



**OPEN CIRIEC SEMINAR**  
**Accountability, anti-corruption and**  
**transparency policies in**  
**Public owned enterprises (POEs)**

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**Improving the effectiveness of**  
**accountability, anti-corruption and**  
**transparency policies in Spanish POEs**

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# Outline



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Relevance of  
public enterprises  
in Spain

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on accountability,  
anti-corruption  
and transparency

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# Introduction

- Hybrid nature of public enterprises presents several opportunities, challenges and risks
- Critical issue: Management of public owned enterprises in the context of a more business approach
- Research gap on anti-corruption and compliance measures in public owned enterprises (POEs)
- Aim: Focus in the current situation in Spain as a first step of a comparative study in the framework of this CIRIEC Working Group

# Relevance of public enterprises in Spain

- Spain is one of the European countries with less importance of public enterprises
- However, three main facts highlight concerning POEs:
  - They have a special relevance in industry
  - The privatisation process has been intense in Spain at the central level
  - The growth of public enterprises at the regional and local level

# Relevance of public enterprises in Spain: an historic approach

- **Background: Royal Factories**
- **Emergence in the first third 20<sup>th</sup> century**
- **Rise of POEs in the golden age of capitalism**
  - **Creation of National Institute of Industry in 1941 (main national industrial holding, around 200 enterprises in any sector)**
  - **Main focus in strategic and basic activities (energy, oil, basic industries, iron and coal, defence, transport, equipment, ...)**
    - **Expansion**
    - **Secondary role**
    - **Social role**
    - **Privatisation**

# Relevance of public enterprises in Spain: an historic approach

## Relevance of public enterprises on PIB

Country	1979	1982	1985	1988	1991	1995	1999
Germany	13,2	14	12,4	11,6	11,1	10,7	11,0
France	18,2	22,8	24,0	18,3	17,6	14,7	11,8
Italy	20,0	20,0	20,3	19,0	18,9	14,2	9,6
Great Britain	18,7	16,2	12,7	7,4	4,4	2,7	2,3
<b>Spain</b>	<b>8,0</b>	<b>12,0</b>	<b>12,0</b>	<b>10,0</b>	<b>9,0</b>	<b>8,0</b>	<b>4,1</b>
Sweden	n.d.	n.d.	n.d.	n.d.	n.d.	12,9	13,1
Austria	n.d.	n.d.	n.d.	27,0	16,9	13,3	12,0
Greece	15,8	22,3	23,2	20,8	20,2	15,4	14,3
Finland	n.d.	n.d.	n.d.	n.d.	n.d.	17,6	10,9
Portugal	15,0	23,9	22,7	24,0	20,7	12,3	8,6
Netherlands	n.d.	9,0	9,0	9,6	7,5	6,8	4,6
Denmark	n.d.	12,0	11,4	11,9	11,5	9,7	7,8
<b>European Union</b>	<b>n.d.</b>	<b>n.d.</b>	<b>n.d.</b>	<b>13,3</b>	<b>11,8</b>	<b>10,4</b>	<b>8,9</b>

Source: CEEP

# Relevance of public enterprises in Spain: an historic approach

## Relevance of public enterprises in Spain

Year	% Gross Added Value	% Gross Fixed Capital Formation	% Employment
1966	4,25	14,45	2,80
1970	5,37	14,59	3,25
1975	5,87	16,30	3,72
1981	8,10	23,20	4,93
1983	8,60	26,70	5,02
1985	10,40	27,70	4,55
1987	8,90	14,60	4,05
1989	8,60	16,60	3,81
1991	7,20	13,48	3,24
1995	8,00	6,27	3,50
1999	3,90	5,00	3,30
2001	2,12	3,56	1,12
2003	2,60	4,00	1,50

Source: IGAE and others

# Relevance of public enterprises in Spain today

- **Within the public institutional sector, we can found 19.675 entities**
- **Concerning public enterprise sector, we identify 6.631 entities:**
  - 451 entities depending on the central level
  - 1.921 entities depending on the regional level
  - 4.259 entities depending on the local level
- **2.283 are corporations or public enterprise entities**
- **Different trends before financial crisis (21.307); trend to reduction during and after crisis?**



# Relevance of public enterprises in Spain today

- **Public enterprises at central level are grouped in two main institutions:**

## **1) SEPI 2019**

- **15 enterprises with majority participation (Sectors: Postal service, shipbuilding, energy, food distribution, agricultural and environmental services, mining, tobacco, business promotion, leisure and sports, financial services)**
- **9 enterprises with minority participation (energy, technology, food, aerospace, telecommunications, waste management)**
- **100 indirect participation**
- **Employment: 78.442**
- **Investment: 138 million euros**
- **Turnover: 4.519 million euros**

