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Accountability of Independent Regulatory Agencies in Kosovo: A view on current perspectives and key challenges



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Accountability of Independent Regulatory Agencies in Kosovo: A view on current perspectives and key challenges

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Background

The past decade has seen an enormous increase in the number of independent regulatory agencies (IRAs) in OECD countries, and Kosovo is no exception. IRAs operate across various policy domains and cumulate several powers, including policy-making, monitoring and control, adjudication, and sanctioning. IRAs are established as independent agencies that possess regulatory powers and operate separately from public institutions but are neither directly elected by the people nor directly managed by elected officials.¹ Once these IRAs² are established, they become 'central actors in decision-making' but remain at arm's length from the government.³ As in Kosovo, IRAs are often responsible for regulating various markets like energy and mines, electricity and utilities, competition, and telecommunications, amongst others.

The rise of IRAs has shifted some political power from the parliament and government to these agencies. The establishment of an IRA means delegation of an important policymaking power to agencies operating outside the line of the central government. Scholars like Frank Vibert find that this approach leads to a new form of governance in which 'the importance of the unelected rises' while 'the importance of the elected declines'.⁴ The number of IRAs began to noticeably increase beginning in the 1990s.⁵ While many of these early IRAs were tasked with regulating the utilities market, later on, IRAs were increasingly tasked with regulating fields related to competition or the enforcement of licenses.⁶ While IRAs are differently defined in various countries' legal frameworks, the definition of IRA employed in this policy report is as follows:

*"an unelected body that is organizationally separated from governments and has powers over regulation of markets through endorsement or formal delegation by public bodies"*⁷

The proliferation of IRAs has become a subject of analysis amongst scholars, although adequate theoretical explanations are still lacking. A prevalent position explains the establishment and spread of IRAs results from the need for political stability and credible policy systems, which requires regulating agencies to have independence from political influence and interference.⁸ As governments often lack capacity for effective policy-making and implementation and find it difficult to commit to a specific course of action, whether deviating from planned policies or simply

¹ Thatcher, Mark, and Alex Stone Sweet. (2002). "Theory and Practice of Delegation to Non-Majoritarian Institutions." West European Politics.

² The terms IRA, regulator, and market regulator are used interchangeably throughout the paper.

³ Thatcher, Mark. (2011). "Delegation to Independent Regulatory Agencies in Western Europe" London School of Economics.

⁴ Vibert, Frank (2007). "The rise of the unelected: democracy and the new separation of powers" Cambridge University Press.

⁵ Thatcher, Mark, and Alex Stone, Sweet. (2002). "Theory and Practice of Delegation to Non-Majoritarian Institutions." West European Politics. Giraldi, Fabrizio (2008). "Delegation in the Regulatory State. Independent Regulatory Agencies in the Western Europe" Edward Elgard publications. Maggetti, Martino (2007). "De Facto Independence After Delegation: A Fuzzy-Set Analysis." University of Lausanne.

⁶ Mark, Thatcher (2002). "Regulation after delegation: independent regulatory agencies in Europe" Routledge Publishing.

⁷ Coen, D. and M. Thatcher (2005). "The new governance of markets and non-majoritarian regulators" Governance- an International Journal of Policy and Administration

⁸ Enns-Jedenastik, Laurenz (2015). "The Politicization of Regulatory Agencies: Between Partisan Influence and Formal Independence" Journal of Public Administration Research and Theory. Oxford University Press.

Gilardi, Fabrizio (2002). "Policy credibility and delegation to independent regulatory agencies: a comparative empirical analysis" Journal of European Public Policy.

Majone, Giandomenico (1996). "Temporal Consistency and Policy Credibility: Why Democracies Need Non-Majoritarian Institutions" Florence: European University Institute, Working Paper.

Majone, Giandomenico (1997). "Independent agencies and the delegation problem: theoretical and normative dimensions" In Bernard Steunberg & Frans van Vught (Eds.), Political Institutions and Public Policy.

introducing new policies to correct unsuccessful or unimplemented policies, IRAs with established expertise in their given field can act as market regulators while promoting policy cohesion and protecting the public interest.

There are several variables which affect IRAs functioning such as internal organization, salary system, employment status, and, perhaps most importantly, accountability mechanisms, which are of growing importance in contemporary governance and crucial for maintaining democratic control over this new form of regulatory governance.⁹ The accountability of IRAs is essential for ensuring that they perform their role as market regulators free from political interference.

The literature does not draw on any comprehensive consensus on the concept of accountability, thus different definitions serve different research goals. However, accountability is generally understood as an actor's, in this case an institution's, responsibility to justify its conduct and actions to a greater forum¹⁰ whether top-down or bottom-up.¹¹ Top-down accountability requires accountability to an actor's or institution's principal, i.e. the parliament, the government or the administration, whereas bottom-up accountability requires agencies to be accountable to their stakeholders or the public at large. In the case of regulatory agencies in Kosovo, the agencies are responsible for justifying their conduct to the parliament. In accordance with the legislation in Kosovo, each regulatory agency is responsible to report yearly to the parliament. However, the parliament is not granted the power to issue sanctions in the case that a regulatory agency is deemed to have not acted accountably. Thus, ensuring and enforcing proves to be one of the key problems with regard to IRA functioning in Kosovo.

While a consistent operational definition of accountability is elusive and changes over time, numerous scholars have developed various indicators to measure the accountability and independence of IRAs.¹² The specific definition of accountability employed in this study, as shown in the above box¹³ speaks to an IRA's obligation to report and answer to parliament, to bear the consequences of failing to properly carry out its functions and responsibilities, and to maintain transparency (by providing up-to-date information and data on the webpage in all of Kosovo's official languages and compiling and making available periodic performance evaluations, amongst others).

- 1. The relationship between an actor and a forum*
- 2. in which the actor is obliged*
- 3. to explain and justify*
- 4. his conduct*
- 5. the forum can pose questions,*
- 6. pass judgment,*
- 7. and the actor may face consequences*

To sum up, while several aspects including internal organization, salary systems, and recruitment and employment processes impact an IRA's lifecycle, accountability is key and perhaps the most foundational aspect needed to ensure that these agencies can perform

⁹ Majone, Giandomenico (1999). "The Regulatory State and its Legitimacy Problems" West European Politics.

¹⁰ Bovens, Mark (2007). "Analyzing and Assessing Accountability: A Conceptual Framework" European Law Journal.

