Corporate Governance

OECD Review of the Corporate Governance of State-Owned Enterprises in Romania

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BETTER POLICIES FOR BETTER LIVES

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Foreword

The Romanian government has undertaken important legal and institutional changes over the past decade to improve the governance and performance of its state-owned enterprises (SOEs), yet significant implementation shortcomings persist. This review describes and assesses the corporate governance framework of the Romanian SOE sector against the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* ("SOE Guidelines"). It makes recommendations to help the Romanian authorities design adequate mechanisms to ensure the implementation of applicable rules for the exercise of state ownership and the governance of SOEs.

The review was undertaken at the request of the Romanian Government, acting via the Ministry of Finance. It was conducted by the OECD Working Party on State Ownership and Privatisation Practices (the "Working Party"), the body responsible for supporting and overseeing the effective implementation of the SOE Guidelines.

The review was prepared on the basis of questionnaire responses provided by the Romanian authorities in January 2022 as well as supplementary information made available subsequently by the authorities; desk research undertaken by the OECD Secretariat; and information gathered through virtual consultations with the main Romanian stakeholders in January and February 2022, and as well as an in-person mission to Bucharest in September 2022. The information contained in the review is up-to-date as of December 2022.

The OECD would like to thank the Romanian authorities and stakeholders for their co-operation and support for fact-finding meetings and information gathering during the review process, including representatives from the Ministry of Finance, Ministry of Economy, Ministry of Energy, Ministry of Transport, General Secretariat of the Government, Fiscal Council, Competition Council, Court of Accounts, National Authority for Energy Regulations, National Integrity Agency, National Anti-Corruption Directorate, as well as representatives from the private sector (Fondul Proprietatea), civil society (Transparency International), and selected SOEs.

This report was prepared by Emeline Denis under the supervision of Hans Christiansen, both of the Corporate Governance and Corporate Finance Division of the OECD Directorate for Financial and Enterprise Affairs. It was prepared for publication by Greta Gabbarini and Henrique Sorita Menezes.

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Abbreviations and acronyms

AmCham	American Chamber of Commerce
AGM	Annual General Meeting
ANI	National Integrity Agency
ANRE	National Authority for Energy Regulations
Bil	Billion
BoD	Board of directors
BVB	Bucharest Stock Exchange
CEO	Chief Executive Officer
CFO	Chief Finance Officer
CoA	Court of Accounts
DNA	Anti-corruption Directorate
EC	European Commission
EGSM	Extraordinary General Shareholders' Meeting
EU	European Union
EUR	Euros
FSA	Financial Supervisory Authority
FTSE	Financial Times Stock Exchange
GCI	Global Competitiveness Index
GDP	Gross Domestic Product
GO	Government Decision
GEO	Government Emergency Ordinance
GSG	General Secretariat of the Government
IFRS	International Financial Reporting Standards
IPO	Initial Public Offering
ILO	International Labour Organization
IMF	International Monetary Fund
JSCs	Joint-stock companies
KPIs	Key performance indicators
LLCs	Limited liability companies
Mil	Million
MoF	Ministry of Finance
NAS	National Anti-Corruption Strategy
NATO	North Atlantic Treaty Organization
OECD	Organisation for Economic Co-operation and Development
OMPF	Order of the Minister of Public Finance
RoA	Return on Assets
RoE	Return on Equity
RON	Romanian currency (Lei)
RRP	Recovery and Resilience Plan
SOEs	State-Owned Enterprises
SOE Guidelines	OECD Guidelines on Corporate Governance of State-Owned Enterprises
USD	United States dollar

Executive summary

State-owned enterprises (SOEs) play an important role in the Romanian economy – in terms of their overall volume, but even more so because of their role in systemically important sectors such as energy and transportation. The total SOE sector is valued at approximately USD 19 billion and employs around 183 000 people. Compared with other post-transition economies, Romania has a relatively large portfolio of listed SOEs, which have played a significant role in developing the stock market. Eighteen majority-owned SOEs are traded on the stock exchange, the largest and most valuable of which are concentrated in the energy sectors (i.e. hydrocarbons and electricity). Overall, however, there is high heterogeneity in the performance of SOEs. While the state's portfolio has showed positive returns on equity and assets in recent years (albeit significantly less than private firms), this is entirely attributable to the five most profitable SOEs without which the aggregate operating result would be sharply negative. Further, while the median SOE is slightly larger than the median non-SOE in terms of asset size, SOEs underperform significantly compared to non-SOEs both in terms of sales and profitability.

To address concerns regarding the inefficiency of SOEs, the Romanian Government has undertaken important reform efforts to improve the governance and performance of its SOEs. Starting in 2011, it adopted GEO no. 109/2011, later amended and approved by Law no. 111/2016 and supplemented with GD no. 722/2016, which provides for a strong legal and regulatory framework for the ownership and corporate governance of SOEs, and brought forward important institutional and procedural changes. Most notably, ownership arrangements were streamlined in order to delineate state ownership from regulatory functions, with the establishment of 'corporate governance structures' within line ministries, and a co-ordination function attributed to the Ministry of Finance. Transparent selection procedures for board and executive members were also introduced with the aim of professionalising SOE boards and improving their operational autonomy, and a clear objective-setting and performance monitoring framework for SOEs was adopted.

However, significant implementation shortcomings exist. As both legislations were adopted under the influence of international financial institutions in 2011 and 2016, implementation efforts seem to have stalled once the respective reform projects were terminated, which may signal a lack of sufficient political will to ensure continued implementation of the provisions of the legal framework. In some cases, ownership practices seem to have regressed towards earlier practices of excessive political influence in the more economically important companies.

The professionalism and autonomy of boards of directors of Romanian SOEs are of particular concern, with actual selection practices of SOE board and executive members significantly departing from the framework envisaged by the law. Indeed, the law currently allows for the appointment – and reappointment – of 'interim directors' at the discretion of the state if no adequate directors can be identified via the prescribed nomination procedures. At present, a majority of SOEs operate with such interim boards, which may be politically connected. This is also detrimental for the objective-setting framework for SOEs, as key performance indicators are intertwined with the directors' employment terms, which in turn materially weakens the exercise of financial and non-financial controls over individual companies. In addition, non-compliance with financial and non-financial disclosure requirements remains high across SOEs, especially

with regard to the disclosure of annual financial statements, audit reports, the annual directors' reports, board and executive remuneration, and the resolutions of general meetings of SOEs, which raises concerns about their accountability and oversight.

Further, the ownership framework remains widely decentralised across line ministries, and the co-ordination functions that are vested in the Ministry of Finance appear limited. In particular, its sanctioning powers, while frequently employed, are not strong enough to deter widespread cases of non-compliance with corporate governance provisions. Moreover, corporate governance structures of line ministries are sometimes lacking resources and expertise to effectively exercise their ownership rights and are not effectively insulated from ministerial regulatory and policy making functions in some instances. In addition, although a state ownership policy was issued at the same time as important amendments to the legal framework on SOEs in 2016, it appears that it is not well known among the main stakeholders and is not actively implemented.

The maintenance of a level playing field between SOEs and private companies is another potential area of concern. Although Romania abides by the state aids provisions of the EU Single Market, several areas of concern remain. These include the existence of "autonomous administrations" (i.e. SOEs with non-standard forms of incorporatisation); low and non-market consistent profitability requirements of a number of companies; and the exemption from insolvency procedures of debt owed by distressed SOEs to the state. Moreover, while Romania's practice of listing minority stakes in SOEs in stock markets should be considered as a good practice, questions remain about the treatment of minority investors in companies that retain important public policy objectives.

Going forward, Romania should seek to design adequate mechanisms to ensure and oversee the continued implementation of existing corporate governance provisions applicable to SOEs. It should however be noted that these challenges are also subject to the reform commitments undertaken by the Romanian authorities in the context of the European Union's Recovery and Resilience Plan.

1 The state-owned enterprise landscape in Romania

This chapter first discusses the Romanian business environment and capital market before providing an overview of the state-owned enterprise sector – including information regarding its size, sectoral distribution, and economic and financial performance. It then outlines the legal and regulatory frameworks bearing on SOE governance, including details on the general corporate governance framework as well as on sectoral laws and regulations applicable to SOEs. It finally describes ownership arrangements and examines how the state exercises its ownership rights, with a particular focus on policies and practices underpinning board and executive appointments, performance monitoring and financial oversight of SOEs.

1.1. Economic and political context of Romania

Romania is located in South-eastern Europe, bordering on the Black Sea. It has a population of 19.3 million people as of 2020 (OECD, 2022[1]). It is a unitary state with a central government under which regional and sub-regional authorities exercise delegated powers. The intermediate administrative level consists of 41 counties.[1] Lower-level administrative units are categorised as either 'towns' or 'communes'. Romania joined the North Atlantic Treaty Organisation (NATO) in 2004 and the European Union (EU) in 2007.

Table 1.1. Selected economic and social indicators for Romania (2018-21)

	2018	2019	2020	2021*
	Current prices RON billion	Percentage changes, volume (unless stated otherwise)		
Real GDP growth	951.7	4.2	-3.7	6.3
* Private consumption	607.3	3.9	-5.1	4.1
* Capital formation	200.4	12.9	4.1	7.5
* Experts of goods and services	398.4	5.4	-9.4	11.3
Inflation rate, average consumer prices		6.8	3.8	5.3
General government fiscal balance (% of GDP)		-4.4	-9.3	-8.0
General government gross debt (% of GDP)		44.5	59.4	62.4
Unemployment rate (% of labour force)		3.9	5.0	5.1
Current account balance (% of GDP)		-4.9	-5.0	-6.5
GDP per capita (EUR – current prices)	10 500	11 520	11 360	..
At-risk-of-poverty rate (% of total population)	32.5	31.2	30.4	..

Note: * Estimate made in late 2021.
Source: OECD (2022[1]) *OECD Economic Surveys: Romania 2022*, https://www.oecd-ilibrary.org/economics/oecd-economic-surveys-romania-2022_e2174606-en and Eurostat.

Economy. After a difficult transition to a market-based economy in the 1990s, and notwithstanding current weaknesses caused by the COVID-19 induced crisis, Romania's economy has improved significantly over the last decade. In less than 20 years, Romania has reduced the gap in GDP per capita to the OECD average by half, from close to 70% to around 35% (OECD, 2022[1]). That said, the crisis hit the economy hard as GDP fell by 3.7% in 2020 before surpassing its pre-crisis level in 2021 (Table 1.1). In its 2022 Economic Survey of Romania, OECD recommends a strong commitment to structural reform, bolstered by the availability of funding connected with the EU Recovery and Resilience Plan, to return the Romanian economy to a long-term trajectory of growth above the European average (OECD, 2022[1]).

The risks facing Romania's economy include inequality and fiscal sustainability. Despite the progress achieved so far, Romania has the second-lowest GDP per capita (at EUR 11 360) among EU member states and likewise, according to Eurostat estimates, one of Europe's highest shares of population who are at risk of poverty. While Bucharest and many secondary cities have become hubs of prosperity and innovation, poverty remains widespread in rural areas. In addition, while Romania's government debt at just over 60% of GDP is not in itself alarming, the persistent public budget deficits raise concerns about debt sustainability that will need to be addressed in the medium term.

Government. Romania is a semi-presidential republic, with a division of powers between parliament and the president's office as established by the Constitution of 1991. The head of state is the President, elected for a period of five years and eligible for a second term. The current president has served since 2014. Parliament is bicameral, consisting of a Senate with 136 seats and a Chamber of Deputies with 330 seats. Members of both chambers are directly elected by party-lists and serving for a period of four years. The

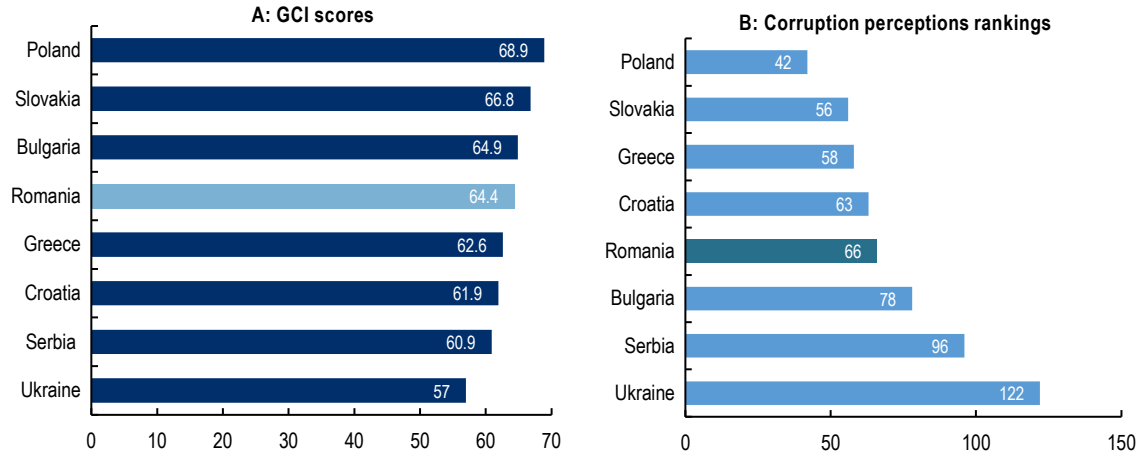
head of government is the Prime Minister who is appointed by the President with the consent of parliament. The Council of Ministers (Romania's cabinet) is appointed by the Prime Minister.

Following parliamentary elections in December 2020, the largest parliamentary party is the Social Democratic Party (PSD) with 29.3% of the votes for Senate and 28.9% of the votes for the Chamber of Deputies. In second place came the National Liberal Party (PNL – 25.6% and 25.2% respectively), followed by the USR-PLUS Alliance[2] (15.9% and 15.4%) and the Alliance for Unity (AUR – 9.2% and 9.1%). The current government is a "grand coalition" including the two largest parties whose leaders have agreed to serve as Prime Minister on a rotating basis. The current office holder is Mr. Nicolae Ciuca who heads the PNL; he will cede the post to the leader of the PSD in May 2023.

Legal system. Romania is a civil law jurisdiction wherein the national Constitution and acts of parliament are the primary source of law. Because Romania is an EU member state, its legal system treats EU law as binding. Structurally, the judicial system comprises three instances for civil, administrative and criminal matters: 188 local courts (*judecatorii*); 41 country courts (*tribunale*); 15 Courts of Appeal (*curti de apel*); and the High Court of Cassation and Justice, which is the court of last instance. A number of specialised courts also exist, including family courts and commercial courts, as well as a separate military court system. The Constitutional Court of Romania acts as an independent constitutional jurisdiction and is not part of the ordinary court system.

Business environment. Romania ranked 55th out of 190 countries in the 2020 version of the now-discontinued World Bank *Ease of Doing Business* report, and 51st out of 141 economies in the Global Competitiveness Index (GCI) 2019 (Figure 1.1). Whilst hardly impressive, these rankings do not differ significantly from the respective indices' ranking of other post-transition economies in like circumstances. With respect to integrity, Romania ranked 66th out of 180 countries (with 1 being the best and 180 the worst) in Transparency International's 2021 Corruption Perceptions Index.

Figure 1.1. Business climate indicators in Romania



Note: The GCI Index provides a scorecard of competitiveness on a scale from 0 to 100; hence a high score indicates a high degree of competitiveness. The corruption perception index is the ranking of each country in terms of its perceived level of corruption; hence a high score indicates a high risk of corruption.

Source: World Economic Forum (2019[2]), *The Global Competitiveness Report*, https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf; Transparency International (2021[3]), *Corruption Perceptions Index*, https://www.transparency.org/en/cpi/2021

Capital market. The Bucharest Stock Exchange (BVB) was re-established as a public interest institution in 1995 after a long period of inactivity. In 1997, the exchange listed the first companies of national

importance and created the first stock market index BET. The exchange was demutualised and became a joint-stock company in 2005. The BVB also merged with Rasdaq, the Electronic Exchange of Securities from Bucharest that same year. In 2010, the BVB became a listed company with its shares trading on the Regulated Market. In 2015, the exchange launched the AeRO market, a multilateral trading system (MTS) dedicated to serving SMEs. By the end of 2020, 72.17% of BVB's share capital was in the hands of Romanian institutional investors, 5.25% was owned by foreign institutional investors and 19.96% by Romanian private individuals.[3]

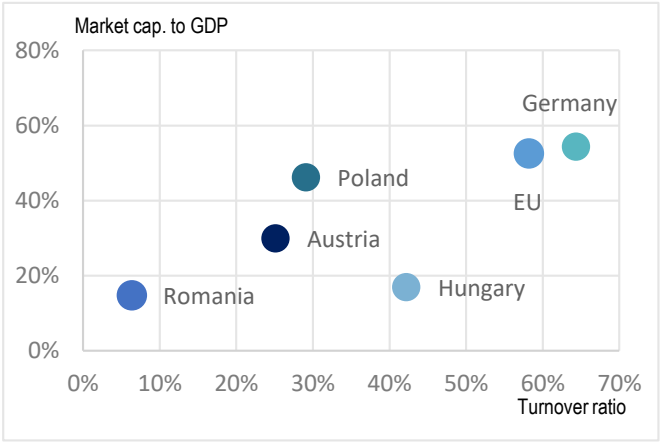
The Bucharest Stock Exchange operates two markets: the Main Market, which is the regulated market, and the alternative trading system, the AeRO market. The Main Market targets large mature companies, whereas the AeRO market is designed for SMEs. To become listed on the Main Market, companies are required to be legally structured as a joint-stock company and to have a minimum market capitalisation of EUR 1 million. In addition, companies are required to have at least a 25% free-float and a minimum of three years of financial reporting history. There are specific requirements for the three tiers of the Main Market: Premium, Standard and International.

The AeRO market is designed to serve the needs of SMEs. A company wanting to list on AeRO needs to have an anticipated market value of at least EUR 250 000 and a minimum of 10% free-float or at least 30 shareholders. Companies seeking to raise capital on this market have to be established as a joint-stock company (SA) prior to the listing. Specific requirements apply to companies listed on the three tiers of the AeRO market: Premium, Standard and MTS International.

By the end of 2020, the Main Market of the BVB listed 76 companies, of which 54 (71%) were listed on the Standard tier, 19 on the Premium tier and three on the International one. The market capitalisation of the Main Market totalled EUR 28.8 billion, with EUR 1.7 billion in the Standard tier, EUR 15.6 billion in the Premium and EUR 11.5 billion in the International tier. The AeRO Market listed 242 companies of which 222 (92%) were in the Standard tier. The market capitalisation of this segment totalled EUR 1.2 billion. Importantly, 18 companies listed on the BVB were identified as SOEs.[4] Of these, nine were listed on the Main Market (three on the Standard tier and six on the Premium tier) and nine on the AeRO market (all on the Standard tier).

The Romanian equity market is still in a developing stage. When compared to EU and other peer countries, its market capitalisation to GDP and its turnover ratio are the lowest. However, it is worth mentioning that developing the capital market has been one of the Financial Supervisory Authority (FSA)'s main objectives since 2014. An important milestone for the Romanian capital market was the upgrade from Frontier to Secondary Emerging market status by the global index provider FTSE Russell. The reclassification as Secondary Emerging market increases the visibility of the Romanian stock market and decreases the country risk premium since the new status places Romania in the investable universe of a wider range of investors. In addition, a series of measures were adopted to increase transparency and ease market access overall, raising the attractiveness of the local capital market.

Figure 1.2. Market capitalisation and turnover (end of 2020)



Note: Turnover ratio corresponds to the total value traded over the market capitalisation.
Source: OECD (2022[4]), *Capital Market Review of Romania: Towards a National Strategy*, OECD Publishing, Paris, https://www.oecd.org/corporate/capital-market-review-of-romania-9bfc0339-en.htm

With respect to investors, as of early 2020, private corporations and holding companies was the largest investor category holding 30% of the listed equity in Romania. Their relative importance as owners in the equity market is higher compared with other European peer countries and the EU. The public sector ranked second owning 29% of the total market capitalisation. Institutional investors held 15% of the listed equity in Romania, a relatively low participation compared with their importance in other European markets such as Germany, Hungary and Poland where they own around 30% of the listed equity. In terms of ownership structure, the Romanian stock market is fairly concentrated. In six of every ten listed companies, the largest single shareholder holds over 50% of the equity capital. This level of control and concentration is much higher than in other European countries. Around one-third of the listed equity was in the hands of foreign investors.

