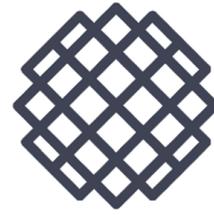




Republika e Kosovës
Republika Kosova
Republic of Kosovo



Zyra Kombëtare e Auditimit
Nacionalna Kancelarija Revizije
National Audit Office

AUDIT REPORT

Rental proceeds in the Privatisation Agency of Kosovo

for the 2012-2021 period

Compliance/Performance Audit

Prishtina, January 2023

The Auditor General of the Republic of Kosovo is the highest institution of financial and economic control, who, under the Constitutions and domestic laws, enjoys functional, operational and financial independence.

The National Audit Office is an independent institution the objective of which is to assist the Auditor General in discharging his/her duties.

The Auditor General, as the Head of the National Audit Office, is accountable to the Assembly of the Republic of Kosovo in discharging his/her duties and powers set forth in the Constitution, the Law no.05_L_055 on the Auditor General and the National Audit Office, bylaws and the internationally recognised public sector auditing standards.

Our mission is to contribute to the sound financial management in the public administration. We carry out audit in compliance with the internationally recognised public sector auditing standards and good European practices.

The reports of the National Audit Office directly promote accountability as they provide a base for holding managers' of individual budget organisations to account. We are thus building trust on the way public funds are spent and playing an active role in securing taxpayers' and other stakeholders' interests in enhancing public accountability.

Performance audits assess whether the Government's programs are managed properly, efficiently and cost-effectively and whether the systems for efficiency measurement and reporting are put in place.

The Auditor General has decided on the content of the audit report on "Rental proceeds in the Privatisation Agency of Kosovo" in consultation with the Assistant Auditor General, Naser Arllati, who has supervised the audit.

This report is the output of the audit carried out under the oversight of the audit director Mehmet Muçaj, supported by Burbuqe Idrizi (Team Leader), Ajtene Llapashtica (Team Member), Kreshnike Haziri-Bublica (Team Member), Elvir Krasniqi (Team Member), Arben Hundozi (Team Member) and Besim Lezi (Team Member).

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List of Acronyms

NAO	National Audit Office
PAK	Privatisation Agency of Kosovo
SOE	Socially Owned Enterprises
RCD	Regional Coordination Department
RO	Regional Offices
LA	Liquidation Authority
DCMAU	Direct Control, Monitoring and Administration Unit
BD	Board of Directors

Executive Summary

The National Audit Office has carried out the compliance/performance audit on the topic "Rental proceeds in the Privatisation Agency of Kosovo". The objective of this audit is to assess whether the Privatisation Agency of Kosovo has managed the properties and other rented assets properly and in accordance with the applicable legislation.

This audit covers the properties and assets renting process for the period starting from 2012 until 2021. The Privatisation Agency of Kosovo and its subordinate units such as: the Regional Coordination Department, the Regional Offices, the Liquidation Authority, the Direct Control, Monitoring and Administration Unit and the Finance Department have been subject to this audit.

The audit conclusion is that the Privatisation Agency of Kosovo has not properly managed the leasing of properties and other assets under its administration. About 41% of the tested samples have resulted in irregularities and the potential value of the loss caused by the Agency - from these tested cases - either due to actions taken or not taken is € 838,748.

The properties and other socially owned property assets leasing process was not developed in accordance with the purpose of the Law on PAK to preserve and increase the value of the assets administered by PAK. Although the properties that were under liquidation are managed by PAK, the lease contracts were renewed without applying the principle of free competition, transparency and without achieving value for money.

Based on the Guide for the release of the SOE assets from unauthorised users or usurpers, in certain cases leasing processes were developed without applying free competition. Such actions can be understood as an opportunity to encourage and promote the unauthorised use of properties administered by PAK.

Based on the internal acts, in certain cases the Agency had entered into contracts with illegal usurpers or users. Such actions can be understood as opportunities to stimulate and promote the illegal use of properties managed by the Agency.

There were cases when properties were leased without defining the usage purpose or due to poor monitoring, the leased property was exploited for purposes of extracting and processing limestone, alienating it to an irreversible state. The user has exploited over 300,000 cubic meters of limestone for at least 10 years, while the Agency has only collected proceeds in the amount of €4,511 generated from the rent.

Lease contracts had been extended with the same terms and prices for years. It was noted that the prices of some of the contracts compared to properties in the surrounding areas were lower. Despite being under its competence, the Agency had not applied the direct negotiation method to change the potential contractual terms of the contracts, including their prices.

In some cases, the Agency had no supervision of the properties under its administration, thus as a result, the public property was used by entities that had no contractual relationship with the Agency at all. Moreover, the determination of the rental price for agricultural land had no basis on any legal regulation in two of the cases.

When using lease procedures, criteria set for public announcement was not in accordance with the regulation for leasing of socially owned enterprises' assets. Moreover, there were cases where these criteria were not complied with prior the signing of the contract. Failure to timely update the contracts had caused PAK to bill some tenants based on contracts that had already expired.

We have also identified cases of renewed contracts by the Agency without fully paying off the financial liabilities.

Based on the identified issues, we conclude that the Agency had not made sufficient efforts to properly manage public properties and assets. The lack of actions in regards to the management of properties leased by the Agency indicates that the internal control system was not at the appropriate level. As a result, the Agency had not managed to ensure that the proceeds from the leased property be more than those generated.

In order to eliminate the identified shortcomings, concrete actions are required to be taken and for this we have given recommendations to the Privatization Agency of Kosovo.

Auditee's response

PAK partially agrees with the audit findings and conclusions. The letter of confirmation and entity's comments can be found on annex 1.

1 Introduction

The Privatisation Agency of Kosovo (hereinafter PAK) is an independent public body, which carries out its functions and responsibilities with full autonomy. The Agency enjoys full legal capacity, in particular the capacity to enter into contracts, to acquire, hold and dispose of property and has all implied powers to fully discharge the tasks and powers conferred upon it by the present law; and to sue and be sued in its own name.

The Agency has been established as the successor of the Kosovo Trust Agency governed by UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency, as amended, and all assets and liabilities of the latter have become assets and liabilities of PAK.

PAK's powers on the Trust Fund have been conferred to the Board of Directors. It is worth noting that PAK has been working on the privatisation of Socially Owned Enterprises (SOEs) as of August 26th, 2008.

The Agency enjoys broad and exclusive administrative authority over all enterprises, assets, interests, shares and property falling within the scope of Articles 5.1 and 5.2 of the Law no.04/L-034 on the Privatisation Agency of Kosovo. Such authority includes any action that the Agency considers reasonable and appropriate, within the limits of the Agency's administrative resources, to better enable the sale, liquidation, transfer or other disposition (such as renting) of an enterprise, asset or state owned interest.

During administration of the socially owned property, PAK has applied, *inter alia*, the approach of renting of the socially owned enterprises. This was done on the grounds of a better management of SOEs and for the purpose of preventing the SOEs' assets value from deteriorating. Based on the data provided from PAK, the amount of proceeds generated from the rent over the 2012-2021 period was €41,328,826.

1.1 Audit Problem

Although PAK's annual financial statements have been audited on annual basis, the National Audit Office has never conducted a special audit on rental proceeds in terms of compliance. The Standing Committee for Budget, Labour and Transfers addressed their request to the National Audit Office for conducting an audit on this area and upon examining this request, the Auditor General included it in the annual audit plan.

Considering the importance of managing the renting of socially owned property, NAO has initiated the special audit of rental proceeds for the ten years.

The handling of this audit topic is important given that the rental contracts from 2012 to 2021 are on different subjects (various property, buildings, assets), situated in different locations and having different values, which are of high public interest and have an impact on the social environment.

The purpose of renting properties/enterprises was to prevent the enterprises' assets value from deteriorating, increase PAK's revenues and to have a better management of enterprises in general.

Considering the assets of the enterprises, the amount of proceeds and the importance it has for the environment in general, it is of public interest to make an examination as to whether the proceeds from the rented assets/properties have reached the intended objectives.

1.2 Audit Objective and Scope

The objective of this audit is to assess whether PAK has managed the properties and other assets in compliance with the applicable legislation.