¹¹ Maggetti, Martino (2010). "Legitimacy and Accountability of Independent Regulatory Agencies: A Critical Review". University of Zurich/ Institut für Politikwissenschaft.

¹² Philp, Mark. (2009). "Delimiting Democratic Accountability" Political Studies. Oxford University Publishing.

Hanretty, Chris, Pierre, Larouche. and Andreas, Reindl (2012). "Independence, accountability and perceived quality of regulators." Brussels: Centre on regulation in Europe(CERRE). Giraldi, Fabio (2011). "Policy credibility and delegation to independent regulatory agencies: a comparative empirical analysis." Journal of European Public Policy.

¹³ Bovens, Mark (2007). "Analyzing and Assessing Accountability: A Conceptual Framework" European Law Journal.

their role and uphold their responsibilities as independent market regulators. Given the importance of the accountability element in the IRAs functioning, particularly in the context of Kosovo (low levels of parliamentary oversight, high levels of corruption) this policy report aims to examine and measure the accountability of independent regulators operating in Kosovo. The report is structured as follows: the first section maps regulatory agencies in Kosovo based in legislation; the second section operationalizes the concept for measurement purposes, utilizing the accountability index to assess the levels of accountability for all functioning regulators in Kosovo. The last section offers a set of policy recommendations aimed at increasing the accountability of IRAs in Kosovo.

Mapping Regulators in Kosovo

Out of eighty independent institutions and agencies established either by the Assembly or the government, we have identified nine important IRAs based on their functions and responsibilities outlined in relevant legislation. One should note that there is no clear categorization of regulators versus other independent institutions, and such categorization only becomes possible when looking at the legal mandates and responsibilities. The establishment and functioning of independent institutions, including regulators, in Kosovo has been criticized by Kosovar civil society¹⁴ as well as the European Commission.¹⁵ The Commission found that IRAs are not able to carry out their functions proactively, effectively, and free from political pressure. Some reports from the civil society also cite a lack of accountability of independent agencies and institutions, though in a more narrow sense, highlighting specifically the lack of accountability mechanisms codified in legislation.

Out of eighty independent institutions, more than thirty are established by the Assembly of Kosovo and forty-six by the Government as central bodies as part of Ministries. The institutions, including regulators, established by the Assembly are established in accordance with Article 142 of the Constitution which states

“Independent agencies of the Republic of Kosovo are institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies. Independent agencies exercise their functions independently from any other body or authority in the Republic of Kosovo. Independent agencies have their own budget that shall be administered independently in accordance with the law.”

An OECD study reviewing all independent institutions in Kosovo demonstrates that their establishment, as well as their recruitment system and salaries system, is not in line with EU/OECD practices.¹⁶ According to the study, this practice of establishing new independent agencies undermines both the separation of powers between the legislative and executive branches of power in Kosovo and points to the lack of adequate control over the performance of these bodies, though the study does not elaborate further on how this practice is not in line with EU/OECD practices. On this basis, as a first step, Kosovo needs a system for categorizing IRAs on the basis of their functions and legal mandate.

¹⁴ GAP Institute (2016). “Institucionet dhe Agjencite e Pavarura: Marredhenia e punes, sistemi i pagave, organizimi i brendshem dhe llogaridhenia” GAP Publishing.

Abazi, D., Ejupi, B. (2016). “Operationalization of independent agencies: opportunities for fusion, increased oversight and balance of independence and accountability” INDEP Publishing.

KDI Institute (2014). “Agjencite e (Pa) Varura dhe Ndermarrjet “Publike” ne Kosove” KDI Publishing.

¹⁵ European Commission. European Neighborhood Policy and Enlargement Negotiations. Country of Kosovo. Country Report 2016, 2015, 2014.

¹⁶ OECD (2016). “Review of institutions and agencies of the Assembly and central bodies of the Government”. OECD Publishing.

Based on an assessment of independent institutions' functions as stipulated in the relevant legislation, we identified nine regulatory agencies in Kosovo, as outlined in Table 1 below. Table 1 identifies the following three elements for each of the nine regulatory agencies in Kosovo: 1) the year the agency was established, 2) the legislative framework under which the agency was established and operates, and 3) the institution that the agency is responsible for reporting to.

Table 1: Mapping the scheme for market regulators

	NAME	YEAR	LEGISLATIVE FRAMEWORK	REPORTS TO
1	Water Services Regulatory Authority	2008	Law NO. 05/L-0.42 on Regulation of Water Services	- Assembly - Commission for Agriculture, Forestry, Environment and Spatial Planning.
2	Civil Aviation Authority	2008	Law No.03/L-0.51 on Civil Aviation	- Assembly, Commission for Economic Development, Infrastructure, Trade and Industry - Commission on Budget and Finance
3	Railway Regulatory Authority	2008	Law No. 04/L-0.63 on Kosovo Railways	- Assembly - Commission for Economic Development, Infrastructure, Trade and Industry.
4	Kosovo Competition Authority	2008	Law No.2004/36 on Competition	- Assembly - Commission for Economic Development, Infrastructure, Trade and Industry
5	Commission for Mines and Minerals	2005	Law No. 03/ L-163 on Mines and Minerals	- Assembly
6	Independent Media Commission	2005	Law No. 04/L-44 on Independent Media Commission	- Assembly - Commission for Public Administration, Local Government and Media
7	Public Procurement Regulatory Commission	2005	Law No. 04/L-042 on Public Procurement in Republic of Kosovo	- Assembly - Commission on Budget and Finance
8	Energy Regulatory Office	2004	Law No. 05/L-084 on the Energy Regulator	- Assembly - Commission for Economic Development, Infrastructure, Trade and Industry
9	Regulatory Authority of Electronic and Postal Communications	2004	Law No. 04/L-109 on Electronic Communication	- Assembly - Commission for Economic Development, Infrastructure, Trade and Industry

