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PUBLIC ENTERPRISES - SPECIFICITIES OF FUNCTIONING IN THE LIGHT OF CORPORATE GOVERNANCE

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Abstract: Establishing corporate governance in a public company where the state appears as the majority owner is a very important challenge both in countries that have developed market economies and corporate governance practices, but also in those that are still developing. More precisely, it is very difficult to find a balance of state competencies in relation to the performance of ownership functions, such as candidacy and election of directors in public and state-owned enterprises, as well as members of the supervisory board, while refraining from political interference in the work and management of state-owned companies. The dynamism of large organizations makes the impact on their behavior difficult and complex. Public companies in the light of corporate governance have a number of specifics that are determined on the basis of the business identity itself, primarily in relation to whether they are single-member companies, whether the founders are exclusively state bodies, and whether they perform activities of general interest. Corporate governance in Serbia has become a very important topic at the end of the last century, which was a direct consequence of initiating the process of property transformations and changing the role and importance of the private sector in the industry. Despite the fact that it has been happening for more than twenty years, there are still very few societies that have really understood the depth and complexity of the subject.

Keyword: corporate governance, public enterprises, transition, economic growth

INTRODUCITION

In recent times, globalization, liberalization and marketization and ongoing structural transformations of national economies have contributed to the expansion of the private sector, on the one hand, and the reduction of the public sector, including the restructuring of public enterprises, on the other. These initiatives appeared to be undertaken in order to achieve two main goals – giving more space to the private sector to function as the main engine of growth and at the same time, reducing and eliminating inefficient public enterprise operations, accompanying cost savings and revenue generation.

Establishing corporate governance in a public company where the state appears as the majority owner is a very important challenge in countries that have developed market economies and corporate governance practices, but also in those countries that are still developing. More precisely, it is very difficult to find a balance of state competences in relation to the performance of ownership functions, such as the nomination and election of directors in public and state-owned companies, as well as members of the supervisory board, while refraining from political interference in the work and management of state-owned companies. property.

The dynamism of large organizations makes influencing their behavior difficult and complex. It is not a one-time job, but an ongoing process. Any regulatory body — whether it's the government in the case of a public company, or the board of directors in a private company — needs a variety of tools to control the company. Of the many tools at its disposal, the appointment of a chief executive officer is the most direct and also the most far-reaching if the company has significant control over its environment and the objectives of the controlling body.

Also, there are challenges related to how the state ensures the existence of equality and competitiveness in the markets so that companies from the private sector could compete with public or state enterprises, without the authorities in power not harming the competitiveness of the market with the use of these authorities, with the aim of providing the conditions to make a profit for a public or state enterprise based on a monopoly position.

In order for the ownership function to be performed responsibly in public companies where the state appears as the majority owner, it should use all the means that are applicable in the private sector in relation to how to improve the practice of corporate governance. Public companies in the light of corporate governance have a number of specificities that are decided on the basis of their economic identity, primarily in relation to whether they are single-member companies, whether the founders are only state bodies, and whether they perform activities of general interest.

The general rules of corporate governance that refer to the governing bodies in a private capital company cannot, as such, be fully applied to the governing bodies of a public company.

1. CONCEPT OF CORPORATE GOVERNMENT

Corporate governance has been one of the very popular topics in economics as a science for the last two decades, and its improvement represents a very important and essential requirement that is not only set before companies, but also set for legislation, i.e. the state and its bodies that are interested in the economic aspects of corporate management, i.e. in improving the quality of companies' operations and increasing their competitiveness (Vasiljević, 2013, p. 27). In countries that have gone through or are still in the transition period, this is especially important, especially because they are moving to a market way of doing business and market economic systems.

Effective corporate governance requires a strong legislative, regulatory and institutional framework on which market participants can rely when entering into private contractual relationships. This framework of corporate governance is often based on laws, regulations, self-regulatory systems, voluntary obligations and business practices that result from the country's specific circumstances, history and traditions. Therefore, the preferred combination of these elements will vary from country to country. The legislative and regulatory elements of the corporate governance framework can be supplemented by compelling legal elements based on the "comply or explain" principle, such as corporate governance codes, to offer flexibility and take into account the specificities of each company.

What works well for a particular company, investor or stakeholder may not necessarily hold true across the board for companies, investors and stakeholders operating in a different context and under different circumstances. As new experiences accumulate and business conditions change, the rules of the corporate governance framework will be revised and adjusted as necessary.

