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CAN MORAL BEHAVIOR OF PUBLIC ENTERPRISES IN BOSNIA AND HERZEGOVINA BE IMPROVED BY LEGISLATED MODEL CODES OF ETHICS?

Abstract: The two entities in Bosnia and Herzegovina passed special laws on public enterprises trying to protect state interests in and ethical conduct of public services: Republika Srpska in 2004 and Federation of Bosnia and Herzegovina in 2005. Mandatory ethics program and supplemented Model Codes of Ethics led to legal recognition of public enterprises as moral persons and ethical agents. Normative analysis, based on the business ethics theory, shows Model Codes of Ethics and their replicas do not in practice satisfy the basic theoretical requirements regarding the creation, content, functions and implementation of corporate codes of ethics. Consequently, the Model Codes of Ethics can not improve moral behavior of public enterprises in BIH.

Key words: *model codes of ethics, moral behavior, public enterprise, Bosnia and Herzegovina*

CONCEPTUAL FRAMEWORK

History of ethics codification and research methodology

1. Codes of ethics are „distinct formal documents specifying self-consciously ethical constraints on the conduct of organizational life.”¹ Historically, codes of ethics appeared in professions as businesses (doctors, lawyers, architects etc.). Companies’ codes of ethics are relatively new and coincide with the collapse of the „myth of amoral business”.² The first wave of corporate codification of ethics began in the late 1970 s and early 1980 s. By the 1990 s almost 90% of big U. S. corporations had some form of a code of ethics.³ Companies from Europe⁴, Japan and the rest of the world followed. Increasing globalization brought new qualities into

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¹ [53]. p. 45; [40] p. 28: „A code of ethics by most definitions is a written, distinct, formal document which consists of moral standards which help guide employee or corporate behavior.”

² Historical development of the idea of codification of ethics, see at [7]. pp. 117–120.

³ [53]. pp. 46–47; [40], p. 27.

⁴ For UK developments, see [7]. p. 1078–1078.

corporate ethics and its codification, especially concerns for transcultural values and universal human rights.⁵ A contemporary corporation acts not only within legal frameworks, but also within a web of different codes of ethics.⁶ Its own code of ethics is usually at the center of this web.

2. In independent Bosnia and Herzegovina (BIH), the affirmation of business ethics was delayed by the postwar reconstruction, initial accumulation of private capital, slow privatization and weak corporate governance. These factors still influence general company regulation and the moral practice of business entities in BIH.⁷ Under the circumstances, prolonged privatization of the most important state-owned companies created significant problems in their legal and ethical behavior, and the effectiveness of their public functions. In such an environment, ethical norms in intra-corporate life and market relations were treated mostly as specific legal duties.

New perspectives opened after the Law on Public Enterprises (LPE) was passed by the Republika Srpska (RS) in 2004 and by the Federation of Bosnia and Herzegovina (FBIH) in 2005. From a moral standpoint, the most interesting novelty relative to general corporate law was the requirement that all public enterprises („javna preduzeća”) adopt a code of ethics. Despite extensive regulation in these two laws, the legislators of both entities felt compelled to append to them identical, mandatory Model Codes of Ethics.⁸ At approximately the same time chambers of commerce started creating their own codes of business ethics, binding on their members.⁹ Today, public enterprises are re-examining their codes of ethics,¹⁰ while privately owned companies are beginning to draft their own.¹¹

⁵ [44]. pp. 610- 612. The process of globalization resulted in the „third generation” of business ethics and corporate codes of ethics, focusing on the rights of „humankind” or our collective humanity. (p. 612). See also p. 618. It seems that the first generation of global business ethics was concerned primarily with corruption issues (see [39]).

⁶ [7]. pp. 120–121 enumerated 12 ethics codes binding a Canadian corporation. Today, a BIH public enterprise potentially deals with at least eight different ethics codes: its own corporate code of ethics; chamber of commerce code of ethics; stock exchange code, brokers’, accountants’, bankers’ and lawyer’s codes; state employee’s codes and UN Code for Transnational Corporations Code and UN Global Compact, when applicable.

⁷ [1]. p. 119: „1st pillar: Institutions”, point 1.17. Regarding ethical behavior of companies, BIH is ranked 134th out of 140 countries included in the survey.

⁸ Unofficial translation into English of the Model Code of Ethics in FBIH (Official Gazette FBIH 29/05), see Appendix 1 to this paper.

⁹ Canton Sarajevo Chamber of Commerce passed the Code of Business Ethics for its members on September 28, 2005. Republika Srpska Chamber of Commerce promulgated its Code of Business Ethics on March 15, 2006. It is worth mentioning that the membership in cantonal chambers of commerce is voluntary, while in RS it is mandatory.

¹⁰ For instance, public enterprise „JP Autoceste FBIH”, d. o. o., Mostar (“Highways of FBIH”, Ltd.) published the first version of its code of ethics on March 17, 2011 and replaced it with a new one on June 17, 2014. JP „Sarajevo — šume” d. o. o. Sarajevo („Sarajevo — Forests” Ltd., Sarajevo) adopted the second version of its Code of Ethics on June 15, 2015).

¹¹ For example, minority state-owned company „Bosnalijek” d. d., Sarajevo, passed its Code of Business Ethics and Organizational Behavior in 2004.

3. Codification of moral rules is at the epicenter of LPEs' regulation of business ethics. Therefore, the research question of this paper is whether a legislated Model Code of Ethics satisfies the theoretical criteria for a code able to improve internal and external ethical behavior of domestic public enterprises. We hypothesize that the answer is negative. We will prove that by comparing the theory of corporate codes of ethics to the regulation in LPEs and in Model Codes of Ethic. Consequently, this research will be normative in nature.¹²

Public enterprises are legally bound to publish certain information on their websites, alas not including their codes of ethics¹³, which had to be collected by direct request.¹⁴ Fourteen public enterprises' ethics codes were acquired.¹⁵ This modest sample only allows their illustrative use.

Relation between morality and law

1. Relations between morality and law are essential to the study of business ethics, corporate codes of ethics¹⁶, and Model Codes of Ethics of public enterprises in BIH. Morality is a specific, relatively independent societal subsystem dedicated to the creation and implementation of behavioral rules which are considered good because they potentially or actually contribute to the well-being and development of individuals, social groups and society as a whole.¹⁷ The moral subsystem consists of subjects, rules and implementation mechanisms. These three elements do not appear in identical forms in different segments of society.

Creators of moral norms are primarily individuals with their understanding of „good” and „bad” behavior. The disposition of a moral norm always comprises a behavioral rule and a moral judgment. If a person breaches a moral rule, only they can feel the qualm and uneasy conscience as characteristic moral sanctions. It follows that moral norms are basically autonomous. Groups and society build their moral norms upon the self-imposed, individual ones. Sanctions for a breach of group or societal ethical norms are imposed by society at large, groups or institutions which aren't a part of the state apparatus. Therefore, societal moral norms are autonomous and heteronymous at the same time. In many social domains, eth-

¹² [42]. p. 27: „The lack of normative reflection on codes might be considered surprising given the explicit nature of codes.”

¹³ Article 2, section 2 of both [21]. and [22]. [40]. p. 34 pleads for „universal distribution to all stakeholders...” In this context, the author suggests that „placing of the code of ethics on the internet is one of the means of ensuring accessibility of the code by outside public.”

¹⁴ Survey of the internet sites of 14 public utility enterprises in Canton Sarajevo, performed on December 10, 2015, did not reveal a single code of ethics. [44]. p. 615 found that in eight industries researched, „81% (164 out of 202) of companies had Codes of Ethics on the web...”

¹⁵ The structure of the sample is as follows: eight codes of cantonal public utility enterprises, four codes of public enterprises in FBiH ownership, and two codes of public enterprises in RS ownership.

¹⁶ See [5]. pp. 42–44.

¹⁷ For the definition of „moral” see [23]. p. 120.

ically homogenous groups, coherent systems of moral norms and dispersed implementation mechanisms develop slowly. In business, however, the speed, volume, and relative similarity of transactions contribute to ethical norms appearing fast.¹⁸

Contrary to moral norms, law is predominantly created by the state. The legislative process is relatively short. Sanctions are only those prescribed by the law itself and imposed by competent state bodies. Lawmakers follow „state reasons” and goals which are not always „good”. Moral judgment is not an indispensable part of a legal norm’s disposition. If necessary, a law can be consciously unethical. A legal norm which violates moral attitudes of its addressees or the society as a whole is still binding. Therefore, legal norms are exclusively heteronymous.

