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Introduction

The process of reforming agencies started in 2016 when in one of the meetings of the Special Group of Public Administration Reform, the representatives of the Republic of Kosovo and the European Union through joint conclusions agreed that the process of reforming institutions and agencies reporting to the Government and the Assembly is very necessary and should start as soon as possible¹. Following the conclusions, the Ministry of Public Administration, with the support of SIGMA/OECD, prepared a qualitative and quantitative analysis entitled: 'Review of independent institutions and agencies of the Assembly and central Government bodies'². Independent Regulatory Agencies (IRAs) were also part of the analysis, therefore this paper will focus on these type of agencies by analyzing the concept and legal basis. The purpose of this paper is to provide an overview of the status, organization and functioning and lines and instruments of accountability of IRAs, but also the options of the Government and the Parliament for their reform for which legal amendments need to be made and which is required to be implemented this year according to the law ³.

I. DEFINITION AND INDEPENDENCE OF IRAs

Theoretically, there are different opinions about the definition of IRAs which differ both in their role and in their type. The OECD, on the question of what regulators are, defines them as entities authorized by law to use legal remedies to achieve policy objectives and to impose restrictions and charges through the functions of issuing permits, licenses, accreditation, approval, inspection and execution⁴.

In general terms, Independent Regulatory Authorities (IRAs) are just another type of government agencies established through the delegation of powers by elected politicians. However, they are special in terms of functions and status⁵. Their mandate includes functions of a regulatory nature. While regulatory activities refer to government activities that influence and control the behaviour of individuals and businesses or the system of rules that affect an industry or activity⁶, competencies of regulators, including the adoption of rules, and oversight and improvement of rules ⁷.

In almost all European countries but also in the European Union itself, dilemmas arose about the independence of IRAs and how this independence should be ensured. When it comes to independence, the principle of legality precludes the full independence of any public body. IRAs are not excluded from this regime. Along with all other bodies, they must act within the frame boundaries set by lawmakers, i.e., in most countries - parliament. Parliamentary

¹Fifth Meeting of the Special Group for Public Administration Reform (conclusions) 2 June 2016, <https://mpb.rks-gov.net/ap/desk/inc/media/844E0923-6295-4151-BD72-454C2C80932B.pdf>

²Review of independent institutions and agencies of the Assembly and central Government bodies, <https://mpb.rks-gov.net/ap/desk/inc/media/A2077B02-AF9F-4B8B-A488-BE9C2B01DADB.pdf>

³ Kosovo Assembly Law No. 06/l-113 on the Organization and Functioning of the State Administration and Independent Agencies, Article 53, paragraph 1, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18684>

⁴ OECD 201, The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, 2014

⁵Thatcher, Mark, 2005. The Third Force? Independent Regulatory Agencies and Elected Politicians in Europe,

⁶Beckett, Julia, 2005, Public Management and the Rule of Law.

⁷Bianculli, Andrea C., Fernández-i-Marín, Xavier & Jordana, Jacint, 2013. The World of Regulatory Agencies: Institutional Varieties and Administrative Traditions, Jerusalem Papers in Regulation & Governance.

independence may be limited by constitutional and international commitments, but this does not negate the fact that the legislature remains competent to significantly curb administrative independence. Even the most in-depth interpretations of administrative independence cannot contradict these powers of legislators. Otherwise, the principle of legality would be undermined and bodies endowed with administrative independence would enjoy its benefits (autonomy to define their objectives and pursue them using public authority) with very limited controls, functioning almost as private businesses with public authority. Such an interpretation of administrative independence would lead to a meaningless conclusion that implies a return to the pre-Rechtsstaat era of administrative freedom when legal boundaries did not restrict administrative action⁸.

