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**YEREL YÖNETİM REFORMU
PROJESİ (YR III)**
LOCAL ADMINISTRATION REFORM
PROJECT (LAR III)

COMPARATIVE ASSESSMENT REPORT FOR THE FUNCTIONING OF MUNICIPALITY-LED ENTERPRISES

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ABBREVIATIONS

EU	European Union
MEE	Municipal Economic Enterprise
UN	United Nations
CEEP	European Centre of Employers and Enterprises Providing Public Services
IPA	Instrument for Pre-accession Assistance
HR	Human Resources
HRIS	Human Resources Information System
OSH	Occupational Safety and Health
ISKUR	Turkish Employment Agency
KBS	Public Expenditure and Accounting Information System
KHK	Decree-Law
LAR-I	Local Administration Reform Project Phase I
LAR-II	Local Administration Reform Project Phase II
LAR-III	Local Administration Reform Project Phase III
OECD	Organisation for Economic Co-operation and Development
CMB	Capital Markets Board
NGO	Non-Governmental Organisation
TCC	Turkish Commercial Code
UNDP	United Nations Development Programme
CA	Chartered Accountant

1. INTRODUCTION

Local Administration Reform Project Phase III (LAR-III) is the third phase of the projects funded by European Union (EU) in the framework of IPA funds and implemented by UNDP to support local administration reforms. The first phase of this project series (LAR-I) was executed in 2005-2007 and the second phase (LAR-II) in 2009-2011. LAR-III targets to carry out a series of activities aimed at enhancing and strengthening the administrative capacities of local administrations together with the Ministry of Interior and the Ministry of Environment, Urbanization and Climate Change as co-beneficiaries and ensuring participation within our local administration system, benefiting from the outputs of previous projects.

The specific objective of the project is to enhance and strengthen administrative capacities of and collaborations among the Ministry of Interior (MoI) and the Ministry of Environment, Urbanization and Climate Change (MoEUCC) as well as local administrations for their tasks aimed at ensuring effective implementation of the new local administration model in line with the democratic governance principles.

The project has three components. The general architecture of the project is presented in the following sections.

❖ **First Component: Delivery of Effective and High-Quality Municipal Services.** The activities under this component focus on:

- Strengthening the loan system of municipalities,
- Following up municipal receivables,
- Increasing the revenues of municipalities,
- Revenue sharing systems,
- Prioritizing investments in rural areas,
- Comparative studies on the status of Municipal Enterprises and Water and Sewerage Administrations with the EU countries and accordingly providing suggestions to the beneficiaries about the legislative changes to be made.

Among other activities are:

- Internalization of the issues concerning municipalities within the EU acquis,
- Making determinations on the capacity building for improving and monitoring the performance management system in municipalities,
- Conducting due diligence and comparative analyses on how municipalities operate in selected service areas and providing suggestions,
- Developing standards for improving the municipal personnel system.

❖ **Second Component: The New Metropolitan Municipality Model and Capacity Building for Inclusive Local Governance Processes.** Under this Component, with the help of various surveys, workshops and events, the following activities are aimed:

- Determining the effect of the implementation of the Law on Metropolitan Municipalities on municipalities,
- Developing a software which will monitor the effect of the reforms,
- Proposing a new model for the MM structure,
- Providing trainings for the municipal staff,
- Developing a new model about neighbourhood governments,
- Developing service standards in the service areas to be determined,
- Developing a model for enabling participation in MMs,
- Contributing to the development of policies on strengthening the municipal election system and municipal councils,
- Developing programs for disadvantaged groups (women, children, people with disabilities).

❖ **Third Component: Establishment and Updating of the Management Information System Infrastructure pertaining to the Local Administration System.** Under this Component, it is aimed to strengthen the database known as YERELBİLGİ. This Component, as a support component, aims to develop the software needed by the other two components (such as Performance Management System, Reform and Legislation Monitoring System).

This study covers activity “A.1.1.9. Develop recommendations for the development of a draft legislation on the functioning of municipality-led enterprises in line with EU Member States experiences” carried out under the main activity “A.1.1. Enhancing Administrative and Operational Capacities for efficient provision of local services” of the first component: Delivery of Effective and High-Quality Municipal Services” of the LAR-III project.

The activity A.1.1.9 carried out under the project aims contribute to the development of a draft legislation on the functioning of Municipality-Led Enterprises (MLEs) by means of efforts to make more transparent the business processes of MLEs, to strengthen the effectiveness of their relations with municipalities and to establish a more accountable and transparent structure. In this context, two basic outputs are expected from the activity: “Comparative Assessment Report” and “Recommendations Report to Improve the Legislative Framework Regulating Municipality-Led Enterprises in Türkiye”, which is presented with this document.

The functioning of MEEs in Türkiye is required to be improved to ensure that they become more accountable and transparent before the community and the respective municipal council. In order to regulate existing applications and develop recommendations, the study

includes a comprehensive review of the legal regulations, MEEs, existing problems and good practice examples in Türkiye as well as EU practices.

Prepared under the above-mentioned study, the report starts with introduction section in which current structure in Türkiye is explained and continues with the Local Administrations and MLEs in Türkiye. Under the Baseline Analysis of MLEs, 21 of the 30 MMs and 13 of the provincial and district municipalities in Türkiye were examined and analysed. Under the Structure and Functioning of MLEs in Selected EU States, the structuring of enterprises in eight European countries were examined in order to conduct a benchmarking study regarding the current status in Türkiye. Results of examination, analysis and benchmarking studies conducted are summarized in the Assessment and Recommendations section.

2. MLEs IN TÜRKİYE

Recent developments around the world revealed a new formation in terms of the public sector and organisation and governance of public services. In other words, the impacts of the new public administration approach have led to the ever-increasing use of market-like mechanisms and incorporation trends in the public sector causing the boundaries between the public and private sectors to become unclear. These new organizations are referred to as combined organizations as they have taken the characteristics of private sector organizations on one side but have not broken their ties with the public sector on the other side. These organisations appear more of a private sector organisation and have been established to eliminate the disadvantages of public institutions. Municipalities have been affected by the incorporation trend around the world to overcome the bureaucratic obstacles in the public sector (Sağlam, 2020).

Technological developments, rapid urbanization, and transfer of power and resources by central governments to local administrations, particularly since the last quarter of the 20th century have brought along significant increases in both the demand and provision of local public services. Local administrations have been interested in alternative service methods while striving to fulfil their increased functions and responsibilities. Particularly, enterprises that have been established and operating by the private law provisions have become the most preferred practice due to the flexibility they provide for the production and provision of services. Accordingly, the number of enterprises established under the private law provisions, particularly by special provincial administrations (SPAs) and municipalities, has increased since the 1980s in line with the increasing service demand and delivery (Demirkaya, 2010).

The functions, powers and responsibilities are divided and shared between municipalities and the central government and its local units at the provincial level in the framework of the Law No. 5216 on Metropolitan Municipalities and Law No. 5393 on Municipality. With the amendment of the Law on Metropolitan Municipalities by the Law No. 6360, MMs are defined as public legal entities, which have the same boundaries as provincial administrative boundaries, provide coordination among district municipalities within its boundaries, fulfil the functions and responsibilities and use the power assigned to them by laws based on the administrative and financial autonomy, and have a decision-making body formed by the electorate through elections (Yılmaz, 2013 and 2015).

After the enactment of the Law No. 6360, the number of municipalities reduced from 2,950 in 2012 to 1,390 in 2021. In the current situation today, 93% of the population of our country lives within municipal boundaries, whereas the remaining 7% lives outside municipal boundaries. Of the population living in municipal boundaries, 82.8% are in the MMs, and 17.2% are in other municipalities. The percentage of the population living in MMs in the total population increased from 45% before 2010 to 77% today. Since the population living under the municipal administration has increased, the revenue structures of municipalities, particularly their own capacity to generate revenues, became more important in terms of delivering sufficient and high quality local public services (Yılmaz, 2015).

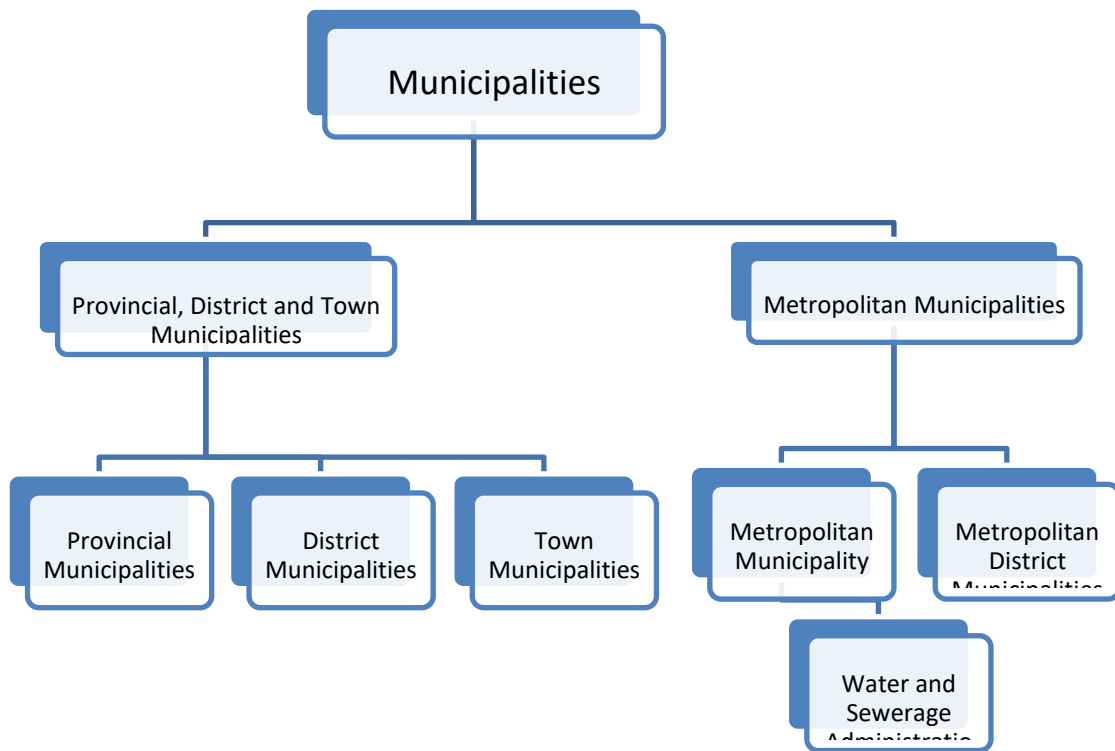


Figure 2.1.: Types of Municipalities in Türkiye

Looking at the breakdown of municipalities in Türkiye by population as of the end of 2020, there are 350 municipalities with populations of over 50,000, 248 of which have populations over 100,000. The number of municipalities with populations of 2,000 to 5,000 is 435. The differentiation among populations of municipalities is very high (Yılmaz et al., 2017; 2020 (LAGAR; 2021). The average population of municipalities in Türkiye is slightly over 50,000, and there are 337 municipalities with population of over this average.

Table 2.1.: Breakdown of Municipalities by Type and Population Range

	Metropolitan Municipality	Province	Metropolitan District	District Centre	Town	Total	Population
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	Büyükşehir	il	Büyükşehir İlçe	İlçe Merkezi	Belde	Toplam	Nüfus
0 - 2.000				37	70	108	173.829
2.001 - 5.000			13	132	282	427	1.277.660
5.001 - 10.000			40	98	33	171	1.210.742
10.001 - 20.000			79	62	1	142	2.037.981
20.001 - 50.000		5	132	54	1	192	6.014.449
50.001 - 75.000		5	52	12		69	4.199.593
75.001 - 100.000		7	22	4		33	2.888.923
100.001 - 250.000		28	91	4		123	18.968.107
250.001 - 500.000		6	64			70	24.770.857
500.001 - 750.000			17			17	10.349.916
750.001 - 1.000.000	6		8			14	11.918.825
1.000.001 - 2.000.000	15					15	20.379.192
2.000.001 - 3.000.000	5					5	11.273.459
3.000.001 - 5.000.000	2					2	7.496.527
5.000.001 -	2					2	21.125.774
TOPLAM	30	51	519	403	387	1.390	78.929.602

TOTAL

Source: 2020 LAGAR, 2021, MoEUCC, DGLA

2.1. THE ENTERPRISE CONCEPT & MLEs

According to Article 127 of the Constitution, municipalities are public legal entities established for “meeting common local needs”. The Law No. 5393 on Municipality defines a municipality as “a public entity having administrative and financial autonomy which is established to meet common local needs of inhabitants of a town and whose decision-making body is elected by voters”. In order to meet common local needs, they may establish Municipal Economic Enterprises (MEEs) or municipality-led enterprises (MLEs) in the framework of the rights given to them. MEEs are an alternative method allowing municipalities to make use of local sources more effectively, to contribute to development in the areas in which they are responsible, and to deliver services in a more dynamic process.

On the other side, Article 26 of the Law No. 5216 on Metropolitan Municipalities and Article 70 of the Law No. 5393 on Municipality accord to municipalities the right to establish enterprises in the areas relating to the functions and services assigned to them. The

noteworthy point in both laws is that the areas of activity of such enterprises are limited to the areas relating to the functions and services assigned to municipalities. Municipalities may therefore establish enterprises to perform certain services. Municipalities may also perform services that have specific revenues and expense by establishing an enterprise being subject to their budgets with the approval of Mol (Art. 71) (Sağlam, 2020).

MLEs can be defined as private legal entities which have their own budgets and which are established by municipalities or in which they become partners provided that they obtain the management of the MLE, for the delivery of certain services. These enterprises are established by municipalities based on an organizational purpose, offer personal goods and services and have administrative procedures determined by municipalities. Besides, they generate most of their revenues independently from municipalities and therefore finance their ongoing activities on their own. Resources are allocated to such enterprises to ensure that the respective local community provides maximum social benefit.

The following legislative arrangements were entered into force after being published in the Official Gazette of 24.12.2017 issue 30280 and e Official Gazette of 01.01.2018 issue 30288, respectively: the Decree-Law No. 696 on Enacting Certain Provisions under the State of Emergency; the Procedures and Principles Regarding the Implementation of Transitional Articles 23 and 24 of the Decree-Law No. 375 on Assignment of the Personnel Working under Service Procurement Contracts for Outsourcing Personnel in Public Institutions and Organizations to Permanent Worker Positions in the Public or to Worker Positions in Municipality-led Enterprises. Accordingly, it was supposed that municipalities which had existing MLEs would recruit such workers in these MLEs and that municipalities which had no MLE would recruit such workers in the prospective enterprises to be established. This means that all municipalities would have at least one MLE.

A company is an enterprise established by at least one real and/or legal person by joining their capital and powers to achieve a common goal through signing a contract in order to produce goods and services. Companies that have been or will be established by municipalities should be established in compliance with the procedures set out in TCC No. 6102 and are considered as private law legal persons regardless of the percentage of shares held by municipalities. According to TCC No. 6102, a company to be established by a municipality must be established as a limited liability company or joint-stock company. TCC No. 6102 made nearly uniform the structures and management of limited companies and joint-stock companies. Therefore, a limited company can perform almost all the functions of a joint-stock company no matter how large the volume of activity predicted.

Companies that are subject to TCC must be managed prudentially. Also, they must precisely identify duties, powers and responsibilities in respective regulations, which are to be approved by the general assembly or the board of directors and written in the decision book. Furthermore, they must establish an appropriate organisational structure. MLEs are managed in accordance with TCC and other relevant legislation; they are, however, audited by the Turkish Court of Accounts pursuant to the Law No. 6085 on Court of Accounts. According to TCC, MLEs can also be subject to independent (external) audits according to their size. (Sağlam, 2020)

Since the importance of local administrations has increased around the world in recent years, the functions and responsibilities of municipalities have increased accordingly. Since the importance of local administrations has increased globally in recent years, the functions and responsibilities of municipalities, including local public enterprises, have increased accordingly. Particularly municipalities started to perform various local services, such as those related to transport, construction, etc., through enterprises established in accordance with private law. In this context, considering these enterprises as part of the decentralisation process developed in parallel with the new public administration model, local administrations can meet increased demands for service through these enterprises operating in various sectors.

Although being subject to the private law provisions, these enterprises are neither completely private companies nor public institutions; they are rather private institutional entities in which common local activities for the public weal are conducted through an institutional structure.

According to the United Nations (UN), local public enterprises are the enterprises the decision-making bodies of which are prevailed completely or partly by public authorities, and more than half of such enterprises should be controlled by these authorities. According to the European Commission, a local public enterprise means any enterprise over which the public authorities may exercise directly or indirectly a dominant influence in the management. In this context, to consider an enterprise as a public enterprise:

- The majority of the enterprise's capital must be held by a public authority;
- Public authorities should control the majority of the votes attaching to shares issued by the enterprise; and
- Public authorities can appoint more than half of the members of the enterprises administrative, managerial or supervisory body (European Commission, Article 2 of the Directive 80/723/EEC).

The European Centre of Employers and Enterprises Providing Public Services (CEEP)¹ defines a local public enterprise as the enterprise that has an independent accounting and finance system as a corporate structure, that functions in accordance with the private law rules, and that is controlled (indirectly) by at least 50% by one or more public institutions. Assessments of such international structures as UN, EU and CEEP that have a significant influence on local administrations regarding local public enterprises are expected to give the most realistic result for local administrations. Today, some international organisations advocate more than national governments the interests of local administrations in terms of decentralisation, achieving autonomy and democratisation in an economic and administrative manner.

In a broad sense, an enterprise means one or more persons coming together on any side of an initiative, activity, or a legal or actual situation. In a narrow sense, an enterprise the group of persons and goods aimed at making a profit. According to the EU's 12th Company Law Directive, a company may have a sole member when it is formed. Companies, municipalities, central governments, foundations and associations may form a single-member company without being limited with the number of founders.

Germany has followed the examples of Finland, the Netherlands, Spain and Sweden and included in its legislation a single-member limited liability or joint-stock companies. TCC No. 6102 transposed the EU's regulation on single-member companies to the Turkish law, ensuring full harmonisation.

According to Article 26 of the Law No. 5216 on Metropolitan Municipalities published in the Official Gazette of 23.07.2004 issue 24431, MMs may set up capital companies in the areas relating to duties and services assigned to them according to the procedures provided for in the relevant legislation. Many services are carried out through such special purpose companies that have a separate legal entity and budget and a semi-commercial nature and that, however, affiliated with and operates under the general supervision of a local administration.

Pursuant to the Article 18 "Duties of the Municipal Council" of the Law No. 5393 on Municipality, the Municipal Councils will resolve "to establish or the leave from intra-budget enterprises as well as partnership that are subject to TCC. This explains the term "according to the procedures stipulated in the respective legislation" expressed in Article 70. Accordingly, municipalities may establish companies in the framework of TCC No. 6102 in the areas of functions and services assigned to them with a resolution by Municipal Councils. However, a resolution of a Municipal Council is not sufficient for the foundation of a company as stipulated in Article 26 of the Law No. 4046 on Privatisation Practices. An approval must be obtained from the Presidency after the resolution of the municipal council. (Sağlam, 2020)

Municipalities have also the power to establish intra-budget enterprises pursuant to the Law No. 5393. In Article 70 "Founding Companies" of the Law No. 5393 on Municipality, it is stipulated that "In areas relating to the duties and services assigned to them, municipalities may establish companies according to the procedures provided for in the relevant legislation". Also, in paragraph (i) of Article 18 "Duties and powers of the municipal council" of the same Law it is stipulated that "Decide to establish enterprises under the municipal budget, establish or withdraw from enterprises subject to TCC, increase their capital and establish real estate investment trusts". According to this Law, municipalities may establish, upon the permission from Mol, intra-budget enterprises to deliver services with special revenues and expenditures in matters related to their purview. There should be a resolution of the municipal council which should be submitted to Mol to get permission. Intra-budget enterprises are operated by municipalities pursuant to the "Regulation on Intra-Budget Enterprises of Local Administrations".

2.2. PURPOSE OF THE ESTABLISHMENT OF MEEs

In Article 70 "Founding Companies" of the Law No. 5393 on Municipality, it is stipulated that "In areas relating to the duties and services assigned to them, municipalities may establish companies according to the procedures provided for in the relevant legislation". Also, in paragraph (i) of Article 18 "Duties and powers of the municipal council" of the same Law it is stipulated that "Decide to establish enterprises under the municipal budget, establish or withdraw from enterprises subject to TCC, increase their capital and establish real estate investment trusts". Similarly, in Article 26 "Founding Companies" of the Law No. 5216 on

Metropolitan Municipalities, it is stipulated that “In the areas relating to the duties and services assigned to it, the MM may set up capital companies according to the procedures provided for in the relevant legislation”. In the areas relating to the duties and services assigned to it, the MM may set up capital companies according to the procedures provided for in the relevant legislation. The secretary general and management staff of the municipality and its affiliated entities may hold office on the executive and supervisory bodies of such companies. The MM may operate excavation zones, mass transport services, social facilities, kiosks, car parks and tea gardens under its ownership or possession, or may contract out the operation of such facilities without being subject to the provisions of the Law No. 2886 of 8/9/1983 on State Procurement for a period and at a cost to be determined by the metropolitan council, to companies in which the municipality or its affiliated entities hold more than 50% of the equity capital or to enterprises in which those companies hold more than 50% of the equity capital. (Supplementary sentence: 12/11/2012-6360/10 Art.) However, the transfer of such places by municipal companies to third persons shall be subject to the provisions of Law No. 2886.

The procedure for the establishment of MLEs is explained in detail in the next section. In brief, in its decision No. 2008/4976 of 24.09.2008, the eighth chamber of the Council of State decided to stay the execution of the Circular No. 2016/5 of 21.04.2008 of MoI that regulates the establishment of MLEs and contribution of capital to them; in that decision, it was stated that “the power to grant permission given to the central government with Article 26 of the Law No. 4046 is limited only to establishing a company or contribution of capital in a company, therefore, companies that are to operate under market conditions and in accordance with the provisions of the Commercial Code are not required to obtain permission from the Presidency (previously from Council of Ministers) via MoI; for this reason, the circular does not comply with the law as it stipulates obtaining a permission even though such a situation is not included in the law”.

Municipalities may have a company by means of the following methods:

- Establishment of a new company,
- Contribution of capital in an existing company (as a partner),
- Acquiring an existing company for free (grant),
- Establishment of a new company by an existing MLE (by means of indirect capital relationship),
- In accordance with the Decree-Law No. 696. In the current legislation, there is no provision preventing municipalities from establishing companies or making contribution of capital in existing or future companies, having municipal councils take a decision, or obtaining permission from the Presidency (Council of Ministers).

It can be said that the provisions regarding the representation of municipalities in the executive and supervisory bodies of joint-stock companies that are considered to deliver public services indirectly allow municipalities to establish companies or participate in

companies that are already established. The purpose of establishment of MEEs can be listed as follows:

- To find solutions for the problems of cities,
- To perform services in a quick and effective manner,
- To take the advantage of being established with a private law status,
- To employ staff quickly and ensure that the staff works effectively and efficiently,
- To take the advantage of MEEs in terms of working flexibly and independently of the regulatory, supervisory and restrictive provisions of such laws as the Law on State Procurement, Law on General Accounting and Law on Court of Accounts,
- To ensure creation of new funds by transferring revenues in commercially profitable areas to local administrations,
- To achieve some secondary purposes, for example, to facilitate the provision of some urgent needs of municipalities, including machinery and material.
- To procure services through MEEs in order to ensure smooth provision of services even in case of problems or default in payment.

According to Article 127 of the Turkish Constitution, municipalities are public legal entities established for “meeting common local needs”. Enacted in accordance with this provision of the Constitution, the Law No. 5393 on Municipality defines a municipality as “a public entity having administrative and financial autonomy which is established to meet common local needs of inhabitants of a town and whose decision-making body is elected by voters”. Basic characteristics of MEEs can be listed as follows: (Demirkaya, 2010).

- They are established and managed by municipalities,
- Municipalities hold more than half of their equity capital, or become a partner on the condition of having the control of management,
- They operate in an area that is included in duties of municipalities (Article 26 of the Law No. 5216 on Metropolitan Municipalities and Article 70 of the Law No. 5393 on Municipality),
- They produce marketable goods and services,
- They are subject to TCC,
- They have a budget independent from municipalities and they are private law legal entities.

One of the rights given to municipalities to meet common local needs is that they may establish a company or an enterprise. The definition in this regard contains no identification regarding by which procedure shall they meet “common local needs” in question. In Article

14 that regulates duties and responsibilities of municipalities, municipalities are imposed with certain duties, provided that they are of common local nature. For some of these duties, the term “shall provide or cause to provide” is used to express the necessity, whereas some other duties are left to the discretion of municipalities according to their financial status and the urgency of services with the term “may perform”. In Article 15 that regulates powers and privileges of municipalities, they are authorized to “engage in activities and initiatives of all sorts to meet the common local needs of the town’s inhabitants”; in the further parts of Article the terms “shall provide or cause to provide”, “shall operate or cause to operate” and “shall establish or cause to establish” are used to grant municipalities rights that they may directly use or transfer to third parties.

In both Article 26 of the Law No. 5216 on Metropolitan Municipalities and Article 70 of the Law No. 5393 on Municipality, municipalities are granted the right to establish companies in areas relating to the duties and services assigned to them. The attention-grabbing point in these regulations is that they restrict the activities of such companies and enterprises with the duties and responsibilities of municipalities. Since there is no regulation in the Constitution regarding establishment of MLEs, there is no constitutional barrier for the establishment of MLEs by municipalities. (Sağlam, 2020)

MEEs are defined as private law legal entities that are established or associated -on the condition of having the control of management- based on the Law on Municipality, Law on Metropolitan Municipalities and other relevant legislation and that have their own budgets independently from municipalities. Apart from this definition, MEEs can also be defined, in a more formal way, as follows:

“MEEs are enterprises that are established by local administrations in accordance with an organisational status, that offer marketable (i.e. personal) goods and services that have board of directors assigned by local administrations as they are owned or controlled by local administrations, that finance their current costs and generate most of their revenues independently from local administrations, and that principally allocate resources for the maximisation of social benefits of the community” (Akalin, 1994).

Main purposes of the establishment of MEEs can be listed as follows: (Berk, 2003)

❖ Economic and Financial Reasons

- Local inherent monopolies: Services such as for water, gas, transport, caused municipalities to establish public enterprises.
- Ensuring the supply of convenience goods, that are not offered by the State or State Economic Enterprises, to local consumers with reasonable prices: Since State or Public Economic Enterprises did not sufficiently perform certain duties, including supply of such needs as bread, flour, meat, sugar, coal, etc., regulatory selling shops, establishment and operation of kindergartens and wedding halls, supply of drinking water to the public, municipalities needed to take an active role in these areas.

- Desire to generate new revenue sources: They are engaged in establishing and operating car parks, commercial complexes, hotels, cold storages, drinking and mineral water facilities, and generate new sources to
- Pursuant to the legislative provisions in force, it is not possible for municipalities to work with a bank of their desire. Private law legal entities may however act more independently in this regard, and, particularly, may freely take the advantage of credit facilities offered to them by private sector banks.
- Efforts in pioneering local development initiatives: Local administrations have tried to overcome the lack of capital and entrepreneurs through local tax revenues and bureaucrats, pioneering local development by undertaking various development projects, including for carpet, weaving, garment, hot spring, holiday village, etc.

❖ Seeking Autonomy

- Desire to deviate from the bureaucratic structure that adversely affects the service provision:
- Strict rules and slow decision-making mechanisms of the public law and bureaucracy are insufficient to meet local needs.
- Desire to get rid of the supervision of the central government: Since municipalities are subject to the public law, they are supervised by the central government (Ministries, Court of Accounts, etc.). MEEs are however subject to private law, and therefore supervised only by the Ministry of Industry and Trade (MoIT) in accordance with the private law provisions
- Seeking Independence for Employment
- Desire to provide employment opportunities for local staff and supporters of the ruling party in the municipality: It is observed that municipalities establish Economic Enterprises for this purpose or use the existing ones for this purpose
- Desire to employ qualified staff: Since the wage regime to which municipalities are subject do not allow them to employ qualified staff, such enterprises enable them to offer additional revenues for qualified staff assigned to executive positions.

❖ Problems in MLEs

- The equity capital hold by municipalities in companies being more than 50%, assignment of chairpersons and members of boards of directors usually among municipality staff, who have no financial or criminal liability,
- Incompliance with the free market conditions, such as site selection, competition, recruitment of qualified staff and marketing, during the establishment of enterprises,

- Problems arising in connection the failure to establish an economic and commercial approach due to employment for political purposes,
- Continuous losses of enterprises due to a heavy burden of debt as a result of unplanned and/or not properly considered expenses,
- Steering away from dynamic working methods as a result of overemployment with a political motive,
- Central government’s failure to supervise these enterprises and transfer of burden of debt of enterprises to municipalities.

2.3. PROCEDURE AND METHODS OF ESTABLISHMENT OF MEEs

There are a number of procedures that should be followed before the establishment of MEEs in accordance with the provisions of TCC. Apart from this, municipalities may follow various methods in the establishment of MEEs. Unlike other companies, areas of activities carried out by MEEs are not determined freely.

In the period during which the Law No. 1580 on Municipality was in force, a resolution by the municipal council was enough for municipalities to establish an enterprise. In the government plan of 1988, it was regulated that Municipalities and Provincial Special Administrations were required to obtain permission from the State Planning Organization for the companies they would establish or participate in. In the Decree-Law on Implementation, Coordination and Monitoring of 1988 Annual Programme, it was stated that Municipalities and Provincial Special Administrations would obtain assent from the State Planning Organization for the enterprises they would establish or participate in. In the Decree-Law on Implementation, Coordination and Monitoring of 1992 Annual Programme, it was stated that Municipalities and Provincial Special Administrations would obtain assent from the State Planning Organization for the enterprises they would establish or participate in “if the equity capital would exceed 1 billion TRY or participation share would exceed 10%”. In Article 26 of the Law on Privatisation Practices of 1994, it is stipulated that municipalities are required to obtain permission from the Council of Ministers to establish a joint enterprise.

According to the Law No. 5393 on Municipality and the Law No. 5216 on Metropolitan Municipalities, resolution by the municipal council is required to establish a company. With the amendment made in Article 26 of the Law on Privatisation Practices after constitutional amendment, the provision is still in force, stipulating that municipalities are required to obtain permission from the Presidency.

- ***Resolution of Municipal Council***

In paragraph (i) of Article 18 “Duties and Powers of the Municipal Council” of the Law No. 5393 on Municipality, the power to decide on establishing a company is assigned to municipal councils. The text of the paragraph is as follows:

“Decide to establish enterprises under the municipal budget, establish or withdraw from enterprises subject to TCC No. 6762, increase their capital and establish real estate investment trusts.”

- ***Permission by the President***

Although it is explicitly stipulated in both the Law No. 5393 on Municipality and the Law No. 5216 on Metropolitan Municipalities that municipalities may establish companies, there is no provision in either of these Laws regarding the requirement for municipalities to obtain any permission. According to Article 26 of the Law No. 4046 on Privatisation Practices, it was subject to the permission of the Council of Ministers to establish commercial establishments that were to operate for commercial purposes by municipalities and other local administrations, as well as unions established by them, and to contribute capital to companies that were already existing or would be established. With the constitutional amendment in 2017 that came into force after the Presidential elections held in 2018, although the Council of Ministers still has a de facto responsibility in this regard, it lost its political responsibility. According to the Presidential Decree No. 703 on “Amending Certain Laws and Decree-Laws to Adapt to the Amendments in the Constitution”, all references to the term ‘Council of Ministers’ were replaced with the term ‘President’ across all Turkish legislation.

In a circular of 11.01.2018 addressed to governorships by the General Directorate for Local Administrations of MoI, it was stated that those who would establish a company in accordance with the Law No. 4046 on Privatisation Practices should obtain a permission. The annexes of the circular included a template of memorandum of association and a list of other documents required for establishing joint-stock and limited liability companies. Among the necessary documents listed were a resolution for establishing a company by the respective municipal council, a justification report for the company to be established, the memorandum of association (or its draft) of the company to be established, the general trial balance of the respective administration as at the date of application. It was stated that the documents to be prepared should be sent to the respective governorship with the attached tables as given in annexes of the circular, and such information should be sent, after being organised, to MoI until the date specified in the circular. This means that, although no permission is set forth in TCC for establishing a capital company, in practice, permission is required for establishing companies.

Establishment Methods

Municipalities establish economic enterprises in accordance with the relevant legislation. This may include the laws on municipalities and other provisions set forth in various legislative arrangements regarding establishing a company by municipalities. In the framework of these provisions, the procedures followed by municipalities may differ when establishing economic enterprises (Yaprak, 2019).

- ***Establishing a Company Directly by Municipalities***

As is known, municipalities are given the power to establish a company in both the Law No. 5393 and the Law No. 5216. It is seen that there are no specific terms for the companies to be

established stated in the Law No. 5393 and that, however, the Law No. 5216 includes the term "capital company", resulting in companies established by municipalities practically operating as joint-stock or limited-liability companies.

Looking at a letter dated 11.01.2018 from the General Directorate for Local Administrations of MoI regarding the "Company Information and New Companies to Be Established under the Decree-Law No. 696", it is seen that Article 3 thereof imposes a restriction for types of companies based on the population of municipalities that are to establish such companies. That Article stipulates that:

"It is kindly submitted for your information and necessary actions that special provincial administrations, municipalities with a population of more than 50,000 and their affiliated entities are to establish joint-stock or limited liability companies and that municipalities with a population of less than 50,000 as well as unions of local administrations planning to employ less than 35 workers are to establish limited liability companies."

Therefore, municipalities with a population of more than 50,000 may establish both joint-stock and limited liability companies, whereas municipalities with a population of less than 50,000 may only establish limited-liability companies according to this restriction.

- ***Municipalities' Taking in Partnership in Currently Established Companies.***

Municipalities' taking in partnership in currently established companies is not regulated in the Law No. 5393 or the Law No. 5216. Based on the provisions regarding establishing companies by municipalities of both the Law No. 5393 on Municipality and the Law No. 5216 on Metropolitan Municipalities, it can be concluded that municipalities should establish companies only through their own capital. In paragraph (i) of Article 18 "Duties and Powers of the Municipal Council" of the Law No. 5393 on Municipality, the power to decide on establishing or withdrawing from a company that are subject to TCC is assigned to municipal councils. In the first draft of the law presented by the government, Article 18(i) was as follows: "Decide to establish enterprises under the municipal budget as well as enterprises subject to TCC, participate in or withdraw from enterprises that have been or will be established, increase their capital and establish real estate investment trusts."

- ***Acquisition of Enterprises by means of Accepting Donations to the Municipality***

The Law No. 5393 authorizes both mayors and municipal councils to accept donations. In paragraph (i) of Article 15 "Powers and privileges of municipalities" of the Law, municipalities are authorized to borrow and accept donations. In paragraph g of Article 18 "Duties and powers of the municipal council", municipal councils are assigned to "accepting conditional donations". In paragraph a of Article 38 "Duties and powers of the mayor" of the same law, mayors are assigned and authorized to "accepting unconditional donations". Therefore, when municipalities are to acquire a company at no cost, a resolution by the municipal council is required if acquisition is conditional, or the decision of the mayor is required if acquisition is unconditional.

It is seen that company acquisitions at no cost (donation) by municipalities may take place either by directly acquiring a company at no cost or by becoming a partner in the company by

means of acquisition of company shares at no cost. There is no legal regulation on whether a permission is required for the acquisition of a company at no cost. In its letter No. 2324 of 23.05.2002 regarding the legal opinion on this subject, the Legal Advisor's Office of MoI stated that when local administrations are to participate in a company, since the acquisition of shares by means of donations makes no difference in terms of future liabilities of municipalities, they are required to obtain permission when acquiring shares by means of donations.

- ***Establishing Companies by MEEs***

It is seen that sometimes, companies established by municipalities establish other companies to operate within the purview of municipalities. In its Circular No. 2008/31, the General Directorate of Local Administrations of MoI stated it was necessary to obtain permission from the Council of Ministers through MoI when a company would be established, participated in or acquired at no cost directly by SPAs, MMs and other municipalities as well the unions established by them or by contribution of capital by companies in which these organizations have equity capital.

MMs and other municipalities as well as unions established by them must obtain permission in advance through MoI when they would:

- establish a new company; or
- contribute capital in a previously established company.

The issuance of bonds by companies established by SPAs, municipalities and MMs as well as unions established by them will also be subject to the approval of MoI. A resolution of municipal council is required for domestic borrowing by municipalities and their affiliates and enterprises the total amount of which during a year is less than 10 percent of their last finalized budget revenues increased by the revaluation rate to be determined in accordance with the Law No. 213 on Tax Procedures. Domestic borrowing exceeding ten percent of the aforementioned increased revenues requires a resolution of municipal council taken by the simple majority of the full number of members and an approval by MoI. According to the Decision No. 2007/88 of the Assembly of Administrative Chambers of the Council of State, there is no requirement to obtain permission from MoI (Yaprak, 2019).

2.4. LEGAL BASIS OF MEEs

The framework legislation to which SEEs are subject to also applies for MEEs as they are also considered as public economic enterprises. It is seen that in addition to this general framework, the prominent legal bases in the period when MEEs started to be established were the Law No. 1580 and the Law No. 3030 that have been significant pillars and driving force for MEEs as they are municipality-led enterprises. However, since MEEs are also private law legal entities, they should also be considered as organizations established under TCC. Therefore, they operate not only as a public enterprise but also as a private enterprise in the capacity of a "trader". Because, according to paragraph 1 of Article 18 of TCC, enterprises and businesses established by municipalities to operate under private law are considered as "traders". All

these various legal bases indicate that legislation regulating the establishment and functioning of MEEs is inadequate and unorganized.

2.4.1. LAW NO. 5393 ON MUNICIPALITY

The Law No. 1580 of 1930 on Municipality is one of the main pillars regarding the establishment of MEEs. It is therefore required to discuss the approach of this law at the first place. The emphasis in this law is to satisfy common civil needs at the local level. Based on this approach, the law elaborates the duties of municipalities in 82 paragraphs in Article 15. In general, these include duties such as town health and cleaning, social aid affairs, land development and infrastructure works, ensuring the well-being of inhabitants, cultural affairs, and industrial, commercial and economic affairs.

Being a significant pillar in the existence of MEEs, the Law No. 1580 on Municipality was amended by the Law No. 5393 of 03.07.2005 on Municipality. When both laws are compared in terms of being a pillar for MEEs, it is seen that in general the new law has the same approach as the Law No. 1580 and aims the provision of common civil needs at the local level. These two laws however differ in certain points. Unlike Article 15 of the Law No. 1580, which elaborates on the duties of municipalities in 82 paragraphs, Article 14 "Duties and responsibilities of municipalities" of the new law does not give that much detail but rather lists, in general, common civil needs that are related to towns and inhabitants, such as health and cleaning, social aid affairs, land development works, as well as duties related to these needs. Moreover, the phrase "provide or cause to provide" in Article 14 and the phrases "provide or cause to provide" and "operate or cause to operate" in various paragraphs of Article 15 "Powers and privileges of municipalities" show that the new law maintains the liberal approach as in the previous law. However, a significant difference from the Law No. 1580 is that Article 14(a) of the new law enumerates the main duties and then stipulates that "provide or cause to provide ... economic and commercial development", going far beyond the liberal approach in the previous law. Because "performing services for economic and commercial development" provides municipalities with significant opportunities in practice. It can therefore be said that with its such a liberal approach, the new law has a content that is to form a basis for the development of MEEs.

Apart from these regulations that seem to be in favour of MEEs, there are also regulations that bring along certain restrictions. Because in Article 15 of the new law, it is stipulated that "By a decree of MoI after consulting the opinion of the Council of State, municipalities may transfer the services referred to in paragraphs (e), (f) and (g) on a concession basis for a period not to exceed 49 years; provide public transport services by issuing a license without establishing a concession or monopoly or by leasing public transport routes or by purchasing services in accordance with the principles laid down in Article 67". Although this provision seems to be similar to Article 19 of the previous law, the use of powers and privileges by municipalities as an "entrepreneur" is restricted with the phrase "by a decree of MoI after consulting the opinion of the Council of State".

2.4.2. LAW NO. 5216 ON METROPOLITAN MUNICIPALITIES

It is seen that in paragraphs (d), (f), (g), (h), (i), (j) and (l) of Article 6 of the Law No. 3030, the phrases “operate” and “cause to operate” are used for industrial, commercial and economic duties of MMs. These phrases formed a basis for municipalities to establish companies when performing local services and provided a great radius of action, especially for MMs, in this regard. In Article 8 of the same law, it is stipulated “Metropolitan and district municipalities have the same rights, powers, privileges and immunities as those given to municipalities with provisions of the Law No. 1580 on Municipality and other legislation”. This means that all opportunities provided for municipalities in the Law No. 1580 apply to MMs as well.

The Law No. 3030 was replaced with the Law No. 5216 of 2005. The approach in the previous law was maintained with the phrases “operate or cause to operate” and “provide or cause to provide” in respective paragraphs of Article 7 of this law. Also, the powers, privileges and immunities provided by Article 8 of the Law No. 3030 are maintained in Article 10 of the Law No. 5216 that stipulates “In the matters within their purview, metropolitan and district municipalities shall enjoy the powers, privileges and immunities conferred on municipalities, as appropriate, by the Law on Municipality and other statutory provisions in addition to this Law”. Thus, the Law No. 5216 had no negative consequences in terms of MEEs, maintaining the same approach in terms establishment and functioning.

2.4.3. TURKISH COMMERCIAL CODE NO. 6102 (TCC)

In Article 16 of TCC, it is stipulated “The following legal persons shall be considered traders: commercial companies; associations operating a commercial business to achieve their purposes; enterprises and businesses established by public legal entities, such as the State, Governorships and Municipalities, in accordance with their laws of establishment in order for being managed or operated in accordance with the provisions of private law. Article 275 “Participation of Public Legal Persons” of the same law stipulates “a public legal person, such as the state, governorship and municipality, may be given the right to have a representative present in boards of directors or boards of audits of joint-stock companies that operate in the public services area, even though the legal person has no share to be included in the articles of incorporation”. Therefore, there is no provision in TCC prohibiting municipalities from establishing or participating in companies. Municipalities took the advantage of this situation and established MEEs in the status of “limited liability” or “joint-stock” companies or participated in existing companies.

2.4.4. LAW NO. 4046 ON PRIVATISATION PRACTICES

To form a basis for privatisation efforts, the Law No. 4046 on Privatisation Practices and Amending Certain Decree-Laws was enacted on 24.11.1994. In Article 26 of this law, it is stipulated “Establishment of commercial enterprises to operate for commercial purposes by municipalities and other local administrations and the unions established by them, and contribution of capital to companies that exist or to be established are subject to the permission by the Council of Ministers”. Although this provision may seem like a restriction, it considers legal the establishment and functioning of MEEs.

2.4.5. DECREE-LAW NO. 696

The following legislative arrangements were entered into force after being published in the Official Gazette of 24.12.2017 issue 30280 and the Official Gazette of 01.01.2018, respectively: the Decree-Law No. 696 on Enacting Certain Provisions under the State of Emergency; the Procedures and Principles Regarding the Implementation of Transitional Articles 23 and 24 of the Decree-Law No. 375 on Assignment of the Personnel Working under Service Procurement Contracts for Outsourcing Personnel in Public Institutions and Organizations to Permanent Worker Positions in the Public or to Worker Positions in Municipality-led Enterprises.

Supplementary Article 20 that was included in the Decree-Law No. 375 of 27.06.1989 with Article 126 of the Decree-Law No. 696, and Article 28 of the Communiqué Designating the Procedures and Principles on the Implementation of the Decree-Law No. 696 include provisions regarding the employment of staff, who were already working in SPAs, municipalities and unions of local administrations in which these were members as well as affiliates of municipalities through outsourcing method in accordance with the provisions of Article 62(1)(e) of the Law No. 4734 Public Procurement and Article 78 of the General Communiqué on Public Procurement, in the worker positions of companies in which the abovementioned administrations directly or indirectly and jointly or separately own more than half of the equity capital.

2.5. AREAS OF ACTIVITY OF MEEs

Both Article 70 of the Law No. 5393 on Municipality and Article 26 of the Law No. 5216 on Metropolitan Municipalities allow municipalities to establish companies “within their purview”. Therefore, areas of activity of such companies must be limited with the purview of municipalities. (Sağlam, 2020)

Areas of activity of municipalities include:

- Land development services,
- Water and sewage services,
- Urban infrastructure services, such as transport,
- Public transport services,
- Services regarding geographical and urban information systems,
- Public health services,
- Services for environment and environmental health,
- Cleaning and solid waste services,
- Municipal police services,
- Firefighting, emergency aid, rescue and ambulance services,
- Inner-city traffic services,

- burial and graveyard procedures,
- Afforestation, park and green field services,
- Land and housing services,
- Culture and arts, tourism and promotion services,
- Youth and sports services,
- Marriage services,
- Vocational and skill development services,
- Economic and commercial development services,
- Wholesale and retail marketplace services,
- Slaughterhouse services,
- Bus terminal, marina and pier services, exhibition services.

In addition to the abovementioned activities, MLEs are engaged in trade, export, import, facility establishment, operation and similar activities regarding cleaning, park, garden, landscape, IT, fuel, tourism, engineering, consultancy, mass housing, bakery products, spring water, transport, infrastructure, vehicle, spare parts, natural gas, solid waste, coal, concrete elements, livestock exchange, parking lot, culture, arts, sports, organization. Article 26 of the Law No. 5216 allows MMs to directly operate kiosks, parking lots and tea gardens owned by municipalities or to sublease such facilities to their companies for the amount and duration to be determined by municipal councils without being subject to the public procurement legislation.

Since there is no provision regarding capital contribution in the Law No. 4046, executives of municipalities (they are usually members of boards of directors of companies) do not prefer to establish new companies but rather enlarge existing companies through capital contribution. There is no legislative provision preventing this trend, because “expenses for establishment of and shares in companies” are considered municipal expenses according to Article 60 of the Law No. 5393.

2.6. REVENUES OF MUNICIPALITIES AND MEEs

A state is responsible for producing or ensuring the production of various goods and services aimed at the needs of the community regardless of such responsibility is fulfilled by the central or a local unit. Even the primary necessity is pure public goods and services, there would, of course, be a finance need for this area of activity, which can be diversified as quasi-public and excludable private goods and services according to the economic, social and political situation of the country. In addition to revenue items that include taxes as the financing source of pure public goods and services, there are also items that include tax-like revenues, participation/usage fees, etc. for financing quasi-public and excludable private goods and services (Çakır, 2012: 106).

In fact, it is seen that more than one language is used for the classification of public revenues. Some authors classify public revenues under three groups as enforced revenues, non-enforced revenues and revenues from monetary affairs (Çakır, 2012), whereas some others classify as tax revenues, tax-like revenues and other public revenues (Mutluer & Öner, 2009: 29-36). Municipalities also finance the goods and services they provide with the resources they obtain, as public institutions, through one or more of the abovementioned revenue items.

Municipal revenues can basically be classified in two groups: apportionment allocated by various means from general budget tax revenues (legal apportionment and assistance); own revenues (Acar & Aydın, 2015: 1). Since the criteria or methods used for allocation of tax revenues from the central budget to local administrations are beyond the scope of the subject, this will not be discussed in detail. However, before discussing the own revenues of municipalities, it should be touched upon what criteria are to be taken into consideration in terms of apportionment of revenues between central and local administrations.

In this context, when allocating revenues (Mutluer & Öner, 2009: 37);

- The amount to be provided should be sufficient to properly fulfil duties assigned to local administrations;
- Taxpayers should not be overtaxed to allocate revenues to the central government and local administrations;
- There should be no gap in terms of taxation, particularly if various authorities are empowered to collect tax revenues;
- Measures should be taken into consideration to eliminate economic and social differences among regions.

Given the abovementioned principles as a whole, it is evident that there is a sensitivity to victimising neither the state nor individuals. It is desired that the state does not have difficulties in resources due to collecting fewer taxes on one hand, and that citizens do not suffer from overtaxing on the other hand. Considering that the essential duty of the state is to serve individuals, we can say that the ultimate benefit is in the favour of individuals. Besides, if the burden of taxes on individuals is not considered along with the services fulfilled by the state by aggregating all taxes from individuals, the benefit gained would, of course, be far beyond the first situation.

Considering that this theory is sufficiently discussed, it will be beneficial to focus on municipalities' revenues. As mentioned above, municipal revenues are basically classified in two groups: apportionments allocated from the central budget; own revenues. Apportionments allocated from the central budget are determined based on the Law No. 5779 of 02.07.2008 on Apportionments from General Budget Tax Revenues to Special Provincial Administrations and Municipalities. Regarding this rate, Article 2(2) of the respective law before the amendment stipulated "Of the total amount of tax revenues collected in the central budget, 2.85% shall be allocated to municipalities other than MMs, 2.50% shall be allocated to MMs and MDMs and 1.15% shall be allocated to special provincial

administrations". Then the rates mentioned in this Article were updated with the Law No. 6360 of 06.12.2012 on Establishment of Metropolitan Municipalities and Twenty Seven Districts in Fourteen Provinces and Amending Certain Laws and Decree-laws as follows: "Of the total amount of tax revenues collected in the central budget, 1.50% shall be allocated to municipalities other than MMs, 4.50% shall be allocated to MMs and MDMs and 0.5% shall be allocated to special provincial administrations". Also, 5% contribution to MMs as stipulated in Article 2(3) of the Law No. 5779 was increased to 6% with the Law No. 6360. With the latest amendment, this Article was changed as follows: "Except for the Special Excise collected from the goods listed in Annex (I) of the Law No. 4760 of 06.06.2002 on Special Excise, 6% of the total tax revenues collected for the general budget within the boundaries of a metropolitan municipality and 30% of the apportionment allocated to metropolitan district municipalities from the general budget tax revenues shall be allocated to the respective metropolitan municipality".

The abovementioned amendments in the Law No. 5779 (Arikboğa, 2016: 283) were made with the Law No. 6360, aimed at, inter alia, establishment of 14 new MMs; closing of SPAs in 30 provinces in which MMs are established, and determining municipal boundaries as provincial boundaries; reducing the number of SPAs to 51. More clearly, resources of MMs and MDMs increased in accordance with their increased responsibilities due to the diversification and geographical expansion of purview. Besides, other resources are transferred in accordance with relevant laws based on many other criteria and rates. However, since the subject covers companies and affiliates that are sources of municipal revenues, the apportionments allocated from the central budget are not discussed in more detail.

In Article 59(h) of the Law No. 5393 on Municipality, "Revenues obtained through enterprises, shareholdings and activities of all sorts" are listed among municipal revenues. In this sense, it is aimed to transfer the sources provided by MLEs to the municipality. However, MLEs fail in practice to achieve their targets in terms of transferring the year-end profit of the companies to the municipal budget. Most of these companies make no profit due to various reasons, and those that make a profit use such amounts for "increasing their capitals" rather than transferring to municipalities. Although making a profit is not the founding purpose of these companies, it is thought-provoking that most of the municipal companies make a loss.

3. CURRENT SITUATION ANALYSIS OF COMPANIES AND ENTERPRISES OWNED BY MUNICIPALITIES

3.1. COMPANIES AFFILIATED WITH METROPOLITAN AND DISTRICT MUNICIPALITIES

In line with the changing public management approach, the services that should be provided by municipalities in accordance with their duties and responsibilities can be provided either by municipalities or by the companies they establish based on the laws they are subject to. Among these services that are of great importance for the community are infrastructure works, transport and traffic, market places in neighbourhoods, parking services, collection and processing of solid waste, sports, culture, arts and health. To form a basis for the review of companies of MMs, this section focuses on their details, such as areas in which they provide services, number of employees, financial figures, etc. Accordingly, financial figures of companies are presented and then the rate of services offered by companies to the total municipal services was evaluated. The data presented in this section of the study was retrieved from the latest annual reports of the respective municipalities. Online and face-to-face meetings held with municipality representatives and surveys sent to them via e-mail allowed us to confirm the data obtained from annual reports as well as to access data not available in annual reports.

Based on the examination of 21 of the 30 MMs in Türkiye, the information on companies owned or associated by these municipalities is summarized in Table 3-1. The examination of detailed tables regarding affiliates of MMs are given in Annex-1. Figure 3-1 presents and compares the populations of the 21 MMs examined.

Table 3.1.: Information on 21 Metropolitan Municipalities and Enterprises Owned/Associated by Municipalities

No.	Municipality	Type	Population (Address Based Population Registration System 2020)	INFORMATION ON MUNICIPAL COMPANIES		Total PROFIT/LOSS	Year of Activity Report Referred
				Number of companies owned or associated by the municipality	Number of employee s		
1	ISTANBUL MM	METROPOLITAN	15,462,452	28	54,146	1,041,144,792.00	2019
2	ANKARA MM	METROPOLITAN	5,663,322	15	4,498	-	2018
3	IZMIR MM	METROPOLITAN	4,394,694	12	4,330	-	2019

4	BURSA MM	METROPOLITAN	3,101,833	7	5,518	5,005,813.66	2019
5	ANTALYA MM	METROPOLITAN	2,548,308	8	9,855	-24,509,889.43	2020
6	ADANA MM	METROPOLITAN	2,258,718	5	7,133	-16,889,501.08	2020
7	KONYA MM	METROPOLITAN	2,250,020	10	7,132	-	2020
8	GAZIANTEP MM	METROPOLITAN	2,101,157	8	1,500	-52,389,697.69	2020
9	KOCAELI MM	METROPOLITAN	1,997,258	8	7,361		2020
10	MANISA MM	METROPOLITAN	1,450,616	3	4,760		2020
11	KAYSERI MM	METROPOLITAN	1,421,455	7	4,082	-127,317,562.52	2020
12	SAMSUN MM	METROPOLITAN	1,356,079	9	2,996	-18,033,547.10	2020
13	BALIKESIR MM	METROPOLITAN	1,240,285	7	774		2020
14	TEKIRDAG MM	METROPOLITAN	1,081,065	6	2,155		2020
15	SAKARYA MM	METROPOLITAN	1,042,649	4	0		2020
16	DENIZLI MM	METROPOLITAN	1,040,915	5	3,702	-44,394,476.63	2020
17	MUGLA MM	METROPOLITAN	1,000,773	5	3,495	-20,773,698.33	2020
18	ESKISEHIR MM	METROPOLITAN	888,828	11	3,454		2020
19	TRABZON MM	METROPOLITAN	811,901	10	0		2020
20	ORDU MM	METROPOLITAN	761,400	5	0		2019
21	ERZURUM MM	METROPOLITAN	758,279	10	4,425		2020

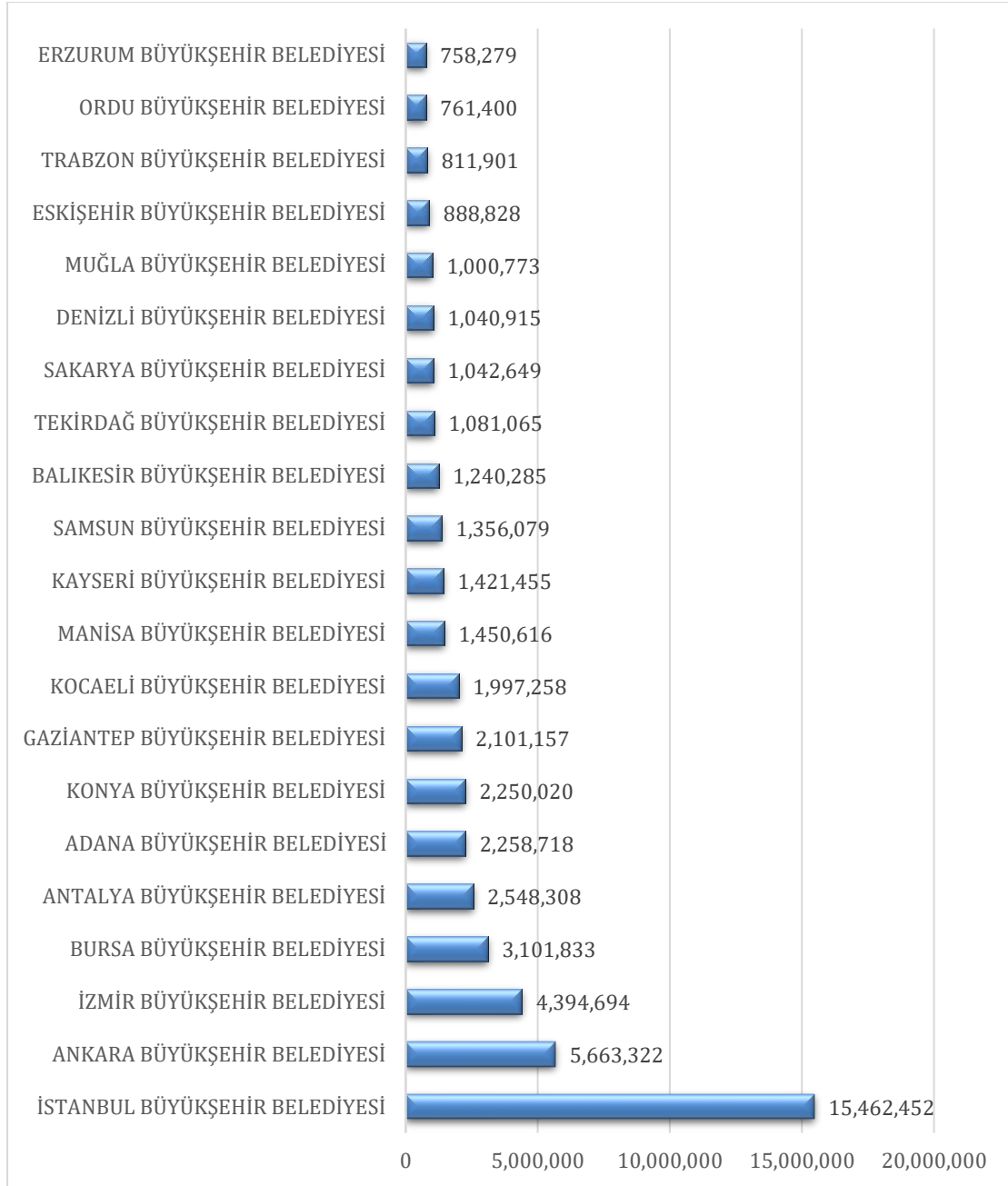


Figure 3-1 Population in Metropolitan Municipalities - Address Based Population Registration System 2020

ERZURUM BÜYÜKŞEHİR BELEDİYESİ	ERZURUM MM
ORDU BÜYÜKŞEHİR BELEDİYESİ	ORDU MM
TRABZON BÜYÜKŞEHİR BELEDİYESİ	TRABZON MM
ESKİŞEHİR BÜYÜKŞEHİR BELEDİYESİ	ESKİŞEHİR MM
MUĞLA BÜYÜKŞEHİR BELEDİYESİ	MUĞLA MM
DENİZLİ BÜYÜKŞEHİR BELEDİYESİ	DENİZLİ MM
SAKARYA BÜYÜKŞEHİR BELEDİYESİ	SAKARYA MM
TEKİRDAĞ BÜYÜKŞEHİR BELEDİYESİ	TEKİRDAĞ MM
BALIKESİR BÜYÜKŞEHİR BELEDİYESİ	BALIKESİR MM
SAMSUN BÜYÜKŞEHİR BELEDİYESİ	SAMSUN MM
KAYSERİ BÜYÜKŞEHİR BELEDİYESİ	KAYSERİ MM
MANİSA BÜYÜKŞEHİR BELEDİYESİ	MANİSA MM
KOCAELİ BÜYÜKŞEHİR BELEDİYESİ	KOCAELİ MM
GAZİANTEP BÜYÜKŞEHİR BELEDİYESİ	GAZİANTEP MM
KONYA BÜYÜKŞEHİR BELEDİYESİ	KONYA MM

ADANA BÜYÜKŞEHİR BELEDİYESİ	ADANA MM
ANTALYA BÜYÜKŞEHİR BELEDİYESİ	ANTALYA MM
BURSA BÜYÜKŞEHİR BELEDİYESİ	BURSA MM
İZMİR BÜYÜKŞEHİR BELEDİYESİ	İZMİR MM
ANKARA BÜYÜKŞEHİR BELEDİYESİ	ANKARA MM
İSTANBUL BÜYÜKŞEHİR BELEDİYESİ	İSTANBUL MM

Figure 3.2 presents the number of staff employed by MLEs of MMs are presented. Istanbul MM ranks first with its 28 affiliate companies at which approximately 55,000 staff are employed. Antalya MM has 8 affiliate companies at which approximately 10,000 staff are employed. Each of Kocaeli, Adana and Konya MMs employ approximately 7,000 staff in their affiliated companies (8, 5 and 10, respectively).

