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**ACCOUNTABILITY AND
TRANSPARENCY POLICIES
IN AUSTRIAN PUBLIC-OWNED
ENTERPRISES**

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transparency policies in Public-Owned Enterprises*
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Accountability and transparency policies in Austrian Public-Owned Enterprises (POEs) / Austria

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Abstract

Public owned enterprises (POEs) are important to the daily lives of citizens. As they provide employment as well as services of general economic interest. Nevertheless, researchers also indicate negative side effects like undermining political control, accountability or public ethics. Fully public or partly privatized POEs have to balance the interests of society for service provision and the economic interests of shareholders. The paper gives an overview about accountability and transparency policies in Austrian Public Owned Enterprises.

Keywords: Accountability, Anti-corruption and compliance measures, Austria, Public Owned Enterprises, Transparency

JEL-Codes: H11, H44, D73, M48

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1. Introduction

Public owned enterprises¹ (POEs) are important to the daily lives of citizens. By providing employment as well as services of general economic interest in sectors as infrastructure (postal service or telecommunication), transport, health or education (Wilkinson, 2018; EC, 2020). About 20% of the Fortune Global 500 companies are POEs like railway or energy companies (Kowalski and Perepechay, 2015, Wilkinson, 2018). POEs have diverse functions for government, in particular national security, economic and social development as well as generating public services and public goods (Wilkinson, 2018). Christensen and Læg Reid (2003) describe partial privatization of POEs as a result of the public sector reform like New Public Management seeking for more efficiency. Nevertheless, researchers also indicate negative side effects like undermining political control, accountability or public ethics, of these reforms (e.g. Bergh et al., 2018; Shaoul, Stafford and Stapleton, 2012; Andersson and Erlingsson, 2012). Fully public or partly privatized POEs have to balance the interests of society for service provision and the economic interests of shareholders.

Hence, POEs (public or partly privatised) often have to cope with corruption. These problems increase with “improper political intervention, poor governance and a lack of transparency and accountability” (Wilkinson, 2018, 4). One form of improper intervention can be potential influence in the composition of management and advisory boards by politicians and public officials (Apriliyanti & Kristiansen, 2019). Public officials in their function of board members may be faced with conflicts of interest (OECD, 2016). The risk of corruption and political intervention increases, when POEs are not “equipped with autonomous, professional and independent boards responsible for ensuring an arms-length relationship between the SOE [POE] and the government” (OECD, 2016, 10). In POEs (public or privatised) we find the typical power rent-seeking (Ye and Hu, 2019; Krueger, 1974). Due to agency problems, public sector managers with control of the POEs may not aim at maximizing the interests of society or shareholders. In order to deal with corruption in POEs, “it is necessary to improve the internal [and external] supervision mechanism and strengthen the restriction and supervision of executive power” (Ye and Hu 2019, 266).

Against this background we state the following questions:

1. Which is the relevance of public enterprises in Austria (number, people employed, economic impacts, sectors, trend in the last decades)?
2. Which are the main legal and organizational forms adopted for POEs in Austria (private law, special law, role of holdings, governance structures)?

¹ In the paper at hand, we use the term public owned enterprise (POE) for public utilities on all government levels (federal, state, municipal) but sometimes also state owned enterprise (SOE), if only the federal level is meant.

3. Which is the current situation/approach on accountability and anti-corruption in Austria (importance of the theme, main legislative acts, etc.)?
4. Which have been the main anti-corruption and compliance measures (legal acts, guidelines, etc.) adopted for POEs in Austria?
5. Which are the main effects, risks, flaws emerging from the previous points?

2. Development of POEs in Austria - Which is the relevance of public enterprises in Austria?

To date March 2021 there exist 7.982 public enterprises in Austria on all levels (federal, state, municipal) (Statistik Austria, 2021). Details can be found in Table 1.

Table 1. Overview of public sector units according to ESA 2010 (Statistik Austria, 2021)

	ESVG 2010 (Europäisches System Volkswirtschaftlicher Gesamtrechnung = European System of National and Regional Accounts (ESA 2010))			
Sector	Non-financial corporate sector	Financial corporate sector	Government	Sum
Federal (Bund)	311	11	374	696
State (Land)	579	29	348	956
Municipal (Kommune)	1,650	9	4,543	6,202
Social insurance	8	2	48	58
Sum	2,548	51	5,377	7,982

With respect to persons employed in POE there exists no clear data in Austria. The data available in Austria is accumulated data of employees in public entities and public administration, there exists no separated data. The aggregated number of employees (Full Employment Equivalents) for the public sector (exclusive outsourced institutions) is as follows (<https://www.oeffentlicherdienst.gv.at>):

