government only whereas now the APC reports to the Parliament of Montenegro⁴⁹. The second body of APC, the director is selected from the Government according to the proposal of the Government for a four year mandate. The Director has a deputy and two assistants, one for the protection of competition and the other for state aid who also are both selected and appointed by the Government.

In the area of privatisation, the Council for Privatisation and Capital Investments⁵⁰ is the responsible institution for the management and at the same time oversight of the privatisation process in Montenegro. The council is a governmental body and its mandate derives from the Law on Privatisation which has been approved in 1996 and later supplemented in 1999, 2000 and 2004. The privatisation process is organized from the Council which based on the law drafts the annual plans for the privatisation which later are proposed to the Government for approval. The annual plans are public and the privatisation plan for 2018 has been approved by the Council and submitted to the Government for approval in February 2018. The Council consists of 17 members, is chaired by the Prime Minister (who at the same time is the Chair of the Council) several ministers, chamber of commerce and the federation of trade union.⁵¹

In the area of electronic and postal communication, the regulatory authority is the Agency for Electronic Communications and Postal Services (AECPS)⁵² which has been established by the Law on electronic communications in Montenegro. AECPS besides the law has also a Statute which defines the rules of operation; it is approved by the Council of the agency and the Parliament of Montenegro. Two bodies of the agency are: the council and executive director. The council is higher and decision-making body and consists of five members including the chair which are selected and appointed by the Parliament based on a public competition. The executive director is also selected through the open competition but from the council of the agency. The council reports to the Parliament through the report on the activities and the financial plan which are both approved by the Parliament. The executive director is accountable to the council⁵³.

In the mining and minerals' sector, there exists the Mining Law⁵⁴ but it does not specify the institution

46 Law no. 01-676/2, date 4.6.2012: <https://bit.ly/2HLuXH9>

47 Civil Aviation Agency in Montenegro: <https://bit.ly/2NGWmt9>

48 Law no. 44/12 for the Protection of Competition: <https://bit.ly/2HZ3Vb9>

49 Law to supplement and change the Law for the Protection of Competition: <https://bit.ly/2FS5k1o>

50 Council for Privatisation and Capital Investment: <https://bit.ly/2rqiv58>

51 Mandate of the Council, structure, members and annual plans for privatization are accessible through the following link: <https://bit.ly/2lhvP5L>

52 Agency for Electronic Communications and Postal Services: <http://www.ekip.me/eng/>

53 Law no. 01-1452/2, 2 gusht 2013: <https://bit.ly/2K2O0cr>

54 Law no. 01-1850/2 on Mining.

in the form of an agency which exercises the activities in the mining sector and the issuing of licences and permits according to the law. The law provides for the “competent authority” concept only and it does not define further the organisation and institutional framework of the institution. On the other side, the law makes understandable that the authority is not under the Parliament because when there is a complaint against the decision of the authority that can be directed to the Ministry responsible for the mining sector. Then, based on the organisation of the Ministry of Economy⁵⁵ it is evident that the mining sector is part of the portfolio of this ministry and it can be concluded that the case is not about an agency under the Parliament.

In the area of railway sector, the Law on railways does not define any authority and its responsibilities in the sector with the exception of the phrase “competent authority”. However, the respective law defines that inspection and the secondary legislation deriving from the law will be both covered by the ministry responsible for transport. Based on the division of portfolios between ministries, it is noted that the Ministry of Transport and Maritime Affairs is the ministry which covers the transport including the railway transport. For the railway transport, the Directorate for Railways⁵⁶ as part of the Ministry is responsible for investments in railways, maintenance, development and modernization of railway infrastructure. Director is the chair of the directorate who is appointed from the Government based on the proposal of Minister of Transport. The directorate is organized into three departments which all cover the specific areas for which the directorate as organisation is responsible for.⁵⁷

In the area of energy regulatory institution, the Energy Regulatory Agency⁵⁸ is the responsible institution in this regard. Two bodies of the agency are: the board and the executive director. The board is appointed by the Parliament based on a proposal from the Government following a public competition made available from the ERA. Also, the executive director is appointed following a public competition made available from ERA for a four year mandate. Members of the board have a five year mandate and cannot be re-appointed to this posi-

tion anymore⁵⁹. In regards to the state of compliance made by the Energy Community Secretariat, it is assessed that organisation, competences are in line with the EU acquis besides two elements: first, the management is not entirely free to decide upon the internal organisation of the regulatory given that the Statute of the regulatory is approved by the Government, and second, the right of the authority to penal sanctions is not on its own but this belongs to the competent court.

