



Monitoring the Transparency of the Activity of State-Administered Enterprises

The TI-Moldova study aimed to analyze compliance with legal requirements for the disclosure of information by state-owned enterprises (SOEs) and joint stock companies with state capital (SC), identify eventual problems and formulate proposals to improve the situation, including the legal framework. The object of the monitoring is the transparency of the policies related to the appointment, activity and remuneration of the administrators and members of the Boards of Directors (BOD) of the enterprises; conflicts of interest policy; public procurement; implementation of the recommendations of the state audit and control bodies; reporting on the results of the activity. The subjects of the monitoring are 38 SOEs and SCs administered by the CPAs.

Methodological aspects. The monitored enterprises were selected from the Register of Public Property, based on the importance of the enterprise and / or the risk for eventual abuses / corruption. The data were collected from various sources, in particular based on requests for information from enterprises and the analysis of the content of the websites of enterprises and their founders. At the same time, information was requested from the Financial Inspection, the National Integrity Authority, the Public Property Agency; National Anticorruption Center, General Prosecutor's Office, and the Ministry of Internal Affairs. The decisions of the Court of Accounts, the reports of the Ministry of Finance, CNA, as well as the articles of the investigative journalists also served as sources of information. The period of reference period is 2018-2019.

THE MAIN FINDINGS OF THE STUDY:

Ensuring access to information. Although TI-Moldova requested public information from the monitored companies, some companies avoided responding, categorizing some of the information as personal data or trade secrets. Some companies requested from TI-Moldova copies of the incorporation documents and the argumentation of the need to present the information, others pointed out the personal nature of the requested data, while on their web pages was already placed some of the requested data.

Business administrators and their remuneration. Although all monitored companies submitted data on the name of the administrator and the act by which he/she was appointed, every fourth company did not provide information on the value of their remuneration, arguing the refusal by personal data or suggesting their retrieval from the e-Declarations portal . Corporate responses to the value of directors' remuneration are often formal and incomplete, there are cases when the value indicated by the company does not correspond to the information from the directors' declaration of assets and personal interests, there is a fear that some directors do not submit statements year by year to some administrators. Some administrators do not submit their declarations of incomes and personal interests.

Also suspicions raise some considerable and repated donations made to these administrators indicated in their declarations of incomes and personal interests.

Boards of Directors (BOD). Although practically all the monitored entities indicated the names of the members of their Board of Directors and the authority they represent, every 5th enterprise did not indicate the individual value of the members' remuneration.

The analysis of the data provided by the companies allowed the identification of possible deviations when appointing the members of the Board of Directors / the composition of the Board of Directors. Thus, although the Law on the State Enterprise and the Municipal Enterprise prohibits the inclusion of the company's chief accountant on the board, this provision does not appear to be complied with. Even if the composition of the Board of Directors must necessarily include the representatives of the MoF, MEI, the representatives of the founder and of the work team, the practice of appointing a fairly large number of founder's representatives to the Board of Directors persists. Although the legislation allows, in the composition of the Board of Directors there are practically no specialists in the field of activity of the enterprise, specialists in economics and law.

The process of promoting and appointing the members of the Board is not transparent and reasoned - a fact explained also by the lack of a special regulation approved by the Government, but also by the disinterest of the founders to change the state of affairs. And the founders' control over the Board's activity seems rather formal.

The practices of accumulating membership functions in a fairly large number of Board of Directors of SOEs and CAs persist, which could affect the quality of work of people in the basic workplace and the control over the activity of enterprises. There may be errors in completing the declaration of assets and personal interests by the members of the Board, because some indicate donations from SOEs and CAs; some fail to indicate the name of the companies, members of the Board of Directors of which they are; discrepancies between the value indicated by the declarant and the one provided by the enterprises were identified.

Purchases of goods, works, services. Although the legal framework includes requirements for the transparency of procurement process for state enterprises (including the publication of procurement plans, notices of intent, the decision on the award and execution of procurement contracts), there are still reservations in complying with these requirements. Thus, about 2/3 of the monitored enterprises reported that they developed procurement plans, of which only 60% published them on their web pages. About 60% of companies reported that they set up Procurement Working Groups, but only a quarter of them provided data on their composition, which was not available on their websites. Only every 5th monitored company claims to publish the results of contract award procedures and only one company - the results of contract execution, *de facto* there are singular cases when such information in published

Conflicts of interest (CoI). About 80% of the monitored companies noticed that in the years 2018-2020 there were no CoI situations, but the results of the controls and audits performed prove the opposite -

such situations took place, they were not reported and resolved. The legal provisions regarding CoI, incompatibilities, restrictions are not sufficiently known by the decision makers and the employees of the enterprises.