Through this audit, we intend to give relevant recommendations on improving the potential shortcomings in the renting of properties/assets process. This audit covers the properties and assets renting process for the period starting from 2012 until 2021. In certain cases, we also covered issues related to the set period of the scope for the year 2022. The Privatisation Agency of Kosovo and its subordinate units such as: the Regional Coordination Department (RCD), the Regional Offices (RO), the Liquidation Authority (LA), the Direct Control, Monitoring and Administration Unit (DSMAU) and the Finance Department have been subject to this audit. In conducting this audit, we will focus on rent contracts signed, the way this contracts have been managed and the list of assets owned by PAK.

The audit methodology includes the examination of the whole documentation, starting with the property/assets renting announcement, contracts entered into and their monitoring. The audit objective is to provide reasonable assurance whether the transactions and underlying activities have been carried out in compliance with the legal framework. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will detect any non-compliance or shortcomings when it exists.

We conducted our audit in accordance with International Standards of Supreme Audit Institutions (ISSAIs). NAO is independent of the auditee in accordance with INTOSAI-P-10, ISSAI 130, NAO Code of Ethics, and other requirements relevant to our compliance audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide the audit conclusions.

1.3 Audit Questions

1. Have properties and other assets been rented in compliance with the applicable legislation?

1.1 Has the renting been transparent (has the renting of the property/asset been publicly announced)?

1.2 When renewing contracts on a yearly basis, has the settlement of the previous debts been considered as a basis for that?

1.3 When renting directly, has the rental price been set based on comparisons made with the rental prices of similar properties/market prices?

2. How has the contract been managed?

2.1 Has the invoicing/collection of receipts been made under the contracted terms?

2.2 What actions has PAK taken when the proceeds were not collected?

2.3 Has the uncollected amount of proceeds been reported in the respective book?

1.4 Audit criteria¹

In the asset/property renting procedure, PAK uses the method of public announcement with the aim of implementing the principles of free competition and transparency as well as direct renting.

In the asset/property renting procedure, PAK uses the method of public announcement with the aim of implementing the principles of free competition and transparency as well as direct leasing.

When renting directly, the rental price shall be set in comparison to the rental prices for similar properties in the same location.

Article 5.4 of the Regulation on the renting of SOEs assets, issued in 2016 and amended over the years, requires that the deposit amount when bidding for the rental should be €1,000 regardless of the assets.

Section 3 of the regulation further stipulates that when the rent is over €1,000 per month, the winning bidder shall, prior to signing the contract, be required to submit the bank guarantee or the a guarantee issued by the licensed insurance company, which must be in amount of 6 month-rents according to the contract.

The contract should be entered into for a five-year period with the possibility of extension. Before proceeding with the new contract, PAK should ensure that the current tenant has complied with the previous contract.

Once the contract is concluded, the tenant shall not sub-rent or relinquish possession of the business premises, as a whole or partly, without obtaining written consent by PAK as the administrator of the rent. Moreover, PAK should make the invoicing/collection of receipts under the contracted terms.

¹ For more information, see ISSAI 300, Criteria, p.7

2 Audit findings

In the audit carried out, NAO has identified shortcomings in the renting of assets and the way PAK has managed the contracts. The identified shortcomings are presented through the audit findings which show the way of management, starting from the public announcement procedure for the lease of the PAK property, the rent evaluation process, the supervision of compliance with the terms of the contract as well as the achievement of purpose. The identified issues are as a result of the analysis of the relevant documents received from PAK, as well as the other relevant actors involved in this project, as well as the analysis of the applicable regulations. The identified issues are the following:

2.1 Land rented for business activities was also used for limestone exploitation

On 25.08.2016, PAK had rented out through direct negotiation the commercial land (cadastral plot no. 154) of the Zhupa SOE from Reqan - Prizren covering an area of 5,486 hectares at a price of €100 per hectare for one year or 54,864m² at €0.01/ m² (5.4864*100=€548.6). The direct negotiation procedure was applied given that the tenant has been using this plot illegally since 2005.

The rent price was set upon PAK's decision, which was based on the recommendation of the Commission for the rental market price research/evaluation. On 28.06.2016, the Commission had recommended the rental price of €100 per hectare to the Board of PAK, on the grounds that there was no data available on the rental price of the properties nearby. Therefore, it had set the market price based on the Municipality of Prizren's Regulation on Charges, Fees and Fines without specifying the regulation number and reference fee.

It is worth noted that the Commission had prepared the evaluation report on June 2016 but at that time the Municipal Regulation no. 58333 on Charges, Fees and Fines dated 08.04.2016 was into force based on which the use of municipal property by individuals for business purposes shall be subject to the monthly rent: for Zone I - 4€/m²; Zone II - 3€/m²; and Zone III - 2€/m². Although the commission had referred to the municipal regulation, it had not given any explanation in its report as to why the price of 0.01€/m² or 100€/ha was set as such and not any reference fee of the regulation.

With this rental contract, this plot was given for business use, but the tenant used it for exploitation of limestone. Although PAK was aware of the limestone exploitation by this tenant, the exploitation of limestone had not been considered in the contract for the commercial use of the land.

By signing this contract, the tenant agreed to pay rent for illegal use for 10.5 years from October 2005 to April 2016 for 0.69 hectares of this plot. However, according to the orthophotos provided by the geoportal of the Kosovo Cadastral Agency, we found that this tenant has been using 1.11

hectares in 2004, 2.40 hectares in 2009, and 3.4 hectares in 2012 rather than 0.69 hectares as agreed. Moreover, in 2000, this tenant signed an agreement with the Municipality of Prizren on the cadastral plot no. 154 for the exploitation of sand and gravel and the exploitation price was set DM 2 per cubic meter.

The tenant had been issued a license from ICMM for the exploitation of limestone for the periods 2005-2017 and 2016-2025, but the latter was suspended on 05.09.2022 by ICMM on the grounds that the tenant failed to submit the Contract/Annex Contract with the land owner, that is PAK, for continuing using the property

Based on the reports obtained from the Independent Commission for Mines and Minerals, the tenant has exploited 337,765m³ of limestone for the 2012-2021 period, whilst the proceeds collected by PAK for the rent were in the amount of €4,511.

Article 2.3 of the contract signed by the tenant and PAK stipulates that the tenant is obliged and agrees to preserve the commercial land to its initially existing condition. But, considering the exploitation of the limestone it is impossible to restore it to the previous condition.

2.2 Mismanagement of the rented properties

- On 08.06.2015, PAK had rented the business premises with an area of 377m², property of Grand Hotel SOE in Pristina, for bar/restaurant at a monthly price of €3,835 (€3,835/377m²), through public announcement. On 03.08.2015, PAK and the tenant signed an addendum for the rental of another area of 25m² for a monthly price of €254, or €10.17 per m².

The contract for these premises had been renewed over the years based on the same terms until 2022. In 20.04.2022 PAK, based on the final report on the geodetic measurements made by the respective commission, had requested changing of the contractual terms. Therefore, with the approval of the Steering Board, the LA amended the rental contract on 28.06.2022 wherewith the area of 505.64m² was contracted at a monthly price of €4,623.

If we refer to the price in the basic contract (2015), the rental price was €10.17 per m², whilst the rental price in the contract dated 01.08.2022 it is €9.14 per m² (€4,623/505.64m²).

So, when comparing the area contracted in 2015 (402m²) with that contracted in 2022 (505.6m²), we find the difference of the areas used by the tenant. Therefore, had PAK included the utilized area of 103.6m², it would have collected proceeds of €1,036 per month or €80,808 for 78 months (103.6m² * €10/m²=€1,036).

- On 11.09.2013, PAK rented the area of 366m², property of Grand Hotel Pristina, at a monthly price of €823.5. During 2015, PAK and the tenant had signed a new contract for the same area at a monthly price of €2,000, thus €2,035 from 2016 onwards. However, on 20.04.2022, PAK, based on the final report on the geodetic measurements dated 01.08.2022, amended the rental contract in order to have the contractual terms changed in accordance with the real areas used by tenant, from 366m² of the Grand Hotel area as it was in the basic contract to 621.73m². This happened on the grounds that during the pandemic, the tenant had made renovations which led to an enlarged area.
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So, when comparing the area contracted in 2016 (366m²) with that contracted in 2022 (621.7m²), we find the difference of the areas used by the tenant. Therefore, had PAK included the utilized area of 255.7m², it would have collected monthly proceeds of €1,421.9 (255.7m² * €5.56/m² = €1421.9) or €102,375 for 72 months.

