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CONCEPTUALIZATION AND PERSPECTIVE OF CORPORATE GOVERNANCE OF STATE OWNED ENTERPRISES IN SERBIA

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Abstract: *Governance of companies in the Republic of Serbia in which the state is the majority or predominant owner for many years represents a big problem and an even bigger challenge for all economic policy makers and power holders. Due to the unwanted social consequences and their political reflection, radical cuts in this area were avoided, despite periods of great crisis and significant losses among some of the largest state-owned enterprises. The major financial crisis in the world in 2008 and the onset of the corona virus pandemic in 2019 certainly contributed to the delay and hesitation. However, the foundations of a new policy in this area were already laid in 2020, and the Strategy of State Ownership and State Sector Governance was adopted in 2021. At the same time, the Action Plan for the implementation of the Strategies in the period from 2021 to 2023 was adopted, so that in December 2022 the Draft Law on the Management of Business Companies owned by the Republic of Serbia finally saw the light of day. Undoubtedly, the corporatization of state enterprises and the improvement of their operations, and above all management in this sector, are included in the very top of national priorities. Regardless of the fact that the law has not yet entered the procedure, the first radical move was made on April 6, 2023. The largest public company in*

Serbia, Elektroprivreda Srbije, was transformed into a joint stock company. In this paper, we shall consider some of the most important issues, problems and possible solutions, raised by the above-mentioned documents, which are important for the organization, implementation and improvement of corporate governance in the public sector in the Republic of Serbia. It is otherwise a very complex and sensitive matter, both in a practical and theoretical sense, which requires comprehensive research and complex answer, and the following text should be understood as an invitation and incentive to the academic and professional public to pay more attention to them.

Key words: *corporate governance, public companies, role of the state as owner, transformation of legal status, strategy of state ownership and governance.*

INTRODUCTION

The moment of truth has come for the state sector of the economy. From January 1, 2024, all economic entities in which the Republic of Serbia is the owner will enter the corporatization procedure. This means that their legal form will be radically changed and adapted to the general regulations on capital companies. In the future, economic entities in which the state is the owner will be organized only as joint stock companies or companies with limited liability. At the time of writing this paper, the largest state-owned enterprise, Elektroprivreda Srbije, has been transformed into a joint-stock company. This was possible in view of the undertaken international obligations, as well as the fact that in the regulations that are being prepared, it is foreseen that the management of this business conglomerate must be in accordance with the regulations of the European Union.

Valid Law on Public Enterprises [“Official Gazette of RS”, no. 15/2016 and 88/2019], as well as the series of regulations that preceded it, prescribes the manner and forms through which the state incorporates incorporates funds, capital and resources, in order to organize and perform tasks of general interest in a certain part of the territory (municipality, city, province) or at the level of the Republic. At the same time, it is allowed to register forms of its entrepreneurship in order to achieve general interests as: (1) public company, (2) limited liability company founded by a public company, (3) joint stock company whose sole owner is a public company, (4) a capital company whose sole owner is the Republic, i.e. an autonomous province, city or municipality, (5) a subsidiary company founded by one of the joint stock companies from the previous point, (6) other capital company and an entrepreneur entrusted with the performance of activities of general interest.¹

After the transformation of the “state sector”, the public company, as a type of business entity, will no longer exist. Along with the change in the legal form of state-owned enterprises, a change in the way of management in these economic entities is also planned. They will be obliged to apply the principles, mechanisms and instruments of corporate governance in the state sector, which are based on the OECD principles, and according

1 See Article 3 of the Law on Public Enterprises.

to which the Strategy of State Ownership and Management of State Enterprises was formed. True, some basic solutions have long been incorporated into the Law on Public Enterprises, the implementation of which could lead to the development of corporate governance in the public sector.

Nevertheless, their application and further elaboration was missing. In addition, regulations have not been adopted in a number of areas that would all together create a favorable environment for the development of corporate governance. What's more, it could be said that there is still a legal gap in terms of the comprehensive regulation of the system of corporate management of state property and capital. Without improving the way of governance, without transitioning to a corporate philosophy and without changing numerous laws that regulate issues of property, finance, audit, control and regular review of the policy of state ownership, changes in the form of organization of state economic entities alone will not yield results.

1. FACTORS AFFECTING CORPORATE GOVERNANCE

A unified and generally accepted definition of corporate governance does not exist, nor is it possible. Definitions depend on the nature of property relations, the overall development of the economy, the legal, business and cultural traditions of a particular society, the institutions that adopt them and the theoreticians that shape them. In all this diversity, the only thing that is not disputed is the understanding of corporate governance as a system of relationships established between numerous participants and interest holders in and around a corporation.

