



Consultation with the OECD Working Party on State Ownership and Privatization Practices

27 March 2018

Global reporting standard for internationally active SOEs

- BIAC appreciated the strong support for future work on SOEs from the **2017 OECD Ministerial Council Meeting**, including in the area of competitive neutrality. We also noted with great interest the call from Ministers to develop a voluntary global reporting standard for internationally active SOEs. The **international expansion of SOEs** has further underlined the need to address concerns regarding their competitive situation. The focus on internationally active SOEs is therefore welcome.
- **Improving transparency** is an important issue, and we have previously stated our support for the development of a transparency checklist. Disclosure should give the **full picture about direct and indirect advantages** SOEs might enjoy and should include details on any state grants or subsidies, guaranties granted to SOEs, etc.
- However, having transparency is not enough. It is important to pay due attention to **how such a standard would be implemented in practice**, and what kind of review mechanisms should be in place. Increased transparency will not automatically lead to a level playing field. There must be detailed reflection on how unacceptable support would be addressed.
- It is also important to **consider the verifiability and credibility** of the information that would be provided, i.e. the standard must provide reporting outcomes that can be subject to independent, external review and assurance. Important questions to consider include the following: Who provides the information? And how can it be ensured that the information provided is reliable and comparable? Who collects the information? Particular attention needs to be given to the **methodology for reporting and assessing** reported results.



- In developing any international reporting standard, it is important to emphasize the need for **high quality reporting and disclosure** and to consider what reporting standards currently exist in order to **seek synergies and complementarities** and not confuse an already complex reporting landscape. Research should be carried out on what currently exists (e.g., IASB, IIRC) to take good account of key aspects needed for reporting on corporate governance included or embedded in other reporting.
- Given the strong presence of SOEs in **emerging economies** (10-30% of economic activity according to OECD's own studies), it is crucial that the standard is being developed with the objective of bringing these countries on board. If only applicable to OECD countries where the SOE share is much less, this would not be conducive to a level playing field.
- We agree that Working Party on State Ownership and Privatization Practices is well-placed to deal with this important project, but would also recommend **working closely with other parts of the OECD** as this issue relates to overcapacity in certain sectors and investment policy for example. With regard to the latter, transparency is for example also an issue in the framework of discussions on national security screening, which is currently getting increased attention. BIAC strongly urges that analytical policy work on SOE-related issues be increased in other key OECD Committees, including the Trade, Investment, Competition, and Governance Committees, as well as the Working Group on Bribery. The OECD needs a **comprehensive, cross-cutting, horizontal approach to critical SOE issues**.
- The idea of a checklist, requiring countries to let SOEs into the market if they fulfil the requirements, should not be the objective. The focus should be on **increasing transparency, creating expectations, and addressing unfair advantages** to create a level playing field.
- Provided that a robust instrument will be developed taking into account our key considerations, we support the plan to have it underpinned by a **Council Recommendation**. Having a legal instrument would give it a special status, and in particular would allow it to be used to check implementation and to use it in the OECD accession process. We would like to express our strong interest in being closely involved in this project.



Integrity and anti-corruption in state-owned enterprises

OECD background report

- BIAc appreciates the **detailed analysis on integrity and anti-corruption challenges in SOEs**. In view of the rising importance of SOEs (over 20% of the world's largest 100 multinational enterprises are SOEs), is particularly worthwhile. It is an important follow-up to the OECD's 2014 Foreign Bribery Report, which gave evidence of the involvement of SOE in foreign bribery cases. By providing such detailed analysis on SOE's exposure to corruption risks, the OECD has certainly filled a gap.
- As highlighted by the results of the survey, **corruption challenges in SOEs are real**: The fact that in almost half of the participating companies (and 42% of all respondents) at least one respondent reported that corrupt and related irregular practices materialized in their company in the last three years should serve as a wakeup call to take urgent action.
- The fact that the SOE report states that “the **greatest obstacle to their companies' integrity relates to relations to the government**” underlines the importance of independent oversight and autonomy of integrity functions. It also highlights how the privatization process, when appropriate, can contribute to increasing transparency. This issue should therefore also be given due attention in the privatization toolkit.
- The report puts forward a number of useful suggestions for the state to effectively encourage SOEs to better prevent corruption risks from materializing and detecting them. However, as the report correctly emphasizes, such efforts will only be effective if **states themselves adhere to high standards of integrity**. We have therefore consistently called for additional adherence to the OECD Anti-Bribery Convention as well as the OECD Declaration on International Investment and Multinational Enterprises, which include the MNE Guidelines. A global level playing field remains a major challenge.