- Units 3 and 4 with an area of 437m², property of "New Enterprise Grand Hotel" SOE in Prishtina, were rented on 07.07.2016 at a monthly price of €4,850. On 01.08.2022, the contract was amended and the surface area was changed to 726.2 m² and the monthly price to €8,060. These changes were made based on the report of geodetic measurements dated 20.04.2022. The property in question has resulted in a difference/increase in the used area of 289.2m². According to PAK, this happened on the grounds that during the pandemic, the tenant had made renovations which led to an enlarged area.

Therefore, had PAK included the utilized area of 289.22m² it would have collected monthly proceeds of €3,210 or €208,642 for 65 months (289.22m² * 11.10€/m²=3,210€).

- On 03.04.2015, PAK had rented the parking area of 1,000 m², property of Grand Hotel SOE in Prishtina, at a monthly price of €4,200 including 15 parking lots. Whilst, with contract no. protocol 9363 dated 22.01.2016 PAK amended the rental contract by changing the price to €5,290 per month only for 1,000m².

On 01.08.2022, PAK amended the rental contract once again from 1,000m² to 1,096m² at a monthly price of €5,798 including in the description 15 parking lots. However, parking lots with an area of 202m² were not included in the price calculation.

Although the contract was amended, PAK still did not include the used area of 1,298m² as per the report on the geodetic measurements.

According to their explanations, this happened on the grounds that during the pandemic, the tenant had made renovations which led to an enlarged area.

Comparing the areas contracted in 2016 (1,000m²) to those confirmed in the geodetic measurements in 2022 (1,298m²), we see the difference in the areas. Had PAK included the used area of 298m² it would have collected proceeds of €1,576 per month, or €113,502 for 72 months (298m² * 5.29€/m²=1,576€).

In addition to the abovementioned cases tested according to the report of geodetic measurements, we found that 4 other cases of changes (increase) made to the areas. Based on the measurement report, the total surface area increased was 1,579m². According to PAK, this happened due to renovations and expansions during the pandemic by the businesses themselves. With regard to the areas changed, we have requested evidence from PAK on where the changes were made, but we have not received any evidence. Moreover, even during the physical examination, we could not notice any changes.

2.3 Socially owned property being used without any contract with PAK in place

In one case, we have found that the land parcel no. P-71914059-01528-15 is property of Bujqësia SOE. According to the title deed, the area of this parcel is 1,789m² whilst we found that the area of around 500m² is being used by a business entity for business purposes.

In this regard, PAK sent a letter on 27.10.2020 to the business entity using this property without any contract in place, asking from it to provide an explanation to PAK on the basis this business entity was using the property on. But, PAK had not received any answer. The said business entity kept using this property further. Although PAK had warned the occupying entity that it would undertake legal measures if the entity did not respond to the letter, we have not managed to obtain any evidence whether PAK undertook any legal measures apart the letters addressed to municipal bodies in December 2022. It is worth noting that according to the certificate of ownership, this property is considered as road infrastructure.

PAK's failure to undertake proactive measures has led to socially owned property being used by unauthorised parties, thus generating no revenues.

2.4 Mismanagement of socially owned property by entities having a contractual relationship with PAK

According to the legal framework of PAK, the lease contract is signed by the lessor and the lessee. That is, according to the contract terms, the tenant shall not rent out the property contracted with the PAK without written consent of PAK as the lease administrator.

We found three cases where PAK had entered into lease contracts for certain property/premises, but during on-site examinations we found that those properties/premises were being used by other entities (unauthorised by PAK) with which PAK had not entered into contractual relationships. These cases are the following:

- On 06.02.2016, PAK had signed a lease contract for the premises of Fabrika e Birrës SOE, with an area of 69m² at a price of €170 per month. According to the contract, the tenant will use the premises for cable telecommunications business activities. It is worth noting that in 2016 the contract with the tenant was entered into through direct negotiation, and that PAK had continuously renewed the contract with the same entity on the same terms.

During on-site examinations carried out on 06.10.2022, we found that the premises were being used by another business entity with which PAK had not entered into any contract.

Moreover, we found that the contract covering the periods from 01.07.2021 to 30.06.2022, namely 01.07.2022 to 30.06.2023, was extended with an entity which according to the Kosovo Business Registration Agency was considered non-existent since 23.12.2020.

In this regard, after addressing this issue, PAK undertook actions on 21.10.2022 by terminating the contract with the tenant, whilst on 14.11.2022 sent a letter to the user to release the property.

- On 15.03.2022, PAK concluded a contract through public announcement procedures for renting out the premises with an area of 15 m² of NewCo Grand Hotel for a one-year period at a price of €307 per month.

During on-site examinations carried out on 11.10.2022, we found that the premises were being used by another business entity, which had no contract in place with PAK for the concerned property.

In addition, we have also found that the premises of an area of 15m² had been changed. It was merged with another premise the contractor of which did already have a contract in place with PAK. Thus, although the two premises were merged, there were two contract in place with PAK, i.e. two tenants, whilst the actual situation shows that there is one business entity. *According to the internal regulation, such changes require prior consent of PAK.*

- On 01.07.2013, PAK concluded a contract for renting out the premises with an area of 2,500m² of Liria SOE in Prizren for a one-year period at a price of €390 per month. According to the contract, the subject will use the property for business activities - construction site. During on-site examination carried out on 12.10.2022, we found that another business entity was operating in the rented out property providing other services (car wash and car rental). This business entity did not have a contract with PAK in place, which constitutes a violation of the contract terms as the rented property was also being used purposes other than those stipulated in the contract. It is worth noting that from 2013 onwards, PAK has continuously renewed the contract with the same entity on the same terms.

Use of public socially owned property without authorisation from PAK may lead to the possibility of tenants having a contract in place with PAK to generate profits on behalf of PAK.

Moreover, PAK had not developed open procedures for two out of the three abovementioned cases.

2.5 Lease contracts renewed without reviewing the terms and purpose

The Bujqësia SOE had initially signed two contracts with different tenants for renting out agricultural land for two properties covering the periods from 2001 to 2011 and 2002 to 2010 respectively.

- The first contract was entered for an area of 1,900m² at a price of €328 per month, whilst the second contract for an area of 6,000m² at a price of €850 per month. Having taken over the administration of Bujqësia SOE on 05.01.2011, PAK renewed the contracts by signing them

on the same terms of the inherited contracts without conducting either the open procedures or the negotiated procedure. According to the lease contract, these properties (area) are to be used for agricultural activities, whilst during on-site examinations we found that these properties are being used for commercial purposes (sale of furniture and other similar products).

Thus, the property is not being used for the purpose it was rented out. Despite the fact that the property was not being used for the purpose set forth in the contract inherited from Bujqësia SOE, PAK, when renewing the contract, did not examine the activity the tenant was exercising and the previously-set price so that it could adapt to the tenant's business activity

- For the agricultural land of an area of 10,007m² property of Bujqësia SOE, PAK entered into a contract with a tenant on 06.01.2021 at a price of €122 per month. We found that the same tenant had already concluded a contract with the SOE for a ten-year period (2001-2011) for the same property at a price of 240 DM (German Marks). Afterwards, from 2011 PAK, after having liquidated the enterprise, has renewed the contract on yearly basis without changing the price.

During on-site examinations carried out on 14.10.2022 we found that this tenant was not conducting any business activity in the rented land (there was just an abandoned and dysfunctional building). This was also proved that by the fact that the property was not connected to the road. Moreover, the same tenant had been released from paying the rent in 2020 (worth €245) based on the Board of Directors' decision dated 25.06.2020 on terminating the activity that was not conducted in this property.

2.6 Shortcomings in the approval of the lease prices

On 31.07.2013, Ereniku SOE made a public announcement for the renting out agricultural land, whilst according to the minutes of the Commission for the leasing of land, dated 07.08.2013, the lease price was €80 per hectare. The incentive price was also determined, which is related to the increases in the contracted area.

We found that:

On 06.11.2013, PAK concluded a contract on behalf of Ereniku SOE for the area of 11 hectare at a price of €66.40/month per hectare or €730 per year, whilst for the area of 125 hectare it concluded the contract at a price of €40/ per hectare or €5,000 per year.

PAK had concluded contracts at the prices of €66.4 and €40 per hectare respectively by referring to the incentive prices although, according to the Circular dated 31.10.2013, these two areas had not suffered any changes in terms of the presented areas and the contracted ones.

With regard to setting the incentive price, Ereniku SOE provided two versions of a document named "Work program for year 2012" (one not signed by the commission and not archived whilst the other version of the same document lacks the part of the composition of the commission). Moreover, we were not able to make sure that the document in question is legally supported.

