

Chapter 18. Corporatisation in Norwegian Local Government

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Abstract

Corporatisation in Norwegian local government, although not a new phenomenon, has grown rapidly during the last 20-25 years, especially since 2003-2004. Considering its relatively small population, Norway has a high number of municipally owned companies (MOCs), compared to its Scandinavian neighbours. Despite this, measured by the number of employees, the size of MOCs constitute less than 10% of the size of local government. Because of the rapid growth, Norwegian municipalities still strive to compensate for the institutional lag that has developed in terms of political and corporate governance. This process involves issues of transparency, accountability and local democracy, which still have to find more sustainable and satisfactory solutions.

18.1. Introduction

During the last decades, municipally owned companies (MOCs) have become an increasingly prevalent feature of the Norwegian local government sector. Municipalities use MOCs to carry out a wide range of tasks and services, predominantly "technical" tasks such as power supply, fire protection, waste services, and water provision, but also functions related to culture, education and health care. In recent years, establishment of new MOCs seems to have levelled off, partly due to increasing ideological and party-political division over management-inspired reforms in the public sector. Although MOCs are commonly seen as an effective and efficient way of organizing public task execution, several studies suggest that MOCs raise concerns over democratic accountability and control. Although the municipal council is ultimately responsible for the full range of the local government's tasks and responsibilities, MOCs often operate more than one arm's length removed from their political owners.

18.2. Context

Norway is a unitary state with two levels of subnational government, which together constitute local government. Following a recent structural reform (Klausen et al. 2021), there are now 356 municipalities (local) and 11 counties (regional). Units at both tiers are led by elected councils. Local governments enjoy comparatively high levels of autonomy (Ladner et al. 2016). Local and regional politicians mostly represent national political parties, which implies a high degree of political integration between the three levels of government (Sellers et al. 2020). Most Norwegian municipalities are organised according to the aldermen principle, in which the political executive committee (*Formannskap*) is composed of representatives from all or most political parties in the municipal council (Jacobsen 2020). The chief executive officer (CEO) (*Kommunedirektør* or *rådmann*) is hired by the municipal council (*Kommunestyre*), and this person is accountable to the council for the entire municipal administration, including the municipal service providing entities. The municipalities of Oslo and Bergen as well as three counties (Nordland, Troms and Finnmark, and Viken) are organised as parliamentary systems. The city (or county) government is the executive and relies on support from the majority of the elected city (or county) council.

Norway is a universalist social democratic welfare state (Esping-Andersen 1990), and belongs to the highly decentralised group of northern/central European local government systems (Hesse and Sharpe 1991; Schwab et al. 2017). Consequently, local governments oversee a very broad range of tasks and services, most of which are mandatory by law. Currently, local and county government expenses equal 17,5% of GDP (OECD 2022). Measured by share of public consumption, local government stands for approximately 34,1% (OECD 2022) The local governments are funded mainly by local taxation (39%), government grants (45%) and various fees and charges from service users (13%).

Norway is not a member state of the EU. Norway is, however, a party to the agreement on the European Economic Area (EEA) and hence a full member of the internal market.

Consequently, all EU directives, regulations and court rulings that are deemed relevant for the single market applies to Norway.

All 356 municipalities have non-differentiated competencies which means that even the smallest municipalities are obliged by law to provide the same range of services as the largest ones. Service provision is subject to extensive legal regulation and supervision by the central government, gradually transforming the local governments into agents of the state (Goldsmith and Page 2010, p. 255), especially regarding welfare service provision. In addition to the mandatory tasks, local governments may take on new tasks at their own initiative. While the Local Government Act (LG Act) mandates a few key organisational elements, local governments are largely allowed to decide on their own organisation.

Most local governments produce the largest share of their services in-house. Between 85% and 100% of local governments incorporate kindergartens, primary education, institutionalised and home-based care services, water and sewage, upkeep and maintenance in their own organisation (Monkerud et al. 2016, pp. 93-95). Inter-municipal cooperation is however also widespread. 50%-85% of local governments provide waste management, auditing, emergency rooms, crisis centres, fire protection and IT services in cooperation with neighbouring municipalities, through a variety of cooperative arrangements (Jacobsen 2014). Additionally, a notable share of local governments purchase services such as road maintenance, kindergartens, maintenance of municipal buildings and infrastructure from private sector providers. The use of market-based steering mechanisms including competitive tenders, pay-per-unit systems, public-private partnerships, benchmarking and free user choice increased rapidly since the early 2000s, but in recent years the growth of such mechanisms seems to have levelled off (Monkerud et al. 2016).

MOCs can be legally established in three ways as:

1. A limited liability corporation (AS) based on the private law Limited Companies Act (AS Act)
2. An inter-municipal corporation (IKS) mandated by the public law Inter-Municipal Companies Act (IKS Act)
3. An in-house municipal company (KF) according to chapter 9 of the Local Government Act (LG Act)

These forms align with the typology of arm's length bodies presented in Van Genugten et al. (2020): KF as type 1, IKS as type 2 and AS as type 3. We include the KF as a MOC because both formally and in practice it is considered and treated as such in the Norwegian context.

Municipalities may also join into cooperative arrangements (SA) based on the Cooperatives Act¹. The SA is mostly used for organising kindergartens (536), waterworks (420) and community centres (130). Although this form is prevalent in local government, comprising 1186 entities all together in 2008, there is to our knowledge practically no research available (Breen et al. 2008). Therefore, we will not explore the SA companies further.