Figure 3.2: Number of Staff Employed by Metropolitan MEEs

Metropolitan Municipality	Number of Staff Employed
Erzurum MM	4,425
Ordu MM	
Trabzon MM	
Eskişehir MM	3,454
Muğla MM	3,495
Denizli MM	3,702
Sakarya MM	
Tekirdağ MM	2,155
Balıkesir MM	774
Samsun MM	2,996
Kayseri MM	4,082
Manisa MM	4,760
Kocaeli MM	7,361
Gaziantep MM	1,500
Konya MM	7,132
Adana MM	7,133
Antalya MM	9,855
Bursa MM	5,518
Izmir MM	4,330
Ankara MM	4,498
Istanbul MM	

The number of companies owned or associated by MMs are presented in Figure 3.3. Istanbul MM has 28 affiliated companies and ranks first in Türkiye. It is followed by Ankara MM, which has 15 affiliated companies; Izmir MM, which has 12 affiliated companies; Eskişehir MM, which has 11 affiliated companies; and Konya, Erzurum, and Trabzon MMs, each of which has 10 affiliated companies.

Figure 3.4 presents the average number of personnel per company affiliated with MMs. It is seen that, on average, there are more than 1,000 personnel per company affiliated with Kocaeli, Antalya, Adana, Manisa and Istanbul MMs. The average number of personnel in companies affiliated with Balıkesir and Gaziantep MMs are between 100 and 200.

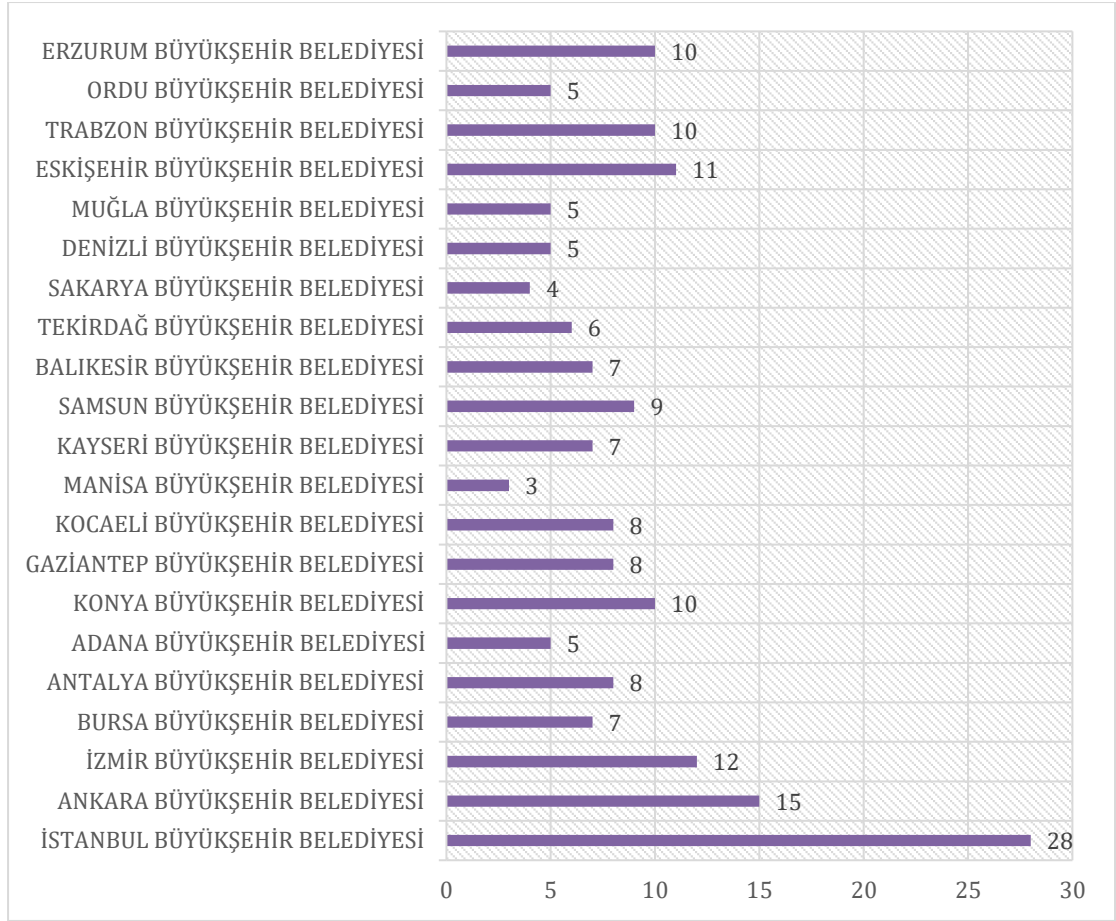


Figure 3-3 Number of MEEs owned by MMs

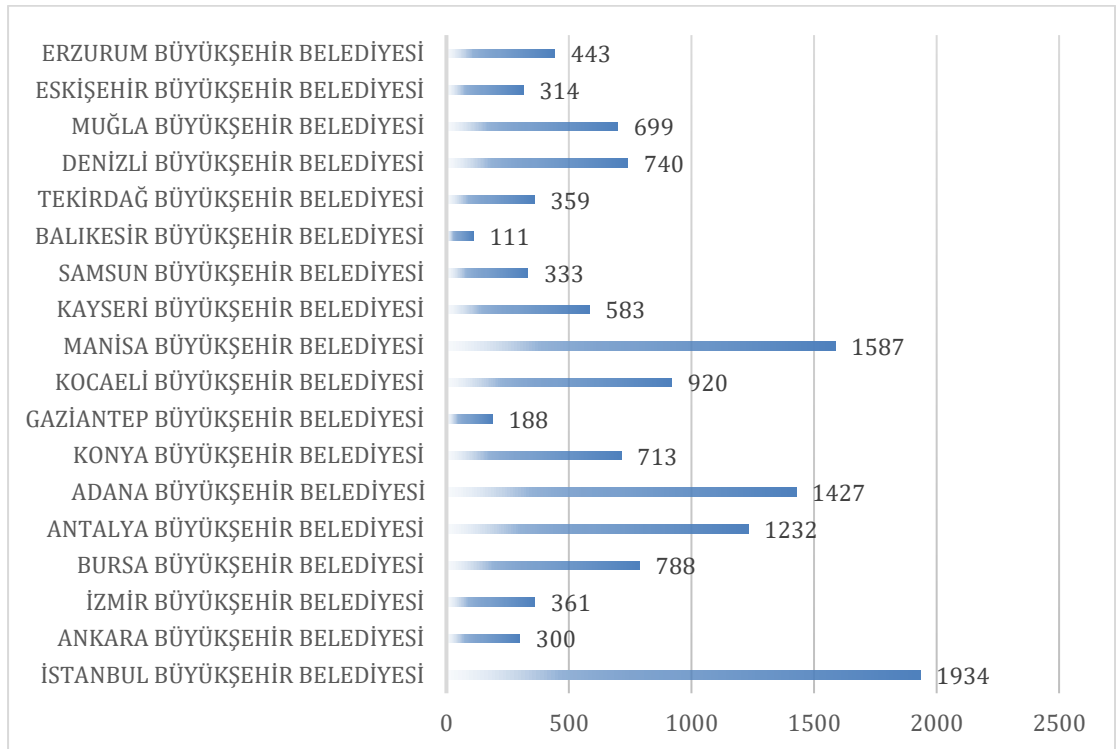


Figure 3.4: Average Number of Employees in MEEs

A study was conducted to classify MEEs in order for examining their service areas. Accordingly, all areas of activity were classified in 5 groups, including Transport, Environment and Energy, Service and Food, Construction and IT. The transport group covers MEEs engaged in main business lines of bus operations, parking lot operations, railways operations, including metro and tram, and maritime operations. The construction group covers MEEs engaged in such activities as urban furniture, mass housing and urban regeneration, project design activities, asphalt paving, site management, sales of houses, etc. The environment and energy group includes MEEs that conduct businesses regarding oil, natural gas trade, arboriculture and landscape, solid waste disposal, energy accreditation, etc. The Service and Food group includes MEEs operating in such areas as culture, tourism, health, sports, bread and bakery products, spring water and restaurants. Finally, IT group includes MEEs engaged in such activities as electronic money, smart cities and digital technologies, fibre optical networks. Figure 3.5 presents Breakdown of MEEs by Service Areas. The examined 21 MMs have 183 MEEs, 47% of which are operating in the service and food area, and 15% of which are operating in the environments and energy, construction and transport areas. We see that the rapid introduction of technology into life in the developing and globalizing world made MMs to try to adapting today's conditions and opening new MEEs in this service group.

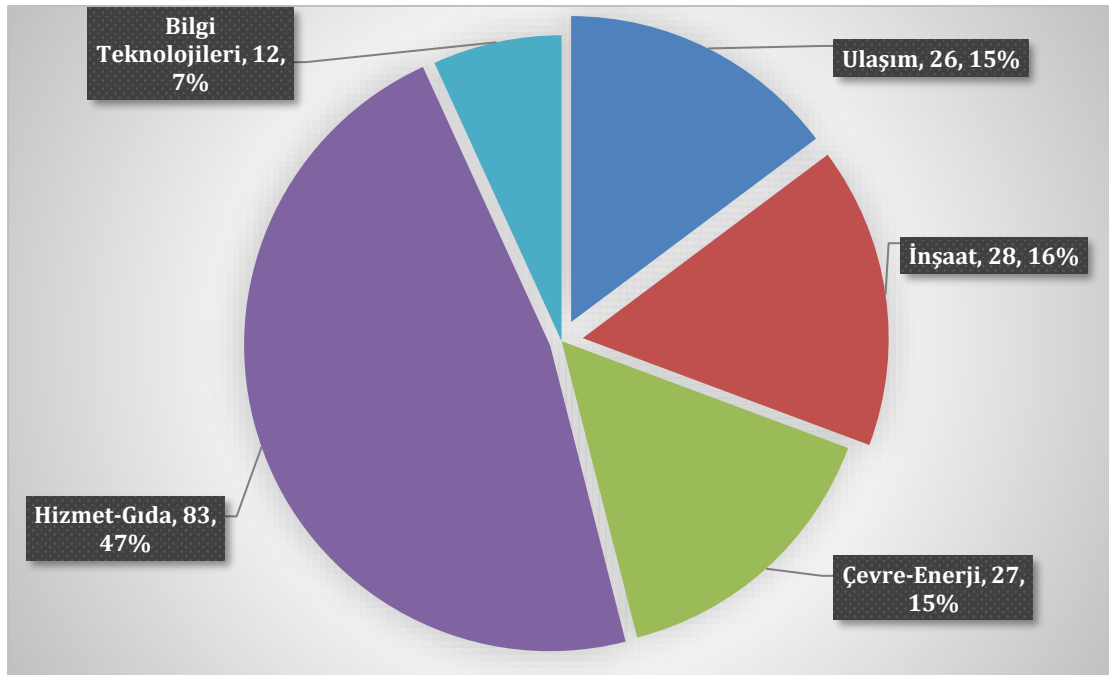


Figure 3.5. Breakdown of MEEs by Service Areas

Bilgi teknolojileri	Information Technologies
Ulaşım	Transport
İnşaat	Construction
Çevre-enerji	Environment & Energy
Hizmet-gıda	Services & Food

Although MEEs are not established completely for profit purposes, it is of critical importance for them to have a financial balance that can be subsidized in terms of sustainable management. Annual reports of MMs are examined to obtain information on financial structures of MEEs, and data on MEEs of 9 MMs are given in the section "Metropolitan Municipalities" of Annex-1. General Financial Structures of MEEs are given in Figure 3.6, but

since the total profit of MEEs of Istanbul MM is too high, i.e., approximately 1 billion TRY, it is not included in the graph. Another municipality that made profit among those examined is Bursa MM with a profit of 5 million TRY.

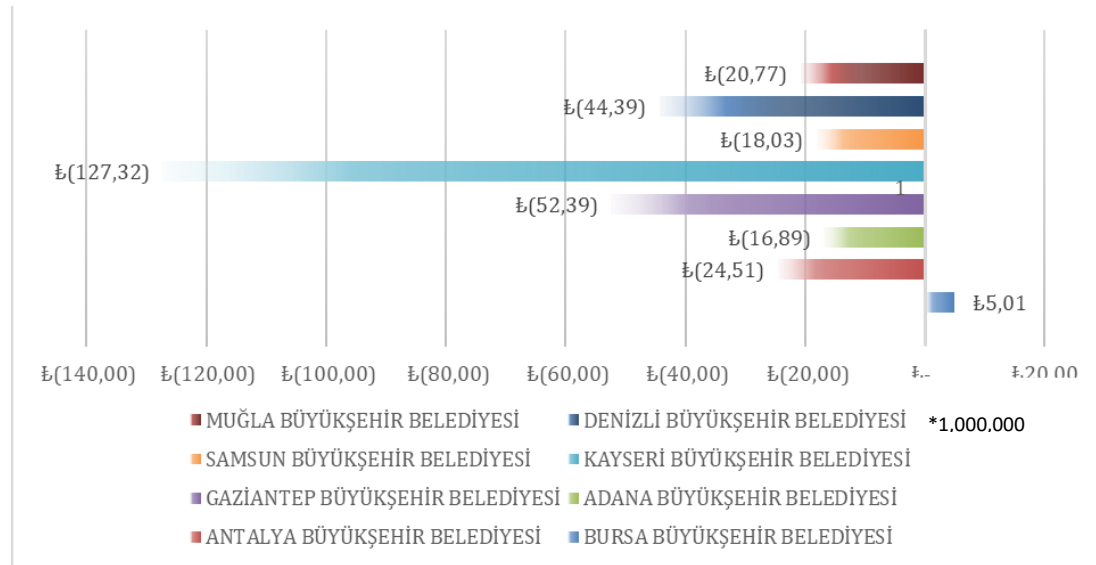


Figure 3.6.: Financial Statuses of MEEs

The financial information of MEEs, the total profit/loss statuses of which are given above should be examined under five Main Service Groups. Financial information of MEEs that are included in the Construction Group, Environment and Energy Group, Transport Group, Service and Food Group and IT Group are detailed in Tables 3.2 to 3.6, respectively.

Table 3.2.: Financial Information of Construction Enterprises

AFFILIATES	Actual Net Revenues (TRY)	Actual Net Expenditures (TRY)	Period Net Profit/Loss (TRY)
BİMTAŞ A.Ş.	148,399,849.00	168,026,362.00	-19,626,513.00
BOĞAZIÇI YÖN. A.Ş.	352,954,064.00	346,231,306.00	6,722,758.00
İSFALT A.Ş.	723,084,950.00	736,173,766.00	-13,088,816.00
İ.İMAR A.Ş.	23,499,831.00	22,464,814.00	1,035,017.00
İSTON A.Ş.	312,292,691.00	310,106,629.00	2,186,062.00
KİPTAŞ A.Ş.	1,699,898,620.00	1,340,355,489.00	359,543,131.00
BURKENT	8,908,434.87	9,010,512.86	-102,077.99

ANET ANTALYA İNŞAAT TURİZM SANAYİ VE TİCARET A.Ş.	38,716,266.00	39,122,165.00	-405,899.00
ANTEPE İnşaat ve Ticaret A.Ş.	39,469,393.97	40,361,863.43	-892,469.46
YENİ ADANA İMAR İNŞ. TİC. A.Ş.	12,211,585.30	28,040,176.14	-15,828,590.84
GAZİBEL	144,531,646.10	145,680,137.58	-1,148,491.48
GAZİKONUT	35,294,377.26	37,769,256.71	-2,474,879.45
KAYSERİ İMAR VE İNŞAAT TİCARET A.Ş.	179,516,340.59	154,708,233.46	24,808,107.13
Samsun Anakent	143,943,466.36	137,001,310.63	6,942,155.73

Tablo-3.3.: Financial Information of Environment and Energy Enterprises

AFFILIATES	Actual Net Revenues (TRY)	Actual Net Expenditures (TRY)	Period Net Profit/Loss (TRY)
AĞAÇ A.Ş.	427,023,499.00	394,942,858.00	32,080,641.00
İGDAŞ A.Ş.	8,866,471,718.00	8,235,970,835.00	630,500,883.00
İSTAÇ A.Ş.	1,050,844,207.00	1,032,241,247.00	18,602,960.00
İ.ENERJİ A.Ş.	548,622,901.00	511,873,259.00	36,749,642.00
UGETAM A.Ş.	84,529,000.00	70,897,919.00	13,631,081.00
TARIMAŞ Bursa	33,075,436.34	32,418,690.65	656,745.69
Bursa Jeotermal A.Ş.	35,537,188.43	37,466,981.68	-1,929,793.25
GAZİ AĞAÇ A.Ş.	184,678,770.98	186,731,235.10	-2,052,464.12
GASKİ ENERJİ	26,630,856.62	28,882,830.34	-2,251,973.72
KAYSERİ ENERJİ A.Ş.	3,735,591.97	4,012,026.05	-276,434.08

BELTES PETROL	51,517.63	100,569.70	-49,052.07
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Table 3.4.: Financial Information of Transport Enterprises

AFFILIATES	Actual Net Revenues (TRY)	Actual Net Expenditures (TRY)	Period Net Profit/Loss (TRY)
İSPARK A.Ş.	333,958,029.00	368,517,757.00	-34,559,728.00
İ.OTOBÜS A.Ş.	661,806,445.00	660,426,249.00	1,380,196.00
İ.ŞEHİR HATLARI A.Ş.	263,564,684.00	256,542,034.00	7,022,650.00
METROİST .A.Ş.	1,041,365,216.00	1,156,688,426.00	-115,323,210.00
ANTALYA ULAŞIM A.Ş.	116,557,798.00	146,009,212.00	-29,451,414.00
ADANA ULAŞIM A.Ş.	431,988,606.26	431,295,665.80	692,940.46
GAZİULAŞ	192,643,151.01	233,362,744.33	-40,719,593.32
KAYSERİ ULAŞIM A.Ş.	159,887,989.08	317,269,483.92	-157,381,494.84
SAMULAŞ A.Ş.	42,190,870.04	71,713,519.36	-29,522,649.32
Denizli Ulaşım A.Ş.	25,378,336.64	66,558,243.18	-41,179,906.54
MUTTAŞ	29,824,224.94	52,457,682.15	-22,633,457.21

Table 3.5.: Financial Information of Service-Food Enterprises

AFFILIATES	Actual Net Revenues (TRY)	Actual Net Expenditures (TRY)	Period Net Profit/Loss (TRY)
BELTUR A.Ş.	392,339,557.00	423,189,144.00	-30,849,587.00
HAMİDİYE A.Ş.	176,387,823.00	174,883,783.00	1,504,040.00
İ.H.EKMEK A.Ş.	336,279,394.00	336,928,113.00	-648,719.00
KÜLTÜR A.Ş.	481,054,065.00	500,232,331.00	-19,178,266.00
İSPER A.Ş.	1,338,017,766.00	1,287,739,008.00	50,278,758.00
SPORİSTANBUL A.Ş.	312,850,134.00	301,514,875.00	11,335,259.00
İSYÖN A.Ş.	58,246,974.00	68,972,514.00	-10,725,540.00
GÜVENSU A.Ş.	4,288,876.00	4,201,210.00	87,666.00
İSTGÜVEN A.Ş.	880,619,525.00	854,574,597.00	26,044,928.00
BESAŞ	99,524,084.02	102,755,480.23	-3,231,396.21
BURFAŞ	62,207,721.65	56,956,064.49	5,251,657.16
BURSA KÜLTÜR VE SANAT ÜRÜNLERİ	46,616,272.32	44,471,306.60	2,144,965.72
BİNTED	402,358,983.72	400,143,271.18	2,215,712.54
ANTALYA HAYVANCILIK TİCARET A.Ş.	594,410.32	844.755,41	-250,345.09
ANTALYA İNSAN KAYNAKLARI A.Ş.	500,600,315.48	493,503,563.47	7.096.752,01
ANTALYA SOSYAL HİZMETLER A.Ş.	3,129,637.95	2,696,499.00	433,138.95
ANSET	15,071,324.88	14,589,620.02	481,704.86
EKDAĞ A.Ş.	14,947,103.84	16,468,461.54	-1,521,357.70

ÇUKUROVA FUARCILIK A.Ş. (ÇUFAŞ)	4,110,848.79	4,105,524.64	5,324.15
ALTINKOZA KÜLTÜR SANAT VE TURİZM HİZMETLERİ A.Ş.	60,722,850.41	62,185,305.66	-1,462,455.25
BELDETAŞ	6,885,030.38	7,181,749.98	-296,719.60
GAZİ DANIŞMANLIK	126,158,504.97	123,697,863.65	2,460,641.32
GAZİKÜLTÜR	41,535,519.08	47,630,414.67	-6,094,895.59
KAYSERİ ERCİYES SPOR A.Ş.	13,327,844.73	12,038,051.95	1,289,792.78
KAYMEK	150,353,301.62	142,193,254.40	8,160,047.22
KAY-TUR	38,767,919.35	42,722,553.38	-3,954,634.03
KAYSERİ Ş.	23,999,270.18	23,962,216.88	37,053.30
Samsun Kültür A.Ş.	75,031,528.91	70,484,582.42	4,546,946.49
BELTAŞ	30,108,101.40	31,736,009.32	-1,627,907.92
Denizli Kültür A.Ş.	1,548,810.18	3,385,894.10	-1,837,083.92
Denizli PERAŞ	157,052,597.59	156,802,175.84	250,421.75
MUBEP	196,961,081.65	194,888,604.40	2,072,477.25
BAĞYAKA	179,320.08	38,251.09	141,068.99
MELSA	2,240,940.56	2,545,675.85	-304,735.29

Table 3.6.: Financial Information of IT Enterprises

AFFILIATES	Actual Net Revenues (TRY)	Actual Net Expenditures (TRY)	Period Net Profit/Loss (TRY)
BELBİM A.Ş.	217,654,059.00	162,166,890.00	55,487,169.00
İSBAK A.Ş.	344,209,886.00	318,741,154.00	25,468,732.00
MEDYA A.Ş.	73,961,118.00	79,005,093.00	-5,043,975.00

İSTTELKOM A.Ş.	80,273,988.00	69,746,418.00	10,527,570.00
GAZİANTEP BİLİŞİM VE AKILLI KENT TEKNOLOJİLERİ	4,087.05	112,128.38	-108,041.33

One of the purposes when establishing an MEE is to generate resources. In this context, the rate of the revenues generated by MEEs owned or associated by municipalities to the total revenues of MMs were calculated during the analyses conducted for 9 MMs (Table 3.7). Although the majority of the revenues generated by MEEs is from the tenders awarded by municipalities with which they are affiliated, these rates may give an idea about the rate of revenues generated by MEEs established by municipalities.

Table 3.7.: Rate of Revenue Budget of MEEs Owned by MMs to Revenue Budget of MMs

	MM	Percentage
1	İSTANBUL MM	108.69%
2	BURSA MM	32.15%
3	ANTALYA MM	39.51%
4	ADANA MM	33.05%
5	GAZİANTEP MM	44.96%
6	KAYSERİ MM	46.19%
7	SAMSUN MM	27.43%
8	DENİZLİ MM	25.02%
9	MUGLA MM	28.72%

13 provincial and district municipalities in Türkiye were examined, and data on MEEs owned or associated by these municipalities are summarized in Table 3.8. Tables with detailed information on MEEs of provincial and district municipalities are given under the “Provincial and District Municipalities” section of Annex-1. Populations of the 13 provincial and district municipalities examined were given in Figure 3.7.

Table 3.8.: General Information on Provincial and District Municipalities

No.	Municipality	Type	Populati on	INFORMATION ON MUNICIPAL COMPANIES
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			(Address Based Population on Registration System 2020)	Number of companies owned or associated by the municipality	Number of employees	Year of Activity Report Referred
1	GAZİANTEP ŞAHİNBEY MUNICIPALITY	DISTRICT MUNICIPALITY	931.116	3	-	2020
2	ANKARA ÇANKAYA MUNICIPALITY	DISTRICT MUNICIPALITY	925,828	6	2,935	2020
3	BURSA OSMANGAZİ MUNICIPALITY	DISTRICT MUNICIPALITY	881,459	2	2020	2020
4	İSTANBUL BAĞCILAR MUNICIPALITY	DISTRICT MUNICIPALITY	737,206	1	1,734	2020
5	İSTANBUL ÜMRANIYE MUNICIPALITY	DISTRICT MUNICIPALITY	713,803	1	2,222	2020
6	SİVAS MUNICIPALITY	PROVINCIAL MUNICIPALITY	635,889	2	1,950	2020
7	ZONGULDAK MUNICIPALITY	PROVINCIAL MUNICIPALITY	591,204	1	659	2020
8	KÜTAHYA MUNICIPALITY	PROVINCIAL MUNICIPALITY	576,688	6	1,318	2020
9	İSTANBUL ESENLER MUNICIPALITY	DISTRICT MUNICIPALITY	446,276	2	1,156	2020
10	ISPARTA MUNICIPALITY	PROVINCIAL MUNICIPALITY	440,304	6	1,311	2020
11	ANKARA ALTINDAĞ MUNICIPALITY	DISTRICT MUNICIPALITY	396,165	2	-	2020
12	KARABÜK MUNICIPALITY	PROVINCIAL MUNICIPALITY	243,614	1	116	2020
13	BİLECİK MUNICIPALITY	PROVINCIAL MUNICIPALITY	218,717	1	346	2020

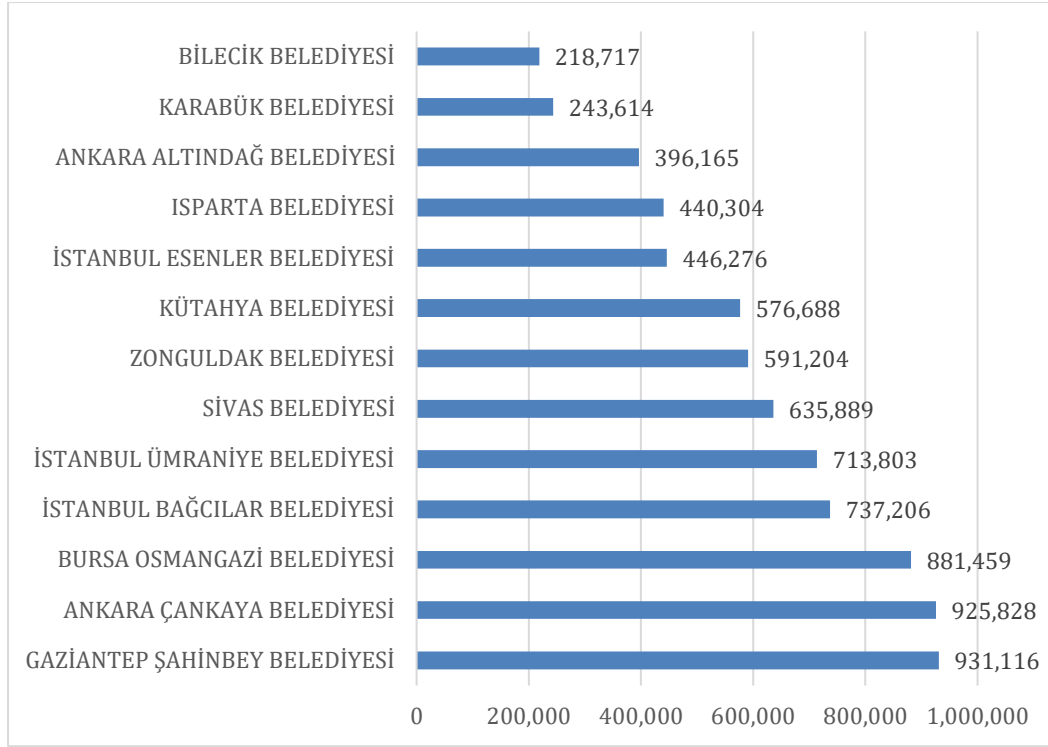


Figure 3.7.: Population in Provincial and District Municipalities - Address Based Population Registration System 2020

The number of personnel employed by MLEs owned by these Provincial and District Municipalities is presented in Figure 3-8. Ankara Çankaya Municipality ranks first with approximately 3 thousand employees in 6 MLEs. Both Istanbul Ümraniye Municipality, which has one MLE, and Bursa Osmangazi Municipality, which has 2 MLEs, employ approximately 2 thousand personnel.

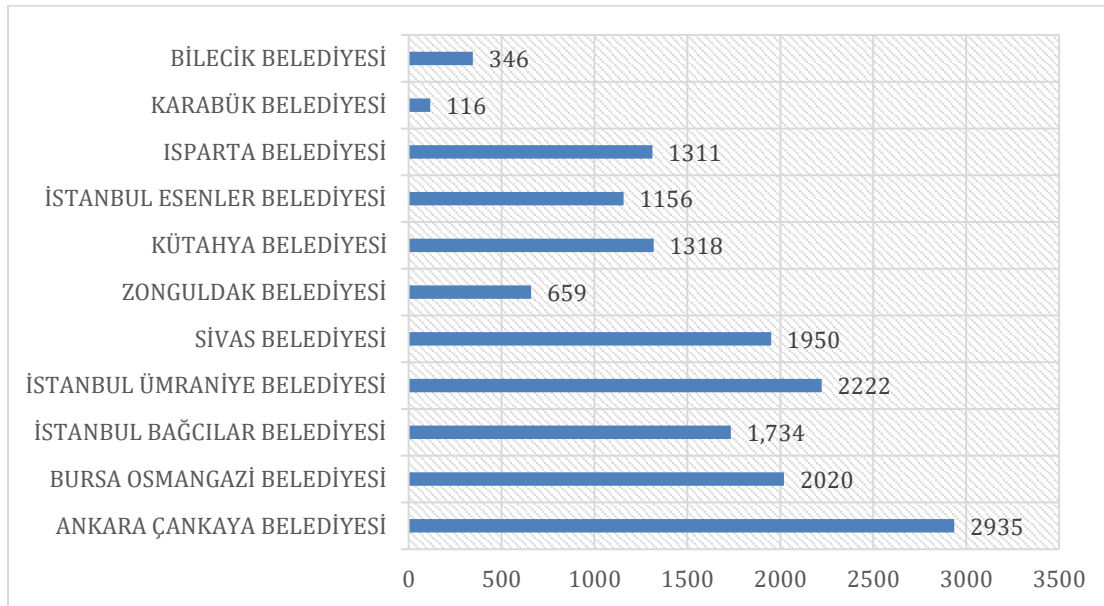


Figure 3.8.: Number of Staff Employed by MLEs of Provincial and District Municipalities

The number of MLEs owned or associated by Provincial and District Municipalities is shown in Figure 3-9. Isparta Municipality, Kütahya Municipality and Ankara Çankaya Municipality have six MLEs each. Provincial and District Municipalities generally have outsourcing companies established based on the Decree-Law No. 696. It is seen that MLEs established by the District Municipalities operate in more than service areas.

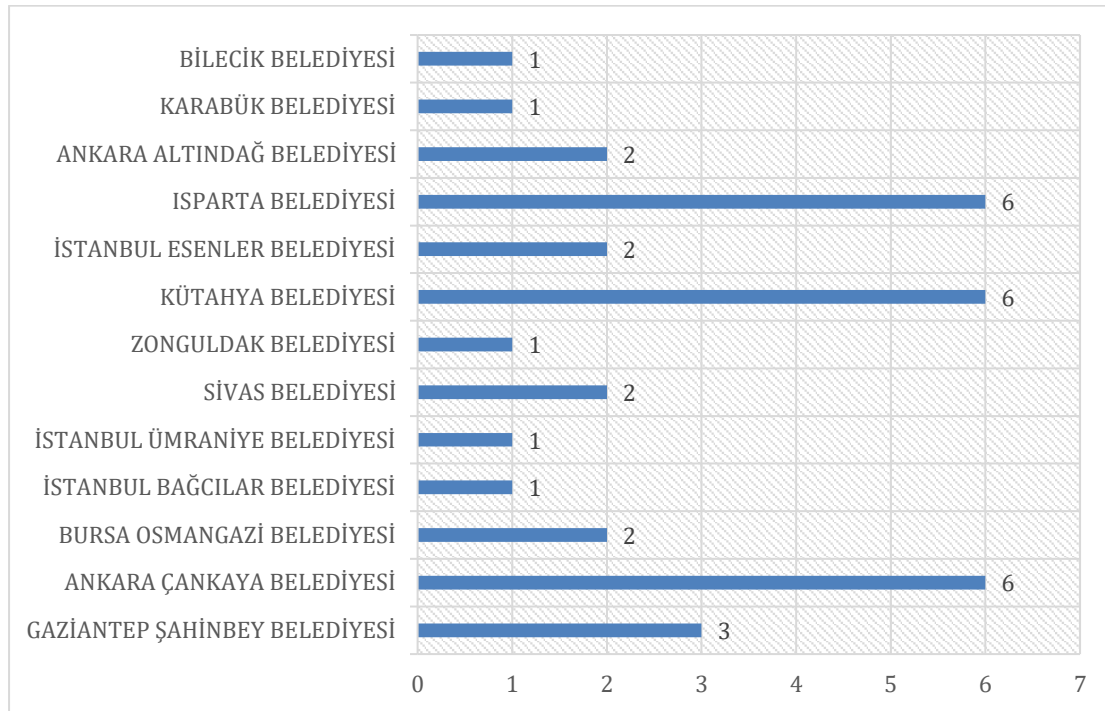


Figure 3.9.: Number of MEEs of Provincial and District Municipalities

3.2. RELATIONSHIP MODEL OF MLEs & RECOMMENDATIONS

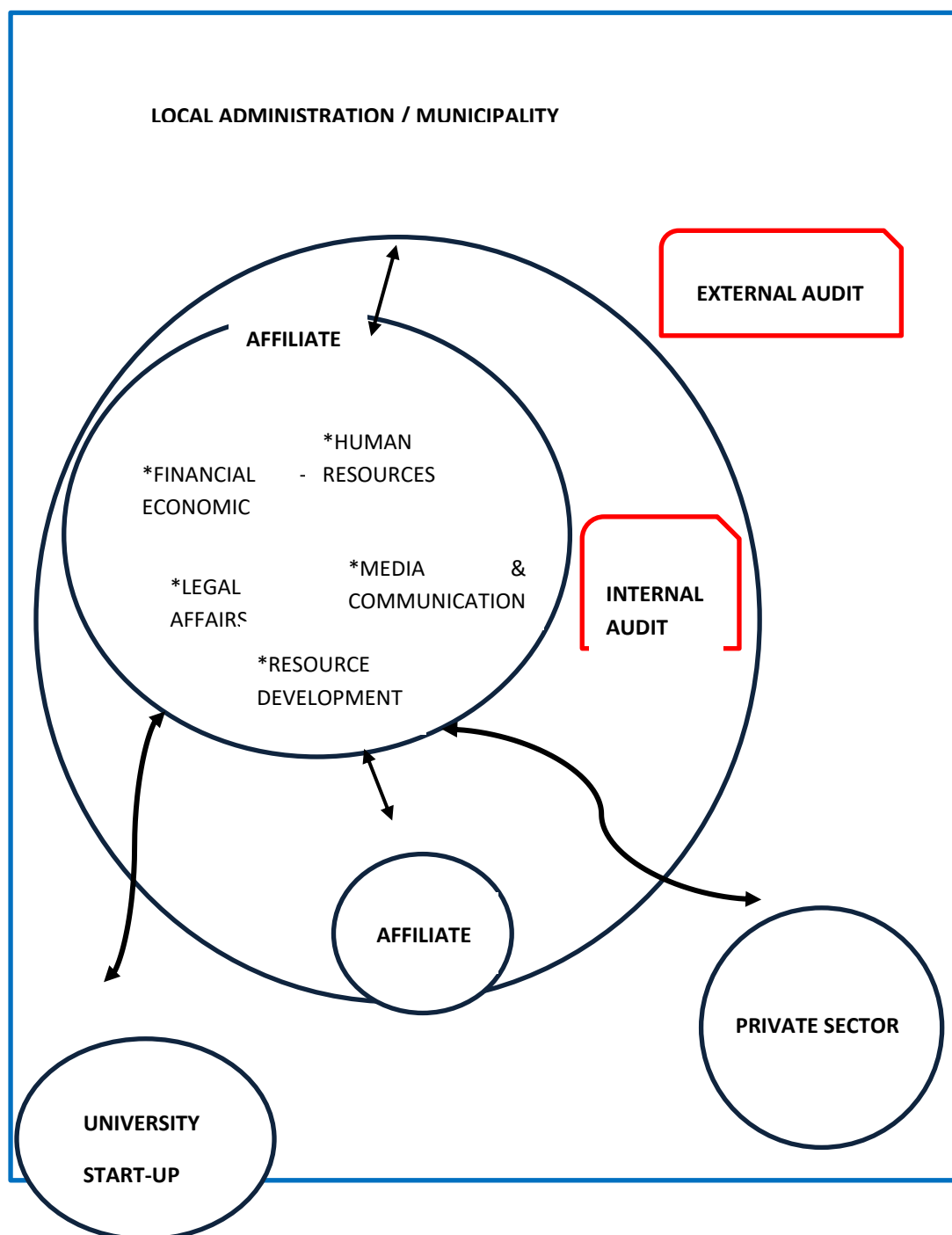


Figure 3.10.: Relationship Model of MLEs

MLEs' internal relationships as well as relationships with external factors are defined in the MLE relationship model in Figure 1. Among the units that have relationships with each other within an MLE are Human Resources, Legal Affairs, Financial-Economic Affairs, Resource Development and Media & Communication. Also, MLEs have relationships and are in close contact with the municipal unit with which they are affiliated, other MLEs of the municipality,

universities, start-ups, NGOs and private sector companies. In terms of audits, MLEs are subject to internal and third party audits, as well as internal and external audits (that will be discussed in detail in the following sections) conducted by municipalities with which they are affiliated.

Based on the MLE relationship model, MLEs can be analysed according to the following main headings:

- MLE relationships/governance
- Internal Affairs of MLEs:
 - Resource Development
 - Financial / Economic
 - Legal Affairs
 - Human Resources
 - Media & Communication (transparency)
 - Management
- Relationships with the private sector
- Relationships with universities and start-ups
- Relationships with other MLEs
- Internal and external audits (accountability)

3.2.1. RELATIONSHIPS BETWEEN MUNICIPALITIES AND MLEs

The basic rule for the performance of public services is the execution of tasks by the local administrations that are closest to the public if they have sufficient financial power, and this allows them to use resources efficiently (Özdenkoş, 1999: 81-86). On the other hand, an important point regarding local administrations is that they provide services effectively and efficiently. Today, it is stated that “the inefficient use of resources” is among the most important problems of municipalities. Which indicators are used to measure efficiency is of great importance for the discussions about how efficiently municipalities use their resources. Local administrations establish MLEs to ensure the principle of expediency and to increase efficiency and diversity of resources.

Since they were first established, MLEs have been experiencing a chequered process in achieving their purposes, delivering spotty performance in different periods. Some MLEs are constantly supported and impose burdens on municipalities, and even their existence is questioned, whereas some MLEs make a profit and generate resources while properly performing public services. One reason for this chequered process is due to the management relations between the municipality and MLEs.

The members of management and inspection bodies of MLEs are assigned by the municipal administrations. In administrative terms, MLEs are dominated by municipalities. Although

MLEs are private law legal entities, when their administrative relations with municipalities are considered, they give the impression that they are public legal entities. The relations between MMs and MLEs are managed by the official units of MMs that are called the Department of Resource Development and Affiliates. These units not only establish unilateral communication between municipalities and MLEs but also ensure coordination among all MLEs. Furthermore, in some local administrations, MLEs are managed relatively independently from municipalities through decisions taken by the director general and/or board of directors. Considering the rate of equity capital owned by municipalities in MLEs and their establishment purposes, it is possible to say that MLEs that act independently of the visions and decisions of municipalities do not make a significant contribution to the main target of municipalities in performing their duties. It is, therefore, necessary to establish a relationship between municipalities and MLEs through a system with identified standards, responsibilities and limits.

3.2.1.1. RECOMMENDATIONS FOR SOLUTIONS FOR IMPROVEMENT AND EFFICIENT MANAGEMENT OF MEEs & STRUCTURE OF THE DEPARTMENT OF RESOURCE DEVELOPMENT AND AFFILIATES

Municipalities operate affiliated companies in which they have equity capital of various percentages. Municipalities usually own the majority of the equity capital of MLEs, particularly those that are large-scale and monopolistic. These MLEs have an active role in the production and delivery of public services as well as are considered a means of generating resources for all municipal services.

- ***- Department of Resource Development and Affiliates***

Establishing the Department of Resource Development and Affiliates within municipalities due to the abovementioned reasons ensures not only the protection of municipalities' legal rights arising from the ownership of equity capital but also the planning, programming, management and operation of MLEs in accordance with the principle of economy and efficiency. The purpose of the establishment of this unit is the planning, programming, management and operation of MLEs in accordance with the principle of economy and efficiency. To this end, under this department, there should be four coordinators with the following duties and responsibilities:

1. LEGAL AFFAIRS COORDINATORSHIP

- Procedures for the Establishment, Transformation and Restructuring of MLEs
- Planning and Organization of General Assembly Meetings
- Examining Procurement and Tender Procedures from Legal Aspects
- Follow-up of Legislation
- Follow-up and Finalization of Other Legal Procedures
- Decision of Boards of Directors and Follow-up of these Decisions
- Other Procedures

2. FINANCIAL AFFAIRS COORDINATORSHIP

- Audit, consolidation, reporting and analysis of financial tables (legal & TFRS) of MLEs
- Coordination of preparing and follow-up, consolidation and reporting of MLEs' budgets
- Organization, follow-up, reporting and coordination of MLEs' "audits under full confirmation reports"
- Follow-up, consolidation and reporting of MLEs' "Independent Audit" processes
- Follow-up and reporting of processes for MLEs' "Audits by Court of Accounts"
- Follow-up and reporting of and taking and ensuring to take necessary measures for MLEs' economic and financial capability criteria
- Examination, follow-up, reporting and analysis of MLEs' annual, monthly and weekly financial statuses
- Follow-up and reporting of and taking necessary measures for financial resource needs of MLEs
- Follow-up of legislation, coordination of MLEs regarding tax legislation, providing consultancy services with relevant parties
- Coordination of finance departments of MLEs, organizing meetings, providing support for all their work

3. HUMAN RESOURCES COORDINATORSHIP

- Determining HR policies of MLEs and follow-up of whether procedures are implemented in accordance with the policy
- Analysis of workload of MLEs and the management of the process regarding position standardization studies
- Identifying the Wage Policy of MLEs, implementation of the wage management system designed in line with the policy
- Follow-up of processes related to Collective Bargaining Agreements applied at MLEs
- Follow-up and control of processes related to the performance of personnel-based services through Outsourcing Contracts
- Follow-up and control of the process related to the performance of non-personnel-based services
- Receiving requests for staff from MLEs and managing the recruitment process through the employment system
- Preparation of the annual Personnel Budgets of MLEs and monitoring of the budget actualisation on a monthly basis

- Preparation of annual leave plans of MLEs and follow-up of processes regarding reducing leave balances
- Developing policies for planning works with no need for overworking
- Control of the Annual Training Plans and follow-up and control of organization of training events on a monthly basis
- Follow-up of costs of MLEs for in-house personnel expenses
- Follow-up and control of the application of the labour legislation and HR Regulation in MLEs
- Improvement of the Career Planning process for promotion and title change of employees
- Searching for appropriate personnel in all MLEs to meet any personnel needs of MLEs, preferably from other MLEs

4. MEDIA & PROMOTION COORDINATORSHIP

- Ensuring effective communication among MLEs, identifying communication targets, developing target-specific strategies and managing the process for the implementation of action programs in line with such strategies,
- Coordination of the coverage in printed and visual media regarding MLEs
- Coordination of requests for announcements and advertisements to be placed in the media,
- Coordination of contents of any kind to be posted on social media platforms regarding MLEs
- Follow-up of the process regarding corporate identity of MLEs

3.2.1.2. RECOMMENDATIONS FOR SOLUTIONS FOR IMPROVEMENT AND EFFICIENT MANAGEMENT OF MEEs & HOLDING STRUCTURING

It can be seen and even experienced in any country that the 'public administration' may act slowly and may delay in producing solutions to problems when compared to the rapid changes in society and needs. Based on this fact, the Plowden Committee, which was established in the United Kingdom in 1961, concluded that the solution for the crisis in public administration was the application of the private sector techniques, approved this solution based on the Fulton Report in 1968, and achieved to implement this solution in the 1980s with the New Right movement, also known as Thatcherism. In the meantime, as a result of its efforts to overcome the crisis in public administration, the United States adopted the New Public Administration theory, the foundations of which were laid at the Minnowbrook Conferences held in 1968, and the New Public Management approach developed subsequently. All of the following models developed later on were structural transformation packages aimed at overcoming the same management crisis: the 'New Zealand Model' (1996) adapted to the public administration in New Zealand; the 'Schlanker Staat' (Slim State) (1997) introduced in

Germany; the 'La Relève' (1998) introduced in Canada; the 'Copernicus Reform' (2005) implemented in Belgium.

3.2.1.2.1. APPLYING NEW APPROACH IN MLEs

MLEs require a new change that will allow them to keep up with the rapidly changing demands of cities, produce faster and better quality services, achieve maximum employee satisfaction, and increase profitability and efficiency.

Accordingly, to develop management systems based on common strategies and standards, employment policies formulated by market conditions, performance systems through which hard-working employees are rewarded, operational units that produce higher quality and faster services, and a management understanding that holds executives responsible to the citizens only:

- A common strategy covering all MLEs should be identified; the establishment purposes of all existing MLEs should be reviewed and it should be ensured that MLEs conduct activities in line with the common strategy; MLEs should be assigned with short, medium and long-term targets in accordance with the common strategy and their activities; expectations from MLEs should be clarified;
- MLEs should be classified using objective and well-defined criteria, particularly in terms of their fields of specialization and activities; coordination of MLEs that must provide complementary or simultaneous services should be facilitated;
- MLEs should be considered as a single structure so that they can follow the common strategy and realize their full potential in any case;
- Management structures and purviews of MLEs should be reviewed; job descriptions of all positions, from the lowest level to senior executives, should be clarified; processes should be analysed and workflows should be identified to ensure full cooperation among units and MLEs; there should be no 'work for which a responsible person is not defined'; complexities in the structure should be eliminated;
- Decision-making processes should be redesigned; each subordinate should have only one manager and approval power to avoid prolongation of decision-making processes; devolution that supports a flexible hierarchical structure should be prioritized rather than a rigid hierarchical structure;
- Senior executives should be chosen among people, who adopt the private sector approach, have a solution-oriented perspective and can act in a result-oriented manner;
- Coordination and communication among MLEs and municipal units should be strengthened; all municipal units and officials should be assigned the responsibility of producing services for the same common purpose/strategy, complementing and working in harmony with one another;

- Human resources, legal affairs, financial affairs, and quality (and relatedly, OHS) functions that are common in all MLEs should be identified in the organizational structure of the municipality, and it should be ensured that the central units work to map out a route for and direct MLEs in accordance with certain strategies and targets;
- Human resources policies, from recruitment to remuneration, should be identified in accordance with the market conditions; appropriate conditions should be established so that qualified personnel prefer to work in MLEs; career talent programs and effective performance management systems should be implemented to prevent employees from working in the same position for many years and to facilitate promotion opportunities;
- A common database should be used for all MLEs; the data should be prepared in a standardized and analysable manner; it should be ensured that the data are used effectively in decision-making and strategy formulation processes;
- Audits should be conducted mainly by the citizens, who are the beneficiaries/customers of the services; independent audit mechanisms should be established to ensure that MLEs are audited against well-defined strategies and targets;
- The costs of each service offered by MLEs should be calculated; MLEs should be given balance sheet targets, and their production of services should be designed considering efficiency, productivity and economic criteria; studies should be carried out to strengthen the financial capacities of MLEs that incur losses as a result of their activities; it should be ensured that MLEs act beyond being 'expenditure' oriented and strengthen their 'revenue-generating' capabilities.
- The competition among MLEs should be based on increasing the volume of services at a more affordable cost and responding more to the needs of the society.

3.2.1.2.2. SPHERE OF INFLUENCE OF THE NEW STRUCTURE

Overcoming the problems faced by MLEs through administrative reforms based on the good practices in developed countries will have a direct influence on Municipalities, MLEs, employees of MLEs, the Private Sector, all citizens, particularly those living in urban areas, and the Public Administration.

A- Sphere of Influence of the New Structure on Municipalities

- Strategy formulation
- Management approach
- Effective performance assessment
- Financial status
- Service quality

B- Sphere of Influence of the New Structure on MLEs

- Opportunity for MLEs to operate collectively
- Activity association
- Performance assessment of MLEs
- Human Resources Policy
- Procurement costs
- Production costs
- Operating expenses
- Financing of new investments
- Competitiveness in the market

C- Sphere of Influence of the New Structure on Employees of MLEs

- Executive positions
- Job descriptions
- Decision-making processes
- Performance management systems
- Career opportunities and motivation
- Performance improvement
- Specialisation
- Mobilisation
- Career talent management

B- Sphere of Influence of the New Structure on Private Sector

- Supply market
- Competitiveness
- Regulation of sectors

B- Sphere of Influence of the New Structure on the Community

- Ability to respond needs quickly
- Quality of the services received
- New employment opportunities
- MLE-Client (Citizen) relations

B- Sphere of Influence of the New Structure on Public Administration

- Implementation of development plans
- Being a role model
- Public Administration Reform process

3.2.1.2.3. BENEFITS EXPECTED FROM THE NEW STRUCTURE

The new structure will allow Türkiye to leave the hierarchical bureaucratic structure that has lost its validity today in developed countries. Then it will be possible to establish a new multi-actor, flexible-structure public administration paradigm that allows society's actors to perform rather than the state, directs them, facilitates resource management, and prioritizes mutual interaction.

When designing this new structure for municipalities, the Department of Affiliates was inspired by public administration reforms in various countries, including, inter alia, United Kingdom, United States, New Zealand, Germany, Canada, and Belgium. Therefore, it would be highly beneficial if municipalities' Affiliate Management Structures are re-institutionalised in the context of the updated public management principles and revised in accordance with a perspective as required by today's conditions.

First of all, gathering MLEs under a single umbrella by imposing an actual responsibility as well as a legal obligation will bring an undeniable synergy. The real synergy will however emerge when all MLEs formulate their activities based a common strategic plan.

Assigning short, medium and long-term targets to MLEs in accordance with a common strategy and measuring their performances based on such targets will visibly increase the quantity and quality of public services. Besides, applicable long-term targets will not only minimize the effects of politics and personality on public services but also contribute to the performance of services with certain standards.

A corporate and legal structure that will gather MLEs under a single umbrella will not only facilitate the transfer of resources to MLEs that cannot make a profit due to the nature of the public services they produce but also reduce the cost of such transfers.

Furthermore, this will alleviate the burden of bureaucratic audits that stem from legal regulations and consequently interrupt business processes and will pave the way for independent audits.

The rationality to be brought by such an umbrella body will strengthen the mobility among MLEs, facilitating the transfer of technical knowledge, labour force and managers.

The 'Operational Integrative Management Model' will allow the central structure to perform a number of common functions. This model will both reduce the need for labour force in some expenditure items and provide significant cost advantages, which in turn ensure efficiency in the use of resources.

Gathering MLEs according to their fields of activity will primarily ensure coordination and cooperation among MLEs that perform similar or complementary activities, whereas MLEs

that operate in different fields but are in need of each other will have the opportunity to work with each other through communication channels that do not prolong the legal and actual processes.

Similar to the approach to be applied for fields of activity of MLEs, clarifying job descriptions of all employees, from the bottom to the top, and workflows in MLEs based on the process analyses to be conducted will ensure both assignment of all works and formation of a 'professional management'.

The growth to be achieved will create further and more productive employment opportunities. Formulating human resources policies by taking into consideration the expectations of qualified personnel will make it possible for MLEs to employ such people.

Identifying career paths will significantly contribute to the prevention of the loss of qualified personnel, and gathering MLEs under a single umbrella will facilitate the transfer of qualified personnel among specialized MLEs. On the other hand, the performance management system to be established will enable MLEs to reward personnel who creates value.

Establishing an ERP system that allows the central structure to monitor management processes of all MLEs, measure their performances, and keep data in a uniform format will make it possible to conduct data analyses, support decisions with data, compare MLEs with each other, and obtain objective results regarding whether management is successful or not.

Eliminating bureaucratic restrictions will enable MLEs to be active actors in the market and capable of entering new markets, thus increasing their turnover.

MLEs will develop a corporate culture and improve customer satisfaction based on an understanding that prioritizes the provision of quality and effective service with a focus on customers (citizens).

Restructuring of management primarily requires a radical change of thought, unlike the previous ones. Numerous experiences of making a reform in the administration based on the traditional public administration paradigm without a new perspective indicated that such studies have no future.

Taking the rigid hierarchical management models described in both the 'iron cage' thesis of Max Weber and the 'bronze law of oligarchy' thesis introduced by Robert Michaels in 1911 as a reference, the traditional Turkish Public Administration is the major obstacle to efforts aimed at restructuring the public administration, as it advocates an excessive statist perspective and accordingly shows the reflexes of a rigid centralistic bureaucracy. In fact, it is repeatedly tried to reproduce the traditional management paradigm under the guise of "reform", serving only to deepen the problems but nothing else.

As a result, the HOLDING structure will have the following characteristics:

- Flexible Organizational Structure
- Soft Hierarchy

- Sharing of Power
- Visionary and Flexible
- Business Management
- Market Oriented
- Entrepreneur-like Managers
- Powered Managers
- Citizen (Customer) Oriented
- High Risk Appetite
- Performance Based Audit
- Multifaceted Assessment
- Performance Based Wage
- Output and Result Oriented
- Transparent
- Quality in Services
- Easy Financing and HR Transfers
- Shortened and Effective Audit Processes

3.2.1.2.4. OPPORTUNITIES OFFERED BY THE NEW STRUCTURE

With the steps to be taken to solve the problems arising from the traditional public administration approach, MLEs will have some opportunities, including:

- ❖ In terms of their strategies:
 - Easiness for MLEs to act and align in the framework of a common vision and strategy
 - Increased synergy in the use of resources by companies
 - Institutionalisation and ensuring the continuity of the steps taken to improve citizen satisfaction
 - Elimination of the restrictions imposed by the legal legislation; taking the advantages of an organization under a single umbrella
 - New occasions for MLEs to increase the quality or diversity of services
 - Opportunities for MLEs to be subject to performance measurements and audits in the context of determined strategies;
- ❖ In terms of their existing operation structure:

- Increased communication among MLEs
 - Formation of a structure that is competitive and flexible in compliance with the sector with identified criteria for the budget and performance
 - Improved decision-making processes and reduced bureaucracy as a result of managers' initiatives
 - Ensuring focusing on works through follow-up of strategic topics by central units and conducting operational procedures by MLEs
 - Increased effectiveness of central functions, and reduced costs as a result of integrative activities
 - Effective communication and flow of information that will ensure dissemination of good practices to all MLEs
- ❖ In terms of HR structures of MLEs:
 - Formulation of modern and effective HR policies and improvement of respective practices (Employment of Qualified Personnel, Performance Management, Development Plans and Career Management)
- ❖ In terms of IT Systems used:
 - Common IT management through which business results and corporate information of all MLEs can be monitored
- ❖ In terms of efficiency:
 - Establishment of common finance pool that could not be formed due to legal restrictions.

3.2.1.2.5. RECOMMENDATIONS FOR TRANSITION TO THE NEW STRUCTURE

Below are the recommendations expressed, during the interviews held under the Current Situation Analysis study, by Directors General and Deputy Directors General of MLEs regarding the transition to the new structure and the success of transformation:

- All processes should be analysed, and problems in the current situation should be solved. This will ensure to eliminate potential resistance and risks.
- Senior executives should know MLEs very well, their roles should be clearly defined, and there should be no extra level in decision-making processes. The responsibility should be imposed on the Holding only.
- The central structure should involve supportive functions, such as HR, Legal Affairs, Financial Affairs and Quality.
- The structure should be standardized and free from complexities.

- HR systems should be developed, competent and visionary professional individuals should be assigned to the management, and a performance measurement and career development system should be established.
- The holding strategy should be formulated properly at the beginning, the establishment purposes of MLEs should be reviewed, and the sectors in which MLEs must be engaged should be identified.
- The existing classification should be repealed, MLEs should be classified according to their fields of specialisation and activities, and groups should be defined clearly and objectively. MLEs that work for Istanbul MM should be separated from those working for the market.
- There should be legal regulations introduced to change corporate identities of MLEs and facilitate their operation through various benefits. Furthermore, statuses of MLEs should be clearly identified.
- An effective independent audit mechanism should be established.
- The new structure and its advantages should be properly explained to citizens, creating a perception that the community is considered a stakeholder.
- MLEs should organized introductory meetings and take steps to ensure mental transformation of individuals, including employees. The change should be managed effectively.
- A common Enterprise Resource Planning (ERP) system should be used in all MLEs to increase efficiency. All data should be standardized and used effectively in decision-making and strategy formulation processes.
- The management centres of MLEs should be disjointed from operational processes.

3.2.2. INTERNAL RELATIONS IN MLEs

Below are the recommendations itemized for the job descriptions and standards for the HR, Legal Affairs, Financial-Economic Affairs, Resource Development and Media & Communication units of MLEs as a result of interviews and assessments.

3.2.2.1. LEGAL AFFAIRS

To establish policies and standards on legal procedures throughout the MLE and to holistically manage legal services in accordance with defined rules.

- To ensure central management, control and coordination of legal activities in line with the Strategic Objectives and corporate priorities.
- To prepare and submit for approval the activity plan and budget of the Legal Advisor's Office together with subordinate managers and ensure the implementation of activities in accordance with the approved plan and budget.

- To provide guidance for legal transactions, follow up the results, and oversee whether business plans are designed effectively and implemented successfully in accordance with MLE's targets, budget requirements and current business conditions as well as market conditions. To direct respective managers for taking and implementing the necessary decisions.
- To regularly monitor financial and operational performances achieved for the activities in his/her area of responsibility, oversee whether necessary corrective and improvement actions are executed.
- To strictly follow-up laws and regulations, identify occasions, risks and opportunities regarding the field of activity, manage research and feasibility studies for potential businesses, ensure that respective units take necessary actions, inform the CEO about developments and obtain approvals as required.
- To ensure that legal issues are included on the agenda of, assessed and resolved by the Senior Management of MLE.
- To coordinate the preparation of functions and business plans related to legal affairs in line with MLE's strategic objectives and corporate priorities, assess the operational performance based on the comparison with business objectives and present results to MLE's Senior Management.
- To make legal reviews, compile and interpret the legislation, follow-up the changes and inform relevant parties, present opinion on draft legislation.
- To strictly follow-up legal issues in cooperation with relevant departments and keep the information up-to-date.
- To defend MLE's rights in front of the judicial and administrative authorities regarding disagreements and disputes between the MLE and its subsidiaries and other persons and institutions.
- To represent the MLE in, where it is a party to, judicial and administrative cases, domestic and foreign arbitration proceedings, enforcement proceedings, and any other legal disputes submitted to a jurisdiction; to follow-up litigation and enforcement proceedings in the capacity of attorney and ensure that such proceedings are concluded; to perform procedures regarding the execution of contracts with self-employed lawyers and/or law firms when necessary; to represent the MLE in these litigation and proceedings and inform relevant parties.
- To review and present legal opinion on draft legislation that relates to the services provided by the MLE, prepared by other public institutions and organizations or by administrative units; draft contracts and specifications of any kind; disputes between the MLE and third parties; and other issues for which any unit of the MLE asks for opinion.