In European law, some of the directives regulate for their own purposes the status of IRAs but there is no homogeneous regulation in this regard. The wording of IRAs regulatory authority varies between directives, but typical regulatory functions include:

- Licensing and distribution of special rights (e.g. radio frequencies) to market stakeholders;
- Monitoring the compliance of market operators with the regulatory framework, including the imposition of sanctions for non-compliance;
- Counteracting the distortion or restriction of competition and abuse of dominant positions by operators in relevant markets.
- Taking action to improve access to regulated services in markets for different groups of users;
- Regulation or approval of tariffs (e.g., for the transmission or distribution of energy);
- Review of market operators' complaints against discrimination and actions that hinder market entry or fair competition;
- Issuance of binding instructions to market stakeholders regarding specific measures to be taken;
- Resolving disputes between operators;
- Collection of information from market stakeholders and conducting market analysis ⁹

In our context, neither in theory nor in legislation, there is no such definition at least until the entry into force of Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies (LOFSAIA). This law, however, makes a more precise definition and sets horizontal rules regarding IRAs especially for those that are of an economic type and those that supervise the market and ensure free-market competition which will be explained below.

II. CONSTITUTIONAL AND LEGAL BASIS

IRAs that regulate the market have a constitutional basis in Article 119, paragraph 5 of the Constitution of the Republic of Kosovo which stipulates that 'the Republic of Kosovo shall establish independent market regulators where the market alone cannot sufficiently protect the public interest'¹⁰. From this provision, we can understand the expressed constitutional authority

⁸Szescilo, Dawid, 2021. European Public Law Volume 27, Issue 1 -Challenging Administrative Sovereignty: Dimensions of Independence of National Regulatory Authorities Under the EU Law.

⁹Ibid.

¹⁰ Kosovo Assembly. Constitution of the Republic of Kosovo, Article 119, paragraph 5

of the state to establish independent bodies for market regulation. However, this authorization is conditioned by at least two elements, the first when the market cannot be self-regulated 'sufficiently' and the second, this must be done to protect the public interest. If we interpret more broadly the second one, it is combined with paragraph 7 of the same article (Article 119) which is related to the constitutional guarantee for consumer protection. Thus, Article 119 in paragraphs 5 and 7 very precisely regulates the constitutional basis for the establishment of IRAs by giving the necessary space to lawmakers for regulation by their law and not limiting it even in terms of time for the existence/extinction of an IRA, but this should be done whenever the market itself is not sufficiently self-regulated and when this circumstance may harm the public interest. In terms of the constitutional guarantee of free-market competition, Article 10 stipulates that 'A market economy with free competition is a basis of the economic order of the Republic of Kosovo'¹¹.

Currently, the legal basis for the functioning of Regulatory Agencies are mainly special laws that have regulated certain segments in terms of their legal status and the way of governing and organizing, lines of accountability and reporting but without consistency and common logical framework.

Over the years, the establishment of IRAs in Kosovo has been done mainly without criteria and not always based on Article 119 of the Constitution, giving the epithet of the regulator to some agencies that are not (Case of the Public Procurement Regulatory Commission, the Commission for Mines and Minerals) or at least lacked the legal authority to regulate the market or supervise market operators. The other case concerns some IRAs that have competencies in market regulation, but that the stakeholder in the market is only the state through public enterprises (such as the Railway Regulatory Agency and the Civil Aviation Authority).

2.1. Legal status of IRAs according to LOFSAIA.

As a law with a horizontal scope that homogeneously regulates the manner of establishment, organization, functioning and accountability of IRAs is LOFSAIA, which entered into force on 1 April 2019.

Based on the best practices of the OECD, LOFSAIA defines IRAs as agencies that regulate and supervise the activity of the operators of a certain market in order to protect consumers and ensure free competition. It is therein understood that Article 14 of LOFSAIA regarding IRAs is in fact an extension of the constitutional regulation defined in Article 119, paragraphs 5 and 7 and Article 10 of the Constitution. Regarding the instrument of establishment, the same can be established only with the law, i.e. by Kosovo Assembly¹².

In terms of their status, IRAs are defined as regulatory agencies that are part of the state administration, ranking together with the ministerial systems and the Office of the Prime Minister¹³. What is meant by the state administration, the same is defined as the organizational and professional apparatus of the Government, which serves the public interest through the design and implementation of policies¹⁴. From these rules it is understood first of all that IRAs are part of the state administration on one hand, but that their status differs from other agencies by giving them the same position with the Office of the Prime Minister and the ministerial systems themselves on the other hand.

