Corporate Governance of State-Owned Enterprises

A SURVEY OF OECD COUNTRIES

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Corporate Governance of State-Owned Enterprises

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Foreword

With state-owned enterprises continuing to play a significant role in many OECD economies and key infrastructure sectors, the quality of their governance is attracting increasing attention. Problems of undue political interference, passive boards and inadequate transparency have prompted public concern, and a number of serious efforts at reform.

Provided they are soundly structured and effectively implemented, reforms can enhance economic growth potential by improving SOE efficiency and their access to capital, while contributing to fair competition by ensuring a level-playing field between companies in the private and public sectors. Better corporate governance of SOEs can also strengthen overall public governance through better transparency and alleviate the fiscal burden.

Governments face complex issues and trade-offs in designing reforms to achieve both sound organisation of the ownership function within the state administration and its effective exercise. They need an active ownership policy while avoiding undue interference in the day-to-day management of SOEs. They also need a chain of accountability that ensures that SOE boards and management make responsible decisions and that guarantees appropriate disclosure of information to the general public.

To help governments meet these challenges and achieve high standards of SOE governance, the OECD adopted Guidelines on the Corporate Governance of State-Owned Enterprises (April 2005) which have been widely endorsed and warmly welcomed by OECD and non-OECD governments. The Guidelines complement the OECD Corporate Governance Principles (Revised 2004) which is the recognised international benchmark for good corporate governance.

This report ***Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries*** provides a comprehensive inventory of current practices and recent developments. Published under the authority of the OECD Working Group on Privatisation and Corporate Governance of State-Owned Assets, the report illustrates the different policy options available to governments in exercising their ownership rights and includes references to official reports by state auditors, parliaments or ownership entities. This information was invaluable during the development of the Guidelines and can now be used by policy makers and practitioners as a reference when reflecting on their own practices and in shaping future reforms. The OECD will use the report and the Guidelines as it continues to promote good governance of state-owned enterprises through policy dialogue meetings with OECD and non-OECD countries. The report will also provide a solid basis for assessing the reforms now being undertaken.

W. Witherell

William H. Witherell
Director for Financial and Enterprise Affairs

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Executive Summary

The objective of this Report is to present a first attempt at a comparative overview of main practices and related issues in the corporate governance of state-owned enterprises in the OECD area. The Report forms the basis and accompanying documentation for the Guidelines on Corporate Governance of State-Owned Enterprises. The focus here is on state-owned enterprises (SOE), *i.e.* assets held in a corporate form. National definitions vary greatly and in federal states information only relates to those enterprises held by the central government, even though individual federal states often control quite large enterprises. Assets such as state-run hospitals as well as buildings and resources controlled administratively by ministries are excluded from consideration.

It is important to review the corporate governance of state-owned enterprises as: 1) State owned enterprises (SOE) still represent a significant share of activity in a number of OECD economies and may thus have an important impact on the overall performance of these economies; 2) Globalisation and liberalisation in many sectors have made the reform of the state sector pressing and raises the issue of the proper exercise of ownership rights; 3) SOEs face specific difficulties in terms of governance that cannot be addressed only by the use of instruments designed for public corporations; 4) improvements in the governance of state-owned enterprises are expected to promote growth through better performance and increased productivity of SOEs and indirectly by underpinning competition and high standards for the business sector in general.

Emerging market economies face many of the issues discussed in this Report. Despite important efforts to privatise, the state sector remains extensive in many sectors of the economy and the state has often retained shareholdings and other rights in the newly privatised companies. How non-member countries are responding to these challenges will be subject to complementary work in the future.

State-owned enterprises are still significant in many OECD economies

In many OECD countries, the state remains a significant owner of commercial enterprises that operate in competitive markets. State ownership includes businesses in several sectors, notably utilities and infrastructure, with energy, transport and telecommunication being usually the most important industries.

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The state's ownership of commercial enterprises is typically manifested as assets in the form of equity stakes in partly or wholly owned corporations; but also other organisational forms and ownership instruments exist. Moreover, it is not uncommon for the state, as a result of partial privatisation or direct intervention, to hold significant equity stakes in large publicly listed companies.

Regardless of the *form* of ownership, however, the mere size of state ownership in commercial enterprises makes efficient governance of these enterprises an important determinant of overall economic performance. SOEs may represent up to 40% of value added, around 10% of employment, and even 50% of market capitalisation in different OECD countries, and not only in the former socialist countries. These percentages are significantly lower in a number of OECD countries, which have undertaken significant privatisation programmes in the 1980's and the 1990's. However, state ownership in these cases is still concentrated in strategic and infrastructure sectors and the effect of these sectors on the competitive environment and overall economic performance is usually significant.*

Globalisation and liberalisation have made the reform of the state sector pressing

The globalisation of markets within most industries, technological changes and liberalisation in many infrastructure sectors has made readjustment and/or restructuring of the state-owned sector often necessary. The need to clearly separate state ownership from the regulatory role, and the necessity to put in place more efficient decision making processes and governance structures have been highlighted in many instances, including when it has been necessary to avoid failures or restructure after failures. Consequently, a number of OECD governments have undertaken significant reforms in the way they exercise their ownership rights in SOEs and in their corporate governance arrangements.

SOEs face specific difficulties in terms of governance

SOEs face specific difficulties regarding their governance. These governance difficulties derive from a number of characteristics that may be more or less acute depending on countries' administrative traditions, the recent history

* See for example, G. Nicoletti and S. Scarpetta, "Regulation, productivity and growth: OECD evidence", *Economic Policy*, 36, 2003. The authors have used the OECD Structural Database which, although it does not directly cover corporate governance arrangements, does deal with many of the issues that governments must decide about SOE and their regulatory environment.

of state sector reforms and the degree of liberalisation of the economies concerned. But they should be kept in mind in order to grasp the specificity of SOE governance. Firstly, SOEs are often effectively protected from two major threats that are essential in policing management behaviour in public corporations, *i.e.* the threat of takeover and bankruptcy. SOE management may enjoy more discretion than in the case of private ownership. In many instances, SOEs are not subject to the usual bankruptcy procedures or when this is the case, such as for listed companies, it is very rare that bankruptcy does really occur. The consequence has often been demands on the budget for investment and expansion programmes. Moreover, SOEs have been until recently operating in sectors where they have been protected from competition. Secondly, accounting and disclosure may not reach private sector standards but rather be oriented towards public expenditure control, which may be at the same time more burdensome and not fulfil the requirements of timeliness and materiality central to private sector disclosure practices.

Governance difficulties may also derive from the fact that in the case of SOEs there is often no clear owner but competing owners and stakeholders with widely different objectives. Who are the principals of the SOE agent-managers and what objectives do they follow? The principal may be a political agent and as noted below there are sometimes several such principals involved. Considering Ministries as the principals concentrates power in their hands. In other cases, the Parliament could be considered the principal, but acting through the Government. The risk of interest group capture and conflicting objectives are inherent. Finally, viewing the corporation itself as the principal and defining the duty of managers and Ministries as to act in the best interest of the corporation itself poses questions regarding the more precise definition of the interest of the corporation. Thus, in the case of SOEs, there is a complex agency chain with multiple and sometimes remote principals involving Ministries, the Parliament or interest groups, and the SOE itself. To structure this complex chain of accountability in order to make sure that SOE management makes efficient decisions is a real challenge.

The impact of better SOE governance is potentially important

In spite of these difficulties, the stakes are potentially high in a number of countries. Improvements in the governance of state-owned enterprises are expected to promote growth through better performance and increased productivity. If fully implemented, they should lead to a more transparent allocation of resources and a more effective supervision and management of enterprises. Better corporate governance will also facilitate access to capital (both debt and equity) and lead to the allocation of internal resources to their

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most productive use. Finally, better corporate governance of state-owned enterprises will improve the competitive process in those sectors open to entry by the private sector and where price controls have been lifted or reformed.

While a more effective exercise of ownership rights by the state may require in some instances changes in underlying legislation, it will usually be carried out within the boundaries of existing rules and regulations, such as Company Law and securities regulation. Taking such laws and regulations as given, there are nevertheless a number of steps that can be taken to improve the state's organisation and execution of ownership rights. By actively exercising the ownership rights that are associated with their equity holdings, through clear and realistic objectives, the state can play an important role in monitoring corporate performance and establish good corporate governance practices to the benefit of the corporations and the public at large.

Structure of the Comparative Report

The Comparative Report will first describe the scale and scope of the state sector in OECD countries. It will give a brief overview of its history, including the main rationale for its development and subsequent large scale privatisation programmes, as well as reforms undertaken in the 1980's and the 1990's. It will then describe the main characteristics in terms of size and industrial sector, and review the significance of the reforms for the development of some equity markets.

The Report will secondly outline the main types of organisation of the ownership function in the state administration. It will describe three main types of organisation which exist in OECD countries, a centralised, a decentralised and a mixed or dual model. It will explain the underlying rationale for such types of organisation, and describe their main characteristics as well as the advantages and disadvantages in terms of governance. It will also describe specific structures which may also be involved in exercising ownership rights, such as holding companies and *ad hoc* and specialised consulting services or agencies.

The third and main part of this Comparative Report will be devoted to describing the main features of the present corporate governance of state-owned enterprises in OECD countries. It will describe how SOE boards are nominated, their composition, functions and the way they perform their main tasks. It will also provide information on disclosure both by SOEs themselves and by the ownership entity about its holdings or the whole state-owned sector. The provisions to protect minority shareholders, where they exist are examined as well as to what extent they are specific to SOEs and effectively enforced. It will examine the way SOEs relate to stakeholders, if they have any specific requirements in this regards in comparison with listed or public corporations, how they fulfil their obligations and how they report on their performance in this regard. Finally, this Report will outline the ways in which SOE senior executives are nominated and remunerated.

This Comparative Report is based mainly on answers to a questionnaire that was circulated in summer 2003. Altogether, 24 countries responded during the period September 2003 to beginning 2005. Some official reports and articles have also been utilised, as well as official documentation, publications and *Annual Reports* by the ownership entities concerned, and national audit offices. Specific examples are given both in the text and in separate boxes.

PART I

Comparative Report

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PART I

Chapter 1

Scale and Scope of State-owned Enterprises in OECD Countries

Rationale and history of state-owned enterprises

Direct state intervention in the economy, although always present since the ancient civilisations, increased strongly in the 20th century as a result of the Great Depression and other financial crises, the Second World War and its associated destruction of industry and infrastructure, and the break up of colonial empires. Post war reconstruction in Europe and **Japan** pushed a number of governments to play a direct role in the economy, and therefore to nationalise or to found companies placed in "strategic" sectors, especially in the energy, transport and banking segments. In **Turkey**, **Korea** and **Mexico**, direct state intervention was based on developmental goals.

Theoretical support for state intervention has usually been derived from various notions of potential market failures, although regulatory failure also needs to be considered:[1] *natural monopoly, public goods, merit goods* and *externalities*:

- There is a natural monopoly when, because of strong economies of scale, cost minimisation can only be realised if the output is supplied by a single monopolistic producer. A typical natural monopoly could be, for example, the electricity, gas and the railway sectors, all of them are sectors in which an interlocking supply network is required for the provision of goods or services. In this situation a private monopolist will under-produce and apply higher prices in comparison with a competitive sector.
- There is a market failure also in the presence of public goods, (goods such as law and order). Consumption is disconnected from payments since it is impossible to exclude the consumers who act as free riders. This restrains private enterprises from producing the optimal quantity of the public good.
- Merit goods can be restricted to particular groups, but consumption is intrinsically desirable even if consumers cannot pay a market price (for example, merit goods are health care or education). As in the case of public goods, there is the possibility that the supply of merit goods is suboptimal.
- Externalities are the (positive or negative) outcome of an economic activity that affects other members of a community. Negative externalities are particularly concerning since, being produced by only one (or a group of) economic actor(s), they imply a cost for others (the typical example is pollution) which is higher than the private cost. Private cost might also be higher than the collective one (positive externality). In these cases of market failure, the private sector is encouraged to overproduce goods that generate negative externalities, and to

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under-produce goods that generate positive externalities. Another important externality used to justify regulation is information asymmetry: information is only known to one side of the market leading to inefficient outcomes.

The case for state ownership as opposed to regulation or outsourcing rests on two further considerations.[2] First, the state should be capable of regulating effectively or in raising and distributing taxes and subsidies. Moreover the state should be able to effectively contract with the private sector for the goods and services it wants provided. Where contracts are by their very nature incomplete, state ownership might be desirable. Second, state ownership might be desirable where the state cannot credibly promise not to confiscate or excessively tax enterprises. Where the state cannot guarantee such conditions, state ownership is needed, albeit as a second best solution, otherwise investment will not take place. The combination of regulatory deficiencies, political economy issues and social goals led to state ownership of many "strategic" enterprises on the following grounds:

- *Industrial economics:* through the SOEs, the state was able to:
  - sustain sectors of particular interest for the economy and in particular preserve employment;
  - launch emerging industries that involved significant start-up costs in cases where future private property rights remained uncertain;
  - control the decline of senile industries (such as the shipbuilding and the steel and coal mining), where direct subsidies were either not possible or where results could not be guaranteed under private ownership;
  - help the private sector to carry high risks, such as natural calamities in the agricultural sector.
- *Development economics reasons:* state-owned enterprises were meant to boost the economy of the less developed regions of a country, and to pursue equality and social stability goals through the investment in new infrastructure or the creation of new plants and employment.
- *Fiscal policy and redistributive goals:* the state invested in some sectors and controlled entry to be able to impose monopoly prices and then use the revenues as a fiscal income, or, on the contrary, to sell at reduced prices to some as a way to distribute subsidies. Through the ownership of enterprises, many states sought to pursue social goals such as sustaining employment and in general substituting for under developed welfare systems.

For all these reasons, states across the OECD area have invested in a wide range of sectors (from heavy industry to infrastructure, from agricultural to telecommunications, and technology) but to a widely varying degree, from almost no state ownership to quite dominant state sectors at some times.

Large privatisations in the 1980s and in the 1990s

The arguments in favour of state ownership were static and as the state evolved in both its capacity for regulation and in its ability to fulfil social goals more directly through, for example, a social security system, the boundaries between state and private ownership shifted. This contributed to a large wave of privatisations from the early 1980's through the 1990's in Europe from West to East as well as in a number of other OECD countries such as **Mexico**, **Turkey** and **Australia**. The privatisations taking place in western European countries were of course a different phenomenon from those in the economies in transition. The shift in the boundaries between the state and private sectors was also driven by other fundamental changes in the economic, political and technological environment.

A key factor was the realisation that state owned enterprises had become captured by favoured constituencies, and as a result were less productive than private enterprises. In many countries, the social goals underpinning state owned enterprises had clearly shifted through political capture favouring specific constituencies at high public cost. This development was aggravated and even enhanced by the difficulty of setting the objectives for SOEs and in evaluating their performance. With many SOE's leading an almost autonomous existence there was also a lack of commitment to good administration.

The lack of clear budget discipline and their political capture in many cases led to a rising opportunity cost for many states of direct ownership and the essential conflict between financing the demands of SOEs and maintaining other government programmes was thrown into relief. The fiscal burden of SOEs had reached serious levels by the end of the 1980's and this was contributing to the deterioration of the fiscal situation: the spiral of increasing public deficits, rising interests rates and growing inflation had reached an alarming state and needed to be brought under control.

Furthermore, the rapid diffusion of new technologies had left the natural monopoly argument on shaky ground. The globalisation of financial markets and increased international trade also demanded firms to be more free and flexible than usually possible in state ownership.

The first countries to undertake a long and consistent wave of privatisations were **Germany**, already starting in the early 1960s, and the **UK** at the beginning of the 1980s. Almost all of the other OECD countries followed especially during the 1990s, and reduced consistently the size of their public enterprise sector. At the same time, there was a significant change in the nature of regulatory regimes, from detailed direct regulation towards framework and market oriented regulation and to a marked decline in state control.[3]

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The following objectives were identified as driving privatisations:[4]

- **Market efficiency objectives:** The need to promote economic efficiency and growth was one of the key factors leading to privatisation: through a change in ownership, the state sought to boost the efficiency of the SOEs by giving them clearer goals, better incentive systems and above all by exposing them to market forces. Privatisation was seen as a vehicle to restructure and make efficient entire sectors through the substitution of monopoly by competition.
- **Capital market development and attraction of foreign investment:** privatisation was a good opportunity to develop or even to establish national capital markets through broader share ownership, and increased liquidity in equity markets.
- **Fiscal objectives:** After years of loose fiscal policy, the budget constraint facing the state had become particularly tight. Governments were thus pushed to cut expenditures for non-core activities such as finance for failing and cash hungry SOEs. This constraint was particularly important for exchange rate stability, including the need in some European countries to meet the Maastricht criteria on budget deficits and public debt.
- **Political objectives:** For transition countries, the privatisation process was a way of fulfilling their political and economic objectives involved in the shift from a state planned economy to the market economy: through privatisations they also launched a signal of their clear intention to exit the planned system for good. Privatisations were also meant to signal the new boundaries of state intervention in the economy. In other OECD countries, privatisation also reflected a shift in the political concept of the state: direct intervention was perceived as less appealing, especially in view of the rise of a mature welfare state. Some of them introduced in this context a policy to concentrate the role of state on its core tasks.

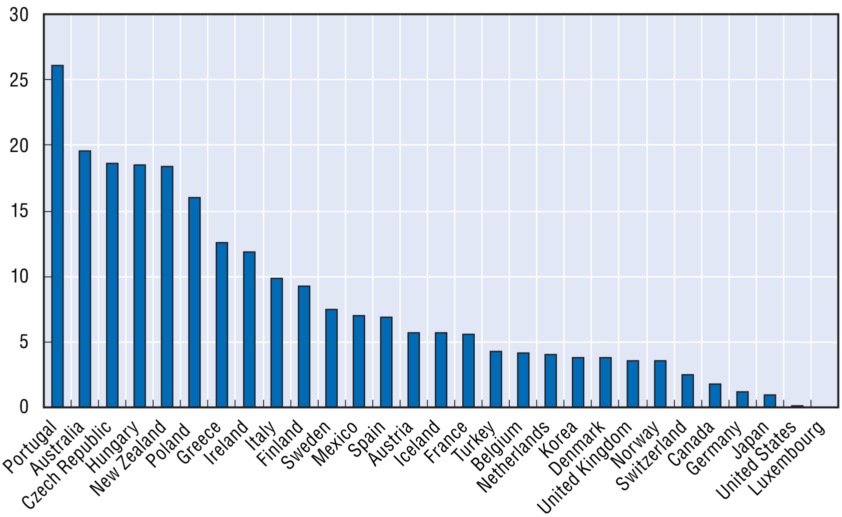
For a complete picture of the dimensions of the privatisation process with respect to the size of the economy in the OECD countries see Figure 1.1.

As evidenced in the Figures 1.2 and 1.3, the scope and size of public enterprises in OECD countries has slightly decreased since the end of the 1990's. There has been much less privatisation activity than in the early and mid-1990's. The size and scope of the state sector remains quite heterogeneous among OECD countries, but a number of them still have significant state sectors.[5]

A smaller but still significant state sector

Even after the privatisation wave, the direct role of the state in the economy has not lost its relevance: there is still a number of SOEs in many OECD countries and the sector is remarkable for its size, economic impact, and for the "strategic" sectors in which it operates.

Figure 1.1. **Privatisation proceeds relative to the size of economy (1990-2001) (per cent of GDP)**

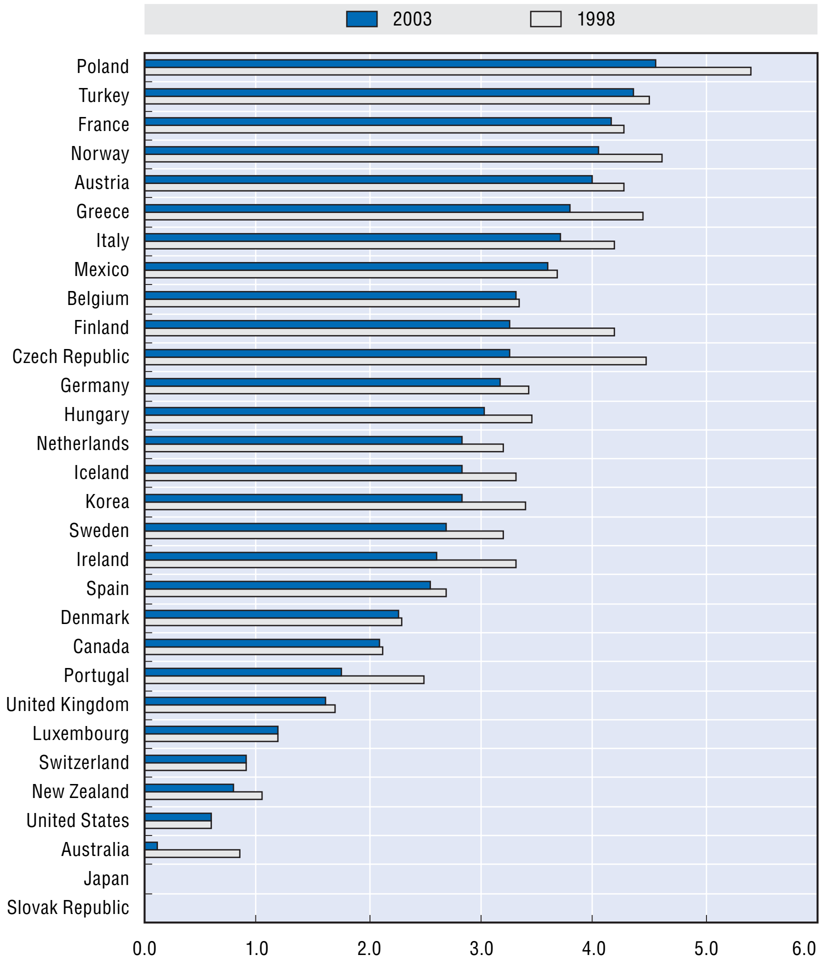


Source: OECD, *Privatising State Owned Enterprises* (2003), p. 26.

The following description of SOEs in OECD countries is derived from data provided by responses to the 2003 Questionnaire on Corporate Governance of State Owned Enterprises. This questionnaire was intended to obtain for each country a complete picture of its state sector, in terms of scale, composition, and impact on the economy of the country. For this reason information was requested concerning the total number of SOEs, the number of majority (or fully or minority) owned SOEs and how many of these were listed. Information was also requested about the economic performance of the SOEs such as turnover, value of assets and value of shareholder equity. Finally and most importantly, information was requested about variables that measure the impact of the SOEs on the economy: the share of value added in GDP, the proportion of total employment in the SOEs and the fraction of the total market capitalisation they represent.

Before proceeding with the analysis of the data, it is important to make some caveats. First, not all countries have responded to the questionnaire and, among the countries that have done so, not all the responses are complete. For federal states, responses only cover the central government even though in some countries there are significant SOEs at the individual federal state level. In some cases, the information only refers to the most relevant SOEs or those where the state is a majority shareholder. However, in the case of the latter, the state might even maintain control in some instances through "golden shares". Comparison is often difficult due to the lack of homogeneity in the

Figure 1.2. **Size of the public enterprises in OECD countries**

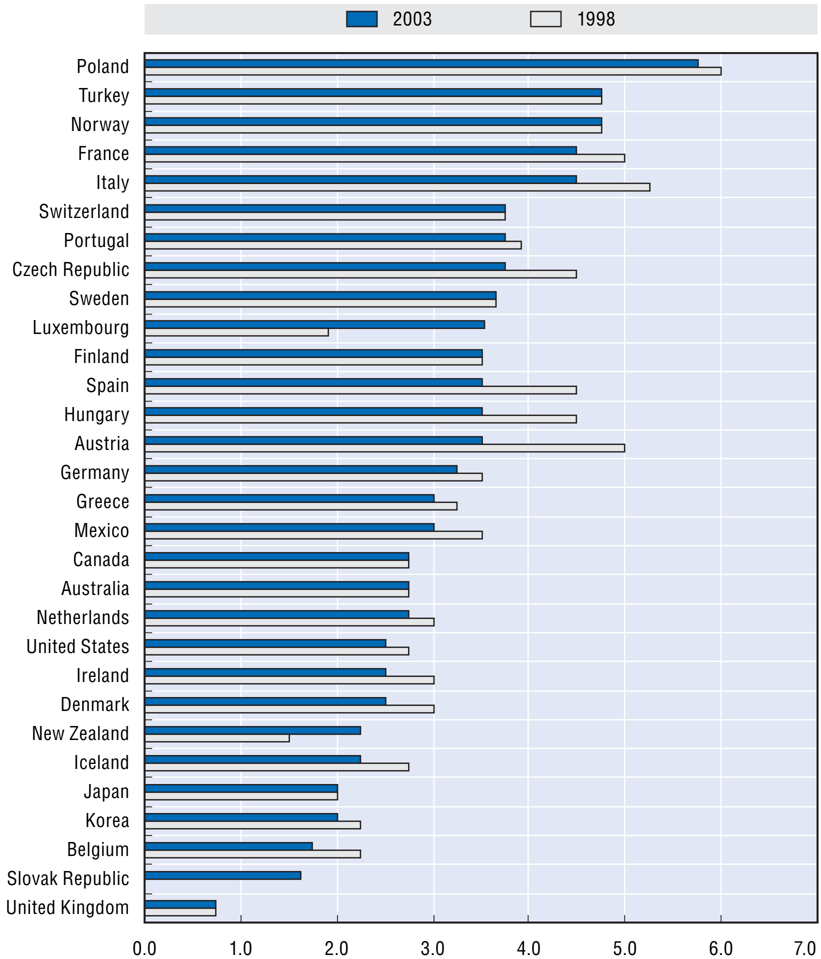


Source: OECD Product Market Regulation Indicators, "Product Market Regulation in OECD Countries: 1998 to 2003", Economics Department Working Paper No. 419.

answers provided by different countries. The most fundamental difficulty has been in the identification of entities needed to be classified as SOEs (see Box 1.1). The resulting description must therefore be treated with caution.

Data analysis has been kept at a very basic level for the moment. Some averages have been calculated when the data variation was not significantly skewed (*i.e.* in a large dataset, the median might be a more appropriate statistic due to major differences among countries). Some percentage ratios have also been calculated and, in order to aid comparisons among different economies, some rescaling of the variables has been undertaken.

Figure 1.3. **Scope of the State sector**



Source: OECD Product Market Regulation Indicators, "Product Market Regulation in OECD Countries: 1998 to 2003", Economics Department Working Paper No. 419.

As far as the absolute number of SOEs is concerned, the picture is dominated by the former socialist countries, **Czech Republic** and **Poland**. In these countries the number of SOEs is very large (over 1 000), due to the fact that data comprises all enterprises in which the state still retains a share, even a very small one, as well as enterprises under the supervision of both central and regional governments. This data might thus not been directly comparable to data in other OECD countries, taking also in consideration all the discrepancies described in Box 1.1. Apart from these two countries, Figure 1.4 shows a wide distribution of the number of SOEs, ranging from the minimum of only 12 for

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Box 1.1. **Discrepancies among data**

The data collected from the 2003 Questionnaire present elements of heterogeneity across countries. The major ones are listed below.

1. Coverage

AUSTRALIA: Information relates only to commercial enterprises owned by the Commonwealth Government of Australia, not the State or Territories enterprises.

AUSTRIA: Information relates only to enterprises at federal level.

BELGIUM: Enterprises that have been established to finance a special purpose or have not the legal form of commercial enterprise or in which the Belgian state has a small interest have not been considered. The National Bank of Belgium and the federal holding company have not been taken into account, nor have the SOEs of sub-national level.

DENMARK: Only commercial enterprises under the responsibility of the central government are dealt with in detail. Data refer to only SOEs, *i.e.*"only to the commercial enterprises where the central government is the sole or majority owner".

FINLAND: State enterprises are considered as totally owned enterprises. National companies operating abroad are comprised: this impacts data such as employment or value added.

FRANCE: For some data (employment) the full number of SOEs is considered. For other data (number of SOEs, ownership structure and equity) only the so-called *Premier Rang* SOEs are taken into account. Finally, only the 50 biggest in the group are taken into account for the asset value.

GERMANY: Only enterprises at federal level are considered. In particular among them only the ones of significant size (*i.e.* the ones with not less than 25% stake of the federal government and with not less than 50 000 Euro nominal capital) are taken into account.

GREECE: Only enterprises that are more than 5% state-owned are considered.

ITALY: Only the central government SOEs are considered.

JAPAN: The SOEs considered are the "listed government affiliated joint-stock companies".

KOREA: Only SOEs belonging to the central government are comprised. In the evaluation of the total asset value, the gross assets of the state-owned financial enterprises have been excluded.

THE NETHERLANDS: Only SOEs belonging to the central state are considered. In the evaluation of the total asset value, the gross assets of the state-owned banks have been excluded.

Box 1.1. **Discrepancies among data** *(cont.)*

NEW ZEALAND: Only SOEs belonging to the central state are considered.

NORWAY: Companies below a certain threshold and companies that are exclusively used for sector specific purposes are excluded.

POLAND: The data refer to the 1787 SOEs that are commercial enterprises. The total number of SOEs, including the ones in which the state has a small participation has been calculated as being 2235.

SPAIN: The SOEs taken into account are only the ones under the General Direction of the State Assets through the general sub-direction of the state holdings.

UK: All the data refer to the 24 out of 150 SOEs that fall within the remit of the UK Shareholder Executive. These represent the most significant of the 80 or so under central government control.

2. Years

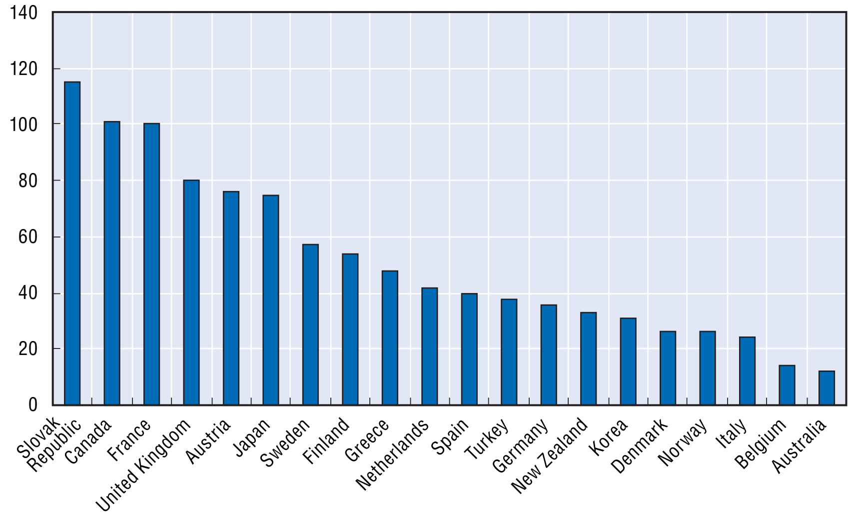
Most responses to the questionnaire were received at the end of 2003. However, some responses, together with many updates, were received in early 2005. Consequently, most of the data provided refers to 2002. However, this is not the case for Australia, Greece, New Zealand, Slovak Republic, Sweden and UK where the data refers to 2003. Moreover, in some countries, the data provided refers to different years: Belgium's data concerning listed SOEs and market capitalization are from 2004; the Czech Republic's data on the number of SOEs refer partly to 2001 and partly to 2003; the New Zealand value added of SOEs refers to 1999 and the Turkish total equity and asset value refer to end 2003.

In order to homogenize data from different countries, the 2003 $ PPP exchange rates have been used.

Australia, to a maximum of 115 for the **Slovak Republic**. Otherwise, roughly one half of the countries has between 50 and 100 SOEs (**Canada**, **France**, the **UK**, **Austria**, **Japan**, **Sweden** and **Finland**), and the other half between around 25 and 50 SOEs (**Greece**, **the Netherlands**, **Spain**, **Turkey**, **Germany**, **New Zealand**, **Korea**, **Denmark**, **Norway**, **Italy**). However, while the number of SOEs might indicate the administrative burden involved, the size of each economy differs to such extent that care is required in interpretation. The following figures give some more appropriate information on the relative size of the state sector in the economies concerned.

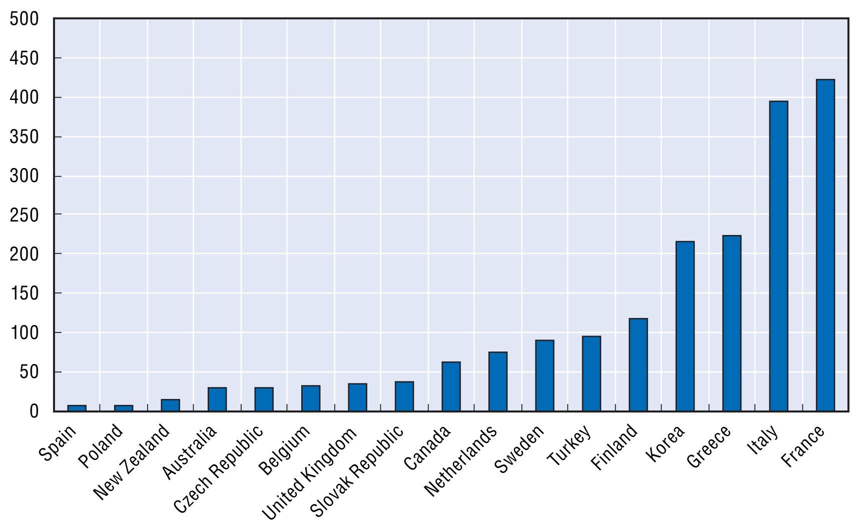
Figure 1.5 provides some data on the value of SOEs' assets expressed in dollars at the 2003 purchasing power parity exchange rates ($ PPP 2003). The figure indicates a wide dispersion among OECD countries. The leading group

Figure 1.4. **Number of SOEs in selected OECD countries**



Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

Figure 1.5. **Asset value of SOEs in selected OECD countries, billion $ PPP 2003**



Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003, and OECD in Figures.

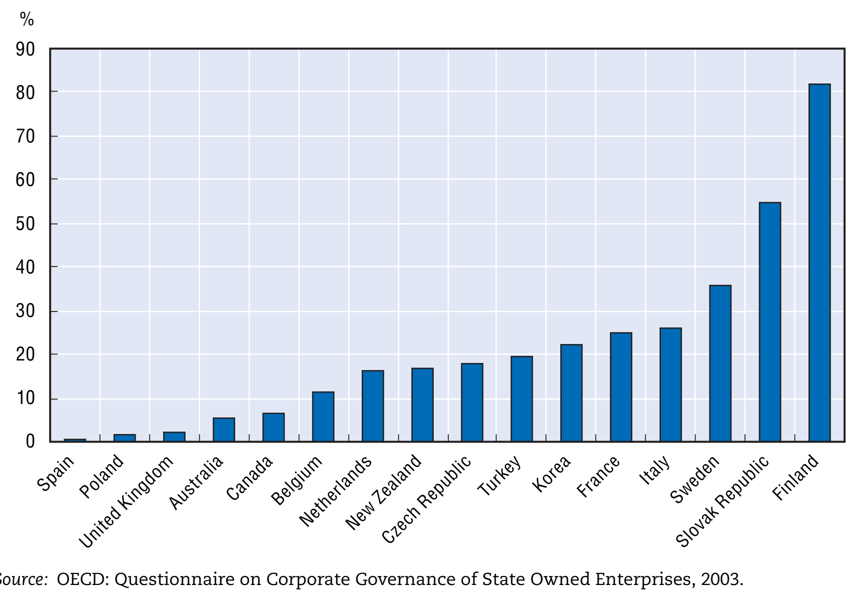
comprises **France**, **Italy**, **Greece** and **Korea**, with asset values of around 200 to 400 billion dollars PPP. Almost all the other countries have total SOE assets of less than 100 billion dollars PPP.

Even if asset values expressed in PPP dollars allow some comparisons among countries and indicate the scale of the state sector, it is also necessary to take into account the size of each country to figure out the relative impact of the state sector on the economy. Figure 1.6 indicates that **Finland** and the **Slovak Republic** have the highest ratio of SOE asset value relative to GDP, in the range of 50-80%. Then the largest number of countries (**Sweden**, **Italy**, **France**, **Korea**, **Turkey**, the **Czech Republic**, **New Zealand** and the **Netherlands**) have a ratio of SOE asset value to GDP comprised roughly between 15% and 35%.

As for the equity value of SOEs, it is likely to vary according to the proportion of firms which are listed and thereby whose equity value is closer to market values. As evidenced in Figure 1.7, **Italy** has the highest equity value of SOEs. In another small group of countries (**Turkey**, **France**, **Finland** and **Sweden**) SOEs have a significant total equity value, in the range of between 20 and 70 billion PPP dollars. **Poland** and **Korea** also belong to this group as only the state share in SOE total equity is already over 40 billions PPP $.

As evidenced in Figure 1.8, a number of countries report SOE total equity higher than 5% of GDP (**Italy**, **Sweden**, **New Zealand**, and **Turkey**). Here again **Korea** and even more so **Poland** belong to this group with ratios of state share in total SOE equity to GDP respectively of 4% and 10%. **Finland** has the highest equity and asset ratios with respect to GDP, due to the fact that domestic and foreign operations of SOEs are included into the asset and equity data, while it has some very internationalised SOEs, particularly relative to the size of its economy.

Figure 1.6. **Asset value/GDP of SOEs in selected OECD countries**



Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

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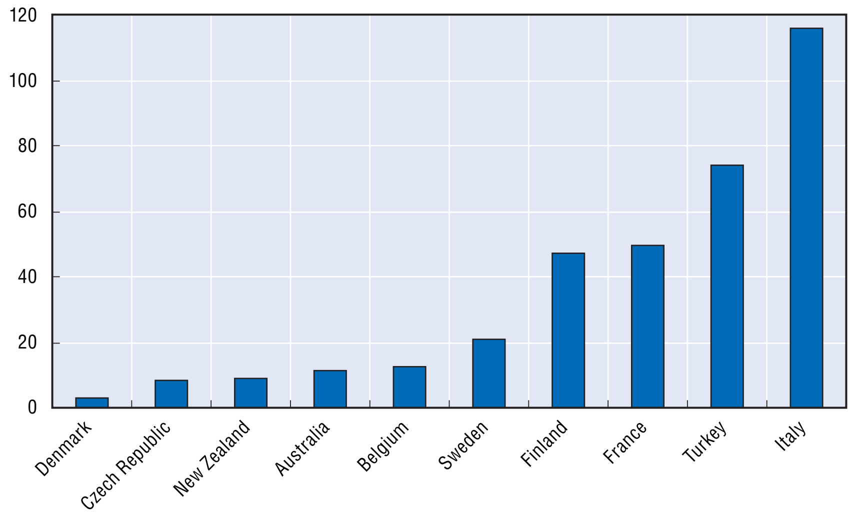
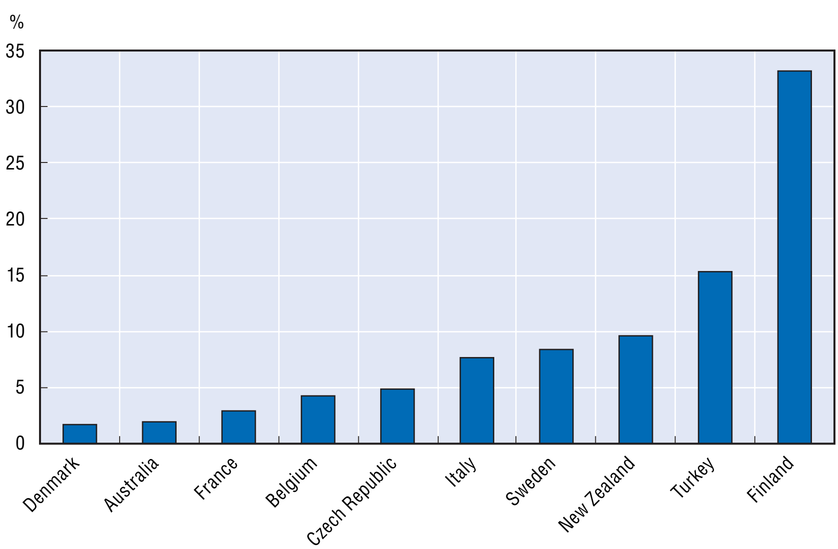
Figure 1.7. **Total equity value of SOEs in selected OECD countries, billion PPP $ (2003)**



Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

Figure 1.8. **Total equity/GDP in selected OECD countries**

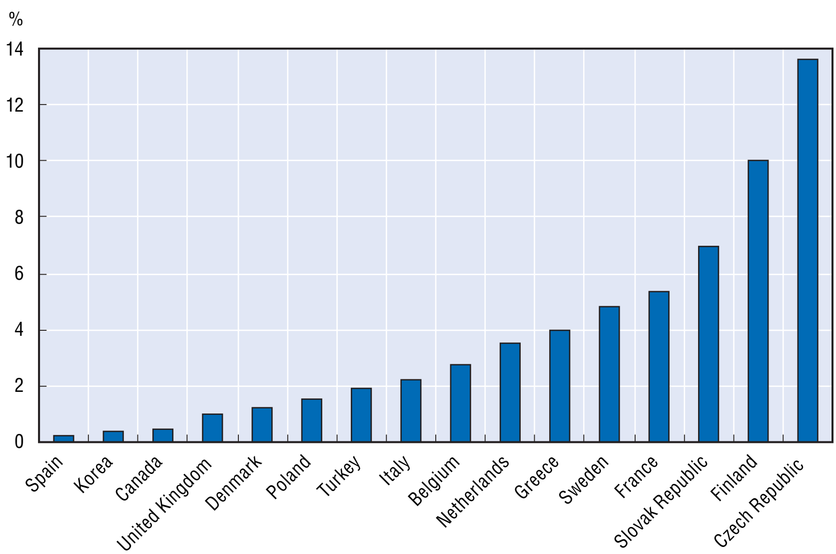


Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

Except in a few cases, hundreds of thousands of workers are employed in SOEs peaking with **France** which counts over 1 million workers. As a percentage of total employment, there are three groups of countries: a first group where the number of employees in SOEs is relatively low, under 2% of total employment (**Spain**, **Korea**, **Canada**, **UK**, **Denmark**, **Poland** and **Turkey**); then a number of countries where the employment in the SOEs is around the 2-5% of total employment (**Italy**, **Belgium**, **Netherlands**, **Greece**, **Sweden** and **France**), and finally the **Czech Republic**, **Finland** and **Slovak Republic** where on average more than 1 out of 10 people work in the SOEs. Once again, for the Finnish SOEs, the number of employees is inclusive of the personnel employed by SOEs in other countries.

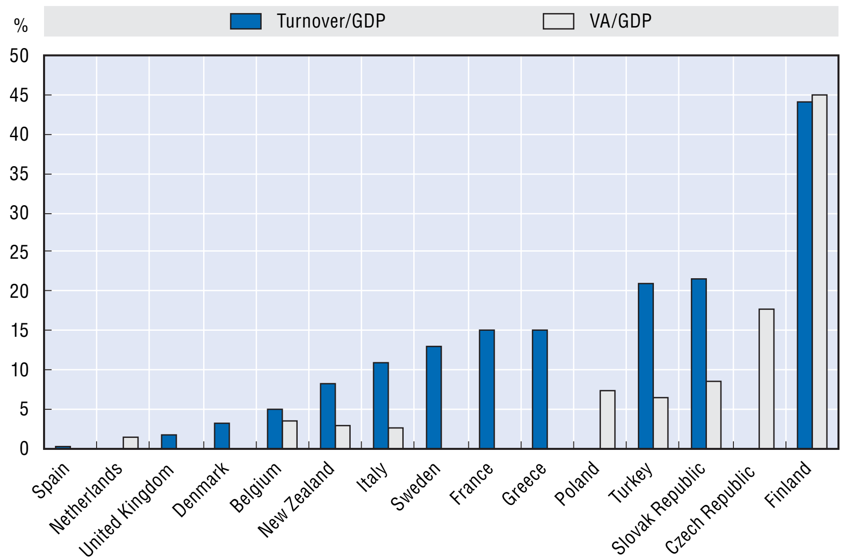
Value added/GDP and turnover/GDP ratios follow the same pattern and therefore they can be considered together (Figure 1.10). The contribution of SOEs' value added to GDP as well as their turnover ratio to GDP is not negligible even if the variance among countries appears to be quite marked. Once again **Finland** shows the highest data with turnover and VA per GDP ratio around 45%, due to the inclusion of foreign operations of SOEs. The **Czech Republic** has also a high value added ratio to GDP of 18%, while the **Slovak Republic** and **Turkey** have a turnover/GDP ratio over 20%. A number of countries (**Greece**, **France**, **Sweden** and **Italy**) have a turnover to GDP ratio ranging from 12% to 15%. For the other countries, with the exception of **Poland** (7.5%), the value added from SOEs represents less than 5% of GDP.

Figure 1.9. **SOE employees as percentage of total employment**



Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

Figure 1.10. **Turnover/GDP and value added/GDP for SOEs in selected OECD countries (per cent)**



Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

Ownership structure of SOE

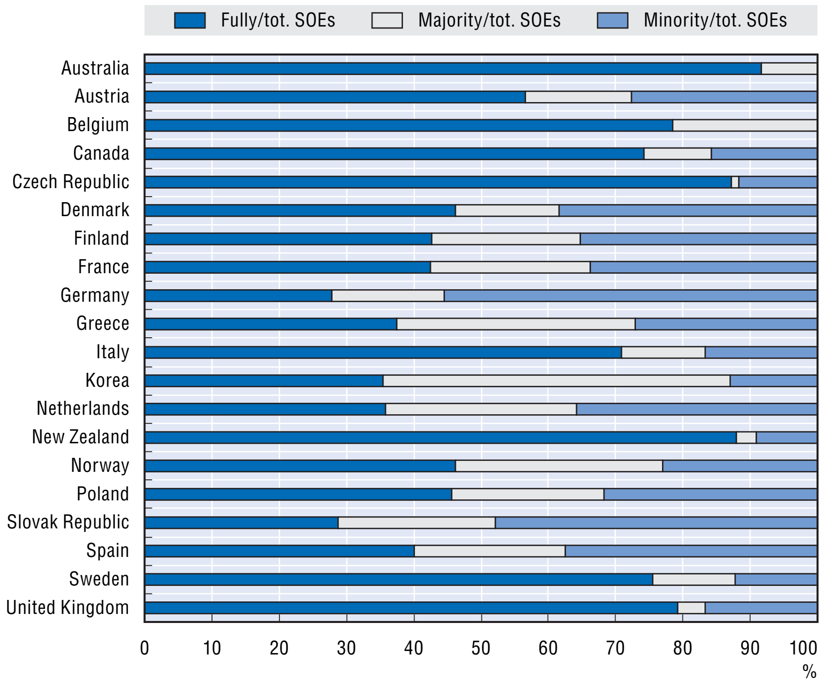
The importance of ownership also depends on the decision making power that the state can exercise with respect to these enterprises. Figure 1.11 represents the ratio of minority, majority, and fully owned enterprises with respect to the total number of reported SOEs.