Croatia

In the area of civil aviation, the Government has established the Civil Aviation Agency (CAA)⁶⁰ through the Law on Air Traffic⁶¹. CAA is a governmental agency, independent in its work and decision making and reports to the Government through the annual reports. Activities of CAA fall under the competence of the Ministry of the Sea, Transport and Infrastructure. Bodies of the agency are: the board which consists of five members appointed by the Government following a proposal from the respective Minister while the director is appointed through a public competition based on the prior consent of the Government. The CAA does not have reporting lines to the Parliament in Croatia.

In relation to the institution for the protection of competition, the Croatian Competition Agency (CCA)⁶² is responsible in this area. CAA has been established by the Law on competition and the institution is accountable to the Parliament. CAA is chaired by the Competition Council which is composed of five members appointed by the Parliament following a proposal from the Government. Members have a five year mandate with the possibility to get re-appointed one more time⁶³. In the area of privatisation, this process in Croatia has started in 1990/91 and given that laws in this period have been mainly drafted in the Croatian language, it is impossible to analyze them and the potential institutional structures which have exercised this function in Croatia. According to a report on privatisation in Croatia, the process has started in 1991 through the approval of two laws: Law on Agency for Reconstruction and Development, Law on the Develop-

55 Ministry of Economy, Mining and Geological Research: <https://bit.ly/2HXtDkp>

56 Directorate for Railways: <https://bit.ly/2HXdPxĚ>

57 Organisation: <https://bit.ly/2rrK4v3>

58 Energy Regulatory Agency: <https://bit.ly/2l15Ek8>

59 Law no. 15-1/15-1/41, 29 December 2015.

60 Civil Aviation Agency: <https://bit.ly/2K7aA3l>

61 Law no. 71-05-03/1-14-2 on Air Traffic: <https://bit.ly/2rĚEFCb>

62 Croatian Competition Agency: <http://www.aztn.hr/en/>

63 Law no. 71-05-03/1-09-2 on Competition: <https://bit.ly/2Ěr5DRs>

men Fund and the Law for the Transformation of Socially-Owned Enterprises. In 2002, the agency and the fund have been merged into one institution and therefore have established the Privatisation Fund⁶⁴.

In the area of electronic communications, pursuant to the Law on electronic communications, the Agency for Electronic and Postal Communications (AEPK) is the regulatory agency which has been established by the Parliament and Government. However, given the supplementation and change of the respective law and the law for the administration of railway services in 2004, there have been established one Regulatory Agency and in fact both regulators have been merged into one institution, the Regulatory Authority for Network Industries⁶⁵.

After the merger of both regulators into one, it has been decided that the joint regulatory institution will have the abbreviation of the former regulatory institution on electronic communications in order to be easily recognized and accessed by the public. The abbreviation of the respective regulatory institution has been in Croatian language HAKOM and through this abbreviation the new regulator is identified. The joint Authority is steered by the Council which is composed of five members appointed and dismissed by the Parliament following the proposal of the Government. The Council reports through annual reports to the Parliament and Government.

As far as the sector of mining and minerals is concerned, based on the Mining Act⁶⁶, the competent institution in this area is: mining department under the Ministry of Economy, Labor and Entrepreneurship⁶⁷. According to the law (article 149), besides the policy drafting in the mining sector in the form of the Strategy for the Management of Mining Materials which is approved by the Government and Parliament, the Ministry and department are responsible also for receiving and deciding upon the licences and permits for the exploitation of minerals. The procedure from the conditions which have to be followed up to the receiving the license has been regulated with a ordinance issued by the Minister which has under his portfolio the mining sector as well

In the energy sector, the Energy Regulatory Agency⁶⁸ is the responsible regulatory institution in the energy area. The ERA has been established through the Law for the regulation of energy related activities⁶⁹ whereas the institution itself has defined the internal organisation, oversight, scope of work, decision-making and other elements with the Statute which is approved by the Managing Board and also approved by the Government. According to article 8 of the respective law, the ERA is established by the Government but it reports to the Parliament. The board consists of seven members appointed by the Parliament proposed by the Government according to the short-listed candidates selected through the public competition.