¹¹Ibid, Article 10

¹² Kosovo Assembly. Law No. 06 / I-113 on the Organization and Functioning of the State Administration and Independent Agencies, Article 14, paragraph 2, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18684>,

¹³Ibid. Article 9 paragraph 1,

¹⁴Ibid. Article 8 paragraph 1

LOFSAIA very clearly distinguishes between the two types of agencies which are Independent Agencies and Executive Agencies. The difference between Regulatory Agencies and Independent Agencies lies in both their functions and their status. Independent Agencies may be established by law by the Assembly provided that they may not exercise executive powers guaranteed to the Government by the Constitution and that they serve the Assembly to exercise specialized parliamentary oversight/control of legality and integrity in areas of certain administrative activity while the Regulatory Agencies are established within the state administration in the exercise of functions related to the regulation and supervision of the activity of the operators of a certain market in order to protect consumers and ensure free competition. The other difference is between the Regulatory Agencies and the Executive Agencies where even in this case these agencies differ both in terms of status and in terms of their functions. While Regulatory Agencies are part of the state administration and have almost the same status as the Office of the Prime Minister and a ministry, the Executive Agencies are part of the ministerial system (of a ministry). When it comes to functions, while Regulatory Agencies have the functions of regulating and supervising the activity of the operators of a certain market in order to protect consumers and ensure free competition, the Executive Agencies exercise the following functions:

- law enforcement, resolving individual issues and carrying out administrative actions under the Law on General Administrative Procedure;
- collecting taxes, levies, customs duties, contributions or other duties and managing them for the purpose for which they were established;
- protection of public safety through the exercise of police powers, the issuance of permits, licenses, authorizations and approvals for specific economic activities and the conduct of inspections;
- collecting, processing and storing data and information for the Government;
- joint exercise of internal support functions.

2.2. Governance of IRAs

LOFSAIA sets rules for governing IRAs. In this respect, as a rule, IRA is led by the Director, but exceptionally it can be led by a collegial body. From this regulation is seen the possibility that knowing the nature and complexity of IRAs, LOFSAIA gives the discretion to determine which form is most suitable for their governance under the law on the establishment. The selection of each form should be analyzed and argued in terms of ensuring their independence in the exercise of functions to best meet the general interest on the one hand and which form of government would be more appropriate to ensure more efficient accountability on the other one. Regarding the selection procedure of both, the director and the member of the collegial body (when this form of governance is determined by a special law), the same rules will apply as in the selection of the senior management level in the civil service (such as positions of the Secretary General) set out in the Law on Public Officials (LPO). The director and the members of the collegial body have the status of a public officer with a special status according to the LPO¹⁵ therefore the regulation of the procedure is a 'borrowing' from the LPO and in no case does the director and the members of the collegial body have the status of Public Officer. Regarding the body that makes the appointment of the director or the collegial body, as a rule, the appointment is made by the Government, but under the law on the establishment, it can be determined that the appointment

¹⁵ Kosovo Assembly. Law No. 06/L-114 on Public Officials, Article 3 paragraph 3.6

may be made by the Assembly ex officio or on the proposal of the Government. The mandate of the director and member of the collegial body will be 4 years with the possibility of re-election for another term. In addition to the regular termination, the term may terminate early the following conditions are met:

- failure to submit to the Government the Annual Performance Plan or the Annual Performance Report within the deadline;
- non-approval by the Government of the Annual Performance Report for two (2) consecutive years;
- serious violations of the law;
- severe lack of integrity or actions in conflict of interest with official duty;
- restriction or deprivation of the capacity to act, by a final decision;
- a final conviction for committing a criminal offence;
- upon reaching retirement age¹⁶.

The legal authorization for the early termination of the mandate lies in the bodies that select the director/member of the collegial body. Given the complexity and diversity of IRAs, LOFSAIA has not set criteria for being elected director/member of the IRA collegial body, but this should be regulated by the law on the establishment.

The functions of the managing body of IRAs are the same as those of the executive director of an executive agency but differ in their normative capacity because they have the right to issue decisions of a regulatory nature.

2.3. System of accountability and performance evaluation of IRAs

LOFSAIA sets horizontal rules for the first time regarding the lines of accountability, supervision and establishment of the performance system by defining the responsible bodies, the plan and the performance report. The management and supervision of a regulatory agency are done through the performance management system and specific supervisory instruments which is the responsibility of the Government and is exercised through the responsible minister who acts as the responsible unit.

