

Dear Madam/Sir

Thank you very much for the opportunity to get acquainted with the draft of the third edition of the OECD Guidelines and to present comments. It has been very interesting to look through the draft and to observe, how the important issues of today, such as sustainability, risk management and disclosure have been taken along and integrated with the basic elements of corporate governance.

Generally I note a certain hardening of the overall approach. Even though the Guidelines are a recommendation, they have always included "cushions", softening wordings or phrases so as not to appear overruling ("if applicable", "best practice calls for", "where practical" etc.) A problem here is that there should be somebody to give judgment if the measure has been "duly" or "to the extent possible" and this judgment would always be given afterwards. Now many of these cushions have been removed, which is a welcome development.

Into the Annotations lots of new language has been introduced. In several items this new language has not been written in the simple corporate governance -style of the earlier editions but using a more complicated but undoubtedly precise expert language which might appear alien to accustomed practitioners of the Guidelines. It would be beneficial to see through the language once more, there are very long sentences, decorated with several commas, ending far away from the starting point.

A few remarks:

1. Minority ownership is discussed in "Applicability and definitions". There are situations in listed companies where a minority owner, perhaps the State, holding, say 35 % of the votes continuously dominates the AGM from year to year since the attendance in the AGM never rises above, say 70 % of the votes. It would be appropriate to discuss also such situations in terms of the applicability of the Guidelines.
2. The definition of independent board members appears for the first time in the paragraph "The governing bodies of SOEs". It should be made clear that receiving remuneration for board membership is okay but receiving remuneration from the SOE for other services would jeopardise the independent status.
3. The Guidelines still do not give a definite recommendation if subsidiaries, ie. companies owned by SOEs, other than SOHCs, are also SOEs.
4. In the Annotations of Chapter I, Guideline C there is a paragraph discussing ad hoc - interventions, which is badly placed in the Guideline on ownership policy.
5. In the Guideline II B a new "cushion" has been added which turns the rule upside down. Now it reads that it is perfectly okay for the government to intervene with the management, as long as it has not been done "unduly". The basic lines of command as included in most company laws should be respected. "Nose in, fingers out". The second sentence would also benefit from rephrasing. "... should avoid ... and only in cases ..." does not make sense.
6. The much debated classification of ownership models is included in the Annotation II D. It is not appropriate to "canonize" this by inclusion into the Guidelines.
7. Guideline IV A 4 Annotation: giving advice in the selection of service providers is micro-management in terms of the Guidelines.

8. Guideline IV B The "cushion" "to the extent possible" is unnecessary since the corporate governance codes include the comply or explain -principle as a rule.
9. Guideline IV C: Should not all public policy objectives be disclosed and not only those possibly having a material effect?
10. Guideline V A 5: The issue regarding independence and remuneration (see above) is repeated here.
11. Guideline V A 9: Debt contracts and covenant risks sound very private and confidential. Do listed companies normally disclose these?
If not, neither should SOEs.
12. Guideline VI C Annotations: Board members are appointed by the AGM, not the government or constituencies.
13. Guideline VI H: The wording suggesting that all committee members should be independent should be adjusted.
14. Guideline VI H: Board committees may hear outside experts but they should not be members of the committee, unless the AGM decides otherwise. Even then it will be tricky to legally and bindingly impose the fiduciary duties on them.
15. Guideline VI I: The language on "female talent pipeline" should be replaced in Guideline II F.

Thank you again for this opportunity.

Best regards

Arto Honkaniemi

Former Senior Financial Counsellor of the Ownership Steering Department at the Prime Minister's Office, Government of Finland

Former Member of the WPSOPP