Source: Author's compilation

- Regulatory Authority of Electronic and Postal Communications (RAEPC)¹⁷: was established in 2004 by the Law on Electronic Communications, pursuant to Article 142 of the Constitution. RAEPC is the national authority in the field of electronic communications and postal services responsible for implementing relevant national policies and strategies as defined by the Ministry that regulates telecommunications in Kosovo. RAEPC's other responsibilities are licensing and supervising telecommunications providers in Kosovo and establishing provisions for consumer protection. RAEPC reports to the Assembly's Commission for Economic, Development, Infrastructure, Trade and Industry.
- Energy Regulatory Office (ERO)¹⁸: was established in 2004 by a special Law on the Energy Regulator¹⁹. ERO's responsibilities include grant licensing, supervision of and compliance control for those issued licenses, approval of tariffs and tariff methodologies for energy services, provision of construction and operation of new generation capacities, issuance of general acts, individual acts, and secondary legislation in accordance with the Law on Energy Regulator, amongst others. ERO reports to the Assembly's Commission for Economic Development, Infrastructure, Trade and Industry.
- Independent Media Commission (IMC)²⁰: was established in 2005, in accordance with Article 141 of the Constitution of the Republic of Kosovo by the Assembly. The IMC is the body responsible for regulating, managing and overseeing the broadcasting frequency spectrum in the Republic of Kosovo in accordance with the best international standards. According to Law no.04/L-44, the IMC licenses public and private broadcasters, establishes and implements policy and regulates broadcasting rights, sets obligations and responsibilities of individuals and entities who provide audio and audiovisual media services. IMC is tasked with promoting and maintaining a fair and open system for the licensing and regulation of audiovisual media services and reports to the Assembly's Commission for Public Administration, Local Government and Media.
- Commission for Mines and Minerals (CMM):²¹ was established in 2005, ICMM shall regulate mining activities in Kosovo in line with the public interest and in accordance with the special Law on Mines and Minerals, the Law on Amending and Supplementing the Law on Mines and Minerals, sub-normative acts issued pursuant to the Law on Mines and Minerals, and the Mining Strategy. The CMM is responsible for granting licenses and permits and for the establishing and maintaining a mining cadaster and a GIS database of geographical and geological data, amongst others. The CMM reports to the Assembly.
- Public Procurement Regulatory Commission (PPRC): was established in 2005 and is regulated by the Law on Public Procurement²². PPRC is responsible for the development, operation, and overall supervision of the public procurement system in Kosovo. PPRC reports to the Assembly's Commission on Budget and Finance.

¹⁷ Regulatory Authority of Electronic and Postal Communications. For more see <http://www.arkep-rks.org/>

¹⁸ Energy Regulatory Authority in Kosovo. For more see <http://www.ero-ks.org/w/index.php/en/home>

¹⁹ Three agencies are established by special laws, as seen in table 1. A special law refers to having a single law addressing only the functioning and organization of one regulator, while other regulators' functioning and mandate are regulated within the scope of the laws addressing the same policy fields.

²⁰ Independent Media Commission. For more see <http://kpm-ks.org/?guha=3>

²¹ Commission for Mines and Minerals in Kosovo. For more see <http://www.kosovo-mining.org/>

²² Law Nr. 04/L-042 on Public Procurement <http://bit.ly/1sH3IAW>

- Kosovo Competition Authority (KCA)²³: was established in 2008 by a special Law on Competition. The KCA is responsible for enforcing, promoting competition among businesses, and protecting consumers in Kosovo. The KCA reports to the Assembly through the Commission for Economic Development, Infrastructure, Trade and Industry.
- Railway Regulatory Authority (RRA)²⁴: was established in 2008 by the Assembly of Kosovo, with a special Law on Kosovo Railways. RRA is responsible for licensing operators and conductors and for keeping and updating the registry of licenses. Similar to other IRAs, RRA reports once a year to the Assembly through the Commission for Economic Development, Infrastructure, Trade and Industry.
- Civil Aviation Authority (CAA)²⁵: was established in 2008 by a special Law on Civil Aviation. The CAA is responsible for the regulation of civil aviation safety and economic regulation of airports and air navigation services in Kosovo. CAA is also responsible for licensing personnel and for regulating prices to protect consumers from monopolies. The CAA reports to the Assembly through the Commission for Economic Development, Infrastructure, Trade and Industry.
- Water Services Regulatory Authority (WSRA)²⁶: was established in 2008 as the independent economic regulator for water and wastewater services in Kosovo. WSRA's role is to ensure non-discrimination, the provision of qualitative, efficient, and reliable services at a fair and reasonable price for customers, and respect for the environment and public health. WSRA is responsible for licensing public enterprises that provide water supply and wastewater services, approving service tariffs for regulated services, and monitoring compliance with service standards, amongst others.

This paper observes that some of the independent institutions are not only independent regulators but are also constitutional institutions. Five institutions were explicitly named in the Constitution which introduced the need to establish them. Out of these five constitutional institutions, one is a regulator. The establishment of the Independent Media Commission (IMC) was required and mandated by Kosovo's Constitution and is therefore not subject to the new regulations on public administration reform, based on that a recent constitutional court decision that highlights that independent institutions of a constitutional nature are specialized and unique in terms of organization and budget and, therefore are not subject to the new regulations on reforming the public administration.²⁷ One could extend further this analysis to note that assembly has less controlling authority over IRAs with a basis in the constitution, compared to those not. It could not review and unilaterally change the IMC's mandate through new or altered legislation as this would fall under the judicial review of the CC. As such, the independence of constitutionally-mandated IRAs is far more formal and protected than other IRAs.

Another key observation is that each IRA is responsible for reporting to the Assembly, through different commissions. All IRAs are also responsible for providing a financial report to the Commission on Budget and Finance. As such, IRAs have at least a dual-layer of accountability, one relating to their performance and one to their finances. Unfortunately, their direct responsibilities

²³ Kosovo Competition Authority in Kosovo. For more see <https://ak.rks-gov.net/?cid=2,11>

²⁴ Railway Regulatory Authority in Kosovo. For more see <http://www.arh-ks.org/default.aspx?l=2>

²⁵ Civil Aviation Authority in Kosovo. For more see <http://caa-ks.org/en/>

²⁶ Water Services Regulatory Authority in Kosovo. For more see <http://www.arru-rks.org/English/index.html>

²⁷ Constitutional Court Decision (2016). Republic of Kosovo. Available at http://www.gjk-ks.org/repository/docs/gjk_ko_73_16_shq.pdf

towards the Assembly do not move beyond reporting, and, further limiting accountability, there is no sanction mechanism available for cases in which the report is not approved by the Assembly.