The performance management system consists of a performance plan which is drafted by IRA and contains at least the following elements:

- the logical framework, which defines the specific objectives, products and results to be achieved, combined with the performance indicators, indicators and relevant tasks,
- the financial part, which specifies the budget of the agency and its distribution according to the specific results to be achieved.

The content of the performance plan is regulated in details by Regulation No. 03/2020 on the Performance of Agencies¹⁷.

The performance plan is agreed upon between IRA and the responsible unit by 30 November of the existing year, for the following year. If there is no agreement between the responsible unit, the performance plan is approved by the Government by 31 December 31 for the following year.

¹⁶ Kosovo Assembly. Law No. 06/l-113 on the Organization and Functioning of the State Administration and Independent Agencies, Article 24, paragraph 6, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18684>

¹⁷ Regulation (GRK) No. 03/2020 on the Performance of Agencies <https://gzk.rksgov.net/ActDetail.aspx?ActID=27050>

The performance report is sent to the responsible unit no later than 31 March of the following year and contains detailed information on the achievement of objectives, outputs and results set out in the performance plan. The responsible unit starts a dialogue process about meeting the objectives which is completed within 30 days after the submission of the report. According to the result of the performance dialogue, the responsible unit prepares the annual performance statement of IRA which is submitted to the Government for approval. The performance statement includes the approval or disapproval of the performance report and a performance appraisal and specific areas in which it is necessary to change the agency performance¹⁸.

The plan, report and performance statement should be made public on the relevant IRA website.

In addition to the performance management system, there are specific supervisory instruments for IRAs. According to LOFSAIA, the unit responsible for IRA can exercise these specific supervisory instruments, by:

- requiring information and documents related to the work of the agency;
- undertaking inspections related to the legality, effectiveness and efficiency of the work of the agency¹⁹.

By definition, these are specific instruments in the hands of the Responsible Unit for IRA, both in providing information and documents and in actions to conduct inspections in terms of legality and effectiveness and efficiency of the agency. However, the right to use the inspection in no case implies the involvement of the responsible unit in issuing orders and instructions on specific administrative matters which are the competence of the IRA. For regulatory acts issued by IRA, as a rule, an administrative dispute may be raised before the court competent for administrative matters.

III. CURRENT SITUATION, LEGAL STATUS, GOVERNANCE, ACCOUNTABILITY

It should first be made clear that this report focuses only on IRAs that have competencies in regulating and supervising a certain market and not on some types of institutions that have the name and function as IRA but that in fact do not meet the conditions defined in LOFSAIA to have this status. Hence, our focus will be on these IRAs that regulate and supervise the activity of the operators of a certain market in order to protect consumers and ensure free competition. Of this nature have been identified agencies listed in Annex 1 to this report. From what has been analyzed in terms of the establishment of these agencies, for each there is a clear legal basis, so they are established by law. Their governance differs mainly between collegial and individual governance (only WSRA has individual governance, others have collegial governance). When it comes to collegial governance again the same is the difference between a management board and a supervisory board (the supervisory board exists in RRA and CAAK). Regarding the general and specific criteria for being a director and/or a board member, the respective laws are very deficient and general, in most cases, a university degree is required and 3 and in some cases 7 years of work experience. When it comes to the composition of the boards to be a member, for example, the type of law degree, economics and other branches related to the nature of IRA is required, but there is no division of the type, for example, out of 5 members one must be a

¹⁸ Kosovo Assembly. Law No. 06 / I-113 on the Organization and Functioning of the State Administration and Independent Agencies, Article 30, paragraph 6, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18684>

¹⁹Ibid, Article 32 paragraph 1

lawyer and an economist and others in the relevant field of IRA. In the absence of this regulation in practice, the whole composition may be of a certain specialization but that is not relevant to the concrete IRA (e.g. all lawyers in RAEPC). Another problem that exists in the composition of the boards is that they have a composition that is appointed only by the Government or the Assembly as the case may be and there is no representation for example of professional associations, protectors of consumer rights, etc. The appointment of the director/members is done in some cases by the Government in some others by the Assembly (ex-officio or on the proposal of the Government). Appointment procedures are generally lacking, but even where they exist they do not provide any guarantee that ensures the merit and professionalism of these bodies. The minimum conditions for being a director/board member, the one-sided composition of the boards and the lack of procedures based on competition and transparency have made it appropriate for the director/board member to be close to the daily politics and party militant.

