



SPAIN

# ACCOUNTABILITY AND TRANSPARENCY POLICIES IN SPANISH PUBLIC-OWNED ENTERPRISES

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## **Accountability and transparency policies in Spanish Public-Owned Enterprises (POEs) / Spain**

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### **Abstract**

The hybrid nature of Public Owned Enterprises (POEs) presents opportunities, difficulties, and challenges. This paper focuses on the implementation of transparency, anti-corruption and accountability in POE in Spain. Spain is one of the European countries with lower importance of public owned enterprises. However, the privatisation process has been intense in Spain and it is accompanied by a parallel process of development of public enterprises at the regional and local levels.

The analysis shows the need to improve the compliance of anti-corruption, transparency, and accountability measures by public enterprises in Spain. The mere existence of laws on this field is not enough to prevent corruption. The main risks and problems identified concern the political influence, the lack of professional management, the contracting procedures, and the confusion between the public and private sphere.

**Keywords:** public owned enterprises, transparency, accountability, corruption, anti-corruption, compliance, organizational forms, Spain

**JEL-Codes:** H11, H4, H70, H82, H83, L3

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## 1. Introduction

Public owned enterprises are a hybrid form of organization between public administration and private enterprises. Nowadays, the framework of the New Public Management provides a more business-oriented approach to the management of POEs.

POEs present some features that may constitute advantages for their relevant role in economy, in terms of their dimension and contribution in national and global spheres, as well as drivers of structural change (Wade, 1990; Chang & Cheema, 2001; Comín & Díaz, 2004; Millward, 2005; Bernier, 2014; Sánchez-Carreira, Vence & Rodil, 2020). However, POEs also face some specific difficulties and risks. Among these risks, bad behaviours, such as corruption, arise (World Bank, 2014; OECD, 2015, 2018, 2019; G20, 2018; Wilkinson, 2018).

Although the wide literature about POEs is mainly focused on efficiency, some relevant issues are neglected. In this sense, there is a research gap about the transparency, anti-corruption, and compliance in POEs (Florio, 2014; Grossi, Papenfuß & Tremblay, 2015). This is striking, given that bad behaviours concerning these issues may increase costs and undermine efficiency (Wilkinson, 2018).

This paper addresses the accountability, transparency, and anti-corruption policies in POEs in Spain. Specifically, it poses the following five questions:

1. Which are the main legal and organizational forms adopted for POEs in Spain?
2. Which is the relevance of public enterprises in Spain (number of people employed, economic impacts, sectors, trend in the last decades)?
3. Which is the current situation/approach on accountability and anti-corruption in Spain?
4. Which have been the main anti-corruption and compliance measures (legal acts, guidelines, etc.) adopted for POEs in Spain?
5. Which are the main effects, risks, and flaws emerging from the previous analysis concerning accountability, transparency, and anti-corruption policies in POEs in Spain?

This paper is organised as follows. After this introduction, the second section presents the configuration of the institutional public sector and the main legal and organizational forms adopted for POEs in Spain. The third section approaches the current relevance of public enterprises in Spain and their evolution. The fourth section deals with the current situation on accountability, anti-corruption, and transparency in POEs in Spain, presenting the legal framework and main anti-corruption and compliance measures. The fifth section tackles the main risks, problems and flaws

concerning accountability, anti-corruption, and transparency in POEs in Spain. Finally, some conclusions and remarks derived from the analysis of the Spanish situation are presented.

## **2. The main legal and organizational forms of POEs in Spain**

The public sector is a complex organization composed by a broad range of varied entities. In fact, the entities that form the public sector in Spain account for a total of 17.688 in 2020. Overall, the public sector can be divided into Public Administration and Institutional Public Sector. The public administration in Spain consists of 13.010 entities in 2020, according to the Inventory of entities belonging to the Public Administrations sector, elaborated by the Spanish Ministry of Finance. These entities are mainly concentrated on the local level (12.986 entities, which means 99,82% of the total), while the regional and even more the central levels are residual, with 17 and 7 entities, respectively. The institutional public sector embraces different kinds of legal forms with the purpose of performing different public functions, being considered as instrumental. According to the article 2 of the General Budget Law (Law 47/2003 of 26 November 2003), the central public sector consists of the following entities:

- a) The General Administration;
- b) Autonomous bodies dependent on the General Administration;
- c) Public corporate entities, dependent on the General Administration, or any other public bodies linked to or dependent on it;
- d) The managing bodies, common services, and mutual insurance companies for accidents at work and occupational illnesses of the Social Security in their public function of collaboration in the management of the Social Security;
- e) Trading companies, as defined in the Public Administration Assets Act;
- f) Public sector foundations, as defined in the Law on Foundations;
- g) Public entities under public law other than those mentioned in paragraphs b) and c);
- h) The consortiums endowed with their own legal personality according to the article 6.5 of Law 30/1992, of 26 November, on the Legal Regime of Public Administrations and Common Administrative Procedure, and 87 of Law 7/1985, of 2 April, regulating the Bases of the Local Regime.