The corporate governance system is influenced by numerous internal and external factors. In theory, the main external factors that shape the economic environment are mainly stated as follows: (1) Efficient capital markets; (2) Regulatory measures; (3) Legislative tradition; (4) Accounting and control standards and (5) Social and cultural values. As for the interest holders in the corporation who use instruments of influence on managers and whom they must take into account when making decisions, the following groups are generally distinguished: (1) Investors, that is, owners of shares, (2) Supervisory Board; (3) Customers; (4) Suppliers; (5) Trade unions; (6) Media; (7) Regulatory bodies; (8) Analysts and (9) Creditors [Laker D.F. and Tayan B. (2021:9)]. These factors and determinants are shown graphically in Figure 1.



Figure 1: Selected determinants and participants in the corporate governance system, [Laker D.F. i Tauan B. (2021:9)];

Due to the uneven development of countries and companies, the system of corporate governance did not develop at the same pace and in the same way. Manojlo Babić [Babić, V (2008: 67)], referring to Draker, points out that: “the corporate governance system has gone through three characteristic development phases”, but there are also a number of other categorizations and classifications of its development phases, which start from different factors. Regarding the mechanisms through which corporate governance is achieved, Mihajlo Perić points out that most authors believe that there are two basic groups, internal and external mechanisms [Perić, M (2018: 17)]. These mechanisms were explained in detail by Milenko Dželetović [Dželetović, M (2020: 42-82)]. In this regard, and after financial abuses in the USA, Larcker and Brain view corporate governance as “a set of control mechanisms that certain corporations adopt to prevent or deter management from activities aimed at achieving their own interests, to the detriment of owners and other stakeholders” [Larcker, D. F. & Taylor. B, (2021:8)]. Manojlo Babić states that “there are two basic models of corporate management, open and closed” [Babić, M. i dr. (2008:107)]. Milton Friedman explains corporate governance as a kind of “conducting business in accordance with the wishes of owners and shareholders, taking into account the basic rules that establish the social environment through laws and local customs” [Friedman, M. (2002:46)]. Shleifer and Vishny see corporate governance as “the way in which financial providers provide corporations with a return on their investment.” [Shleifer, A., Vishny R. W. (1997:737)].

The numerous factors that all these authors talk about, the different degree of influence of interested parties and excessive ambitions objectively lead to a conflict of interests. Primarily these conflicts take place between the owner and the manager.

The aim of corporate management is to continuously overcome, amortize and resolve these differences, in order to improve operations and increase profits. Principles, mechanisms and rules for resolving disputed issues gradually began to take shape in the form of a code of corporate governance. Many countries have regulated the principles and organization of corporate governance in appropriate laws. At the same time, specific models of corporate governance were formed, depending on the nature of ownership relations and the way of their protection.

The OECD² went the farthest in developing and elaborating the principles of good corporate governance on the international level. Its Guidelines for Good Corporate Governance include four groups of values. The first is **impartiality**, understood as the necessity of equal treatment and respect for all shareholders, as well as compensation in case of violation of their rights. The second is the **obligation**, in terms of recognizing the rights of interest holders, which are established by law, as well as improving their cooperation in order to achieve the main goals. The third is **transparency**, which requires full, truthful and timely publication of information on all important issues concerning the company's operations. The fourth is the **responsibility** of both the managers towards the shareholders and the board of directors for the supervision and control of the manager's work, and then the responsibility of the board of directors towards the capital owners [Korporativno upravljanje, Manual (2011:11-12)].

2. PRINCIPLES OF CORPORATE GOVERNANCE IN THE PUBLIC SECTOR

Governance of the state-owned enterprises represents a major challenge for the economy of many countries. Despite this, it escaped the attention of the professional, business and academic public until the middle of the first decade of the 21st century. In particular, there was a lack of any international benchmarks, which would help governments to assess the performance and improve the state management of these enterprises.

The first relevant guidelines for this area of management were prepared by the OECD in 2005 and they were received with great attention. In our country, they were translated and published only in 2008. These OECD Guidelines on corporate governance in state-owned enterprises "filled a very significant gap and aroused the general interest of various key stakeholders" [OECD Guidelines (2008:5)].

In 2015, the OECD adopted an updated text of the Guidelines [OECD Guidelines on Corporate Governance of State Owned Enterprises (2015)]; (unfortunately, it has not yet been translated and published in our country), which resulted from ten years of experience in good management of state-owned enterprises, the professionalization of the function of state ownership and the achievements of corporate management in state-owned enterprises.

2 Organization for Economic Cooperation and Development

2.1. The importance of state-owned enterprises and the necessity of improving their governance

In some OECD member countries, state-owned enterprises still comprise a significant portion of gross domestic product, employment and market capitalization. Moreover, state-owned enterprises often predominate in utility and infrastructure industries, which are also called activities of special social interest. These are primarily energy, transport and telecommunications, whose operations are of great importance for broad segments of the population and other parts of the business sector.

