

## SOE Guidelines - Public Consultation

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Overall, the draft guidelines are a clear improvement, with many clarifications and greater guidance on public service obligations, risk management, and sustainability. And these three *mostly* fit together.

However there is tension in the draft guidelines with greater emphasis on 1) competitive neutrality and hence commercial rates of return but also 2) SOEs fighting global warming, which implies lower returns. There are touch points—unsustainable SOEs may also be financially risky. But the level playing field implies all enterprises should—through taxes, incentives, or regulations—be making a contribution to fighting global warming. The new last chapter implies SOEs should be making an extra effort.

Specific revisions that need to be changed, dropped, or raise questions are noted below.

### I: Rationales for state ownership

- Pg 26, under D. “Where individual SOEs engage in economic activities in the course of fulfilling their public service obligations, states should assess if and how these activities intersect with the level playing field, take mitigating measures and fully disclose the rationale behind and justification for possible distortions of the level playing field, especially if these could negatively affect **foreign** competitors.”

There is no good reason to just say “foreign”. “private sector” would be a better option.

### II: The state’s role as an owner

- Pg 27, under A. The text has been edited to more permissive towards SOE diversification of their activities. Except for the most commercial of SOEs—with significant private sector shareholding—SOEs must be strongly encouraged or required to stick to their mandates. This is important for the reasons given in the paragraph, but also to allow space for private sector development, and to ensure that SOEs pay dividends and do not pick up potential fiscal liabilities. The revised language here is also contradicting B. Why do we care about objectives if the SOE can just do whatever?

### III: State-owned enterprises in the marketplace

- Pg 38, under A. What does this mean? “Particularly in the field of sustainability, the separation of different state functions should be safeguarded, while at the same time

pursuing a whole of government approach to implement national sustainability objectives in co-ordination with relevant public authorities.” There is a huge tension between this chapter—and other parts of the guidelines—which emphasize positive returns on a level playing field, and the new sustainability chapter.

- Pg 38, under B. “SOEs should also be subject to bankruptcy rules equivalent to those for competing enterprises.” Do OECD countries follow this? What about all those special “receiverships” and similar cases. For major SOEs, (partial) defaults do actually happen, but what is implied here does not.
- Pg 38, under C. The accounting for and measuring of PSOs should be clear in almost every possible case. The guidelines are consistent with that, but the annotations remain all over the place. There may be some economies of scope or scale—that justify the SOE--but its certainly possible in almost every case to estimate the cost of the PSO and link that cost to some outputs and objectives. The annotations are too focused on special cases. This is true for the revisions directly under C, and to some extent to the discussion of separation under 1 (and there are different kinds of separation, and they work).

The principal that was supposed to be here is (the ideal) where PSOs are contracted with SOEs by the government through the budget in the same way they could be with private sector. That may be the ideal, but it should still inform thinking in this section.

- Pg 39 under C2. What is the source of “independent oversight” in practice? Public sector auditors/supreme audit authorities, or the equivalent. If so, should be noted explicitly.
- Pg 40 under C3. This whole chapter is highly repetitive and this part in particular largely overlaps with E.2 and E.3. There should be some consolidation. For example, this seems like the Covid-19 (and maybe Ukraine war) section—where many SOEs provided below cost outputs to the private sector. But that is really addressed under “Ad hoc support” under E.2.
- Pg 43 under G. I know why this is has been added—but it also feels very repetitive. You have already asked for most of these things in the previous parts of this chapter. What is new is G2. Do OECD countries—the large ones—actually follow this? Is G really needed as a stand-alone section?

#### V: Disclosure, and transparency, and accountability

- Pg 52, under A5. Is this the right place for the independent board member definition? Not the board chapter?
- Pg 53, under A9. Liabilities related to public-private partnerships should also be mentioned here.

#### VI: The composition and responsibilities of the boards of state-owned enterprises

- Pg 61/62 under C. Board remuneration deserves its own (sub) guideline, or at least not being part of run-on paragraphs.

## VII: State-owned enterprises and sustainability

- Pg 70. “Such goals, if they amount to public service obligations” is here and important, but it should be more prominent, given the need to reconcile with competitive neutrality. It should be called more specifically at the guideline level, not just buried in the annotations.
- More generally, while this section notes, at many points, that SOEs should follow relevant legal requirements, it does not really spell out that what is applied to SOEs should, in most cases, also be applied to the private sector, both to maintain a level playing field and more importantly to ensure greatest impact to ensure sustainability.