1.2. Overview of the Romanian state-owned sector

1.2.1. Number and type of state-owned enterprises

There is a sizeable state-owned enterprise sector in Romania. According to data provided by the Ministry of Finance, as of end 2020, the state-owned stakes (between 1%-100%) in 860 enterprises, of which 410 were majority-owned (with the state owning at least 50% of the ordinary share capital or voting rights). Out of the remaining 450 enterprises, 205 had state holdings of between 10%-49% of shares or voting rights, which implies that in some circumstances they could be considered as SOEs under the terms of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (the "SOE Guidelines").

It is important to note, however, that as of 2020, 194 majority-owned (and 88 minority-owned) SOEs were in insolvency proceedings. According to the provisions of Law no. 85/2014 on insolvency, these firms are considered inactive (and exempted from corporate governance requirements). The remainder of this report focuses on the 216 active majority-owned SOEs under the oversight of central government institutions, and on the legal and administrative provisions applicable to them.

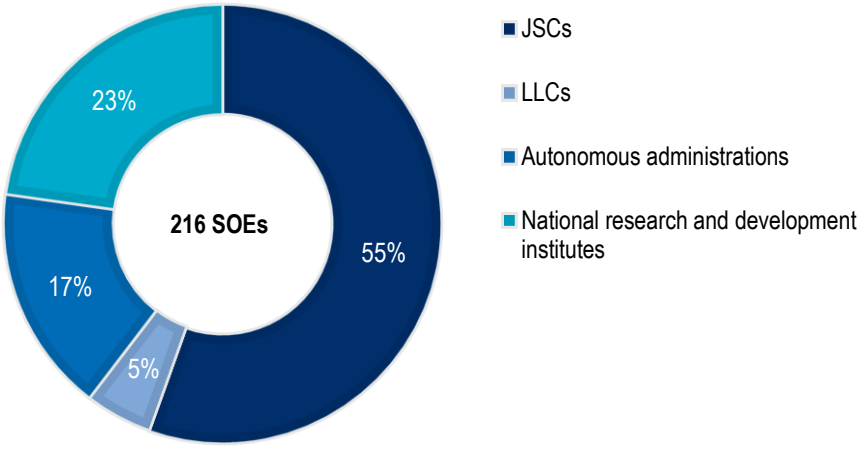
1.2.2. Legal forms of SOEs

State-owned enterprises in Romania can basically take three legal forms: (i) joint stock companies (JSCs); (ii) limited liability companies (LLCs); and (iii) autonomous administrations. The first two categories are legal forms identical to the ones found among private enterprises, as provided by Romania's Companies Law (no. 31/1990). As mentioned above, all stock-market listed SOEs must have the form of joint stock companies. As of end 2020, there were 121 JSCs (18 of which listed) and ten LLCs in Romania.

Autonomous administrations (known as "regii autonome" in Romanian) are statutory corporations fully-owned by the state which are subject to Law no. 15/1990 on the reorganisation of state economic units as autonomous administrations and companies, with subsequent amendments. As of end 2020, there were 36 autonomous administrations in Romania. Overall, all SOEs regardless of their legal form are subject to the corporate governance provisions of GEO no. 109/2011 (as amended and approved by Law no. 111/2016), which stands as the main law on state-owned enterprises (see section 1.3 for details).

While *national research and development institutes*[5] also exist to carry out public policy objectives, they are exempted from the application of corporate governance provisions otherwise applicable to SOEs and are only subject to Law no. 324/2003 amending and approving Government Ordinance no. 57/2002 on scientific research and technological development. As of end 2020, there were 49 such national research and development institutes.

Figure 1.3. Breakdown of majority-owned and active SOEs according to their legal forms (as of end 2020)



Source: Information provided by the Romanian authorities.

1.2.3. Size and sectoral distribution of the SOE sector

Reflecting, in part, large-scale privatisations in previous decades, SOEs still play an important role in the Romanian economy – in terms of their overall volume, but even more so because of their role in systemically important sectors such as energy and transportation. The total SOE sector is valued at approximately USD 19 billion and employs around 183 000 people (Table 1.2). Based on the table, Figure 1.3 and Figure 1.4 provide an additional overview of the sectoral distribution of Romania's state-owned sector.

One characteristic of Romania's SOE landscape is that the country has an internationally very high share of statutory corporations (85 out of a total 216 active companies). However, in terms of economic weight,

the picture is a bit different: the statutory corporations account for a relatively limited 14% of the sector's total valuation and 21% of its employment. In addition, just two large firms account for a large share of the statutory corporations' employment and equity value, namely the national property administration (RAAPPS) and the forestry service (Romsilva).

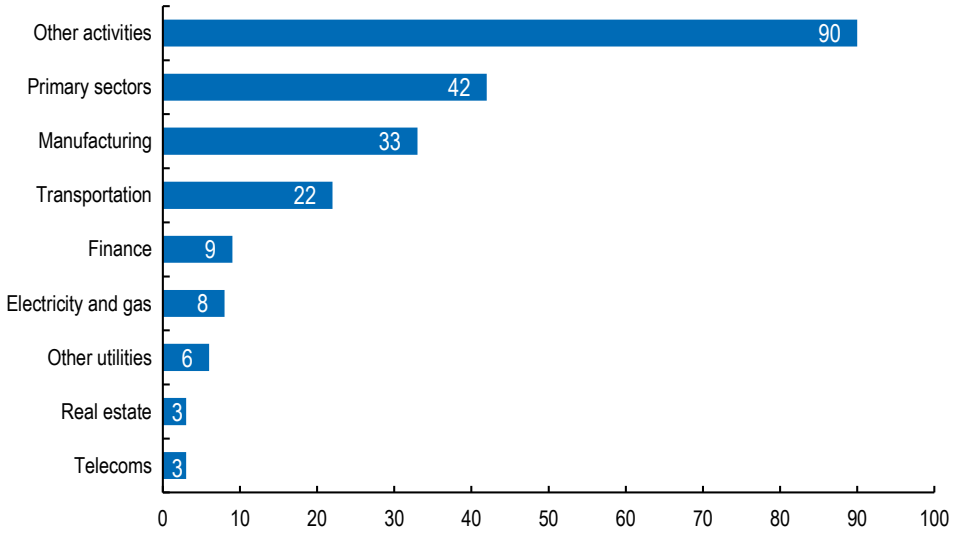
Table 1.2. Size and sectoral distribution of Romania's central state-owned enterprise sector (end-2020)

	Majority-owned listed entities			Majority-owned unlisted enterprises			Statutory corporations		
	N° of enterprises	N° of employees	Value (USD mn)	N° of enterprises	N° of employees	Value (USD mn)	N° of enterprises	Number of employees	Value (USD mn)
Primary sectors	1	5 673	2 731	18	3 034	249	23	15 336	192
Manufacturing	5	3 237	243	25	10 111	235	3	731	83
Finance				9	7 485	1 988			
Telecoms				3	2 171	198			
Electricity and gas	2	4 032	1 832	6	18 142	4 118			
Transportation	3	6 715	1 034	15	50 710	2 829	4	2 575	122
Other utilities (including postal services)				6	33 385	584			
Real estate				2	46	23	1	2 073	1 306
Other activities	7	140	38	29	6 039	626	54	11 561	576
Total	**18**	**19 797**	**5 878**	**113**	**131 113**	**10 850**	**85**	**32 276**	**2 280**

Note: Value of enterprises denotes market valuation in the case of listed companies and book equity value for the rest.
Source: Information provided by the Romanian authorities.

Figure 1.4 provides an overview of the sectors in which individual SOEs are found. Like in other countries, the collectively classified "other activities" predominate, and as in other countries these companies tend to be comparatively small special-purpose entities found across all parts of the public sector. Moreover, in the case of Romania, 54 of them are statutory corporations mostly taking the form of national research and development institutes. A further large cluster of mostly small companies is found in the primary sectors, which span from the extractive industries to agriculture and forestry.

Figure 1.4. Sectoral distribution by number of central majority-owned enterprises (2020)

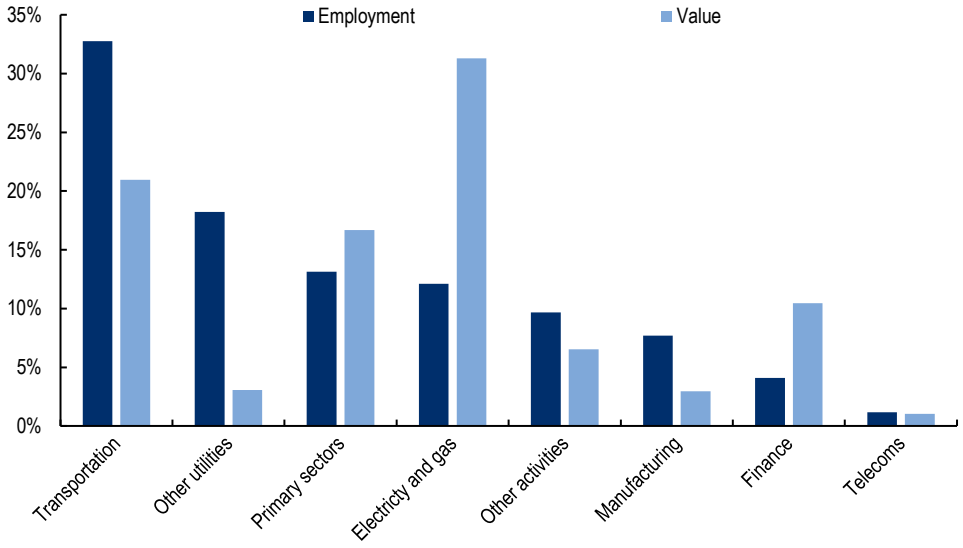


Note: Other utilities include the postal service. Data includes the 216 central majority-owned listed and unlisted SOEs, as well as statutory corporations, that were active as of end 2020.
Source: Information provided by the Romanian authorities.

However, in terms of economic importance, the sectoral distribution is quite different. Figure 1.5 illustrates that in value terms, most of the state-owned economy is concentrated in just two sectors, namely energy (which in the figure is spread over "electricity and gas" and the "primary sectors") and transportation. By far the largest employers in the state-owned sector are found in the transport sector (which includes pipeline operators and hence is partly linked with the energy sector) with close to a third of the overall SOE employment. This is followed by the "other utilities" which account for 18% of Romania's SOE employment, the "primary sectors" (13%) and "electricity and gas" (12%).

These sectoral differences do to a large extent reflect the importance of a few, large state-owned enterprises, which are described in more detail in a later section of this report. For instance, the railway sector (which in Romania includes two operating companies and one infrastructure owner) is by far the largest individual employer in the state-owned sector, followed by the postal company and the forestry industry. In terms of valuation, again, the energy sector stands out. The electricity generators Hidroelectrica and Nuclearelectrica come first and third in terms of valuation. The natural gas producer Romgaz is second. Finally, one reason for the high values of companies related to the energy sector is that many of them are listed in stock markets, which tends to raise corporate valuation.[6] The role of individual listed SOEs is reviewed in more detail below.

Figure 1.5. Sectoral distribution of the central SOE sector by value and employment (2020)

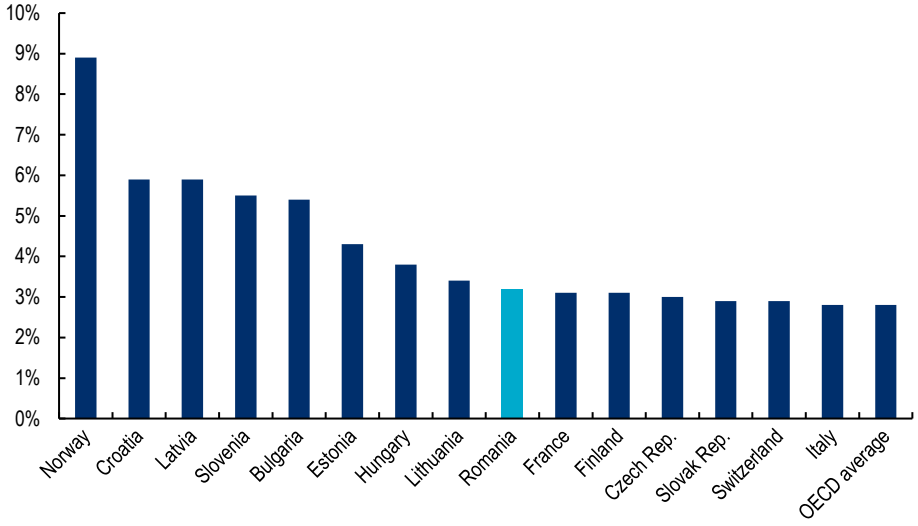


Note: Other utilities include the postal service. Data includes the 216 central majority-owned listed and unlisted SOEs, as well as statutory corporations, that were active as of end 2020.
Source: Information provided by the Romanian authorities.

1.2.4. SOEs' share of the economy

In the absence of detailed GDP figures for the state-owned sector, the OECD relies on the share of employment to illustrate SOEs' relative weight in the economy. An estimate is provided in Figure 1.6.

Figure 1.6. SOEs' share of total dependent employment compared with other countries



Source: OECD Secretariat estimates based on data collected for OECD (2017[5]), *The Size and Sectoral Distribution of State-Owned Enterprises*, https://www.oecd-ilibrary.org/governance/the-size-and-sectoral-distribution-of-state-owned-enterprises_9789264280663-en and OECD Labour Force Statistics Database, http://dotstat.oecd.org/

At the national level, SOEs employ 183 181 people. As a share of the dependent employment[7] this is 3.2% which is somewhat above OECD average (Figure 1.6), but relatively low compared with most other post-transition economies. Of note, this does not provide a full picture of state involvement in Romania's corporate sector as the country has an unusually large number of enterprises held by regional and municipal authorities. However, these "sub-national SOEs" fall outside the scope of the present study.

1.2.5. SOEs listed in stock markets

Compared with other post-transition economies, Romania has a relatively large portfolio of stock-market listed SOEs. Overall, 18 majority-owned SOEs are traded on the stock exchange. This includes eight that are listed on the exchange's main market and ten that are traded on the alternative trading system known as the "AeRO market". In another eight companies the state holds sizeable minority stakes (including three on the main market and five on the AeRO Market). The state invested companies account for 14.2% of market capitalisation. Romgaz (with 70% of state ownership) is the only double-listed SOE; since 2013 it has been admitted to trading both on the Bucharest Stock Exchange and the London Stock Exchange.

The largest and most valuable listed SOEs are concentrated in the energy sectors (i.e. hydrocarbons and electricity). Table 1.3 shows that, as earlier alluded to, the largest five majority state-owned companies all fall within these sectors. So does the oil producer OMV Petrom, until recently the most highly valuated listed company in Romania, in which the state has retained a sizeable minority stake after selling the majority to Austria's ÖMV. A complete list of stock-market traded companies with a consolidated public sector ownership of at least 10% is provided in Annex B.

Among the other four listed companies, Electrica, whilst formally categorised as a "management consultancy" firm, is actually a key player in the electricity distribution and supply market in Romania. With the state holding 48.8% of the shares, and in the absence of other large blockholders, this company would be categorised as an SOE in the sense of the SOE Guidelines since the state can effectively control it. Conversely, the state's stake in the oil refiner Rompetrol (at 44.7%) is actually exceeded by that of another shareholder, Kazakhstan's KazMunayGaz (which holds 48.1%).

Table 1.3. The ten largest listed companies with a state participation exceeding 10%

Company name	Main sector of operations	Stock market(s) of listing	State ownership share	Market capitalisation (USD mill.; end-2020)
OMV Petrom	Extraction of crude petroleum	Bucharest main market	20.6%	5 192
Romgaz	Extraction of natural gas	Bucharest main market and London Stock Exchange	70.0%	2 731
Nuclearelectrica	Electric power generation	Bucharest main market	82.4%	1 358
Electrica	Management consultancy activities	Bucharest main market	48.8%	1 096
Transgaz	Transport via pipeline	Bucharest main market	58.5%	840
Rompetrol Rafinare	Manufacture of refined petroleum products	Bucharest main market	44.7%	489
Transelectrica	Electric transmission and distribution	Bucharest main market	58.7%	473
Conpet	Transport via pipeline	Bucharest main market	58.7%	166
Transcom	Maintenance and repair of motor vehicles	Bucharest AeRO	48.1%	86
Antibiotice	Manufacture of pharmaceuticals	Bucharest main market	53.0%	82

Source: Information provided by the Romanian authorities.

In addition to now being among the companies in the stock markets, Romania's listed SOEs have also played a significant role in developing the markets. A recent OECD study of Romania's capital markets found that the four largest IPOs of all time in Romania concerned SOEs (Table 1.4). This was part of a deliberate strategy by various governments to use the listing of SOEs not only to enhance the governance of the companies but also to help develop the national stock markets. The large listings concerned energy companies and public utilities in the energy sector. On the one hand, this makes good sense because these companies were valuable and profitable, hence easy to bring to the market; on the other hand, it may raise some concerns about the protection of minority shareholders, since many of them are still subject to important public policy objectives that could change over time.

Table 1.4. The largest 10 initial public offerings on Romania's stock markets

Issuer name	Economic sector	SOE?	Year	Proceeds (EUR mill.)
Electrica	Utilities	Yes	2014	456.2
Romgaz	Energy	Yes	2013	399.0
Nuclearelectrica	Utilities	Yes	2013	75.7
Transgaz	Utilities	Yes	2007	69.1
Sphera Franchise Group	Consumer Cyclicals	No	2017	64.0
MedLife	Healthcare	No	2016	43.4
Transelectrica	Utilities	Yes	2006	34.4
SC Teraplast	Consumer Cyclicals	No	2008	14.9
Flamingo International	Technology	No	2005	12.3
Alumil Rom Industry	Consumer Cyclicals	No	2006	8.9

Source: OECD (2022[4]), *Capital Market Review of Romania: Towards a National Strategy*, OECD Publishing, Paris, https://www.oecd.org/corporate/capital-market-review-of-romania-9bfc0339-en.htm

1.2.6. Economic and financial performance of SOEs

The economic and financial performance of SOEs is important on efficiency grounds, but also because some Romanian SOEs represent an increasingly important source of revenues for the state budget. In 2001, Ordinance no. 64/2011 established that at least 50% of SOEs' net profit should be paid as dividends to the national or local budget. However, in response to growing fiscal pressures during the 2016-19 period (where increases in public expenditures concurred with a reduction of certain taxes), the law was amended by GEO no. 29/2017 to provide that SOEs' financial reserves may be redistributed in the form of dividends to the state of local budget.[8] In addition, GEO no. 114/2018 provides that 35% of SOEs' financial reserves found in cash should be distributed as dividends. As such, between 2016-19, some SOEs distributed 85%-90% of their net profits as dividends to the state budget.[9]

Overall, however, the growing fiscal reliance on dividends has concurred with a deterioration of SOEs' financial and operational performance. The European Commission, which regularly monitors the situation, has attributed the decline in operational performance largely to the weakness of the governance of the Romanian state-owned sector (Box 1.1). Moreover, while some SOEs do indeed remain quite profitable, most of the national state ownership portfolio is not.

Box 1.1. Performance of Romania's SOEs according to the European Commission

The findings below are drawn from the European Commission's 'Country Report Romania 2020' issued on 26 February 2020:

The performance of state-owned enterprises is deteriorating. The operational and financial results of state-owned enterprises declined substantially in 2018 and the first half of 2019. Aggregate profits, at RON 3.5 billion in 2018, decreased by 53% compared to 2017, according to the Ministry of Finance data. In particular, companies in the energy and transport sectors contribute to this situation. Arrears are also increasing again, having reached RON 4.4 billion (EUR 932 million) at the end of 2018, 11% higher than in December 2017.

