



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

14 November 2018

### Program of Work and Implementation of the OECD Guidelines

- As the OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOEs) are underpinned by a Council Recommendation, follow up on the implementation of this Recommendation should be part of a regular process. We appreciate that the Working Party is discussing this issue as we have consistently underlined that implementation is not yet satisfactory and follow-up remains of utmost importance.
- The “gold standard” of monitoring processes across the OECD is the monitoring of the implementation and enforcement of the OECD Anti-Bribery Convention, which is based on a rigorous peer-review system involving 4 complementary phases. While such a monitoring is probably beyond what the Working Party can do, it can still serve as a model to be looked at for inspiration.
- Regarding the various options mentioned in the paper, option 1 would not go far enough if it only highlights SOE reforms undertaken. Such analysis should be complemented by information on which areas have not yet been implemented to provide concrete encouragement to countries to move forward with reforms.
- If the Working Group decides to undertake peer reviews of individual recommendations or thematic areas, we would appreciate the opportunity to contribute to discussions on the areas to be chosen. While all chapters of the OECD Guidelines are important, we would like to underline, among others, the importance of the recommendations on SOEs in the marketplace, which aim to ensure a level playing field and fair competition when SOEs undertake economic activities.
- In addition to discussing the implementation of the SOE Guidelines, due attention should be given to ensuring additional adherence to the Guidelines so that non-OECD countries which have an important SOE sector can effectively be included in the review process.



## Ongoing cooperation with other parts of the OECD

- We very much appreciate the important work on SOEs by the OECD Working Party on State Ownership and Privatization Practices. Given the impact of SOEs on other policy fields, including trade, investment, integrity and competition, we underline the importance of cooperation with other parts of the OECD. With regard to investment, for example, transparency is getting increased attention in the framework of discussions on national security screening.
- Other committees should therefore be invited to contribute to the important work of the OECD Working Group on State Ownership and Privatization Practices, including the development of the ACI guidelines and the transparency checklist, which are important priority projects.
- We also welcome the contribution to the OECD Business and Finance Outlook and the focus on trust and level playing field. In particular, we underline the importance of focusing on competitive neutrality and addressing competition distortions – such as subsidies, preferential treatment, special regulatory protection, procurement policy – which can impact a global level playing field.

## Global reporting standard for internationally active SOEs

- As stated previously, we appreciate that the OECD is working on an outline and questionnaire for future work on a global reporting standard for internationally active SOEs, which addresses areas of transparency and disclosure of particular relevance to cross-border transactions.
- We are particularly interested in the output on assessing subsidies and other benefits received by SOEs. 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, etc. granted to SOEs.
- However, as mentioned previously, transparency alone is not enough. It is important to reflect on 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. Questions to consider include the following: Who provides the information? Who collects the information? How can it be ensured that the information provided is reliable and comparable?
- Given the strong presence of SOEs in emerging economies, 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 less, this would not be conducive to a level playing field.

## Anti-Corruption and Integrity Guidelines

- We reiterate our strong support to the OECD for the development of the ACI Guidelines and the excellent OECD background report, which underlines the significant corruption risks in SOEs. The ACI Guidelines should provide constructive guidance to SOEs and governments in dealing with bribery. As such, they should help create trust and transparency, and support a level playing field between SOEs and the private sector in investments both at home and abroad. We agree with the proposed focus areas on sound corporate governance, a strict liability regime for corporate officers and the responsibility of the Board in corporate risk management.
- The role of the private sector is mentioned at the end of the Guidelines in the context of “inviting inputs of civil society, the public, the press and the business community.” We believe that the role of the private sector should be further highlighted. The private sector has developed and implemented strong anti-corruption programs, and SOEs could benefit from cooperation and sharing of best practices. Specific suggestions could include: setting up a platform for exchange of experience with the private sector on best practice, capacity building programs, as well as specific steps such as the promotion of integrity pacts and High-Level Reporting Mechanisms. SOEs might also wish to establish and implement a stakeholder engagement policy, referring to integrity among other things.



- In this respect, we would like to underline that one of the key recommendations in the area of integrity of the Argentina B20 anti-corruption and integrity task force was the need to implement high standards of ethics and integrity with a focus on SOEs. We have been actively involved in these discussions and have underlined the important work of the OECD (see B20 report on the [B20 website](#) for further details), which can play an important role in supporting the implementation of certain recommendations.
- Section IV of the Guidelines refers to the need for strong and transparent external audits. We would recommend specifically mentioning the International Financial Reporting Standards and International Standards of Auditing as appropriate requirements to be made for SOEs. This would help promote a level playing field for SOEs internationally and in comparison with private/listed companies. It would also provide a more comprehensive framework to address the specific disclosure and reporting matters mentioned in the report. SOEs would also benefit from defining key performance indicators for integrity mechanisms implementation.
- Due consideration should be given to the fact that not all countries have the same legal framework. Guidance on the application of existing legal frameworks would be helpful in this respect.
- The issue of “reputation and trust” could be further highlighted in the draft, as a lack of reputation and trust implies a high risk. This could be further addressed through practical steps, such as disclosure of the company’s commitment to integrity and the existence of internal procedures to make it effective, preferably based on a bottom-up approach to give concrete support to the dissemination of business ethics and prevent illegal behavior.
- The draft should also clearly call for the implementation of an “anti-bribery compliance function”, which should supervise the wide range of corruption-sensitive issues as well as coordinate and manage the reputational checks system and a comprehensive anti-corruption compliance program. Another recommendation could relate to the good practice of due diligence reviews prior to establishing relationships with business associates (such as sub-contractors, agents etc.), including examination of their own integrity procedures and checks to verify their “reputational history” in the field of integrity and business ethics.



- We appreciate the inclusion of the recommendation that politicians who are in a position to influence materially the operating conditions of SOEs should not serve on their boards and that a “cooling-off” period could be applied to former politicians. Consideration should be given to the opposite situation, i.e. when SOE officers are applying for positions within the owner.
- Finally, due attention must be given to implementation and encouraging change. The Working Party should therefore already now reflect on how the Guidelines will be implemented, whether non-OECD countries can adhere, and what follow-up process should be in place to verify how countries live up to their commitments.