On average, more than a half of SOEs are fully owned by the state and 20% are majority owned; on average, almost three quarters of SOEs are fully or majority controlled/owned by the state. This is particularly true in countries such as **Czech Republic**, **Korea**, **New Zealand** and **Sweden**. It is important, moreover, to see that the variance among OECD countries is quite small: almost all of them have around the 60-90% of their SOEs majority or totally owned. In **Australia**, **Belgium** and **Turkey**, all SOEs are fully or majority owned.

Even where countries have listed their SOE's, a block of shares has often been retained in the hands of the state (Figure 1.11). In this way SOEs are submitted to a degree of market discipline but there is still the possibility for the state to influence them, and therefore an obligation on the state to effectively exercise their ownership rights.

On average only 10% of SOEs are listed in OECD countries. The variation among countries, however, is high: few countries are well above the average, such as **Norway**, **Greece**, **Italy** and **Finland**, where more than a fifth to a quarter

Figure 1.11. **The situation of State ownership in SOEs**



Note: For France and the UK, the distribution has not been calculated on the totality of SOEs, but only on one part of them: for France on the 80 most important ones among the "Premier Rang" group and for the UK on the 24 that are under the responsibility of the central government.

Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

of SOEs are listed; some other countries have only 2 to 3% of their SOEs listed as in the **Czech Republic**, **New Zealand** and **Poland**; a number of countries have between 5% and 15% of their SOEs listed; finally, some countries do not have listed SOEs, such as **Belgium**, the **Slovak Republic** or the **UK** (Figure 1.12).

In countries where some SOEs are listed, they account for an average of 15% of the total market capitalisation, with a maximum for **Norway** of 56%. Of course the share of SOEs in the capital markets is not only a function of the size of the companies but also on the scale of their national capital markets (Figure 1.13).

SOE remain key players in a number of important sectors

The importance of state ownership in OECD countries is also often attributed to the "strategic" nature of the sectors in which they operate. The concept is controversial, but is often taken to include the production/extraction and the distribution of the main sources of energy (hydroelectric power, oil, gas and coal), post and telecommunication systems, the main systems of transport

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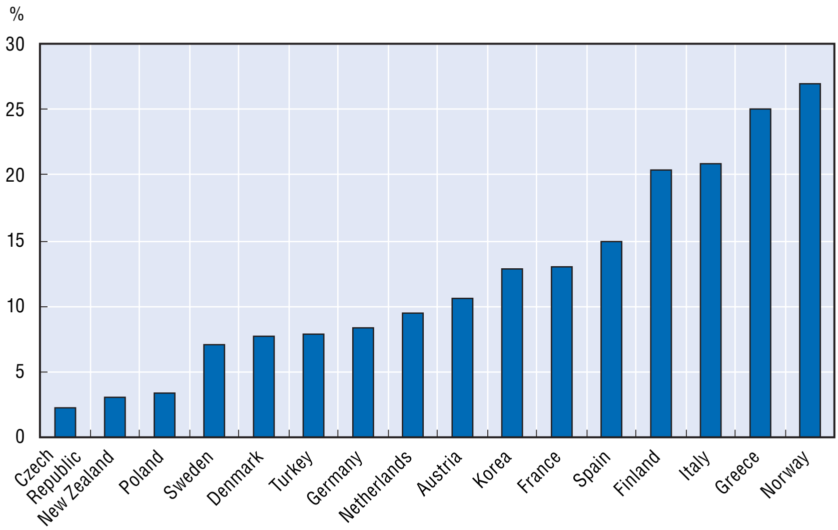
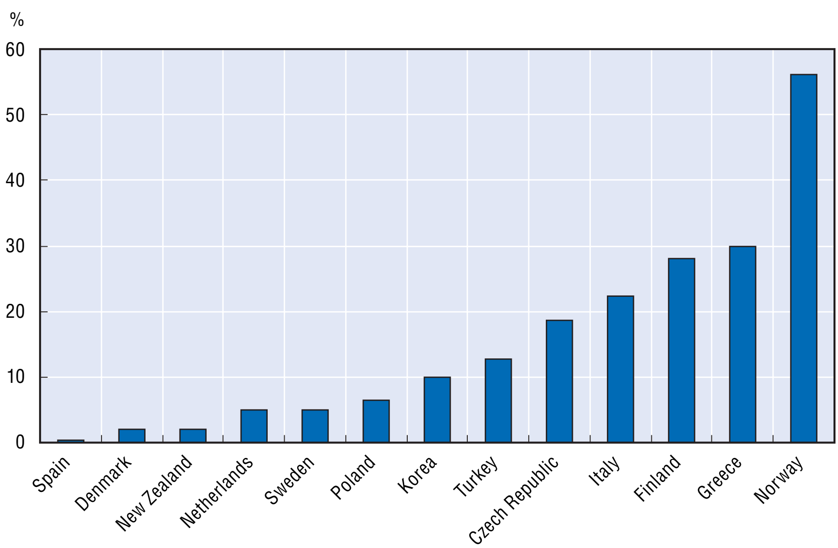
Figure 1.12. **Percentage of listed SOEs in selected OECD countries**



Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

Figure 1.13. **Percentage of market capitalisation in selected OECD countries**



Source: OECD: Questionnaire on Corporate Governance of State Owned Enterprises, 2003.

(both rail and air) and, to a lesser extent, some financial services. As has already been noted, the state has often controlled such sectors in the past and still retains strong direct interests in them. However, the nature of that relationship has tended to change.

Almost all OECD members still participate in some of the sectors mentioned above. In particular, for a small group of countries (**Czech Republic**, **Denmark**, **Finland**, **Italy** and **Norway**) the state is the sole owner of the postal system, the railways, and the majority owner of most of the air transport companies and the energy enterprises. Finally, even after privatisations in the financial sector, some states retain important shares, very often between 30 and 100%, of several financial institutions, in part due to bank failures as in the **Czech Republic** and in Scandinavian countries. For a more complete picture of the distribution across sectors of the SOEs, see Annex I.1.

The legal form of SOEs

An important feature of the governance of SOEs is the legal form they take. The most common legal form of SOEs is the private limited liability company, followed by the joint stock company. SOEs in the majority of the OECD countries are considered to be the same as any other company and are subject to the same corporate regulations. For a complete description, see Annex I.2.

While many are legal entities separate from the state, there are nevertheless also public law institutions as, for example, in the following countries:

- **Austria**, that has some incorporated public law institutes.
- **Sweden**, where the Airport authority and the national grid authority are state bodies.
- **Switzerland**, where the Post is under public law.

Some countries operate their SOEs under special laws, *i.e.* either laws created for the category of SOEs or laws specifically addressed to some SOEs. This is the case of:

- **France** where every EPIC (Établissement Public Industriel et Commercial) is ruled by its own specific regulation.
- **Czech Republic** where the main SOEs are under special laws.
- **Korea** where the GOCs (government owned companies) and the GICs (government invested companies) are subject to special category laws.
- **Slovak Republic** where, until recently, all SOEs were under the law on state enterprise. At the end of the 1990's and the beginning of the 2000's, SOEs were transformed into joint-stock companies, beginning by SOEs in the energy sector, in the telecommunications and in 2004 Slovenska Posta.

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The SOEs with a specific legal status have often been distinguished by different provisions with respect to boards and the required level of disclosure. More importantly, they are not subject to bankruptcy laws. In response to recent deregulation and market liberalisation, however, some harmonisation of the legal status has started to take place, as the French case of EDF and GDF shows (Box 1.2). The many reasons to harmonise the legal status of SOEs with private or public companies are: allowing more systematic use of corporate governance instruments and facilitating access to capital to finance expansion, particularly overseas.

Box 1.2. **France: Evolution of EDF and GDF legal status**

EDF and GDF were created as state enterprise with the juridical form of "Établissements Publics Industriels et Commerciaux (EPIC)" under special legislation. In August 2004, a law on public services in the gas and electricity sector has been adopted. It changes the legal status of EDF and GDF into limited liability companies thus bringing them under general corporate law. The bill has been enacted in November 2004. The reason for this law is to give them greater commercial flexibility:

[…] "It seems necessary, in order to allow them (EDF and GDF) to develop their activities in France as well as in Europe by disposing of sufficient finances and improved capacity to make alliances, to submit EDF and Gaz de France to the law that is common to the other companies and to abrogate the special laws that limited their activities in the electricity and gas fields."

However, they will remain subject to close control by the state. The French Government has affirmed that, due to their importance, EDF and GDF will not be fully privatised, and will remain a state owned enterprise even if minority shares will be offered on the market. They will remain majority state owned companies and therefore the state will still keep the right to orient their strategic choices. As in other European countries, existing employees will retain their public employee status which is associated with a number of benefits.

Source: Projet de loi présenté à l'Assemblée Nationale, 19 May 2004.

Box 1.3. **The importance of SOEs in non-member countries**

In spite of extensive privatisation over the last 15 years, state ownership also remains significant in many non-OECD countries. state owned enterprises (SOEs) – sometimes also referred to as parastatals, government linked companies, or public sector enterprises – are a diverse mix of internationally competitive listed companies, huge public service providers, wholly owned manufacturing and financial concerns, and all sorts of small and medium enterprises. They remain prominent in air and rail transport; electricity, gas and water supply; banking and insurance; broadcasting; natural resource extraction; and telecommunications. Companies with at least some state ownership can also be found in a number of other industries such as aerospace; auto manufacturing; shipbuilding; shoes and textiles; steel; and tourism and leisure.

At its peak, state ownership accounted for 20% of output in Africa, 12% in Asia, and 10% in Latin America. In some sectors such as banking, the share was over 50%. Now SOEs produce approximately 15% of GDP in Africa, 8% in Asia and 6% in Latin America. In many countries in Central and Eastern Europe, the state sector still accounts for 20%-40% of output. It has been estimated that globally, SOEs still account for 20% of investment and 5% of employment.[1] Overall, SOEs play an important role in a number of major economies, including China, Russia, India, and, to a lesser extent, in Brazil and South Africa:

- In China, the central government is responsible for 17 000 SOEs, local governments over 150 000. The 1 200 SOEs listed on the Shanghai and Shenzen stock exchanges – where almost all listed companies are directly or indirectly state owned – and the Hong Kong Stock Exchange – where Chinese SOEs make up 35% of market capitalization – produce 18% of GDP and have a total market capitalisation equal to 40% of GDP.[2]
- In India, there are 240 Public Sector Enterprises outside the financial sector. These enterprises produce 95% of India's coal, 66% of its refined oil, 83% of its natural gas, 32% of its finished steel, 35% of its aluminium, and 27% of its nitrogenous fertiliser. Indian Railways alone employs 1.6 million people, making it the world's largest commercial employer.
- In Russia, companies controlled by the federal government produce 20% of the country's industrial output, and the regional governments another 5%. As measured by assets, the federal government controls 20% of the banking industry, the regional governments 6%.[3]

In-spite of their popularity and seemingly early success in some countries, the overall performance of SOEs has been disappointing.[4] Starting in the 1970s, many non-OECD countries began reforms aimed at enhancing SOE performance, and by the 1980s and early 1990s extensive restructuring had

Box 1.3. **The importance of SOEs in non-member countries** *(cont.)*

become the norm for the state sector. These initiatives have been wide reaching with a number of elements, including downsizing; new capital infusions; various sorts of performance incentives for top management; changes in administration, organisation and legal form; and privatisation using a wide range of methods. These decades of reform have made clear that problems inherent in the governance of SOEs explain much if not all of the poor performance of SOEs.[5]

Improving the corporate governance of SOEs has become a priority in many non-OECD economies

Financial crisis and the long and difficult transitions to market economy have also made clear the key role that corporate governance plays in financial development and enterprise reform. An inattention to governance in the privatisation process has led to sometimes spectacular failures and widespread abuse.[6] Today, improving the corporate governance of SOEs is a policy objective in countries around the world, as shown by the following examples:

- In China, as part of its campaign to "Grasp the large and let-go the small", corporate governance reform, especially for listed SOEs, has become a policy priority.[7]
- In India, the proposed Principle of Corporate Governance for Public Enterprises were issued in 2001.
- South Africa released its first Protocol on Corporate Governance in the Public Sector in 1997, and a revised version in 2002.
- In Indonesia, the newly formed Ministry of State Owned Enterprises has a core mission to reform SOEs based on "Good Corporate Governance Principles".

The consultation with non-member countries

In the development of the OECD Guidelines on the Corporate Governance of State-Owned Enterprises, the OECD Working Group on Privatisation and Corporate Governance of State-Owned Assets has carried out extensive consultation with non-member countries. With the support of the Global Corporate Governance Forum, the OECD carried out research on non-member experience and organized a consultative meeting with representatives from more than 20 non-member countries in the fall 2004, including from Africa, Asia, Eurasia, Latin America, the Middle East and North Africa, Russia and South East Europe. During the public consultation process on the draft OECD Guidelines on the Corporate Governance of State-Owned Enterprises, a number of comments were received from non-member countries, covering all regions mentioned above.

Box 1.3. **The importance of SOEs in non-member countries** *(cont.)*

The high-level participation in the consultative meeting, the strong interest as well as the high quality of the comments provided, testifies to the importance of the issue for many non-member countries. The OECD/World Bank Regional Corporate Governance Roundtables have also identified the issue of corporate governance of state-owned assets as a priority in many regions. This is the case in Asia and Russia, where specific task forces will be set up to develop policy papers on this matter. Guidelines on Corporate Governance of State-Owned Enterprises were presented and discussed in the meetings organised by the OECD in China, Eurasia, Latin America, MENA, and South East Europe in 2005.

1. Chong and Lopez-de-Silanes (2003), EBRD (2003).
2. Quing (2003), Mako and Zhang (2004), The Economist (2003).
3. World Bank (2004).
4. *Ibid.*, Boardman and Vining (1989), Chong and Lopez-de-Silanes (2003), La Porta, Lopez-de-Silanes, and Shleifer (2002).
5. Chong and Lopez-de-Silanes (2003).
6. Chong, Alberto and Florencio Lopez-de-Silanes (2003), Coffee, John C. (1999).
7. TGC (2004), Reddy (2001), DPE (2002), MSOE (2002), and Mako and Zhang (2004) respectively.

Notes

1. For a discussion of requirements for effective regulation see *OECD Report on Regulatory Reform*, OECD, 1997.
2. For a summary of these arguments see Enrico Perotti, "State ownership: A residual role?", *Global Corporate Governance Forum*, Discussion Paper, No. 2, 2003. For an historical context see A. Shleifer, "State *versus* Private Ownership", *The Journal of Economic Perspectives*, 12, 4, 1998.
3. See OECD, 1998, Performance and regulatory patterns in OECD countries, ECO/CPE/WP1(98)15. More recent changes in state control appear to be focused on lifting price controls rather than privatisation.
4. "Privatising State Owned Enterprises, an overview of policies and practices in OECD countries", OECD, 2003.
5. These indicators are collected in the OECD International Regulation Database and have been vetted by national administrations of OECD member countries. The basic data has been normalized so that the indicators have a scale of zero to six. The "Size of public enterprise" indicator reflects the overall size of state-owned enterprises relative to the size of the economy. The "Scope of public enterprises" indicator measures the pervasiveness of state ownership across business sectors as the proportion of sectors in which the state has an equity stake in at least one firm. For a more detailed explanation on the indicators used to approximate the size and scope of public enterprises, refer to para. 12 and to Tables 1 and 2 in the annex of "Product Market Regulation in OECD Countries: 1998 to 2003", Economics Department Working Paper No. 419.

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PART I

Chapter 2

The Organisation of the Ownership Function within the State Administration

Three main types of organisation and the global evolution of the ownership function

The organisation of the exercise of ownership rights (thereafter the "ownership function") within the state administration varies from one country to the other, and is very much dependant on the traditional administrative organisation, the significance of the state sector in the economy prior to the privatisation waves of the 1980's and 1990's, as well as from recent reforms carried out in regulation and the management of state-owned assets. Three main types of organisations dominate: the decentralised or sector model, the dual model and the centralised model.

The most traditional is the decentralised model where state-owned enterprises are under the responsibility of relevant sector ministries. The dual model is, however, the most prevalent one, where the responsibility is shared between the sector ministry and a "central" Ministry or entity, usually the Finance Ministry or the Treasury. Finally, a centralised model, in which the ownership responsibility is centralised under one main ministry, has been on the increase more recently. A few countries use more than one model, for example, in the **Czech Republic** the organisation of the ownership function is based on one element of the sector Ministry or decentralised model and one element of the dual model.

The evolution and reform of the organisation of the ownership function have been significant in the last ten years, and a number of countries are still undertaking reforms. These reforms tend to move countries away from the decentralised model and more towards the centralised model, although a few countries seem to have developed a fairly stable dual model of organisation (Figure 2.1 and Table 2.1).

The underlying rationale for the reform of the ownership function is the need to complement the structural reforms of the past two decades in many sectors in which SOEs are still prevalent in many OECD countries (*cf.* previous chapter). This is particularly the case in non-manufacturing sectors (such as gas and electricity supply, telecoms, postal services, air transport, railways), where access or price regulation is still needed due to the technological or informational characteristics of such industries. Structural reforms in these sectors have included widespread privatisation[1] and regulatory reforms.

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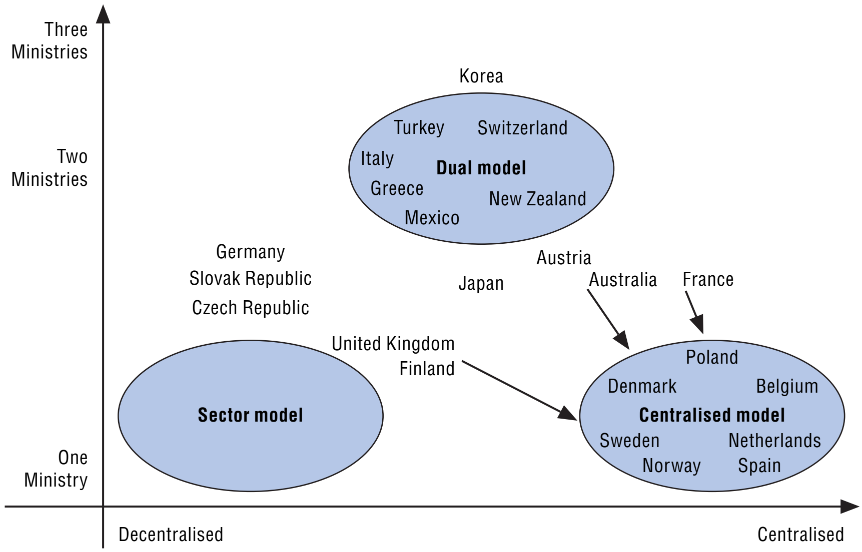
Figure 2.1. **Organisation and evolution of the ownership function**



Regulatory reforms have been extensive, involving increased international openness, easier entry to domestic markets, and an increased reliance on market-based and/or incentive mechanisms· The progress in reforming the regulation of non-manufacturing industries has been significant in the 1990's in most OECD countries. This progress has been particularly important in network industries (telecoms, utilities and air transport), although the timing and scope differs across OECD countries.[2] This liberalisation is continuing in some industries especially in the EU as part of the drive to complete an open internal market.

Reforming the exercise of ownership rights by the state is a complementary reform to both privatisation and these regulatory changes. Most OECD countries have progressively separated clearly the regulatory function within the state administration, mainly to ensure a level playing field between state-owned and privately owned companies. The state is now reforming its ownership function in order to more clearly identify and strengthen this function, as well as to reinforce the incentives for SOE management and boards to produce efficiently and compete effectively.

The decentralised or "sector ministry" model

The first type of organisation, which we term "decentralised" or "sector ministry model", is the most traditional one. In this model, SOEs are under the responsibility of branch or sector ministries. It used to be the predominant model in most OECD countries before the first wave of reforms during the 1970's

Table 2.1. **Types of organisation of the state ownership function in OECD countries**

<table>
<tr><th>Organisation of the ownership function</th><th>OECD countries</th><th>In between</th><th>Holding companies</th><th>Advisory unit</th></tr>
<tr><td rowspan="2">Sector ministry</td><td rowspan="2">Finland
UK (until 2003)</td><td>Germany</td><td rowspan="2">NPF
NPF</td><td rowspan="2"></td></tr>
<tr><td rowspan="2">Slovak republic
Czech Republic</td></tr>
<tr><td rowspan="2">Dual model</td><td rowspan="2">France (until now)
Greece
Italy
Korea (trial model)
Mexico
New Zealand
Switzerland
Turkey
UK (for certain businesses)</td><td></td><td>SICOT
CCMAU</td></tr>
<tr><td rowspan="2">Australia
Austria</td><td rowspan="2">ÖIAG</td><td rowspan="2">GBPFAU</td></tr>
<tr><td>Centralised</td><td>Belgium
Denmark (2001)
France (2004)
Netherlands
Norway (2001/02)
Poland
Spain
Sweden (2002)
UK (for certain businesses)</td></tr>
</table>

Source: OECD Questionnaire on Corporate Governance of State-Owned Enterprises, 2003.

and later. This decentralised or sector organisation was also the most prevalent model used in former socialist economies, such as the **Czech Republic, Poland** and **Hungary**, prior to their transition to a market economy. This model of ownership function still exists today in a few OECD countries such as **the Slovak Republic**, **Finland** and to a less extent **Germany**. In **Finland**, for example, 9 different ministries exercise the ownership function over 50 SOEs. In the **UK**, the ownership function has been historically dispersed among a wide number of ministries, and the legal ownership is now under the responsibility of 9 different Departments, Ministries or Offices.

Until the privatisation waves of the 1980's and 1990's, countries with a sector organisation all had a very extensive state sector, often established in the aftermath of WWII, resulting from post-war nationalisation, such as in **Finland**, or put in place within the framework of a *voluntarist* industrial policy to rebuild the country. These extensive state sectors were sometimes combined with a certain degree of "initiative" or "semi" *planification*.

In some cases, a specific ministry plays a co-ordinating role, in addition to the main role played by sector ministries. The co-ordinating Ministry organises co-operation between the various ministries and is in charge of elaborating the overall ownership policy as well as specific guidelines.

- This is the case in **Finland** where a specific unit within the Ministry of Trade and Industry plays a co-ordinating role and has developed the "Government decision-in-principle on the State ownership policy".
- In the **UK**, the Shareholder Executive advises sectoral shareholding Ministers regarding other business in the Government's portfolio whilst also being the shareholder responsible for 8 businesses.
- In **Germany**, the Ministry of Finance elaborates guidelines for the ownership and the privatisation policy, and authorises changes in holdings. The German model can thus be considered as closer to a dual model.

The main advantages and rationale for such a decentralised organisation are sector expertise and the capacity to implement a more active industrial policy. With the shift from industry specific policies to more framework-oriented and market liberalisation policies, the advantages of such an organisation have now vanished. The management of state-owned assets is shifting towards an ownership view with a focus on added value, and SOE are less perceived as instruments of industrial policy than they used to be.

Moreover, the main drawbacks or dangers resulting from such an organisation are the greater difficulty in clearly separating the ownership function from other state functions, particularly its regulatory role and industrial policy. Achieving such a clear separation has been a main driving force in the evolution towards a more centralised model of SOE management, together with the tendency to locate regulatory duties in special institutions.

Another major drawback in the decentralised model is the difficulty in clearly identifying who is running the SOE. With sector Ministries in charge, the general public perception tends to be that the Ministry is *de facto* running the SOE, instead of the board. The public might think that the Ministry or the government has the power to interfere in the day-to-day operational management of SOEs, irrespective of the real degree of such interference.

Consequently, in the last thirty years a number of countries have moved towards a more centralised model of ownership organisation. This has been done in many cases by reinforcing the co-ordinating Ministry so as to set up a dual ownership model. In a few cases, the decision to centralise is more radical and countries have chosen to directly centralise the ownership function in one Ministry or entity. This more radical shift has been witnessed in **Finland**, where they aim to move directly from a decentralised to a centralised model in 2005 (*cf.* Box 2.8 below).

The dual ministry model

In many OECD countries, two ministries share the ownership responsibility for SOEs. In this case of dual responsibility, both sector ministries and a "common" ministry are responsible for exercising ownership rights.

This dual model used to be the most common until very recently. It still exists in a number of OECD countries, including **Greece, Italy, Korea, Mexico, New Zealand and Turkey**. It is evolving progressively towards a centralised system in **Australia** (*cf.* Box 2.3), and is being reformed into a centralised model in **France** in 2004-05 (*cf.* Boxes 2.5 and 2.6 below).

This dual model differs from the de-centralised model where different sector ministries are responsible for their respective SOEs, with one ministry being "more equal than others" and ensuring co-ordination and overall policy, such as in **Germany** and **Finland**. In the dual model the sharing of responsibility truly concerns the ownership function. There may be a dual responsibility about certain specific aspects, for example, where both ministries have the right to nominate representatives for the board of directors. This is the case in **Mexico**, where representatives from both the Ministry of Finance and Public Credit and from the sector ministries or agencies sit on the board of majority state-owned companies. These state representatives must represent at least 50% of the board, and the chair of the board is from this Ministry or agency. Dual responsibility often also includes the approval of major transactions and strategic plans.

In some cases such as **New Zealand**, dual responsibility is directly reflected in the ownership, with the sector ministry and the common ministry each owning half of the state's shares in SOEs.

The common or central Minister is often directly in charge of some specific ownership functions. This may be the nomination of board members, or aggregate reporting (*i.e.* reporting about the overall state-owned sector). This specific function may nevertheless be carried out in co-ordination or in consultation with the respective sector ministries. In this case, the common ministry will have a co-ordination or centralisation role.

The "common" Ministry is usually the Ministry of Finance (or the Ministry of Economy and Finance), due to the importance of the SOE sector to the state's overall economic and financial objectives, like the Ministry of Finance and Administration in **Australia**, the Ministry of Economy and Finance in **Italy**, or the Treasury in **France**. The **Czech Republic** and Slovak Republic are more specific cases. They are also a dual model, but where the main shareholding entities are the Holding Companies, the NPFs (National Property Fund). Sector Ministries continue to play a role in the governance of SOEs through their representatives in the GSM and on SOE boards.

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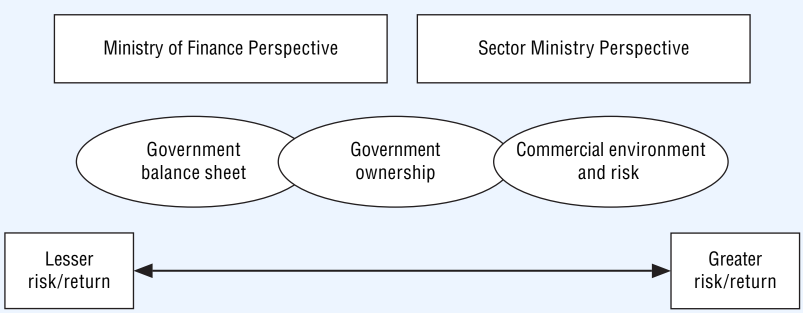
In most countries the dual organisation results more from the power and importance of the Ministry of Finance than from design, while the sector ministries were traditionally in charge of the SOE in view of their role in industrial policy. However, in a few cases this dual organisation has been carefully considered and clarified. This is particularly the case in **Australia** and **New Zealand**. In **Australia**, the *1997 Governance Arrangements for Commonwealth Government Business Enterprises* set out principles related to the arrangements for joint Shareholder Ministers. The Ministry of Finance and Administration "*generally takes a lead role in (SOEs)' financial matters, with the portfolio Minister focusing on operational issues*".[3]

In **New Zealand**, the underlying rationale for the division of responsibilities between the Ministry of Finance on one hand, and the sector Ministries and the Advising Unit on the other hand (CCMAU, Crown Company Management Advisory Unit, see Boxes 2.1, 2.13 and 2.14), is quite similar and is clearly articulated:

- The Ministry of Finance focuses on both economic efficiency and the fiscal impact of SOEs' performance. Therefore they take the lead for financial reporting, economic and divestment issues and have the sole responsibility for approving asset sales.
- Sector Ministries (through the Advising Unit CCMAU) adopt a commercially oriented perspective with a primary emphasis on ensuring that SOEs are successful companies. Therefore, through the CCMAU, sector Ministries take the lead in monitoring performance and have sole responsibility for board composition.

In **Turkey**, at least two entities at ministry level are involved in exercising the ownership function, the sector ministry, the Treasury or the Privatisation

Box 2.1. **The dual model in New Zealand**

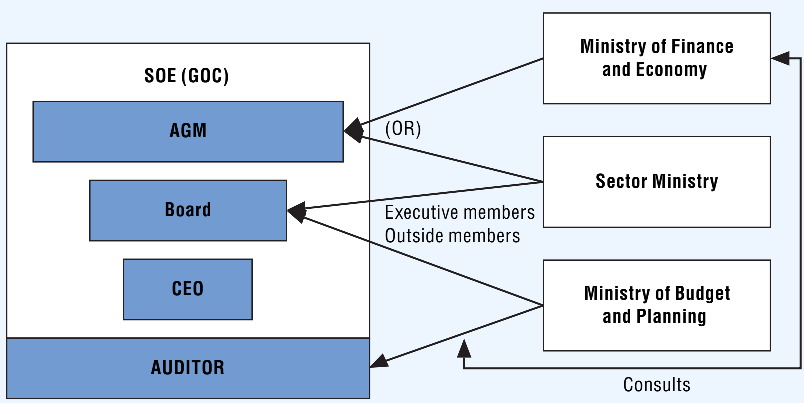


Source: Owner's Expectation Manual, March 2002.

Administration. The Treasury and the Privatisation Administration are the legal owners of SOEs and participate in the GSMs. The State Planning Organisation and the Treasury supervise SOEs' performances. As for the board, one member is appointed by the Treasury and the others by the sector Ministry.

In **Korea**, the organisation is even more complex than the dual model, as it involves more than two ministries. The **Korean** case could be called a "trial" model, as at least three ministries are systematically involved in exercising the ownership rights in SOEs, especially in GOCs (government owned corporations, companies more strategic in nature and usually more than 50% owned SOEs) (Box 2.2). The sector ministry or the Ministry of Finance and Economy represents the state in the GSM. The sector Ministry proposes a board chair and appoints "full-time" (*i.e.* executive) board members. At the same time, the Ministry of Budget and Planning appoints outside directors of GOCs, monitor their performance and proposes an auditor, in consultation with the Ministry of Finance and Economy. So there are three ministries co-operating in the exercise of shareholder rights, plus the Board of Audit and Inspection, which audits SOEs.

Box 2.2. **The Korean ownership function**



Some countries are now evolving towards a reduced role for sector Ministries by centralising the ownership function. This is the case for example in **Australia**. While the dual ministry model was only formally recognised in 1997, the Joint Committee of Public Accounts and Audit *Report 372 – Corporate Governance and Accountability Arrangements for Commonwealth Government Business Enterprises*, published in 1999, on the basis of the Review of GBE Governance Arrangements ("Humphry Review"),[4] recommends going even

Table 2.2. **Debate on the sole/dual model in Australia**

	Sole ownership	Dual ownership
Advantages	Clarity with respect to the government's shareholder objectives and expectations. Clearly separated accountability. Streamlining. Focus on efficiency and rate of return.	Enhanced balance between the government's regulatory, industrial policy and financial perspectives.
Disadvantages	Too much focus on financial issues.	Conflict of interest : • Between CSO (Community Service Obligations) and interests as shareholder. • Incentive for portfolio Ministers to use SOEs to deliver their programmes as implicit CSOs. • Between role as consumer of SOE's products and services and interests as shareholder.

Source: Report 732, Joint Committee of Public Accounts and Audit, 1999, pp. 33-38.

further by removing ownership functions from sector Ministries (Table 2.2 and Box 2.3). The Report recommends the Minister for Finance and Administration becomes the sole representative of the state shareholding interest in SOEs. Sole shareholder Minister responsibilities were given to the Minister for Finance and Administration over three recently formed SOEs.

The centralised model

The centralised model is more recent. It is characterised by a strong centralisation of the ownership function. In this model, most SOEs are put under the responsibility of one Ministry or Agency. In most cases this is the Ministry of Finance (**Denmark, the Netherlands, Spain**) or the Ministry of Industry (**Norway** and **Sweden**), which used to have the most important SOEs under its responsibility in the previous model of sector ministry organisation. In **Belgium**, there is a specific ministry, the Ministry of State-Owned Enterprises and Participations. In a few cases a specific Agency has been established, and this Agency is more or less autonomous, usually reporting once again to the Ministry of Finance (as in the case of **France**). When a centralised model has been established, it has often resulted from recent reforms or was set up during mass privatisation programmes in former transition economies.

In the former transition economies, the centralisation option was most probably adopted to draw a clear line with the past where branch or sector ministries were responsible not only for the ownership function *per se*, but also for real management and close supervision of the SOEs. It was also seen as a way of concentrating scarce talent and being able to pay them differently from the civil service. Finally, it was a way to centralise the privatisation function, as the units in charge with exercising the ownership function are usually at the same time in charge of privatisation. In the **Polish** case, the bulk of SOEs are

Box 2.3. **Australian reforms**

The Parliamentary Joint Committee of Public Accounts and Audit (JCPAA) recently held an inquiry into the corporate governance and accountability arrangements for Australian Government GBEs (Government Business Enterprises). The JCPAA Report 372 findings were tabled in Parliament on 16 February 2000. Offering a detailed examination and evaluation of the existing GBE governance framework, the Committee's report on GBE governance arrangements includes a number of key recommendations.

Recommendation 1: That the Minister for Finance and Administration review the applicability of administrative law to current and future GBEs on a case by case basis.

Recommendation 2: That all portfolio Ministers be removed from their government business enterprise shareholder responsibilities, but remain as the responsible Minister under GBEs' enabling legislation. The Government's shareholder interests in GBEs should be represented by, and be the responsibility of, the Minister for Finance and Administration.

Recommendation 3: That the Minister for Finance and Administration amend the public law to include a section that all Ministerial directions to GBE boards should be in writing and tabled in both Houses of Parliament within 15 sitting days.

Recommendation 4: That the Minister for Finance and Administration amend the public law to include a requirement that GBE boards ensure that there are appropriate and effective induction, education and training programmes offered to new and existing board directors.

Recommendation 5: That the Minister for Finance and Administration amend the public law to include a section requiring confidential board and director performance appraisal. All GBEs will be expected to comply with the new arrangements.

Recommendation 6: That the Minister for Finance and Administration develop draft guidelines for the scrutiny by Parliamentary Committees of confidential commercial issues relating to GBEs. The draft guidelines should be submitted to the Joint Committee of Public Accounts and Audit for approval.

Recommendation 7: That the Minister for Finance and Administration amend the public law to include requirements setting out the risk management responsibilities of audit committees of GBEs.

Source: Report 372, Joint Committee of Public Accounts and Audit, 1999.

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under the supervision of the Ministry of the Treasury. Separate units of the Ministry, responsible for privatisation and corporate governance, employ altogether around 220 persons. A relatively small number of SOEs is supervised by other Ministries, in particular by the Ministry of Economy and the Ministry of Infrastructures, as well as by province governors (regional authorities).

For other OECD countries, recent or current reforms aim at both clarifying responsibilities among different government organs and functions, and at having a more unified and consistent ownership policy.

- First, reforms seek to clearly separate the ownership function from other state functions, such as industrial policy or regulation.
- Second, centralisation of the ownership function facilitates a greater unity and consistency of the ownership policy. In this regard, the **UK** Shareholder Executive was set up with the aim of "providing a more centralised and consistent approach towards the government ownership function". It helps in implementing unified guidelines regarding disclosure, board nomination or executive remuneration. It also helps in unifying practices among Ministries in areas such as board representation.
- Third, centralisation has been a major force towards the elaboration of centralised or aggregate financial reporting on state ownership. The few countries which have a high standard of overall and aggregate reporting on SOEs are usually those that have already or are in the process of centralising the ownership function, such as **Sweden**, **France** and **Norway**.
- Last but not least, the centralisation of the ownership function allows for centralising competencies and organising "pools" of experts in relevant matters, such as financial reporting or board nomination. When a specific or autonomous unit is set up, it may in addition enjoy more freedom in hiring experts from the private sector or more flexibility in remuneration than if they were public servants.

Typically, centralisation has only been undertaken quite recently. This is the case in the **Netherlands**, where the ownership function was transferred to the Ministry of Finance in the late 1990's. This is also the case in **Denmark**, **Norway** and **Sweden**, where the reform was carried out in 2001 and 2002, or in the **UK** where the reforms began in 2003.

- In **Denmark**, the ownership responsibility for 11 SOEs was transferred from various Ministries to a special unit within the Ministry of Finance.
- In **Norway**, the supervision of a number of SOEs has been transferred and consolidated in a special unit of the Ministry of Trade and Industry.
- In **Sweden**, the administration of state ownership has been centralised into a special ownership division within the Ministry of Industry, Employment and Communications. This centralisation has been carried out in order to

"provide better conditions for pursuing a uniform ownership policy with clear objectives and guidelines for the company".[5] The ownership division resulted from the merger of relevant departments or divisions of the same Ministry and of the Ministry of Finance. The new division is responsible for 36 out of 57 SOEs.

- In the **UK**, the government has progressively centralised the shareholder function since September 2003, with the setting up of the Shareholder Executive and the aim of providing a more centralised and consistent approach towards the government ownership function (Box 2.4). The Shareholder Executive remit extends to 24 largest SOEs under central government's responsibility and it now has direct responsibility (rather than advisory) for 8 companies. These are the ones under the responsibility of the Department of Trade and Industry, plus Royal Mint, Partnerships UK, NATS and Actis Capital LLP.

In most cases reform has still to be completed. The centralised unit is usually in charge of establishing common standards or guidelines that will have to be followed by other Ministries regarding the enterprises under their responsibilities. It is also in charge of the global reporting. A significant number of SOEs remain under the responsibility of other Ministries but their responsibility should be transferred in the short or medium term to the "centralising" Ministry.

- In the **Swedish** case, the ownership responsibility of 13 enterprises is scattered among 7 ministries (Ministry of Agriculture, Ministry of Health and Social Affairs, Ministry of Education, Ministry of Foreign Affairs, Ministry of Culture, Ministry of Environment and Ministry of Finance). In the remaining 8 enterprises the ownership responsibility is placed at other divisions within the Ministry of Industry.
- In the **UK**, most SOEs under the shareholder responsibilities of the central government are still under the responsibility of nine Departments (Culture, Media and Sport; International Development; Transport; Environment, Food and Rural Affairs; the Home Office; the Ministry of Defence; the Office of the Deputy Prime Minister, Department for Work and Pensions and Northern Ireland Office). As mentioned above, the Shareholder Executive has responsibility for 8 key businesses.

In **France**, a centralised agency for state shareholdings, the "APE" ("Agence des Participations d'État") has been created at the beginning of 2004. The creation of this Agency was decided in March 2003 by the Ministry of Finance and Economy, following the issue of a Special Report on State Ownership (*Rapport Barbier de la Serre*, *cf.* Box 2.5). This Report was commissioned by the Minister following poor results and serious setbacks in the performance of some highly visible and very large state owned companies.

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Box 2.4. **UK developments: creation, evolution and model of the Shareholder Executive**

The Shareholder Executive was created in the Cabinet Office in 2003 with the over-arching objective to improve fundamentally the professionalism of Departments in exercising their shareholder role and accountability of businesses to their shareholder. The Shareholder Executive was set up against the background of the UK Government owning a diverse and poorly performing portfolio. Ownership was dispersed across different policy departments. Many of the companies in the UK Government's portfolio had experienced significant difficulties in recent years.

The Shareholder Executive is staffed with a mix of private sector and public sector skills with a majority of senior staff from the private sector with backgrounds in: investment banking, accountancy, private equity and corporate strategy.

The Shareholder Executive's original remit was to work as an advisory body advising Government departments on all aspects of their shareholding roles, including corporate governance, objective setting, scrutinising business plans, monitoring performance, making appointments and approving remuneration frameworks. However, it soon became apparent that the advisory only model had limitations in providing the basis of a sustainable step change in the performance of the shareholder role.

By June 2004, the Shareholder Executive had evolved its role and adopted an executive role for the Department for Trade and Industry's shareholdings (Royal Mail, BNFL, UKAEA and ECGD), two HM Treasury shareholdings (Royal Mint and Partnerships-UK), a Department for International Development shareholding (Actis) and most recently, a joint Shareholder Executive/Department for Transport team working on NATS.

In this executive role, the Shareholder Executive has taken on day-to-day responsibility for the shareholding function on behalf of the shareholder department. It is intended to allow a more rapid and effective implementation of the Shareholder Executive's approach and benefit from economies of scale.

The Shareholder Executive model embodies an active and engaged shareholder involvement, while ensuring management are accountable for business performance. In the Shareholder Executive model, the shareholder should: *i)* Set out consistent and durable objectives for each business, reconciling commercial and policy objectives. The focus is on maximising shareholder value within the context of these objectives; *ii)* Approve strategy and monitor performance against high level milestones; *iii)* Appoint a Board with the right skills to manage the business, with appropriate incentives; *iv)* Generally, within Government, champion the commercial potential and vision for Government-owned businesses.

Box 2.4. **UK developments: creation, evolution and model of the Shareholder Executive** *(cont.)*

The Shareholder Executive has set for itself the following key targets: *i)* Ensure each business delivers sustained positive returns, and returns its cost of capital within the policy parameters set by Government; *ii)* Increase by £1 billion in the three years to 2007 the value of the core portfolio of businesses owned by Government, within a framework of clearly defined policy, customer and regulatory objectives.

Source: UK Shareholder Executive.

This Report was followed by a Parliamentary Enquiry into the Management of State-owned Assets (*Rapport Douste-Blazy*,[6] *cf.* Box 2.6), published in July 2003. Both reports advocated a centralisation and a strengthening of the ownership function. The Douste-Blazy Report makes a series of recommendations that aim at streamlining and reinforcing through centralisation and greater autonomy of the ownership function within the state administration, while empowering SOE boards.

The new French APE will still be under the responsibility of the Ministry of Finance, but should enjoy more autonomy and visibility than a normal department or office within the Ministry, particularly regarding human resource policies (Box 2.7).

In **Finland** the ownership function should also be centralised in 2005. The procedure for SOE's ownership was revised twice in the 1990's, most recently in 1999 with a "Government decision-in-principle on the state's ownership". But the Finnish government estimates that since then the SOE's environment and governance has evolved significantly, both internationally and nationally, justifying a revision of the Government decision-in-principle. To this end, the Ministry of Trade and Industry, presently in charge of the co-ordination with other Ministries regarding the ownership policy, has set up a Working Group to prepare for the centralisation of the state's ownership function. An outside expert (Matti Vuoria) was commissioned to write a report on the state ownership policy, make a proposal for the revision and clarify decision-making related to the state ownership policy. The objective of the current evaluation is to harmonise procedures relevant for the state's ownership policy and thus make the ownership policy more predictable and transparent (Box 2.8).

One main recommendation of the Vuoria Report is to centralise the ownership function, in order to make it "open, predictable and consistent". The benefits expected from centralisation are to enhance significantly the efficiency and unity of the ownership policy, and are "so obvious that centralisation

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Box 2.5. **French reforms: main findings from the Barbier de la Serre Report**

Part 1: The State and SOEs

A. Clearly distinguish regulatory and ownership functions:

- clearly distinguish the functions through separate entities/departments within the state administration;
- no distinction between state or privately owned enterprises for other state functions;
- generalise public services concessions/contracts;
- ensure competitiveness of the public operators and respect of "concession" contracts;
- within SOE, separate competitive activities from non-competitive ones in order to avoid cross-subsidies and create a level playing field;
- favour in principle opening of capital to minority private shareholders.

B. Better identify the ownership function:

- a dedicated entity to improve strategic thinking, transparency and to reinforce boards;
- accountability of this entity: report by the state on its shareholdings to the Parliament and the public.

C. Protect minority investors:

- the state should not abuse its controlling position to impose strategy or concession conditions not compatible with long term interest of the SOE.

Part 2: The State as Share Owner

A. Set up a dedicated entity, State Participation Agency (APE):

- will fulfil all the ownership functions;
- under the supervision of the Ministry of Finance;
- determine representatives to SOE boards;
- ensures coordination with other state functions, through an Orientation Committee;
- codifies which business or strategic decisions require information/consultation/agreement by the state;
- reduces as far as possible day to day management intervention by the state;
- appropriate reporting by SOEs to this Agency.

Box 2.5. **French reforms: main findings from the Barbier de la Serre Report** *(cont.)*

Part 3: Corporate Governance of SOEs

A. Quickly transform SOEs operating in competitive sectors into public companies.

B. Acknowledge the central role played by Boards of Directors:
- unify their status (same rights and responsibilities for all board members) and reaffirm the collective responsibility of boards;
- decrease their size (maximum 12);
- limit state representatives to half of the board;
- at least two "external" board members;
- at least two representatives of employees if state has a majority of shares;
- have clear procedures for board;
- remuneration of the board decided by GSM.