2. Morality is a broader societal subsystem than the law, which covers only areas of particular interest to the state. In spite of the fact that legal norms do not necessarily depend on ethical reasons, the law often includes moral norms either to protect them or to facilitate its own implementation. Such moral rules become legal norms without losing their ethical character.

Compared, the moral and law subsystems have their (dis)advantages. The moral subsystem covers a broader area of social relations than the law, and has deeper societal roots. The legitimacy of moral norms must be proven historically and by sociological and philosophical argumentation. The legitimacy of the law depends almost exclusively on the state; moral and other social arguments for justifying legal norms and their implementation might be of some importance only in the final, teleological interpretation of the law. Moral norms must be proven and applied in complex individual and societal circumstances. The law is more precise, general, and consistent. The implementation of the law is more predictable than the observance of moral norms. The differences notwithstanding, ethics and the law should not only support but also complement each other.¹⁹ A conflict between the two is usually a sign of deeper social conflicts.²⁰

Public enterprise in BIH legal system

1. Entities of Bosnia and Herzegovina (BIH) are responsible for legislation on business subjects.²¹ Republika Srpska (RS) passed its first Law on Enterprises in 1998.²² It was replaced by the Law on Business Societies in 2008 (LBS RS).²³ The Federation of Bosnia and Herzegovina (FBIH) promulgated the Law on Business Societies in 1999 and amended it several times since then (LBS FBIH 1999).²⁴ It was replaced by the new FBIH Law on Business Societies 2015 (LBS FBIH

¹⁸ See [47]. pp. 102 -104 for the relation of moral norms and (good) trade usages.

¹⁹ [5]. p. 40–41 calls this approach to moral and law as „Coinciding Views”.

²⁰ [45]. p. 77

²¹ Article III, 3 of the BIH Constitution

²² [34].

²³ [32].

²⁴ [29].

2015).²⁵ Both LBSs contain the general legal regime for companies based on capital (corporations) and on persons (partnerships).²⁶ These subjects are designed for doing business in order to make profit and distribute it among the members. Therefore, the legal regime focuses on interest of a company and its owners. Protection of public interest and morality is only indirect.

In the late 1990 s, at the dawn of privatization,²⁷ all BIH state levels owned more than 80% of overall capital in the country.²⁸ In the new economic environment, neither the socialist-era Law on Public Enterprises²⁹, nor the Entities' general company acts, could adequately protect public interest. In order to cope with this problem, RS passed its specific Law on Public Enterprises in 2004 (LPE RS) and FBiH in 2005 (LPE FBiH).³⁰ The Entities' laws on business societies apply to issues not regulated in the laws on public enterprises.

Interpretation of the two laws on public enterprises reveals their general goals: preventing misuse of state property and public goods, curbing political party control over publicly owned companies, protecting state property prior to privatization, making state property serve all citizens, revenue raising, and better implementation of laws on conflict of interest. An elaborated restatement of those objectives was added in amendments to the Entities' LPEs.³¹ Aware of the relatively poor rule of law in the country,³² legislators also intended the new acts to improve ethical behavior of public companies. They did so by legally creating and imposing a system of corporate ethics, including identical Model Codes Of Ethics. This was a historically important turning point for business ethics in BIH³³: corporations in the legal form of public enterprises were officially recognized not only as societal, economic and legal subjects, but also as moral persons and agents.

2. In the first LPE RS from 2004 the only requirement for the status of public enterprise was permanent engagement in activities of common interest³⁴. The founder of an enterprise could be the RS, a unit of local self-government, or a private individual. Type of ownership, legal form of incorporation, and number of employees were irrelevant. Amendments from 2011 imposed cumulative conditions for the status of

²⁵ [28].

²⁶ See [49]. pp. 114–117

²⁷ [4]. The Entities' Laws on Enterprise Privatization were promulgated later.

²⁸ [36].

²⁹ [30].

³⁰ [31]; [27].

³¹ See Art. 2 a of [22]. and [21].

³² [2]. p. 68; [1]. By independence of the judiciary, BIH ranks 110th out of the 144 countries included in the Global Competitiveness Report 2015–2016.

³³ Neither LBS explicitly regulates any issue of business ethics. The RS Securities Commission's Standards of Corporate Governance (RS Official Gazette 117/11) several times explicitly insists on respecting business morality (e. g. 15.3; 16.1). By contrast, FBiH Securities Commission's Rulebook on the Management of Joint Stock Corporations from 23rd of March 2010 does not directly refer to ethical duties of participants in corporate governance.

³⁴ Art. 2, section 1 of [22].

public enterprise. First, only the RS or a local self-government unit may establish a public company. Second, it has to be registered as a corporation, i. e. Joint Stock (JSC) or Limited-Liability Company (Ltd.). And third, the portion of direct or indirect state ownership cannot be less than 50% plus one share.³⁵ Additionally, LPE RS is valid for all companies with RS majority ownership employing more than 50 persons.³⁶ The extension of the LPE RS scope beyond public enterprises is an important vehicle for increasing the number of corporations *ex lege* treated as moral persons.

The concept of public enterprise in FBiH evolved in the direction opposite to that in the RS. To qualify as a public enterprise under LPE FBiH from 2005, a company had to be either registered in the form of a corporation³⁷ or a public enterprise founded by law and have activity of „public social interest” determined by municipality, canton or FBiH, or have at least 50 employees and majority state ownership, regardless of type of business activity. The latter condition gave public enterprise status to a considerable number of state-owned companies that did not perform any activity declared to be of public interest. Both types of public enterprises had to implement business ethics regulation prescribed by the LPE. The 2008 amendment of the LPE Article 2 altered this paradigm by making public interest the only criterion for being a public enterprise. Majority state-owned corporations with more than 50 employees are no longer public enterprises and do not have to apply the ethics system from LPE FBiH.³⁸ The number of corporations legally required to act as moral subjects was thus reduced.

Corporation as a moral agent

1. In BIH, different legislative approaches to ethical issues in the general legal regime for corporations and in special regulations for public enterprises reflect a broader dilemma on whether corporations have ethical personhood. One theory holds that the answer is categorically negative. It is based on the assumption that only natural persons are capable of moral judgment, actions and, consequently, moral responsibility. This theory does not seem compatible with the contemporary role of corporations, development of organizational sciences and introduction of penal responsibility for corporations.³⁹ The second, affirmative response is more plausible: corporations are moral subjects. The main arguments in favor of this standpoint are: legal recognition of corporate personality, attribution of employees’ acts to corporations,⁴⁰ existence of a specific corporate culture⁴¹ and organization for making corporate decisions, including ethical ones, which may dis-

³⁵ Art. 2, section 1 of amended [22].

³⁶ Art. 2, section 2 of original [22]. and its amendment.

³⁷ See Art. 3 of [21].

³⁸ Art. 372 LBS FBiH 2015.

³⁹ [3]: „Responsibility of Legal Persons for Criminal Acts”, Art. 126–148; [15]. pp. 168–169.

⁴⁰ [10]. pp. 39–40.

⁴¹ See [19]. pp. 234–235.

agree with standpoints of individuals engaged by a corporation.⁴² However, corporations, like human beings, are not always able or willing⁴³ to make and implement moral judgments: „in order to qualify as a moral agent, a corporation would need to embody a process of moral decision making”⁴⁴ and to control its implementation in „the structure of policies and rules,”⁴⁵ as well as in practice.

2. An „ethics program” is the organization of permanent corporate moral acting.⁴⁶ Incentives for adopting an ethics program can be external⁴⁷ or internal⁴⁸. In practice, they act cumulatively. An ethics program can be: formal or informal⁴⁹, recognized or unrecognized, compliance- or value-oriented.⁵⁰ In any case, „a good corporate ethics program must be user friendly”.⁵¹ Scope and content of an ethics program depend primarily on external pressures, while the top management’s commitment to ethical leadership is the most important internal factor in the program’s implementation.⁵²

In each case the aim of an ethics program is the standardization of employees’ ethical attitudes and behavior. To achieve this goal, a corporate ethics program should provide for: bodies responsible for ethics management, an ethics management system, and a set of ethical rules along with policies for their creation and implementation. Using mandatory norms, the Entities’ LPEs outline basic solutions for each of those four main elements of an ethics program.⁵³ Essential features of such an ethics program are: external (state) origin, mixture of le-

⁴² For the overview see [43]. pp. 207–210.

⁴³ About difficulties of being an ethical person and acting like one, see [18]., especially pp. 69–72: „Myth 1: It’s Easy to Be Ethical”.

⁴⁴ [12]. p. 17.

⁴⁵ [12]. p. 30. For an excellent illustration of this standpoint see: Harvard Business School, Case 9–395- 127 (Rev. February 27, 1997): „Levi Strauss & Co: Global Sourcing (A)”.