Article 2.1 of Law 40/2015 on the Legal Regime of the Public Sector sets up that this law is applied to the public sector, which comprises the General State Administration, the Administrations of the Autonomous Communities, the entities that make up the

Local Administration, and the institutional public sector. Therefore, it is applied to the different levels of government, which are national, regional, or local levels. Likewise, the institutional public sector is defined in the article 2.2. It comprises any public bodies and public law entities linked to or dependent on the Public Administrations, private law entities linked to or dependent on the Public Administrations, and public universities.

Within the institutional public sector, it is found the public enterprise sector. The delimitation of the public enterprise sector is a complex task, due to its functional and institutional heterogeneity. There are different definitions of public enterprises, but all of them share that they carry out an economic activity and that they are owned or controlled by the public sector. Spain follows the criteria of the European System Account (ESA-2010), OECD and United Nations, based on the ownership and/or control for a public administration at any government level. Thus, a majority participation is not required to be a POE, being decisive to have the control of the entity. In this way, the definition of public owned enterprise is difficult and not precise. Whereas the criterion of ownership is accurate, the criterion of control is vaguer, because how public authorities can control an enterprise differ. Therefore, it can be concluded that a public enterprise is defined as that type of economic unit that is controlled by the public sector, regardless of the total or partial ownership. In the case of partial ownership, the criterion for deciding whether a company should be considered public is not primarily the exact percentage of ownership, but rather the effective control that the public sector exercises over the enterprise and its decision-making. It means that it can be POEs without majority participation by the public sector and even without public participation. Moreover, it may exist an enterprise totally owned by the public sector, which is not considered POE, because it is not controlled by the public sector. This is the case of the Spanish Radio and Television Corporation<sup>1</sup>, ruled by the Law of Creation of the RTVE Corporation (Law 17/2006 of 5 June 2006) to ensure its independence, neutrality, and objectivity (IGAE, 2020).

According to article 3 of Law 47/2003, the public enterprise sector encompasses public corporate entities, trading companies and the entities mentioned in the former paragraphs g) and h) of article 2 not included in the administrative public sector.

There are different modalities of legal forms for POEs. The combination of public and private law differs according to the legal form. Any of the different legal forms provide own legal status, more flexibility and agility. Moreover, they are mainly ruled by private law, although they require certain guarantees concerning transparency, publicity and the management of the assets, budget, economic contracting, and personnel hiring. However, there are no clear criteria to select the concrete legal form. The key element is to seek the escape from administrative law, which is more rigid, bureaucratic, slow, and less responsive. Furthermore, the different levels of government, which are national, regional, or local levels, also follow this structure.

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<sup>1</sup> The Spanish denomination is Corporación Radio Televisión Española (RTVE).

However, they may use other similar denominations, because each region has autonomy to create their own legal forms. This leads to increase confusion about the different legal forms for public ownership.

The legislation concerning public enterprises in Spain is scarce and very fragmented (García Ruiz, 2009; Matilla, 2016). The general framework for the existence of the POEs is composed by the Spanish Constitution (article 128.2) approved in 1978, the different regional Statutes of Autonomy and even the Treaty of Rome, which is the founding treaty of the EU (articles 7, 85, 94, 222). Article 128.2 of the Spanish Constitution allocates the possibility of public economic initiative to the central public sector, extending it to the Autonomous Communities and Local Entities. The regions can create their own regional public business sector, subject to the state laws, the Statutes of Autonomy, and the regional assets laws. Within the European framework, article 222 of the Treaty of Rome states that the European Community does not preclude the ownership of the enterprises, setting the principle of neutrality and equal treatment for public and private companies, dominating the principle of free competition and not discrimination by nationality or ownership, which is one of its fundamental bases (Sánchez, 2006). The specific framework on POEs consists of the Law 39/2015 on the Common Administrative Procedure of Public Administrations, the Law 40/2015 on the Legal Regime of the Public Sector, and the Law 47/2003 General Budgetary Law.

Table 1 presents the composition of the public institutional sector in Spain by level of government, data retrieved from the Spanish Inventory of State, Autonomous and Local Public Sector Entities (INVENTE<sup>2</sup>), elaborated by the General Intervention of the State Administration (IGAE<sup>3</sup>), which is part of the Ministry of Finance. INVENTE is a public administrative register, which provides public information and the organisation of all the entities that comprise the institutional public sector, regardless their legal nature. This inventory contains information on the name, legal form, structure of ownership, activity, and other legal data. Nevertheless, it does not include economic information, such as turnover, employment or economic and financial results. The public institutional sector in Spain is composed of 4.678 entities on 31 December 2020. Most of these entities (2.885 entities, 61,67% of the total) depend on the local level, due to the existence of 8.131 municipalities. Moreover, 1.348 entities (28,82% of the total) belong to the regional level, in which are 17 Autonomous Communities and 2 Autonomous Cities. Finally, 445 entities (9,51%) correspond to the central level. Therefore, the total number of entities show that Spain is a high decentralized country both in territorial and functional terms.