- To take legal measures in a timely manner for preventing disputes, present legal opinion regarding the settlement of disputes amicably.
- To give legal advice as may be required for the MLE to better achieve its objectives and operate in accordance with the legislation, plan and program.
- To contribute to the preparation of specifications for the tenders to be announced in order for the MLP to perform its activities; to approve the contracts to be executed with the tenderers to which the tenders are awarded.
- To prepare or cause to prepare working principles, procedures and regulations for the functions carried out and perform necessary efforts for their approval.
- To ensure, follow-up and supervise that services in the purview of MLE are performed regularly in the framework of the standards and procedures determined by the MLE.
- To provide, as an internal consultant, expertise and support on legal issues to the Senior Management of the MLE, and ensure that expertise services on legal issues are provided to the relevant managers of the affiliated units and MLE.
- To contribute to the establishment of cooperation with relevant departments, ensuring harmony in the management and the improvement of management efficiency.
- To oversee the regular performance of systems related to all functions in the purview, the design of new systems and the improvement of existing systems.
- To conduct studies for the improvement of business processes.
- To take care in efficiency, profitability and environment during the use of resources and use resources effectively.
- To ensure and control that activities in the department/unit are performed in the framework of defined regulations and guidelines.
- To report the necessary information, developments and problems regarding his/her duties and responsibilities to his/her administrative manager and, if any, to the positions with which s/he has a functional relationship.
- To follow-up legislative changes related to his/her purview, announce them to the personnel in a timely manner and monitor the implementation.
- To organise the work of and coordinate at the high-level the personnel who reports to him/her, identify their duties, powers and responsibilities.
- To ensure that the department works in coordination with other departments/units and external customers.
- To best represent the MLE in front of public institutions, private organizations and third parties.

- To maintain a high level of and make an effort to further improve the internal and external customer satisfaction and employee satisfaction.
- To regularly monitor the performance of all his/her subordinates, provide feedback to them, prepare training and development plans, take necessary actions and coach his/her team.
- To ensure the personnel to be more loyal to the MLE and keep their morale and motivation high in order to serve the culture and identity of the MLE.
- To ensure that his/her subordinates act in accordance with workplace rules and practices such as on leave, attendance, dress code, etc. and control them.
- To ensure that OHS measures are implemented in the field of activity and that work is completed in accordance with the measures implemented.
- To ensure that the documents related to the work are archived and that they are kept ready for internal and external audits under appropriate conditions during the legally mandatory period.
- To take utmost care for using stationery, office materials and all kinds of tools and equipment owned by the MLE, take necessary measures for keeping and maintaining fixtures, documents, files, etc. in the unit under good conditions.
- To perform the duties assigned to him/her in the framework of the regulations issued by the Senior Management of MLE and other legislation.

3.2.2.2 – FINANCIAL–ECONOMIC AFFAIRS

To disseminate the Financial Affairs function in the group for which it is responsible, contribute to the design of financial affairs systems (finance, accounting, budget and management reporting), coordinate the implementation of these systems in the MLE, assess the results with the relevant managers and make necessary improvements.

- To manage, control and coordinate Financial Affairs procedures throughout the MLE in accordance with MLE's Strategic Objectives and corporate priorities.
- To prepare and submit for approval the Financial Affairs action plan and budget of the MLE together with subordinate managers, and ensure the implementation of Financial Affairs activities in accordance with the approved plan and budget.
- To provide guidance for Financial Affairs activities of the MLE, follow up the results, and oversee whether business plans are designed effectively and implemented successfully in accordance with MLE's targets, budget requirements and current business conditions as well as market conditions. To direct respective managers for taking and implementing the necessary decisions.
- To regularly monitor financial and operational performances achieved for the activities in his/her area of responsibility, oversee whether necessary corrective and

improvement actions are taken, report to the Chairperson of the MLE in administrative terms and to the CFO in operational terms regarding the performance of financial affairs.

- To strictly follow-up developments in the market, identify occasions, risks and opportunities regarding the field of activity, manage research and feasibility studies for potential businesses, ensure that respective units take necessary actions, inform his/her administrative and operational superiors about developments and obtain approvals as required.
- To ensure central management and coordination of finance, financial affairs, tax, budget and reporting functions within the MLE.
- To contribute to the identification of MLE's standards and policies related to Financial Affairs and ensure that they are implemented throughout the MLE.
- To strictly monitor domestic and international financial markets and compile the data on potential financial risks and opportunities and submit to the Senior Management.
- To manage relations with domestic and international banks and financial institutions.
- To strictly monitor the collection, payment and cash flow plans in cooperation with relevant departments, compare actualisation with these plans, ensure up-to-dateness of plans and improve the use of financial resources.
- To analyse the capital adequacy of MLEs, inform the Senior Management about capital increases if needed.
- To ensure that financial resources of the MLE are assessed in accordance with return and risk.
- To search for financing resources if needed, find appropriate alternatives for financing the business, investments and projects and submit them to the Senior Management.
- To ensure the MLE applies for potential incentives in accordance with administrative procedures, prepares and obtains approval for necessary financial statements and submits them to relevant authorities.
- To ensure that the accounting transactions of the MLE are performed regularly in accordance with relevant laws, standards and procedures. Ensure that necessary formal statements are made in a timely manner.
- To manage tax planning studies of the MLE.
- To develop risk management practices for the MLE and manage the process for keeping the risk matrix up-to-date and taking risk-oriented actions.
- To schedule preparations for the activity and budget planning in the MLE, coordinate the performance of the works in accordance with the time schedule, ensure the consolidation of plans and budgets and submit them to the Senior Management. To

coordinate the preparations of activity plan and budget related to financing and financial affairs of the MLE accordingly.

- To prepare, review, interpret, submit to the Senior Management and report to relevant managers the assessment on budget actualisation throughout the MLE. To coordinate works for making budget revisions and/or taking other necessary actions in line with the instructions of the Senior Management.
- To ensure the preparation of reports on financial transactions and consolidated financial results as well as the set of management reports in cooperation with relevant departments.
- To contribute to the improvement of financial affairs activities of the MLE and oversee the implementation performance.
- To prepare or cause to prepare working principles, procedures and regulations for the functions carried out and perform necessary efforts for their approval.
- To ensure, follow-up and supervise that services in the purview of MLE are performed regularly in the framework of the standards and procedures determined by the MLE.
- To provide, as an internal consultant, financial expertise and support on financial analyses and assessments to the Senior Management of the MLE, and ensure that expertise services on financial analysis and financial affairs are provided to the relevant managers of the affiliated units and MLE.
- To contribute to the establishment of cooperation with relevant departments, ensuring harmony in the management and the improvement of management efficiency.
- To oversee the regular performance of systems related to all functions in the purview, the design of new systems and the improvement of existing systems.
- To conduct studies for the improvement of business processes.
- To take care in efficiency, profitability and environment during the use of resources and use resources effectively.
- To ensure and control that activities in the department/unit are performed in the framework of defined regulations and guidelines.
- To report the necessary information, developments and problems regarding his/her duties and responsibilities to his/her administrative manager and, if any, to the positions with which s/he has a functional relationship.
- To follow-up legislative changes related to his/her purview, announce them to the personnel in a timely manner and monitor the implementation.
- To organise the work of and coordinate at the high-level the personnel who reports to him/her, identify their duties, powers and responsibilities.

- To ensure that the department works in coordination with other departments/units and external customers.
- To best represent the Group in front of government agencies, private institutions and third parties.
- To maintain a high level of and make an effort to further improve the internal and external customer satisfaction and employee satisfaction.
- To regularly monitor the performance of all his/her subordinates, provide feedback to them, prepare training and development plans, take necessary actions and coach his/her team.
- To ensure the personnel to be more loyal to the MLE and keep their morale and motivation high in order to serve the culture and identity of the MLE.
- To ensure that his/her subordinates act in accordance with workplace rules and practices such as on leave, attendance, dress code, etc. and control them.
- To ensure that OHS measures are implemented in the field of activity and that work is completed in accordance with the measures implemented.
- To ensure that the documents related to the work are archived and that they are kept ready for internal and external audits under appropriate conditions during the legally mandatory period.
- To take utmost care for using stationery, office materials and all kinds of tools and equipment owned by the MLE, take necessary measures for keeping and maintaining fixtures, documents, files, etc. in the unit under good conditions.
- To perform the duties assigned to him/her in the framework of the regulations issued by the Senior Management of MLE and other legislation.

3.2.2.3 – RESOURCE DEVELOPMENT

To holistically manage services with regard to the development of new businesses, improvement of existing businesses, investment management, etc. throughout the MLE in accordance with defined rules; to conduct, and follow-up in a common portfolio, feasibility studies for business development projects that can be designed with participation from different units in accordance with the business standards adopted throughout MLEs.

- To ensure central management, control and coordination of Business Development activities in line with MLE's Strategic Objectives and corporate priorities.
- To prepare and submit for approval the action plan and budget of the Business Development function together with subordinate managers and ensure the implementation of Business Development activities in accordance with the approved plan and budget.

- To provide guidance for Business Development activities, follow up the results, and oversee whether business plans are designed effectively and implemented successfully in accordance with MLE's targets, budget requirements and current business conditions as well as market conditions. To direct respective managers for taking and implementing the necessary decisions.
- To regularly monitor financial and operational performances achieved for the activities in his/her area of responsibility, oversee whether necessary corrective and improvement actions are taken, report to the CEO regarding the performance of Business Development function.
- To strictly follow-up developments in the market, identify occasions, risks and opportunities regarding the field of activity, manage research and feasibility studies for potential businesses, ensure that respective units take necessary actions, inform the CEO about developments and obtain approvals as required.
- To ensure that issues regarding Business Development are included on the agenda of, assessed and resolved by the Senior Management of MLE.
- To coordinate the preparation of functions and business plans related to the Business Development in line with MLE's strategic objectives and corporate priorities, assess the operational performance based on the comparison with business objectives and present results to MLE's Senior Management.
- To search for domestic or international incentive opportunities that may be feasible for such activities of the MLE as the development of new businesses, improvement of existing businesses, investment management, etc. in coordination with the Financial Affairs Directorate and Legal Advisor's Office, and submit such opportunities for the approval of MLE's Senior Management.
- To manage, in line with investment decisions, relationships with relevant institutions during all stages of investment, from research to completion, in cooperation with relevant departments, ensure that necessary actions are taken and preparations are made by the MLE accordingly, and coordinate and supervise MLE's efforts.
- To identify the management standards for new investments or renovation/rebuilding investments to be made by the MLE, conduct sectoral research studies at the international level regarding potentially attractive business areas and areas of regular activity of the MLE, and follow up on the developments and keep the information from external environment up-to-date.
- To prepare plans and projects to implement business issues for which an investment decision was taken, establish the organization and manage that studies are fit-for-purpose and conducted in accordance with the plans and project. To ensure the progression of the investment and service procurement process related to new business development issues when necessary.

- To prepare tender specifications related to the Business Development activities of the MLE, provide support for the central management of the tender process and ensure that the awarded work and the activities of the successful tenderer are conducted in accordance with the Standards of the MLE.
- To hand over the structure established for the business subject to the relevant department of the MLE or management, once the functions related to Business Development activities are implemented.
- To ensure that investments made by the MLE are in compliance with the national and international standards on environment and occupational health and safety.
- To prepare or cause to prepare working principles, procedures and regulations for the functions carried out and perform necessary efforts for their approval.
- To ensure, follow-up and supervise that services in the purview of MLE are performed regularly in the framework of the standards and procedures determined by the MLE.
- To provide, as an internal consultant, expertise and support on Business Development practices to the Senior Management of the MLE, and ensure that expertise services on legal issues are provided to the relevant managers of the affiliated units and MLE.
- To contribute to the establishment of cooperation with relevant departments, ensuring harmony in the management and the improvement of management efficiency.
- To oversee the regular performance of systems related to all functions in the purview, the design of new systems and the improvement of existing systems.
- To conduct studies for the improvement of business processes.
- To take care in efficiency, profitability and environment during the use of resources and use resources effectively.
- To ensure and control that activities in the department/unit are performed in the framework of defined regulations and guidelines.
- To report the necessary information, developments and problems regarding his/her duties and responsibilities to his/her administrative manager and, if any, to the positions with which s/he has a functional relationship.
- To follow-up legislative changes related to his/her purview, announce them to the personnel in a timely manner and monitor the implementation.
- To organise the work of and coordinate at the high-level the personnel who reports to him/her, identify their duties, powers and responsibilities.
- To ensure that the department works in coordination with other departments/units and external customers.

- To best represent the MLE in front of public institutions, private organizations and third parties.
- To maintain a high level of and make an effort to further improve the internal and external customer satisfaction and employee satisfaction.
- To regularly monitor the performance of all his/her subordinates, provide feedback to them, prepare training and development plans, take necessary actions and coach his/her team.
- To ensure the personnel to be more loyal to the MLE and keep their morale and motivation high in order to serve the culture and identity of the MLE.
- To ensure that his/her subordinates act in accordance with workplace rules and practices such as on leave, attendance, dress code, etc. and control them.
- To ensure that OHS measures are implemented in the field of activity and that work is completed in accordance with the measures implemented.
- To ensure that the documents related to the work are archived and that they are kept ready for internal and external audits under appropriate conditions during the legally mandatory period.
- To take utmost care for using stationery, office materials and all kinds of tools and equipment owned by the MLE, take necessary measures for keeping and maintaining fixtures, documents, files, etc. in the unit under good conditions.
- To perform the duties assigned to him/her in the framework of the regulations issued by the Senior Management of MLE and other legislation.

3.3 EMPLOYMENT IN MLEs

According to Article 26 “Founding Companies” of the Law No. 5216 on Metropolitan Municipalities, the secretary general and management staff of the municipality and its affiliated entities may hold office on the executive and supervisory bodies of such companies. According to this provision, anyone who is already a manager in the municipality and its affiliated entities may hold office on the executive bodies of such companies. MLEs employ personnel according to current laws. However, in line with Supplementary Article 20 that was included in the Decree-Law No. 375 of 27.06.1989 with Article 126 of the Decree-Law No. 696, and Article 28 of the Communiqué Designating the Procedures and Principles on the Implementation of the Decree-Law No. 696, MLEs may employ staff, who were already working in SPAs, municipalities and unions of local administrations in which these are members as well as affiliates of municipalities through outsourcing method in accordance with the provisions of Article 62(1)(e) of the Law No. 4734 on Public Procurement and Article 78 of the General Communiqué on Public Procurement, in the worker positions and/or they may undertake the provision of services that are based on the employment of personnel in worker positions in this context. (Sağlam, 2020)

The scope of subcontractor's personnel to be transferred to MLEs in worker positions is determined by the provisions of the Decree-Law No. 696 and the aforementioned Procedures and Principles, and the following personnel were left out of the scope: those who were already employed in worker positions in MLEs in which the abovementioned administrations own more than half of the equity capital. Therefore, personnel employed by MLEs are not included in the process for the transfer to worker positions.

The requirements for personnel to be employed in MLEs are listed below.

- To be a Turkish citizen, without prejudice to the provisions of the Law No. 2527 of 05.09.1981 on Free Performance of the Professions and Arts and Employment in Public, Private Institutions or Work Places of Foreigners of Turkish Origin,
- To be at least 18 years old,
- Not to be convicted due to crimes against the security of the State, crimes against the constitutional order and the functioning of this order, even if pardoned,
- Regarding the military service:
 - Not to be engaged with the military,
 - Not be at the drafting age,
 - To have completed or postponed military service or included in reserves,
- Not to have a mental illness that may prevent the applicant from performing his/her duty continuously, without prejudice to the provisions of Article 30 of the Labour Law No. 4857 of 22.05.2003,
- Having been subjected to a security investigation and/or archive search,
- To meet special requirements suitable for the nature of the work to be determined by relevant administrations if needed.

The Maximum Share of Personnel Expenses in Total Expenses will be determined as follows.

“The total annual expenses of administrations for personnel, including the personnel of MLEs, for the current year cannot exceed forty percent of the amount to be calculated by increasing the total budget revenues of the administration for the previous year based on the revaluation rate determined and announced in accordance with Article 298-bis of the Law No. 213 on Tax Procedure Law of 04.01.1961 for the previous year. This share shall be applied as thirty percent for metropolitan municipalities. If personnel expenses exceed the aforementioned amount due to an unexpected increase in salaries or wages within a year, no personnel may be recruited by MLEs in that year and the following years until personnel expenses fall below this amount.”

3.3.1. RECOMMENDED HR COMPANY ORGANIZATION

The outsourcing companies established pursuant to the Decree-Law No. 696 on Enacting Certain Provisions under the State of Emergency should be organized with a professional

structure that allows these companies to employ subcontracted personnel and serve other MLEs. In the current situation, these companies are in default on such personnel expenses as insurance premiums and taxes. An important step towards an effective and efficient human resources policy for these companies will be restoring them with a positive financial structure and enabling them to provide professional HR services for other MLEs apart from professional services provided with the personnel transferred pursuant to the abovementioned Decree-Law.

3.3.1.1. ANALYSIS OF CONSOLIDATED DATA OF MLEs

Below is current situation analysis regarding the human resources structure and policies of MLEs.

- Selection and Placement

The majority of MLEs apply a similar selection and placement process.

In general, all companies receive demands for personnel from all units, search for suitable candidates from the common pool, and assess these candidates through interviews.

Besides, companies check the demands of units based on the standard job positions, measure workload at the requesting unit, whereas some companies determine the needs based on the requirements in the tender specifications.

When assessing candidates, some companies examine them through written language or occupational tests in addition to interviews.

Some MLEs may accept external job applications and select candidates accordingly.

Few companies receive 'assessment' services in this process.

- Wage and Career Management

Remuneration in MLEs is usually based on the position and market conditions. Most of the MLEs have a fixed remuneration system, where some of them conduct research to obtain sectoral data on wages.

Almost none of the companies conduct a study on strategic career planning. They conduct limited studies only to record development plans based on data obtained from the results of the performance assessment system. The core of the career management is the advancement and job promotion mechanism.

- Orientation and Assessment

Nearly all MLEs implement a general orientation programme, whereas some of them provide individual and position-based orientation programs that include on-the-job orientation.

However, very few MLEs do not implement an orientation programme or just keep records. Some MLEs make personality assessments and apply psychotechnical tests. Furthermore, some MLEs apply in-house personality inventory tests.

- Training

Most of MLEs provide training based on units' requests for training, whereas some of them provide training based on needs assessment and very few others provide statutory training only.

MLEs include their requests for training in their periodic training plans and ensure that such training is delivered by internal and external trainers in accordance with these plans. However, some MLEs prefer external services only for the delivery of the training requested.

- Personnel Rotation

The personnel can be rotated in-house on the grounds of request for change of unit, request by unit managers, or personal excuses of the personnel or, in exceptional cases, in accordance with the performance evaluation outputs. Although no rotation practice is implemented in terms of horizontal promotion, there are some MLEs rotate the personnel for their preparation to potential future promotion in the MLE in line with the organizational succession and in order to realize the determined career plans. The personnel rotation is exercised to benefit more from employees and to create value-added.

The results of the impact analysis of the common human resources project for MLEs is given below.

In terms of municipalities:

- Easy access to qualified personnel for local administrations and subsidiaries
- Participation of qualified personnel seeking employment in the community to labour force (Social benefit)

In terms of universities:

Career Centres of universities

- Internship opportunities for university students and job opportunities for graduates

In terms of the outsourcing company:

- Creation of an HR pool with qualified candidates
- Job opportunities for individuals within the immediate environment (Social benefit)

Local Administrations

In terms of local administrations:

- Recruitment of suitable personnel through the personnel pool classified according to service areas

In terms of the outsourcing company:

- Expanded business environment

- Enriching and making use of the qualified personnel pool.

NGOs Operating in the Field of HR

In terms of NGOs:

- Improved business relations with MLEs
- Increased public recognition (promotion efforts)

In terms of the outsourcing company:

- Communication with NGOs to expand the target audience

Private Employment Agencies/ISKUR

In terms of private employment agencies/ISKUR:

- Improved business relations with MLEs
- Increased public recognition (promotion efforts)

In terms of the outsourcing company:

- Recruitment of suitable personnel in the relevant MLE through private employment agencies without losing time for searching for personnel with desired qualifications.

HR Consultancy Firms

In terms of HR consultancy firms:

- Improved business relations with MLEs
- Increased public recognition of the firm (promotion efforts)

In terms of the outsourcing company:

- Satisfying the MLEs' needs for personnel that they cannot meet by themselves through HR consultancy firms by means of outsourcing.

MLEs

In terms of MLEs:

- Employment of qualified personnel,
- Contribution to forming a basis for the development of a new HR approach.

In terms of the outsourcing company:

- Revenues in return of the services provided and reduced overheads,
- Being a company that implements new trends and renews and improves itself thanks to MLEs.

3.3.1.2. BASIC ACTIVITIES OF MLEs

- Employment Services
- General Administration Services: Recruitment of personnel from a single source for the works that are performed by outsourced personnel, including those working in the cleaning services or cafeteria or performing administrative activities regarding the buildings and facilities as well as those working as a secretary, driver or housekeeper for the senior management and that are awarded by MLEs through separate tender processes and require dealing with many companies
- Blue-Collar Employment Services: Central recruitment of personnel from a single hand for the works that MLEs employ or outsource personnel in the framework of the requirements specified in tender specifications in order to perform municipal services.
- White-Collar Employment Services: Providing support for employment of personnel in line with market conditions in areas that require expertise, including positions for which the existing human resources pool cannot be utilized and which necessitate technical requirements.
- Employment of Seasonal Human Resources: Meeting MLEs' needs for employment of personnel in urban services for which seasonal workers are required
- Services based on Temporary Working Relations: Employment of personnel who will work on a project-based or in jobs that has a fixed-term but require indefinite employment contract
- Industrial Relations: Follow-up of the processes with the unions as part of a collective bargaining agreement, establishment of the rights of organizations and employees on a social and fair ground
- Management of remunerative rights and affairs
- Follow-up of all legal obligations of MLEs' personnel during the period starting with their recruitment and ending when they leave the job,
- Fulfilment of the requirements of the social security system,
- Making employees use their fundamental material and social rights as well as supplementary material and social rights determined in line with the HR policies of MLEs and the municipality,
- Preparation of salary accruals and payrolls and execution of score card and attendance processes that provide input for accruals and payrolls,
- Leave planning, follow-up of health-related procedures and execution of disciplinary processes.
- Selection and Placement

- Execution of the whole process, from the selection of the employees needed by MLEs to their recruitment,
- Establishment of a candidate pool and selection of candidates by searching personal application platforms, sectoral publications, job application websites, etc.,
- Follow-up of the entire process, from assessment of candidates to holding interviews and selection and placement in organizations of candidates in accordance with the position requirements, corporate culture and HR policies
- Orientation: Delivery of orientation training and onboarding programs to newly employed personnel to introduce the organization and facilitate their participation,
- Probation: Providing guidance for employees during their probation period that can be longer than legally defined periods in line with the HR policies, and measuring their persistency at the end of this period based on the assessment of their compliance with the needs of the organization.
- Strategic HR Practices
 - Performance Assessment: Implementation of the 360 Degree Performance Assessment System on the basis of competence for blue-collar personnel and on the basis of targets for white-collar personnel.
 - Career Management: Developing Career Plans, career mapping, identifying organizational and individual career planning criteria and implementing them in organizations; activating the organizational succession function as a mechanism that is based on the career planning and triggers training needs; following-up employee's needs, including for rotation, promotion, career expectations and retirement, and providing guidance for employees through a portfolio manager,
 - Development Planning: Planning Development based on KPIs, Planning Development that will Provide Inputs to the Academy, Mentoring, Coaching
 - Training Management: Identifying training needs, receiving requests, analysing needs, determining training contents and delivering training. Ensuring an interaction between training activities and the personal development and career management of employees, establishing a systematic approach that prioritizes the achievement of corporate development through training
 - Talent Acquisition and Management: Unveiling intellectual gems that remained hidden or are unnoticed within organizations and ensuring a high value-added through consensus between individuals and the organization
 - Wage Management: Developing a fair and professional wage model in compliance with organizations' structure, culture, personnel diversity, fields of activity, business criteria, etc., and producing organization-specific solutions
 - Management of Diversity

- Generation Management
- Employee Experience (Work-Life Balance)

Conducting such studies as personality inventory, psychotechnical tests, scenario-based and interactive exercises when assessing candidates during the selection and placement process

3.3.1.3. OHS SERVICES (JHSU)

Offering MLEs an Occupational Health and Safety System managed by specialized staff of a single company through a single source, instead of the one that they run within their organization and that is supported through outsourcing; making organizations' tender processes more simplified by this means; establishing an effective structure for cost management by using common equipment and areas and ensuring both financial savings and rational use of qualified human resources within the organization

3.3.1.4. SOCIAL HR AND IN-HOUSE COMMUNICATION

Organizing social events to ensure the participation of employees of MLEs and motivate them, taking care of corporate needs as well as their individual needs, honouring them in front of the society and making them feel valued

Ensuring that, by means of a personnel information systems, personnel are aware of the developments in the corporation, developments regarding other employees, changes in the legislation as well as they benefit from individual and corporate opportunities

3.3.1.5. TECHNOLOGICAL RESOURCES

- Companies need an information system allowing them to easily follow up on all Human Resources Management System processes throughout the company within an electronic environment, i.e., computers and mobile devices
- HRIS should run on a server-client principle and thus be accessible to user computers as well as mobile devices via remote
- The system should allow users to operate HR processes through a web-based interface via the internet or intranet
- Its structure should be suitable for making transactions for basic and strategic HR functions and storing and reporting data on such transactions
- There should be a module for the management of remunerative rights and affairs for such transactions as personnel records, leaves, attendance, health-related procedures, wage tracking and payroll
- There should be a candidate pool database for selection and placement process
- There should be a career management module for performance assessment and individual and organizational planning

- There should be a training management module through which training requests are received, needs are identified and included in planning
- There should be interfaces that are used for legal transactions such as OHS records, workplace opening statements, e-declaration, social security procedures
- The superstructure should involve an Archive and Document Management System to support HRIS
- To track personnel's attendance and score cards, hardware infrastructure and software that keep records of employee's entrance to and exit from the workplace should be integrated with HRIS.

3.3.1.6. HUMAN RESOURCES MANAGEMENT SYSTEM

Mission: To be a pioneering company in the management of strategic human assets with innovative and effective solutions.

Vision: To ensure organizational development of our stakeholders by offering, as a strategic partner, innovative and effective human resources solutions in achieving their goals.

Basic Values: Being Human-Centred, Perpetuating Collaboration with Stakeholders, Being Open to Innovations, Adapting Holistic Approach, Focusing on Information and Technology, and Paying Regard to Corporate Social Responsibility.



Figure 3-11: Structure of the Human Resources Outsourcing Company

MUNICIPALITY	HUMAN RESOURCES COMPANY				
UNIVERSITIES	REMUNERATIVE RIGHTS	EMPLOYMENT	OSH SERVICES	HR OFFICERS	SUBSIDIARY COMPANIES
NGOs	ASSESSMENT CENTRE	SELECTION AND PLACEMENT	STRATEGIC ACTIONS	LOCAL ADMINISTRATIONS	
COMPANIES					
TRADE UNIONS					

To enable tracking at MLEs the Human Resources processes that will be implemented from a single hand once the structure is centralized as described in Figure 3-11 after the

transformation and providing operational support at the local level, there will be personnel working at Financial Affairs units of each MLE. Such personnel will basically receive the information and documents, such as reports, forms, petitions, etc., that should be submitted by the personnel, and direct them to the central structure.

3.4. PRIVATISATION OF MLEs

The concept of privatisation refers to two processes in terms of municipalities. The first one is the privatisation of MEEs established pursuant to relevant laws or a resolution of respective municipal councils or other service units. The second process is that municipalities may subcontract to other institutions and organizations various services that they legally have to perform such as refuse collection, slaughterhouse, cemetery and firefighting (Yereli, 1995).

The literature refers to many reasons, including financial, economic, political and social, regarding the privatisation of MEEs. However, Bozlağan argues that the following economic, political and social reasons are of secondary importance for municipalities: “to ensure effectiveness and efficiency in the management of MEEs”, “to invigorate the local economy”, “to avoid overemployment and disguised unemployment in MEEs”, “to liberalize the local economic structure and thus strengthen local democracy”, “to ensure the spread of property and capital to grassroots”. It is possible to say that, in this regard, municipalities are mostly motivated by financial and administrative reasons. These reasons can be listed as follows (Yüzer, 2010).

- To Obtain Revenues for the Municipality: Municipalities may opt for privatisation for such a purpose as generating revenues in periods when their debts increase and it is difficult to meet these debts with revenue sources and borrowing opportunities. They can achieve to generate such revenues by means of selling their production units to the private sector.
- To Get Rid of MEEs’ Burden of Debt: This purpose comes into question when MEEs make losses and the deficits resulting therefrom are compensated with transfers from the municipal budget. However, such transfers have an adverse effect on the performance of services and narrow the manoeuvrability of municipalities.

In Articles 415-418 and 518-520 of TCC, it is stated that municipalities may transfer their capital stock shares or the stock certificates representing these shares in “joint stock” companies and capital stock shares in limited liability companies to third parties upon a resolution by their municipal councils. Article 26 of the Law No. 4046 on Privatisation Practices and Amending Certain Decree-Laws stipulates that the procedures regarding the privatisation of enterprises of commercial purpose owned by municipalities and their shares in any affiliates regardless of the rate of shares shall be executed upon decisions of authorized bodies. In the same article, it is further stipulated that bodies authorized for the privatization of affiliates and commercial establishments are municipal councils (Article 26).

Another privatisation method is the Public Offering of Shares of Joint Stock Companies owned by Municipalities. According to TCC, gradual establishment was abolished, but public offering of shares is possible. According to Article 346 of TCC, the equivalent of shares of a joint stock

company subscribed in the articles of association, determined and also guaranteed by subscribers in the articles of association to be offered to the public within maximum two months as of the registration of the company shall be paid from the revenues from the sale. The share certificates shall be offered to public in accordance with the capital markets legislation. At the end of the sale period, the nominal value and issuance premium less expenses if any shall be paid to the company and the amount that will remain after the expenses are deducted shall be paid to shareholders offering their share certificates to the public. The total amount of shares offered to public but not sold within the prescribed period and 25 percent of the equivalent of shares not offered to public within the prescribed period shall be paid within three days after the two-month period.

Considering the situation of affiliated companies in Türkiye, it is likely to privatise or offer to public some of them and provide funds so that further investments may be made in local administrations. The privatisation of some of the affiliate companies that make losses due to their failure to use resources effectively and efficiently can enable these companies to operate efficiently as the private sector. Thus, public resources can be used more effectively. It was learned, as a result of the questions asked during the interviews held, or through the surveys conducted, under the LAR-III project, that municipalities have no agenda on privatisation of affiliate companies. However, given the COVID-19 pandemic and the economic conditions of our country, it is recommended to local administrations to consider privatisation as an option for creating resources.

3.5. ANNUAL REPORTS OF CAPITAL COMPANIES

Joint stock companies issue end of year financial statements as well as an annual report. According to Article 514 of TCC, the board of directors of a joint stock company shall prepare and submit to the general assembly the financial statements and its appendices as well as the annual report of the board of directors as stipulated in the Turkish Accounting Standards with regards to the previous accounting period within the first three months of the accounting period following the balance sheet date. According to the Turkish Accounting Standards, financial statements of joint stock companies shall be prepared to honestly, exactly and authentically reflect the company's assets, debts, and liabilities, equity and operating results in a complete, understandable, comparable, transparent and reliable manner, in accordance with the needs as well as the nature of the business. Furthermore, joint stock companies issue annual reports pursuant to Article 516 of TCC. For both joint stock companies and groups of companies, the mandatory minimum content of annual reports of boards of directors is regulated in detail by MoT through a regulation. (Sağlam, 2020)

Article 56 of the Law No. 5393 assigns a duty on mayors to draw up an activity report of municipalities that must include such information and assessments in respect of the municipality's affiliated entities and enterprises and municipal companies. However, it cannot be said that this obligation is fulfilled in practice. Even though municipal companies are not included in the scope of Article 2 of the Law No. 5018, it is undeniable that municipal companies are also public institutions. Therefore, it must be ensured that the management of these companies prepare a strategic plan and performance program and carry out their activities in this framework. To achieve all these aspects, the legal structure of municipal

companies should be clearly defined as stated also in the development plans. Annual activity reports of municipalities should include information about MEEs according to standards that should be developed regarding the content of such reports.

3.6. AUDITING OF MLEs

MEEs are also subject to many audits, as is the case for any other institution. Since MEEs are commercial companies established by municipalities to provide public service and there are legal regulations that distinguish them from other commercial companies, auditing of these companies has different characteristics. Apart from being subject to audits applied to commercial companies because of operating as a commercial company, these enterprises may be subject to audit procedures applied to public institutions pursuant to legal regulations. They are further subject to judicial review due to their employees' criminal liability for their acts and actions. Non-judicial reviews of MEEs may be conducted in various forms. Even though MEEs are commercial companies established in accordance with the provisions of TCC and subject to audits according to the provisions of private law, they are also subject to audits according to public law because of being established by municipalities and using public resources (Yaprak, 2019).

In the Law No. 5393 on Municipality, it is stipulated that the Municipal Council shall form an Audit Commission "to audit the municipality's revenues and expenditures and related accounting records and transactions for the previous year". Emphasizing that the commission may request "information and documents of all sorts from municipality units and affiliated entities", the legislator did not mention municipal companies. Furthermore, there is no provision regarding the direct supervision on municipal companies in Part Four "Supervision on Municipalities" of the Law.

There is a noteworthy provision in Article 56 stipulating that municipal companies may be indirectly audited as part of supervision on municipalities. The mayor shall draw up an activity report in the manner prescribed in the fourth paragraph of Article 41 of the Law No. 5018 on Public Fiscal Administration and Control, indicating the activities conducted in accordance with the strategic plan and the performance program, the goals and the extent of their achievement against the performance criteria determined and the reasons for any deviations therefrom, together with the state of the municipality's debts. The activity report shall also include such information and assessments in respect of the municipality's affiliated entities and enterprises and municipal companies. Municipal Councils may use their power to supervise and obtain information through activity reports as stipulated in Article 26. It is clear from this regulation that municipal companies will be indirectly audited during supervision on municipalities. According to Article 26. of the Law on Metropolitan Municipalities, MMs may establish capital companies in areas relating to the duties and services assigned to them according to the procedures provided for in the relevant legislation. The secretary general and management staff of the municipality and its affiliated entities may hold office on the executive and supervisory bodies of such companies. The MM may operate excavation zones, mass transport services, social facilities, kiosks, car parks and tea gardens under its ownership or possession, or may contract out the operation of such facilities without being subject to the provisions of the Law No. 2886 of 8/9/1983 on State Procurement for a period and at a

cost to be determined by the metropolitan council, to companies in which the municipality or its affiliated entities hold more than 50% of the equity capital or to enterprises in which those companies hold more than 50% of the equity capital. (Supplementary sentence: 12/11/2012-6360/10 Art.) However, the transfer of such places by municipal companies to third persons shall be subject to the provisions of Law No. 2886.

Such companies are managed and controlled by MMs. Given that MLEs are legal entities that use public resources of local administrations, it is clear that they are included in the scope of the Law No. 5018. The tendering procedure is one of the measures taken to ensure public institutions use their resources effectively and efficiently. Municipal companies are also subject to the Law on Public Procurement for the procurement of goods or services and construction works (Art. 2/d).

3.6.1. COURT OF ACCOUNTS

The audits by the Court of Accounts are conducted as part of external audits. Municipalities are also audited in this scope. According to Article 55 of the Municipality Law, municipalities shall be subject to external supervision in accordance with the Law No. 5018. According to Article 68 “External Supervision” of the Law No. 5018, the external supervision is conducted by the Court of Accounts. According to this article, the purpose of the external supervision is to examine the financial activities, decisions and transactions of the management in terms of compliance with the laws, institutional goals, targets and plans in the framework of accountability for public administrations that are in the scope of the general government and to report the results to the Turkish Grand National Assembly.

The proposed Law on Court of Accounts was adopted on 3.12.2010 and published in the official gazette of 19.12.2010. In Article 4(b) that identifies the audit coverage of the Court of Accounts of the first version of the Law No. 6085 published in the Official Gazette, it is stipulated that administrations, organizations, establishments, unions, enterprises and companies of all kinds established or directly or indirectly associated by local administrations are also subject to audits (also in terms of partnership rights if the public share is less than 50 percent). Thus, companies established by municipalities are included in the scope of the audit by the Court of Accounts. In 2013, Article 4(b) was amended with the Law No. 6495 as “Administrations, organizations, establishments, unions, enterprises and companies of all kinds affiliated with or established or directly or indirectly associated by the administrations listed in paragraph (a), provided that the public share is not less than 50 percent”. This paved the way for companies being subject to audits by the Court of Accounts.

Pursuant to Article 160 of the Constitution, the Court of Accounts shall be in charge of auditing, on behalf of the Turkish Grand National Assembly, all revenues, expenditures, and assets of the public administrations financed by central government budget and social security institutions, with taking final decisions on the accounts and acts of the responsible officials, and with exercising the functions prescribed in laws in matters of inquiry, auditing and judgment. The Law No. 832 on Court of Accounts was enacted in the framework of the abovementioned constitutional regulation, confirming such duty of the Court of Accounts. In the context of these regulations, the general authority to audit public institutions is vested in

the Court of Accounts. However, when the legislation is reviewed, it is seen that there is no regulation regarding the authority of the Court of Accounts to audit municipal companies.

Since it is stipulated in Article 4 of the Law on Court of Accounts that “The Court of Accounts shall audit: a) Public administrations included in the central government budget and social security institutions, local administrations, joint stock companies established pursuant to special laws and with more than 50 percent of the capital held by the public (in terms of partnership rights if the capital held by the public is less than 50 percent) and other public administrations (except for the professional organizations having a public status); b) Administrations, organizations, establishments, unions, enterprises and companies of all kinds affiliated with or established or directly or indirectly associated by the administrations listed in subparagraph (a), provided that the public share is not less than 50 percent”, municipal companies are defined as public institutions and included in the auditing scope of the Court of Accounts.

The Law on Court of Accounts defines audits by the Court of Accounts as regularity and performance audits. There are two types of regularity audits: financial audit and compliance audit. The financial audit of the Court of Accounts is the audit on reliability and accuracy of financial reports and statements in accordance with results of the assessment of accounts and transactions of public administrations as well as their financial activities, financial management and control systems. Compliance audit is the audit pertaining to the examination of the compliance of accounts and transactions related to revenues, expenditures and assets of public administrations with laws and other legal arrangements. According to the new law, performance audit is measurement of results of activities with respect to objectives and indicators determined by public administrations in the framework of accountability.

The Court of Accounts performs trial of accounts in the framework of identified criteria and takes final decision through a judicial procedure on whether the accounts and transactions of those who are held responsible in laws are in compliance with the legislation, and applies the legal remedies accordingly.

Municipal companies that are subject to the audit of the Court of Accounts should prepare and manage their budgets based on strategic plans that are required, even if not statutorily, in practice, to be prepared as well as performance criteria that are required to be identified. The findings reached are included in two separate parts of the reports of the Courts of Account.

- Findings that have an effect on the opinion of the auditor:

These are the findings that require the auditor to express a negative opinion on the financial statements.

- Findings that have no effect on the opinion of the auditor:

These are the findings that have no effect on financial statements but involve significant illegalities.

Municipal companies are also included in the reports of external audits conducted by the Court of Accounts, whereas separate reports are issued for companies included in the auditing scope. These reports also refer to companies as “public administrations”. The companies may therefore be subjected to external audits like any public administration.

3.6.2. MINISTRY OF INTERIOR

The Law No. 5393 on Municipality stipulates that “municipality’s administrative acts except for their financial transactions shall be supervised by MoI in terms of legal compliance and integrity of administration”. Accordingly, in Article 18/a of the Statute of the Inspection Board of MoI, it is stipulated that MoI inspectors are assigned, among other things, “to inspect and supervise the works, transactions and accounts of municipalities and villages as well as unions, businesses, establishments and enterprises affiliated with or established by them in accordance with special laws”. This means that the supervision by MOI Inspectors is not a direct audit of companies, but an indirect audit through municipalities.

Among the units designated to audit municipal companies are:

- Prime Ministry Inspectors,
- MoFT Inspectors,
- Members of the Inspection Board, Account Experts Board and Revenues Controllers as well as tax auditors,
- Independent Audit Board according to TCC and Inspection Board of MoT,
- Court of Accounts Auditors

Adopted by the Decree of the Council of Ministers No. 11608 of 09.04.2018 pursuant to Supplementary Article 20 of the Decree-Law No. 375, the Procedures and Principles for Delivering Services based on Personnel Employment of Special Provincial Administrations, Municipalities and their Affiliates and Unions of Local Administrations of which they are members entered into force after being published in the Official Gazette of 28.04.2018 issue 30405.

These Procedures and Principles are related to monitoring the recruitment of workers in companies which will undertake personnel-based services of local administrations; upper limits for the share of personnel expenses related to workers in total expenses; annual limits, based on criteria to be set, for the number of workers to be newly recruited; and purchases and expenditures with regard to the abovementioned issues. Municipalities shall send, through Governorships, their requests for obtaining permission regarding their employment of workers to MoI via the e-internal affairs system.

In Article 260 “Inspection Department” of part eight, that organizes MoI, of the Presidential Decree No. 1, the Department is assigned to inspect and supervise the transactions and accounts of the central units and affiliated entities of the Ministry, provinces and districts, and local administrations as well as unions, businesses, establishments and enterprises affiliated

with or established by the foregoing, or established pursuant to special laws or Presidential Decrees, and to conduct examinations and investigations, when required. This provision indicates that economic enterprises established by municipalities and use public resources may also be subject to the supervision of the central administration.

3.6.3. AUDIT OF COMMERCIAL COMPANIES BY THE MINISTRY OF TRADE

Joint stock and limited liability companies shall be audited by Chief Trade Inspectors, Trade Inspectors and Assistant Trade Inspectors. The Regulation on Auditing of Commercial Companies by MoT was published in the Official Gazette of 28.08.2012. Audits shall be conducted by Chief Trade Inspectors, Trade Inspectors and Assistant Trade Inspectors.

Purpose and Principles of Audits and Issues to be Audited.

The purpose of audits by the Ministry is to ensure that commercial companies operate in accordance with the Law and the regulatory acts issued based on the Law. To this end, the Ministry supervises the compliance of all transactions of commercial companies, from the establishment to the termination of companies, with the Law and the regulatory acts issued based on the Law; provides guidance for the resolution of nonconformities; informs the authorities about those who are found to have a criminal liability, and management bodies of companies about those who are found to have a legal liability in order for the situation of such people is included in the agenda of and resolved by the general assembly; and takes measures to eliminate problems experienced in practice.

3.6.4. INDEPENDENT AUDIT

Auditing of companies is one of the issues that was considerably amended in TCC. Besides, this indicates the importance attached to auditing in our country. The first amendment was made before the law entered into force, whereas the second one after the entry into force. As is known, the first version of TCC No. 6102 that was adopted on 13 January 2011 prescribed to confer the powers for audits of joint stock, limited liability, shared limited partnership companies of all sizes and groups of companies in independent auditing firms or, for small or medium sized companies, in one or more independent certified public accountants or a chartered accountant. However, with the Law No. 6335 published in the Official Gazette on the day before TCC entered into force, the articles of TCC regarding audits were amended. Accordingly, the necessity for companies of all sizes (small, medium, large) for being subject to independent audits was repealed, and the power to determine the companies that shall be subject to independent audits was vested in the President, who has determined the companies that are subject to independent auditing since then. However, companies not covered by this provision are exempted from audit.

3.6.5. FULL CERTIFICATION/CHARTERED ACCOUNTANT'S AUDITS

Full certification audits of municipal companies started to be conducted in 1995 in accordance with the Law No. 3568 on Certified Public Accountants and Chartered Accountants as well as the regulations by the Ministry of Treasury and Finance (MoFT) through various communiqués. With full certification examinations, chartered accountants check the accounts

and financial statements of companies and audit the accuracy and compliance in terms of taxation.

Full certification audits are also aimed to alleviate the workload of the state in terms of auditing of companies. With full certification reports issued after conducting a full certification audit, chartered accountants assure to the government that corporate tax returns of companies are in compliance with the legislation.

Full certification is a report issued, signed and sealed by chartered accountants based on their findings whether the subjects and documents included in the scope of certification reflect the truth as a result of examination of natural or legal persons or their enterprises and establishments in terms of compliance with the auditing principles and standards.

The purpose of certification by chartered accountants is to examine, determine and ensure the accuracy of taxes that are to be paid or exempted. Chartered accountants have, therefore, to examine all kinds of documents and use any examination techniques to determine the actual situation.

This means that chartered accountants will consistently audit all taxable transactions of MLEs with which they signed a contract. Such an audit will be conducted within the current period on the books and documents based on which the annual revenues or corporate tax return will be certified by the chartered accountant. Taxpayers should immediately correct their mistakes that may be determined during such audits to be conducted throughout the year. If taxpayers do not correct the issues that are contrary to the tax legislation, chartered accountants will include in their certification reports such irregularities as well as the issues that may be found to be in contrary to the tax legislation during cross audits regarding the taxpayer for whom the cross audit is conducted.

3.6.6. AUDITS BY MUNICIPALITIES

MEEs may also be audited by municipalities. Such audits are conducted in accordance with the provisions of the Law No. 5393 on Municipality. According to Article 55 of the law, municipalities are supervised in accordance with the provisions of the Law No. 5018 on Public Fiscal Administration and Control.

Furthermore, municipalities are subject to internal audits pursuant to Article 63 of the Law No. 5018. The article defines internal audit as an “activity of providing independent and objective assurance and consultancy, which is performed to assess whether the resources are managed in conformity with the principles of economy, effectiveness and efficiency and to provide guidance in order to improve and add value to the activities of public administrations. Internal audits are conducted by internal auditors, who are assigned by mayors in the local administrations.

Apart from internal audits conducted in the framework of the Law No. 5018, there are also some provisions regarding audits in the Law No. 5393 on Municipality. For example, according to Article 25 of the Law on Municipality, at each January meeting, the municipal council shall form an audit commission from among its own members to audit the municipality’s revenues

and expenditures and related accounting records and transactions for the previous year. The commission may request information and documents of all sorts from municipality units and affiliated entities.

Affiliated entities and enterprises of municipalities may also be audited pursuant to Article 55 of the Law on Municipality. Moreover, according to Article 56 “Activity Report” of the Law on Municipality, mayors are obliged to draw up an activity report in accordance with the principles in Article 41 of the Law No. 5018; such reports must include information and assessments regarding affiliated entities and enterprises and municipal companies. MLEs are therefore included in an assessment of municipalities made by mayors through an activity report.

Another organizational structure engaged in the supervision of municipalities is internal audit units established as Inspection Department in MMs and as Inspection Directorates in other municipalities. The inspection unit at a municipality audits municipality’s affiliated entities and companies and conducts disciplinary investigations of the personnel working within the municipality when required. Such units may also be established within MLEs as Inspection Departments and may audit the companies or affiliated entities of municipalities and MLEs based on the power delegated by their regulations.

3.6.7. AUDITS BY THE PUBLIC

It can be said that the main purpose of an audit is to inform the public. The public may, however, fail to convey, through various mass media channels, its clamour or appreciation of administrative bodies to them despite its desire to do so. In order to achieve the public benefit, local communities constantly monitor local administrations, question their decisions and actions and resist those decisions and actions that, according to them, are not in the interest of the community. In other words, local communities can try to ensure the public interest by monitoring and supervising with utmost care and attention the production and provision of services financed by them. Public supervision on municipalities becomes more and more influential. Today, it is a very important supervision tool, particularly with the widespread use of mass media. Townsman’s supervision is conducted to check if local administrations act properly, i.e., whether they use public resources in line with the needs of the society as well as to check the compliance of their actions and transactions with the law. Supervision of local administration’s services in terms of whether they meet the needs of the local community is a political phenomenon, and this power should belong solely to the local community. The central government’s supervision cannot be sufficient on its own to ensure that local administrations use resources efficiently, effectively, and economically. Audits by the local community is important at this stage.

3.6.8. RECOMMENDED INTERNAL CONTROL SYSTEM - MLEs

Municipalities are involved in certain economic activities when performing public services. Companies established by municipalities in accordance with TCC are quite flexible in terms of auditing as compared to local administrations. Mol has an indirect power of administrative tutelage over these companies only at the establishment stage, whereas all of their

subsequent activities are audited by MoIT. Such audits may only be conducted upon notice or complaint due to the large number of capital companies operating versus the lack of auditors in Türkiye. This results in a lack of auditing, particularly of MLEs, thus inefficiency in municipal services.

The members of MLEs' executive or auditing bodies, which are established upon resolutions by municipal councils, are also assigned from among executives in municipalities. It is seen that the chairpersons of MLEs are mostly the mayors of founding municipalities and that members of audit boards are the executives of respective municipalities in the framework of the Law No. 5216. This appears to be a way of auditing, but in practice, cannot ensure a healthy audit mechanism. Public enterprises are requested to inform the public about all subjects specified in the OECD Principles of Corporate Governance. Enterprises, including public enterprises, operating in industries subject to international competition and thus subject to political, operational, and currency exchange risks are advised to establish a risk management system that will allow them to identify, manage, control and report risks.

However, it was stated that since public enterprises are owned by the state, they should disclose to the public whether they can achieve their objectives, as well as important risk factors and the measures to be taken for the management of the risks therefrom. Public enterprises should therefore have effective and functioning internal control systems to ensure that they can fulfil their responsibilities for which they are expected to make a disclosure. As is seen, the OECD attaches importance to such concepts as internal audit, independent external audit, and public auditing, emphasizing the importance of auditing of public enterprises. In this context, it can be said that if MEEs implement these internationally recognised principles in our country, they will significantly contribute to ensuring the effective provision of services.

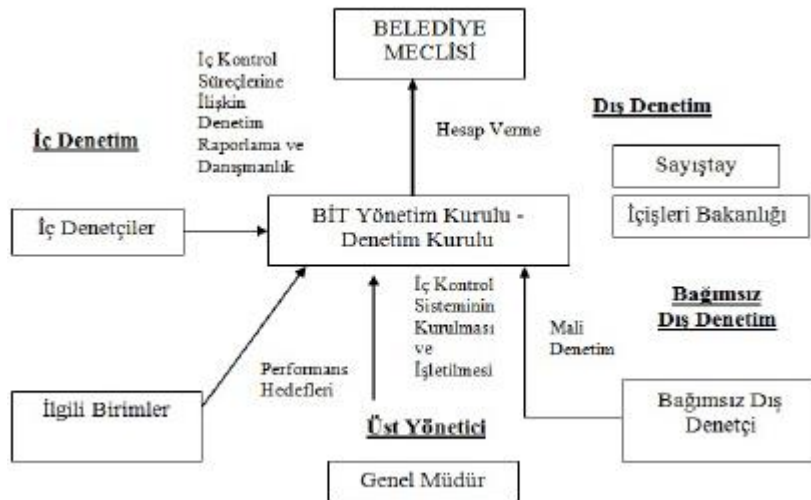


Figure 3.12. Internal Control Mechanism

BELEDİYE MECLİSİ	MUNICIPAL COUNCIL
İç Denetim	Internal audit
İç Kontrol Süreçlerine İlişkin Denetim Raporlama ve Danışmanlık	Audit reporting and consulting on internal control processes
Hesap Verme	Accountability
Dış Denetim	External audit
İç Denetçiler	Internal auditors

BİT Yönetim Kurulu – Denetim Kurulu	MEE Executive Board – Audit Board
Sayıştay	Court of Accounts
İçişleri Bakanlığı	Ministry of Interior
İlgili Birimler	Related Units
Performans Hedefleri	Performance Goals
İç Kontrol Sisteminin Kurulması ve İşletilmesi	Establishing and operating the internal control system
Mali Denetim	Financial audit
Bağımsız Dış Denetim	Independent external audit
Üst Yönetici	Senior manager
Bağımsız Dış Denetçi	Independent external auditor
Genel Müdür	General manager

The recommended internal control mechanism, including audit practices, for MEEs is presented in Figure 3-12. The Boards of Directors and Audit Boards of MEEs will be composed of internal auditors, experts from the relevant units of municipalities and independent external auditors, under the senior management of the Director General. In such a system, the senior manager will ensure the establishment and functioning of an internal control system; expert personnel will identify performance targets; internal auditors will conduct audits and provide consultancy on internal control processes; and independent external auditors will conduct financial audit of the company. Operating on the basis of such a system, Boards of Directors and Audit Boards of MEEs will be accountable to Municipal Councils. Besides, external auditing of MEEs may be conducted by the Court of Accounts and Mol. Mol will audit, based on the administrative tutelage of the central government over municipalities, whether MEEs operate in accordance with their objectives (meeting local common needs), whereas the Court of Accounts will conduct financial audits on whether the public resources are used effectively, efficiently and sparingly.

3.7. NON-EXECUTIVE BOARD MEMBERSHIP

The composition of boards of directors is of great importance in terms of implementing good corporate governance practices. One critical issue in this composition is the “independence”. Therefore, some of the members of the board of directors are preferred to be independent in line with corporate governance principles.

Boards of directors of companies consist of executive and non-executive members. Executive board members are in charge of managing daily decision-making and operating mechanisms of the company, whereas non-executive board members are responsible for identifying and overseeing the general policies and strategies of the company.

In generally recognized practices, non-executive board members are independent; they oversee the decision-making structures of companies and play an important role in the protection of the interests of shareholders. Accordingly, executive board members act as if they are employees of the company, whereas non-executive board members are expected to be independent to ensure objectivity. This is of critical importance to ensure accountability and transparency.

Requirements and conditions regarding the independent members are set forth in both the legislation of the CMB and TCC.

Requirements for a member to be considered “independent” are as follows:

- Is not to be a major shareholder (more than 1 percent) and does not own privileged shares,
- His/her spouses or relatives are not a major shareholder or a manager in the company,
- Is not working in the company or an associated company (including significant customers and suppliers),
- Does not have any interest from the company other than the attendance allowance received as a result of being a board member,
- Has professional education, knowledge or experience to duly exercise the duties s/he will undertake,
- Has strict ethical standards, professional reputation and experience to positively contribute to company's activities, to protect his/her impartiality in the event of conflict of interest between partners of the company and to make decisions independently taking into consideration the rights of stakeholders.

Stock options or payment plans based on the performance of the company cannot be used in the remuneration of the independent board members. Allowances to be paid to independent board members must be sufficient to protect their independence.

For an independent board member to be considered independent, the member must also have economic independence. Because, an independent board member who is dependent on the revenues from being a board member will have difficulties to act independently when fulfilling the duties of an independent board member. It would be contrary to the purpose of the existence of independent membership if independent board members approved all issues with which they dealt, rather than contributing to the activities of the company.

It is difficult to measure various factors, such as the psychology (especially his/her ability to make the right decision under pressure) of the person who will take charge as an independent member; the courage to defend his/her views that are beneficial for the company even if they are anomalous for the community; the ability to express himself/herself properly and to make others to listen to him/her; having a fair perspective and conscience allowing him/her to protect all stakeholders. Because these qualifications can only be evidenced with practices over time. An independent member to be assigned without having these qualifications can make a very limited contribution to the company. Otherwise, it will be difficult for this person to contribute despite his/her knowledge, background and experience.

3.8 – LEGAL PERSONALITY PARADOX OF MLEs (PUBLIC?, PRIVATE?)

MEEs may be established in accordance with the provisions of the Law No. 5393 on Municipality and the Law No. 5216 on Metropolitan Municipalities. However, a municipal council resolution is required in order to establish such enterprises in accordance with the provisions of TCC. Besides, since there are some privileges granted to MLEs by various legal regulations and their audits differ from those of any private law legal entity, there is

uncertainty as to whether the legal personality of MLEs falls under public or private legal personality (Sağlam, 2020).

Although MEEs are companies established in accordance with TCC, their legal personalities differ from those of any private law legal entity as they perform services in areas relating to the duties and services assigned to municipalities; they are given certain powers that are granted to public legal entities; and they are subject to audits applied to public legal entities. Therefore, to make an assessment regarding the legal personality of MEEs, it is thought that one should primarily assess the legal personality of these enterprises in terms of the necessary criteria required to have a public legal personality after considering the opinions on the doctrine and judgments.

In general, it is clearly specified in the constitution and/or laws if an institution has a public legal personality. However, a provision on the legal personality of MEEs is included neither in the Law on Municipality nor in the Law on Metropolitan Municipalities. The only regulation is that municipalities may establish companies.

In this regard, the municipal council resolution regarding the establishment of a company is an administrative action. The transactions to be carried out in order for such a resolution to bear legal consequences fall in the scope of private law. As is the case for any company with a private legal personality, MEEs are also established in the framework of the provisions of TCC on the establishment of companies, and they may have a legal personality after being registered with the trade registry.

3.9. BASIC FINDINGS AND RECOMMENDATIONS REGARDING THE CURRENT SITUATION

3.9.1. Municipality - MLE Relations

Looking at the organizational structures of the MMs that are examined under the study, it is seen that they manage MLEs at different management levels and through different organizational units. MMs coordinate MLEs through the following organizational units: Department of Resource Development and Affiliates; Department of Education Services, Foreign Relations and Coordination; Department of Enterprises and Support Services; Directorate of Coordination of Companies, Affiliates and Enterprises; Directorate of Enterprises and Affiliates; Directorate of Strategy Development. Some MMs manage MLEs at the directorate level, whereas some others manage at the department level. Among municipalities that participated in the interviews held under the study, some of them exercise certain powers on companies through these units. However, companies owned by some other municipalities have a more independent management structure in terms of relations with the municipality. This difference in the management of MLEs gives rise to a complex situation in terms of both the management and ownership of these companies, the majority of whose shares are owned by municipalities.

3.9.2. Legal Personality of MLEs (Public? Private?)

The members of management and inspection bodies of MLEs are assigned by the municipal administrations. Although MLEs are private law legal entities, when their administrative relations with municipalities are considered, they give the impression that they are public legal entities. In general, which institutions have a public legal personality is clearly specified in the constitution and/or laws. However, a provision on the legal personality of MLEs is included neither in the Law on Municipality nor in the Law on Metropolitan Municipalities. The only regulation is that municipalities may establish companies.

Although MLEs are companies established in accordance with TCC, their legal personalities differ from those of any private law legal entity as they perform services in areas relating to the duties and services assigned to municipalities; they are given certain powers that are granted to public legal entities; and they are subject to audits applied to public legal entities.

MLEs may be established in accordance with the provisions of the Law No. 5393 on Municipality and the Law No. 5216 on Metropolitan Municipalities. Besides, since there are some privileges granted to MLEs by various legal regulations and their audits differ from those of any private law legal entity, there is uncertainty as to whether the legal personality of MLEs falls under public or private legal personality.

3.9.3. Establishment Purpose of MLEs

Enacted pursuant to Article 127 of the Turkish Constitution, the Law No. 5393 on Municipality defines a municipality as “a public entity having administrative and financial autonomy which is established to meet common local needs of inhabitants of a town and whose decision-making body is elected by voters”. One of the rights given to municipalities to meet common local needs is that they may establish a company or an enterprise. In both Article 26 of the Law No. 5216 on Metropolitan Municipalities and Article 70 of the Law No. 5393 on Municipality, municipalities are entitled to establish companies in areas relating to the duties and services assigned to them. Based on this entitlement, municipalities have established, in order to provide municipal services, companies that would control, regulate and supervise the market and companies that add value and generate profit. Looking at the establishment purposes of MLEs examined under the study, it is seen that MLEs are operating in a broad range of service areas. However, MLEs that have been established in recent years are mostly profit-oriented companies. During the review of the reports of the Courts of Account, it was observed that municipalities have also established companies in areas that are out of the scope of their purview. The power given to municipalities by law for establishing companies is limited to the service areas assigned to them. However, looking at MLEs that have been established in recent years, it is seen that municipalities have changed their policies on the establishment of companies from performing public services, mostly to resource development. In this regard, the answer to the following question is of critical importance in order to clarify the establishment purposes of MLEs: Which one is ideal for municipalities: to establish companies that will control, regulate and supervise the market in order to provide municipal services, or to establish companies that add value and generate profit or a combination of these two methods?