Research shows that the influence of state-owned enterprises is growing globally. For example, the share of state-owned enterprises among the “**Fortune Global 500**” increased from 9%, in 2005, to 23% in 2014, especially thanks to the growth of Chinese state-owned enterprises [State Owned Enterprises (2015:6). In the list “**Fortune Global 500**” published in 2022, the total number of Chinese companies reached 136, while the number of companies from the US dropped to 124. These two countries together own 48 percent of all companies on the Global 500 list. On top of that, among the 136 Chinese companies, as many as 96 companies (or 71 percent) represent gigantic state-owned enterprises from the primary activity [CSIC: Fortune Favors State-Owned, October 7, 2022]³

The increasingly complex international circumstances, crises and wars that are being waged in the not-so-distant environment indicate that state-owned enterprises and other public enterprises (at the federal, provincial, city and municipal level) that serve the general interest are still necessary and should be preserved, modernized and their work should be improved. This requires a radical improvement of the corporate management of economic entities that are owned by the state.

In the sphere of governance of state-owned enterprises, the main challenge is to find a balance between the authority of the state to actively exercise its ownership function (primarily to nominate and elect the board of directors) and the risk of imposing excessive and inappropriate political interference in the operation and management of such companies. An equally important challenge is to ensure market equality in all areas in which private companies can compete with state-owned enterprises, so that the state, through its regulatory or supervisory function, does not prevent competition.

2.2 The specificity of corporate governance in state enterprises

The specifics of corporate governance in the public sector arise from the economic nature itself and the distinctive business identity of public and other companies with predominant state ownership. In Serbia, it is expressed in several ways. One group of specifics arises from the fact that these companies at the local, municipal and city level are mostly organized as single-member companies and at a higher level (federal and provincial)

³ <https://www.csis.org/blogs/trustee-china-hand/fortune-favors-state-owned-three-years-chinese-dominance-global-500-list> (2023.03.19);

as joint-stock companies as well. The second main specificity is that their founders are exclusively state bodies, regardless of the level of government that founded them. The third specificity derives from the peculiarity of the work they they engage in, because they perform activities of general interest or special importance. The fourth specificity is that on the local level it is possible for state enterprises to transfer a part of their activities to the private sector through a public-private partnership (most often this is the case in the field of public transport).

Perhaps the greatest specificity is reflected in the fact that the state simultaneously appears as an owner, entrepreneur, shareholder, employer, profit earner and market participant, and at the same time as a creator of legislative frameworks, a regulator of the work of other participants and a controller of compliance with legality. The directors of state-owned enterprises in those circumstances were in a dilemma, how to define the business goals of state-owned enterprises, how to establish effective management control and who will implement it, how to ensure a certain transparency of operations but also protect business interests, how to organize and compose the management and control bodies, etc.

2.3. OECD Rules for corporate governance in the public sector

The general principles of corporate governance of the OECD from 2004 did not provide answers to the problems that arise within the business of public companies, and in connection with the way of governance. Faced with this, the OECD started to develop a special set of rules for corporate governance in the public sector.

The first “package” of Guidelines was published in 2005 and it contained instructions for the following:

- 1) Ensuring an effective legal and regulatory framework for state-owned enterprises;
- 2) Positioning the state in the role of owner;
- 3) Establishment of fair treatment for all shareholders;
- 4) Regulation of relations with interested parties;
- 5) Achieving transparency and openness in business;
- 6) Defining the duties of board members in state enterprises.

In the second, much broader and more complete version of the Guidelines, published in 2015, the principles relate to the following:

- 1) Explanation of the necessity of state ownership;
- 2) Explaining the role of the state as owner;
- 3) Adjusting the position of the state enterprise on the market;
- 4) Fair treatment of shareholders and long-term investors of the state enterprise;
- 5) Relations with shareholders and responsible business;
- 6) Publication of reports and transparency of business;
- 7) Responsibility of supervisory boards of state-owned enterprises.

2.4. SCC Code and corporate governance in public companies

The Serbian Chamber of Commerce was the first institution in Serbia to publish the general Code of Corporate Governance in 2012 [“Sl. Gazette of the RS» no. 99/2012)], as a document intended for all business entities. Before that, there were only narrower codes of certain public joint-stock companies.

The code consists of three parts. The third part is relevant for us, entitled “*Additional principles and recommendations for capital companies in which the state is a member*”. This part is dedicated to the specific problems faced by economic companies in which the state is the owner. The drafting of the Code was based on the belief that governance of state-owned companies is basically not much different from the management of privately owned companies. The same economic laws apply in both cases. This is especially true for state-owned companies that are listed on an organized capital market, as well as to companies with mixed capital - state and private.

Due to its multiple role, the state is in a position to influence the market conditions of business and to place the companies in which it is a member in a privileged position compared to companies that are exclusively owned by the private sector. State enterprises are often protected from two basic threats that are essential for management policy, i.e. these enterprises in practice do not go bankrupt, nor are they really threatened by the danger of takeover, which significantly reduces the responsibility of their governing bodies and management.