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<sup>2</sup> The Spanish denomination is *Inventario de Entes del Sector Público Estatal, Autonómico y Local* (INVENTE). It is regulated by Royal Decree 749/2019, of 27 December, which approves the Regulations for the operation of the Inventory of State, Autonomous and Local Public Sector Entities, developing the lines set out in articles 82 and 83 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector.

<sup>3</sup> The Spanish denomination is *Intervención General de la Administración del Estado*.

Concerning the public enterprise sector, it is composed of 2.623 entities at the different levels of government. The distribution by level of government shows a similar pattern than in the whole of the public institutional sector, with the local level concentrating 65,15% of the public enterprise sector entities; the regional level accounts for 26,28% of these entities, while the central level represents 8,58%.

**Table 1. Composition of public institutional sector in Spain in 2020**

Legal form	Level of government			Total
	Central	Regional	Local	
Administrative Autonomous Bodies	0	91	618	709
Agencies	9	16	0	25
Autonomous Bodies	59	50	221	330
Commercial Autonomous Bodies	0	12	6	18
Consortia	73	149	289	511
Foundations	36	394	302	732
Fund without legal personality	28	23	0	51
Independent Administrative Authority	6	0	0	6
Management entities, common services of the Social Security	6	0	0	6
Mutual collaborator with the Social Security	21	0	0	21
Other body and entity under public law linked to or dependent on the State Administration	31	0	0	31
Other non-profit institutions	0	24	20	44
Other public law entities	23	1	0	24
Public corporate entities	13	52	55	120
Public entities	0	152	0	152
Public Universities	1	48	0	49
Trading companies	139	336	1.365	1.840
User communities	0	0	9	9
Total	445	1.348	2.885	4.678

Source: INVENTE (IGAE).

The characterization of the public enterprise sector shows a clear predominance of the trading companies (1.840 entities, 70,15%). This legal form is followed at a considerable distance by consortia (511 entities, 19,48%). Moreover, there are 152 public entities (5,79%) and 120 public corporate entities (4,57%).

It should be underlined that the trend of the public institutional sector as well as the public enterprises sector is to increase the number of entities since mid-90s until the recent years. Many of them were created for instrumental purposes, including hiding or centrifuging deficits, because the budgets of these entities were not consolidated with public sector budgets for many years. This growth trend is opposite to the privatisation trend at the central level. Moreover, the regional and local entities are



mainly service enterprises or instrumental ones (investment or cultural events). The reports of the Ministry of Finance show a decrease in the number of these entities can be noted, in particular, at the regional and local levels, due to the approval of plans for rationalisation of the public sector since 2010.

### **3. The relevance of public owned enterprises in Spain**

This section approaches the current economic relevance of POEs in Spain, as well as their evolution in the last decades. Concerning the relevance of public enterprises, Spain is currently one of the countries with less relevance of POEs enterprises in quantitative terms within the EU. This is due to the traditional lower significance of POEs in Spain, as well as the strong privatization process.

Despite the lower relevance of POEs in Spain, they have been relevant players in the industrial and technological development (Braña, Buesa & Molero, 1984; Martín & Comín, 1990; Comín & Díaz, 2004; Sánchez, 2006; Sánchez-Carreira et al., 2020). The contribution of the POEs in the industrial sector has been very significant, underlining in several key activities, such as energy, defence, manufacture of transport equipment or services (Myro, 1981). In fact, the leading industrial group in the country has been the public corporation National Institute of Industry (INI<sup>4</sup>) for many years. This entity has also directly participated in more than 200 enterprises of all sectors (Martín & Comín, 1990; Sánchez, 2006).

#### **3.1. The current relevance of public owned enterprises in Spain**

As it was mentioned in the section 2, INVENTE does not include economic information concerning the institutional and enterprise public sectors. Thus, there is a lack of homogeneous and aggregated data at the regional and local levels. The public sector as a whole (including the decentralized administration) amounts to 2.598.481 employees in Spain in 2020, according to the Ministerio de Política Territorial y Función Pública (2020). The staff of the public enterprise sector is estimated at 161.500 employees in Spain in 2020. This total shows that the larger local and regional public sectors provide less employment than the central public enterprise sector. This fact is explained by the different activities, more oriented to services and instrumental functions in the decentralized public enterprise sector. Moreover, it accounts for most of the entities, although the size of the entities is smaller than in the central public enterprise sector, with some exceptions (such as the entities that manage health or radio and television).