As a result of having applied the incentive price for the nine-year period, PAK did not collect revenues of €41,197 (87,040-45,843). The following table shows the financial estimates in details.

Period of use	Years	Used area per hectare	Price in the add	Discount – incentive	Contracted price	Contracted amount	Amount in the add
2013-2021	8	125	80	40	40	40,000	80,000
2013-2021	8	11	80	13.6	66.4	5,843	7,040
Total of financial liability						45,843	87,040

2.7 Assets rental price set in contradiction to the Board of Directors' decision

The rental price for certain cases was set in contradiction to the Board of Directors' decision. Although the following issues are not material in terms of value, they are important in nature and indicate the lack of internal controls over the process of renting out and monitoring of the rented properties. Such cases are disclosed as the following:

- On 23.11.2016, the Board of Directors approved the rent price of €540 per month for the asset (premises) of Lux SOE at an area of 144m². Based on the list provided by PAK, we see that the rent price was set following the recommendation of the commission, which had set the market prices for the rental of assets of SOEs – guidelines on the usurpations.

Although the Board of Directors had approved the price for this area, the Liquidation Authority did not sign the contract with the user of the premises because this user refused to sign the contract on the grounds that the premises area was not accurate. On 07.03.2018, PAK made the geodetic measurements of the premises and confirmed that the area of business premises was 125m².

The Liquidation Authority had signed the contract on 20.02.2018 before the geodetic measurements were made and had set the price of €460 per month for the area of €125m². Thus, the contract price was set without the approval of the Board of Directors.

Moreover, for this case there are two contracts which were archived with the same archive number of 13728/18 and the same date 20.02.2018 and they included different areas (129.2m² and the other 125m²). We asked for explanations regarding this occurrence and based on their response there had been a technical error.

- In 2013, PAK had entered into a lease contract for the property of KB Kosova SOE in an area of 25.71 hectare at an annual price of €642 or €25 per hectare. But, during 2017, PAK had researched the market price and made an accurate identification of the plots related to the properties of the SOE and found that the area of property in question was 45.18 hectare and recommended the price €40 per hectare.

On 27.04.2017, the Board of Directors approved the price of €40 per hectare for the area of 45.18 hectares based on the Commission's report,

However, the contract signed in 2018, 2019, 2020 and 2021 included the whole area of 45.18 hectare, but the annual price was €1,019 or €22.55 per hectare. Setting of such a price is in contradiction to the price approved by the Board of Directors. Thus, the calculated error for 4 years was €3,152€².

It is worth noting that, in the contract signed in 2017, PAK had charged the user with retroactive financial amounts for the non-matching area of about 19 hectares for the period 2014-2017 and the user had paid the liability. Following the identification of this issue by the audit, PAK undertook actions in 21.10.2022 in this regard by changing the terms of the contract.

2.8 Contract terms changed without the approval of the Board of Directors

On 16.05.2002, Agriculture SOE leased the property with an area of 6,000m² in the amount of €1,534 per month, for a ten-year period until May 1, 2013. In the meantime, the SOE signed an annex to the contract in December 2009 the rental price of which was reduced from €1,534 to €850 per month.

Given that the Bujqësia SOE had gone through the liquidation process from 2011 to 2018, the Liquidation Authority had continued to sign the contracts over the years on the same terms of the inherited contract of 2009.

In 2018 and 2019, the tenant refused to sign the contract on the grounds that the area included in the contract was not correct. According to the data of PAK, the geodetic measurements were made and the area was 3,284m². Therefore, on 13.02.2020, the Liquidation Authority concluded the contract with the property user and changed the terms of the basic contract by reducing the contracted area rented from 6,000m² to 3,284m², without changing the total price of the contract. In relation to this, we have requested the relevant evidence, but we have not received any document or decision of approval from the BD.

² The total price for the area of 45.18 hectares should be €1,807 per year. The total loss from this discrepancy for the period 2018-2021 is €3,152.

2.9 The criteria of the public announcement not in line with the Regulation on the renting of Socially Owned Enterprises' assets

The process of renting out the properties in the public announcement was accompanied by the following shortcomings:

- *According to the public announcement for leasing the property of Banka e Vojvodinës SOE, dated 03.02.2020, a deposit in the amount of €5,000, as well as a bank guarantee or a guarantee from a licensed insurance company in the amount of the contract or for 12 months was requested when bidding for tenancy.*

PAK did not adhere to the criteria set in the Regulation on renting the SOEs assets when it comes to the property of Banka e Vojvodinës SOE with of an area of AKP 640m², with which it had concluded the contract on 19.06.2020, and the property of Newco Grand Hotel SOE with an area of 33m² with which it had concluded the contract on 24.05.2019.

Whereas, in such cases, the internal regulation of PAK requires the deposit to be in the amount of €1,000 and the bank guarantee is required from the winning bidder who must submit the bank guarantee in the amount of 6 monthly rents prior to signing the contract.

The contract was signed without meeting the criterion that the winning bidder had to submit the bank guarantee or the guarantee issued by the licensed insurance company. Moreover, this criterion was not adhered to when extending the contract on a yearly basis either.

- *According to the internal regulation of PAK, in such cases a deposit is required in the amount of €1,000 and the bank guarantee is required from the winning bidder, who must bring a bank guarantee equal to 6 monthly rents prior to signing the contract.*

In the public announcement dated 22.03.2019 for leasing the property in Newco Grand Hotel SOE, with an area of 33m², a deposit of €2,000 was requested in when bidding for the lease and bank guarantee or a guarantee from a licensed insurance company covering the whole duration of the contract or 12 months.

Thus, the criteria required by PAK are in contradiction to the Regulation on the leasing of assets of socially owned enterprises. Moreover, this diminishes competition and discriminates the bidders

2.10 Poor process of renting out the SOEs' assets

In 2016, PAK had rented out the property of the SOE Ndërmarrja e re Grand Hotel j.s.c., through public announcement, with an area of 427m². The contract was concluded for the one-year period at a price of €4,850 per month.

In the leasing process, we found that PAK had signed the contract with the tenant even though the latter had not met the criterion for submitting the bank guarantee as required by the PAK regulation.

Moreover, in this process, we found shortcomings occurred during the evaluation process because - according to the commission - four (4) bidders had applied for this announcement. The evaluation committee carried out the bids evaluation and announced the highest bid as the winner although the bid was not signed and was lacking the contact information, making it thus ineligible and should have been disqualified from the process.

According to PAK, the contract was not entered into with the winner due to the lack of contact information. Moreover, PAK eliminated the second highest bid due to the bidder's failure to pay off the financial liabilities from previous contracts.

We found that the third bidder, even though he was a natural person involved in the renting process, he had applied to the Liquidation Authority for renting the property on behalf of a business. But we found that such business had already applied with its representative for receiving the offer. Thus, based on the documents examined, we found that there were two bidders (one natural person and the other a legal person) for the same business. Therefore, even though the Liquidation Authority had accepted the request of the natural person as a representative of the business, the contract was signed with the fourth bidder (legal person) but based on the highest price.

Based on the issues found, we may conclude that the renting procedure was accompanied by shortcomings.

2.11 Lease contracts signed by overlooking the principle of free competition and transparency

The Article 3 of PAK regulation on the procedures for leasing the SOEs assets, issued in 2014, stipulates that "In the leasing procedure, the public tendering approach must be applied, by using at the same time the principles of free competition and transparency". However, PAK concluded the contracts by treating the property users as usurpers based on the Guideline for the Release of SOEs Assets, which stipulates, among other things, that the contractual relationship is entered into through negotiation by the commission appointed by PAK. The issues are the following:

- In 2014, PAK, as the SOEs property administrator, had sent a letter to the first user of the asset (petrol station) of Jugopetrol SOE, which was using the property until 01.03.2015, requiring it to pay off the financial liability, but no answer was received.

In the documentation received, we found that the first user had entered into a lease agreement on 01.03.2015 for renting out the property to the second user. This agreement was concluded for a six-month period, where the tenant rents out the property to the lessor in return for €3,000 per month.

On 03.06.2015, the second user addressed a request to PAK for entering into a contractual agreement and on 09.06.2015 it enters into a direct agreement for renting out the property at

a price of €5,203. This was done based on the Guideline for the Release of SOEs Assets from Usurpers and Illegal Users.