⁴⁶ [6]. pp. 394–395.

⁴⁷ External incentives come mostly from the state and public agencies. One of the first and most famous instruments were the US Principles of Federal Prosecution of Business Organizations [50]. Public agencies and professional organizations may also play an important role.

⁴⁸ Moral attitudes of top management, corporate culture, the need to use the ethics program as a control system, etc.

⁴⁹ See [18]. pp. 73–74: „Myth 3: Ethics Can be Managed Through Formal Ethics Codes and Programs”.

⁵⁰ [54]. pp. 41–42; [19]. p. 91.

⁵¹ [43]. p. 223.

⁵² [54]. p. 53.

⁵³ For „bodies” see Art. 5, 7, 10, 16, 17 and 19 of [22]. and Art. 5, 6, 8, 11, 17, 20 and 21 of [21]. System of ethics management is regulated in Art. 5, 7, 19 and 20 of [22], and in Art. 6, 20 and 21 of [21]. Ethical rules and policies for the creation of a code of ethics can be found in Art. 2 a, 5, 7, 19 and 52 of [22], and in Art. 2 a, 8, 20, 47 and 52 of [21]. Art. 7, 16, 18, 20 and 47 of [22]. regulate the implementation of ethics rules, while [21]. enshrines norms on the same issues in Art. 21 and 47.

gal and ethical norms, formal character, and being officially recognized and compliance-oriented.

CREATION OF A CODE OF ETHICS

Determination of goals

1. Incentives for drafting a corporate code of ethics may have different sources and multiple purposes.⁵⁴ That is why business ethics theory unanimously asserts that the first task in the creation of a code is to determine why a corporation wants to make its own code. As a living moral subject and agent, a corporation usually sets several ethics goals. These goals should be understandable not only to the management, but to the employees and the stakeholders as well. Additionally, the goals are to be equitable,⁵⁵ justified⁵⁶, and achievable⁵⁷.

Determination of the goals largely depends on whether the ethics management is rules- or principles-oriented. The selected goals can be equal or organized hierarchically. In any case, they must be specific to the corporation's mission, „cultural context”⁵⁸ and internal and external relations. Generic codes of ethics should be avoided.⁵⁹

2. Do LPEs' Model Codes of Ethics satisfy these criteria? Arguments for a negative answer are as follows. Adopting a code of ethics is a legal duty of a public enterprise.⁶⁰ Failure to do so is a punishable business offense for the public enterprise and its CEO.⁶¹ The goals of the Model Codes of Ethics are the same as those of the LPEs.⁶² In drafting the proposal of the code, the Supervisory Board must cooperate with the Internal Audit Board, whose head is nominated by the Entity's chief auditor.⁶³ Identical Model Codes of Ethics⁶⁴ were published right after the LPEs.⁶⁵ They enshrine seven legal principles along with three ethical principles of equal

⁵⁴ See [53]. p. 48 for some of most common intentions behind codifications of corporate ethics.

⁵⁵ [43]. p. 222.

⁵⁶ [40]. p. 37.

⁵⁷ [40]. p. 32.

⁵⁸ [8]. p. 1080.

⁵⁹ [43]. p. 222: „The company's code of ethics should not be window dressing or so general as to be useless.”

⁶⁰ [22]. Art. 52 sets a six months period after the entry of the law into force. Art. 47 of [21]. mentions, but does not determine, a „prescribed period” for passing a code of ethics.

⁶¹ Art. 47 of [22]., Art. 47 of [21].

⁶² Art. 19 of [22]., Art. 20 of [21].

⁶³ Art. 19 of [22].; Art. 20 of [21]. Head of Internal Audit Board presides over the Board, but has no voting rights.

⁶⁴ For the English translation of the Model Code of Ethics in FBiH legislation see Appendix 1.

⁶⁵ [33].

standing.⁶⁶ Principle 10 states that „no deviation from this code or amendment of it is permitted”. There is no explicit prioritization of any goal. Yet system analysis shows that the protection of state property and interests is the major goal and the implicit rationale for the Model Codes of Ethics.⁶⁷

The conclusions are obvious. The incentives for adopting a code of ethics are external. The primary goal is the protection of the Entities’ general interests in public enterprises. In drafting the code, the Internal Audit Board should strive to protect state interests rather than specific ethical needs and aims of a public enterprise. Mandatory content of legislation and Model Codes of Ethics does not give enough incentives for defining a public enterprise’s specific goals. Consequently, the core content of individual codes is imposed and in essence generic. In this regime the specific interests of public enterprises are marginalized. Under the circumstances it is reasonable to suppose that individual codes can hardly satisfy specific moral expectations which originated the movement for codifying business ethics.

3. There were different practical reactions to the pressure of the LPEs. Some enterprises basically transcribed the Model Code of Ethics, inserting a few ethically irrelevant provisions.⁶⁸ Other public enterprises added their specific goals: integrity, transparency, consumers’ and employees’ satisfaction, environmental protection,⁶⁹ fairness, truthfulness, just and non-discriminatory treatment,⁷⁰ correct employee conduct and relationships.⁷¹ One enterprise also listed the improvement of its business relations with all shareholders, employees, stakeholders⁷² etc.

Drafting the codes of ethics

1. Every code of ethics is a normative and formal document. In this respect, codes of ethics are similar to general legal acts. However, different societal nature of juridical and moral norms requires business ethics theory to examine specific issues in drafting codes of ethics.

Making a code of ethics is a process, not a one-off drafting task.⁷³ As many employees and stakeholders as possible should be induced to actively participate in

⁶⁶ Principles 3, 7 and 9 contain principles of ethic. The rest are dedicated to legal issues.

⁶⁷ Reasons for Principle 4: „Protection and Correct Use of Company Property” and Principle 6: „Compliance with Laws, Rules and Regulations” can be discerned in other principles, as well.

⁶⁸ 2006 Ethics Code of public utility company „Vodovod i kanalizacija” d. o. o., Sarajevo (PE „Water Supply and Sewerage”, Ltd., Sarajevo).

⁶⁹ JP „Toplane d. o. o. Sarajevo/District Heating System” in its 2005 Code of Ethics.

⁷⁰ JP „Elektroprivreda Bosne i Hercegovine” d. d. Sarajevo (PE „Electrical Power Industry of BIH”, JSC, Sarajevo) in its 2005 Code of Ethics.

⁷¹ JP „Sarajevo — šume” d. o. o. Sarajevo (PE „Sarajevo — Forests” Ltd., Sarajevo).

⁷² JP „Elektroprivreda Hrvatske zajednice Herceg — Bosna”, d. d. Mostar (Electric Power Industry of HZ HB).

⁷³ For useful instructions see [6]. pp. 401–202.

the creation of the code.⁷⁴ Stages of good legal drafting (initiative, research, working team, scope, basic principles, structure determination, first draft, discussion of first draft, proposal) must be applied in accordance with the character of moral norms and ethics policy of the corporation. Due to the role of lawyers in the drafting process,⁷⁵ separation of moral and legal rules in codes of ethics is not an easy task. It is recommended to avoid legal language and to use positive and negative formulations.⁷⁶ In any case, the code must be comprehensible to the company's employees and stakeholders.⁷⁷

The format of the code ought to be compatible with its functions and relatively short. Several formats appear in practice: creeds, mission statements, codes of conduct, compliance codes⁷⁸, standards and manuals, codes of ethics drafted like legal documents⁷⁹, and technical documents involving ethical rules. In order to facilitate application of the code, it is suggested to illustrate individual provisions with examples and provide a rationale behind a code „in those cases where the rationale is not self-evident⁸⁰.”

2. The LPEs legally require public enterprises to adopt codes of ethics, drafted in accordance with the prescribed Model Codes of Ethics, and to implement them. By doing so, the LPEs erase the line between law and ethics. Such legislative approach influences the drafting of the codes of ethics, among other issues.⁸¹

The format of the Model Codes of Ethics does not fit into the most widespread forms of ethics codes. Apart from the personal validity provision at the very beginning, the body of the text is divided into ten principles. Only Principle 9: „Understanding and Following this Code” has a solely ethical character. Other principles summarize and recount, in less formal terms, complex legal institutions like con-

⁷⁴ [40]. p. 32 makes the distinction between employees and stakeholders. A company has a moral obligation to include employees, i. e. to make them aware of the existence of and potential changes to the code. Stakeholders are „morally entitled to participate in the code creation process,” but not obliged to comply with the code.