# Relevance of public enterprises in Spain today

- **Public enterprises at central level are grouped in two main institutions:**

## **2) DGPE 2019**

- **3 enterprises providers of services (accommodation and catering, lottery and credit insurance)**
- **14 enterprises (investment, cultural events, instrumental and others)**
- **Employment: 6.916**
- **Turnover: 10,1 million euros**

# Current situation on accountability, anti-corruption and transparency of POEs. Legal framework

- Definition of public enterprise is based on the criteria of ownership and/or control for a public administration at any government level
- Use of different and confuse legal forms (at least 8 kind with some particularities at national level. Autonomy at regional level)
- Confusion: Absence of objective criteria for a choice of the legal form
- Scarce legislation and characterised by fragmentation
- Key element: to seek the escape from administrative law (more rigid, bureaucratic and slow, less responsive)
- Different legal forms with own legal status, ruled by private law and with certain guarantees concerning transparency, publicity and the management of the assets, budget, economic contracting and personnel hiring

# Current situation on accountability, anti-corruption and transparency of POEs. Legal framework

- **General framework**
  - **Spanish Constitution (1978, art. 128.2)**
  - **Different Statutes of Autonomy**
  - **Treaty of Rome (arts. 7, 85, 94, 222)**

# Current situation on accountability, anti-corruption and transparency of POEs. Legal framework

- **More specific framework**

- Law 39/2015 on the Common Administrative Procedure of Public Administrations
- Law 40/2015 on the Legal Regime of the Public Sector
- Law 47/2003 General Budgetary Law
- Law 33/2003 on the State Assets of Public Administrations
- Royal Decree 1373/2009 approving the General Regulations of Law 33/2003 on Public Administration Assets
- Law 9/2017 on Public Sector Contracts
- Law 19/2013 on transparency, access to public information and good governance
- Law 22/2015 on the Auditing of Accounts, regarding non-financial information and diversity
- Royal Decree 451/2012 regulating the system of remuneration of senior managers and directors in the state public sector

# Current situation on accountability, anti-corruption and transparency of POEs. Legal framework

- **Main legal reference: Law 19/2013 on transparency, access to public information and good governance**
- **Aim:**
  - To broaden and strengthen the transparency of public activity
  - To regulate and guarantee the right of access to information concerning public activity
  - To establish the obligations of good governance as requirement of the responsibility for all those who carry out activities of public relevance
- **It applies to all public administrations and public enterprise sector, as well as to other institutions concerning the activities subject to administrative law**
- **Effects, results?**

# Corruption Perception Index in Spain

Rank 2019	Country	CPI score 2019	Lower CPI	Upper CPI
1	Denmark	87	82,83	91,17
1	New Zealand	87	83,25	90,75
<b>30</b>	<b>Spain</b>	<b>62</b>	<b>56,81</b>	<b>67,19</b>
180	Somalia	9	6,15	11,85

Source: Corruption Perception Index 2019 by International Transparency

- Improvement from 2018 (CPI Spain 2018: 58, rank 41), but far from 65 (2012)
- Subjective perception and affected by citizens tolerance

# Index of Transparency of public enterprises in Spain

- International Transparency also elaborates a new index: Index of transparency of public enterprises in Spain
- It assesses the 45 largest public enterprises, which represent 2,3% of GDP, invest 22% of GDP and 7% of employment
- It measures 6 areas based on 60 indicators
- This index shows an average score of 45,3 (out of 100) in 2018
- Only 19 of the 45 public enterprises overcome the test
- High dispersion: The first enterprise scores 74,2 and the last one 15,8.
- It only analyses the transparency, not corruption. It aims at promoting the information culture of public enterprises and increasing the level of useful and important information that these enterprises provide



# Index of Transparency of public enterprises in Spain

Score	Number of enterprises
>10-20	2
> 20-30	9
> 30-40	9
> 40-50	6
> 50-60	5
> 60-70	11
> 70	3

Source: Index of transparency of public enterprises in Spain by International Transparency

# Index of Transparency of public enterprises in Spain

Area	Score
Information about the enterprise	48,6
Relations with society, users or stakeholders and quality of services	49,7
Financial and economic transparency	44,0
Transparency in contracting and agreements	49,3
Data access rights	36,1
Corruption prevention and compliance in transparency and good governance	30,6

Source: Index of transparency of public enterprises in Spain by International Transparency