An additional observation arises only by looking at the names of the IRAs, which are inconsistent and complex. First, not all IRAs, i.e. the Commission on Mines and Minerals, have the word regulator in their names which could lead to confusion when trying to determine which institutions are IRAs. Of the nine IRAs in this study, five have the word 'regulator' in their names, three have the word 'authority', and three have the word 'commission'. This makes it slightly more difficult to identify regulators, as one cannot rely solely on name and must check each legal mandate (of the eighty independent institutions in Kosovo).

Operationalizing Accountability

“Accountability is a core concept of contemporary regulatory governance.”²⁸

Much has been written about accountability, though only a few have empirically measured the accountability of market regulators. While many concepts are linked to accountability, such as transparency, democracy, openness, dialogue with citizens, and good governance, among others, a lack of operationalization has made it difficult to measure. The operationalization of accountability refers to the identification of specific, measurable, reliable, and time-framed indicators. In the above section, accountability is defined as “the relationship between an actor and a forum in which the actor is obliged to explain and justify his conduct, the forum can pose questions, pass judgment, and the actor may face consequences”. This depicts a relationship in which the lines of accountability are specific and set and also include sanction mechanisms, since in the context of Kosovo, the prospect of being sanctioned by a given actor is an inherent part of being accountable to that same actor. IRAs “should be accountable to those who delegated the responsibility – the government or the legislature- but also to those who fall under their functional realm, and to the public at large (stakeholders).”²⁹

To measure the concept of accountability, this paper utilizes an approach developed by Mark Philip (2009) and later on employed by other authors like Chris Hanretty et al (2012)³⁰, with slight differences (elaborated below). With this approach, levels of accountability are measured using twenty indicators, each contributing equally, which are grouped into four different stages: a) a procedural stage, in which the regulator identifies the rules on the basis of which it is to be held accountable and demonstrates that it is following these rules, b) an information stage, in which stakeholders – political actors and the public – acquire the information needed to hold the regulator accountable, c) a discovery stage, in which stakeholders – political actors and the wider public – may examine particular actions of the regulator, and d) an evaluation stage, in which the regulator identifies the objectives on the basis of which it is to be held accountable.

The first stage of accountability includes indicators related to the presence of defined regulatory objectives, reasoned decisions, procedural rules in place, and objectives explained to stakeholders. The second stage of accountability includes indicators related to the retrospective

²⁸ Biela, Jan. (2014). “Accountability: on the measurement of an elusive concept” Standing Group on Regulatory Governance, Barcelona.

²⁹ Das, Udaibir., Quintyn, Marc., Chenard, Kina. (2004). “Does Regulatory Governance Matter for Financial System Stability? An Empirical Analysis” Working Paper. IMF Publishing.

³⁰ Philip, Mark. (2009). “Delimiting Democratic Accountability” Political Studies. Oxford University Publishing. See also Hanretty, Chris, Pierre, Larouche. and Andreas, Reindl (2012). “Independence, accountability and perceived quality of regulators”. Brussels: Centre on regulation in Europe (CERRE).

annual report, press releases, and voluntary information provision. The third stage of accountability includes indicators related to appearance before the relevant parliamentary commission, public consultations, annual reports publicly available, and data underlying decisions publicly available. The fourth stage of accountability includes indicators related to code of conduct, periodic performance evaluations, possibility of commission intervention, the possibility for appeals before the judiciary, and membership in peer networks.

As stated above, our approach slightly differs from the one employed by Philip and Hanretty et al. In our index of accountability, we exclude two indicators used by previous scholars — compulsory/compelled information provision and advisory board with stakeholder participation. Since there are procedures for the appointment of board members of IRAs, this indicator that cannot be easily quantified for measurement purposes in Kosovo. However, this does not mean that the 'advisory board with stakeholder participation' variable has no impact on a regulator's accountability in Kosovo, as will be discussed later. One should also note that IRA board members in Kosovo do not have only an advisory mandate but also have executive functions. The other indicator not included - compulsory/compelled information provision- refers to the provision of information to the 'forum' (the Assembly). This indicator is omitted, as there are two other indicators—reporting to the commission and appearance before the parliamentary commission — which provide the same information.

In addition, our four-stage schematic overview of accountability indicators includes an indicator related to sanctioning - possibility of commission intervention - unlike the model used by Philip and Hanretty et al. The inclusion of this indicator serves to demonstrate the (non) existence of sanctioning mechanisms. In Kosovo's transitioning democracy, accountability cannot exist on the basis of disclosure of information alone without sanctioning elements. It is important to link application of sanctions with the performance results of the agency. Given that, the agency can be held accountable in case of failure to achieve goals as outlined in their respective annual plans or for failure to attain approval of their annual report from the assembly. Introducing a sanction mechanism in Kosovo could serve to modify the behavior of IRA personnel, improve performance and legitimacy of IRAs, and pave the way for building more accountable and transparent institutions.

For assessing these indicators, this analysis utilizes an assessment scale of 0-1.

Table.2 Scale ratings

Assessment Scale	Numerical Value
Data is missing	0
Above average	0.5
Very good	1

Source: Author's compilation

Data is missing (0): the score of 0 indicates that no data is available about one indicator. *Above average* (0.5): the score of 0.5 indicates that the agency, since its establishment, has shown an average or slightly better than the average performance for a certain indicator. *Very good* (1): the score of 1 indicates that the majority of the data is available regarding an indicator. The data are based on regulators' respective web-pages, legislation, and other regulations available online. Prior to final publication, the findings were also sent to all regulators via email for further consultation.

Based on this assessment scale and as shown in Table 3 below, a numerical value has been given to each indicator. The average of these values provides accountability index for each regulatory agency. Less accountable agencies receive an accountability index closer to 0, while more accountable agencies receive an accountability index closer to 1.