⁷⁵ [53]. p. 52. In BIH, Principle 9 of the Model Codes of Ethics instructs users who have dilemmas on interpretation or implementation of the code to turn to the legal counsel of a public enterprise.

⁷⁶ [40]. p. 31–32, argues that „negative tone language in a code (e. g., ‘don't do x’) appears to provide clearer direction (and is therefore more easily understood) than use of positive, inspirational language (e. g., ‘try to do y’) for certain types of activities...”

⁷⁷ [40]. pp. 31 and 37.

⁷⁸ Compliance codes encompass at least a company's technical and legal norms. As a part of its compliance program, they „focus on law and emphasize prevention and punishment.” ([5]. p. 41). Compliance codes are typical for regulated industries. In this format of a code there is inherent danger of ethical transgressions by using lower standards in legal and technical regulations as a justification. For examples, see [11].

⁷⁹ [8]. p. 1079 notes that in practice, codes of ethics appear even as „annual reports presented to either shareholders and/or employees.”

⁸⁰ [40]. p. 31.

⁸¹ Influence of law and lawyers on the drafting of codes of ethics is not specific only to BIH and public enterprises. About coupling law and morality in corporate codes of ethics, see [53]. p. 52.

flict of interest or corporate governance.⁸² Two out of ten Principles are formulated negatively — as interdictions.⁸³

In preparation of a code of ethics, the Supervisory Board is only legally bound to cooperate with the Internal Audit Board,⁸⁴ not with the management or any other body. The argument for this solution is the deep insight of the Internal Audit Board into all aspects of the enterprise's life. The argument against it is the right of the Entity's Chief Auditor to nominate the president of the Internal Audit Board. Despite not having voting rights, the president might serve as a conduit for the government's ethical considerations. The Supervisory Board submits the proposal of the code of ethics to the Assembly (General Meeting) for adoption.⁸⁵ All procedures are the same as if the code of ethics were a purely legal act.

The mandated legal procedure for adopting the code of ethics does not prevent the Supervisory Board or other corporate bodies to conduct procedures and obey drafting principles established by the theory of business ethics. Unfortunately, there is no research data on whether they do. Yet, two outcomes are indisputable. First, the format of the code is subordinate to government's goals. Second, the drafting does not fully correspond to the requirements of the theory of business ethics. The analysis of the enterprises' code of ethics from the sample leads to the same conclusions.

CONTENT OF THE CODES OF ETHICS

General content of codes of ethics

1. In general, corporate codes of ethics concern moral issues in societal relations of companies and their employees in the course of doing business. The content of an individual code may depend on various factors: legislation and other external pressures, public commitment to ethics,⁸⁶ type of industry, corporate goals and culture, motives and orientation of top management, etc. In order to determine the prevailing, typical content of codes of ethics, the theory examines two basic aspects: topics regulated by the code⁸⁷, and core moral values.⁸⁸ Their results converge in the final analysis.

2. The topics are examined through meta-analysis of a large number⁸⁹ of research papers dealing with codes of ethics.⁹⁰ Those primary sources are descrip-

⁸² See Principles 1 and 2.

⁸³ See Principles 8 and 10.

⁸⁴ Art. 29 of [22]. and Art. 27 of [21].

⁸⁵ Art. 7 and 5 of the [22]. Art. 8 and 6 of the [21].

⁸⁶ [53]. p. 48.

⁸⁷ [7]. pp. 122–124; [53]. p. 55–56.

⁸⁸ [40]. pp. 30–32.

⁸⁹ See [7]. pp. 122–123; [53]. pp. 46 (Table 1).

⁹⁰ As an example of analytical approach to the content of corporate codes of ethics, see [44]. pp. 615–617.

tive and statistical, and they allow ascertaining the core content of codes,⁹¹ which can be predominantly oriented towards the company, the employees or the social environment.⁹² Within each of these groups, the accent may be placed on different subjects (e. g. shareholders and stakeholders, management, female employees) or matters (e. g. finance, corruption, privacy, environment, conflict of interest, social responsibility).⁹³

The topics covered by the code do not necessarily exhaust all „ethical concerns related to code content and the process involved in developing a code”.⁹⁴ Among the missing concerns may be universal moral values or „standards”⁹⁵, like trustworthiness, respect, responsibility, fairness, caring and citizenship,⁹⁶ which should be included in corporate codes of ethics^{97, 98} for them to be deemed truly ethical.

Moral content in the LPEs, Model Codes of Ethics, and in practice

1. The Entities’ LBSs generally outline moral content in company law. The LPEs regulate specific business ethics issues in more detail. They determine the content of codes in almost the same manner.⁹⁹ Table 1 offers the overview of general and mandatory legislative solutions and their relation to the „Principles” of Model Codes of Ethics.

2. The first conclusion from Table 1 is that the Entities’ LPEs regulate in detail the most important content of codes of ethics. Notwithstanding minor phrasing differences, the Model Codes of Ethics are fully congruent with LPEs’ provisions. The second conclusion is that there is considerable overlap among the general company legislation, laws on public enterprises and Models Codes of Ethics. The restatement of law in Model Codes of Ethics serves to reinforce the rule of law

⁹¹ [7]. on p. 122, Tables IV and V, enumerates the ten most important topics in Canadian and in U. S. corporate codes of ethics. [53]. pp. 55–56, Table 3: „Common Content Of Codes Of Ethics” extracts the following generic issues: general matters, nature of the company, employee issues, legal matters, firm’s stratus and actions in the market, and responsibilities to society.

⁹² [37]. p. 189, states that European companies have codes of ethics which are „...for both internal and external use, US companies’ codes dealt more with conduct inside the firm...”

⁹³ [7]. p. 123, Table VI, and p. 124, Table VII, [53]. pp. 55–56, Table 3: „Common Content Of Codes Of Ethics”.

⁹⁴ [40]. p. 29.

⁹⁵ [40]. p. 37.

⁹⁶ [40]. pp. 29–30.

⁹⁷ [44]. p. 607: corporate codes of ethics „specify corporate ethical values”.

⁹⁸ [40]. p. 32, Table I, and p. 33, Table II.

⁹⁹ Only articles which are generally and directly relevant for a specific duty (RS), or refer to Joint Stock Companies’ management or Supervisory Board’s members (RS and FBIH), are listed in Table 1.

Table 1: Subject matter content of the Model Codes of Ethic

No	Articles of LBS		Articles of LPE		Content in LPEs	Principles of Model Codes of Ethics
	RS 2008	FBIH 2015	RS	FBIH		
1	2	3	4	5	6	7
1	33, 34, 35, 37	36, 37, 258, 267	13, 19	20, 14	Prohibition to connected persons to enter into real or apparent conflict of interest with public enterprise	Principle 1: Conflict of Interest
2	32, 33	32	14	20, 15	Duty of connected persons to act professionally and conscientiously	Principle 3: Professional Abilities and Conscientious Conduct
3	33 309	257	15	20, 16	Duty of Supervisory Board and management to encourage control and protection of public enterprise's assets	Principle 4: Protection and Correct Use of Enterprise's Assets
4	309	253, 264	16	17, 18	Duty of Supervisory Board and management to comply with laws, rules and regulations	Principle 6. Compliance with Laws, Rules and Regulation.
5	309	264	16.	20, 17	Duty of Supervisory Board and management to encourage ethical behavior, whistle-blowing, and to report illegal or unethical behavior	Principle 7: Encouraging the Reporting of Illegal or Unethical Behavior
6	/	/	17	20, 17	Connected person's duty to report illegal behavior in public enterprise	Principle 6: Compliance with Laws, Rules and Regulations
7	38	39	19	20 14	Connected person's duty not to betray business secrets of public enterprise	Principle 5: Confidentiality
8	33, 35	34, 35, 40, 258	19	20	Ban on using corporate possibilities for own purposes and on connected persons to compete with public enterprise	Principle 2: Corporate Possibilities.
9	369	/	19, 40	20, 41	Ban on loans to management and Supervisory Board members	Principle 8: Loans to Management and Supervisory Board Members
10	369	/	19	/	Ban on loans to employees and members of enterprise's bodies	/
11	/	/	20, 47, 52	20, 47	Duty of management, on pain of penalty, to provide for the implementation of the code. In RS management must adopt guidelines for application of a code	Principle 9: Understanding and Following This Code.
12	/	/	47	20, 6, 47	Sanctions against public enterprise, Supervisory Board and management if code of ethics is not adopted or if it does not contain provisions from LPEs	Principle 10: Deviation and Disciplinary Action

by disguising legal duties as moral principles.¹⁰⁰ Clearly, the Model Codes of Ethics belong to the first generation of corporate codes of ethics.¹⁰¹ Third, the considerable part of the content of the Model Codes of Ethics is explicitly addressed to connected persons only,¹⁰² which contradicts the determination of the Codes' personal scope of application.¹⁰³

The Model Codes of Ethics should not be assessed only according to the issues regulated; equally important and even more extensive is the missing content. The mandated templates do not mention a number of ethical relations which the theory of public enterprises considers indispensable to the codes' content: implementation of public interest, position of employees in an enterprise (information gathering, salaries, non-discrimination, affirmative action, gender relations, equitable treatment, promotion, etc.), ethical issues in internal employee relations, managers' behavior, stakeholders' rights, technology and environmental protection, corporate social responsibility, specific moral sanctions, etc. These lacunae in the content of the Model Codes of Ethics corroborate our previous conclusion that the real aims of ethics codification in public enterprises are actually goals of the state in disguise.