# Index of Transparency of public enterprises in Spain

## Indicators on Corruption prevention and compliance in transparency and good governance area

A system for the prevention of corruption approved by the Council or Governing Body exists, and its description is published, detailing the main risks and controls that are carried out, and there is a body responsible for monitoring and updating them

The training and/or dissemination actions carried out on the compliance programme and/or system for the prevention of corruption and criminal risks are published (if they have not been carried out, this will be expressly indicated on the website)

A code of ethics, code of conduct or good corporate governance exists and is published (in accordance with Article 112 of Law 40/2015)

There is a link to the Whistleblower Channel, which is regulated by a protocol detailing procedures for the protection of the whistleblower and which will also accept anonymous complaints

Possible sanctions and disciplinary measures for non-compliance with the Corruption Prevention Programme or the Code of Ethics and Good Governance are published, as well as the sanctions imposed in such cases

Existence of a Manual, Protocol or Plan of procedures for Transparency and good governance, approved by the highest governing body, which details the responsibilities in matters of active transparency, as well as the mechanisms and means in place for regulatory compliance

**Source: Index of transparency of public enterprises in Spain by International Transparency**

# Main Risks

- **Public enterprises face several risks.**
- **The main risks and problems identified in Spain are the following:**
  - **Mission drafts**
  - **Undue political influence**
  - **Lack of professional management**
  - **Short-term managements periods**
  - **Contracting procedures**
  - **Confusion between the public and private spheres (reverse doors, privatization and outsourcing processes)**





# Some initiatives

- **Forética: Corporate Social Responsibility Action Group to advance in the achievement of Sustainable Development Goals and transparency in public enterprises**
- **FIDE: Working Group to improve the governance of public enterprises in Spain (5-25 plans)**

# Some initiatives

## Plan 5 - 25 for the reform of the Institutional Public Sector in Spain

The Plan 5 - 25 is configured around 5 AXES and 25 concrete PROPOSALS for the strengthening and development of the Business Sector in Spain and the improvement and sustainability of the economy.

Autonomy	Market	Appointment Forms	Good Governance and Transparency	Boards of Directors
 <p><b>1</b> State Ownership Policy.</p> <p><b>2</b> Separate Ministries, Owners and Administrations.</p> <p><b>3</b> Objectives Establishment.</p> <p><b>4</b> Operational Autonomy.</p>	 <p><b>5</b> Level playing field for accounting, regulatory and fiscal reasons</p> <p><b>6</b> Rates of return consistent (competitive markets).</p>	 <p><b>7</b> Merit-based nomination.</p> <p><b>8</b> Directors selection through independent entity.</p> <p><b>9</b> Minimum appointment deadlines. Cessation assumptions rated.</p> <p><b>10</b> Congress and Senate Committees reinforcement.</p>	 <p><b>11</b> Equal standards to listed companies.</p> <p><b>12</b> Greater responsibility in internal control.</p> <p><b>13</b> Ethical and Integrity Culture.</p> <p><b>14</b> Non external activities financing.</p> <p><b>15</b> Internal Auditor and Auditing Committees.</p> <p><b>16</b> Coordination with Control Organisms.</p> <p><b>17</b> Standardization of public Information of Companies in the Public sector State, Autonomic and Local level.</p>	 <p><b>18</b> Gender Equality Promotion.</p> <p><b>19</b> Board Members' Responsibility.</p> <p><b>20</b> Medium and long term overview.</p> <p><b>21</b> Reduce Boards of Directors.</p> <p><b>22</b> Professional selection procedures.</p> <p><b>23</b> Independent Board Members and specialized Committees..</p> <p><b>24</b> Employee representation.</p> <p><b>25</b> External Evaluation of the Boards.</p>

# Conclusions

- The analysis shows a clear need to increase the current level of anti-corruption, transparency and accountability
- The Law 19/2013 on transparency, access to public information and good governance is a step forward, but not enough
- The mere existence of laws on transparency, anti-corruption or accountability does not seem enough if it is not accompanied by other measures and actions to prevent corruption

# Conclusions

- The main risks and problems identified are the political influence, the lack of professional management, the contracting procedures, and the confusion between the public and private sphere
- There are excessive bureaucratic, administrative and formal controls ex-ante and ex-post by the General Intervention. However, these controls are not effective
- There is a clear need of improvement with implementation of clear and simple procedures, best practices and effective regulations and controls



# Limitations and further research

- This research is only a first step for a later comparison with the situation of other European countries
- It also provides input for giving advice and improving the effectiveness of accountability, anti-corruption and transparency policies

**Many thanks for your attention**

**Questions, comments and suggestions**

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