Building blocks of the Anti-Corruption Guidance for SOE owners:

- The draft recognizes that the starting point should be the implementation of the SOE Guidelines. BIAC very much agrees with this, but underlines that first there needs to be a mechanism in place to **get non-member countries adhere to the Guidelines**, and second there must be a mechanism to **verify how countries live up to the commitments**. The peer review mechanism for the Anti-Bribery Convention for example has proven to be highly effective.
- The objective of the Guidance should be to ensure transparency and the adoption of high-quality integrity and compliance programs in SOEs. However, the draft should more duly underline that the **reporting and disclosure must be of the highest quality**. SOEs should prepare financial statements in accordance with International Public Sector Accounting Standards or International Financial Reporting Standards. Additionally, there should be encouragement to undertake extended organizational reporting. The credibility of this extended organizational reporting would be enhanced if it too, was subject to independent external assurance review.
- Like for the global reporting standard, due attention should be given to **implementation and encouraging change**. For example, in section “III. Corruption prevention and detection at SOE level”, the notion of “(self-)correction” should be added.
- The **benefits of cooperation between SOEs and the private sector** should be more duly highlighted: Specific suggestions could include setting up a platform for exchange of experience with the private sector on best practice and capacity building programs as well as specific steps such as the promotion of Integrity Pacts and High-Level Reporting Mechanisms. The participation of SOEs in public procurement has been of particular concern to governments and companies alike, and should be given due attention. Public-private dialogue would also be particularly worthwhile to address corruption in infrastructure projects.
- While the draft currently contains overarching principles, we underline the importance of **specific recommendations which are measurable**, such as: Autonomy of integrity functions; specialized board committees composed of independent members; integrity tools related to public procurement; integrity pacts, with anti-corruption clauses built into contracts; observance of OECD instruments, such as the



MNE Guidelines; high-level reporting mechanism; requirements concerning the monitoring of integrity and compliance programs of SOEs, etc.

Selected comments on the proposed building blocks:

- **Building block 3: Ensure clarity in the legal and regulatory framework and the state's expectations:** The state's expectations should indeed be clearly communicated. However, alarming levels of corruption in some SOEs show that expectations alone are not enough.
- **Building block 5: Require adequate risk management systems within SOEs.** This is a key requirement. We underline the necessity for risk management systems to be consistent with private sector best practice. As highlighted by the OECD study, not all states require SOEs to establish risk management systems. Due attention should be given to the reporting and disclosure aspects of any internal control and risk management systems. That is, when considering what is appropriate with respect to internal control and risk management, one must think about how the SOE will be able to communicate the existence of the systems, as well as the adherence to (and robustness of) those systems. Furthermore, risk management systems should not only be monitored, but also *adjusted* if needed.
- **Building block 6: Require adoption of high quality integrity mechanisms:** The state should instruct SOEs to adopt internal control mechanisms. This section mentions board professionalism but does not refer to the professionalism (and integrity) of the staff working in the SOE. While board members and senior management must indeed uphold the highest ethical standards and set the right tone at the top, capacity building is not only important for managers, but also employees, and relevant public officials in compliance. The overall effectiveness will depend on the skills, expertise, and professionalism of the staff working within the organization. The focus should be on "practical implementation" of the mechanisms throughout the organization – requiring a skilled, expert, and professional staff. It should also address what should be done in the case of digressions.
- **Building block 7: Safeguard the autonomy of SOEs and their decision-making bodies:** This is a particularly important point, including the requirement that serving politicians do not sit on SOE boards.



- **Building block 8: Require objective external review of SOEs:** Again, this is a particularly important point as SOEs should be subject to objective external review. The quality of the reporting is particularly important. Consideration could be given to the role of the Ministry of Finance.
- **Building block 10: Invite the input of civil society, the public and the press:** Given the great number of civil society groups, it might be appropriate to focus on “relevant stakeholders”. As mentioned up front, the importance of cooperation with the private sector should be more duly highlighted, not only in this building block, but also before.