The deterioration of corporate governance contributes to poor performance. Romania has a very solid corporate governance framework for state-owned enterprises, but its implementation has been limited. Loss-making companies are not asked to restructure or modify their business plans. Debts to the state budget, social security or other state-owned enterprises amount to 90% of all arrears by state-owned enterprises, which represents a financial risk for the state but also demonstrates a permissive attitude from public sector suppliers and creditors. Interim boards and managers became a standard practice in most companies. The authorities applied 60 financial penalties for administrative offences under the corporate governance legislation, but the amounts tend to be symbolic. Furthermore, different Ministries and departments involved in overseeing state-owned enterprises seem to disagree increasingly on the respective responsibilities, despite clear allocations under the law.

The future of the Sovereign Development and Investment Fund is unclear. The creation of the Fund was announced in 2017. It should receive the state's shares in some 30 state-owned enterprises to boost investment, but with unclear objectives or strategy. A first law was approved in spring 2018 but rejected by the Constitutional Court. In November 2018, the government addressed the Court's concerns and adopted framework legislation. It accelerated the assessment of how to create the Fund outside the budget perimeter, but plans are unclear.

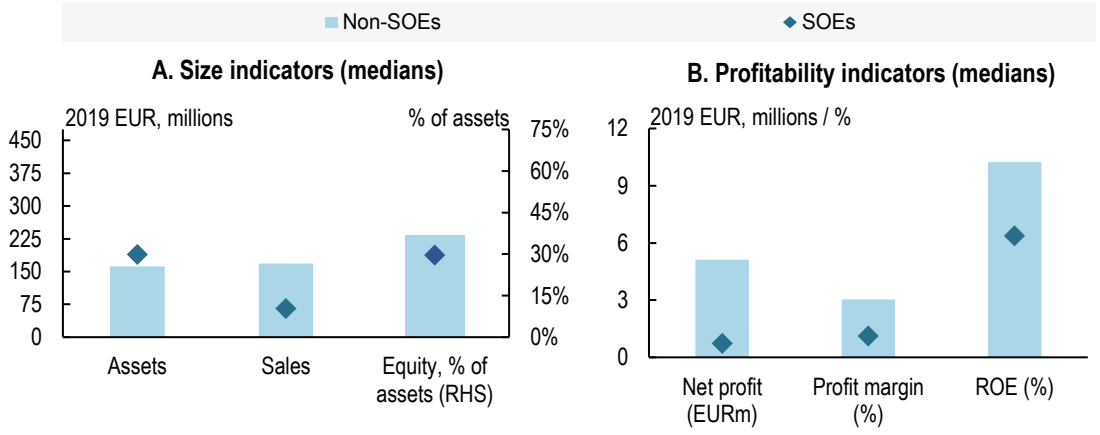
Source: European Commission (2020[6]), *European Semester Country Report Romania 2020*, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0522&from=EN

A 2022 report by the Romanian Fiscal Council observed that while the state's portfolio has showed positive returns on equity and assets in most recent years (albeit significantly less than private firms), this is entirely attributable to the five most profitable SOEs without which the aggregate operating result would be sharply negative. This report moreover seems to confirm the European Commission's assessment that the situation has deteriorated in recent years. In 2019, the state-owned companies registered an aggregate net loss of RON 1.8 billion, and while 2020 recorded a return to positive territory with a total net profit of RON 0.9 billion, this reflected one-off government assistance to enterprises related to the COVID-19 crisis (Romanian Fiscal Council, 2022[7]). While there is high heterogeneity in the performance of SOEs, central SOEs in the portfolios of the ministries of economy, energy and transport produce 75% of total declared revenues (74% net of subsidies) and receive 87% of total subsidies. However, when adjusted for subsidies, the profit of the central SOEs in the portfolio of the Ministry of Economy and the Ministry of Transport in particular fall into negative territory, driving down overall performance significantly (World Bank, 2020[8]).

Recent analysis by the OECD sheds further light on the relatively weak performance of Romania's SOEs. OECD analysed a sample of 279 large unlisted companies of which 42 were identified as SOEs (defined in this study as a company where the state owns at least 20% of the share capital) (OECD, 2022[4]). A comparison of the respective size and indicators of financial performance of companies shows that while the median SOE is slightly larger than the median non-SOE in terms of asset size, SOEs underperform

significantly both in terms of sales and profitability (Figure 1.7). To the extent that SOEs provide services that the private sector will not, or is not suited to, due to an inherently low profitability in the specific industry, this is natural and not necessarily cause for concern. However, in the Romanian case, the gap between SOEs and non-SOEs is very pronounced. The cited study argues that this is an argument for listing a number of large SOEs in the stock market with the double purpose of enhancing their performance and making the markets deeper and more liquid.

Figure 1.7. Financial indicators for large SOEs and private companies (not traded in stock markets)

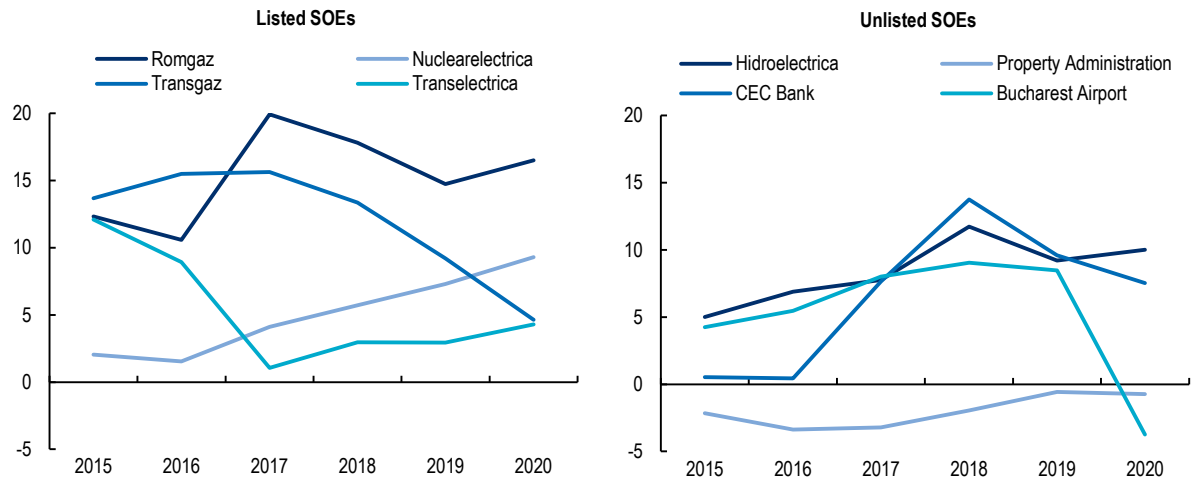


Source: OECD (2022[4]), *Capital Market Review of Romania: Towards a National Strategy*, OECD Publishing, Paris, https://www.oecd.org/corporate/capital-market-review-of-romania-9bfc0339-en.htm, based on data from the OECD-ORBIS Corporate Finance dataset.

The development of financial performance indicators in some of the largest SOEs shed further light on these findings. Figure 1.8 shows the rate of return on equity (RoE) of four listed and four unlisted Romanian SOEs since 2015. The figures apparently confirm the notion that unlisted SOEs have not been particularly profitable. The RoEs of unlisted SOEs have in recent years varied in a band from -5% to 15% compared with 0% to 20% for the listed firms, which can be expected to show a performance that is closer to their private sector peers. At the same time, the variation among firms is considerable. The most consistent performer among the unlisted firms has been Hidroelectrica (as mentioned elsewhere a top candidate for privatisation) with a RoE generally around 10%.[10] Bucharest Airport was also quite profitable until the COVID-19 induced crisis triggered major losses. Conversely, the National Property Administration statutory corporation (Regia Autonomă Administrația Patrimoniului Protocolului de Stat, RA AAPS) has been consistently loss-making for the last many years.

Additional corporate information not on display indicates that the overall poor performance of unlisted SOEs observed in Figure 1.8 may be in part triggered by particularly bad results in a small number of large firms. In particular, the rail freight company CFR Marfa recorded mounting deficits in 2015-17, which wiped out its equity capital and led to a major recapitalisation.

Figure 1.8. Rates of return on equity in large listed and unlisted SOEs (2015-20)



Source: Information provided by the Romanian authorities.

1.2.7. Perspectives on privatisation

In the context of Romania's transition from a post-communist economy to a market-based system, Law no. 15/1990 undertook the restructuring of state enterprises into commercial companies with share capital and fully-owned autonomous administrations (regii autonome), the latter thus remaining as state property and solely operating in strategic economic sectors such as defence production, transport, energy, natural gas and mining. The law also created the National Agency for Privatisation (NAP) tasked with organising the privatisation process and ownership certificate programme (i.e. the Mass Privatisation Programme). Further privatisation efforts were undertaken by Law no. 58/1991, Law no. 55/1995 and Law no. 77/1994.

In the aftermath of the 2008 global financial crisis and as part of Romania's commitments under the IMF-EU-World Bank economic recovery programme, efforts were made to accelerate privatisations, focusing on state-owned companies operating in the energy sector. Through initial public offerings (IPOs), 10% of the share in nuclear energy company Nuclearelectrica were sold in November 2013, and 15% of the shares in the state-controlled gas producer Romgaz were sold in November 2013. Both IPOs were oversubscribed and generated about EUR 450 million in gross proceeds (IMF, 2014[9]). While the Romgaz transaction was completed at the upper end of the price range, the Romgaz IPO was the first time a Global Depository Receipts (GDRs) was issued in conjunction with a public offering on the Bucharest stock exchange. A dual listing of Electrica on both the Bucharest and London Stock Exchanges was undertaken in 2014, which had a significant impact on its capitalisation and liquidity.

In the context of the COVID-19 pandemic, privatisation efforts came to a halt in 2020, with the enactment of a two-year ban on the sale of SOE shares that was formally motivated by concerns about having to sell state assets at artificially low prices. The ban expired in 2022.

In March 2022, the initiation of the listing of the shares of Hidroelectrica on the Bucharest Stock Exchange was approved by the shareholders (including the Ministry of Energy with 80.06% of the shares, and Fondul Proprietatea with 19.94% of the shares), with Fondul as the selling shareholders of up to 19.94% of the share held in Hidroelectrica. The listing is aimed to be completed by Q1 2023. Further, the listing of Salrom (51% state-owned, with 49% of the shares held by Fondul) was approved by the shareholders in July 2021 and approved by government memorandum in July 2022. As part of its commitments under the EU Recovery and Resilience Plan, Romania should also list, lease or restructure at least three central

state-owned companies operating the energy and transport sectors by Q2 2026 (European Commission, 2021[10]).

1.3. Legal and regulatory framework

1.3.1. Main laws and regulations on corporate governance

Companies Law no. 31/1990

The Companies Law no. 31/1990 is the primary legislation for the corporate sector in Romania. It applies to all companies, and contains provisions regarding the management of the company, the appointment and dismissal of board members and executive managers, the composition and functioning of the management bodies and the remuneration of their members, as well as their responsibility, revocation and liability towards the company. According to the law, a company may be established as a general partnership, limited partnership, joint-stock company, partnership limited by shares, and a limited liability company.

The Companies Law was amended several times,[11] with significant revisions driven by Romania's efforts to join the European Union and introduced in 2004, 2006 and 2007 in order to comply both with the European Commission's recommendations on corporate governance and the OECD Corporate Governance Principles.[12] In particular, Law no. 441/2006 brought substantial reform by introducing two alternative corporate management systems (the one-tier and two-tier system), as well as significant changes to the rights, duties, attributions and powers granted to the members of the management bodies of the companies.

Overall, the main amendments in 2006 and 2007 of the Companies Law aimed at enhancing corporate governance rules regarding: board independence; the requirement for the managers to inform the board of directors of their actions on a regular basis; the clear separation between executive and non-executive directors; the right of directors to request information from executive managers regarding the daily management of the company; independence requirements for board committee members; and the duty of loyalty for directors and executive managers.

Laws and regulations on capital markets

The Capital Market Law no. 297/2004 applies to all companies listed on the stock exchange or a recognised alternative trading system. It was amended by GEO no. 32/2012 and the subsequent Law no. 24/2017 regarding the issuers of financial instruments and market operations, and by Law no. 158/2020 which implements the 2017 EU Shareholder Rights Directive II. The law applies to listed SOEs (currently 18 majority-owned and eight minority-owned (10-49%) at the central level of government). It regulates the functioning of the financial instruments and markets, and provides for the rights and obligations of companies listed on the regulated market.

The law also defined the responsibilities of the former National Securities Commission (CNVM), which were later attributed to the Financial Supervision Authority (FSA) created by Government Emergency Ordinance no. 93/2012 approved by Law no. 113/2013 as an integrated regulatory and supervisory body for the non-banking financial market. The FSA is responsible for the authorisation, supervision and control of the insurance-reinsurance market, financial instruments and investments market and private pensions market.

National Corporate Governance Code

The Bucharest Stock Exchange (BVB) Code of Corporate Governance includes a set of principles and recommendations which can be adopted on a comply-or-explain basis by companies whose securities are traded on the regulated market. The first code was adopted in 2001. Following Romania's accession to the EU in 2007, a new code harmonised with European legislation was issued in 2008, recommending that issuers adopt a clear and transparent corporate governance framework, which should be disclosed to the general public. The code was revised in 2016 to enhance the recommendations around access to information for investors and the protection of shareholders' rights, in line with Romanian and European legislation. It applies to all listed SOEs, but there is no requirement or expectation that unlisted firms adhere to it.

The code differentiates two tiers of companies – standard and premium – with corporate governance requirements being more stringent on the latter. The code imposes obligations pertaining to having majority non-executive board members, minority shareholder protection, investor relations and shareholder engagement, internal audit, and board and executive remuneration.

In particular, it comprises four sections, each including general principles, as well as "provisions to comply with". According to the BVB rulebook, companies listed on the Bucharest Stock Exchange are required to include a corporate governance statement as a specific section in their annual report which should contain a self-assessment on how the "provisions to comply with" are observed, and include the measures taken in order to comply with the provisions that are not fully met. In accordance with the comply-or-explain principle, all cases where a company does not observe the "provisions to comply with" must be reported to the market via the company's annual report.

As part of its monitoring role regarding the implementation of the code, the Bucharest Stock Exchange (BVB) also published a Compendium of Corporate Governance Practices and a Manual for Reporting Corporate Governance in order to assist companies to implement the Code (BVB, 2015[11]; 2015[12])

1.3.2. Legal and regulatory framework applicable to SOEs

Law no. 15/1990 on the Restructuring of State Enterprises into Commercial Companies and Autonomous Administrations

As mentioned above, in 1990, the Law on the Restructuring of State Enterprises (Law no. 15/1990) undertook the conversion of the former socialist "state economic enterprises" into (i) commercial companies with share capital, and (ii) (fully-owned) autonomous administrations ("regii autonome"). The latter were to remain state property and operate only in strategic sectors of the economy, such as defence production, rail and urban transportation, energy, natural gas and mining. According to Article 18 of Law no. 15/1990, the legal form of the company is to be established by its articles of association. Government Emergency Ordinance no. 30/1997 further introduced the reorganisation of autonomous enterprises into companies, with the aim of submitting them to a privatisation process.

Government Emergency Ordinance no. 109/2011 on state-owned enterprises

Government Emergency Ordinance no. 109/2011 on corporate governance of public enterprises (hereafter referred to as "GEO no. 109/2011") represents the main framework for the ownership and corporate governance of SOEs in Romania. It was introduced in the aftermath of the 2008 global financial crisis which severely impacted the Romanian economy (including SOEs) and was conditioned on financial assistance agreements with the IMF, EU and World Bank.

Prior to the adoption of GEO no. 109/2011, SOEs (referred to in Romanian law as public enterprises[13]) operated on the basis of Law no. 15/1990 (autonomous administrations), while incorporated SOEs

operated under Law no. 31/1990 (companies). Since the former was deemed to comprise important gaps for the good governance of autonomous administrations, and the latter was deemed not adapted to the specificity of SOEs, it was considered necessary to develop new corporate governance mechanisms for SOEs, in addition to those regulated by the existing general legislation.[14]

According to the Romanian authorities, GEO no. 109/2011 was developed with explicit reference to OECD instruments, notably the SOE Guidelines and the G20/OECD Principles of Corporate Governance, and aimed to (i) establish transparent selection procedures for SOE board members and executive managers in order to safeguard their independence and objectivity, (ii) introduce mechanisms to protect the rights of minority shareholders, and (iii) increase transparency regarding the activity of SOEs and the state's shareholding policy. As such, GEO no. 109/2011 introduced provisions on, *inter alia*, the protection of minority shareholders, internal and statutory audit, transparency and reporting requirements. GEO no. 109/2011 was amended once by GEO no. 51/2014, until it was later approved and amended by Law no. 111/2016 (see details below).

Of note, the most important objective of GEO no. 109/2011 was reportedly to professionalise SOE boards by ensuring that directors are sufficiently qualified and are independent enough to discern and promote the interests of the company. As such, the Ordinance sought to limit political intervention in the appointment process by introducing detailed rules and criteria-based procedures for the selection of directors and executive managers, which are to be applied by independent committees or human resources recruitment specialists.[15] Other provisions include (i) the requirement for both boards and executive managers to draw "administration plans" outlining the company's objectives, (ii) the requirement to establish at least two board committees, and (iii) the right of minority shareholders to contest board nominations. All the specific provisions introduced by GEO no. 109/2011 compared to the general ones of the Companies Law no. 31/1990 are summarised in Table 1.5.

Table 1.5. Changes brought by GEO no. 109/2011 compared to the general provisions of the Companies Law (no. 31/1990)

Specific provisions	Details
Professional management	GEO no. 109/2011 requires minimum qualification criteria for the selection of SOE board members and executive management, which are not provided by Law no. 31/1990.
Procedures for the selection of board members	GEO no. 109/2011 provides for a specific process for the selection of board members and executive management, while the Companies Law entitles the boards of directors and general meetings of shareholders to decide on the selection and appointment of board members. For large enterprises, GEO no. 109/2011 requires the use of independent external consultants in the selection process. While representatives from line ministries are allowed to fill several seats on the boards, candidates are required to go through the due process of evaluation by the independent consultant.
Separation of responsibilities	According to GEO no. 109/2011, the chairperson of the board of directors cannot be the same as the general manager, whereas the Companies Law allows the general manager to act as chairperson of the board of directors, subject to the prior approval of the general meeting of shareholders.
Board and executive remuneration	GEO no. 109/2011 imposes certain basic rules and criteria for the remuneration of the company's management structures, while the Companies Law accepts the approval of the shareholders.
Limits on the number of board members	GEO no. 109/2011 provides that one-tier boards be comprised of at least five and a maximum of nine directors, while the Companies Law has no provisions regarding these. For two-tier boards, GEO no. 109/2011 provides that they be comprised of between three to seven members.
Board committees	GEO no. 109/2011 requires boards to set-up at least two committees (an audit committee, and a nomination and remuneration committee), while the Companies Law only suggests that board committees can be established (except for JSCs whose annual financial statements are subject to financial audit, where the creation of an audit committee shall be mandatory).
Administration plan	GEO no. 109/2011 requires executive and non-executive directors to jointly elaborate an administration plan within 90 days of their appointment, which should be submitted for approval by the board of directors. The Companies Law does not impose such an obligation on board members.
Reporting requirements	Reporting requirements are extended by GEO no. 109/2011 compared to the standards imposed by the Companies Law. In particular, companies subject to GEO no. 109/2011 are required to have a website where they should disclose: the decisions of the general meetings of shareholders; annual financial reports; half-

Specific provisions	Details
	yearly accounting reports; annual audit report; annual directors' report; the list of directors and their CVs; Codes of Ethics; and the remuneration report.
Protection of minority shareholders	The protection of minority shareholders is also extended by GEO no. 109/2011 compared to the standard requirements of the Companies Law. According to GEO no. 109/2011, minority shareholders with more than 10% of the voting rights may require the use of the cumulative voting method to appoint the members of the board of directors. The provision goes even beyond the Capital Markets Law applicable to listed companies, where the cumulative vote can only be requested by a significant shareholder.