In addition, on 12.11.2021, this tenant applied to PAK for a name change, and on 30.11.2021 the board had approved such a request and at the same time requested that all debts be paid prior to changing the business name. But, based on the documents we obtained, the business registration number has changed in addition to the name, which means that the legal entity has changed as well.

As a result of these changes, PAK entered into a new contract with the new entity (the third user) by overlooking the public announcement procedures. Moreover, we found that even though the contract contained the protocol date of 17.12.2021, it included the period from 01.06.2020-31.05.2022³ (retroactively) which does not correspond to the date of the request and the date of approval of the board. Whilst in certain cases, PAK had undertaken procedures to release properties and applied open procedures in renting them out.

- On 07.02.2012, "Liria" SOE had signed a lease contract with a tenant for the business premises - building plot with an area of 2,500m² at a monthly price of €390 for the period 07.01.2012 to June 2013. Given that the SOE became subject to PAK administration in 2013, PAK signed a contract for this property on 01.07.2013 on the same terms with a tenant different from the one with which the SOE had a contractual relationship by overlooking the public announcement procedures. This was done on the grounds that the previous tenants owned 33% of the shares in the current business with which PAK signed the contract.
- On 01.06.2012, PAK concluded a lease contract for the property of Shpeztaria - Peshkataria, SOE with an area of 1,794m² at a monthly price of €2,000. The tenant had not paid the amount of €9,062 to PAK, and on 28.01. 2022 had made a requested for transferring the lease to another tenant, which was approved by the Board of Directors on 30.03.2022 provided that the new tenant paid off the outstanding liabilities of the previous tenant and the contract was renewed retroactively from 01.01.2022 to 31.12.2022. Thus, the contract was renewed with the new tenant as if it were an active tenant in the PAK's list of tenants by overlooking the public announcement procedures.
- On me 09.09.2015, PAK had rented out the property of Tregu SOE with an area of 400m² at a monthly price of €1,000, whilst the last contract concluded on 10.12.2021 at a monthly price of €1,640 did not specify the area in m².

Based on the issues identified above, PAK had not developed for the changes that occurred, the PAK had not developed procedures for the public announcement of the leasing of these properties.

Conclusion of contracts by overlooking the public announcement procedures undermines the principle of competition, transparency and achievement of value for money.

³ i.e. includes the date before the request for changing the name was made.

2.12 Renewal of contracts having outstanding debts

Lease contracts stipulate the tenant's obligations towards the lessor regarding the term of payments. The issues presented below are cases of extended contracts the outstanding debts of which had not been paid.

- For the use of the business premises with an area of 15m² at a monthly price of €90, property of Përparimi SOE, PAK have been concluding lease contracts since 25.11.2014. We found that with the annual renewal of the contracts for years 2019 to 2022, the contract terms have not been adhered to because the contracts had been renewed regardless of the debts being accumulated over the years.
- In the contract signed on the property of Industria-Ereniku SOE for the area of 125 hectares at a price of €5,000 per year, we found that the tenant had failed to meet the contractual terms for two years, although the contracts were renewed regardless of the accumulated debt.
- The same has occurred for the contract signed on the property of Industria-Ereniku SOE for the area of 450 m² at a price of €600 per month. We found that the tenant had failed to meet the contractual terms for year 2021 whilst the contract had been renewed regardless of the accumulated debt.
- With regard to the signed contract of Shpeztaria -Peshkataria SOE for an area of 1,794 m² at a price of €2,000 per month, we found that contracts had been renewed over the years regardless of the accumulated debts.
- On 01.12.2015, PAK had concluded the contract for renting out the property of Malishgan SOE with an area of 120.32 hectare at a price of €30 per hectare for the vegetation period. PAK renewed the contract on the same terms as of 30 November 2017, but the tenant had not paid according to the contract. On 30.01.2018, PAK started the debt collection procedures through enforcement and, on 18.10.2018, the enforcement officer executed the case and PAK collected the funds on the company's account. As a result of the court proceedings, the contractual relations between PAK and the tenant were suspended. On 13.12.2019 the tenant filed a request to PAK for the contract renewal and, on 15.01.2020, the Liquidation Authority signed the contract with the tenant for the area of 75.33 hectares based on the Board's Decision. This means that the contract was renewed 2 years and 2 months after its expiration with tenant who had failed to meet the terms of the previous contract.

2.13 Poor management of lease contracts

- For the property of Bujqësia SOE with an area of 6,000m², PAK was in a contractual relationship with a tenant from 2011 to 2015, whilst for the periods 07/2016 to 06/2017; 07/2018 to 11/2019; and 01.11.2020 to 31.10. 2021 there were no contracts in place between PAK and the user of such property, who was already using it. The contract was not signed due to the party's refusal, because according to the party, the area in use was smaller than the contracted area. PAK had not undertaken any legal action other than continuing to send the invoice in the amount of €850 based on the 2015 contract. Based on the recommendations of PAK management and the Liquidation Authority, billing has continued on regular basis due to the fact that the property has been used even after the lease contract had expired. It is worth noting that, based on the contract dated 13.02.2020, the area has been changed from 6,000 m² to 3,284 m².
- Whereas for the property of Liria SOE, the rent was billed for the periods from 01/2014 to 12/2015 and from 07/2017 to 12/2017, for which there was no contract signed. The billing was done on the grounds that according to Article 1.2 of the contract, the contract could be automatically renewed for the same subsequent period.
- PAK has changed the price to €334 without the approval/consent of the Board of Directors for the property of Bujqësia SOE with an area of 0.19 hectares, for which PAK has entered into a contract since 2011 at a price of €328 per month. According to the responsible officers, this occurred due to a miscalculation of the invoice. However, when signing the contract in the second half, the price was returned as at the beginning without the Board's approval. This was done on the grounds that the contract included the calculation of VAT although the Enterprise is not subject to the VAT. In addition, PAK billed for twenty months at the price of €334 per month, despite the fact that the contract is at a monthly price of €328.

PAK's failure to take action on updating the contracts has resulted in billing being made without a contract in place, which may lead to parties disputing the liabilities towards PAK.

2.14 Failure to conduct a research on and evaluation of the market price

When entering into contracts over the years, PAK has not conducted any research of the market price in order to determine the rental price in accordance with the market price. Cases are the following:

- For the property of Liria SOE - building plot in Prizren with a total area of 2,500m² at a price of €390 per month starting from 2013 to 2021, PAK did not conduct any research and evaluation of the market price, despite the fact that the contracts were renewed annually at the same price.

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- For the property of Industria-Ereniku SOE in Gjakova (outside the city) with an area of 125.45 hectare at a price of €40 per hectare or €5,000 per year, the lease has not been revaluated since 2012, whilst the contracts were renewed at the same price.
 - In 2014, Tregu SOE in Pristina (wholesale market) concluded two contracts, one for the area of 400m² at a price of €1,200 per month and the other for the area of 300m² at a price of €400. PAK had not conducted any research and evaluation of the market price, except for the second contract in 2017 when it increased the rent price to €1,200
 - For the property of Pëparimi SOE in Podujeva, PAK in 2014 rented out the business premises with an area of 15m² at a price of €90 per month. Despite the contracts were renewed, no market price research and evaluation was ever made.
 - On 20.12.2016, Sham Drita SOE in Gjilan rented out the businesses premises with an area of 20m² through the procurement procedure. PAK has ever since renewed the contracts without conducting a valuation of the market price.
 - On 05.01.2011 PAK rented out the property of Bujqësia SOE in Fushë Kosovë with an area of 10,007m² at a total month of €120 per month. Despite the contracts were renewed, no market price research and evaluation was ever made.
 - On 30.03.2017 PAK rented out the property of Magjistrala SOE in Prishtina (at the bus terminal) with an area of 1,093m² at a price of €2,579.50. PAK has ever since renewed the contracts yearly without conducting a valuation of the market price
 - For the properties of the Pasuria Bujqësore SOE in Ferizaj with an area of 19.41 hectares with an annual price of €1,650 and the Dubrava SOE in Istog with an area of 3 hectares and annual price of €90 no research and evaluation of the market price was conducted either, even though such properties were rented since 19.11.2014 and 06.03.2015 respectively.
 - For the property of Jugotrem SOE in Gjilan with an area of 400m² rented out at a monthly price of €100, no market price evaluation has been conducted ever since 2015 when the first contract was signed.
 - For the two plots of Lavëtari-Blegtori SOE in Prizren with a surface area of 20,000m² the contract was entered into on 20.12.2016 at a monthly price of €350. When renewing the contract and the annexes, no market price evaluation was conducted.