Finally, municipalities may set up foundations. Since foundations are self-owning, independent bodies operating beyond municipal control, we will not include this form in this chapter.

While AS and IKS are legally autonomous entities, the KF is a semi-autonomous hybrid organisation, politically integrated but administratively separated. Contrary to the AS, an IKS can only be owned by municipalities, counties, or other inter-municipal companies.

Nonetheless, the IKS is in many ways quite like the AS (Høivik 2005). A board appointed by

¹ *Lov om samvirkeforetak (Samvirkelova)*

the owner assembly (*general assembly* in the AS, *assembly of representatives* in the IKS, and *municipal council* in the KF) oversees the corporation, and the MOC manager is accountable to the board. A mandatory ownership agreement in the IKS corresponds to the articles of association in the AS. One key difference between AS and IKS is that IKS owners take on unlimited proportional liability. Moreover, IKS shares are not transferrable. The distribution of shares is laid down in the ownership agreement. IKS ownership can only be changed by unanimous decision among the owners (IKS Act §26). Dissolution of an IKS necessitates agreement among the owners and must be sanctioned by the ministry (IKS Act §32).

If a local government wants to co-own a corporation with private owners, the limited liability AS is the only form available. According to §1-1 in the Partnership Act², local governments cannot establish or participate in an unlimited liability partnership, general or limited, with private co-owners.

18.3. A Brief Note on Data

The empirical basis for this chapter is mainly taken from extant studies (particularly Klausen and Winsvold 2021, Bjørnsen et al. 2015; Opedal et al. 2012; Ringkjøb et al. 2008). While these publications offer rich evidence about MOCs in Norway's local government sector, they are based on statistics dating from 2014 and earlier. We have, consequently, supplemented and updated the empirical material by collecting statistics from the Norwegian Register of Business Enterprises, Brønnøysundregistret.³ Due to varying methodologies, there are some minor deviations between the newly collected data and extant studies.

² *Lov om ansvarlige selskaper og kommandittselskaper (Selskapsloven)*

³ All domestic and foreign enterprises operating in Norway are obligated by law to register key information with the Register of Business Enterprises.

18.4. Trends

Although MOCs are not a completely new phenomenon in the Norwegian local government sector, the growth of MOCs during the last couple of decades has been strong and comprehensive, organizing a widening range of local services. The prevalence of MOCs is now such that it changes our conception about what local government essentially is, and what its functions should be. It seems reasonable to assume that the surge of MOCs may impair democratic accountability. Thus, corporatisation is not only a question of finding practical solutions to public service delivery, but also an issue of how to preserve local democracy, including how to renew it. The New Public Management (NPM) legacy of public sector reform, advocating strict separation of politics and administration, makes the issue of local democracy imminent when applied to externalised local service provision through corporatisation (Aars and Ringkjøb 2011). Although corporatisation in Norwegian local government may be interpreted as a result of international reform trends like NPM, the growth of MOCs certainly also reflects considerable pragmatism in responding to internal needs, challenges, and ideas. As Norwegian municipalities metaphorically are carrying the welfare state on their backs, a role assigned by the national government, the number, range, and complexity of tasks designated to the local government sector have over the last 60 years grown to challenge the capacity and competence of a large share of the local governments. In this situation, corporatisation has emerged as an attractive solution for meeting this challenge by increasing the municipalities' managerial capacity over a growing range of tasks, especially within the technical sector.

During the last 25 years, MOCs have become increasingly prevalent in the local government sector. In the period 2011-2014, approximately 2900 corporations were operational, distributed in this way according to their company form (Bjørnsen et al. 2015; Opedal et al. 2012):

- 2418 limited liability companies (AS)
- 254 intermunicipal companies (IKS)
- 224 in-house companies (KF) ⁴

Although the number of AS has grown continuously since the mid-90s, the growth accelerated after the turn of the new millennium. The growth of AS then levelled off in the period 2011-2014 (Bjørnsen et al. 2015) however, before starting to grow again after 2018 (see Figure 18.1).

The IKS and KF forms of MOC were introduced in 2000. The number of IKS rose sharply during the first years after its introduction, partly because already existing inter-municipal cooperative arrangements were formalised, but within few years the growth slowed down. Following the structural reform of 2020, the number of IKS dropped somewhat from approximately 260 in 2015/2016 to 236 entities in 2021 (whereof seven are under liquidation).

As could be expected, the number of KF rose as well after 2000. It reached 216 units in 2006, and by 2021 the number had decreased to 185.

Figure 18.1 illustrates the trends of corporatisation in Norwegian municipalities since 1997.

Figure 18.1: Number and legal form of MOCs, 1997-2021 (Source: The Register of Business Enterprises 2021)

⁴ Of these, eleven were owned by counties, and in 2021 this was reduced to seven.