C. Set up specialised committees:
- establish quickly audit and nomination/remuneration committees;
- at least two external members in the audit committee;
- ensure policy for selection and development of directors.

D. Define criteria and remuneration of CEO:
- the agency must be consulted regarding nomination;
- link length of appointment to performance;
- link remuneration to the level of responsibility, referring to usual practice in the private sector.

E. Protect minority rights:
- submit to the AGM public service concession contracts with financial implications;
- special report by auditors on its implementation.

Source: Rapport Barbier de la Serre, "L'État Actionnaire et le Gouvernement des Entreprises Publiques", 24 February 2003.

should be implemented as soon as possible".[7] The report also recommends that the ownership function be located "sufficiently far" from the Ministries responsible for the regulation of different sectors or industrial policy.

When countries decide to centralise their ownership function, the main questions that arise regarding the organisation of such a centralised unit are location, degree of autonomy, and how it relates or may still draw on specific

Box 2.6. **French reforms: main recommendations of the Douste-Blazy Report**

CEOs

- Maintain nomination by the government.
- Evaluated by Parliamentary commissions.
- Remuneration closer to the private sector.
- Performance evaluation by the Agency.

Boards of Directors

- Maximum 15 board members.
- Unify status.
- Internal and detailed rules.
- Strategy committees to examine acquisition projects.
- Audit committees with access to external expertise.
- The Agency will establish a list of external candidates and promote independent directors.
- Corporate governance committees.

Management tools

- Generalise public company status.
- Check quality of management tools.
- Systematic risk analysis.
- Reporting as listed companies.

Public service missions

- Establish contracts to fulfil public service or policy obligations.
- Performance evaluation and incentive based remuneration for these services.

APE (State Participation Agency)

- Define and codify reporting by SOEs, as well as rule for examination of acquisition projects.
- Leading state representative within boards.
- Inter ministerial committee for strategic coordination of SOEs.
- Annual reporting of the APE director to the Parliament.

State representation within boards

- Mission letter.
- Maximum of 3 board members.
- Pre-meetings among state representatives.
- Regular monitoring by the APE.

Box 2.6. **French reforms: main recommendations of the Douste-Blazy Report** *(cont.)*

Controls

- Define performance criteria and points at which action is necessary.
- Suppress specific state controls other than through board and APE.

Source: Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale.

Box 2.7. **Reinforcing expert teams with the new French APE**

About 20 new experts have been hired to reinforce the new APE. Most of these new experts come from the private sector and have an extensive experience in industry or services, particularly in management consulting and banking. Several experts with an international profile have also been recruited. The new APE personnel are now diversified in terms of age, background and education (business schools, university, engineers, ENA (National Administration School), with as many women as men.

- Within the former shareholding department, with a sector organisation, a vice director and a senior manager have come from private investment funds.
- Financial experts have come from the Agence France Trésor, from the London subsidiary of a large international bank, and from an investment bank.
- Three legal experts also joined the APE, one from an EPIC* one from a French subsidiary of a American bank, and one from the legal department of the Ministry of Finance and Economy.
- Audit and accounting specialists will also join the APE.
- The general secretariat has also integrated a HR director from an EPIC,* several civil servants from the Treasury, as well as external professionals for information systems and documentation.

* Établissement Public à Caractère Industriel et Commercial (*cf.* Annex I.2).

Source: *Annual Report*, "L'État Actionnaire", 2003, ministère de l'Économie, des Finances et de l'Industrie, p. 10.

expertise and competences from sector ministries. The autonomy of the ownership function is a crucial issue. Formal autonomy may facilitate a clear separation with other functions, especially when the unit is located within a sector Ministry for administrative reasons. It may also have a significant impact on its ability to attract experts from the private sector and to compensate them accordingly.

Box 2.8. **The Finnish reform: main findings from the Vuoria Report**

- Set up a high level expert working group in order to deepen the discussion on shareholding policy and to organise communication between business and the public administration.
- Revision of the shareholding policy legislation so that it would better take account of both the requirements set by company and securities market law and appropriate organisation of the power of decision between Parliament and the Government.
- Abolition of supervisory boards in all publicly listed companies in which the state is a major shareholder (thus adopt a one tier board system).
- Clarification of the principles and limitation of liability regarding board membership by civil servants to ensure that the civil servant's position in relation to legislation on civil servants and Company Law are in harmony with each other.
- Observance of the corporate governance recommendations of the Stock Exchange and private practice in state-owned companies and the state's associated companies.
- Centralisation of the state's ownership steering and ensuring resources for it.
- Further development of the guidelines concerning remuneration of executives and personnel.

Source: Matti Vuoria, Evaluation Report of the State's Ownership Policy, Ministry of Trade and Industry Finland, Studies and Reports, 3/2004.

The main impediments to centralisation often lies first in human resources, where civil servants from one Ministry need to be transferred to another, and secondly in power struggle where sector ministries are very reluctant to lose control over their "national champions".

Other specific structures involved in exercising the ownership function of SOEs

Holding companies

In this type of organisation, the ownership of most or a specific list of SOEs has been transferred to one or several holdings which are in turn owned by the state and under the responsibility of one Ministry. This holding organisation has often resulted from reforms undertaken mainly in the 1970's, aimed at decreasing political interference in the management of SOEs, giving more flexibility to their management *vis-à-vis* usual public management rules, and finally tougher budget constraints. In the **Italian** case, the IRI holding company was also set up to support the development of the southern region and to rescue distressed companies.

This type of organisation is not frequent and has shown its limitations. It has led to excessive indebtedness and has not proven to be efficient either in terms of corporate restructuring or in financial management, and not even for regional development in the Italian case. In **Italy** the consolidated debt of IRI surged to $58.3 billion by 1992, while in **Austria**, the ÖIAG debt grew to Euro 37 billion in 1995. In order to reduce their debts, both holding companies were then given the mandate to reduce their holdings. From 1992 to 2000, IRI conducted 160 major asset sales, before being liquidated with its remaining state shares transferred to the Treasury. ÖIAG was asked to reduce its majority holdings to blocking minority holdings and to use the proceeds for these sales to reduce its debt to Euro 4 billion by end-2001.

Apart from the former transition economies, only **Austria** still retains this holding organisation with the ÖIAG that controls a significant number of SOEs (Box 2.9) and is the privatisation agency for the Austrian Republic. The ÖIAG owns the bulk of the most strategic SOEs and the most significant ones in size. In this sense, the Austrian model is closer to a centralised model. But the remaining 76 federally controlled enterprises are under the responsibility of 8 federal ministries. Thus the Austrian management of SOEs is a hybrid one, with one element of centralisation through a Holding Company, and one element of decentralisation.

The holding organisation is also still prevalent in former transition countries, as it is also a vehicle to carry out privatisation:

- In **Hungary**, the Hungarian Privatization and State Holding Co. (ÁPV Rt.) was founded in 1995. The task of ÁPV Rt. is the sale and responsible, market-based management of state-owned assets determined by law, as well as to report on and control earlier privatisation transactions. ÁPV Rt. is a one man company limited by shares, owned exclusively by the Hungarian state. The rights of the general meeting in ÁPV Rt. are exercised by the Ministry of Finance, as holder of shareholder rights, except for certain rights reserved for the government and defined in the legislation.
- In the **Czech Republic** and in the **Slovak Republic**, specialised and autonomous bodies were set up in 1991, the National Property Funds, to carry out privatisation and exercise the ownership function over "non-strategic" and partially state-owned enterprises (Box 2.10). However, sector ministries are also represented at GSMs and the NPF must exercise its rights in cooperation with sector ministries, even though it has *de facto* a large autonomy in doing so. In the **Czech Republic** however, the ownership function over strategic enterprises as well as over fully owned SOEs is still

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Box 2.9. **The Austrian ÖIAG**

Origins: The origins of the ÖIAG trace back to 1946 with the first Nationalisation Act. Nationalised industry, comprising the main banks and the main companies in the heavy industry sector, played in the following years a very important role in boosting economic reconstruction. In this first phase, nationalised industry was administered directly by the government through the Ministry of Asset Protection and Economic Planning and later on through the Ministry of Transport and the Federal Chancellery. Nationalised industry therefore was used to achieve political goals. For example, it was a means for ensuring employment and staff was often selected for political reasons rather than for their business qualifications. Balanced representation of the major political parties became the norm throughout the enterprises.

Reforms: Direct political influence generated inefficiencies in the long term that caused a series of crises in the nationalised companies. A long succession of reforms was started in response to various crises: the first of them took place in 1967 and led to the foundation of ÖIG which took over the administration of the majority of the nationalised companies. Crisis also led to a consequent restructuring of the companies and the loss of thousands of jobs. Three years later the ÖIG was transformed into a public limited company (ÖIAG) and it was restructured again with the formation of the VOEST, a large group meant to absorb all the nationalised companies that had suffered periods of crisis. Since the ÖIAG was still considered a policy instrument to be used against recessions, it continued to report growing losses and in the mid 1980's it needed to be restructured again. New industry holdings were formed after breaking up former conglomerate, financed by the revenues obtained from privatisation and they were then sold on the stock exchange as private companies. Unfortunately, this approach did not prove to be successful and after a few years, at the beginning of the 1990's, the most important nationalised companies started reporting losses again that the state had to sustain with budget subsides. A new restructuring took place: the holding was dissolved and a substantial part of the ÖIAG directly owned holdings were sold.

Current functions: The ÖIAG became a privatisation agency. According to the ÖIAG Act of 2000 the principal tasks of the company have become nowadays on the one hand the disposal of shares (privatisation management), on the other hand the holding, administration and exercise of ownership interests (investment management) in companies in which the ÖIAG holds shares, or in which such ownership interests are to be transferred by act of parliament or legal transactions (holdings) and the acquisition of ownership interests.

Box 2.9. **The Austrian ÖIAG** *(cont.)*

Strategy: The strategy of the ÖIAG has become a dual one: on one hand, it should stimulate an increase in the value of the investment for which it is responsible and, on the other, it continually examines exit scenarios with the aim of achieving partial or complete privatisation of those companies for which privatisation is envisaged. The two strategies are implemented simultaneously. Beyond the maximisation of returns, the ÖIAG is also in charge of securing jobs during the privatisation processes and improving the Austrian economy and capital market.

Status and size: The ÖIAG is under the sole ownership of the Republic of Austria and under the political responsibility of the Federal Ministry of Finance; it fully owns three non listed companies (the Post, the Postbus and the Bergbauholding) and holds minority positions in Austrian Airlines, Bohler uddehlom (leader in steel industry), OMV AG (leader in oil and natural gas), Telecom Austria, Voestalpine (steel company), VA tech (global technology and services group). The size of these companies is significant, as they employ overall more than 100 000 persons (a high percentage of total employment) and have a turnover ranging from a minimum of 65.8 million Euro to a maximum of 7 billion Euro.

Source: ÖIAG Web site: *www.oeiag.at*.

exercised by the respective branch ministries. Thus, considering the respective size of the assets under the responsibility of the NPF (altogether 22 billion CZK in net book value) and direct branch ministries' responsibility (432 billion CZK in net book value), the Czech model should be considered more as decentralised than centralised.

- This is the same case in the Slovak **Republic**. The NPF is the legal owner of shares, but the ownership rights of most enterprises, being natural monopolies, are still exercised by the sector ministries.

Thus the holding structures remain an exception, except in former transition countries where they are not supposed to be permanent structures, but should disappear with the completion of privatisation and restructuring of industry. In the **Czech** case, a decision was made in June 2003 to liquidate the NPF[8] while the NPF of the **Slovak Republic** will be liquidated in 2007. In other cases, such as in **Austria**, with its new mandate of serving as a dedicated privatisation agency, the holding company has come under close supervision of their countries' Treasury.[9]

Box 2.10. **The Czech NPF**

Origins: The National Property Fund was founded in 1991 in accordance with the act on the powers of bodies of the Czech Republic in the transfer of state property to other persons and the act issued by the Czech National Council on the National Property Fund. The purpose of NPF is to provide the technical implementation of individual privatisation decisions and the temporary management of state ownership interests intended for gradual privatisation.

Functions: The task of the Fund is to implement the privatisation projects that have been decided by the Ministry of Finance but the NPF has never had the power of decision over the way in which the state property has to be privatised. For this reason, the NPF is charged with preparing and concluding the agreement of the sale, in case of a privatisation that goes through the direct sale of property to a predetermined entity, and to take care of the public tender if the selling follows this procedure. In case of the privatisation going through the constitution of a joint stock company and the subsequent sale of its stocks, the NPF is responsible for founding the joint stock company, becoming its main shareholder for a limited period of time and finally selling or transferring the shares. A specific rule for the completion of the privatisation process is the holding of a "golden share" by the NPF. Through it the state can exercise a right of veto with the aim of maintaining the business focus of the company.

Governing bodies: The NPF is under the direct control of the Parliament of the Czech Republic that elects the highest organs of the NPF: the Presiding Committee and the Supervisory Council. The Presidium, composed of nine members among which as a chairman is the Minister of Finance, is the body charged with preparing the Statute of the NPF, of appointing the executive members, of approving their remuneration, preparing the budget proposal and discussing the financial statements of the NPF with the Government before submitting them to the Parliament. The Supervisory Board supervises the activities and business operations of the NPF. Finally, there is the Executive Committee that has managerial functions, whose members are elected by the Presidium.

Size: NPF has 135 employees, and at present exercises the ownerships rights of strategic companies that play a major role in Czech economy (companies in the energy sector, air transportation, telecommunications) and non-strategic companies that account for the 10.5% of the holdings of the NPF.

Source: NPF Web site: *www.fnm.cz*.

Ad hoc *specialised consulting services*

Some countries have set up specialised consulting companies to advise the ownership entity within the government. These are usually relatively small units, but with highly qualified experts. These consulting companies pool expertise and provide assistance to the ownership unit within the administration, giving second opinions and specialised advice. They may focus, for example, on performance monitoring, board assessment and the appointment process. They enjoy more flexibility in terms of hiring and remuneration policy, and may be also more independent of overall government policy. They are therefore perceived as being less easily captured by a line agency or sector ministry. They may also focus more strictly on shareholder value and are less suspected of pursuing other agendas, including political ones. The boards concerned feel that they are monitored by governance professionals.

Box 2.11. **The Italian Advisory Unit, SICOT**

The SICOT, Sistemi di Consulenza per il Tesoro s.r.l. (Treasury Consultancy Systems), is a limited liability company created in March 2001. The main mission reported in its Statute is the activity of consultancy for the Treasury Department concerning the following issues:

- administration of state shares;
- the privatisation process.

The only shareholder of SICOT is the Ministry of Economy and Finance which is also the only one with power to nominate the company bodies, including the board of statutory auditors. SICOT has currently 18 employees.

As an example of the kind of professional activity carried on by SICOT, here follow the main undertakings accomplished in 2003:

- support activity for the privatisation of ETI and Mediocredito Friuli Venezia Giulia;
- running and developing of a database of information on SOEs, and preparation of a new database on their governance;
- monitoring SOEs' current activity, internal organisation and future restructuring plans;
- participation in the transformation process of some state entities into joint stock companies;
- carrying out studies on various subjects, mainly concerning governance issues.

Source: SICOT, *Annual Report 2003*; By Law Article 4.

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Such consulting companies exist, for example, in **Italy** where the fully state-owned limited liability consulting firm SICOT has been set up to provide assistance to the Division for Finance and Privatisation within the Ministry of Economy and Finance, in charge of the ownership function as well as with privatisation (Box 2.11). The Division has 25 employees and SICOT 14 experts, so it almost doubles the expertise capacity of the ownership unit.

In **Australia**, the CSAU (Commonwealth Shareholder Advisory Unit) is now named the GBPFAU (Government Business and Private Financing Advice Unit), following the Humphry Report's recommendations. It employs 14 staff with financial and analytical skills and experience in banking, finance, small business, information technology and the public sector. It provides oversight, management, and strategic advice on the commercial performance of Government Business Enterprises (GBEs), by analysing their operations and environment, engaging in discussions with them and consulting with their stakeholders (Box 2.12).

Box 2.12. **The Australian Government Business and Private Financing Advice Unit (GBPFAU)**

The Government Business and Private Financing Advice Unit (GBPFAU) provides strategic advice to the Minister for Finance and Administration on the commercial performance of the Commonwealth's investment in the 10 Commonwealth Government Business Enterprises (GBEs) and the 13 non-GBE public trading and finance enterprises. The Commonwealth's diverse portfolio of businesses plays a vital role in sectors such as telecommunications, health care and transport infrastructure. The commercial success of these enterprises contributes to the Australian economy and provides significant returns to the Commonwealth government.

The GBPFAU undertakes strategic analysis of Commonwealth businesses and their industry sectors with a view to enhancing shareholder value. The GBPFAU provides the Minister with timely and focused commercial analysis of corporate plans, operational performance and significant investment proposals. Further to this, the GBPFAU also considers the fundamental structure of these businesses, ranging from dividend policy to capital structure.

As with any shareholder, the Commonwealth seeks to understand and manage risks arises from its investments. The GBPFAU proactively advises on such risks and their management. The GBPFAU continues to ensure that those enterprises formally designated as GBEs operate under a robust corporate governance framework, through ongoing review of the Commonwealth's GBE governance and accountability arrangements.

Source: Finance Annual Report 2001, Chapter 3.

The GBAU also implements the Finance Minister's decisions regarding communications, and ensures the quality and robustness of the GBE corporate governance framework.

There is also a specialised advisory unit in **New Zealand**. The CCMAU (Crown Companies Monitoring Advisory Unit) is a central device in monitoring the SOEs (or Crown Companies). The CCMAU plays, together with the Treasury, a constant advisory, monitoring and reporting role regarding SOEs. As the primary responsibility for the ownership function is divided between the sector ministries and the Finance Ministry, as described above, the CCMAU and the Treasury serve as advisors to these two respective Ministries. These two entities, the CCMAU and the Treasury, are considered as two agencies having the same role, but with different, and complementary, perspectives (*cf.* Boxes 2.13 and 2.14 below). The CCMAU has a prime responsibility for providing day-to-day monitoring advice for most SOEs, even though the final decisions on all issues remain with Ministries (the Responsible or sector ministry and the Ministry of Finance). The CCMAU has also a sole responsibility for board composition and performance, while the Treasury is responsible for regulatory aspects and asset sales.

Box 2.13. **The New Zealand CCMAU**

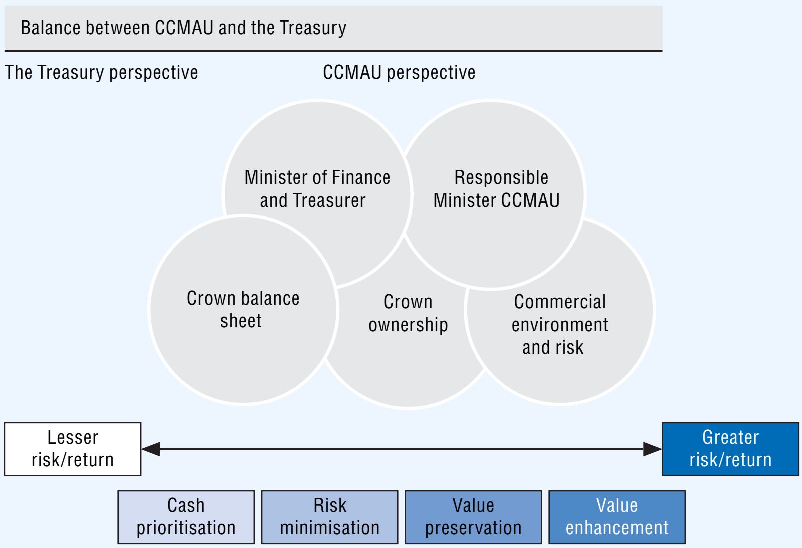
The role of CCMAU advisors is to advise and assist shareholding Ministers, to liaise with the Board and Management, to monitor progress and report on ownership interest, management issues, provide expert advice on technical issues.

CCMAU advice focuses on SOE's commercial opportunities and risks, on their operating as viable businesses, their operating environment, their performance against objectives, and the protection and enhancement of shareholders interests.

The CCMAU reports to shareholding Ministers on ownership plans and strategies, business plans and SCIs (Statement of Corporate Intent), capital structure, dividends, diversification and expansion; company divestments and other issues, as appropriate. The CCMAU also contributes to general policy advice on Crown companies in consultation with other departments.

Source: Owner's Expectation Manual, March 2002.

Box 2.14. **The dual model in New Zealand**



Source: *Owner's Expectation Manual*, March 2002.

Notes

1. Privatising State-Owned Enterprises, An Overview of Policies and Practices in OECD Countries, OECD, 2003.
2. "Product Market Regulation in OECD Countries: 1998 to 2003", Economics Department Working Paper No. 419.
3. Department of Finance and Administration, Australian Government, Submission, p. S29.
4. R. Humphry in "Review of GBE Governance Arrangments", Australian Government, March 1997.
5. *Annual Report State-Owned Companies* 2002, p. 19, Regeringskansliet.
6. Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale.
7. Matti Vuoria, "Evaluation Report of the State's Ownership Policy", Ministry of trade and Industry, Finland, Studies and Reports, 3/2004, p. 23.
8. Decision from 23 June 2003, No. 624, "On the Budgetary Outlook for 2003-06: the Conception of the Reform of Public Budgets", deciding that the subjects established for temporally period of transformation (including the NPF) will be liquidated.
9. *Privatising State-Owned Enterprises, An Overview of Policies and Practices in OECD Countries*, OECD, 2003, p. 56.

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PART I

Chapter 3

Relationship of State-owned Enterprises with other Shareholders

As noted in Chapter 1, on average around 40% of SOEs involve other shareholders. In approximately a half of these the state is a majority shareholder. Not all these firms involve public investors since only some 10% are listed, although they are usually among the largest enterprises.

The relationship between the state as a controlling or significant shareholder and the minority shareholders is particularly delicate in SOEs, and especially in those commercial companies that are listed. As a dominant shareholder, the state may be in a position to abuse minority shareholders as it is able to make decisions in GSMs without the approval of minority shareholders. It is also usually in a position to control the board's composition. Moreover, the state is likely to have other political and policy objectives which might be implemented at a cost to the minority shareholders.

It is in the state's own interest that other shareholders do not perceive it as an opaque and unpredictable owner, and feel that they are treated equitably. The state's track record in terms of respecting minority rights has a significant impact on the shares' value and the future capacity of the company to raise further funds on the market. Finally, having other shareholders introduces market pressures and may become an important means of monitoring SOE management.

In most OECD countries where part of SOEs' capital is held by private shareholders, minority shareholders' rights are recognised and in some case specifically protected. The ownership entity often "ties its own hands" and takes clear measures or adopts general policies that will prevent an abuse of minority and other non-controlling shareholders. These declared rights concern above all representation of minority shareholders on the board of directors, decision making power at the meetings of shareholders and rights to information about the company's situation.

These rights may be defined in the general legal framework concerning companies, *i.e.* the commercial company code, the Company Law, or corporate governance codes. They may be also more specifically defined or referred to in the charter of a SOE, or in specific founding laws where they exist (*cf.* Annex I.2). Finally, the equitable treatment of other shareholders may be a general principle adopted by the ownership entity or the government *vis-à-vis* SOEs. This is the case, for example, in **Norway** where the first of the government's ten principles of good corporate governance for SOEs is that all shareholders shall be treated equally.[1]

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Reference to the general legal framework

In most OECD countries, minority shareholders in SOEs have no more rights than they usually have in privately owned companies. Almost all countries assert that SOEs follow the regulatory provisions fixed in their commercial company code, Company Law, listing requirements or in the corporate governance principles/codes. Their respective legal frameworks are deemed to ensure fair and equitable treatment among all shareholders, and no special protection or provision is made for shareholders other than the state in SOEs. Most countries do refer to the general legal framework as, for example, the following:

- In **Australia**, the *Commonwealth Authorities and Companies Act 1997* (CAC Act), which applies to all SOEs, seeks to replicate requirements of the *Corporations Act* 2001 and in some areas apply more stringent requirements. SOEs that are incorporated are also subject to the Corporations Act 2001 as any other company would be. When listed, SOEs are subject to the Australian Stock Exchange Listing Rules. No further rules are provided to protect minority shareholders.
- In **Austria**, beyond the listing rules and the Company Law, the "Austrian Code on Corporate Governance" also applies to all SOEs and no further provision aims at protecting minority shareholders rights in SOEs.
- In **Finland**, **Germany**, **Sweden** and the **UK**, the general Company Law applies and is deemed to protect adequately minority shareholders rights, even in SOEs; this is the case also in **Switzerland**, where the provisions of Company Law related to the protection of minority shareholders rights applies to special status SOEs (such as Swisscom and CFF) as well as SOEs subject to normal Company Law (RUAG).
- In **Italy**, except for the cumulative voting-type system (see below), SOE's minority shareholders do not enjoy any specific rights beyond what is mandated in the Company Law.
- In **Korea**, minority shareholders are not granted special protection rights in SOEs or special treatment in the appointment of their board members. There are no specific disclosure requirements or approval procedures for special transactions aimed at protecting minority shareholders rights. All SOEs follow the Commercial Law and the Securities and Exchange Act regarding minority shareholders' rights.[2]
- In **Belgium**, minority shareholders are not granted specific representation rights in boards as the state and private shareholders have proportionate representations in boards.
- In **New Zealand**, minority shareholders are protected by provisions in general securities-related legislation. These provisions apply irrespective of state ownership.

- In **Norway**, the joint stock Company Law in some instances grants protection and special rights to minority shareholders against misuse by majority shareholders (misappropriation of money, withholding of dividends, gifts and/or decisions favouring only one of the shareholders, etc.).

In some countries, such as the **UK**, when the state has sold some, but not all, of its equity interest, the other shareholders have a majority of voting shares. This ceding of voting control alleviates the potential of abuse by the state as a majority shareholder and ensures that the partially state-owned enterprises benefits from the experience and discipline of the private sector shareholders.

Strengthened decision making powers within GSMs or boards

There are a few exceptions where minority shareholders in SOEs are granted a higher level of control and more decision making power than in the case of other companies. Indeed, minority shareholders in SOEs may be particularly concerned about the actual decisions being made outside of the company's GSM or board, or prior to meetings of the former which can become a mere rubber stamp. Thus SOE minority shareholders are in some countries granted access to the decision making process, often through stronger representation on the board.

In a few OECD countries and for some SOEs, minority shareholders are actively encouraged to participate in general shareholder meetings. This is usually done by the adoption of specific mechanisms at the company level, including facilitating voting *in absentia* or developing the use of electronic means as a way to reduce participation costs. These mechanisms often also include facilitating employee-shareholder participation or a system facilitating the collection of proxy votes from employee-shareholders, as employees in many countries are the most numerous individual shareholders in partially privatised enterprises.

In a few countries, a specific regulation applies to all SOEs and grants minority shareholders additional rights, mainly with regard to their representation on boards. Cumulative voting may be allowed, according to the general Company Law or following specific SOE by-laws. This allows minority shareholders to concentrate their voting rights some directors and may help in rebalancing the dominant state position by a stronger influence of private minority shareholders. Other ways to grant stronger representation to minority shareholders in SOE board have been adopted in a series of OECD countries:

- In **Denmark** and **Spain**, SOEs' minority shareholders are granted board representation.
- In the **Slovak Republic**, in SOEs which are more than 51% state-owned, the state enters into a shareholders' contract granting minority shareholders majority representation on the board of directors.

- In **Italy**, minority shareholders of all listed SOEs are granted special rights through the election system of the board: a cumulative voting-type system – "voto di lista" – assigns disproportional voting rights to the minority shareholders (*cf.* Box 3.1).
- In **Norway**, minority shareholders are represented in the selection committee appointed to nominate board members.
- In **Sweden**, for listed companies, a nomination committee comprising the four or five largest shareholders discusses board nomination and remuneration.
- Similarly, in **Finland**, the nomination of board members of listed SOEs is drafted in co-operation with the largest shareholders. For non-listed companies in which it has a share, the state has concluded shareholders agreements with the other owners in order to grant them representation on the board.
- In **Greece**, SOE statutes may contain a provision regarding the participation of minority shareholders on the Board.
- In **Turkey**, for SOEs' subsidiaries, if private shareholders collectively hold a share of capital greater than 20%, they have the right to nominate/appoint one member for each 20% share, but at most two members of the board in total.

Ex ante rights

Granting minority shareholders specific *ex ante* rights may also be quite useful in some circumstances, and in most cases these rights are granted by the general legal framework and are not specific to minority shareholders in SOEs:

- In a number of OECD countries, pre-emptive rights under the general company legal framework serve to protect minority shareholders.
- Qualified majorities for certain shareholder decisions may also be useful and are granted according to the general Company Law in many OECD countries, or by specific SOE by-laws. In **Austria**, for example, minority shareholders enjoy significant rights at GSMs via threshold arrangements. In the **Slovak Republic** and for votes on fundamental matters, the approval of two third of shareholders is required, and it is possible to extend further this requirement to more than two third of present shareholders.
- Finally, qualified majorities for some board decisions might also be made mandatory in the case of some SOEs. This is the case in **Belgium**, where special majorities have been stipulated in shareholders' agreements in the decision making powers of the boards of the telecommunications and airport companies, where a significant part of the shares is held by private investors. Similarly, in **Spain**, specific requirements or procedures for specific transactions are set out in the Public Limited Companies Act.

Box 3.1. **The election system in Italian listed SOEs – *Voto di lista***

According to this election system, directors are appointed as follows:

- Board members are elected by a shareholders' meeting on the basis of lists presented by the shareholders.
- Only those shareholders who, alone or together with other shareholders, represent at least 1% of the shares with voting rights at ordinary shareholders' meetings shall be entitled to present lists. All those entitled to vote can vote for only one list.
- Each shareholder can present or participate in presenting only one list and a candidate can only appear on one list or will be ruled ineligible.
- The outgoing Board of Directors can present a list of its own.
- Within each list, candidates must be ranked progressively.
- The lists presented by the shareholders must be lodged at the registered office and published at least ten days before the first meeting date.

The procedure for electing the Directors is:

a) The list obtaining a majority of votes will elect a certain percentage of the Directors. The bylaw of the SOE sets up this percentage which, however, cannot be higher than four fifth by law (to this purpose any fraction – *i.e.* 6½ directors – is rounded down). The people elected are determined by their position on the list.

b) The remaining Directors will be drawn from the other lists; for this purpose, the votes obtained by these lists will be divided successively by one, two, three and so forth according to the progressive numbers of the Directors remaining to be elected. The quotient obtained in this way will be attributed to the candidates of such lists in the order in which they rank in the list. The numbers thus attributed to the candidates of the various lists will be arranged in decreasing order in a single ranking. The candidates who obtain the highest numbers will become Directors.

In the event that more than one candidate from different lists has obtained the same number of allocated votes , the candidate of the list that has not yet elected a Director or that has elected the fewest Directors will be appointed.

In the event that no Director has been elected from any of these lists or that the same number of Directors has been elected from each list, the candidate of the list that has obtained the most votes will be appointed. If there is a tie in terms of both numbers of assigned directors and votes obtained by each list, the entire shareholders' meeting will vote again and the candidate who obtains a simple majority of the votes will be appointed.

Source: Italian answer to the OECD Questionnaire on Corporate Governance of State-Owned Assets.

In other countries, specific provisions protecting minority shareholders concern only a part of SOEs, usually through individual by-laws or by the possibility given by the law to adopt exceptional provisions:

- In **Denmark**, the state promotes provisions allowing for additional minority rights in the individual SOE by-laws.
- In **Greece**, the Company Law allows the statutes of the companies to contain provisions regarding minority shareholders' rights. In a number of listed companies there is a "general assembly of minority shareholders" to which all shareholders (except the state) may take part.

Information rights

A crucial condition for protecting minority shareholders is to guarantee a high degree of transparency. The way SOEs report "simultaneously to all shareholders in order to ensure their equitable treatment"[3] and which facilitates informed investment decisions by minority shareholders is documented in the Chapter 5 below.

However, few countries document the provisions taken, if any, to ensure that the ownership entity does not make any potentially abusive use of the information it receives as a controlling shareholder.

- In the case of listed SOEs, listing requirements and regulatory authorities oversee SOEs and shareholding entities in this regard. In **Italy**, it is specifically required that listed SOEs do not give any information to the ownership entity that it does not also give to minority shareholders, in order to fulfil the *Consob* requirements regarding equal treatment of shareholders (*cf.* Chapter 5).
- For non-listed SOEs, specific mechanisms and procedures would need to be put in place by the ownership entity and at the SOE level. It is not clear whether such mechanisms exist in many OECD countries, and if they are effective, in ensuring easy and equitable access to information by minority shareholders of SOEs.

Very few countries report examples of SOEs having developed an active policy of communication and consultation with minority and other shareholders. When it is the case, it often derives from the characteristics and objectives of the partial privatisation of these SOEs, which aimed at developing the capital market and equity culture, mainly through sales to employees. When they have an active policy in this matter, SOEs identify their minority shareholders and keep them duly informed in a timely and systematic fashion.

Some SOEs may also in some cases organise active consultation with minority shareholders for specific issues. This aims at avoiding decisions that would be unwelcome or badly perceived, and minimize the risk that decisions may be challenged in courts.

Right of redress

Regarding right of redress, minority shareholders do enjoy in most OECD countries the same rights in SOEs as in other companies, based on the general company legal framework. In **Poland**, for example, on the basis of the Commercial Companies Code (CCC), every shareholder who voted against a resolution that was adopted by the GSM, and who holds even only one share can challenge this resolution in the courts. He/she can sue the company for an annulment of a resolution which contravenes the statutes or good practices, harms the interests of the company or is aimed at harming a shareholder. A shareholder will have also the same right if, without a valid reason, they were not allowed to participate in the GSM, if he/she was not present at the GSM, if the GSM was wrongly convened, or if the questioned resolution was not included on the agenda. Beyond that, a shareholder who has been refused the necessary information during the GSM and who raised an objection, recorded in the minutes, may file an application with the registry court requesting that the management board be obliged to provide the information.

The state as a minority but dominant shareholder: the case of "golden shares"

A key issue in many countries concerns where the state maintains a veto over corporate decisions, especially in strategically "sensitive" sectors, by holding on to a "special rights". These are special in the sense that they go beyond the rights associated with a normal shareholding. One instrument to install such "special rights" is a "golden share" in the narrow sense, *i.e.* a preferred stock holding in a company that a public authority retains after privatisation. But, by and by, the term "golden share" has become a generic term for "special rights" in general, whether those rights are associated with a state shareholding or not.

Special rights have usually been introduced in the context of privatisation: they allow the state to divest itself of national flagships but without relinquishing its control over them. Whilst from the financial benefits of privatisation, the state retains specific powers over the future ownership, control, or strategic conduct of a private company. As such, they can significantly affect the wealth of the private shareholders in an unpredictable manner.

Such "special rights" come in all shapes and sizes: in some instances, they are stipulated in overall Framework Laws underpinning the governments' privatisation programmes, with specific decrees for individual companies. In others, they consist of special shares directly inserted in the Articles of Association of a privatised company. The beneficiaries vary, since special rights can be attributed to the government directly or to any other entity of public authority. They may grant those public authorities a bevy of exceptional

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privileges, *e.g.* the right to oppose investments beyond a certain threshold, vetoes of mergers and acquisitions, prior approval of other strategic management decisions or simply enhanced voting power by limiting other investors' voting rights.

In several landmark decisions of 2002 and 2003 against **Portugal**, **France** and **Belgium** as well as the **UK** and **Spain**, the European Court of Justice struck down diverse special rights mechanisms and established as a general principle that legislation liable to deter potential direct investment restricts the EC Treaty freedoms of capital movement and establishment. These case have far reaching implications for the creation of an Internal Market for corporate control, since member States can no longer count on golden shares as a reliable policy tool. With respect to residual special rights cases in a number of old and new member States, the European Commission continues to take a constructive approach towards member States, pursuing infringement procedures where necessary (current cases regard *e.g.* the **Netherlands**, **Italy**, **Spain** and **Luxembourg**). Thus, partially as a result of these rulings by the European Court, the scope of special rights, including golden shares *per se*, is now limited.[4] They have been abolished in **Korea**, **Norway** and **Greece**, while there is only one remaining SOE with a golden share in **France**.

Notes

1. First *Annual Report* on state ownership from the Ministry of Trade and Industry, *Annual Report 2002*, published in 2003, p. 11.
2. According to Article 31 of the Framework Act for GOCs and the Article 17 of the Special Act on Privatisation for some GICs respectively (Korean response to the OECD Questionnaire on Corporate Governance of State-Owned Assets, p. 8).
3. Annotations to the 2004 *OECD Principles of Corporate Governance*, p. 50.
4. See S. Grundmann and F. Möslein, "Golden shares: State control in private companies. Comparative law, European law and policy aspects", *European Banking and Financial Law Journal*, forthcoming.

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PART I

Chapter 4

The Role of Stakeholders in Corporate Governance

The importance of stakeholder relations *per se* for building sustainable enterprises has been recognised by the OECD Principles of Corporate Governance. "*The competitiveness and ultimate success of a corporation is the result of teamwork that embodies contributions from a range of different resource providers including investors, employees, creditors, and suppliers. (…) It is, therefore, in the long-term interest of corporations to foster wealth-creating co-operation among stakeholders.*"[1] The attention to stakeholders is even a unique feature of the Principles.[2]

The role of stakeholders in the governance of SOEs has been a subject of debate for quite some time. Complaints by consumers about poor service and the judgement that SOEs were being run in favour of narrow sectional interests at great expense to the budget and the public were among the reasons which led to privatisation, and sometimes to the establishment of consumer bodies attached to the regulator rather than to the company. Moreover, it has often been argued that governments as owners might be tempted to use SOEs in a non-transparent manner to further narrow sectional goals which are not in the long term interest of the public and the budget. This is sometimes done through granting specific rights or influence to stakeholders in the decision making process without the necessary mechanisms to guarantee transparency and accountability of these processes, and sometimes depriving the company organs of their responsibilities and decision making powers.[3]

Some aspects of stakeholder participation in corporate governance are developed extensively in other chapters, such as the representation of employees on boards, and the disclosure about stakeholder related issues. In this chapter, the focus is on the main characteristics of the legal framework related to stakeholders, and the manner and degree to which this framework differs from that applying to public companies. The main features of stakeholder participation in the corporate decision making is outlined, insofar as this is specific to SOEs in some OECD countries. Finally, the role of creditors, the second main group of stakeholders after employees, is also briefly described.

The legal framework regarding stakeholders relationships

In a small group of OECD countries, SOE employees are treated as in privately owned companies, with no exceptions, and are therefore subject to national Company Law. This is the case for example in **Germany**, **Austria**, the **Netherlands** and **Sweden**. However, employees in most of these countries

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have strong legal rights. They enjoy rights to participate in the decision making process, which are wider than in many other OECD countries. This is especially the case in **Germany**, **Austria**, and the **Slovak Republic**, with a one half or one-third representation on supervisory boards, and **Sweden**.

Moreover, in these countries which do not differentiate between SOEs and privately-owned companies in terms of stakeholder (*i.e.* employee) rights, the state as an owner has often adopted an overall pro-active stance on many stakeholder issues in their SOEs. In **Finland**, for example, state policy is to promote the selection of one representative of the company personnel for either the board of directors or the supervisory board in both majority and minority owned SOEs. **Sweden** takes a broader approach extending beyond corporate governance concerns. The state ownership policy, under the title of "*Companies as part of society*", calls for their companies to take the lead in promoting gender equality for both executives and the board and also calls on the companies to take the lead in reducing the incidence of sick leave.[4]

In a number of countries, where normal Company Law applies to SOEs, a series of specific regulations concern stakeholders' rights (usually employees) and involve either all SOEs or only one or a small group of them.

- In **Australia**, SOEs follow the general Company Law with two exceptions such as the Australian Postal Corporation, which has a special understanding about the rights of employees.
- In the **Czech Republic** there are specific schemes for the rights of SOE stakeholders, but within the general legal framework.
- In **Italy**, stakeholders (mainly employees) do not enjoy special rights, but SOEs have the possibility to go beyond the legislative requirements on a voluntary basis.
- In the **UK**, SOEs do not have formal responsibilities towards stakeholders other than those usually found in normal private sector business, except for trading funds. These trading funds, which are arm's length executive agencies of Government Departments, are subject to individual Departmental policies on issues such as employment and supplier payment policy because they are bound by Civil Services rules.

Finally, in some OECD countries, SOEs are characterised by specific governance structures differing from the usual joint-stock company, as regard the rights granted to stakeholders, principally employee board level representation, or other consultation/decision making rights for employees' representatives, for example, through work councils.

Employee representation on SOE boards

Specific governance structures for SOEs, mainly with regard to rights granted to employees, exist in numerous OECD countries, including in **France**, **Greece**, **Poland**, **the Slovak Republic** and **Spain** (*cf.* Table 6.3 in the Chapter 6). Board composition and employees' representation is covered in more detail in the Chapter 6.

- In some of these countries, employees are represented in SOE boards while they are not in public listed corporations (in **Spain** and **Greece**) or their representation is stronger (**France**).
- In **Poland**, the same rules are binding in SOEs and in publicly listed companies unless the statutes provide otherwise. In Treasury companies, employees may designate two fifths of the Supervisory Board's composition.[5] In addition, according to the privatisation law, in wholly-owned Treasury companies with more than 500 employees, the employees are also allowed to elect one member of the Management Board.
- In the **Slovak Republic**, according to the Commercial Code[6] (No. 513/1991 Coll., Article 200), one third of the Supervisory Board members are elected by the employees if the company has more than 50 employees. Moreover, the Article of Associations may establish a higher percentage for employee representatives, provided that it is higher that the number of board members elected by the Shareholders Meeting.

Some other countries have approved special laws for their SOEs with the effect to mandate or strengthen employee representation on boards:

- In **Belgium**, SOEs have special responsibilities with respect to employees and clients given by special laws and statutes. However, employees are not represented on the board, but only on the strategy committees where they exist.
- In **France**, the 1983 "Law on Democratisation of Public Sector", as described in Chapter 6, fixes the composition of the board for some of the most important SOEs. It requires a tripartite board with one third filled by employees' representatives.

The effects of employee representation on boards will depend partly on the way these representatives are elected and trained. It will also depend on how the representatives are accepted on the boards and whether a board split can be avoided, especially in two-tier systems.

Practices regarding the election of employee representatives vary a great deal among OECD countries (Table 4.1). There are two main features which characterise the different election systems. First, employee representatives may be elected "directly", *i.e.* by all employees or by categories of employees, or "indirectly", *i.e.* by the work council. Second, representatives may be only

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Table 4.1. **Election systems for employee representatives**

	Direct	Indirect
Employees only	France[1] Denmark Portugal Poland	Austria Finland Luxembourg
Employee or union representative	Spain	
Trade union representatives	Germany Greece[2] Sweden	Italy

1. In France, employees are divided into two constituencies, managers and non-managers. They are elected by a one ballot vote with proportional representation, with one seat reserved for managers.
2. Employee representatives are nominated by trade-unions.

Source: "Workers' participation at board level in the EU-15 countries, Report on the national systems and practices", Hans Böckler Foundation/European Trade Union Institute, Brussels, 2004.

employees or may also be trade unionists from outside the enterprise concerned, or a combination of both. When they have to be employees from the enterprise, they are nevertheless often also representatives of trade unions. Some other systems also exist, such as in the **Netherlands**, where the Work Council cannot elect any employee representative to the board, but has the right to recommend some candidates who are often not employees of the enterprise.[7]

The impact of these different systems of employee representation on the corporate governance of SOEs has only been the subject of little formal research and investigation. One report for **France** concluded that: "*Globally, the impact of employee representatives on boards seems to be limited. They themselves evaluate their influence as between being non-existent or at the margin for some issues. They are not in a position to influence strategic orientations of the enterprise. They are more often recognised as useful 'damage limitation' devices, preventing the board from passing certain limits. Finally, their possibility to disagree with a decision is still perceived as a bad signal by management, which likes to demonstrate a unanimous approval of its decisions by the board.*"[8] Studies for **Sweden**, by contrast, are much more positive.[9] A great deal appears to depend on national traditions and the overall structure of the board and whether it even has any real decision making power (see Chapter 6). If one issue does appear to be common, it is the issue about how employee elected/nominated board members control conflicts of interest including the use of confidential information. This is of course an issue that other board members also have to face.

The motivation and commitment of employee board members might also depend on the remuneration system. In many countries these board members are either not paid or part of the payment is made to a trade union (Table 4.2).

Table 4.2. **Remuneration of employee representatives into boards**

	No remuneration	To individuals	To trade unions
Countries	Austria France[1] Sweden[2]	Finland Germany[3] Greece Ireland Netherlands	

1. However, they benefit from reduced responsibility compared to the general legal framework. For example, there is no joint and several liability with the board members who represent the shareholders.
2. For 2/3 of companies.
3. By agreement, union members contribute a certain amount of the remuneration to the trade unions.

Source: "Workers' participation at board level in the EU-15 countries, Report on the national systems and practices", by Hans Böckler Foundation/European Trade Union Institute, Brussels, 2004, p. 36.

The rights of creditors: insolvency/bankruptcy procedures

In a number of cases, SOEs are to a large extent protected from insolvency or bankruptcy procedures by their specific legal status. This is sometimes due to the necessity to ensure continuity in the provision of public services, but overall it should not weaken creditors' rights. For example in the **UK**, while government-owned Company Act companies are subject to regular insolvency and bankruptcy procedures, special administration regimes exist to ensure certain essential services continue to be provided in the event of bankruptcy or insolvency.