Source: Ministry of Finance (2014[13]), *Evaluation of the implementation of the emergency ordinance no. 109/2011*, https://mfinante.gov.ro/domenii/guvernanta/rapoarte-generale-periodice

In spite of the improvements brought by GEO no. 109/2011 to the corporate governance framework of SOEs, a 2014 report commissioned by the Ministry of Finance found that, three years after the adoption of the ordinance, its application was still far below expectations. While the process of board selection and appointment provided by GEO no. 109/2011 had been carried out in 33 large enterprises by mid-2014, most of these boards were revoked soon after by decision of the shareholders' representatives during the AGM for various reasons – including the failure of the board to submit its administration plan in time as required, or the non-approval of the submitted plan by the line ministry. Board members removed from office were replaced with interim members, and the process had not started in more than 200 SOEs in the central government's portfolio (Ministry of Finance, 2014[13]). The report identified several inter-related factors explaining this stalemate, including (i) lack of monitoring, enforcement mechanisms and accountability, and (ii) unclear institutional arrangements, roles and responsibilities (Box 1.2).

Based on these identified shortcomings, the report issued recommendations to **(i) improve the performance management framework for SOEs**, and **(ii) establish a clear ownership structure within government**. Regarding the first objective, the report recommended that – instead of having two different administration plans, one drawn by the board and one by executive management, which might encourage collusion between non-executive and executive members to set achievable goals and possibly ignore long-term objectives – the relevant line ministry first establishes a "letter of expectation" which sets out the general (short-, medium- and long-term) objectives for each company. Based on these guidelines, the board, in collaboration with executive management, should then develop a business plan and set concrete targets.

This objective goes hand-in-hand with the need to strengthen the capacities of ministries to monitor companies in their portfolio. As such, the report also recommended that each line ministry set up specialised departments – comprised of qualified professionals – to oversee and monitor SOEs, collect information and prepare regular reports on their performance, and represent the state owner during AGMs without compensation by the company they supervise for meeting attendance (which was previously the case) as it might distort incentives. In order to increase political accountability, the report also recommended that line ministries be required to regularly submit reports to the government on the implementation of GEO no. 109/2011 and on the evolution of enterprises in their respective portfolios.

Regarding ownership arrangements, the report further recommended the establishment of an independent ownership structure, in line with OECD standards, responsible for: (i) developing a state ownership policy, (ii) regularly reviewing the legal status of SOEs (including autonomous, national and commercial companies) which may change depending on SOEs' performance, sector of operation and sectoral policies, (iii) identifying the public policies that SOEs have to carry out, and ensuring that these obligations and costs are made public, (iv) identifying SOEs for privatisation, restructuring and liquidation and organising these procedures; (v) monitoring the implementation of GEO no. 109/2011 and establishing reporting lines between SOEs and line ministries; (vi) ensuring proper representation of the state in AGMs; and (vii) monitoring the functioning and quality of SOE boards, developing instruction manuals and facilitating training programmes.

Law no. 111/2016, amending and approving GEO no. 109/2011

GEO no. 109/2011 was revised and codified by Law no. 111/2016, which introduced important amendments to the legislative framework on corporate governance of SOEs, based on the identified shortcomings and subsequent recommendations of the 2014 report on implementation of GEO no. 109/2011 (Box 1.2).

Box 1.2. Main provisions of Law no. 111/2016

Ownership arrangements

- In the aim of separating ownership from regulatory functions of line ministries, the law required the establishment of **corporate governance structures** in public authorities with ownership roles. It also attributed a **co-ordination function** to the Ministry of Finance, along with sanctioning powers for non-compliance with corporate governance requirements. The Ministry of Finance is also tasked with preparing and publishing **annual aggregate reports** on the activity of central and local SOEs.

Objective-setting and performance management framework for SOEs

- The law introduced a **performance management framework** for SOEs, to be designed and implemented through several instruments: (i) **letters of expectation** to be prepared by the state owner – in collaboration with minority shareholders – for individual SOEs detailing their long-term objectives (i.e. for a period of four years), (ii) **declarations of intent** to be prepared by SOE board and executive candidates, and (iii) **administration plans** to be jointly prepared by SOE board members and executive management upon their appointment setting out concrete targets, based on which **performance indicators** are then required to be developed by line ministries and included in the mandate contracts[16] of SOE board and executive members, in line with the provisions of Government Decision no. 722/2016.

Source: Romanian Government (2016[14]), *Law no. 111/2016*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/178925 and Romanian Government (2016[15]), *Government Decision no. 722/2016*, https://legislatie.just.ro/Public/DetaliiDocument/182501

At present, all state-owned enterprises regardless of their legal form are required to observe the provisions of GEO no. 109/2011[17] (as approved by Law no. 111/2016), with a few exceptions. Two defence and national safety SOEs (CN Romtechnica SA and Rasirom RA) are exempted as well as a maritime enterprise (Damen Shipyards Mangalia SA), whose operational management is entrusted to its minority shareholder in spite of it being majority-owned by the state. Credit institutions (CEC Bank, Eximbank) are also exempted from the provisions of GEO no. 109/2011 (as approved by Law no. 111/2016), on the grounds that they are subject to specific prudential standards applicable to the financial sector.[18]

Some subsequent attempts were made to amend, and apparently weaken, the provisions of the law. A legislative attempt to amend Law no. 111/2016 to exempt around 100 SOEs (including the largest ones) from corporate governance requirements was made in December 2017 but was deemed unconstitutional in 2018 (European Commission, 2019[16]). In addition, in 2018, the government attempted to set up a Sovereign Development and Investment Fund, to which it intended to transfer the ownership of around 30 SOEs, and to be classified outside the budget perimeter with very broad objectives, including job creation, infrastructure development, innovation and competitiveness. While the creation of the Fund received parliamentary approval in 2018, it was deemed unconstitutional in 2019, and its future remains unclear (European Commission, 2019[16]; 2020[6]).

Although the legal framework for SOEs has been strengthened since 2011 in the aim of professionalising SOE boards and insulating them from political interference, it should be noted that there is at least one important loophole in the law. It allows for interim appointments of board members and management, in order to ensure business continuity. These four-to-six months interim appointments stand in stark contrast with the four-year mandates allowing for stability, accountability and long-term planning, and have become standard practice in recent years. As such, the provisions of the law have only been marginally observed and implemented since 2016, and SOE board appointments remain highly politicised (see Section 1.4.4 for more information).

Other relevant laws and regulations

The state's expectations from SOEs can also be found in the following laws and regulations, which are briefly summarised below (Table 1.6) and described in more detail in other relevant sections of the review:

- **Government Ordinance no. 64/2001** (as amended by GO no. 29/2017) on the dividend policy
- **Government Ordinance no. 26/2013** (approved with amendments by Law no. 47/2014) on strengthening the financial discipline of SOEs in which the state (via central or administrative-territorial units) is sole or majority shareholder or directly or indirectly holds a majority stake
- **Law no. 85/2014** on insolvency
- **Law no. 672/2002** on public internal audit
- **Law no. 162/2017** on statutory audit of annual financial statements
- **Order of the Minister of Public Finance no. 666/2015** on the application of IFRS by SOEs
- **Law no. 98/2016** on public procurement and **Law no. 99/2016** on sectoral public procurement
- **Law no. 544/2001** on access to information of public interest (applicable to any public authorities and institutions, including those managing public financial resources)
- **Government Decision no. 722/2016** on the methodological norms underpinning the appointment procedure for board members and executive management in SOEs, and with regard to establishing financial and non-financial performance indicators for monitoring the performance of SOEs
- **Order of the Ministry of Finance no. 1952/2018** on the disclosure requirements of line ministries, as well as those of the Ministry of Finance as part of its monitoring responsibilities.

Table 1.6. SOE legal and regulatory framework

Law	Main provisions relevant to SOEs
Companies Law no. 31/1990	As the primary legislation for the Romanian corporate sector, it applies to all companies in Romania, and contains provisions regarding the management of the company, the appointment and dismissal of board members and executive management, as well as their responsibility, revocation and liability towards the company.
GEO no. 109/2011 (amended and approved by Law no. 111/2016)	Main law regulating the ownership and corporate governance of SOEs.
GD no. 722/2016	Secondary legislation detailing the provisions of GEO no. 109/2011 regarding the establishment of financial and non-financial indicators for monitoring the performance of SOEs, and remunerating SOE boards and executive management.
Ordinance no. 26/2013 (amended and approved by Law no. 47/2014)	The Ordinance aims at strengthening the financial discipline of SOEs in which the state (via central or administrative-territorial units) is the sole or majority shareholder, or directly or indirectly holds a majority stake.
Bucharest Stock Exchange (BVB) Code	The Bucharest Stock Exchange (BVB) Code of Corporate Governance includes a set of principles and recommendations which can be adopted on a comply-or-explain basis by companies whose securities are traded on the regulated market. It differentiates two tiers of companies – standard and premium – with corporate governance

Law	Main provisions relevant to SOEs
of Corporate Governance	requirements being more stringent on the latter.
Law no. 85/2014 on Insolvency	The law does not provide for any protection from the application of insolvency or bankruptcy procedures based on the legal status of SOEs. The minimum amount of the claim for which the request for opening of the insolvency procedure can be filed is of RON 50 000 both for the creditors and for the debtors.
Law no. 672/2002 on Internal Public Audit	Main legislation regulating the exercise of public internal audit in public entities.
Law no. 98/2016 on Public Procurement and Law no. 99/2016 on Sectoral Public Procurement	Main laws on public procurement transposing the provisions of the EU Directive on procurement (EC 2014/25/EU) into national legislation. These laws regulate the procedures for awarding public procurement contracts, as well as certain aspects related to their execution.
Law no. 162/2017 on Statutory Audit of Annual Financial Statements	The regulation transposes into national legislation the requirements of EU Regulation no. 537/2014 on statutory audit, which is to be performed by financial auditors or by authorised audit firms that are registered as members of the Chamber of Financial Auditors in Romania (CAFR). The law requires *inter alia* public interest entities to have an audit committee composed of a majority of non-executive and independent members.
Order of the Minister of Public Finance no. 666/2015 on IFRS standards for a number of SOEs	The regulation transposes the requirements of International Financial Reporting Standards (IFRS) into national accounting regulations for 17 SOEs.
Law no. 15/1990 on Reorganization of Economic Entities as Regies Autonomes or Commercial Companies	The law undertook the conversion of the former socialist “state economic enterprises” into (i) commercial companies with share capital, and (ii) (fully-owned) autonomous administrations (“regii autonome”). The latter were to remain state property and operate only in strategic sectors of the economy, such as *inter alia* the defence industry, rail and urban transportation, energy, natural gas and mining.
Law no. 544/2001 on Access to Information of Public Interest	The law provides that any person has the right to request and obtain information of public interest from any public authority or institution that uses or manages public financial resources (including autonomous administrations and corporatised SOEs operating under the Companies Law).
Order of the Ministry of Finance no. 1952/2018	The Order regulates the procedure for monitoring the implementation of the provisions of GEO no. 109/2011 (as amended and approved by Law no. 111/2016) regarding the corporate governance of SOEs.
GO no. 64/2001 (amended by GO no. 29/2017) on the distribution of profit	Government Ordinance no. 64/2001 on the distribution of profit in national enterprises, national companies and fully or majority state-owned companies, as well as autonomous administrations, regulates the distribution of a minimum share of 50% transfers from the state or local budget in the case of autonomous administrations, or dividends, in the case of national enterprises, national companies and fully or majority state-owned companies. Further, Government Ordinance no. 29/2017 stipulates that the government as an owner has the right to receive dividends, including from previous years’ reserves.

Source: Adapted from World bank (2021[17]), Romania: Policies in support of a fiscally sustainable recovery.

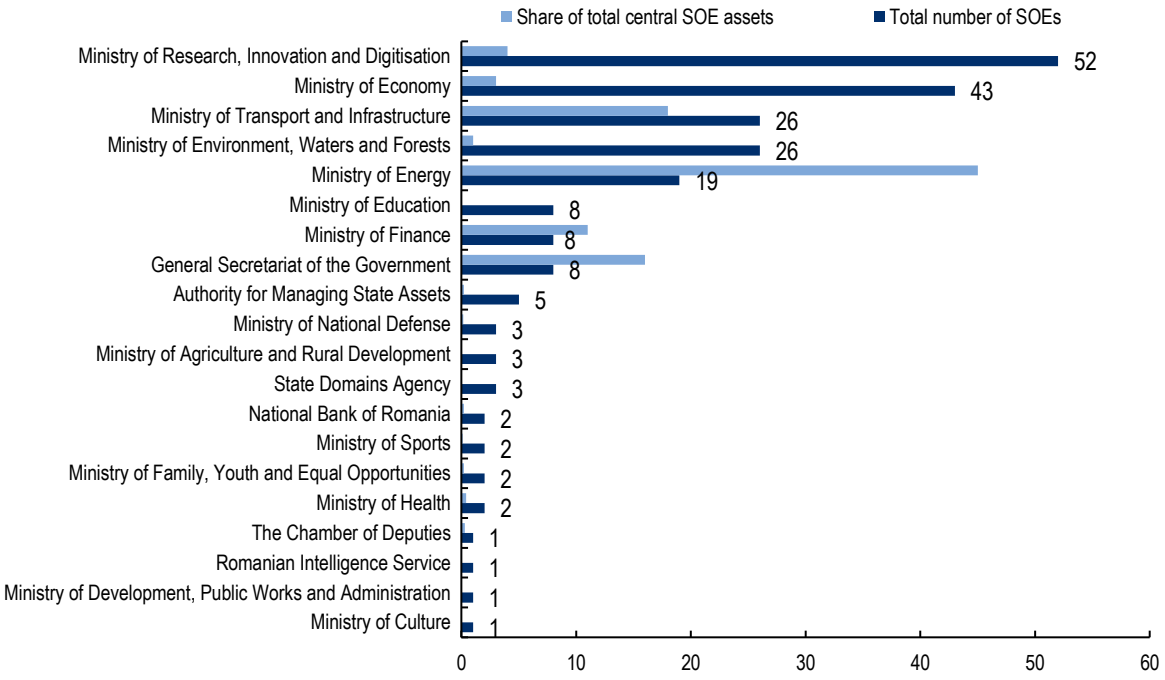
1.4. Ownership framework and responsibilities

1.4.1. Ownership arrangements and co-ordination

Ownership framework

As of 2020, the ownership of the 216 SOEs considered in this report was dispersed across 20 central government institutions (including 14 line ministries and six other central institutions). However, five ministries concentrated the majority of SOEs (166), representing 71% of the central state-owned sector total value (Figure 1.9). In addition, with only eight SOEs in both of their portfolios, the General Secretariat of the Government and the Ministry of Finance respectively owned 16% and 11% of the total value. The remaining 13 central institutions exercising ownership functions each oversaw a portfolio of SOEs representing less than 0.5% of the total value.

Figure 1.9. Breakdown of SOEs held by central government, by number and share of total equity value of the central state-owned sector (in percentage) as of end 2020



Source: Information provided by the Romanian authorities, detailed in Annex A.

The five ministries with the largest number of SOEs in their portfolio as of 2020 included the Ministry of Energy with 19 SOEs accounting for an equity value of USD 8.7 billion or 45% of the state owned sector's total value, the Ministry of Transport (26 SOEs; USD 3.5 billion; 18% of total), Ministry of Research, Innovation and Digitisation (52 SOEs; USD 754 million; 4% of total), Ministry of Economy (43 SOEs; USD 627 million; 3% of total) and Ministry of Environment, Waters and Forest (26 SOEs; USD 202 million; 1% of total). These portfolios – along with the ones of the Ministry of Finance and General Secretariat of the Government (GSG) – include Romania's most economically important SOEs. Details of the individual SOEs are provided in Annex A.

Ministry of Transport and Infrastructure

The Ministry of Transport and Infrastructure is responsible for implementing European legislation regarding transport and transport infrastructure. As of end 2020, it exercised ownership over 26 SOEs operating in the naval, air, railway and road transport sectors (Table 1.7). The portfolio includes a majority of unlisted fully incorporated companies (including some of strategic interest, such as CNAIR), with only five statutory corporations. These SOEs tend to be fully state-owned, except for nine companies where minority investors own stakes of between 2%-40% (in the naval and air transport sectors). While in 2020 transport SOEs accounted for 85% of subsidies allocated from the state budget for both exploitation and investment activities, this portfolio also included the SOEs with the highest outstanding payments among central public enterprises as of end 2020, including CFR, CFR Marfa, CFR Calatori, and TAROM, due to the outbreak of the COVID-19 pandemic.

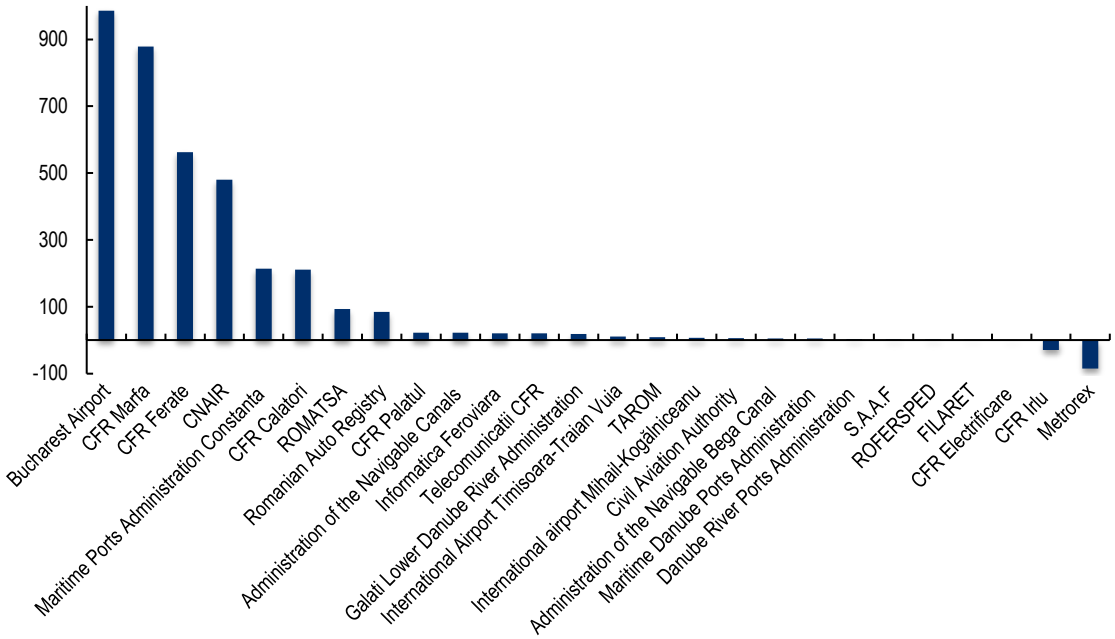
Table 1.7. Overview of SOEs under the oversight of the Ministry of Transport

Domain	Description of individual SOEs
Naval	**Administration of the Navigable Canals (80% state-owned company)** organises and manages the operation of the navigable canals on the Danube, including locks and telecommunications installations. **Galati Lower Danube River Administration (fully-owned autonomous administration)** is responsible for ensuring minimum navigation depths (through maintenance dredging, coastal and floating signage, construction works and repairs, etc.). **Maritime Ports Administration Constanta (80% state-owned company)**, **Administration of Ports of the Danube River (80% state-owned company)** and **Maritime Danube Ports Administration (79.9% state-owned company)** were all established as JSCs and are port authorities, respectively operating in (i) the ports of Constanta, Midia, Mangalia and Tomis, (ii) ports located on upper (fluvial) Danube, and (iii) ports located on the maritime Danube. **Administration of the navigable bega canal (fully-owned statutory corporation)** is a waterway authority**.**
Air	**Bucharest Airport (80% state-owned), international airport Timisoara – Traian Vuia (80%), international airport Mihail-Kogălniceanu (60%),** Air transport company **TAROM (98.7% state-owned). Civil Aviation Authority** and **Administration of Air Traffic Services ROMATSA (both fully-owned autonomous administrations).**
Railway	**CFR Palatul** (administration of the CFR Palace building and rental activities), **CFR** (national railway company), **CFR Marfa** (freight transport operator), **CFR Calatori** (passenger services), **CFR Irlu** (locomotive maintenance and repair), **Telecomunicatii CFR** (telecom infrastructure), **Electrificare CFR** (electrification installation of the national railway company CFR), **S.A.A.F** (railway asset administration company), **Filaret** (typography and printing activities), **Informatica Feroviara** (IT services), **Metrorex** are all fully-state owned companies.
Road	**CNAIR** (fully owned company) is the road infrastructure administration, and the **Romanian Auto Registry** is an autonomous administration responsible for the improvement of road safety and the reduction of polluting emissions (including through individual road vehicle approval authenticity certifications and technical checks, pollution tests, etc.).