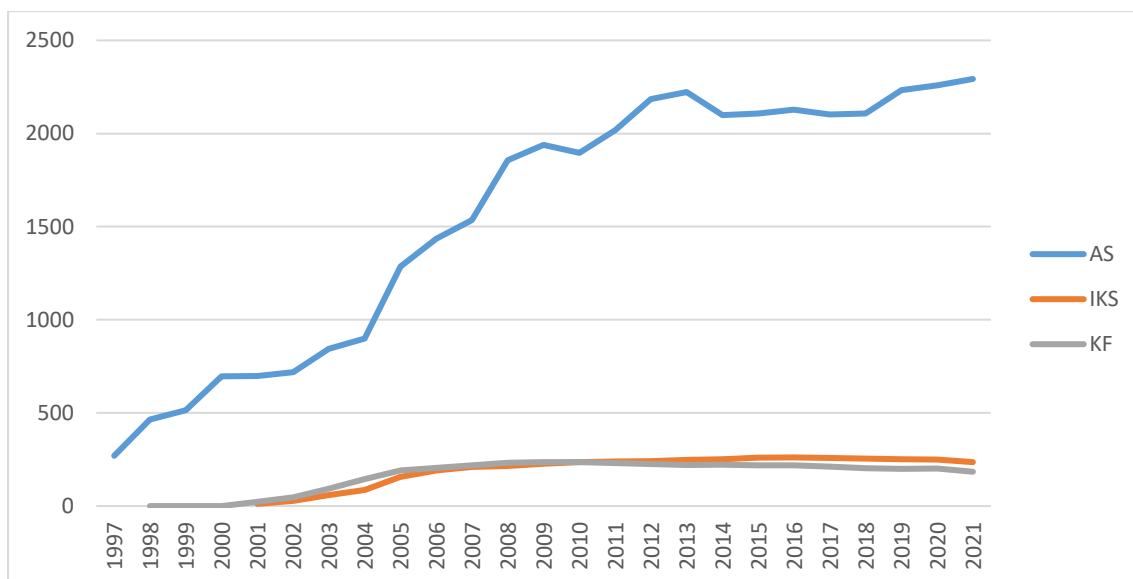


Figure 18.1 shows that almost 85% of Norwegian MOCs are limited companies (AS). What these curves do not show, is the considerable overlap that exists between the companies. For instance, all three MOC types may hold subsidiaries, usually organised as AS. Raw data on these patterns is available, but it would require a separate research project to analyse and bring them to light. Therefore, as of today, the prevalence of this overlap appears to make the picture of corporatisation rather complex and opaque.

18.5. Legal Status

Norwegian MOCs may be established under both public and private law. The most prevalent form of MOCs, the AS, is a private law entity regulated by the general AS Act⁵, while the IKS is a public law company under the IKS Act⁶. As these forms hold separate legal personality, they seem to align with the segregated hybrid type organisation described by Skelcher and Smith (2015, p. 440) as “[f]unctions oriented to different logics ... compartmentalised into separate but associated organisations”. In contrast, the KF is not legally separated from its owner municipality, thereby resembling the segmented hybrid

⁵ *Aksjeloven*

⁶ *Lov om interkommunale selskaper*

form, defined by Skelcher and Smith (2015, p. 440) as “logics ... compartmentalised within the organisation”. The KF is a public law entity regulated by the LG Act⁷, which applies to all political and administrative bodies in municipalities and counties.

The LG Act contains provisions that authorise municipal control with MOCs. The municipal control committee (LG Act, chapter 23) and audit agency (LG Act, chapter 24) have the mandate to monitor and control the activities of all companies in which the municipality holds ownership interests. However, the control committee may only demand access to information from limited companies if they are 100% publicly owned. Further, public laws like the Public Administration Act⁸ and the Freedom of Information Act⁹ have some validity for MOCs, and always if they make decisions concerning individual citizens, business firms or organisations.

Norway’s membership of the EU single market through the EEA agreement entails several restrictions on local governments’ dealings with corporations that they own. The agreement contains provisions forbidding public support to all type of companies. These provisions are of special relevance for the IKS form because of its unlimited liability clause. EU regulation has also influenced other parts of Norwegian legislation relevant for MOCs. Most notably, the Public Procurement Act¹⁰ and the Competition Act¹¹ contain provisions by which municipalities and their MOCs must abide. Local governments are in general required to issue public tenders for specific tasks, instead of issuing the task in question directly to a corporation owned by themselves. Exceptions from this rule apply only if (a) the corporation

⁷ *Kommuneloven*

⁸ *Forvaltningsloven*

⁹ *Offentleglova*

¹⁰ *Anskaffelsesloven*. See also Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18.

¹¹ *Konkurranseloven*

is under the full control of the local government, and (b) the corporation's activities predominantly comprise tasks and services mandated by the corporation's public owner(s).

As mentioned in section 18.4 on 'Trends', approximately 85% of the MOCs are AS whereas approximately 9% hold the IKS form. That leaves approximately 7% for the in-house companies (the KF form). Some modifications apply, though. First, as almost all 356 Norwegian municipalities are co-owners of one or more IKS, our conception of how prevalent the three organisational forms are, may be extended by considering the proportion of municipalities involved. For instance, between 85% and 93% of Norwegian municipalities provide their waste services through inter-municipal arrangements, primarily IKS companies (Monkerud et al. 2016, p. 93; Torsteinsen and Van Genugten 2016, p. 213). Second, many IKS and some AS own (or co-own) several subsidiaries, usually organised as limited companies, a practice motivated by, among other things the need to separate monopoly and commercial activities. Thus, the mixing of organisational forms within the framework of one overarching enterprise structure, usually an IKS or an AS, should be considered when presenting numbers of prevalent forms. Even a KF may own or co-own AS subsidiaries, and although this is not common, it illustrates the hybrid character of corporatisation in Norwegian local government. However, access to information about these enterprise structures is not readily available. Finally, many municipalities hold minority share positions in various AS companies, sometimes side by side with private shareholders. If most shares are owned by private interests, the companies are no longer counted as public companies in public statistics, and it would require extensive and detailed investigation to find out how many and to what extent municipalities are involved in such companies. Consequently, cross-ownerships, use of enterprise structures, and the holding of minority positions in private limited companies, make the analysis of prevalence of MOC forms more complicated and opaquer than a simple counting exercise could envisage.