The limited content of the Model Codes of Ethics caused different reactions in practice. Even a small sample of codes of ethics suggests classifying them in three groups. The first group of public enterprises simply copied the Model Code of Ethics, sometimes with minor additions.¹⁰⁴ Public enterprises which made significant additions to the Model Code of Ethics are in the second group. The codes of those enterprises conform not only to the Model, but to theoretical content requirements as well.¹⁰⁵ The third group is made up of public enterprises which did not tran-

¹⁰⁰ [40]. p. 30 points out that „it would not be sufficient for a company to merely restate the law in its code, as the law would not sufficiently express the moral standards (other than possibly citizenship)”.

¹⁰¹ [44]. p. 614: „First generation... is fundamentally about being consistent with the law while maximising returns to the general shareholders of the company.”

¹⁰² See Principles 1, 2, 3, 5, 6, 9.

¹⁰³ The introductory provisions of both Model Codes of Ethics state that the individual code applies to all employees, including agents, members of Supervisory and Audit Boards, and public companies which in RS control at least 5% and in FBiH at least 10% of voting rights in a public enterprise. „Connected persons” are mentioned only within the phrase „the relation of connected persons,” which is impossible to interpret grammatically. Members of management are not mentioned at all.

¹⁰⁴ Art. 13 of 2006 Code of Ethics of the public utility company „Vodovod i kanalizacija” d. o. o., Sarajevo (*PE „Water Supply and Sewerage”, Ltd., Sarajevo*) established a five-member commission for monitoring the implementation of the Code. See also the ethics codes of „Elektroprivreda BiH — Zavisno društvo Rudnik mrkog uglja Kakanj” d. o. o., Kakanj, dated 1st of April 2011, „KJP Komrad, d. o. o”, Bihac, dated 8th of July 2007, and „KJP Saobraćaj i komunikacije Tuzla, d. o. o.”, „KJP Veterinarska stanica, d. o. o.”, Sarajevo, dated July 4, 2007, and „KJP Park, d. o. o.”, Sarajevo.

¹⁰⁵ Codes of Ethics of the following public enterprises: „Autoceste FBiH” (Art. 13 e. g.), „Sarajevošume” (e. g., Chapters IV — VI), „Elektroprivreda BiH”, and „Elektroprivreda HZHB”.

scribe the Model. Instead, they imbedded the mandated content into their own formulation of ethical principles and rules.¹⁰⁶

3. Attempts to establish moral principles justifying corporate codes of ethics have a long history.¹⁰⁷ The examination of the mandatory subject matter in the light of universal moral standards, as defined by Schwartz,¹⁰⁸ reveals the ethics content of Model Codes of Ethics.

Table 2: Moral content of Model Codes of Ethics

Principle	Principles of Model Codes of Ethics	Application of universal standards described by Schwartz
1	Conflict of Interest	Citizenship; Trustworthiness
2	Corporate Possibilities.	Citizenship; Trustworthiness; Fairness
3	Professional Abilities and Conscientious Conduct	Trustworthiness; Responsibility
4	Protection and Correct Use of Enterprise's Assets	Trustworthiness; Responsibility; Caring
5	Confidentiality	Trustworthiness; Responsibility
6	Compliance with Laws, Rules and Regulations	Caring; Trustworthiness
7	Encouraging Reporting of Illegal or Unethical Behavior	Caring; Trustworthiness
8	Loans to Management and Supervisory Board Members	Fairness
9	Understanding and Following this Code	Trustworthiness; Citizenship
10	Deviation and Disciplinary Action	Citizenship; Responsibility

By itself, Table 2 suggests that the Model Codes of Ethics conform satisfactorily to broadly conceived universal moral values. However, in the light of conclusions from Table 1, the assessment is less favorable: the moral content of the Model Codes of Ethics already exists in the law. Despite the fact that morality is a broader concept than the law, the Model Codes of Ethics do not protect ethics beyond the boundaries of the legal system. This finding confirms the previous conclusion: the mandated Model Codes of Ethics are designed to support implementation of the

¹⁰⁶ See „JP Toplane Sarajevo/District Heating System” in its Code of Ethics from 2005, „JP Autoceste FBiH, d. o. o.”, Mostar, June 2014. „KJP Sarajevo-šume, d. o. o.”, Sarajevo, in Article 2 of its code declared the „building of trust” as the most important goal of the code, as did „KJP GRAS, d. o. o.”, Sarajevo in the preamble of its code.

¹⁰⁷ See [42]. p. 29–31 and 35–36

¹⁰⁸ For a brief description of the scope of moral standards see [40]. pp. 29–30. The relations between code content, moral obligations and basic moral standards are summarized in p. 33, Table II, „Code content and moral standards”. See also [42]. p. 39.

existing law, not to stimulate the improvement of public enterprises' ethical standards and behavior.¹⁰⁹

FUNCTIONS OF CODES OF ETHICS

General functions of codes of ethics

1. Corporate codes of ethics have varied goals and complex content. They operate within diverse internal organizational schemes, corporate cultures, business and social environments. That is why codes of ethics serve several purposes and functions.¹¹⁰ Those functions may be intended or unintended, actual or potential. Functions which occur more often than others have standard names and typical formats. Depending on circumstances, the same ethical phenomenon can be an ingredient of different standard functions. Therefore, business ethics theory is not unanimous about the classification of the standard functions of codes of ethics.

2. The distinguishing function has a core role in a corporation's business ethics. A code of ethics defines and affirms specific and most important elements of business ethics in internal, business and social relations. This function is not limited only to written moral rules for anticipated situations. It also contains guidelines for situations in which more than one moral standard is equitable and applicable.¹¹¹ Finally, the distinguishing function offers a behavioral compass for completely new ethical problems, proving the „moral maturity” of a corporation.

The legitimatization function tends to strengthen the social position of a corporation and to reinforce its citizenship beyond the recognition granted by the law.¹¹² This function is oriented both inward and outward. Its first task is to facilitate the internalization of corporate values and culture by shareholders, employees and stakeholders. The increase of internal cohesion around a unique corporate ethics culture makes it easier for corporation to act in a socially responsible manner. Therefore corporate codes of ethics should contain at least basic provisions on corporate social responsibility.

The controlling function directs employees and shareholders to behave according to a corporation's requirements. A code of ethics helps achieve this primarily by strengthening corporate culture. The existence and implementation of a code of ethics keep moral issues under permanent scrutiny. In such an environment employees have to take moral issues seriously¹¹³. If not, peer pressure alone or in cooperation with implementation bodies makes everybody respect the corporation's

¹⁰⁹ An interesting example is the Code of Ethics of „KJP GRAS, d. o. o.”, Sarajevo, whose preamble contains some Kantian references to ethical principles and respect thereof.

¹¹⁰ [53]. p. 47–48: „...codes can have multiple, not necessarily consistent organizational roles.”

¹¹¹ [6]. p. 401.

¹¹² [6]. p. 401: „An especially dangerous situation is created when employees conclude that whatever is not prohibited is permitted.”

¹¹³ [43]. p. 220.

moral bottom line.¹¹⁴ Successfully implemented, the controlling function makes business operations easier and more efficient in the long run.

The public relations function should create the most favorable possible social environment for a corporation, primarily by creating a lasting good moral image among external stakeholders, professionals and the general public, especially consumers. That is why companies use their codes of ethics, including corporate social responsibility, not only as a part of their general public relations policy, but also as a powerful marketing tool.¹¹⁵ Public support for a corporation as a moral agent helps to alleviate corporate defensiveness in moral disputes with stakeholders, consumers, state bodies and the society as a whole¹¹⁶.

Finally, corporate codes of ethics have a very strong protective function. In internal relations, a code of ethics is an important factor in preserving of a unique moral personality of a corporation. Success in this endeavor often discourages government regulation and may protect a corporation from legal and other types of responsibility.