Table 3. The index of accountability for each regulatory agency

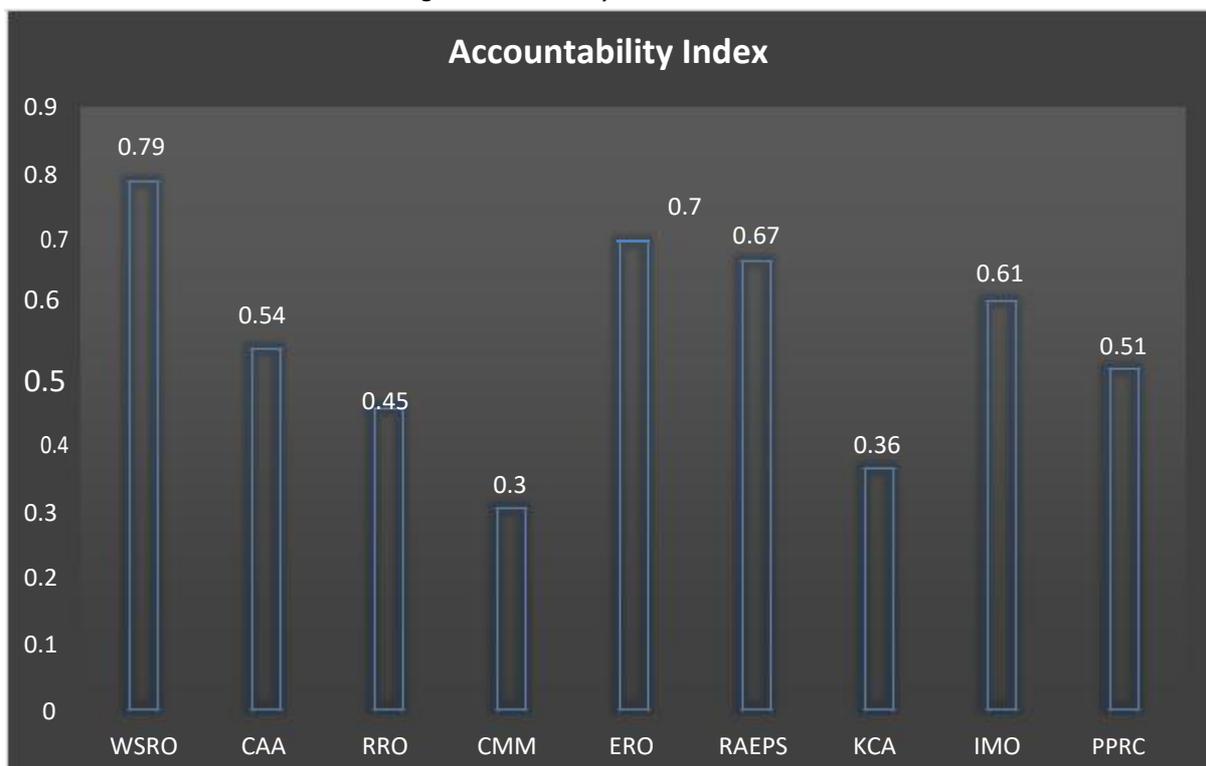
		WSRA	CAA	RRO	CMM	ERO	RAEPC	KCA	IMC	PPRC
ACCOUNTABILITY CRITERION										
PROCEDURAL STAGE										
1	Presence of defined regulatory objectives	1	1	1	0.5	1	1	0.5	1	1
2	Objectives explained to stakeholders	1	0.5	0.5	0.5	1	1	0.5	1	0.5
3	Reasoned decisions	0.5	0.5	0	0	1	1	1	1	0
4	Procedural rules in place	1	1	0	0	1	0	0	0	1
Average		0.87	0.75	0.37	0.25	1	0.75	0.5	0.75	0.62
INFORMATION STAGE										
1	Report to the Commission	1	1	1	1	1	1	1	1	1
2	Retrospective annual report	1	1	1	1	1	1	0	1	1
3	Press releases	1	1	1	1	1	1	1	1	1
4	Voluntary information provision	1	1	0	0	0	0	0	0	0
Average		1	1	0.75	0.5	0.75	0.75	0.5	0.75	0.75
DISCOVERY STAGE										
1	Appearance before parliamentary Committee	0.5	1	1	1	1	1	1	1	1
2	Public consultations	0	1	0	0	1	1	0	0	0
3	Annual reports publicly available	1	1	1	1	1	1	0	1	1
4	Data underlying decisions publicly available	1	0.5	0	0	1	1	0	1	0
Average		0.62	0.87	0.5	0.5	1	1	0.25	0.75	0.5
EVALUATION STAGE										
1	Prospective annual plan	0	0	0	0	0.5	0	0	0	0
2	Code of conduct	1	0	0	0	1	0	0	0	0
3	Periodic performance evaluation	1	0	0	0	1	0.5	0	0	0
4	Possibility of Commission intervention	0	0	0	0	0	0	0	0	0
5	Appeal before judiciary	1	1	1	1	1	1	1	1	1
6	Membership in peer network	0.5	0	0	0.5	0	0	0	0	0
Average		0.7	0.2	0.2	0.3	0.7	0.2	0.2	0.2	0.2
CUMULATIVE AVERAGE		0.79	0.70	0.45	0.38	0.87	0.67	0.36	0.61	0.51

Source: Regulators' respective web-pages, regulations and legislation. *

*The data were gathered during the period June, July, August 2017.

The data in fig. 1 suggests that no regulator scores lower than 0,3 or higher than 0,79. As shown in the figure below, the highest score belongs to the Energy Regulatory Office (0,87), and Water Services Regulatory Authority (0, 79), the Civil Aviation Authority (0,70) followed by the Regulatory Authority of Electronic and Postal Communications (0,67), and the Independent Media Commission (0,61). The Commission on Mines and Minerals scored the lowest (0,38), followed by the Kosovo Competition Authority (0,36), Railway Regulatory Office (0,45), Public Procurement Regulatory Commission (0,51), and. The average accountability index is 0, 59, indicating only moderate accountability amongst IRAs on average. This score indicates accountability challenges spread throughout various indicators. These challenges also lead to low performance and efficiency in the IRAs work.