18.6. Background Characteristics

MOCs are used for several purposes. The most recent survey, based on data from 2014, reports on the distribution of AS and IKS among different classes of activity (Bjørnsen et al. 2015). Note that AS may be owned by one municipality in full, by a consortium of local governments, or by private as well as public sector owners. Unfortunately, the data does not allow distinction between such differences in ownership structure, which means we do not know how many AS count as instances of corporate inter-municipal cooperation. The distributions are reported in table 18.1 and table 18.2.

Table 18.1: Distribution of AS among classes of activity, 2014 (Source: Bjørnsen et al. 2015)

	Enterprises (N=2418)	Employees (N=35627)
Electricity, gas-, steam- and hot water supply	22,7 %	27,0 %
Property management and related services	20,6 %	2,6 %
Employment training, adapted work	16,3 %	22,3 %
Business development, electronic communications, other technical or scientific service provision	8,5 %	6,0 %
Roads and communications	8,0 %	21,0 %
Building and construction, including planning, regulation and technical services	6,9 %	8,5 %
Culture, leisure, tourism	6,6 %	3,8 %
Water, sewage and waste services	5,3 %	5,2 %
Residual category	2,7 %	1,1 %
Kindergartens, education, health and care services	2,3 %	2,4 %

Table 18.2: Distribution of IKS among classes of activity, 2014 (Source: Bjørnsen et al. 2015)

	Enterprises (N=354)	Employees (N=6332)
Water, sewage and waste services	22,9 %	27,9 %
Administrative services	19,8 %	9,1 %
Fire protection	18,4 %	29,7 %
Culture and education	15,0 %	12,9 %
Technical services, building and construction, other	9,9 %	4,6 %
Health and care services	9,0 %	12,1 %
Harbour management	3,4 %	2,2 %
Electricity, gas and hot water supply	1,7 %	1,6 %

Further, the number of employees presented in the tables indicates the size of the two MOC forms. In all, 41,959 were employed in AS and IKS in 2014. Not all MOCs are actual enterprises with employees, however. Limited corporations (AS) are sometimes established as a way of organizing the ownership of municipal buildings, such as the city hall.

The KF form is primarily used within the following services (numbers indicate entities): property management (47), culture and sport (46), and harbour management (44). To a lesser extent we find KFs working with local business development (17) and energy production/distribution (15). The total number of employees was 6,120 in 2011 (Opedal et al. 2012).

Thus, measured by the number of employees, Norwegian MOCs constitute almost 10% of the local government sector.

Finally, most Norwegian MOC are single-purpose entities. However, that does not prevent them from running several activities within their enterprise structure, but then usually tasks associated with their main purpose. For example, a waste service IKS may take care of both household waste and industrial waste, or an AS operating in the cultural sector may encompass both a cinema and a concert hall.

18.7. Board Structure

Norwegian MOCs typically have one-tier board structures. There is one exception, though. AS companies with more than 200 employees are obliged to establish a supervisory board (*bedriftsforsamling*) with 12 members, of which 2/3 are appointed by the owner assembly while 1/3 are chosen by the employees (AS Act §6-35). However, few, if any, MOCs of the AS type are of this size, not least because in such cases it is quite common to opt for an enterprise structure comprising two or more smaller AS companies. Thus, for all practical purposes the one-tier board is the relevant board structure for all three types of Norwegian MOCs.

KS, which is the interest and employer organisation for all 356 municipalities and 11 counties in Norway, has developed its own corporate code for owners' and MOCs' corporate governance (KS 2020). The report first describes and explains what corporate governance is, which company forms are available, and the legal foundations of forms and ownership control. Finally, the report presents a corporate governance code consisting of 21 recommendations, especially relevant for the KF, IKS and AS forms of MOCs. It also seems that the KS report has been somewhat influenced by the OECD guidelines on corporate governance of state owned enterprises (2015). In addition, many municipalities introduce and

discuss supplementary recommendations in their ownership reports, often based on local or mediated experiences.

We do not have data indicating new trends in the board structure of Norwegian MOCs.

Although several and repeated recommendations have been voiced to ‘purify’ boards of local politicians, even by some politicians themselves, we have little information substantiating if and to what extent this is happening.

18.8. Autonomy

Autonomy may be defined as the delegated capacity of an organisational entity to make and implement decisions without (too many) constraints from the authority centre on the exercise of those capacities. The more the authority restricts the entity’s exercise by structural, political, legal, financial or interventionist measures, the less the actual autonomy becomes (Verhoest et al. 2004; Berge and Torsteinsen 2021b). Corporatisation may be seen as a type of delegation (Overman 2016) that formally gives organisational entities more autonomy than in-house integrated entities have. The introduction of MOCs in municipal service provision signifies hiving-off entities from the traditional political-administrative chain of command that (ideally) characterises local government, thereby replacing direct, vertical, hierarchical steering with indirect, horizontal, contractual-resembling governance. According to Ringkjøb et al. (2008) corporatisation thus implies “fragmentation of democratic power” (ibid. p. 49). This constitutes the general context within which MOC managers exercise their authority.