Functions of the Model Codes of Ethics

1. The Entities' legislation sets the basic framework for public enterprises' ethics programs, and includes several provisions on the codes' content.¹¹⁷ Its detailed elaboration is left to the Model Codes of Ethics. Their provisions restate the existing general and special legislation, including the moral values they contain. Ethical norms remain incorporated into and limited by legal rules. Consequently, the functions of the Model Codes of Ethics may be in a different category from the usual functions of corporate ethics codes.

Omitting the legal content of the Model Codes of Ethics from the analysis helps overcome the difficulty of collating juridical and ethical acts. On the theoretical level, this approach can be justified by the fact that the moral and the legal system exist simultaneously, are intermingled and each has its own sanctions which can be applied together or separately. The practical explanation for the methodology adopted is even more convincing. Comparison of the functions of the Model Codes of Ethics and the quintessential functions of corporate ethics codes is intended to show to public enterprises possible directions for extending their own codes of ethics beyond the horizon of the Models.

2. The Model Codes of Ethics are mandatory and generic. They are meant to provide public enterprises with unified core values and ethical norms, as seen by the legislators. Should dilemmas or new issues appear, the clarification and advice

¹¹⁴ [8]. p. 1081: "...behavioral impact of a Code of Ethics can only be fully understood and explained through reference to interaction of..." formal-, social-, and self-control. Also, see the scheme on p. 1089.

¹¹⁵ [13]. pp. 12–23 especially.

¹¹⁶ [43]. p. 220–221.

¹¹⁷ Art. 19 of [22]. and Art. 20 of [21].

must be solicited from the chief legal counselor of public enterprise,¹¹⁸ not its ethics officer. Obviously, the creators of the Model Codes of Ethics had unity within the law as their primary goal. That is why the Model Codes of Ethics do not have the distinguishing function. Yet, the door for introducing this distinguishing role into individual codes of ethics is not completely closed. Article 52 of the LPE RS requires public companies to adopt appropriate guidelines for the implementation of their codes of ethics. Those guidelines can be a suitable tool for inserting distinguishing moral norms into a public enterprise's ethics program. The LPE FBiH does not mention guidelines. Here, the only remaining way for inserting distinguishing ethics rules into individual codes of ethics is the interpretation of Principle 9, which allows public enterprises to go *praeter* Model Code of Ethics. Our sample of codes of ethics shows some companies did¹¹⁹ and other did not¹²⁰ use this opportunity.

Generally, the legitimatization function is outside the scope of the Model Codes of Ethics. The only exception could be their focus on the duties of connected persons.¹²¹

The reasons for passing the LPEs led to a strong presence of the controlling function in the Model Codes of Ethics. Principle 3 requires connected persons to act with due diligence, professionally and conscientiously. Principle 6 expressly imposes the duty of control on the Supervisory Board and management. Interestingly enough, this duty refers only to legally relevant behavior. The control of ethical conduct outside legal norms is completely omitted. Finally, Principle 7 requires the Supervisory Board and management to promote reporting on illegal and unethical behavior and to report such behavior of other employees.¹²² Thus whistle-blowing becomes an instrument of peer pressure.

The LPEs forbid charitable donations, except if approved by specific legislation.¹²³ The Model Codes of Ethics do not mention other issues of corporate social responsibility. The orientation toward the protection of state interests makes the model codes of ethics blind to the public relations potential of corporate codes of ethics.

¹¹⁸ Principle 9 of each Model Code of Ethics.

¹¹⁹ „JP Toplane Sarajevo/District Heating System” in its Code of Ethics from 2005, „The Code of Behavior of Agricultural Institute of Republika Srpska — Banja Luka” dated February 10, 2010, „The Code of Behavior and Corporate Governance ‘Krajinapetrol d. d.’, Banja Luka, September 9, 2012, „JP Elektroprireda HZ HB” in the code from June 2005.

¹²⁰ Code of Ethics of „KJP Vodovod i kanalizacija, d. o. o.”, Sarajevo, Code of Ethics of „JP Elektroprivreda BiH — Zavisno društvo Rudnik mrkog uglja Kakanj, d. o. o.”, Kakanj, dated 1st of April 2011, Code of Ethics of „JP Komrad, d. o. o.”, Bihac, dated 8th of June 2007, and Code of Ethics of „JP Saobraćaj i komunikacije Tuzla, d. o. o.”; Code of Ethics of „JP Elektro Doboje, d. d.”, dated 10th of May, 2005.

¹²¹ See Principles 1, 2, 3, 5, 9.

¹²² [41]. p. 335: „Despite many respondents not being aware of the reporting obligation as stipulated by the companies' codes, most respondents still believed that employees should be obliged to report all violations.” Unfortunately, there is no research of this issue in BiH.

¹²³ Art. 40 of [22].; Art. 41 of [21].

The regulation of the protective function in the LPEs and the Model Codes of Ethics reflects the essential reasons of the state for passing those acts: protection of companies' assets¹²⁴, rule of law¹²⁵ and economic success of public enterprises.¹²⁶ Therefore, different aspects of the protective function are elaborated in each of Models' ten principles.

IMPLEMENTATION OF CODES OF ETHICS

General requirements for successful implementation

1. A number of essential factors determine the life of a code of ethics in the practice of an individual corporation. The quality of the code itself, is the first factor in a successful implementation of a code of ethics. The code may be considered good if it satisfies a critical majority of theoretical requirements regarding goals, creation and the content. Additionally, a good code must reflect the company's tradition and present situation.

Even the best-drafted code will not be implemented at all,¹²⁷ or at best partially, if other factors are not in place. Prominent among them are the moral qualities of the employees. This „individual factor” encompasses an array of features which influence moral perceptions and attitudes of each employee: education, age, gender, duration of employment generally and within the corporation, individual culture and values, locus of control, self-control, role identification etc.

Individuals do not work alone in a corporation. Consequently, a successful implementation of the code depends on internal situational factors: size of the corporation, location of headquarters and production units, the degree of division of labor, peer influences and pressures, size and values of corporate bureaucratic enforcement apparatus, and, last but not least, moral attitudes and behavior of top management. The theorists are unanimous that ethical leadership, „tone at the top” in particular, decisively shape moral behavior of employees and ethical climate in a corporation.¹²⁸ A corporation is not a stand-alone subject on the market. The most important external situational factors shaping corporate moral personality are: stability of society and societal ethics, structure of the market, the economic cycle, competition, type of government, etc.

¹²⁴ Principles 3, 4, 5, 8.

¹²⁵ Principles 2, 7, 9, 10.

¹²⁶ Principles 1, 2, 3, 5.

¹²⁷ Enron Code of Ethics from the year 2000 can be found at <http://mishkenot.org.il/Hebrew/docs/ethics/Enron%20Code%20Of%20Ethics.pdf>. For the history of Enron collapse see [25]. Legislative response to the Enron collapse was Sarbanes-Oxley Act of 2002; see [20]. pp. 2123–2141.

¹²⁸ See [9]. p. 227 and [40]. p. 38. In [20]. pp. 2124, we find the claim that „...corporate code of behavior is only as good as the directors and officers responsible for implementing it.” See also pp. 2128, 2130, and 2132.

2. Fundamental to a corporate ethics program are the bodies responsible for its creation and implementation. There is a consensus in the theory that all corporate organs, departments and employees should be involved into the implementation of the code of ethics. However, their involvement is not equal. The most active is the board of directors or its counterpart in continental systems of corporate governance, the supervisory board. The effective role of these bodies depends on the regulation and traditional practice of corporate governance in each country.¹²⁹ In the aftermath of the Enron collapse, the ethical engagement of boards of directors in common law systems increased.¹³⁰ In corporate administration, ethical issues are most often in the purview of legal and human resources departments.

Notwithstanding the corporate governance system, the management is the most responsible for the implementation of the code of ethics.¹³¹ The paramount position in all ethical processes belongs to the top management: Chief Executive Officers (CEOs) in common law or „Vorstand“ („*uprava*“) in continental legal systems. It affects the implementation of the code of ethics through moral attitudes of its highest-ranking officers, by setting ethics policies, and through its position toward the ethics management system as a control tool of corporate activities. In decentralized corporations, middle management plays a more important role than in centralized ones.¹³² Larger corporations sometimes appoint individuals specifically in charge of ethics processes, either within top management, or at divisional or lower levels. Those persons are called ethics commissioners, ethics managers or ethics officers. They organize training activities, monitor and direct compliance with the code of ethics in practice, investigate moral misdeeds and propose or determine moral sanctions.