State-owned enterprises sustain significant political influence, and often choose to follow the short-term political goals of the party in power. When it is known that instead of making a profit, they have to pay more attention to employment, price control, encouraging regional development and the like, then their responsibility weakens and the motivation of management boards and managers decreases.

Often, the bad economic results of companies in which the state is the owner are the result of fundamental problems in the management of these companies: non-transparent operations (as a rule, reporting is directed to the body of the state that supervises the specific company, which is often itself involved in its operational and strategic management), non-professional management boards, etc. On the other hand, good corporate governance allows the state to better protect its assets, increase the value of state-owned enterprises and make them more attractive to strategic partners and investors. When a state-owned enterprise operates successfully, it increases the state budget and contributes to the common good.

3. THE NECESSITY OF ACCELERATED CORPORATIZATION OF THE STATE SECTOR AND IMPROVEMENT OF CORPORATE GOVERNANCE

So far, the most significant step forward in terms of clarifying the structure of state-owned enterprises and introducing corporate governance in them was made in 2021.

In April of that year, the Government of Serbia adopted the Strategy⁴ (“Official Gazette of the RS”, no. 36/21), which should bring significant innovations and improvements in this area by 2027. This is the first time that a document of a conceptual character has been adopted in Serbia, which in a single place and in a comprehensive way presents a rounded strategic vision of ownership management, defines the goals of financial and public policies, proclaims the principles of corporate management and elaborates the rules of control and supervision in accordance with international standards and the best practice.

Two months later, the Action Plan for the operational implementation of the planned strategy in the first stage, that is, in the period from 2021 to the end of 2023⁵, was adopted (“Official Gazette of RS”, no. 68/21).

3.1. The strategy of state ownership and governance of state enterprises until 2027

The concept, elaborated in the form of the State Ownership and Corporate Governance Strategy, contains instructions and provides guidelines regarding the following:

- goals of ownership governance,
- principles of corporate governance and
- practices of supervision over economic entities in accordance with international standards

The strategy also encompasses the establishment of a centralized management system for state-owned enterprises with the **Ministry of Economy** performing this centralized ownership function on behalf of the state. It will not do so only in cases where adopted international acts have determined otherwise (which refers to the field of energy).

Bearing in mind that this Ministry will be in charge of developing and establishing the ownership policy that will define the justification and purpose of state ownership, the goals of that ownership, the role of the state in the corporate management of companies in which the state is a member, as well as the way in which the state will implement its ownership politics, there is no doubt that the duties and responsibilities of the Ministry will expand significantly.

In order to implement the unified policy of state ownership, the Ministry of Economy has been tasked to perform the following, in cooperation with line ministries and competent authorities: (1) prepare an analysis of all “state” economic entities (financial, property legal, corporate, etc.); (2) carry out the classification of economic entities (by activity and by importance for the state); (3) establish a unique record of business entities owned by the Republic; (4) analyze the existing legal framework and list acts that need to be adopted, amended, repealed, repealed, etc.; and (5) draft the acts for regulating the system of all PSRS and their subsidiaries.

4 Full title: Strategy of state ownership and management of economic entities owned by the Republic of Serbia for the period from 2021 to 2027;

5 Full title: Action Plan for the Implementation of the Strategy of State Ownership and Management of Economic Entities Owned by the Republic of Serbia for the period from 2021 to 2027, in the period 2021-2023.

The transformation defined by the Strategy will cover all state enterprises, including their subsidiaries (in which they own more than 50% of the capital), but also those companies in which the state is a minority owner. When the central register of all state-owned companies is created, it will be decided later what regime will be applied to companies in which the state is a minority owner.

The goal of the Strategy is to carry out the reform of state companies through sustainable and efficient management of business entities, to increase the benefits of state ownership for society and citizens as a whole, and to protect the general interests of the state.

The Government Strategy contains an overview and analysis of the current situation in three areas:

- the legal framework of business entities owned by the RS;
- proprietary governance;
- corporate governance.

3.2. The number and structure of companies owned by the Republic of Serbia

The necessity of introducing precise records and a clear classification of companies in which the state is the owner is emphasized by the very fact of data inconsistencies. Namely, in the Strategy, adopted in April 2021, it is said that preliminary data indicate that the Republic of Serbia has 270 active economic entities in its portfolio. Their structure is given in Table 1, along with a graphic representation.