Note: Rofersped is a subsidiary of CFR Marfa.
Source: Ministry of Transport (2021[18]), Annual report on the activity of SOEs under the authority of the Ministry of Transport 2021, https://www.mt.ro/web14/documente/interes-public/rapoarte/2022/Raportul%20anual%20%c3%8eP%202021.pdf

The total equity value of the central state-owned sector in the portfolio of the Ministry of Transport is driven by four large enterprises in the air transport and railway sectors, including: Bucharest Airport (USD 986 million in equity, 1 459 employees), CFR Marfa and CFR (with respectively USD 878 million and 562 million in equity, and 4 814 and 23 218 employees), and CNAIR (USD 479 million equity, 6 916 employees). In 2020, three fully state-owned companies were loss-making, including: Electrificare CFR (-1.2 million), CFR Irlu (-29.4 million), and Metrorex (-85.4 million).

Figure 1.10. Equity value of the central state-owned sector in the Ministry of Transport's portfolio (in million USD)



Source: Information provided by the Romanian authorities, detailed in Annex A.

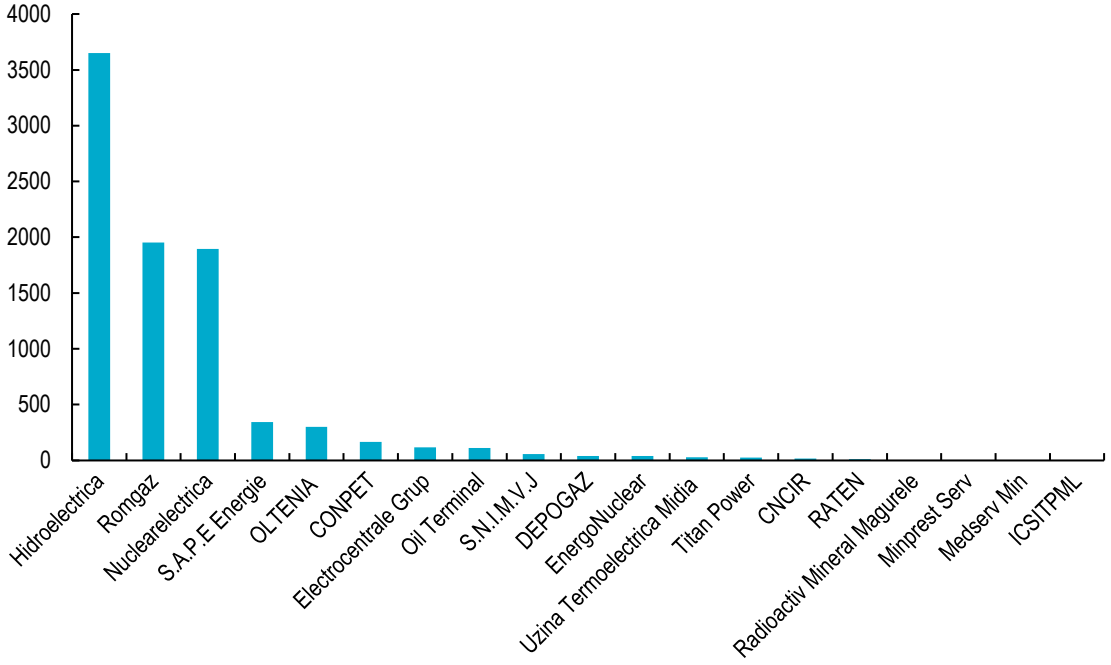
Ministry of Energy

The Ministry of Energy exercises ownership rights over enterprises operating in the field of electricity (including production, transport, distribution and supply of electric and thermal energy), minerals (including exploitation, processing, transport and distribution of hydrocarbons), and is responsible for energy efficiency policies and the implementation of the EU Green Deal. Of note, the portfolio includes the top four companies on the electricity market (Hidroelectrica, Nuclearelectrica, Oltenia, OMV Petrom), accounting for three-quarters of the electricity delivered to the network (with the remainder including over 100 generators, each with a market share of less than 5%). While energy SOEs received around 2% of total subsidies granted to central SOEs from the state budget in 2020, they accounted for the largest share of dividends redistributed to the state budget, with SOEs operating in the electricity production and natural gas extraction sectors accounting for more than 70% of total payments to the state budget in 2020 (Ministry of Finance, 2021[19]).

The total equity value of the central state-owned sector in the portfolio of the Ministry of Energy is driven by three large enterprises. With USD 3.6 billion in equity and 3 400 employees, Hidroelectrica is the largest majority-owned company (80% of state shareholding) in the portfolio, followed by Romgaz (1.9 billion in equity, 5 673 employees, 70% state shareholding) and Nuclearelectrica (1.8 billion in equity, 2011 employees, 90% state shareholding). The portfolio of majority-owned SOEs includes four listed enterprises (Conpet, Oil Terminal, Nuclearelectrica and Romgaz), 14 unlisted companies, and one statutory corporation (Raten).

The Ministry of Energy's portfolio also includes three listed, minority-owned SOEs: Petrom (20% state ownership, 8 billion in equity, 9 939 employees), Rompetrol (44.7% state ownership, 336 million equity, 1 119 employees), and Electrica (48% state ownership, 1 021 billion in equity, 120 employees).

Figure 1.11. Equity value of the central state-owned sector in the Ministry of Energy's portfolio (in million USD)



Note: Figure includes majority owned-SOEs only (i.e. at least 50% state ownership). As such, Petrom, Rompetrol and Electrica are excluded.
Source: Information provided by the Romanian authorities, detailed in Annex A.

General Secretariat of the Government

The General Secretariat of the Government (GSG) is subordinated to the Prime Minister. As of end 2020, it exercises ownership rights over eight SOEs categorised as of high economic and social importance, including the Property Administration (RAAPPS), a fully-owned autonomous administrations with 1.3 billion equity and 2073 employees, and two listed energy companies: the technical operator of the natural gas transmission system Transgaz (58% state-owned with 953 in equity and 4 145 employees), and the electricity transmission system operator Transelectrica (58% state-owned with 852 million in equity and 2021 employees). Four subsidiaries of Transelectrica constitute the rest of the portfolio: Opcom (power market generator), Smart (transmission grid maintenance services), Formenerg (training activities for personnel in the energy sector), and Teletrans (IT and communications services for electrical transport networks).

Ministry of Finance

The Ministry of Finance exercises ownership over SOEs operating in the financial, credit and insurance sectors, including credit institutions, financial and non-financial institutions and insurance companies. The portfolio comprises eight SOEs, including three credit institutions – CEC Bank (full holding), EximBank (95% state-owned) and Banca Românească (99% state holding) – which are however exempted from the application of GEO no. 109/2011 (as amended and approved by Law no. 111/2016). The rest of the portfolio is composed of the fully-owned company Imprimeria Nationala (responsible for the issuance and circulation of securities), the fully-owned National Credit Guarantee Fund for Small and Medium Enterprises and its subsidiary the Local Guarantee Fund, the fully-owned Romanian Counter-Guarantee

Fund, and the insurance-reinsurance company Exim Romania (98.6% state holding). As of end 2020, the Ministry of Finance also held a minority stake in Fondul Proprietatea (5.14%).

Ministry of Economy

As of end 2020, the Ministry of Economy exercised ownership over a large number of SOEs operating in the defence industry (accounting for 35% of SOEs in the portfolio), tourism (24%), mineral resources (8%), and "other sectors" such as utilities (34%). In 2020, the portfolio included 16 fully-owned, 29 majority-owned and 11 minority-owned SOEs, including 10 enterprises listed on the Bucharest Stock Exchange and 12 SOEs in insolvency proceedings. While the portfolio accounted for 3% of total value of the central state-owned sector in 2020, the Ministry of Economy also owned the most loss-making SOEs among central government institutions over the same period (representing an aggregate -165 million), including: Damen Shipyards Mangalia (-65 million in equity), Uzina Mecanica Orastie (-61 million), Metrom (-13 million), Avioane Craiova (-11.8), Certej (-5 million), Cugir (-3 million), Minvest (-2.5 million), and Conversmin (-675 933). Except for Damen Shipyards Mangalia and Avioane Craiova, these are fully state-owned.

Rationale for state ownership

Romania adopted an ownership policy in 2016 shortly after Law no. 111/2016 came into force. It aimed to specify the purpose of state ownership and the expectations of the state towards public enterprises as a pre-requisite to providing individual SOEs with clear objectives, as well as to clarify the roles and responsibilities of all stakeholders involved in the exercise of state ownership. As such, the policy classifies companies into two large categories: the ones for which the state has mainly commercial objectives and which are expected to maximise economic value, and the enterprises with public service and policy objectives. This follows clarifications regarding the rationale for state ownership, which according to the ownership policy should be based on four key pillars: (i) control over natural resources, (ii) managing natural monopolies, (iii) delivering public services, and (iv) strategic business reasons. It should however be noted that the latter is generally vague, as owning SOEs for "strategic business reasons" may include a wide range of economic activities across many sectors, which may potentially be used to justify direct state intervention in any industries where a more solid economic rationale (e.g. market failure or public service requirements) cannot be provided.

Indeed, according to a (2020[8]) World Bank report drawing from data from the OECD Product Market Regulation (PMR) database, it appears that the state is present in some sectors where its intervention seems to not based on sound economic or strategic grounds, including sectors beyond typical network industries (such as manufacturing, shipbuilding and accommodation). According to the report, Romania has at least one SOE in 23 out of the 30 sectors tracked by the OECD PMR indicators, compared to 12 sectors in the Slovak Republic, 17 in the Czech Republic, 18 in Hungary, and 15 on average in the EU-15 – with SOEs operating in all the 10 network sectors,[19] and in at least 13 non-network sectors, including sectors with viable competition and private sector operators, making for a significant SOE footprint (Box 1.3).

Even in sectors where the presence of SOEs is usual, unclear economic rationales for state ownership seem to exist. This is the case of TAROM for instance, which remains state-owned despite the fact that it has been operating at a loss for ten consecutive years. In spite of the liberalisation of railways since 1998, the state also keeps full control – and is liable for losses – of companies operating in the three market segments, including infrastructure operation (CFR), freight services (CFR Marfa) and passenger services (CFR Calatori) (World Bank, 2020[8]). Regarding rail freight, the fact that CFR Marfa received state aid that was later deemed incompatible also raises concerns about the preferential treatment of SOEs in the sector (EC, 2020[20]).

Box 1.3. Market positions of SOEs

According to a (2020[8]) World Bank report, Romanian SOEs operate in several sectors because of (i) market failure, natural monopoly and information asymmetries (in such sectors as air and road transport, railroad infrastructure, electricity transmission, generation and supply, and postal services), or in (ii) network industries with economies of scale and scope (in such sectors as electricity supply, gas production, transmission and supply, and telecommunications). However, there are also several sectors where state ownership seems to be underpinned by unclear economic rationales, including accommodation, construction, building and repairing of ships and boats, and manufacture of basic metals. The report also maps out the market shares of Romanian SOEs and the participation of private companies by sector.

Table 1.8. SOE market shares and private sector participation

	SOE market shares by sector	Private sector active
Sectors in which private companies are active but SOEs have a market share of >50%	Electricity generation (80% SOEs aggregated), railways passenger transport (>80%-90%), urban transport (100% underground transport, 100% tram, bus, trolley transport in Bucharest), water transport (100% seaport infrastructure and navigable canals), construction (100%), coal mining (>90%)	Yes, in all sectors, except port infrastructure
Sectors in which SOEs have a significant market share without competing with the private sector	Air transport infrastructure (100%), railways infrastructure (100%), electricity transmission (100%) and distribution (100%), gas production (45%) transmission (100%) and supply (to household consumers, 25%), postal services (100%), air safety services (100%), water distribution (100%), aerospace manufacturing (100%), state credit guarantees (100%), lottery gambling (100%), publishing and printing (100%), mining (uranium, 100%), defense industry (production of weapons, 100%)	Almost all sectors are legal monopolies*, except for the gas production and supply sectors where private companies are active
Sectors in which SOEs compete with the private sector without holding significant market shares	Railways freight transport (36%), air transport passengers (18%-20%), shipbuilding (<15%), financial service activities (7.5% banking, <5% insurance), television and radio broadcasting (20%-35%)	Yes, in all sectors

Note: *Postal services were a legal monopoly until end 2019.
Source: Adapted from World Bank (2020[8]), *Markets and People: Romania Country Economic Memorandum*, https://openknowledge.worldbank.org/handle/10986/33236, based on the OECD-World Bank PMR indicators database (https://datacatalog.worldbank.org/search/dataset/0038692)

Ownership arrangements: institutional roles and responsibilities

In spite of an apparently extensive decentralisation of the ownership framework (as outlined above), it can be argued that Romania currently also embodies some element of a'co-ordination model' according to OECD classification, with distinct responsibilities attributed to the Ministry of Finance on one hand, and to line ministries on the other hand.

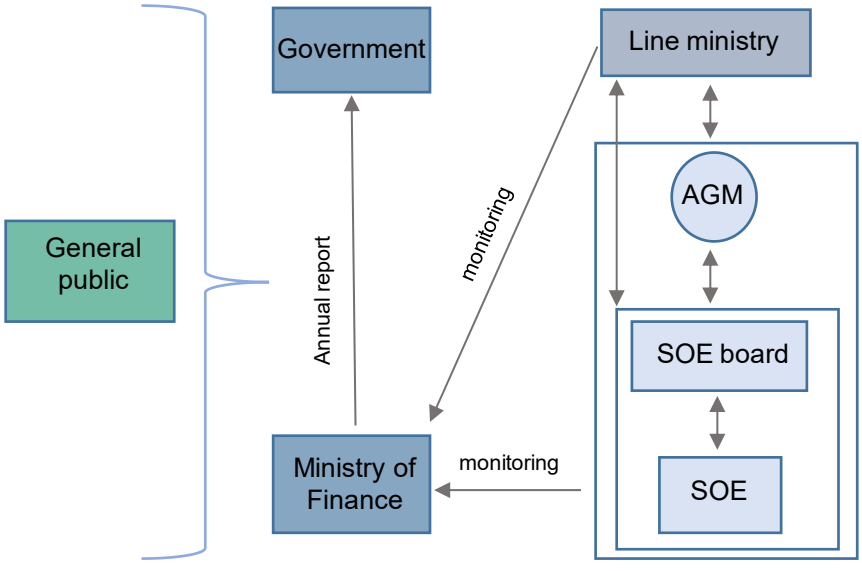
Table 1.9. Types of state ownership model structures

Ownership model	Main characteristics
Centralised model	One government institution carries out the mission as shareholder in all companies and organisations controlled by the state (with or without exceptions). This institution can be either a specialised ownership agency or a designated government ministry. Financial targets, technical and operational issues, and the process of monitoring SOE performance are all conducted by the central body. Board members are appointed in different ways, but essential input comes from central units.
Coordination model	A department with non-trivial powers over SOEs is formally held by other ministries (and institutions). For example, a co-ordinating department or specialised unit acting in an advisory capacity to shareholding ministries on technical and operational issues, in addition to being responsible for performance monitoring.
Twin track model	Two different government institutions exclusively exercise ownership functions on their respective portfolios of SOEs.
Dual ownership	A small number of ownership agencies, holding companies, privatisation agencies or similar bodies owning portfolios of SOEs separately.
Dispersed ownership	A large number of government ministries or other high-level public institutions exercise ownership rights over SOEs (in the absence of a co-ordinating agency).

Source: OECD (2021[21]), *Ownership and Governance of State-owned Enterprises: A Compendium of National Practices 2021*, https://www.oecd.org/corporate/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices-2021.pdf

Indeed, Law no. 111/2016 clarified ownership arrangements by attributing a monitoring role to the Ministry of Finance, and by requiring each line ministry and other central government institutions to set up a "corporate governance structure" comprised of competent professionals to exercise the ownership function. This intended to delineate ownership responsibilities from regulatory roles within line ministries, and to prevent potential conflicts of interest that such an overlap might entail. The law also prescribed some degree of co-ordination regarding the flow of information across institutions (Figure 1.12).

Figure 1.12. Institutional arrangements as prescribed by Law no. 111/2016



Source: Adapted from the Ministry of Finance (2021[19]), *Annual report on SOEs 2020*, https://mfinante.gov.ro/documents/35673/220982/raportanual2020.pdf

Ministry of Finance

Since 2016, the Ministry of Finance carries out a monitoring role with regard to the financial performance of SOEs, as well as the implementation of corporate governance provisions (prescribed by Law no. 111/2016) by all public enterprises subjected to the law, as well as by their ownership entities. Its monitoring powers are established by Order of the Ministry of Finance no. 1952/2018, with sets out reporting requirements for line ministries using a standardised format (S1100 form). The reporting must include information regarding: (i) the application of the provisions of Law no. 111/2016; (ii) audited annual financial statements of SOEs and the performance status of their key performance indicators (including, if relevant, the causes that led to deviations of more than 10% from the approved targets); and (iii) a list of board members of the SOEs in their portfolios.

While this information is to be transmitted electronically from line ministries to the Ministry of Finance, it can be argued that reporting requirements as currently devised (whereby SOEs are subject to reporting requirements to their line ministries, which are in turn required to transmit information to the Ministry of Finance) can create delays in data collection by the Ministry of Finance, which may in turn hamper its monitoring and oversight capacities.[20] Further, not all line ministries comply with reporting requirements: as of end 2021, nine central government institutions had not reported information about 16 SOEs (Ministry of Finance, 2021[19]). For enforcement purposes, the Ministry of Finance also has sanctioning powers in case of non-compliance with corporate governance provisions by both SOEs and line ministries. However, the amounts of these monetary fines appear limited, and may not bear a strong-enough deterrent effect.

Table 1.10. Roles and responsibilities of the Ministry of Finance and of line ministries, as provided by Law no. 111/2016

Responsibilities of the Ministry of Finance	Responsibilities of line ministries
• Monitor and evaluate the application by SOEs and line ministries of the provisions of the law. • Develop rules, regulations, guides, forms to facilitate uniform application by line ministries and monitoring the implementation of legal provisions and international best practices in the field of corporate governance. • Monitor the financial and non-financial performance indicators of SOEs in co-operation with line ministries. • Establish a database of board members and executive managers of central and local public enterprises by centralising the lists of directors and managers received from ownership entities after publication on their own websites. • Prepare and submit to the government an annual report on SOEs, to be published on its website in August of each year reporting on information of the previous fiscal year (from 1 January to 31 December). • Together with competent ministries, drawing up implementing rules to approve a uniform framework for (i) establishing selection criteria for executive and non-executive members of SOEs, (ii) drawing up a shortlist of up to five candidates for each post, (iii) determining their ranking, and (iv) the procedure for final appointments. • Issue warnings and fines to line ministries and SOEs failing to comply with certain legal requirements.	• Oversee the board member selection process. • Propose candidates for executive and non-executive positions in compliance with legal requirements regarding qualifications and experience. • Appoint state representatives to SOE boards. • Establish and monitor performance objectives. • Monitor the board of directors directly for autonomous administrations, and through the general meeting of shareholders for commercial companies, to ensure that the SOE is operating under principles of efficiency and profitability. • Monitor the implementation of the remuneration guidelines. • Monitor conflicts of interest and approve related party transactions. • Monitor other corporate governance practices in SOEs.