64 Bendekovic, J., Privatisation in Croatia, f.55-60.

65 Regulatory Authority for Network Industries: <https://bit.ly/2KNhsV4>

66 Law no. 71-05-03/1-13-2 on Mining: <https://bit.ly/2jNc0Fk>

67 Ministry of Economy, Labor and Entrepreneurship: <https://bit.ly/2laxfLZ>

68 Energy Regulatory Agency: <https://bit.ly/2K9a7Oo>

69 Official Gazette no. 120/12, Law for the regulation of activities in the energy area (accessible online is the version of 2007 only and this is not in force now since it has been supplemented and changed in 2012)

OECD principles for the governance of regulators

Organisation for Economic Cooperation and Development (OECD) has published through the past years a number of manuals and guides which deal with the principles and best practices in relation to the governance of regulators. In this aspect, OECD has published in 2014 the manual "Governance of Regulators: principles and best practices"⁷⁰ which discusses upon the elements of independency and in general what are the principles for a well-functioning of regulators. In fact, the whole manual is written about seven principles which have to be followed in the governance of regulators: 1) role clarity, 2) preventing undue political influence and maintaining trust, 3) decision making and governing body structure for independent regulators, 4) accountability and transparency, 5) engagement, 6) funding and 7) performance evaluation. The aim here is not to give assessments how much regulators in Kosovo are governed by these principles, but more to provide these principles which could be serving as good criteria against which the assessment of regulators could be done in a future report.

However, there are several elements which need to be brought again in this section: understanding of independency and institutional structures of regulators, if regulators are involved in decision-making and cases when two or more regulators which cover individual sectors are merged into multi-sector and multi-purpose regulators. In relation to the institutional independence, it is clear that independency is not ensured only by the fact of leaving the regulator under the Parliament, or to put in on the other side, the regulator is not independent because it is under the Government.

The respective OECD manual tells that the regulator can be either a unit or department of one ministry or a separate entity from the Government⁷¹. In relation to the policy formulation, the manual defines that the policy making in principle belongs to the Government which defines the objectives, priorities and approach through legislation proposed to be approved in the Parliament.⁷² In connection to the third point, that of regulatory functioning and governance which cover a number of sectors, as brought earlier the examples of Croatia where two regulators have been merged into one, there is a growing trend where a number of regulators get merged and established a single regulatory institution. For this reason, the following section is dedicated to the case of Netherlands where three regulators have been merged into one⁷³.

Multi-purpose regulators: the case of Netherlands

Netherlands represents one of the countries where a few regulators, three in this case, have been merged into one regulator. The Netherlands Consumer Authority, the Netherlands Consumer Authority and the Netherlands Independent Post and Telecommunications Authority merged on 1 April 2013, creating the Netherlands Authority for Consumers and Markets (ACM)⁷⁴. The Authority is responsible for the economic regulation of six areas: water, energy, telecommunication, transport, and competition and consumer protection.

The Authority has two bodies: the board and seven departments chaired by directors, the office of communication and policies and the office of chief economist. Each department has a team which is responsible for the sectors or areas they cover: consumer department, energy department, telecommunications, transport and postal services department, competition department, legal department, department for cooperative services and department for healthcare⁷⁵.

70 OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing: <https://bit.ly/2Jc9HPN>

71 Ibid, p. 18

72 Ibid, p. 37

73 Ibid, p. 36

74 Establishment Act of the Authority for Consumers and Markets: <https://bit.ly/2Isomki>

75 Organisational structure: <https://bit.ly/2luRV4M>

Conclusions and recommendations

The basic functions which are exercised by the agencies elaborated in this work should be further exercised, however, the manner how the respective agencies which exercise those tasks are managed and report should change. For instance, the Civil Aviation Authority should be functioning as a separate competent authority on civil aviation, but its management by the Assembly as well as reporting lines to the Assembly should change. Then, the process of privatization and transformation of socially-owned enterprises should also be conducted by the Kosovo Privatization Agency until the list of enterprises to be either privatized or transformed is over. But, management under the Assembly, operation and reporting lines to the Assembly should change. Moreover, issuing of licenses and permits for mines and minerals should also be carried by an institution in Kosovo, but this does not mean that the assigned institution should be separate from the executive, managed by and report to the Assembly. Also, the regulatory function of the Railway Regulatory Authority is questionable especially in the context of Kosovo because the railway infrastructure and transport service are under state property, receive public money and both functions are covered by publicly-owned enterprises in Kosovo.