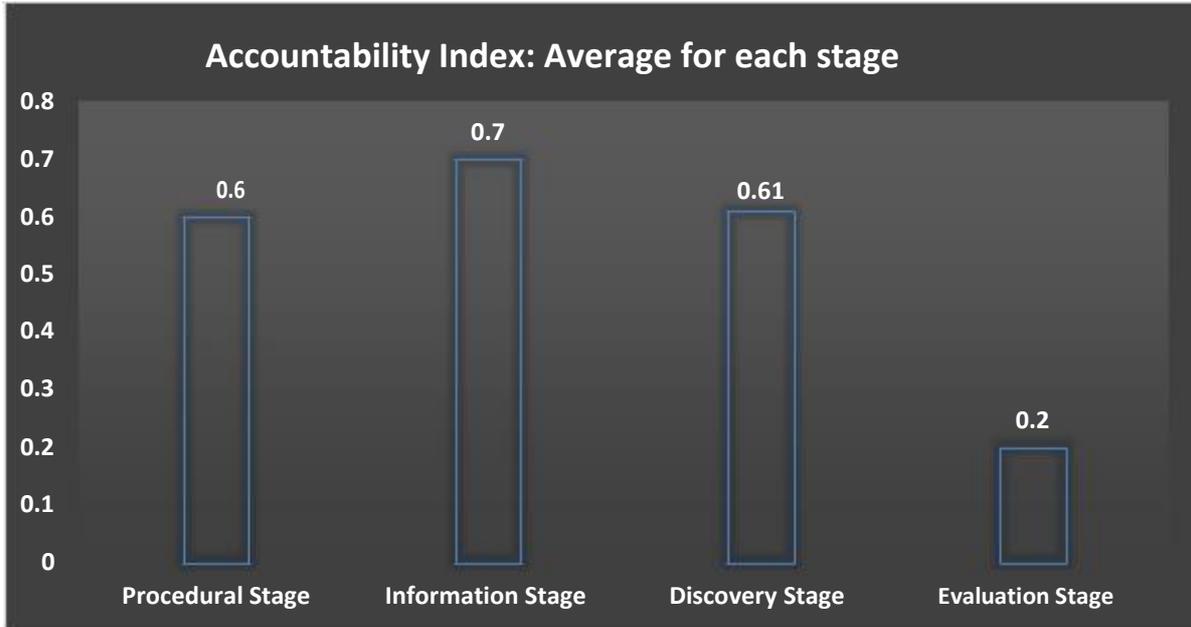
Fig.1 Accountability of IRAs in Kosovo



Source: Author's compilation

In the sections below, the analysis examines the accountability indexes for each stage separately in order to identify where most of the challenges lie. The data in fig.2 suggests that all IRAs score the lowest in the evaluation stage. More precisely, the average of the accountability scores for the evaluation stage is approximately three times lower than the average of each of the three other stages - discovery, information, and procedural- or around 200% lower than the average of each of the other stages. Since IRAs scored lowest in this stage, we devote the following section to discuss challenges unique to the evaluation stage.

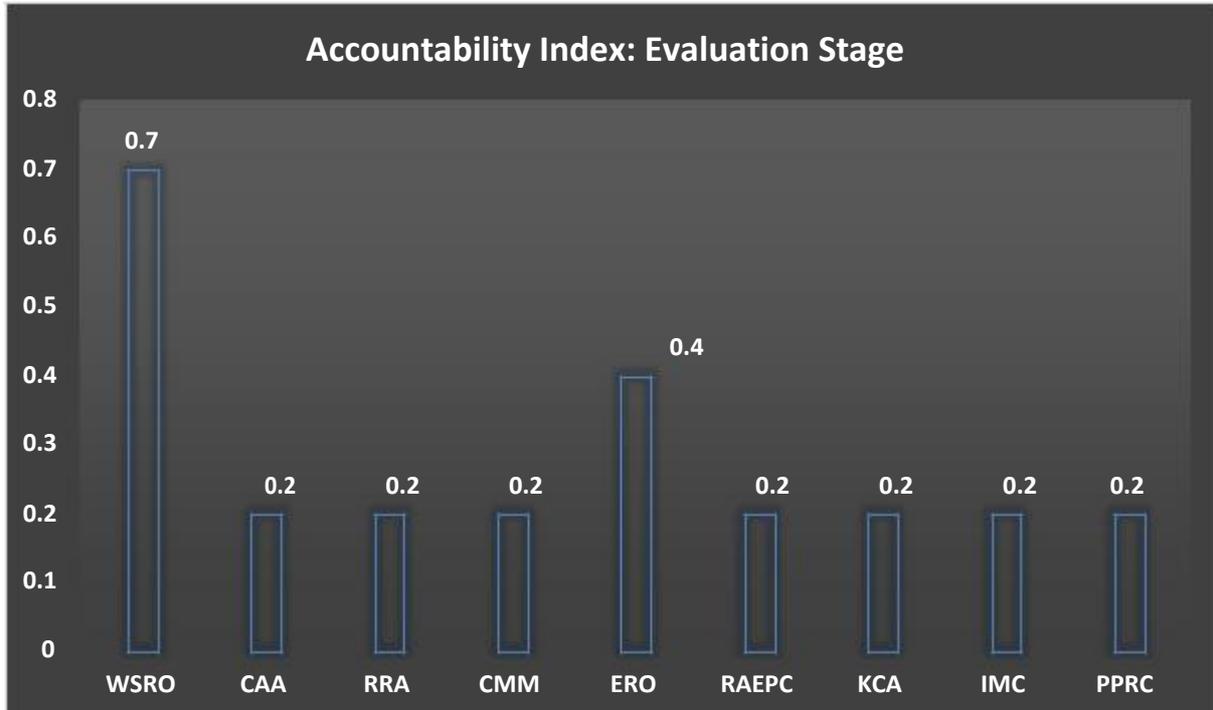
Fig.2 Accountability Index: Performance Average of each stage



Source: Author's compilation

Evaluation Stage

Fig. 3 Accountability Index: Evaluation Stage



Source: Author's compilation

The evaluation stage includes six indicators related to prospective annual plans, codes of conduct, periodic performance evaluations, the possibility of commission intervention, possibility for appeal before the judiciary, and membership in peer networks. As shown in fig. 3, almost all IRAs scored an average of 0,2 for the evaluation stage, making this stage the worst performer of all stages included in the index. Based on the above data, one can deduce the following findings:

- a. All IRAs received a score of 1 for the 'appeal before judiciary' indicator, which means that the court can review IRAs decisions. As such, IRAs are accountable to a higher institution- the court- which can overturn their decisions.
- b. The data demonstrates that all IRAs scored 0 in the 'possibility of commission intervention' indicator, which means that the Assembly does not have the formal authority to sanction regulators upon receiving the annual report. As mentioned, this remains an immense challenge for increasing accountability and consolidating democratic control over IRAs.
- c. The data reveals that apart from the WSRA and ERO, all the other IRAs lack a formal code of conduct, which could promote moral behavior, act as a guideline for ethical policymaking, enhance the credibility of the regulator and the reputation of its personnel, and serve as a reference for solving ethical dilemmas. The lack of a code of conduct indicates a lack of self-regulation amongst IRAs.
- d. The data suggests that apart from the WRSO that scores 0,5 no other IRA has scored 0,5 or 1 for the indicator of prospective annual plan. This conveys the lack of long term planning for all amongst IRAs in Kosovo.
- e. The data shows that no IRA is a member of any network, apart from the WRSO which is a member of one network and thus scores 0,5. The lack of involvement in networks prevents IRAs from interacting and sharing information with other regulators engaging with similar policies or challenges.
- f. The data indicates that most of the IRAs do not provide periodic performance evaluations, apart from the WSRA, ERO, and RAEPK who have regularly produced periodic performance evaluations of the markets they are responsible for.