Therefore, this section focuses on the central public enterprise sector. According to the last annual report of the IGAE concerning the central public enterprise sector in Spain (IGAE, 2020), it is comprised of a total of 201 entities on 31 December 2018.

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<sup>4</sup> The Spanish denomination is Instituto Nacional de Industria.

Table 2 presents the distribution of these entities by activity. Transport and storage is the most relevant branch, which represents 27,86% of the total number of entities. It is followed by Financial and insurance activities (18,41%) and Construction and real estate activities (11,94%). A total of 14 entities (6,97%) are found without economic activity or in dissolution.

**Table 2. Distribution by activity of the central public enterprise in Spain in 2018**

Activity	Number of entities	% of entities
Agriculture, livestock, forestry and fisheries and extractive industries	6	2,99
Manufacturing industry	8	3,98
Water supply, sanitation, waste management and decontamination activities	5	2,49
Construction and real estate activities	24	11,94
Wholesale and retail trade and hotel and catering trade	3	1,49
Transport and storage	56	27,86
Information and communications	13	6,47
Financial and insurance activities	37	18,41
Scientific, technical and administrative professional activities and support services	19	9,45
Public Administration and Defence, Compulsory Social Security and Education	12	5,97
Artistic, recreational and entertainment activities	4	1,99
No economic activity	14	6,97
Total	201	100,00

Source: IGAE (2020).

The main economic data of the public enterprise sector are presented in Table 3.

**Table 3. Main economic data of the central public enterprise sector in Spain in 2018**

Economic Indicator	Value
Turnover (in thousands of euros)	28.716.647
Results (in thousands of euros)	2.107.002
Asset (in thousands of euros)	253.970.820
Employment (number of people)	144.580

Source: IGAE (2020).

Nowadays, the most relevant public enterprises at the central level can be dependent on different ministries, underlining the transport area (77 entities in 2018), due to the management of the entities concerned with rail, port or airport infrastructures. Apart from the entities depending directly on the ministries, most of the POEs (85 entities) in Spain are grouped in the following two institutional groups depending on the Finance Ministry.

- 1) The General Direction of State Assets (DGPE<sup>5</sup>) was created in 1967 with the purpose of the management, processing and information on issues related to the public participation. It is composed of a heterogeneous group of companies, mainly from non-industrial sectors, such as accommodation and catering, lottery, and credit insurance; and other enterprises devoted to investment, cultural events, instrumental and others. This group employs 6.520 people, its turnover amounts to 8,451 million euros, and net results are 1.015.857 thousand of euros. Table 4 presents the enterprises that form DGPE and their economic data in 2020.

**Table 4. Enterprises that form the DGPE in 2020**

Activity	Name of enterprise	Turnover (thousands of euros)	Net result (thousands of euros)	Employment
Services enterprises	CESCE	147.768	25.041	423
	Paradores de Turismo	131.647	-63.830	3.700
	S.E. Loterías y Apuestas del Estado	7.310.974	1.489.251	513
Investment enterprises	Aguas de las Cuencas de España (Acuaes)	82.715	13	87
	Aguas de las Cuencas Mediterráneas	119.000	-13.852	84
	Canal Navarra	9.404	-12.841	2
	Infraestructuras Agrarias	31.130	-3.083	71
	S.E. Infraestructuras Transporte Terrestre	201.229	-394.935	551
	SIEPSE	335.273	-295	43
Cultural activities enterprises	S.E. de Acción Cultural (SEACSA)	31	-13.803	54
Instrumental enterprises	SEGIPSA	28.351	1.831	240
	SEGITTUR	561	-45	49
	SENASA	31.909	-966	607
Other enterprises	CIA. Española de Reafianzamiento (CERSA)	0	0	15
	Empresa Nacional de Innovación	21.120	5.036	52
	EXPASA	34	-1.665	19
	SECEGSA	0	0	10
Total enterprises		8.451.446	1.015.857	6.520

Source: DGPE.

<sup>5</sup> The Spanish denomination is Dirección General de Patrimonio del Estado.

2) The National Society of Industrial Participations (SEPI<sup>6</sup>) was created by Royal Decree-Law 5/1995, of 16 July 1995, to group public shareholdings in industrial and service companies. Its main objective is to achieve the strengthening of its companies and their future viability, allowing them to face new competitiveness factors and the challenge of globalisation and continuous technological innovation. SEPI is the successor to the former INI. It is composed of 14 enterprises with majority participation in the sectors of postal service, shipbuilding, energy, food distribution, agricultural and environmental services, mining, tobacco, business promotion, leisure and sports, and financial services. Moreover, nine enterprises are minority owned by SEPI in the energy, technology, food, aerospace, telecommunications, or waste management areas. It also has indirect participation in other 100 enterprises. It employs more than seventy-eight thousands workers in 2019. Its turnover amounts to five thousands million euros. The group also invests around 153 million of euros and exports 938 million of euros in 2019.

