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

23 October 2017

BIAC Key Messages on the future program of work

High level attention to SOE work

We welcome the general direction of the program of work and appreciate that SOE issues have received significant high-level attention, including in the 2017 Strategic Orientations of the OECD Secretary General, which underlined the need for further analysis in light of the rapid internationalization of SOEs, with particular attention to enhancing transparency about the benefits they may enjoy and ensuring that they play by the same rules. We also noted that the Ministerial statement called on the OECD to examine the possibility to “develop a global reporting standard for internationally active SOEs.”

A strong effort to implement the SOE Guidelines and accession discussions

BIAC has consistently underlined the need to implement the SOE Guidelines. We therefore welcome that the proposed program of work calls for a strong effort to ensure the implementation of the SOE Guidelines. The Working Party should look at best practice in other committees, such as the Working Group on Bribery, which has a rigorous peer review process in place.

As a first step, and to ensure credibility of the process, it is essential that the Guidelines are implemented in OECD member countries. As a second step, we support close cooperation with non-member countries and additional adherence to the SOE Guidelines, in particular non-OECD G20 countries, given the importance of SOEs outside of the current OECD membership. The Guidelines are also likely to play an important role in the accession discussions, in particular as the OECD is evaluating the possibility of six additional countries to join the Organization (Brazil, Argentina, Peru, Bulgaria, Croatia, Romania).
**Analyzing the SOE landscape**

The evolving SOE landscape, characterized among others by increasing internationalization and a stronger push towards mixed ownership of SOEs, underlines the need for the OECD to continue as a knowledge center for SOE information and provide a comprehensive mapping of the SOE landscape in OECD and partner countries. A regularly updated OECD fact book with synthesized information about selected key areas would be helpful.

**Internationalization of SOEs**

In light of the continued high levels of SOEs acting at the international level, we appreciate that the Working Party, in cooperation with the Trade, Investment and Competition Committees carried out a major project on SOEs in the global market place. While SOE activity has come down slightly, it remains very active, and many of the problems identified, e.g. in the area of lack of integrity or level playing field, persist and require continued attention.

While on the one hand the OECD has identified restrictive national practices and adverse reactions vis-à-vis some foreign SOEs, we strongly recommend that this work be complemented by focusing on identifying and addressing undue advantages SOEs might enjoy. We would also like to underline again the issue of SOE Board effectiveness, and would be pleased to help facilitate further dialogue with the OECD in this area.

**Further work on competitive neutrality**

BIAC was very supportive of the OECD’s work on competitive neutrality resulting in a major report published in 2012, which underlined the need to maintain a level playing field between public and private business. We therefore welcome the suggestion in the program of work to look at ways in which competitive neutrality can be enforced and monitored in practice.

We underline that many of the proposed recommendations, including the importance to ensure that SOEs operate in the same tax and regulatory environments, with debt neutrality, competitive and non-discriminatory public procurement, etc. remain valid and should be addressed with dedicated follow-up work. New work together with the Competition Committee to identify best practices with a view to providing concrete guidance to governments in specific would be very helpful.
A level playing field applies to all sectors, including the finance sector. We would be pleased to involve our finance experts if additional work on strengthening state-owned financial institutions is being considered.

**Privatization and broadening SOE ownership**

We note that privatization and broadening of SOE ownership is mentioned at the end of the program of work. We underline that this remains an important pillar of the Working Party on State Ownership and Privatization Practices and is an integral part of its mandate. We therefore recommend that sufficient attention be given to this work area.

Having a clear view and guidance on the alternatives that privatization can provide to state ownership is important to inform discussions on the rationales of state ownership. Work on privatization is one of the possible outcomes of the regular reviews of each state’s ownership policy as recommended in the SOE Guidelines.

The background paper on privatization and broadening the ownership of SOEs provides an interesting overview of company specific information regarding privatization. We look forward to further discussions on guidance to be developed in this area.

Key issues to be addressed include among others: how to ensure integrity of the process; how to ensure professionalism of the process; how to attract private capital and develop efficient business planning; the necessary pre-privatization work to adjust SOEs to the relevant corporate governance standards.

**A global reporting standard for internationally active SOEs**

Improving transparency is an important issue, and we have previously stated our support for the development of an OECD checklist in this area, bearing in mind that transparency is not a goal in itself, but should be followed by dedicated follow-up work.

Disclosure should include details on any state grants or subsidies received by the SOE, guaranties granted by the state to the SOE, etc. To ensure fair competition, it is important to have the full picture about the direct and indirect advantages SOEs enjoy. A transparency check list can play an important role by providing a basis for objective assessment of what should be considered good practice when SOEs operate abroad.

As far as the outcome of such an exercise is concerned, there are a number of issues that need to be taken into account, such as comparability, access to the information, and most important, action to be taken if there is a lack of transparency. Consideration should be given to situations when the exercise reveals that there is unfair competition. Increased
transparency also does not resolve the underlying issue of unfair competition and does not automatically lead to a level playing field.

As far as a global reporting standard is concerned, we would welcome further details on the process and the envisaged outcome. With regard to the proposal mentioned in the program of work to have a “model SOE chapter” for future trade and investment agreements, we would like to express our interest to contribute to these discussions and receive further details.

**Anti-Corruption and Integrity Guidelines for SOEs**

While corruption is an issue that concerns all sectors and society as a whole, SOEs have a number of specific corruption-related vulnerabilities, such as close relationship between government, politicians and SOE senior management, and in some cases a lack of transparency and reporting. Further work to foster transparency, effective anti-corruption policies and a strong «tone from the top» are therefore indispensable.

We welcome the focus on addressing corruption and fostering integrity in SOEs and congratulate the OECD on the comprehensive background report, which contains a number of alarming facts, i.e. that 43% of respondents have witnessed corruption and other rule-breaking in their company in the last three years. Based on the 2015 OECD Anti-Bribery report, according to which about one third of the bribery cases concerned SOEs, a dedicated analysis related to SOEs is extremely timely.

While the paper rightly mentions that the Guidelines will be developed in close cooperation with the OECD anti-bribery and public sector integrity experts, we strongly suggest that close cooperation with the private sector should be added. The development of these Guidelines could significantly benefit from an exchange of views with the private sector and exchange of best practice, for example in the case of compliance programs. In particular listed companies have very strong transparency obligations.

Consideration should also be given to the link between privatization processes and addressing corruption issues in this context. Furthermore, we believe this initiative would be a good opportunity to specifically address not only the supply side, but also the demand side of bribery, which has been a long-standing request from BIAC and can be particularly relevant for SOEs.

BIAC stands ready to contribute to these discussions going forward. In addition to the area of anti-corruption, where the private sector has a lot of useful information to share with regard to compliance programs for example, BIAC could help share members' experience with corporate governance codes, stewardship codes, compliance programs (for anti-corruption and other topics), and skill selection more broadly.