Three out of seven agencies, the Kosovo Competition Authority, the Regulatory Authority for Electronic and Postal Communications and the Energy Regulatory Office should be operating independently from the executive because of the regulatory functions they have. However, a better coordination of activities between the sectorial regulators and the Kosovo Competition Authority is indispensable. Also, two examples of mergers of regulators have been provided in this work: the case in Croatia where the Railway Regulatory and the Regulatory Authority for Electronic Communications have been merged and created a single authority and second, the case in the Netherlands where three regulators have been merged into one.

According to the conclusions, elements and examples provided, the report provides a number of recommendations related to the functioning and reporting of the respective agencies:

To supplement and change the Law no. 03/L-051 on Civil Aviation, articles which relate to the reporting of Director General to the Assembly of Kosovo. The reporting target as well as for policies related to civil aviation should be the Ministry of Infrastructure, in this case the Minister. However, this does not mean that the General Director cannot join the

Minister of Infrastructure and report to the Parliamentary Committee;

Civil Aviation Authority should be seen and transformed into an executive agency under the Ministry of Infrastructure, the same as the Agency for Air Navigation Services;

Kosovo Competition Authority should be strengthened and its independence should be guaranteed in selecting the members of the committee of competition. Also, the earlier definition which has been present in the basic law on protection of competition that members of the committee of competition should be selected through an open competition should be returned;

Law no. 03/L-119 on the protection of competition should be supplemented in order to accommodate the above recommendation and also to define how members to be appointed as members of the committee are proposed. It should be specified who takes part in the selection committee, based on what criteria the members are appointed and it should also be ensured that the potential candidates are politically neutral. Also, it should be considered fact candidates are not proposed from the Government only, but the five candidates should be proposed from two or three institutions instead (for instance the President, the Assembly, the Government);

A mandate in terms of timeline should be defined for the Kosovo Privatization Agency depending on the remained socially-owned enterprises planned to be either privatized or transformed. After this period, this agency should be abolished;

Law no. 04/-109 on electronic communications should be supplemented as far as the proposal of candidates to become board members is concerned. Given that the regulatory is under the Assembly, the independence upon selection of the board members should be ensured. In this sense, the law should be changed in the disposition where it calls

for the Minister to recommend the candidates to become board members. In this sense, there should be rules and procedures as who selects the candidates to become board members, open competition, what is the composition of the selection committee up until the proposal of the candidates from the Government;

Independent Commission on Mines and Minerals should not be managed by the Assembly of Kosovo and report to the Assembly because the nature of tasks entrusted to the Commission are of executive nature and such structures in other countries exist in the Government. ICMM should be transferred as executive agency under the Ministry for Economic Development;

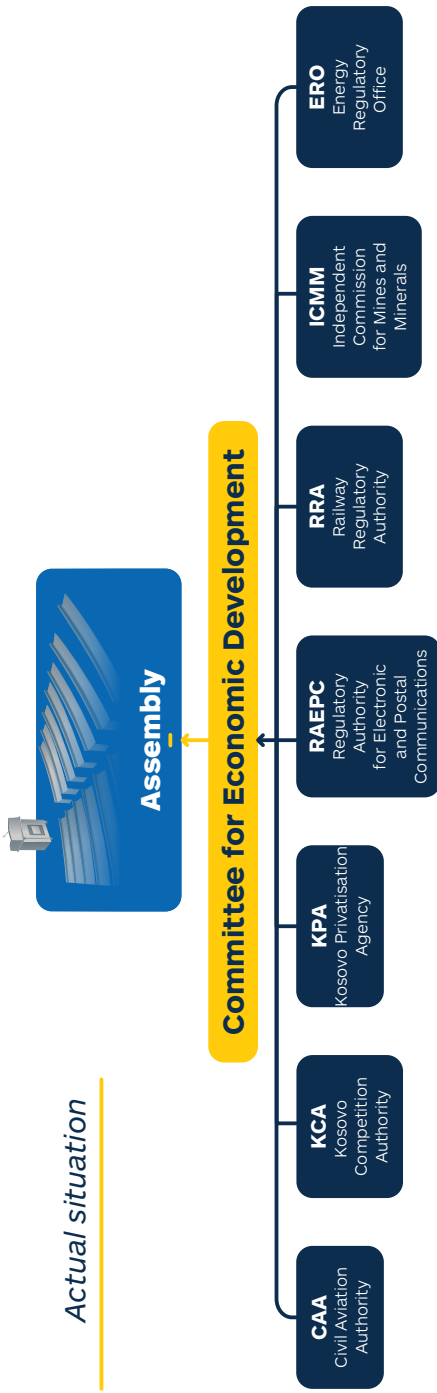
Law no. 04/L-063 on railways should also be supplemented, articles which relate to the status of the board and the fact that the fifth member of the board is also the general director of the Railway Regulatory Authority but at the same time is a civil servant. Therefore the status of the board should be defined and that the general director (or the chief executive) can participate in the board's meetings but it cannot at the same time be a civil servant and have the right of vote in the board;