PAK not only has not made any research on the market prices, but it had not taken into account the price of the reference contracts [contracts which PAK had already signed with other tenants in the same location (close to each other)] and which are comparable either. The following are some cases that we have made comparisons regarding the rental prices:

- On 03.07.2008 Bujqësia SOE in Prishtina (highway Prishtinë - Fushë Kosovë) had rented out the agriculture land with an area of 1.27 hectare at a price of €480 per month or €0.0378 per m². According to the PAK contracts on the properties off this enterprise, the rent price per square meter in this area from year 2001 ranged from €0.17 to €0.27 per m². PAK has ever since renewed the contracts yearly without conducting a valuation of the rental market.

PAK's failure to conduct a market research from 2010, since when it took the SOE under its administration, has led to a potential damage in the rental proceeds by €0.1822 per m² or approximately €2,314 per month. Had the reference prices of the PAK contracts for that area been taken into consideration, PAK would have collected proceeds of €277,672 for 10 years.

- On 05.01.2011, PAK had rented out the property of Bujqesia SOE in Prishtina (highway Prishtine - Fushe Kosove) with an area of 1,900 m² at a total price of €328 per month. Contracts have ever since been renewed without conducting a valuation of the market price. Had the reference prices of the PAK contracts for that area been taken into consideration, PAK would have collected proceeds of €11,400 for 10 years (reference prices €0.17 and €0.27 = $0.44/2=0.22$. thus $0.22-0.17=0.05€$ under-priced).

Due to PAK's failure to conduct market price research and evaluation the potential loss might be very high.

3 Conclusions

Based on the audit findings, we may conclude that the Privatization Agency of Kosovo was not efficient in developing procedures and managing lease contracts.

We may conclude that PAK has not revised the terms of the contracts signed over the years regarding to the activity being carried out and the rental prices.

The lack of appropriate actions has not enabled PAK and AL to timely identify all the properties owned by SOEs that are being used by illegal users for long periods of time. In addition, incomplete reporting of the actual situation has resulted in the leased properties being used by parties other than those contracted by PAK, which is not only illegal by also creates the possibility for the tenants to profit from this.

The Liquidation Authority had not taken all appropriate actions under the current circumstances to locate, take possession of, preserve, protect and apply reasonable measures necessary to maintain the company's assets. Due to lack of internal controls, PAK has not reviewed the usage purpose for when renting out SOE properties. This has resulted in a reduced funds from rental proceeds and decreased value of the assets of SOEs under liquidation.

Poor monitoring from PAK and LA has led to contract terms being changed without the approval of the Board of Directors.

Weaknesses have also been identified in the development of leasing procedures, such as failure to fully adhere to the criteria of the public announcement for leasing. Such shortcomings lead to the signing of contracts with unsuitable tenants.

Ineffective management of contracts has led to the renewal of contracts on a yearly basis, regardless of the debts not being settled, thus overlooking the contract terms.

For years, PAK had not conducted a market price research or evaluation, even though market conditions have changed over the years.

Failure to make an initial evaluation of properties before renting them out has led to tenants using larges areas than the contracted ones. This has caused losses as a result of not collecting proceeds from the used area not included in the contract.

PAK had not timely measured/ documented the surface area. Therefore, in certain cases the geodetic measurements have shown discrepancies between the contracted and used areas.

4 Recommendations

- The Board of Directors should review the internal legal acts for the lease of properties in order to be in the spirit of the principles of free competition and transparency, to promote the preservation, to increase the value of the enterprise, as well as to establish standards for good governance of enterprises.
- The Board of Directors should ensure that all properties under the PAK administration are freed from illegal users so that they could become subject to the leasing procedures.
- The Board of Directors should ensure that LA has taken all appropriate actions to locate, take possession of, preserve, protect and apply reasonable measures necessary to maintain the company's assets, so that the properties are used for the purpose they have been rented out.
- The Board of Directors should ensure that the LA, by reviewing the lease purpose, has undertaken all the proper measures for increasing the funds from proceeds and the value of assets of the SOEs under liquidation.
- The Board of Directors should enhance the controls over the LA and officers of PAK in order to ensure that any change to the contractual terms is made with the approval of the Board of Directors.
- The Board of Directors should enhance the controls over the LA and the officers of PAK in order to make sure that when leasing through public announcement, the criteria set forth in the applicable regulations in force are adhered to that all bidders are treated equally.
- The Board of Directors should ensure that LA monitors the tenants proactively by ensuring that the contractual terms have been adhered to before renewing the contracts.
- The Board of Directors should make a general analysis of the contracts signed years ago and reconsider the current rental prices with the market prices in order to benefit/maximize their value.
- The Board of Directors should ensure that PAK has done the geodetic measurement of the areas in time, so that there is no discrepancy between the contracted and used areas.

The Board of Directors should revise the Guideline on the release of assets of SOEs so that it complies with the spirit of the principles of free competition and transparency.

5 Annex 1: Entity's Comments / Letter of Confirmation

No	Issues	Comments of the Budget Organisation (BO)	View of the NAO
2.1	Land rented for business activities was also used for limestone exploitation	<p>2.1.1. We partially agree with the finding. We would like to clarify as follows:</p> <p>Based on the Regulation of Municipality of Prizren of 2009, which the PAK team used for comparison in July 2016, the price of 2 euros /m² for Zone III was in cases of "renting out land for temporary use for the instalment of temporary facilities without additional construction". At that time, PAK had no access to the Regulation of the Municipality of Prizren of 2016.</p> <p>As the Regulation of the Municipality does not provide information on rented out land, PAK is based on the tender of the Municipality of Prizren (the evidence was previously given to NAO), where 1 hectare of land (class III land culture) was rented out for 30 euros by the Municipality of Prizren. PAK has rented out the land for €100/1 hectare (class VIII land).</p> <p>Limestone exploitation started before the contracting period between PAK and the tenant in 2016. The contracted area has been determined on the basis of documentation, in this case, licenses from ICMM according to the Law on Mines and Minerals.</p>	<p>The comment is irrelevant thus the finding remains as such. PAK has only provided additional clarifications. We have addressed the issue based on the report of the evaluation commission dated 28.06.2016, source document of PAK, which refers to the regulation as presented in the report, without stating the reason for setting the price of €0,01 per m² or €100 per Ha.</p> <p>PAK is responsible for managing and preserving/increasing the value of the properties under its management. In this case, PAK has not had proper management based on the fact that the contracted area was determined based on the documentation from ICMM and not according to on-site situation.</p>
2.2	Mismanagement of the rented properties	<p>We partially agree with the finding. We would like to clarify as follows:</p> <p>The general comment applies to the cases presented in finding 2.2.</p>	<p>PAK only provided additional clarifications. The fact that the area is changed for property located in the city centre without the knowledge of PAK confirms the finding that PAK mismanages the property.</p>