3.9.4. Employment and Promotion Policies of MLEs

There is no comprehensive legal regulation regarding the employment by MLEs. Legally, there is only one criterion that regulates the upper limit of the share of personnel expenses in total expenses. This limitation is expressed as follows: the total annual expenses of administrations for personnel, including the personnel of MLEs, for the current year cannot exceed forty percent of the amount to be calculated by increasing the total budget revenues of the administration for the previous year based on the revaluation rate determined and announced in accordance with Article 298-bis of the Law No. 213 on Tax Procedure Law of 04.01.1961 for the previous year; this share be applied as thirty percent for MMs. On the other hand, the Decree-Law No. 696 stipulates requirements for the personnel to be employed by companies established pursuant to this law. MLEs take a different tack for their employment and promotion policies. Making a regulation to standardize MLEs' recruitment and promotion processes is important in terms of both the public conscience and the principles of visibility and transparency.

3.9.5. Annual Reports of MLEs

Article 56 of the Law No. 5393 assigns a duty on mayors to draw up an activity report of municipalities that must include such information and assessments in respect of the municipality's affiliated entities and enterprises and municipal companies. However, it cannot be said that this obligation is exactly fulfilled in practice. As part of the study, the activity reports of various MMs and provincial and district municipalities were examined. In this regard, the activity reports examined are miles apart from each other in terms of the level of detail of the information on MLEs. Standardizing the information on MLEs to be presented in such reports is important in terms of the principles of transparency and visibility.

3.9.6. Auditing of MEEs

Even though MEEs are commercial companies established in accordance with the provisions of TCC and subject to audits according to the provisions of private law, they are also subject to audits according to public law because of being established by municipalities and using public resources. MLEs are subject to Financial Audits, Legal Audits, Efficiency/Performance Audits, internal audits by municipalities, Audits by the Court of Accounts, MoI and MoT, Independent Audits, Full Certification/Chartered Accountant's Audits and Public Audits.

MEEs are also subject to many audits, as is the case for any other institution. Since MEEs are commercial companies established by municipalities to provide public service and there are legal regulations that distinguish them from other commercial companies, auditing of these companies has different characteristics. Apart from being subject to audits applied to commercial companies because of operating as a commercial company, these enterprises may be subject to audit procedures applied to public institutions pursuant to legal regulations. They are further subject to judicial review due to their employees' criminal liability for their acts and actions.

It is discussed whether MLEs have effective and functioning internal control systems to ensure that they can fulfil their responsibilities for which they are expected to make a disclosure. It

can be said that an internal control mechanism and audit practices system that can be applied in MEEs may significantly contribute to ensuring their service efficiency.

3.9.7. Boards of Directors of MEEs

In general, the boards of directors of MLEs owned or associated by municipalities consist of senior executives of municipalities. Looking at the boards of directors of the MLEs examined under the study, it is seen that MLEs opt for forming their boards of directors from members who are experts in service areas through the assignment of, based on the service areas of MLEs, such officials as the Secretary-General, Deputy Secretaries General, Heads of Departments, and, in some cases, Directors of municipalities. It is also seen that in some of these MLEs, there are board members who are not bureaucrats of municipalities. MLEs differ significantly from each other in terms of the number of members of the board of directors and the attendance allowances of the members. When MLEs are classified by their service areas and turnovers, it is seen that there are also significant differentiations between MLEs in terms of the number of board members of different companies operating in the same service area and having turnovers approximately equal to each other, and the attendance allowances of these members. Boards of directors of MLEs consist of executive and non-executive members. Looking at MLEs of European municipalities, it is seen that there are independent board members in their boards of directors. Independent board members also serve to ensure coordination among the municipal council, municipality and MLE. In the current situation, it is considered a problem that MLEs have boards of directors with varying numbers of members, who are paid varying attendance allowances.

3.9.8. Privatisation of MEEs

Municipalities may opt for privatisation for such a purpose as generating revenues in periods when their debts increase and it is difficult to meet these debts with revenue sources and borrowing opportunities. They can achieve to generate such revenues by means of selling their production units to the private sector. In cases where MEEs make losses and the deficits resulting therefrom are compensated with transfers from the municipal budget, municipalities may opt for the privatisation of MLEs in order to relieve themselves from the burden of debt. However, such transfers have an adverse effect on the performance of services and narrow the manoeuvrability of municipalities. Another privatisation method is the public offering of shares of joint stock companies owned by municipalities. According to TCC, gradual establishment was abolished, but public offering of shares is possible. According to Article 346 of TCC, the equivalent of shares of a joint stock company subscribed in the articles of association, determined and also guaranteed by subscribers in the articles of association to be offered to the public within maximum two months as of the registration of the company shall be paid from the revenues from the sale. The share certificates shall be offered to public in accordance with the capital markets legislation. At the end of the sale period, the nominal value and issuance premium less expenses if any shall be paid to the company and the amount that will remain after the expenses are deducted shall be paid to shareholders offering their share certificates to the public.

Municipalities were consulted in the scope of a study regarding the privatisation of MLEs to create resources for local administrations by taking into consideration the COVID-19 pandemic and the economic conditions of our country. It was observed that in general, municipalities which participated in interviews had no plan regarding privatisation.

3.9.9. Turkish Public Enterprises' Data System

Municipalities keep the data on their affiliates through departments or directorates in accordance with the standards they set. They conduct various studies based on this data in order to increase MLEs' performance and efficiency. Municipalities use various packaged software programs to supervise, manage and institutionalize their affiliates. It is seen that since the processing of data as well as generating value using the developing technologies and approaches has become more of an issue today, various studies are being conducted, for example, to make use of the data of all municipalities. However, it was observed that the MLEs examined under the study did not exchange their experiences, could not develop joint projects for more effective and sustainable services and could not take concrete steps regarding achieving a corporate structure and branding. Therefore, they cannot develop visionary policies and practices in terms of sustainability.

3.9.10. Liquidation of MLEs that are not Operating in the Municipal Service Areas

It was seen that of the MLEs examined under the study, some companies were established to operate in areas outside the service areas of municipalities and MLEs. The number of companies that are operating in service areas of municipalities has increased after stopping the activities of Ilbank in MMs and transferring of the companies and their activities to MMs. It is of critical importance to liquidate MLEs that do not operate in the purview of municipalities and/or that are inactive and transfer their assets to municipalities. There are many large and small companies in which municipalities directly or indirectly have a small percentage of equity. It is thought that this is another problem in the current situation that should be resolved.

3.9.11. Determination of the Price of the Goods and Services Offered by MLEs

There is no standardized approach either in the legislation or among the practices of municipalities in order for determining the prices of goods and services offered by MLEs. In the current situation, there is no practice regarding the prices received by MLEs for the service they offer to the public; examples of such practices may include the evaluation of these prices by such institutions as chambers of commerce that have knowledge on the sector, comparison of these prices with other prices in the market; and making regulations regarding the minimum profitability to be obtained according to service groups.

4. FUNCTIONING OF MLEs: EXPERIENCES OF EU MEMBER STATES

As mentioned in the introduction section, this study assesses, among other things, the structures and functioning of MLEs in Türkiye as well as MLEs operating in selected EU Countries. The purpose of this assessment is to obtain data that will shed light on MLEs' activities by analysing the administrative, financial and legal structures of MLEs of various sizes in the respective European countries, observing their performance criteria and assessing the relations between municipalities and MLEs.

In order to conduct a consistent analysis, it was tried to select countries that have different cultural structures and relatively different levels of economic development. Furthermore, attention was paid to examining various MLEs in terms of their sizes and areas of activity to assess as many different examples as possible.

This section of the study presents the examination, analysis and comparison studies in question.

As explained in the foregoing sections, municipalities establish MLEs, that they manage wholly or in part, to provide local public services. The structure of these enterprises differs from the local bureaucracy as they are managed by appointed board members and have an independent status. This autonomous structure of MLEs is the driving force for their popularity growing around the world.

Municipalities expect MLEs to be able to increase the efficiency of local public services through their autonomous structures. However, these enterprises are also used, from time to time, to serve as a step towards privatisation in order for relieving the financial burden on municipalities or to implement some competitive measures or operating techniques regarding the delivery of local public services.

Although these enterprises are separated from each other based on their autonomous structures, they also have a heterogeneous structure in terms of certain aspects. MLEs may belong to one or more municipalities; in general, they were established for a single purpose but can serve more than one purpose; they generally fall under private law but in various countries, they can carry out activities under public law as well.

The functioning of MLEs is in some cases based on revenues from user fees, and sometimes on subsidies from municipal property. Some affiliates may be allowed to generate profit, or municipalities with which they are affiliated may in some cases require these affiliates to absolutely make a profit; in some cases, these affiliates may be instructed or necessitated to break even.

However, affiliates of municipalities are expected to act in accordance with the law and order and respect the principles of transparency and accountability as they use public money,

despite their power to autonomously provide public services for the purpose of efficiency. Although there are norms and standards developed for this purpose, there are still serious doubts regarding the quality of oversight, auditing, and therefore accountability and transparency in affiliates; particularly, the relationship between affiliates and municipalities with which they are affiliated, and the unclear financial situations is among the areas of concern. Another concern regarding governance is the powers of municipal councillors, who hold office for such positions as director and board member in municipality-led enterprises apart from their main duties in the municipality.

From an empirical approach, it can be seen that most European countries have a very diverse and pluralistic institutional structure for the provision of public services. The following structures can develop and deliver public services at the local level:

- A unit included in the administrative organization of the municipality;
- An autonomous enterprise that is affiliated with the same local administration or one or more other jurisdictions;
- Cooperation of two or more public authorities (e.g., consortium of municipalities);
- Cooperation of two or more public and private partners through a project or by establishing a joint company (the first structure established is often called a contractual public-private partnership, the second one is known as a corporate public-private partnership);
- Awarding the service to a private company;
- Transfer of the service to a non-profit private organization (e.g., a social charity).

Besides, a service may be fully privatised (material privatisation), and thus, may be delivered by a private service provider without any public liability. Finally, all these institutional variables can also have a mixed format. This means that public, mixed and private institutions that provide services may come together in a network structure and cooperate in order to provide a specific service. As a result, local administrations (as buyers or contractors of public services) have numerous institutional options within various institutional arrangements for the provision of public services and must therefore make strategic decisions for creating the most effective institutional combination. Such decisions are extremely sensitive and ideologically biased and can lead to serious consequences, which will be discussed in the following sections.

Based on the studies conducted on various MLEs, below is the summary of a range of principles that are understood to have contributed to the success of efficient companies:

- The municipal council and the company being clear on the target they want to achieve and having a clear vision for the future and how the company will grow
- Creating a culture of trust between the municipality and the company

- Putting in place an effective interaction with people
- Ensuring the proper establishment of the company structure, governance and operations
- Receiving professional advice on and support in areas that require expertise, including finance, law, tax and public relations
- Creating a correct business leadership based on the correct skills for the business and market
- Encouraging cultural exchange, and creating a commercial mindset in people who are newly recruited in the company

Although governments of many Member States of the European Union (EU) have a long tradition of providing these services through their institutions, we observe an increasing private sector participation and trend in this direction. In the last three decades, many local public enterprises have given their places to completely private enterprises operating under franchising or have been transformed into mixed enterprises.

Currently, MLEs in Türkiye are established not only to ensure economic efficiency in public services, but also to develop alternatives to standard employment practices. In addition to this, the diversity of activities and administrative inefficiencies stemming from politically minded appointments cause operational complexities and inefficiencies that lead to operational losses by affiliates that must be financed from municipal budgets in many municipalities, in other words a waste of public money.

In this context, functioning of MLEs in Türkiye is required to be improved to ensure that they become more accountable and transparent to both the society and municipal council. Therefore, it is recommended to conduct a comprehensive review of EU practices under the Project Document in order to make suggestions for draft legislation for the sake of making MLEs' operating processes more transparent and accountable and regulating existing practices accordingly.

As part of this study, online meetings were held with the European officials from Italy, Poland, Romania, Spain and United Kingdom. Furthermore, to include France, the Netherlands, the Czech Republic, Sweden and Germany in the study, a desk study was conducted on these countries.

The study for the review of selected country cases were conducted based on virtual meetings and a desk review. The subjects that were discussed in this desk review study were determined with the Technical Assistance Team of the LAR-III project.

This section of the study is configured under two main sections:

- Examination of various European Municipalities in terms of their participation in companies

- Recommendations for improvement of the management of MLEs for Turkish Municipalities

4.1. CASE STUDIES IN SELECTED COUNTRIES

4.1.1. FRANCE

4.1.1.1. Overview of LPEs in France

Table 4.1.: Information on LPEs in France

Milestones	Companies started to be established in 1920, and their number have increased with the decentralisation process since 1980s.
Basic Trends	Usually consistent, but there are restructuring efforts in housing and planning.
Area of Activity	Tourism, planning, housing, public transport, economic development, water, sewage, waste, environment, entertainment, culture, telecommunication, parking lot
Main Legislation	Law of 07.07.1983 on Local Mixed Economy Companies Act (Sociétés d'économie mixte locales) that was amended by law of 02.01.2002 (CGCT, Article 1521-1) Law of 24.07.1966 on Limited Companies amended by Law of 1983
Legal Forms	-Limited liability companies (publicly held limited companies/societes anonymes- SA) In-house organization: essentially board of directors, executive board and supervisory board
Capital	Legal rules: public/private ownership which includes 50% - 85% local administration equity and has at least one private shareholder Capital structure in practice: The 35% of the capital of SEM belongs to various shareholders other than local administrations; of these shares 15% belong to private shareholders and this percentage is even higher in new SEMs.

Tender	Competitive tenders as a general rule Inconvenient rules for housing and planning
Boundaries	No regional boundaries
Local Administration Representative	Elected representatives
Tariffs	Tariffs are adjusted by local administrations
Financial Support to Local Administrations	Grants that are used under control, support to local public enterprises with financial difficulties, financial support in contracted operations
Public Control	Control by local administration, final control by the state representative (préfet), control by the Regional Auditing Commission
Representative Bodies	Sem Federation: Federation des Sem

4.1.1.2. Legislation History

Traditionally local administrations have been able to use two types of organisation when they opt for direct provision of a public service: the *régie*, or wholly publicly owned enterprise, and the local mixed economy company, which has financial autonomy and may or may not have corporate status.¹

Régies are managed by a council headed by the mayor (or other local holder of executive power) along commercial lines, and they have their own budgets, which must, in principle, balance expenditure and commercial revenues, as an appended to the general budget of the local administration. *Régies* having the status of a public law corporation under local administration control have their own balance sheet, board and executive manager.

A *régie* is deemed to facilitate the management of utilities (*industrial and commercial public services*), and its management is subject to private law. In recent years, it has been possible to create administrative *régies* with financial autonomy for the purpose of direct provision of administrative public services, in particular social and cultural public services, instead of creating associations.²

¹ Quoted from the "Public and Municipal to Private Sector Provision" written by Hellmut Wollmann, Ivan Koprić and Gérard Marcou.

² Quoted from the "Public and Municipal to Private Sector Provision" written by Hellmut Wollmann, Ivan Koprić and Gérard Marcou.

Despite the fact that there are a significant number of such local public enterprises (i.e., *régies*) this institutional structure has long been considered to lack the necessary flexibility and it complicates the sharing of capital investments among several local administrations. In the fifties and seventies, mixed economy companies were developed for local projects by specialised subsidiaries of the *Caisse des Dépôts et Consignations*. The main purpose of the law of 1983 on local mixed economy companies (SEML) was to facilitate the creation of such companies and to secure local administration control over their management by making it a requirement for local administrations to hold the majority of the capital and seats in the board.

This legislation was a turning point, making SEML an instrument that local administrations could use to implement their policies, instead of being driven by state companies (subsidiaries of *Caisse des Dépôts*). In this sense, the 1983 law was consistent with the decentralisation reform of 1982, rather than with new public management (NPM). There was then a sharp increase in the number of SEML.

CGCT Article L-1521-1³: “Municipalities, departments, regions and their groups may, in the framework of the power given to them by law, establish local semi-public companies which associate them with one or more private persons and possibly, with other public persons to carry out development and construction operations, to operate public services of an industrial or commercial nature, or for any other activity of public interest; when the purpose of local semi-public companies includes several activities, these must be complementary. In addition, semi-public companies may carry out design, construction, repair or maintenance operations as well as provide, where applicable, finance for hospital or medico-social equipment in line with the needs of a medical institution, a social or medico-social institution or a medical cooperation.”

In recent years, new legislation has facilitated providing services. The first step in this sense was to allow local administrations to establish wholly publicly owned local public companies (SPL); this was achieved through the housing law of 2006, and more generally by the law of 28 May 2010. SPL, which have one or several public shareholders for whom they carry out orders, are fully in line with European Court of Justice (ECJ) rulings on ‘in-house entities’, provided that the control exercised by the public authority over the SPL makes effective the control over the direction of the SPL. They are private law limited companies, with at least two shareholders (instead of seven), and subject to public law with respect to local administration functions and state oversight, including the legal regime governing SEML where applicable. SPL may only be created to perform local administration functions, not for purely financial purposes.

³ Code général des collectivités territoriales (General code on local administrations)

The second step was the law of 1 July 2014 on single purpose, mixed economy companies (SEMOP), which referred to 'institutional public private partnerships' (European Commission 2007, 2008). Such companies are created by one local administration (a single or a joint authority) with at least one shareholder who is an economic operator, for a limited time period and for a single purpose, namely a contract which is agreed between the local administration and the company. This contract is subject either to concession rules or to public procurement rules as regards the open procedure chosen for the selection of the shareholding economic operator, depending on the objective of the contract. The contract itself is a consequence of the constitution of the company after the selection of this economic operator.

Another innovation is the shareholding rule: the local administration has to hold between 34 percent and 85 percent of the capital and at least 34 percent of seats on the board; economic operators have to hold at least 15 percent of the capital.

These provisions mean that the local administration has to decide at the tender stage whether it wants to create a SEML or a mixed economy company led by the economic operator. Similar single purpose companies may be used for planning development projects (law of 7 August 2015) and for hydraulic energy concessions (law of 17 August 2015).

In fact, SEML, SPL and SEMOP are all regarded as being instruments used by local administrations to carry out their projects.

4.1.1.3. Providing Municipal Services by means of Outsourcing

Outsourcing is an ambiguous concept, as direct management of public services by local administration bodies is rather rare. According to the Court of Accounts, direct provision means that management is not delegated to a contractor that would operate the service at its own risks and usually funded to a large extent by users' fees. Outsourcing is often the preferred form of management, but the conditions vary by sector.

Furthermore, since the early 2000s several new legal arrangements have been put at the disposal of local administrations to facilitate direct provision. The Court pointed out the emergence of new forms of direct provision by 'local public companies', e.g., fully owned by local administrations, and the option of '*quasi régies*' in which the contractor is paid directly by the local administration and is subject to full local administration control. This definition is consistent with EU law, as devolution of services to in-house providers is not subject to EU procurement and concession directives (No. 2014/23 to 25/CE).

Although a greater proportion of local administration public services is outsourced in France than in other countries under review, cross-sector comparisons are not easy owing to differences in how data are treated. For example, 22,000 of the 31,000 water supply and sewage services are directly provided (*régies*), but 61.4 percent of the population is supplied

with water, and 41.7 percent with sewage services, by private providers.⁴ However, 90 percent of public transport networks, 38 percent of school catering and 74 percent of waste treatment are operated by private companies.⁵ The situation of the social care sector is specific.

In the field of utilities outsourcing is always equivalent to contracting out. Two main types of contracts are currently used: concessionary agreements (*délégations de service public*; DSP) and procurement contracts. Concessionary agreements date back to the nineteenth century and there are several forms developed through practice and administrative case law. Under a concession, the contractor has to finance and provide the infrastructure and other equipment; under a franchise (*affermage*), the contractor has to operate the service with means put at its disposal by the public authority.

In both cases the contractor is paid out of operational revenue. Under a third type of contract, the contractor has to manage the service on a commercial budget, and it is paid for doing so by the local administration, with variations according to operational results (*régie intéressée*). Since local administrations ceased to be bound by standard contracts in 1982, there is the potential for considerable variation in the arrangements. The Law of 29 January 1993 set out a common legal framework covering the agreement procedure for all these contracts. Directive 2014/23/CE has required adaptation of French legislation, and in particular the word “concession” will take general meaning, instead of “délégation de service public”, but no substantial change (Legislative decree - ordonnance - No.2016_55, 29 January 2016; Decree No. 2016-86, 1 February 2016).

Traditionally, the contractor had to operate the service at its own risk;

over time, risk-sharing evolved towards the transfer of a large part, if not the majority, of the risk to the public authority. Nowadays only a minority of contracts are really concessions in the strict sense, both as a result of industrial strategies (which have also supported the French version of the Private Finance Initiative (PFI) in, for example, water supply) and of increased involvement of public authorities in the substance of the service to be delivered (e.g., urban public transport services).⁶

In all cases, physical assets remain public in the sense that even when they are provided or constructed by the concession holder, they are subject to the legal regime of the public domain (e.g. public property with special legal assignment) from the beginning, unless the contractor obtained a long-term lease on public estates. They return without any further compensation to the public authority at the end of the contract if they are necessary to the

⁴ (Court of Accounts, 2015)

⁵ (Court of Accounts, 2015)

⁶ Quoted from the “Public and Municipal to Private Sector Provision” edited by Hellmut Wollmann, Ivan Koprić and Gérard Marcou.

continuity of the public service, even if in the beginning they were private property or on private premises.

A service may also be provided through a public procurement contract. In this case, the contractor is paid in instalments by the public authority throughout the term of the contract (*quasi régies*). This is very common in the case of waste collection services and for the management of sanitation plants. This legal structure for contracting out is resumed by EU law with the directives of 24 February 2014, in particular the Directive 2014/23/EU which defines as a 'concessionary contract' any contract in which part of the operational risk is assumed on revenues by the concession holder, additionally to payments by the public authority as the case may be. French law needed only marginal adjustment to comply with these new directives.

The legal regime governing administrative contracts, as developed by Council of State case law, strikes a balance between the prerogatives of the public authority and the protection of the legitimate economic interests of the contractor. The public authority is allowed to change the terms of the contract unilaterally at any time if it is in the public interest to do so, while keeping the initial financial balance of the contract, through any kind of compensation.

4.1.1.4. Types of Local Public Enterprises in France

Local public enterprises (LPEs) serve local administrations, companies and citizens. They look out for the public benefit and community value, being at the intersection of the private and public sectors as they are pure flexible and responsive enterprises. LPEs are regulated by private law and provide services for the public benefit. Public authorities hold at least 34 percent of the equity shares of these limited companies (Sociétés anonymes).⁷

Local public companies may be established as: Sociétés d'économie mixte - mixed economy companies (Sem); Sociétés publiques locales - local public companies (Spl); Sociétés d'économie mixte à opération unique - single-operation mixed economy companies (SemOp).

Traditionally, mixed economy companies (Sem) are the most significant form of local public companies in France, but they have to comply with the competition rules. Within the Sem structure, there should be at least two shareholders from the public and private sectors, including banks, companies, chambers of commerce or industry. 50 to 85 percent of their equities are owned by public authorities. Their activities are not limited with the physical boundaries of the relevant local administration: a Sem may operate in all areas and for all stakeholders.⁸

⁷ <https://www.lesLPE.fr/wp-content/uploads/2021/01/LPE-dossier-de-presse-janv-2021.pdf>

⁸ LES SOCIÉTÉS D'ÉCONOMIE MIXTE LOCALES Un outil des collectivités à sécuriser Communication à la commission des finances, de l'économie générale et du contrôle budgétaire de l'Assemblée nationale

Local public companies (Spl) were started to be established by local administrations in 2010 as the means of cooperation among public partners. There should be at least two local administrations within these companies, in which shareholders from the private sector cannot be involved. Since they are considered in-public instruments, Spls are exempted from the competition rules; however, they may therefore not operate outside the boundaries of the local administrations.

Semop formations are the public private partnerships which were included in the legislation in 2014. This structure allows local administrations to share 15 percent to 66 percent of the equity of the company with partners from the private sector. They are established for single purpose only and thus, operate for limited period of time.

Every year, the Federation (La Fédération des élus des Entreprises publiques locales) that consist of elected representatives from local public enterprises issues the “LPEscope”⁹ report, a reliable and complete LPE barometer in France. Issued on June 1st, the 2020 version of this report shed light to studies in this area, presenting basic information for understanding the evolution of the movement formed by Sem, Spl and Semop.

It is seen that LPEs has been in a growing trend in 2020 as compared to the previous year. There are now a total of 1.332 active companies, including 887 mixes economy companies (Sem), 417 local public enterprises (Spl) and 28 mixed economy companies for a single purpose (Semop). Besides, the total turnover of LPEs increased by 9% as compared to the previous year and reached approximately 15 billion EUR, and accordingly LPEs reached at the peak level in terms of their operations. This achievement was mainly as a result of maturing of some projects in the energy sector, while almost all branch operations were positively affected.

These companies operate in the entire region either for rural municipalities or urban municipalities, from coastal areas to mountainous areas and from MMs to overseas regions. They are involved in around forty areas of activity, including commercial and many other areas, such as tourism, culture, entertainment and planning as well as the environment, networks, housing and real estate.

They benefit from the complementarity of the system and continue to be the privileged operators of local administrations who are the main shareholders and have full control, in close collaboration with other local players.

Having entered a growth cycle since 2014, local public companies have accelerated their development in one year, after a period of uncertainty between the judgment of the Council of State of 14 November 2018 and the law of 17 May 2019 on securing the shareholding of LPE. Having a turnover of around 15 billion EUR, they reached their highest level of activity

⁹ Eplscope 2020, le baromètre des entreprises publiques locales

(+9% compared to the previous year) with support also from companies involved in the energy sector.

The trend was accompanied by a movement of financial consolidation. Determined to further invest in the territories, Sem, Spl and SemOp have considerably increased their capitals and funds to levels well above the constraints imposed by the various legislations in force. Their cash flow was also on the rise.

Similar to other companies, local public companies have also faced the consequences of this crisis in the global, European and French economies. Particularly, since they were prepared to this situation with the deployment of a financial reinforcement strategy in recent years, they were able to limit the shocks induced by revenue losses during the first period of confinement. Resorting to various mechanisms put in place by public and semi-public institutions, including recourse to short-time working (used by 57% of LPEs), regulation on deferment of payments of social and employer contributions (35%) or deferment of demands on state-guaranteed (22%), they were able to alleviate the effects of the sudden slowdown in economic activities.¹⁰

Yet, Sem, Spl and SemOp leaders predict a 9% decrease in operating volume in June for the fiscal year 2020 as they are heavily dependent on activity cycles. However, these forecasts masked various realities regarding the fields of activity and in terms of their positioning according to pluralistic activities.

With losses of turnover estimated at 31% on average, 339 LPEs operating in such areas as tourism, culture and entertainment appear to be most affected compared to 81 companies specialized in mobility (-15%). In particular, companies involved in events and even a little diversified their activities seem weakened. Other sectors experienced much less losses. It is estimated that turnover in development, housing & real estate and economic development areas to decrease by 6%, 3% and 2%, respectively, whereas the turnover in the environment and networks sector is anticipated to grow by 10%.¹¹

The prospects for economic recovery still remain unclear today. The ongoing health and economic crises have significantly hampered the promising momentum of the local mixed economy. It seems impossible that the recovery of the French economy in the third quarter to survive during the second period of confinement.

Local public companies are awaiting the return to normal economic activity. These companies are also expected to suffer from the cutback in investments by local administrations and other public institutions in the forthcoming months and years.¹²

¹⁰ <https://www.lesLPE.fr/wp-content/uploads/2021/01/LPE-dossier-de-presse-janv-2021.pdf>

¹¹ <https://www.lesLPE.fr/wp-content/uploads/2021/01/LPE-dossier-de-presse-janv-2021.pdf>

¹² <https://www.lesLPE.fr/wp-content/uploads/2021/01/LPE-dossier-de-presse-janv-2021.pdf>

4.1.1.5. Financing of Local Public Companies

The law stipulates specific financing plans and regulations regardless of the area of activity. The National Fund for Solidarity and Autonomy (CNSA) was established as a new national public agency by law on 30 June 2004 in order to finance aid and to provide technical support to socially responsible institutions and local administration bodies for the elderly and people with disabilities with limited autonomy.¹³

Between 2006 and 2013, financing provided by the CNSA and the Social Security fund for these services increased by about 50 percent. Overall, the funding for services to compensate for the loss of autonomy comes from several sources: the CNSA (37%, with resources coming from State levies—general social contribution, solidarity contribution for autonomy and additional contribution to the latter), state budget (26%), Social Security fund (19%), departmental councils (17%); this funding has increased sharply since the mid-2000s.

However, departmental councils act as agencies of central government, implementing national policy, particularly in the case of personal autonomy-related services. In the field of urban public transport, a special levy (*versement transport*, VT) was introduced to finance investments in urban public transport in the metropolitan area of Paris, and subsequently extended to all urban areas with over 10,000 inhabitants; its scope was also extended to include running costs of transport services. This VT is levied at a rate between 0.55% and 1.75% of paid salaries, but may reach a ceiling of 2.7% in the metropolitan area of Paris. At present, the VT yields on average 50% of the resources of transport authorities, whereas tariffs yield only about 20% and the gap (30%) is covered by local public budgets. This imbalance raises questions about the sustainability of the transport financing system.¹⁴

Implementation of waste policy is supported by a special tax, the general tax on polluting activities, introduced in 2009, which is the main source of funding for the activities of the Agency for Environment and Energy Control (ADEME) as directed to the following areas: waste prevention (34%), recycling (18%), organic valorisation (18%) and valorisation of building waste (8%).

Lastly, users' fees for water supply and sewerage include various levies provided for by the law which represent a contribution to the costs of managing water resources and conserving their quality. These levies are determined by hydrographic district committees in which all categories of users and local administrations are represented. They distribute the costs of water consumption between these categories. For many years, the system has been criticised by the Court of Accounts (and was criticised again in 2015), because too much of the burden

¹³ COUR DES COMPTES / PUBLIS SOCIÉTÉS D'ÉCONOMIE MIXTE LOCALES Un outil des collectivités à sécuriser Communication à la commission des finances, de l'économie générale et du contrôle budgétaire de l'Assemblée nationale Mai 2019

¹⁴ Court of Accounts (2015)

of paying for water services is shifted from enterprises and farmers to domestic households. There are now plans to reform the system.¹⁵

4.1.1.6. Areas of Activity of Local Public Companies

It is emphasized from the beginning that it may be considered illegal if there is a financial understanding, based on the principle of complementarity, which will result in pooling of activities within a single company merely to ensure a financial balance¹⁶.

This practice helps to prevent that:

- SEM must bear the responsibility for operations under financial conditions that would not be undertaken by any other enterprise;

- a lossmaking activity is financed by another activity in a structured and sustainable manner

(More specifically, a public service delegation should not cause extra charges to users in order to finance other lossmaking activities supported by the SEM); or

- the fees charged by SEM to users or customers are independent of production costs and result in extra charges to users in order to finance other lossmaking activities supported by SEM.

However, this precautionary principle makes it possible to ensure that:

- the functioning of the SEM is based on a feasible and sustainable economic model;
- charges paid by taxpayers for a public service are not used to compensate the deficits from other irrelevant activities;
- SEM complies with the principles of transparency and information in terms of communities and local taxpayers.

As an exception, certain areas of activity, such as social housing, are subject to more restrictive regulations that prohibit SEMs from making any financial transfers between different activities they carry out. Looking at the statistics, it is seen that there is an increasing trend regarding the development of multiple activities, which is supposed to be an important centreline by the professionals in the sector.

¹⁵ Public And Social Services In Europe From Public And Municipal To Private Sector Provision Edited By Hellmut Wollmann, Ivan Kopic, Gérard Marcou

¹⁶ Circular of 16 July 1985 of DGCL, Ministry of Interior and Regional Planning, relating to information on the establishment, operation and control of local mixed economy companies. Quoted from the guide for local mixed economy companies on the general management of local administrations. 2007 edition, p.37.

4.1.1.7. Companies Affiliated with Local Public Companies

SEMs are explicitly entitled to establish subsidiaries and buy holdings according to Article 76 of the Law of 29 January 1993 on the prevention of corruption and the transparency of economic life and public procedures (referred to as the “Sapin I law”). Accordingly, “any equity investment by a local mixed economy company in the capital of a commercial company is subject to an express agreement between the local administrations and their shareholder groups having a seat on the board of directors.”

However, no certain instrument was implemented to monitor and identify subsidiaries and SEM holdings in the event of achieving such an official opinion. According to the 2018 data collected by FLPE, the total identified SEMs (300) have a total of 429 subsidiaries, 301 of which is owned by less than one-third of these SEMs.

SEMs have various motivations to establish subsidiaries. Among these motivations are: carrying out a “complementary” activity; mobilizing financing or sharing the risk from investment with partners; individualization of an activity or a risk in a private company; developing an instrument, the objectives and project duration of which differs from those of founding members; strengthening expertise by establishing partnerships with actors with technical skills not possessed by the SEM; establishing structures with partners other than the founding partners; the desire to try innovative activities with project companies.

Traditionally, subsidiaries operate in the real estate and urban planning sectors. Subsidiaries of SEMs in the real estate sector (real estate companies - SCI) are established, on a specific operation basis, with private developers and banking institutions to share the risk and investment. On the other hand, there are subsidiaries (simplified joint-stock companies - SAS) that own an energy business or are established for a development project.

Similarly, the NOTRé law empowers regions to hold equity shares in commercial companies for the implementation of regional development plans, innovation and internationalization, strengthening their pivotal role in the economic development of the local structure.¹⁷

4.1.1.8. Equity of Local Public Companies

In accordance with the Commercial Code¹⁸, the capital of a SEM must be €37,000 at the minimum unless the company decides otherwise. Based on the nature of activities, there are two exceptions to this principle: the minimum capital of a SEM operating in the fields of development or construction should be increased to €150,000 and €225,000, respectively.¹⁹

¹⁷ CGCT Article L.4211-1-8bis (introduit par la loi NOTRé)

¹⁸ Commercial Code, Article L.224-2

¹⁹ CGCT Article L.1522-3.

Similar to public limited companies, the own equity of a SEM should not be less than half of its share capital for the recapitalisation risk. Besides, financial balance and restructuring are subject to case law regarding procedures for bankruptcy or compulsory liquidation. It is at the discretion of the shareholders to determine the level of capital share in compliance with the nature of activities and investment needs. SEMs are monitored on a regular basis in the event of undercapitalization. For example, this was uttered by the Court of Accounts in public reports in 1990, 2001 and 2015.

Although it is not possible to evaluate, on a global basis, the capital share of a SEM with the current information systems, balance sheet structure and risks taken, the average capital of that SEM and the relevant business sector can be estimated with the financial data collected. Paradoxically, it is seen that regardless of the level of risk in the development sector, the capitalisation in this sector is lower than other sectors, such as “environment and networks” and “economic development”.

The low level of capitalization of SEMs when compared to the importance of their operations can be explained by the nature of their corporate purpose and the controlling share of public shareholders combined with the potential of these companies to benefit from loan guarantees. Local administrations act as the final guarantor of SEMs and provide SEMs with certain conveniences in case of difficulties. Thus, they have managed to ensure the stability of the system by constantly mobilizing a significant amount of capital.

4.1.1.9. Report of the French Court of Accounts on Municipal Subsidiaries

The French Court of Accounts (Court des Comptes de France) conducted an audit in 2019.²⁰

According to this audit, although there were no waves of SEM failures during the recent economic crisis as in the past, particularly during the 1970s and 1980s, it should be noted that there are no overall statistics on the liquidations or financial failures of SEMs, or on their direct or indirect losses borne by their shareholders.

However, there are many risks posed by SEMs due to the nature of their activities and their status as a public limited company. Among the risks identified by the report, four of them should be particularly highlighted:

- ❖ SEMs can become an instrument for deconsolidation of certain expenses and the indebtedness of local administrations and for evading the strict rules on budgetary balance. SEMs are not taken into account so much as additional budgets or state management in terms of monitoring of standards on expenditures by local administrations;

²⁰ LES SOCIÉTÉS D'ÉCONOMIE MIXTE LOCALES Un outil des collectivités à sécuriser / Mai 2019

- ❖ As a particular form of organization of a public service, SEMs are likely to entail financial risks for the community, as they may act as a shareholder or a loan guarantor. The control of this risk depends on the ability of the community to control its own activity. According to Article L.1524-4 of CGCT, municipalities are withheld from receiving subsidies from the State in the event of financial difficulties arising from their participation in the capital of a SEM or a guarantee that they have granted for loans contracted by such a company;
- ❖ The development of own-account activities of SEMs and/or subsidiaries and equity investments, which concerns more than a third of SEMs, makes it more difficult for shareholder communities to exercise risk control. This is a factor that aggravates the potential financial risks on shareholders;
- ❖ The risks of participation of elected officials in the governance bodies of SEMs is minimized by legislative provisions, but this relative protection does not apply to their participation in the governance of subsidiaries. The financial conditions of their participation in the management of subsidiaries are also not subject to any supervision.

The report states that “the census of LPEs is imperfect and, consequently, the exact assessment of their financial situation is out of scope”.

4.1.1.10. The List of Recommendations Presented in the Auditor’s Report

- Setting up, at the national level, an independent statistical system for monitoring and evaluating SEMs, their subsidiaries, direct or indirect, and their shareholdings, based on reporting obligations, breach of which would be sanctioned.
- Alignment of the legal regime that is required for the transmission of SEM documents regarding the right to information on the contracts of municipal authorities’ own companies or shareholder groups so that these contracts are enforceable only when they are transmitted to the representative of the State.
- Presenting to the boards of directors or supervisory boards of SEMs the final observations report of an audit report on the model in force for local administrations.
- Extending the obligation to report on actions taken following the observations made by the European Court of Auditors so that this obligation covers SEMs, and making mandatory the transmission of this report to local administrations and shareholder groups of SEMs as an obligation to address this issue in their municipal councils and to inform the regional chambers of accounts on this issue.
- Amending the CGCT in order to enrich reports that are presented by representatives participating in the meeting and that include data relating to the past and future

activities of SEMs and to include these reports in the budget guidelines report of companies or shareholder groups.

- Ensuring that SEMs are subject to a ceiling regime similar to that of the public entities that are holders of non-elected senior level positions.
- Making full use of the opportunities offered by the SPL and SEMOP statutes, insofar as they were established to take into account the European law on the flexibility of use that was that of the SEM originally. However, to transform an SEM into an SPL, it is necessary to consider a legislative mechanism that makes it possible to promote the transfer of shares between communities, avoiding any blockage.

4.1.2 HUNGARY

4.1.2.1. Overview of Municipal Companies in Hungary

Table 4.2.: General Information on Municipal Companies in Hungary

Milestones	State-owned enterprises were handed over to municipalities between 1989 and 1991 and then transformed to companies in accordance with the trade law on socialist municipal enterprises (Vallalat).
Basic Trends	The number of local public companies has been decreasing due to the privatisation process, whereas new local public companies have been established in the fields of parking areas, environment and internet services in rural areas.
Area of Activity	Cleaning of public spaces, housing, health, sewerage, water, environment, parking areas
Main Legislation	Law of 1988 on Companies Law of 1989 on Transformation to Company Law of 1990 on Local Administrations Law of 1995 on Public Procurement Law of 2003 on Hospitals
Capital	Legal rules: There is no capital composition rule except for the hospitals in which private shareholders cannot hold more than 49% of the equity. Capital structure in practice:

	<p>The capital share (which was 100%) of local administrations has been decreasing due to the shares allocated mostly to executives of companies in the scope of privatisation. Private shareholders are mostly local and international groups, citizens and executives of local public companies.</p> <p>-The state is also a shareholder.</p>
Tender	Competitive tenders in which shareholder local administrations as well as other customers are involved
Boundaries	There is no regional boundary; however, in practice, companies operate in the region of the shareholder local administration.
Local Administration Representative	Assignment of municipal councillors to the seats in supervisory boards
Tariffs	<p>Tariffs are set by municipalities except for electricity and gas (State)</p> <p>Joint decision of the capital city and the State for the public transport in Budapest</p>
Financial Support to Local Administrations	<p>Loan guarantees</p> <p>Financial subsidy to compensate the revenue deficit resulting from tariffs set by local administrations</p>
Public Control	<p>Municipal control committee composed of municipal councillors</p> <p>Municipal finance committee and other possible provisional committees based on a resolution by municipal councils</p>
Representative Bodies	Relevant associations based on the sector of operation. For example; Public Space Cleaning Association, Public Service Enterprises Association

4.1.2.2. Legislative History

Hungary is a unitary state composed of municipalities, cities, cities with county rank, capital city districts and other counties. Following a series of legislative regulations and reforms, Hungary established a legal framework for a two-tiered government structure in 1990 after eliminating one tier that existed in the prior three-tiered system.

Local administrations in Hungary are established through democratic elections and has an organizational structure allowing the central government to be organized at the local level.

The main duty of local administrations is to use the public power for local public affairs as well as to provide local public services.

The local administration sector was established by the Parliament as part of the local administration sub-systems for public financing under the Local Administration Law entered into force on 30 September 1990 to create a new system. With the entry into force of this law, local administrations acquired public properties, forests, water bodies, money and securities and protected natural areas as well as monumental properties managed by repealed councils and their institutions and organizations. Companies that were previously managed by municipal councils also handed over to municipalities and most basically, became municipal subsidiaries.

The law assigns municipalities with a responsibility for a wide range of services. The following services started to be served solely by local administrations: infrastructure services, supply of drinking water, lighting of public spaces, solid waste management, maintenance of roads and cemeteries. Besides, urban local units became responsible for public transport, sewage systems and regional heating. Municipalities were also made responsible for kindergarten education, primary education, basic healthcare and basic social services for the elderly. Cities were assigned with additional responsibilities, such as secondary schools, basic hospitals, and specific nursing homes.²¹

Following this preparation phase, the liberalization process was extended and intensified. This phase started around the middle of the 1990s. In the public utility sector, it led to privatisation. In the area of electricity, after restructuring the industry and service delivery, relationships of ownership became different. It means that productivity, maintenance of the distribution network and service provision were divided. The Hungarian Electricity Board became a commercial company (MVM) but remained state-owned. Shares in the six regional electricity trade companies were sold to three big investors, the German companies RWE and E.on and the French company EDF. By law the state retained 25 % of shares plus one vote in gas distribution companies. The Budapest Gas Works, traditionally linked to the capital, remained partially owned by the Budapest city government after the transition.

By the middle of the 1990s, the transfer of state-owned core assets to local administrations was complete. This was followed by two parallel developments. A proportion of the transformed companies were privatised. There were at least three good reasons behind the decision to seek to privatise public companies. Firstly, privately owned companies seemed to be more efficient than public sector organisations. Secondly, a price competition arose due to the privatisation tender (which includes consumers' pricing formulae for a longer time period). Thirdly, private providers became operators of that services for which local

²¹ Fleischer, T. (1993, June). *Privatisation of the urban services in Hungary*. Paper presented at conference on 'La privatisation des service urbains en Europe', Observatoire du Changements Social en Europe Occidentale, Poitiers.

administrations were responsible. On the other hand, in the 1990s and 2000s large western European energy, water, and waste companies were ready to enter the newly open, regulated markets. In general, these companies acted in their own interests and ultimately their shareholders' interests. The whole EU pre-accession process very much supported this process.²²

The main focus of the Hungarian government from 2010 was to change the ownership structure. Developments in Hungary, which represent a rather extreme approach to addressing the challenges facing Europe, may illustrate the key challenges. The main characteristic of developments in the 2010s was the emergence of governmental opposition to privatisation. This is illustrated in Figure 4.1.²³

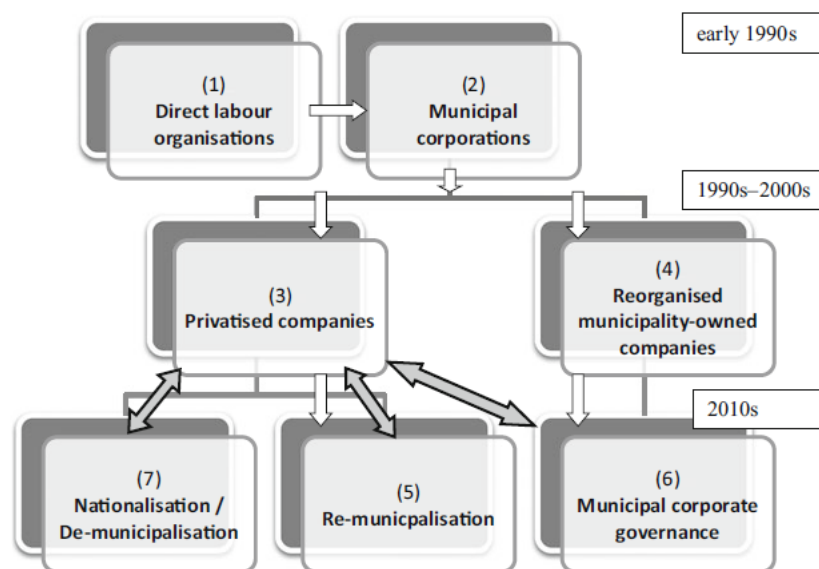


Figure 4.1.: Emerging of Opposition Against Privatisation by Hungarian Government

None of the laws on municipality explains how local administrations will hand over the responsibility for public services, while performing these services. Therefore, the provision of public services is under the responsibility of municipalities only.

According to legal regulations, local administrations may provide public services through their companies as well. As a result, extra-budgetary service units, including companies in which municipalities hold shares of more than 25% very important actors in the municipal economy. These extra-budgetary organizations are therefore municipal enterprises that perform public functions and operate according to the legislation prescribed for companies rather than the rules of budgetary management; they are also users of public funds. These companies provide

²² Hajnal, G. (2014, April). *Unorthodoxy at work: An assessment of Hungary's post- 2010 governance reforms* . Paper presented at IRSPM XVIII Annual Conference, Ottawa, Canada.

²³ Public And Social Services in Europe from Public and Municipal to Private Sector Provision Edited By Hellmut Wollmann, Ivan Kopic, Gérard Marcou

public services to the public and probably generate profit; they also undertake the management of the municipal assets provided to them.

As a result of this dual approach, there are operational risks for local administrations not only in the municipal system, but also for municipal companies.

In Hungary, the legal rules regarding the economic independence of local administrations are defined by the Fundamental Law as is the case for other independence elements of the local administrations' autonomy.

According to Article XIII (1) of the Fundamental Law, everyone shall have the right to property; however, the ownership of property shall entail social responsibility. In this context, according to Article 38 (1) of the Fundamental Law, the property of the Hungarian State and of municipal governments shall be considered national assets. Besides in Article I (4) of the Fundamental Law, it is explicitly stipulated that "Legal entities established on the basis of an act of Parliament shall also have these fundamental rights, and they shall also be bound by those obligations which, by their nature, are applicable not only to human beings".

In the light of the foregoing information, Article 38 (5) of the Fundamental Law regulates uniformly the ownership by the state and local administrations and principles regarding the governance in the scope of national property, highlighting specifically the economic enterprises owned by the state and local administrations. These enterprises conduct business prudently and independently under the requirements of legality, efficiency and effectiveness.²⁴

All these information reveal that there are two types of public companies: state-owned companies and companies that are wholly or partially owned by local administrations.

Therefore, local administrations may establish a company and acquire shares of an existing company. However, with the exceptions specified in the law, a local administration may be a founder or a member only in companies in which the local administration does not bear any responsibility for liabilities that do not fall in the scope of company assets.

Companies owned by local administrations play a significant role in the provision of public services and performance of duties of local administration. However, interruption of these services and financial impossibilities may endanger the liquidity of local administrations.

Therefore, local administrations may always maintain their financial capacities, cost-effective management and continuous protection of liquidity if they transfer their liabilities for the performance of public services to the companies they own.

²⁴ Emese Gasparics - Erika Horváth - Csaba Lentner: Economic management and coordination of the Hungarian local administration system. In: Csaba Lentner (ed.): Tax Finance and Public Finance Management - Public Finances and Public Finance II. NKE, Budapest, 2015, 613.

Today, municipal enterprises predominantly perform the following tasks: development and management of settlements, cemetery maintenance, housing management, central heating systems and water services and waste management.

According to Csaba Lentner²⁵, in Hungary, a total of 1,707 municipal enterprises were successful in 2016, including 998 small-sized enterprises, 589 medium-sized enterprises and 111 large scale enterprises. Furthermore, mentioned companies mainly operate in the transport sector (e.g., BKV, BKK Zrt.); in addition, there are also asset management companies in Budapest, Debrecen and Miskolc.

Examining the corporate forms of these companies, it can be said that local administrations mostly preferred limited liability companies (1592). Apart from these limited liability companies, there were also 111 joint stock companies, 3 limited companies and 1 association in Hungary in 2016.

According to István Szabó²⁶, participation of local administrations in the process of performance of institutional tasks take place in three models:

- *Operating model* is based on legal regulations. This model is mainly used for performing duties regarding the management of settlements.
- *Governance model* is characterized by the influence and regulation by means of ownership. This model primarily applies to duties regarding the management of municipal properties as well as to management of real estates and management and administration of assets.
- In the case of the *combined management model*, there is an asset management company instead of for-profit and not-for-profit companies. This model is also used in the largest cities and the capital of Hungary.

In Hungary, the Law on State Audit Office (“SAO”) that remained in force until 2011 allowed the control of state economic enterprises only, but not municipal enterprises. With an initiative of the SAO, the draft Law on Court of Accounts was changed by the Parliament and as a result, the SAO was conferred also the power to audit municipal enterprises as of 1 January 2011.²⁷

In accordance with Section 5 (4) (a), (b) of the Law, the SAO audits the management of assets within the state budget, management and activities for the protection and enrichment of

²⁵ Csaba Lentner: Municipal financial and property management. Dialóg Campus Publishing House, Budapest, 2019, 121–122.

²⁶ The role of municipally owned companies in the performance of tasks outside the public sector in municipalities of county towns. PhD evaluation. Széchenyi István University, Győr, 2012.

²⁷ László Domokos: Operational Risks and Growing Indebtedness in Hungarian Municipalities - Experiences of the Audit of the State Audit Office. Financial Review, 2012/2, 165–173, 169.

assets, the compliance with the rules regarding the transfer and enforcement of assets within the state budget and may audit the management of economic assets owned by the state or municipalities (partially owned).

The SAO started to audit municipal companies based on this power. The SAO primarily audited the Budapesti Közlekedési Zrt. (BKV) company. During the audit, it was revealed that companies did not renew their fixed assets and thus, accumulated implicit debts, which in turn caused them to face with the risk of hidden borrowing due to interruptions in public services.²⁸

Subsequent reports indicated that the indebtedness of municipal companies consistently increased between 2007 and 2010, and that, however, local administrations failed to pay enough attention to the increase of the debts of such companies and to presentation of the financial risks to town councils.²⁹

In 2019, the SAO evaluated the risks associated to the financial management of 322 municipalities. Conducted based on the data of the annual statements of local administrations for 2015-2016, the audit determined that in the case of municipalities concerned, the financial equilibrium and the preservation of the value of the state property were ensured, and the financial management was stable.³⁰

The report also stated that the number of majority-owned economic companies of city municipalities was 572 in 2014, 618 in 2015, and 618 in 2016. According to the study, 221 municipalities had such companies in 2016.

Apart from the abovementioned issues, the report stated that functioning and growth in the debt stock of majority-owned companies as well as the increase in the long-term shares/stocks constitute a source of risk for the management of city municipalities. It is seen that the companies made a loss in both 2015 and 2016 as their consolidated after-tax profit decreased from 3,775 million HUF in 2015 to 2,039 million HUF in 2016.³¹

In the case of loss-making management, the value of assets decreases, the risk of repaying liabilities increases, and consequently, sustainability-related problems arise. The long-lasting unprofitable management of companies explicitly endangers the performance of the municipal tasks they perform.

²⁸ Zoltán Zéman - Szilárd Hegedűs - Petronella Molnár: Examination of the creditworthiness of local administration enterprises using the credit scoring method. *Financial Review*, 2/28/2018, 182–200, 183.

²⁹ Zoltán Zéman - Szilárd Hegedűs - Petronella Molnár: Examination of the creditworthiness of local administration enterprises using the credit scoring method. *Financial Review*, 2/28/2018, 182–200, 183.

³⁰ Report No. 19017 of the State Audit Office - Audit of Local Administrations on the Basis of Financial Monitoring: Sustainability of Municipal Governance. 2019, 5 (hereinafter referred to as SAO Report No.19017)

³¹ Report No. 19017 of the State Audit Office - Audit of Local Administrations on the Basis of Financial Monitoring: Sustainability of Municipal Governance. 2019, 5 (hereinafter referred to as SAO Report No.19017)

The report also stated that the stock of debts of companies exceeded the operating income of local administrations in both years examined. This is a serious problem for local administrations as they were obliged to cease the activities of companies in the event of non-payment by these companies, which brings with it financial and consolidation risks. This adjustment obligation poses a risk for local administrations as the liabilities of companies are greater than the annual operating income of local administrations.³²

It is understood based on the foregoing information that municipalities did not pay sufficient attention to prevent the indebtedness of their own subsidiaries. It is a problem that the joint presentation of the real financial risks of the municipality and companies was often neglected; the representative body could therefore not get a real picture of the financial situation, as a result of which it could not make an appropriate decision on the financing and operation of the company.

It can be said that debt-related risks of companies that are wholly or partially owned by municipalities has increased significantly in the recent period due to the dynamic and continuous growth of their loan portfolios since 2006.

Based on all of this, the question to be answered is what companies may do, what they should do, whether local administrations should take action in this regard, or what the Government can do to avoid another financial collapse.

The large cities are still in a more favourable position, as they have two options. On one hand, they may establish a separate company for each task, and such companies may continue their activities so that management of small-scaled companies can be more transparent and controllable. On the other hand, unlike the above, they can merge their former municipal companies into a holding company, as a result of which they can gain financial, organizational and management benefits.³³

The best example for the latter was the establishment of the asset management holding by Debrecen County Municipality (Debreceni Vagyonkezelő Zrt.), which became a unique enterprise in the municipal sector in Hungary in terms of its size and nature. The company was registered with a capital of 20 million HUF based on the ruling of 3 May 2000 of the Court of Registration.

Establishment of a holding company provide benefits, among others, in the following specific issues:

³² Report No. 19017 of the State Audit Office - Audit of Local Administrations on the Basis of Financial Monitoring: Sustainability of Municipal Governance. 2019, 5 (hereinafter referred to as SAO Report No.19017)

³³ THE RISK OF INDEBTEDNESS OF LOCAL GOVERNMENT-OWNED COMPANIES IN HUNGARY 2019-10-03 XXI. volume, 3rd issue Author (s): Dr. Zoltán Gyirán PhD

- In a holding company, funds of the shareholder group are managed uniformly, and liquidity management enables the group's funds to be optimized while ensuring short- and long-term liquidity.
- Besides, the establishment of a holding company enables companies that have free funds to provide loans to other companies in the group provided that such loans have favourable terms for both parties. The functioning of such an internal loan market will ensure more savings because companies would have to take more expensive loans if a company in the group does not have free funds.
- The establishment of a holding company also makes it possible to aggregate the financial-accounting systems and planning and reporting processes within the group of companies. Thanks to the common rules and modern information systems, companies become more transparent, while their performance can be better evaluated and compared and become more accountable.
- Furthermore, managers of the companies in the group bear responsibility mainly for professional issues, and better functioning of the planning and reporting system makes it possible to expand duties of financial managers.
- Finally, there may be great savings from fixing the number of personnel in the boards of directors and supervisory boards of the member companies.

4.1.2.3. Initiatives for Creating Transparent Municipal Enterprises

The aim of this research initiative was to map and disseminate best practices in public disclosure and business integrity solutions among municipal enterprises in Hungary. The project defined municipal enterprises as companies operating under 100% municipality ownership, exercised by one municipality or a group of municipalities.³⁴

In Hungary, the legal framework with regard to access to public sector information at the disposal of municipal enterprises and to their public disclosure obligations is stipulated by several regulations. The Freedom of Information Act (Act CXII of 2011 on Informational Self-determination and Freedom of Information, hereinafter referred to as FOI Act) defines the set of public interest information and data and sets the general rules for disclosing and accessing public sector information in general.

Another specific act (Act CXXII of 2009 on the Economical Operation of Public Business Organisations) regulates the disclosure of the salaries of the municipal enterprises' management and that of the members of the supervisory boards of municipal enterprises. The Public Procurement Act (especially, Article 31 of Act CVIII of 2011 on Public Procurement) sets the statutory base for disclosure obligations on public procurement procedures and data

³⁴ http://www.budapestinstitute.eu/BI_HU_case_study_EN_2016_publ_final.pdf

in the public sector. In the case of enterprises owned by the City of Budapest, an additional local regulation (134/2015 (I.28.) Resolution of the City Council) is in effect since March 2015, requiring a pro-active disclosure of information concerning the sale of real estate owned by municipal enterprises in Budapest.

*4.1.2.4. SUMMARY OF FINDINGS & RECOMMENDATIONS FROM THE TRANSPARENCY RESEARCH*³⁵

Disbursement of public money in a transparent manner is essential for economic growth. International research studies reveal that transparent and accountable public administration increases efficiency and therefore increases the profitability of companies owned by the central government and municipalities. Municipal enterprises have a vital role in local public financing, and operating these enterprises in a transparent and accountable manner can ensure higher quality services and more efficient use of public resources at the local level.

As a result, transparency and public disclosure activities are necessary for public enterprises, including municipal enterprises, to become more accountable and perform more efficiently. Legal requirements for sharing company information and data with the public are the first step to enhance accountability. However, in most cases, effective monitoring and implementation activities carried out by owners of public companies and/or larger mass of people must be included in the process apart from regulatory obligations. In general, national regulations put forth explicit obligations for public authorities and public companies, including municipal enterprises to disclose information. However, compliance with these rules remain limited due to the lack of regular monitoring or effective implementation.

Transparency International conducted an analysis, through which the public disclosure policies of a sample group consisting of municipal enterprises from Visegrad countries were examined with an aim to bring a new perspective to this area. In this context, 36 companies were checked that represent EU regions with different levels of economic development from the Visegrad region (Hungary, Poland, Czech Republic and Slovakia "V4"). The public disclosure practices of these local companies were mapped and analysed based on the data included in their websites and the interviews with the representatives from companies. The study conducted shed light on the driving forces and obstacles to ensure greater transparency and integrity at the local level. The results of the V4 transparency ranking show that there are major differences among the public disclosure practices of the enterprises in the sample group and that there are substantial needs for further peer learning and exchange of best practices.

With regard to public transparency and public disclosure, the best performing municipal enterprise in Hungary is the Budapest Waste Management Company, FKF Nonprofit Zrt. In the

³⁵ http://www.budapestinstitute.eu/V4_MOE_summary_2017_final.pdf

cross-regional comparison its transparency score of 59.00% ranks the company as the second best among the 36 V4 municipal enterprises.

Based on the V4 transparency indicators, the company's performance varies significantly across the selected criteria. While they comply almost completely with the statutory disclosure obligations in effect in the Hungarian legislation (ownership structure, external revenue, public procurement, pay offs to the CEOs, managers and members of the Supervisory Board), the company website completely lacks information on performance criteria, HR selection procedures, and business integrity approach and solutions in use within the firm.

Based on the content analysis of the website and on interviews conducted with company representatives, while the current company management (especially the CEO) acknowledges the strategic importance of public transparency and integrity issues, their main attention is on being in compliance with the necessary disclosure provisions stipulated by the national and local regulations rather than sharing insights on the company's strategic goals, values and actions with the broader public in a pro-active and user-friendly way.

Their commitment though does not go beyond the necessary obligations and lack more pro-active measures. They also lack communication on interesting and more progressive internal company initiatives that might be inspiring for other municipal enterprises. Despite of the CEO's commitment to public transparency and accountability and some good practices (identified mainly in the area of public procurement, EU grants, and donations/sponsorships) the company faced considerable challenges:

“Moderate control and support by the public owner: primarily regulation-based control with no specific body or unit at the municipality level to monitor and enforce more pro-active disclosure and promote business integrity approaches among the municipal enterprises in Budapest. The commitment to transparency and accountability issues at the municipality level is usually politically driven. In other words, this situation changes quickly with entry of new political actors and it depends clearly upon their priorities. Usually there was more explicit attention to these issues in election years - as was the case in 2014 in Budapest, when new rules on disclosing information in selling real estate under ownership of the municipality and municipal enterprises in Budapest were put into effect and when there was an initiative to subcontract an independent legal firm for consultancy services on integrity issues available for municipal enterprises in Budapest. Notably, this later initiative subsequently faded away due to “change in the management of the asset management holding company” (the company exercising the ownership rights).”