However, in most OECD countries, SOEs follow the same general rules for insolvency and bankruptcy as for private companies. This is the case for **Austria, Denmark, Finland, Germany, Italy, Korea, Mexico, the Netherlands, the Slovak Republic, Spain**, **Sweden** and **the UK**. In this later case, only trading funds and statutory corporations are not subject to regular insolvency and bankruptcy procedures. In **Poland**, only few SOEs subject to special laws, namely the Polish Post Office, Polish Railways and Polish Airports, are not subject to general rules for insolvency and procedures. In case of bankruptcy, the state has some specific rights, *i.e.* requesting a declaration of bankruptcy and participating in the process.[10]

Only three countries declare that SOEs are not subject to the general insolvency and bankruptcy procedures. This is the case for **Belgium**, **Turkey** and **France**; in the latter, however, this is true only for SOEs under the specific legal statute of EPIC (Établissement Public Industriel et Commercial). In **Belgium**, a specific system of insolvency and bankruptcy applies to SOEs and some of their assets covering public services are protected from creditors.

However, even if SOEs are subject to the usual insolvency and bankruptcy procedures as in **Korea** and **Sweden**, in most cases, there are no examples where a majority owned SOE has gone into bankruptcy. Only a few countries

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report cases of SOEs going effectively into bankruptcy, such as **New Zealand** and **Norway**.

Creditors and the board often assume that there is an implicit state guarantee on SOE debts. This situation has in many instances led to excessive indebtedness and wasted resources of the SOE. This is detrimental to both bondholders and to the ultimate owners, the taxpayers. For EU countries, the Community Law regime for state aid should prevent governments from subsidising losses, thus strengthening the credibility of their commitment not to intervene should a SOE go bankrupt.

A small number of OECD countries have more clearly defined the obligations of SOEs with respect to creditors:

- In **Australia**, following cases of delayed payments, SOEs have to be as transparent and fair with their creditors as private enterprises. In addition, they have often to comply with further reporting requirements to the Treasury through subsidiary legislation or regulations.
- In **Belgium**, SOEs have to follow specific rules enhancing transparency and objectivity in contracting for procurement of goods, services relating to the provision of public services.
- In **Sweden**, SOEs have in some cases the possibility to borrow money from the National Debt Office. In such case, the risk premium included in the interest rate should reflect the actual risk.

Notes

1. *OECD Principles of Corporate Governance*, Annotations Chapter IV, p. 46, 2004.
2. *OECD Principles of Corporate Governance*, OECD *Policy Brief*, August 2004.
3. This is described in length in the board chapter.
4. *Annual Report State-owned Companies*, 2003, Regeringskansliet, pp. 18-19.
5. In food-processing companies one fifth of the Supervisory Board is designated by employees and one fifth by farmers and/or fishermen.
6. Commercial Code No. 513/1991 Coll., Article 200.
7. It should be noted that in many Dutch companies there is the so called “structural regime” in place which also involves the board essentially appointing itself through the co-option system. For details see *Corporate governance: A survey of OECD countries*, OECD, 2004.
8. “Gouvernement d’entreprise : fonctionnement des organes de contrôle et rôle des représentants des salariés”, Observatoire des Dirigeants, LSCI/CNRS, November 2003, pp. 74-89.

9. "Employee Participation on the Company Board: the Swedish Experience", Anders Victorin, *Company Law Reform in OECD Countries, A Comparative Outlook of Current Trends*, December 2000; "Workers' participation at board level in the EU-15 countries, Report on the national systems and practices", Hans Böckler Foundation/European Trade Union Institute, Brussels, 2004, pp. 123/124.
10. If the state is the sole owner, the state is entitled to be informed by the court that the bankruptcy proceedings have been initiated, if it has been initiated by somebody else than the state. The state can also express its opinion to the court about the justification of the motion, but this opinion is not binding.

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PART I

Chapter 5

Transparency and Disclosure

Transparency and disclosure are even more important for SOE's than for other companies since it is important to show that political control is being exercised at arms length and to make their goals clear to the public. By reporting to their ownership entities, the Parliament or the general public, SOEs increase their transparency and accountability. Reporting is a key element for monitoring whether the board is fulfilling its agreed objectives. Exposing processes and performance to public scrutiny provides strong incentives for good management, board monitoring and the effective use of ownership rights.

There are three main types of SOE reporting, *ex ante*, *ex post* and aggregate reporting and a description of each follows in this chapter. It should be noted that *ex ante* and aggregate reporting are more specific to the state sector.

- *Ex ante* reporting is often additional to mandatory requirements according to normal Company Law and mainly concerns setting objectives. In most cases, it goes hand in hand with performance reporting. Setting objectives and reporting performance vary greatly depending on countries, and has undergone numerous and significant reforms in some OECD countries in recent years.
- *Ex post* disclosure covers financial reports, general Directors' or Corporate Governance reports, as well as some specific reports required from SOEs. *Ex post* reporting by SOEs has significantly improved in recent years in most OECD countries, and SOEs are increasingly reporting in as much detail as ordinary joint stock companies.
- Finally, aggregate reporting covers all forms of reporting on the overall state sector, either carried out by the ownership entities or by specific state audit or control entities. This aggregate reporting aims both at reporting to the Parliaments and informing the general public. The content and quality of such aggregate reporting varies extensively among OECD countries.

Transparency of SOEs will not only depend on the content of their disclosure, but also on the quality, timeliness and relevance of the documents. The role of auditors as well as specific state control entities in charge of controlling the quality of SOE reporting are also described in the last part of this chapter. The discussion shows that SOEs are in general subject to additional controls in comparison with ordinary joint stock companies, but that the extensiveness and quality of these additional controls may also vary greatly.

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The availability of information concerning SOEs also varies across OECD countries, as different reporting documents are not always made public. Some reports remain confidential between the SOE concerned and its ownership entity, advisory units or the government. In other countries, documents are tabled in the Parliament or published in *Official Gazettes*.

There is obviously some trade-off between public accountability and commercial confidentiality, or between the costs related to reporting and control, and its benefits. Costs relate to resources needed to develop various reports as well as the potential danger related to the disclosure of commercially sensitive information. Some SOEs in countries with high standards of public accountability complain about the extra burden which leaves them at a competitive disadvantage. But benefits are also potentially great, with a reduced risk of unsatisfactory or poor performance and a similar reduction in the associated political and social costs. Each country has to make its own decision about the balance between these costs and benefits.

Finally, increasing attention is being given to risk monitoring. The necessary reinforcement of risk monitoring systems has been one of the lessons learnt from recent experience in the performance of certain SOEs, and remains a key challenge in a number of OECD countries.

Ex ante disclosure: setting up and reporting on objectives

There are a few but growing number of OECD countries where the overall objective of SOEs or of the ownership entities in exercising the ownership function is clearly and openly articulated. This is the case for example in **Sweden**, where the Ownership Policy begins by stating that "The Government's overall objective is creating value for the owners".[1] This is also the case in **France**, where the overall objective of the new APE (Agency for State Ownership) is to "look after ownership interests of the state".[2] In the **UK**, the Shareholder Executive's overridding objective is slightly more developed, as follows: "to ensure the Government's shareholdings deliver sustained, positive returns and return their cost of capital over time within the policy, regulatory and customer parameters set by Government, by acting as an effective and intelligent shareholder".[3]

As for individual SOEs, they have to report on their objectives in most OECD countries, or at least for the large enterprises. This reporting takes various forms, such as statements of corporate intent (SCI), management contracts, corporate plans, etc. Typically, SOEs will first have to submit yearly business plans and obtain approval from ministries concerned or from the Ministry of Finance. Then SOEs have to report to the ownership entity and/or to the Ministry of Finance/Treasury, on a quarterly, semi-annual or annual basis with quantitative and qualitative information aimed at monitoring the current performance relative to targets and objectives.

Challenges

There are well known and extensively discussed difficulties in defining objectives and measuring performance in any kind of company. These difficulties are even greater in the case of SOEs as they typically have a more complex set of objectives since they are often being called upon to implement government policy. Moreover, the relative importance of these multiple objectives is not always clearly specified.

In addition to ambiguities about objectives, the link between objectives and performance indicators introduces further difficulties. Regarding financial performance, there are in most cases no tradable share prices available as a synthesis financial indicator, except for the few listed SOEs. SOEs usually report, in the same way as their private sector counterparts, a series of partial financial indicators, such as EBIT or ROE. These measures derive from published accounting data, and thus are rather easy to understand and interpret. SOEs also increasingly use complex or comprehensive measures, such as economic value added (EVA). These comprehensive measures integrate the opportunity cost of capital as well as risk adjusted rates of returns (Box 5.1). Thus they allow a better assessment of the value produced by SOEs and a more systematic benchmarking, particularly with the private sector. However, they are costly to compute and their interpretation has also given rise to an intensive debate as to their relevance and impact on corporate strategies.[4]

As for the measures of non-financial performance, they are often complex but quite useful as they focus on specific aspects of SOEs' operations and provide the context to qualify their financial performance. SOEs in many countries tend to compile an increasingly comprehensive set of non-financial indicators.

The ambiguity that typically exists regarding the link between performance indicators and objectives can create perverse management incentives, which in turn ultimately prevent or disrupt achievement of the original objectives. The history of plan economies reflects dramatically these difficulties. A crucial goal in corporatisation of SOEs was precisely to alleviate these difficulties in supervision of their performance.

Different ways of setting and reporting on objectives

An elaborate and sometimes complex system of objective setting and performance monitoring exists in a few counties, especially the ones where the state sector used to be or is still predominant. This is the case for example in **Korea** and **Turkey**:

- In **Turkey**, SOEs prepare programme proposals which will be revised both by the Treasury and the State Planning Organisation. They are then approved by the Council of Ministers and published in the *Official Gazette*.

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Box 5.1. **Economic Value-Added (EVA)**

Academic research shows that accounting measures (*e.g.*, earnings per share) are only coincidentally related to stock prices. More significant is the cash, adjusted for time and risk, that investors can expect to get back over the life of the business. This raises the question of how to link discounted cash flow – which is the most analytically respectable approach to valuation – with actual financial management of the enterprise?

Economic value-added (EVA) is operating profits less the cost of all the capital employed to produce those earnings. EVA will increase if operating profits can be made to grow without tying up any more capital, if new capital can be invested in projects that will earn more than the full cost of the capital and if capital can be diverted or liquidated from business activities that do not provide adequate returns. EVA is the only performance measure that is entirely consistent with the standard capital budgeting rule: Accept all positive and reject all negative present value investments. (Earnings per share, on the other hand, will increase so long as new capital investments earn anything more than the after-tax cost of borrowing.)

The rate of return on total capital is the return that should be used to assess corporate performance. The required rate of return for a particular enterprise should increase with the enterprise's operational risk and financial risk. Performance should be measured against total capital – both in debt and equity. Net operating profits in excess of total capital times required rate of return is considered economic value added (EVA).

Source: Mako and Zhang, "Exercising ownership rights in state owned enterprise groups: what China can learn from international experience", 2002.

- In **Korea**, besides reporting almost the same as private companies, GOCs (SOEs) have to submit a special report, called the "Report on Actual Results of Operation" with financial and non-financial information on the SOE objectives, its achievement of these objectives, as well as "concerns of public interest". This special report has to be submitted by 20 March to all the supervision entities concerned, *i.e.* the line or branch Ministry, the Ministry of Planning and Budget and the Ministry of Finance and Economy, as well as to the National Assembly.

Reporting on objectives also exists in countries where a specific process of "management contract" has been put in place, such as in **Australia**, **Belgium**, **France**, **Greece** and **New Zealand**. The main objective of the management contract system is to formalise further the establishment and monitoring of performance objectives (including policy objectives) for SOEs, while recognising clearly the separation between the shareholder interests and the right of the board to manage the business. Management contracts, which are actually with the company as an entity, have usually led to a greater independence of SOE management. They clarify the medium term relations between the different ministries or agencies concerned and the SOEs, and help establish a common understanding about the external environment, the strategic orientation of an SOE and the goals to be achieved.

- In **Australia**, as part of the management contract system, wholly-owned SOEs have to develop a Statement of Corporate Intent (SCI) in line with Government policy, embodied in the 1997 *Governance Arrangements for Commonwealth Government Business Enterprises*.[5] The SCI is a planning and accountability document specifying financial and non-financial performance targets for three years ahead. The purpose is to enhance *ex ante* accountability and to clarify mandates and objectives, *i.e.* to "*provide for greater clarity for the Parliament, shareholder Ministers and a (SOE)'s board and management as to the high level framework within which a (SOE) is to operate*".[6]
- In **France**, based on 1982 legislation, performance contracts clarify the respective commitments of the state and SOEs (in terms of profitability, social policy, productivity, quality and indebtedness). They also define common tools to measure the performance in terms of financial profitability and productivity targets. Finally, they define the incentive policy for the management and employees (*cf.* Box 5.2).
- In **Greece**, management contracts contain conditions and rules concerning the achievement of the goals set in the business plan, the conditions for their revision, the indicators required to monitor main economic performance, especially production costs, productivity, quality of services and yearly staff expenditures.
- In **New Zealand**, there is an annual business planning cycle, but SOE boards and management are expected to develop strategy and financial performance plans for the next three years. This is done through a process of negotiation of a SCI (Statement of Corporate Intent) (Box 5.3). SOE boards determine targets in consultation with the relevant sector Ministers. These SCIs set out the nature and scope of SOEs' activities and are the reference document against which SOE boards will be held accountable. SCIs will also include estimates of intended aggregate capital expenditure, as well as financial and non-financial performance indicators.

In some OECD countries such as **Australia, Belgium** and **Canada**, SOEs have also to submit *corporate plans*, which set broad objectives to be achieved covering a period from 3 to 5 years. These corporate plans include the information contained in SCIs and are designed as accountability mechanisms in the relationship between the SOE boards and the ownership entities. "*The corporate plan is the cornerstone of the control and accountability framework*."[7] A SOE's corporate

Box 5.2. **Provisions of performance contracts for SOEs in France**

Commitments of the state

- Definition of development targets.
- Evolution of fixed assets.
- Financing by grant or governmental loans of investments considered as of public interest.
- Price related commitments.
- Financial commitments.
- Involvment in equity.
- Management of the debt and remuneration of deposits.

Commitments of the SOE

- Financial profitability.
- Social policy and evolution of employment, including pension related issues.
- Productivity targets.
- Quality targets.
- Indebtedness policy.

Definition of common tools to measure

- Performance.
- Fulfilment of financial profitability target.
- Fulfilment of productivity target.

Definition of incentive policy

- For the management.
- For the employees.

Source: Jean-François Guthmann, "Privatisation, management and performance contracts with SOEs: the French Experience", presentation in the OECD/ICSSR Conference on Privatisation and Corporate Governance of State-Owned Assets, New-Delhi, November 2003.

plans must indicate, for example, "*how it will balance its commercial objectives with its public policy objectives and the trade-offs required to achieve that balance… (or…) how it can contribute to government priorities and initiatives while still ensuring that its activities are consistent with its mandate*".[8] Corporate plans are reviewed by the ownership entities, with the objective of having a clear and common understanding of the SOE's mandate, targets and performance indicators, and about how the SOEs will balance their different objectives and take into consideration the government's policy priorities.

Box 5.3. **Negotiation of corporate objectives (SCI) in New Zealand**

The main steps in the business planning cycle are:

- Shareholding Ministers write to each Crown company board before the beginning of each planning round to detail the information requirements, the timing (milestone dates) and any special issues the company is to address during the planning round.
- Boards are then required to: assess their business environment; reassess their strategic direction; provide a detailed plan for the immediate year; and provide financial projections for the following 2 to 4 years.
- Following the delivery of the boards' outlook and business plans to the shareholding Ministers, advisors then prepare a report on these documents for the shareholding Ministers' consideration. Draft SCIs are delivered together with the business plans. The SOE Act, the CRI Act and other relevant company-specific legislation require boards to deliver their draft SCIs to shareholding Ministers at least one month before the end of each financial year.
- Shareholding Ministers may then, through their advisors, seek further information.
- Shareholding Ministers then consult with boards on any issues or concerns they have with the business plans and draft SCIs. This occurs either by letter or, more often, meeting between shareholding Ministers, advisors and the board (referred to as the business planning meeting).
- Following the business planning meeting (if held) shareholding Ministers write to boards outlining their understanding of the main outcomes and issues discussed.
- Boards then consider the outcomes from business planning meetings and the shareholding Ministers' written comments, and if necessary, revise their business plans and SCIs. Boards then deliver to shareholding Ministers finalised business plans and SCIs.
- Shareholding Ministers table the finalised SCIs in the Parliament.

Source: Reporting Requirements of Crown Companies, Owner's Expectation Manual, Section 4.1, New Zealand CCMAU, (*www.ccmau.govt.nz/PDF/OEM%20Final%20Version_310502.pdf*).

Transparency issues

Difficulties and criticisms have often arisen in some countries regarding the transparency of the objective setting process, as well as in its monitoring. Indeed, performance monitoring could become a powerful accountability mechanism as long as it is disclosed. This disclosure will allow the Parliament and the general pubic to assess how well resources vested in SOEs are efficiently used, how efficient are SOEs' corporate strategies and the government's ownership policy.

Consequently, management contracts or Statements of Corporate Intent are usually submitted to the Parliaments. For example, in **Australia**, SCI are tabled in Parliament within 15 sitting days of the Parliament following the beginning of the financial year. On the other hand, corporate plans usually remain confidential as they often contain commercially sensitive information.

The usual challenge regarding all these different kinds of objective setting and performance monitoring lies indeed in the balance to be struck between accountability to the Parliament and the risk of disclosing commercially sensitive information. Some companies have complained that this may place them at a competitive disadvantage *vis-à-vis* their private peers.[9]

On- going and **ex post** *monitoring of performance*

Regardless of the form of the objectives document, (Statement of Corporate Intent, Management Contracts or others) they are only of use if on-going or *ex post* reporting adequately identifies departures from performance and financial targets. This is not always the case in some OECD countries. Performance monitoring allows difficulties to be identified early and may also benefit the assessment of government policies, for example, in the case of sector restructuring and service quality improvement policies.[10]

A few countries have set up on-going monitoring systems of performance indicators. This decreases the risk of unforeseen underperformance. The discipline of reporting on a regular basis in itself reduces the risk, and in case of problems gives the opportunity to react promptly:

- In **Australia**, GBEs are required to provide confidential performance reports to shareholder Ministers six monthly and shareholder Ministers may ask GBEs to provide these reports on a quarterly basis.
- In **France**, a monthly reporting system is being developed by the new APE ("State Participation Agency"), with main financial indicators as well as qualitative indicators when relevant. Moreover, SOEs' senior management has to organise regularly and at least once a year a meeting with the APE to explain and discuss main developments and strategic perspectives.[11]
- In **New Zealand**, SOE boards have to advise CCMAU on a monthly basis if the SOE is ahead, in line with or below budget.
- In the **UK**, SOEs report periodically, usually monthly, to the Shareholder Executive on performance of business against plan and budget.

Moreover, ownership entities are usually supposed to be informed of any significant events that may significantly alter the SOE's performance.

The crucial difficulty lies in the role of the SOE boards in reporting on performance and in the balance to be achieved between proper monitoring of performance by the ownership entity, and interference in day-to-day management. Direct monitoring by the ownership entity of management performance will lead to a by-passing of the board in one of its key function. Thus performance monitoring systems are or should be evolving towards an increased involvement of the board, on one hand in monitoring management, on the other hand in reporting to the ownership entity.

Reporting on how objectives and targets have been met (*i.e.* how management contracts have been fulfilled) takes different forms and various entities are involved depending on the countries. Parliaments are increasingly involved in reviewing corporate objectives or any kind of *Annual Report* on performance.

- In **France**, "*Annual reviews of performance contracts*" are carried out under the responsibility of State Controllers (see below Box 5.6), reporting directly to the Ministry of Finance. These reports are not disclosed.
- In **Greece**, boards have to submit "*Annual Reports on Activity*", containing all information related to the achievement of objectives agreed upon in the business plans and management contracts. The *Annual Report* on Activity has to be submitted to the Ministry of Economy and Finance and to the branch Ministry concerned, as well as to the appropriate Parliamentary Committee.
- In **Italy**, by the end of February, non-listed state fully-owned enterprises submit *Annual Reports* to the Ministry of Economy and Finance including the description of the principle managerial issues as well as the main financial results compared with forecast results. SOEs also provide mid-year updates on both financial items and managerial issues.
- In **Belgium**, every year the board of SOEs reports to the minister in charge of the SOEs on the public services activities.
- When SOEs are required to provide corporate plans, such as in **Australia** and **Canada**, they are also asked to provide progress reports against them.

Variable results have been observed

Mixed results regarding performance contracts with SOEs have been documented by a number of studies, especially regarding developing countries where these performance contracts have been developed since the 1970's, often with the assistance of the World Bank. These studies have shown that the effects of performance contracts on SOE efficiency have been disappointing, with no pattern of improvement in trend productivity or profitability apparent. These poor results are explained by the information advantage of SOE managers in negotiating targets, the insufficient incentives provided to motivate managers,

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and the lack of credibility of the governments' commitment. In negotiating these performance contracts, too often governments have pledged politically unrealistic actions, and have underestimated the associated political costs as well as the extent of their information disadvantage *vis-à-vis* SOE managers. The conclusion drawn by the World Bank on its extensive experience with such performance contracts is that performance contracts have to be part of a broader package of SOE reforms.[12]

In the OECD countries surveyed, the results of objective setting and performance monitoring systems have been quite varied. The effectiveness depends on three main aspects: first, the quality of the preparation and negotiation of the contracts; second, the quality of performance indicators selected to monitor performance; and finally, the effective independence of SOE management and their capacity to protect themselves from political interference. Management or performance contracts for SOEs have usually contributed positively to the clarification of objectives and to the independence of management. In some cases they have also permitted a better co-ordination between different governmental bodies with interests in SOEs' strategies, allowing an early debate between these different bodies/administrations. However, management contracts have not always been sufficient to prevent political interference.

- In **France**, the process of "performance contracts" is widely recognised as having been a success in the formerly non-competitive sector of SOEs (La Poste, EDF, GDF), but a relative failure in the competitive sectors, or in sectors with sensitive social and employment issues such as in the railways and public transportation. In this latter case, the relative failure was partly due to continuing political interference regarding employment issues.
- In **Canada**, a study found significant deficiencies in a third of corporate plans surveyed, as well as less serious problems in another third. These weaknesses were related, for example, to a lack of clarity in the definition of objectives as well as to a lack of information about how the SOE will monitor its performance. Deficiencies were also linked to the approval process, as very little feedback was received from the ownership entities. The process was thus transformed into a ritual instead of a "*clarification of respective appreciation of the corporation's objectives*", addressing challenges and choices facing the SOEs. Moreover, review by the Treasury tended to focus sometimes on minor funding issues instead of broad strategic orientations. Consequently, a recommendation was made that "(to) *align expectations, each corporation and the responsible minister should reach an understanding on the most effective ways to outline priorities, provide feedback and reach consensus on corporate plan submissions and to maintain ongoing contact between them*".[13]

Ex post disclosure

Financial Statements

Financial disclosure by SOEs has improved significantly in recent years in many OECD countries. Generally speaking, SOEs have to report the same way as public companies since they are also subject to Company Law. Among the countries surveyed, there are no cases where SOEs have been subject to less stringent standards than applied to ordinary public company regarding disclosure and transparency. On the contrary, in most cases, SOEs are subject to additional requirements.

In the **UK**, for example, SOEs set up as Companies Act companies have the same reporting requirements as all registered companies as set out in the Company Act and in conformity with UK accounting standards. For Statutory Corporations, recent practice has been to require reporting as close to that which is required by Public Limited Companies and they are audited in line with APB (Audit Practice Board) best practice. For Trading Funds, the reporting requirements are to produce *Annual Reports* and accounts, again closely aligned to private sector companies' practices.

When listed, SOEs are subject to the general rules and regulations of the stock market and the relevant market authorities monitor their compliance. In a few cases, some of the largest SOEs are listed abroad (*cf.* Chapter 1) and thus subject to the listing requirements concerned.

In an increasing number of OECD countries, SOEs even when they are not listed and are also not subject to Company Law are required to report to the same standards as listed companies. In some cases, the ownership entity may have a degree of discretion about some specific aspects of financial reporting by SOEs. The approach is based on the argument that their ultimate owner is the general public, so that they are even more "public" than public companies. This is the case, for example, in **Sweden**, where this Principle is set in their "Guidelines for External Financial Reporting by Government-Owned Companies", and repeated in the ownership entity's *Annual Report*. "*For state-owned companies, the requirement for an open and professional provision of information transparency is a question of democracy since the companies are ultimately owned by the Swedish people. The Government therefore considers that these companies should be at least as transparent as listed companies.*"[14]

In all OECD countries, SOEs have to submit *Annual Reports*. *Annual Reports* are the primary documents summarising the main outcomes and financial results of SOEs for the year. Requirements regarding the content and quality of *Annual Reports* are usually formulated in the Company Law and in other legislation and regulation, or in laws specific to the status of a SOE. Annual Reports aim to convey information relevant to different stakeholders, including ownership entities, the general public, other government agencies, the political arena and the media.

In most OECD countries surveyed, SOEs also publish bi-annual reports, such as in **Norway**, but only a few countries publish *Quarterly Reports*. *Quarterly Reports* have to be submitted by SOEs in **New Zealand**, **Sweden**, **Turkey** and only by some SOEs in **Norway**. In **France**, only listed SOEs publish bi-annual reports, but all SOEs issuing securities have committed themselves to do so from 2004. These interim reports usually include interim financial statements, information on capital expenditure to date, reports on operations, as well as discussion on the evolution of strategy and changes in overall operating conditions.

The main differences among countries and among SOEs relate to the comprehensiveness, quality and clarity of these *Annual Reports*. In many countries, studies or specific audits have shown that the content and quality of SOEs' *Annual Reports* do not always meet high standards. To improve the situation, certain countries are issuing specific guidelines or booklets detailing key items to be included in *Annual Reports*. This is the case, for example, in the state of Queensland, **Australia**, with the "Annual Reporting Guidelines for Queensland Government Agencies", and in **Poland**, with the below mentioned Guidelines on Financial Reporting.

SOEs' *Annual Reports* are in most cases available to the public. Interim reports are often not as publicly available as *Annual Reports*. Annual or interim reports may also be posted on SOE's Web sites or on the ownership entities' Web sites. In **Sweden**, for example, close to 80% of *Annual Reports* are posted on SOE Web sites and more than 50% of *Quarterly Reports*. In many cases, *Annual Reports* and often bi-annual reports are submitted to the scrutiny of Parliamentary Committees, which may in turn make audits and develop specific recommendations related to the content of SOEs' *Annual Reports*.[15]

Another factor which may have a decisive impact on the usefulness of *Annual Reports* is the timeliness of publication. Some countries have adopted clear policies to encourage SOEs to publish their reports in a timely manner. This is the case, for example, in **Sweden** where the goal is to have all state-owned companies publishing their *Annual Reports* by January of the following year. Reporting dates for SOEs are summarised in the aggregate *Annual Report* published annually by the ownership entity.

In many OECD countries, large SOEs are also increasingly publishing consolidated accounts. This is the case, for example, in **Greece** and in **France**, where a number of SOEs have begun to publish consolidated accounts since 2000 (CNR in 2001, RATP in 2002). A recent regulation ("*Loi de Sécurité Financière du 1^er^ Août 2003*") will require by 2006 all "*Établissements Publics*" to publish consolidated accounts as soon as they control another entity and have them certified by external auditors. Moreover, consolidated accounts will meet IFRS standards by 2005, following EU regulations with respect to listed companies.

Directors' Reports and Corporate Governance Reports

In a growing number of OECD countries, SOEs are also required to submit a *Directors' Report*. Such a report usually includes the following information: *i)* a review of operations and main activities; *ii)* significant changes in the state of affairs and in the environment that may affect the SOE's performance or strategic perspective; *iii)* likely developments; *iv)* information on board members, including their qualification, experience, specific responsibilities if any, the number of board and committee meetings and board members' attendance.

In some countries, a *Corporate Governance Report* is also required. This report is required in most OECD countries for listed SOEs as part of the listing requirements. The reports by SOE's usually include information on: *i)* the board composition and nomination process; *ii)* resources available to directors for external advice; *iii)* procedures for elaborating and reviewing compensation schemes for CEO and board members; *iv)* procedures for nominating external auditors; *v)* risk management; *vi)* ethics policy.

In some countries, such as **Canada**, a specific "Governance Protocol" is agreed between the SOE and its responsible Minister, and has to be reviewed regularly. This Governance Protocol includes information on: *i)* how the board will be involved in nominating the CEO, its chair and new board members; *ii)* corporate plan negotiation mechanisms, including how the government will communicate issues which it wants to be part of the corporate plan and how it will give feedbacks on the corporate plan proposed by the SOE; *iii)* procedures for on-going contact with the minister and for handling *ad hoc* issues.[16]

In some countries, there is no Corporate Governance Report or Protocols as such, but the main aspects are nevertheless covered in more focused reports or in the *Annual Report*. For example, in **Sweden**, a report has to be submitted regarding the board's composition and work during the year. In **Belgium**, the *Annual Report* contains complete information on the remuneration of board members.

Specific reporting

In some countries, SOEs have to undertake some additional reporting, mainly concerning non-financial aspects, either to reflect reporting requirements or practices of listed companies, or as a proactive policy established by the ownership entity to introduce specific reporting:

- As an example of the former, SOEs in **Denmark** have to report on significant events to the Danish Commerce and Company Agency and to the public, the

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same way as listed companies are usually required to report such events to the stock exchanges.

- As an example of the latter, **Finnish** SOEs' *Annual Reports* have to include a specific section on the value of EVA.
- The **Austrian** ÖIAG has to report on the implementation of the privatisation programme, simultaneously with the presentation of its annual account statements.
- In **New Zealand**, SOEs are required to carry out Value-Based Reporting (VBR), focusing on the changes in the SOE's economic value. This is used also to benchmark SOEs' performance among themselves and with privately owned companies.[17]
- In **Poland**, SOEs are subject to a series of additional disclosure requirements above those set forth in the Company Law. The Treasury prepares specific guidelines on financial reporting on an annual basis to explain and clarify all these requirements. SOEs have to prepare detailed reports on management board activity, plus a report on their activity in the previous financial year, and a report on the result of the examination of financial reports. Moreover, a special *Quarterly Report* has to be approved by the Supervisory Board and submitted to the Treasury, giving information on the financial situation, the remuneration of employees, financial credibility and potential risks. Another *Quarterly Report* on sureties and guarantees granted has to be submitted to the Ministry of Finance.
- In **Spain**, SOEs are required to submit half-yearly reports on compliance with the principles of advertising and competition in the award of work contracts.
- In **Sweden**, as specified in the "Guidelines on external reporting by government-owned corporations", all SOEs have to submit with their *Annual Report* a series of specific reports: *i)* a comprehensive external environment analysis; *ii)* a description of the company's equal opportunities policy, work to promote diversity and an account of all incentive schemes; *iii)* an account of the company's dividend policy; *iv)* information about the company's environmental record.
- In **Turkey**, SOEs report to the Treasury non-financial information, such as employee number, on a quarterly basis. Moreover, if needed, the Treasury and State Planning Organisation can ask for additional non financial information from the SOEs.
- In the **UK**, examples of non-financial information included into the *Annual Reports* are: an overview from the Chief Executive; the Chairman's statement; a review of business developments, future business strategy, corporate governance arrangements and details of the board of directors (remuneration, experience and responsibilities).

Government-specific reporting is not allowed in some countries such as **Italy** in order to ensure equitable treatment with non-government shareholders.

Other reporting and accountability mechanisms

The ownership entities usually have extensive powers to demand that SOEs provide, on an *ad hoc* basis, reporting on important matters as they arise. They may also ask external auditors or reviewers to submit a report on a specific issue, asking the SOE to provide the reviewers or auditors with full access to documentation, management and premises. Special investigations may also been undertaken by Auditor Generals or other State Control entities (see below). These additional layers of reporting and monitoring are intended to avoid unpleasant surprises, making the state a more predictable owner and avoiding any public outcry about SOE performance or other politically sensitive issues related to SOEs. This is part of the overall reinforcement of risk management, as described in the last section of this chapter.

In some countries, SOEs' annual general meetings may be open to the general public as if they were the ultimate shareholder. This is the case in **Sweden** where it is considered appropriate for wholly-owned SOEs to "*offer some kind of outward-directed activity in connection with the annual general meeting*".[18] This gives the general public the opportunity to question SOE management and the board. Procedures to avoid abuses have been developed such as in-advance registration. Members of Parliament in **Sweden** may also be invited to attend the SOE's annual general meeting.

SOEs may also, and indeed often have to, appear before Parliamentary Committees, in the framework of reviews of state expenditures, or for specific mandates such as dedicated enquiries or audit of SOE performance. They also indirectly report to the Parliament through questions from shareholder ministries.

In some cases, SOEs have questioned the appropriateness of such hearing procedures, particularly when it involves releasing commercially sensitive information. For example, in the case of the state telecommunications company in **Australia**, they argued that being an off-budget agency, they should not have to comply with parliamentary procedures that would damage competitive neutrality as their competitors were not subject to the same scrutiny. They asked that the scrutiny be carried out in-camera by other Parliamentary Committees.[19]

Some regulators also perform Regulatory Reviews concerning regulatory compliance by SOEs. Where regulators are independent bodies, they usually do have wide investigative or "discovery" powers and this constitutes an important accountability mechanism for a number of SOEs in most OECD countries.

Aggregate disclosure

Only very few countries report on the state sector as a whole. In a number of OECD countries, even the ones with a significant state sector, there is no aggregate reporting whatsoever on the global performance of SOEs. This is the case in **Italy**, **Korea**, the **Czech Republic**, except for the National Property Fund, and in **Austria** except for the ÖIAG. In **Belgium**, there is only the general annual reporting of the ministers' policies to the Parliament, but no aggregate reporting on all SOEs as such.

Aggregate reporting to the Parliament

When global reporting is carried out, it is primarily to inform the Parliament:

- In **Canada**, the Treasury Board of Canada Secretariat publishes a *Annual Report* to the Parliament.[20]
- In **Denmark**, the Ministry of Finance reports annually to the parliamentary committee concerned (Appropriation Committee) on the situation of SOEs.
- In **Finland**, the National Audit Office submits an aggregate *Annual Report* or survey on the results and economic state of companies with a majority state shareholding. In addition, the government submits to the Parliament a report on the administration and status of central government finances, including information on the ownership policy, the financial statements of the SOEs and on how SOEs have met their service and operational targets.
- In **Italy**, the *Corte dei Conti* sends an *Annual Report* to the Parliament on the activity of each SOE.
- In the **Netherlands**, the Ministry of Finance communicates with the Parliament on financial results of all SOEs.
- In **Poland**, the Ministry of Treasury prepares an annual "Report on the economic and financial conditions of state assets", which has to be approved both by the Parliament and the government. However, the Treasury has no obligation to report to the government and the general public on the overall performance of SOEs. Additionally, the Ministry of the Treasury prepares the "Report on economic and financial conditions of SOEs", which is communicated to the government and parliamentary committees concerned. Moreover, it is posted on the Ministry of Treasury's Web site.

Other forms of aggregate reporting exist, based often on reports to the Parliaments. This reporting gives the Parliament the opportunity to discuss ownership issues, either at a general principle or policy level, or in connection with decisions on specific cases or decisions such as divestment or investment in a SOE:

- In **Australia**, the Productivity Commission has performed a three year research programme designed to provide comparable information on the financial performance of SOEs, "*Financial Performance of Government Trading Enterprises 1998-99 to 2002-03*".
- In **Finland**, the co-ordinating ownership entity within the Ministry of Trade and Industry publishes annually a bulletin called "*State Shareholding in Finland*" with information on the 17 biggest SOEs. But the survey by the National Audit Office mentioned above is much more detailed and also available to the general public.
- In **Germany**, the "*Report on Government Holdings*" started in 1954 as a part of the federal budget process and included a list of holdings in economic enterprises of public and private law. Since 1973 it is published as a separate report by the Federal Ministry of Finance. These reports enable the parliament and a broad section of the public to have a view of the economic activities of the federal government and to follow changes in the challenges, tasks and policies of the federal government on its holdings and privatisation.
- In **Norway**, the Ministry of Trade and Industry reports the performance and developments of the SOE under its supervision on a four yearly basis,[21] the last one having been tabled at Parliament in Spring 2002.
- In **Denmark** the *Annual Report* to the Appropriation Committee is also available to the public on the Internet.

Aggregate Annual Reports

In a few cases, a less detailed global *Annual Report* is also published, covering the overall state owned sector (Box 5.5). In **Sweden** this aggregate reporting has been performed since 1999, following a resolution originally passed by the Parliament in 1982. In **France**, such an *Annual Report* has been published since 2002. The **UK** will start publishing an *Annual Report* from 2005. Such *Annual Reports* mainly target the general public, the media, trade unions and other interested parties, and may also be appendixed to the reports to the Parliaments. Since 2000, **Sweden** has also published interim aggregate reports aiming at providing continuous monitoring during the year of development of SOEs.

In these cases, the *Annual Reports* give information on the state ownership policy, the organisation of the ownership function within the state administration, an overview of the evolution of the state-owned sector, aggregate financial information, as well as individual reporting on the most significant SOEs and reporting on changes in SOEs' boards.

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Box 5.4. **Why combined accounts and not consolidated accounts in France**

The aim of consolidated accounts is to present the capital, financial situation and results of a group of companies constituting a consolidated entity by way of capital links or where the consolidating entity exerts a notable influence on the other firms as though they comprised a single entity.

The aim of combined accounts is to present the capital, financial situation and results of a group of entities where the cohesion arises from state ownership or, at another level, from organisational links leading to common social, commercial, technical or financial behaviour.

The group accounts of significant state controlled entities also do not conform to the usual concept of consolidation because the accounts of the state, the controlling entity, are not included in this group. This is where the qualification "combined accounts" derives. The criteria for combination are neither the economic interests nor the organisational ties existing between combined entities but the fact that they are controlled by the state.

Source: L'État Actionnaire, Rapport 2003, p. 43.

In a few cases when different Ministries are involved, there is a semi-global reporting, *i.e. Annual Reports* covering only one part of SOEs. This is the case in **Norway**, where the Department of Ownership of the Ministry of Trade and Industry publishes an *Annual Report* on SOEs under its administration.

Very few countries publish aggregated accounts, which are not the same as consolidated accounts in the accounting sense. In **Sweden**, the aggregate *Annual Report* on SOEs includes consolidated income statements and balance sheets since 2000. In **France**, according to the new Law on Financial Security, the state should publish "combined" accounts for SOEs for 2003. Given the varying accounting methods used in the state sector (French norms, IFRS compatible or not, etc.), as well as the significance of determining which enterprises are to be aggregated, this "combination" of accounts constitutes a complex exercise (*cf.* Box 5.4).

Other disclosure

Global aggregate reporting available to the public as published *Annual Reports* or through reports posted on Internet allow the general public to have a clear view of the performance and evolution of the SOE sector. Reports on SOEs are in many OECD countries debated by the media with great interest.

As for general disclosure of information to the general public, a few ownership entities have developed a Web site with significant information both on the organisation of the ownership entity, the ownership policy, as well

Box 5.5. **Ownership entity *Annual Reports* in Germany, Norway, Sweden and France**

The Swedish and French *Annual Reports* cover the totality of the two countries' SOEs. The first one is edited by the Ministry of Industry Employment and Communications, the second one by the Ministry of Industry, Finance and Economy.

- They both present a very detailed description concerning the role, objectives and main actions taken by the state as a shareholder.
- They also describe the corporate governance arrangements and instruments, and give precise information on changes in SOE boards.
- A brief overview of the main extraordinary events of the year concerning each company is also present in both reports.
- The two reports describe the consolidated accounts and global financial situation of the SOEs. The French report analyses firms on a sector division whereas the Swedish divides the companies under the market conditions from the ones with special societal interests.
- The two of them underline the social aspects of the SOEs: the Swedish illustrates the presence of gender policy, environmental initiatives and ethical policy for every firm.
- Both the reports contain names of the SOEs directors and Sweden has also all their contact addresses.
- The French report is more focused, at least in 2003, on the renewed role of the state and on the statutory evolution of every firm.
- The French *Annual Report* is only available in French, the Swedish is in English.

The German *Annual Report*, edited by the Federal Ministry of Finance, covers the totality of the Federal Government holdings. The core aim of this report is transparency of the entrepreneurial activities of the government towards Parliament and the public.

- It starts with a foreword of the Federal Minister of Finance describing the actual state of privatisation policy and main corporate events. It is followed by an overview of the direct holdings and substantial indirect holdings of the federal government and its special funds. This overview includes a retrospective view of privatisations being executed in the last years.
- The main part includes key economic and financial information figures on all substantial direct and indirect holdings as well as names of management and supervisory board members.
- As annexes are attached a list of all government holdings and a list of all direct and indirect holdings with a nominal capital of at least 50 000 € and a government stake of more than 25 %.
- The report is only available in German.

Box 5.5. **Ownership entity *Annual Reports* in Germany, Norway, Sweden and France** *(cont.)*

The Norwegian *Annual Report*, edited by the Ministry of Trade and Industry, only comprises the SOEs that are under this Ministry's responsibility. Although more concise than the French and the Swedish, its structure is quite similar:

- It starts with the ownership report summarising the main corporate events, restructurings, key corporate affairs.
- It then presents the organisation of the state's ownership administration and also its corporate governance principles.
- Finally, in few tables the financial performance of each company and the global portfolio figures of all SOEs are described.
- The Report is written in English.

Source: French (L'Etat Actionnaire, Rapport 2003), Swedish (*Annual Report State-Owned Companies*, 2003, Regeringskansliet) and Norwegian *Annual Reports*, 2003.

as on the size, evolution and performance of the state sector. This is the case for **Canada**, **Finland**, **France**, **Germany**, **New Zealand** (the CCMAU), **Sweden** and the **UK** (Table 5.1).

Some ownership entities have also recently published documents related to the state ownership policy and the corporate governance of state-owned entities (*cf.* Table 5.2).

Some countries have general policies of high public accountability concerning SOEs. This is the case in **Sweden** and **New Zealand**. In the latter, the Official Information Act applies to information held both by SOEs and their subsidiaries and by the shareholding Ministers concerning SOEs. This Act requires the disclosure of information and provides very limited grounds upon which information may be withheld. However, these kinds of policies may cause considerable compliance costs for SOEs and ownership entities concerned so that cost recovery practices are thus becoming more frequent.[22]

Benchmarking and evaluation of SOEs

There is very rarely a systematic evaluation of SOEs. In the **Netherlands**, however, a project plans to evaluate all SOEs on a 5-year cycle, in order to support a Parliamentary debate on this issue.

Few countries have developed systems allowing benchmarking the performance of SOEs with that of the private sector or with that of other similar SOEs in other countries. Such benchmarking can only be based on performance monitoring systems as discussed in the first part of this chapter.

Table 5.1. **Examples of ownership entities Web sites**

	Site address	Contents	Quality	English Translation
Canada	*www.tbs-sct.gc.ca/ccpi-pise/index_e.asp*	*Annual Report* to Parliament; Policies and guidelines; general information and other reports.	Very transparent.	
France	*www.minefi.gouv.fr/guide/index.phtml*	*Annual Reports*, ownership policy, governance rules, all available in French.	Quite transparent.	Not always available in English (partial translation of the Web site and no translation of the *Annual Reports*.
Germany	*www.bundesfinanzministerium.de*	*Annual Report* on Government Holdings.	Documents on specific aspects of privatisation and administration of SOEs, only available in German.	Very partial.
Sweden	*www.regeringen.se*	*Annual Reports*, ownership policy.	Very transparent and user friendly.	Complete, Web site and all the document translated.
New Zealand	*www.ccmau.govt.nz*	CRIs' profile and structures and evaluation of accountability.	Very transparent and user friendly.	//
Finland	*www.ktm.fi*	Main documents, news from the SOEs, state policy, main statistics.	Very transparent and user friendly.	Complete.
Poland	*www.msp.gov.pl*	General information on the structure and functioning of the ministry, mainly centred on the privatisation processes.	Very transparent and user friendly.	Complete.
UK	*www.shareholderexecutive.gov.uk*	*Annual Reports*; other reports on board functioning or on remuneration policy; various regulations.	Transparent and quite user friendly.	

Source: French, Swedish, New Zealander, Finnish Web sites.

The usefulness of such performance monitoring system will indeed depend significantly on the comparison of results over time and across SOEs. The long term comparison will allow for identifying trends and assessing emerging difficulties regarding SOEs' performance. The comparison across SOEs will allow for benchmarking their performance.

Table 5.2. **Examples of ownership policy documents**

	Date	Name
Australia	July 2003	Public Sector Governance, Better Practice Guide, Framework, Processes and Practices.
	June 1997	Governance Arrangements for Commonwealth Government Business Enterprises.
Canada	2004	Fundamental review of Crown Corporate Governance. New appointment process for directors and CEOs of Crown Corporations.
	2003	Guidelines for audit Committee.
	1996	Guidelines for Corporate Governance.
	1993	Guidelines on Role and Responsibilities of Directors
France	July 2004	Règles de Gouvernance régissant les relations de l'Agence des Participations de l'Etat et des Entreprises à participation d'Etat.
Germany	2001	Revised Guidelines for the administration of government holdings (first edited in 1963) and Guidelines for appointing personalities to supervisory boards and other supervisory organs (first edited in 1974).
Norway	2002	White Paper No. 22, "A reduced and improved state ownership".
Spain		"Regulatory Instruction on relations with state-owned companies in which the DGPE has a stake."
Sweden	2004	State Ownership Policy 2004.

Accounting and auditing

Accounting

In most cases SOEs apply the same accounting and auditing standards as is the case with public companies. Generally speaking, there are no specific provisions or any exemptions from the general accounting standards. In the **UK**, for example, SOEs have to report in conformity with UK accounting standards. The only specificity in the case of EU countries is the requirement to maintain separate accounts when an SOE is entrusted with the operation of a service of general economic interest and receives state aid in any form whatsoever to carry out this service. An outstanding issue is the upcoming implementation of IAS/IFRS for consolidated accounts in 2005, which is still a subject of discussion in many countries. In many cases only the largest SOEs will be required to adopt IAS/IFRS, the remainder staying with domestic standards.