Table 5 presents the enterprises that form the SEPI and the available economic data. It should be mentioned that the public sector does not provide economic data for the minority owned enterprises. For this reason, the table collects the information published in the last annual report of this entity, which correspond to 2019.

**Table 5. Enterprises that form the SEPI**

Majority-owned enterprises					
Activity (Market share)	Name of enterprise	% of public participation	Turnover (million of euros)	Net result (million of euros)	Employment
Postal service (45,2%)	Grupo Correos	100	2.266	14,5	56.236
Shipbuilding (24,7%)	Grupo Navantia	100	1.237	-145	4.112
Environmental and agriculture (18,9%)	Grupo Tragsa	51	879	6,5	13.194
	Cetarsa	79,18	69,6	1,7	366
	Mayasa	100	0,9	-2,2	61
	Saeca	80	5,8	3,1	42
Food distribution (0,4%)	Grupo Mercasa	51	19,5	7,1	154
Energy (7,9%)	Grupo Enusa	60	324	3,8	797
	Ensa	78,75	73,3	-3,8	653
Communication (1,8%)	Agencia Efe	100	87,9	-8,8	1.110
Mining (0,6%)	Grupo Hunosa	100	31	-11	750

<sup>6</sup> The Spanish denomination is Sociedad Estatal de Participaciones Industriales.

Majority-owned enterprises					
Activity (Market share)	Name of enterprise	% of public participation	Turnover (million of euros)	Net result (million of euros)	Employment
Business promotion (0,3%)	Grupo Sepides	100	20,1	3,6	123
Leisure and sport (0,2%)	Hipódromo de la Zarzuela	95,78	8,9	-6,9	136
Orderly management and winding-up of dormant companies	Cofivacasa	100	-	-	-
Minority-owned enterprises					
Activity	Name of enterprise	% of public participation	Fair value participation (million of euros)	Result contribution (million of euros)	Publicly listed companies
Aerospace	Airbus Group	4,16	4.207	-56	Yes
	Alestis Aerospace	24,05	-	-	No
Air transport	IAG	2,52	363	33	Yes
Energy	Red Eléctrica Corporación	20,00	1.940	144	Yes
Energy	Enagás	5,00	298	21	Yes
Radioactive waste management	Enresa	20	-	-	No
Technology	Indra	18,71	337	10	Yes
Telecommunications	Hispatat	7,41	-	-	No
Food	Ebro Foods 3	10,36	307	5	Yes
	<b>Turnover (million of euros)</b>	<b>Net result (million of euros)</b>	<b>Employment</b>	Exports (million of euros)	
Total enterprises	5.009	-237	78.079	<b>153</b>	

Source: Own elaboration based on SEPI (2020).

### 3.2. The evolution of public owned enterprises in Spain

This subsection briefly deals with the history and evolution of POEs in Spain, following a comparative approach with the EU.

Like in other European countries, the roots of public enterprises in Spain are found in the Royal Factories of the 18<sup>th</sup> century. They were mainly dedicated to textiles and metallurgy. During the 19<sup>th</sup> century under the predominance of liberalism, privatizations arose concerning land, mines, canals, and Royal Factories. However, forest, state mines, public services (roads, ports, post, or telegraph) remain public (Martín & Comín, 1988; Sánchez, 2006).

The major importance of the POEs in Spain is in the 20<sup>th</sup> century, in particular, after the Second World War, in the context of the golden age of the capitalism. Previously, in the first third of that century, public enterprises rise, mainly in the activities of official banks, municipal services, telecommunications (Telefónica), air transport (Iberia) or oil (CAMPSA) (Martín & Comín, 1990; Sánchez, 2006).

A key element in the growth of POEs in Spain has been the creation of the National Institute of Industry (INI) in 1941, following the Italian experience. It was an instrument of industrial policy, aimed at industrializing the country in a context of economic autarchy, ensuring the supply of basic and economic products, given the low ability of the private initiative and the limited financial resources to invest in industrial and new activities. The INI became the main national industry holding and many enterprises were the main player of its sector. It participates in around two hundred enterprises of different sector during the more than five decades of its existence. Its main focus was on strategic and basic activities (iron, coal, energy, oil, defence, transport manufacturing, steel, transport services, equipment, ...). During the first decades, the holding addresses its expansion and ambitious industrial projects. In the sixties, its role is reduced and mainly secondary, acting only to fill the absence of private initiative. In the seventies, its main role is social, taking over private enterprises in crisis across a wide range of sectors. Thus, the INI became a hospital for private enterprises in crisis, being a countercyclical policy instrument. This fact increased the complexity of management due to the variety of enterprises, many of them going into losses and setting the path for starting privatization in the 1980s (Martín & Comín, 1990; Carreras, Tafunell & Torres, 2000; Sánchez, 2006).