Overall, the Ministry of Finance is responsible for developing rules, regulations, guides and forms for line ministries in order to facilitate the implementation of corporate governance provisions (prescribed by Law no. 111/2016). Further, the Ministry of Finance is required to publish an annual aggregate report on SOEs, including information on the financial performance and value of the state-owned sector (i.e. consolidated balance sheet and profit and loss accounts of the SOE sector), total employment in SOEs, and on the

application of corporate governance provisions prescribed by Law no. 111/2016 (i.e. compliance with the prescribed board selection process, and with transparency and disclosure requirements).

Line ministries

As mentioned above, Law no. 111/2016 requires each ownership entity (i.e. line ministry) to establish a dedicated corporate governance structure to carry out its responsibilities as the shareholder of SOEs, in order to delineate the ownership function from other conflicting roles of the state with regard to regulating markets and setting industrial policies. However, while it seems that not all central government institutions have established this mandatory structure,[21] in some line ministries which retain important regulatory powers (e.g. Ministry of Transport) it is unclear whether this separation is effectively ensured in practice. By law, corporate governance structures are tasked with the following duties:

- Overseeing the board member selection process
- Proposing candidates for executive and non-executive positions in compliance with legal requirements regarding qualifications and experience
- Appointing state representatives to SOE boards[22]
- Establishing and monitoring performance objectives
- Monitoring the board of directors directly for autonomous administrations, and through the general meeting of shareholders for commercial companies, to ensure that the SOE is operating under principles of efficiency and profitability
- Monitoring the implementation of the remuneration guidelines
- Monitoring conflicts of interest and approving related party transactions
- Monitoring other corporate governance practices in SOEs.

According to information gathered by the review team, where corporate governance structures are effectively established, there seems to be wide disparities with regard to their composition, which can range from including three civil servants in some ministries (e.g. Ministry of Energy, which oversees a portfolio of large and economically important SOEs), to 16 civil servants in others (e.g. Ministry of Transport). The Ministry of Environment has no such structure for exercising ownership over Romsilva, and the board selection process of Romsilva is overseen by the Human Resources Department of the ministry. In addition to variations in available resources, some line ministries also reportedly lack professionals with specialised skills. While having recourse to relevant trainings on a regular basis could potentially fill those gaps, overall it is important to ensure that these structures are properly staffed and have an adequate budget in order for them to effectively exercise their ownership rights.

Objective-setting and performance monitoring of SOEs

The objective-setting and performance management framework for public enterprises is clearly set by law and regulation, including Law no. 111/2016 (amending and approving GEO no. 109/2011) and GD no. 722/2016. However, it remains widely not implemented by ownership entities, due to the fact that it is codified through the board appointment process, which is itself often bypassed.

Legal provisions on the performance management framework for SOEs

A detailed framework for SOE performance management is provided by Law no. 111/2016, as well as Government Decision no. 722/2016. According to Law no. 111/2016, the respective ministries' corporate governance structures are responsible for setting and monitoring clear performance management objectives for individual SOEs, which are codified through the appointment process for board members and executive management. In particular, as part of the selection and appointment process, corporate governance structures are required to prepare – in consultation with minority shareholders,

where relevant – a "letter of expectations" for individual SOEs outlining the performance expected from SOE boards and executive management for a period of at least four years, as well as the policy for SOEs required to deliver specific public services (see Annex C).

Based on this letter of expectations, executive managers are upon appointment required to prepare an administration plan that the board must approve within 90 days. Following this, the board is in turn required to prepare an administration plan of its own within 90 days of its appointment. A consolidated administration plan comprised of these two components – one elaborated by management, the other by the board – is then submitted for approval by the board of directors within a maximum of 20 days from the date of submission. According to the Romanian authorities, these provisions aim to align objectives and ensure realistic expectations from line ministries, corporate governance structures and SOEs' board and management, as well as overall policy coherence.

Box 1.4. Disclosing SOEs' objectives: letter of expectations and administration plan, as provided by Law no. 111/2016

Letter of expectations

The letter of expectations is a working document through which the line ministry in consultation with any shareholders representing, either individually or together, 5% of the share capital of the state-owned enterprise, establishes the performance expected from the management and supervisory bodies of the state-owned enterprise, as well as the policy of the line ministries regarding SOEs which have specific public policy obligations, for a period of at least four years. Each line ministry is required to develop the letter of expectations for individual SOEs, and make it publicly available on its webpage.

Administration plan

The administration plan is a working document of the executive managers and of the board members materialised into a document elaborated to determine the objectives of a state-owned enterprise during their mandate. It is structured on two components: of administration, elaborated by the board of directors or the supervisory board, and of management, elaborated by the managers or members of the management. It is based on the letter of expectations and establishes the mission, objectives, actions, resources and financial and non-financial performance indicators for the performance of a specific activity for a period of time which cannot exceed four years.

Source: Romanian Government (2016[14]), *Law no. 111/2016*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/178925

Based on these set objectives, corporate governance structures are expected to use the detailed examples of financial and non-financial KPIs provided by GD no. 722/2016. While Annex 1 of GD no. 722/2016 provides examples of KPIs required to monitor SOE performance, Annex 2 outlines KPIs underpinning the remuneration of SOEs' executive and non-executive directors. In particular, four categories of KPIs are included in Annex 2 (financial, operational, public service and corporate governance), and their weight is differentiated for non-executive and executive directors (with corporate governance KPIs weighting between 50-75% for non-executive directors, and financial and operational KPIs weighting between 35-75% for executive directors). According to Article 35 of Annex 2 of GD no. 722/2016, when setting performance indicators, corporate governance structures may be assisted by independent experts.

Box 1.5. Describing the four categories of KPIs detailed in Annex 2 of GD no. 722/2016

Annex 2 provides detailed KPIs, as well as a methodology for determining the variable remuneration component of SOEs' non-executive and executive directors, which may be adjusted by SOEs and corporate governance structures, as provided by Article 28 of Annex 2.

Financial indicators include outstanding payments, operating expenses, current liquidity, EBITDA, work productivity, etc.

Operational indicators include the achievement of public policies, quality of services/products, coverage of services/products, productivity of assets, customer satisfaction, etc.

Corporate governance indicators include the development of an internal management control system, establishing the risk management policies and risk monitoring.

In particular, the variable remuneration component of **executive directors (or executive management in two-tier boards)** should be determined according to the following model:

- 25-50% financial KPIs
- 10-25% operational KPIs
- 5-25% public service oriented KPIs
- 10-25% KPIs specific responsibilities for corporate governance.

The variable remuneration component of **non-executive directors (or supervisory board members in two-tier boards)** should be determined according to the following model:

- 5-20% financial KPIs
- 5-20% operational KPIs
- 5-25% public service oriented KPIs
- 50-75% KPIs specific responsibilities for corporate governance.

Source: Romanian Government (2016[15]), *Government Decision no. 722/2016*, https://legislatie.just.ro/Public/DetaliiDocument/182501

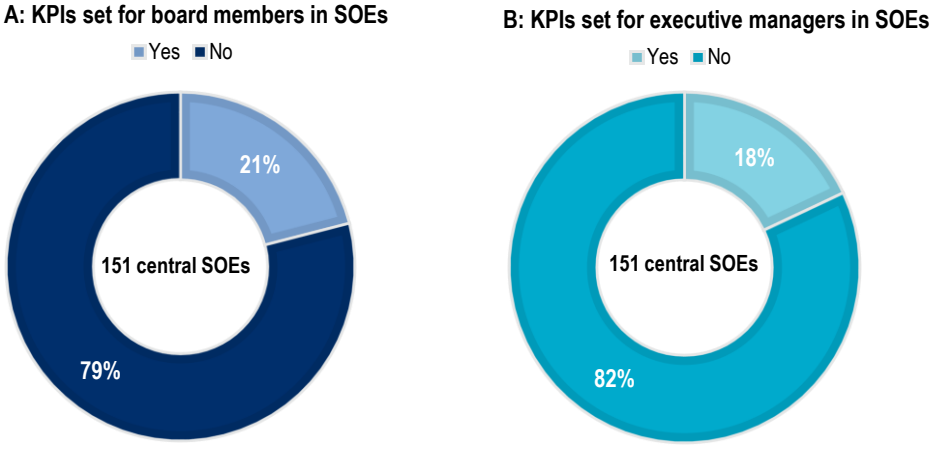
According to the law, the mandate contract concluded by the company with the board members should include the objectives and financial and non-financial performance indicators established by the general meeting of shareholders, as well as those from the letter of expectations. For SOEs established as ***companies*** (JSCs or LLCs), the assessment of the board members' activity should be made on an annual basis by the general meeting of shareholders, with support from experts as relevant, and should refer both to the execution of the mandate contract and of the administration plan. For SOEs established as ***autonomous administrations***, performance should be assessed by the ownership entity, which can be assisted by independent experts. The degree of compliance with objectives should inform the amount of variable remuneration granted to SOE board and executive members.

Provisions remain widely unapplied due to interim board and executive appointments

While this legal framework can be considered robust in theory, it should be noted that it remains widely not implemented in SOEs. Indeed, an important caveat of this system is that it is intrinsically linked to the appointment process for board members and executive managers, which in practice is often bypassed. In particular, the extensive reliance on interim board and executive appointments entails that at present, only few board and executive mandates are longer than six months (see Section 1.4.4 for details). As such, as of end 2020, KPIs for board members were reportedly set in only 31 centrally-owned SOEs out of the 151

public enterprises subject to Law no. 111/2016, and KPIs for executive managers were set in only 26 central SOEs (Figure 1.13).

Figure 1.13. Share of central SOEs with established KPIs for board and executive members (in 2020)

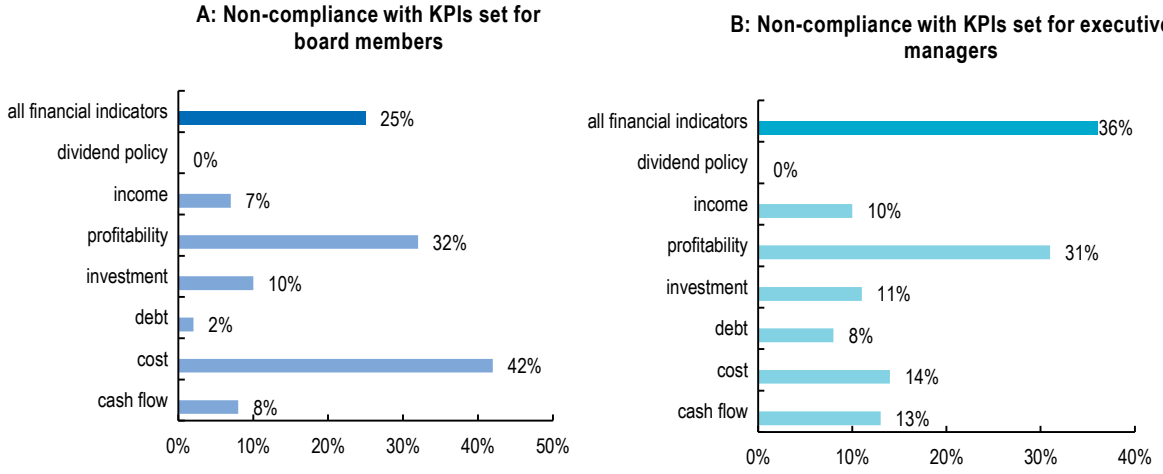


Note: In 2020, a total of 315 KPIs were set for **board members** across 31 central SOEs (including 118 financial, 121 operational and 76 corporate governance indicators), while 281 were set for **executive managers** across 26 SOEs (including 126 financial, 101 operational and 54 corporate governance indicators).
Source: OECD Secretariat, based on data from Ministry of Finance (2021[19]), *Annual report on SOEs 2020*, https://mfinante.gov.ro/documents/35673/220982/raportanual2020.pdf.

At present, for the large majority of SOEs (with interim appointees), objectives are currently set on a quarterly basis, and are restricted to financial objectives mainly including revenue and expense forecasts (which are derived from the approved budget). This stands in stark contrast with the framework envisaged by the law, which provides that SOE objectives and clear financial and non-financial KPIs be set on an annual basis in consultation with minority shareholders and approved by the general shareholders' meeting. This practice notably limits the operational autonomy of boards.

Even in SOEs where KPIs have been established, some irregularities have been found regarding the manner in which they have been set, as not effectively derived from the objectives set out in the letter of expectations. This is the case for Hidroelectrica, where the Court of Accounts found that the KPIs set for board and executive members in 2020 had not fully transposed the expectations of the state owner. While the letter of expectations emphasised investments (including *inter alia* the realisation of profitable hydropower investments), the performance indicators listed in the Annex to the mandate contracts of board and executive members seem to be limited to the implementation of renovations and modernisations (with a target value of minimum 55% of the approved reference entry balance for 2020). It should however be noted that Hidroelectrica filed an appeal. Another issue is whether the financial KPIs, where actually established, are actually adhered to. As of end 2020, around 30% of the financial indicators set for SOE board and executive members had not been met (Figure 1.13).

Figure 1.14. Degree of compliance with financial KPIs set for executive and non-executive directors



Source: OECD Secretariat, based on data from the Ministry of Finance (2021[19]), *Annual report on SOEs 2020*, https://mfinante.gov.ro/documents/35673/220982/raportanual2020.pdf

1.4.2. Description of selected Romanian SOEs

Hidroelectrica

The company known as Hidroelectrica (full name "Societatea de Producere a Energiei Electrice in Hidrocentrale S.A.") is majority-owned by the state and not traded in the stock markets. The state, through the Ministry of Energy, holds 80.06% of the shares; the national Property Fund ("Fondul Proprietatea") owns the rest.

Hidroelectrica's main areas of commercial activity are electric power generation, transmission and distribution. Based on its extensive network of hydroelectrical power plants, it is the largest power generator in Romania, and at the same time it engages in the distribution and supply of electricity produced by other companies. Its existence as an autonomous company dates back to 2000 when the state-owned energy conglomerate CONEL, which among other things acted as a holding company for four national electricity generators, was broken up. Hidroelectrica currently employs 3 354 persons.

The company and its owners have taken certain steps to align corporate governance with private sector practices. Hidroelectrica has a two-tiered board structure, with seven members of the supervisory board and five members of the management board. The work of the supervisory board is supported by three board committees for auditing; nomination and remuneration; and strategy. The board members are appointed for a four-year period and have been on post since February 2019. The members of the supervisory board include ministerial representatives, employees of other state-owned or state linked companies, and entirely independent individuals. The president of the board is State Secretary in the Ministry of Energy, and one of the other board members is Director General in the same Ministry.

Hidroelectrica, as can be seen from Table 1.11, has been reasonably profitable in recent years with rates of return on equity in the range of 8-10% which is not far from industry averages. Perhaps reflecting this the state expects the company to contribute significantly to the national fiscal budget, to the extent that the dividend pay-out ratios in recent years have exceeded 100%. In the past, Hidroelectrica's healthy cash flows have also attracted an excessive and perhaps unwanted interest: in 2012 the company entered into insolvency protection following a period in which it was induced, on the one hand, to enter into electricity

supply contracts on unfavourable terms and, on the other hand, purchase energy from other SOEs at a loss to itself.

Table 1.11. Financial performance indicators for Hidroelectrica

		2015	2017	2019	2020
Asset value	USD mill.	4 613	4 731	4 058	4 196
Book equity value	USD mill.	4 338	4 501	3 534	3 651
Annual turnover	USD mill.	767	836	974	968
EBITDA	USD mill.	511	601	689	684
Net Profit	USD mill.	217	349	325	366
Dividends	USD mill.	163	460	529	513
Provisions	USD mill.	38	47	186	208
Long-term debt	USD mill.	133	76	219	216
ROA	%	4.7	7.4	8.0	8.7
ROE	%	5.0	7.8	9.2	10.0

Source: Information provided by the Romanian authorities.

As previously mentioned, in March 2022, the initiation of the listing of the shares of Hidroelectrica on the Bucharest Stock Exchange was approved by the shareholders (including the Ministry of Energy with 80.06% of the shares, and Fondul Proprietatea with 19.94% of the shares), with Fondul as the selling shareholders of up to 19.94% of the share held in Hidroelectrica. The listing is aimed to be completed by Q1 2023.

The railway companies

Romania's railway system is commonly known by the acronym CFR (Romanian – "Caile Ferate Romane"). Its network has a total length of around 10 800 km and is the 23rd longest in the world. Following liberalisations commencing in 2011, around 15% of the tracks are leased by private operators. The use of these "non-interoperable tracks" is reserved for the operators and not accessible for the state railway company. There are currently 12 private firms offering passenger rail services and 28 private firms offering freight rail services. The state operator remains the sole provider of nation-wide rail transport.

The state-owned railway service is divided into three separate companies: the CFR Infrastructura (commonly referred to just as CFR), which manages the infrastructure of the network; the CFR Calatori, which is responsible for passenger services; and the CFR Marfa, which is responsible for freight transport. The three SOEs are all unlisted joint stock companies. Their sole shareholder is the state, operating via the Ministry of Transport and Infrastructure. Common to all three companies is that their financial performance has deteriorated significantly since 2015. Further detail is provided below.

The CFR infrastructure management company

The CFR as mentioned earlier operates the railway network and related infrastructure in Romania. It generates its revenues by renting and leasing out capacity to the state's own railway companies plus increasingly to private competitors. Since its main clients by far remain CFR Calatori and CFR Marfa, its financial performance is closely linked to the operations of those two companies. Reflecting this, CFR's profitability has sagged in recent years, most noticeably in the crisis year 2020 (Table 1.12). CFR is among Romania's largest corporate employers. To oversee and operate its extensive railway infrastructure, the company currently employs around 23 200 persons.

The CFR has a board consisting of five non-executive board members. It is chaired by an academic from the Polytechnic University of Bucharest with a degree in railway engineering. Among the other board members are two managers from the Ministry of Transport and Infrastructure and a parliamentary staffer.

Table 1.12. Financial performance indicators for CFR

		2015	2017	2019	2020
Asset value	USD mill.	2 636	3 521	3 453	3 703
Book equity value	USD mill.	412	578	578	562
Annual turnover	USD mill.	256	278	237	236
EBITDA	USD mill.	65	85	21	-30
Net Profit	USD mill.	26	40	-6	-71
Dividends	USD mill.	0	0	0	0
Provisions	USD mill.	146	160	146	197
Long-term debt	USD mill.	167	142	127	118
ROA	%	1.0	1.1	-0.2	-1.9
ROE	%	6.4	6.9	-1.0	-12.6

Source: Information provided by the Romanian authorities.

CFR Calatori

CFR Calatori was originally the passenger transport division of CFR, but it was given independent legal personality through a reorganisation in 1998. While private rail providers as mentioned above now compete in the market, competition is less steep than in freight transport and CFR Calatori is under less financial strain that its sister company CFR Marfa (see below). However, the company was hard hit by the COVID-19 related slowdown in travel activity in 2020, and in early 2022, the European Commission authorised the Romanian Government to disburse EUR 44 million to the company in compensation for its losses. The employment in CFR Calatori, which has been relatively constant over time, in 2020 stood at around 12 100.

Table 1.13. Financial performance indicators for CFR Calatori

		2015	2017	2019	2020
Asset value	USD mill.	934	926	743	754
Book equity value	USD mill.	306	330	256	211
Annual turnover	USD mill.	460	508	493	459
EBITDA	USD mill.	116	138	101	114
Net profit	USD mill.	8	-5	-38	-89
Dividends	USD mill.	0	0	0	0
Provisions	USD mill.	66	40	18	23
Long-term debt	USD mill.	0	0	33	29

Source: Information provided by the Romanian authorities.

CFR Calatori has a unitary board consisting of six directors without executive representation. The current board consists entirely of temporary appointments, and it is not clear from the company's website who holds the position of president.[23] Only two of the board members are characterised as being "without political affiliation", both of whom hold managerial positions within the Ministry of Transport and Infrastructure. Among the other four, two are parliamentary counsellors and one is an employee of CFR Marfa.