Corporate governance also became a very important topic in Serbia at the end of the last century, which was a direct consequence of the initiation of the process of ownership transformations and changes in the role and importance of the private sector in the private sector. Despite the fact that it has been in force for more than twenty years, there are still very few societies that have really understood the depth and complexity of the subject (Rajnović, Lj., Bukvić, R., 2017, p. 10). In our country, the problems are primarily related to the fact that it lags behind corporate governance at the world level. This is primarily a consequence of weaker recent and accompanying regulation, a historical legacy, meaning primarily the period of socialism.

2. MANAGEMENT IN PUBLIC ENTERPRISES

The concept of management refers to power, or rights and authorizations (Obradović, 2013, p. 5). Management becomes the center of concern of states, it is widely used in different disciplines. Its political connotation means the integration of citizens into design and democratic decision-making.

In economics, management aims to conduct economic policy and fight against rent, fraud and corruption, legally, management has great importance emphasizing the separation, balance and independence of the legal authority (Belfellah,Y., Carassus, D., 2017).

In public enterprises, the government usually retains responsibility for decisions such as investment above a certain amount, joint venture and cooperation decisions, expansion, diversification, appointment of consultants, dividend payout ratio, wage revisions and related policies, appointment of senior staff, output pricing (and input through pricing of products of other public companies, import duties or direct fixing of purchase prices as in the case of agricultural products).

The stated rationale for retaining these powers is that the Government is the competent authority to make such decisions in the light of the country's development plans. It is believed that the Government has the necessary broader view and knowledge, for example, of alternative investment opportunities. Regardless of the formal delegation or division of powers, in practice, the roles of the controlling ministry and the top management of a public company can vary greatly from country to country, from company to company and from time to time.

Although several factors come into play, the strategic decisions of a public company seem to rest with the government. However, the company's top management is expected to advise the government on these decisions. We can agree that there is a certain degree of mistrust in the public sector, but we must be aware that its improvements will not come without the active participation of citizens. In the end, it is the citizens who are the ultimate beneficiaries.

Faced with the need to implement practices that promote the proper management of public entities, we find corporate governance. The implementation of this mechanism should precisely contribute to the improvement of the work of public companies, first of all raising the transparency but also the efficiency of operations and the improvement of the service in the end.

With the support of this mechanism, public entities can perform independent, objective activity that strengthens their administration in order to ensure liquidity and increase the quality of the services they provide (Matavulj, 2022).

Although there is no doubt that public companies are different from those with private capital, there is no reason why the management itself should be different.

In fact, their management requires a somewhat stricter approach considering the very specific legal nature of the work they perform as well as the end users who benefit from them.

2.1. Principles of effective management in public sector entities

In order for the public sector to identify some elements of corporate governance that can contribute to its functionality, some principles are highlighted below (Peris-Ortiz, M., Rueda Armengot, C., De Souza Rech, C. , 2012):

- Leadership and commitment of governing bodies - In order to create an effective management system, the composition of the board of directors and other governing bodies, called special committees or others similar to support the board, must be clear about the assumed responsibilities and commitment which exists according to the citizens.
- The establishment of a well-defined structure of authority does not guarantee the proper functioning of the governing body if the members who make it up are unaware of their responsibilities and, moreover, are not forced to account for their mandate. The lack of election of members of the governing body can cause several problems, among which is the obvious non-fulfillment of duties. For this reason, the definition of a good body integration profile must take into account the knowledge, experience and qualities of people, as well as the strict ethical and behavioral guidelines expected to be followed in the entity.
- Communication - One of the current opportunities in the public sector is communication between its areas and all those areas that are related to its operations and services. The mentioned failure in communication limits the fluidity in the business operations of entities, makes it difficult for information to arrive on time and with the ability required according to the appropriate filters, thus affecting the capacity for adequate and efficient decision-making. Establishing functional communication channels and methods for distinguishing the type of information that each governing body should receive leads members of governing bodies to a better decision-making process.
- Liability - In order to properly identify when there should be liability, it is necessary to define who is responsible, why they are responsible, what they are responsible for and when they are responsible. The lack of these criteria threatens the fulfillment of organizational goals. When accountability is adequate, the functions of each member are known and the response to any contingency is optimized.
- Transparency - Perhaps transparency in all its aspects is the most important element that the public sector in our country should have. The lack of clarity of information weakens the trust in public entities by the third parties involved. Showing how resources are obtained, how they are spent, and how operations are managed demonstrates that public entities are trustworthy, accountable, and well-managed, in addition to offering an optimal public image.