Generally, Norwegian MOCs, including their managers (or CEOs), enjoy extensive manoeuvring space. Research indicates that too little constraint may be more usual than too much constraint (Klausen and Winsvold 2021; Opedal et al. 2012; Ringkjøb et al. 2008).

However, although most MOCs are legally autonomous and operate at arm’s length from their owners, their independence is politically conditioned. They constitute entities of a local

government governance system, which implies that their owners may expel their boards, change their organisational form, and even re-municipalise them, i.e. re-integrate them into the municipal organisation. In practice, MOC managers usually exercise their authority and make their decisions without much interference from their owners (Bjørnsen et al. 2015, p. 150; Aars and Ringkjøb 2011; Ringkjøb et al. 2008), almost as if the MOCs *were* independent organisations. Case studies indicate that corporatisation leads to de-politicisation, illustrated by municipal councils giving ownership reports scarce attention (e.g. Torsteinsen and Bjørnå 2012). Further, the political steering of municipal service provision becomes significantly weaker when it is corporatized compared to in-house provision (Berge and Torsteinsen 2021a; Bjørnsen et al. 2015, p. 150). In addition, the municipal CEO does not have any formal authority in steering the companies, not even the in-house KFs. Despite limited owner steering, the freedom of MOCs and their managers is conditioned, and it may be influenced in various ways.

First, the selection of organisational form involves politically choosing specific structural and legal frameworks, which both enable and constrain managerial autonomy. The KF model, for instance, is more embedded politically in the owner organisation than the IKS and the AS forms. In a KF, the municipal council serves as its owner assembly, for example by appointing its board. As with AS and IKS, a KF is placed outside the municipal CEO's chain of command, except for one situation; the CEO may require the KF board to halt the implementation of a decision until the municipal council has had a chance to consider its economic consequences. However, municipal CEOs seem reluctant to utilise this control mechanism and consequently it is seldom put into practice (Opedal et al. 2012). Further, the IKS form means the company has two or more owners, a feature that may create inter-owner contradictions and coordination problems (Tavares and Feiock 2018; Voorn et al. 2019). As the number of owners grows, these problems may be exacerbated, even to the extent that

transaction costs may exceed scale economy benefits (Blåka 2017; Sørensen 2007). The implication may be that in order to reduce these costs, owners choose to intervene less with IKS operations, thus unintentionally enhancing the IKS' autonomy. In this way, an IKS may even become more autonomous than an AS-type MOC, especially if the AS is owned by a single municipality. During the last decade, the EFTA Surveillance Authority (ESA) has repeatedly criticised Norway for using the IKS form for commercial activities. Since this form implies that owners hold unlimited responsibility for the company's economic obligations, ESA claims that this is in breach with EU competition regulation, because it gives the IKS unfair competitive advantages equivalent to illegal state support (The Nordic Competition Authorities 2016). Despite several years of discussions and investigations, Norwegian authorities have so far not been able to amend the IKS Act. Instead, IKS enterprises have sought to meet the criticism from ESA by separating commercial and monopoly activities through separating accounts or through creating subsidiaries organised as AS companies, thereby upholding the autonomy of the IKS.

Second, legal regulations may also influence the manoeuvring space of MOCs and their managers. In the section 18.5 on the MOCs legal status, we described general laws relevant for MOCs' organisational designs, operational practices, obligations, limitations etc. In addition, laws and provisions on sectors and services describe the specific tasks that municipalities are responsible for and may assign to either in-house entities or MOCs, e.g. water supply, sewage services, waste management, harbour management, fire protection, health care and employment training. Although these laws authorise numerous regulations and provisions, they leave considerable space to MOC managers for exercising professional and managerial discretion (Ringkjøb et al. 2008).

Third, municipalities may enhance or circumscribe MOCs' autonomy through financial means. Doing so is especially straightforward for KFs, where the municipal council decides

on the KF's budget. When establishing an IKS, municipalities must set up a corporate agreement (IKS Act §4) defining, among other things, how much the company can invest or take up in loans without the explicit approval of its owners. Further, irrespective of organisational form, monopoly services like water supply and sewage services and household waste collection and treatment are financed according to the full cost recovery principle (FCR). Users including citizens, organisations or businesses, pay fees decided annually by the municipal council(s). These fees are supposed to cover 100% of the total costs associated with providing the specific service, including depreciation of investments. Cross-subsidisation between services and organisational entities are illegal. A side effect of the FCR principle seems to be insufficient maintenance and renewal of infrastructure, especially within water and sewage services (Norsk Vann 2021, p. 3). This happens despite explicit suggestions from service providers, stating that investments are necessary. However, a case study indicates that when service provision is corporatized, investment projects are easier to implement. Consequently, corporatisation seems to enhance the service provider's financial autonomy compared to service entities organised in-house (Berge and Torsteinsen 2021b). Nonetheless, since municipal councils are reluctant to rise fees too much or too fast for fear of public protests, financial limits associated with FCR services will always exist.¹² Finally, MOC autonomy may also be circumscribed by owners' desire and need for strengthening their budgets by taking dividends from their commercial companies. Municipalities have been particularly eager to reap dividends from hydroelectricity production, a sector where local government ownership is at approximately 50%. The AS model dominates this sector, split between subsidiary companies for grid (monopoly) and production (competition). A few years ago, when hydroelectricity production was extremely profitable, municipalities and

¹² The maintenance lag within for instance infrastructure of municipal water supply and sewage services has been calculated to 390 billion NOK (Kommunal Rapport, 19 June 2019).

counties could extract as much as 90% - sometimes more - of the MOCs' surplus as dividend.¹³ This practice reduced the MOCs' autonomy for developing long-term strategies and for implementing necessary maintenance and renewals.