Concerning privatizations in Spain, three main steps can be identified. The process has begun in mid-1980s within the difficult situation of the INI, mainly due to its social function during the seventies. New business-oriented criteria were introduced to restructure INI, with the purpose of seeking productive efficiency, profitability, and financial reorganisation. Thus, the public sector divested unprofitable enterprises, activities that are not considered strategic and even those that require high investment to upgrade in industrial and technological terms. The main method used for privatization in this first step is direct selling. Most of the large enterprises were sold to foreign enterprises (e.g., automotive or computer industry), which provide the financial and technology viability. It should also be mentioned that some of these processes were undertaken at a negative price. This means that the public sector does not receive real income from privatization, given that it assumes the debts of the enterprise, the required investments to guarantee its viability or the restructuring of employment. The main reasons for the privatization at this stage were strategic, as well as the budgetary and technological constraints. Thus, privatization was explained by financial, industrial, and technical rationalities and based on a microeconomic pragmatic approach (Bilbao, 1995; Martín, 1996; Bel & Costas, 2001; Sánchez, 2006).

The second step began in the early 1990s and the main reason for privatization is the reduction of public deficit. The process affects to service enterprises in regulated and less competitive sectors, which generated profits. Most of the privatizations were carried out through the stock market. It should be underlined that the privatizations were partial, remaining the public sector as shareholder of the enterprises (Bilbao, 1995; Martín, 1996; Bel & Costas, 2001; Sánchez, 2006). This is a gradual process but progressively advancing until a full privatization. In this sense, the privatization process is based on a pragmatic character with a predominance of the macro-economic perspective (Martín, 1996).

The third step started in 1996, when the privatizations were accelerated. They form part of a global plan to privatize all the public enterprises. In this time, the main enterprises, also named the crown jewels, were privatized mainly through the stock market. The public sector lost the participation in strategic sectors. It involves the most relevant process both in quantitative terms and in speed. Although there is an ideological approach to privatization, the economic reasons concerning the access to the euro is critical in the process as in other European countries.

At the turn of the century there has been a slowdown in privatization processes. It is true that the bulk of the public enterprise sector was already privatized, but there was still room for privatization. Table 6 shows the evolution of revenues from privatization process in Spain in the period 1986-2001. The revenues are mainly concentrated in the last half of the 90s and specifically in the years 1997 and 1998, with revenues exceeding 25.000 million of euros. Spain has one the most outstanding countries in the privatization process, although the importance of the POEs is low.

**Table 6. Revenues from privatizations in Spain**

Year	Revenues (million of euros)	% GDP
1986	79	0,04
1987	579	0,3
1988	551	0,2
1989	815	0,3
1990	-	-
1991	-	-
1992	480,81	0,1
1993	2.404,5	0,7
1994	1.081,82	0,3
1995	2.449,12	0,6
1996	2.025,41	0,5
1997	12.481,46	2,7
1998	13.083,29	2,6
1999	2.899,67	0,5
2000	993,10	0,16
2001	836,33	0,13

Source: CCP.

Finally, it should be mentioned that in the 21<sup>st</sup> century, some privatization process has occurred, but their dimension is low. Moreover, new public enterprises emerge, in some cases due to the financial crisis. The current situation derived from the Covid-19 incidence leads to increase the role of public sector in the economy, including its role as producer.

Table 7 presents the economic relevance of the POEs in Spain in the period 1966-2001. It shows the increasing contribution of POEs to value added, investment and employment until mid-80s. Therefore, POEs contributed to the Spanish economy with the 10% of the added value, 27% of the investment and almost 5% of employment in 1985. Since then, their economic relevance continuously decreases, mainly during the 90s. Thus, POEs contributed 2,1% of added value, 3,6% of investment, and 1,1% of employment in 2001.

Unfortunately, IGAE has not longer published this economic information since 2001. The importance of the investment effort of public enterprises in comparison with its lower impact on employment shows that public enterprises in the Spanish economy were highly specialised in capital-intensive activities. In a business structure characterized by its small dimension, as it happens in the Spanish case, the public enterprises are relatively large, and comparable to those of the large European groups. The INI has been the leading Spanish company for many years, ranking among the top twenty European companies, and including in the Fortune Global 500. Moreover, several SOEs occupied the top positions among the most relevant Spanish enterprises in different variables (Carreras et al., 2000; Sánchez, 2006).