Controls by the Financial Inspection (FI). About 2/3 of the monitored companies reported that they were controlled by FI in 2018-2019, of which only ¼ - that they placed the results of the controls on their website. Only one company informed about the elaboration of the action plan for the implementation of the FI recommendations.

During the period covered, the FI has inspected 188 SOEs and 72 companies with state capital, finding irregular expenses of 109.6 million lei and estimated caused damages of about 17 million lei. Among the typical deviations, the IF noted: the irregular and unfounded payment of the salaries to the administration and some employees; granting prizes and material aids to the members of the Board of Directors from the salary fund; failure to make an inventory of debts and receivables; lack of transparency in procurement process; reflection of expenses in the absence of supporting documents, etc. 41 materials were sent to the law enforcement agencies.

The audits of the Chamber of Accounts. In 2017-2020 the Chamber of Accounts audited the activity of SOEs and CAs, identifying multiple irregularities in keeping records, records and management of assets, planning and making procurements, leasing of spaces, stating mismanagement of enterprises and the low level of responsibilities of management bodies. Although most of the companies subject to the audits of the Chamber of Accounts confirmed their performance, the entities did not include on their website information on the results of the audits and the measures taken to implement the Court's recommendations.

Business decision makers in the view of law enforcement. According to the law enforcement agencies, in 2018-2020 (9 months) about 100 criminal cases were initiated regarding the activity of SOEs and CAs, in a large part of the cases not the decision makers are targeted, but rather engineers, deputy branch directors, bosses train attendants, wagon attendants, store managers, customs brokers, etc. Almost every tenth case has been closed.

Disclosure of information. Although practically all monitored companies have web pages, only some of them contain consistent information such as their status, internal regulations, annual report, audit report, procurement documentation. Improvement also need the information on the activity of the enterprises.

Recommendations

- Introducing in the legal framework of clear requirements for disclosure of information by joint stock companies / state-owned companies, regardless of whether or not they are public interest entities.

- Examining the opportunity to review / update the provisions related to salaries in units with financial autonomy, including managers / administrators of enterprises.
- Preventing the abusive secrecy of information about the activity of enterprises, including by informing / training the leaders and representatives of the founders about the legal provisions related to access to information and disclosure of information.
- Ensuring by the founders of transparency in the selection and appointment of candidates for the position of member of the Board of Directors, arguing their decisions in the respective orders of public authorities, placing them on the web pages of enter
- Ensuring transparency of the activity of the Boards of Directors, including by persons representing the state interest on the web page of the enterprises.
- Reducing the number of councils in which one person can participate simultaneously, attracting in their composition specialists in economics, law and in the field of activity of enterprises.
- Organising, with the support of the National Integrity Authority, trainings on the process of completing and submitting declarations of assets and personal interests, declaring and resolving conflicts of interest for business decision makers and members of the Boards of Directors.
- Carrying out by the National Integrity Authority of some thematic controls regarding the timely submission of the declarations of assets and personal interests by the administrators of the enterprises, as well as regarding the vericity of the data from the submitted declarations.
- Placing on the web page of the Financial Inspection the results of the inspections performed at the enterprises.
- Organising, with the support of the Financial Inspection, workshops on typical irregularities detected in the activity of state enterprises for the administrators, their chief accountants and, as the case may be, the members of the Boards of directors / audit commissions.
- Intensifying the attention of the Boards of Directors to the results of audits / controls performed at companies and of the measures taken in order to remedy the situation.
- Developing/ updating the web pages of the enterprises, with the possible inclusion of a special column Disclosure of information, which would include at least the obligatory information (statute, internal regulations, annual report (complete), audit report in full, procurements). In the case of companies that do not have a website, the information must be placed on the web pages of the founders.
- Warning the business administrators and members of procurement working groups on compliance with the requirements on transparency of procurement process (publishing plans, notices of intent, monitoring contracts and publishing information on their execution).

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