External audits

In most OECD countries, SOEs are subject to the same requirements in terms of auditing by an external auditor. This provides assurance by an outside expert that financial results and performance indicators are reasonable and correct, *i.e.* free from error or misrepresentation. External audits are also an important incentive for SOE management and boards to account accurately to the ownership entity and the general public. In the **UK**, all end of year published financial reporting by an SOE is signed off by auditors and the basis of auditor's opinion is set out in the annual accounts.

The nature and selection of the external auditor varies according to countries.

- In some countries, SOEs are required to be audited by an independent and certified external auditor, selected by the company, or more particularly by its audit committee. This is the case in **France**, **Norway**, **Poland** and **the Slovak Republic**. In the **UK**, all SOEs except trading funds are audited by independent auditors. In **Belgium**, each SOE is audited by four external auditors, two of them being nominated by the *Cours des Comptes* (the state control authority). In **Italy**, also when not mandated by the law (non-listed SOEs), the Ministry of Economy and Finance requires SOEs to be audited by an independent and certified external auditor.
- In some other countries, SOEs are audited by an official "Auditor General". The Auditor General audits the financial statements of Commonwealth Authorities and Companies in **Australia and** trading funds in the **UK**. The Auditor Generals are special state audit entities, as described below. They have extensive powers in terms of access to documents, premises and the staff of SOEs.
- In some countries and for certain SOEs, the company may choose auditors from the private sector but in this case the Auditor General is required to give a report on the company's financial statements. This is the case for the state telecommunications company in **Australia**.

Increasing attention is given to the selection of external auditors and to their independence. When auditors are selected by the company, Audit Committees are in charge of deciding on the procedures to organise a competitive selection, and are progressively focusing more on quality and not just on price competition. In **Poland**, for example, SOEs' Supervisory Boards have to select external auditors based on their relevant experience, price and independence. The external auditor must not have provided other services to the SOE in the same year, and cannot be appointed for more than 3 years.

Specific State control

The most distinctive feature of SOEs in most OECD countries in terms of disclosure and transparency is that, besides having to report as usual public companies, they are also submitted to specific controls as state entities. These specific controls are carried out by specialised state audit entities which in general are charged with controlling the use of public money. These specific state audit entities are called Board of Audit in Japan, National Audit Office in Australia, Finland, New Zealand and the UK, Auditor General in Canada, *Corte dei Conti* in Italy, *Cours des Comptes* in Belgium and France, Supreme Chamber of Control in Poland, Board of Audit and Inspection in Korea, Federal Court of Auditors in Germany, Court of Auditors in Austria, *Intervencion General de la*

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Administration del Estado in Spain, High Audit Committee in Turkey, State Audit Office in Norway, Riksrevisionen in Sweden, etc. (Table 5.3).

- In **Italy**, the *Corte dei Conti*'s representatives attend board meetings as well as meetings of the board of statutory auditors, with an observer status and no voting rights. They submit to the Parliament an *Annual Report* on each SOE.
- In **Korea**, the Board of Audit and Inspection has the authority to inspect companies in which the government has invested (GICs) when deemed necessary.
- In **Sweden**, the Riksrevisonen, within the scope of the performance audit, it is able to examine activity pursued by the state in the form of limited companies. This is conditional on the activity being regulated by law or in another statutory provision or that the state has a considerable interest in the activity. Riksrevisonen can also appoint one or more auditors to take part in the annual audit. This means that Riksrevisonen, together with other auditors, examines the companies in accordance with the provisions on auditing in the Companies Act.
- In **Turkey**, the High Audit Committee, under the Authority of the Prime Ministry, does a periodical audit/control of SOEs, their subsidiaries and affiliates. SOEs' Annual Financial Statements are audited and approved by the Turkish Republic National Assembly.

An important distinction among these various state audit entities lies in their reporting lines. In some cases they report to the executive, such as in **France**. In other cases, as described above, they report directly to the Parliament. This is the case of National Audit Offices (Auditors General) in the **UK**, **Australia**, the **Austrian** Court of Auditors and the State Audit Office in **Norway**.

National Audit Offices seem to be more independent and have more resources. Auditor Generals have secure tenures and their independence also derives from their capacity to self-organise their work, their power to undertake performance audits covering a wide range of issues, and their freedom to table to Parliament any issue arising from an audit. However, Ministers may also suggest areas to be covered by the Auditor General's reviews. In some cases, Auditor Generals may contract out some financial audits, so long as, for example, 35% of audits in one sector are retained in-house.[23]

These specific audit entities will generally control if state assets are managed appropriately, honestly and with due care. They will inspect both SOEs and the ownership entities in charge of SOEs. In some cases they may also undertake performance reviews of SOEs, as well as prepare a general report on the overall performance of the state sector. This is particularly the case for Auditor Generals reporting to the Parliament. The scope of performance reviews is much wider than the usual financial audits: "*The objective of a performance audit is to enable the auditor to express an opinion whether, in all material respects, all or part*

Table 5.3. **External audits and specific State control**

	External auditors	State auditor	Special auditing rules
Australia		Yes: Australian National Audit Office.	
Austria	Yes.	Yes: Austrian Court of Auditors, if state Majority owner.	
Belgium	Yes 4.	Yes: 2 of the external auditors are appointed by the General state control authority.	
Czech Republic	Yes.	Yes: Supreme Audit Office.	More stringent than other firms: commercial (state) enterprises have to have an independent audit.
Finland		Yes: National Audit Office.	No: As the other firms.
France	Yes.	Yes: Cour des Comptes.	
Germany		Recommended Federal Court of Auditors having specific rights if state is majority owner.	No: As the other firms.
Greece			
Italy	Yes: External private auditors by practice.		Following EU 2000/52 directive recently implemented in Italy, SOEs entrusted with the operation of services of general economic interest are required to keep separate accounts.
Japan		Yes: Board of Audit of Japan.	
Korea	Yes: Board of Audit and Inspections.	Yes: Possible to entrust the line Minister.	
Netherlands			No: As the other firms.
New Zealand		Yes: Auditor General.	Yes: Only non-listed controlled by select committees.
Norway	Yes.	Yes: State Audit Office.	No:As the other firms.
Poland	Yes: SOEs supervisory boards select external auditors.	Yes: Supreme Chamber of control. State Audit Procedures during privatisation.	More stringent than the other firms; independent audit.
Slovak Republic		Yes.	SOEs liable to have their financial statements verified by auditors.
Spain	Yes: Accounting Court.	Yes: General Intervention State Administration.	More stringent than the other firms.
Sweden	Yes	Yes: Riksrevisonen.	
Switzerland	Yes: Federal Finances Control (depending on the SOE's statute).	Yes: Federal Finances Control (depending on the SOE's statute).	
Turkey		High Audit Committee.	No: As the other firms.
UK	Yes.	Yes: (trading funds).	No.

Source: Responses to the OECD Questionnaire on Corporate Governance of State-Owned Assets.

of an entity's or entities' activities have been carried out economically and/or efficiently and/or effectively."[24] They have to evaluate policy implementation, but not government policy as such, even though this may not always be clearly cut.

Other mechanisms have been developed in some countries to reinforce the control over SOEs activities. This is for example the case in **Belgium**, where a government commissioner (commissaire du gouvernement), acting on behalf of the minister, participates in the board and the management committee of each SOEs to supervise its public services performance and its compliance with the law, the Articles of Association and management contract. Though the commissioner is not a member of the board and has only a consultative role, he may oppose to any decision that should break any provision of law, statutes or management contract; he can also put an item on the agenda in order to respect the above mentioned provisions. A similar government commissioner exists in **France** (see below Box 5.3). The existence of a variety of control mechanisms has sometime led to perverse effects, as described below in the French case.

From scattered control to risk monitoring

In many OECD countries, SOEs are thus subject to both reporting typically required of ordinary public companies and to specific reporting and control procedures designed for state entities. In some cases, there are also other numerous reporting and controls, which do not always make the overall picture more transparent nor allow the state as an owner to better monitor SOEs.

This is one of the main conclusions of the French Parliamentary Report on SOEs' management. SOEs are described as submitted at the same time to heavy operational control and to numerous but inappropriate strategic controls (*cf.* Box 5.6). Controls are described as being "*heavy and tangled/muddled*" … "*At the same time omnipresent, fragmented and inappropriate*" … "*In volume and quantity, there are well enough controls, may be too much*" (Former Budget State Secretary Edmond Alphandery).[25] "*Nine out of ten times, the state intervenes on issues of operational management and not related to the strategy or control of the enterprise*" (Daniel Lebègue).[26] This resulted in an ineffective control as each controller relies partially on the others, and to a partial loss of responsibility by SOEs' management and boards, summarised as follows by the former Ministry of Economy and Finance Francis Mer: "*Untraceable controller, the State grasps all, often losses all*" … "*Being piled up, these controls become sometimes useless, and result in not controlling SOEs*".[27]

Thus, while in some cases SOEs were subject to a series of controls and reporting requirements, it has not prevented the state from somehow losing control over the strategic orientations and the risks taken by some of the biggest SOEs. Current systems were consequently considered as not capable of providing adequate safeguards against newly emerging risks.

Box 5.6. **A lot of control but poor monitoring: the French case**

Heavy operational controls

Since 1967's Rapport Nora, SOEs are supposed to enjoy "operational autonomy" and this Principle was confirmed by a "Circulaire du 29 May 1997" of the Prime Minister Alain Juppé. However, since the 50's (Décret n° 53-707, 9 août 1953) many SOEs remain subject to an *ex ante* state control on many crucial issues such as salaries, investments, procurement and tariffs:

- **On investment:** The CIES (Comité des Investissement à Caractère Économique et Social), makes recommendations on investment programs, their timing and financing. These recommendations are in practice mandatory. Only SOEs with minority investors have been excluded from this scrutiny (France Telecom or Areva).
- **On salaries:** SOEs still include many public servants (42% of France Telecom personnel) whose salaries are not decided by the enterprises concerned. The CICS (Commission Interministérielle de Coordination des Salaires) gives only consultative advice, covering not only remuneration but also retirement provisions. This remains a constraining process, with mandatory *ex ante* information and *ex post* disclosure. The CICS can decide on the average salary increase, and has decision making power in some specific areas, for example, on profit sharing schemes.
- **On tariffs:** for universal services or when there are no competitors, tariffs are fixed to avoid abuse of monopoly positions by SOEs. This rationale is loosing ground with the increasing deregulation and competition, but this control on tariffs prevents many SOEs from having control over some of the main determinants of their financial position.

Inappropriate process for strategic control

SOEs are subject to different kinds of strategic controls:

- **Government commissioners** ("Commissaires du Gouvernment"): in charge of "technical supervision" and compliance of the SOE's overall policy with the government's policy, including with regards to regulation, competition and regional policies. They participate in the board of directors, with a consultative role. They can require any document and initiate controls of any kind. They may also put an item on the agenda of the board meeting or ask for a second deliberation. In practice, they represent the state especially as a regulator. However, as soon as some SOEs are active in a competitive sector where regulation is carried out by an independent agency, the role of these commissioners becomes questionable.

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Box 5.6. **A lot of control but poor monitoring: the French case** *(cont.)*

- **State controllers:** Their role was originally to control accounts and approve expenses, particularly regarding investment, but their mission has been diversified progressively. It has been modified recently by Décret n° 2002-1502 of 26 December 2002. Now they mainly inform the state about the financial and economic situation of SOEs, in order to evaluate their performance and control risks. They reduce information asymmetry between the shareholding state and the enterprise, particularly with regards to subsidiaries where the state is not always represented. They also participate in board meetings with a consultative voice and have strong investigative powers. In most cases they are located in the SOE's offices and may call senior management as well as visit any site. In some cases, they still have an *ex ante* approval power regarding large acquisitions, and asset or share transfers. But they are not well integrated in and are too far from the decision power. They write "notes" which will not always feed into the effective decision making.
- ***Ex ante* approval of share acquisitions or sales:** any acquisition or sale of shares has to be approved by a joint Ministerial order from the Ministry of Finance and the sector Ministry concerned. This is a heavy control process, and not a very effective one. First, listed "first rank" SOEs (Air France, France Télécom) are excluded. Secondly, subsidiaries are in most cases not covered. Given the heavy process of approval (*i.e.* joint Ministerial order described above) and the growing importance of subsidiaries, this process has been supplemented by a contractual process of specific conventions between the state and some SOEs to specify information requirements of the supervising authorities.

Source: Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale, Part II, pp. 18-30.

A number of OECD countries are reviewing, or considering doing so, the methods by which they control SOEs. Instead of controlling specific aspects of their actions and policies, such as salaries or investment, they are evolving towards more global performance and risk monitoring. The former type of control derived from the past history of close supervision of SOEs, while the latter illustrates the evolution towards operational autonomy of SOEs, linked to a more result oriented monitoring by the state as a shareholder.

To face the increasing financial, operational, political, reputation and business risks attached to deregulation and the opening to competition, a number of OECD countries have put in place or enhanced risk management systems in SOEs. Risk management systems aim at identifying, assessing and ultimately monitoring the different kinds of risks faced by companies. The main objective is first to be fully aware of risks incurred and secondly to take preventive measures to avoid or reduce these risks. The careful identification and consideration of risks is an integral part of strategic planning. It also brings greater transparency to the decision making process and finally allows *ex ante* reactions instead of after an event has taken place, thus avoiding "unpleasant surprises".

A "no surprise" policy has been, in a few cases, elaborated and explicitly formulated, such as in **New Zealand**: "*Shareholding Ministers expect Crown Company boards to adhere to the 'no surprises' policy and be informed well in advance of everything considered potentially contentious in the public arena, whether the issue is inside or outside the relevant legislation and/or ownership policy.*"[28]

Risk management is a primary responsibility of SOE boards and more particularly of their audit committees when they exist. This responsibility includes ensuring that adequate processes are in place throughout the company to effectively identify various risks, setting acceptable levels of risk, and taking measures to reduce or respond to risk. Audit committees should approve and monitor policies for reporting and monitoring risk. Internal audit processes are reinforcing risk monitoring and are increasingly integrating risk management into the overall strategic process.

External risk reviews of SOEs are still uncommon in most OECD countries but are developing under the pressure of some recent setbacks. These external reviews scrutinise risk management processes and independently check their integrity and completeness. Specialised training on risk management for SOE employees have also recently developed in a series of OECD countries.

SOEs are increasingly asked to report to ownership entities on their risk management systems in a systematic fashion, including regular briefing and discussion in the corporate plans. This reporting usually includes a description of the systems in place and an assurance that these are adequate, including a statement by the board to this effect. Reporting also includes information on how compliance with policies and procedures is achieved and regularly checked. Box 5.7 describes guiding principles for risk management in Australia SOEs, as set up by the 1997 GBE Governance Arrangements.

The state as a shareholder is also highly sensitive to risks incurred by SOEs as it is often considered, implicitly or explicitly, as the first guarantor of these risks. This is a main reason why SOEs are limited in the activities they are allowed to undertake. Shareholder entities are thus increasingly sensitive to risk management and are encouraging SOEs to set up effective risk management systems, allowing SOE boards and shareholder entities to monitor risk closely. However, additional and specific requirements for SOEs regarding risk management, for example to conduct periodic external risk reviews, are still extremely rare.

Box 5.7. **Guiding principles for managing risk in australian SOEs (GBEs)**

- Directors should establish processes and practices within the company to manage all risks associated with its operations.
- Directors should keep the shareholder Ministers informed of risk management strategies by outlining them in corporate plans and progress reports, and other reports where necessary.
- In addition, corporate plans and progress reports should contain a statement from the Board which states that it has appropriate risk management policies and practices in place and that adequate systems and expertise are being applied to achieve compliance with those policies and procedures.
- As a result of the Government, as shareholder, being sensitive to commercial risk, the following limits may be set on the activities of particular companies with respect to liabilities and/or financial exposure:
  - in normal circumstances, a SOE should only use derivative financial instruments for the purpose of hedging exposures;
  - shareholder ministers may require the Board of a SOE to provide a risk management plan, the contents to be agreed on a case-by-case basis.
- As a general rule the Government will not provide formal guarantees of SOE liabilities:
  - guarantees provided in the past continue to apply to existing borrowings until they mature, in order to protect the interests of investors;
  - the enabling legislation of public financial enterprises currently provides for statutory guarantees of most of the obligations of those enterprises.

Source: Governance Arrangements for Commonwealth Government Business Enterprises, June 1997.

Notes

1. State Ownership Policy, 2004, Regeringskansliet, p. 2.
2. *L'État Actionnaire*, Rapport 2004, p. 7.
3. UK response to the OECD Questionnaire on the Corporate Governance of State-Owned Assets.
4. "Financial Performance of Government Trading Enterprises 1998-99 to 2002-03", Australian Government Productivity Commission Research Paper, 2004, Chapter 6 on Performance Monitoring.
5. Following recommendations made by R. Humphry in "Review of GBE Governance Arrangements", Australian Government, March 1997.

6. R. Humphry, "Review of GBE Governance Arrangements", Australian Government, March 1997, p. 33.
7. Report of the Auditor General of Canada, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-22.
8. Report of the Auditor General of Canada, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-22.
9. Report 372, "Corporate Governance and Accountability Arrangements for Commonwealth Government Business Enterprises", Joint Committee of Public Accounts and Audit, Australian Government, 1999, Chapter 5.
10. "Financial Performance of Government Trading Enterprises 1998-99 to 2002-03", Australian Government Productivity Commission Research Paper, 2004, p. 62.
11. "Règles de Gouvernance régissant les relations de l'Agence des Participations de l'État et des Entreprises à participation d'État", 2004, para. 2.1 and 2.2.
12. See Mary Shirley, WB, "Why Performance Contracts for State-Owned Enterprises Haven't Worked", Paper presented at an OECD/DRC/ADB conference on Corporate Governance of state-owned enterprises in China, January 2000.
13. Report of the Auditor General of Canada, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-25.
14. *Annual Report State-Owned Companies*, 2003, Regeringskansliet, p. 17.
15. This is the case for example with the report on "Annual Reporting In the Public Sector", Queensland Public Accounts Committee, Australia, 2001.
16. Report of the Auditor General of Canada, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-26 and 18-27.
17. Owner's expectation manual, New Zealand CCMAU, 2002, Section 6.6.
18. Draft Ownership Policy, 2003/05/22.
19. Report 372, "Corporate Governance and Accountability Arrangements for Commonwealth Government Business Enterprises", Joint Committee of Public Accounts and Audit, 1999, p. 78.
20. Rapport Annuel au Parlement, Les Sociétés d'État et autres sociétés dans lesquelles le Canada détient des intérêts, Secrétariat du Conseil au Trésor du Canada, 2003.
21. The Norwegian Government Policy for Reduced and Improved State Ownership, based on White Paper No. 22, 2001-02, Ministry of Trade and Industry, 2002.
22. New Zealand's response to the OECD Questionnaire on the Corporate Governance of State-Owned Assets.
23. "Financial Performance of Government Trading Enterprises 1998-99 to 2002-03", Australian Government Productivity Commission Research Paper, 2004, pp. 38-39.
24. Australia Auditing Standard AUS 806, cited by the "Financial Performance of Government Trading Enterprises 1998-99 to 2002-03", Australian Government Productivity Commission Research Paper, 2004, p. 44.
25. Citation of former Budget State Secretary and former President of EDF, Edmond Alphandery, in his audition for the Parliamentary Commission, Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale, Part II, pp. 18 and 33.

26. Citation of former CEO of the CDC (Caisse des Dépôts et Consignations), Daniel Lebègue, in his audition for the Parliamentary Commission, Rapport Douste-Blazy, No. 1004, “Rapport fait au nom de la commission d’enquête sur la gestion des entreprises publiques afin d’améliorer le système de prise de décision”, July 2003, Assemblée Nationale, Part II, p. 19.
27. Citation of Ministry of Economy, Francis Mer, in his audition for the Parliamentary Commission, Rapport Douste-Blazy, No. 1004, “Rapport fait au nom de la commission d’enquête sur la gestion des entreprises publiques afin d’améliorer le système de prise de décision”, July 2003, Assemblée Nationale, Part II, p. 30.
28. Owner’s Expectation Manual, Section 5.1, New Zealand CCMAU.

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PART I

Chapter 6

The Board of Directors of a State-owned Enterprise

An increasing number of OECD countries have undertaken important reforms to professionalise and empower SOE boards. To this end, they seek to limit political interference and have increased the independence and competence of SOE boards through structured and skill based nomination processes. They have restored their responsibility in critical areas such as monitoring of management and strategic orientation and are developing more systematic evaluation processes. Remuneration practices are also evolving to reflect more adequately the responsibilities and work load involved.

However, in a number of OECD countries SOE boards still tend to be too large, excessively staggered with too many state representatives lacking business perspective and often independence. They may also be deprived of some of their critical responsibilities, to the benefit of shareholding ministers or the management. Finally, the presence of employee representatives may in cases transform SOE boards into a political negotiation arena, even more so as the state sector labour force tends to be the most organised.

This chapter will review the main features of SOE boards in OECD countries. First, the chapter describes SOE boards' composition, underlining the varying importance and nature of state representation within these boards, as well as the level of their independence. Second, the chapter reviews the main features of the nomination process. The chapter then considers the main functions and responsibilities of SOE boards and details where they are weak, focusing particularly on their capacity to nominate CEOs. The chapter also describes the functioning of SOE boards, mentioning existing guidelines and assessing their practice in terms of specialised committee and evaluation. Finally, SOE board remuneration and current trends in this regard are discussed.

Board structure and size

SOE boards are usually structured in the same way as other joint stock companies (JSC) in their respective countries. Countries with a predominantly one-tier board system, such as **New Zealand** or the **UK**, also have one-tier boards for SOEs. Similarly, countries with two-tier systems have supervisory boards and management boards for SOEs, as in **Germany**, **Austria**, the **Slovak Republic** and the Scandinavian countries. In **Norway**, there is a single board system, but the largest companies may have a "Company Supervisory Assembly" of between 12 and 24 members.

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The overall size of SOE boards has been large in many countries. This is the case for example in **France** where SOE boards could once comprise up to 30 members, partly due to the consequences of the "tri-partite" board structure introduced by the 1983 Law on Democratisation of the Public Sector (see below).

However, the size of SOE boards has been generally reduced in the recent years. In **Sweden** and **New Zealand**, the average size of SOE boards has been reduced to 7. A number of countries have also set limits for the size of SOE boards (*cf*. Table 6.1), such as in Korea where the 1983 GIE Administration Basic Act has limited boards to 15 members.

Table 6.1. **New limits on the size of SOE boards**

	Minimum	Maximum	Average
Greece	7	13	
Korea		15	
Mexico	5	15	
New Zealand	2	9	7
Switzerland	2	9	

Source: OECD Questionnaires on the Corporate Governance of State-Owned Assets.

Board composition

The composition of SOE boards differs greatly from one country to another according to the relative influence of the state, the presence of employee representatives, and the significance of private sector experts and "independent" members.

State representatives

The first main characteristic of SOE boards is state representation. SOE boards in various OECD countries differ mainly in terms of both the size and the nature of the state representation. The state may be represented by civil servants from the ownership or sector ministries, as well as by "external" personalities from the private sector or else (academics, experts, etc.). Here we will focus on the representatives of the state as such, *i.e.* those coming from the shareholding ministers.

The size of state representation in SOE boards varies from zero to almost the entire board:

- In some countries there is no state representative on SOE boards. These countries usually follow a centralised ownership model, such as **Denmark, Norway**, the **Netherlands** and the **UK** as for wholly-owned SOEs. **Australia** has a policy that no public servants should be appointed to the board of GBEs, except in exceptional circumstances. This is also the case in **Korea**, where the state has no direct representative on SOE boards.

- In many countries, there are only one or two state representatives, irrespective of the size of the state share. This is the case in **Sweden** and **Germany** (1 or 2 maximum), or for most SOEs in **Finland**. This is also the case in the **UK** when the government is not the sole shareholder. There are state appointed board members in 3 companies: QinetiQ, NATS and Partnerships UK. In **Italy**, following a recent revision of golden share powers the Minister of Finance, in agreement with the Minister of Productive Activities, appoints one SOE board member with an observer status and no voting rights. In some countries with a dual ownership model, each shareholding ministry is represented, such as in **Greece** where the Ministry of Economy and Finance and the sector ministries are both represented on the SOE board.
- In many cases the state representation is proportional to its ownership, such as in **Austria**, the **Czech Republic, the Slovak Republic**, in **New Zealand** for minority held SOEs, and in **Spain**.
- The state representation may also be a fix percentage, for example one third in **France** for some SOEs, or at least 50% in **Mexico**. In this latter case, the Chairman of the board must also be a state representative from the state agency or Ministry in charge of the ownership function.
- Finally, in a few countries all members, with the exception of the Chair, are state representatives.

There is no obvious link between the type of ownership organisation and the size of state representation in SOE boards, as evidenced in Table 6.2. However, countries with a dual model of ownership tend to have greater direct state

Table 6.2. **State representation in SOEs per ownership model**

	Sector model	Dual model	Centralised model
No state representation		Korea Australia →[2]	Denmark Norway Netherlands
1 or 2 State representatives	Finland Germany	Italy Greece *Switzerland* *UK*	Sweden
Proportion of ownership or fix percentage	Slovak Republic →[1]	← *Czech Republic*[1] *Austria* →[2] New Zealand Mexico	Spain France
All board		Turkey	

1. The Czech Republic and the Slovak republic are in between the dual and the sector models.
2. Austria and Australia are in between the dual and the centralised models.

Source: Answers to the OECD Questionnaire on the Corporate Governance of State-Owned Assets in OECD Countries.

representation. A few countries with a dual model have no state representation on SOE boards. There are also a few countries with a centralised model of ownership having a strong state representation (**France** and **Spain**), as well as countries with a sector model having a low state representation.

Rules concerning board composition may mandate state representatives on SOE boards to be civil servants from the entities or ministries concerned, such as in **Mexico**. Or they just give the right to the state, through the ownership entity, to nominate representatives of the state, civil servants or not, as is the case in **Italy**, **Poland** and **Germany**. In cases where the state appoints "representatives" who are not from the administration, we would consider them as external or independent members of boards and treat them as such below.

In **Poland**, also, the state representatives to the supervisory board have to go through specific examinations to be able to apply for a board position (*cf.* Box 6.1).

Employees representatives

A second major difference in the composition of SOE boards is the presence and number of employee representatives (Table 6.3):

- In most cases, the presence of employee representatives on SOE boards derives from the usual practice for JSC in the countries concerned, and is based on

Box 6.1. **The Polish experience: specific examinations for State representatives on SOE boards**

Fields of expertise for candidates wanting to be Treasury representatives on SOEs' Supervisory Boards include:

- Legal: Civil Code, Commercial Company Code, Labour Code, Bankruptcy Law and court conciliation procedures, commercialisation and privatisation procedures.
- Corporate governance: role of boards, GSMs,…
- Business: management, marketing, business plans, accounting, corporate finance, valuation methods, restructuring, state aid for enterprises.

Those who pass the exam receive a special certificate and are registered in a database. The database presently includes 34 320 names for 4 952 positions altogether.

The Treasury organises training for SOE board members in economics, law and corporate governance issues. It also organises one meeting a year on the guidelines about how to present financial reports.

Source: Polish Response to the OECD Questionnaire on Corporate Governance of State-Owned Assets, 2004.

Table 6.3. **Employee board level representation in SOEs**

	Works council	Board level representation	
		State owned enterprises	Public listed corporations
Austria	Yes[1]	1/3 of board members[2]	
Belgium	Yes	No	
Czech Republic	Yes[1]	1/3 of board members	
Denmark	Yes	2 to 1/3 of board members	
Finland	Yes	Determined by sector agreement	
France	Yes	2 works councils representatives (no voting rights) or:	
		3 to 1/3 of board members	2-3 board members for privatised corp.; max. 1/3 of board members for other corp. (voluntarily)
Germany	Yes[1]	to a half board members (depending on firm's size), chairman elected by shareholders	
			Iron, coal and steel industry: appointment of the personnel director of the management board
Greece	Yes	2-3 boards members	No
Hungary	Yes[1]	1/3 of board members (for enterprises of more than 200 employees)	
Ireland	No	Considered as best practice	No
Italy	No	No (constitutional law not implemented)	
Luxembourg	Yes	Up to 1/3 to a half of board members	
Korea	Yes	No	
Netherlands	Yes	Work council appoint members of the supervisory board	
Norway	Yes	Subject to size of the company and/or agreement with the employees	
Poland		2 to 2/5 of board members	No
Portugal	Yes	No (constitutional law not implemented)	Best practice of 1 member of the council of auditors
Slovak Republic	Yes	1/2 of board members	1/3 of board members
Spain	Yes	2 board members	No
Sweden	Yes[1]	2-3 board members	
Switzerland	No	1-2 (Post, Swisscom, SBB)	
Jurisdictions in Australia, Canada, Japan, Mexico, New Zealand, Turkey, UK and the US have no provisions for work councils or for board level employee representation.			

1. Includes co-determination rights.
2. "Board members" refers to members of the board of directors for one-tier systems, and to members of the supervisory board for two-tier systems.

Source: TUAC, ETUI and EIRO.

Company Law requirements. This is the case in **Austria**, the **Czech Republic**, **Sweden, Finland, Norway, Denmark** and **Germany**.

- In former socialist countries, the requirement is based on privatisation law, such as in **Poland**, where employee representatives comprise 40% of the supervisory boards of Treasury Companies. In the **Slovak Republic**, employees of state enterprises elect half of the supervisory boards and employees of joint-stock companies elect only one third of the supervisory boards.

- In some other cases, there are specific legal statutes for SOEs requiring a definite number or percentage of employee representatives, such as in **France** (where it varies between 2 and 1/3 of the board), **Greece, Spain**, and **Switzerland**. In **Greece**, each SOE board must have two representatives of employees. In **Switzerland**, 2 out of nine board members in three of the four federally owned SOEs have to be employee representatives. In **France**, one third of SOE boards must be employee representatives, according to the 1983 Law on Democratisation of Public Services. The 1983 Law grants reduced liability to employee representatives, and in general differentiates board members in terms of status, responsibilities and accountability.

The underlying rationale for having employee representatives on boards in SOEs is the same as for listed companies' boards, even though many more countries mandate participation than for private enterprises. It is to increase accountability to employees as stakeholders. Employee representation on boards is designed to provide employees with an opportunity to discuss and negotiate alternative strategies while keeping in mind the overall financial and service obligation objectives. It also aims at facilitating communication between employees and the CEO as well as senior officers. Last but not least, employee representation may be a source of primary information for outside board members regarding the situation within the SOE.

However, as for private sector companies, the benefits of having employee representatives is a debated issue. The rationale for having employees represented on SOE boards may be reinforced in the case of some SOEs by their role as "examples" of good practice in terms of social and employment policy. It has also been enhanced *de facto* by the historical strength of public sector labour unions. The benefits will depend heavily on critical factors such as the competence and independence of employee representatives and their respect of confidentiality obligations. It will also depend on their acceptance and co-operation with the board and management.

The role of employees in SOE boards is also tied to their growing role as shareholders, especially in partially privatised SOEs, where various schemes for employee participation have been introduced. The effects of these employee participation schemes are not obvious, as discussed regarding ESOPs in the *Corporate Governance Survey of OECD Countries*.[1]

Independent members of SOE boards

A third critical characteristic of SOE boards is their degree of independence. "*A key factor in ensuring that boards can function efficiently and effectively is their independence. Boards must have autonomy and independence in the conduct of their duties and be free from day-to-day involvement from Ministers.*"[2] The degree of independence of SOE boards will thus depend partially on the size and characteristics of state and employee representatives as described above.

The presence of independent board members varies a lot from one country to the other, as well as the understanding about what is meant by independence:

- In a few countries there are no independent board members, such as in **Spain** and **Turkey**.
- In many countries a specified percentage of board members must be independent. **Greece** requires that at least 30% of board members be non-executives, among which 2 must be independent, except when minority shareholders are represented on the board. In **France**, one third of a board have to be "qualified personalities", deemed to be independent from the state and the management. In **Korea**, at least half of GIE boards should be "outside", *i.e.* non-executive directors, who are deemed to be independent, even though there is no definition of independence. In the **Slovak Republic**, a majority of board members have to be independent.
- In some countries SOEs follow the best practice as set up by country codes, laws or regulation regarding the corporate governance of listed companies. This is the case in the **UK**, where the Combined Code on Corporate Governance is used as a benchmark for SOEs. This Combined Code requires a majority of independent directors on boards of large companies.
- Finally, in a number of countries, most if not all board members are independent. In **Scandinavian** countries, the **Netherlands**, **Austria**, **Germany**, **Australia** or **New Zealand**, most SOE board members (apart from employee or stakeholder representatives) come from the private sector, even though they are appointed by the ownership entity. Moreover, these countries usually define independence more strictly.

When a certain number or a general quality of independence is required of SOE board members, it is not always clearly defined. Moreover, whenever independence is required and defined, there are rarely specific mechanisms to check or enforce these considerations.

- In some countries such as **New Zealand**, independence means only non-executive.
- In a number of countries, independence means both from the management and from business relationships. This is the case in **Australia** and in **Norway**, where private sector experts are not supposed to have any business relation or be in competing business. In **Greece**, independent board members should not be an executive or the Chairman of the board, have business or other professional relationship with the company, and not be a first or second relation of or be married to an executive member of the board, a senior executive, or a shareholder owning a majority stake.

- Finally, some countries such as **Australia** have a broader approach to the independence of boards. They take into consideration not only the independence of board members, but also the separation of the Board Chairman from the CEO. It is then the role of the Board to select the CEO, although responsible Ministers are consulted as part of this process.

In **France**, the 1983 Law on Democratisation of Public Services requires a tripartite board with one third of direct state representatives, as mentioned above, one third employees and one third "qualified personalities". The latter two have a hybrid status as they are *de facto* nominated by the state, and in some instances may also be civil servants, but not active,[3] nor from the administration in charge of ownership, such as university professors or researchers. This hybrid status also makes them feel and be perceived as indirect state representatives. This is even more the case since the state tends to believe that as a controlling shareholder, it should have the majority on boards, whereas it is only allowed to control directly one third of board members. It thus uses purposely "qualified personalities" as indirect representatives. Moreover, these board members often have conflicts of interest with SOEs, being sometimes representatives of the SOE's clients or suppliers.[4] Consequently, in many cases, these "qualified personalities" could not really be considered as independent.

Some specific mechanisms may be set up in order to reinforce the independence of SOE boards. Directors may, for example, have set terms (usually from 3 to 5 years) and can only be dismissed for serious reasons. In **Greece**, independent members may submit, individually or in common, their own report to the GSM when they deem it necessary.

Other specific representation

Very few countries facilitate the representation of minority shareholders on SOE boards, through a cumulative voting system. This is the case in **Italy** where a specific cumulative voting-type system, the "voto di lista", assigns minority shareholders disproportional voting rights (*cf.* Box 2.13).

A few countries have adopted a voluntary policy in favour of female representation on SOE boards. This is the case in **Sweden** and **Norway**, where respectively 50% and 40% of SOE board members shall be women, and in **Finland**. In **Sweden**, "*The Government aims to have an even distribution between men and women*". The intermediate target of 40% has been reached in May 2003.[5]

Some other countries, such as **Canada**, have additional requirements, for example in terms of geographic origins or minority representation. While favouring an enlargement of the pool of candidates, such a policy may also put too much emphasis on the diversity of SOE boards to the detriment of their skills and capabilities. This has been criticised in **Canada** where Crown Company Boards have a high ratio of women, a good geographic balance, but lack in cases some critical skill and capabilities.[6]

In sum, although they vary a lot in terms of composition, SOE boards are still strongly state dominated and lack independence in about one half of OECD countries. Moreover, employee representation is more common than in private listed companies. These broad characteristics of SOE board composition are based on nomination processes still marked by a strong political input. Consequently, SOE boards often lack the necessary business expertise and perspective.

The nomination process

Ensuring that SOEs have qualified boards is becoming a critical task and a priority for ownership entities in many OECD countries. In practice, the nomination of SOE boards is sometimes complex and may also lack transparency. The ownership entities are not always the main decision bodies regarding the nomination of SOE board members, and more particularly state representatives within SOE boards. Many different Ministries or other government organs may be involved, especially where the dual model of ownership is used, and strong political influence is frequent. Very few countries have set up clearly defined processes for the nomination of SOE boards.

Political influence

The main characteristics of the nomination process according to the different models of organisation of the ownership function are the following:

- In the centralised model of state ownership, the ownership entity is often fully in charge of the nomination of SOE boards, both of state representatives if any and of other "independent" members. In this case, state representatives are not numerous, usually one or two if any, and are usually drawn from the ownership entity itself.
- In other models, dual or decentralised, state representatives are often nominated by the sector ministers concerned. But they usually have to be cleared by the Cabinet before a final decision and are in cases nominated by decree, at the Prime Minister or Ministerial level. It is often a collective decision involving both the sector minister and the government and sometimes accompanied by a complex round of negotiations amongst the different state organs concerned. This is the case in **Australia** (*cf*. Box 6.2) where the GBPFAU has an informal role in providing advice to the Minister on possible board candidates.
- In the dual model, the centralising entity is often in charge of nominating non state representatives.

Political influence in the nomination process is strong in a number of OECD countries, but the process can and often degenerates into a situation characterised as "political interference". The political interference goes either

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Box 6.2. **SOE boards nomination process in Australia**

"(SOE) Boards of directors are to comprise people with an appropriate mix of skills, who are to be appointed on the basis of their individual capacity to contribute to the board having an appropriate balance of relevant skills, such as commerce, finance, accounting, law, marketing, workplace relations and management, and contribute to the achievement of the (SOE)'s objectives." The process for SOE Boards' Appointment is as follows:

- The Board Chairperson shall, through the Board, provide the shareholder Ministers with a list of suitable candidates for Board membership.
- Shareholder Ministers may elect to appoint a candidate not proposed.
- Shareholder Ministers shall consult with the Prime Minister and the Treasurer on all Board appointments.
- Board appointments should normally be for terms of three years, with retiring directors eligible for inclusion in the list of candidates.

Source: Governance Arrangements for Commonwealth GBEs, Australian Government, June 1997, Section 3.4, p. 8.

through the nomination process itself, involving a complex political negotiation among different government organs, or through direct nomination of political appointees. This is often identified as a main weakness of SOE governance, as "*too often, SOE boards are populated with people chosen for their political allegiance rather than business acumen*":[7]

- In a number of cases there is a direct political dimension to the nomination with the direct involvement of the Council of Ministries or even the President, such as in **France** for Chairmen and CEOs of some large SOEs.
- Sometimes SOE boards will even be overstaffed with political appointees. In **Finland**, for example, the "*relative support of Parliamentary parties has become the core criteria for the composition of Supervisory Boards*" of SOEs, as "*the state (…) adopted in the early 1990's the principle that the Parliamentary factions of parties represented in Parliament appoint their representatives to the Supervisory Boards of state-owned companies*".[8]
- In the most extreme cases, even the nomination of non-state representatives will result from bargaining among ministries concerned, possibly involving specific committees or organs.
- On the contrary, some countries, such as **Norway**, have explicitly excluded the participation of members of the Parliament, Ministers or State Secretaries on the boards of SOEs. This is also the case in **Germany**, except regarding State Secretaries who can be appointed in SOE boards if they are not members of the Parliament.

Questions and concerns about the appointment of public servants, particularly deputy ministers, to SOE boards are documented, for example, in the case of **Canadian** Crown Corporations.[9] They relate to their attendance records, the practice of sending substitutes, potential conflicts of interest with other responsibilities, as well as the deference of other board members who tend to consider these deputy Ministers as a direct spokesperson for the government. One of the conclusions of this study is that the role and attendance of public servants on SOE boards needs continuing and close monitoring.

Some OECD countries are trying to curb political interference in the nomination of SOE boards, as this is often perceived as a strong impediment to board professionalism. **Korea**, for example, has undertaken major reforms to reduce the appointment of military or high level bureaucrats to SOE management and then to boards on political grounds and as a reward for their careers (see Box 6.3). But these efforts have been met with strong resistance from both within government and the political parties that perceive correctly these nominations as a critical means to influence SOEs' strategies.

Some other countries use a more generic process to curb the political interference, based on the general process for appointments in public bodies. This is the case for example in the **UK**, where SOE board members are appointed (or approved) by the shareholding Ministry. But the appointment process has to be conducted in accordance to the "*UK Government's Code of Practice for Ministerial Appointments*", which are guidelines for making public appointments, focusing on transparency and consistency in the selection procedure. Consequently, the selection procedure is run from the Office of the Commissioner for Public Appointments, and the Chairman of the SOE board concerned is on the selection panel for other board members (*cf.* Box 6.4).

Structured and skill based processes

A number of countries have a formal policy of nominating relevant and independent private sector experts based on their business experience. In some instances, these requirements are even articulated in relevant laws. But in practice the nomination of board members rarely derives from a global strategy based on an evaluation of needed competencies. It is more often a succession of individual decisions, which do not take into consideration the overall balance of skills and experiences at the board level.

The result is that some critical skills are often missing. This has been evidenced in a survey of Canadian Crown Corporation Chairs and CEOs. Observers noted numerous gaps in the balance of skills and competencies of their boards. This is explained by the pitfalls in the nomination process, as only 34 per cent of Crown Corporations have completed profiles outlining their requirements for director skills and capabilities. Moreover, when they

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Box 6.3. **Mitigating political influence on GIE management and its effect on boards in South Korea**

Public enterprises have historically played a remarkable role in the Korean economy, but since the 1970's a series of reforms have been launched to make them more productive and therefore more competitive. The major reform dates from 1983 and is called GIE Administration Basic Act. This act meant to consolidate and substitute all the former ones on the same subject and it changed the way in which GIEs were governed. The main principles evoked in the Act were autonomy, accountability and efficiency, and through them almost all aspects of management as well as supervision were changed.

The underlying idea of this reform was that the performance of the public enterprises was suffering because of the strong control exercised by the state. The Korean political powers in fact were able to appoint executives coming from outside the firm and in doing so they followed political considerations instead of taking into account the competencies or the abilities of the candidates. Such appointments of executives coming from outside the firm were called "parachute appointments" and they were also dangerous for the morale of the employees who saw their possibilities for promotion reduced. For all these reasons the Act established that the appointed executives had to be chosen among the employees with the only exception of the CEO that is still appointed by the President under the recommendation of the Supervisory Minister. This Act was a compromise since on one side the CEOs were still under the political power but at least not all the executives were in the same situation. It was also in a sense a "minor evil" solution, as it was recognised that the Act, by forbidding the selection of outside executives by political decision, also impeded recruitment of possible valuable persons coming from outside the company.

This Act was a true compromise and it had a counter productive effect on boards. This is evidenced by the changes put in place in the boards' structure to take into account the interests of retired military officers and bureaucrats that before were employed as executives in the SOEs. After the new law, a new type of boards emerged with more strategic functions, separated from the management responsibilities of implementation. In this way, the non executive members of boards could be recruited from outside (among the classes mentioned above) without compromising the performance of the firm. Each of these boards had to be composed of a maximum 10 members including the chairman, the CEO, one representative from the Economic Planning Board and the Supervisory Ministry and civilians with particular expertise. CEO and Chairman were appointed by the President; the other board members were appointed by the Supervisory Minister at the recommendation of the Chairman. A mechanism was put in place to discourage "parachute elections": very low remuneration of board members, which involved a simple reimbursement of expenses.

Box 6.3. **Mitigating political influence on GIE management and its effect on boards in South Korea** *(cont.)*

After 1983 the GICs became more independent also because their managers acquired more autonomy. The government was only setting the objectives and evaluating the performance, but it had no more formal control on the way the goals were pursued. Moreover, the Act entrusted the GICs with the authority to finalise budget plans by just following some common budget guidelines, instead of submitting it to the supervisory ministry. The GICs also acquired the power to decide at their own discretion purchases of goods that before were decided at the central level. And a central body of Audit and Inspections was instituted as uniquely authorised to do external audits.

Source: Mako and Zang, "Exercising ownership rights in state owned enterprise groups: what China can learn from international experience", 2002, p. 20; Lim, "Public enterprise reform and privatisation in Korea: Lessons for developing countries", 2003, p. 6.

Box 6.4. **UK Code of Practice for Ministerial appointments**

The Code of Practice's Principles

1. **Ministerial Responsibility:** The ultimate responsibility for appointments rests with Ministers.
2. **Merit:** All public appointments should be governed by the overriding principle of selection based on merit, by the well informed choice of individuals who, through their abilities, experience and qualities, match the needs of the public body in question.
3. **Independent Scrutiny:** No appointment shall take place without first being scrutinised by a panel which must include an Independent Assessor.
4. **Equal Opportunities:** Departments should sustain programs to promote and deliver equal opportunities principles.
5. **Probity:** Board members must be committed to the principles and values of public service and perform their duties with integrity.
6. **Openness and Transparency:** The principles of "open government" must be applied to the appointments process, its workings must be transparent and information must be provided about appointments made.
7. **Proportionality:** The appointments procedures need to be subject to the principle of "proportionality". That is they should be appropriate for the nature of the post and the size and weight of its responsibilities.

Source: UK Government Office of the Commissioner for Public Appointments' Web site : *www.ocpa.gov.uk/pages/code.htm*.

have done so, in many cases these profiles were not used by the government in making the appointments. An extreme situation is where the government only consults nominally the Chairman, or not at all. Such gaps undermine the boards' effectiveness. "*Too often, the corporation had not assessed its requirements for skills and capabilities and the government did not consult the board, which led to frustration, unmet needs, and a weakened board.*"[10]

The main way of restricting such governmental or political interference in the nomination of SOE boards and to increase their independence and professionalism is indeed to put in place a structured nomination process, making sure that the ultimate selection criteria is competency. Moreover, focusing on setting up structured nomination processes allows ownership entities to perform their nomination mission with a limited administrative capacity.