Law no. 05/-084 on Energy Regulatory Office should also be supplemented, articles which relate to the selection of board members. After the open competition from the Ministry of Economic Development, there should also be defined who takes part in the selection committee. The competence over the selection of members should not be left to the Government entirely, but to a number of institutions which the office can later guarantee a higher degree of independence due to the independency of board members;

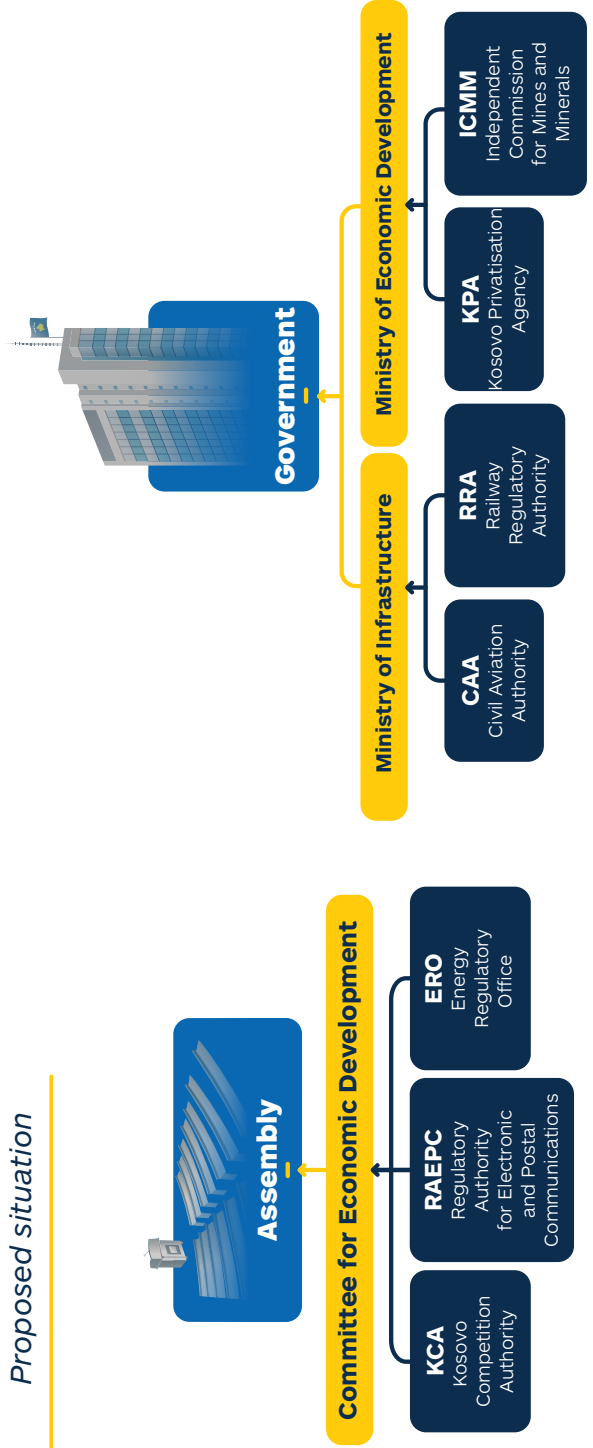
Given the undergoing process of amendment of the Rules of Procedure of the Assembly, in the section dealing with independent agencies, at least two elements should be addressed: 1) how proposed candidates from the Government are appointed by the Assembly (also those who are shortlisted through a prior open competition from the Assembly and wait to be appointed by the Assembly)? Second, what is the result if an annual report of a certain agency is not approved by the Assembly? In relation to the first element, cases when proposed candidates do not receive the necessary majority to be appointed as members of a certain committee, the process should be returned to the beginning and other new candidates should be proposed.

Annex

Actual situation



Proposed situation



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