**Table 7. Evolution of the economic 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

Source: Own elaboration based on Comín, Martín & Jiménez (1992), IGAE (Several years), Myro (1993), and Sánchez (2006).



The evolution of the public enterprise sector in Spain follows a similar pattern to the European one in both expansion and privatization stages, as it can be observed in Table 8. This trend is identified, despite the varying importance of SOEs in different European countries. It should be underlined the traditional low relevance of the public enterprises in Spain. The European countries with the greatest weight of public enterprises are Austria, France, Italy, and Germany. Spain belongs to the group of countries with less relevance of POEs, together with the United Kingdom and the Netherlands. These data are the mean of three indicators (contribution to Gross Added Value, investment, and employment) based on the data of the European Centre for Public Enterprises (CEEP). Unfortunately, this series of data has not been updated.

**Table 8. Evolution of the economic relevance of public enterprises in EU**

Country	1988	1991	1995	1999
Germany	11,6	11,1	10,7	11,0
France	18,3	17,6	14,7	11,8
Italy	19,0	18,9	14,2	9,6
Great Britain	7,4	4,4	2,7	2,3
Spain	10,0	9,0	8,0	4,1
Austria	27,0	16,9	13,3	12,0
Greece	20,8	20,2	15,4	14,3
Portugal	24,0	20,7	12,3	8,6
Netherlands	9,6	7,5	6,8	4,6
Denmark	11,9	11,5	9,7	7,8
European Union	13,3	11,8	10,4	8,9

Source: CEEP.

Concerning the relevance of the POEs in Spain, three main facts highlight: the high relevance of public enterprises in industrial sector; the intensity of the privatization process departing from a minor relevance of the public enterprises in Spain; and finally, the growth of public enterprises at the regional and local level in contrast to the privatization at the central level. Many of these enterprises are instrumental, created to avoid controls or not to be considered for the overall public deficit until a few years ago.

#### **4. Current situation on accountability, anti-corruption, and transparency in POEs in Spain**

Once presented the relevance of public enterprises in Spain, the current situation on of POEs is approached.

Previously, it should be indicated the current situation of corruption in Spain. Spain ranks thirty out of 180 countries in the Corruption Perception Index elaborated by International Transparency, achieving a score of 62 (from 0 to 100) in 2019. The higher the value of the index, the lower the level of corruption. It shows an improvement compared with 2018, when it scores 58 and ranks in the forty-one position, after several years worsening. However, it is far from what it would be expected for an economy among the top fifteen in the world. International Transparency estimates that Spain should be achieved a score of 70 points. The best scoring for Spain was in 2012, when it achieved 65 points. Denmark and New Zealand rank first, while Somalia is in the last position. It should be noted that this index is subjective, depending on the perception of citizens and, therefore, affected by the different tolerance and sociocultural issues.

Likewise, the Control of Corruption Index is estimated at the value of 0,65 (from lowest -2,5 to highest 2,5) for Spain in 2019, placing on the 73 percentile. The trend shows a decrease since 2012 and a shift towards growth since 2017. However, the current value is lower than 1,12 corresponding to 2012. This indicator also shows perceptions concerning the exercise of public power to get private interests and gains.

Concerning the legal framework for accountability, anti-corruption, and transparency in Spain, the main reference is the Law 19/2013 on transparency, access to public information and good governance approved in 2013. It means a novelty to improve transparency and good governance in the public sector. It addresses the following three main goals: to broaden and strengthen the transparency of public activity, to regulate and guarantee the right of access to information concerning public activity, as well as to establish the obligations of good governance and compliance measures. It involves a requirement of the responsibility for all those who carry out activities of public relevance. This regulation is applied to all public administrations and public enterprise sector, as well as to other institutions concerning the activities subject to administrative law.

Other relevant references of the legal framework concerning the public enterprise sector deal with assets, budgets, or contracts (adopted in twenty and seventeen) or retribution for directives. They are the following ones:

- 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;
- and Royal Decree 451/2012 regulating the system of remuneration of senior managers and directors in the state public sector.

One relevant issue is to know the effects and results of the implementation of the Law 19/2013 on transparency, access to public information and good governance in POEs. For that purpose, the Index of Transparency of Public Enterprises in Spain elaborated by International Transparency as a novelty is useful. This index assesses the 45 largest public enterprises in Spain, which represent 2,3% of GDP, 7% of the employment and invests 22% percent of GDP. It measures six areas based on sixty indicators.

This index shows an average score of 45,3 (out of 100) for public enterprises in Spain in 2018. Only 19 of the 45 public enterprises overcome the test. The first enterprise scores 74,2 and the last one 15,8. Table 9 shows the distribution of public enterprises by score of Index of Transparency of Public Enterprises. There is a high dispersion among the values of the enterprises, as it can see in Table 9. Only three enterprises overcome the score of seventy, while two enterprises scores less than twenty.