Standing ethics committees and commissions are appointed bodies whose only duty is to take permanent care of moral issues within a corporation.¹³³ Their role is mostly advisory and investigative. Sometimes standing bodies serve as the second instance in moral disputes. The theory recommends that they include external experts. The corporation may also individually hire an external ethics consultant. They are especially useful in ethical audits.

3. Functioning ethics management organization and policies are the third condition for the successful implementation of a code of ethics. Their first component

¹²⁹ Comparative law overview can be found in [52]. pp. 43–54 and [51]. pp. 375–394. A classification of corporate governance systems for the purpose of analyzing codes of ethics, see [14]. pp. 684–685.

¹³⁰ [14]. p. 682 and 693 established a positive correlation between participation of outside directors in the Board of Directors and board ownership with the content of codes of ethics and their implementation. This influence is stronger in common law than in continental systems; see also [14]. p. 198.

¹³¹ [14]. p. 683: „...the composition of the board in regard to its independence and diversity plays the main role in the ethical commitment shown by the firm.“ For corporate governance in BIH, see [49]. pp. 224–252.

¹³² [55]. p. 391.

¹³³ [43]. p. 223 considers ethics committees in charge of communicating the code, its interpretation, facilitation of the use of the code, investigation of grievances, etc.

is a top-down communication subsystem. This means that the code of ethics ought to be distributed and discussed prior to its application.¹³⁴ Existing and newly hired employees should sign the receipt of the code.¹³⁵ It is desirable to distribute explanatory materials, a letter from top management on the code of ethics, and follow-ups on code implementation. Whether the code of ethics will be available to external stakeholders and the general public depends on the company's transparency policy. At the moment of internal distribution of the code, an ethics training subsystem should be in place.¹³⁶ It is commendable to make training regular,¹³⁷ organized for specific groups (top management, middle management, all employees, employees in specific sectors, etc.), and focused on the corporation's general experiences and needs, or on critical sectors of activity, e. g. finance. „Sufficient training would be attained at the point where employees would not violate the code due to lack of understanding of how the code's provisions apply.”¹³⁸

The investigative subsystem has several important roles in the implementation of the code of ethics. First, it supplies the necessary information for testing the quality of the code. The data could serve to reinforce the code's implementation by allocating more money, better bottom-up communication lines (ethics hotlines and helplines, anonymous violation reporting system¹³⁹), timely reporting and proper handling of code implementation reports, internal or external ethics audit, etc. Second, the investigative subsystem supplies information on violations of the code, their consequences for the corporation and for moral wrongdoers. Success of these tasks depends on the chosen policy options. Reactive investigations will produce lesser results than proactive. Systemic checking of each complaint is more effective but more expensive than the random approach. Secret examination of complaints or suspicions may or may not give better results than public inquiry. Principles of fairness and respect demand that the responsible body provide information to the reporting employee on steps taken by corporate bodies. In any case, the accused person should be informed in due time and with respect for their privacy.¹⁴⁰ The investigative subsystem serves to improve the code and the design of prevention measures.

Finally, the enforcement subsystem provides for corrective actions. Its constituent parts are responsible bodies, types of corrective actions, consistent application and fair enforcement policy. Corrective actions are punitive: publication of the breach, oral or written public warning, annual „award” for the worst ethical act or

¹³⁴ [40]. p. 34 grounds the distribution of a code prior to its entry into force in the principles of procedural fairness, caring and responsibility.

¹³⁵ For employees' attitudes about prior dissemination and signing of a code of ethics see [41]. pp. 332–333.

¹³⁶ [43]. p. 223 insists that a „part of all employee training programs should be devoted to ethics.”

¹³⁷ [41]. p. 333: „All code commentators concur that without sufficient training, codes remain ineffective in influencing behavior.”

¹³⁸ [40]. p. 34.

¹³⁹ See [41]. p. 336.

¹⁴⁰ [40]. p. 35.

employee, transfer of the wrongdoer etc. Positive sanctions are the counterpart to the negative ones: award for the most ethical employee of the year, public recognition for moral acts, publicity, etc.¹⁴¹ Corrective actions stem from oppressive and bureaucratic enforcement policy, while positive sanctions are rooted in a participatory and rewarding approach to ethics program implementation. Punishment or reward must be proportionate.

*Implementation requirements for the Entities'
legislation and Model Codes of Ethics*

1. Concrete factors for the successful implementation of codes of ethics in BIH are difficult to determine.¹⁴² A detailed content analysis of the Model Codes of Ethics shows they do not satisfy a majority of theoretical requirements regarding topics of codes of ethics. That is why the Model Codes of Ethics cannot be deemed as good. Human resources capacity for implementing codes of ethics in public enterprises can be assessed only indirectly. Due to the absolutely dominant state ownership, the public interest those enterprises satisfy, the monopolistic position they have and the political interest vested in them, public enterprises are very attractive employers. Consequently, the quality of their personnel should be above average, and should not be an obstacle to the successful implementation of codes of ethics.

Internal situational factors of the successful implementation of codes of ethics in public enterprises vary considerably. Theoretically, two constants may be ascertained. First, public enterprises have a strong and capable bureaucratic apparatus. Second, their management is under considerable influence of politics, so „the tone at the top” must be assessed on a case-by-case basis. External situational factors in BIH negatively influence the moral behavior of domestic companies. Thanks to the societal, business and political position of public enterprises, the negative impact of social environment factors is lesser on public enterprises than on other corporations.

2. The two LPEs have identical definitions of the bodies in charge of implementing codes of ethics. Their structure basically follows the theoretical recommendations. The duties of each particular body are adjusted to its general legal role in a public enterprise.

Beside duties in preparing and proposing a code of ethics, the Supervisory Board passes general acts regulating „operational and functional aspects of enterprise bodies in accordance with the law, by-laws and code of ethics.”¹⁴³ The Supervisory Board must not transfer these regulatory duties. The general competencies of the Supervisory Board include the supervision of ethical behavior inside and

¹⁴¹ [18]. p. 79: „The reward system may be the single most important way to deliver a message about what behaviors are expected.”

¹⁴² For general overview see [35]. On p. 116 of [35]. SOEs is marked as one of the areas „with significant knowledge gaps”. See also [1]. pp. 118–119

¹⁴³ Art. 11 of [22].; the formulation in Art. 19 of [21] is similar.

outside the enterprise. Additionally, the LPEs explicitly require the Supervisory Board to foster ethical behavior and to encourage whistle-blowing.¹⁴⁴

The management („*uprava*”) is primarily and directly responsible for the implementation of the code of ethics.¹⁴⁵ In LPE FBIH the management is explicitly in charge of initiating labor law disciplinary procedures for ethical misbehavior.¹⁴⁶ The ethical procedures and sanctions are not mentioned in the law or in the Model Codes of Ethics. Prior to delegating duties related to the implementation of code of ethics to one of its executive directors, the management must obtain unanimous written consent of the Supervisory Board.¹⁴⁷ Appointing an ethics officer does not relive management from responsibility for ethical behavior of a public enterprise. If it does not implement a code of ethics, a public enterprise and the responsible individuals, including members of management, can be punished for a misdemeanor.¹⁴⁸

3. There is no empirical research on ethics management and policies in public enterprises in BIH.¹⁴⁹ Therefore, the conclusions about this requirement for a successful implementation of the Model Codes of Ethics must be derived from the LPEs and the Models themselves. Examples from our sample of codes of ethics also cast some light on this dark area.

The communications subsystem is organized top-down. Codes of ethics are adopted and made known to employees in the same way as any other general legal act of the company. First of all, the Model Codes of Ethics are published in the Entities' official gazettes. When a public enterprise passes its own code of ethics, it is communicated through the usual internal channels. Principle 9 of the Model Code of Ethics stipulates a general duty of employees to get acquainted with the code. Sometimes, it is required from employees to sign the code of ethics and an appropriate declaration¹⁵⁰ of its acceptance. If workers have moral dilemmas or find themselves in an ambiguous position, they are required to ask for additional explanations and advice, primarily from the chief legal counsel of a public enterprise. Obviously, in the implementation process, the communication system works from the bottom up.

¹⁴⁴ Art. 16 of [22]., Art. 17 of [21]., Principle 7 of the Model Code of Ethics.

¹⁴⁵ Art. 20 of [22]., Art. 11, 19, and 21 of [21].

¹⁴⁶ Art. 21 of [21].

¹⁴⁷ Art. 20 of [22].; Art. 21 of [21].

¹⁴⁸ Fines for public enterprises are between 5.000 and 15.000 KM, and for responsible individual from 500 to 1.500 KM (Art. 47 of [22].; Art. 47 of [21].)