Very few countries, such as **Australia**, **New Zealand** and **Sweden**, have set up such structured and clearly skill-based nomination systems. Structured systems are based on a systematic evaluation of existing boards. In view of the corporate strategy and the existing mix of competences and skills, competence and experience requirements are specified for new board positions. Finally, candidates are systematically identified, interviewed and assessed based on profiles drawn up for each board position.

In **Sweden**, boards undertake self evaluation and draw up a list of needs in terms of composition and competence. This structured approach has led to the replacement of a significant portion of SOE boards, the appointment of a large number of new board members, and eventually to more professional, diversified and business oriented boards. In the case of listed companies, the ownership entity consults with other major shareholders ahead of the GSM through a nomination committee, which should include at least one representative from the ownership entity.[11] Proposed nominations are also published in advance of the GSM and the nomination committee members attend the GSM to justify their proposal.

In **New Zealand**, the nomination process is codified and involves both the CCMAU and the shareholding Ministers, with the objectives to appoint the best qualified candidates, avoid back door influence and have an open and transparent consultation. The shareholding Ministers are responsible for all appointments to SOE boards. In practice they seek nominations from their political colleagues and from "representative agencies" with a view to promoting appropriately qualified people from under-represented groups of society. The Ministers have the final say on all appointments. But the CCMAU has a dedicated and primary board appointment function and manages the overall appointment process, as described in the Box 6.5. It identifies appropriately qualified candidates for Ministerial consideration, and interviews

Box 6.5. **Crown company boards appointment process in New Zealand**

The main steps of the Board Appointment process are:

1. Shareholders' expectations conveyed to the board.
2. Agree skill requirements for the board.
3. Review against present membership and identify gaps.
4. Agree skill profiles for vacancy and relevance for any forthcoming reappointments.
5. Minister consults political colleagues in the Parliament.
6. Compile list of candidates – minister and CCMAU.
7. Interview candidates and advise Minister of outcome.
8. Due diligence of preferred candidates.
9. Referee checks.
10. Recommendations to shareholding Ministers.
11. Ministers make appointments; Ministers required to certify that due process has been followed and that candidates have no unmanageable conflicts of interests.
12. Cabinet Appointments and Honours Committee (APH) confirms.
13. Cabinet ratifies; parliamentary party consulted.
14. Appointment documentation completed.
15. Chair initiates induction programme.
16. CCMAU initiates sector induction programme.

Source: Corporate Governace in New Zealand Government-owned companies, The Boardroom Practice Ltd./CCMAU, OECD/ICSSR Conference on Privatisation and Corporate Governance of State-Owned Assets, 27-28 November 2003, New Delhi, India.

and assesses them. It maintains a database of qualified candidates and consults specialised networks for finding new potential candidates. It manages the appointment process by itself as well as the induction process, and later on monitors board and individual directors' performance. Once the appointment is made, shareholder Ministers must certify in writing that the candidate is the best available and that there are no "unmanageable conflicts of interest".

Nomination committees

A few countries have also introduced nomination committees, but only for listed SOEs. These committees are useful in devoting specific attention to and in formalising further the nomination process. However, nomination

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committees within SOE boards do not necessarily base their work on a specific evaluation of competence requirements.

Some countries have developed specific committees or other institutionalised processes for the nomination of SOE board members. These committees may exist at the company level or for all SOEs, and are to a certain extent based on the model of the **UK**'s Commissioner for Public Appointments, as described above. The government requires that the process be efficient, transparent and based on merit, excluding political activity and affiliation from selection criteria. Moreover, all stages are subject to audits.

In **Denmark**, the Minister in charge is required to consult a "Special Government Committee" which must ensure that the nomination is based on professional merits. However, this committee includes the Prime Minister and the Deputy Prime Ministry. In **Norway**, the nomination of board members in large SOEs is discussed by an "Election Committee". This Election Committee is not a sub-body of the board as it is composed of shareholders' representatives, including one civil servant representative of the shareholding Ministry, and members of the Company Supervisory Assembly, which is a kind of "super or supervisory board", twice as large as the actual board and similar in composition.

Another important difficulty in the appointment process is the lack of timeliness. In a number of countries, the nomination process may take an excessive amount of time, due to its complexity and the number of organs or entities involved. Moreover, appointment terms are often unevenly staggered, so that a number of members might need to be re-elected in a single year. These difficulties may have a serious impact on the continuity and stability of the boards' work.

With or without a structured nomination process, a growing number of countries maintain databases of qualified candidates. They also increasingly rely on the professional services of recruitment agencies to fulfil this key task of board nomination. This is especially the case in countries with relatively small ownership units, such as **Finland** or **Sweden**. The development of such practices would help in enlarging the pool of potential experts for SOE boards, especially to bring in more private sector experience, thereby improving SOE boards' professionalism.

Apart from managing appointments to SOE boards, the ownership entities are also increasingly involved in setting up induction processes. These induction programs often include training in board responsibilities, the SOE's relationship with the government and Ministries concerned, and board procedures. Such induction training enhances SOE board professionalism. Ownership entities are also increasingly active in monitoring on an on-going basis boards and directors' performance to ensure a smooth evolution of board structure and composition, as described below.

Many OECD countries have realised that board nomination is critical in enhancing SOE boards' competence and independence and have begun to reform their nomination process. These reforms and their evolution usually aim at decreasing state representation within SOE boards and reducing the political interference in the nomination of SOE boards through structured and skill-based nomination processes, led mainly by ownership entities.

Board functions

General functions and responsibilities

The functions and responsibilities of SOE boards are more or less clearly defined and are based on Company Law requirements. SOE boards are usually supposed to have the same level of responsibility and liability as the boards of joint stock companies. This means, in most cases and in a legal perspective, that SOE board members have an unlimited liability for the affairs of the SOE.

- This is the case, for example, in **Australia**, where "*GBE boards have absolute responsibility for the performance of the GBE, and are fully accountable for this to the shareholder Ministers*".[12]
- In **Sweden**, "*Board members have the same unlimited responsibility as board members of privately-owned companies. The board members share a collective responsibility for the company's management and organisation*".[13]
- This is also the case in **Germany**, where the functions and responsibilities of the supervisory board are stated in the general Company Law which applies to SOEs to the same extent as to private-owned companies.

Responsibilities usually include the strategic monitoring of the company, the development and reviewing of the organisational strategy, the negotiation with the shareholding ministers of the general business plan and objectives, the monitoring of senior management performance and compliance with the law. In **New Zealand**, the boards' role is clearly described and in broad strategic terms, includes the preparation, finalisation and implementation of the Statement of Corporate Intent (SCI, *cf.* Chapter 5) as a central part of the accountability process. In **Korea**, the description is focused on specific tasks reserved to the board, and does not even mention either the role of strategic orientation or the monitoring of management (*cf.* Table 6.4).

Weakness of SOE boards

In many instances, SOE boards are not granted the full responsibility generally accorded to boards of joint stock companies in terms of strategic guidance, monitoring of management and disclosure. They are deprived of certain critical functions and are not always vested with the necessary authority to carry out those which they have. The roles and responsibilities of SOE boards

Table 6.4. **Board duties in New Zealand and Korea**

Crown company board duties in New Zealand	GOCs' board functions in Korea
The Board is typically responsible for: • Appointing, managing and monitoring the chief executive's performance. • Providing leadership and vision to the company in a way that will enhance shareholder value and ensure the company's long term organisational health. • Developing and reviewing organisational strategy. • Monitoring the performance of senior management. • Reviewing and approving the company's capital investments and distributions. • Ensuring compliance with statutory requirements. • Providing leadership in its relationships with stakeholders. • Negotiating the Statement of Corporate Intent (SCI) or with the shareholder, developing a business plan that will receive shareholders support, and holding management responsible for meeting the performance measures/milestones in the SCI and business plan. • Establishing appropriate governance structures to ensure the smooth, efficient and prudent stewardship of the company.	The board of directors shall be establish in order to deliberate and resolve the following matters: • Operational objectives, budget, finance and operating plan. • Use of reserve funds and carrying forward of the budget. • Closing accounts. • Acquisition and disposition of basic assets. • Borrowing of long-term funds, issuance of debentures and a plan for their redemption. • Selling price of products and services. • Disposition of surplus fund. • Equity investments in other companies. • Amendment of the articles of incorporation. • Enactment and amendments of the by laws. • Other matters which are deemed necessary by the board of directors.

Source: Owner's expectation Manual, Section 3 (New Zealand); Article 9, the Framework Act on the management of government-governed institutions (Korea).

are often encroached from both ends, as they are by-passed both by senior management and the ownership entity, and some of their functions may also be duplicated by specific state control organs in some areas.

The SOE board may be deprived of some of the responsibility for defining the strategy of the SOE. The ownership entity, if not the government itself, may indeed be tempted to become over involved in defining the strategy for the SOE. This is even more the case when the ownership entity is the sector Ministry which has a thorough knowledge of the sector, and most likely has its own objectives in terms of the desired evolution of the sector and of the SOE itself.

SOE boards also face difficulties in exercising control over management as they do not always have the legitimacy, or even the authority, to do so. In some countries, there is a strong direct link between the management and the ownership entity or even with the government, as the management is appointed *de facto* by the ownership entity or the government (see below). In this case, SOE senior management tend to be loyal and report to the ownership entity or the government directly, by-passing the board.

SOE boards may also feel partially deprived of their responsibility regarding the completeness, exactness and fairness of reporting, as this disclosure function may be in part duplicated by specific state control organs, such as those described in the previous chapter. In some cases they are also deprived of the necessary tools to adequately follow and control the risk incurred by the SOE, even though these weaknesses are being increasingly addressed in a systematic fashion in some OECD countries (*cf.* also Chapter 5).

The typical weakness of SOE Boards has been thoroughly described in the French Douste-Blazy Parliamentary Report. This Report describes how in many cases SOE boards were deprived of their main responsibilities and how they were not even consulted on key strategic decisions, or only informed *ex post*. The arguments given by some large SOEs CEOs to justify this by-passing of the board was that as soon as the state (*i.e.* the Minister concerned) agreed with the decision, it was not useful to have the board decide on the issue. Knowing that the decision had already been taken *de facto*, board discussions became a formality. In a specific case of a major acquisition, the state representative within a SOE board officially regretted during the board meeting that the board was consulted only at the end of the process and that this consultation was even superfluous as negotiations were already completed. The underlying explanation is the direct link existing often between the CEO and the government, as described by the Treasury Director: "*We must admit that some CEOs of SOEs tend to directly address the Minister and to consider that a simple visit in the Minister's office equals approbation by the board.*"[14]

Nomination of CEOs

In a number of countries SOE boards do not fulfil what should be one of their key functions, the nomination and removal of CEOs (*cf.* Annex I.5):

- SOE boards are clearly in charge of nominating the CEO only in a few countries such as **Australia**, Denmark, Finland, **Germany**, **New Zealand**, and **Norway**. It is also the case in **Austria**, but special statutory provisions apply regarding the process, in terms of transparency, vacation notice, delays, etc.
- In some other countries it is the GSM which nominates the CEO, as is the case of **Korea**'s GICs and Hungary.
- SOE boards are clearly not in charge of nominating CEOs in several OECD countries, such as **Belgium, France**, **Mexico** and **Turkey**. In **France**, in the largest SOEs CEOs are nominated by Presidential Decrees, in accordance usually with the ownership entity which proposes candidates based on their competencies. In the **Mexican** case, even senior executives two levels below the CEO are appointed and removed by the ownership entity.
- In some other countries, the board is officially in charge of nominating the CEO but *de facto* there is a strong interaction, in the form of consultation with the concerned Ministries (in **Italy**) or even approval from the Ministry in charge (in **Japan**).

- In the **UK**, the Chairman of the Board usually chairs the selection panel for the CEO and other board members. This panel then makes an appointment recommendation to the responsible minister.
- In **Korea**, in the case of GOCs, the Board sets up a specific Recommendation Committee, but the CEO must be approved by the sector ministry and is even often directly appointed by the country's President (*cf.* Box 6.6).

In a few OECD countries the selection of CEO remains a political prerogative of the government and there is no political will to change and return this critical responsibility to SOE boards. Nomination of the CEO by the government can lead to a weakening of their legitimacy. This is the case in **France** where practical modalities of CEO nomination have been criticised, without questioning the government power to nominate them, as this is considered as "*logical and necessary*". CEOs are "*often nominated as a matter of urgency, depending on political changes, without real adequacy between their experience and the enterprise's culture*". The Douste-Blazy Parliamentary Report recommends to develop the promotion of internal managers and to apply "*minimal guaranties of transparency and objectivity*"[15] in the nomination process, in order to increase the legitimacy of CEOs and decrease the often questioned high degree of inter-relationship with the high levels of the administration. The new ownership agency (APE) should be more involved, particularly in searching for and selecting potential candidates. Moreover, a recommendation is made for the newly appointed CEO to be interviewed by the relevant Parliamentary committees.

Box 6.6. **President Recommendation Committees in Korea's GOCs**

The GOC's board sets up a President Recommendation Committee to nominate a President candidate (which will be at the same time CEO and Chair of the Board).

The Recommendation Committee comprises a majority of outside directors (including the Chair of the Committee), one former or incumbent President, and members designated by the board. Company officers, staff or public officials may not be members of the Recommendation Committee.

The Recommendation Committee must post a public notice in major daily newspapers. It can also investigate other potentially appropriate candidates and request the services of a specialised agency.

The Recommendation Committee negotiates with the selected candidate the terms of their contracts.

Source: Framework for Act on the Management of Government-Invested Institutions and Act on Corporate Governance Improvement.

The power to hire and fire the CEO and to determine the terms of his/her employment should reside with the board, as this is a key to boards' accountability and effectiveness. "*The nature of the relationship between the CEO and the board is often critical. The board must work with the CEO to build a relationship of openness and trust… An important aspect… is to establish a clear accountability relationship for the CEO to the board…*"[16]

In **Canada**, three models of selecting CEOs have been identified in Crown Corporations, even though the government now favours a board empowering model. In the first one, "Centre selects", the board is not even consulted. In the "Centre searches" model, the government runs the search and recruitment process but consults with the board, including on selection criteria or for input to the short list of candidates. In the "Board search model", the Board leads the search process, conducts interviews (as well as the Minister) and recommends a shortlist to the government, which makes the final decision. The last model is largely perceived as the most effective. It leads to more accountability and enhanced mutual trust and respect among the different company organs as well as with the government.[17] Both **Canada** and **Sweden** are moving towards empowering SOE boards, giving them similar responsibilities as in the private sector and more arms' length relationships with the governments and Ministries in charge.

Without this crucial role of nominating the CEOs, and without the power to remove the latter in case of poor performance, it is difficult for the board to fully exercise their monitoring function and to feel responsible for the performance of the company. This deprives SOE boards from one of the most powerful accountability levers and is considered as one of the most significant issues in SOE governance in many OECD countries.

Work of boards

Process and guidelines for SOE Boards' Work

Only a few countries have developed or are developing specific guidelines for how the work of SOE boards should be conducted. The only requirement usually established by the Company Law or in specific SOE related legislation, concerns the obligation for minutes of board meetings and the number of meetings to be held per month or year, which varies from twice a month in **Turkey** to once a year in **Austria** (*cf.* Table 6.5 below).

The length of term for board members, often a three year term, and possible number of re-appointments are becoming issues in a number of OECD countries. It is sometimes considered that board members need to have longer terms and have the option to be reappointed to ensure an enhanced independence and stability of SOE boards. This is the case, for example, in

Table 6.5. **Examples of minimum number of SOE board meetings**

	Minimum number of board meetings
Turkey	Twice a month
Greece	Once a month
Spain	11 times a year
Poland	Every two months
Slovak Republic, Mexico	Once a quarter, 4 times a year
Austria	Once a year

Source: Answers to the OECD Questionnaire on the Corporate Governance of State-Owned Assets, 2004.

Canada, where studies have shown that the duration of service has increased from 3.7 to 4.6 years between 1997 and 2001, but still lags behind the private sector (on average 7.7 years).[18]

A few countries such as **Sweden, Australia** and **France** have developed or are in the process of developing (**Spain**) specific guidelines for SOE boards. In **Sweden**, the ownership entity developed in May 2002 model rules for SOEs, aiming at reinforcing the role of SOE boards and at increasing their involvement in SOE operations (*cf.* Box 6.7). These rules are explained and progressively deepened in the *Annual Reports on State-Owned Companies* and boards have to adopt annually a written formal work plan. This work plan has to be produced by the whole board and is considered as "*a valuable basis for the board's work in the coming year*".[19]

In **France**, rules and regulations concerning the relationship between the APE and SOEs give clear guidance regarding competencies and functioning of SOE Boards and their specialised committees. Moreover, specific guidance for state representatives on SOE Boards has been developed. This Guide focuses on four items, including the status of state representatives, their role within the board, the framework of his/her mission and his/her responsibilities. The latter includes practical advice on priority missions for state representatives on SOE boards, as described in Box 6.8. A Parliamentary Report also recommends that SOE boards adopt a detailed internal charter covering the types of decisions that have to be approved by the board, minimal delays for providing information to board members and audit committee members prior to their meetings, details about the rights and means to obtain information for board members, definition of missions and resources of specialised committees.[20] Finally, in 2004, an extensive training programme has been developed for civil servants acting as board members in SOEs.

In **Australia**, a "Better Practice Guide on CAC Boards"[21] has been published in July 2003 at the Federal level. Some particular states have also developed their own guides, such as New South Wales with the "Guide to better practice for public sector governing and advisory boards".[22]

Box 6.7. **The Swedish rules of procedure for SOE boards**

The Swedish Company Act requires that boards adopt annually rules of procedures. In May 2000, the Swedish ownership entity developed model rules for SOEs, aiming at reinforcing SOE boards' roles and at increasing their involvement in SOE operations. These rules include the following main elements:

- The board should state their operational objectives, the financial targets and the operational goals of the company; to administer the capital invested for the benefit of the shareholders and within the limits of the core business.
- The board should coordinate its view with representatives of the owners concerning matters of strategic importance such as changes in operation, major structural changes (acquisitions, mergers, divestments) changes in company risk profile, etc.
- The board's responsibilities should be separated from those of the managers to whom the day-to-day management is to be left.
- The Chairman should be in constant contact with the management in order to be able to monitor it.
- The board should have access to the same level of information as the managers for issues of strategic importance.
- The Board rules should decide also the frequency of the meetings of the board, and all the matters related to it (the notification agenda and the minutes) and also to the board committees.

Source: Proposed Rules of Procedure for the Boards of Government-owned Companies, 18 May 2000, Swedish Ministry of Industry, Employment and Communications.

In some countries, board members receive a formal document describing the SOE's governance framework, clarifying their responsibilities within this framework and outlining the ownership entity's expectations. This is the case in **Australia** where all board members should be provided with a "Charter Letter", a letter of appointment setting out their duties and responsibilities. The Role of the Board should also be clearly documented in a Board Charter.[23]

Co-ordination among state representatives

Co-ordination among state representatives is a key issue where they are numerous, and especially when they represent different ministries or government organs as is usually the case in dual ownership models. For example, in **France**, the ownership unit within the Treasury had to deal in a specific case with representatives from the budget Directorate, the State Control, *technical tutelles*, and from at least three different directorates of the sector Ministry. This

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Box 6.8. Practical Advice for State Representatives in French SOEs

Basic rules that constitute the absolute minimum that board members should know and apply in all circumstances:

Know the Company, including: Main risks and risk monitoring process; Authority delegated by the board to senior executives; Sales and acquisitions of significant shares; Main economic issues and specific problems faced by the company; Committees within the board; The company's activities and product lines; Internal and external audit processes as well as internal control, budget and financial systems; Human resources policy; Strategy and long term plans; Short and long term financing conditions.

Devote necessary time to fulfill the board's mission: Actively participate in the board's work; Ask relevant questions and insist on obtaining satisfactory answers; Attend all meetings of the board and relevant committees; Follow competitors' activity; Encourage informal exchanges with other board members and senior management; Scrutinize accounts and other documents in the appendix.

Attend Board Meetings.

Mention in writing disagreements in the minutes of the board meeting.

Do not undertake any forbidden transaction.

Source: Guide du Représentant de l'État au sein des Conseils d'Administration des Sociétés Anonymes, Fiche Pratique 6, pp. 52-53.

weakness in co-ordination was identified in the French parliamentary Report on the Management of State-Owned Assets and considered as an important reason, though not the major one, for the lack of strategic guidance by the state.

Some mechanisms may be adopted in cases of numerous state representatives to alleviate such co-ordination problems. For example, meetings of all state representatives may be organised ahead of board meetings in some cases. These meetings are intended to co-ordinate views and reach a common position on significant issues. In case of conflicts, arbitration may be undertaken by the Minister himself or even at an "inter-ministerial" level. A "leading" state representative may also be formally or informally chosen, in charge of representing the government view. The extent to which such co ordination mechanisms could lead to a common view reflecting the "general public interest" is questionable. That such a co-ordination could reflect a clear ownership view is even more dubious. In this case the common position may reflect more turf battles and rivalries between differing state organs concerned than a common or coordinated position.

State representatives do not always have a clear mandate from the state as board members, and even more so when they are not civil servants. Without a clear mandate or instructions, they often end up silent and passive. One state representative on the France Telecom board reported to the Parliament: "*Since my nomination in 2002, I have not had any contact with Ministries or representatives from the government while I was representing the state in France Telecom's board. Lacking any other direction, I always considered that my mission was to support the action taken by the CEO, who was trusted by the state and who had not taken any important strategic decision without the state's consent. I would have found it normal to be consulted or instructed about what the state was expecting from us, which never happened… It is quite serious. It means that board members are appointed and then they are free.*" This was also summarised by Daniel Lebègue as follows "*Lacking instructions, state representatives in SOE boards are mute*".[24]

Specialised Committees

The work of specialised committees of SOE boards has recently increased, following the trend and practices of public joint stock companies in the countries concerned. They are not usually mandatory, and boards are free to set up such committees, based on the Company Law and according to their governance needs.

Specialised committees are common in half of the countries surveyed. They are present in all SOEs in few countries, such as the **UK**, where Government-owned Company Act companies have remuneration, audit and risk and nomination committees. Specialised committees are present in almost all SOEs in some other countries, such as **Spain** and the **Netherlands**, or in many SOEs such as in **Korea**. The most frequently occurring committees are the audit and remuneration committees, which are "general practice" in most SOEs, such as in **Belgium**. Audit committees are mandatory in **Australia** for wholly owned SOEs. In less numerous cases, strategy committees and in a few cases risk committees have also been established.

A few countries are more reluctant to set up specialised committees in order to avoid undermining the collegiality of board work.

When they exist, the composition and duties of committees are defined by the board, and are usually published in the *Annual Reports*. The existence of specialised committees does not deprive the full board of its responsibilities in the matters concerned, except in a few cases where they are allowed to take decisions on their own behalf, such as in **Austria**. In general, the practice in SOE boards is in line with the standard practice in the private sector.

Some recent events and failures have, however, emphasised the necessity to reinforce SOE boards particularly with regard to audit and risk management and thereby has reinforced the advocacy of specialised committees within SOE

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boards. Setting up specialised committees could indeed be instrumental in reinforcing SOE boards' competency and in underlining their critical responsibility in these matters.

Audit committees are thus considered critically important in a number of OECD countries, as they play a key role in risk management. This is particularly the case after some severe and unforeseen financial difficulties in some major SOEs. They are usually sub-committees of the board and their typical functions include overseeing audit functions, internal control and financial reporting process, including approving the related policies. The benefits of having audit committee have been discussed extensively, including in the recent *OECD Survey of Corporate Governance Developments*.[25] Their impact will vary a great deal depending, *inter alia*, on their effective independence from the management. "*When properly structured and given a clear mandate, audit committees can provide considerable benefit to organisations.*"[26]

However, an in-depth study of some 14 Crown Companies' Audit Committees by the Auditor General of **Canada** has shown that half of them were operating below an effective level, with important concerns about financial literacy and accounting expertise in a number of them, sometimes incomplete oversight responsibilities, and lacking operating procedures. Thus, the mere existence of such committee is not enough to guarantee effectiveness. They should follow good practices and document duly their work. This is the reason why best practice or guidance for audit committees has been specifically developed in some countries, such as **France** or **Canada** (*cf*. Boxes 6.9 and 6.10).

Board evaluation

There is rarely a systematic internal evaluation of SOE board performance. This is also usually the case for public joint stock companies in most countries, even though shareholders are presumed to do so in the GSM.

- Only three countries surveyed reported to have a systematic evaluation of board performance, **New Zealand, Poland** and **Sweden**. In **Sweden** and **New Zealand**, there are both evaluations of the board and of the individual board members. In **Poland**, individual evaluation is carried-out quarterly by the Treasury and annually by the GSM. In **New Zealand**, there is a board self-appraisal, a board review of the Chair and a Chair review of each director.
- In **Norway**, an independent assessor may be nominated, or board members discuss the evaluation among themselves. Moreover, one of the recently issued ten principles on state ownership states that: "The board's activities shall be assessed". Similarly the Norwegian Code of Practice for Corporate Governance states that "The board of directors should evaluate its performance and expertise annually", and that "this evaluation should be made available to the

Box 6.9. **Recommendations for the establishment and work of audit committees in French SOEs**

Audit committees should keep a watchful eye on possible risks and be able to promote an on-going improvement of the company's financial statements. More importantly, they should ensure that the *Annual Reports* and, where applicable, *Quarterly Reports* are published in a timely manner.

In the first instance, these recommendations apply to the **composition of the audit committees** which can vary in number from 3 to 5 members who may not nominate someone else to represent them. It is strongly recommended that independent administrators are represented in these committees. However, the Chair and other directors of the company who are called to attend meetings when their presence is deemed necessary cannot be members of these audit committees. In most cases, meetings should take place in the presence of an external auditor (this should be systematic when involving an accounting session) and give rise to regular submission of a report to the board.

Four major tasks could be entrusted to the audit committees who must then report back their conclusions to the whole board:

- Ensure pertinent, permanent and truthful accounting methods are put in place to establish the accounts and publication of all financial information.
- Give an opinion on the selection of the external auditor and the fees he/she should receive (competencies and independence) and examine the program of work, the conclusions and recommendations of the external auditor (in accordance with recommendations made by the external auditor and the audit committee).
- Examine internal procedures related to the gathering of information, the program, the conclusions and recommendations made by internal control (based on recommendations made by the internal controllers and the audit committee).
- Put forward their views on financial strategy, major capital/asset transactions and the management of risk (assessment) policy.

The committee should meet at least 3 times a year (annual and consolidated reporting, quarterly reporting).

Evidently, the committee should be able to function efficiently. Aside from submitting work related documents within a reasonable period allowing for sufficient examination of these documents, members of the audit committee should be able to ask anyone judged to be useful to have a role in the tasks and have access to any internal information deemed necessary, to have sufficient means at hand, most notably, financial, in order to carry out any research if required. Audit committee members should keep the information at their disposal strictly confidential.

Source: L'État Actionnaire, Rapport 2003, pp. 14-15.

Box 6.10. **Selected best practices for the audit committees in Canada's crown corporations**

Audit committee responsibilities

The audit committee should ensure financial oversight by:

- critically reviewing the interim and annual financial statements, the auditor's report and the management discussion and analysis section of the *Annual Report*; and
- actively soliciting the external auditor's judgments about not only the acceptability but the quality of the corporation's accounting principles as applied in its financial reporting. This discussion should include such issues as the clarity of financial disclosure and the aggressiveness or conservatism of the corporation's accounting principles and estimates.

The audit committee should ensure oversight of corporate books, records, financial and management control and information systems, and management practices by:

- actively soliciting information about significant risks and exposures and reviewing the adequacy of internal controls to manage those risks;
- reviewing the integrity and effectiveness of the management information systems;
- reviewing internal audit plans and reports and subsequent actions by management; and
- reviewing significant findings and recommendations made by the external auditor and examiner and following up on management's subsequent actions.

The audit committee should:

- ensure ethical oversight through the annual review of management's compliance with the corporate code of conduct; and
- actively solicit all sensitive information (for example, senior management expenses, significant litigation, non-compliance with laws and regulations, misuse of corporate assets, illegal activities).

Membership and competencies

The audit committee should be composed of at least three directors, the majority of whom should not be officers or employees of the corporation.

Although a variety of skills and experience is beneficial to an effective and balanced audit committee, all members should be financially literate and at least one member should have accounting or related financial management expertise. Financial "literacy" signifies the ability to read and understand

Box 6.10. Selected best practices for the audit committees in Canada's crown corporations *(cont.)*

fundamental financial statements, including a balance sheet, income statement and cash flow statement, and the ability to ask probing questions about the corporation's financial risks and accounting. "Expertise" signifies past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that results in the individual's financial sophistication (experience as a chief executive officer (CEO), for example, or other senior officer with financial oversight responsibilities).

Operating procedures

Terms of Reference. Audit committees should have clear, written terms of reference and operating procedures that specify the scope of the committee's responsibilities and how it carries them out, including its structure, processes, and membership requirements.

Meetings. The frequency of audit committee meetings should be tailored to the responsibilities assigned, but should be at least quarterly. The audit committee should also meet periodically with management, the external auditor and the head of the internal audit, in separate private sessions.

Source: Report of the Auditor General of Canada – December 2000.

nomination committee", and this would apply to all listed SOEs. However, it is expected that it will take some time before a systematic evaluation is carried out in all listed SOEs.

- Some other countries plan to develop such evaluation system, such as in the **UK** and the **Netherlands**, where for the time being only some SOE regularly evaluate their boards. In the **Netherlands**, reforms are considered which would establish a five year evaluation programme for all SOEs, including evaluation of their boards. In the **UK**, there have been until now only a few instances of formal and global assessment of board effectiveness. However, the newly set up Shareholder Executive is recommending that a more systematic and regular board review is carried out across the Government's portfolio.
- In a number of remaining countries, there is no regular evaluation, except during the nomination process (**Switzerland**), or as an on-going activity by the shareholding entities or advisory units (**Australia**).
- In a number of countries (**Greece, Slovak Republic**), the board may only be questioned *ex post* if there is serious divergence from the company's targets, after reporting to the ownership entity, the sector Ministry or the Parliament, depending on the country's usual reporting requirements. In **Turkey**, the

state control body in charge of auditing SOEs is also in charge of evaluating SOE boards. In **Korea**, SOE's results are evaluated once a year by the Ministry of Planning and Budget, following a well defined process. Based on this global evaluation carried out at the collective level, the Minister may propose the removal of the Chair or of an executive board member.

- Some countries declare that there is no formal board evaluation, including **Germany, Spain** and **Belgium**.

The evaluation of SOE Chairs is more frequent. For example, in **Australia**, SOE Chairs have been advised by the Minister for Finance and Administration that they should provide shareholder Ministers with a annual review of the board's performance.

The objective of SOE board evaluations is to give the ownership entities confidence about the performance of appointed board members. It gives an opportunity and a formal means of assessing the board's skills and evaluating the adequacy of the appointment regime. It can also be a vehicle to provide counselling to individual directors' performance and to organise succession planning.[27] It should lead to a continuous improvement of boards' performance and capability.

An evaluation could scrutinize the overall board performance and effectiveness, as well as the behaviour and contribution of individual directors. There are some discussions whether individual board member evaluation could be detrimental to the desired and necessary collegiality of board work. In any case, an individual evaluation of the Chairman's performance seems necessary.

In practice, the conduct of SOE board assessments varies quite a lot. The assessment often includes a self-assessment process and sometimes an element of "peer review". An external "facilitator" may also be appointed, who will set up a format questionnaire and organise interviews with individual board members. Finally, the evaluation should be discussed in a board meeting and published.

The assessment should not be only a "conformance" evaluation, but be carried out against key financial and non-financial objectives and compliance with accountability, including reporting requirements. Reviewed questions should include, *inter alia*, the quality of communication with management, the internal interaction among board members, the quality of induction and training, etc. The final result should identify areas of strength and weaknesses, as well as areas of improvement. It should highlight possible risk exposure and set up goals.[28] Some focused evaluation could be carried out, for example, regarding the governance. In **Australia**, a Director's Checklist is provided to assist Directors to assess the strength of their current governance framework.[29]

In **Sweden**, forms for collective, individual and Chairman evaluations are provided to boards, with qualitative assessment from 1 to 5. For the collective evaluation, it includes evaluation of integrity, working climate, the functioning as a group, coverage of all relevant expertise areas, absence of rivalry, quality of dialogue, etc. For individual board members, it includes knowledge of company's operations, understanding of the sector, attendance, concrete and original contributions, team spirit, personal contacts, absence of conflicts of interest, good judgement and commitment. The Chair evaluation includes leadership, strategic planning, external communications, relations with the board, planning for successor, etc.

A number of OECD countries plan to develop evaluation of SOE boards' performance as a critical tool in enhancing SOE board professionalism. Such evaluations underline board responsibilities and clarify their main functions. They are also instrumental in advocating more business experience and in diversifying board member profiles. Finally, they have proved to be a useful incentive for individual board members to devote sufficient time and effort in carrying out their critical functions, and for the board as a whole to really be the strategic leader and monitor of SOEs.

Board remuneration

It would be difficult in many countries to really enhance board professionalism and business perspective as long as remuneration does not permit attracting and retaining professional board members with the required expertise and experience. In a majority of OECD countries, remuneration is still far from even approaching any decent level in comparison with the responsibilities involved.

Here again, there seems to be a dichotomy between centralised models of ownership and the two other models:

- In centralised models of ownership there is a general policy of increasing board member remuneration with the objective of approaching private sector levels, such as in **Sweden** and **France**. In other cases, the remuneration of board members is decided by the GSM, such as in the **Netherlands**. Some countries with a centralised model, however, do have very low remuneration levels for SOE board members.
- In decentralised and dual models remuneration is in most cases still very low. In **Korea** for example, outside directors receive monthly and attendance allowances which are "relatively modest", lower than in private companies. In some sectors, in **Poland**,SOE board remuneration may be ten times lower than in the private sector.
- This is not the case, however, in the **UK**, which is still a mainly decentralised model. SOE board's remuneration is in most cases below private sector benchmark, but the difference is not drastic, and in some cases the remuneration is even comparable to private sector benchmarks.

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- Finally, in a few countries SOE board members are not remunerated except for attendance allowances, such as in **Spain**.

Remuneration criteria are very often the size of the SOE and related work load, the risk level, wage indices in the sector or company, as well as usual practice in the sector concerned. In some countries there are maximum limits, such as six times the average wage in the industrial sector concerned in **Poland**, with a possible exception for very important SOEs where remuneration can be 50% higher than six times the average wage in the industrial sector concerned. This is also the case for state enterprises in the **Slovak Republic**, where the remuneration can not be higher than five times the national average wage salary. Consideration may also be given to the non-cash benefits provided and personal status attached to holding the office, for example in **Australia**.

There are very few countries where board remuneration is determined through a standardised methodology, such as in **New Zealand** (*cf.* Box 6.11).

There are very few cases where part of the board members' remuneration is performance related:

- In the **Slovak Republic**, board members of state enterprises receive a bonus of 5% the CEO's bonus.
- In the **UK**, the board member remuneration is a combination of base pay and bonuses based on performance. Most executive board member remuneration packages have an annual performance element, and some have a long-term bonus arrangement on top. The size of the annual performance bonus as a percentage of salary varies between companies, ranging from 20% to 70%.

Box 6.11. **SOE board remuneration methodology in New Zealand**

Director's fees are not performance related. Each SOE is placed into one of six fee bands, with a unit rate for each director. Each boards receives approval for an annual lump sum of fees based on the unit rate multiplied by the number of directors, with a loading of 2 for the Chair and 1.5 for the deputy Chair. The unit rate incorporates an allowance for sub-committee work.

The unit rates are aligned to the private sector averages, but with a reduction to reflect the public service element of appointment to the SOE boards. In practice therefore, although the fees are pegged to the private sector equivalents, they lag someway behind.

Boards may request additional one-off fee approvals to cover extraordinary activities that arise, over and above the normal expectation on directors.

Source: New Zealand's response to the OECD Questionnaire on the Corporate Governance of State-Owned Assets, 2004.

- In **Poland**, a draft law on principles of remuneration in the public sector has been prepared by the Ministry of Treasury and is now discussed in the Parliament. This draft law would base SOE board members' remuneration on board performance and economic conditions of the SOE concerned.

Finally, in a few countries, specialised statutory authorities decide on SOE board remuneration in order to de-politicise the issue and to avoid conflicts of interest. This is the case in **Australia** where the Remuneration Tribunal is an independent statutory body that is set up to determine the remuneration payable in respect of certain public offices, such as the judiciary, directors of boards and Principle Executive Officers of Commonwealth entities. In **Turkey**, the remuneration of state representatives to SOE boards is decided yearly by the High Planning Council.

There is a strong underlying tendency in many OECD countries to re-evaluate SOE board remuneration in order to bring them more into line with private sector practice. In **Norway**, the newly adopted corporate governance Principles for SOE state that: "*Compensation and incentive systems shall promote the creation of value in the companies and shall be generally regarded as reasonable*."[30] In **Sweden**, for example, the average fees for the 5 largest SOEs has increased from 167 000 SEK in 2002 to 226 000 SEK in 2004 for a board member, and from 331 000 SEK to 434 000 for a Chairman, significant increases of 35% and 31% respectively. These increases are even more significant for medium sized companies, with board members fees multiplied by a factor of almost three on average between 2002 and 2004 for board members, slightly decreasing for Chairman.[31]

Notes

1. *Corporate Governance, A Survey of OECD Countries*, 2004, OECD.
2. Report 372, "Corporate Governance and Accountability Arrangements for Commonwealth Government Business Enterprises", Joint Committee of Public Accounts and Audit, Australian Government, 1999, p. 53, Australia.
3. There is a series of specific status that allow civil servants to work for a while in the private sector or in a SOE ("pantoufler"): *en disponibilité, hors cadre, en retraite différée…*
4. Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale, p. 78.
5. *Annual Report State-Owned Companies*, 2003, Regeringskansliet, p. 14.
6. *Report of the Auditor General of Canada*, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-10.
7. Simon Wong, "Improving Corporate Governance in SOEs: An integrated Approach", in *Corporate Governance International*, Vol. 7, Issue 2, June 2004.

8. Matti Vuoria, "Evaluation Report of the State's Ownership Policy", Ministry of trade and Industry, Finland, Studies and Reports, 3/2004.
9. *Report of the Auditor General of Canada*, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-15.
10. *Report of the Auditor General of Canada*, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-10 to 12.
11. See *Corporate Governance: A Survey of OECD Countries*, OECD 2004 for details about the Swedish system of nomination by shareholder.
12. *Governance Arrangements for Commonwealth GBEs*, Australian Government, June 1997, s3.2, p. 8.
13. Swedish Company Act (1975: 1385), cited by the *Annual Report State-Owned Companies*, 2003, Regeringskansliet, p. 13.
14. Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale, p. 77.
15. Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale, p. 35.
16. Canada's Treasury Board Guidelines on Corporate Governance in Crown Corporations, cited by *Report of the Auditor General of Canada*, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-15.
17. *Report of the Auditor General of Canada*, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-16 to 18.
18. *Report of the Auditor General of Canada*, December 2000, Chapter 18, Governance of Crown Corporation, pp. 18-14.
19. *Annual Report State-Owned Companies*, 2002, Regeringskansliet, pp. 12-13; *Annual Report State-Owned Companies*, 2003, Regeringskansliet, pp. 13-16.
20. Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale, p. 40.
21. CAC Boards, Guidance Paper No. 3, *Better Practice Guide, Public Sector Governance*, ANAO, July 2003.
22. "On board, Guide to better practice for public sector governing and advisory boards", the Audit Office of New South Wales, 1998.
23. *Principles and Better Practices, Corporate Governance on Commonwealth Authorities and Companies*, Discussion Paper, Australia National Audit Office, 2000, p. 19.
24. Rapport Douste-Blazy, No. 1004, "Rapport fait au nom de la commission d'enquête sur la gestion des entreprises publiques afin d'améliorer le système de prise de décision", July 2003, Assemblée Nationale, Tome 1, Part II, pp. 17-18.
25. *Corporate Governance, A Survey of OECD Countries*, 2004, OECD.
26. *Principles and Better Practices, Corporate Governance in Commonwealth Authorities and Companies*, Discussion Paper, Australian National Audit Office, Australian Government, p. 12.

27. Corporate Governance in New Zealand Government-owned Companies, The Boardroom Practice Ltd./CCMAU, OECD/ICSSR Conference on Privatisation and Corporate Governance of State-Owned Assets, 27-28 November 2003, New-Delhi, India, p. 74.
28. Report 372, "Corporate Governance and Accountability Arrangements for Commonwealth Government Business Enterprises", Joint Committee of Public Accounts and Audit, 1999, Australian Government, pp. 62-64.
29. Appendix A, Public Sector Corporate Governance: A Director's Checklist, in "Principles and Better Practices, Corporate Governance on Commonwealth Authorities and Companies", Discussion Paper, Australia National Audit Office, 2000, p. 38.
30. The Norwegian Government Policy for Reduced and Improved State Ownership, based on White Paper No. 22 2001-02, Ministry of trade and Industry, 2002.
31. *Annual Report State-Owned Companies*, 2002, Regeringskansliet, p. 13; *Annual Report State-Owned Companies*, 2003, Regeringskansliet, p. 15.

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Corporate Governance of State-Owned Enterprises
A Survey of OECD Countries
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ANNEX I.1

OECD State-owned Enterprises across Strategic Service Sectors

	Post	Telecoms and mass media	Railway	Electricity	Gas/oil/coal	Air transport	Financial services
Australia	Austalian Postal C.	Telstra C.L.	Australian Rail Track C.L.	Snowy Hydro L.		Airservices Australia	
Austria	Österreichische Post AG	Telekom Austria AG	Österreichische Bundesbahnen	Verbundgesellshaft	OMV AG	Austrian Airlines AG	
Belgium	La Poste	Belgacom	Société Nationale des Chemins de Fer Belges			Brussels International Airport Company; Belgocontrol (air traffic control)	Office National du Ducroire
Canada	Canada Post Corporation	Canadian Broad-casting Corporation	VIA Rail Inc.	None	None	None	Business Development Bank of Canada; Canada Mortgage and Housing Corporation; Export Development Canada; Farm Credit Canada
Czech Republic	Ceska Posta s.p.	CESKY TELECOM a.s.	Ceske Drahy a.s.	CEZ a.s.	Severoceske doly a.s.; Sokolovska a.s.; MERO CR a.s.; CEPRO a.s.	Ceske aerolinie a.s.; Ceska sprava letist s.p.	

	Post	Telecoms and mass media	Railway	Electricity	Gas/oil/coal	Air transport	Financial services
Denmark	Post Danmark A/S	Nordunet A/S; TV2/ Danmark A/S	DSB		DONG A/S; Gastra A/S	Air Greenland A/ S; Københavns Lufthavne A/S; SAS AB	Dansk Jagtforsikring A/ S; Dansk Eksportkerditfond ; Danmarks Firskeribank
Finland	Finland Post Ltd.	Suomen Erillsverkot Ltd.; Finnish Broad-casting Company Ltd.; Teliasonera plc.	VR Group Ltd.	Fingrid Ltd.; Kemijoki Ltd.; Fortum plc.	Fortum plc.; Gasum Ltd.	Finnair plc.	Sampo plc.
France	La Poste	France Televisions; Arte; Radio France	RATP; SNCF; RFF	EDF; Areva	GDF; BRGM; Charbon-nage de France; EMC	Aéroport de Paris	CDC; Banque Dev PME; C.C.R.
Greece	Hellenic Post SA	Hellenic Telecom-munication Organisation	Hellenic Railways Organisation SA	Public Power C.	Hellenic Petroleum SA; Public Gas Corporation	OA SA (privatisation process is currently running)	National Bank of Greece (the state no longer holds a stake privatised 11/2004); Central Bank of Greece; Emporiki Bank; Agricultural Bank
Hungary	Magyar Posta	Antenna Hungaria	Magyar Államva-sutak; Rt.; Győr-Sopron-Ebenfurti Vasút Rt.	Magyar Villamos-művek (MVM); Paksi Atomerőmű Rt., and OVIT included; Tiszavíz Vízierőmű Kft.; Vértesi Erőmű Rt.; MAVIR	MOL Rt. (11.82 per cent); MAGÁZ Rt.	MALÉV Rt.; Budapest Airport	Magyar Fejlesztési Bank Rt.; FHB Rt.; Eximbank Rt.; Mehib Rt.; Hitelgarancia Rt.