CFR Marfa

CFR Marfa was originally the freight division of CFR but was given independent legal personality in 1998. As of 2020, CFR Marfa employed around 4 800 persons, down from 6 500 in 2015. The company is persistently loss-making, having last posted a profit in 2007. In 2013, under pressure from international lenders, the government attempted to sell a majority stake in CFR Marfa through a trade sale to a strategic investor. However, the bids received were deemed unsatisfactory and the company in its entirety remained in state hands. The company was placed under a pre-insolvency procedure in 2020 after the European Commission ruled in February that year that the facilities granted by the government in the context of the aborted privatisation process had amounted to illegal state aid. CFR Marfa was ordered to reimburse nearly EUR 800 million including interest and penalty. According to press reports, the government is now engaged in renewed efforts to either privatise or dismantle the company.[24]

Table 1.14. Financial performance indicators for CFR Marfa

		2015	2017	2019	2020
Asset value	USD mill.	288	283	1 215	2 005
Book equity value	USD mill.	98	21	897	878
Annual turnover	USD mill.	187	188	158	130
EBITDA	USD mill.	-21	-20	8	-15
Net Profit	USD mill.	-38	-40	-56	-84
Dividends	USD mill.	0	0	0	0
Provisions	USD mill.	1	1	1	1
Long-term debt	USD mill.	14	0	33	36

Source: Information provided by the Romanian authorities.

The company has a unitary board consisting of seven directors without executive representation. The current board – which consists entirely of temporary appointments – is chaired by a Director General from the Ministry of Transport and Infrastructure. Of the other six board members, three are employees of the ministry, one is an executive manager in CFR Calatori and two board members are "outsiders" employed by private companies.

Romgaz

The company known as Romgaz (full name: "Societatea Nationala de Gaze Naturale S.A.") is a majority state-owned company that is listed both on the Bucharest and London Stock Exchanges. As previously mentioned, the flotation of Romgaz shares in 2013 was the largest ever IPO in Romania's history. The state currently holds 70.01% of the shares; there are no other major block holders.[25]

Romgaz is the largest natural gas producer in Romania and one of the largest producers in Eastern Europe. The company is Romania's main supplier, responsible for producing around 40% of the country's total natural gas consumption. Romgaz traces its history back to an integrated gas sector company established in the pre-communist era. In 2000, the company was broken up, with the gas transmission and gas distribution activities split into separate enterprises. Romgaz retained responsibility for exploration and storage of gas. The company is overseen by the Ministry of Energy which exercises the state's ownership rights. It currently employs 5 673 persons.

In terms of corporate governance, Romgaz is overseen by a unitary board which includes executive and non-executive directors. The current board consists entirely of temporary appointments. The CEO sits on the board, as do two other senior corporate officers – although the latter are not categorised by the company as being parts of the executive.[26] Among the four outside directors the president of the board is State Secretary in the Ministry of Energy. One further official from the ministry sits on the board, as does

a high-level employee of another state-owned enterprise. Only one board member is categorised as being independent.

Table 1.15. Financial performance indicators for Romgaz

		2015	2017	2019	2020
Asset value	USD mill.	2 665	2 844	2 040	2 450
Market value	USD mill.	2 528	3 100	3 356	2 731
Book equity value	USD mill.	2 337	2 393	1 667	1 953
Annual turnover	USD mill.	977	1 178	1 156	990
EBITDA	USD mill.	552	708	611	472
Net Profit	USD mill.	288	477	246	322
Dividends	USD mill.	251	678	146	174
Provisions	USD mill.	80	122	123	184
Long-term debt	USD mill.	88	0	0	1
ROA	%	10.8	16.8	12.0	13.2
ROE	%	12.3	19.9	14.7	16.5

Source: Information provided by the Romanian authorities.

Romgaz is a profitable company, with rates of return that compare well with industry averages. It carries little debt, hence its book equity is close to its asset value, both of which fluctuate annually in response to changing hydrocarbons prices (Table 1.15). In recent years, the company has had a dividend payout ratio close to 50%, which seems consistent with industry practices. However, it bears mentioning that prior to the stock-market listing, the fund managers of the Property Fund (at that time a minority shareholder) threatened legal action against the government which it alleged was trying to use their shareholder superiority to channel money from the company to compensate for a national budget deficit.

1.4.3. Financial oversight in the SOE sector

Budget approval process

According to GO no. 11/2016 (amending GO no. 26/2013), unlisted SOEs are required to submit the income and expenditure budget (as approved by the general shareholders' meeting) for approval by the government within 45 days from the date of approval of the Annual State Budget Law. According to the Romanian authorities, the government approves these budgets within 45 days from the date of submission. While listed are required to submit the income and expenditure budget for approval by the general shareholders' meeting within 60 days from the date of approval of the Annual State Budget Law, the budget of these SOEs is not required to be approved by government. According to the Romanian authorities, if SOEs respect these deadlines, the government approval process is swift.

These provisions represent a significant improvement from the previous process prescribed by GO no. 26/2013, whereby SOEs' budgets were often approved by government with significant delays (of up to one year in some cases). This reportedly hampered the operational autonomy of capital intensive SOEs in particular (such as energy SOEs), as budgets are to be pro-rated until they are approved by government (with allowed monthly spending of 1/12th of the budget of the previous year) (Box 1.6).

Box 1.6. Shortcomings of the budget approval process as provided by GO no. 26/2013

According to a 2015 World Bank report, Ordinance no. 26/2013 was adopted in the context of poor financial performance of SOEs that led to high fiscal burden, as a means to control costs and reduce losses. The report found that the ordinance provides for "strict, long and inadequate budgetary processes without differentiating between loss-making SOEs and profitable ones, leading to various inefficiencies and undermining their autonomy". In particular, the ordinance then prescribed executive management to prepare the annual budget based on strict rules and performance indicators, which was to be approved by the General Assembly and then submitted to the line ministry and the Ministry of Finance, with final approval issued by the entire government (with delays of up to a year).

Source: Frederick, R. (2015[22]), Decision making, roles and responsibilities in Romanian state-owned energy enterprises.

Reporting and disclosure requirements

All majority-owned SOEs – regardless of their corporate form – are subject to the reporting requirements of GEO no. 109/2011 (as amended and approved by Law no. 111/2016), as well as those provided by the Accounting Law, and Law no. 47/2014 (amending and approving GO no. 26/2013). In particular, all SOEs are required to submit their annual financial statements, and the consolidated statements with the auditor's report, to the Ministry of Finance and their ownership entities by May of the following year (according to Article 36 of the Accounting Law). For autonomous administrations, according to Article 9 of Law no. 111/2016, SOE boards are required to prepare "monthly reports to the supervisory public authority [regarding] the fulfilment of the financial and non-financial performance indicators, annex to the mandate contract, as well as other data and information of interest to the public supervisory authority, at its request."

For fully incorporated SOEs, according to Article 55 of GEO no. 109/2011, the board of directors must submit on a semestrial basis a report on the activity of the SOE at the general shareholders' meeting, which should include information on the performance of the mandate contracts of board members, details on the operational activities and financial performance of the company, as well as the semestrial accounting reports of the company. Further, according to Article 57, the board must also submit information (including statements and reports) relating to the activity of the SOE to the line ministry, Ministry of Finance, and shareholders with more than 5% of ownership on a quarterly basis and whenever requested "in the format and within the deadlines established by orders or circulars of the beneficiaries".

Of note, while SOEs are required to abide by the financial and non-financial disclosure requirements provided by Law no. 111/2016, the overall degree of compliance is relatively low (Figure 2.4). As of end 2020, more than 30% of SOEs had not published their annual financial statements and half-yearly accounting reports, and almost 40% had not published their annual audit report. As of end 2021, almost half of SOEs (45%) had not published the annual directors' report. Although some progress was made since 2017 regarding disclosure of board composition and their remuneration, as of end 2021, around one-third of SOEs had not published the list of directors and their CVs, and almost half (47%) had not disclosed information on the remuneration of executive and non-executive directors. It is also worth noting that almost 40% of SOEs had not published resolutions of the general shareholders' meeting in 2021, which can negatively impact the right to information of non-state shareholders in particular, hence hampering the principle of equal treatment of all shareholders.

Internal and external audit

Internal audit

All Romanian SOEs are subject to Law no. 672/2002 on internal public audit, which requires internal auditors to independently assess risk management, control and governance process. Internal audit procedures are organised in accordance with the provisions of GEO no. 109/2011, which provides that the internal auditor be subordinated to the audit committee. Law no. 111/2016 (amending and approving GEO no. 109/2011) also requires SOEs to establish an audit committee, which should be composed of three non-executive members and a majority of independent members (i.e. two independent members), out of which at least one must have competencies in the field of accounting and statutory audit. While the widespread practice of interim appointments in SOE boards may give rise to concerns regarding the independence of audit committee members (see Section 1.4.4 below for details), according to the Romanian authorities, independence requirements for SOE board audit committees are usually complied with.

Accounting standards

While companies whose securities trade in a regulated market are required to use IFRS standards since 2012, the 16 largest and unlisted majority-owned Romanian SOEs are required to apply IFRS since 2016, in accordance with the provisions of GEO no. 666/2015. As of end 2020, 24 large SOEs had elaborated financial statements in accordance with IFRS, including nine SOEs listed on the stock exchange, and 15 majority-owned and unlisted SOEs. In practice, smaller SOEs prepare financial statements using Romanian accounting standards, in line with EU Directive 34/2014 transposed in national legislation by Order of the Ministry of Finance no. 1802/2014.

External audit

According to Article 34 of the Accounting Law no. 82/1991, the annual financial statements of fully or majority-owned SOEs, as well as those of autonomous administrations, are subject to statutory audit, which should be performed by authorised financial auditors or audit companies, and carried out in accordance with International Audit Standards, EU Regulation no. 537/2014, and Law no. 162/2017. According to articles 47-48 of GEO no. 109/2011, the audit committee should select the external auditor, who should be appointed by the general meeting of shareholders for companies, and by the board for autonomous administrations, for a period of at least three years.

According to articles 21-24 and Article 28 of Law no. 94/1992, the Court of Accounts also carries out performance and compliance audits of majority-owned SOEs (with more than 50% of state shareholding), which are planned according to an annual activity programme. Internal audit reports are used to delve deeper into any issues that may be identified internally, and if irregularities are found, a notice is sent to SOE's management, as well as to the ownership entity, who are required to take measures to address the issues identified according to a set deadline. The auditee can request for an extension of the deadline, pending the submission of a document explaining why the initial deadline cannot be complied with. The auditee can challenge the decision before the court.

1.4.4. Boards of directors

Board structure and composition requirements

According to the Companies Law no. 31/1990, companies can have a one-tier or two-tier system, which may be changed by the decision of the general meeting of shareholders. SOEs tend to have one-tier

boards. According to the provisions of GEO no. 109/2011, the board of directors of SOEs should be formed as follows:

- **Autonomous administrations** are administered by a board of directors comprised of three to seven members, including one representative from the Ministry of Finance, one representative from the relevant line ministry, and between one and five independent members (who may not be public servants, or state representatives from the line ministry or other public institution).
- **Joint-stock companies** with one-tier boards must have a board of directors comprised of between three to seven members and may only include one state representative. In the case of large enterprises with over 50 employees and a turnover of over EUR 7.3 million, the board of directors can also be formed of five to nine members, with a maximum of two seats for state representatives, who must be evaluated by the selection committee and comply with the same standards of professional qualifications imposed on all candidates (according to Article 28 of GEO no. 109/2011). For companies with two-tier boards, supervisory boards must be composed of between five to nine members, who may not be members of the management board nor employees of the company.
- In the case of **limited liability companies**, the number of board members and the selection procedure thereof, as well as the establishment of certain board committees, are decided by the line ministry through the articles of incorporation of the companies in question.

In addition to the state's maximum of two seats on SOE boards, the Companies Law no. 31/1990 requires boards to be composed of a majority of non-executive and independent members (Article 138). The constitutive act or the decision of the General Assembly may also establish specific conditions of professionalism and independence for supervisory board members. One-tier boards may include executive directors, and in Romania's SOEs the CEO often serves on the board. The nomination of independent board members should take into account the criteria set by law (Box 1.7). However, according to data provided by the Romanian authorities, at present these requirements are rarely implemented in practice (as described below).

Box 1.7. Independence requirements for board members

The nomination of independent board members should take into account the following criteria:

a) that he/she is not a manager of the enterprise or of a company controlled by it and he/she has not held such a position in the last five years

b) that he/she is not an employee of the enterprise or of a company controlled by it and he/she has not had such a work relationship in the last five years

c) he/she should not receive or have received from the enterprise or from a company controlled by it an additional remuneration or other advantages, other than those corresponding to his/her capacity of non-executive administrator

d) he/she should not be a significant shareholder of the enterprise

e) he/she should not have or have had in the last year business relationships with the enterprise, or a company controlled by it, either personally, or as shareholder, administrator, director or employee of a company which has such relationships with the company if, due to their significant nature, they could affect his/her objectivity

f) he/she should not be or have been in the last three years a financial auditor or an employed shareholder of the current financial auditor of the enterprise or of a company controlled by the enterprise

g) he/she should not be a director in another company where a director of the enterprise is non-executive administrator

h) he/she should not have been a non-executive director of the company for more than three mandates (i.e. 12 years)

i) he/she should not have family relationships with a person who is in one of the situations provided under letter a) and d).

It should however be noted that according to Law no. 161/2003, the government may also approve – on an "exceptional basis" – the appointment of politicians (such as secretaries of state and undersecretaries of state) to the board of autonomous administrations, fully incorporated companies and listed companies, including banks or credit institutions, insurance and financial companies "of strategic interest or if a public interest imposes it" [Article 84 (3)]. Private persons may also not simultaneously serve on the boards of more than three companies.

As mentioned above, the board is required to establish two board committees – an audit committee, and a nomination and remuneration committee – and follow specific requirements regarding their composition (as per GEO no. 109/2011). The audit committee must be comprised of a majority of non-executive and independent members, out of which at least one must have competencies in the field of accounting and statutory audit. The nomination and remuneration committee must be composed of non-executive members, out of which at least one must be independent. Other committees may be established at the discretion of the board, with duties and responsibilities established by statute or internal regulation (as per Article 34).

Board nomination process

The selection process for SOE board members is clearly defined and regulated by Law no. 111/2016 (amending and approving GEO no. 109/2011) and the methodological rules set in GD no. 722/2016. According to applicable provisions, selection criteria for individual board vacancies should be established by line ministries, together with the board nomination committee (and independent human resources experts if applicable), taking into account the general criteria provided by law, the requirements set in the letters of expectations, as well as the specificities and complexities of the company's activities.

In particular, Article 28 of GD no. 722/2016 provides that a 'board profile matrix' be established by the board nomination committee, together with the line ministry, which must include the following information: specific selection criteria; evaluation grids for all criteria; weights for each criterion (depending on their importance); the grouping of criteria for comparative analysis; a collective minimum threshold for each criterion (if applicable); subtotals, totals, weighted totals of all criteria for individual board members. This aims to ensure for a transparent, standardised and competitive selection process.

Box 1.8. Board selection criteria provided by Government Decision no. 722/2016 (Article 33 of Annex 1)

The Board Profile Matrix distinguishes between mandatory and optional criteria required for a given competency-based board, which have been identified by the analysis of contextual requirements. The mandatory criteria are competencies and traits which must be met by all candidates or board members and for which there is a minimum level of competence required. The optional criteria are competencies and features that may be met by some but not necessarily all of the board members, and for which there is no minimum level of competence applicable to all board members.

The criteria to be used in the selection procedure are differentiated into three groups:

- **Competencies**, including: sector-specific skills; professional skills of strategic importance; corporate governance skills; social and personal skills; local and international experience; specific competencies and restrictions for civil servants or other categories of staff within the line ministry or other public authorities or institutions.
- **Personality traits**, including: personal and professional reputation; integrity; independence; political exposure; interpersonal communication skills; alignment with the shareholders' letter of expectations; meeting gender diversity criteria.
- **Other parameters that may be decisive**, including: the economic and financial results of the enterprises in which the candidate had exercised his/her mandate as board member or executive manager; the fiscal and judicial records of the candidate; other criteria, depending on the particular SOE and the applicable legal provisions.

Source: Romanian Government (2016[15]), *Government Decision no. 722/2016*, https://legislatie.just.ro/Public/DetaliiDocument/182501

Importantly, the selection process as regulated by law prescribes the involvement of independent human resources specialists, which is mandatory for large SOEs, and optional for other companies. It should also be noted that in the case of fully incorporated companies, while the state is entitled to propose candidates for board nomination, these proposals should be made on the basis of a prior selection by independent experts. Further, as part of the selection process, shortlisted candidates are required to prepare a "declaration of intent" based on the objectives established in the letters of expectations, which should set out the candidate's assessment of the medium-term objectives to be achieved, development needs of the SOE regarding corporate governance, and the candidate's vision of the expectations of shareholders. While board members of **autonomous administrations** are appointed by the line ministry (based on the proposal of the independent expert when applicable), the law provides that board members of **fully incorporated companies** be appointed by the general meeting of shareholders among the shortlisted candidates.

Of note, shareholders owning (individually or collectively) at least 5% of the SOE's share capital may request the application of the cumulative voting method by written proposal within 15 days as of the date of publication in the Official Gazette of Romania of the convening notice of the general meeting of shareholders which has on its agenda the election of the board members. If the request is made by a shareholder holding more than 10% of the SOE's share capital, the application of the cumulative vote method is mandatory. The cumulative voting method allows shareholders to cast all of their votes for one or more shortlisted candidate(s).

Table 1.16. Procedures for selecting and appointing SOE board members, according to Law no. 111/2016

SOE type	Call for applications	Selection process	Nomination process
Autonomous administrations	The vacancy announcement must be published in at least two newspapers and the SOE website	Committee set up by the line ministry, of independent experts for large enterprises (>500 employees)	Line ministry (based on the proposal of independent experts for large enterprises)
Companies		Board nomination committee, which may be assisted by independent experts	General meeting of shareholders; possibility of applying the cumulative voting method at the request of minority shareholders
Large companies		Human resources recruitment companies or independent recruitment specialists	

In spite of these provisions seeking to ensure for a transparent selection process, a loophole in Law no. 111/2016 currently allows for interim appointments of board members and executive management (similar to the provisions introduced by Article 137 of the Companies Law no. 31/1990). These interim appointments in SOEs can be directly proposed by the state and should serve for a period not exceeding six months (Box 1.9). While this provision intended to create a transitory arrangement at the time of the promulgation of the law, and a stop-gap in case a board is hit by sudden resignations, many ownership entities continue to avail themselves of this provision to appoint directors without proper procedure.

Box 1.9. Interim appointments, as provided by Law no. 111/2016

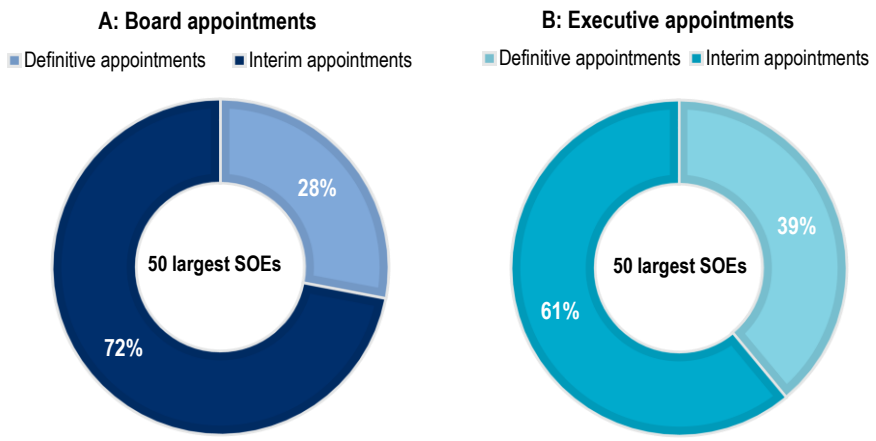
In case of one or more vacant board seats and in order to ensure business continuity, line ministries may appoint interim board members until the selection procedure is completed (in the case of **autonomous administrations**) or may convene a general meeting of shareholders in order to appoint one or more board member(s) until the selection procedure is completed (in the case of **companies**). In such cases, the state is entitled to submit proposals for candidates in the general meeting of shareholders.