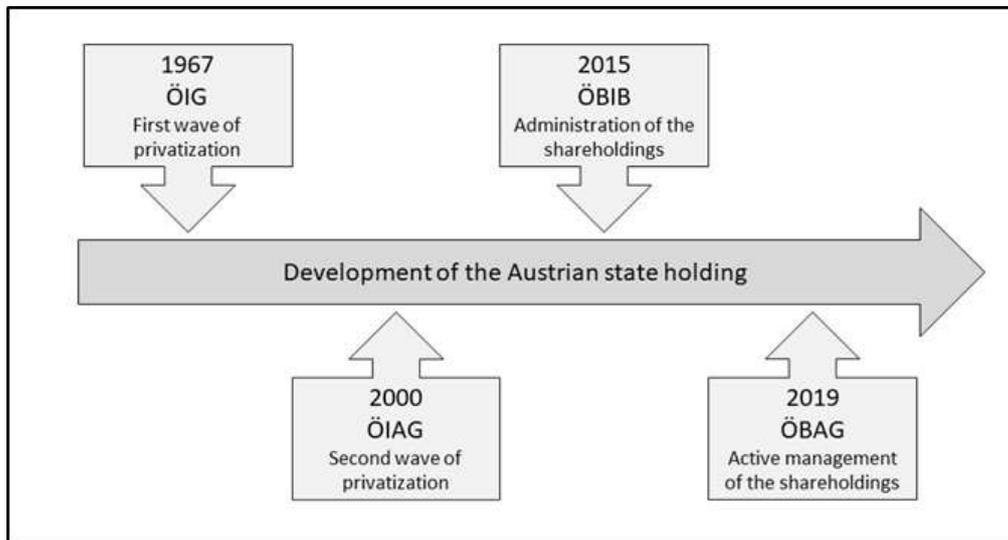
- Federal level: 135.128 (to date 2019)
- State level: 144.297 (to date 2019)
- Municipal level: 76.966 (to date 2018)

In Austria the management of federal POEs (SOEs) is under responsibility of the Federal Ministry of Finance (Federal Ministry of Finance, 2020). For managing its SOEs the Austrian federal government uses the Österreichische Beteiligungs AG (ÖBAG). ÖBAG is an autonomous holding company with the Federal Minister of Finance as shareholder representative – hence, the Austrian federal government is the sole owner (Federal Ministry of Finance, 2020).

Austria has a long tradition of SOEs. After Second World War, 71 companies were transferred to public ownership, to protect them from Soviet demands of reparations. Since 1955 the management of these SOEs was under responsibility of the Österreichische Industrie- und Bergbau Gesellschaft (IBV). Under the 1956 Competence Act, the managing directors of IBV had the right to appoint supervisory boards and managing directors – principally, these should have been independent of party politics. The proportional representation was the result of mutual distrust between the parties (Korom, 2014). Economic crises and reforms within government lead to first the foundation of the ÖIG (Österreichische Industrieverwaltungsgesellschaft mbH) in 1967 and in the beginning of the 1970s the transformation into a public limited company (ÖIAG: Österreichische Industrieverwaltungs Aktiengesellschaft, transformation into Aktiengesellschaft conformable to Artikel I (1) ÖIG-Gesetz-Novelle 1969 from 21. January 1970, BGBl. 47/1970, for changing and complementing ÖIG-Gesetz) (Weber, 2011). In the 1970s ÖIAG was responsible for managing a total of eight mixed enterprises with more than 200 associated companies. In the mid-1980s, ÖIAG underwent a reorientation, initially in favour of sectoral holding companies, which were to be restructured with proceeds from privatisation and later privatised. A further change of direction took place with the 1993 law amendment of the ÖIAG. The law amendment provided to sell the majority of the shareholdings of ÖIAG within a reasonable period of time. At the time the resulting mixed economy was considered to be an intermediate step which, ex post, has in part proved to be long-lasting. The returns of privatisation were partly used to repay the government debts, that occurred due to subsidizing ÖIAG companies that were in deficit. With Austrian EU membership in 1995 some of the former SOEs were completely privatized. Some others developed into large mixed enterprises. In February 2015 ÖIAG was converted back into a limited liability company, the ÖBIB (Österreichische Bundes- und Industriebeteiligungs GmbH). One of the reasons for the conversion of ÖIAG into a limited liability company was that the board of directors of corporation is independent in its official functions, whereas a managing director of a limited liability company is dependent by the directive of the owner. With respect to ÖBIB, the authority to give directives lies with the Federal Minister of Finance. ÖBIB had the aim to maintain and increase the value of the associated companies. This is to be achieved while taking into account public interests in securing Austria as a location for industry and research, and in securing and creating jobs (§ 7 Abs. 1 ÖBIB-Gesetz).