In terms of accountability, there is generally no clear and precise regulation both in terms of responsible supervisory bodies and supervisory mechanisms and instruments. There is no legal requirement to develop and approve performance plans or measurement indicators for its evaluation. Forms of supervision are not defined whether they are direct or indirect. Direct supervision in most cases is exercised in the Assembly or in the responsible committees of the Assembly which lack the specialization to challenge an IRA, the scope of which is very complex and requires in-depth specialization, which is lacking in the functional committees but also in the administration of the Assembly itself. When it comes to indirect supervision in some IRAs there is a supervisory board but it has a homogeneous composition (all members are appointed by the Assembly or the Government as appropriate) and there is no board representation of other participants to minimize the potential political influence and reinforce their accountability.

Only in a few cases is the content of the reports regulated but which is more oriented towards descriptive reporting of common activities than performance-based reporting and the achievement of concrete IRA outputs. Consequences of lack of a report and negative performance report except in ERO are not remedied which means that if the report is not presented or the performance is negative there is no consequence for the managing body of IRA (director/board).

IV. IRA REFORM OPTIONS

The frequently asked question, which is also a challenge for the drafters of IRA legislation, is how to regulate the independent regulatory agencies, therefore, during the reform process and the drafting of legislation, the following reform points should be taken into account:

- reducing the number of regulatory institutions in a single jurisdiction and avoiding political influence on boards by prohibiting the nomination of politicians to boards of financial regulatory institutions;
- The budget of the institution should be completely independent of the government on both sides in terms of budgeting and spending,
- to stimulate regulators to adjust in times of crisis, early retirement mechanisms for regulators should be adopted,
- diversification of the board of directors of regulatory institutions including public representatives and experts on the management board. Furthermore, the two types of directors of the regulatory institution (as an individual body or even when they are part of the board) and the regulators themselves must be subject to the duties of care and loyalty,

- in addition to audit and remuneration committees, peer review by similar sector regulators from other countries should be introduced,
- the employment of former employees of the financial regulatory institution should be limited in order to avoid unwanted capture and conflict of interest,
- the goals of the financial regulatory authority should be clearly defined by law and more formalized and extensive public information of the regulatory work should be well done²⁰.

Considering the adjustment that has been made in LOFSAIA as well as the legal requirement that the process of reform/adjustment of the status of executive, regulatory and independent agencies should be done by the end of 2021²¹, this paper aims at providing several options on how IRAs can be reformed (Annex 2) both in terms of their optimization (reduction of their number) as well as in the adjustment of their status, way of governing and accountability.

4.1. Reducing the number of IRAs - should be considered, given the overall reform in reducing ministries and agencies in general which has begun to be implemented in Kosovo. When it comes to reducing IRAs, the following options should be considered:

4.1.1 Option 1, out of 7 IRAs, a single one is created but leaving out the Independent Media Commission since it has constitutional status (this system is applicable in the Netherlands, Spain, Latvia and Germany). This IRA would function in the executive branch. This option would optimize financially many expenses, including a single collegial body, joint services, joint expenses, etc.

4.1.2. Option 2, merging IRAs taking into account the specialization of the sectors. Under this option, an IRA would be established that includes the regulation of civil aviation, railways, electronic and postal communications, an IRA that includes the regulation of water and sewerage, energy, waste, an IRA for competition and the Independent Media Commission. So from the current 7, they would be reduced to 4 of them. In this option, the Competition Commission retains the status of IRA but the lines of accountability and other elements in their law need to be changed to harmonize them with LOFSAIA.

4.2. Governance of IRAs – seeing the complexity and diversity of IRAs, LOFSAIA has left open the possibility of governing IRAs between collegial and individual governance. The way of governing should be regulated by a special law and each definition (collegial or individual) should be well thought out and in a way that best serves the general interest and the establishment of clear lines of accountability. We also give these recommendations related to governance for each option that is chosen.