National laws and provisions regulating local service provision, define purposes, goals etc. for each single service, and the extent of details seems to have increased over the years (e.g. Difi 2010; Fimreite 2003; Indset et al. 2012; Reichborn-Kjennerud and Vabo 2016). For some public services, EU regulation has influenced national goal setting significantly, for example within waste management (Torsteinsen and Van Genugten 2016). Further, when establishing a MOC, the owner – or owners, for an IKS - has to formulate a founding document. The AS and the IKS laws require the most comprehensive documents (§2-1 and §4, respectively), while the Local Government Act confines itself to describing basic provisions for a KF. All municipal councils involved have to pass the founding document for an IKS and for an inter-municipal AS. In addition, the owners' corporate assemblies must do the same. The founding documents must include the companies' goals and objectives, although these may be formulated in rather general terms, giving MOCs considerable manoeuvring space. As companies develop, their activities may deviate somewhat from what has been stated in the founding document. Usually, the MOCs themselves initiate revisions of the document to align with practice and they also develop their own long-term strategies and short-term action plans. Finally, the LG Act of 2018 requires that municipalities must produce ownership reports at least once every election period (§26-1). Before 2016, less than 50% of Norwegian municipalities made any such reports (Monkerud et al. 2016). Now, these reports must contain the municipality's principles for ownership governance, a review of all companies in which the municipality holds ownership (or other) interests, and statements explaining the purpose of these ownership (and other) interests. Some local governments

¹³ See for example [Teknisk Ukeblad \(TU\), 18 November 2013.](#)

decide on ownership strategies for each individual corporation in their portfolio. The quality and frequency of ownership reports vary between municipalities, so does the political attention municipal councils give them.

Studies show that municipalities mainly govern their MOCs through owner assemblies and founding provisions. In addition, they may influence the companies more indirectly by strategically appointing board members and by defining the content and quality of the services that the companies are supposed to deliver (Ringkjøb et al. 2008, p. 52). In some municipalities, the CEO ensures that MOC documents are routinely scrutinised in order to give advice to the politicians involved in governing the MOCs (Klausen and Winsvold 2021). The main trend, however, seems to be that Norwegian municipalities are rather weak and passive owners (Ringkjøb et al. 2008, p. 55).

18.9. Monitoring

The formal monitoring of MOCs rests on two pillars, the municipal and the corporate pillars, respectively.

Governing and oversight of MOCs resides largely with four municipal actors: The council, the mayor, the control committee and the municipal auditors (Figure 18.2). First, the *municipal council* decides on the establishment of MOCs, their articles of association and their legal corporate forms. The council carries the superior political authority and responsibility for the municipality's ownership positions and its service provision. Thus, the municipal council cannot organise away its responsibility through corporatisation. The ownership report of the municipality and the annual reports from the MOCs are important documents in this respect. Information from owner assembly meetings and board meetings communicated by the mayor or appointed local politicians may reach the executive committee of the municipal council and maybe also the council itself, but these

communication channels are often informal and occasional. Second, the *mayor* carries a special responsibility since she or he is the municipality's legal representative. Accordingly, the owner assembly of MOCs is appointed by and usually composed of the mayor (wholly owned AS) or the mayors of the municipal owners (inter-municipal companies, IKS or AS).¹⁴ Because the mayor signs the companies' annual documents, the mayor bears full responsibility for ensuring adequate monitoring of the MOCs. Sometimes the mayor may involve the municipal administration in assisting him or her in monitoring the MOCs. This function can be placed with the municipal CEO, with a special staff unit, or distributed with different municipal departments. Consequently, this function may be divided between several administrative entities, making the control fragmented, incoherent, and occasional. As late as 2016, nearly 90% of the municipalities did not have administrative units specialised for ownership management and control (Monkerud et al. 2016). In local governments organised by the parliamentary principle (Oslo and Bergen), the city government is responsible for monitoring MOCs.¹⁵ Based on authority delegated from the city council, each member of the city government is responsible for corporations that fall under their individual portfolios. Third, all municipalities are required to establish a *control committee*, composed of local politicians, and appointed by the council.¹⁶ The committee serves as 'the eyes and ears' of the municipal council, monitoring the decisions and activities of the municipal administration, including the management of the municipality's owner interests in MOCs. The committee must prepare an inspection plan at least once every election period, listing which MOCs to control, and the plan must be passed by the council. Further, the committee holds a wide mandate to require information, to investigate and to attend meetings in owner assemblies.

¹⁴ Sometimes, other local politicians may be appointed members of the owner assembly. This happens if a municipality owns many companies, thus overwhelming the capacity of the mayor, or if a larger municipality holds several seats in the assembly of an IKS, thus necessitating the appointment of additional members.

¹⁵ Local Government Act, chapter 10. Three of 11 counties have chosen the parliamentary model: Nordland, Troms og Finnmark, and Viken.

¹⁶ *Kontrollkomite*. Local Government Act, chapter 23.