Lack of an explicit strategic approach at the company level: while the Chief Executive Officer of the FKF Nonprofit Zrt. was aware of the importance and potential benefits of public transparency and business integrity, these issues were not part of their business strategy, at least not explicitly. Internally, some pro-active albeit rather

informal initiatives have been launched, but there was no external communication on these actions and objectives towards clients, business partners, and citizens in general.”

Dominantly reactive company-level approach, lack of any pro-active disclosure practices: usually no denial of public request information – except requests related to personal information violating privacy rules, but very slow progress in introducing more advanced business solutions – for example, awareness raising within the company via integrity/transparency trainings or other HR development initiative in business integrity issues, lack of more advanced integrity-based tools (such as ethical hotline, fraud risk management, etc.).”

Owner-specific recommendations (Municipality of Budapest, BVH Holding Zrt.):

- Development of online public databases, searchability functions in those databases (EU grants and assistance, public procurements, public asset management)
- More pro-active support for municipal enterprises to install integrity tools: consultancy on ethical issues, ethical hotline provided by an independent NGO and/or legal firm
- Design of positive (financial) incentives for more pro-active disclosure: regular publication of transparency rankings, integrating assessment of business transparency and integrity into the premium payments
- Involve civil society organisations and business organisations in monitoring and enforcing compliance and pro-active disclosure rules.

Company-specific recommendations that are potentially relevant for other municipal enterprises as well:

- Publish information on public request procedures, also including the name of the unit and staff member in charge
- Make it explicit in cases when no relevant company information or data is available in regards specific disclosure obligations (e.g., amount of EU co-financed supports/assistance for the period 2014-2016)
- Use hyperlinks to public online databases when relevant and it is complementary to discretionary disclosure (e.g., EU co-financed development projects, EU public procurements)
- Share information on the timing, objectives and summarise the results/main conclusions of public audits in a pro-active way
- Inform the public about the company’s strategic plans, performance criteria – covering at least the main business areas and objectives (e.g., publication of company information

note with performance indicators in plain language) and also communicate more explicitly on the company's commitment to integrity and anti-corruption issues

- Publish information on the professional track record of the executive management (CVs or golden paragraphs, at least) - Publish information on HR selection and promotion criteria and share also insights on the company's diversity policy to the public
- In general, inform the public on the company's commitment to transparency and business integrity, about the related initiatives, internal actions (e.g., publication of the Code of Ethics, summary of the operation of the Ethical Board, any further actions on fraud risk management and internal anti-corruption measures)
- Develop an English version of the company website while reshaping the website as planned in 2017

In practice, it is very common that as the owner of a municipal enterprise, the municipality itself is insufficiently informed about management of the company. Being informed is, however, the starting point of any efficient oversight and control. According to OECD recommendations the directing bodies of MOE should make both regular and incidental reports on municipal enterprises conduct for the owner. In respect to specifics of a municipal enterprise, its articles of incorporation should also give more power to supervisory board as well as general meeting represented by the municipal council.

The cornerstone of any good management is qualified composition of company's bodies. Especially, the board of directors should consist of experts and professionals. The municipality should clearly state personal requirements for future members in advance. Also, it should lay out nomination procedure rules based on which possible candidates would be chosen in several selection rounds. Furthermore, it is also agreeable to state maximum remuneration of municipal enterprises' functionaries as well as regulate their concurrence of functions. These provisions could prevent cronyism – a situation when a person holds office in multiple municipal enterprises and there is reasonable doubt about his capability to perform his duties with due diligence.

Municipal enterprise should have its own anti-corruption policy covering areas of legality, conflict of interests, bribery, grants and sponsorships and other issues (contracts disclosure, prohibition of entering into unconscionable contracts). Inspiration can be taken from statutory protection of whistle-blowers in Slovakia. Employers with at least 50 employees are required to create an internal system for handling employee reports of anti-social activities. Where the employees report anti-social activities under an internal reporting system, any legal acts against them by the employer may be suspended by the Labour Inspectorate if there are relevant reasons to believe that the legal acts related to the employee's motion.

MOE should possess an ownership strategy defining the company’s projected economical and performance goals. Municipal enterprise should also have internal and external audits performed regularly.

In regard to disposition of public property, municipal enterprises should be under scrutiny of non-governmental organisations, investigative journalists and the public. It is important that the municipal enterprise will disclose as much information as possible regarding the subject of its business, public procurement, selection procedures for vacancies, offers for sale or rent of its property, etc. on its official websites. An inspiration can be taken from Hungarian legislature that clearly specifies the company information and data obligatory to public disclosure in form of so-called General Disclosure List. This is practically a useful checklist that helps the municipal enterprise managements in shaping their disclosure practices. Also, Czech Act No. 340/2015 Coll., on the Register of Public Contract in force since 1.7.2016 is a way forward in raising municipal enterprise’s transparency. To conclude with all V4 countries in case of their respective legislating procedure could appropriately reflect the specifics of municipal enterprises in a new legislation.

4.1.3. ITALY

4.1.3.1. Overview of Municipal Companies in Italy

Table 4.3.: General Information on Municipal Companies in Italy

Milestones	The first enterprises within local administrations were established between 1905 and 1910 and transformed to companies from the 1990s.
Basic Trends	The number of local public companies has increased as a result of the reorganization of local public services in accordance with Article 35 of the Law of 2002 and transformation of <i>aziende speciali</i> structures to local public companies.
Area of Activity	Regions: economic development, planning, public equipment, public transport Cities: commercial activities, tourism Municipalities: energy, water, waste, pharmacies, cemeteries
Main Legislation	Article 35 of the Financial Law No. 448/2001 of 2002 regarding the Provision of Local Public Services; Article 14 of the Companies Law No. 326/2003 regarding the Management of the Provision of Local Public Services and Administrative Jurisdiction (this article does not apply for the gas and electricity sectors)

	regulated by Article 4 co. 234 of the Financial Law No. 350/2003 of 2004).
Legal Forms	Legal forms: - limited companies (società per azioni – SpA) - limited liability companies (società a responsabilità limitata – Srl) - internal organization: board of directors
Tender	Network: If the local public company has a network or the local public company wholly owned by local administrations, the management is directly assigned to the local public company without making any tender. Service: The management is directly assigned to the local public company without making any tender.
Boundaries	Water and waste sectors: A.T.O. (ambito territoriale ottimale) Other sectors: there is no certain regional boundary. All local public companies (both Italian and foreign) that directly take over a portion of the local public services cannot compete outside their region.
Tariffs	Electricity and gas: national electricity and gas regulatory authority (at the local level) Transport: public authorities (local administrations) Water and waste: Supplied by local public companies under the criteria set out by the central government.
Financial Support to Local Administrations	Grants (service contract compensation) Loan guarantees
Public Control	Activities of local public companies are controlled by a temporary regulatory authority regarding local public services. Today, regulatory authorities prevail for the gas and electricity sectors only (the same for both sectors).
Representative Bodies	Italian National Confederation of Services Confservizi (Confederazione nazionale dei servizi)

4.1.3.2. Legislative History

Italy is a unitary state composed of municipalities (comuni), cities (province), regions (region). Municipal councils (consiglio comunale) are directly elected for a five-year period. The municipal council is the main legislative and decision-making body of the municipality. The council votes particularly the municipal budget.

The municipal executive board (giunta comunale) is the executive authority of the municipality. This board implements the resolutions taken by the municipal council and its members and assessors (assessori) are assigned by the mayor.

Italy has a three-tier Sub-National Governance System composed of regions, cities and municipalities. Italy is referred to as “regionalised country”, particularly since the constitutional reform in 2001 and enactment of the fiscal federalism law of 2009 both of which granted greater autonomy to the regions.

In Italy, the corporatization of public institutions, i.e., establishment of institutionally and financially independent companies to carry out activities in the public interest, has been a prominent phenomenon since the early 1990s, particularly at the local level and in the field of public services. Under a highly fragmented and slightly contradictory legal structure, the number of municipal companies in Italy has exceeded 5,000 recently ³⁶ and today, these companies represent a complex structure composed of several governance models. In fact, there are many discrepancies considering the two fundamental conceptual dimensions that define the ownership structure and operating principle/logic that determine the degree of privatisation, i.e., the mode of service delivery while on the other hand the number of private law firms, wholly or partly owned by Italian municipalities, has increased dramatically over the last two decades.

In Italy, the rules regulating the creation of mixed enterprises companies (public-private companies) for the provision of local public services have been subjected to a rather complex evolution over time. Even if the management of local public services through joint stock companies had already been introduced in the Consolidated local finance act of 1934, the first piece of legislation which adopted a set of rules governing in an organic way the use of joint-stock companies and especially mixed enterprises is the Law No. 142 of 8 June 1990 “Regulation of the local administrations”.

References are in Articles 22 (local public services) and 23 (special undertakings and institutions). In particular, Article 22 stated that ‘Municipalities and Provinces may use the following forms for local public services:³⁷

³⁶ Corte dei Conti 2018

³⁷ The Provision Of Local Public Services Through Mixed Enterprises: The Italian Case G. Bognetti And L. Robotti Annals Of Public And Cooperative Economics 78:3 2007 Pp. 415–437

- public management, where, owing to the small size or the characteristics of the service, it is not expedient to create an institution or an undertaking;
- concessions to third parties, where there are technical, economic or social reasons;
- special undertakings, inter alia, for the management of multi-services of economic and commercial interest;
- institutions, for the provision of social services not having any commercial interest;
- joint stocks mixed enterprises with a public majority, where participation by other public or private persons appears useful owing to the nature of the service to be provided.

The Law No 142 did not therefore allow, in the case of local public services, joint stock companies with private majority, but only mixed enterprises with public majority. This possibility was introduced two years later by Article 12 of Law No. 498 of 23 December 1992, which established that local bodies may *'for the provision of public services ...create ad hoc joint stock companies ...without the restriction of public majority'*.

With the Consolidated Act on Local Administrations (Legislative Decree No.267 of 18 August 2000) the two laws were repealed. The Consolidated Act contained, in Articles 112–116 of Title V 'Services and local public interventions', the rules which replaced and innovated what had been provided under the previous laws and by other pieces of legislation approved in the 1990s. The relevant articles are 113, 115 and 116.

Accordingly, when the public body holds a minority of the shares, the private shareholder must be selected through a public tender procedure, and the deed of incorporation must include the obligation on the part of the public body to appoint one or more directors and the auditors.

The two forms of participation of public authorities in joint-stock companies (majority and minority) are not necessarily alternative. This is because, the setting up of a joint stock company with the public holding a majority of the shares does not prevent the subsequent change to a company with a majority private holding. The transfer of control can in fact be achieved through the general procedures provided under the Law 474/94 which, even if referred particularly to the disposals of State participations, are in principle applicable to local bodies and allow effective forms of control to protect the public interest.³⁸

These rules ensured a considerable acceleration in the transformation process of local public enterprises into corporate forms. Most of the new companies utilized the facilitating

³⁸ The Provision Of Local Public Services Through Mixed Enterprises: The Italian Case G. Bognetti And L. Robotti Annals Of Public And Cooperative Economics 78:3 2007 Pp. 415–437

procedures provided under the Bassanini Law. At that time, three quarters of them were still entirely owned by municipalities. Only in very few cases was the private participation a majority one.

After a decade of enthusiasm, the intentions of earlier reformers were frustrated by a variety of factors: firstly, municipal resistance and the lack of credible market players; secondly, the lack of a stable legislative framework and the frequent recourse to court litigation at all levels; and finally, hesitation and lack of commitment at national government level from the weak centre-left governing coalition (2006–8) and political resistance from the parties to the centre-right coalitions (2001–6, 2008–11), particularly the Northern League, Silvio Berlusconi's main partner, resulted in the obstruction of liberalisation in favour of distribution policies, protectionism and the safe-guarding of pre-existing local interests.

As a result, the decade was dominated by the negotiation of conditions for in-house service provision; by the imposition of compulsory competitive tendering often proposed as a panacea but always weakened by loopholes and exceptions; and by lack of monitoring, evaluation, user protection and systematic, stable and general legislation on tendering and concessions. (Lippi et al. 2008).³⁹

In 2011, high turnout and a large majority in a referendum forced the repeal of a 2009 Act which had imposed compulsory competitive tendering. Successive governments sought to circumvent this provision, but were stopped by rulings of the Constitutional Court which stated that compulsory competitive tendering could not be reinstated after the referendum. This forced government to limit its intervention to incentives for liberalisation. The referendum also led to the abolition of the system of fixed profit for investors in water concessions, making the sector less appealing to private investors. Today, municipal companies are described in the media as a costly, inefficient, and mostly corrupt 'jungle' and both the present government and the (recently dismissed) spending-review commissioner Carlo Cottarelli, have deemed a substantial reduction in their number essential.⁴⁰

Ultimately, a new legislative decree (DECRETO LEGISLATIVO No.175 of 19 August 2016) was issued in 2016 to address municipal enterprises and shareholders comprehensively.

In such an environment with continuous reforms, private investors showed only limited interest in the Italian public services as explained in the following sections. Multinational companies, particularly those operating in the water sector, acquired shares of water companies; however, almost uniformly, they established partnerships with Italian companies,

³⁹ I. Kopic, G. Marcou & H. Wollmann (Eds.), *Public and social services in Europe. From public and municipal to private sector provision* (pp. 135–149). Basingstoke: Palgrave Macmillan.

⁴⁰ IPE magazine July/August 2021

including mostly public companies that are familiar with and can better respond to political and legal disturbances.⁴¹

The operating forms which can be utilized by local administrations to provide local public services of economic interest, the local public transport service, the distribution of electricity and natural gas are regulated as follows⁴²:

- The local administrations may set up an entirely publicly owned joint-stock company to which the ownership of the assets may be conveyed. This company cannot be sold, but can be liquidated.
- The separate operation of networks and plants may be awarded directly to an entirely publicly owned joint-stock company under the in-house providing rules.
- The separate operation of the service of economic interest (the awarding of the service) may be awarded directly to an entirely public capital company with the in-house providing rules.
- The operation of plants or services of economic interest can be awarded, through a public tender procedure, to enterprises organized in form of joint-stock companies. Such companies may be mixed-capital companies or companies which are entirely publicly owned. The companies in question which operate the networks may also carry out the connected works directly.
- The operation of local public transport services and the operation of natural gas distribution must be awarded through public tender procedures. The existing operations for the distribution of electricity are kept in force until 2030.
- Instead of awarding the provision of services of economic interest to joint-stock companies identified through the carrying out of public tenders, the local administration may award the service to mixed-capital companies in which the private component has been selected through public tender procedures. If the mixed company has also been directly awarded the operation of the networks, it may carry out the connected works directly.
- The participation of the local administration in joint-stock companies providing services may be transferred through a public tender procedure.
- The local administrations may transform their special undertakings into joint-stock companies through the simplified procedures of Article 115 of the Consolidated Act,

⁴¹ I. Kopic, G. Marcou & H. Wollmann (Eds.), *Public and social services in Europe. From public and municipal to private sector provision* (pp. 135–149). Basingstoke: Palgrave Macmillan.

⁴² The Provision Of Local Public Services Through Mixed Enterprises: The Italian Case G. Bognetti And L. Robotti *Annals Of Public And Cooperative Economics* 78:3 2007 Pp. 415–437

with the proviso of selling to other public or private shareholders part or the entire capital within two years of the transformation.

- The local administrations may set up joint-stock companies, without the restriction of a public majority holding, for the realization of works required for the good performance of the public services, as well as for the construction of infrastructures and for other public interest works. The selection of the private partner must be carried out through public tender procedures.

4.1.3.4. Number and Volume of Municipal Enterprises

In Italy, the number of organizations in which the public sector directly participated was 6,310, 4,253 of which belong to at least one regional or local public administration or otherwise, to groups managed by local administrations (local subsidiaries).⁴³

These companies employ 276,366 people that correspond to 32.6% of the total reference. Both the number of companies and employees decreased by 7.5% and 30.3%, respectively, as compared to the previous year. The decrease in the number of companies was mostly seen in the following sectors: mining (-40%), construction (-14.3%) and accommodation and food services (-13%). Affected from the significant decrease (-89.6%) in the number of employees, economic activities of the sector include financial and insurance activities due to disposal by local administrations the minimum shares they held in banks.

Despite a decrease of 5.6%, the professional, scientific and technical activities sector is the leading sector in terms of the number of local subsidiaries (12,197 employees in 652 companies). This was followed by water supply, sewerage (with 79,029 employees in 612 companies), waste treatment and recovery and Transport and Storage (with 90,336 employees in 456 companies).

The number of active companies owned by at least one regional or local public administration is mostly constant. The value-added per employee of public enterprises increased by 3.7% in 2017, reaching €100,706, whereas it is €48,020 for overall companies in the sector and services.

In Italy, municipal enterprises carry out a wide variety of services. It is the third largest sector in the EU in terms of the number of sectors in which region and city administrations control at least one company along with those controlled by the central government (Figure 4.2).⁴⁴

⁴³ Le Partecipate Pubbliche In Italia | Anno 2017 / www.istat.it

⁴⁴ Vassilis Karantounias, Dino Pinelli Local State-Owned Enterprises in Italy: Inefficiencies and Ways Forward ECONOMIC BRIEF 010 | APRIL 2016 European Commission

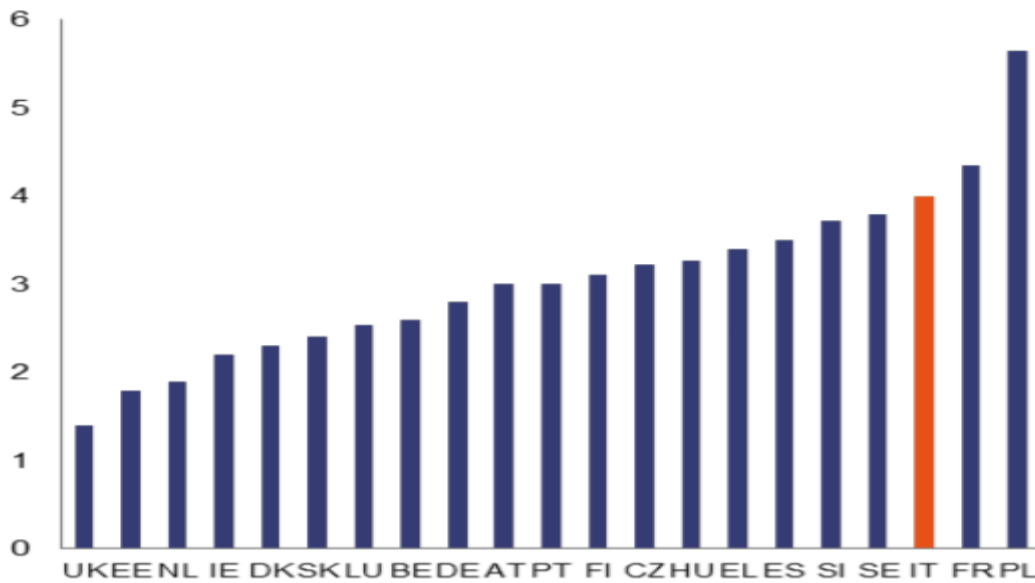


Figure 4.2.: Activities Undertaken by MLEs in Italy Compared to Other EU States

Municipal companies have proliferated during the last two to three decades. This is mainly because the public sector has been making extensive use of the private law corporate structures in order to perform certain missions of its own, seeking for flexibility outside the bureaucratic structures and the related constraints on the use of public money (e.g. public procurement, recruiting, budget constraints), which were becoming more stringent in that period. Thus, a plethora of publicly- and semi-publicly-owned undertakings have emerged, particularly at the regional and municipal level, active in several areas: accomplishment of tasks of public interest, management of state assets, provision of local public services or provision of services on the open market like the standard private players.⁴⁵

The number and percentages of municipal enterprises and their employees by sector in 2017 are presented in the table below.⁴⁶

Table 4.4.: Number and Percentage of MLEs and their Employees in Italy in 2017

Sector	Companies		Employees	
	Company	%	People	%
B - Mining activity	3	0.1	59	0.0

⁴⁵ Vassilis Karantounias, Dino Pinelli Local State-Owned Enterprises in Italy: Inefficiencies and Ways Forward ECONOMIC BRIEF 010 | APRIL 2016 European Commission

⁴⁶ Prospetto 9 - Imprese partecipate da almeno un'amministrazione pubblica locale e addetti per sezioni di attività economica - Anno 2017

C- Manufacturing activities	96	2.3	2,228	0.8
D - Supply of electricity, gas, steam and air conditioning	424	10.0	14,134	5.1
E - Water supply; sewerage, waste treatment and recovery activities	612	14.4	79,029	28.6
F - Construction	132	3.1	2,564	0.9
G - Wholesale and retail trade, repair of vehicles and motorcycles	377	8.9	9,814	3.6
H - Transport and storage	456	10.7	90,336	32.7
I - Accommodation and food & beverage services	67	1.6	2,470	0.9
J - Information and communication services	139	3.3	5,403	2.0
K - Finance and insurance activities	118	2.8	12,573	4.5
L - Real Estate activities	207	4.9	1,496	0.5
M - Professional, scientific and technical activities	652	15.3	12,197	4.4
N - Administrative and support service activities	446	10.5	18,836	6.8
P - Education	121	2.8	2,457	0.9
S - Healthcare and social welfare	109	2.6	13,569	4.9
TOTAL	4,253	100.0	276,366	100.0

Overall, net of financial and insurance activities, publicly controlled companies generate over 58 billion in added value (7.5% of that produced by industrial and service companies).

The most important sectors confirm the supply of electricity, gas, steam and air conditioning, which achieves 65.3% of the added value of the entire reference sector (62.1% in 2016) and the supply of water; sewer networks, waste treatment and recovery activities, with 62.1% of

the added value of the entire reference sector (63.3% in 2016). For 2017, the Mining sector has grown with an added value of 71.7% against 60.1% in 2016.⁴⁷

The cost of labour of publicly controlled companies represents 8.4% of the cost of labour of the joint-stock companies as a whole, with an average value per employee of €51,951.⁴⁸

According to the Consumer Markets Scoreboard, satisfaction of Italian customers regarding the services provided is lower compared to customers in other countries. The main reason of this difference is very low level satisfaction regarding the services provided mostly by municipal companies (e.g., postal services, gas, electricity, water; tramway, local bus, metro and train services).⁴⁹

Regardless of the perceived poor quality of services, several indicators point out that, since late 1990s, prices of services generally provided by municipal enterprises, particularly for waste, water and railway transport, have increased faster in Italy than in France, Germany and the Euro area as a whole.

Furthermore, the prices regulated at the local level (another proxy of the prices of local SOEs) have increased faster than the general price index in the country. In particular, between 1999 and 2015, the price index of services regulated at the local level has increased by nearly 73% while the overall price index has increased by about 36%. Even in the period from the beginning of the crisis to 2015, the price index of services locally regulated soared by more than 32% more than doubling the increase in the overall price index (almost 14%).⁵⁰

With its 2018 report on the “Local Administration-Owned Enterprises”, the Autonomy Section of the Court of Accounts maintained its commitment for monitoring of shares in public companies reformed with the Legislative Decree No. 175/2016. The report examines the management results of subsidiaries regarding accounting transactions (revenues and expenses) in local administrations to reveal the profitability of public companies and overall reflections on regional financing.

Prevalence of direct assignments is approved: Despite the very strict prerequisites for deviance from the principles of competition, among 15,139 credit lines, there were only 828 tenders in which third parties are participated and a total of 146 bilateral agreements signed

⁴⁷ Prospetto 9 - Imprese partecipate da almeno un'amministrazione pubblica locale e addetti per sezioni di attività economica - Anno 2017

⁴⁸ Prospetto 9 - Imprese partecipate da almeno un'amministrazione pubblica locale e addetti per sezioni di attività economica - Anno 2017

⁴⁹ https://ec.europa.eu/info/sites/default/files/eujus15a-1816_i02__the_consumer_markets_scoreboard_2018_-_accessibility_final.pdf

⁵⁰ Vassilis Karantounias, Dino Pinelli Local State-Owned Enterprises in Italy: Inefficiencies and Ways Forward ECONOMIC BRIEF 010 | APRIL 2016 European Commission

with mixed companies. The survey conducted compares the results of public enterprises (1,917) and overall enterprises examined (5,776).

It seems that at the aggregate level, organizations are mostly profitable and that however, operating losses, particularly those of wholly public-owned structures, are substantially higher in some regions. Financial management clearly demonstrates that all enterprises examined have debts more than their receivables. Overall debt amounts to 104.41 billion EUR, approximately a third of which can essentially be attributed to fully owned holdings.

The frequency of service contracts and of other payment types in the formation of turnover invigorates the effect of outsourcing on the balance sheets of shareholding enterprises, which indicates the possibility of high commitment rates in wholly owned subsidiaries (75.36%, but it is seen that the commitment incidence reduces to 39.81% in all enterprises examined). Regarding the value of production, extremely high costs and value added tax should be considered. The reason of negative results during the year may seem physiological (which leads to compensation of loss or recapitalization). However, it is difficult to understand whether this results from the profit-related balance sheets. The results of extraordinary audits conducted in accordance with Article 24 of the Legislative Decree No. 175/2016 and detailed by separate firms revealed that 37.5% of payments made by owner organizations should be intervened in terms of rationalization.

Furthermore there are numerous duplicated activities carried out by many companies in the same region, particularly for the provision of IT supply and services (Molise), public transport (Sicilia), airport services (Sicilia), financial activities and services (Sicilia). In fact, there are companies that have the same legal and accounting regime, that continue to carry out secondary activities aimed at the main purpose without performing the activities for which they were established, thus cause doubling of the cost of administrative devices and that are currently tended towards downscaling (Aosta Valley).

As for the liquidation procedures of investee organizations, a gradual improvement in their development and definition must be recognized, although, as also reported in the previous reports, implementation difficulties remain, especially with regard to minority shareholdings.

There are some specific issues, including: the economic conditions of the investee companies being not realistic all the time; inadequacy of rationalization plans; inertia regarding the disposal of investee entities (there is a significant loss regardless of employees or activities carried out similar to that of other enterprises or companies located in the same region); and the lack of motivation and benefit with regard to financial aid interventions hindered by the implementation of emergency liquidation procedures; (this indicates the case of an enterprise that has set aside a budget to cover a significant operational deficit of the investee company and soon begins a disposal procedure). At this point, it is clearly observed that if the subsidiaries are in an irrecoverable situation and the necessary procedures and advantages

are not clear, the logic of “recovering at all costs” should be removed from the regulatory and judicial framework.

In many cases, it was noted that entities holding small-scale shares often have difficulties in jointly exercising the guidance and control powers of the public shareholder and in disposing of the shares, usually as a result of not ensuring sufficient attractiveness for those operating business activities in the sector. Finally, it was revealed that the attempts to reducing the costs of the investee companies were insufficient; This was mostly interpreted as companies only tighten their expenses rather than an inevitably downsizing when get negative economic results.

Analysis of economic results and financial management of investee companies is the first step towards an overall assessment for the suitability of shareholder organizations in terms of outsourcing services and, in general, possessing equity investments. The Legislative Decree No. 175/2016 affirms the measures aimed at encouraging shareholder institutions to be more accountable. Such measures should be particularly taken into consideration if, in the event of recurrent losses in subsidiaries, there is a need to allocate resources from certain funds, or reduce the wages of executives, or to rationalize the company that has negative financial results in four of the last five years.

The linkage between the operating results of entities and the liabilities of owner institutions is considered within the general prohibition of loss reduction, unless it is in the framework of a recovery plan that is suitable to guarantee the future balance of the subsidiaries account.

Results of a more detailed analysis shows that the effect of personnel cost on the production cost is higher in wholly publicly owned companies (28.51%), whereas the general average is as low as (20.20%).

These results are of greater importance in Sicilia and Calabria, where the average rate of personnel cost to production cost of wholly publicly owned holdings is above 50%.

This might indicate that policies aimed at limiting the labour costs of and restriction on employment in wholly publicly owned companies are not effective enough, particularly for the mentioned services. In fact, in public services for the general economic interest, as the labour cost is a productive factor that can affect the performance of other factors, its determinative weight within the overall cost of production is associated with high levels of production value.

A focus was dedicated to loss-making organizations in the last five years and, in particular, to the 375 enterprises that recorded losses for at least four out of the five years in the time interval examined (identified among the 2,502 OO.PP. of which the statutory financial statements are available for each year in the period between 2012 and 2016).

The analysis shows that more than 42% of loss-making organizations are wholly publicly owned, while mixed companies the majority of shares of which are owned by the public

constitute a category within which losses are widespread, with a tendency to improve results, over the five-year period. With regard to the 375 loss-making organizations in at least 4 out of the 5 fiscal years of the entire five-year period, it is seen that less than a fifth of the negative operating results are attributable to those wholly owned by the public, while the greatest losses are attributable to mixed companies.

In conclusion, although being characterized by illegitimate practices (e.g. joint stock company solely owned by municipalities as, multiple levels of indirect ownership, practices for various policies other than public services), corporatization in Italy can be described as a common phenomenon in the country. This reveals that municipalities are highly interested in private law companies despite it has a meaning different than the interpretation of new public administration that has stricter rules. Evidence shows that companies are considered as versatile instruments to find new ways for policy making and to protect local policies against environmental challenges.

In this regard, corporatization has gone far beyond its own basic concept that is defined as business-oriented management strategies. It became a flexible way for achieving various objectives, including political representation. The diversity of structures and strategies used by public stakeholders caused us to analyse how they, e.g., mayors, consider all these attractive companies as potential representative areas (not necessarily directly related to policies of the respective company) to which they can “invite” private law companies because of their policy-making resources: money, expertise, networking, party membership.

In this case, boards of directors of companies may become an additional political field for coalitions - that is suitable for negotiations without drawing attention. This factual reality allows private sector stakeholders to be represented in a political arena beyond the democratic procedures and with a very low cost in terms of the amount to be invested. Beyond management instruments: municipal enterprises as opportunities for political ‘reinvention’ in Italy.

Furthermore, municipal companies (and their shareholders’ assemblies) may also be conceptualised as strategically built local “arenas” of representation, where local elites can be recruited or find new career opportunities, new coalitions can be arranged, and decisions can be made in an attractive and unobtrusive place far from the traditional mechanisms of democratic control. This holds true for both fully publicly owned and mixed public-private companies, where the interests of local administrators and private shareholders can be adjusted in a “governance fashion”, contributing to strengthen territorial networks of influence and allowing public actors to maintain political control over “sensitive” policy areas which are crucial for local administrations’ perceived legitimacy (such as local utilities).⁵¹

⁵¹ PRIVATE GOVERNMENT “WITH” PUBLIC MONEY? Municipal corporations and local utilities in six Italian regions by Stefania Profeti (University of Bologna – stefania.profeti@unibo.it)

4.1.3.5. Guiding, Monitoring and Internal Control Powers⁵²

For the financial and operational control of municipal companies, internal companies run by the same bodies play a central role through periodical monitoring of the performance of companies and analysis of deviations from identified objectives. Since these controls are agreed in advance to adopt appropriate corrective actions, they are performed “by the local administration structures in charge of these companies” (Article 147, Legislative Decree No. 267/2000).

Accomplishment of these controls depends, as a prerequisite, on the strong governance of the participating bodies in order to continuously monitor the management and overall results and create a balance for regional organizations.

In this context, it is considered appropriate to promote measures aimed at overcoming the potential conflict of interest between the main local administration and the company through a systematic and purposeful control on the level of achievement of objectives, in terms of the economy, efficiency and quality of the services provided, as well as reference criteria.

The Italian Court of Accounts (Corte dei Conti) also audits municipal companies based on its guidance, control and monitoring power in accordance with the Decree-Law No. 175/2016 and Article 15 of the same Decree in order to confirm the impact of the relevant management on subsidiaries/controlled entities. The primary aim of this function, in terms of auditing powers, is to promote best practices among municipal companies and to promote the faculty for ensuring clarity and guidance on the rules regarding transparency and segregation of accounting.

The Italian Court of Auditor set certain targets to highlight certain critical issues as summarized below:

- Holding shares in companies that are not, in terms of proceeding, among the “indispensable” ones for corporate purposes;
- Companies that have no employees or that have managers more than employees;
- Equity investments in similar companies or companies engaged in activities similar to those of other companies;
- Subsidiaries or instrumental public organizations (“dual companies”)

⁵² CONFSEVIZI, *Competitivit `a delle local utilities. Analisi patrimoniale e finanziaria delle imprese di servizio pubblico locale*. Rapporto 2004 Confservizi-Nomisma in collaborazione con UniCredit Banca d’Impresa. Quaderni Confservizi No. 6, 2004b.

- Investments in companies with an average annual turnover not exceeding 1,000,000 EUR in the last three years;
- Equity investments in companies that were not established for the management of a service aimed at the general public interest and that had negative results in four out of the last five years;
- Equity investments in companies that must cover high operating costs;
- Equity investments in companies that are gathered in activities to the extent possible for their purposes.

4.1.3.6. Activity Restrictions⁵³

Given the public benefit restrictions stipulated by the law, activities for which municipal enterprises are allowed to carry out are as follows:

- Development of general public benefit services, including operation and management of networks and facilities suitable for the function of services;
- Design and construction of public works in accordance with the programme agreed among public administrations,
- Development and management of services for public works through partnership agreements
- Ensuring the self-production of goods or services used as an intermediary by the participating public institutions in performing their functions, in accordance with the conditions specified in the European Directives regarding public contracts and the conditions specified in the national legislation regarding transposition of these Directives;
- Other services (Other company categories may include inherited companies that were handed over to the management of community funds for the management of exhibition areas and construction of roads in mountainous areas, companies established within universities, or newly established companies and the companies established for management of agricultural institutions with academic functions).

⁵³ BOGNETTI G. and ROBOTTI L., 2003, 'The reform of public utilities in Italy', *Annals of Public and Cooperative Economics*, Vol. 74, No. 1, 117–137.

4.1.3.7. Personnel management criteria Recruitment, recruitment restrictions and excess personnel

Municipal subsidiaries identify their own provisions, criteria and methods in accordance with the Civil Law, Labour Law as well as European Union's principles of transparency, clarity and impartiality. These provisions are published in the corporate website of the company.

In accordance with their own provisions, municipalities set specific targets for all operating expenses, including annual and perennial costs arising from subsidiaries' personnel and their contracts and recruitment, by taking into account, at their own expense, the provisions of Article 25 or other provisions that prohibit or restrict recruitment of personnel.

In the general sense, in cases where a measure aimed at rationalising personnel costs is applicable for the outsourcing option, administrations should, when making a decision for such expenditure, consider and monitor the dynamics of wages of company's employees in the framework of broader controls which should be implemented by the controlling body on municipal enterprises.

Regarding employment restrictions, in order to determine public companies' targets for rationalization and cost reduction, the regulations in force refer to the public subsidiaries of administrations by taking into account the prohibitions and restrictions regarding the recruitment of personnel at their own expense, as well as the provisions they have determined regarding the sector related to the activity.

Excess personnel in public companies may be determined in the following cases:

1. Re-internalising functions or services (Article 19(8) of Legislative Decree No. 175/2016);
2. Personnel scouting process (Article 25 of Legislative Decree No. 175/2016). This is reattached to the provision on the extraordinary rationalisation of shareholders as referred to in Article 24 of the Legislative Decree No. 175. If it is found that the personnel is currently employed under a permanent employment relationship, expenses made (for reabsorption) by the same administration is not eligible in the context of current recruitment privileges.

4.1.3.8. Loss

In case the operating results of municipal subsidiaries are negative, participating local public administrations that are responsible for financial accounting set aside a certain amount of fund corresponding to negative results in proportion to their participation in the following year.

Local public administration that adopted public accounting adjust the value of the investment in the following year according to the amount corresponding to net value of assets of the investee company. As explained above, the amount that has been set aside is released if the participating enterprise recovers the loss.

Municipal companies that have attained negative economic results in the previous three years should reduce, in the next step, the wages of members of administrative bodies by 30%. Attaining negative results in two consecutive years constitutes a good reason for removal of executives from office.

4.1.3.9. Bankruptcy and Commercial Crisis

In the event of occurrence of an irrecoverable corporate crisis in a public company with a direct line of credit, considering this situation as a sort of “failure of public intervention” results in that the body owning the company is prohibited from establishing new companies to provide services in the same area, notwithstanding the formal commitment of the enterprise in the recognition of the equity investments made.

The obligation to appeal to the market (Article 14(6))¹⁰⁷ can therefore be considered equivalent with a “sanction” imposed by the relevant law in the event of the bankruptcy of the investee public company. “Financial assistance” by municipalities cannot overcome a severe business crisis in subsidiaries or only in investee companies. In such cases, municipalities are obliged to take action for the benefit of enterprises in order to raise the shares in the loss-making company, even if the capital falls below the legal limit or in the case of financial assistance.

However, to ensure the realization of investments, predetermined interventions (contracts, service contracts or extraordinary transfers against the program) are predicted, provided that specified measures are designed in the scope of a remediation plan, approved by the regulatory authority of the relevant sector and notified to the Court of Cassation.

Furthermore, interventions are predicted to ensure the continuity of the provision of public services that are authorized by the Legislative Decree subject to registration by the Court of Auditors. (Legislative Decree No. 175/2016, Article 14, Paragraph 5, third period). Significant measures which deviate from common law and seem to be closely related with the principles laid down in the governance of public companies are predicted to prevent business crises.

Based on the empirical proofs presented above, some results might be recommended. Examining the operational logic of municipal companies, it is seen that there are signals regarding a number of contradictory situations in various studies: On the one hand, the continuous blossoming of private-law municipal companies, as well as the prevalence of market-like legal forms (i.e. joint-stock and Ltd) among them, seem to respond to a private, market-oriented rationale oriented toward better and more efficient services, which is indeed very often claimed by local decision-makers to justify their choice to externalise services production and delivery as well as to transform old municipal enterprises into corporations.

On the other hand, however, based on the very different diffusion of the phenomenon across the North and the South of the country, the large use of corporations well beyond the domain of local utilities and legislative provisions, and the frail market dimension of several municipal

corporations, it can be hypothesised that a plurality of strategies may exist behind the corporatisation strand, and that the economic rationale probably is not the most relevant among them.

For example, research studies show that municipal companies are largely used as an instrument to foster partnership among local public institutions, to consolidate territorial networks built around the capital cities and, in their PPP format, to reproduce real arenas of decision-making where the pre-existing relations between local public and private stakeholders may be strengthened through mechanisms of joint shareholding. The same contradictory signals characterise also the companies' ownership structure: although private shareholders are very numerous in shareholders' assemblies, their financial contribution is generally very poor.

This holds true especially in the domain of local utilities (in particular transports, water services and multiutility companies), where indeed the need of private money to realise new investments is often claimed to be the main reason to offer the companies' share capitals to private actors. As for the ownership structure, thus, we are facing a situation of "ambivalent privatisation": a large presence of private heads sitting in the decisional bodies of private law companies, coupled with the absolute dominance of public financial resources (contributed directly or indirectly) in the nourishing of companies' share capitals. It is a situation, which provocatively we have labelled "private government with public money", whose concrete implications on local democracy are worth to be further analysed.

The analysis of the different types of actors represented in the assemblies, in fact, reveals that the composition of shareholders' assemblies in companies dealing with specific subsectors of public services tends to replicate the network of stakeholders interested in such sectors and normally consulted (or directly involved) by public institutions in "ordinary" decision-making processes. All in all, it may thus be hypothesised that in municipal corporations old and new forms of governance coexist, generating new power configurations in the domain of public services which develop "in private" although still largely nourished by public resources.

An ever increasing number of decisions is taken in an ever more complex setting of public, public-public and public-private arenas, with the ever stronger involvement of managers from the public and the private sectors representing interests, territories and institutions that are selected through their ability to pay and to access shareholders' assemblies and boards of directors. The autocratic power of mayors is relied upon to guarantee accountability, but mayors themselves are not all equal: small municipalities depend on larger ones in their strategies, and local resources may not be sufficient to undergo the same strategy in different parts of the country. And the networks revolving around mayors and boards of directors pose serious conflicts of interest and lack the transparency and clarity that makes the public "public".

4.1.4. POLAND

4.1.4.1. Overview of Municipal Companies in Poland

Table 4.5.: General Information on MLEs in Poland

Milestones	Municipal enterprises (przedsiębiorstwo komunalne) were established as a result of transfer of public ownership in 1990. Municipal enterprises were transformed, as of 1996, to companies (jednoosobowa spółka gminy) that fall under the Law on Companies.
Basic Trends	The number of such companies are increasing to the detriment of municipal budgetary institutions as part of the modernization of public services.
Area of Activity	Water, construction, waste, real estate transactions, electricity, gas, heating, public transport, trade, entertainment, culture, sports
Main Legislation	Law of 1990 on Local Administrations Law of 1996 on Municipal Economy Law of 1998 on Regions and Districts Commercial Code of 2000
Legal Forms	Legal Forms: - Limited companies (spółka akcyjna – - Limited liability companies (spółka z ograniczoną odpowiedzialnością Sp. z o.o) In-house organization of local public companies: Board of directors and supervisory board are mandatory for limited companies
Capital	Legal rules: There is no rule for the composition of capital However, districts cannot establish local public companies. Capital structure in practice:

	Two third of local public companies are 100% owned by local administrations (water, sewerage) Apart from local administrations, there are other shareholders (local groups, foreigner groups) in the construction, energy and water sectors.
Tender	Competitive tender (Law of 1994 on Public Procurement)
Boundaries	No regional boundaries
Local Administration Representative	Municipal councillors are prohibited from taking a seat in boards of directors (ruling by the Constitutional Court, December 2001): Non-municipal representatives assigned by mayors may participate.
Tariffs	Tariffs are determined by the local administration usually by considering upper limits set for some sectors (e.g., energy) by the State according to proposals submitted by local public companies.
Financial Support to Local Administrations	There are grants provided by local administrations to local public companies for provision of public services only. Loan guarantees
Public Control	National control office (NIK – Najwyższa Izba Kontroli)
Representative Bodies	Sem Federation: Federation des Sem

4.1.4.2. MLEs in POLAND

In Poland, there are currently 2,500 municipalities (gmina), 308 counties (powiat) (plus 66 cities with a county status) and 16 regions (województwo), all of which constitute the three tiers of regional authorities.

At the regional level, there is a dual structure, composed of an elected self-government and a voivode (wojewoda) assigned by the prime minister. Functions of the regional state authorities and self-governments are clearly separated and there is hierarchical order between them.

According to the Polish legal system regarding local administrations, municipalities may perform their duties through their own organizational units or other organizations assigned

for operating within a certain range. Local administration bodies are entitled to choose the right legal form to carry out activities for the provision of public services. The main basis at this point is the laws and regulations regarding municipalities.

According to the legislation, municipalities may establish limited liability or joint stock companies or participate in such corporate-legal commercial organizations. The legislation includes, however, restrictions on commercial activities on such organizations. The concept of public service company is not defined specifically in the law. The only terms in the legislation on municipalities are: “company participated by local administration units”, and “company wholly owned by local administration units”.

This provision applies to companies operating in the public services area. It should also be mentioned that, such a company must develop regulations approved by the executive authority, notwithstanding the number of local administrations participating in the company and the composition of shareholders.

A municipality may establish a company in four different ways. In the first method, the state is obliged for privatisation procedures and therefore transforms the municipal enterprise to a company. In the second method, a new company is established. In the third method, the municipality participates in an already existing organization. Finally, in the fourth method, the local administration transforms a budgetary institution to a capital company.

The capital companies in which local administrations participate are separate legal entities. Their composition may, however, vary depending on the local administrations, such as municipality council and mayor (i.e., mayor, council speaker). Such authorities have a certain influence on business law companies.

The founding bodies of local administration units take decisions for the following issues:

- Establishing and participating in companies,
- Withdrawing from companies,
- Liquidation and selling shares of companies,
- Participation rules,

Among their powers are the right to sell or lease companies, granting right to use or, if provided otherwise in the association agreement, the right to buy or sell properties. Furthermore, a resolution may be made by the general assembly, in which partner/shareholders are participated, regarding decisions for amendments in the corporate charter or change of ownership or termination of the company.

Supervisory boards of companies, in which local administration units are participated, and which are subject to the Code of Commercial Companies, are subject to the Law on Municipal Services. Looking at the practice, this means that the rules on the powers and duties of

supervisory boards of companies are equivalent to those of the supervising authority in local public companies.

The purpose of the obligation to establish supervisory boards in municipal subsidiaries is primarily to ensure the appropriate supervising of whether public sources are used in accordance with the principles of economy. To this end, the Supervisory Board audits activities of the company in every respect. The board of directors of the municipal company can be run by one or more members, the term of office of whom must be specified in the corporate charter or articles of incorporation. Basic duties of the board of directors should primarily include the management and representation of the company. The board also have duties stemming from the provisions of the corporate charter.

According to the legislation on the establishment of municipal companies, in order for a capital company to be established by local administration, the company should operate only for the purpose of performing public services. Therefore, the local administration cannot establish or participate in a company for a purpose other than fulfilment of such duties. Public duties that must be fulfilled by the local administration are its own duties and therefore, included exclusively in its purview.

Main duties of the local administration are as follows: Water supply, sewerage, disposal and treatment of municipal wastewater, ensuring cleanliness, order and maintenance of sanitary facilities, disposal of garbage and municipal waste, electricity, heating and gas supply, etc.

Satisfaction of the collective needs in the local market of a community governed by a local administration is at the core of the public duties performed by the local administration unit. The municipal economy basically covers duties with a public service nature. In other words, it is composed of the continuous and uninterrupted provision of services for the public interest. Therefore, local administrations should consider failure to meet certain needs as a justification to establish a commercial company or join a company (limited companies, joint stock companies). Private enterprises may also carry out activities that fall in the scope of public duties of a certain local administration.

As a rule, a company established by a local administration cannot operate outside the area of that municipality. However, it is not always possible to apply this principle. In practice, this principle is quite difficult to implement when it comes to water supply and sewerage services (for example, if there is no water source in the area of a local administration, water supply can only be supplied from outside of the boundaries of that local administration).

Local administration units (LGU) mostly participate in limited liability companies⁵⁴, which can be established by one or more persons for any purpose permitted by law. Most of the

⁵⁴ As is known, establishing a joint stock company requires significant financial expenditures and establishment process is more complicated than a limited liability company. This form is more convenient for a large-scale

municipal companies are unlimited companies. The basis of the functioning of such a company rest upon the articles of incorporation that is drawn up according to the resolution of the local council. Currently, the minimum capital of a limited company must be at least 5,000 PLN (Polish zloty) The company gains legal entity status immediately after registered by the relevant National Court. If 100% of the shares are owned by the local administration, the company gains a self-governing legal entity status.

Limited companies consist of the following units:

- Shareholders' meeting
- Board of Directors,
- Company management.

Local administration units may use their own institutional and legal forms as given below to govern the municipality:

- Any tier of the local administration may create limited liability and joint stock companies as well as enterprises under the local administration budget,
- They may establish inter-communal associations (limited companies, joint stock companies, and enterprises under the local administration budget),
- Local administrations may establish, together with associations of local administrations not engaged in the public services (as a general partner, limited liability partner or shareholder), general partnerships, limited partnerships and limited joint stock companies that are allowed to operate as capital companies,
- In the field of public-private partnerships, any tier of a local administration and subsidiaries of local and county (poviat) units may establish limited partnerships and limited joint stock companies, respectively, with capital companies provided that they may only be passive partners in the second option: Limited partner or shareholder (local administration units and subsidiaries of municipalities and poviats may not be a general partner in a limited partnerships and limited joint stock companies that are established for the purpose of public-private partnership).

In limited companies of local administrations, the board of directors may consist of one or more members; the term of office of these members depends only on the provisions of the corporate charter. If there is no provision regarding the form of representation in the articles of incorporation, any statement to be made on behalf of the company is made by two board

enterprise. Therefore, the number and rate of joint stock companies among municipal economic enterprises with local self-governing status are much fewer (approx. 14%).

members or, alternatively, by a board member and a proxy in accordance with the Code of Commercial Companies.

In order for the actual recognition of a statement submitted or a correspondence delivered to the company, action taken by one board member or the proxy is deemed sufficient. Appointment of a proxy requires approval of all members of the board of directors, whereas such proxy can be dismissed by any of the members.

A board member of a company in which a local administration participates is appointed and dismissed upon a decision of the supervisory board. A board member can be dismissed at any time; however, such dismissal does not deprive him/her of any claims that may arise from the employment relationship. The Board of Directors may, unanimously, appoint a commercial proxy. Such proxy may be withdrawn by any of the members of the board of directors.

The speaker of the municipal council of the local administration must, before taking the office, be a member of the board of directors of a limited company in which a municipal legal entity (commercial law company) is a participant. A company affiliated with the municipal legal entity operates on the basis of the use of a property of the municipal company (therefore of the local administration).

The company has a shareholder in the form of a rural local administration, a municipal local administration, a poviát, or a company of a local administration. The majority of companies operate in the following areas: water collection and treatment, thermal energy, waste and sewerage and healthcare (hospitals, clinics, healthcare facilities, ambulance services). The list of these companies by area of activity can be found at www.coig.com.pl. Number of municipal companies in voivodships:

Voivodship	# of Cos.
LOWER SILESIA	352
KUJAWSKO-POMORSKIE	210
LUBELSKIE	178
LUBUSKIE	108
ŁÓDZKIE	207
MAŁOPOLSKIE	286
MAZOVIAN	349

OPOLSKIE	109
PODKARPACKIE	213
PODLASKIE	103
POMERANIAN	225
SILESIA	360
ŚWIĘTOKRZYSKIE	146
WARMIŃSKO-MAZURSKIE	207
WIELKOPOLSKIE	313

According to a research study⁵⁵ conducted in 2014 for the financial condition of municipal companies in Poland, the best performing companies in terms of profitability were those operating in the field of waste management, whereas companies operating in the field of public transport had the worst results for profitability. The most profitable five companies providing municipal waste services were MPGK Rzeszów, MPO Łódź, MPO Szczecin, ZU Gdańsk Szadółki and MPGK Katowice.

The research covered 100 companies to determine the best companies operating in the field of public transport that have an effect on quality of life of regional communities throughout Poland, considering the following issues: Existing fleet standards, implemented industrial innovations, expenditures on educational activities, expenditures of staff training, investments realized with participation of EU-connected institutions. The best performing three companies were determined as Municipal Transport Company in Lublin, Municipal Communication Institute in Toruń and Public Transport Company in Tychy. Furthermore, they were among the top ten enterprises in the following cities: Częstochowa, Jelenia Góra, Łomża, Ostrołęki, Inowrocław, Włocławek and Grudziądz⁵⁶. There is no subsidiary owned by major cities, such as Warsaw, Wrocław, Kraków, Łódź or Poznań.

In a study conducted for ranking the best water supply and sewerage companies, the first company was Częstochowa Regional Water Supply and Sewerage Company, which was

⁵⁵ Raport Curulis, 2015, Kondycja finansowa spółek komunalnych w Polsce 2014, Doradztwo Samorządowe, Poznań

⁵⁶ Duda S., 2015, Ogólnopolski Ranking Przedsiębiorstw Komunikacji Miejskiej, Dodatek w Dzienniku Gazecie Prawnej, nr 170.

continuously ranked at the top of the list for the previous five years. The main assessment criteria included, among others: Finance (profit, revenues, access to finance resources), expenditures on training and improving qualifications of staff, failure frequency in water supply and sewerage networks, sales services. Even though such a ranking is important and necessary for economic practice, it does not reflect the whole picture of municipal companies operating and competing in the utilities market.

Pursuant the provisions of the Public Finance Act of 27 August 2009, capital companies that are subsidiaries of local administrations are not included in the public finance sector, meaning that their liabilities do not increase debts of respective local administrations. Therefore, it cannot be ignored by local administrations to establish municipal companies in order to remain within certain indebtedness limits without exceeding the legal limits.

Although municipal subsidiaries are separate entities and therefore their activities are financed from their own revenues, they have a strong connection with the budgets of the respective local administration units as they provide services in return for a fee. The excess of revenues over expenses is transferred to the budget, whereas in the event of deficiency, companies are subsidized through transfer of resources from the budget. Such relationships are not favourable for actions aimed at improving the profitability of companies.

4.1.4.3. Polish Supreme Audit Office

The Polish Supreme Audit Office (NIK), audits the public duties performed by municipal subsidiaries, and there are some reservations about how local administrations perform their duties. The last comprehensive audit covered the period between 2009 and 2014 and revealed many abnormal situations.

The points that should be considered are as follows:

- Undertaking projects without an appropriate preparation (making no economic analysis, making no predictions for necessary measures, not taking relevant risks into account),
- Fulfilment of duties unprofessionally and ineffectively,
- Non-compliance of assets owned by the management with legal purposes, illegitimacy,
- Poor management, being engaged in unauthorized activities (outside of the scope of public services)

According to the findings of the Supreme Audit Office, more than half of the self-governed companies make losses, and some municipal companies spend financial resources unlawfully (*a point to be noted*).

As can be clearly seen, the authorities of municipal companies have difficulty in dealing with two incompatible objectives, which are meeting collective social needs (with the highest quality) in a reliable manner and maximizing profits at the same time. The main point is to transform as many municipal services as possible into companies in order to operate such services without imposing any burden on the budget of the local administration.

It is very difficult to accord these conflicting interests, and in fact, the real question is whether this is possible or not. There are cases regarding loss-making companies, for which attempts were made to save them through recapitalization in addition other methods (e.g., granting direct subsidies to current operations or undertaking liabilities of an unprofitable company in exchange for new shares); such attempts, however, did not yield effective results.

Looking at the practice, it is seen that in general, municipal subsidiaries are used as an instrument for the purpose of political affairs. Here, there are two main purposes, the first of which is to seek transfer of self-management liabilities to subsidiaries. Secondly, supervisory boards in companies are mainly composed by the local mayors (mayor, city president), but there are no formal restrictions for anyone to be involved in these boards. In addition, many party members who do not have long-term management experience are included among councillors and chairpersons of the executive board of MLEs at times. It is seen that the structure and expansion of companies are rarely analysed when it comes to employment in MLEs. These enterprises have extremely grown particularly by personnel who are in administrative and leader positions.

According to the audit report, many leader positions have been created (not included in the enterprise administrative board). Therefore, operating costs of companies have increased further. In case of adverse financial outcome, it can be said that misgovernment including not taking corrective measures has become a standard. In certain times, such as when economic and financial conditions were deteriorating, situations emerged in which employment opportunities and bonus amount were reduced for employees of the municipal corporation.

Another problematical area for the functioning of MLEs is that financial results of the activities are not published. In practice, there is serious variation. For example, there are enterprises that publish a balance sheet including also list of assets. These enterprises are the enterprises that usually operate in the industries of lodging, catering, development, management and real estate.

Some companies publish only capital sum. There is also a large group of MLEs that do not publish any financial statements, and this information is probably shared only upon demand of interested parties. On the other side, it should be accepted that the law does not explicitly require them to publish balance sheets, the problems encountered and similar types of other reports on revenues, costs, profits and losses. However, public benefit means possible maximum transparency for the financial activities of the sub-units of local administrations. Consequently, along other tasks, the main role of local administrations should be taking action

to ensure the disclosure of data of subsidiary units (as far as possible) and even not hiding or not approving such behaviours.

There are extremely dysfunctional elements that become general situation (e.g. favouring kins when conducting an inspection on companies, creating a job position to a small group of councillors in a leader-position at company structure) in these enterprises. Therefore, a new organizational and legal form that is sufficient for fulfilment of public service duties, e.g. constituting an indirect form between a budgeted institution and a commercial company, should be constituted.

MLEs doing public duties somehow keep in the "background" and go beyond the open, transparent economic space. Employees of the companies lack information about the conditions and economic factors related to their own functioning. Thus, reliable evaluations may be made relating to the effectiveness of operations.

In addition, when it comes to using MLEs for that purpose, it is easier to pass over legal regimes imposing certain debt ceilings because companies do not strictly depend on local administration budget. These conditions give rise to a sense of injustice because of the limitation of possibilities in small local administrations. At the same time, this does not reflect the debt state and structure of the local administration as a whole.

The summary of the audit conclusions is presented below:

1. Almost every one of three companies that are subject to examination and have controlled participation of local administration units (29%), carry out unlawful activities in the light of current regulations in operation and that violate the scope of public benefit and are actualized without adapting limitations related the off-site activities (irregularities defined here are generally related to business methods of companies operating the fields of funeral services, development activities, contracted property management and services of hotel and catering.) Moreover, some companies (3%) also operate outside the boundaries of local administration units that are shareholder. MLEs benefit from a privileged market position, such as receiving service orders from the local administration units that are actual shareholders (they also violate the provisions of the Law on Public Procurement).
2. In eight of the local administration units examined, the same duties were carried out by two or three companies simultaneously, without performing a reliable analysis concerning economic justification of the task organization in question. This situation caused both cost increase in fulfilling duties (e.g. repetition of general expenses), and negative impact on the effectiveness and efficiency of performed duties in some cases.

3. Before the performance of tasks related to local administration through companies, a reliable process or an analysis was not performed on effectiveness of the model in question and in line with the objectives determined by the local administration units, it was not given any justification about assigning the task in question to these companies as the best solution. Only 30 attempts that were subject to the activity (45% of the analysed ones) among 66 examined cases are incorporated in development strategies of local administration units and for only four projects, the strategy was implemented through companies. In almost half of the examined cases, evaluation was not carried out on profitability or effectiveness of all projects to be run by the company. Between 2009 and 2013, 23 companies (among 66 companies established at that time) that were unlawful or did not have sufficient economic justification, were established as a result of local administration units omission of the issues mentioned above. Before incorporation of individual companies and transfer of public services to these companies, not analysing of legal, economic and organizational conditions resulted in an imperfect performance of duties.
4. The examination conducted revealed that there was uncertainty in the regulations on economy of municipalities determined by local administration units and there were significant interpretation problems of local administration units about necessary conditions that a local administration unit must meet in order to establish a commercial company or participate in this company. The issues that are concerned about in this respect are related to the interpretation of the “public benefit” notion and facilities that enable the activities of companies with the participation of local administration units in areas that are out of the public benefit notion.
5. In the period examined, the economic and financial situation of companies in which local administration units participated has diversified but then adverse tendencies have shown up. Employment in companies has increased, debt ratios have worsened and this has caused a decline in financial results. Between 2009 and 2013, the financial results of the analysed companies have decreased over more than 3 times (5.0 million PLN of the total profit). The loss at the end of 2008 amounting to 2.4 million PLN was 2.6 million PLN by the end of 2013, and in this period about 10,000 new positions were added in terms of employment.
6. Apart from objective factors that prevent getting better results (lack of revenue during the construction phase of public infrastructure, the implementation of unprofitable tasks), another reason for getting adverse outcome is misgovernment including absence of activities that reduce operational costs. Since performance requirement is on companies, it has been possible to decelerate the debt growth of local administration units with fulfilling the duties requiring external financing (credit) by the companies. However, the magnitude of companies’ debt growth (debts of the

companies in which examined local administration units participated increased from 29 million PLN in 2008 to 82 million PLN in 2013) may become a threat in terms of financing of local administration units.

7. Between 2009 and 2013, the audited municipalities have ensured funding and 7.7 billion PLN in-kind contributions without analysing the company's needs in terms of financing properly. While it was taken a decision to make asset contributions to companies, no calculation was made on what would benefit the companies. In addition, local administration units did not analyse these transfers of property in terms of government assistance. In this field, only 5 local administration units of 28 have analysed just in some cases and with an unreliable way.
8. The Supreme Audit Chamber identified irregularities on transfer of local administration assets to the disposal of companies concerning assets with a total value of 96.5 million PLN (1% of all funds transferred by local administration units to MLEs) transferred by seven audited entities. The companies have mismanaged assets with a total value of 11.3 million PLN. After the transfer of assets to companies, local administration units did not provide active control on utilization of the transferred premises. In the context of employed corporate governance procedures, it has not been provided any information about utilization of assets transferred to companies as contributions and there are no other mechanisms that provide active control over management of transferred assets by the companies. The findings of the Supreme Audit Institution (SAI) show that there are irregularities related to utilization of assets in 12 companies and that in 10 of the companies, the assets in question are utilized out of founding purposes.
9. It was determined that 22 projects (40% of the projects examined) were prepared with bias and no good justification am MLE for the intended application. No economic analysis or cost-benefit analysis have been conducted, or no analysis has been conducted as to whether the application in question performed through the company is the most effective manner of the project application or not. Unreliable project preparation has led to a variation of the project concept, prolongation of application and cost increase.
10. By means of the fulfilment of public services by MLEs, it was possible to undertake huge infrastructure investments (railway line, cultural facilities, sports facilities) effectively. The efficiency for the fulfilment of public services by companies in which local administration units participated has decreased due to irregularities both in the activities of companies and in the local administration units that supervise them. In addition to the errors and omissions excepted at preparation phase, other irregular points are as follows:

- Inability to provide companies for proper financial resources and organizational provisions to apply the given project by local administration units,
- Errors in public procurement procedures,
- Abandonment of adopted assumptions without any justification,
- Making inappropriate audits on the contractors employed,
- 8 of the 55 projects examined have never been implemented and 15 projects have been carried out with irregularity. Half of the 20 projects examined in detail of companies have not been implemented in line with the assumptions made. In six projects (30%), the specified time (in cases where a specific time was designated for the project) and assumed costs were exceeded. Compared with the assumptions, the costs increased by 223.8 million PLN (7%).

