



CIRIEC Virtual Seminar

Working Group

Accountability, anti-corruption and transparency policies in Public owned enterprises (POEs)



4 June 2020 morning (10.00 – 13.00)
Webinar

Introduction

Andrea Zatti

University of Pavia - Italy



Relevance of the topic (1)



- POEs play a key role in the global and local economies and societies
- In the public sphere an increasing share of relevant decisions and resources are allocated to these, at least partially, autonomous organizational forms
- POEs are have become a specific and alternative way (with respect to both self-production, on the one hand, and external regulation and privatization, on the other) to manage public functions
- The terms 'external agencification' or 'satellization' has been exploited to describe this situation where the competent public administration acts as a hub of a multitude of increasingly independent spokes/units (mainly private law)



Relevance of the topic (2)



- POEs are deemed to be prone to greater corruption risks due to some additional challenges than private sector firms.
- Consequences can be particularly severe: financial losses and increases in the cost of government, quality of services and infrastructures dramatically undermined, erosion of citizens' trust in public institutions, leading to biased misperception and social and political instability
- Need 'to provide guidance for governments by combining existing corporate governance and anti-corruption instruments, and developing new guidance to shine the light into **the grey area** between general government and private business that SOEs occupy' (OECD, 2018)



Relevance of the topic (3) (exemplified for Italy)



- POEs, strongly proliferated in Italy during the last two or three decades, involving nearly all sectors of the economy

in the words of the Italian Court of Auditors: ‘an emblematic case of public intervention in the economy that has progressively acquired worrisome dimensions, demanding radical measures to limit negative effects on public finances and on the economic system in general’ (*Corte dei Conti, 2018, p. 17, Translation by the author*).

- According to the CPI (Corruption Perception Index), Italy is placed among the worst performing countries in the G7 (7th on 7) and the EU members (23th on 27).
- Corruption is still perceived as a key and pervasive phenomenon, affecting all sectors of society, both in the public and the private sphere (GRECO, 2017).



Aim of the CIRIEC project



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COMMON GRID	
Main Pillars	Main contents
National Approach to POEs	<ul style="list-style-type: none"> - Historical development - Diffusion of POEs and main sectors of activities - Main legal organisation forms of POEs (stock option companies, limited companies, public law companies, etc.)
Impact of POEs on the effectiveness and transparency of the public intervention	<ul style="list-style-type: none"> - Problems and pitfalls associated with the diffusion of POEs, eg.: mission drifts, complicated ownership policy, centrifugal powers and isolationism, budget transparency and accountability, more complex principal-agent chain, - Focus on the increased risk of corruption and undue political influence and conflict of interest
National legislation and regulation on corruption prevention mechanisms	<ul style="list-style-type: none"> - Dimension, characteristics and effects of the phenomenon in single countries - Main legislative acts and practices adopted to face corruption and increase accountability in the public and private sphere - State of implementation and overall evaluation
Policy measures and anticorruption practices in POEs	<ul style="list-style-type: none"> - Adoption of anticorruption and compliance measures or forms of control and accountability in organizations (corporatized enterprises) characterized by a hybrid nature: transparency, data disclosure, risk assessment, code of conducts, etc. - Prevalence of public oriented vs. private oriented organizational arrangements and procedures to prevent corruption and foster accountability. - Consequences both at the organizational and individual level of the anticorruption mechanisms and policies during their adoption also assuming a longitudinal analysis <ul style="list-style-type: none"> Evaluation of the effectiveness of measures implemented within POEs to identify and prevent corruption and other forms of corporate misconduct.



POEs as hybrid organizations



- ❑ Public mission and values
- ❑ Political influences
- ❑ Regulatory power
- ❑ Hierarchies
- ❑ Accountability with respect to the broader general interest



- ❖ Organizational autonomy
- ❖ Managerial independence
- ❖ Output-based measurement
- ❖ Market-driven approach

The adoption of private law status (**‘corporatisation’** or **‘formal privatization’**) furtherly increases the hybridity of the organisational and regulatory environment.



POEs: pros and cons



- ✓ De-politicization
- ✓ Professionalization
- ✓ Organizational specialization
- ✓ Results-based management
- ✓ Performance measurement

- Short termism and commodification
- Unclear lines of responsibility
- Lack of accountability
- Reduced democratic transparency
- Financial opacity

“Valuable vehicle to keep critical decisions, at least partially, within the public sphere, escaping at the same time from the rigid and bureaucratic framework” (Grossi & Reichard, 2008)

“Corporatized firms represent an institutional configuration which has both weak economic and political incentives” (Klien, 2012)



POEs and corruption (1)



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POEs

Passive corruption

Individuals or groups of individual demand or accept money, gifts or other undue advantages to act or to refrain to act in the correct exercise of their function, thus penalizing the interest of the company.

Active corruption

Managers and directors try to gain contracts and benefits for the enterprise, being mainly active bribe payer.



POEs and corruption (2)



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POEs

Passive corruption

Likely to be predominant in non commercial entities entrusted of public policy objectives being a concrete threat for the general interest pursued

Active corruption

Possible in large commercial operators to get privileged access to contracts and concession, or to obtain a relaxed regulatory oversight in markets in which they operate



POEs and corruption (3)



POEs are prone to greater corruption and mismanagement risks (?)

- multiple principals
- multiple objectives
- lack of incentives and professionalism in the exercise of the (public) ownership
- politicized boards and management
- weaker budget constraints, poor internal and external governance
- low levels of transparency and accountability



Guidelines and Reccomendations



G20 (2018), *G20 High-level principles for Preventing Corruption and Ensuring Integrity in State Owned-Enterprises*, G20 Argentina 2018.

OECD (2018), *State-owned enterprises and corruption. What are the risks and what can be done?.*, Paris.

OECD (2019a), *Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises*, Paris.

OECD (2019b), *Recommendation of the Council on guidelines on anti-corruption and integrity in State-Owned enterprises*, C/MIN(2019)5/FINAL, Paris.

World Bank (2014), *Corporate Governance of State Owned Enterprises, A Toolkit*. Washington, World Bank Group.



Guidelines and Recommendations: Three main targets



- i) **to improve the integrity of the public authorities and their execution of the ownership responsibilities** (clear specification of objectives, reporting systems, accountability and review systems, setting of high standards anti-corruption and integrity principles and practices; disclosure of all financial support by the state, risk assessment of the overall risk exposure of the state, etc.);

- ii) **to improve corporate governance and promote integrity and prevention of corruption at the enterprise level** (risk management systems; procurement and contracting processes, high standards of transparency and disclosure, professionalized boards and management structures, selection criteria for board members, etc.);

- iii) to enhance, horizontally, **a culture of integrity** to counter pressure and undue influence (code of conducts, training and communication programmes).



Guidelines and Recommendations: weaknesses/biases



- i) approach adopted is mainly focused on large POEs
- ii) approach focused on entities operating in competitive markets and following a commercial logic (level playing field)

“SOEs operate with similar efficiency, transparency, and accountability as best-practice private companies”
(OECD, 2019)



The 'mantra' of autonomy



- Ethical superiority of the management?
- Role of interdependence between the principal and the agent, together with the importance of relational contracting, intrinsic motivation and trust are overlooked
- in the in-house option, autonomy and separation of roles are openly conflictual and cannot be requested or suggested as viable organizational options



Future research & developments



To be discussed
and co-constructed together

+ Perspective of a **collective publication**