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	Post	Telecoms and mass media	Railway	Electricity	Gas/oil/coal	Air transport	Financial services
Italy	Poste Italiane spa	RAI holding; Seat spa	Ferrovie dello Stato spa	Enel spa	ENI spa	Alitalia spa; ENAV spa	Consap spa
Japan		NTT C.					
Korea		Korea broad-casting system		Korea electric power C.	Dahian Coal C.; Korea Petroleum C.; Korea Gas C.; Korea oil pipeline	Korea airports C.	Industrial bank of Korea, Korea development bank; Korea first bank; Kookmin bank
Mexico		Notimex Newspapers "El Nacional" TV metro-politana	Ferrocarril de istmo de Tehuantepec			Airports and Seaports	Agroasemex; Bansefi; Bancomext; Banjercito; Nafinsa Sociedad Hipotecaria Federal
Netherlands	Dutch PTT		Dutch Railways NS			KLM NV Schipol Airport	Postbank
New Zealand	NZ post L.	Television NZL	NW railways C.	Electricity C. NZL; Genesis power L.; Mighty River Power L.		Airways C. of New Zealand L.; Air NZL	Asure of New Z Lim; At work NZL
Norway	Posten AS	Telenor ASA; BANETele AS	NSB AS	Statnett SF; Statkraft SF	Statoil ASA; Petoro Norsk Hydro ASA	Avinor AS	DNB ASA; Argentum AS; Kommunal-banken
Poland	Poczta Polska	Telewizja Polska	Polskie Koleje Państwowe	Południowy Koncern Energetyczny (PKE S.A.); BOT Górnictwo i Eneretyka S.A.	Polskie Górnictwo Naftowe i Gazow-nictwo (PGNiG S.A.)	Polskie linie Lotnicze LOT S.A.	Bank Gospodarstwa Krajowego

	Post	Telecoms and mass media	Railway	Electricity	Gas/oil/coal	Air transport	Financial services
Slovak Republic	Slovenská posta	Slovak Telecom	Zeleznicná spolocnost' slovensko a.s.; Zeleznicná spolocnost' cargo slovakia a.s.	VSE; SSE; ZSE; SE; SEPS	Transpetrol; SPP	Letisko M.R. Stefánika-Airport Bratislava a.s.,(BTS); Letisko Kosice-Airport Kosice a.s.; Letisko Piest'any a.s.; Letisko Poprad-Tatry a.s.; Letisko Sliac a.s.; Letisková Sopolocnost' Zilina a.s.; Letové Prevádzkové sluzby SR, s.p. Bratislava; Slovenské aereolínie a.s.	Postová Banka; Dopravná Banka; Slovenská Konsolidacná; Slovenská zárucná a rozvojová banka; Slovenská Sporitel'na
Sweden	Posten	TeliaSonera (45.3%)	SJ AB; Green Cargo	Vattenfall; National Grid Authority		SAS (21.4%); Airport Authority	SBAB; Nordea Bank (19.5%)
Switzerland	Die Schweiz. Post	Swisscom AG	Schweiz. Bundes-bahnen (SBB AG)				Export Risk Guarantee (ERG), SUVA
Turkey	PTT	Türk Telekom AŞ	TCDD; TÜDEMSAŞ; TÜLOMSAŞ; TÜVASAŞ	TEİAŞ; EÜAŞ; TETTAŞ; TEMSAN	TPAO; BOTAŞ; TTK; TKI	DHMI; THY	ZERBANK; Halkbank; T.Kalk.B. (These state banks acting in the financial services sector are legally not SOEs, but ownership belongs to the Treasury)
UK	Royal Mail Group PLC	British Broad-casting Corporation; Channel Four Television Corporation Ltd.		British Energy; UK Atomic Energy Authority; British Nuclear Fuels plc.		Air travel trust; National Air traffic Services Ltd. (49% stake); Various regional airports	Financial services authority; Export Credit Guarantee Department

ANNEX I.2

Legal Status of State-owned Enterprises

	Company law		Public law	Special law		Comments
	Limited liability	Joint stock company		For categories of SOEs	For specific SOEs	
Australia	X	X			X	1. Companies limited by shares under the Corporations Act. 2. Companies established as separate legal entities under their own enabling legislation.
Austria	X	X	X			Joint stock or limited liability companies, but also incorporated public law institute.
Belgium	X	X	X	X		All corporations are autonomous State Enterprises under the public law. They are also partially submitted to the general company law except some derogation in the law governing autonomous State enterprises.
Canada	X	X	X		X	State-owned corporations (called Crown corporations in Canada) are usually incorporated under an enabling statute for each corporation but in a few cases they have been incorporated under the authority of general company law; some are share-capital corporations, while the rest are non-share capital corporations; most state-owned corporations are also subject to a general and comprehensive governance and accountability regime that takes precedent over the individual constituent acts or general company laws whenever there is a conflict.
Czech Republic	X	X		X	X	Commercial (state) enterprises but also joint stock companies. The major are under special laws.
Denmark	X	X			X	For companies limited by shares only Company Act applies, for other SOEs provisions set by specific legislation.

	Company law		Public law	Special law		Comments
	Limited liability	Joint stock company		For categories of SOEs	For specific SOEs	
Finland	X	X		X	X	General provisions of the company law apply. In addition separate statutory form of SOE (State Enterprise).
France	X	X		X	X	Commercial companies under Commercial Code; EPIC (Établissements publics industriels et commercials); GIE and GIP.
Germany	X	X			X	State owned commercial enterprises run as joint stock companies and companies with limited liability.
Greece	X	X			X	Société anonyme or legal entity. In cases of SA there is limited liability. In some other cases (*i.e.* Post Savings Bank) there is state guarantee. There are specific laws regarding every SOEs *i.e.* charter law for every SOE.
Hungary	X	X			X	Limited liability, joint stock company and other forms under the Company law. Special law *e.g.*: for the financial institutions.
Italy		X				All the State Owned commercial enterprises are Joint stock companies.
Japan		X	X	X		The better known are public corporation and quasi non governmental organisation.
Korea		X		X	X	Government Owned Companies subject to the Framework Act and Government Invested Companies. Other companies (gas, airport) subject to special Act on corporate governance improvement and privatisation of GIC.
Mexico	X	X	X	X	X	Anonymous society or limited responsibility society or limited responsibility society of public interest. Under public and private law.
Netherlands	X	X	X	X	X	All limited liability under private or public law.
New Zealand	X	X		X	X	Crown Entities (operating under company act); SOEs (under general commercial law and SOE Act).
Norway	X	X		X	X	Joint Stock Companies, companies organised as funds and State Enterprises under Law on State enterprises.
Poland	X	X		X		Companies limited by shares under the Polish Commercial Companies Code, SOEs under the provisions of the Act of September 1981 on SOEs.
Slovak Republic	X	X		X		State Enterprises or Joint stock companies with state capital participation and state budgetary and contributory organisations linked to the State Budget.
Spain		X		X		All sociétés anonymes.

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	Company law		Public law	Special law		Comments
	Limited liability	Joint stock company		For categories of SOEs	For specific SOEs	
Sweden	X	X	X	X		All State owned commercial companies are under the Swedish company law but Airport Authority and national grid authority that are organised as state bodies.
Switzerland		X	X		X	Joint Stock Companies ruled by special law or by private law. Post is a public company; ERG is a fund.
Turkey	X	X	X		X	Treasury Portfolio Companies are subject to the Law Empowered decree No. 233, in few exceptions they are under the commercial code. Privatisation Administration portfolio companies are subject to the commercial code some exceptions excluded.
UK	X	X	X	X	X	The SOEs can assume three main forms: "Companies Act companies" (following private sector companies' rules), Statutory Corporations (with specific legislation); Trading Funds (executive agencies of Government departments).

ANNEX I.3

Transparency and Disclosure/Synthesis Table

	Same rules as listed companies	Timing	General issues: type of report	Specific issues: stakeholders' report	Aggregated disclosure
Australia	Yes (in some cases more requirements).	Annual + monthly or quarterly on performance.	Financial and non financial report.	Yes: in the *Annual Report*, information on specific responsibilities and extraordinary functions.	
Austria	Yes.	Annual.	Report to the GM.	As the private commercial companies.	
Belgium	Yes.	Annual.	Report to the minister and general public control. Separate accounts between public services and commercial activities.		
Canada	Some reporting is the same; other reporting is unique for state-owned corporations.	Annual.	*Annual Report* contains audited financial statements and a summary of historical performance over covering five years; the summary of a corporate plan and budgets usually covers five future years; the state also prepares annually a summary report on all state-owned corporations.	Most must submit a corporate plan and budgets for approval of the government.	The state prepares an *Annual Report* on all state-owned corporations, including aggregated information on employment, assets and borrowings; the consolidated public accounts of Canada include the financial performance of all departments, agencies and the state-owned enterprises.

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	Same rules as listed companies	Timing	General issues: type of report	Specific issues: stakeholders' report	Aggregated disclosure
Czech Republic	Yes.	Annual + regular info on balance sheet and statements.	Report of data and information to statutory representatives and financial authorities.	Yes within valid legislation.	
Denmark	Yes but after 2005 IAS/IFRS standards not compulsory, but will apply to the largest SOEs.	Annual and biannual.	Report significant events to the Danish Commerce and Companies Agency.	Not for creditors and suppliers; not in general apart from the general Danish company law rules.	Yes, annual publication "Companies of the State".
Finland	Yes for listed companies. No special disclosure rules for other SOEs.	In connexion with the GM or according to the securities market legislation.	Private enterprises report to the State as an owner; listed ones publish for the market.	No specific obligations.	Yes, annual publication of a bulletin called "State shareholding in Finland".
France	Yes (for listed companies).	Yes annual.	Yes report to parliament published annexed to the annual draft budget.		Yes annual publication "l'État Actionnaire".
Germany	Yes.		Government can ask- in line with company and commercial law- for an extensive report via its representatives in the SB and GM.		
Greece	Yes. The rules are the same *i.e.* for subjects of internal audit.	Annual.	Board submits the Annual account report to the Min of Eco and Finance and to the supervising minister and to the Parliament Committee.	Yes, only for listed companies referring to costumers and suppliers.	A recommendatory report is issued every year for a special Parliament committee.
Hungary	*Annual Reports* audited, *Quarterly Reports* not audited.	Annual and *Quarterly Reports*, monthly controlling reports.	Financial and non-financial reports sector related.	According to Company law. Reports approved by the state as owner.	
Italy	Yes partially (yes as to external auditing, no as to requirement for *Quarterly Report*).	Listed SOEs quarterly; non listed SOEs Annually and biannually.	Non listed fully owned enterprises: report to the Treasury with quantitative and qualitative information (financial results, forecasts, managerial issue). Court of Auditor sends reports to Parliament on the activity of each SOE.	Yes, voluntarily.	

	Same rules as listed companies	Timing	General issues: type of report	Specific issues: stakeholders' report	Aggregated disclosure
Japan	Yes, partially.	Yes.	JT: business plan and report to Finance Min. NTT: Balance sheet and operating statements to Min of Public Management.		
Korea	Almost, apart from the Report on Actual results of Operation made by GOC.	Annual (for situation of operation as the need arises).	The President reports on results of operation to the National Assembly, the Ministry of Planning and Budget and the Line Ministry.	No particular responsibilities *vis-à-vis* stakeholders.	
Mexico	Yes: according to Ley Federal de Transparencia y Acceso a la Informacion Publica Gubernamental (LFTAIPG).				
Netherlands	Yes (non listed additional scrutiny).	Twice a year.	Communication to the Parliament of profit-loss, etc. In the future 5 years' cycle evaluation, with information from the Ministry of Finance to Parliament.	As other companies.	
New Zealand	Yes	Quarterly, half-yearly, annual.	Board submits for approval the business plan and the *Annual Report* to the shareholding Ministry.	Yes, by Companies Act.	Yes, Crown Companies *Annual Report*.
Norway	Yes.	Yes. Annual. Listed company shall issue *Quarterly Reports*.	Board: Annual Company accounts and *Annual Reports*, public and also sent to the Parliament. Financial and non financial.	As the privately owned.	Yes by Min of Trade and Industry.
Poland	According to law but some differences.	Quarterly.	To Ministry of Treasury on financial situation approved by SB or annually by GM; to Ministry of Finance on sureties and guarantees granted.	No.	

	Same rules as listed companies	Timing	General issues: type of report	Specific issues: stakeholders' report	Aggregated disclosure
Slovak Republic	Some differences.	Annual.	Financial Statements presented to the founders, discussed with SB given to relevant State administration and tax office. Public upon demand.	If any as according Act No. 111/1990; yes within valid legislation.	
Spain	Yes, but smallest exempted.	Quarterly, biannual, annual.	Instruction regulating relations with SOEs participated by General Direction of the State Patrimony.		
Sweden	Yes.	Quarterly and annual.	The parliament and the general public receive an *Annual Report*. The Division for State Enterprises *Quarterly Reports* on a consolidated basis.	As other privately owned.	Yes.
Switzerland	Yes: Only Swisscom and RUAG completely; Post, SBB and Skyguide under special laws; in some cases more requirements.	Quarterly, biannual or annual.	Confederation gives objectives, and receives regular annual management reports.	Partially in *Annual Report*.	No.
Turkey	Listed companies in Privn. Admin. Portfolio are subject to the same rules as the listed companies under the Capital Markets Board Law regarding transparency requirements.	Quarterly.			Annual aggregate disclosure report issued by the High Audit Committee with one year timelag.
UK	No, whilst most have similar reporting requirements, they do not comply with UK listings rules.	Annual, but some provide semi-annual updates.	Financial and also non Financial (comprising overview from the chief executive, chairman statements, review of business development, future business strategy, corporate governance arrangements).	Generally yes, particularly in relation to staffing.	Not currently, will do this for the first time this year.

ANNEX I.4

Synthesis Table/Board Composition

	Board composition				Nominating power of the state	Comments
	Members from any ministries	Members from private sector	Political appointees	Employees or employees representatives		
Australia					All the board	
Austria				One every two supervisory board members elected by GM.	According to its % of ownership.	Except : OIAG, self-nomination.
Belgium		Yes.	Yes.		Proportional representation of shareholders.	If State is a majority Shareholder, the Chair is a government representative.
Canada	Yes in some cases, either as *ex officio* members or as regularly appointed directors.	Yes.	The state has final authority to appoint all directors but a new process announced in 2004 requires the corporations initiate the process of identifying suitable candidates and making recommen-dations.	Rarely.	For all the board, except for *ex officio* members.	A new process was introduced in 2004 whereby the corporations initiate the process to identify suitable candidates and make recommendatio ns to the state.
Czech Republic	Yes.	Yes.	Possible.	One third.	According to its % of ownership.	

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	Board composition				Nominating power of the state	Comments
	Members from any ministries	Members from private sector	Political appointees	Employees or employees representatives		
Denmark	No, unless specifically required by legal framework.	Yes.	No.	Follow Company Act half the number of members elected by General Meeting	All the Board nominated by the reference Minister in consult with Gov. Comm.	
Finland	Yes 1 if State majority or significant minority shareholder.	Others.		Yes but with exceptions.	All members are nominated by the AGM, state does not have any special rights.	
France	One third.	One third of "qualified personalities".	No, but connections.	One third.	Elected by the Ministers.	For listed SOEs and SOEs where the State has no majority shares, as any other company.
Germany	Yes.	Mostly.	Members of Parliament and Ministers cannot become board members.	One third or half depending on the relevant laws of labour co-determination being applicable.	According to its % of ownership in line with company law.	
Greece	In case of public corporations one representative of the economic and social committee and two members (president and CEO) appointed by joint ministerial decision- economy and finance and supervising minister-. In cases of normal SA according to the special law (if any) and the law regarding SA- usually elected by the general meeting.	There are no limitations for board participation from the private sector.		Yes two representatives.	State according to its % of ownership + appointment of managing director and president.	Except listed; at least 1/3 non-executive.

	Board composition				Nominating power of the state	Comments
	Members from any ministries	Members from private sector	Political appointees	Employees or employees representatives		
Hungary	Yes, but not compulsory.	Yes.		Over 200 employes 1/3 of the members of the supervisory board has to be elected from employees.	Proportional representation of shareholders.	According to the company law.
Italy	Not usually but possible.				Golden share power to appoint one SOE board member with an observer status and no voting rights.	List election system assigning disproportionate rights to the private.
Japan	No.					No general information available; Min approval on selection and dismissal.
Korea					Proposes the President Appoints all the directors.	
Mexico	Yes Chair of board.	Yes.			All the Board appointed by the Fed Executive Branch through the government agency.	Chair: State representatives.
Netherlands	No.			Yes in some specific cases.	According to its % of ownership.	
New Zealand			Mostly.		The State appoints all the directors.	
Norway	Forbidden.	Yes.	No, forbidden.	One third.	According to its % of ownership.	40% women.
Poland	Yes not always.	Yes possible.		Two fifths of the SB's composition elected by the employees and approved by GSM.	According to its % of ownership.	Special examination for Treasury representatives.

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	Board composition				Nominating power of the state	Comments
	Members from any ministries	Members from private sector	Political appointees	Employees or employees representatives		
Slovak Republic	Yes.	Yes.	No.	If State Enterprises 50% of the SB; if joint stock companies with more than 50 employees 1/3 of the SB.	According to Shareholders agreement.	.
Spain					According to its % of ownership.	
Sweden	Yes 1-2.	Most.	Possible (all nominations should go through a well defined and structured process).	As JSCs.	Formal decision at the AGM after consent by minister and after recommendation by Division for SOE at MOI.	Except Listed; 40% women.
Switzerland	Yes: ERG.	Mostly.	Mostly.	Swisscom, Post, SBB, Skyguide, SUVA.	Yes (all the board of SUVA and ERG; two members for SBB and Post; 1 member for Skyguide and Swisscom).	Purely professional criteria.
Turkey	Yes.		Yes.	But two must be deputy Director General and chairman must be CEO.	All the board: one appointed by the Treasury, four appointed by sector Ministry.	
UK	No if State only owner; Yes in a few cases if business is partly state owned but only non executive directors.	Most.	No.	Generally no, but yes in small number of cases.	Yes – as appointment of approval rights. Retain some rights for partially owned companies.	

ANNEX I.5

Synthesis Table/Board Functions

	Nominate CEO	Specialised committees	Systematic performance evaluation	Remuneration/ private sector	Independence
Australia	Yes.	Where needed (all have audit committee).	No but ongoing assessment of performance of board.	Taken into account.	Majority of independent non executives in the supervisory board.
Austria	Yes.	Yes, possible.	If problems.	Yes.	
Belgium	No.	Yes (audit, remuneration, etc.).	No.	More modest.	Recently introduced.
Canada	Yes in most cases.	Yes (audit committee), individual constituent act of the corporation may mandate other committees.	Recommended as part of government guidelines.	Consideration of both public and private remuneration.	Have fiduciary responsibility to make decisions in the best interests of the corporation, consistent with mandate of the corporation and the last-approved corporate plan unless formally directed otherwise (which is rarely used) and any directives are public.
Czech Republic	Yes..	Yes, usual.	No.	Depending on the kind of society.	No.
Denmark	Yes.	No, corresponding to private sector practice.	No but on an *ad hoc* basis.	Lower.	Yes.
Finland	Yes.	In listed SOEs and in large non listed SOEs.	No.	A little lower.	Yes.
France	No.	More and more.	No.	Significantly lower, but increasing.	Yes for listed SOEs and SOEs where the State has not got majority shares.

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	Nominate CEO	Specialised committees	Systematic performance evaluation	Remuneration/ private sector	Independence
Germany	Yes.	Yes common.	No except for listed companies.	Yes, except for (mostly smaller) SOEs in non-competitive areas.	Yes all members of SB are independent.
Greece	Joint ministerial decision of Economy and Finance and supervising minister.	Where needed (all have audit committee). There are no legal limitations.		No.	At least two members of SB; non compulsory if minority shareholders in the SB.
Hungary	Nomination in line with ownership ratio.		Monthly controlling reports.	Guidelines by the owner, a little lower than private sector.	Yes.
Italy	Yes, but consultation with concerned ministries.	Yes by practice.	No but assessment of board participation on the basis of financial results.	Specific system for non listed SOEs, partially benchmarked on private sector.	
Japan	Yes, but approved by Ministry.	Possible.	Yes at GM.	Yes.	NTT independence from the government.
Korea	Recommendation committee set up by the Board, but approval by Line Ministry and for GOC direct appointment by President.	Usual.	Yes reports on results of operations.	Lower.	No def.
Mexico	No.	n.a.	n.a.	n.a.	n.a.
Netherlands	Yes.	Usual.	No but plans to set up a 5 years plan for evaluation.	No.	According to the law, all the Board members act independently.
New Zealand	Yes.	Most.	Yes, annual by the Board.	Aligned but a bit lower.	All board members.
Norway	Yes.	Yes, few under discussion.	Under discussion.	Comparable.	Practice to elect independent board members, not mechanism to enforce.
Poland	Yes.	Possible.	Yes, carried out by the Treasury.	Set at one average wage in the enterprise sectors.	No def of independence but mechanism that insures business criteria in choosing the members.
Slovak Republic	Yes.	Yes.	No.	For State Enterprises only: no, but upper limit set.	Determining majority (indep = not representatives of employees).

	Nominate CEO	Specialised committees	Systematic performance evaluation	Remuneration/ private sector	Independence
Spain	Yes.	Yes, audit.	No.	No remuneration at all.	Not elected.
Sweden	Yes.	Yes, recommended.	Yes, yearly chair.	Lower, but not significantly lower than in the private sector.	All indep = not employed.
Switzerland	Yes.	Yes.	Yes, on the basis of *Annual Report* upon the given objectives.	No.	It has to be guaranteed.
Turkey	No.	Audit Committees (audit committees are not present in all SOEs, they are present in affiliates and do not exist within the board of directors, but they stand as a separate body namely "Audit Board").	Not of board itself, global evaluation by High Audit Committee.	Low, decided by HPC (High Planning Council).	No explicit mechanisms.
UK	Governments approves appointment of CEO on recommendation of Chair.	YES, especially Companies Act companies (audit, remuneration, nomination committee). Most others have audit committees.	On cases by case basis as self assessment or by consultant.	Generally lower than market benchmarks.	All board have independent members on them.

ANNEX I.6

Synthesis Table/CEO Appointment and Remuneration

	Appointment process		Remuneration		
	Structure of nomination process	Power of appointing CEOs	Who decides	Elements (fixed, performance related.)	Level with respect to private sector
Australia	Established in the Entity Constitution or in the Legislation.	CEO: Board with review of Government.	CEO: Board in consultation with remuneration tribunal and shareholders ministers.		
Austria	Notice of vacancy; one month to receive candidatures; evaluations even with consultants; after the choice publication.	Executives: Supervisory Board (Joint stock companies); body representing the interests of the owners (Lim liab comp).	Supervisory Board (joint stock companies).		Contracts modelled on the standards of the respective sectors.
Belgium		CEO: Government (in some cases consult with private shareholders); executives: Board on CEO's proposal.	Remuneration committee proposes to the board.	May be incentive elements maybe in negotiation with the Minister.	

	Appointment process		Remuneration		
	Structure of nomination process	Power of appointing CEOs	Who decides	Elements (fixed, performance related.)	Level with respect to private sector
Canada	Most appointed by the state on the recommendation of the Minister responsible for the corporation and after consultation with the board of directors; new appointment process announced in 2004, requires the corporation to initiate the appointment process by identifying suitable candidates and making recommendations to the state.	With rare exceptions, rests with the state but the new process started in 2004 requires the corporation to initiate the process and Parliament has a new role to review recommended candidate.	State sets remuneration ranges and maximum annual bonuses, usually after a review by an independent advisory committee; movement in the salary range and bonuses decided annually by the state on the recommendation of the board and minister responsible for the corporation.	Salary plus an annual bonus; non-remunerative benefits set by the board of directors, taking in consideration the norms of the public and private sectors, and must be communicated to the state.	Must take into consideration practices in both public and private sectors.
Czech Republic		CEOs designed by shareholders after selection process organised by boards.	In accordance with Commercial Code, Labour Code and SOE's statutes, Board signs the managements agreement.	Basic+ rewards+ long term rewards; sometimes a special reward in fulfilment of selected criteria.	
Denmark	Determined by board.	Board.	Board.	Mainly fixed but most receive performance related bonuses.	Generally lower.
Finland		Board of directors; State involved only as shareholder.	Board decides the bonuses schemes State as an owner takes step in the decision of incentive schemes.	Almost always performance related in some parts.	Should be competitive with but it is often slightly lower.
France					
Germany	AGM.	All the executives are elected by the supervisory board (except for smaller SOEs being limited liability companies).	Supervisory board (except for smaller SOEs being limited liability companies).	Fixed and performance-related elements.	Comparable to private sector except for (mostly smaller) companies in non competitive areas.
Greece	Established in each SOE's Statute elaborated by the Board.	In cases of Public Companies joint ministerial decision; in cases of SA the AGM.	Established in the SOE Statute elaborated by the Board.	Extra compensation, according to law if overperforming firm.	

	Appointment process		Remuneration		
	Structure of nomination process	Power of appointing CEOs	Who decides	Elements (fixed, performance related.)	Level with respect to private sector
Hungary	Nomination according to ownership ratio, under company law.	GM.	GM.	Depending on the size of the company and performance related.	Generally lower.
Italy		State only as a shareholder.	Board upon proposal of the remuneration committee if any.	For non listed SOEs specific policies; almost always performance related.	
Japan		Board, motion of selection approved by Finance or Public management Minister.	For JT the board within specific limits; for NTT the company itself.	Performance related is not common.	
Korea	The board sets up a committee of outside directors to recommend a candidate for President.	The government: contracts approved by the line Minister and the President of Government has the power to appoint CEOs. GIC: approved by GM.	Board.	Usually linked to results of operations.	Lower.
Mexico		Appointed by the President of Republic or by the governing body of the respective enterprise.	Approved by the respective governing body.		
Netherlands		Supervisory board (selection and appointment).	Supervisory board with the approval of shareholders.		Comparable.
New Zealand		Board (government expectation on requisites).	Board (government expectations of up and down limits).	Performance related not uncommon.	Competitive but below private sector.
Norway		CEO: board of directors with help of consultancy firms; leading executives: by CEO.	Board but Ministry circular with elements and level of remuneration.	Comprehensive of pension rights.	Competitive but not leading.
Poland		Supervisory Board Board.	The Supervisory Board decides according to Remuneration Law.		

	Appointment process		Remuneration		
	Structure of nomination process	Power of appointing CEOs	Who decides	Elements (fixed, performance related.)	Level with respect to private sector
Slovak Republic	There are selection commissions elected by the founder except at least one member that is elected by the employees.	Founders.	Founders.	Fixed with an annual bonus from the share of profit for directors.	There are upwards limits with respect to the average national wage.
Spain		Board under proposal of Direction Generale Patrimonio Estado and Minister of competence.		Most part fixed, some adopted the performance related part.	Generally lower.
Sweden	Ministry and chairman consult before appointments.	Board (one person representing the Ministry is there).	The board within specific public guidelines.	Salary, bonuses, sick insurance and pension schemes.	Guidelines state that remuneration should be competitive but not generally at a higher level than in corresponding private companies.
Switzerland	Established in the SOEs' Statute elaborated by the Board.	Board.	The Board.	Fixed and performance related.	Less than the private sector pay.
Turkey		Appointed by the collective decision of the relevant minister, prime minister and president.	High Planning Council decides.	Fixed, not performance related (salary + bonuses + pension + health insurance).	Less than the private sector pay level.
UK	Open Competition, in accordance to the UK Government's "Code of practice for ministerial appointments to public bodies". Chair is on appointment panel.	Appointed by the shareholding minister after recommendation of appointment panel.	The Shareholding Minister recommendation from remuneration committee.	Salary and performance related incentives.	Generally lower.

PART II

OECD Guidelines on Corporate Governance of State-owned Enterprises

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Preamble

In several OECD countries, State-Owned Enterprises (SOE) still represent a substantial part of GDP, employment and market capitalisation. Moreover, State-Owned Enterprises are often prevalent in utilities and infrastructure industries, such as energy, transport and telecommunication, whose performance is of great importance to broad segments of the population and to other parts of the business sector. Consequently, the governance of SOEs will be critical to ensure their positive contribution to a country's overall economic efficiency and competitiveness. OECD experience has also shown that good corporate governance of State-Owned Enterprises is an important prerequisite for economically effective privatisation, since it will make the enterprises more attractive to prospective buyers and enhance their valuation.

A number of non-OECD countries also have a significant state-owned sector, which in some cases is even a dominant feature of the economy. These countries are in many cases reforming the way in which they organise and manage their state-owned enterprises and have sought to share their experiences with OECD countries in order to support reforms at national level.

It is against this background that the OECD Steering Group on Corporate Governance in June 2002 asked the Working Group on Privatisation and Corporate Governance of State-Owned Assets to develop a set of non-binding guidelines and best practices on corporate governance of state-owned enterprises. The Working Group, which comprises representatives from OECD member countries and the World Bank and IMF as observers, has undertaken comprehensive consultations during the development of these Guidelines. It has consulted with a wide range of interested parties, such as board members and CEOs of state-owned enterprises, state audit bodies, unions and Parliamentarians, and has conducted extensive consultations with non-member countries. A draft version of the Guidelines was posted on the OECD website for public comment and resulted in a significant number of useful and constructive comments, which have also been posted on the site.

These Guidelines should be viewed as a complement to the OECD Principles of Corporate Governance[1] on which they are based and with which they are fully compatible. The Guidelines are explicitly oriented to issues that are specific to corporate governance of State-Owned Enterprises and consequently take the perspective of the state as an owner, focusing on policies that would ensure good corporate governance. Nonetheless the Guidelines are not intended to, nor in their effect should they, contradict or discourage OECD countries or non-OECD countries from undertaking any privatisation policies or programmes.

Over the years, the rationale for state ownership of commercial enterprises has varied among countries and industries and has typically comprised a mix of social, economic and strategic interests. Examples include industrial policy, regional development, the supply of public goods and the existence of so called "natural" monopolies. Over the last few decades however, globalisation of markets, technological changes and deregulation of previously monopolistic markets have called for readjustment and restructuring of the state-owned sector. These developments are surveyed in two recent OECD reports that have served as input to these guidelines.[2]

In order to carry out its ownership responsibilities, the state can benefit from using tools that are applicable to the private sector, including the OECD Principles of Corporate Governance. This is especially true for listed SOEs. However, SOEs also face some distinct governance challenges. One is that SOEs may suffer just as much from undue hands-on and politically motivated ownership interference as from totally passive or distant ownership by the state. There may also be a dilution of accountability. SOEs are often protected from two major threats that are essential for policing management in private sector corporations, *i.e.*, takeover and bankruptcy. More fundamentally, corporate governance difficulties derive from the fact that the accountability for the performance of SOEs involves a complex chain of agents (management, board, ownership entities, ministries, the government), without clearly and easily identifiable, or remote, principals. To structure this complex web of accountabilities in order to ensure efficient decisions and good corporate governance is a challenge.

As the Guidelines are intended to provide general advice that will assist governments in improving the performance of SOEs, the decision to apply the Guidelines to the governance of particular SOEs should be made on a pragmatic basis. The Guidelines are primarily oriented to state-owned enterprises using a distinct legal form (*i.e.*, separate from the public administration) and having a commercial activity (*i.e.* with the bulk of their income coming from sales and fees), whether or not they pursue a public policy objective as well. These SOEs may be in competitive or in non-competitive sectors of the economy. When necessary, the Guidelines distinguish between listed and non-listed SOEs, or between wholly owned, majority and minority owned SOEs since the corporate governance issues are somewhat different in each case. The Guidelines can also be applied to the subsidiaries of these aforementioned entities, whether listed or not.

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While the Guidelines are primarily intended to cover commercial enterprises under central government ownership and federal ownership, authorities could also promote their use by sub-national levels of governments that own enterprises. They are also useful for non-commercial SOEs fulfilling essentially special public policy purposes, whether or not in a corporate form. It is in the governments and the public's interest that all these categories of SOEs are professionally run and apply good governance practices.

Throughout the Guidelines, the term "SOEs" refers to enterprises where the state has significant control, through full, majority, or significant minority ownership. However, many of the Guidelines are also useful in cases where the state retains a relatively small stake in a company, but should nevertheless act as a responsible and informed shareholder. In the same vein, the term "*ownership entity*" refers to the state entity responsible for executing the ownership rights of the state, whether it is a specific Department within a Ministry, an autonomous agency or other. Finally, as in the OECD Principles, the term "board" as used in this document is meant to embrace the different national models of board structures found in OECD and non-OECD countries. In the typical two tier system, found in some countries, "boards" refers to "supervisory board" while "key executive" refers to the "management board".

The following document is divided into two parts. The Guidelines presented in the first part of the document cover the following areas: I) Ensuring an Effective Legal and Regulatory Framework for State-Owned Enterprises; II) The State Acting as an Owner; III) Equitable Treatment of Shareholders; IV) Relations with Stakeholders; V) Transparency and Disclosure; VI) The Responsibilities of Boards of State-Owned Enterprises. Each of the sections is headed by a single Guideline that appears in bold italics and is followed by a number of supporting sub-Guidelines. In the second part of the document, the Guidelines are supplemented by annotations that contain commentary on the Guidelines and are intended to help readers understand their rationale. The annotations may also contain descriptions of dominant trends and offer alternative implementation methods and examples that may be useful in making the Guidelines operational.

Notes

1. *OECD Principles of Corporate Governance*, 2004.
2. *Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries*, OECD, 2005 and *Privatising State-Owned Enterprise, An Overview of Policies and Practices in OECD Countries*, OECD, 2003.

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1. Ensuring an Effective Legal and Regulatory Framework for State-Owned Enterprises

The legal and regulatory framework for state-owned enterprises should ensure a level-playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions. The framework should build on, and be fully compatible with, the OECD Principles of Corporate Governance.

A. There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.

B. Governments should strive to simplify and streamline the operational practices and the legal form under which SOEs operate. Their legal form should allow creditors to press their claims and to initiate insolvency procedures.

C. Any obligations and responsibilities that an SOE is required to undertake in terms of public services beyond the generally accepted norm should be clearly mandated by laws or regulations. Such obligations and responsibilities should also be disclosed to the general public and related costs should be covered in a transparent manner.

D. SOEs should not be exempt from the application of general laws and regulations. Stakeholders, including competitors, should have access to efficient redress and an even-handed ruling when they consider that their rights have been violated.

E. The legal and regulatory framework should allow sufficient flexibility for adjustments in the capital structure of SOEs when this is necessary for achieving company objectives.

F. SOEs should face competitive conditions regarding access to finance. Their relations with state-owned banks, state-owned financial institutions and other state-owned companies should be based on purely commercial grounds.

Annotations to Chapter 1:

Ensuring an Effective Legal and Regulatory Framework for State-Owned Enterprises

The legal and regulatory framework for state-owned enterprises should ensure a level-playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions. The framework should build on, and be fully compatible with, the OECD Principles of Corporate Governance.

The legal and regulatory framework within which SOEs operate is often complex. If it is not consistent and coherent it can easily result in costly market distortions and undermine the accountability of both management and the state as an owner. A clear division of responsibilities among authorities, a streamlining of legal forms together with a coherent and consistent regulatory framework will facilitate the improvement of corporate governance in SOEs.

A. There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.

The state often plays a dual role of market regulator and owner of SOEs with commercial operations, particularly in the newly deregulated and often partially privatised network industries. Whenever this is the case, the state is at the same time a major market player and an arbitrator. Full administrative separation of responsibilities for ownership and market regulation is therefore a fundamental prerequisite for creating a level playing field for SOEs and private companies and for avoiding distortion of competition. Such separation is also advocated by the *OECD Principles of Regulatory Reform*.

Another important case is when SOEs are used as an instrument for industrial policy. This can easily result in confusion and conflicts of interest between industrial policy and the ownership functions of the state, particularly if the responsibility for industrial policy and the ownership functions are vested with the same branch or sector ministries. A separation of industrial policy and ownership will enhance the identification of the state as an owner and will favour transparency in defining objectives and monitoring performance. However, such separation does not prevent necessary co-ordination between the two functions.

In order to prevent conflicts of interest, it is also necessary to clearly separate the ownership function from any entities within the state administration which might be clients or main suppliers to SOEs. General procurement rules should apply to SOEs as well as to any other companies. Legal as well as non legal barriers to fair procurement should be removed.

In implementing effective separation between the different state roles with regard SOEs, both perceived and real conflicts of interest should be taken into account.

B. Governments should strive to simplify and streamline the operational practices and the legal form under which SOEs operate. Their legal form should allow creditors to press their claims and to initiate insolvency procedures.

SOEs may have a specific, and sometimes different, legal form from other companies. This may reflect specific objectives or societal considerations as well as special protection granted to certain stakeholders. This particularly concerns employees whose remuneration may be fixed by regulatory acts/bodies and whom are given specific pension rights and protection against redundancies equivalent of those provided to civil servants. In a number of cases, SOEs are also to a large extent protected from insolvency or bankruptcy procedures by their specific legal status. This is sometimes due to the necessity to ensure continuity in the provision of public services.

Where this occurs, the SOEs often differ from the private limited liability companies through: *i)* the respective authority and power of the board, management and ministries; *ii)* the composition and structure of these boards; *iii)* the extent to which they grant consultation or decision making rights to some stakeholders, more particularly, employees; *iv)* disclosure requirements and, as mentioned above, the extent to which they are subjected to insolvency and bankruptcy procedures, etc. The legal form of SOEs also often includes a strict definition of the activity of the SOEs concerned, preventing them from diversifying or extending their activities in new sectors and/or overseas. These limits have been legitimately set to prevent misuse of public funds, stop overly ambitious growth strategy or prevent SOEs from exporting sensitive technologies.

In some countries, SOEs' specific legal forms have evolved significantly in recent years in response to the deregulation and an increased scrutiny of state aid and cross subsidisation. Limitations on the type of activities that SOEs are allowed to carry out according to their legal form have been relaxed. In some countries, changes in the legal form have been accompanied by the state taking on commitments regarding employees' protection, more particularly regarding pension rights.

When streamlining the legal form of SOEs, governments should base themselves as much as possible on corporate law and avoid creating a specific legal form when this is not absolutely necessary for the objectives of the enterprise. Streamlining of the legal form of SOEs would enhance transparency and facilitate oversight through benchmarking. It would also level the playing field with private competitors in increasingly deregulated and competitive markets.

The streamlining should target SOEs having a commercial activity and operating in competitive, open markets. It should focus on making those means and instruments usually available to private owners, also available to the state as an owner. Streamlining should therefore primarily concern the role and authority of the company's governance organs as well as transparency and disclosure obligations.

If the change of the legal forms of SOEs is too difficult, other options could be to streamline SOEs' operational practices, make some specific regulations more inclusive, *i.e.* extending their validity or coverage to SOEs with specific legal forms, or ask SOEs to voluntary fulfil requirements from these specific regulations, particularly concerning disclosure requirements.

C. Any obligations and responsibilities that an SOE is required to undertake in terms of public services beyond the generally accepted norm should be clearly mandated by laws or regulations. Such obligations and responsibilities should also be disclosed to the general public and related costs should be covered in a transparent manner.

In some cases SOEs are expected to fulfil special responsibilities and obligations for social and public policy purposes. In some countries this includes a regulation of the prices at which SOEs have to sell their products and services. These special responsibilities and obligations may go beyond the generally accepted norm for commercial activities and should be clearly mandated and motivated by laws and regulations. They should also preferably be incorporated in the company by-laws.

The market and the general public should be clearly informed about the nature and extent of these obligations, as well as about their overall impact on the SOEs' resources and economic performance.

It is also important that related costs be clearly identified, disclosed and adequately compensated by the state budget on the basis of specific legal provisions and/or through contractual mechanisms, such as management or service contracts. Compensation should be structured in a way that avoids market distortion. This is particularly the case if the enterprises concerned are in competitive sectors of the economy.

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D. SOEs should not be exempt from the application of general laws and regulations. Stakeholders, including competitors, should have access to efficient redress and an even-handed ruling when they consider that their rights have been violated.

Experience has shown that in some countries SOEs may be exempt from a number of laws and regulations, including in a few cases, from competition law. SOEs are often not covered by bankruptcy law and creditors sometimes have difficulties in enforcing their contracts and in obtaining payments. Such exemptions from the general legal provisions should be avoided to the fullest extent possible in order to avoid market distortions and underpinning the accountability of management. SOEs as well as the state as a shareholder should not be protected from challenge via the courts or the regulatory authorities, in case they infringe the law. Stakeholders should be able to challenge the state as an owner in the courts and be treated fairly and equitably in such case by the judicial system.

E. The legal and regulatory framework should allow sufficient flexibility for adjustments in the capital structure of SOEs when this is necessary for achieving company objectives.

The rigidity of the capital structure sometimes makes it difficult for an SOE to develop or fulfil its objectives. The state as an owner should develop an overall policy and provide mechanisms that allow appropriate changes in SOEs' capital structure.

These mechanisms could include the capacity, for the ownership function, to adjust the SOEs' capital structures in a flexible way but within clear limits. Within certain limits, this could, for example, facilitate the indirect transfer of capital from one SOE to another, such as through some reinvestment of dividends received, or the raising of capital on competitive market terms.

These mechanisms should respect the Parliament decision making power regarding the budget or the appropriate level of state ownership as well as the overall transparency in the budgetary system. Any change in the capital structure of an SOE should be clearly consistent with the state ownership objective and the SOE's specific circumstances. Decisions should be adequately documented to allow effective accountability through audits or scrutiny by the Parliament. Finally, such mechanisms should be limited and subject to careful oversight in order to avoid any form of cross-subsidisation via capital transfers.

F. SOEs should face competitive conditions regarding access to finance. Their relations with state-owned banks, state-owned financial institutions and other state-owned companies should be based on purely commercial grounds.

Creditors and the board often assume that there is an implicit state guarantee on SOEs' debts. This situation has in many instances led to excessive indebtedness, wasted resources and market distortion, to the detriment of both creditors and the taxpayers. Moreover, in some countries, state-owned banks and other financial institutions tend to be the most significant if not the main creditor of SOEs. This environment leaves great scope for conflicts of interest. It may lead to bad loans by state-owned banks as the enterprise might feel itself under no obligation to repay the loan. This may shelter SOEs from a crucial source of market monitoring and pressure, thereby distort their incentive structure.

A clear distinction is necessary between the state and SOEs' respective responsibilities in relation to creditors. The state often grants guarantees to SOEs to compensate for its inability to provide them with equity capital, but this facility is often widely abused. As a general principle, the state should not give an automatic guarantee in respect of SOE liabilities. Fair practices with regard to the disclosure and remuneration of state guarantees should also be developed and SOEs should be encouraged to seek financing from capital markets.

Mechanisms should be developed to manage conflicts of interests and ensure that SOEs develop relations with state-owned banks, other financial institutions as well as other SOEs based on purely commercial grounds. State-owned banks should grant credit to SOEs on the same terms and conditions as for private companies. These mechanisms could also include limits and careful scrutiny on SOEs' board members sitting on the board of state-owned banks.

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2. The State Acting as an Owner

The state should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that the governance of state-owned enterprises is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness.

A. The government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in the corporate governance of SOEs, and how it will implement its ownership policy.

B. The government should not be involved in the day-to-day management of SOEs and allow them full operational autonomy to achieve their defined objectives.

C. The state should let SOE boards exercise their responsibilities and respect their independence.

D. The exercise of ownership rights should be clearly identified within the state administration. This may be facilitated by setting up a co-ordinating entity or, more appropriately, by the centralisation of the ownership function.

E. The co-ordinating or ownership entity should be held accountable to representative bodies such as the Parliament and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions.

F. The state as an active owner should exercise its ownership rights according to the legal structure of each company. Its prime responsibilities include:

1. Being represented at the general shareholders meetings and voting the state shares.
2. Establishing well structured and transparent board nomination processes in fully or majority owned SOEs, and actively participating in the nomination of all SOEs' boards.
3. Setting up reporting systems allowing regular monitoring and assessment of SOE performance.
4. When permitted by the legal system and the state's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs.
5. Ensuring that remuneration schemes for SOE board members foster the long term interest of the company and can attract and motivate qualified professionals.

Annotations to Chapter 2:

The State Acting as an Owner

The state should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that the governance of state-owned enterprises is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness.

In order to carry out its ownership functions, the government should refer to private and public sector governance standards, notably the OECD Principles of Corporate Governance, which are also applicable to SOEs. In addition to the OECD Principles of Corporate Governance, there are specific aspects of SOE governance that either merit special attention or should be documented in more detail in order to guide SOE board members, management and the state entity responsible for executing the ownership rights of the state in effectively performing their respective roles.

A. The government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in the corporate governance of SOEs, and how it will implement its ownership policy.

It is often the multiple and contradictory objectives of state ownership that lead to either a very passive conduct of ownership functions, or conversely results in the state's excessive intervention in matters or decisions which should be left to the company and its governance organs.

In order for the state to clearly position itself as an owner, it should clarify and prioritise its objectives. The objectives may include avoiding market distortion and the pursuit of profitability, expressed in the form of specific targets, such as rate-of-return and dividend policy. Setting objectives may include trade-offs, for example between shareholder value, public service and even job security. The state should therefore go further than defining its main objectives as an owner; it should also indicate its priorities and clarify how inherent trade-offs shall be handled. In doing so, the state should avoid interfering in operational matters, and thereby respect the independence of the board. A clear ownership policy will help in avoiding the situation where

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SOEs are given excessive autonomy in setting their own objectives or in defining the nature and extent of their public service obligations.

Moreover, the state should strive to be consistent in its ownership policy and avoid modifying the overall objectives too often. A clear, consistent and explicit ownership policy will provide SOEs, the market and the general public with predictability and a clear understanding of the state's objectives as an owner as well as of its long term commitments.

In developing and updating the state's ownership policy, governments should make appropriate use of public consultation. The ownership policy and associated company objectives should be public documents accessible to the general public and widely circulated amongst the relevant ministries, agencies, SOE boards, management, and the legislature.

It is also important that relevant civil servants endorse the ownership policy and that the SOE General shareholders meeting, the board and senior management endorse the corporate objectives statements.

B. The government should not be involved in the day-to-day management of SOEs and allow them full operational autonomy to achieve their defined objectives.

The prime means for an active and informed ownership by the state is a clear and consistent ownership strategy, a structured board nomination process and an effective exercise of established ownership rights. Any involvement in the day-to-day management of SOEs should be avoided.

The ownership or co-ordinating entity's ability to give direction to the SOE or its board should be limited to strategic issues and policies. It should be publicly disclosed and specified in which areas and types of decisions the ownership or co-ordinating entity is competent to give instructions.

Along the same lines, strict limits should also be put on the ability of any other government bodies to intervene in day-to-day management of SOEs.

C. The state should let SOE boards exercise their responsibilities and respect their independence.

In the nomination and election of board members, the ownership entity should focus on the need for SOE boards to exercise their responsibilities in a professional and independent manner. As stated in the OECD Principles, it is important that individual board members when they carry out their duties do not act as representatives for different constituencies. Independence requires that all board members carry out their duties in an even-handed manner with respect to all shareholders. Except when this is compatible with the company charter or the explicit objectives of the company, this means that board members should not be guided by any political concerns when carrying out their board duties.

When the state is a controlling owner, it is in a unique position to nominate and elect the board without the consent of other shareholders. This legitimate right comes with a high degree of responsibility for identifying, nominating and electing board members. In this process, and in order to minimize possible conflicts of interest, the ownership entity should avoid electing an excessive number of board members from the state administration. This is particularly relevant for partly owned SOEs and for SOEs in competitive industries. Some countries have decided to avoid nominating or electing anyone from the ownership entity or other state officials on SOE boards. This aims at clearly depriving the government from the possibility to directly intervene in the SOE's business or management and at limiting the state responsibility for decisions taken by SOE boards.