In order to arrange the activities of companies according to the extent allowed by legislation with the participation of local administration units and increase the efficiency of the implementation of tasks through these companies, the results of the examination show that the following actions should be implemented:

1. According to Articles 86 and 78 on incorporation and partnership of commercial law companies of the authorities forming local administration units, ensuring active legal audit of taken decisions by governors. Particularly, in accordance with Article 1 Paragraph 2 and Article 10 of the Municipal Court and Article 13 Section 2 of the USW, in the light of restrictions on the conduct of emerging business activities which will be conducted by the emerging local administration units, it is necessary to verify the subject of company activities and activities in the regional scope.
2. The utilization of analyses of the legal and economic conditions that constitute and keep companies with the participation of local administration units and the verification of the companies' activities in accordance with the current regulations.
3. With considering the proper effectiveness and economic efficiency in the discharge of duties in question, preparation of reliable and professional projects that are transferred to companies in order to ensure high-quality fulfilment of these duties, and supervision and monitoring of these projects in the light of financial and economic parameters.
4. Execution of the basic content by the executive organs of local administration, performing legitimacy analysis on transfer of the individual components of municipal property to companies and carrying out an active control on whether the assets transferred to the companies by the local administration are used in accordance with the purpose or not.

4.1.4.4. A RESEARCH STUDY CONDUCTED BY THE TRANSPARENCY INTERNATIONAL

Disbursement of public money in a transparent manner is essential for economic growth. International research studies reveal that transparent and accountable public administration increases efficiency and therefore increases the profitability of companies owned by the central government and municipalities. Municipal enterprises have a vital role in local public financing, and operating these enterprises in a transparent and accountable manner can ensure higher quality services and more efficient use of public resources at the local level.

As a result, transparency and public disclosure activities are necessary for public enterprises, including municipal enterprises, to become more accountable and perform more efficiently. Legal requirements for sharing company information and data with the public are the first step to enhance accountability. However, in most cases, effective monitoring and implementation activities carried out by owners of public companies and/or larger mass of people must be included in the process apart from regulatory obligations. In general, national regulations put forth explicit obligations for public authorities and public companies, including municipal enterprises to disclose information. However, compliance with these rules remain limited due to the lack of regular monitoring or effective implementation.

Transparency International conducted an analysis⁵⁷, through which the public disclosure policies of a sample group consisting of municipal enterprises from Visegrad countries were examined with an aim to bring a new perspective to this area. 36 companies were checked that represent EU regions with different levels of economic development from the Visegrad region (Hungary, Poland, Czech Republic and Slovakia “V4”). The public disclosure practices of these local companies were mapped and analysed based on the data included in their websites and the interviews with the representatives from companies. The study conducted shed light on the driving forces and obstacles to ensure greater transparency and integrity at the local level. The results of the V4 transparency ranking show that there are major differences among the public disclosure practices of the enterprises in the sample group and that there are substantial needs for further peer learning and exchange of best practices.

According to the research, when it comes to the image of Polish companies in regard to transparency, accountability, and the prevention of abuse, it is very unfavourable compared with the remaining Visegrad Group countries.

The average on the basis of the indicators that were chosen for the purposes of these monitoring activities totalled 34.1%, while Poland, with 24.3%, was in last place in the ranking. On the other hand, Polish companies turned out well in the group of indicators regarding access to public information and the ownership structure.

⁵⁷ http://www.budapestinstitute.eu/V4_MOE_summary_2017_final.pdf

This is due to the fact that access to this information, as well as the need to maintain Public Information Bulletins [Biuletyn Informacji Publicznej] (BIP) on the websites of municipal companies is required in Poland by law. In accordance with legal regulations, the BIP must contain information regarding a company's legal status or legal form, organisation, business activities and abilities, governing bodies and persons as well as their abilities, its ownership structure, assets, operating principles, manners of accepting and handling various matters, and registers, records, and archives, as well as the manner and rules regarding disclosing the information contained therein, as well as regarding any audits that were carried out.

Although most data was available, consistently missing were the results of audits that took place, while in three cases, financial statements were also not available hindering the evaluation of the assets of those companies. At the same time, however, in the areas related to these requirements, as in the area of public procurement, all monitored countries had rather good results, which was certainly due to the fact that these matters are governed by law, and the most willingly disclosed data was informational in nature and in most cases did not affect the evaluation of the given company's productivity nor allow for the verification of the effectiveness of its management processes.

For public procurements, company websites constitute one of the media channels allowing for access to a wide range of bidders. Only in the area of access to information did Poland have a result that was higher than the average for the countries that were analysed. In the remaining areas, Poland was below average, and in five areas, in last place. It did not receive any points in the area of anti-corruption policies or in regard to the transparency of recruitment processes. Few points (and the main source of points in this area was the leader of the Polish monitoring activities, Warsaw's Fast City Rail [Szybka Kolej Miejska]) were also awarded in the area of providing information regarding management staff. The best Polish municipal company, with a result of 40.50%, was significantly above average in regard to the monitoring activities, but ended up in just 11th place among 36 companies that were analysed. It is important to remember that this company is compared with other transport companies in the Visegrad Group. Unfortunately, the lowest ranked ten companies include five companies from Poland, including two in the very last two places in the ranking (with respectively 10.67% and 9.67%). As can be seen, Polish companies are unwilling to share information with citizens if this is not governed by law. The law only governs access to information in the Law of 6 September 2001 regarding access to public information and access to information regarding tenders in the Law of 29 January 2004 on Public Procurement.

4.1.5. SPAIN

4.1.5.1. Overview of Municipal Companies in Spain

Table-4.6: General Information on MLEs in Spain

Milestones	The first companies were established in 1900 and the number of enterprises has been increasing since the 1980s.
Basic Trends	There are no basic trends.
Area of Activity	Municipalities and provinces: Public transport, watercourse, real estate property, planning, economic development, cemeteries
Main Legislation	Law No. 7/1985 on Local Administrations Organization Law No. 39/1988 on Local Finance Decree-Law No. 1564/1989 on Amending the Law on Limited Liability Company Law No. 2/1995 on Limited Company
Legal Forms	- limited liability companies (Sociedad anónima) - limited liability companies (sociedad de responsabilidad limitada)
Capital	Legal rules: There is no specific rule of capital constitution. Capital structure in practice: More than 80% of local public companies 100% of them have publicly owned capital.
Tender	Competitive tendering is applied in order to fulfill public services by outsourcing.
Boundaries	There is no territorial boundaries.
Local Administration Representative	Elected representatives or other representatives assigned by the local administration
Tariffs	Tariffs are adjusted by the local administration.
Financial Support to Local Administrations	Requirement of local administration support to carry out the activity
Public Control	Local administration approval is required for forecast and actual budget. Control of local public companies is exercised by the National Supervisory Commission.

Representative Bodies	Provinces and municipalities Federation: Federación Española de Municipios y Provincias - FEMP
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According to the provisions of the Local Administrations Law (“La Ley de Bases de Regime Local”), the public services of the local administration should be conducted in the light of the most sustainable and efficient methods listed below:

4.5.1.2. Direct Rule:

- a) Rule by the Local Institution itself (Gestión por la propia Entidad Local)
- b) Local self-governing institution (Organismo autónomo local) - 5 PALMA
- c) Local public enterprise (Entidad pública empresarial local) - 3 PALMA
- d) Local commercial company whose capital is offered to the public (*Sociedad mercantil local, cuyo capital social sea de titularidad pública*)

The utilization of the forms specified in articles c) and d) above can only be possible if the selection of these forms is accredited with a supporting report showing that it will be more sustainable and productive than the forms specified in articles a) and b) and considering economic profitability and investment recovery criteria.

The report should also include received technical support which will be published with the justification on received recommendation to be submitted to General Assembly where reports on service cost will be evaluated. In accordance with these purposes, a report will be received from the auditor local who will assess the fiscal sustainability of the proposals made.

4.5.1.3. Indirect Rule

The public services of the local administration can also be managed indirectly by way of the different manners that are ensured by the provisions of the Local Administration Law, such as mixed economy companies (sociedades de economía mixta).

In case of proper implementation of the guidelines to local commercial companies, it will be possible to use public property in a professional and responsible manner and it will be enabled that local institution will play a significant role in improving corporate governance in all sectors in which it exercises its powers. As a result, it is expected that companies will operate in a healthier, more competitive and transparent way.

4.1.5.4. Local Commercial Company, “Sociedad mercantil local”

The Local Commercial Company "LCC" is the company whose capital belongs to the public administration. Unlike private companies, one of its basic characteristics is that they are not

run exclusively in the focus of profit principle, and company management does not act exclusively according to economic criteria.

Regardless of their legal form, local commercial companies are subject to the private legal system except from the issues in which regulations on budget, accounting, financial control, efficiency control and contracts are applicable.

These enterprises must adopt one of the forms specified in the Royal Legislative Decree No. 2 1/2010 of July 2, which approved the Consolidated Text of the Law on Share Capital Companies (“Ley de Sociedades de Capital”). The capital contribution submitted by public administrations or institutions should also be included in the articles of the incorporation contract.

Local commercial companies are established according to the founding charter of the company which makes commercial transactions possible. The requirements before the approval of the project by fully incorporated foundation are included in the Articles of Incorporation.

The foundation process of the company starts with setting up a working commission consisting of articles of incorporation, technocrats and company members. This committee must prepare a report superior to company statutes about social, legal, technical and financial aspects, including the form of government and termination of activity.

After the report is prepared, it will be declared to the public. The staying on the air time of the report cannot be less than 30 calendar days. Finally, the project will be certified by the general assembly and the entire dossier will be submitted to the authorized body of the autonomous community.

After the contract acceptance, the usual commercial procedure for the establishment of companies will be started: Public deed, publicity of the company and its enrolment to the trade register.

Consequently, there are two separate phases of establishment of a public company:

- At administrative phase, Municipal Council's consent is received on establishment of a company to provide public services and the documents related to company are prepared.
- At completely commercial phase, final steps are taken to constitute legal entity.

The local public institution will be the exclusive owner of the company capital and although capital contribution can be provided directly by local institution or subsidiaries, entire capital must be provided by the local public institution at company's establishment phase. It is possible that the contribution will be made by money and physical assets or in return for rights.

Determining how long exactly the public company's establishment phase will take is not easy when considering that more than one representative will involve in the process, and complicated documents must be prepared (documents of company statutes, economic-financial studies etc.). The steps to be taken before final establishment of a MLE to manage public service are summarized below.

The establishment process of the local commercial company, “Sociedad mercantil local”

The **administrative procedures** on establishment of a local commercial company include the following phases:

- Preparation of a socio-legal work including at least a draft of company statutes.
- Preparation of an economic-financial feasibility study on the company.
- Preparation of the service regulation or legal regime.
- Acceptance of the contract by the general assembly of the company confirming form of service government in question.

In addition, below is the **commercial procedures** on establishment of local commercial company:

- Capital payment.
- Preparation of definitive regulations.
- Issuance of public foundation deed.
- Designation of Legacy Transfer and Certificated Legal Transactions Tax.
- Making an NIF application within 30 days following the valid acceptance of the company's establishment.
- Registration of the company in the Trade Register.
- Registration of local assets in the inventory of assets.

At most 5 members of boards of directors are freely assigned by the general assembly in municipalities with a population of less than 20,000, and at most 9 in those having higher than 20,000 or urbanized municipalities.

Publicly traded companies with 100% of their capital belonging to municipal council will operate according to the provisions of Law on Share Capital Companies (“Ley de Sociedades de Capital”).

Without any connection with the municipality, the personnel of these companies will be completely subject to the Labour Law. Thus, the integration of the service including public officers means that at least temporarily, these people will no longer have the status of public officers and will service in where they are in the scope of service in question.

On the other hand, personnel employed by the company with taking into consideration to the principles of publicity, merit and capacity at selection stage never acquire the status of an official in the local company.

The annual general budget will be announced by local public institutions. The projected balance sheets relating to the expenditure and revenues of commercial companies whose share capital belongs to the local public institution should be fully integrated (consolidated) into this budget.

The predicted cost and revenue table of the commercial company mention to the following issues:

- Statement of loss and gains.
- Capital budget.
- Operating account.
- Accounts for other results.

The mentioned companies are subject to the governmental accounting regime as well as keeping accounts as required by commercial law. The audit of its accounting corresponds to the intervention which is also common to all commercial companies under the enterprise.

4.1.5.5. Mixed Economy Company

This is a commercial company in which public (i.e. local administration/municipality) participates with a considerable extent and also known as a mixed company. By means of this cooperation, public capital also take part in government together with private capital. This type of public company has usually the format of a public limited company.

The state has a common position with representing by public servants under a legal entity. In most cases, although public capital participation i more than private capital, these companies are arranged under commercial provisions. In case that the public capital share is necessarily the majority, the company receives the national title as a result of this participation.

The typical and main characteristics of these institutions are as follows:

- a) Mixed capital, in other words, the capital formed by contributions of municipality and individuals;
- b) Both common categories of these are involved in the government of the enterprise.

The state may have various reasons to integrate companies falling into this class but one of these reasons is providing the relevant public benefit over concrete action.

At the same time, in case of that the same activities are carried out only by the state -in other words, without private partners- by way of a personalized enterprise of the state, the public company figure usually emerges. Therefore, the difference between the public company and the public mixed economy company is obvious.

4.1.5.6. Audit Procedures

As required by law, all companies depend on local enterprises for internal controls bilateral intervention relating to financial and effective functionality. It is clearly stated that all MLEs will be subject to financial control through audit procedures and external control of the Court of Accounts “Tribunal de Cuentas”.

Internal audit is a counselling activity that ensures objective and independent assurance, contributes the primary goals with a systematic and disciplined approach for the government of corporate governance and the control and the risks on government processes designing to increase the value and activities. Auditors play an important role for ensuring efficient and sound public enlightening process as well as adequate internal controls in a broad sense.

Public companies should develop effective internal audit procedures and establish an internal audit function that is followed by managing body and audit committee and directly depended to this. The procedures on information collecting, compiling and presenting should be described with enough detail. In addition, it should be ensured that the company's procedures are applied properly and the qualities of the information are fully shared with the public by the company.

According to the OECD (The Organisation for Economic Co-Operation and Development) Guidelines, public companies, especially larger ones, should be subject to an independent annual external audit based on international standards. The existence of certain state control mechanisms does not mean that there is no need for an independent external audit, but some public companies may not have to be audited by independent external auditors. The reason is that there are certain systems that ensure the quality of accounting information and its full preparation.

On the other hand, it should be stipulated that local administrations are subject to private audits as well as external audits of large public companies at least in order to stiffen confidence for the information provided and it should be developed appropriate procedures for the selection of external auditors. At this point, it is extremely critical that these auditors are independent from both the administration and shareholders who have the majority of shares (from local enterprise, if it is a public company). In addition, external auditors should be subject to the same criteria of independence as so in private companies.

Public companies must be controlled by effective accounting and auditing standards. All public companies must declare their financial and non-financial information. Namely, the members of the board of directors of public companies must sign the financial balance sheets and these reports are affirmed by general and finance directors who are responsible for finance adequately and reasonably. Local commercial companies may also be subject to the Court of Accounts audit which is carried out by the Tribunal de Cuentas in Spain.

4.1.5.7. Recommendations on Audit

In 2013, a general audit⁵⁸ was made in Spain by the State Inspection Board over companies belonging to local administration. A total of 1,198 companies were examined. All of these companies belong to local enterprises and 1,095 of these enterprises -91% of them- are municipalities most of which have a population of more than 5,000 people.

According to autonomous communities, most of these enterprises (53% of the total) are in Andalusia and Catalonia. When sectors are taken into consideration, the number of companies operating in the field of urban planning gets ahead of other companies with a rate of 36% and the rate of companies belonging to municipal councils is 39%.

Among the companies of County Council, Municipal Council and Insular Council, field of activity of the companies having the biggest relative importance can be listed as "tourism and recreational activities" 16%, and "administrative activities and assisted services" %11, "urban planning" 13%.

As basic sectors, the sectors of "water supply and sanitation", "waste collection and purification," and "urban passenger transport" constitute 10% group of current companies in 2013 and the vast majority of these companies operates in local level but not regional.

While a small majority of the audited companies (especially 54% of them) made profit, the rest made loss. On the other hand, the operating profit remained slightly lower than the total loss of those who received negative results with respectively 254,655 and 268,947 thousand EUR. The companies of County Council, Municipal Council and Insular Council were the companies that pointed the highest losses with 58% and the worst operating results with an average loss of 350 thousand EUR per company. On the other hand, local non-regional enterprises were the ones that achieved the best results with an average total profit of 63% and an operating result of 1,489 thousand EUR per company.

The recommendations from the audit report are presented below:

- The structure of the local enterprises public sector should be reviewed and by this means, the establishment, performance and permanence of dependent institutions should be enhanced.
- Local enterprises must constantly keep the financial balance of their commercial companies in check. In this way, in case of that the resulting net turnover is insufficient to finance the services offered by the companies, and evaluating, prioritizing and regarding necessary of the complementary contributions to the services of the local businesses of their own, it can be eliminated under the principles of legitimacy,

⁵⁸ INFORME DE FISCALIZACIÓN DE LAS SOCIEDADES MERCANTILES DEL SECTOR PÚBLICO LOCAL EN DESEQUILIBRIO FINANCIERO / 30.04.2019

stability and sustainable budget. Local enterprises should take appropriate measures for the effective liquidation of commercial companies whose dissolution and abolition has been decided.

- Local enterprises must implement internal mechanisms and procedures that are necessary to ensure fulfilling the preparation, approval and submission of general accounts with huge care and security and thus according to the Consolidated Text of the Local Tax Regulation Law, Article no. 205, to ensure Public Accounts serving a purpose in optimal level and especially implementing decision-making as well as the legitimacy, effectiveness and financial controls.
- Local enterprises and all members of the local public sector should remember that citizens should take advantage of advertising and mechanisms to access public information. Similarly, measures such as the automatic dissolution of commercial companies should be taken in company with the guidelines on people responsible for the implementation of these measures, on measures' form and duration.
- In order to contribute to review of local business public sector structure, it is recommended that the legislator should determine the criteria that aims reviewing and keeping under control of the permanent financial balances of enterprises forming the local public sub-sector as well as the guarantee of local autonomy.
- The State Administration General Response Department as the centre that manages and directs local public accounting, should carry out works or studies to find a best way to integrate the financial balance sheets of the local public sector enterprises that make up the annual accounts with national accounting indicator information providing that Institutions of European Union consider to be related to the situation and economic-financial results of public enterprises, especially enterprises that are members of the local public sector can benefit from advertising and accounting control mechanisms and in this way they can increase their capacity for financing and data.

4.1.5.8. SUMMARY & CONCLUSION

1) Municipal commercial companies (SMMs) are structured to be used by Municipalities as a means of service providing and for the development of economic activity through direct rule. These companies have been in use for a long time and were consolidated within the municipal organization.

2) In workplace environment, municipal commercial companies survive in a wide variety sectors of municipal activity and hence they have a direct influence on community dwellers who are service user. Because their capital belongs to public property and uses as a means, these companies do not make as much profit as other commercial companies while serving the purposes of the Municipal Council and satisfying local needs.

3) Municipal commercial companies facilitate service encounter of Municipal Council by its gaining control over the relevant provisions, and these services are the services that are quite difficult to deliver and manage in accordance with their own means and within the organizational structure. Therefore, in some sectors, MLEs are seen as a means of re-municipalisation of services in a certain way, since they are one of the forms of direct rule provided by the LBRL.

4) It should be kept away from generalizations on advantages or failures for analysis of these companies. When choosing one service delivery system or another and deciding which one will be the best form of organization, it is recommended to focus on the concrete activity or service to be offered, their characteristics, needs and service recipients. By this means, it will be possible to achieve the best result, a more effective implementation and effectiveness, in short, a high quality of service. The file that was seen as necessary by the regulatory body for the establishment of a municipal commercial subsidiary will serve as a proof of the appropriateness of the measures taken and whether they were taken at the right time or not with focusing public goals (budget stability, sustainable financial situation etc.) were attained or not.

5) Care of other commercial companies, the recognition of the single form of these commercial companies in which the Municipal Council is the sole partner, is a pioneer situation.

6) Considering that the search for efficiency is the main justification, it should be remembered that agility for goods and service delivery has become a necessity over the special legal system which is subject to the Commercial Law and on the basis of party autonomy.

7) "Agility" and absence of administrative control caused to a negative reputation on the basis of the broad sector and the accusation of companies as a way to evade administrative law.

8) Administrative Law enters fairly on government and decision-making mechanism of the sole partner of MLEs. Modern administrative regulations that protect and even strengthen the issue of applying to MLEs for justifiable reasons also limit the discretion that may arise about the structuring and government of companies.

9) MLEs benefit from the advantages offered to them by incorporation. But for the very reason, they are subject to the obligations and controls required by commercial law, without escaping from the control of Administrative Law in matters determined by law. MLEs are currently subject to double control and they must observe the obligations arising from both their administrative and commercial rights.

10) National and international recommendations on the current Rules of the "Corporate Governance" movement ease the removal of possible inconsistencies in functioning of MLEs. These rules associate the actions and measures adopted in the framework of Corporate Social

Responsibility with the activities of subsidiaries at the municipal stage, as well as in relations with other partners.

11) Municipalities should establish a "Governance Strategy" in their subsidiaries (and investees). If possible, its definition should have maximum consensus among political forces and benefit from transparency: it should be known among citizens and local tax payers. The elaboration of this will be based on the generally accepted Principles of Corporate Government and especially the OECD Guidelines on the corporate governance of public companies.

12) The "Government Strategy" directed by body corporate will define the goals and rules of the municipal community for the government and it will be carried out transparently and responsibly, with professionalism and efficiency. Among the components, it should be avoided to relaying noncorporate political influences or discussions to MLEs and alienation from social interests.

4.1.6. UNITED KINGDOM

4.1.6.1. Legislative History

The pursuit of greater efficiency at austerity period over the past decade has prompted to UK local administrations to develop new methods for local service delivery: instead of resorting to get services from private companies, they have benefited from affiliated companies many of which are in traditional non-profit enterprise format.

Although the history of the establishment of such companies dates back to the Victorian age, today this situation is a widespread phenomenon in all local administrations in the United Kingdom.

This trend gathers speed under powers on the establishment of local administration commercial companies introduced in the Decentralization Law of 2011 and the Local Administration Law of 2003 and this has paved the way for improving the performance and efficiency of local public services as well as having better governance.

In a study, the annual declarations of municipal councils of 2010/11 and 2016/17 fiscal years were compared and it was found that there was an increase of 50% in the number of such formations. Most of the growth has occurred in stock companies, in other words, in structure of companies operating for profit traditionally in private sector⁵⁹.

In line with this development, local administrations constitute new governance regulations establishing the mechanisms of reporting, accountability and control in order to direct the

⁵⁹ Ferry L., Andrews R., Skelcher, C., and Wegorowski, P. 2018. New development: Corporatization of local administrations in the United Kingdom in the wake of austerity 2010–2016, *Public Money and Management*, 38(6), 477-480

tension between the need for management and supervision and the needs of companies to innovate, take risks and be competitive⁶⁰.

Although these developments are seen as temporal in a large extent, on the other hand, they are also seen as a combination of experiments and just copying each other's practices that can be called by theorists as isomorphism in a field that has not yet been institutionalized⁶¹.

These governance regulations can be fraught with uncertainty, conflict and problems and new commercial entities bring along the governance requirements that are different from the system directing local administration and potentially contradictory. This situation makes think that by establishment of a commercial company, an enterprise that has separate and possibly different interests from the interests of the municipal council will have been established, and it may be difficult to maintain accountability.

Commercial companies provide freedom, flexibility and self-financing opportunities, but they have a risk as they are likely to have a deficit. Local administration will be the organ that is responsible for the financial, reputational and democratic consequences arising from the service failure. This understanding is extremely important because these companies have a high risk of failure at the first stage due to the conflict of objectives and principal-agent problems, and the control regulations will depend on the form of company to be preferred by local administration. There are common options: companies that are limited by shares or guarantees, associated enterprise public limited companies, or companies for benefit of society. Other important issues are financial and tax implications on both the original municipal council and company.

One of the key control mechanisms of local administrations is the maintenance of the internal audit function as a legal necessity. In this sense, each local administration needs to make an effective internal audit in order to evaluate the effectiveness of its regulations on risk, control and governance management.

KPMG defends that internal audit of local administration is “the cornerstone of good governance and it improves accountability, compliance and standards”. In the context of the companies of the Municipal Council, it is expected that internal audit will provide assurance for the effective government of companies, their financial security and production of required returns, and for protection of the municipal council’s reputation from damage by inappropriate behaviour or methods. As a shareholder, the Municipal Council will also need

⁶⁰ Grant Thornton 2014. Responding to the challenge: alternative delivery models in local administration.

⁶¹ How UK local administrations control their subsidiaries: A conundrum in corporate and public governance Simbarashe Muzarurwi, Donald Nordberg, Hany Elbardan 1 A full paper for the British Academy of Management conference Birmingham, September 2019

assurances for operation of institutions in an ethically sound manner which is also suitable for proprietary and control by a public institution⁶².

Right after the corporatization of local administrations in the United Kingdom, it was conducted a study by Laurence Ferry (from Durham University), Rhys Andrews (from Cardiff University), Chris Skelcher (from Birmingham University) and Piotr Wegorski (from Cardiff University) titled "Corporatization of local administrations in the United Kingdom in the wake of austerity 2010–2016". The study provides valuable information and perspective on the subject.⁶³

The summary on the findings of the study is presented below:

- The results of the analysis on the sample of local administrations show that the rate of incorporation has increased by 50% and the number of companies, which was 400 in 2010, reached about 600 companies in 2016. Again, these companies cover a great variety of commercial concern areas.
- It was determined that the number of public limited companies (and especially all of the share owned companies) whose shares can be offered to the public was under 200 in 2010/11, it reached over 300 in 2016/17 showing an increase of 50%. Nowadays, this practice is becoming a commonly used company structure and this is an important indicator of how local administrations benefit from companies established to provide certain public services while maintaining control through the ownership of capital. The profit obtained through such companies may provide dividends for reinvestment in other public services managed by the local administration.
- Unlike limited companies whose shares can be offered to the public, the number of companies limited by guarantee and public benefit companies fluctuated between 150 and 200 between 2010/11 ad 2016/17 and they have not been as popular as them. The reason for this situation may be the restrictions imposed on such companies to use their profits for reinvestment in another area out of the company.
- A similar modest pattern of growth is seen that the form of associations of charities, foundations, industrial and savings whose number was just under 40 in 2010/11 and rose to just under 50 in 2016/17 showing an increase of 25%, are being used for corporatization purposes. Small-scale subsidiaries of such enterprises indicate that commercialization opportunities catch local administrations' attention more.

⁶² How UK local administrations control their subsidiaries: A conundrum in corporate and public governance Simbarashe Muzarurwi, Donald Nordberg, Hany Elbardan 1 A full paper for the British Academy of Management conference Birmingham, September 2019

⁶³ Ferry L., Andrews R., Skelcher, C., and Wegorowski, P. 2018. New development: Corporatization of local administrations in the United Kingdom in the wake of austerity 2010–2016, *Public Money and Management*, 38(6), 477-480

- The number of limited liability partnerships has tripled but more importantly, the number of these companies begun with a very low base, that was under 10 companies in the period of 2010/11 and could come up just above 30 companies in the period of 2016/17 shareholding companies. Therefore, they remain relatively small for local administration as a means of incorporation compared to limited-share companies. However, it is remarkable that most limited liability partnerships are used for development companies to create joint ventures with private institutions especially for the purpose of submitting planning and development projects. The accountability obligation of these structures is less than limited companies with shares, and the transparency of these companies has already been questioned by local media in some places.
- During the term of study from 2010/11 to 2016/17, the number of closed companies, which was 0 in 2010/11, increased to almost 20 in 2016/17. This number remains small compared not only to the number of limited companies whose shares can be offered to the public but to the relative increase in all types of corporatization. However, in case of that the deficit of some of these companies are closed due to the level of service and quality problems, important questions on the basis of corporatization are raised.
- The results of the research particularly remark that certain services have been more prone to corporatization during this term of employment. For example, commercialization has greatly increased in fields of planning and social services. The reflection of this situation is seen in all companies' need of finding new working ways for social care area and in many authorities' decision of commercialization of development.

4.1.6.2. Non-Public and Independent Commercial Institutions

New formations have appeared for two main reasons. The first reason is to establish commercial enterprises out of the municipal council, especially in cases where services are not accepted as an important part of the services provided by the municipal council or commercial freedom is required. The second reason is to create trusts for entertainment or art services in which it would be useful to determine a different business strategy. The most common form of these new formations are usually the structures of companies limited by guarantee. These are included among the examples: Companies that are established to support economic renovation, including providing financial support to SMEs such as Finance Birmingham; or companies that are established to support growth in specific areas like technology or tourism such as Marketing Birmingham or Birmingham Technology⁶⁴.

⁶⁴ Responding to the challenge: alternative delivery models in local administration January 2014 / Grand Thornton

Some municipal councils have also initiated a discussion about the provision of legal services through service procurement from outside. For example, Oldham Borough Municipality is establishing a fully municipal company (Company A) to provide formal social care services for adults. In the wake of the establishment of Company A (and as of 2014/15), the municipality plans to establish another company (Company B) in order to provide other informal specialized services in the field of personal care with the aim of potentially generating an revenue in coming years. On the other hand, Buckinghamshire District Municipality is also establishing a social care limited company on adults and developing a safeguarding centre together with the authorities of police, fire and National Health Service.

Among other examples, there are trusts that provide a means for museums and libraries to find sponsors from the private sector and there are companies and social enterprises established to make possible the commercialization of services that are no longer necessary for municipalities. Companies and trusts as separate enterprises can act in a commercial way by determining the appropriate strategies, business plans, terms and conditions in order for the staff to achieve their set goals.

The examples:

- Shropshire Municipality established a fully municipal company to provide services to the municipality and other private/public sector institutions.
- Cheshire East Municipality established a development company to manage the remaining municipal assets.
- There are series of companies within the Cornwall Municipality and BT has recently established an associated company with British Telecom to provide purchasing and payroll/HR services.

Some municipalities have a long-term goal like converting these limited companies and joint ventures into independent commercial enterprises. But these constructions are not without risk. For example, although most companies are the companies limited by guarantee, the local administration does not always consent to the failure of companies and this means that the risk for taxpayers is increased. In addition, these enterprises' need for management and supervision does not always coincide with their need for innovation, risk-taking and competitiveness. The risk of financial failure is an extremely realistic risk for local administrations reporting incalculable losses in their group companies. It is required that the local administration have to find a way to balance these risks.

Many municipalities have successfully transferred the services in question to a trust operating in entertainment or museums or theatre sector. This implementation may be an excellent model in terms of reduction of total cost on municipalities through reduction of the subvention. Costs are also reduced by generating additional revenue and changing the terms and conditions on personnel. This implementation is also useful for innovation of the management team in the field of service development.

There are currently over 100 trusts operating in the entertainment sector that ensures a joint service with local administrations providing them with grant. While some of them are operating cultural facilities such as libraries, museums and theatres, the majority of them are operating sports and entertainment facilities.

“Trusts operating in the entertainment sector operate 30% of public entertainment centres in the UK and employ approximately 50,000 personnel with a total turnover of over £739 million.”

“There is no single specific model for trusts.” It is expressed that “About two third of them are charitable companies, and one third of them are joint companies, and they are all intent on providing accessible and affordable facilities as far as possible for everyone.”

The trusts operating in the field of charitable work have been operating public gyms and swimming pools since the 1930s. However, there has been a huge growth in the sector since the 1990s when local administrations began to meet to the need for achieving financial saving.

The largest MLE in UK is the Greenwich Leisure Limited with an annual turnover of £115 million. This company launched in 1993 is currently managing 110 centres and majority of them are in London. It is responsible for the management of some Olympic venues including the Aquatics Centre and the Copper Box arena.

The company has increasingly started to operate out of the capital city with facilities in York and Oxfordshire. Nowadays, it has also entered the field of library administration and extended its scope: It is currently carrying out the management of 15 libraries, and 10 more libraries will be added in April.

However, the risks for such organizations are ongoing. As with companies, the management of trusts is the responsibility of the trust board. The municipal council may appoint a member to this board, but the members will be responsible to the trusts not to the council. Therefore, it is important that any contract between the council and the trust provides for appropriate control measures and even the potential intervention opportunity. Since it is difficult making these changes later, it is also important that the local administration is clear about the subsidy and service levels before the transfer. In addition, it is necessary to clarify the business plans, the provision of services in the future, estimation of revenue, asset transfer and regulations on cost and tax in advance of the transfer.

Municipalities emphasize that service providing by another service provider (except Municipal Council) can also be useful:

- Participation increase in physical activities: In some cases, it was achieved success in this field through the Municipality's determination of certain targets that must be met by outsourcing service providers in Municipal contracts.

- Sustainability of services: Some Municipalities commented that if entertainment and cultural services had not been required to be offered directly by the Municipality due to budget squeeze, they would not be sustainable.
- Outsourcing service providers who are experts in entertainment and cultural services can focus on direct service providing of these services without the obligation to participate in distracting activities that affect Municipal personnel such as attending Municipal meetings. This Municipality's comment sets a most typical example of this situation: "...in terms of services, the Trust is a construction that focuses on a single issue and therefore is free to market services and facilities much more effectively than any other Municipal department."

A current trust providing services in entertainment sector or municipalities that chose to work with a private company specializing in entertainment services often state that it is benefited from the expertise of these enterprises for the quality of local services.

- In most cases, including where the service provider specializes in providing additional activities that have not previously been audited by the Municipality, the services and equipment have been updated partly due to the requirements in contracts of entertainment sector.
- In any case, municipalities declared that they could obtain significant efficiency savings as a result of working with companies that provide outsourcing.

A spokesman of local administration summed up the benefits of working with an outsourcing company in the best manner like this: "A well-structured outsourced body is the best option in terms of ensuring that services on entertainment sector continue as relevant services and keep up with the changing landscape for meeting the wishes of the community. There are broadscale economies involving major operators that can share the best practices according to the contracts formed, rather than providing heavily strategic management which the municipality cannot supply and at the same time working in isolation."⁶⁵

4.1.6.3. Case Study / Greenwich Leisure Limited:

Greenwich Leisure Limited (GLL) which was established over twenty years ago is the UK's largest social assistance institution in its field and it is the first of its kind. It manages more than 250 entertainment centres plus about 70 libraries. It nationally works with about 45 local municipalities and a series of public institutions and sports organizations and has wide range of customer base.

As the company has developed, it has also added a foundation providing development programs of sports and sports heritage and independent support initiatives for young sports

⁶⁵ <https://www.redditchbc.gov.uk/media/1626547/Final%20Report.pdf>

talents in its structure. Medical treatment has also been enhanced by working with general practitioners to offer the Healthwise program and providing people with specially prepared classes and courses to help managing their current health conditions and improving their health. GLL has recently been considered worthy for the status of the main provider to provide nationally apprenticeship training.

The implementation of this model emerged as a result of the financial squeeze happened in 1992. This period has been a period in which local administrations have benefited from the Compulsory Competitive Tendering process. However, the tender document prepared by Greenwich Municipality was so complex that only the internal supplier could realistically tender. Because the level of savings required even at this stage was extremely huge, it was needed a new contract and a new structure for service providing.

It was encountered to tax and technical difficulties because of the inability of municipalities to establish institutions suitable for charity organizations or precedents in that period. In this way, the company was established by the personnel at £25 per share and then presented to the municipality. The current structure of the company is as an industrial and foresight association (employee cooperative and non-profit democratic organization) which has a stakeholder cooperative-style governance structure and manages by the personnel. The management committee is appointed at the annual plenary session in which the members of the Association attend and the committee includes the clients, members of local administrations, independent qualified professionals and representatives of personnel.

The social enterprise started on a small scale in beginning and took responsibility just for entertainment services for the Greenwich Municipality. However, with further liberalization, the company soon afterwards began to work with other local municipalities and spread also this model with others.

Creating an entrepreneurial focal point in a top-down structure is an important success factor for the company. Financial and activity-based targets are set for all personnel and personnel are held responsible in terms of their results obtained. GLL has also changed its personnel culture in order to adopt a more operating-like approach and provide better customer service. It has been needed a similar change when taking libraries over and experiences show that this area is often a service area that usually does not have an operating structure around it. Existing of the right people with the right skills in the system is really important because it is recognized that people who have previously been involved in the service may not have the necessary skills to hold down the job in the long term.

The changing financial landscape continues to create challenges to GLL. The financial constraint of local administrations means that when contracting any service, the most important factor is still price not social value and this makes the current business model challenging. The company manages these risks by diversifying its unique market presence and taking advantage of this. As a well-established company, it can prove its new working methods

and add value and innovation. For example; GLL has actualized the opportunity of online registration for entertainment purposes, which created a transformation in customer journey and by the moment, 60% of their memberships are online memberships.

One of the most important experiences of GLL gained by establishment of this company is the need for considering working capital and finding a way to hedging of cash flow. Many local administration contracts still make delayed payments, so it is important to take into account the current level of working capital and set expectations before the inception date or when distributing services. Some of the contracts formed with local administrations are still waiting for payouts and this causes an additional pressure.⁶⁶

4.1.6.4. Local-Enterprise Partnerships (LEP)

Partnerships with the private sector range from collaboration space such as Local Enterprise Partnerships to joint venture agreements for transfer of personnel and services to the private sector (often supported by contracting).

Local-Enterprise Partnerships (LEP) are partnerships that are associated between enterprises and local administration and are conducted under the leadership of the private sector. They were established in 2011 in order to support economic growth in local areas. There are 38 LEPs each of which operates in more than one local administration in the United Kingdom. The government has made a commitment of £12bn to local areas in the United Kingdom between 2015-16 and 2020-21. £9.1 bn of this budget has already been allocated through negotiated Growth Agreements between central government and individual LEPs. The Ministry of Housing, Communities and Local Administration (Department) is generally responsible for the Local Growth Fund and the distribution system in which LEPs invest this fund.

LEPs are good example of effective partnerships that enable local administrations to connect actively with private sector between regions and areas. The main benefit of such partnerships is that the private and public sector's aims conform with the resources that are needed to achieve changes of environment or services. Means of joint venture fall into two main categories: the companies that are established to provide front office or administrative office services in cases where profit share with the private sector is involved and the companies that are established to guarantee some sort of revival.

The need for the public sector to be the initiator of development by facilitating collaboration is a common factor in renovation programs. This also reduces the level of risk for the private sector by providing some funds to support the plan that was made. An example of this is the Service Birmingham which is a joint venture company between Birmingham City Council and

⁶⁶ <https://www.grantthornton.co.uk/insights/social-enterprise-case-study-greenwich-leisure-limited/>

Capita to provide administrative office services. There are much more diverse means of economic renovation and these means often include other public sector partners. City centre replacement plans, broadband distribution plans and Green Deal initiatives can be given as examples of them.

Joint ventures are also useful in terms of that they use commercial resources as well as public sector resources and combine commercial and public sector expertise. The focal point of concerns is on whether there is a clear understanding of commercial risks, dividend and cost structures or not. It is also important that municipalities have the right to renegotiate contracts in cases where there is an 'excess profit' or conditions change. A private finance initiative is often interpreted as a public private partnership. However, that is not the case in our experience. The private finance initiative 'partner' is often unwilling to renegotiate the terms and this is required that local administrations must provide contractual conditions such as conditional pay raise or defray contractual payments even in cases where conditions change such as the establishment of Academy schools.

The joint venture of Barnet London Borough Council with the private sector is a successful example for the LEP. Barnet LBC determined a net model for a 'Commissioning Council'. The Council has recently signed contracts whose worth is over £360m. According to the Council's estimation, it is foreseen that the contracts save £165m in ten years. The council has more control over business development through the forming of one of the contracts as a joint venture contract and so it is ensured that the growing service exist within the structure of Barnet.

The first contract was a support and customer service organization contract with Capita. Background administrative services including customer service, human resources, finance and payroll, IT, revenues and benefits, property, corporate purchasing and business services are provided with this new organization. By this means, it was also provided the important personnel transfer to Capita and the investments in background office technologies were guaranteed. With the second contract, it was constituted a joint venture on the provision of development and regulatory services (DRS) in the district between the municipality and Capita. These services include the following: supervision of construction, land charges, planning (development management), strategic planning and renovation, highways services, environmental health, commercial standards, licensing and cemetery and crematorium services.

The contracts are also a guide for other municipalities. These can be done:

- Before outsourcing for service delivery, municipalities should carefully analyse what can be outsourced in terms of public services.
- Municipalities must develop appropriate benchmarks and outputs to ensure that they can release value for money to the public and monitor the process during the contract.

- Municipalities must clearly reflect savings in terms of the cashable benefits obtained from the outsourced service and the minimum revenue guarantees received from the joint venture companies.
- The governance arrangements in similar contracts should be clarified transparently in order to prevent the occurrence of conflict of interest.
- The rights of explicit intervention must be constituted in contracts for municipalities.

4.1.6.5. The Guideline Issued by the Cabinet Office

According to the Guideline issued by the Cabinet Office in January 2016 ("Guideline for Managers of Companies Fully or Partially of Public Sector"), some tips that may help decide on who did what in a municipal company are as follows:

- The parties of company's founder should remember that the company is a separate legal entity at the stage of establishment of the company and appointment of members to the board of directors and the members of board of directors are obliged to act in accordance with the interests of the company. Therefore, it should be allowed that directors actually manage the company -in other words, decide what is the best for interests of the company using their independent judiciary. Chief members, chief officials, monitoring officers and lawyers employed by municipalities should particularly consider the conflict situations and (in the latter case) certain codes of professional conduct. In the case of paying to managers, there are also provisions on situations that are imprudent for both the director/ officers and the director / members. These rules will need to be carefully directed with the help of appropriate legal advice and education.
- In cases where the interests of the company do not compatible with the interests of the main authority, both the directors of the company and the main authority catch the blame only if the company makes the tender of the main authority. The company's facing financial difficulties and carrying out a planned action plan for advantage of the main authority at the cost of the company's creditors increases the current risk. Such a responsibility may originate (among other things) from the fact that the main authority is treated as a "shadow director" of the company. In reality, such an intervention may set the main authority back the protection activity that it would otherwise carry out through a limited commercial company.
- In this case, it may be best to keep away from the reference to the use of the appointment as a "candidate" director because the term of "candidate" refers to a person who only performs a task for the benefit of another (for example, holding a certain property and taking required actions) and complies only with the instructions of the other. Referencing to a "candidate director" may give the impression that the person delegated all his/her discretion to the appointing council and this situation may for example encourage a liquidator or the person responsible for the

arrangement to make a request against the individual because of breach of duty and/or the board of appointment. Instead, it should be referred to “appointed director”, “shareholder-appointed director” or a similar title.

4.1.6.6. Audit Report on Nottingham City Council's Joint Ventures and Own Companies

An audit report of public interest was prepared pursuant to the regulations on governance for Nottingham Municipality of Robin Hood Energy Ltd. ("RHE") by Grand Thornton LLP, according to Section 24 and Annex 7 of the Local Audit and Accountability Act of 2014.

The report offers valuable information and explanations about government of municipal companies.

The reasons of the establishment of these companies vary like companies' life. For example, the Nottingham City Transport company has been a company controlled by the City Council for many years since it was previously part of the Council. Other companies were established more recently for certain purposes which include income generation as a part of the Council's “commercialization” agenda. The Council bought Thomas Bow City Asphalt which was an attachment group company in December 2019 and also considers to establish another companies.

The fact that some of these companies are successful and well-managed does not eliminate the necessity for the Council to make effective governance regulations for these companies or to ensure that the lessons taken from RHE are implemented to a wider extent. The Audit Committee reflected that the general governance regulations should be improved for the Council's companies in July 2017 and requested the authorities to identify the best practices for management of local administration companies in order to propose a framework for the companies belonging to City Council.

The scope of this study was confirmed in September 2017 and the results obtained were reported in April 2018. Good execution areas that are not included in the regulations of Nottingham Municipality were highlighted. The City Council accepted that current governance regulations throughout its companies should be strengthened and then it undertook further studies in February 2019 and filed the necessary reports. As a result, it was agreed on a series of Company Management Principles.

According to the principles laid down, companies will be provided with freedoms necessary to achieve their commercial and operational goals and the Council will have the controls to ensure the protection of its investment and achievement of the goals. The principles in question also include expectations regarding the flow of information between the bodies and the need for implementation of the relevant protocols in order for the decisions taken to be in support of the company and the Council group.

It was offered to create a new committee to provide supervision of the members. It was offered to establish a Board of Directors Companies and a Trade Committee. The board of directors will have the functions below.

- To give direction to the Company Shareholders' Meeting concerning company's commercial activities, vision and goals.
- To review the practice of the Council's commercial approaches including group companies corresponding with the development of companies and the group.
- To evaluate the effect of the group companies and commercial activities for achievement of the strategic goals of the Council.
- To certify the Company Shareholders' Meeting's programme of work.
- To certify the structure of group company proposals and other formal structures in order to protect the legal and commercial interests of the Council as a shareholder
- Exceptionally, to review the results obtained and offered in defiance of the company's governance principles and certify the measures taken by the Company Shareholders' Meeting to ensure the filling of the identified deficiencies.

It was also noted that only two companies out of the seven group companies reported their operational profit situations for the 2018/19 period and these two companies were small firms and heavily additional loans were credited by the Council to more companies. These supported companies excepting RHE are: Nottingham City Homes £19.8 million in 2018/19 - £6.6 million in 2019/20 - Enviroenergy £12 million in 2018/19, zero in 2019/20 - Nottingham Ice Centre zero in 2018/19, £4.5 million in 2019/20. In light of our findings about the RHE and the current suffered financial pressures of the Council which means that the RHE scenario was unlikely to be repeated again, and with the recognition of our view that some conditions around the RHE were unique, it t was underlined that the Council should steadily review the general corporate governance regulations that it needs, the improved monitoring proposed to the Subcommittee should be implemented and incorporated into the current system, and when applicable the other aspects of the regulations should be strengthened.

It is also included in this report a series of recommendations that the Council should tackle as outlined below. It is conducted a Strategic Investigation in order to determine the future of RHE and the most important steps that the Council has to take now are to ensure that the lessons learned from RHE are practiced in a wider group.

- In light of the current Strategic Investigation and other appropriate recommendations for decision making support, the Council must urgently determine the future of RHE by evaluating the current options and risks properly. The current financial circumstances of the Council should also be considered under this assessment.
- The Council should review its overall approach about benefiting from the members of the board of directors of its controlled companies and other similar institutions. The information for a full understanding of the role of members of the Company's Board of Directors and legal requirements should be provided.

- In the event of the Council's continuing to assign its members in such roles, it should be ensured that the non-executive individuals of related boards (including councillors) collectively have the knowledge and experience required to support the work of the administration. This situation is especially important in cases where the company operates in a sector that is non-normal experience of members of the City Council and specialisation-required.
- In cases where the members of the Council are assigned in such roles, the City Council must ensure that adequate and appropriate training updated periodically is provided for the members of the Council.
- The City Council must properly define all elements of the governance structure including the role of shareholder, and effectively relay these definitions to required people.
- In the case of allocation of roles in institutions related to the City Council to individual councillors, the Council should ensure that scope of conflicts of interest is minimized and it should be discriminated between those who undertake such roles and those who assign this responsibility and auditors of whoever is responsible.
- The City Council should evaluate the risks of its companies for inclusion of them in overall risk management processes with consistent increase and reporting rather than evaluating them as individual risks.
- Since the new regulations on auditing companies were transferred into practice together with the Corporate Governance Subcommittee, the City Council should ensure that financial information is provided in accordance with its requirements and is fully understood by the Subcommittee and other persons involved in the accountability of companies, and in case of non-eligible information, a concrete step should be taken like subjecting the incumbent to supervision.
- In the case of coming into question of new regulations involving the Corporate Governance Subcommittee, the City Council should ensure that enough importance is attached to the review and risk management responsibilities including giving the Audit Committee clear accountability for governance and risk management review group-wide.
- In addition to the situations referred in recommendations above, the City Council should practice the lessons learned from RHE in a more detailed examination of the company's governance regulations, particularly in order to ensure that risks are determined and managed properly and also to successfully implement a more robust monitoring activity agreed upon by the Corporate Governance Executive Subcommittee.

- The City Council should use its experience of having RHE to determine whether there are other lessons to be learned for the 'separation of powers' that must be applied or not, for more major governance and particularly including the need for a stronger monitoring and review function and the transition to a culture in which the challenges set out by political priorities and their implementation are recognized as positive.
- The City Council should reflect the financial pressures generating from COVID-19, demand-driven services and other areas as well as from RHE in order to produce balanced and achievable financial plans for the current year and the medium term, without relying on one-time disproportionate and unreliable measures.

4.1.7. THE NETHERLANDS

4.1.7.1. Overview of Municipal Companies in the Netherlands

Table-4.7: General Information on MLEs in the Netherlands

Area of Activity	Economic development, energy, waste, public transport, culture, roads, parking spaces, fire fighting
Main Legislation	Transitional Article 234 of the Municipality Law of Companies Act
Legal Forms	Legal Forms: - limited companies (Namloze Vennootschap - NV) - limited liability companies (Besloten Vennootschap - BV) Intra-organization: There is a general assembly ("simple partnerships") or management and supervisory boards (structural companies) which have majority powers.
Capital	Legal rules: There is no specific rule of capital constitution. Capital structure in practice: Mostly 100% publicly owned companies
Tender	It is implemented by the contract including the activities of company's statutes and all other types of activities.
Boundaries	There is no territorial boundaries.
Local Administration Representative	Elected representatives
Tariffs	Tariff control is conducted by the local administration according to the contractual clauses.

Financial Support to Local Administrations	It is sponsored to local public companies that have financial problems (appointment of a state inspector).
Public Control	Control activities on local administrations and state-owned local public companies are conducted by the National Supervisory Commission. One third of the auditors are appointed by the local administration.

4.1.7.2. Legislative History

There is a specific local administration system for incorporation in the Netherlands municipalities. The Netherlands can be qualified as a decentralized, unitary country. Decentralization means transferring duties and responsibilities to local administrations. But at the same time, the Netherlands unitary system also centrally imputes consistency and coordination responsibility. This situation means that although local administrations of the Netherlands have a fairly wide extent of autonomy and responsibility (in comparison with other Scandinavian countries), they will be quite heavily dependent on the central government (alike the continental-Napoleonic tradition) when fulfilling their duties.⁶⁷

In addition, the limited financial autonomy of local administrations reinforces this dependency on the central government. Another important local administration context is that the scale of the Netherlands municipalities has increased significantly over the decades and on average a Netherlands municipality has the population of about 50,000 now. Despite the relatively large scale, municipalities tend to cooperate with other municipalities in fulfilment of many duties because of the dominant role they assume for delivery of public services.⁶⁸

Finally, there is a bilateral municipal system in the Netherlands, in which legislative competence is exercised by the municipal council and executive power is exercised by the mayor and executive committee. Executive committee has a portfolio similar to that of the ministers among cabinet. This practice applies to municipal companies in terms of causing governance regulation: Individual members of the executive committee are responsible for government of municipal companies that comply with their specific portfolios. This delegation reports to the municipal council and is monitored by the municipal council.

In the Netherlands, subcentral legislation draws a general framework for the rules on the formation of both types of municipal companies with a special law for public law-based inter-municipal cooperatives. The Netherlands can be subsumed as a decentralized unitary state. In this monotype government system, local administrations have their own sphere of competence and it is given to the local administrations an actual and general competence.

⁶⁷ Lidström (1996). *Kommunsystem i Europa*. Stockholm: Publica.

⁶⁸ Schaap (2019). *Lokaal Bestuur*. Dordrecht: Convoy.

However, the autonomy of local administration is limited by central and provincial competent authorities according to the regulations.

Local administrations are responsible for a wide range of duties usually provided by municipal companies. While most MLEs belong to only one municipality in Germany, in the Netherlands most subsidiaries belong to more than one municipality.

The corporate governance system is organized on the basis of a two stratified governing board system including executive and non-executive boards, unlike the single stratified model which is common in continental European countries but prevailing in Anglo-Saxon countries (Van Thiel, 2015). The daily management of the enterprise is under a board of directors with executive directors' responsibility. On the other hand, the inspection board with non-executive directors inspects the board of directors, gives advice and participates in strategic decisions.

The Netherlands municipalities are partly free to establish municipal companies. In addition, the subsidiaries in question may be constituted in a number of ways for many different sectors and differ in many other areas and thus become particularly more heterogeneous. The law applicable to subsidiaries depends on the legal status in which they are established.

Firstly, municipalities are free to establish associations, foundations and various types of enterprises for public service delivery and these are subject to the Netherlands Burgerlijk Wetboek – the Netherlands private (commercial) law. These municipal companies with private law can be employed by municipalities with a few restrictions set out by lawmakers. Municipal private law companies can also be used for the purpose of public-private partnerships or inter-municipal collaboration.

Privatization in private commercial law is often preferred by municipalities as it is the most flexible option for establishing municipal companies. However, this practice also imposes some restrictions: The most closely associated restriction concerning this issue is the requirement of the existence of a supervisory board in accordance with private law. In addition to this, the law also does not have very strict limits and does not impose very strict requirements about what kind of structure the supervisory board in question will actually have, and thus the composition and duties of the supervisory boards may change. It is also offered a one-stage board option to be applied from time to time in accordance with Dutch private law. Both supervisory and executive board members are gathered under these same board roof. In summary, private law offers a very flexible way for municipalities in terms of customizing the local services delivery with a few related restrictions.

Municipal companies can typically be established under both private and public law. The public law option applies only to municipal companies which is established for inter-municipal cooperation. The table below shows that today most municipal companies are based on the private law.

Table-4.8.: Institutional Status of MLEs in the Netherlands

Institutional Status	Number	%
Public law organization	309	38,7
Enterprise	279	34,9
Foundation	189	23,7
Association	22	2,8
Total	799	100

It is seen that one of the key determinants of the legal status of MLEs is the service sector. Public law organizations are the dominant organizational form for MLEs operating in services such as general and financial services, environmental services, social affairs, security and health services.⁶⁹

This situation shows that public law organizations are mostly exploited for duties required by national government. The enterprises are mainly exploited for MLEs that have economic and development missions, sports and welfare, as well as infrastructure and garbage collection missions and that deliver services many of which require significant investment. Foundations are especially exploited for educational and cultural services: More than half of the MLEs in this service sector are foundations. In other service sectors, foundations are exploited to a much lesser extent.

Further to that, Voorn, Van Genugten and Van Thiel (2019)⁷⁰, posit that one of the main reasons for exploiting corporatization based on private law is to avoid governance problems that may arise in public law companies, when public regulations remain very strict in solving problems requiring collective action (multiple manager problems).

4.1.7.3. Structure of the board of directors

MLEs that are subject to public and private law, typically have a two-stage board of directors covering the executive and non-executive (supervisory) board. The supervisory board supervises the board of directors, gives advice and shares strategic decisions. In a questionnaire conducted among the managers of municipal companies, 73.4% of managers reflect that they have a supervisory board⁷¹. On the other hand, the composition of the board is different in MLEs: While in private law companies, the board of directors and the

⁶⁹ Voorn, B. 2020a. When Politics Meets Professionalism: The Characteristics and Performance Predictors of Municipally Owned Corporations [dissertation]. Nijmegen: Radboud Universiteit.

⁷⁰ Van Thiel, S., Van Genugten, M., & Voorn, B. (2019). Principals and agents: The relationship between governments and state-owned enterprises. In L. Bernier, M. Florio, and P. Bance (eds.), *The Routledge Handbook of State-Owned Enterprises* (pp. 322-335). London: Routledge.

⁷¹ (Voorn et al. 2018; Voorn et al. 2020a)

supervisory board are composed of professionals or volunteers with specific expertise, in public law companies, the supervisory board is composed of politicians (as representative of the property owner municipalities) and the board of directors is composed of professionals.

Therefore, how property owners are represented varies in the governance structure of MLEs. While the shareholders of private law companies are represented in the general assembly, they are represented in the supervisory board in public law companies. While stated shareholder meetings are conducted once or twice a year in private law companies, they are conducted about four to six times a year, that is much more frequently in public law companies.

Some MLEs hold to the governance regulations in the Netherlands. These governance regulations are sectoral rules in there. Governance regulations vary by sector but they are all derived from the Netherlands commercial law (Tabaksblat Code) for listed companies.

These governance regulations are primarily related to the separation of powers within organizations and between the non-executive board and the board of directors. Under the rules regarding the transparency, integrity and diversity of the non-executive board, it is also included the regulations on the appointment, tenure and remuneration of the members of the board of directors. Health institutions, primary and secondary schools, and cultural organizations can be given as examples of sectoral regulations on MLEs. There is an “apply or explain” rule in the logic of this sectoral governance regulation but the regulations are legally non-binding. In non-existence of sectoral regulation, some large private law companies –such as the MLEs in public services sector– are voluntarily subject to the Tabaksblat law or implement their own company governance codes which are usually derived from the Tabaksblat law. In such cases, there are no governance regulations of public law companies.

4.1.7.4. Background (organizational) characteristics

MLEs are used in many different service sectors. Voorn, Van Genugten and Van Thiel (2018, 2020a) compared the utilization of MLEs in eight different sectors and found that they were prevalent everywhere, and that about three-quarters of MLEs had inter-municipal ownership. While enterprises and foundations are equally exploited for inter-municipal cooperation, public sector organizations are only exploited for inter-municipal cooperation since the Netherlands legislation does not allow single-owner public law companies. Therefore, the main reason for incorporation in the Netherlands is the provision of inter-municipal cooperation (Voorn and Dec Van Genugten, to be published soon). The MLEs specific to the service sector are shown in the table below.

Table-4.9.: Breakdown of MLEs in the Service Sector in the Netherlands by sub-sectors

Sector	Total
General & Finance	6.2%

Economy and Development	15.3%
Infrastructure and Garbage Collection	14.1%
Nature and Agriculture	13.6%
Education and Culture	11.3%
Social Affairs and Employment	19.8%
Sports and Welfare	9.6%
Safety and Health	10.2%
Total	100%

Only 13% of MLEs in the Netherlands have public-private participations. Internationally, this is probably a low number. Public-private participations usually emerge in the "Infrastructure and Garbage Collection" and "Economy and Development" sectors as in other countries where development projects for housing or industrial parks are conducted.

A great majority of MLEs were established for a single purpose. However, there are also municipal subsidiaries that are established for more than one purpose in the Netherlands. One type of multi-purpose companies is public law regional cooperations (previous urban areas) which are usually active in the fields of economic development, labour, housing, public transport, energy, etc. Another type of multi-purpose companies is the organizations delivering public services (in Dutch: *ambtelijke fusie*), where the public services delivered by all participating municipalities (two to four) are combined under the roof of a single joint public service organization and where municipalities are shareholders. This joint public service organization is responsible for the fulfilment of all local duties to the participating municipalities. The first of these constructions was established in 2008 and by year of 2020, there are approximately 25 service organizations in which municipalities participate jointly. In addition, MLEs may occasionally come together and pull together; for example, in most cases MLEs operating in public health (in Dutch: *GGD*) are located in the same building with Security Zones firms (in Dutch: *Veiligheidsregio*) or other firms delivering youth services (in Dutch: *Jeugdzorg*), and through this collaboration between MLEs is possible.

