

Fair Market Conditions for  
Competitiveness in the Adriatic Region

# Anti-corruption and State-owned Enterprises



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## **The Importance of the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises:**

- State-owned enterprises (SOEs) are an important conduit for states to exercise their roles as economic actors. The benefits of SOE ownership are economic, political and social. The costs are high when mismanagement or abuse occurs.
- The OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises are the first international instrument to offer the state, in its role as an enterprise owner, support in fighting corruption and promoting integrity in SOEs.
- The Guidelines can help states to ensure that owners exemplify integrity in their conduct, that ownership arrangements are conducive to integrity, that SOEs adhere to good practices at the SOE level and that accountability mechanisms are integral to SOE sectors.

## What is the issue?

State-owned Enterprises (SOEs) have been in the spotlight in recent years in view of their increasing international presence and market share. They have also been under scrutiny for corruption and other irregular practices in and around SOEs, with an increasing amount of literature on the potential for undue influence, bribery and other infractions to interfere with the daily operations of an SOE. The OECD's Foreign Bribery Report found that SOE officials were more often promised or given foreign bribes, and of a higher financial value, than any other public officials in all concluded cases of foreign bribery of public officials between 1999 and 2014 (OECD, 2014).

Today, 102 of the world's largest 500 enterprises are state-owned. As their role as global competitors continues to grow, it is more important than ever that SOEs operate with transparency and efficiency (OECD, 2019). Research by the OECD and others shows that certain SOEs may be particularly exposed to corruption risk (OECD, 2019). State ownership is concentrated in high-risk sectors, such as the extractive industries and infrastructure, where public and private sectors intersect via valuable concessions and large public procurement projects. Strong and responsible state ownership is essential to effectively mitigate these

corruption risks. At the same time, SOEs in many economies also continue to provide essential public services. The cost to the public purse and the perverse effects of misallocated resources by corruption in SOEs can dangerously undermine citizens' trust in public institutions.

Good corporate governance of SOEs, in accordance with the OECD Guidelines on Corporate Governance of State-Owned Enterprises, is essential to help reduce the risk of corruption. In recent years, there has been abundant evidence on how corruption involving SOEs can cause serious economic and political damage and lead to a breakdown of public trust extending well beyond the SOEs themselves. This is why there needs to be a concerted effort to stamp out corrupt and otherwise irregular practices in SOEs, as well as in government institutions exercising state-ownership rights (OECD, 2019).

#### *What is a SOE?*

The OECD Guidelines on Corporate Governance of State-Owned Enterprises (hereinafter SOE Guidelines), recognise that any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature (OECD, 2015).

#### *What are corrupt and irregular practices?*

Corruption refers to the abuse of public or private office for personal gain. This includes the active or passive misuse of powers of public officials (appointed or elected) for private financial or other benefits (OECD, 2008). Irregular practices are referred to as broader instances of breaking SOE integrity policies, including internal company programmes, functions, people, processes or controls that seek to prevent, detect or address risks of waste and abuse. Such irregular practices, harmful in their own right, may be linked to or open avenues for corrupt behaviour.

#### *What is Integrity?*

The consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests.

## **What can policy makers in the Adriatic Region do?**

Targeting corruption and improving integrity in SOEs is essential for OECD-member and non-member countries, including in the Adriatic region. The more pronounced presence of SOEs in the global marketplace has been marked by certain high-profile scandals and occasional evidence of susceptibility of SOEs to corruption. This raises questions about what might make SOEs susceptible to corruption and how policy makers can act to maximise their productivity by raising their integrity. As their role as global competitors continues to grow, it is more important than ever that SOEs operate with transparency and efficiency.

The quality of corporate governance and the way in which the state exercises its ownership rights can help to address many of these issues. Some state-owned companies still operate as public institutions despite having economic objectives and competing in the market, and many lack the sophisticated risk-management and compliance mechanisms found in best-practice private firms. SOEs can also be subject to undue interventions by senior public officials or other third parties. The Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises can help states as owners to promote integrity and fight corruption in SOEs. They complement the already-existing OECD Guidelines on Corporate Governance of State-owned Enterprises.

### *The OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises*

Policy makers in the Adriatic region can turn to the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (hereinafter ACI Guidelines) as the global standard to promote integrity and fight corruption in SOEs.

The ACI Guidelines are the first international instrument to offer the state, in its role as an enterprise owner, support in fighting corruption and promoting integrity in SOEs. The Guidelines can help states to ensure that owners exemplify integrity in their conduct that ownership arrangements are conducive to integrity, that SOEs adhere to good practices at the SOE level and that accountability mechanisms are integral to SOE sectors. The ACI Guidelines are intended to supplement and complement the OECD Guidelines on Corporate Governance in SOEs, by providing guidance to the state on fulfilling its role as an active and informed owner in the specific area of anti-corruption and integrity. The Guidelines were developed by the OECD Working Party on State Ownership and Privatisation Practices in cooperation with other OECD bodies. They have benefited from input received during an inclusive public consultation and from business and labour representatives, civil society, partner countries and other interested stakeholders.