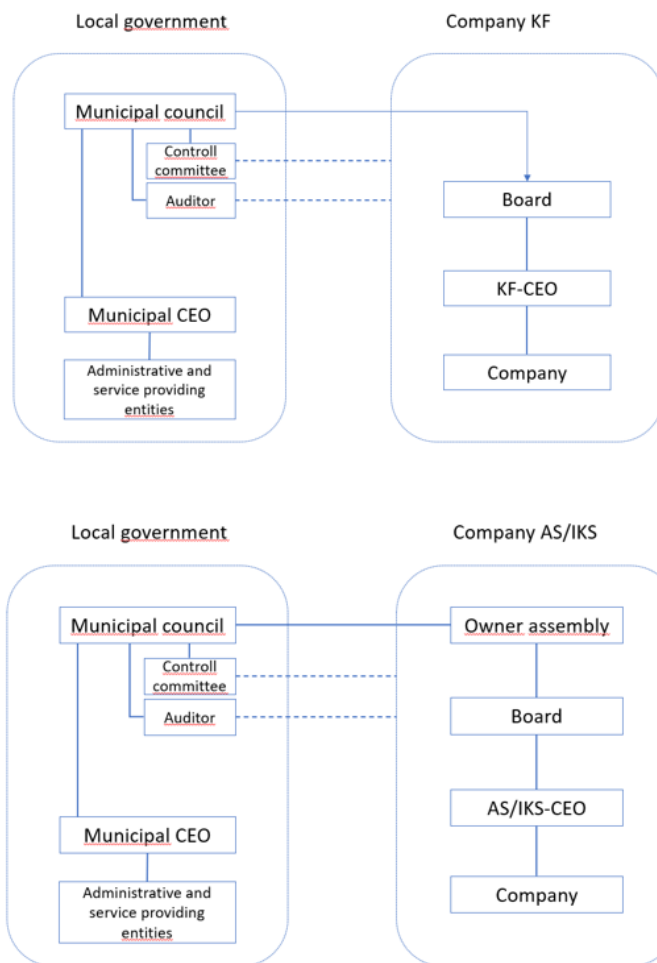
By law, the committee has unlimited access to whatever information deemed necessary for supervision, and it is required to prioritise administrative auditing according to presumed risk and significance (§23-3). The committee reports directly to the council. The control committee shall have its own secretariat, which by law needs to be organised independently from the municipal administration. Fourth, the *municipal auditors*, cooperating closely with the control committee, have very much the same authority as the committee.¹⁷ Finally, local governments commonly use several non-mandatory monitoring instruments (Bjørnsen et al. 2015). Mayors, municipal CEOs and professional managers commonly meet with MOC managers and board members in the period between owner assemblies, in order to exchange information and discuss corporate strategy and performance.

The corporate monitoring system comprises three elements (Figure 18.2). First, *the owner assembly*, which usually meets once or twice a year, is the superior authority of the IKS and the AS type MOCs. For the KF MOC type the municipal council plays this role, which underlines the hybrid character of this sort of company (politically integrated, administratively autonomous). Second, apart from deciding on the MOC's annual documents, a key function of the owner assembly is to appoint *the board*, which de facto is the main monitor of a MOC (Tricker 1995). Most board members still seem to be local politicians, earning their seats in the usual post-election 'horse-trading' of positions (Bjørnsen et al. 2015). In line with company law, the board oversees the MOC on behalf of the owners. In addition to taking care of the owner's interests, the board is also supposed to cooperate with the MOC manager in developing the company (Van Thiel 2015). Sometimes, the balance between control and cooperation may become difficult to uphold, for example if board members let themselves be co-opted (Selznick 1949), thus identifying themselves more with the company than with their municipal owner or owners. Case studies indicate that some

¹⁷ *Kommunerevisjon*. Local Government Act, chapter 26.

local politicians who have been appointed as board members, may operate as mouthpieces for the company when they enter the municipal council or the executive committee (Berge and Torsteinsen 2021b; Torsteinsen and Bjørnå 2012). While some find this combination of roles highly problematic and claim that boards should be ‘professionalised’, i.e. only include non-political experts, others argue that politicians on the boards promote informal information sharing and mutual understanding, beneficial for corporate autonomy and democratic control. Nonetheless, in a survey, local politicians mention appointment of board members as a relatively important way to control companies (Ringkjøb et al. 2008, p. 52), and sometimes municipalities even instruct their board members how to vote in board meetings (Bjørnsen et al. 2015, p. 128). Finally, the IKS and AS companies are annually controlled by *auditors* engaged by their own boards, and the results are communicated through the annual reports, which are also distributed to the owners.

Figure 18.2: Relations of authority, appointments, and accountability



Note: dashed lines indicate monitoring and control.

18.10. Accountability

In the former section, we described how introducing MOCs into Norwegian local government service provision meant setting-up a corporate monitoring system in addition to the municipal one already in existence. This two-pillar system has implication for the construction of formal accountability regimes. Bovens (2007) defines accountability in a narrow sense as “a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences” (p. 450). Schillemans (2011) has elaborated this definition by

describing three phases of account giving: the information, discussion, and consequence phases.

Within the municipal pillar, multiple forums and actors may be identified, linked together in a hierarchical chain of governance. The ultimate forum is of course the citizens, calling the municipal council to account through local elections every fourth year, but also through the political discourse going on between elections. At the next level, the municipal council is the forum whereas the municipal administration (including service providing entities) is the actor. Both in practice and according to the LG Act, the actor that is formally accountable to the council is the municipal CEO. This follows from his or her position as the supreme leader of the whole municipal administration, and the council may not even intervene in his/her exercise of staff management (§13-1). Thus, at this third level, the municipal CEO is the forum while all subordinate managers are the actors called to account.