**Table 9. Distribution of enterprises by the score of Index of Transparency of Public Enterprises**

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.

The analysis of the scores by area shows that in overall any area achieve fifty points out of 100. The highest scores correspond with the areas of “Relations with society, users or stakeholders and quality of services”; and Transparency in contracting and agreements are near, followed by “Information about the enterprise”. The lowest score is in the area “Corruption prevention and compliance in transparency and good governance” (36). The second weakest field is “data access right”.

**Table 10. Distribution of scores by area of the Index of Transparency of Public Enterprises**

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

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

The analysis of this indicator shows a low performance, although a law on transparency and accountability exists. It should be underlined that this index only analyses the transparency, but 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. Finally, the indicators used for measuring Corruption prevention and compliance in transparency and good governance area by this index are presented in the Table 11. It is based on six indicators about the existence or publicity of system of prevention, body, manuals, codes of ethics, conduct or good corporate governance. Thus, there are based on formal aspects instead about the effectiveness.

**Table 11. Indicators to measure 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.

Many public enterprises have developed guides and codes of ethics, conduct or good governance to improve accountability and transparency. Most of these documents follow the models of the national and regional entities and they have a low participation both in internal and external terms.

Nowadays, two initiatives concerning public enterprises in Spain should be noted. It is curious that none of them comes from the public sector. The first one is developed by Forética, an association of enterprises and professionals of corporate social responsibility and sustainability leader in Spain and Latin America. Its mission is to promote the integration of social, environmental and good governance aspects in the strategy and management of companies and organisations. Forética created a Corporate Social Responsibility Action Group as a collaborative business platform composed of twenty-eight public enterprises to advance in the achievement of Sustainable Development Goals and transparency in public enterprises.

The second initiative is developed by the Foundation for Research on Law and Enterprise (FIDE<sup>7</sup>). It created a Working Group to improve the governance of public enterprises in Spain, which presents a report in 2020 (FIDE, 2020). The group identifies 25 proposals grouped in 5 axes, which are autonomy, market, appointment forms, good governance and transparency and boards. Some of these measures are in accordance with the results of these researches.

## **5. Main risks, problems and flaws concerning accountability, anti-corruption, and transparency in POEs in Spain**

Public enterprises face several risks, problems, and flaws concerning accountability, anti-corruption, and transparency in Spain. The main concerns identified in the analysis are the following ones.

- Mission drafts, due to the existence of many and different goals (sometimes contradictory or ambiguous) and the problem of the principal and agent (which is not exclusive of public enterprises).
- Undue political influence. The political criteria, personal or own interests decide against technical decisions. In this sense, the responsibilities are not clearly defined.
- Lack of professional management, using the management and directive positions according to political criteria to reward friends or politicians, even if they have not specific knowledge concerning the sector. Moreover, there are no incentives for being good professionals and good managers.

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<sup>7</sup> The Spanish denomination is Fundación para la Investigación en la Empresa y el Derecho.

- Short-term management periods. The limited period means that there is no opportunity to change, to plan and develop long-term plans.
- Contracting procedures are also relevant. The divisions of contracts at the different government levels avoid some controls and publicity. The criteria are a key issue. This field has generated problems in the different government levels in Spain, from the local to regional or national ones, including international operations of POEs.
- Confusion between the public and private spheres. The reverse doors for former politicians, or the privatization and outsourcing processes that open new ways of public-private collaboration, such as public private partnerships, are bad behaviours.

Moreover, there are excessive bureaucratic, administrative, and formal controls carried out by the General Intervention ex-ante and ex-post. However, these controls are not effective. There are not a clear, comprehensive, and effective system to detect, prevent and avoid bad practices. Another critical issue that can be considered a weakness is what happens when there is no compliance with laws and guides and these behaviours arise.

## **6. Final remarks**

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

The main risks and problems identified in Spain are the political influence, the lack of professional management, the contracting procedures, and the confusion between the public and private sphere.

Moreover, the existent controls are not effective to detect, prevent and avoid bad practices. There is a clear need of improvement with implementation of clear and simple procedures, best practices and effective regulations and controls. Training and internalisation of ethics are also crucial. POEs need to understand that it is useful for them. In this sense, they should be aware that good accountability, transparency and anti-corruption policies, transparency is not only efficient, but also create added value for the entity and sustainability, in line with Grossi, Papenfuß & Tremblay (2015). However, a merely formal compliance (for instance, if there is or not a protocol) is not enough for a real improvement.

This research means only a first approach to the situation in Spain. It is needed a deeper analysis and better economic information and about good and bad practices. It provides input for giving advice and improving the effectiveness of accountability, anti-corruption, and transparency policies. The next steps will be an in-depth study of some cases and the comparison with the situation of other European countries.

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