Employees of the ownership entity, professionals from other parts of the administration or from the political constituencies should only be elected on SOE boards if they meet the required competence level for all board members and if they do not act as a conduit for undue political influence. They should have the same duties and responsibilities as the other board members and act in the interest of the SOE and all its shareholders. Disqualification conditions and situations of conflict of interest should be carefully evaluated and guidance provided about how to handle and resolve them. The professionals concerned should have neither excessive inherent nor perceived conflicts of interest. In particular this implies that they should neither take part in regulatory decisions concerning the same SOE nor have any specific obligations or restrictions that would prevent them from acting in the company's interest. More generally, all potential conflicts of interests concerning any member of the board should be reported to the board which should then disclose these together with information on how they are being managed.

It is particularly necessary to clarify the respective personal and state liability when state officials are on SOE boards. The state officials concerned might have to disclose any personal ownership they have in the SOE and follow the relevant insider trading regulation. Guidelines or codes of ethics for members of the ownership entity and other state officials serving as SOE board members could be developed by the co-ordinating or ownership entity. These Guidelines or codes of ethics should also indicate how confidential information passed on to the state from these board members should be handled.

Direction in terms of broader political objectives should be channelled through the co-ordinating or ownership entity and enunciated as enterprise objectives rather than imposed directly through board participation. SOE boards should not respond to policy signals until they are authorised by the Parliament or approved by specific procedures.

D. The exercise of ownership rights should be clearly identified within the state administration. This may be facilitated by setting up a co-ordinating entity or, more appropriately, by the centralisation of the ownership function.

It is critical for the ownership function within the state administration to be clearly identified, whether it is located at a central ministry such as the finance or economics ministries, in a separate administrative entity, or within a specific sector ministry.

To achieve a clear identification of the ownership function, it can be centralised in a single entity, which is independent or under the authority of one ministry. This approach would help in clarifying the ownership policy and its orientation, and would also ensure its more consistent implementation. Centralisation of the ownership function could also allow for reinforcing and bringing together relevant competencies by organising "pools" of experts on key matters, such as financial reporting or board nomination. In this way, centralisation can be a major force in the development of aggregate reporting on state ownership. Finally, centralisation is also an effective way to clearly separate the exercise of ownership functions from other activities performed by the state, particularly market regulation and industrial policy as mentioned in guideline I.A above.

If the ownership function is not centralised, a minimum requirement is to establish a strong co-ordinating entity among the different administrative departments involved. This will help to ensure that each SOE has a clear mandate and receives a coherent message in terms of strategic guidance or reporting requirements. The co-ordinating entity would harmonise and co-ordinate the actions and policies undertaken by different ownership departments in various ministries. The co-ordinating entity should also be in charge of establishing an overall ownership policy, developing specific guidelines and unifying practices among the various ministries.

Centralisation of the ownership function in a single entity is probably most relevant for SOEs in competitive sectors and is not necessarily applicable to SOEs that are mainly pursuing public policy objectives. Such SOEs are not the primary target of these Guidelines, and in their case, sector ministries may remain the most relevant and competent entities to exercise ownership rights which might be indistinguishable from policy objectives.

When centralisation of the ownership function is considered, it should not give rise to a new and overly powerful bureaucratic layer.

When the ownership function can not be handled by a single entity, some key functions could nevertheless be centralised in order to make use of specific expertise and ensure independence from individual sector ministries. One example when such partial centralisation can be useful is the nomination of board members.

The clear identification of the ownership function should be sought at different levels of government depending on where ownership is located, for example national, regional, federal or sub-federal levels. These Guidelines do not give direction to determine the appropriate level of SOE management in this respect within a state or a federation. They merely indicate that, regardless of the level of authority, the ownership function would be better centralised in or co-ordinated by a single entity. Moreover, if there are different administrative levels of ownership, harmonisation of ownership practices should be looked for. Finally, centralisation of the ownership function does not imply the centralisation of the legal ownership.

E. The co-ordinating or ownership entity should be held accountable to representative bodies such as the Parliament and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions.

The relationship of the co-ordinating or ownership entity with other government bodies should be clearly defined. A number of state bodies, Ministries or administrations have different roles *vis-à-vis* the same SOEs. In order to increase the public confidence in the way the state manages ownership of SOEs, it is important that these different roles are clarified and explained to the general public.

In particular, the ownership entity should maintain co-operation and continuous dialogue with the state supreme audit institutions responsible for auditing the SOEs. It should support the work of the state audit institution and take appropriate measures in response to audit findings, following in this regard the INTOSAI Lima Declaration of Guidelines on Auditing Precepts.

The co-ordinating or ownership entity should also be held clearly accountable for the way it carries out the state ownership function. Its accountability should be, directly or indirectly, to bodies representing the interests of the general public, such as the Parliament. Its accountability to the legislature should be clearly defined, as well as the accountability of SOEs themselves, which should not be diluted by virtue of the intermediary reporting relationship.

Accountability should go beyond ensuring that the exercise of ownership does not interfere with the legislature's prerogative as regards budget policy. The ownership entity should report on its own performance in exercising state ownership and in achieving the state objectives in this regards. It should provide quantitative and reliable information to the public and its representatives on how the SOEs are managed in the interests of their owners. Specific mechanisms such as *ad hoc* or permanent commissions could be set up to maintain the dialogue between the co-ordinating or ownership entity and the legislature. In the case of Parliament hearings, confidentiality issues

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should be dealt with through specific procedures such as confidential or closed meetings. While generally accepted as a useful procedure, the form, frequency and content of this dialogue may differ according to the constitutional law and the different parliamentary traditions and roles.

The accountability requirements should not restrict unduly the autonomy of the co-ordinating or ownership entity in fulfilling their responsibilities. For example, cases where the co-ordinating or ownership entity needs to obtain the legislature's *ex ante* approval should be limited and include significant changes in the overall ownership policy, significant changes in the size of the state sector and significant transactions (investments or disinvestment).

More generally, the ownership entity should enjoy a certain degree of flexibility *vis-à-vis* its responsible ministry in the way it organises itself and takes decisions with regards to procedures and processes. The ownership entity could also enjoy a certain degree of budgetary autonomy that can allow flexibility in recruiting, remunerating and retaining the necessary expertise, including from the private sector.

F. The state as an active owner should exercise its ownership rights according to the legal structure of each company.

To avoid either undue political interference or passive state ownership, it is important for the co-ordinating or ownership entity to focus on the effective exercising of ownership rights. The state as an owner should typically conduct itself as any major shareholder when it is in a position to significantly influence the company and be an informed and active shareholder when holding a minority post. It would be well advised to exercise its rights in order to protect its ownership and optimise its value.

As defined by the OECD Principles of Corporate Governance, four basic shareholder rights are: *i)* to participate and vote in shareholder meetings; *ii)* to obtain relevant and sufficient information on the corporation on a timely and regular basis; *iii)* to elect and remove members of the board; and *iv)* to approve extraordinary transactions. The co-ordinating or ownership entity should exercise these rights fully and judiciously, as this would allow the necessary influence on SOEs without infringing on their day-to-day management. The effectiveness and credibility of SOE governance and oversight will, to a large extent, depend on the ability of the ownership entity to make an informed use of its shareholder rights and effectively exercise its ownership functions in SOEs.

An ownership entity needs unique competencies and should have professionals with legal, financial, economic and management skills that are experienced in carrying out fiduciary responsibilities. Such professionals must also clearly understand their roles and responsibilities as civil servants with respect to the SOEs. In addition, the ownership entity should include competencies related to the specific obligations that some SOEs under their supervision are required to undertake in terms of public service provisions. The co-ordinating or ownership entity should also have the possibility to have recourse to outside advice and to contract-out some aspects of the ownership function, in order to exercise the state's ownership rights in a better manner. They could, for example, make use of specialists for carrying out evaluation, active monitoring, or proxy voting on its behalf where deemed necessary and appropriate.

Its prime responsibilities include:

1. Being represented at the general shareholders meetings and voting the state shares

The state as an owner should fulfil its fiduciary duty by exercising its voting rights, or at least explain if it does not do so. The state should not find itself in the position of not having reacted to propositions put before the SOEs' general shareholder meetings.

For the state to be able to express its view on issues submitted for approval at shareholders' meetings, it is necessary that the co-ordinating or ownership entity organises itself to be able to present an informed view on these issues and articulate it to SOE boards *via* the general shareholders meeting.

It is important to establish appropriate procedures for state representation in general shareholders meetings. This could be achieved for example by clearly identifying the co-ordinating or ownership entity as representing the state's shares.

2. Establishing well structured and transparent board nomination processes in fully or majority owned SOEs, and actively participating in the nomination of all SOEs' boards

The co-ordinating or ownership entity should ensure that SOEs have efficient and well-functioning professional boards, with the required mix of competencies to fulfil their responsibilities. This will involve establishing a structured nomination process and playing an active role in this process. This will be facilitated if the ownership entity is given sole responsibility for organising the state's participation in the nomination process.

The nomination of SOE boards should be transparent, clearly structured and based on an appraisal of the variety of skills, competencies and experiences required. Competence and experience requirements should derive from an evaluation of the incumbent board and the demands aligned

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with the company's long term strategy. These evaluations should also take into consideration the role played by employee board representation when this is required by law or mutual agreements. To base nominations on such explicit competence requirements and evaluations will likely lead to more professional, accountable and business oriented boards.

Where the state is not the sole owner, the co-ordinating or ownership entity should consult with other shareholders ahead of the general shareholders meetings. SOE boards should also be able to make recommendations to the ownership entity based on the approved board member profiles, skill requirements and board member evaluations. Setting up nomination committees may be useful, helping to focus the search for good candidates and in structuring further the nomination process. In some countries, it is also considered to be good practice to establish a specialised commission or "public board" to oversee nominations in SOE boards. Even though such commissions or public boards might have only recommendation powers, they could have a strong influence in practice on increasing the independence and professionalism of SOE boards. Proposed nominations should be published in advance of the general shareholders meeting, with adequate information about the professional background and expertise of the respective candidates.

It could also be useful if ownership entities maintain a database of qualified candidates, developed through an open competitive process. The use of professional staffing agencies or international advertisements is another means to enhance the quality of the search process. These practices would help in enlarging the pool of qualified candidates for SOE boards, particularly in terms of private sector expertise and international experience. The process may also favour greater board diversity, including gender diversity.

3. Setting up reporting systems allowing regular monitoring and assessment of SOE performance

In order for the co-ordinating or ownership entity to make informed decisions on key corporate matters, they should ensure that they receive all necessary and relevant information in a timely manner. They should also establish means that make it possible to monitor SOEs' activity and performance on a continuous basis.

The co-ordinating or ownership entity should ensure that adequate external reporting systems are in place for all SOEs. The reporting systems should give the co-ordinating or ownership entity a true picture of the SOE's performance and financial situation, enabling them to react on time and to be selective in their intervention.

The co-ordinating or ownership entity should develop the appropriate devices and select proper valuation methods to monitor SOEs' performance in respect of established objectives. It could be helped in this regard by developing systematic benchmarking of SOE performance, with private or public sector entities, both domestically and abroad. This benchmarking should cover productivity and the efficient use of labour, assets and capital. This benchmarking is particularly important for SOEs in non-competitive sectors. It would allow the SOEs, the co-ordinating or ownership entity and the general public to better assess SOE performance and reflect on their development.

Effective monitoring of SOE performance can be facilitated by having adequate accounting and audit competencies within the co-ordinating or ownership entity to ensure appropriate communication with relevant counterparts, both with SOEs' financial services, external auditors and specific state controllers.

4. When permitted by the legal system and the state's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs

Depending on the legislation, the co-ordinating or ownership entity may be entitled to nominate and even appoint the external auditors. Regarding wholly-owned SOEs, the co-ordinating or ownership entity should maintain a continuous dialogue with external auditors, as well as with the specific state controllers when these latter exist. This continuous dialogue could take the form of regular exchange of information, meetings or *ad hoc* discussions when specific problems occur. External auditors will provide the co-ordinating or ownership entity with an external, independent and qualified view on the SOE performance and financial situation. However, continuous dialogue of the ownership entity with external auditors and state controllers should not be at the expense of the board's responsibility.

When SOEs are publicly traded or partially-owned, the co-ordinating or ownership entity must respect the rights and fair treatment of minority shareholders. The dialogue with external auditors should not give the co-ordinating or ownership entity any privileged information and should respect regulation regarding privileged and confidential information.

5. Ensuring that remuneration schemes for SOE board members foster the long term interest of the company and can attract and motivate qualified professionals

There is a strong trend to bring the remuneration of board members of SOEs closer to private sector practices. However, in a majority of OECD countries, this remuneration is still far below market levels for the competencies and experience required, as well as for responsibilities involved.

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3. Equitable Treatment of Shareholders

The state and state-owned enterprises should recognise the rights of all shareholders and in accordance with the OECD Principles of Corporate Governance ensure their equitable treatment and equal access to corporate information.

A. The co-ordinating or ownership entity and SOEs should ensure that all shareholders are treated equitably.

B. SOEs should observe a high degree of transparency towards all shareholders.

C. SOEs should develop an active policy of communication and consultation with all shareholders.

D. The participation of minority shareholders in shareholder meetings should be facilitated in order to allow them to take part in fundamental corporate decisions such as board election.

Annotations to Chapter 3:

Equitable Treatment of Shareholders

The state and state-owned enterprises should recognise the rights of all shareholders and in accordance with the OECD Principles of Corporate Governance ensure their equitable treatment and equal access to corporate information.

It is in the state's interest to ensure that, in all enterprises where it has a stake, minority shareholders are treated equitably, since its reputation in this respect will influence its capacity of attracting outside funding and the valuation of the company. It should therefore ensure that other shareholders do not perceive the state as an opaque, unpredictable and unfair owner. The state should on the contrary establish itself as exemplary and follow best practices regarding the treatment of minority shareholders.

A. The co-ordinating or ownership entity and SOEs should ensure that all shareholders are treated equitably.

Whenever a part of an SOEs' capital is held by private shareholders, institutional or individual, the state should recognise their rights. It is in the interest of the co-ordinating or ownership entity and SOEs themselves to refer to the OECD Principles of Corporate Governance with regard to minority shareholders' rights. The Principles state that "*Minority shareholders should be protected from abusive action, by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress*". The Principles also prohibit insider trading and abusive self-dealing. Finally, the annotations to the OECD Principles suggest pre-emptive rights and qualified majorities for certain shareholder decisions as an *ex-ante* means of minority shareholders protection.

As a dominant shareholder, the state is in many cases able to make decisions in general shareholders meetings without the agreement of any other shareholders. It is usually in a position to decide on the composition of the board of directors. While such decision making power is a legitimate right that follows with ownership, it is important that the state doesn't abuse its role as a dominant shareholder, for example by pursuing objectives that are

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not in the interest of the company and thereby to the detriment of other shareholders. Abuse can occur through inappropriate related party transactions, biased business decisions or changes in the capital structure favouring controlling shareholders. The measures which can be taken include better disclosure, a duty of loyalty of board members, as well as qualified majorities for certain shareholder's decisions.

The co-ordinating or ownership entity should develop guidelines regarding equitable treatment of minority shareholders. It should ensure that individual SOEs, and more particularly their boards, are fully aware of the importance of the relationship with minority shareholders and are active in enhancing it.

As stated in the OECD Principles of Corporate Governance, *"the potential for abuse is marked when the legal system allows, and the market accepts, controlling shareholders to exercise a level of control which does not correspond to the level of risk that they assume as owners through exploiting legal devices to separate ownership from control"*. Therefore governments should, as far as possible, limit the use of Golden Shares and disclose shareholders' agreements and capital structures that allow a shareholder to exercise a degree of control over the corporation disproportionate to the shareholders' equity ownership in the company.

B. SOEs should observe a high degree of transparency towards all shareholders.

A crucial condition for protecting minority and other shareholders is to ensure a high degree of transparency. The OECD Principles of Corporate Governance "*support simultaneous reporting of information to all shareholders in order to ensure their equitable treatment. In maintaining close relations with investors and market participants, companies must be careful not to violate this fundamental principle of equitable treatment.*"

Minority and other shareholders should have access to all the necessary information to be able to make informed investment decisions. Meanwhile, significant shareholders, including the co-ordinating or ownership entity, should not make any abusive use of the information they might obtain as controlling shareholders or board members. For non-listed SOEs, other shareholders are usually well identified and often have privileged access to information, through board seats for example. However, whatever the quality and completeness of the legal and regulatory framework concerning disclosure of information, the co-ordinating or ownership entity should ensure that all enterprises where the state has shares put mechanisms and procedures in place to guarantee easy and equitable access to information by all shareholders.

Any shareholder agreements, including information agreements covering board members, should be disclosed.

C. SOEs should develop an active policy of communication and consultation with all shareholders.

SOEs, including any enterprise in which the state is a minority shareholder, should identify their shareholders and keep them duly informed in a timely and systematic fashion about material events and forthcoming shareholder meetings. They should also provide them with sufficient background information on issues that will be subject to decision. It is the responsibility of SOEs' boards to make sure that the company fulfils its obligations in terms of information to the shareholders. In doing so, SOEs should not only apply the existing legal and regulatory framework, but are encouraged to go beyond it when relevant in order to build credibility and confidence. Where possible, active consultation with minority shareholders will help in improving the decision making process and the acceptance of key decisions.

D. The participation of minority shareholders' in shareholder meetings should be facilitated in order to allow them to take part in fundamental corporate decisions such as board election.

Minority shareholders may be concerned about actual decisions being made outside the company's shareholder meetings or board meetings. This is a legitimate concern for listed companies with a significant or controlling shareholder, but it can also be an issue in companies where the state is the dominant shareholder. It might be appropriate for the state as an owner to reassure minority shareholders that their interests are taken into consideration.

As underlined in the OECD Principles of Corporate Governance, the right to participate in general shareholder meetings is a fundamental shareholder right. To encourage minority shareholders to actively participate in SOEs general shareholder meetings and to facilitate the exercise of their rights, specific mechanisms could be adopted by SOEs, in the same vein as those recommended for listed companies in the OECD Principles. These could include qualified majorities for certain shareholder decisions and, when deemed useful by the circumstances, the possibility to use special election rules, such as cumulative voting. Additional measures should include facilitating voting *in absentia* or developing the use of electronic means as a way to reduce participation costs. Moreover, employee-shareholder participation in general shareholders meetings could be facilitated by, for example, the collection of proxy votes from employee-shareholders.

It is important that any special mechanism for minority protection is carefully balanced. It should favour all minority shareholders and in no respect contradict the concept of equitable treatment. It should neither prevent the state as a majority shareholder from exercising its legitimate influence on the decisions nor should it allow minority shareholders to hold-up the decision-making process.

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4. Relations with Stakeholders

The state ownership policy should fully recognise the state-owned enterprises' responsibilities towards stakeholders and request that they report on their relations with stakeholders.

A. Governments, the co-ordinating or ownership entity and SOEs themselves should recognise and respect stakeholders' rights established by law or through mutual agreements, and refer to the OECD Principles of Corporate Governance in this regard.

B. Listed or large SOEs, as well as SOEs pursuing important public policy objectives, should report on stakeholder relations.

C. The board of SOEs should be required to develop, implement and communicate compliance programmes for internal codes of ethics. These codes of ethics should be based on country norms, in conformity with international commitments and apply to the company and its subsidiaries.

Annotations to Chapter 4:

Relations with Stakeholders

The state ownership policy should fully recognise the state-owned enterprises' responsibilities towards stakeholders and request that they report on their relations with stakeholders.

In some OECD countries, legal status, regulations or mutual agreements/ contracts grant certain stakeholders specific rights in SOEs. Some SOEs might even be characterised by distinct governance structures as regard the rights granted to stakeholders, principally employee board level representation, or other consultation/decision making rights to employees' representatives and consumer organisations, for example through advisory councils.

SOEs should acknowledge the importance of stakeholder relations for building sustainable and financially sound enterprises. Stakeholder relations are particularly important for SOEs as they may be critical for the fulfilment of general service obligations whenever these exist and as SOEs may have, in some infrastructure sectors, a vital impact on the economic development potential and on the communities in which they are active. Moreover, some investors increasingly consider stakeholder related issues in their investment decisions and appreciate potential litigation risks linked to stakeholder issues. It is therefore important that the co-ordinating or ownership entity and SOEs recognise the impact that an active stakeholder policy may have on the company's long term strategic goal and reputation. They should thus develop and adequately disclose clear stakeholder policies.

However, the government should not use SOEs to further goals which differ from those which apply to the private sector, unless compensated in some form. Any specific rights granted to stakeholders or influence on the decision making process should be explicit. Whatever rights granted to stakeholders by the law or special obligations that have to be fulfilled by the SOE in this regard, the company organs, principally the general shareholders meeting and the board, should retain their decision making powers.

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A. Governments, the co-ordinating or ownership entity and SOEs themselves should recognise and respect stakeholders' rights established by law or through mutual agreements, and refer to the OECD Principles of Corporate Governance in this regard.

As a dominant shareholder, the state may control corporate decision making and be in a position to take decisions to the detriment of stakeholders. It is therefore important to establish mechanisms and procedures to protect stakeholder rights. The co-ordinating or ownership entity should have a clear policy in this regard. SOEs should fully respect the rights of stakeholders, as established by law, regulations and mutual agreements. They should act in the same way as private sector listed companies and refer to the OECD Principles of Corporate Governance regarding relations with stakeholders.

Implementation of the OECD Principles of Corporate Governance implies full recognition of the contribution of various stakeholders and encourages active and wealth-creating co-operation with them. To this end, SOEs should ensure that stakeholders have access to relevant, sufficient and reliable information on a timely and regular basis to be able to exercise their rights. Stakeholders should have access to legal redress in the event their rights are violated. Employees should also be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing that.

Performance enhancing mechanisms for employee participation should be permitted to develop when considered relevant with regard to the importance of stakeholder relations for some SOEs. However, when deciding on the relevance and desired development of such mechanisms, the state should give careful consideration to the inherent difficulties in transforming entitlement legacies into effective performance enhancing mechanisms.

B. Listed or large SOEs, as well as SOEs pursuing important public policy objectives, should report on stakeholder relations.

Good practice increasingly requires listed companies to report on stakeholder issues. By doing so, SOEs will demonstrate their willingness to operate more transparently and their commitment to co-operation with stakeholders. This will in turn foster trust and improve their reputation. Consequently, listed or large SOEs should communicate with investors, stakeholders and the public at large on their stakeholder policies and provide information on their effective implementation. This should also be the case for any SOE pursuing important public policy objectives or having general services obligations, with due care to the costs involved related to their size. Reports on stakeholder relations should include information on social and environmental policies, whenever SOEs have specific objectives in this regard.

To this end, they could refer to best practice and follow guidelines on social and environmental responsibility disclosure, which have been developed in the past few years.

It might also be advisable that SOEs have their stakeholder reports independently scrutinised in order to strengthen their credibility.

The co-ordinating or ownership entity could in turn strengthen disclosure on stakeholder matters by having both a clear policy and possibly developing aggregate disclosure to the general public.

C. The board of SOEs should be required to develop, implement and communicate compliance programmes for internal codes of ethics. These codes of ethics should be based on country norms, in conformity with international commitments and apply to the company and its subsidiaries.

The OECD Principles of Corporate Governance recommend that boards apply high ethical standards. This is in the long term interest of any company as a means to make it credible and trustworthy in its day-to-day operations and with respect to its longer term commitments. In the case of SOEs, there may be more pressures to deviate from high ethical standards given the interaction of business considerations with political and public policy ones. Moreover, as SOEs might play an important role in setting the business tone of the country, it is also important for them to maintain high ethical standards.

SOEs and their officers should conduct themselves according to high ethical standards. SOEs should develop internal codes of ethics, committing themselves to comply with country norms and in conformity with broader codes of behaviour. This should include a commitment to comply with *the OECD Guidelines for Multinational Enterprises*, which have been adopted by all OECD states and reflect all four principles contained in the *ILO Declaration on Fundamental Principles and Rights at Work*, and *the OECD Anti-Bribery convention*. The ethical code should apply to the SOEs as a whole and to their subsidiaries.

The ethical code should give clear and detailed guidance as to the expected conduct of all employees and compliance programs should be established. It is considered as a good practice for these codes to be developed in a participatory way in order to involve all the employees and stakeholders concerned. These codes should also be fully supported and implemented by the boards and senior management.

The code of ethics should include guidance on procurement processes, as well as develop specific mechanisms protecting and encouraging stakeholders, and particularly employees, to report on illegal or unethical conduct by corporate officers. In this regard, the ownership entities should ensure that SOEs under their responsibility effectively put in place safe-harbours for complaints for employees, either personally or through their

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representative bodies, or for others outside the company. SOE boards could grant employees or their representatives a confidential direct access to someone independent on the board, or to an ombudsman within the company. The codes of ethics should also comprise disciplinary measures, should the allegations be found to be without merit and not made in good faith, frivolous or vexatious in nature.

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5. Transparency and Disclosure

State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.

A. The co-ordinating or ownership entity should develop consistent and aggregate reporting on state-owned enterprises and publish annually an aggregate report on SOEs.

B. SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent company organ.

C. SOEs, especially large ones, should be subject to an annual independent external audit based on international standards. The existence of specific state control procedures does not substitute for an independent external audit.

D. SOEs should be subject to the same high quality accounting and auditing standards as listed companies. Large or listed SOEs should disclose financial and non-financial information according to high quality internationally recognised standards.

E. SOEs should disclose material information on all matters described in the OECD Principles of Corporate Governance and in addition focus on areas of significant concern for the state as an owner and the general public. Examples of such information include:

1. A clear statement to the public of the company objectives and their fulfilment.
2. The ownership and voting structure of the company.
3. Any material risk factors and measures taken to manage such risks.
4. Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE.
5. Any material transactions with related entities.

Annotations to Chapter 5:

Transparency and Disclosure

State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.

A. The co-ordinating or ownership entities should develop consistent and aggregate reporting on state-owned enterprises and publish annually an aggregate report on SOEs.

Co-ordinating or centralised ownership entities should develop aggregate reporting that covers all SOEs and make it a key disclosure tool directed to the general public, the Parliament and the media. This reporting should be developed in a way that allows all readers to obtain a clear view of the overall performance and evolution of the SOEs. In addition, aggregate reporting is also instrumental for the co-ordinating or ownership entities in deepening their understanding of SOE performance and in clarifying their own policy.

The aggregate reporting should result in an annual aggregate report issued by the state. This aggregate report should primarily focus on financial performance and the value of the SOEs. It should at least provide an indication of the total value of the state's portfolio. It should also include a general statement on the state's ownership policy and information on how the state has implemented this policy. Information on the organisation of the ownership function should also be provided, as well as an overview of the evolution of SOEs, aggregate financial information and reporting on changes in SOEs' boards. The aggregate report should provide main financial indicators including turnover, profit, cash flow from operating activities, gross investment, return on equity, equity/asset ratio and dividends. Information should also be provided on the methods used to aggregate data. The aggregate report could also include individual reporting on the most significant SOEs. It is important to underline that aggregate reporting should not duplicate but complement existing reporting requirements, for example, annual reports to Parliaments. Some ownership entities could aim at publishing only "partial" aggregate reports, *i.e.* covering SOEs active in comparable sectors. Finally, publishing bi-annually aggregate reports would further improve transparency of state ownership.

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In some countries it has proven useful for the co-ordinating or ownership entity to develop a website, which allows the general public easy access to information. Such websites could provide information both on the organisation of the ownership function and the general ownership policy, as well as information about the size, evolution, performance and value of the state sector.

B. SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent company organ.

As in large public companies, it is necessary for large SOEs to put in place an internal audit system. "Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.*" Internal auditors are important to ensure an efficient and robust disclosure process and proper internal controls in the broad sense. They should define procedures to collect, compile and present sufficiently detailed information. They should also ensure that company procedures are adequately implemented and be able to guarantee the quality of the information disclosed by the company.

To increase their independence and authority, the internal auditors should work on behalf of, and report directly to the board and its audit committee in one-tier systems, to the supervisory board in two-tier systems or the audit boards when these exist. Internal auditors should have unrestricted access to the Chair and members of the entire board and its audit committee. Their reporting is important for the board's ability to evaluate actual company operations and performance. Consultation between external and internal auditors should be encouraged. Finally, it is also recommended as good practice that an internal control report is included in the financial statements, describing the internal control structure and procedures for financial reporting.

C. SOEs, especially large ones, should be subject to an annual independent external audit based on international standards. The existence of specific state control procedures does not substitute for an independent external audit.

SOEs are not necessarily required to be audited by external, independent auditors. This is often due to specific state audit and control systems that are sometimes considered sufficient to guarantee the quality and comprehensiveness of accounting information. These financial controls are

* Definition of the Institute of Internal Auditors (*www.theiia.org*).

typically performed by specialised state or "supreme" audit entities, which may inspect both SOEs and the co-ordinating or ownership entity. In many cases they also attend board meetings and are often reporting directly to the Parliament on the performance of SOEs. However, these specific controls are designed to monitor the use of public funds and budget resources, rather than the operations of the SOE as a whole.

To reinforce trust in the information provided, the state should require that, in addition to special state audits, at least all large SOEs are subject to external audits that are carried out in accordance with international standards. Adequate procedures should be developed for the selection of external auditors and it is crucial that they are independent from the management as well as large shareholders, *i.e.* the state in the case of SOEs. Moreover, external auditors should be subject to the same criteria of independence as for private sector companies. This generally includes limits on providing consulting or other non-audit services to the audited SOE, as well as periodic rotation of audit partners or audit firms.

D. SOEs should be subject to the same high quality accounting and auditing standards as listed companies. Large or listed SOEs should disclose financial and non-financial information according to high quality internationally recognised standards.

In the interest of the general public, SOEs should be as transparent as publicly traded corporations. Regardless of their legal status and even if they are not listed, all SOEs should report according to best practice accounting and auditing standards.

All SOEs should disclose financial and non-financial information, and large and listed ones should do so according to high quality internationally recognised standard. This implies that SOE board members sign financial reports and that CEOs and CFOs certify that these reports in all material respects appropriately and fairly present the operations and financial condition of the SOE.

To the extent possible, a cost-benefit analysis should be carried out to determine which SOEs should be submitted to high quality internationally recognised standard. This analysis should consider that demanding disclosure requirements are also both an incentive and a means for the board and management to perform their duties professionally. SOEs under a certain size could be excluded, provided that they do not pursue important public policy objectives. Such exceptions could only be decided on a pragmatic basis and will vary among countries, industrial sectors and the size of the state sector.

A high level of disclosure is also valuable for SOEs pursuing important public policy objectives. It is particularly important when they have a significant impact on the state budget, on the risks carried by the state, or when they have a more global societal impact. In the EU, for example, companies that are entitled to state subsidies for carrying out services of general interests are required to keep separate accounts for these activities.

E. SOEs should disclose material information on all matters described in the OECD Principles of Corporate Governance and in addition focus on areas of significant concern for the state as an owner and the general public.

The OECD Principles of Corporate Governance describe what the main elements of disclosure for a public company should be. SOEs should at least comply with these requirements, including financial and operating results, remuneration policies, related party transactions, governance structures and governance policies. SOEs should disclose if they follow any code of corporate governance and, if so, indicate which one. With regards remuneration of board members and key executives, it is viewed as good practice to carry this out on an individual basis. The information should include termination and retirement provisions, as well as any specific facility or in kind remuneration provided to board members. SOEs should be particularly vigilant and improve transparency in the following areas.

Examples of such information include:

1. A clear statement to the public of the company objectives and their fulfilment

It is important that each SOE is clear about its overall objectives. Regardless of the existing performance monitoring system, a limited set of basic overall objectives should be identified together with information about how the enterprise is dealing with trade-offs between objectives that could be conflicting.

When the state is a majority shareholder or effectively controls the SOE, company objectives should be made clear to all other investors, the market and the general public. Such disclosure obligations will encourage company officials to clarify the objectives to themselves, and could also increase management's commitment in pursuing these objectives. It will provide a reference point for all shareholders, the market and the general public for considering the strategy adopted and decisions taken by the management.

SOEs should report on how they fulfilled their objectives by disclosing key performance indicators. When the SOE is also used for public policy objectives, such as general services obligations, it should also report on how these are being achieved.

2. The ownership and voting structure of the company

It is important that the ownership and voting structures of SOEs are transparent so that all shareholders have a clear understanding of their share of cash-flow and voting rights. It should also be clear who retains legal ownership of the state's shares and where the responsibility for exercising the state's ownership rights are located. Any special rights or agreements that may distort the ownership or control structure of the SOE, such as golden shares and power of veto, should be disclosed.

3. Any material risk factors and measures taken to manage such risks

Severe difficulties arise when SOEs undertake ambitious strategies without clearly identifying, assessing or duly reporting on the related risks. Disclosure of material risk factors is particularly important when SOEs operate in newly de-regulated and increasingly internationalised industries where they are facing a series of new risks, such as political, operational, or exchange rate risks. Without adequate reporting of material risk factors, SOEs may give a false representation of their financial situation and overall performance. This in turn may lead to inappropriate strategic decisions and unexpected financial losses.

Appropriate disclosure by SOEs of the nature and extent of risk incurred in their operations requires the establishment of sound internal risk management systems to identify, manage, control and report on risks. SOEs should report according to new and evolving standards and disclose all off-balance-sheet assets and liabilities. When appropriate, such reporting could cover risk management strategies as well as systems put in place to implement them. Companies in extracting industries should disclose their reserves according to best practices in this regard, as this may be a key element of their value and risk profile.

Public Private Partnerships should also be adequately disclosed. Such ventures are often characterised by transfers of risks, resources and rewards between public and private partners for the provision of public services or public infrastructure and may consequently induce new and specific material risks.

4. Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE

To give a fair and complete picture of an SOE's financial situation, it is necessary that mutual obligations, financial assistance or risk sharing mechanisms between the state and the SOEs are appropriately disclosed. Disclosure should include details on any state grant or subsidy received by the SOE, any guarantee granted by the state to the SOE for its operations, as well as any commitment that the state undertakes on behalf of an SOE. Disclosure of guarantees could be done by SOEs themselves or by the state. It is considered good practice that Parliaments monitor state guarantees in order to respect budgetary procedures.

5. Any material transactions with related entities

Transactions between SOEs and related entities, such as an equity investment of one SOE in another, might be a source of potential abuse and should be disclosed. Reporting on transactions with related entities should provide all information that is necessary for assessing the fairness and appropriateness of these transactions.

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6. The Responsibilities of the Boards of State-Owned Enterprises

The boards of state-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the company's performance. The board should be fully accountable to the owners, act in the best interest of the company and treat all shareholders equitably.

B. SOE boards should carry out their functions of monitoring of management and strategic guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO.

C. The boards of SOEs should be composed so that they can exercise objective and independent judgement. Good practice calls for the Chair to be separate from the CEO.

D. If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.

E. When necessary, SOE boards should set up specialised committees to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration.

F. SOE boards should carry out an annual evaluation to appraise their performance.

Annotations to Chapter 6:

The Responsibilities of the Boards of State-Owned Enterprises

The boards of state-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

In a number of countries, SOE boards tend to be too large, lack business perspective and independent judgment. They may also include an excessive number of members from the state administration. Moreover, they may not be entrusted with the full range of board responsibilities and can therefore be overruled by senior management and by the ownership entities themselves. Moreover, their function may also be duplicated by specific state regulatory bodies in some areas.

Empowering and improving the quality of SOE boards is a fundamental step in improving the corporate governance of SOEs. It is important that SOEs have strong boards that can act in the interest of the company and effectively monitor management without undue political interference. To this end, it will be necessary to ensure the competency of SOE boards, enhance their independence and improve the way they function. It is also necessary to allow them clear and full responsibility for their functions and ensure that they act with integrity.

***A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the company's performance. The board should be fully accountable to the owners, act in the best interest of the company and treat all shareholders equitably*.**

SOE boards should, in principle, have the same responsibilities and liabilities as stipulated in company law. However, in practice, board members may have a reduced liability, particularly the ones nominated by the state**.**

The responsibilities of SOE boards should be articulated in relevant legislation, regulations, the government ownership policy and the company

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charters. It is essential and should be emphasised that all board members have the legal obligation to act in the best interests of the company and to treat all shareholders equitably. The collective and individual liability of board members should be clearly stated. There should not be any difference between the liabilities of different board members, whether they are nominated by the state or any other shareholders or stakeholders. Training should be required in order to inform SOE board members of their responsibilities and liabilities.

To encourage board responsibility and in order for boards to function effectively, they should follow best practices adhered to in the private sector and be limited in size. Experience indicates that smaller boards allow for real strategic discussion and are less prone to become rubberstamping entities.

To underline the board's responsibilities, a Directors' Report should be provided along with the annual statements and submitted to the external auditors. The Directors' Report should give information and comment on the organisation, financial performance, material risk factors, significant events, relations with stakeholders, and the effects of directions from the co-ordinating or ownership entity.

B. SOE boards should carry out their functions of monitoring of management and strategic guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO.

In many instances, SOE boards are not granted full responsibility and the authority required for strategic guidance, monitoring of management and control over disclosure. SOE boards may see their roles and responsibilities encroached from two ends; by the ownership entities and by management. The co-ordinating or ownership entity, if not the government itself, may be tempted to become too involved in strategic issues, although it is their responsibility to define the overall objectives of the company, particularly since the difference between defining objectives and setting strategies can be rather unclear. SOE boards may also encounter difficulties in monitoring management as they do not always have the legitimacy, or even the authority, to do so. Furthermore, in certain countries, there is a strong link between the management and the ownership function or directly with the government. SOE senior management tends to report to the ownership function or the government directly and thereby circumvent the board.

In order to carry out their role, SOE boards should actively *i)* formulate, monitor and review corporate strategy, within the framework of the overall corporate objectives; *ii)* establish appropriate performance indicators and identify key risks; *iii)* monitor the disclosure and communication processes, ensuring that the financial statements fairly present the affairs of the SOE and reflect the risks incurred; *iv)* assess and follow management performance; *v)* develop effective succession plans for key executives.

One key function of SOE boards should be the appointment and dismissal of CEOs. Without this authority it is difficult for SOE boards to fully exercise their monitoring function and feel responsible for SOEs' performance. In some cases, this might be done in concurrence or consultation with the ownership entity. In some countries, a full owner can directly appoint a CEO and this possibility extends to SOE. This may also occur when the state is a dominant owner in SOEs that are assigned important public service purposes. To ensure that the integrity of the board is maintained, good practice would require consultation with the board. Regardless of the procedure, appointments should be based on professional criteria. Rules and procedures for nominating and appointing the CEO should be transparent and respect the line of accountability between the CEO, the board and the ownership entity. Any shareholder agreements with respect to CEO nomination should be disclosed.

It follows from their obligation to assess and follow management performance that the SOE boards should also have a decisive influence over the compensation of the CEO. They should ensure that the CEO's remuneration is tied to performance and duly disclosed.

C. The boards of SOEs should be composed so that they can exercise objective and independent judgement. Good practice calls for the Chair to be separate from the CEO.

A central prerequisite in empowering SOE boards is to structure them so that they can effectively exercise objective and independent judgement, be in position to monitor senior management and take strategic decisions. As underlined in the Principles, "*in order to exercise its duties of monitoring managerial performance, preventing conflicts of interest and balancing competing demands on the corporation, it is essential that the board is able to exercise objective judgement*". All board members should be nominated through a transparent process and it should be clear that it is their duty to act in the best interests of the company as a whole. They should not act as individual representatives of the constituencies that appointed them. SOE boards should also be protected from undue and direct political interference that could detract them from focusing on achieving the objectives agreed on with the government and the ownership entity.

A central requirement to enhance the objectivity of SOE boards is to nominate a sufficient number of competent non-executive board members who are capable of independent judgement. These board members should have the relevant competence and experience and it is advisable that they be recruited from the private sector. It will help in making boards more business-oriented,

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particularly for SOEs that operate in competitive markets. Their expertise could also include qualifications related to the SOE's specific obligations and policy objectives. In some countries, diversity in board composition is also an issue and it includes gender consideration. All board members should disclose any conflicts of interest to the board which must decide how they should be managed.

Mechanisms to evaluate and maintain the effectiveness of board performance and independence should be developed. These include, for example, limits on the possible number of reappointments and resources granted to the board to have access to independent information or to carry out independent expertise.

For enhancing board independence, the OECD Principles of Corporate Governance also consider that it may be regarded as a good practice that the Chair person is separated from the CEO in single board structures. Separation of the Chair from the CEO helps in "*achieving an appropriate balance of power, increasing accountability and improving the board's capacity for decision making independent of management*". An adequate and clear definition of the functions of the board and of its Chair would prevent situations where the separation might give rise to inefficient opposition between the two company officers. In the case of two-tier board systems, it is similarly considered good practice that the head of the lower board (management board) does not become the Chair of the Supervisory Board on retirement.

Separation of the Chair from the CEO is particularly important in SOEs, where it is usually considered necessary to empower the board's independence from management. The Chair has a key role in guiding the board, ensuring its efficient running and encouraging the active involvement of individual board members in the strategic guidance of the SOE. When the Chairman and the CEO are separate, the Chairman should also have a role in agreeing with the ownership entity on the skills and experience that the board should contain for its effective operation. The separation of the Chair from the CEO should therefore be considered as a fundamental step in establishing efficient SOE boards.

***D. If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence*.**

When employee representation on SOE boards is mandated by the law or collective agreements, it should be applied so that it contributes to the SOE boards' independence, competence and information. Employee representatives should have the same duties and responsibilities as all other board members, should act in the best interests of the company and treat all shareholders equitably. Employee representation on SOE boards should not in itself be considered as a threat to board independence.

Procedures should be established to facilitate the professionalism and the true independence of employee board members, and to make sure that they respect their duty of confidentiality. These procedures should include adequate, transparent and democratic election procedures, training and clear procedures for managing conflicts of interest. A positive contribution to the board's work will also require acceptance and collaboration by other members of the board as well as by the SOE management.

E. When necessary, SOE boards should set up specialised committees to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration.

The use of specialised board committees in SOEs has increased, in line with practices in the private sector. The type of special committees that boards make use of can vary between companies and industries and includes: audit committees, remuneration committees, strategy committees, ethics committees, and in some cases risk and procurement committees. In some countries, an equivalent body to the audit committee performs a similar function.

The setting up of specialised board committees could be instrumental in reinforcing the competency of SOE boards and in underpinning their critical responsibility in matters such as risk management and audit. They may be also effective in changing the board culture and reinforcing its independence and legitimacy in areas where there is a potential for conflicts of interests, such as with regards to procurement, related party transactions and remuneration issues.

When board committees are not mandated by law, the co-ordinating or ownership entity should develop a policy to define in which cases specialised board committees should be considered. This policy should be based on a combination of criteria, including the size of the SOE and specific risks faced or competencies which should be reinforced within SOE boards. Large SOEs should at least be required to have an audit committee or equivalent body with powers to meet with any officer of the company.

It is essential that specialised board committees are chaired by a non-executive and include a sufficient number of independent members. The proportion of independent members as well as the type of independence required (*e.g.* from management or from the main owner) will depend on the type of committee, the sensitivity of the issue to conflicts of interests, and the SOE sector. The audit committee, for example, should be composed of only independent and financially literate board members.

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The existence of specialised board committees should not excuse the board from its collective responsibility for all matters. Specialised board committees should have written terms of reference that define their duties, authority and composition. Specialised board committees should report to the full board and the minutes of their meetings should be circulated to all board members.

SOE boards could also establish a nomination committee to co-operate with the ownership entity with regards to the board nomination process. In some countries it is the practice that nomination committees can also be set up outside the board structure, particularly including several main owners. Regardless of who establishes the nomination committee, it is important to involve the board in thinking about its own composition and succession planning, through its involvement in the search process and its ability to make recommendations. This can contribute to making the nomination process focused on competence.

F. SOE boards should carry out an annual evaluation to appraise their performance.

A systematic evaluation process is a necessary tool in enhancing SOE board professionalism, since it highlights the responsibilities of the board and the duties of its members. It is also instrumental in identifying necessary competencies and board member profiles. Finally, it is a useful incentive for individual board members to devote sufficient time and effort to their duties as board members.

The evaluation should scrutinise both the overall board performance and could also include the effectiveness and contribution of individual board members. However, the evaluation of individual board members should not impede the desired and necessary collegiality of board work.

Board evaluation should be carried out under the responsibility of the Chair and according to evolving best practices. The board evaluation should provide input to the review of issues such as board size, composition and remuneration of board members. The evaluations could also be instrumental in developing effective and appropriate induction and training programmes for new and existing SOE board members. In carrying out the evaluation, the SOE boards could seek advice from external and independent experts as well as by the ownership entity.

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ANNEX II.1

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Corporate Governance of State-Owned Enterprises

A SURVEY OF OECD COUNTRIES

Globalisation has heightened the need to enhance the corporate governance of state-owned enterprises (SOEs) in many countries, especially where SOEs significantly affect economic performance because of their weight in the national economy.

This survey provides a broad comparative overview of SOE governance in OECD countries today. It provides a wealth of information, including examples of successes and failures of past reform efforts. It highlights the key challenges to be addressed by the state as a corporate owner and provides a framework to help governments assess and improve the way they exercise their ownership function and ensure a level-playing field for private and state-owned enterprises. It also shows the importance of making progress in transparency and disclosure by SOEs and strengthening SOE governing boards.

Based on extensive research in OECD countries, this survey underpinned development of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, adopted in April 2005, which established the first international benchmark in this area.

For any questions or information concerning this survey or the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, please contact the Corporate Affairs Division at: corporate.affair.oecd.org. For more information on OECD's work on privatisation and corporate governance of state-owned assets, visit: *www.oecd.org/daf/corporate-affairs/soe/.*

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