		<p>The initiative to measure the exact area of the premises in the Grand Hotel was as a result of tenants' verbal requests during 2021 (during the period of the Covid-19 pandemic) to the Grand officials for an increase in the areas of use.</p> <p>PAK has not been able to accurately determine when these facilities became operational, therefore the Liquidation Authority has defined that in the memorandum sent to the PAK Board of Directors, it is proposed that the contracting period of the new areas should be applied from January 1, 2022. In these cases, additional unusable areas are included, namely areas that cannot be tendered or rented to someone else.</p> <p>The NAO assumptions that PAK lost revenue because it has not calculated the new areas from the tendering periods, are not based on any audit standard and on any evidence of the period in which the use of the extra areas started. Therefore, PAK disputes the legal basis and the conclusion of the NAO that PAK has lost funds from rental revenue collection.</p> <p><i>2.2.1. We do not agree with the finding:</i></p> <p>The price of m² has not changed between the basic contract and the new contract - after the addition of the area for this contract. In the current contract, the price of 10.17 euros per m² for interior spaces is the same as in the previous contract. While the outdoor area - the terrace is calculated according to the Regulation on Tariffs, Fees and Charges of the Municipality of Pristina, i.e., 8 euros per m². Therefore, NAO should not have calculated the average price of interior spaces and the price of the terrace and came to the wrong conclusion that the price dropped from 10.17 EUR/m² to 9.14 EUR/m².</p>	<p>Regarding the potential loss of revenues, we considered the source documents/contracts/reports of PAK according to the findings presented in the report. As long as no additional documents have been provided which confirm the contrary, the finding remains as such.</p> <p>Paragraph 2.2.1, the comment is irrelevant thus the finding remains as such. Based on the basic contract of 2015, the price per m² was €10.17 for 402m², while the price in the 2022 contract included the total price per m² of €9.14 for 505.64m². By comparing these two contracts we came to the conclusion of calculating the price shown in the report.</p> <p>Paragraph 2.2.4, the comment is irrelevant thus the finding remains as such.</p> <p>Based on the 2022 contract, the contract amendment is based on the 2016 contract, not the 2015 contract as claimed in the comment. The 2016 contract included only the area of 1,000 m², while the geodetic measurements of 2022 ascertain the area of 1096m² plus 15 parking lots with an area of 202m². Based on these evidences, we came to the conclusion/presentation of the case in the report.</p>
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		<p>2.2.4 We partially agree, but we would like to clarify as follows: Regarding the m² area that the Audit Team has concluded that even with the contract change, not all m² were taken into account, this conclusion is wrong. In the 2015 contract, the parking lot in front of the Hotel entrance has 15 parking lots, and with the new contract, there are the same parking lots. M² cannot be added here, as the Audit team concludes, because these are correctly marked places for the number of parking lots and not for m². While the area of 96 m² that has been added is only for the underground parking lot.</p> <p>For the price for the additional area of 96m² of the underground parking lot, the amount of 5,290/1000m² (underground parking lot) =5.29m² was calculated, while, in fact, because the price of 5, 290 m² included the underground parking lot and the outdoor parking lot of 15 places (as much as it has been used since 2015), the average price including the outdoor parking lot had to be calculated. So, for setting the average price in 2022, PAK did not include the outdoor parking lot of 202m². If it were included, then the price/m² would be 4.4 euros and not 5.29 euros as calculated by PAK.</p> <p>Consequently, there is no loss in billing, but it has billed 85.51 euros more every month starting from January 2022.</p>	
2.5	Lease contracts renewed without reviewing the terms and purpose	<p>We disagree with the finding:</p> <p>The general comment applies to the cases presented in finding 2.5.</p> <p>Both Contracts were inherited/ signed by the former management of the SOE. The contract does not define the use of the property for agricultural purposes, respectively it does not define the issue of the activity, but only describes the culture of the property that is registered in the cadastre. The facility was built by the tenant before the SOE was put into liquidation and PAK rented out only the land.</p>	<p>Point 2.5.1 & 2.5.2, the comment is irrelevant thus the finding remains as such.</p> <p>As for the issue that the contracts are inherited by the SOE, this is presented in the report. The emphasis of these issues has been placed on the examination of the contractual conditions by the PAK.</p>

		<p>Contracts used for agricultural purposes are one-year contracts and billing is done on annual basis and differ from business contracts, as is the case for these two contracts for which billing is done every month.</p> <p>2.5.2 Regarding the forgiveness of rent debts as a result of the pandemic, it was acted in accordance with the Government's decisions on subsidizing rents and the decision of the PAK Board in June 2020. The tenant had an active contract at the time when the rent liabilities for the period March-June 2020 were forgiven.</p>	<p>As long as the contract defines the use of the property for agricultural purposes, while the intended use is for business purposes, then these two do not coincide with each other.</p>
2.6	Shortcomings in the approval of the lease prices	<p>We disagree with the finding:</p> <p>In this period 2012 - 2013, it is worth noting that the issue of leasing is not regulated by PAK, as the first regulation was adopted in 2014. As a result, the management of the company regulated the issue of leasing according to the work program.</p> <p>The whole procedure of announcing the lease was led by the bodies of the SOE and the contract was signed according to the policy of stimulating agricultural land rents approved by the competent bodies of the SOE.</p> <p>Consequently, the NAO's conclusions about the loss of rental income are not based on the law and any regulation in force.</p> <p>On July 16, 2013, the Collegium and Board of Directors of SOE "Ereniku Main Activity" made a decision on the public announcement for the lease of agricultural land. This decision defines the composition of the commission of three members (signed and sealed). The decision also states that "The initial price per hectare remains unchanged from the previous years, including the percentage incentive for the increase of the contracted area".</p>	<p>The comment is irrelevant thus the finding remains as such.</p> <p>PAK failed to argue the legal basis in cases of determination of the incentive price. So, while there is no approved regulation, PAK used the "work program" that was provided to us in two versions, which really creates confusion based on that document. Moreover, despite the adoption of the regulation in 2014, PAK continued to renew contracts without taking any corrective measures.</p> <p>Although the incentive price related to the increase of the contracted area, based on the circular of 31.10.2013, these two areas have not undergone any changes. Therefore, it is not clear why the incentive price was applied.</p> <p>As long as the issue has been unclear, this has been presented as a shortcoming.</p>

		<p>On August 7, 2013, the Commission prepared the announcement minutes and submitted it to the Collegium of the Board of Directors of SOE "Ereniku Main Activity". The price for 1ha is €80, also stated in this report, and each rent bidder is encouraged with a discount of the rent price for an increase in the contracted rent area.</p> <p>The incentive policy by the Socially Owned Enterprise has been defined in advance prior to the establishment of the Leasing Commission with the evidence of the "Declaration regarding prices" and the 2012 work program attached. This document (signed and sealed) clearly specifies the implementation of the rental price deduction according to ha. The Commission has operated during 2013 according to the <i>work program</i> document of 2012 (see the above information). A statement on the validity of this activity was issued again in 2022 for the <i>work program</i> document of 2012.</p> <p>The contracts and annual rental payments clearly indicate the implementation of the incentive to all tenants.</p> <p>Whereas, as for the circular referred to by the Audit Team, it is related to the procedure of signing contracts according to the PAK format, where the issues of changes from those presented by the previous tenants are disclosed. There are three cases when they asked for a change of premises before signing the contract. One case required a reduction of area from 10ha to 6ha, and the other two required an increase from 10ha to 11ha.</p>	<p>Moreover, even though PAK issued a statement regarding the setting of the incentive price, that statement is not complete since three members of the commission are not included/signed.</p>
2.7	Assets rental price set in contradiction to the Board of Directors decision	<p>2.7.1. We partially agree with the finding. We would like to clarify as follows: The PAK Board of Directors has approved the price per square meter and the tenant. Consequently, re-approval of the contract is not required unless the price or tenant changes.</p>	<p>Point 2.7.1, The entity's comment is irrelevant thus the finding remains as such.</p>

		In this particular case, after accurate measurements of the area, a contract was signed with the tenant for assets in the north, such as LUX SOE, PAK has managed to extend the authority and take ownership the assets of LUX SOE in the north of Kosovo.	Although the Board of Directors on 23.11.2016 approved the price of €540 for the business premises, the contract for that property was signed on 20. 02. 2018 in the amount of €460 and no approval was received from the Board of Directors for this change.
2.8	Contractual terms changed without the approval of the Board of Directors	<i>We disagree with the finding:</i> KB Kosovo - With the previous regulation, no approval was required from the Board for changes in the area. In the current case, the total value of the rent has not changed. The area of the property was not expanded but the area of the property that was rented out was reduced without reducing the total price of the contract.	The entity's comment is irrelevant thus the finding remains as such. The change of area from 6,000m ² to 3,000m ² also means a change in the price/conditions of the contract without the approval of the Board of Directors.
2.9	The criteria of the public announcement not in line with the Regulation on the renting of Socially Owned Enterprises' assets	We agree with the finding that the deposit was set more than what the regulation determines. However, as the tendering procedure had failed several times, the increase of the deposit has led to a successful tendering and collection of proceeds. We do not agree with the finding that competition was limited because there were enough bidders even when the deposit was increased.	The entity's comment regarding limited competition is irrelevant thus the finding remains as such.
2.11.1	Lease contracts signed by overlooking the principle of free competition and transparency	2.11.1 We disagree with the finding. The case regarding the property lease for the petrol station at the roundabout at the entrance to Pristina from Veternik has been in the arbitration dispute that PAK and the Republic of Kosovo won in the International Arbitration initiated by Bedri Selmani against the Republic of Kosovo. This lease has already been subject to review by International Arbitration and is considered <i>res-judicata</i> and cannot be subject to <i>post-effectum</i> , further judicial review nor civil or procedural review.	Point 2.11.1, The entity's comment is irrelevant, thus the finding remains as such. The issue addressed in the report has to do with the use of the property from one user to another, as explained in the report. As for the explanations given in the comment, we have not addressed them as issues.