Within the corporate pillar the owner assembly is the forum at the first level, while the board is the actor required to give account. At the next level, the MOC's top manager serves as the actor vis-à-vis the board now operating as the forum, and finally, the top manager serves as the forum to whom subordinate managers must give account. This chain of accountability relations is commonly referred to as corporate governance (Berle and Means 1933; Tricker 1995). It is the corporate sector counterpart to the system of accountability relations found in public sector representative government as outlined above (Klausen and Winsvold 2021).

One extant study found that deficient understanding of corporate governance and the rather complex chain of accountability relations between the council and the MOC is an important impediment for control over MOCs by elected councillors (Bjørnsen et al. 2015).

Consequently, the accountability linkage between the municipality and the IKS and the AS types of company is the owner assembly, the council as the forum and assembly as the actor.

In practice, however, politically appointed board members may also be called to account by the municipal council, e.g. in terms of not being re-appointed. Although at odds with codes of corporate governance (KS 2020), this practice is not unusual, neither in Norway nor abroad (Van Thiel 2015). When it comes to the KF form of MOC, the accountability linkage between the municipal council and the company is tight and direct through the board. However, as the council plays two roles vis-à-vis the board, both as the owner assembly for the KF and as the supreme political authority for the whole municipal organisation, the relationship may be characterised as hybrid and thus somewhat opaque.

18.11. The MOC Executive Director

We do not have any data describing if and to what extent the decision-making authority of MOC managers is restrained. To acquire this type of data a separate study would have to be made. Some data has been collected in case studies, mostly as supplementary information to another research focus (e.g. Berge and Torsteinsen 2021b; Renå 2013). Beyond that, our impression is basically made up of stories presented in the media.

Concerning labour issues, in some cases corporatisation may be motivated by the need to recruit expertise that is attractive in the private market and therefore used to salaries above negotiated municipal tariffs. This has been documented in a couple of municipalities in western and southern parts of Norway (Berge and Torsteinsen 2021b), but we have no data indicating how prevalent this phenomenon is. These case studies also show that MOC managers are reluctant to set wages higher than necessary for attracting specialised engineers, this in order to avoid tensions between the company and its owner. Consequently, public ownership may have a disciplinary effect on MOC managers' decision-making.

As to financial issues, founding documents often decide limits for the aggregated size of loans and liabilities that the company may take, and these limits are regulated over time. This

issue is especially important for the IKS, for which the owners carry unlimited responsibility, and for the KF, whose budget is (usually) integrated into the overall municipal budget.

Nonetheless, several cases uncovered by media show that some managers may have wide manoeuvring space, sometimes with serious consequences. In a research article Renå (2013) has analysed three cases of economic misgovernance in municipal companies, including two KFs and an AS. One of his most interesting findings was that the municipalities' own control regimes were not able to discover the crimes being committed. Instead, the scandals were uncovered by investigative journalists in one of Norway's largest newspapers, *Aftenposten*. Similar scandals have recently been uncovered by Norway's leading business newspaper, *Dagens Næringsliv*. These examples indicate that municipal owners of MOCs do not always exert sufficient economic control.

Finally, to what extent the decision-making power of MOC managers is restrained when it comes to organisational issues, will probably appear in founding documents, employment contracts, laws or elsewhere. In a legal analysis, comparing the IKS and the AS forms, Høivik (2005) concludes that the top managers have approximately the same manoeuvring space in both. However, if usual restraints on selling public property apply, the municipal councils will have to be involved if the economic and strategic values exceed certain limits.

18.12. Conclusion

During the last 25 years, corporatisation has become a prominent feature of Norwegian local government. Although growth in the number of MOCs has levelled off since 2013-2014, we have seen a slight increase since 2018. Approximately 85% of the MOCs are organised as private law limited liability companies (AS) while the remaining entities are public law inter-municipal (IKS) and in-house companies (KF). These forms align with Type 3, Type 2 and Type 1 respectively in Van Genugten et al.'s (2020) typology of arm's length bodies. The prevalence of corporate forms is especially high within 'hard' services, e.g. energy supply,

waste management, property management and fire protection, but it is also used within some ‘soft’ services, e.g. employment training, administrative services and culture and education. However, measured by the number of employees, MOCs constitute almost 10% of local government employment (KS 2022). This implies that although MOCs are important within ‘hard’ services, they play a minor role within the dominating welfare services of the municipalities, i.e. education, kindergartens, health, and social services, which account for almost 90% of all municipal employees.

Although some local governments have made distinct progress towards advancing democratic accountability of MOCs, the local government sector overall is still marked by deficient corporate governance - not least because exercising indirect governance is challenging for lay part-time local politicians, lacking sufficient competence and capacity to do so. In addition, the municipal CEO’s role in governing MOCs, even in-house KFs, has been limited and unclear, and many of them have felt side-lined in this respect. Thus, the introduction and rapid growth of MOCs seem to have uncovered an institutional gap in terms of local government failing to develop public corporate government mechanisms and practices to keep up with this development (Klausen and Winsvold 2021). With the new LG Act (2018), however, national government has made a small step towards filling this gap by ordering the municipalities to prepare an ownership report at least once every four years.

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