The so-called OECD principles are focused on legal and regulatory frameworks for corporate governance and the level of national competence (OECD, 2020). The OECD Principles promote the following key aspects:

- Creating an effective and efficient regulatory framework for corporate governance;
- Protection of shareholder rights and keys;
- Treating shareholders on a fair basis;
- Ensuring the position and interests of other interested parties in the regulatory framework;

- Disclosure of information and transparency of reporting;
- Duties and responsibilities of the board of directors.

2.2. Factors of inefficient management in public enterprises

The growing complexity of state entities has made it necessary to establish more and better controls for the management of public enterprises due to significant deficiencies in their management system. In general, the following factors can be identified as responsible for the mismanagement process:

- The existence of a monopoly position and the consequent absence of competition and a reduction in the quality of service;
- The entity's easy access to financial resources, which can create an eloquent economic loss;
- State support to public entities, which affects the responsibility that should otherwise be assumed by their administrators due to the scarcity of resources;
- Political periods and their changes, which force entities to change their perspectives of goals and policies;
- Corruption that promotes the management of resources according to personal interests, in addition to the ineffectiveness of regulatory agents to avoid it.

2.3. A new model of corporate governance

A new model of corporate governance known as the KISS model[1] it was created in 2008 and is shown in Figure 1. At that time, Hilb took a holistic approach and prescribed values for owners, employees and consumers (Čeliković, 2017). The issue of corporate governance is at the center of the world because of the numerous crises that have occurred both in countries that promote management approaches that offer value for shareholders (such as the United States and Australia) and in countries that try to manage an approach that brings value to all interested parties (Germany and Japan).

As Hilb explains, the problem is that there have been only two basic models of corporate governance: the Anglo-American one, which emphasizes maximizing shareholder value, and the other, which emphasizes the interest of a wider group of stakeholders. In his book Corporate Governance, Hilb introduces a third way. The author believes that there is an alternative model of business management, which in this way is added to the traditional one. "The integrity of people is the most important". New corporate governance, which integrates the advantages of both approaches: "Thus I avoid the traditional question of which approach should be used as a basis for corporate governance: the American approach or the one that gives value to all stakeholders?" I seem to suggest a comprehensive and global approach".

1 Keep it Integrated, Strategical, Situational and Controlled

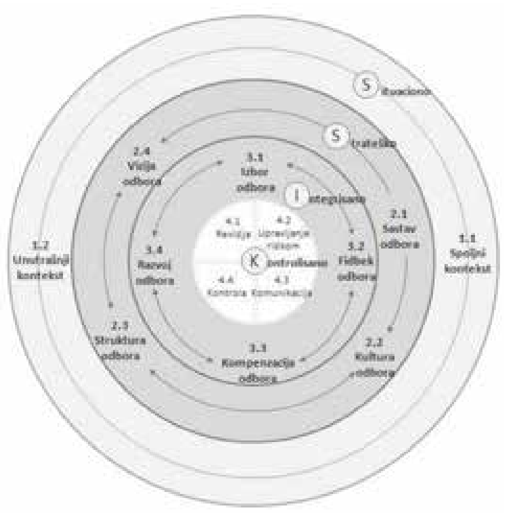

Figure 1. KISS model (Source:(Hilb, 2008)

For Hilb, companies generate lasting success only if all their activities add value for shareholders, customers, employees and society: "That's why it's important for every board of directors to determine how stakeholders participate in the company's success." company, in accordance with his requirements.

Major corporate scandals have contributed to the development of good corporate governance practices in many countries around the world. Regardless of the undoubted improvements, we must be aware of the following:

- The Anglo-American management model is promoted as a global standard,
- The importance of soft law and mechanisms is undoubted, but it does not mean that it will damage the integrity of the relationship between the board and management
- Best practice guidelines are typically designed for large listed firms (and are therefore often not suitable for small firms), and
- Good governance guidelines do not guarantee "good governance practice".

3. CORPORATE GOVERNANCE OF PUBLIC ENTERPRISES IN SERBIA

Regardless of the fact that corporate governance in private companies in Serbia is at an extremely low level, in public companies it seems that the establishment of corporate governance is a much more complex issue. More precisely, Serbia started to implement reforms in public enterprises among the last countries in transition and therefore suffers great losses because these are mostly enterprises that are not efficient and have an unfavorable impact on public finances and the economy.