Since 2019 ÖBIB was again converted into a stock corporation, the ÖBAG (Österreichische Beteiligungs AG). Focus of the ÖBAG is the management of the shareholdings. Overall ÖBAG secures 135,000 jobs in Austria. The aim of the ÖBAG is to optimise the alignment of the holdings, especially with regard to the federal government's ownership interests (ÖBAG, 2020). Hence, the development of the Austrian state holding is shown in Figure 1.

Figure 1. Development of the Austrian state holding



The following Table 2 shows the portfolio of ÖBAG in April 2020.

Table 2. Portfolio of the ÖBAG (Data from the ÖBAG website 2020)

Entity	Share of ÖBAG (in %)	Total revenue (in Euro)	Employees
Post AG	52.85	1,959 Mio	20,545
Verbund	51	2,848 Mio	2,742
Casinos Austria	33.24	4,487 Mio	3,438
OMV	31.5	22,930 Mio	20,231
Telekom Austria	28.42	4,466 Mio	18,695
BIG Bundesimmobiliengesellschaft	100	1,075 Mio	923
APK Pensionskasse	32.9	Managed assets: 4.465 Mio	
FIMBAG	With 03.11.2015 it was decided to dissolve the company after having largely fulfilled the tasks assigned.		
GKB-Bergbau	The organization is a 100 percent holding of ÖBAG. It realizes the withdrawal from the mining sector. It bundles the remaining rights and obligations of the former Austrian Mining Holding. GKB also carries out the legally anchored safety and closure measures including recultivation.		
IMIB (Immobilien und Industrie-beteiligungen GmbH)	In 1987, the operating units of the steel and technology division of the former VOEST-ALPINE AG became independent. Furthermore, IMIB holds 13 percent of the shares in VAMED AG and focuses on the handling of open business cases.		
Schoeller-Bleckmann	Until 1995 the organization was the parent company of several companies specialized in the processing of high-alloy stainless steel. In the course of the privatization order of the Republic of Austria, the organization was sold. The company is now concentrating on the legally anchored securing of the former plant site.		

In addition to the ÖBAG, the Federal Ministry of Finance has shares at the Österreichische Nationalbank (ÖNB), Österreichische Bundesfinanzierungsagentur (ÖBFA), Bundesbeschaffung GmbH (BBG) as well as the Bundesrechenzentrum GmbH (BRZ). Furthermore, the federal government owns equity holdings, as road construction companies namely Großglockner Hochalpenstraßen AG (GROHAG), Felbertauernstraße AG (FAG) and Villacher Alpenstraßen-Fremdenverkehrs GmbH (Federal Ministry of Finance, 2020). Hence, ÖBAG is not the only management holding of SOE in Austria, but the biggest.

Besides the SOE managed by ÖBAG there are other (independent) SOEs on federal level in Austria. These are Verbund AG (energy) as partially public entity as well as ÖBB (Austrian Railroad), ÖBF (Austrian Forestry), ASFINAG (Highway) and the ORF (Austrian Broadcasting Corporation) as pure public entities.

3. Which are the main legal and organizational forms adopted for POEs in Austria?

In Austria public enterprises can be under public or private law. The following table shows possible legal forms for POE.

Table 3. Legal forms of POEs

Legal form	Description
Government operated system (Regiebetrieb)	They are legally and economically dependent and not separated from the administration. This form is more administration than entity. The organisation is subject to regulation by the municipality and has to apply the usual requirements for budget and accounting. They are found on municipal level.
Owner-operated municipal enterprise (Eigenbetrieb)	Owner-operated municipal enterprise are the economic enterprises of communities. They are more independent than government operated systems but still legally dependent. They are also found on municipal level.
Public law institution (Anstalt öffentlichen Rechts)	Public law institutions are organisational and economically independent. As a legal entity it is equipped with its own rights and obligations and has its own personnel management and material resources.
Public law foundation (Stiftung öffentlichen Rechts)	Public law foundations are about earmarked assets, as these assets should be used to fulfil public administration tasks.
Limited liability company (GmbH)	The limited liability company belongs to the corporations. A corporation is a legal entity with its own rights and obligations, which are incumbent on the company alone, detached from the founders. The nominal capital has to be at least 25.000 Euro.
Stock Corporation (AG)	While the limited liability company is suitable for small and medium-sized enterprises, the stock corporation is a common legal form for large companies.

The specific governance structure depends on the legal form. The bigger POEs are in most cases in form of limited liability companies or stock corporations. As stated before, some of the SOEs are managed by different state holdings.

4. Efforts in Austria against corruption

4.1. Which is the current situation/approach on accountability and anti-corruption in Austria (importance of the theme, main legislative acts, etc.)?