4.1.7.5. Autonomy

Autonomy is an important characteristic of MLEs and is generally the key reason for the establishment of these subsidiaries. However, MLEs may differ greatly in terms of the autonomy that they have in practice. Voorn et al. (2018; 2020a) asked for explanation from the managers of companies about their level of autonomy on the basis of their labour force, financial aspects and revenue sources. First of all, it is identified these forms of autonomy in this section. Secondly, it is deliberated the guiding relationship between property owner

municipalities and MLEs, which also shows the level of autonomy that MLEs have in practice. Finally, it is deliberated on some trends regarding the autonomy of MLEs.

MLEs of the Netherlands have a high degree of autonomy in personnel matters. Private law organizations -both enterprises and foundations- have significantly more personnel autonomy than public law organizations (Voorn et al., 2018; Voorn et al., 2020a). MLEs particularly have control over the temporary personnel policy (including the possibility of free recruitment of temporary and external personnel) and also generally have control over long-term policies (decisions such as recruitment of new personnel, determination of wages, decision-making on dismissal or promotion). Most MLEs have control over labour conventions and pension regulations but their control over these matters is significantly less.

As relevant to financial affairs, MLEs usually have so much autonomy in decisions for buying materials and services as also for setting tariffs and transferring funds between personnel and material budgets. On the other hand, MLEs have significantly less freedom to take out loans and transfer budgets between years. Only a small group of MLEs has the freedom to invest and participate in other companies.⁷²

In terms of revenue sources, MLEs are often dependent on municipal financing (accounting for an average of 47.9% of their budget), but it is also obtained finance through tariffs that are offered to users (15.9%) or municipalities (9.5%). In some cases, MLEs receive funds from other agents (7.2%) or earn different incomes (including subsidies, 19.5%) (see also Table 3). When evaluated in terms of their institutional status in relation to their revenue sources, there are great differences between the different types of MLEs. Public law companies and foundations are mostly dependent on municipal budgets. However, enterprises are clearly less dependent on municipal budgets and they are provided with more financing from tariffs and other sources. The revenue sources of MLEs are shown in the table below.

Table-4.10.: Revenue Sources of MLEs in the Netherlands

Revenue Source	Unweighted average	Public law organization	Enterprise	Foundation
Budgeted municipalities	47.9%	62.7%	27.1%	50.4%
Tariffs for users	15.9%	4.7%	30.2%	13.4%
Tariffs for municipalities	9.5%	12.5%	6.9%	8.6%
Budget (other public sector)	5.9%	8.9%	2.1%	5.6%
Budget (private parties)	1.3%	1.7%	1.5%	0.5%

⁷² (Voorn et al. 2018; Voorn et al. 2020a).

Other	19.5%	11.9%	32.2%	21.5%
Total	100%	100%	100%	100%

Source: Voorn, Van Genugten and Van Thiel (2020a).⁷³

Organizing the public service delivery in accordance with references also means a fair amount of autonomy in goal setting and reaching. The level of autonomy substantially depends on how municipalities establish their referral relationships with municipal subsidiaries.

The overall objective of MLEs is identified by the founders of these MLEs (mostly municipalities) and stated in founding documents or regulations. More measurable performance indicators are regularly included in policy documents, in (quasi-)contractual agreements between municipalities and MLEs or in subsidy documents. MLEs have much voice over the determination of performance indicators. Performance indicators are usually co-specified but in most cases, MLEs play a larger role than property owner municipalities. Enterprises and especially foundations have relatively more control over determination of performance indicators than municipal public law companies.

A qualitative study on performance management of MLEs showing that the strategic initiative is mostly on the side of MLEs verifies this situation. This situation can be explained by three factors. Firstly, as MLEs continue their activities for a longer period of time, they become more active than municipalities about goal setting. In other words, the increasing distance between the municipality and MLEs over time leads to the existence of information asymmetry and the shift of the goal-setting role to the company. Secondly, the lack of continuity in especially mayor, alderman and municipal council on the side of the municipality leads to an increase of initiative on the part of MLEs. Thirdly, in the event of a partnership structure in MLEs, having more than one manager leads to diversity and/or freedom in goal setting, and this results in greater autonomy in determining goals and performance indicators for MLEs. Performance indicators are presented in the table below.

Table-4.11.: Performance Indicators of MLEs in the Netherlands

	Total	Public law organization	Enterprise	Foundation
Municipalities set	1 (0.6%)	0 (0%)	1 (1.8%)	0 (0%)
After consulting MLEs, municipalities set	8 (4.5%)	2 (2.5%)	4 (7.1%)	2 (5.6%)

⁷³ Voorn, B. 2020a. When Politics Meets Professionalism: The Characteristics and Performance Predictors of Municipally Owned Corporations [dissertation]. Nijmegen: Radboud Universiteit.

Subsidiaries and municipalities set together	72 (40.7%)	46 (58.2%)	16 (28.6%)	10 (27.8%)
After consulting municipalities, MLEs set	57 (33.1%)	24 (30.4%)	21 (37.5%)	11 (30.6%)
MLEs set	34 (19.8%)	7 (8.9%)	14 (25.0%)	13 (36.1%)
Total	172 (100%)	79 (100%)	56 (100%)	36 (100%)

Another way for municipalities to guide their own subsidiaries is to form an opinion about their actual performance through reporting. It is observed that MLEs give a comprehensive report to municipalities. Most MLEs give reports to municipalities 3-6 times a year. Almost three quarters of MLEs give reports to municipalities more frequent than once a year. It is seen that there are noticeable differences among MLEs with different institutional statuses in terms of reporting frequencies.

MLEs that are subject to public law give more reports to municipalities compared to the MLEs that are subject to private law. Under *Wet gemeenschappelijke regelingen*, this can be explained by the obligations on reporting MLEs subject to public law to the municipal councils of property owner municipalities. MLEs can report about many variables to their respective municipalities, but one of the most commonly reported items is that to what extent they have met their performance targets. 71.8% of MLEs use performance indicators on financial consequences, 61.6% of them use performance indicators on the quality of service delivery, and 41.2% of them use indicators on other social impacts⁷⁴. These social impact indicators generally shape depending upon the sector. For example, while environmental organizations often use performance indicators on environmental quality, employment organizations often notify labour force participation rates. Only 9% of MLEs do not use performance indicators.

In the event that performance indicators are not used, the budget is used as a means of guidance. In terms of the frequency and type of performance indicators used, it is observed that there is no obvious difference among MLEs with different institutional status.

Interestingly, most executive directors of MLEs believe that their performance related to performance indicators do not produce effects in reality⁷⁵. A great majority of senior staff (92.7%) do not expect any benefits to the extent that they perform well. A smaller majority which still corresponds to three-quarters of senior staff do not expect any sanction in case of poor performance. In case of any problem, senior staff of MLEs expect to be spoken with them about the issue or perhaps to be reprimanded harshly rather than face the consequences.

Municipalities also use informal guidance methods in addition to these formal guidance methods. Communication between municipal public services and MLEs can be given as an

⁷⁴ (Voorn et al. 2018; Voorn et al. 2020a)

⁷⁵ (Voorn et al. 2018; Voorn et al. 2020a)

example of such an informal guidance mechanism. It is seen that this kind of communication is frequently used.⁷⁶ While most MLEs (67.7%) communicate with municipal officers on a weekly basis, large majority of MLEs (89.2%) contact them at least once a month. When categorized by institutional status, it is found that the companies that communicate the most with local officers are organizations that are subject to public law, and even half of these organizations make this communication on a daily basis. On the other hand, the nature of this communication shows a change. It is usually contacted about operational matters, but it is also discussed periodically about evaluation and strategic matters.

Consequently, MLEs have too much autonomy in the Netherlands. This situation can be explained by lack of capacity and information on the municipality side and hereby, information asymmetries between MLEs and municipalities, non-measurability of the service, bureaucratic culture and political factors.

4.1.7.6. CASE STUDY: UTRECHT MUNICIPALITY⁷⁷

The findings of the research conducted in MLEs of Utrecht and the relevant recommendations are presented below. This study is valuable for the sake of giving an idea of the management, performance and control of municipal companies in the Netherlands.

4.1.7.6.1. Municipal Council rapporteurs are the link between the relevant party (MLE) and the municipality

There are certain roles that some councillors play in relation to relevant parties. The Municipal Council appointed rapporteurs for various municipal relevant parties in 2014. For each joint agreement, one or more councillors are appointed as rapporteurs. The number of people to be appointed depends on the number of applicant councillors. Rapporteurs prepare the General Assembly meetings' reports and follow closely the relevant parties' developments.

Duties of Municipal Council rapporteurs are presented under "Memorandum of Affiliated Parties, 2015":

- To follow developments on the connected party;
- To inform municipal council on requested and unsolicited situations about the relevant party;
- If required, to prepare motions and amendments for the EU proposals;
- In case of failure of reconciliation between political groups, to file the matters of debate to the municipal council;
- To be in contact with other regional municipal councils.

⁷⁶ (Voorn et al. 2018; Voorn et al. 2020a).

⁷⁷ Grip op verbonden partijen Rekenkamercommissie Utrechtse Heuvelrug Onderzoek uitgevoerd in opdracht van de Rekenkamercommissie Utrechtse Heuvelrug Onderzoekers E.I.A. (Emilie) Stumphius MSc LLM Prof. Dr. J. (Hans) Bossert B.L.K. (Bas) Verkooijen MSc Datum / 8 kasim 2019

There have been some developments under this range of duties. In beginning, rapporteurs included their opinions, wishes and reservations in the reports that they wrote so that all political groups could agree. At the municipal council information event in January 2015, it was arisen that councillors were mainly took aim at the first two duties and generally valued the time frame narrowly to respond. Therefore, it was decided that it would be appropriate for the opinions, wishes or reservations to be prepared by municipal councillors and especially for the rapporteurs contacted by other regional municipal councils through registry system.

This means that council rapporteurs have some duties. In a brief investigation conducted by the clerk of the court in 2016, it was arisen that the municipal council rapporteurs expressed a positive opinion on spokespersonship after these changes. They shared their impressions on the fact that the decision-making process is being improved (or at least accelerated) with working of rapporteurs in municipal council. However, the (mostly short) reporting time and the difficulty of contacting councillors in other municipalities continued to be an issue that was highlighted.

This comment is a remarkable point of criticism when taking into consideration that importance of this contact was emphasized before. The interviewees indicate that the reason for the difficulty of this contact can be explained by the fact that Utrechtse Heuvelrug was one of the first municipalities in the area selecting a municipal council rapporteur.

Two recommendations are formulated based on the research conducted by the Registrar:

1. To contact with other municipal councils through recording unit in order to pool;
2. To conclude agreements on how the rapporteurs will be included by community colleges, especially to notice the time schedule.

Currently, municipal council rapporteurs play a main role for the preparation of the decision-making process of Utrecht Hill Ridge Assembly. The rapporteurs are considered in Assembly studies due to their knowledge and therefore they are important in terms of determining the position.

According to the various subsumed parties, the rapporteurs contribute to relevant parties' knowledge store. However, according to the relevant parties, the appointment of parliamentary rapporteurs may also raise other question marks in municipalities.

Matter of affiliating with rapporteurs from other municipalities is still not at an optimal level. They have not yet fully recognized each other. A series of officials from the region are currently trying to improve mutual communication by setting up a common portal where documents from all municipalities can be included. The fact that all related municipalities should cooperate on this issue means that it is difficult to bring this about for now.

4.1.7.6.2. Representation on relevant parties

Representation on relevant parties is executed at three levels in Utrechtse Heuvelrug: The official account holders of the municipal representative officially work together with the relevant party and parliamentary rapporteurs are the 'transmission authority' for the councillors. In this sense, account holders, municipal representatives and parliamentary rapporteurs form a tripartism and each of them has a different role and duty.

The nature of the relevant party is partly determined by the administrative benefit of the municipality. Therefore, the municipality gains control either through representation on the board of directors or through suffrage. A manager or municipal official is at the board of directors of the relevant party on behalf of the municipality or votes on behalf of the municipality.

In addition, councillors can also be appointed as members of the board of directors in the event of parliamentary regulation. The members of the board of directors are appointed by municipal council vote which confers the responsibilities on them. Therefore, they are responsible to municipal council in terms of the policy being followed by the common charter.

Utrechtse Heuvelrug classifies relevant parties as co-regulations, companies and cooperatives, foundations and associations, and other relevant parties and forms of cooperation. In eight co-regulations in which Utrechtse Heuvelrug Municipality is represented, the various members of the board of directors in the portfolio take part in the general assembly. On the other hand, under Utrecht Region Environment Agency (ODRU), the mayor is also the person at the head of both general and everyday management. Therefore, Utrechtse Heuvelrug is the municipality that is in the position of chairperson.

In 'companies and cooperatives' category, Utrechtse Heuvelrug Municipality carry the right to vote on a share basis under 'Bank Nederlandse Gemeenten NV', 'Vitens NV' and 'Biga BV'. The nominal value of the share pack varies between € 36.500 and € 504,172.50. In all three cases, the responsible portfolio holder carries the right to vote. In addition, the portfolio holder of 'Biga BV' company represents the municipality in General Assembly. As regards the 'Lange Dreef CV', the municipality has no direct administrative power with this limited partnership. The portfolio holder who is appointed as a director of Lange Dreef BV and Utrechtse Heuvelrug Commandet BV may influence the decision-making process of the CV.

'Wereldkidz' and 'Stichting Social Village Teams Utrechtse Heuvelrug' are the other two relevant parties that fall into the category of 'foundations and associations'. When it comes to the Social Village Teams Utrechtse Heuvelrug Foundation, the Board also has the role of Supervisory Board. The municipality gets no administrative benefit out of the Wereldkidz foundation.

4.1.7.6.3. Formal responsibility: Account holder

In addition to administrative representation, provisions on formal participation are presented under the Memorandum of Affiliated Parties. Utrechtse Heuvelrug uses the term of 'account holder' in this context. The account holders are formally included in relevant parties and therefore have professional knowledge of what the relevant party does for the municipality. Since most relevant parties have work groups or consultation structures, the interpretations made on the subject at formal level vary. The representation of the municipality in such formal work groups is important in terms of getting signals at this level and representing the interests of the municipality.

Account holders periodically come together in order to exchange experience and prepare reports on relevant parties. The intensity of the contact between municipality and various interested parties differs. In workshops, it was stated that this situation may lead to different knowledge levels from the point of relevant parties.

4.1.8. GERMANY

4.1.8.1. *Overview of Municipal Companies in Germany*

Municipal companies are mostly used in the field of voluntary and compulsory self-government duties. Voluntary self-management duties do not have content-related features on how an activity should be executed and whether it is available or not and they are subject to jurisdiction of regional authorities. For example, as well as the sustaining of public services for the public weal through public service organizations and transport companies, the maintenance of sports arenas and swimming pools and the operation of museums, concert halls, theatres and libraries in the cultural sector falls into this field. The establishment of savings banks may also be added to this field.

When it comes to compulsory self-government duties, these duties are required to be fulfilled by municipalities according to the state and federal laws. It is under the relevant regional authority's responsibility to how the duties will be fulfilled. The activities of housing, waste and sewage disposal, road construction, urban development and redevelopment, as well as special missions in the field of youth and social welfare are included in the scope of compulsory self-government duties which are mostly fulfilled by municipal companies.

Economic activities are municipal activities that can be assumed by entrepreneurs in the private sector with profit making purpose. Comparisons that are made in this field are primarily based on the type of activity, not on absence or existence of competition. The remuneration and making a real profit shows the economic activity of the municipality.

However, the limit of an uneconomic activity is not always clear. Some authors posit that uneconomic companies are those whose activities are openly assigned to municipalities and that cannot be operated profitably in as much as prior experiences. Municipal enterprises that

operate under compulsory municipal duties, auxiliary enterprises that deliver education, health and social services, culture, sports, entertainment, waste management services with the municipality's own needs are not economic enterprises, and facilities that deliver sewage disposal, scavenging and similar services are also included in this scope.

The economic units of municipalities operated by the constructions of legal entities in private sector are listed under the first Eigenbetriebsverordnung of 1838:

a) Enterprises that deliver public services (Waterworks, gasworks, electricity and district heating facilities and marketing companies),

b) Transport companies (trams, small railways, motor vehicle companies, industrial railways, link railways, rail companies, port companies, storage facilities, warehouses, seaports, airports and ferries),

c) Activities of primary production/processing companies (Goods, dairies, dairy farms, sawmill, saltworks, wells, gravel and lime works, lignite mines, brickyards, mills),

d) Other companies (independent gas enterprises, independent fitting companies, ice plants, milk cooling and cooling systems, wine and cellars, municipal buildings, ad agencies).

As to the commercial enterprises of municipalities, some special terms contained in the municipal commercial law apply to them.

Limits of private enterprise: Regardless of their legal status, municipalities can establish commercial enterprises, take over them, significantly amplify these enterprises or participate in them under the condition that certain admissibility requirements (namely triple barrier) are met: the requirement of public service, municipality's efficiency and subsidiarity. In order to be given official authorization to a banking company, this company must be a savings bank.

If the sole purpose of economic activity is to make a profit, then the purpose of public service is out of question at this point. Performance is mainly related to the degree to which the type and scope of the activity is proportionate to the performance of the community in question. According to the provision on subsidiarity, operation of economic activities by municipalities is possible only if these activities are better or more economical than those in the private sector.

Legal structure of companies: Based on their remit, municipal companies are operated as public or private law companies. The company structure that exists under public law is presented below:

a) Own enterprise,

b) Organization subject to public law,

c) Foundations (Foundation) subject to public law,

d) Zweckverband (Zweckverband).

These are included in the possible forms of organization under private law:

a) GmbH (limited company),

b) Aktiengesellschaft (AG),

c) GmbH & Co (limited company & partnership), KG (limited company (GmbH)),

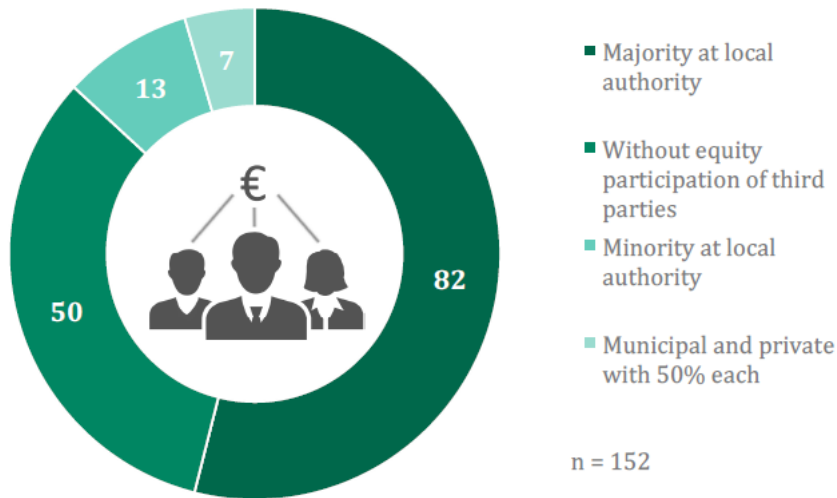
d) Cooperative, e) Foundation subject to private law (Foundation),

f) Legally capable association (association).

The majority of German public enterprises were established as the companies subject to private law. For example, limited companies or a lot fewer of stock companies are included in this scope. Federal Statistical Institute of Germany published a report on 16,206 public enterprises that have commercial accounting practices in 2015. About two-thirds of these companies were established in a legal format under private law, and as to 88% of them were established as limited liability companies. In such companies, shareholders at shareholders' meetings and audit board are usually represented by municipal councillors or members of the land government and therefore the members involved in the process from both structures participate in the strategic decisions of the municipal public enterprise and they are responsible for these decisions to some extent.

The establishment of companies that deliver municipal services has drawn great interest for several years but not limited to Germany. A number of local administrations, politicians and councillors that figure public services which are controlled and operated by the municipality as a movement to benefit from municipal services is gradually increasing. Again, the same circles identified that energy systems played an important role in the socioeconomic development of their communities. It has made several political attempts in recent years in order to regain local responsibility for security of supply and to reroute public service companies to public ownership. A renaissance effect has been experienced in the municipal service companies and the municipal economy in Germany as a result of these steps taken. 152 new local Stadtwerke have been established in Germany in just eleven years between the beginning of 2005 and the end of 2016. The structure of the shareholders was generally

designed in such a way as to ensure the municipality to have a great influence on the company.



4.1.8.2. Limitations on Municipal Companies

According to the provisions of the Local Administrations Law (Articles 89-98), municipalities can participate in economic life only in exceptional circumstances. On the one hand, the purpose of this practice is to protect private sector companies because of the inability of economic enterprises of local administrations to compete with the private sector in free market economy.

On the other hand, such activities and inclusion in competition also accompany the risks that local administrations should not be exposed for the municipality. As a result of these circumstances, the municipality can establish, take over or expand an economic enterprise only in a state of that such a company is necessary for public welfare, the size and type of the company conform with the capacity and possible needs of the municipality, and it is not possible to fulfill these goals by another company both physically and economically.

Savings banks (Sparkassen) operate in a large part of the economic activity area. According to the provisions of the Bavarian State Savings Bank Law (Sparkassengesetz), local administration administrations can establish and operate savings banks as long as getting permission from the supervisory authorities.

Savings banks:

- They are established by municipalities and municipal associations.
- They are under municipalities' responsibility (guarantee authorities).
- They transfer a part of their annual net profit to the municipality.
- They are largely managed by representatives of the guarantor authority (municipal council) in key fundamental decisions.
- They are subject to the supervision of regional government.

Savings banks are operated as an agency under public law and are independent in the face of the municipality. Banking transactions with the customer are conducted in the framework of private law. According to the Federal Administrative Court, the savings bank is a financial institution with its idiosyncrasies, and therefore it has a structure of a private bank. It will be expected that these banks will serve the local credit needs and offer a safe and interest-bearing investment opportunity for government savings and other funds. In addition, savings banks should take advantage of the relevant institutions in order to promote the public's saving sense and electronic means of payment.

The regional principles in question also apply to savings banks. This principle indicates that the activity-area of a savings bank is bounded by the guarantee authority (municipal or district) area. According to the principle in question, the general directorate and branches of the savings bank can only be established within the municipal (district) borders. The purpose of this arrangement is to prevent competition among public savings banks. The business area limited by region should be separated from the (unrestricted) activity area determined by market rules. To give an example, the savings bank can accept everyone's savings deposits. While the savings bank stocks are invested in securities, accounts receivables and other values, they can also participate foreign market developments. In this context, activity-areas are based on the principle of "the world".

Although savings banks are part of a banking and currency system, they are different from the other banks under the aspects below.

- Property (local administration),
- Local and regional focal,
- Factual main focal of business relations developed with the people living in immediate surroundings,
- Exclusion of competition within the boundaries of a municipality or district.

The second greatest area where local administration operates is the local supply industry. All cities and many municipalities that are dependent on a district operate energy, gas or water supply companies, either alone or together with other local administrations.

The third largest bracket of the local administration economy is the transport sector. Especially metropolitans have their own local public transport companies. Among other opportunities offered in transport sector, there are operating sea or inland ports, airports, mountain railways, etc.

Education and culture organizations such as schools, museums, theatres, as well as social organizations such as youth centres, kindergartens, children's homes and sports arenas are generally not regarded as economic companies.

However, this is more of a formal classification. Efficiency matters should always be considered, and this also plays an important role. “Economic companies” are used in the meaning of institutions whose main purpose is to make a profit (see GO Article 94). However, this is not quite applicable to theatres.

4.1.8.2.1. Representation in subsidiaries

(1) Municipal representatives in company bodies including MLE can decide credit usage only according to a decision to be made in advance by municipal council. The same applies to that such a company intends to join another company.

(2) In case of the representatives being responsible for their own activities, the municipality compensates the damage in question to the representatives as long as it is not intentional or gross negligence. However, in case of the representatives acting upon the orders given, the municipality is supposed to pay compensation.

(3) The memberships of the municipal representatives under the first paragraph culminate in their retirement from the professional or honorary service of the municipality.

4.1.8.2.2. Management of Economic Activities

(1) It will be expected that economic activities and participation will bring in money to the municipal budget.

(2) The revenue of each operation must cover the expenses at least and ensure the possibility of creating appropriate funds, in addition to providing interest to own capital at a standard market ratio. Payments that would be appropriate for the goods and services of the enterprise to the municipality or other incorporated or unincorporated MLEs are also included in this revenue.

(3) The taxes, loan interests earned for management goals, appropriate amounts spent for maintenance and supply, appropriate depreciation values, appropriate fees for the goods and services of the municipality and other incorporated or unincorporated MLEs and special risks should be included under expenditures.

4.1.8.2.3. Information and Audit Rights

(1) Where the shares of a company are municipal shares in a stated rate on paragraph 1 of Article 53 of the Law on the Basic Rules for the Application of the Budget Law, the municipality must fulfill the following:

1. The annual report and the board of directors' report should be arranged and audited according to the provisions of the commercial law applicable to large capital companies, unless further legal provisions are applied or otherwise stipulated in other legal provisions.

2. The rights that are given under paragraph 1 of Article 53 of the Law on the Basic Rules for Application of the Budget Law should be exercised.

3. It should be aimed that the powers specified in Article 54 of the Law on the Basic Rules for Application of the Budget Law should be conferred on them and the regional auditing body responsible for this.

The legal supervisory authority may allow exceptions.

Where the participation is not a majority participation as prescribed in Article 53 of the Law on the Basic Rules on the Regulation of the Budget Law, the municipality's participation in a company should aim at prerogatives to be conferred to the municipality pursuant to paragraph 1 of Article 53 of the said Law, and powers to be conferred to the municipality pursuant to Article 54 of the said Law and to the regional supervision unit in charge pursuant to the relevant regulation or the company's articles of incorporation. Where the participation is indirect, this rule applies only if the participation exceeds one fourth of shares, and is exercised by a company in which the municipality alone or in conjunction with other local administrations has participation under Article 53 of the said Law.

Under paragraph 1 of Article 129, municipalities that do not have an audit unit and are not part of another local administration's audit unit are supposed to make an audit through the district audit office, at municipality's expense. According to Article 129 (2), the municipal council may assign additional duties, particularly the following duties to the audit office through a relevant agreement in Article 127 (2).

- Review of structure, expediency and profitability of the government,
- Examination of the stocks and assets of the municipality and its own enterprises,
- Mutual fund management audit,
- Review of the municipality's activity as a partner or shareholder in companies with its own legal entity,
- Auditing of accounting, company and treasury to which the municipality is responsible for crediting or hides in different way.

The mayor is responsible for the coordination of MLEs' works, the implementation of municipal benefits and the general control exercised by the municipality with respect to how the duties of the MLEs are fulfilled.

4.1.8.2.3. The Content of the Audit and Cash Account Audit

(1) Audit may be expanded in such a way to comply with the provisions and principles applied to economic management considering particularly the adherence to the following points:

1. Compliance with the financial adjustment and budget plan,

2. Presentation and verification of the reasons for income and expenses, as well as listing of the annual accounts and proof of assets correctly,
3. Being economic and efficient of the application,
4. Spending less for personnel or assets when fulfilling duties, or fulfilling them in another more effective way.

(2) The economic administration of the hospitals including their final statements is audited. Paragraph 1 will be applied only *mutatis mutandis*.

(3) Audit scope also includes the economic administration of MLEs *mutatis mutandis*. In this context, necessary regulations must be made according to the final audit (Article 107).

(4) In frame of audit, the activities of the municipality in companies subject to private law, in which it participates directly or indirectly, are also audited within commercial principles. The same applies to acquisition and economic cooperatives of which the municipality is a member and to local administration companies. In addition, the audit includes the auditing of accounting, tax and other audits that the municipality appropriates to itself when crediting or otherwise.

(5) *Correct transaction of cash operations*, correct setting up of cash accounts and interaction matters with the administration are audited through cash account audits.

4.1.8.2.4 Securing the Public Interest in Association Agreement

Where a company is sustained, established, taken over or significantly expanded according to private law or if it is participated in this company, the municipality is supposed to ensure that the company operates continuously in the public interest in accordance with the draft association agreement or with this agreement itself.

4.1.8.2.4.1. Ensuring Adequate Effect

On order to enable the municipality to effectively manage and control the company, in accordance with Section 117 (1) No. 3, municipalities are obliged to ensure having appropriate effect on the company, particularly the effect that will have on the supervisory board or the unit of the company corresponding to the supervisory board, and to specify the provisions on how this impression will be produced, if possible from the association agreement. In a condition that the votes in the committees and organs of the company are determined according to the participation rates, it was generally accepted that the municipality has an appropriate effect.

In a state of the municipality being the sole shareholder of the limited company in question, there is no need to indicate separate collateral in the provisions of the association agreement because it is possible for the municipality and the administration to give instructions at any time independently from a specific form. This situation is related to Section 37(1) of the

limited company agreement. On the other hand, it is necessary for an AG to have an effect upon the board of directors because of the fact that binding provisions under AktG are more limited. In addition, the municipality is deprived of the right to give instructions to the members sent by it to the supervisory board of an AG.

Starting from this situation, it can be said that the GmbH has precedence over AG. Thus, the sustainment, establishment, acquirement, significant expansion of an AG or the participation in this company can only be subject to local administration audit in a situation where special terms and conditions are met and it is accepted for capital-intensive "large companies".

4.1.8.2.4.2. Limitation of Loss Assumption

According to the subparagraph 6 of paragraph 1 of Article 117, the municipality cannot request a transfer commitment for indefinite or unreasonable loss. This regulation also aims to protect the municipality from the obligation to make unlimited additional contributions and thus to prevent a noticeable disruption of performance. In case of the fact that the municipality is not the sole shareholder in the company, the appropriateness of loss amount should be justified and as a rule the participation quota should be taken as a basis.

4.1.8.2.4.3. Conflicts of Interest

Municipal representatives on supervisory boards should carefully review the purposes specified in the articles of association as well as the public interest and if necessary, critically call into question the conduct of commercial activities.

When the member of the supervisory board makes decisions that he has the right for exercise, he cannot pursue personal interests or beneficial work opportunities for the company.

It should be avoided transactions between the company and the members of the board of directors or the supervisory board or persons closely associated with them. If this is not possible, it must be complied with the usual standards applied in industry. Receiving approval of the supervisory board is required for main work activities.

The member of the supervisory board should abstain from forming contracts on consulting or other services and business contracts. This practice is valid only in exceptional cases and it must be received all supervisory board members' approval.

4.1.8.2.4.4. Power of Municipal Council

According to the Paragraph 1 of Article 119/5, the municipality can give instructions to its representatives as long as it is not contrary to the provisions of companies act. Therefore, the municipality's right to give instructions is conditioned to that nothing short of this is determined by companies act. Another such regulation is optionally offered under GmbH according to association agreement articles (Paragraph 1 of Article 52).

4.2. RECOMMENDATIONS FROM SELECTED COUNTRIES' EXPERIENCE

In addition to the comments and analyses mentioned above, we have submitted certain recommendations under our study conducted on European municipalities. In accordance with our examinations of domestic legislation and practices in various countries, we have summarized a series of possible measures and actions that municipalities in Türkiye can take to improve their contributions to the municipality in this section of the report.

Firstly, the structured literature review reveals that use of local administration companies is a growing phenomenon in European local administrations and is becoming an important part of public service delivery system. Despite the fact that the establishment of commercial enterprises has noteworthy benefits, these enterprises also imply some serious risks.

Although commercial companies owned by local administrations are separate legal entities with their own governance structures and are free to operate commercially, the relevant local administration remains responsible for the effective public service delivery and local administration as a shareholder will be exposed to both financial and reputational risks in case of the company's failure in the following situations.

Commercial companies in question are under the control of the relevant local administrations and this control will be less direct since competent authorities do not conduct control activities over these companies on a daily basis. Therefore, there is difficulty about democratic accountability in service delivery.

In view of the fact that their commercial companies as shareholders are entitled to conduct commercial activities in order to return profits to local administration, it is seen that company interests are separate and distinct from municipal council interests and in this case it may be difficult to maintain accountability.

Secondly, commercial companies can take too many risks when pursuing growth and profit and aggressively adopt private sector principles at the cost of non-financial results, which can be significant issue for local administration. Accordingly, local administrations will need to make sure that they have good governance regulations because accountability and transparency are very important in protecting democratic values and maintaining trust in the politically governed organization. The accountability issue is important and there are social expectations with regard to the local administration being fully accountable.

The proposed measures in the following section should be implemented by means of improved policy-making, planning and government in order to ensure noteworthy improvement in citizens' lives.

The measures in question are grouped and presented in categories by outlining under measures, expected results, required activities and resource requirements.

1. Field of Activity

- Independently of their legal form, municipalities should establish commercial enterprises, take over these enterprises, significantly expand them or participate in

commercial subsidiaries providing that it is for public interest and satisfies efficiency requirements.

- In the case that sole purpose of economic activity is to make a profit, public interest cannot be mentioned. The performance in question is mainly related to the ratio of type and scope of activity to community performance.
- For the sake of example, according to German Local Administrations Law provisions, municipalities can participate in economic life only in exceptional cases. On the one hand, the purpose of this practice is to protect private sector companies because economic enterprises owned local administrations cannot compete with the private sector in free market economy. On the other hand, such activities and inclusion in competition also involve the risks for the municipality that local administrations should not be exposed to. As a result of these circumstances, the municipality can only establish, take over or expand an economic enterprise if such a company is necessary for public welfare, the size and type of the company are compatible with municipality's capacity and possible needs, and it is not both physically and economically possible to fulfill these goals by another company.
- Since the very beginning of the process, it has been emphasized in France that a pure financial understanding on complementarity principle which would lead to the aggregation of activities in the same company structure for the sole purpose of achieving financial balance could be accepted as illegal. This practice helps to prevent emergence of the following situations:
 - Taking more responsibility of MLEs regarding execution of activities under financial provisions that any other enterprise would not accept,
 - Structurally and sustainably financing of one activity to another lossmaking activity (to put it more explicitly, a delegation delivering a public service should not charge the service to its own users at a higher price in order to finance lossmaking activities supported by a MLE);
 - Or independence of the production costs from the prices charged to the users or customers of MLEs.
- On the other hand, this precaution principle makes possible to ensure the following:
 - The operation of MLE is based on a practical and sustainable economic model;
 - Amount of money paid by taxpayers for a public service do not close the other activities' deficit that are not related to this;
 - MLEs are compatible with the transparency and knowledge principles for communities and local taxpayers.

- In addition, under subsidiarity principle, municipalities are only allowed to conduct economic activities in cases where it is not possible to deliver the services in question in a better and more economical way by private enterprises in France.
- On the other hand, municipalities in Hungary have almost always been in charge of non-commercial services. For example, infrastructure services –potable water supply, lighting of public spheres, solid waste management, roads and cemeteries maintenance– have become a completely local responsibility. In addition, urban local units have also been made responsible for public transport, sewage systems and district heating. Municipalities have also been made responsible for kindergarten education, primary education, primary health services and elderly essential social services. Additional areas of responsibility such as middle schools, hospitals providing primary health services and private nursing homes have been assigned to the cities.
- Similarly, according to the legislation on establishment of MLEs in Poland, for a local administration to be able to establish a capital company, the activity of this company must only consist of fulfilment of public duties. Therefore, local administrations cannot establish a company and participate in the company for any purpose except fulfilment of these duties. The public duties that must be fulfilled by local administration are its own duties, and therefore they fall exclusively within its jurisdiction.
- In addition to this, in almost all of the countries analysed in this study, a company established by a local administration cannot operate outside the field of that municipality as a rule. However, exercising this principle is not always possible. Exercising this principle is quite difficult especially when it comes to water supply and sewage services (for example, when there is no water resource in local administration area, water supply is only possible from outside local administration borders).

2. Financing of MLEs

2.1. Financing of Daily Operations and Cash Flow

- Specific financial plans and regulations are provided by law in various countries for MLEs that particularly operate in the field of social and cultural services. For example, a new national public institution, namely the National Solidarity and Autonomy Fund (CNSA) was established by law in France on 30 June 2004 in order to finance aids and to provide technical support to institutions and municipal companies that are responsible for social care of elderly and people with disabilities with limited autonomy. In addition, municipal companies' activities are also directly supported by state budget, social security funds, and chamber councils based on the services that they deliver to citizens.

- In addition, various taxes and fees collected by the municipality from time to time and case by case, may be directly or indirectly associated with the services delivered by municipal units (For example, while a special tax for waste collection is collected by the municipality, the waste collection services are delivered by a municipal company). It should be avoided from this discrepancy and the taxes or fees which are directly related to the activities of a company and collected by the Municipality, should be compensated to the MLE. This compensation can be made through a detailed analysis of cost structure of services and the tariffs that the MLE receives for the exchange of its services. In case of a gap between costs and revenues (tariffs), this gap can be closed with taxes collected by the municipality.
- For example, a special tax (versement transport, VT) was laid on the field of urban public transport in France in order to finance urban public transport investments in Paris metropolitan area, and this practice was later expanded to all urban areas with a population of more than 10,000; the scope of the practice was also expanded for inclusion of operating costs of transport services. The amount of this special transport tax (VT) is calculated according to a rate between 0.55% and 1.75% of wages, but in the metropolitan areas of Paris, this rate can be up to a bound rate which is 2.7%. In allowable range, the tax rate is determined by local municipal councils. While the VT tax currently accounts for 50% of the resources of authorities of transport, tariffs contribute only at the rate of 20%, and the gap between (30%) is closed by local capital budgets.
- In addition, MLEs must have in a way of autonomy when setting the tariffs that are applied (e.g. transport fee). The body which is responsible for setting tariffs varies from country to country based on whether there is a national sector regulator or not, or whether the responsibility lies with the municipality or Price Commission. For example, municipalities in Spain wield the powers to propose tariffs and ultimately set tariffs under the general regulation of a national Price Commission. Nevertheless, this model can lead to a conflict of interest since the municipality owns partly the joint venture which is also a monopoly company.

2.2. Lossmaking Institutions

- In case of negative operating results of MLEs, participating local public administrations responsible for financial accounting may allocate a certain limited amount of funds equal to the negative results according to participation rates in the following year as in Italy.
- Public local administrations that adopt public accounting adjust investment value in the following year according to the amount corresponding to the net part of the investee's assets. As described above, the amounts that put aside are released in a state of that participating enterprise compensates for the loss.

- MLEs that have a negative economic result in previous three years should follow certain procedures. For example, institutions that make loss in Italy reduce the wages of members working in their administrative units by 30. Obtaining negative economic results for two consecutive years can constitute a valid reason for dismissal of managers.

2.3. Bankruptcy and Commercial Crisis

- In the event of the emergence of an irremediable institutive crisis in a public company, it must be prohibited -by the parent company- to establish new companies that will deliver the same services with this failed institution.
- The severity of the commercial crisis that is experienced in subsidiaries or only in investees should not be overcome by municipalities' "financial support". In such cases, municipalities should be supposed to act for the benefit of the enterprise in order to increase the stock in the lossmaking company even in the event that the capital falls under the legal limit and financial support.
- However, providing that the specified measures are stipulated in an improvement plan, predetermined interventions for making investments (contracts, contracts for services or extraordinary money transfers contrary to the schedule) should be envisaged.
- Municipalities must consistently keep financial balance of their commercial companies in check. Thus, in the event of insufficient net turnover to finance the services delivered by the companies, it may be possible to evaluate, prioritize and if required, liquidate the complementary contributions to local business services owned by them in accordance with the legitimacy, stability and sustainable budget principles. Municipalities should take appropriate measures in order to efficiently liquidate commercial companies that have been decided to be dissolved and abolished.

2.4. Financing of Long-Term Investments

- In terms of financing of long-term investments, to the MLEs at hand under this study usually finance their investments through a combination of operating surplus and grants and long-term loans providing from local administrations, international financial institutions (IFI) or developed financial markets.
- Governments in Europe usually provide loan collateral from markets or international financial institutions. Yet in time, it is expected that the company in question constitutes its own operating surplus and becomes more supportive of more important investment programs every passing day. It is supposed that MLEs use their funds in order to maintain and replace current assets, as well as to finance new investments.

- Contractual consequences are specific to the country and context, particularly in respect of identification of this situation at the outset or maintaining the necessary flexibility in time. For example, empresa mixta's own capital model in Spain can take the pressure off on the cash flow available for debt service payments although it is often more expensive than debt. This situation is especially important at the early development phase of a company. Consequently, the growth obtained from empresa mixta's cash flow can be reinvested to the company and with this, a capital gain can be created.

2.5. Transfer Pricing Regulations

- According to Article 13 (3) of the CITL, it is stated that “Arm's length principle means that the price or return received for the purchase or sale of goods or services between relevant parties must be the same as the price or return to be formed in the absence of such a relationship between related interested parties.”
- The relevant party generally refers to the following:
 - Shareholders of the company;
 - Natural or legal persons related to the company or its shareholders;
 - Natural or legal persons who directly or indirectly control the company in terms of management, supervision or capital;
 - Natural or legal persons who are directly or indirectly controlled by the company in terms of management, supervision or capital.
- Tax loss penalty will be imposed in case of detection of disguised profit distribution through transfer pricing in research conducted. The amount of the penalty is equal to the amount of accrued missing tax at the end of the correction.
- Considering that MLEs should be considered as relevant parties between the municipality and themselves, their transactions should be conducted in frame of arm's length principle. For example, in the event of a municipal company official delivering services to the municipality or other municipal companies, this company should be adequately compensated for the services in question.

3. Audit & Transparency

3.1. Performance Evaluation & Control & Audit

- An effective internal audit system should be developed in order to make financial and performance audit of MLEs. Internal audit is a counselling activity that is designed to increase the value and activities of an institution, providing objective and independent assurance that contributes to the main objectives with a systematic and disciplined approach in order to manage risks, control and corporate governance on management processes efficiently. Auditors play a significant role for ensuring adequate internal controls in a broad sense and an efficient and a sound disclosure process.

- MLEs should develop effective internal audit procedures and form an internal audit function that is monitored by the managing body and the audit committee and is directly subordinate to it. The procedures on information collection, compilation and submission should be specified. In addition, it should be ensured about the proper implementation of the company's procedures and that information qualifications are completely released to the public by the company.
- In addition, according to the OECD Guidelines, public companies and especially larger ones must be subject to an independent annual external audit based on international standards.
- On the purpose of consolidating confidence in the information provided, it must be stipulated that local administrations are subject to private audits as well as at least large public companies are subject to external audits, and it must be developed appropriate procedures adequate to the selection of external auditors. At this point, it is extremely critical that the auditors in question are independent of both the administration and the shareholders that own the majority of the shares (of the local enterprise, if it is a public company). The prepared audit report must be submitted to the municipal company's board of directors or supervisory board and the municipal council.
- MLEs must be audited according to the effective accounting and auditing standards. Financial and non-financial information must be announced. In other words, members of board of directors of public companies must sign financial balance sheets, and general directors and finance directors in charge of finance must affirm these reports adequately and reasonably.
- The obligation to submit actions taken through observations and Court of Accounts report should be extended to MLEs and it should be made necessary to send this report to municipalities and other shareholder groups (if any) with the requirement to be discussed at the deliberative assembly.
- As such in France example, it can be established an independent statistical system for monitoring and evaluating MLEs, subsidiaries and direct and indirect holdings across the country.
- Municipal council may assign additional duties such as particularly the organization of MLE, the examination of its expediency and profitability to the audit office. The audit should be extended to commitment to the provisions and principles for economic management and especially to the following points:
 - Stick to the financial regulation and budget plan,
 - Being justified and proven of income and expenses, and the correct listing of the annual account and the proof of assets,

- Being economical and efficient of practice,
- Spend less on personnel or assets when fulfilling duties or fulfilling them in another more effective way.

3.2. Transparency

Spending public money transparently is essential for economic growth. International research proves that transparent and accountable public administration increases productivity and consequently, the profitability of municipal or central government-owned companies increases. MLEs play a vital role in local public finance, and their transparent and accountable operation can provide better quality local services and a more efficient use of public resources at local level.

Consequently, transparency and public disclosure activities are necessary for public enterprises including MLEs to deliver a more accountable and efficient performance. Legal requirements on sharing company information and data with public are the first step to increasing accountability but in most cases the effective monitoring and implementation activities carried out by public company owners and/or the wider public, as well as regulatory obligations should be included in the process.

When examining the practice, it is seen that the MLE's owner, i.e. the municipality is not sufficiently informed about company management. Having knowledge about company management is also a starting point of an effective supervision and control. In accordance with OECD's recommendations of the OECD, the managing bodies of MLEs must submit to the company owner both regular and interim reports on course of company.

In this regard, MLEs must fulfill the following:

- Publish information about the public request procedures, including the unit and the personnel responsible name
- In case of absence of relevant company information or data in relation to certain public disclosure obligations, clearly explaining this
- In case of relevance, using connection links to publicly available online databases and complementing this in optional public disclosure activities
- Share information about the timing of public audits, their objectives and proactively summarizing the outputs/main results obtained
- Inform the public about the company's strategic plans and performance criteria covering at least the main working areas and objectives (for example, publishing the company's information note with performance indicators in plain language), and also elucidating the company's commitments for integrity and fighting against corruption

- Publish information about the professional history of top management (at least their curriculum vitae)
- Share information about HR selection and promotion criteria and information on company's diversity policy with the public
- In general, inform the public about the company's commitment to transparency and work integrity, relevant initiatives, internal actions of the company (for example, publishing Codes of Conduct, summary of the functioning of Ethics Committee, fraud risk management and other actions related to internal fighting against corruption measures)
- Development of the English version of the company's website

In addition, municipalities should support their own subsidiaries in terms of matters below mentioned:

- Develop online public databases and forming a searchability function in these databases (EU grants and aids, public contracts, public asset management)
- Provide more proactive support for MLEs' using integrity tools: providing consultancy service on ethical issues through an independent CSO (civil society organization) and/or a legal company, constituting a call centre for ethical issues
- Design positive (financial) incentives for a more proactive public disclosure: publishing orders of transparency regularly, integrating work transparency and integrity assessment into premium payments
- Monitor non-governmental organizations and commercial enterprises in terms of rules of compliance and proactive public disclosure and including these rules in their implementation

4. Corporate Governance

- Municipalities should form "Governance Strategy in MLEs" and if possible, it should be maximally reached an agreement about the definition of this strategy among the existing political forces in the institution and transparency should be ensured which means that citizens and local taxpayers should be aware of the situation. Detailing the strategy in question should be based on OECD Principles for corporate governance of public companies.
- Under "Governance Strategy", the objectives and rules on government of municipal community will be defined. These will be implemented by legal entity and conducted transparently and responsibly with professionalism and effectiveness. At principal points of the strategy, noncorporate political influences or discussions that are unfamiliar to social interests should be avoided.

- The parties establishing the company should remember that the company is a separate legal entity and the members of the board of directors are supposed to act upon company's interests at the stage of establishment of the company and appointment of members to the board of directors. Therefore, it should be allowed that the directors actually govern the company -in other words, they decide what company's best interest is by using their independent judgment. Top members, top officers, monitoring officers and lawyers employed by municipalities should particularly consider about conflict situations and (in the latter case) certain rules of professional behaviour.
- In this case, it may be best to avoid referring the use of the term for appointment made as a "candidate" director because "candidate" term refers to a person who is on duty only for another's benefit (i.e., to keep hold of a certain property and execute necessary transactions) and act only according to the instructions of others. Referring to a "candidate director" may give the impression that the person delegates all his discretion to the council appointing, and this may encourage, for example, a liquidator or the person responsible for the regulation to demand against the individual for breach of duty and/or against the appointment board. Instead, it should be referred to "appointed director", "shareholder-appointed director" or a similar title.

4.1. Holding Organizations

Municipalities and local administrations can turn municipal companies into a holding company and consequently reap financial, organizational and supervisory benefits.

These are some special advantages of operating a holding company:

- Shareholder group funds are managed uniformly in holding company, and it can be possible to optimize group funds when providing short and long-term liquidity through liquidity management.
- In addition, it is possible for companies with free funds to credit other companies in the group by way of establishing a holding company as long as it is under proper circumstances for both parties. The internal credit market forces created by this way achieves more savings than that while one company does not have free funds, another company must receive expensive credits.
- It can also be possible to combine financial accounting systems, planning and reporting processes within the company group by establishing a holding company. Transparency of companies increases and their performance becomes more evaluable, comparable and accountable by means of common rules and modern information systems.

- In addition, the responsibilities of member corporations' directors predominantly involve professional issues and purview of companies' economic and financial directors can be extended through functioning of planning and reporting system.
- Finally, fixing the number of personnel involved in member corporations' boards of directors and supervisors in management of group of companies also provides a great saving.

4.2. Affiliate Companies of Local Public Companies

- MLEs' motivations for establishing affiliate companies vary significantly. The fundamental motivation here may be conducting a "complementary" activity, mobilizing financing or sharing investment risk with partners, individualizing an activity or a risk in a private company, developing a tool whose goals and project duration are different from those of founding members, strengthening expertise by affiliating with actors with technical skills that the company does not have, creating structures with other partners other than founding partners, or the desire to test innovative activities in frame of project companies.
- For example, subsidiaries in France traditionally operate in real estate and urban planning industries. MLEs operating in real estate industry are building companies established on a specific transaction basis with private developers and banking institutions in order to share risk and investment.

4.3. Municipal Council (City Council) Rapporteurs

As is seen in some European countries (e.g. the Netherlands, Spain), some municipal councillors may play a set of specific roles on MLEs. Councillors receive the reports of company's general meetings and stay up on the developments.

Below are the duties of councillors in question:

- Follow the developments on relevant party;
- Inform the municipal council about the requested and unbesought situations of interested party;
- If required, prepare motions and amendments for EU proposals;
- In the event of failure to reach an agreement between political groups, submit the discussion topics to the municipal council;
- Being in contact with other municipal councils in the region.

In case of the municipality's taking advantage of municipal councillors, the matters below should be considered:

- The City Council should have ensured that adequate and appropriate training updated periodically is provided for councillors in cases where councillors are used in such roles.
- The City Council should properly define all elements of governance structure without excepting the shareholder role and effectively transmit these definitions to required people.
- The council should ensure that scope of conflicts of interest is minimized if roles in the City Council organizations are assigned to individual councillors and make a clear distinction between the persons who play such roles and those who assign this responsibility and control those responsible.
- The City Council should assess the risks associated with its companies for the purpose of their inclusion in general risk management processes with appropriate increase and reporting, rather than assessing them as individual risks.
- Due to the new regulations on auditing companies made applicable together with Corporate Governance Subcommittee, the City Council should ensure that financial information is provided in accordance with its requirements and is fully understood by the Subcommittee and other persons involved in the accountability of companies and also, if appropriate information is not provided, take a concrete step, such as surveillance of the person in charge.
- When it comes to new regulations involving Corporate Governance Subcommittee, the City Council should ensure that it is put enough emphasis on the review and risk management responsibilities including conferring clear line of responsibility for group-wide governance and risk management review to the Audit Committee.
- In addition to the situations referred to in recommendations above, the City Council should particularly ensure the proper identification and management of risks and also implement the lessons learned from RHE for more detailed examination of the company governance regulations, in order to successfully carry out a more reliable monitoring activity agreed upon by the Corporate Governance Executive Subcommittee.

4.4. Public Private Partnerships

- Municipalities can participate in joint ventures with private companies in various European countries examined under this study. This joint venture can be formed according to one of current legal forms in the country in question. While in some countries there are lower and upper thresholds for subsidiary (for example, municipality must own at least 50% of the company), such a threshold is not included in some other countries' legislation.

- Municipalities that adopt a joint venture approach with an experienced private operator usually try to think of ways to increase their professional capacities by taking advantage of the private partner's fund of knowledge. At the same time, the municipality wants to give mandate to service delivery to another party while assuming a certain level of control through majority stock in company and full ownership of assets. On the other hand, the operator has autonomy in making decisions on enterprise.
- Private sector part's main source of motivation is to make a profit, and by this means it will guarantee production efficiency and so it will ensure that so-called non-market failure of the public sector which will be expected to cause inefficiency will be corrected by producing output in question with minimum cost. The public partner contained in the administrative board has the characteristic of limiting possible opportunistic behaviour of private sector actor who tries to maximize his profit and remains unresponsive to the public interest (for example, reducing service quality in order to reduce the costs).
- In addition, the existence of the public sector will prevent market failures special to private enterprises by taking into account externalities and objectives on distribution, in a word, general economic interests.
- Another characteristic of blended initiatives is often mentioned as a positive characteristic: In cases of non-availability of public funds; in other words, in the event that public indebtedness has limits, a private sector partner can play a role, as is currently seen in Italy. In this case, private capital can be put into use in order to be able to fund the investments that are necessary to ensure for the service in question to be economically efficient and technologically updated.
- For example, forming blended enterprises in accordance with the Italian legislation can be implemented appropriately in terms of municipalities. The reason for this is possibility of giving the service in question directly to the municipality through public procurement which is limited to the selection of a private sector partner in accordance with the legislation. It is obvious that in the event of the private sector actor being the shareholder with a minority stock, the public sector actor will have full control on the enterprise. In addition, while blended enterprises can participate in public procurements of other geographic locations, the unit that directly undertakes the service in question cannot participate in these procurements. Therefore, while blended enterprises maintain the possibility of competing in other areas and profiting from possible scale economies of, they can keep out competition in their own region.
- The other advantage of blended business model is the access to different sources of finance. The public partner can provide the political impact that will help access low-

cost public finance for the joint venture which would otherwise cannot be provided to a private operator. On the other hand, the private sector partner can help the public sector partner toward accessing market finance which is inaccessible for them due to their credit rating (at least inaccessible under favourable conditions) and ensure that the trust of the financial institutions is gained.

5. OVERALL ASSESSMENT

Alongside the tendency of privatization that changed the way of using public resources and delivering public services in the world, some practices started to be developed by decision-makers and these practices can help to deliver public services effectively, economically and efficiently. According to the results of these research studies, it was foreseen that the public service delivery through corporatization maximised the service quality reaching the citizens and so corporatization began in public institutions. Firstly, with the evaluation of the reasons for the practice of establishing a company as a means of local economic activities of municipalities, it was clearly observed that this practice did not occur independently of the political, social and economic policy implemented by the state at country level, and that the regulatory or entrepreneurial role that the state assigned to itself when creating economic policies also affected municipalities which were local administration units. The establishment of an economic enterprise by municipalities is a practice that is observed not only in Türkiye but also in European and Baltic countries and in South American countries. The reasons for establishment of these companies may differ from country to country. However, acceptable reasons for each state can be depicted as reinvigorating the local economy and the free economic activity of municipalities through these companies.

MEEs are established according to TCC upon a decision taken by the municipal council. Since public legal entities can only be established by law or Presidential Decree with the constitutional amendment, MEEs that will be established by a municipal council decision after the amendment will be commercial companies established according to TCC and possessing the legal personality of private law. Therefore, the fact that MEEs are subject to audit of Court of Accounts, perform public services and use public resources means that they possess public legal personality. The main problem for municipal companies is that these organizations have a multi-law legal infrastructure. Municipal companies are still continuing their operations between the lines of different laws including general provisions and whose validity is debated. In this frame, it is required that municipal companies should be fully defined legally in the direction of strategic goals. The current legal regulations cannot suffice for the legal infrastructure of municipal companies that achieve good practices. Therefore, first of all, it must be made a special, single and detailed legal regulation for municipal companies.

The importance of minimizing managerial problems and implementing effective company management is critical under public finance management logic. Because of municipal companies' economic, political and administrative effects spreading throughout Türkiye, it is important for them in terms of sustainability to use original approaches of strategic management and planning techniques in a developing and changing world. Unlike other commercial and administrative decision-making processes, municipal companies have to make strategic decisions and be in a struggle for attaining medium and long-term objectives. Management by objectives must be specialized in only one of the main focus branches such as transport, environment, energy, construction and technology in order for municipal subsidiary companies' more effective and efficient services delivery under the concepts of long-term strategic focus and orientation to the main business. Therefore, a legal regulation on the regulation of MLEs' service areas must be made.

Municipalities operate subsidiary companies that they own in various quantities according to their capital. There are 183 subsidiary companies in 21 MMs examined in the study. MMs have subsidiaries in almost all sectors serving in the fields of transport, environment, energy, construction, technology, services and food. For this reason, the establishment of Department of Resource Development and Subsidiaries structure or the holding structure within municipalities ensures the protection of legitimate rights arising from share ownership in the companies participating in the municipal capital; the administration, planning, programming and processing of the subsidiaries according to the economic and efficiency principles. First of all, subsidiary companies' gathering under a single roof as of a legal obligation and actual liability will create an undeniable synergy. However, the main synergy will arise when all subsidiary companies fictionalize their activities on a common strategic plan. In accordance with a common strategy, setting short, medium and long-term goals for companies, measuring the performance of companies toward these goals will ensure a noticeably increase in quantity and quality of public services. In addition, applicable long-term goals will minimize the effects of politics and privateness on public services and will conduce toward performance of services with certain standards. A corporate and legal structure that will gather companies under a single roof will facilitate resource transfers to unprofitable companies by force of the grade of its public services, and will also reduce the resource transfer costs. With companies' gathering under a single roof, bureaucratic audit processes arising from legal legislation and performing in a way that suspends business processes will decrease and independent audit will be possible. The rationality of this roof formation will empower inter-company mobility more and technical knowledge, labour and managers transfer among subsidiary companies will be made more easily. Taking into account all of these, an arrangement should be made to ensure that municipal companies or companies in which municipalities shareholders are coordinated under a single roof by municipalities as the models described above.

It should be carried out an inventory study of all current municipal companies in Türkiye through a detailed research by a commission consisting of officials of institutions such as the Presidential Board of Local Government Policies, MoI, MoEUCC, MoT, the Court of Accounts, UMT. According to the emerging results, it can be ensured to form visionary and corporate structures such as increasing the efficiency of MLEs by experience share among themselves, creating more effective and sustainable projects with joint projects, creating expert and brand companies with companies that will be grouped according to their service areas. It can be said that entry of financial data to one of the systems of MoFT, namely the KBS System, the establishment of smart systems such as the Turkish Subsidiaries Data System where systems such as the Unified Data Transfer System can work together and more efficiently can contribute to these companies with comparative analysis both in terms of auditing and control of these companies, and keeping the data to be obtained systematically and regularly.

The new TCC foresees institutionalized companies with its modern structure and attaches importance to the transparency and accountability of companies like other modern laws. When evaluated from this aspect, the quick adaptation of municipal companies to the new period should be realized.

As is known, municipal subsidiary companies carry out their activities in municipality's duty and service area. It should be ensured that the assets of municipal companies that do not fall

into municipalities' area of responsibility are transferred to the municipality Information and permission entities that are not used properly in practice should be rendered active and effective, and all corporate activities of direct or indirect municipalities and municipal companies should be put down and staked out.

The staffing of municipality and its subsidiaries is subjected to certain restrictions according to the provisions of Article 49 of the Law No. 5393 on Municipality. The purposes of these restrictions are using public resources effectively and efficiently, ensuring balanced distribution of local services, increasing service quality delivered by municipalities, providing staffing with required qualifications, titles and number. Personnel working in municipal companies work in employee status subject to Labour Law and they are not gained a separate status by Decree-Law No. 696. Only when their hiring, the security clearance applied to civil servants was also put into practice for company personnel. Otherwise, the personnel working in these companies do not differ from the personnel in any other commercial company, except working in a company owned by a public legal entity. MLEs take different tracks for staffing and promotion policies. Although the subsidiary companies are not exactly public legal entities, it is important that an arrangement that will standardize the recruitment and promotion processes in these institutions operating with the logic of private sector will be made in terms of the visibility and transparency principle of public conscience. The human resources companies established by the Decree-Law No. 696 on Enacting Certain Provisions under the State of Emergency work with for 4% general expenses in addition to workers' wages and costs and with 7% profit in addition to this under determined laws. As it stands, these companies are unable to pay certain employee costs such as SSI and tax expenses. The fact that these companies achieve a financially positive structure and provide professional HR services related to other subsidiaries, except for professional services related to personnel who are only under the Decree-Law will be an important step for an effective and efficient human resources policy.