Depending on the changes in the political environment, the laws also changed, and new institutions also disappeared and appeared. The result of all reform efforts today leads to the adoption of the necessary legislative solutions, the establishment of necessary institutions, and the creation of an environment in which it is possible to implement public sector reforms (Milojević, 2017).

A very important issue in economic reform is the corporatization of public enterprises, and in addition, the introduction of corporate governance in public enterprises in Serbia is motivated by internal reasons and the wishes of the founders of those enterprises to increase the level of efficiency, effectiveness and transparency of the work of public enterprises, as well as external recommendations from EU (Matavulj, 2022). The government interest is to improve the corporate management of public companies, in order to increase the efficiency of these companies and to achieve better business results. In order to achieve this, it is necessary to change the current management methods, and to establish corporate management and professionalization of management in public companies.

The matter of corporate governance in Serbia is regulated by the Law on Business Companies; Law on Banks; Law on Accounting, Law on Audit and Law on Capital Market. In 2008, the Belgrade Stock Exchange issued a Corporate Governance Code addressed to companies listed on the stock exchange, which will be implemented according to the "comply or explain" principle. In 2011, the law introduced an obligation for companies whose shares are listed on the stock exchange to harmonize their operations with the amendments to the Law on Business Companies, and if they do not do so, to provide written reasons for non compliance.

In 2012, the Serbian Chamber of Commerce also developed its own corporate governance code, intended for all businesses (including family businesses and state-owned enterprises). Nature of this code is that it's voluntary and "companies are encouraged to implement it by adapting their articles taking into account the recommendations of the code".

The principles of corporate governance are one of the central pillars of globalization, while corporate law is developed through domestic mechanisms, so it is very important for Serbia to follow international trends. Corporate governance mechanisms are also becoming a vital part of international agreements. This fact allows Serbia to comply with unwritten international standards and regulations, as well as to be part of positive development through real changes in the quality of corporate governance (Ljutić, 2021).

The challenges for Serbia are reflected in the correct balancing of many and often conflicting goals when managing public enterprises. The state as the owner needs to ensure that these companies operate efficiently, and that they lead investment policies that will ensure their long-term viability and market competitiveness. On the other hand, the state is the regulator and should ensure the conditions to enable these companies to operate efficiently and in the long term, and also to protect consumers from possible abuses of the monopoly positions of public companies on the market.

More must be said about achieving a balance between state ownership, the function of satisfying the public interest and the absence of politicization of the management itself.

CONCLUSION

Introducing and improving corporate governance in public companies in Serbia is certainly an important issue in the process of building a modern market economy. These companies are important factors in the development of the country, which means that their poor management can slow down the growth and development of the Serbian economy. Contrary to that, quality and efficient management allows for greater efficiency of public companies, and this is certainly a very important segment of developing the economy as a whole.

We can consider the absence of politicization of management as a utopia or a more realistic minimization of political influence in the work of a public company as a strategic issue above all. It is clear that it is the very nature of the same that inevitably dictates this natural relationship, and that the majority shareholder must refrain from the bad practice of creating losers.

The issue of insolvent public companies in Serbia seems to be an unpleasant constant, and it is precisely the implementation of the principles and good practices of corporate governance that would primarily contribute to the regulation of this part of the market by separating the ownership from the management structure. The introduction of professional management would be the cornerstone of the improvement and recovery of the Serbian economy, but not in an apparent way, but through the absolute absence of political influence, which today is a commonly known way of satisfying party appetites.

Professional management should be a constant, an internal mechanism that will ensure business continuity regardless of political changes, which is in line with the basic purpose of these entities. Professionalization, along with the implementation of good corporate governance practices, would contribute to financial recovery and the relief of the Serbian economy from the constraints of unregulated debt. As an inevitable consequence, there would be a significant improvement in the transparency of the work of public companies themselves as a basic prerequisite for the implementation of the system of “rewards and punishments” for good and bad financial operations, by which we also mean adequate measures of criminal legal protection for those who cause significant damage through negligent or malicious operations which we unfortunately witness every day.

Adequate implementation of the legislative framework would greatly help the clearer conception and regulation of the basic mechanisms of business operations of these entities. It is up to the academic community to analyze, criticize and make suggestions for improvement, while every day practice should confirm or deny our starting points.

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