Key elements addressed by both the ACI Guidelines and the SOE Guidelines include:

- ✓ Professionalising state ownership;
- ✓ Making SOEs operate with similar efficiency, transparency and accountability as best-practice private companies;
- ✓ Ensuring that competition between SOEs and private enterprises, where it occurs, is conducted on a level playing field.

The ACI Guidelines were developed with the understanding that the state, in its role as enterprise owner, should adhere to four fundamental principles similar to those espoused by the SOE Guidelines. The first principle is that state ownership is exercised in a rules-based economic environment, where each economic actor derives its authority from, and behaves in line with, applicable laws. The second principle is one of a strict separation of roles between the state as an owner and the management of the SOE (the state allowing SOEs full operational autonomy). The third premise is the need for a clear distinction between the state's role as an owner and its other roles (e.g. regulatory, policy-making and prosecutorial).

Fourthly, SOEs should not receive unfair advantages due to their proximity to the state, nor should they be overburdened with regulations and controls compared to private firms.

More specifically, the ACI Guidelines can provide policy makers with guidance on the following key areas (OECD, 2019):

**1. Integrity of the state**

- ✓ Apply high standards of conduct to the state
- ✓ Establishing ownership arrangements that are conducive to integrity

**2. Exercise of State Ownership for Integrity**

- ✓ Ensure clarity in the legal and regulatory framework and in the State’s expectations for anti-corruption and integrity
- ✓ Act as an active and informed owner with regards to anti-corruption and integrity in state-owned enterprises

**3. Promotion of Integrity and Prevention of Corruption at the Enterprise Level**

- ✓ Encourage integrated risk management systems in state-owned enterprises
- ✓ Promote internal controls, ethics and compliance measures in state-owned enterprises
- ✓ Safeguard the autonomy of state-owned enterprises’ decision-making bodies

**4. Accountability of SOEs and of the state**

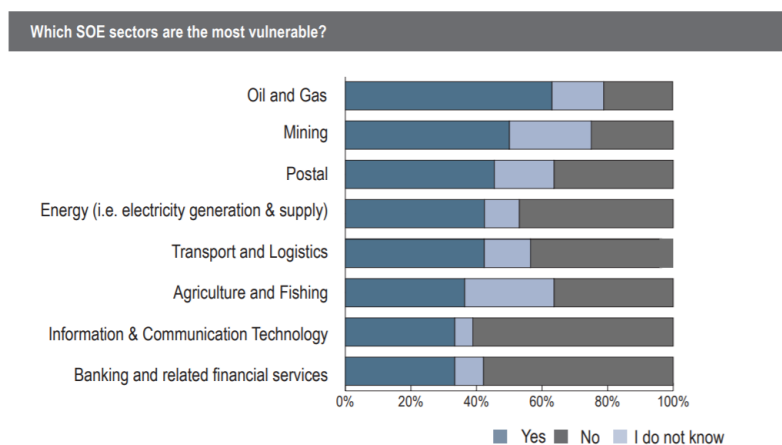
- ✓ Establish accountability and review mechanisms for state-owned enterprises
- ✓ Take action and respect due process for investigations and prosecutions
- ✓ Invite the inputs of civil society, the public and media and the business community

*Lessons from the international experience*

*Which SOE sectors and types are the most vulnerable?*

The oil and gas, mining, postal, energy and transportation and logistics sectors report to have witnessed corrupt and other irregular practices more often than average (OECD, 2018). These sectors are the most highly regulated, are likely to have natural market monopolies and are engaged in high-value public procurement projects (Figure 1).

Figure 1 Those who reported witnessing corruption and other irregular practices by sector



Source: Based on 289 responses to the 2017 OECD Survey of anti-corruption and integrity in SOEs.

**SOEs with public policy objectives** – whether well-defined or more implicit – report higher risks of corruption or other irregularities. They also report taking fewer actions to avoid known corruption risks than those SOEs with entirely commercial objectives.

**SOEs with entirely commercial objectives** are more likely to see the allocation of operational budget to integrity as more of an investment or asset than SOEs with public policy objectives.

In face of known corruption risks, SOEs generally appear less risk averse or less ready to take action than private companies. This could reflect the fact that SOEs are legally obliged to conduct certain activities, and consequently have less freedom than private firms to walk away from dubious propositions. Overall, SOEs see financing integrity as more of a cost or expense than private companies.

The greatest obstacles to integrity in SOEs relate to relations with the government (including a perceived lack of integrity in the public and political sector), and with employee behaviour (including opportunistic behaviour by individuals).

To a lesser degree, challenges also arise from ineffective control and accountability (including ineffective internal control or risk management) and the company culture (including a lack of awareness amongst employees of the need for integrity).