¹⁴⁹ Database search for keywords „javna preduzeća” (public enterprises), „etički kodeksi” (codes of ethics), „Model etičkog kodeksa” (Model Code of Ethics), „poslovna etika” (business ethics) by the Library of the Faculty of Law, University of Sarajevo, in January 2016, produced only one paper reporting on empirical research of ethical attitudes of employees in Croatia. See [24].

¹⁵⁰ See Code of Ethics of „KJP Toplane/District Heating System, d. o. o.”, Sarajevo, from 2005.

The investigative subsystem in the LPEs does not differentiate between law and ethics.¹⁵¹ Ethical codes from the sample do not have provisions on specific procedures for moral, as opposed to legal, issues.

In the Model Codes of Ethics and the codes from the sample, the enforcement system for moral breaches is the same as for legal ones. Besides fines, unethical acts are subject to disciplinary punishment, including discharge from the present position.¹⁵² Specific moral corrective actions are not present in the public enterprises' codes of ethics from the sample.

CONCLUSIONS

1. Public enterprises are owned by the state and should serve common interests. To ensure moral conduct in public services, the Entities' special laws on public enterprises introduced obligatory corporate ethics programs and Model Codes of Ethics. Thus public enterprises became legally recognized as moral agents. Unlike FBiH, the RS law still considers as moral agents all corporations with majority state ownership employing at least 50 persons. Adopting a code of ethics with prescribed minimal content is a legal duty of public enterprises. This fact, though not unique to BIH, is a serious indicator of a still unsatisfactory position of business ethics in the public service sector and in business generally.

2. The LPEs' provisions related to business ethics programs are concentrated on promulgation and implementation of code of ethics. Behavioral rules are mostly enshrined in the mandated Model Codes of Ethics, appended to special laws on public enterprises and identical for both Entities. The assessment of the mandated business ethics requires a clear methodological distinction between law and morality, and the application of the normative approach. The absence of empirical studies and doctrinal discussions on corporate codes of ethics in BIH makes general business ethics theory the necessary criterion for evaluation of the Model Codes of Ethics.

3. The legislators imposed the Model Codes of Ethics as an instrument for protecting state interests and enhancing the rule of law, rather than for improving business ethics. Those Model Codes of Ethics and their replicas do not in practice satisfy the basic theoretical requirements regarding the creation, content, functions and implementation of codes of ethics. Consequently, the Model Codes of Ethics are not sufficient to improve the moral behavior of public enterprises.

4. Further advancement of business ethics in BIH depends primarily on organized social action. In order to facilitate a grass-roots movement for business ethics, both in public enterprises and more generally, continuous theoretical and empirical research are necessary. The following steps in this direction seem appropri-

¹⁵¹ Art. 7 of [22].; Art. 10 of [21].

¹⁵² Principle 10 of the Model Code of Ethics.

ate: normative analysis of codes of ethics of public enterprises, comparative examination of codes of ethics adopted by public enterprises and by chambers of commerce, normative analysis of private corporations' codes of ethics, and empirical research on codes of ethics and their implementation in corporate practice.

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APPENDIX**Unofficial Translation**

In accordance with the article 53 of the Law on Public Enterprises in Federation of Bosnia and Herzegovina („Official Gazette FBiH” 8/05) it is hereby released

**MODEL CODE OF ETHICS
FOR PUBLIC ENTERPRISES***

Based on Article 6 Paragraph 1 b) of the Law on Public Enterprises („Official Gazette FBiH” 8/05), the General Meeting of Public Enterprise _____, JSC or Ltd meeting on ____ 2005, adopted the

**CODE OF ETHICS
OF PUBLIC ENTERPRISE _____**

This Code of Ethics applies to:

1. All employees of the public enterprise (the Enterprise in further text), including individuals and representatives named by the Enterprise for particular activities;
2. All members of the Supervisory and Audit Boards
3. All public Enterprises or individuals which control, directly or indirectly, at least 10% of total voting shares of the Enterprise.

A relation between „connected persons” is considered to exist (the term being used in further text according to context) in each of the following cases:

Principle 1**Conflict of Interest**

A connected person is obliged to avoid real or apparent conflicts of interests with the Enterprise in personal or professional relations.

A conflict of interest appears when the personal, viz. professional interest of a connected person makes, could make, or appears to make it materially impossible to pursue the interests or operations of the Enterprise, or for the connected person to fulfill their duties and responsibilities.

A connected person must provide the Management, the Supervisory Board or another supervisory body with access to all transactions or relations which the connected person has reason to believe might create a real or apparent conflict with the interests of the Enterprise.

In the course of its operations, the Enterprise may not offer more favorable terms to connected persons than to non-connected ones. As pertains to this paragraph, a connected person is understood as one of the following:

1. Members of the immediate family of a connected person up to third degree of relation by blood or marriage, as well as members of the connected person’s household;
2. Legal persons in which the Enterprise has at least 10% (or less) of total voting rights;

* Published in „Official Gazette FBiH” 29/05

3. Legal persons with voting rights in the Enterprise;
4. Legal persons in which a Enterprise has at least 10% (or less) of total voting rights;
5. Legal persons in which a connected person or a member of the immediate family thereof, as defined in 1., belongs to the Supervisory Board or the Management.

If any connected person knows or should have known that another connected person has broken the stipulations of this paragraph, the first connected person is obliged to report this to the Management and the Supervisory Board or other supervisory body.

Principle 2

Corporative Possibilities

In performing their duties, connected persons ought to further the legitimate interests of the Enterprise when the opportunity arises.

The connected persons themselves ought not to take advantage for their own needs of the opportunities discovered while performing duties related to the Enterprise, or use the Enterprise's property, information, or their position with the Enterprise for personal gain.

Competition between the connected person and the Enterprise in each of the above-mentioned cases, resulting in financial damage to the Enterprise or Enterprises, is not allowed.

The Management, the Audit Board and the Supervisory Board will determine whether any of the above mentioned actions cause financial damage to the Enterprise, based on all relevant facts and circumstances, including in the cases when the Enterprise's opportunities are used for personal ends, regardless of whether the Enterprise had previously declined to take advantage of those opportunities.

Principle 3

Professional Abilities and Conscientious Conduct

Persons connected to the Enterprise are obliged to perform their functions and duties with due attention, professionally and conscientiously.

Principle 4

Protection and Correct Use of Enterprise Property

In performing their duties, the Supervisory Board and the Management are obliged to encourage responsible use and control of the Enterprise's property and resources. Enterprise property, including data, materials, stocks, intellectual property, buildings and facilities, software and other property owned, leased or possessed by the Enterprise, ought to be used exclusively for justified business ends of the Enterprise.

Principle 5

Confidentiality

Connected persons shall respect the confidentiality of the information they gain access to in the course of performing their duties, except in the cases where the publication thereof is permitted by the Enterprise or required by law. Confi-

dential information includes, among others, all the non-public information which might be useful to the competition.

Principle 6

Compliance with Laws, Rules and Regulations

In the course of performing their duties, the Supervisory Board and the Management are required to actively participate in verifying compliance with existing laws, bylaws and other regulations within the Enterprise. In addition, if any connected person learns any information which they consider to be evidence of material breach of the law, that person is obliged to bring that information to the attention of one or more of the following persons: president of the Supervisory Board, main legal counsel of the Enterprise, the General Shareholder Meeting, police and other state organs.

Principle 7

Encouraging the Reporting of Illegal or Unethical Behavior

The Supervisory Board and the Management are obliged to influence the Enterprise to actively promote ethical behavior and encourage the employees to report evidence of illegal or unethical behavior of individual employees.

Principle 8

Loans to Management and Supervisory Board Members

Public Enterprises are not allowed to give or organize giving of individual loans to members of the Supervisory Board, the Management, the Audit Board or the employees directly, indirectly or through subsidiaries, or to extend or materially change existing loans to those persons. The Management and the Supervisory Board should not solicit or help obtain individual loans from the Enterprise contrary to the above.

Principle 9

Understanding and Following this Code

Connected persons are expected to act according to the stipulations of this code. Each person is responsible for studying and acquainting oneself with this code, to seek further clarification and advice from the Enterprise's chief legal counsel in connection with the interpretation and the requirements of this code, and in connection with any situation which appears to violate this code.

Principle 10

Deviation and Disciplinary Action

No deviation from this code or amendments of it is permitted. Every violation of the stipulations of this code will result in the immediate activation of disciplinary procedures and the adoption of disciplinary measures, including dismissal.

This code enters into force on the day of its adoption by the Enterprise's _____ JSC or Ltd General Meeting.