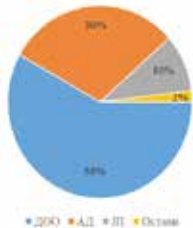
Structure of companies owned by the RS	
<ul style="list-style-type: none"> - limited liability companies (DOO): 157; - joint stock companies (AD): 82; - public enterprises (JP) 26; - others: 5 	 <p>A pie chart illustrating the structure of companies owned by the RS. The chart is divided into four segments: a large blue segment representing 69%, an orange segment representing 29%, a small yellow segment representing 2%, and a very small grey segment representing 0%. A legend below the chart identifies the segments with symbols: a blue square for 69%, an orange square for 29%, a yellow square for 2%, and a grey square for 0%.</p>

Table 1: Structure of companies owned by RS (Strategy 2021-2027:10)

However, according to the Announcement of the Agency for Business Registers of Serbia, published two months later, 545 public companies operated in Serbia in the previous year, with a total of 114,451 employees (<https://www.danas.rs/vesti/ekonomija/u-srbiji-prosle-godine-poslovalo-545-javnih-preduzeca-sa-vise-od-114-000-zaposlenih/>). Of these, 29 were large public enterprises (with 73,495 employees), 97 medium-sized enterprises (with 21,558 employees), 251 small enterprises (with 17,458 employees) and 168 micro enterprises (with 1,940 employees).

3.1. Basic shortcomings of the corporate governance system in the public sector

Corporate governance in public companies, similar to the private sector, can be said to represent “a set of rules by which the internal organization of a public company functions, the selection of directors and members of the management body, supervision of the founder as owner, a system of planning, reporting and measuring the achieved results of public companies in order to make their work transparent” [Vukolić Z (2019:71)]. For many years, it has been repeated here as a general assessment that corporate governance in public companies is in the initial stages of development. The institutional framework is in place, but the process itself is in the beginning. The need to strengthen the market orientation of the Serbian economy, the gradual harmonization with the European Union regulations, as well as the implementation of what was agreed with the IMF – all this has been a step towards redefining the status and organization of the state sector, as well as the way of management in this area. This process was significantly accelerated in 2023, and was preceded by a deep dive into the essence and causes of the basic problems in this area.

The creators of the State Sector Reform Strategy have very critically assessed the current state of affairs in the sphere of corporate governance. They concluded that on the normative level, the biggest problem is the uneven legal framework for numerous state-owned economic entities and the lack of complicity between many laws, primarily the Law on Public Enterprises and the Law on Business Companies. Universal rules regarding the organization and management of companies in which the state has ownership rights, as well as regarding strategic planning, do not exist, so the differences are large, goals and plans are generally set and vaguely articulated, and they do not contain guidelines for the implementation of plans. Provisions concerning the operation of state-owned holding companies are scattered in a series of regulations, and there is inconsistency between them. If it is taken into account that the important roles of the state on the economic plan (as a company owner, as a policy maker, as a regulator and as a controller) are neither precisely nor clearly defined, nor are they to be found in a single place, then the question remains of how business entities can shape their goals. The uneven legal framework creates confusion in business, and the different solutions, mechanisms and practices of corporate management do not allow an analytical and comparative view of the essence of the problems in these companies.

Precisely from the point of view of the functioning of corporate governance, it is almost impossible to explain large fluctuations in the operations of public companies and in general companies in which the state has ownership. Thus, it follows from the APR data from 2021 that in 2020 the total net profit of public companies was 29.6 billion dinars, and that in 2019 they had a loss of 3.6 billion dinars. Moreover, in 2020 they reported a positive result from financing of 7.6 billion and it is 2.3 times higher compared to 2019, while as a result of other activities they reported a loss of 15 billion dinars, which is 34.6 percent less than in 2019. The question remains who actually contributed to it and to what

extent: the state as owner, directors as managers or accountants as experts for beautifying the balance sheet.

A study by the Faculty of Economics from Belgrade also rated the level of corporate governance in Serbia as very low. ("Level of corporate governance in JP founded by RS, 2016:7-10). The main reasons are the following:

- unclear definition of business goals, which is why in practice the emphasis is not always on achieving business results, but often on maintaining social peace, excessive employment, non-payment of debts, etc.;
- absence of mechanisms for effective control of managers, their removal or promotion in accordance with the results of employment, because they are appointed by those who should control them, and political factors often have more influence than public demands or general interest;
- insufficient transparency of business, given that the reports are incomplete, uneven or deficient, to be evaluated by those who often participate in management or adopt measures that change the position and conditions of business, as well as the weaknesses of internal control and internal audit;
- insufficient expertise of supervisory boards, because insufficient attention is paid to competence, education and required experience, which are necessary for professional behavior, as well as for independent behavior, outside of political influences;
- absence of mechanisms for stimulating reward and evaluation of both the contribution of the manager and the engagement and contribution of the members of the executive board.