When the relevant legislation is examined as to whether the personnel whose status changes with the Decree-Law No. 696 on Enacting Certain Provisions under the State of Emergency are entitled to additional payments or not, it is seen that the expression "municipalities and entities affiliated to them" is mentioned in the Law No. 6772 on Additional Payments to Employees Working in State Institutions or Its Affiliated Institutions. While the state-owned companies are mentioned by law, MLEs are not mentioned. Here, the word "company" is not used for entities affiliated to municipalities. Therefore, it is seen that MLEs' personnel do not have the right for additional payments. However, with amending on the relevant legal regulation in order to eliminate injustice caused by the result of that this right not being entitled to the employees of municipal companies while it is entitled to the employees of the state-owned companies resulting from the injustice, it is thought that it would be useful to entitle the right of additional payment to the employees of the municipal companies as well.

MEEs can be established in the form of either limited or incorporated companies according to the municipalities' population rate after Decree-Law No. 696. Municipalities can establish these companies in various forms under the provisions that are involved in the legislation. Municipalities can become partners with established companies, acquire companies with donations, or current municipal companies can establish companies. There is another point

that distinguishes municipal companies from other commercial companies and this point is that they can see certain services by the method of operating cycle and only with a municipal council's decision without the need to tender.

With Article 56 of the Law No. 5393., the mayors were assigned to prepare municipalities' annual report and it was imposed obligation for involvement of information and evaluations in question related to affiliated organizations and enterprises and municipal partnerships in the report to be prepared. However, it cannot be said about fulfilment of this provision in practice. Although, it is not included under Article 2 of Law No. 5018., the fact that municipal companies have the nature of public institutions is undeniable. Therefore, it should be ensured that managers of these companies prepare a strategic plan and performance program, and their activities should be carried out in this frame. In order to make all this happen, the legal structures of municipal companies should be clearly set out, as included in development plans. In annual reports of municipalities, information about ICTs should be shared and standards related to the content to be shared should be brought.

The audit of MEEs is made according to both private and public law. As a commercial company in terms of private law, the companies audited by Capital Markets Board, Ministry of Trade and Public Oversight, Accounting and Auditing Standards Authority are audited by the Court of Accounts as public legal entities in terms of public law. However, there are provisions on audit of municipal companies by the municipality in Municipality Law. Again, with Article 260 of the Presidential Decree No. 1, which can be evaluated as the reflection of power of administrative tutelage exercised by the central government on municipal companies, the duty of auditing the entities established by the local administrations was assigned to the Ministry of Interior Inspection Board. Therefore, companies are subjected to bidirectional audit in terms of both private and public law. Since public enterprises are government enterprises, it is stated that they should particularly give account of whether the company's goals are fulfilled or not, and important risk factors and measures to be taken against these risks management. Therefore, public enterprises should have effective functioning internal control systems in order to guarantee that they can fulfill their responsibilities, which they are expected to disclose. It can be said that with suggestion internal control mechanism and audit implementation systems that can be implemented in MEEs, it can be made significant contributions to ensuring the service effectiveness of MEEs.

The formation of boards of directors matters much for implementation of good corporate governance practices. In this formation, "independence" is a critical point. In line with corporate governance principles, it is preferred that some of members of the board of directors consist of independent members. Companies' boards of directors consist of executive and non-executive members. While executive members of the board of directors take charge in daily decision-making and functioning mechanisms of the company, non-executive members of the board of directors are supposed to determine and supervise the general policy and strategy of the company. In accepted practices, non-executive members of the boards of directors are independent members and play an important role for security of benefits of shareholders by monitoring the decision-making structure of companies. Accordingly, while executive members behave almost like an employee of the company, non-executive members are required to be independent in order to provide objectivity. This

matters for ensuring accountability and transparency. For this reason, it can be said that the application of this recommendation in MLEs' board of directors will have importance in terms of the concepts of independence and transparency.

As is known, economic enterprises can utilize both public property of municipality and their own property while carrying out their activities. The utilization of public properties by economic enterprises is evaluated in frame of procedures on utilization of public property by private persons. In this respect, the utilization of public goods by companies can come our way as a special rule or a special exceptional utilization. As for the realization of this utilization, this is possible by allocation decision to be taken by municipal council. Therefore, there is no privileged aspect of the utilization of public properties by MEEs than the utilization of them by any commercial company. In the event of MEEs' utilization of their own properties in service, the utilization of these properties only in the performance of public service does not add distinction to them. However, it can be brought a special protection with legislative arrangement for the properties utilized by MEEs personally in the performance of services in order not to deny these services because the activities carried out by enterprises are included in duty and service area of municipalities which are public legal entities. But this protection should not be for all properties of economic enterprises, but only for the properties that are utilized by them personally in their performance of the services and are required for the service. Exceptions to the purchases of goods and services to be made by MLEs under Article 3/g of Law No. 4734 on Public Procurement should be granted according to municipalities' areas of activity. Consequently, in accordance with local service concept's spirit and requirements, a new "bidding law" including the requirements of local administrations and subsidiary companies should be formed.

In our study, the structures and functioning of municipal companies operating in EU Countries were also evaluated for the purposes of analysing the administrative, financial and legal structures of municipal companies and enterprises with various sizes located in European countries, monitoring their performance criteria, analysing municipality-subsidiary relations.

The main issues that are acquired as a result of the examinations and evaluations in question are summarized below:

- European countries' viewpoints on the areas of activity of municipal companies vary. In some countries, municipal companies are only established to perform certain public services, while in some other countries, municipal companies trade like miscellaneous companies in the free market.
- The basic orientation in European countries is to improve the independence of municipal companies from the municipality. This independence includes price setting issues for both the management and the services delivered.
- Throughout the European countries, regulations that support municipal companies to achieve a more transparent and accountable structure are being developed.
- In many European countries, there are measures and regulations on the liquidation of loss making Municipal companies for a long period of time.
- In frame of public- private sector partnerships, there are successful joint ventures formed by municipalities and private sector companies in European countries.

- In some European countries, there are legislative regulations on conglomeration of municipal companies. In countries in question, particularly in metropolitans, successful holding structures were established.
- In many inspected countries, there are regulations and practices that enable municipal companies to have an effective internal audit system as well as public audit.

In view of subsidiary companies in Turkey, it is likely that some subsidiary companies will be fund-raise by being privatized or offered to the public for the purpose of making more investments in local administrations. It can also be benefited from the efficiency of the private sector through privatization of some subsidiary companies that make losses because of not being able to use resources effectively and efficiently, and thus more efficient use of public resources can be ensured. The knowledge acquired as a result of the questions that were interviewed under LAR-III project and then asked through the questionnaire is in the direction of that there is no privatization agenda for subsidiary companies of our municipalities. The knowledge acquired as a result of the questions that were interviewed under LAR-III project and then asked through the questionnaire is in the direction of that there is no privatization agenda for subsidiary companies of our municipalities. However, in view of COVID-19 and the economic conditions of our country, the privatization option of local administrations in order for fund raising is suggested here as a way.

Consequently, MEEs are companies that their public aspects are obvious as well as they were established for the purpose of assisting to the municipality in performing their local services and economic activities freely. Because of dispersed legislation applied to them, just as there is a legislation regulating public economic enterprises, a comprehensive legislative arrangement on MEEs is also needed. As emphasized in justification of Municipal Law No. 5939, they should continue their existence as an economic activity of the municipality in order to invigorate the local economy in accordance with lawmaker's will.

REFERENCES

- Law No. 4046 on Privatisation Practices
- Law No. 5216 on Metropolitan Municipalities
- Law No. 5393 on Municipality
- Turkish Commercial Code No. 6102
- Decree-Law No. 696 on Enacting Certain Provisions under the State of Emergency
- ABADAN, Yavuz; "Siyasi Teori Açısından Türkiye’de Ademi Merkezîyet Problemi", AÜSBF Dergisi, Cilt:20, Sayı: 4, 1965.
- Adana Metropolitan Municipality 2020 Activity Report
- Ankara Altındağ Municipality 2020 Activity Report
- Ankara Metropolitan Municipality 2018 Activity Report
- Ankara Çankaya Municipality 2020 Activity Report
- Antalya Metropolitan Municipality 2020 Activity Report
- ARIKAN Yahya, 2020 Yılı Müşterilerimizin El Rehberi, TURMOB Yayınları, Ankara 2020.
- AYKAÇ, Burhan; "Türkiye’de Kamu Yönetiminin Küçültülmesi, Yerel Yönetimler ve Yerel Demokrasinin Amaçları, Gazi Üniversitesi İİBF Dergisi, Sayı:1/99, 1999.
- Balıkesir Metropolitan Municipality 2020 Activity Report
- BEKTÖRE Sabri, Benligiray Yılmaz, Erdoğan Nurten, Sağlam Necdet ve Kaya Ergün. (2009). Muhasebe Uygulamaları. (Ed. Yılmaz Benligiray) Eskişehir: Anadolu Üniversitesi Açık Öğretim Fakültesi Yayınları No:867.
- BEKTÖRE, Sabri, Benligiray, Yılmaz ve Aydın, Davut. (2008). Şirketler Muhasebesi. Nisan Kitabevi: Eskişehir.
- Berk, Ahmet 2003. "Yerel Hizmet Sunumu ve Belediye İktisadi Teşebbüsleri." Sayıştay Dergisi
- Bilecik Municipality 2020 Activity Report
- BOZLAĞAN, Recep, "Belediye İktisadi Teşebbüsleri ve Özelleştirme Çalışmaları", Yerel Yönetimler Sempozyumu, 1-2 Kasım 2000, TODAİE, Ankara.
- Bursa Metropolitan Municipality 2019 Activity Report
- Bursa Osmangazi Municipality 2020 Activity Report
- CHRISTENSEN, Tom, Per LEGREID; "A Transformative Perspective on Administrative Reforms", içinde New Public Management, (Ed. Tom CHRISTENSEN - Per LEGREID), Ashgate, 2002.
- ÇAĞLAYAN, M. Zafer; Soru Önergesi Cevabı; 21.1.2009, <http://www2.tbmm.gov.tr/d23/7/7-6127c.pdf> (20.5.2009)
- ÇAKIR İsmail H., "Kamu Kaynağının Kullanılmasında Mali Şeffaflık ve Hesap Verme Sorumluluğunun Rolü", 5018 Sayılı Kamu Mali Yönetimi ve Kontrol Kanunu Kapsamında Güncel Mali Sorunlar, (Ed. Erkan KARAASLAN) Muhasebat Kontrolörleri Derneği Yayını, Ankara- 2006.
- ÇETİNTAŞ, Dinçer; "Belediye İktisadi Teşebbüsleri ve İstanbul Büyükşehir Belediyesi Örneği", Marmara Üniversitesi SBE Maliye ABD, İstanbul, 2007.
- DEMİRKAYA, Yüksel. (2010). Avrupa Birliği’nin Yerel Kamu Şirketleri Stratejisi: Türkiye’de Hukuki Yapı ve İstanbul Büyükşehir Belediyesi Uygulamaları. Mustafa Kemal Üniversitesi Sosyal Bilimler Enstitüsü Dergisi, 7(13), s. 420 – 444.

- EKİNCİ, Abdullah. Belediye Şirketlerine Sayıştay Şoku. https://www.muhasabenet.net/makale_abdullah%20ekinci%20smmm_belediye%20sirketlerine%20sayistay%20soku.html
- Erzurum Metropolitan Municipality 2020 Activity Report
- Eskişehir Metropolitan Municipality 2020 Activity Report
- Gaziantep Metropolitan Municipality 2020 Activity Report
- Gaziantep Şahinbey Municipality 2020 Activity Report
- GÜNGÖR, Hayrettin. (2015). Belediyelerde Borçlanma ve İktisadi Girişimler. Ankara: İmak Ofset.
- <https://www.kvkk.gov.tr/Icerik/4197/Kisisel-Verilerin-Korunmasi-Kanununa-IliskinUygulama-Rehberi>
- https://www.kvkk.gov.tr/yayinlar/veri_guvenligi_rehberi.pdf
- Isparta Municipality 2020 Activity Report
- İçişleri Bakanlığı, Mülkiye Teftiş Kurulu Başkanlığı Büyükşehir Belediyesi Genel İş Ve Yürütümü Teftiş Rehberi, Mart 2021
- İstanbul Bağcılar Municipality 2020 Activity Report
- İstanbul Metropolitan Municipality 2019 Activity Report
- İstanbul Esenler Municipality 2020 Activity Report
- İstanbul Ümraniye Municipality 2020 Activity Report
- İzmir Metropolitan Municipality 2019 Activity Report
- Karabük Municipality 2020 Activity Report
- KARADENİZ, Yasin. (2017). Belediye İktisadi Teşebbüslerine Eleştirel Bir Bakış. Mahalli İdareler Dergisi. (57).
- Kayseri Metropolitan Municipality 2020 Activity Report
- Keskiner, Yusuf Emrah. Belediye Şirketlerinde Stratejik Plan Zorunluluğu www.tid.gov.tr/Makaleler/YusufEmrahKeskiner%2021-30.doc
- KİŞHALI Yunus. (2010). Şirketler Muhasebesi. İstanbul: Beta Yayınevi.
- Konya Metropolitan Municipality 2020 Activity Report
- Kurumlar Vergisi Kanunu, Kanun No. 5520
- Kütahya Municipality 2020 Activity Report
- Manisa Metropolitan Municipality 2020 Activity Report
- MEŞE, Mustafa. (2011). Belediye Şirketleri Üzerine Bir Değerlendirme. SAYDER Dış Denetim Dergisi. (4) ss. 203-215.
- Muğla Metropolitan Municipality 2020 Activity Report
- MUTLUER, Kamil, Erdoğan ÖNER; Teori ve Uygulamada Mahalli İdareler Maliyesi, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2009.
- OKUTAN, Emre. Belediye Şirketlerinin Denetiminde 6085 Sayılı Sayıştay Kanunu Sonrası Dönem. <http://www.sayder.org.tr/e-dergi-belediye-sirketlerinin-denetiminde-6085-sayili-sayistay-kanunu-sonrasi-donem-11-19.pdf>
- ÖZDEMİR, Gürbüz; “Belediye İktisadi Teşebbüslerinin Özelleştirilmesi”, Sayıştay Dergisi, Sayı: 71, Ekim-Aralık 2008.
- SAĞLAM, Necdet (2020) Belediye Şirketleri, Kuruluşu, Yönetimi, Kanuni Yükümlülükleri, Muhasebesi Ve Denetimi Ankara: Nisan Yayınevi
- SAĞLAM, Necdet ve Şengel, Salim. (2016) Şirketler Muhasebesi. Detay Yayıncılık: Ankara.

- SAĞLAM, Necdet. (2017) Örneklerle Tekdüzen Hesap Planı. Bursa: Muhasebetr.
- SAKINÇ, Süreyya. Belediye İktisadi Teşebbüslerinin Kuruluş İşlemleri Ve Denetimi.
- Samsun Metropolitan Municipality 2020 Activity Report
- Sivas Municipality 2020 Activity Report
- Tekirdağ Metropolitan Municipality 2020 Activity Report
- TORTOP, Nuri, Burhan AYKAÇ, Hüseyin YAYMAN, Akif ÖZER; Mahalli İdareler, 2. Baskı, Nobel Yayın Dağıtım, Ankara, 2008.
- Law No. 6103 on the Entry into Force and Implementation of the Turkish Commercial Code
- ULUSOY, Ahmet, Tekin AKDEMİR; “Yönetimler arası Transferler: Teori ve Türkiye Uygulaması”, içinde: Türkiye’de Yerel Yönetimlerin Sorunları ve Geleceği, (Ed. Nihat FALAY - Ahmet KESİK - Murat ÇAK – Mehmet KARAKAŞ), Seçkin Yayıncılık, Ankara, 2010.
- ULUSOY, Yasin; “Halka Açık Anonim Ortaklıklarda Bağımsız Dış Denetimin Fonksiyonları ve Denetçi Bağımsızlığı”, Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, C.7, S.2, 2005.
- Van Metropolitan Municipality 2019 Activity Report
- Yaprak, Nurhan, Belediye İktisadi Teşebbüslerinin Hukuki Niteliği, 2019
- YAVUZ, Mustafa; “Türkiye’de Yerel Yönetim Şirketleri: Yapısı, Hukuki Dayanakları ve Sorunları, Gazi Üniversitesi SBE Kamu Yönetimi ABD, Ankara, 2009.
- YERELİ; Ahmet Burçin , İzmir’deki BİT’lerin Özelleştirilmesine Yönelik Stratejiler ve Yöntemler, İzmir Ticaret Odası, İzmir 1995, s.19.
- YILMAZ, H. Hakan, “Türkiye’de Belediyelerin Mali Yapıları ve Mali Farklılaşma (Financial Structure of municipalities And Differentiation in Financial Structure)” Türkiye Belediyeler Birliği Yayınları, Ankara, 2013
- YILMAZ, H. Hakan, Belediye Gelirlerinin Mali Özerklik Bağlamında Değerlendirilmesi, TBB İller ve Belediyeler Dergisi, s. 10-24, 804-808, Temmuz 2015
- YILMAZ, H. Hakan, F. Emil, B. Kerimoğlu, “Yerel Yönetimler Maliyesi: Temel İlkeler ile Mevzuat ve Uygulama Açısından Türk Yerel Yönetim Yapılanmasında Mali Yönetim ve Kaynak Kullanım Sistemi”, PYB, Ankara, 2017
- YÜZER, Ferit, Türkiye’de Belediye İktisadi Teşebbüslerinin Denetiminin Hizmet Etkinliği Yönünden Değerlendirilmesi, 2010
- Zonguldak Municipality 2020 Activity Report

ANNEXES

ANNEX-1 MUNICIPALITIES

6.1- METROPOLITAN MUNICIPALITIES

7.1.1. ISTANBUL MM

ISTANBUL MM					
	Company	Revenues (TRY)	Expenses (TRY)	Net PROFIT/LOSS for 2019 Period	Service Area
		Realised	Realised		
1	AĞAÇ A.Ş.	427,023,499.00	394,942,858.00	32,080,641.00	Environment & Energy
2	BELBİM A.Ş.	217,654,059.00	162,166,890.00	55,487,169.00	IT
3	BELTUR A.Ş.	₺392,339,557.00	423,189,144.00	-30,849,587.00	Service & Food
4	BİMTAŞ A.Ş.	148,399,849.00	168,026,362.00	-19,626,513.00	Construction
5	BOĞAZIÇI YÖN. A.Ş.	352,954,064.00	346,231,306.00	6,722,758.00	Construction
6	HAMİDİYE A.Ş.	176,387,823.00	174,883,783.00	1,504,040.00	Service & Food
7	İGDAŞ A.Ş.	8,866,471,718.00	8,235,970,835.00	630,500,883.00	Environment & Energy
8	İSBAK A.Ş.	344,209,886.00	318,741,154.00	25,468,732.00	IT
9	İSFALT A.Ş.	723,084,950.00	736,173,766.00	-13,088,816.00	Construction
10	İSPARK A.Ş.	333,958,029.00	368,517,757.00	-34,559,728.00	Transport
11	İSTAÇ A.Ş.	1,050,844,207.00	1,032,241,247.00	18,602,960.00	Environment & Energy
12	İ.ENERJİ A.Ş.	548,622,901.00	511,873,259.00	36,749,642.00	Environment & Energy
13	İ.H.EKMEK A.Ş.	336,279,394.00	336,928,113.00	-648,719.00	Service & Food
14	İ.İMAR A.Ş.	23,499,831.00	22,464,814.00	1,035,017.00	Construction
15	İ.OTOBÜS A.Ş.	661,806,445.00	660,426,249.00	1,380,196.00	Transport
16	İ.ŞEHİR HATLARI A.Ş.	263,564,684.00	256,542,034.00	7,022,650.00	Transport
17	METROİST .A.Ş.	1,041,365,216.00	1,156,688,426.00	-115,323,210.00	Transport
18	MEDYA A.Ş.	73,961,118.00	79,005,093.00	-5,043,975.00	IT
19	İSTON A.Ş.	312,292,691.00	310,106,629.00	2,186,062.00	Construction
20	KİPTAŞ A.Ş.	1,699,898,620.00	1,340,355,489.00	359,543,131.00	Construction
21	KÜLTÜR A.Ş.	481,054,065.00	500,232,331.00	-19,178,266.00	Service & Food

22	İSPER A.Ş.	1,338,017,766.00	1,287,739,008.00	50,278,758.00	Service & Food
23	SPORİSTANBUL A.Ş.	312,850,134.00	301,514,875.00	11,335,259.00	Service & Food
24	UGETAM A.Ş.	84,529,000.00	70,897,919.00	13,631,081.00	Environment & Energy
25	İSYÖN A.Ş.	58,246,974.00	68,972,514.00	-10,725,540.00	Service & Food
26	İSTTELKOM A.Ş.	80,273,988.00	69,746,418.00	10,527,570.00	IT
27	GÜVENSU A.Ş.	4,288,876.00	4,201,210.00	87,666.00	Service & Food
28	İSTGÜVEN A.Ş.	880,619,525.00	854,574,597.00	26,044,928.00	Service & Food
Total		21,234,498,869.00	20,193,354,077.00	1,041,144,792.00	

Table 7-1 Data on MLEs of Istanbul MM

Service Area	
Transport	4
Construction	6
Environment & Energy	5
Service & Food	9
IT	4
Total	28

Table 7-2 Number of MLEs of Istanbul MM by Service Areas

Istanbul MM	
Net Revenue Budget - 2019	19,537,299,033.00
Net Expense Budget - 2019	21,417,911,796.26
MLEs	
Net Revenue Budget - 2019	21,234,498,869.00
Net Expense Budget - 2019	20,193,354,077.00
Rate of Revenue Budget of MLEs to Revenue Budget of Istanbul MM	108.69 %

Table 7-3 Rate of Revenue Budget of MLEs of Istanbul MM to Revenue Budget of the Municipality

7.1.2. ANKARA MM

ANKARA MM -2019			
	MLEs	Employees	Service Area
1	Ankara Halk Ekmek A.Ş.		Service & Food
2	Anket A.Ş.		Service & Food
3	Belko Ltd. Şti.		Service & Food
4	Beltaş A.Ş.		Transport
5	Metropol-İmar A.Ş.		Construction
6	Portaş A.Ş.		Construction
7	Anfa Ltd. Şti.		Service & Food
8	Anfa Güvenlik Ltd. Şti		Service & Food
9	Belka A.Ş.		Environment & Energy
10	Ankara İnovatif Teknoloji Ve Bilişim A.Ş.		IT
11	Belpa A.Ş.		Service & Food
12	Belplas A.Ş.		Construction
13	Bugsaş A.Ş.		Transport
14	Beltema Ltd Şti.		Service & Food
15	Seğmen Su A.Ş.		Service & Food
TOTAL		4,498	

Table 7-4 Data on MLEs of Ankara MM

Service Area	
Transport	2
Construction	3
Environment & Energy	1
Service & Food	8
IT	1
Total	15

Table 7-5 Number of MLEs of Ankara MM by Service Areas

7.1.3. IZMIR MM

IZMIR MM - 2019			
	MLEs	Employees	Service Area
1	İZFAŞ		Service & Food
2	EGE ŞEHİR PLANLAMA A.Ş		IT
3	İZDENİZ A.Ş.		Transport
4	İZMİR METRO A.Ş		Transport
5	İZDOĞA A.Ş		Environment & Energy
6	ÜNİBEL A.Ş.		Service & Food
7	İZELMAN A.Ş		Service & Food
8	İZULAŞ A.Ş		Transport
9	İZBETON A.Ş		Construction
10	GRAND PLAZA GIDA TURİZM A.Ş		Service & Food
11	İZENERJİ A.Ş.		Environment & Energy
12	BAYSAN A.Ş.		Service & Food
TOTAL		4,330	

Table 7-6 Data on MLEs of Izmir MM

Service Area	
Transport	3
Construction	1
Environment & Energy	2
Service & Food	5
IT	1
Total	12

Table 7-7 Number of MLEs of Izmir MM by Service Areas

7.1.4 – BURSA MM

BURSA MM							
MLEs	2019			Employees	Service Area		
	Realised Revenues	Net	Realised Expense			Net	Net Profit/Loss for 2019 Period
1	BESAŞ.	99,524,084.02		102,755,480.23		-3,231,396.21	Service & Food
2	BURFAŞ	62,207,721.65		56,956,064.49		5,251,657.16	Service & Food
3	BURSA KÜLTÜR A.Ş.	46,616,272.32		44,471,306.60		2,144,965.72	Service & Food
4	BİNTED	402,358,983.72		400,143,271.18	5,188	2,215,712.54	Service & Food
5	BURKENT	8,908,434.87		9,010,512.86	41	-102,077.99	Construction
6	TARIMAŞ	33,075,436.34		32,418,690.65	101	656,745.69	Environment & Energy
7	Bursa Jeotermal A.Ş.	35,537,188.43		37,466,981.68	76	-1,929,793.25	Environment & Energy
TOTAL		688,228,121.35		683,222,307.69		5,005,813.66	

Table 7-8 Data on MLEs of Bursa MM

Service Area	
Transport	
Construction	1
Environment & Energy	2
Service & Food	4
IT	
Total	7

Table 7-9 Number of MLEs of Bursa MM by Service Areas

Bursa MM		
Net Revenue Budget - 2019	2,140,562,920.53	
Net Expense Budget - 2019	2,276,277,977.93	
MLEs		
Net Revenue Budget - 2019	688,228,121.35	
Net Expense Budget - 2019	683,222,307.69	
Rate of Revenue Budget of MLEs to Revenue Budget of Bursa MM		32.15%

Table 7-10 Rate of Revenue Budget of MLEs of Bursa MM to Revenue Budget of the Municipality

7.1.5 – ANTALYA MM

ANTALYA MM						
MLEs	2020			Empl oyees	Servic e Area	
	Realised Net Revenues	Realised Net Expense	Net PROFIT/L OSS for 2020			
1 ANTALYA HAYVANCILIK TİCARET A.Ş.	594,410.32	844,755.41	- 250,345.0 9	3	Servic e & Food	
2 ANET ANTALYA İNŞAAT TURİZM SANAYİ VE TİCARET A.Ş	38,716,266. 00	39,122,165. 00	- 405,899.0 0	217	Constr uction	
3 ANTALYA İNSAN KAYNAKLARI A.Ş	500,600,31 5.48	493,503,56 3.47	7,096,752 .01	7,945	Servic e & Food	
4 ANTALYA SOSYAL HİZMETLER A.Ş.	3,129,637.9 5	2,696,499.0 0	433,138.9 5	17	Servic e & Food	
5 ANTALYA ULAŞIM A.Ş	116,557,79 8.00	146,009,21 2.00	- 29,451,41 4.00	1,363	Transp ort	
6 ANSET ÖZEL SAĞLIK ve EĞİTİM KÜLTÜR İNŞAAT TİC.LTD.ŞTİ.	15,071,324. 88	14,589,620. 02	481,704.8 6	41	Servic e & Food	

7	ANTEPE İnşaat ve Ticaret A.Ş.	39,469,393. 97	40,361,863. 43	- 892,469.4 6	116	Construction
8	EKDAĞ A.Ş.	14,947,103. 84	16,468,461. 54	- 1,521,357 .70	153	Service & Food
	TOTAL	729,086,25 0.44	753,596,13 9.87	- 24,509,88 9.43	9,855	

Table 7-11 Data on MLEs of Antalya MM

Service Area	
Transport	1
Construction	2
Environment & Energy	
Service & Food	5
IT	
TOTAL	8

Table 7-12 Number of MLEs of Antalya MM by Service Areas

ANTALYA MM - 2020	
Net Revenue Budget	1,845,180,613.03
Net Expense Budget	2,031,364,909.04
MLEs - 2020	
Net Revenue Budget	729,086,250.44
Net Expense Budget	753,596,139.87
Rate of Revenue Budget of MLEs to Revenue Budget of Antalya MM	39.51%

Table 7-13 Rate of Revenue Budget of MLEs of Antalya MM to Revenue Budget of the Municipality

7.1.6. ADANA MM

ADANA MM							
MLEs	2020			Net Profit/Loss for 2020 Period	Employees	Service Area	
	Realised Revenues	Net	Realised Net Expense				
1	ÇUKUROVA FUARCILIK A.Ş. (ÇUFAŞ)	4,110,848.79		4,105,524.64	5,324.15	3	Service & Food
2	ALTINKOZA KÜLTÜR SANAT VE TURİZM HİZMETLERİ A.Ş.	60,722,850.41		62,185,305.66	-1,462,455.25	816	Service & Food
3	ADANA ULAŞIM A.Ş.	431,988,606.26		431,295,665.80	692,940.46	6,237	Transport
4	BELDETAŞ	6,885,030.38		7,181,749.98	-296,719.60	27	Service & Food
5	YENİ ADANA İMAR İNŞ. TİC. A.Ş.	12,211,585.30		28,040,176.14	-15,828,590.84	50	Construction
	TOTAL	515,918,921.14		532,808,422.22	-16,889,501.08	7,133	

Table 7-14 Data on MLEs of Adana MM

Service Area	
Transport	1
Construction	1
Environment & Energy	
Service & Food	3

IT	
TOTAL	5

Table 7-15 Number of MLEs of Adana MM by Service Areas

Adana MM	
Net Revenue Budget - 2020	1,561,117,675.53
Net Expense Budget - 2020	1,553,405,212.92
<i>MLEs</i>	
Net Revenue Budget - 2020	515,918,921.14
Net Expense Budget - 2020	532,808,422.22
Rate of Revenue Budget of MLEs to Revenue Budget of Adana MM	33.05%

Table 7-16 Rate of Revenue Budget of MLEs of Adana MM to Revenue Budget of the Municipality

7.1.7 – KONYA MM

KONYA MM - 2020			
	MLEs	Employees	Service Area
1	Konya Şehir Hizmetleri A.Ş.		Service & Food
2	Konbeltaş Konya İnş.Taş.Hiz. Dan. Park İşl. ve Elekt. Üret. A.Ş.		Construction
3	Belediye Sağlık Hastanesi Anonim Şirketi		Service & Food
4	Konya Bilim Merkezi İşletme Hizmetleri Sanayi Ticaret A.Ş.		IT
5	Konya Sanat Kültür ve Spor Faaliyetleri Sanayii Ve Tic.A.Ş.		Service & Food
6	Sağ-Taş Sağlık Tesisleri Anonim Şirketi		Service & Food
7	Enerya Konya Gaz Dağıtım A.Ş.		Environment & Energy
8	ÇUM-PAŞ Çumra Patates ve Zirai Ürünleri Değerlendirme Sanayi Anonim Şirketi		Service & Food
9	İNNO-PARK Konya Teknoloji Geliştirme Bölgesi Yönetici A.Ş		IT
TOTAL		7,132	

Table 7-17 Data on MLEs of Konya MM

Service Area	
Transport	-
Construction	1
Environment & Energy	1
Service & Food	5
IT	2
TOTAL	9

Table 7-18 Number of MLEs of Konya MM by Service Areas

7.1.8 – GAZİANTEP MM

GAZİANTEP MM							
MLEs	2020					Emp loye es	Service Area
	Realised Revenues	Net	Realised Expense	Net	Net Profit/Loss for 2020 Period		
1	GAZİ AĞAÇ A.Ş.	184,678,770.98		186,731,235.10		-2,052,464.12	Environ ment & Energy
2	GAZİ DANIŞMA NLİK	126,158,504.97		123,697,863.65		2,460,641.32	Service & Food
3	GASKİ ENERJİ	26,630,856.62		28,882,830.34		-2,251,973.72	Environ ment & Energy
4	GAZİBEL	144,531,646.10		145,680,137.58		-1,148,491.48	Constru ction
5	GAZİKON UT	35,294,377.26		37,769,256.71		-2,474,879.45	Constru ction
6	GAZİKÜLT ÜR	41,535,519.08		47,630,414.67		-6,094,895.59	Service & Food
7	GAZİULAŞ	192,643,151.01		233,362,744.33		-40,719,593.32	Transpo rt
8	GAZİANTE P BİLİŞİM VE AKILLI KENT TEKNOLOJ İLERİ	4,087.05		112,128.38		-108,041.33	IT
TOTAL		751,476,913.07		803,866,610.76		-52,389,697.69	1,50 0

Table 7-19 Data on MLEs of Gaziantep MM

Service Area	
Transport	1
Construction	2
Environment & Energy	2
Service & Food	2

IT	1
TOTAL	8

Table 7-20 Number of MLEs of Gaziantep MM by Service Areas

GAZİANTEP MM	
Net Revenue Budget - 2020	1,671,328,525.40
Net Expense Budget - 2020	1,603,808,047.13
<i>MLEs</i>	
Net Revenue Budget - 2020	751,476,913.07
Net Expense Budget - 2020	803,866,610.76
Rate of Revenue Budget of MLEs to Revenue Budget of Gaziantep MM	44.96%

Table 7-21 Rate of Revenue Budget of MLEs of Gaziantep MM to Revenue Budget of the Municipality

7.1.9 – KOCAELİ MM

KOCAELİ MM - 2020			
	MLEs	Employees	Service Area
1	ANTİKKAPI TURİZM İŞLETMECİLİK VE ÖZEL SAĞLIK HİZMETLERİ A.Ş.	280	Service & Food
2	BELDE ÖZEL SAĞLIK VE EĞİTİM HİZMETLERİ SOSYAL HİZMETLER GIDA VE İHTİYAÇ MADDELERİ PAZARLAMA VE TİCARET A.Ş.	5,488	Service & Food
3	İZAYDAŞ (İZMİT ATIK VE ARTIKLARI ARITMA YAKMA VE DEĞERLENDİRME) A.Ş.	292	Environment & Energy
4	İZMİT SU ANONİM ŞİRKETİ	162	Service & Food
5	İZMİT SİGORTA LİMİTED ŞİRKETİ		Service & Food
6	KENT KONUT İNŞAAT SANAYİ VE TİCARET ANONİM ŞİRKETİ	99	Construction
7	SEKAPARK TURİZM İŞLETMECİLİK VE YATIRIM A.Ş.	30	Service & Food
8	ULAŞIMPARK ULAŞTIRMA HİZMETLERİ TİCARET ANONİM ŞİRKETİ	1,010	Transport
TOTAL		7,361	

Table 7-22 Data on MLEs of Kocaeli MM

Service Area	
Transport	1
Construction	1
Environment & Energy	1
Service & Food	5
IT	0
TOTAL	8

Table 7-23 Number of MLEs of Kocaeli MM by Service Areas

7.1.10 – MANİSA MM

MANİSA MM - 2020			
	MLEs	Employees	Service Area
1	MANULAŞ A.Ş.		Transport
2	SPİLAŞ A.Ş.		Construction
3	BESOT A.Ş.		Construction
TOTAL		4,760	

Table 7-24 Data on MLEs of Manisa MM

Service Area	
Transport	1
Construction	2
Environment & Energy	
Service & Food	
IT	
TOTAL	3

Table 7-25 Number of MLEs of Manisa MM by Service Areas

7.1.11 – KAYSERİ MM

KAYSERİ MM						
MLEs	2020			Employeees	Service Area	
	Realised Revenues	Net	Realised Expense			Net Profit/Loss for 2020 Period
1	KAYSERİ ERCİYES TURİZM İNŞAAT SPOR ETKİNLİKLERİ SAN. TİCARET A.Ş.	13,327,844.73		12,038,051.95	1,289,792.78	Service & Food
2	KAYSERİ İMAR VE İNŞAAT TİCARET A.Ş.	179,516,340.59		154,708,233.46	24,808,107.13	Construction
3	KAYMEK KAYSERİ MESLEKİ EĞİTİM VE KÜLTÜR A.Ş.	150,353,301.62		142,193,254.40	8,160,047.22	Service & Food
4	KAY-TUR KAYSERİ TURİZM EĞİTİM KÜLTÜR VE TİC. A.Ş.	38,767,919.35		42,722,553.38	-3,954,634.03	Service & Food
5	KAYSERİ SPOR ETKİNLİKLERİ TURİZM İNŞAAT SANAYİ VE TİCARET A.Ş.	23,999,270.18		23,962,216.88	37,053.30	Service & Food
6	KAYSERİ ULAŞIM TURİZM İNŞAAT TAAHHÜT PROJE MÜŞAVİRLİK TELEKOMÜNİKASYON SANAYİ VE TİCARET A.Ş.	159,887,989.08		317,269,483.92	-157,381,494.84	Transport
7	KAYSERİ BÜYÜKŞEHİR ENERJİ TARIM HAYVANCILIK TİCARET A.Ş.	3,735,591.97		4,012,026.05	-276,434.08	Environment & Energy

TOTAL	569,588,257.52	696,905,820.04	-- 127,317,562.52	4,082
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Table 7-26 Data on MLEs of Kayseri MM

Service Area	
Transport	1
Construction	1
Environment & Energy	1
Service & Food	4
IT	
TOTAL	7

Table 7-27 Number of MLEs of Kayseri MM by Service Areas

KAYSERİ MM - 2020		
Net Revenue Budget		1,233,159,437.61
Net Expense Budget		1,173,496,454.21
MLEs - 2020		
Net Revenue Budget		569,588,257.52
Net Expense Budget		696,905,820.04
Rate of Revenue Budget of MLEs to Revenue Budget of Kayseri MM		46.19%

Table 7-28 Rate of Revenue Budget of MLEs of Kayseri MM to Revenue Budget of the Municipality

7.1.12 – SAMSUN MM

SAMSUN MM						
MLEs	2020			Emp loye es	Service Area	
	Realised Net Revenues	Realised Net Expense	Net PROFIT/LOSS for 2020			
1	Samsun Anakent Turizm Ticaret Limited Şirketi	143,943,4 66.36	137,001,310.6 3	6,942,155.73	1,64 8	Constructio n
2	Samsun Kültür Turizm Ticaret Anonim Şirketi	75,031,52 8.91	70,484,582.42	4,546,946.49	800	Service & Food
3	SAMULAŞ A.Ş.	42,190,87 0.04	71,713,519.36	-29,522,649.32	548	Transport
4	Samsun FKM A.Ş.			-		Transport
5	Samsun Ulusal ve Uluslararası Lojistik Merkezi İşletmeciliği Anonim Şirketi			-		Service & Food
6	SAMGAZ Doğal Gaz Dağıtım A.Ş.			-		Environmen t & Energy
7	Terme Metal Sanayi ve Ticaret Anonim Şirketi			-		Environmen t & Energy
8	Samsun Bölgesel Ekonomik			-		Service & Food

	Kalkınma Anonim Şirketi					
9	Samsun Teknoloji Geliştirme Bölgesi Yönetici Anonim Şirketi			-		IT
	TOTAL	261,165,865.31	279,199,412.41	-18,033,547.10	2,996	

Table 7-29 Data on MLEs of Samsun MM

Service Area	
Transport	2
Construction	1
Environment & Energy	2
Service & Food	3
IT	1
TOTAL	9

Table 7-30 Number of MLEs of Samsun MM by Service Areas

SAMSUN MM - 2020	
Net Revenue Budget	951,955,615.56
Net Expense Budget	876,522,469.08
MLEs (3 main MLEs) - 2020	
Net Revenue Budget	261,165,865.31
Net Expense Budget	279,199,412.41

Rate of Revenue Budget of MLEs to Revenue Budget of Samsun MM	27.43%
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Table 7-31 Rate of Revenue Budget of MLEs of Samsun MM to Revenue Budget of the Municipality

7.1.13 – BALIKESİR MM

BALIKESİR MM - 2020			
	MLEs	Employees	Service Area
1	BAGYAŞ	166	Service & Food
2	BALTOK	25	Construction
3	BALPARK	130	Transport
4	BALPAŞ	16	Service & Food
5	BATAŞ	33	Service & Food
6	BTT	392	Transport
7	PERSONEL A.Ş.	12	Service & Food
TOTAL		774	

Table 7-32 Data on MLEs of Balıkesir MM

Service Area	
Transport	2
Construction	1
Environment & Energy	
Service & Food	4
IT	
TOTAL	7

Table 7-33 Number of MLEs of Balıkesir MM by Service Areas

7.1.14 – TEKİRDAĞ MM

TEKİRDAĞ MM - 2020			
	MLEs	Employees	Service Area
1	Tekirdağ Belde Kent Yönetim A.Ş.		Service & Food
2	Tekir Ağaç Peyzaj Park Bahçe Turz. Org. San. A.Ş.		Environment & Energy
3	Tekirdağ Çevre Yönetim A.Ş.		Environment & Energy

4	Tekirdağ Otopark Ulaşım Nak. İmar Plan. San. A.Ş.		Transport
5	Tekirdağ Birlik Yem San. ve Tic. A.Ş.		Service & Food
6	Tekirdağ BB Personel A.Ş.		Service & Food
TOTAL		0	

Table 7-34 Data on MLEs of Tekirdağ MM

Service Area	
Transport	1
Construction	
Environment & Energy	2
Service & Food	3
IT	
TOTAL	6

Table 7-35 Number of MLEs of Tekirdağ MM by Service Areas

7.1.15 – SAKARYA MM

SAKARYA MM - 2020			
	MLEs	Employee s	Service Area
1	BELPAŞ		Service & Food
2	SAKARYA BÜYÜKŞEHİR FİDANCILIK VE PEYZAJ SANAYİ TİCARET ANONİM ŞİRKETİ		Environment & Energy
3	SAKARYA BÜYÜKŞEHİR SERACILIK TİCARET ANONİM ŞİRKETİ		Environment & Energy
4	SASAY ÇEVRE ENERJİ İHTİYAÇ MADDELERİ SAN. TİC. A.Ş.		Environment & Energy
TOTAL		0	

Table 7-36 Data on MLEs of Sakarya MM

Service Area	
Transport	
Construction	
Environment & Energy	3
Service & Food	1
IT	
TOTAL	4

Table 7-37 Number of MLEs of Sakarya MM by Service Areas

7.1.16 – DENİZLİ MM

DENİZLİ MM						
MLEs	2020			Emp loye es	Service Area	
	Realised Net Revenues	Realised Expense	Net Net Profit/Loss for 2020 Period			
1	BELTAŞ Denizli BB Temizlik Ulaşım Sanayi ve Ticaret Anonim Şirketi	30,108,101. 40	31,736,009.32	-1,627,907.92	439	Service & Food
2	Denizli BB Ulaşım Sanayi ve Ticaret Anonim Şirketi	25,378,336. 64	66,558,243.18	-41,179,906.54	479	Transpor t
3	Denizli BB Kültür Sanayi ve Ticaret Anonim Şirketi	1,548,810.1 8	3,385,894.10	-1,837,083.92	2	Service & Food
4	Denizli BB Personel Temizlik Ulaşım Sanayi ve Ticaret Anonim Şirketi (PERAŞ)	157,052,597 .59	156,802,175.84	250,421.75	2,78 2	Service & Food
5	Denizli BB Enerji Sanayi ve Ticaret Anonim Şirketi (DENİZLİ ENERJİ A.Ş.)		-			Environ ment & Energy
TOTAL		214,087,845 .81	258,482,322.44	-44,394,476.63	3,70 2	

Table 7-38 Data on MLEs of Denizli MM

Service Area	
Transport	1
Construction	
Environment & Energy	1
Service & Food	3
IT	
TOTAL	5

Table 7-39 Number of MLEs of Denizli MM by Service Areas

DENİZLİ MM - 2020	
Net Revenue Budget	855,737,801.20
Net Expense Budget	742,277,634.90
MLEs - 2020	
Net Revenue Budget	214,087,845.81
Net Expense Budget	258,482,322.44
Rate of Revenue Budget of MLEs to Revenue Budget of Denizli MM	25.02 %

Table 7-40 Rate of Revenue Budget of MLEs of Denizli MM to Revenue Budget of the Municipality

7.1.17 – MUĞLA MM

MUĞLA MM						
MLEs	2020			Emp loye es	Service Area	
	Realised Net Revenues	Realised Net Expense	Net Profit/Loss for 2020 Period			
1	MUĞLA KENT HİZMETLERİ İNŞ. TUR. SAN. TİC. A.Ş. (MUTTAŞ)	29,824,224.9 4	52,457,682.15	-22,633,457.21	448	Transpor t
2	MUĞLA BÜYÜKŞEHİR BELEDİYESİ EMEK PERSONEL LİMİTED ŞİRKETİ (MUBEP)	196,961,081. 65	194,888,604.4 0	2,072,477.25	3,02 2	Service & Food
3	BAĞYAKA MADEN SUYU VE KAPLICA İŞLETMELERİ TURİZM TİCARET ANONİM ŞİRKETİ	179,320.08	38,251.09	141,068.99	12	Service & Food
4	MUĞLA EL SANATLARI SANAYİ VE TİCARET LİMİTED ŞİRKETİ (MELSA)	2,240,940.56	2,545,675.85	-304,735.29	13	Service & Food

5	BELTES PETROL ENERJİ SANAYİ TİCARET ANONİM ŞİRKETİ	VE	51,517.63	100,569.70	-49,052.07	0	Environ ment & Energy
TOTAL			229,257,084. 86	250,030,783.1 9	-20,773,698.33	3,49 5	

Table 7-41 Data on MLEs of Muğla MM

Service Area	
Transport	1
Construction	
Environment & Energy	1
Service & Food	3
IT	
TOTAL	5

Table 7-42 Number of MLEs of Muğla MM by Service Areas

MUĞLA MM - 2020	
Net Revenue Budget	798,380,292.35
Net Expense Budget	840,672,155.86
MLEs - 2020	
Net Revenue Budget	229,257,084.86
Net Expense Budget	250,030,783.19

Rate of Revenue Budget of MLEs to Revenue Budget of Muğla MM	28.72%
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Table 7-43 Rate of Revenue Budget of MLEs of Muğla MM to Revenue Budget of the Municipality

7.1.18 – ESKİŞEHİR MM

ESKİŞEHİR MM - 2020			
	MLEs	Employees	Service Area
1	BELKENT	21	Service & Food
2	BELMAR	17	Service & Food
3	ESKET	2	Service & Food
4	ESPARK	2,039	Environment & Energy
5	ESPAŞ	6	Service & Food
6	ESTRAM	1,189	Transport
7	ESKİŞEHİR HALK EKMEK	57	Service & Food
8	ESKİŞEHİR İMAR İNŞAAT	48	Construction
9	ESKİŞEHİR KENT HİZMETLERİ	0	Service & Food
10	KENTAŞ	75	Transport
11	KENT DİZAYN	0	Construction
TOTAL		3,454	

Table 7-44 Data on MLEs of Eskişehir MM

Service Area	
Transport	2
Construction	2
Environment & Energy	1

Service & Food	6
IT	
TOTAL	11

Table 7-45 Number of MLEs of Eskişehir MM by Service Areas

7.1.19 – TRABZON MM

TRABZON MM			
	MLEs	Employees	Service Area
1	TRABİTAŞ		Service & Food
2	TULAŞ A.Ş.		Transport
3	TRABEL A.Ş.		Service & Food
4	TURKUAZ OTOPARK A.Ş.		Transport
5	TRABZON DÜNYA TİCARET MERKEZİ		Service & Food
6	TRABSU		Service & Food
7	KARADENİZ DOĞALGAZ DAĞITIM		Environment & Energy
8	TEKNOKENT		IT
9	KASTAŞ		Construction
10	KENT TURİZM A.Ş.		Service & Food
TOTAL		0	

Table 7-46 Data on MLEs of Trabzon MM

Service Area	
Transport	2
Construction	1
Environment & Energy	1
Service & Food	5

IT	1
TOTAL	10

Table 7-47 Number of MLEs of Trabzon MM by Service Areas

7.1.20 – ORDU MM

ORDU MM - 2020			
	MLEs	Emplo yees	Service Area
1	ORBEL		Construction
2	ORTUR		Service & Food
3	ORTAR		Service & Food
4	ORYAZ		IT
5	OREN		Environment & Energy
	TOTAL		

Table 7-48 Data on MLEs of Ordu MM

Service Area	
Transport	
Construction	1
Environment & Energy	1
Service & Food	2
IT	1
TOTAL	5

Table 7-49 Number of MLEs of Ordu MM by Service Areas

7.1.21 – ERZURUM MM

ERZURUM MM			
	MLEs	Employees	Service Area
1	Çetaş A.Ş.	67	Environment & Energy
2	Erkonut A.Ş.	176	Construction
3	Esker A.Ş.	34	Service & Food
4	Ertansa A.Ş.	81	Transport
5	Palandöken A.Ş.	90	Service & Food
6	Enerji A.Ş.	89	Environment & Energy
7	Kültür Sanat A.Ş.	934	Service & Food
8	Ejder 3200 A.Ş.	166	Service & Food
9	Erzurum Spor A.Ş.	24	Service & Food
10	Kariyer A.Ş.	2,764	Service & Food
TOTAL		4,425	

Table 7-50 Data on MLEs of Erzurum MM

Service Area	
Transport	1
Construction	1

Environment & Energy	2
Service & Food	6
IT	
TOTAL	10

Table 7-51 Number of MLEs of Erzurum MM by Service Areas

7.2. PROVINCIAL AND DISTRICT MUNICIPALITIES

7.2.1. GAZİANTEP ŞAHİNBEY MUNICIPALITY

GAZİANTEP ŞAHİNBEY MUNICIPALITY		
MLEs		Employees
1	ŞAHİNBEY KATILIM A.Ş.	
2	ŞAHİNBEY PERSONEL A.Ş.	
3	BELYÖN A.Ş.	
TOTAL		0

Table 7-52 Data on MLEs of Gaziantep Şahinbey Municipality

7.2.2. ANKARA ÇANKAYA MUNICIPALITY

ANKARA ÇANKAYA MUNICIPALITY		
MLEs		Employees
1	ÇANKAYA BELDE SOSYAL ETKİNLİKLER GIDA TEMİZLİK EĞİTİM BİLİŞİM SANAYİ VE TİCARET A.Ş.	672
2	ÇANKAYA BEL-PET AKARYAKIT VE TÜREVLERİ LİMİTED ŞİRKETİ	21
3	ÇANKAYA İMAR PROJE İNŞAAT MADEN BELDE GEREKSİNMELEİ SANAYİ VE TİCARET A.Ş.	749
4	METROPOL İMAR A.Ş.	-

5	ÇANKAYA BELEDİYESİ PERSONEL A.Ş.	1,493
6	SAĞLIK KAYNAK SUYU İŞLETMELERİ A.Ş.	-
TOTAL		2,935

Table 7-53 Data on MLEs of Ankara Çankaya Municipality

7.2.3. BURSA OSMANGAZİ MUNICIPALITY

BURSA OSMANGAZİ MUNICIPALITY		
	MLEs	Employees
1	OSMANGAZİ BELEDİYESİ PERSONEL ANONİM ŞİRKETİ (OSPERAŞ)	1,923
2	OSMANGAZİ KÜLTÜR İŞLETMELERİ (OKİ)	97
TOTAL		2020

Table 7-54 Data on MLEs of Bursa Osmangazi Municipality

7.2.4. İSTANBUL BAĞCILAR MUNICIPALITY

İSTANBUL BAĞCILAR MUNICIPALITY		
	MLEs	Employees
1	Başak İnşaat Taahhüt Turizm Sanayii ve Ticaret A.Ş.	1,734
TOTAL		1,734

Table 7-55 Data on MLEs of Istanbul Bağcılar Municipality

7.2.5. İSTANBUL ÜMRANİYE MUNICIPALITY

İSTANBUL ÜMRANİYE MUNICIPALITY		
	MLEs	Employees

1	Hizmet A.Ş.	2,222
TOTAL		2,222

Table 7-56 Data on MLEs of Istanbul Ümraniye Municipality

7.2.6. SİVAS MUNICIPALITY

SİVAS MUNICIPALITY		
	MLEs	Employees
1	ÖZBELSAN A.Ş.	1,928
2	SİDAŞ EMLAK OTOMOTİV İNŞAAT A.Ş.	22
TOTAL		1,950

Table 7-57 Data on MLEs of Sivas Municipality

7.2.7. ZONGULDAK MUNICIPALITY

ZONGULDAK MUNICIPALITY		
	MLEs	Employees
1	Zonguldak Belediyesi Personel Limited Şirketi	659
TOTAL		659

Table 7-58 Data on MLEs of Zonguldak Municipality

7.2.8. KÜTAHYA MUNICIPALITY

KÜTAHYA MUNICIPALITY		
	MLEs	Employees
1	BELDE A.Ş.	39

2	SİMPAŞ A.Ş.	94
3	YONCALI DÜBECİK KAPLICALARI A.Ş.	1,185
4	ÇİNİGAZ A.Ş.	-
5	TASARIM TEKNOKENT YÖNETİCİLERİ A.Ş.	-
6	KÜTAHYA BELEDİYESİ ÖZEL GÜVENLİK VE PERSONEL A.Ş.	-
TOTAL		1,318

Table 7-59 Data on MLEs of Kütahya Municipality

KÜTAHYA MUNICIPALITY				
Percentage and Amount of Shares in Companies Participated				
	NAME OF COMPANY	TOTAL SHARES	AMOUNT	PERCENT AGE
1	BELDE A.Ş.	5,500,000.00	5,091,953.00	92.58%
2	SİMPAŞ A.Ş.	10,000,000.00	8,897,068.00	88.97%
3	YONCALI DÜBECİK KAPLICALARI A.Ş.	100,000.00	33,987.00	33.99%
4	ÇİNİGAZ A.Ş.	57,000,000.00	5,700,000.00	10.00%
5	TASARIM TEKNOKENT YÖNETİCİLERİ A.Ş.	1,250,000.00	237,500.00	19.00%
6	KÜTAHYA BELEDİYESİ ÖZEL GÜVENLİK VE PERSONEL A.Ş.	100,000.00	100,000.00	100.00%

TOTAL EQUITY	73,950,000.0 0	20,060,508.0 0
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Percentage and Amount of Shares in Companies Participated by Kütahya Municipality

7.2.9. İSTANBUL ESENLER MUNICIPALITY

İSTANBUL ÜMRANİYE MUNICIPALITY		
	MLEs	Employees
1	ESKON	-
2	ESPER	
TOTAL		1,156

Table 7-61 Data on MLEs of Istanbul Esenler Municipality

7.2.10. ISPARTA MUNICIPALITY

ISPARTA MUNICIPALITY		
	MLEs	Employees
1	ISBAŞ A.Ş.	65
2	BELMAŞ A.Ş.	-
3	ISBEL	1,242
4	GÜL FUARCILIK VE ORGANİZASYON LTD. ŞTİ.	-
5	BERİL MADENCİLİK LTD. ŞTİ.	2
6	ISTEM LTD. ŞTİ.	2
TOTAL		1,311

Table 7-62 Data on MLEs of Isparta Municipality

7.2.11. ANKARA ALTINDAĞ MUNICIPALITY

ANKARA ALTINDAĞ MUNICIPALITY	
MLEs	Employees
1 Altındağ Belediyesi Personel Ltd. Şti	
2 Altın-Bel Ltd. Şti.	
TOTAL	0

Table 7-63 Data on MLEs of Ankara Altındağ Municipality

7.2.12. KARABÜK MUNICIPALITY

KARABÜK MUNICIPALITY	
MLEs	Employees
1 Karabük Belediyesi Personel Anonim Şirketi	116
TOTAL	116

Table 7-64 Data on MLEs of Karabük Municipality

7.2.13. BİLECİK MUNICIPALITY

BİLECİK MUNICIPALITY	
MLEs	Employees
1 Bilecik Kayı Gıda Temizlik Turizm Sanayi ve Ticaret A.Ş.	346
TOTAL	346

Table 7-65 Data on MLEs of Bilecik Municipality

ANNEX-2 - QUESTIONNAIRE

THE LOCAL ADMINISTRATION REFORM PROJECT PHASE III

“A.1.1.9 Development of a Draft Legislation on Operation of Municipality-Led Subsidiaries toward EU Member States' Experiences”

Questionnaire

(June 2021)

Local Administration Reform Project Phase III (LAR III) is implemented by the United Nations Development Programme (UNDP). The co-beneficiaries of the project are the Ministry of Interior (MoI) and Ministry of Environment, Urbanization and Climate Change (MoEUCC). The project is funded by the European Union. The overall objective of the project is to maintain the implementation support for local administration reform process executed between 2003 and 2013 and ensure an effective, inclusive, accountable and participatory local governance which is in accordance with international standards in Turkey.

Under the project, it is aimed to contribute to the development of a draft legislation on operation of municipality-led subsidiaries with the studies to be performed for the purposes of making business processes of municipality-led subsidiaries more transparent, strengthening their relations with the municipality at the heart of efficiency and making them a more accountable, transparent structure through activity of A.1.1.9. Under the study, it will be prepared a “Comparative Analysis Report” and a “Legal Advice Report on Municipal Subsidiaries” for Municipal Subsidiaries, taking account of practices in selected EU member states.

In the scope of our activities implemented by the UNDP under the LAR-III project, we kindly ask you to fill out the questionnaire prepared in order to develop recommendations on the preparation of draft legislation for operation of municipal companies, taking account of EU Member states' experiences. We would like to thank you for your contributions, which we think are significant in terms of contributions of the project outputs to legislative regulations, identification of the problem in the framework of main problems and accordingly development of appropriate solutions.

PERSONAL INFORMATION

Name :

Institution/Municipality Name :

Department :

Duty :

- **General Questions**

1. What are the areas of activity and sizes of your companies operating within your municipality?

Name of the Company	Area of Activity (Transport, Construction, Environment-Energy, Service-Food, Information Technologies):	Number of Employees	Net Income for the Period	Net Cost for the Period	Net Profit/Losses

- **Questions about the Internal Structure of Subsidiary Company**

2. What are the studies that you carry out under specialization of your subsidiary companies in order to deliver more effective and efficient services in their main areas of activity in frame of management by objectives, long-term strategic focussing, head for main business concepts?
3. What are your recruitment and promotion policies in human resources?

(Performance measurement criteria (Are there any criteria that you consider for promotion?) recruitment policies (Are competitive recruitment policies motivated?))
4. What are your media and communication strategies?

(What are the media tools that you use to ensure the apparency and transparency of the projects conducted, and what criteria do you use in this selection?)

5. What are the steps that you follow under your fund raising policies in frame of accountability and transparency?

(What are your criteria at the point of choosing the shareholders with whom you cooperate during the course of fund raising?)

6. Do you have an agenda at the point of public offerings of subsidiary companies in frame of participative management, management according to undisclosed needs, service-oriented management concepts?

7. What are the steps in your budget preparation process?

(Are views exchanged with competent authorities in budget preparation process? To what extent do company managers (chefs, managers, assistant general managers) contribute to the budget preparation process?)

8. How much work is carried out in coordination with the legal affairs unit?

(Are employees informed about their rights during working and dismissal process? Are opinions received from the legal affairs about both internal audit and external audit due to the qualification of being a municipal company in the processes related to tenders?)

- **Relations with the Affiliated Municipality**

9. Can you specify your priorities in decision-making mechanism for the establishment of a new subsidiary company? What are your priorities when choosing its area of activity?

10. What are the problems experienced in management of subsidiary companies in general under economic and current legislation? Is there any standard that you follow in your current reporting process, and if any, can you brief about these standards?

(evaluation under the legislation and municipal relations)

11. (Internal audit) How often does the responsible municipal department for the coordination of subsidiaries check reports on subsidiaries?

(Financial schedules, human resources, projects and their progress, etc.)

12. (Internal audit) Who appoints board members when forming the boards of directors of subsidiaries? Which criteria are taken into account when selecting board members? To what extent is the board of directors effective in the decision-making processes related to the company? What are the share sharing rates of the companies and have you had an agenda about public offering at this point?)

13. (External Audit) How often do subsidiary companies come under the domination of Court of Accounts and what are the difficulties experienced in this process?

14. (External Audit) Is there any third party independent audit that have been carried out for your subsidiary companies? If any, can you elaborate it?

15. (External Audit) How often are the reports on subsidiary companies discussed in municipal council?

- **Relations with Other MLEs**

16. Do municipal companies carry out joint projects in themselves?

17. Do you have any studies about the co-execution of the works of certain departments of municipal companies such as purchasing, human resources, media and communication, etc.?

- **Relations/Partnerships with the Private Sector**

18. What are your criteria for selection of companies in the projects carried out by the subsidiary companies with the private sector?

- **Relations/Partnerships with Universities and Non-Governmental Organizations**

19. How do you evaluate the participation of universities and non-governmental organizations as joint owner in projects that are carried out by subsidiary companies?

(Do you have any projects that you carry out with company-university cooperation or company-non-governmental organization cooperation? If any, what percentage of your overall projects does it correspond to? Do you have any projects that you carry out within subsidiary in order to support entrepreneurs (start-up companies, individual entrepreneurs etc.) for the development of the city?)