Discovery and Procedural Stages

As shown in the fig. 2, IRAs perform similarly in the discovery and procedural stages, with a difference of only 0.01 on the accountability index.

The procedural stage of the accountability index includes indicators relating to the operation of the regulator and in particular the way in which the operator explains itself to the 'forum' (the Assembly through parliamentary commissions). The following draws upon a number of relevant findings deriving from the above data analysis:

- a. A characteristic of all regulators in our analysis, even those which score poorly in other areas, is having defined regulatory objectives, which constitute a basic element of accountability.
- b. The indicator 'objectives explained to all stakeholders' refers, in Kosovo's context, to having all objectives present in all three official languages on the respective web-pages. For this indicator, five regulators score 0,5 and four other regulators score 1.
- c. The indicator of 'reasoned decisions' refers to whether or not decisions are published. Four regulators scored 1, two scored 0,5 and three scored 0, with an overall average of 0.55 for the indicator, which should be considered unsatisfactory for such a basic element of accountability.

- d. The indicator intended to gauge whether there are procedural rules in place refers to whether or not there are publicly available rules on procedures, participation in decisions and policymaking, and internal administrative procedures. The data suggests that all but four three regulators lack formal and publicly available procedural rules.

The discovery stage of the accountability index concerns all stakeholders, the Assembly and the public at large, as it relates to the assessment of regulators' actions.

- a. The data shows that all IRAs periodically appear before the parliamentary commission to answer questions, generally upon submitting their annual reports.
- b. That data reveals that three regulators including ERO, RAEPC and ACC, have public consultations. This is unsatisfactory, as public consultations are important for gaining feedback and transparency.
- c. The data shows that almost all regulators make available their annual reports on their web-pages. This indicates openness and transparency not only to the Assembly but to the public at large. Only one regulator does not make public its annual report.
- d. The indicator relating to making 'data underlying decisions publicly available' refers to whether or not the agency publishes its arguments and evidence, in regard to decisions made, on its webpage. For this indicator, four IRAs received a score of 1, four received a score of 0, and only one regulator scored 0,5. S

Information Stage

IRAs in Kosovo scored the highest for the information stage, averaging 0,7 on the accountability index. This stage relates to whether information is made available to all stakeholders, the Assembly and the public at large.

- a. The data suggests that all IRAs received a score of 1 for the 'report to the commission' indicator. This is one of only two indicators for which all IRAs received the highest score. This indicator does not assess the quality of the report but rather checks whether IRAs reported to the Assembly through the relevant parliamentary commission.
- b. The data indicates that all IRAs, apart from one, the KCA, produce retrospective annual reports.
- c. The data reveals that for the second indicator for which all IRAs received the highest score was the indicator evaluating whether IRAs issue press releases. At some point in time, all IRAs in Kosovo issued press releases via their respective web-pages.
- d. This indicator for 'voluntary information provision' evaluates whether an IRA has a communications strategy available on their respective web-page. Only two regulators score 1 including WSRA and ACC, while all the others scored 0.

Advisory Boards with Stakeholder Participation

The indicator of ‘advisory board with stakeholder participation’ refers to whether or not an IRA has a board composed of ‘merit-based appointed interlocutors.’ As previously explained, different from the type of boards analyzed in the literature, IRAs boards in Kosovo are more executive in nature. Stakeholder participation also refers to the representation of all stakeholders on the board, coming not only from the government but also from groups that are affected by the respective IRA policy including experts, civil society and academia. The appointment of board members for most independent institutions and agencies in Kosovo has been highly criticized for being politicized. The boards for most independent institutions and agencies in Kosovo do not include representatives from civil society, academia or experts, although selection is supposedly based on open competition. In accordance with the Law, board members of many agencies including IRAs are proposed by the Government and are appointed by the Assembly. Several civil society organizations have criticized the political appointment of board members of independent agencies, including IRAs and the lack of professionalism of these boards.³¹ This criticism has been supported by the European Commission, whose country report findings highlight the lack of expertise and independence of board members. The EC reports highlighted the need for merit-based appointment of board members in accordance with the law. The latest wiretapping released by a media portal in Kosovo revealed that the appointment of board members of regulatory agencies was heavily influenced by key political figures and based on little to no objective criteria.³²

In an attempt to solve this problem, the Assembly of Kosovo, the Government of Kosovo, and the British Embassy have signed a Memorandum of Understanding, which supports a merit-based and transparent recruitment process of professional heads of institutions and public bodies and intends to strengthen the administration by supporting the appointment of professional and politically-independent personnel.³³ The British Embassy has planned to support such a system by engaging an external implementing partner that will assist the technical recruitment process. However, at present, only the head of Kosovo Customs has been appointed as a result of this memorandum of understanding. To make matters more complicated, the President of Kosovo has sent a reaction letter to the President of the Assembly, stating that this form of appointment of the Director of Kosovo Customs is not in compliance with the laws of the country since the memorandum itself does not have a legal basis in Kosovo.³⁴ Although, the head of the Assembly has not issued a formal reply to the President, the Ministry of Finance issued to the media a statement with regard to the legality of the memorandum.³⁵

Policy Recommendations

The emergence of IRAs in Kosovo represents a new form of governance, which has proliferated in the last decade in all OECD countries, and a shift of power from those directly elected by the people to ‘unelected’ bodies. In theory independent agencies and institutions, of which there are 80 in

³¹ GAP Institute (2016). “Raporti per Kosoven 2016 i Komisionit Evropian dhe konfirmim i ceshtjeve te ngritura nga Institut GAP rreth buxhetit dhe reformes se administrates publike” GAP publishing.