4. THE TRANSFORMATION OF THE STATE OWNERSHIP STRATEGY INTO THE NEW LAW

4.1. Review of certain provisions of the Draft Law on the Governance of Companies Owned by the Republic of Serbia

Bearing in mind the importance that the Strategy on State Ownership and governance attaches to the development of corporate governance, it is not surprising that the draft of the first law in that new reform wave is dedicated to governance. It follows from the very title of this act (mentioned above) that the redefinition and implementation of a new way of **corporate governance** is the key to all other changes. Hence, in the first paragraph of Article 1, it is proclaimed that the law regulates "*the method of ownership management and improvement of corporate management*". At the same time, after this sentence, following the comma, it says "*as well as other issues related to the **legal position of capital companies***".

From this wording, one can recognize the intention to improve the corporate governance system and simultaneously create an initial formal basis for converting public

companies into capital companies, without waiting for changes to other regulations. At the same time, this approach makes it possible to avoid possible “distruction” of employees in current public enterprises in the Republic, given their fear of privatization. To be honest, corporate governance is not a matter of status, nor is the legal position of the company resolved through the way of governance, but the wording allows both tracks for the implementation of changes to be open. The fact that out of a total of 48 members, only 16 are directly involved in corporate management speaks of this two-dimensional approach. For that purpose, the “Draft Law on Management” advocates certain normative innovations, without waiting for the relevant economic legislation to be reformed.

When the question arises as to who according to this Draft Law can perform activities of general interest, one gets the impression that there is a certain vagueness here. According to the currently valid regulations, activities of general interest, apart from public companies, can be performed by private companies, then companies with mixed capital, business entities or even entrepreneurs to whom this right has been transferred. However, from the “Draft Law on Management...” it is not clear who will be able to perform activities of general interest after the transformation of the republic’s public enterprises into capital companies. In Article 2, paragraph 2, it is said that a capital company **can** (author’s note) perform activities of general interest (which are determined as such by a special law). However, this does not mean that it **must** perform that activity. But if it doesn’t have to, it is not clear who else could perform that special activity of general interest and on what basis.

A certain terminological inconsistency is also noticeable. For example, “Strategy of State Ownership...” and “Action Plan for its Implementation...”, both in the title and in the text of the document use the term “*business entities owned by the Republic of Serbia*” (abbreviated PSRS). However, the “Draft Law on Governance...” uses the term “*business companies owned by the Republic of Serbia*” in the title, while in the text part it uses the term “**business companies in which the state has ownership**” (majority, minority or controlling, author’s remark). Undoubtedly, the circle of “business companies in which the state has ownership” is wider than the circle of “business companies that are owned by the Republic of Serbia”. Likewise, the term “*business entities*” is broader than the term “*business companies*”, because business entities can be not only business companies, but also various other entities. Is this a matter of inaccuracy, of some insufficiently articulated change, or of some third matter? It also remains unclear whether the “republic” capital company will in the future be able to entrust the performance of services or parts of services and jobs of general interest to other economic entities and to which, whether to private legal entities, as well as entrepreneurs, which is otherwise possible now according to the Law on Public companies and the Law on Business Companies.

The intention of the creators of the law was to **centralize ownership governance**. However, Article 4 does not establish a single central authority, but provides that “*centralized ownership management is carried out through the Ministry of Economy*” (underlined by the authors). The fact that it is carried out “through” the Ministry means that it is

not direct, but it looks like mediation and coordination with other ministries and state bodies. Moreover, when it comes to capital companies that deal with the production and supply of electricity, i.e. natural gas, they will have “their own” special central authority of ownership management. It will be the Ministry responsible for electricity and gas affairs⁶.

Article 3, paragraph 3 of this Draft, stipulates that **the provisions of the law shall not be applied to** “republic” capital companies (which are current public companies, author’s note), which carry out the activity of production, weapons and military equipment; which operate as banks; which operate as insurance companies and other financial organizations; non-profit organizations; institutes that are organized as commercial companies; then to those economic companies owned by the RS over which the privatization procedure was initiated, i.e. over which bankruptcy was initiated. It is realistic to assume that the number of state economic entities that will be subject to the provisions of this law will certainly be reduced, at least by ten percent.

The draft Law envisages that the Government **passes an Act on the criteria for choosing the legal form of the capital company into which the public enterprise will be converted.**⁷ At the same time, a period of one year, from the date of entry into force of the law, is prescribed, in which the Government, at the proposal of the ministry, will implement the change of form of public companies into a joint-stock company or a limited liability company.⁸ In the meantime, while the Law has not yet entered the procedure, on April 6, 2023, the Government adopted the *Decision on changing the legal form of Elektrotivreda Serbia from a public company to a non-public joint-stock company*. The government had an indisputable, multiple legal basis for such a thing, because it is the founder of this state-owned enterprise and the only competent one for its status changes. All the more so since the Draft Decision was previously adopted by the EPS Supervisory Board and submitted to the Government. However, it remains unclear on the basis of which criteria this change was made, given that the *Act on the criteria for choosing the legal form of the capital company into which the public company will be converted* has not yet been adopted, nor was it possible, because the law has not even entered the parliamentary procedure yet. After the transformation of EPS, there are still 25 public companies owned by the RS that are awaiting corporatization.