4.2.1. Governance through a collegial body must be viewed from many perspectives. Initially, the composition and procedure for selecting board members should first be determined based on competition and merit. When we are at the size of the collegial body, the number from 3 to 7 members should be considered. The composition of the collegial body should also reflect participants from professional associations and users of a particular service. The criteria for education and experience must be clear. The type of education and experience should be

²⁰Jabotinsky, Hadar and Siems, Mathias, 2017. How to Regulate the Regulators: Applying Principles of Good Corporate Governance to Financial Regulatory Institutions https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2978112.

²¹ Kosovo Assembly. Law No. 06/I-113 on the Organization and Functioning of the State Administration and Independent Agencies, Article 30, paragraph 6, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18684>

balanced by defining the nature and functions of the IRA (e.g. one of the board members should have law school and experience in the field of education). The selection procedure, mandate and reasons for dismissal are set out in LOFSAIA, so they can be borrowed in the special law or the special law to make reference to LOFSAIA. Referring to the body that makes the appointment and dismissal, as a rule, according to LOFSAIA the appointment is made by the Government on the proposal of the ministry responsible for the field of IRA. Another possibility is that under the establishment law the appointment can be made directly by the Assembly, which itself conducts the selection procedures or at the proposal of the Government which makes the selection while the appointment is made by the Assembly. If the manner of appointment by the Assembly is determined by a special law, special attention should be paid to the selection commissions both in the case when they are established by the Assembly and when they are established by the Government. Another aspect that needs to be well analyzed is the system of financial management and human resources which again there are two possibilities for this to be done, by the board itself through its chairman or by a Secretary General who ensures professionalism and continuity of institutional memory. For the work, procedure and decision-making of the collegial body, the regulation can be borrowed from the Law on General Administrative Procedure. The body conducting the recruitment procedure for the director/board member should be explicitly defined by law and should have the necessary specialization in human resources (e.g. the Department for the management of public officials may be authorized to conduct the procedure and managing and storing the files of board members). The criteria for appointment should be determined by the special law of IRA and the same should ensure professionalism.

4.2.2. Governance through an individual (monocratic) body/Director of IRA is simpler from the perspective of selection and dismissal. The complete selection procedure, mandate, reasons for dismissal are defined in LOFSAIA. The appointment criteria should be determined by the special IRA law and the same should ensure professionalism. As with collegial governance, it must be determined whether financial and human resource management is done directly by the Director or by a Secretary-General. As to the individual governance, a very important segment must be taken into account that has to do with the delegation of competencies, therefore the special law should not concentrate all the (administrative) authority on the Director but on the IRA itself so that the director then selects and determine the professional structures responsible for exercising this authority in a professional manner. The same does not happen with the regulatory authority, therefore this competence should remain as the competence of the Director of IRA.

4.2.3. The normative capacity of IRA - is one of the main functions of an IRA, therefore it must be taken care of both the nature of the act that regulates the market and the procedure and the body that makes the approval. The act that regulates a certain market (e.g. setting fees) has more elements of a normative sub-legal act, therefore the special law should provide the conditions and restrictions on what and to what extent the sub-legal act should regulate, the procedure and the approval authority. The drafting and consultation procedure should be subject to the standard preliminary and public consultation procedure as for any other normative act.

4.2.4. IRA budget - Regarding the financial management, the general rules governing this area should apply, except that IRA should have a special budget code defined in the annual budget law. Considering that the budget is one of the segments for maintaining independence, it is recommended that the budget be proposed directly to the Assembly without the need for a prior approval by the Government.

4.2.5 Internal organization - defined in LOFSAIA should also apply in the case of IRAs. Human resource management should be done by the IRA itself, while IRA officers should have the status of civil servants in accordance with the Law on Public Officials.

4.2.6. Accountability – regulations set out in the LOFSAIA regarding accountability must be applied directly to each IRA. However, by special law, this regulation must be expressed, for example, by referring to LOFSAIA.