There exist different approaches for corruption prevention. Under the responsibility of the Federal Ministry – Interior there exists the Federal Bureau of Anti-Corruption (BAK) dealing with issues of corruption (www.bak.gv.at). The Federal Bureau of Anti-Corruption (BAK) was established on 1st January 2010 and is based in Vienna. Its tasks are the nationwide prevention and combating of corruption. The BAK works in close cooperation with the Attorney for Economic Affairs and Corruption (WKStA) and has central functions in the cooperation with foreign and international institutions fighting against corruption (BAK, 2018).

Also the Federal Ministry of Justice aims for corruption prevention. In 2012 the “Korruptionsstrafrechtsänderungsgesetz 2012” was adopted (Federal Ministry of Justice, 2020).

In the international context Austria is involved in the Group of States against Corruption (GRECO) as well as in the OECD Working Group against bribery.

4.2. Which have been the main anti-corruption and compliance measures (legal acts, guidelines, etc.) adopted for POEs in Austria?

SOEs in Austria have to comply with the Public Corporate Governance Codex (Bundes Public Corporate Governance Kodex 2017, (B-PCGK 2017)). The codex was enacted on October 30th 2012. Corporate governance codices of SOEs and state-affiliated enterprises find their special meaning in the fact that the public authorities as owners also have a special responsibility towards public property and the public itself. The guidelines are aimed primarily at enterprises that have their own legal personality. The Public Corporate Governance Codex is formulated to apply only to the federal government and federally owned or affiliated companies. The necessities from which the Public Corporate Governance Codex was developed are of course the same for federal states and municipalities. The application of this codex is therefore open to all state levels. The Public Corporate Governance Codex does not apply to stock corporations, since according to § 243c UGB these enterprises have a specific code. Legally, the regulations of the Public Corporate Governance Codex represent a self-binding commitment of the Federal Government, the observance of which is incumbent on the bodies of the Federal Government (Bundes Public Corporate Governance Kodex 2017, (B-PCGK 2017)).

The ÖBAG as a stock corporation refers specifically to the Austrian Corporate Governance Codex. With respect to governance issues, responsibility and integrity concerning the supervisory boards, the law for ÖIAG Act 2000, in the version of 22.05.2020 points several times to the Austrian Corporate Governance Code and additional laws concerning transparency. In §4 (1) it is defined that six members of the supervisory board are elected and dismissed by the general meeting. The professional and personal qualifications of these members must comply with the provisions of the Stock Corporation Act and the highest corporate governance standards. The law points out that the members of the supervisory board who are to be elected by ÖBAG at the annual general meetings and general meetings of its affiliated companies or who are to be appointed on the basis of contracts with third parties must, without prejudice to other provisions of federal law, comply with the rules of the Austrian Corporate Governance Code (ÖIAG Act 2000 §5 (1)). The candidates for the supervisory board are generally recognised entrepreneurs, freelance workers or managers from the private or public sector. They should be personalities with several years of practical experience as a management body or as a member of the supervisory board of a company. In particular, when appointing these persons, the strict criteria for independence and incompatibility of the Austrian Corporate Governance Code have to be considered. They have to perform their duties on the supervisory board of the associated company independently of their own interests or those of related legal entities (ÖIAG Act 2000 §5 (2)). No one should be candidate, who was member of the management board of the respective ÖBAG affiliated company in the two years prior to assuming the position. Also, the person should not have exercised an activity pursuant to § 1 of the Federal Act on Transparency and Incompatibilities for Top Management and other Public Officials (Unv-Transparenz-Gesetz, BGBl. No. 330/1983). The principles of Rule 52 of the Austrian Corporate Governance Code must be observed (ÖIAG Act 2000 §5 (3)).

In general, in Austria exists the “Korruptionsstrafrecht” and the “Korruptionsstrafrechtsänderungsgesetz“ (law on corruption). Additionally, in the criminal code (Strafrechtsgesetz) includes several paragraphs on corruption (§§302-309 StGB).

For public tender, national and European law defines specific thresholds, that have to be considered.

Hence, in Austria there exist several laws, codices and guidelines, that should help to prevent corruption in SOE. It depends on the implementation and realization of those guidelines, if they are successful in preventing corruption.

5. Which are the main effects, risks, flaws emerging from the previous points?

In general, the anti-corruption efforts in Austria are rather well established. Hence Austria shows a score of 77 on the corruption perception index, ranking on place 12 out of 180 countries (Transparency International, 2019).

One fundamental problem is that there is no sufficient data basis about POEs in Austria. There is only insufficient information about employees on the different state levels and about employees within POEs without administrations.

Another issue is the so called “crony capitalism” meaning that person that jobs and positions are assigned by personal networks or politically driven. Within the appointment of members of the management board and supervisory board in POEs, the political influence of the company is always controversially discussed. In some cases, a failure of the Supervisory Board is assumed by political mandate holders. Political elites would maximize their self-interest, and party-political proportional representation would be able to foil effective control. Additionally, competence of political mandate holders to perform Supervisory Board functions is sometimes questioned.

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