A prerequisite for the creation of a unified framework of ownership and management for all PSRS and for the centralization of responsibility and competence of the state in terms of ownership is the **classification of those companies and the compilation of their list**. That is why the “*Draft Law on Governance...*” in Article 12, paragraph 1, provides that the Government, on the proposal of the Ministry of Economy, determines “*a list of capital companies and minority capital companies, which will be used to classify them*”.

6 This exception is provided for in Article 39 of the Draft Law on the Governance of Companies Owned by the Republic of Serbia;

7 Article 40, paragraph 4, of the Draft Law on the Governance of Business Companies Owned by the Republic of Serbia;

8 Article 44, paragraph 1, of the Draft Law on the Governance of Business Companies Owned by the Republic of Serbia

The wording is obviously quite clumsy because establishing the list does not mean that their classification will be carried out, only their enumeration, and the enumerated companies are then classified according to certain criteria (author's remark). Paragraph 2 of the same article points to this, and it states that "**classification is made on the basis of goals of governance...**" (underlined by the authors). Article 11 lists five goals.⁹ However, this is where the doubt about the basis for classification begins. Namely, in contrast to the Draft Law, "Business Governance Strategy...", as a document that was the starting point for drafting the Draft Law, on p. 25 obliges the Ministry to "*classify the PSRS in its portfolio according to clearly defined criteria, which will primarily be aimed at preserving the national interest*" (underlined by the authors). The "Action Plan for the Implementation of the Strategy..." stipulated that by the end of 2021, the Ministry of Economy would "*create and establish criteria for the classification of PSRS*", and by the end of 2022, "*to adopt an act that will carry out the classification of PSRS and compile a list of classified PSRS*". The act on classification criteria cannot be found on the website of the Ministry of Economy, nor the list of PSRS already classified according to (those) criteria, so it remains unknown whether they were adopted and applied.¹⁰ It is possible that those five objectives from Article 11 of the Draft Law represent those criteria for classification. But out of a total of five, only the first could be directly linked to the preservation of the national interest, and the third only indirectly. Does this mean that the other criteria will not be applied at all as a basis for classification?

According to the currently valid regulations, the director of a public company has the status of a public official, given that he is appointed by a state authority. This entails the obligation to report to the Agency for the Prevention of Conflicts of Interest on their assets, income and employment. However, considering that the Draft Law foresees a different way of electing the director (through a competition, where the selection decision is made by the Supervisory Board or the Assembly of the company), **the director would lose his status as an official**. With that, his obligation to submit a report to Agenia about his assets and income would cease. This will certainly reduce the possibility of controlling the assets of the director, determining the existence of a conflict of interest, possible unjust enrichment, etc. It would probably be more appropriate if at least the Law on the Prevention of Corruption includes the obligation of future directors of state-owned capital companies to submit reports to the Agency, just like public officials.

9 (1) preservation of national and strategic interests, (2) preservation of markets and consumer protection, (3) reduction of social stratification of society, (4) sustainable management of state property and sustainable use of natural resources of the Republic of Serbia, and (5) improvement of economic, industrial and social goals;

10 The only available list is the *List of public companies and capital companies that perform activities of general interest and to which the Law on Public Companies from 2017 applies* (34 in total), with the indication of three more companies whose activities are monitored by the Department for Control and Supervision of the Work of Public Companies . ([https://privreda.gov.rs/sites/default/files/inline-fileU Republici Srbiji kao i u mnogim državama u svetus/Spisak-JP-I-DK-Za-Sajt-Avgust-2017.pdf](https://privreda.gov.rs/sites/default/files/inline-fileU%20Republici%20Srbiji%20kao%20i%20mnogim%20drzavama%20u%20svetus/Spisak-JP-I-DK-Za-Sajt-Avgust-2017.pdf), (accessed 19.03.2023);

Article 23 of the draft stipulates that in a certain situation, a **temporary director** can be appointed to head the company, for a period of one year. According to the current regulations, the acting director could also be appointed for only one year, but in practice it happened that this situation lasted much longer. Thus, the head of JP Putevi Srbije has been the same person in the status of acting director for ten years. Therefore, it is not excluded that some future acting directors will stay in that position much longer than the temporary period prescribed by law. Especially since no punitive measures are foreseen for this extension. This problem could be eliminated by introducing the wording that the general director must be elected within one year at the latest, as well as that the second position must not last longer than one year.

CONCLUSION

State enterprises play a significant role in the economic life, but also in the overall development of almost every country. Their participation in GDP is on average around 20 percent, but in some countries it reaches up to 40 percent. They are dominant even in highly developed countries with a market economy. This is also the case in the Republic of Serbia. However, the way these companies are managed, their legal status, business efficiency and profitability are not at a satisfactory level here. Solving these problems is now included in the very top of national priorities. Corporate governance in the public sector and the transformation of public companies into capital companies received an additional acceleration in 2023 with the sudden transformation of JP Elektroprivreda Srbije into a joint stock company.