#### *How can obstacles to integrity be overcome?*

The OECD report *State-owned Enterprises and Corruption- What are the risks and what can be done* (OECD, 2018) finds that many of the SOEs that witnessed corruption or other irregular practices in their company in recent years had a series of integrity mechanisms in place, including corruption-specific controls and risk management processes, internal and external audit, reporting mechanisms and codes of conduct or ethics. The evidence shows that there is more work to be done in better assessing a company's risk profile in order to adopt internal controls that are more tailored to the risks faced. In some cases there is a need to increase their efficiency.

However, the greatest obstacles facing SOEs have to do with human behaviour and relationships. Controls are a critical part of corporate governance, but must be coupled by a culture of integrity to counter pressure and undue influence where corruption is a systemic issue and opportunistic behaviour by individuals where it is not.

The main obstacles, as outlined in Figure 2 (column A), may represent weaknesses or blind spots to the SOE that could leave them exposed to corruption or other irregular practices by corporate insiders or outsiders. The figure also illustrates the key elements of an overall corporate approach that may be instrumental in overcoming such obstacles (column B).

Figure 2 Counteracting perceived obstacles to integrity in state-owned enterprises

A. What are the obstacles to integrity?	B. How can SOEs overcome obstacles to integrity?
A. Top ten obstacles to integrity in SOEs (as rated by 347 SOE respondents)	B. Key elements of effective integrity, anti-corruption or compliance mechanisms or programmes
<ol style="list-style-type: none"> <li>1. A lack of a culture of integrity in the political and public sector</li> <li>2. A lack of awareness among employees of the need for, or priority placed on, integrity</li> <li>3. Opportunistic behaviour of individuals</li> <li>4. A lack of awareness of legal requirements</li> <li>5. Perceived likelihood of getting caught is low</li> <li>6. A lack of a culture of integrity in the company</li> <li>7. Overly complex or burdensome legal requirements</li> <li>8. Inadequate financial or human resources to invest in integrity and prevent corruption</li> <li>9. Ineffective internal control or risk management</li> <li>10. Ineffective channels for whistleblowing / reporting misconduct</li> </ol>	<ol style="list-style-type: none"> <li>1. A culture of integrity through tone at the top and mechanisms to operationalise it</li> <li>2. Autonomy and resources for integrity mechanisms</li> <li>3. Risk Management and assessment</li> <li>4. Standards of conduct/policies and internal controls</li> <li>5. Third party management and due diligence</li> <li>6. Education and training on anti-corruption and integrity</li> <li>7. Disclosure, monitoring and auditing</li> <li>8. Detection, advice and complaints channels</li> <li>9. Incentives for integrity</li> <li>10. Investigation, response and improvement</li> </ol>

*Note:* The ten obstacles were ranked out of a list of 24 obstacles put forth to SOE respondents, found in the Annex of Chapter 2, and generated based on an index constructed from 0 to 3 (from “does not exist in my company” to “very much an obstacle”)  
*Source:* Column A: OECD 2017 Survey of anti-corruption and integrity in SOEs. Column B: Adapted from sections of, and international principles captured in, OECD, UNODC and World Bank (2013), *Anti-Corruption Ethics and Compliance Handbook for Business*, [www.oecd.org/corruption/anticorruption-ethics-and-compliance-handbook-for-business.htm](http://www.oecd.org/corruption/anticorruption-ethics-and-compliance-handbook-for-business.htm).

## Where do we go from here?

Since the adoption of the ACI Guidelines by OECD governments at the annual Ministerial Council Meeting on 22-23 May 2019, experts from all over the world began the implementation of the ACI Guidelines and started gathering good practices at the country and company level that support the implementation of integrity, anti-corruption and compliance measures contained in the new Guidelines. The good practices will concretely feed into an accompanying ‘Implementation Guide’ planned for issuance in 2021.

## Sources

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POLICY BRIEFING NOTES  
**FAIR MARKET CONDITIONS FOR COMPETITIVENESS  
IN THE ADRIATIC REGION PROJECT**

High levels of corruption and lack of transparency are key constraints to economic growth and competitiveness in many countries worldwide. The Policy Briefing Notes, designed for stakeholders from the Adriatic Region, aim to provide practical guidance to tackle corruption, foster integrity and level the playing field for all firms. They draw on OECD guidelines, legal instruments and good practices and are tailored to the region's circumstances.

The Policy Briefing Notes are one output of the three-year OECD project to promote fair market conditions for competitiveness in Bosnia and Herzegovina, Croatia, and Serbia, supported by the Siemens Integrity Initiative. Through Collective Action, government officials from the region along business leaders, anti-corruption experts and practitioners, civil society representatives and academics have engaged to jointly identify country-specific challenges to integrity and foster fair market competition.

These efforts are part of the engagement of the OECD South East Europe Regional Programme, which collaborates with the region since 2000 to foster private sector development and competitiveness, improve the investment climate and raise living standards for an inclusive and sustainable future for the people of South East Europe.

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[oe.cd/fair-market-conditions](http://oe.cd/fair-market-conditions)**