³² Insajderi (2016). “Dosja e Shefave” Available at <http://www.insajderi.com/hulumtime/dosja-e-shefave-xxiv-grabovci-e-quant-flora-brovinen-idiote/>

³³ Memorandum of Understanding Between the Assembly of the Republic of Kosovo, The Government of the Republic of Kosovo and the Government of the United Kingdom of Great Britain and Northern Ireland. (2016). Available at http://www.kuvendikosoves.org/common/docs/MEMORANDUM_BASHKEPUNIMI_MES_KUVENDIT_TE_REPUBLIKES_S_E_KOSOVES_QEVERISE_SE_REPUBLIKES_SE_KOSOVES_DHE_QEVERISE_SE_MBRETERISE_SE_BASHKUAR.pdf

³⁴ RTK live (2017). “Presidenti: Drejtori i Doganave dhe Britaniket te Jashteligishe” Available at <http://www.rtklive.com/sq/news-single.php?ID=138772>

³⁵ Insajderi (2017). “Ambasada Britanike qeveria argumentoi ligjshmerine e drejtorit te doganave/” Available at <http://www.insajderi.com/ambasada-britanike-qeveria-argumentoi-ligjshmerine-e-drejtorit-te-doganave/>

Kosovo (including the nine market regulators that we have identified), operate at arm's length from the government and are responsible for the regulation of certain markets. However, a key dilemma remains in determining how and by whom the regulators regulated themselves. As such, while several aspects of regulators' functioning including internal organization, salary system, employment status, and independency are assessed in the literature this analysis primarily focuses on the dimension of accountability for regulators in Kosovo. This report operationalizes the concept of accountability, measuring each Kosovar IRAs level of accountability according to an accountability index built around four stages – the procedural stage, informational stage, discovery stage, and evaluation stage. This focus is further based on the premise that the higher the accountability index of regulators, the better their overall performance with regard to fulfilling their responsibilities/duties.

The following shortly presents the key findings:

- All regulators report to the Assembly, yet the Assembly has no sanction mechanism in place in the case that it finds the annual report unsatisfactory. This indicates the existence of limited accountability considering the fact, in the context of Kosovo, that the prospect of being sanctioned by a given actor is an inherent part of being accountable to that same actor.
- The overall accountability of regulators according to the index is 0.59, indicating an overall index slightly higher than 50%. This means that they merely perform about 50 % of their foreseen tasks.
- No regulator scored above 0.3 or higher than 0.79 on the accountability index. Four regulators scored higher than 0.6, while the other five scored below 0.5. One could infer that regulators in Kosovo face quite a number of challenges and shortcomings based on these results.
- Out of four stages, the evaluation stage proves to be the most challenging for IRAs in Kosovo. In this stage, they received an average score of 0.2 on the accountability index. Below are findings related to each element of the evaluation stage – prospective annual plans, codes of conduct, periodic performance evaluations, the possibility of commission intervention, appeal before judiciary, and membership in peer networks:
 - a. Apart from one regulator, all others lack guidelines for ethical policymaking and demonstrate a lack of self-regulation.
 - b. Most of the regulators lack prospective annual-plans which demonstrates a lack of strategic planning.
 - c. The data also shows that only two regulators are members of a network covering the same policy fields (regulating the same market). This suggests a lack of interaction and information sharing with other regulators and institutions engaging in the same policy realms.
 - d. Apart from three regulators, all others failed to produce periodic performance evaluations of the markets they cover.
 - e. All regulators' decisions can be subject of a court review.

- f. The parliamentary commissions cannot sanction regulators, even when their annual reports are not approved.

There are very few stakeholders currently represented on the boards of regulators. The process for appointing board members is highly politicized and unprofessional. There is a high risk that if the selection of board members continues to be on the basis of political affiliation and political rewards, the regulators may increasingly fail to deliver with regard to their intended functions and responsibilities.

For all three other stages evaluated on the accountability index, IRAs scored in the range of 0.6-0.7 on average. The major challenges and shortcomings within these stages include the following:

- a. Apart from two regulators, all others have failed to facilitate public consultations.
- b. One regulator, the KCA, does not make public its annual report on its web-page.

Inconsistency and complexity in the naming of regulators (not all regulators have the name regulator in their name) lead to confusion over which independent institutions in Kosovo are IRAs (considering the fact that there are around eighty independent institutions in Kosovo).

Given the above findings, the following recommendations should be considered and implemented promptly by respective institutions:

- The Assembly should introduce legislative changes to allow for sanction mechanisms for IRAs assessed as having problems with accountability. Such a sanction mechanism should be based strictly on technical criteria relating to the performance of IRAs, in order to safeguard the IRAs' independence.
- The Assembly should introduce a mechanism for the dismissal of board members with poor performance or who prove to be unaccountable.
- All regulators must be able to produce periodic performance evaluations of their markets, which should be transparent and visible publicly accessible via the Assembly website.
- The Assembly should initiate legislative amendments obliging agencies to make public their annual reports. These requirements should also specify what should be included in the annual reports.
- All regulators should adopt a structured platform for public consultations, aimed at facilitating the engagement of all stakeholders and minimizing the burden on those consulted.
- All regulators should make full use of their human and financial capacities to become members of relevant regional or international networks.
- All regulators should develop codes of conduct as well as prospective annual plans with clearly identified benchmarks, targets for each quarter of the year, and sections to address customer complaints. Longer-term planning horizons and decision-making are welcomed and favored by investors.
- All market regulators should be open and should ensure that regulations are simple and user-friendly.
- All market regulators should be consulted during the process of drafting legislation relating to independent regulators in Kosovo.
- Members of regulators' boards should be appointed in line with the aforementioned memorandum of understanding between the Assembly, the Government, and the British Embassy, and should be closely monitored by civil society organizations.

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POLICY REPORTS

Policy Reports are lengthy papers which provide a tool/forum for the thorough and systematic analysis of important policy issues, designed to offer well informed scientific and policy-based solutions for significant public policy problems. In general, Policy Reports aim to present value-oriented arguments, propose specific solutions in public policy – whereby influencing the policy debate on a particular issue – through the use of evidence as a means to push forward the comprehensive and consistent arguments of our organization. In particular, they identify key policy issues through reliable methodology which helps explore the implications on the design/structure of a policy. Policy Reports are very analytical in nature; hence, they not only offer facts or provide a description of events but also evaluate policies to develop questions for analysis, to provide arguments in response to certain policy implications and to offer policy choices/solutions in a more comprehensive perspective. Policy Reports serve as a tool for influencing decision-making and calling to action the concerned groups/stakeholders.