Quality corporate governance rests on certain principles, which are considered to be an international standard and which are derived from the experiences of the so-called best practices in the business world. So far, the OECD has adopted two “packages” of Guidelines for the improvement of corporate governance of state-owned enterprises (the first in 2005, and the second in 2015). They contain principles, values and instructions, on the basis of which the Strategy of State Ownership and Governance of Business Companies was formed in the Republic of Serbia, the *Action Plan for the implementation of the Strategy was adopted* and the *Draft Law on the Management of State-owned Business Companies* was drafted. Those documents initiated the process of essential transformation of state enterprises and the comprehensive development of corporate management in them.

In Serbia, there is no central register of state-owned enterprises, nor criteria for their classification, so it is difficult to state the true situation. Such companies exist at the municipal, city, provincial and republic levels. According to preliminary data, the Republic of Serbia currently has 270 active economic entities in its portfolio. Of these, 157 are organized in the form of limited liability companies, 82 as joint stock companies, 26 as public companies, while the remaining 5 have some specific forms. However, it is estimated that the number of state-owned businesses at all levels of social organization is almost twice as large, i.e. over 500.

Opting for accession to the European Union and harmonizing regulations and practices with modern economies in the world, the Republic of Serbia strategically opted for deep reform and changes, primarily for the purpose of transitioning to a corporate organization of the state sector and introducing the principles of market operations in the public sector. This requires a clear determination of the ownership rights and obligations of the state, the definition of management goals appropriate to strategic goals and national needs, and an increase in the efficiency, profitability and social benefits of first-rate entities in which the state has ownership.

Governance as a whole, and corporate governance in particular, has so far been neglected in almost all enterprises with state ownership, regardless of whether it is a majority or minority share. What is more, the operations of these companies are still far from the public eye, their supervision is incomplete, the personnel policy is insufficiently transparent, with many failures, which most often come to light when the losses of these companies are discussed.

In order to eliminate all that, the operationalization of the new concept was started. The Government of Serbia adopted the Strategy of Public Ownership and Corporate Governance for the period 2021-2027, and then the Action Plan for its implementation in the first three years. The Serbian Chamber of Commerce has adopted its Code of Corporate Business, and a number of companies, following these and international solutions, have already adopted their own code.

Research and analysis that preceded the new concept of economic reform, which penetrates into the essential issues of organizing and managing the public sector, showed that public companies must be transformed into capital companies, and corporate management must be raised to the level of top managerial skills. The idea is to regulate the structure and form of these companies in a unique way, to establish a central register for such companies, to carry out their classification, to ensure regular reporting, control and supervision. In short, everything that characterizes successful business practices and has become the standard of modern business in developed countries will be applied to the state sector in Serbia.

The Ministry of Economy, with the cooperation of some other ministries and administrative bodies, will become the main representative of the state as the owner in all these companies. This will require a fundamental transformation and adjustment not only of this ministry, but also of other government bodies, business institutions, associations and business entities, as well as their habituation to enable the respect of interests and the inclusion of a number of other interested parties (stakeholders) through corporate management, and in the later perspective of private shareholders (shareholders) in companies that are under the management of the state, etc.

In a word, the state sector of Serbia is getting ready to open its iron doors to the public, to expose itself to competition and to step into the world of corporate management, which until now has been for it rather foreign and far away. The evolution of the role of the state is reflected in the fact that it will move from the position of irresponsible

manager to the position of responsible owner. And as an owner, he will primarily have to focus on long-term development goals, instead of following short-term populist or social impulses. She will entrust the achievement of development goals to managers capable of meeting her expectations. Such a result will be achieved only by management that is not politicized, but professionalized, that has enough knowledge and ability to manage the company, to raise its performance, and that is well rewarded and stimulated for successful work. Perhaps Drucker most believed in the exceptional abilities of managers and their contribution to social development. Researching the history of management, he concluded that in less than 150 years, management «transformed the social and economic structure of the developed countries of the world.» It led to the improvement of the world economy and the establishment of new rules for countries that will participate equally in that economy» [Druker, P.F.(2003:11)].

The first document for the implementation of the new reform concept of the governance of public enterprises, which should gain the force of law, has already entered public discussion in the form of a draft. Generally speaking, it offered respective and recognized solutions and the business world will certainly welcome them. Of course, there are certain weaknesses, doubts and controversies, and we looked at them, indicating what should be changed or improved. However, the text of the future Law on the Governance of Business Companies in the Republic of Serbia is not a key issue, neither for science nor for practice. The key issue is whether it will be fully implemented and whether the state will persist in implementing that concept.

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