		<p>Paragraph 255, page 73 of the ICC decision, states that: (our remark: Republic of Kosovo vs Bedri Selmani - <i>According to Kosovo, the agreement complied with the 2014 PAK Guidelines for releasing of usurped assets, as Illyrian Power – previously another "usurper" according to Kosovo – voluntarily entered into the agreement following the procedure required by the 2014 PAK Guidelines.</i></p> <p>Moreover, paragraph 555, page 156, of the ICC decisions stipulates that: <i>Mr. Selmani also has no valid basis to challenge PAK's decision to award a lease for one station (Pristina III) to a recipient, Illyrian Power, without first going through a tender process. The 2014 PAK Guidelines specifically authorized PAK to do so, if a previously unauthorized occupant agreed to recognize PAK's authority over a property and to pay rent under a new lease.</i></p>	
2.1 2	Renewal of contracts having outstanding debts	<p>With regard to issues on the renewal of contracts the debts of which had not been settled, the audit team could observe that it is not that tenants have refused to pay. Instead, PAK has not settled any of the previous debts and the same have been included (rescheduled) as debts in the following lease contract. Rescheduling of debts was made to prevent the costly and prolonged collection procedures when using the enforcement procedures or when retendering for assets.</p>	<p>The entity's comment is irrelevant thus the finding remains as such.</p> <p>The entity provided an explanation regarding this matter, however the situation regarding the continuation of the contract remains the same as disclosed in the report.</p>
2.1 3	Poor management of lease contracts	<p>2.13.1 There is no change in the total price of the contract, but only a reduction of the area. Therefore, with the lease regulation that was in force, it is not required to be sent to the Board for approval.</p>	<p>Point 2.13.1. The entity's comment is irrelevant thus the finding remains as such.</p> <p>The change of area from 6,000m² to 3,000m² also means a change in the price/conditions of the contract without the approval of the Board of Directors.</p> <p>Point 2.13.2</p>

		2.13.2 – SOE Liria – billing is done in accordance with article 1.2 of the contract. According to Law on Obligational Relationships all lease contracts, if not terminated, are considered automatically renewed, therefore until the signing of a new contract, billing and collection continues for that period.	The issue addressed in the report is related to the negligence of PAK in updating the contracts for certain periods/ months.																
2.1 4	Failure to conduct a research on and evaluation of the market price	<p>PAK administers social enterprises and exercises its powers based on the Law on PAK, other applicable laws and by-laws (regulations, etc.).</p> <p>In none of the mandatory legal provisions it is not defined that PAK should reevaluate the rent price in the case of contract renewal. Any change in contract prices, unilaterally by PAK and without legal basis on a regulation, would be successfully contested in court proceedings.</p> <p>Rental revenues segregated by periods are (before and after the adoption of Lease Regulation and Asset Handling Guideline)</p> <table border="1"> <tr> <td>Viti 2002</td> <td>Viti 2008</td> <td>€ 1,761,685</td> <td>By KTA -Before the Regulation</td> </tr> <tr> <td>Viti 2009</td> <td>Viti 2013</td> <td>€ 6,359,434</td> <td>By PAK - Before the Regulation</td> </tr> <tr> <td>Viti 2014</td> <td>Decem ber 2022</td> <td>€ 44,330,887</td> <td>After the Regulation and Guideline</td> </tr> <tr> <td></td> <td>Total</td> <td>€ 52,452,005</td> <td></td> </tr> </table> <p>These are enormous increases in rental revenues due to the activities of PAK in the respective periods, thus directly affecting the preservation and increase of the property value of SOEs.</p> <p>Therefore, NAO's assumptions that PAK has lost revenue because it has not revaluated rents since 2011 is not based on the law or any regulation in force. PAK has no knowledge that any of the public institutions in Kosovo have reviewed the property rent price.</p>	Viti 2002	Viti 2008	€ 1,761,685	By KTA -Before the Regulation	Viti 2009	Viti 2013	€ 6,359,434	By PAK - Before the Regulation	Viti 2014	Decem ber 2022	€ 44,330,887	After the Regulation and Guideline		Total	€ 52,452,005		<p>The entity's comment is irrelevant thus the finding remains as such.</p> <p>Knowing that the price of lease contracts has not been reviewed for years and since PAK manages the property and aims to manage, preserve and increase the value of the property, such researches should have been done.</p> <p>In addition, the adoption of the regulation by PAK (August 2022) regarding these issues supports the finding presented in the report.</p>
Viti 2002	Viti 2008	€ 1,761,685	By KTA -Before the Regulation																
Viti 2009	Viti 2013	€ 6,359,434	By PAK - Before the Regulation																
Viti 2014	Decem ber 2022	€ 44,330,887	After the Regulation and Guideline																
	Total	€ 52,452,005																	

		<p>On the other hand, in August 2022, a new Lease Regulation was already adopted, which stipulates that PAK will "<i>periodically (at least three months before the expiration of the contract) evaluate the amount of rent in relation to the movements of rent values on the market...</i>". Therefore, only in future audits, the NAO has a reason to express its opinion regarding the revaluation of rents according to the PAK regulation.</p>	
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REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVA - REPUBLIC OF KOSOVO	
AGJENCIA KOSOVARE E PRIVATIZIMIT - KOSOVSKA AGENCIJA ZA PRIVATIZACIJU	
PRIVATISATION AGENCY OF KOSOVO	
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No.:	142-2
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No. l.Fq.:	1
Et. Str.:	
No. Pj.:	
Data: 23 JAN 2023	
Prishtinë / Pristina	

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ZYRA KOMBËTARE E AUDITIMIT			
NACIONALNA KANCELARIJA REVIZIJE - NATIONAL AUDIT OFFICE			
23 JAN 2023			
KATEGORIA E DOKUMENTIT			
KODI I DOKUMENTIT			
KODI I KLASIFIKIMIT			
KODI I LOKALITETIT			
Titulli i Dokumentit	Titulli i Klasifikimit	Nr. Prof. Br. Prof. No.	Nr. i Fasçes Br. Stranica No. Pages
06	47	076	9

AGJENCIA KOSOVARE E PRIVATIZIMIT
KOSOVSKA AGENCIJA ZA PRIVATIZACIJU
PRIVATISATION AGENCY OF KOSOVO

23 janar 2023

LETËR E KONFIRMIMIT DHE TABELA E KOMENTEVE NË DRAFT RAPORT
Për gjetjet e Auditorit të Përgjithshëm për auditimin e të hyrave nga qiraja për vitet 2012-2021

Për: Vlora Spanca, Auditore e Përgjithshme, Zyra Kombëtare e Auditimit

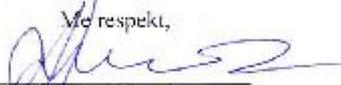
F nderuar znj. Spanca,

Përmes kësaj shkresë konfirmoj se:

- Më 30 dhjetor 2022 kam pranuar draft raportin e Zyrës Kombëtare të Auditimit për auditimin e të hyrave nga qiraja për Agjencinë Kosovare të Privatizimit, për periudhën 2012-2021 (në tekstin e mëtejshëm "Raporti"). Vërejmë se për 4 (katër) kontrata të qirasë (e gjetura nr. 2.2), fushëveprimi ka përfshirë auditimin edhe për vitin 2022;
- Ne pajtohemi me disa prej të gjeturave dhe nuk kemi komente (në tabelën në shtojcë do ta shënojmë se cilat janë këto raste);
- Ne pajtohemi pjesërisht me disa prej konkluzioneve dhe/apo të gjeturave dhe për këto kemi komente të cilat i kemi shënuar në tabelën në shtojcë;
- Ne nuk pajtohemi me disa prej konkluzioneve dhe/apo të gjeturave dhe për këto kemi komente të cilat i kemi shënuar në tabelën në shtojcë; si dhe
- Drenda 30 ditëve nga pranimi i Raportit final, do t'iu dorëzoj një Plan të Veprimit për zbatimin e rekomandimeve, i cili do të përfshijë afatet kohore dhe personelin përgjegjës për zbatimin e tyre.

Në letërën e datës 19 janar iu kemi shkruar për aspektin formalo-juridik për auditimet plotësuese të proceseve të Agjencisë Kosovare të Privatizimit, siç kërkohet me nenin 25 të Ligjit të AKP-së.

Me respekt,


Arben Limani
Drejtor Menaxhues

Agjencia Kosovare e Privatizimit