All IRAs reform has a direct implication in supplementing and amending specific laws, therefore this can be done through a single law that complements all specific IRA laws or by making amendments to each law one by one. Until the supplementation and amendment of special laws, the regulations provided under LOFSAIA that are not in the special laws must be applied directly in accordance with Article 53 paragraph 2 of LOFSAIA.

APPENDIX 1 - Current Status of IRAs

Agency	Legal basis	Governance	Reporting	Accountability
Water Services Regulatory Authority	Law No. 05/L - 042 on the Regulation of Water Services	Director Proposed and appointed by the Assembly.	Assembly	Planning: No performance plan required by law. Report, content: Operational and financial activities of the Authority performed during the previous year, including detailed data of performance indicators for each sector regulated by this law and the consolidated financial accounts of the Authority for the previous year. Legal consequences: There are no legal consequences for the Director if the performance plan or report is not approved.
Energy Regulatory Office	Law no. 05/L-084 on the Energy Regulator	Board + managing director Conditions for the appointment of board members: They are set by law and are minimal. Composition and manner of election of the Board: Board members are nominated by the ministry, approved by the Government and finally appointed by the Assembly. There is no division in terms of representation. Managing Director: There are no rules on how he/he is elected and what his mandate and function is.	Assembly through the responsible functional committee	Plan: No performance plan required Report, content: the obligation to report is defined by law. The report contains: - monitoring results of competition and transparency in energy markets, - a summary of all individual decisions taken and decisions on dispute resolution and enforcement proceedings taken by the Regulator during the previous year; during the previous year; - data on licensing and other regulatory activities during the previous year; the audited financial report of the Regulator for the previous year, including the amount of revenues collected by the Regulator as well as the expenses incurred Legal consequences: The Parliament of Kosovo may initiate the procedure of dismissal of the Chairman and members of the board if for two consecutive years they have failed to fully fulfil their responsibilities, which has seriously damaged the efficiency of the energy sector.

Railway Regulatory Authority	Law No. 04/L-063 on Kosovo Railways	<p>Supervisory Board (non-executive) + General Director</p> <p>Conditions for the appointment of board members:</p> <p>They are set by law and are minimal.</p> <p>Composition and manner of election of the Board: Recommended by the ministry, approved by the Government and appointed by the Assembly. There is no division in terms of representation.</p> <p>Managing Director: is one of the members of the board, elected by the Board according to civil service legislation.</p> <p>Functions of the Managing Director: delegated by the board even though it is non-executive, and by the law of railways</p>	Assembly	<p>Plan: No performance plan required</p> <p>Report, Content: Not regulated by law</p> <p>Legal consequences: There are no legal consequences for the board and the Director if the plan or performance report are not approved.</p>
Regulatory Authority for Electronic and Postal Communications		<p>Board</p> <p>Conditions for appointment:</p> <p>They are assigned by law and are general.</p> <p>Composition and manner of election of the Board: Recommended by the ministry, proposed by the Government and appointed by the Assembly. There is no division in terms of</p>	Assembly	<p>Plan: No performance plan required</p> <p>Report, content:</p> <ul style="list-style-type: none"> -the work report of the Authority for the previous year; -annual work program for the following year; -report on the status of universal service; -report on the realization of the annual financial indicators of the Authority;

		<p>representation.</p> <p>Managing Director: There is no, this function is exercised by the Chairman of the Board</p>		<p>-data on the situation in the electronic communications market.</p> <p>Legal consequences: there are no legal consequences for the board.</p>
Kosovo Competition Authority	Law No. 03/L-229 on Protection of Competition	<p>Commission + General Director</p> <p>Conditions for appointment of members:</p> <p>They are appointed by law and are general and minimal.</p> <p>Composition and manner of election of the Board: Recommended by the Government and appointed by the Assembly. There is no division in terms of representation.</p> <p>General Director: There are no rules on how the status is regulated, the manner of selection nor its functions.</p>	Assembly	<p>Plan: No performance plan required</p> <p>Report, content: Not regulated by law</p> <p>Legal consequences: there are no legal consequences for committee members if the plan or performance report is not approved.</p>
Kosovo Civil Aviation Authority	Law No. 03/L-051 on Civil Aviation	<p>Supervisory Board (non-executive) + General Director</p> <p>Conditions for appointment:</p> <p>They are set by law and are minimal.</p> <p>Composition and manner of election of the Board: Recommended by the Minister, appointed by the Government. There is no division in</p>	Director-General, Board, Ministry, Government and Assembly	<p>Plan: No performance plan required</p> <p>Report contains:</p> <ul style="list-style-type: none"> -provides detailed information for the last calendar year related to; -organization, activities, CAA staff and salary level: -CAAs procurement, financial management and budget issues: -all administrative complaints, disputes (conflicts) and procedures submitted or

		<p>terms of representation.</p> <p>Managing Director: Appointed by the Government on the proposal of the Minister. Except for a few minimum and general conditions, no competition or merit is required during the selection process.</p>		<p>conducted during the previous calendar year; and</p> <p>-all decisions and measures on CAA executive, regulatory or licensing matters.</p> <p>Legal consequences: there are no legal consequences for the Director-General if the report is not approved.</p>
Independent Media Commission	<p>Article 141 of the Constitution and Law No. 04/L-44 on the Independent Media Commission</p>	<p>Commission + Chief Executive Officer</p> <p>Conditions for appointment of members:</p> <p>They are prescribed by law and are general and minimal.</p> <p>Composition and manner of election of the Board: Members are elected by the Parliament through an open and transparent procedure. There is no division in terms of representation.</p> <p>Chief Executive Officer: appointed in accordance with civil service legislation.</p>	Parliament	<p>Plan: No performance plan required</p> <p>Report, content: The law regulates only the obligation to report to the Parliament but not the content.</p> <p>Legal consequences: there are no legal consequences for committee members if the performance plan or report is not approved.</p>

APPENDIX 2- IRA Reform Options

Agency	Reducing the number		Functions	Governance		Budget	Internal organization	Accountability
	Opt.1	Opt.2		Opt.1	Opt.2			
Water Services Regulatory Authority	Fusion	Fusion	Waste management and waste disposal functions should also be added	G. collegial Board with 3-7 members	G. individual Director	Budget: special budget code, budget proposal to be made directly to the Assembly.	Two levels: Department, Division. Human resource management is done by IRA itself	Arrangements provided for in LOFSAIA must be applied directly or by reference.
Regulatory Authority for Electronic and Postal Communications			Remain as they are, if constitutional amendments occur, the functions of the Independent Media Commission should be defined jointly with this agency.	Composition of the board: to reflect also participants from professional associations and service users				
Energy Regulatory Office			Reduction of functions in electricity and increase of regulatory functions in other energy sources (gas, coal, etc.) should be considered.	The criteria for appointing board members must be clearly defined	The criteria for			

Railway Regulatory Authority		Fusion	Market regulation functions are contested given that railway services are provided by a single operator and the same is state-owned.	<p>Appointment of members: By the Government on the proposal of line Ministry.</p> <p>By the Assembly on the proposal of the Government or ex-officio by the Assembly both the development of procedures and the appointment.</p> <p>Financial and human resource management:</p> <p>By the Chairman of the Board or the Secretary General</p>	<p>appointing a director must be precisely and clearly defined</p> <p>Appointment of the director: By the Government on the proposal of line Ministry,</p> <p>By the Assembly on the proposal of the Government or ex-officio by the Assembly both the development of procedures and the appointment.</p> <p>Financial and human resource management:</p> <p>By the Director or Secretary General</p>			
Kosovo Civil Aviation Authority			The functions of regulating the economy of airports are disputed, given that there is only one airport in Kosovo.					
Kosovo Competition Authority		It remains as it is only the lines of accountability are changed						
Independent Media Commission	Remains as it is	Remains as it is						

POLICY NOTE

The Policy Note provides brief, concise, and timely analysis of specific issues. Policy Notes are short reports that describe the reasons behind selecting a particular policy alternative on a current issue/debate. They are usually published for a specific event and advocate for the professional positions of the Group for Legal and Political Studies. More precisely, Policy Notes are advocacy documents, which provide arguments regarding the adaptation/changes of a certain policy. Policy Notes aim at impacting a target audience on the importance/implications/solutions of a current problem, thereby giving recommendations to policymakers, civil society and the media, and the general public.



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