The duration of the mandate of the interim board member is of four months, with possibility of extension for "solid reasons" for an additional two months, reaching a total period of maximum six months. If the selection procedure is suspended or cancelled by the court of law, the mandate of the interim director continues until the new board member is appointed according to due process. In practice, this continuation is not subject to time limitations and may extend well beyond the six months otherwise foreseen by the law.

Similarly, in case of vacancy of one or more executive management position(s), Article 137 of the Companies Law no. 31/1990 entitles the board to appoint an interim executive manager until the general shareholders' meeting, only if the articles of incorporation do not provide otherwise. Law no. 111/2016 further provides that this interim mandate may last four months, with a possibility of extension of two months (which may extend well beyond this time period in practice).

At present, the practice of interim appointments is widespread. According to data provided by the Romanian authorities, in 2021, out of the 271 board positions across the 50 largest SOE (in equity value and number of employees), 194 board members were temporary appointments, while only 76 appointments were definitive, following due process. As for executive management, 48 were temporary appointments and 31 were definitive (Figure 1.15). This practice has direct consequences on the operational autonomy of boards, which is de facto limited (see section below).

Figure 1.15. Status of board and executive appointments in the 50 largest SOEs in 2021



Source: OECD Secretariat, based on data provided by the Romanian authorities.

According to data provided by the Romanian authorities regarding the composition of the boards of ten large SOEs, as of end 2021, out of six board positions on average, less than two board members were independent on average.[27] However, according to evidence gathered by the OECD review team, it appears that some of these board members classified as independent were in fact politically appointed – and politically connected – in addition to those members appointed on an interim basis.[28] It should also be noted that an unusually high number (by international standards) of members of parliament currently sit on the boards of the largest SOEs – which signals that the largest and most economically important enterprises remain controlled by both the governing and opposition parties in Romania. Controversies also exist with regard to the appointment of executive directors, who in some cases are categorised as independent despite evidence of the contrary.[29] Overall, this raises concerns around the ability of the board to exercise objective and independent judgment for the long-term interest of the company.

Although the degree of compliance with prescribed provisions seems to have increased from year to year since 2017, in many cases the process is often stalled shortly after it is initiated. For instance, in 2020, while the procedure for selecting board members was initiated in 92 SOEs, it was completed in only 31 SOEs (Ministry of Finance, 2021[19]). According to the Romanian authorities, this is reportedly due to the lack of interested candidates, which may in turn be due to the perception that SOEs remain politically controlled. Indeed, evidence gathered by the review team suggests that although enthusiasm from private sector candidates emerged in the immediate aftermath of the adoption of GEO no. 109/2011 (evidenced by the then large number of private sector applicants), such enthusiasm from professional candidates seems to have declined shortly after, and to have stalled since 2016. This is reportedly due to some high-profile cases of disbandment by the state of the board of some large SOEs – often without justification – shortly after their nomination according to due process. The most publicised cases where the boards appointed according to legal provisions were subsequently revoked by decision of the General Assembly include CFR Marfa, CFR Calatori, CFR, Posta Romana, and TAROM (Box 1.10).

Box 1.10. Case of TAROM: board selection and disbandment between 2012-14

TAROM was the first company to implement the provisions of GEO no. 109/2011 by appointing a new board of directors according to due process in October 2012. The structure of the board was diversified, including people from the banking environment, pilots, businessmen from the private sector, but also people close to the political environment.

The only foreign member of the board was selected as CEO but, for unknown reasons, he refused to sign the contract that was proposed to him. A month later, the board appointed a new CEO, a former director of the national airline company from Luxembourg.

A conflict among the members of the board of directors on different topics led to the resignation of some members. In several interviews and articles, a former member of the board of directors described instances in which the board influenced management decisions and pressured the CEO to resign. In the following two years, the board structure changed four times.

In May 2013, the company's CEO was forced by the board to accept the reduction of his management contract from four years to one year. Open conflicts between the CEO and chair of the board were related in the press.

In November 2013, the general shareholders' meeting of TAROM dismissed the entire board and appointed a new interim board of directors.

In May 2014, four of the members of the board of directors were fired, with another resigning a month before.

In June 2014, the entire board was dismissed.

Source: Ministry of Finance (2014[13]), *Evaluation of the implementation of the emergency ordinance no. 109/2011*, https://mfinante.gov.ro/domenii/guvernanta/rapoarte-generale-periodice

Overall, the practice of interim appointments has drawn criticisms from minority investors in large SOEs. For instance, Fondul Proprietatea has recently raised concerns around temporary board and executive appointees in large SOEs in which it owns a minority stake, which are reportedly exclusively based on political affiliations and lacking relevant professional experience in the field of activities of these companies. These include the board and executive members of Oltenia Energy Complex, Salrom, Bucharest Airports, Timisoara Airport, Galati Ports Company, Constanta Maritime Ports, River Danube Ports Administration, and Plafar.[30]

Board duties and responsibilities

According to applicable provisions, SOE boards, as well as individual board members, are subject to the same responsibilities and liabilities as is the case for private companies. This applies equally to both corporatised SOEs and autonomous administrations. In majority state-owned SOEs, the same duties should consequently apply equally to board members nominated by the state and those nominated by other shareholders. The duties of the board are established by the Companies Law no. 31/1990, GEO no. 109/2011 (as amended and approved by Law no. 111/2016), the capital markets legislation (for traded companies), and the companies' articles of incorporation. They are differentiated for one-tier and two-tier board structures (Table 1.17). According to the provisions of GEO no. 109/2011, the chair of the board cannot at the same time serve as the company's CEO.[31]

Table 1.17. Board responsibilities in one-tier and two-tier systems

Responsibilities of the board (with a one-tier structure)	Responsibilities of the supervisory board (in a two-tier structure)
• Establish the main lines of activity and development of the company; establish the accounting policies and the financial control system, as well as the approval of the financial planning • Appoint and revoke executive management, and set their remuneration • supervise the activity of executive management • Prepare the annual report, organise the general meeting of shareholders and implement the decisions thereof • File the request for opening the insolvency procedure for the company.	• Exercise permanent control over how the company is managed by executive management • Appoint and revoke executive management • Verify compliance with the law, with the articles of incorporation and with the decisions of the general meeting of the operations of company management • Report at least once a year to the general meeting of shareholders with respect to the supervisory activity it has performed.

According to applicable provisions, the members of the boards are all responsible for the fulfilment of their obligations towards the company. The board of directors represents the company in relation to third parties and in court. In the absence of contrary provisions in the articles of incorporation, the board of directors represents the company through the chair. While the chair of the board ensures the communication between the line ministry and the board of directors, this could give rise to concerns in cases where board chairs are appointed on a temporary basis.

As in many other jurisdictions, the board is required to prepare an annual "directors' report" presenting the development and performance of the company's activities during the fiscal year and describe the main risks and uncertainties that it is facing. The report should be signed by the chair, and should accompany the financial statements of the SOE. While this report is required to be published on the websites of SOEs, in practice only around half of SOEs do. Boards are also required to establish a conflicts of interest policy, accompanied by an implementation strategy. In this aim, within 90 days of appointment, the board should adopt a code of ethics made publicly available on the SOE website, which should be approved by the internal auditor and revised on an annual basis. However, this code of ethics is not published by around 40% of SOEs on average, which raises concerns around whether such codes are actually adopted.

According to Article 4 of GEO no. 109/2011, the ownership entity and the Ministry of Finance may not intervene in the activity of management and board function of the public enterprise. According to the law, the authority for taking administration and management decisions for the public enterprise and the liability under the law belongs to the board of directors and executive management. However, in spite of these provisions, concerns around excessive political intervention exist in light of the widespread practice of interim appointments.

Overall, in actual practice, the operational autonomy of boards is often limited due to the widely used practice of interim appointments. This entails that in practice, strategic decisions are taken by ownership entities or SOE management, with boards at best focusing on compliance checks and other purely supervisory functions rather than strategic business decisions. In addition, boards are often convened several times per month to either grant authorisation for management to perform certain actions, or to convey requirements from the ownership entity (Romanian Government, 2016[23]). This suggests that many SOE boards have limited independence, operational autonomy and decision-making powers.

1.5. Prospective changes

EU Recovery and Resilience Plan

As described in previous sections, important reforms of the legal framework for SOEs occurred under Romania's commitments under the IMF – World Bank – EC Economy Recovery Programme, initiated in the aftermath of the 2008 global financial crisis. Going ahead, commitments to international organisations

are likely to remain important drivers of reform. Romania has been invited by the OECD to open negotiations with a view to future membership of the Organisation. While the process may necessitate reform in some areas of its SOE landscape, this is envisaged as a medium-term priority that has not yet taken concrete form. In the near term, Romania's overriding commitment to SOE reform arises from the Recovery and Resilience Plan that the country agreed with the European Commission in 2021 (European Commission, 2021[10]).

Component 14 of the EU Recovery and Resilience Plan focuses on reform and investment to ensure good governance, including concrete priorities for work toward SOE reform. In particular, the so-called Reform 9 puts forward a commitment to "improve the procedural framework for the implementation of corporate governance principles in state-owned enterprises". The stated objective of this reform is to improve the corporate governance of all state-owned enterprises in Romania by enforcing OECD standards.

The reform shall be implemented through the entry into force of amendments to Law no. 111/2016, removing all exceptions to compliance with corporate governance standards, including for state-owned companies at local level. These amendments shall enforce a separation between the regulatory and ownership functions, remove any direct or indirect advantage that might derive from state ownership, be it in terms of market rules/regulations, financing, taxation, or public procurement, and ensure that any state-owned enterprise pursue obtaining profitability.

The reform shall also set up and operationalise a task force at the centre of the government to ensure the monitoring of the application of corporate governance standards, having the ultimate responsibility of ensuring a transparent and competitive selection procedure for approving the appointment of board members, and for evaluation and controls. The task force shall publish regular reporting of performance indicators and enforces sanctions for state-owned enterprises non-compliant with key performance indicators. It is unclear at this point what concrete form the task force should take. Based on the terms of the Plan, it could be equivalent to an ownership co-ordination entity such as those seen in a growing number of post-transition economies, or it could take the form of a central ownership agency with more extensive powers.

A Monitoring Dashboard – essentially equivalent to aggregate reporting in real time – with financial and non-financial targets and performance indicators for all categories of public companies (including key sectors such as transport, energy, public utilities) shall be developed, yearly published and used centrally for reporting and monitoring progress in achieving performance for all categories of state-owned enterprises.

The implementation of the reform – which will be accompanied by extensive technical assistance provided to the Romanian authorities – will be completed by 30 June 2026. Among the most urgent priorities, the updated legislation for state-owned companies and the permanent task force to ensure the monitoring and enforcement of the application of corporate governance standards shall enter into force and be operational by 31 December 2022. The Monitoring Dashboard shall be operational by 30 June 2023. An outline of the detailed plan and timeline is provided in Table 1.18.

Table 1.18. SOE-related deliverables established by Reform 9 of the Recovery and Resilience Plan

Activity	Description of activity	Completion date
Entry into force of updated legislation for state-owned enterprises	Entry into force of the amended Law no. 111/2016, removing all exceptions, including for state-owned companies at local level. These amendments shall (i) separate the regulatory and ownership functions; (ii) remove any direct or indirect advantage that might derive from state ownership, be it in terms of market rules/regulations, financing, taxation, or public procurement; and (iii) ensure that any state-owned enterprise pursue obtaining profitability.	2022: Q4

Activity	Description of activity	Completion date
Operationalisation of the task force	On the basis of the recommendations of an independent expert panel, a permanent task force is established in compliance with OECD corporate governance standards, and becomes operational to ensure the monitoring of the application of corporate governance standards, has the ultimate responsibility of ensuring a transparent and competitive selection procedure for approving the appointment of administration board members, monitors, evaluates, controls, and publishes regular reporting of performance indicators and enforces sanctions for state-owned enterprises non-compliant with key performance indicators.	2022: Q4
Publication of the Monitoring Dashboard with financial and non-financial targets and performance indicators for all categories of public companies	A Monitoring Dashboard shall be developed, yearly published and used centrally for reporting and monitoring progress in achieving performance indicators (financial and non-financial) for all categories of SOEs. For this, the following steps shall be performed: (i) conduct an evaluation of all state-owned companies with recommendations for selling or listing the assets of state-owned companies; (ii) identify financial and non-financial key performance indicators for monitoring financial and non-financial objectives for all categories of SOEs (including those in sectors such as energy transport, public utilities); and (iii) develop a scorecard for monitoring the application of corporate governance requirements by all SOEs.	2023: Q2
Reduction of interim/temporary management board appointments by 50% for state-owned companies at central level	The reduction of temporary appointments to the management of state-owned companies at central level shall be calculated by reference to the baseline level (2020) to be determined in the analysis carried out in 2022.	2023: Q4
Central state-owned companies listed, leased or restructured in the field of energy and transport	At least three central state-owned companies listed/leased/restructured in the field of energy and transport, in addition to the listing of at least 15% shares of Hidroelectrica.	2026: Q2
Reduction of interim/temporary management board appointments by 10% for state-owned companies at local level	The reduction of temporary appointments to the management of state-owned companies at local level shall be calculated by reference to the baseline level (2020) to be determined in the analysis carried out in 2022.	2023: Q4

Source: European Commission (2021[10]), *Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Romania*, https://gov.ro/fisiere/stiri_fisiere/Annex_to_the__Proposal_for_a_Council_Implementig_Decision.pdf.

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Notes

[1] In addition, the capital city Bucharest holds both municipality and county competences.

[2] The Alliance has since dissolved. One of its main legacy parliamentary parties is the Save Romania Union Party (USR).

[3] Shareholding structure as of 31 December 2020, The Bucharest Stock Exchange website (2020[24]), retrieved in January 2021: https://www.bvb.ro/FinancialInstruments/SelectedData/NewsItem/BVB-Structura-actionariat-la-data-de-31-decembrie-2020/F9B4E

[4] SOEs are hereby defined as companies with at least 50% state ownership.

[5] The OECD review team understands that these institutions are essentially a legacy of the earlier communist economic system, in which products and technologies were often developed by specialised institutes and subsequently produced by manufacturing firms not directly linked with them.

[6] A definitional point is also at play: according to OECD practices the value of a corporation is the market value if the firm is traded in stock markets, and the book equity value if it is not. In practice, the market value of most profitable companies tends to exceed their book equity.

[7] This metric is preferred by the OECD on the grounds that it avoids introducing a bias in the case of countries with particularly large self-employment e.g. in the agricultural sector.

[8] This was based on the government's findings that " the reserves established as a self-financing source from the undistributed profit for compulsory destinations [were] not used by companies where the state holds a majority stake, [as] the surplus is reflected in their liquid assets".

[9] However, it should be noted that capital intensive SOEs with investment needs can provide justifications to distribute only 50% of their net profit as dividends.

[10] The CEC Bank also displays mostly sound RoEs. However, this is a highly leveraged financial institution and for comparison its rates of return on assets have been close to zero for the period under review.

[11] The Companies Law was amended and supplemented by the following enactments: Law no. 302/2005, Law no. 164/2006, Law no. 441/2006, Law no. 85/2006, Government Emergency Ordinance no. 82/2007, Government Emergency Ordinance no. 52/2008, Law no. 88/2009, Government Emergency Ordinance no. 43/2010, Government Emergency Ordinance no. 54/2010, Government Emergency Ordinance no. 90/2010, Law no. 202/2010, Government Emergency Ordinance no. 37/2011, Law no. 71/2011, Government Emergency Ordinance no. 2/2012, Government Emergency Ordinance no. 47/2012, Law no. 76/2012, Law no. 255/2013, Law no. 187/2012, Law no. 152/2015, Law no. 163/2018, and Law 223/2020. The last amendment from 5 November 2020 drastically simplified the transfer of shares in limited liability companies to third parties.

[12] Following the recommendations comprised in the OECD's "Report on Corporate Governance in Romania" (OECD, 2001[25]).

[13] "Public enterprises" include i) autonomous administrations incorporated by the state or an administrative-territorial unit/companies as well as ii) national companies in which the state or an administrative-territorial unit is a sole shareholder, a majority shareholder or where it holds control/companies in which one or several public enterprises described hold a majority share or a share that ensures them control.

[14] For areas not covered by GEO no. 109/2011, the ordinance shall be supplemented by the provisions of Law no. 15/1990, Companies Law no. 31/1990 and Law no. 287/2009 on the Civil Code.

[15] According to a 2014 report from the Ministry on Finance evaluating the implementation of GEO no. 109/2011, gradual stages of implementation were foreseen. Given that directors and managers usually have a four-year term, Article 60 of GEO no. 109/2011 provided that the full renewal of all SOE boards and managers be completed by end-2015. However, Article 61 introduced an exception to this gradual approach and provided that for each large SOE (with a turnover of over RON 1 million and over 1 000 employees), the procedures for appointing new board members and executive managers should start immediately. Each ministry and state agency with SOEs in their portfolio was required to prepare a list of companies that fell into this category. These lists changed several times (Ministry of Finance, 2014[13]).

[16] According to the Romanian Civil Code, a mandate is a contract whereby one party (trustee) is obliged to conclude one or more legal acts on behalf of the other party (principal). The trustee may not exceed the limits set by the mandate. In the case of SOEs, GEO no. 109/2011 states that the mandate contract will contain clauses regarding how the variable remuneration component will be determined by reference to the agreed-upon financial and non-financial performance indicators.

[17] This includes joint stock companies (JSCs), limited liability companies (LLCs), and autonomous administrations, but excludes national research and development institutes.

[18] This follows a declaration from the International Monetary Fund (IMF) dated 17 March 2017, which mentioned that "[b]anks should be excluded from the scope of [GEO no. 109/2011], because they are already subject to a special corporate governance law" (IMF, 2017[26]).

[19] Including electricity, gas, postal services, railways, air, water, road and urban transport, heating, and telecommunications.

[20] Reform commitments under the RRP may be a good step towards improvement., in particular the development of a "monitoring dashboard whereby financial performance would be monitored in real time (see Chapter 5 for details).

[21] In 2020, out of the 16 central institutions with a state ownership role, 14 reported having established this dedicated corporate governance structure.

[22] The Ministry of Finance is not involved in the board selection process for SOEs under the oversight of other central government institutions. However, in the case of autonomous administrations, the Ministry of Finance has the right to propose and select a representative. See Section 1.4.4 on board composition requirements for details.

[23] https://www.cfrcalatori.ro/en/management.

[24] https://www.romania-insider.com/romania-close-dismantling-cfr-marfa.

[25] The national Property Fund was previously a major shareholder, but it divested its stake in 2015 and 2016.

[26] For further detail, see https://www.romgaz.ro/en/consiliu-administratie.

[27] Data includes the board composition as of 2021 of Posta Romana, CFR, Romsilva, CFR Calatori, Oltenia, CNAIR, Romgaz, Metrorex, Transgaz, CFR Marfa.

[28] Anecdotal evidence also suggests that these interim members are replaced according to political cycles.

[29] This is the case for Transgaz: https://www.realitatea.net/stiri/actual/controverse-la-vaful-unei-companiicheie-cum-a-ramas-seful-transgaz-pe-functie-cu-3500-de-leizi_621621efb3c9537a61419903

[30] https://romania.europalibera.org/a/activipercentageC8%99tii-de-partid-care-conduc-firmele-de-stat-penelizarea-consiliilor-de-administrapercentageC8%9Bie/30767807.html; https://www-zf-ro.translate.goog/burse-fonduri-mutuale/fondul-proprietatea-critica-schimbarea-consiliul-administratie-20264190?_x_tr_sl=ro&_x_tr_tl=en&_x_tr_hl=fr&_x_tr_pto=wapp

[31] However, at least one criminal investigation carried out by the National Anticorruption Directorate of a corruption case involving an SOE found that at the time of the facts, the chair of the board was also acting as CEO.

2 Assessment of Romania against the OECD Guidelines of Corporate Governance of SOEs

This chapter describes the corporate governance framework of Romanian SOEs specifically with regard to how actual policies and practices compare with the recommendations of the *OECD Guidelines of Corporate Governance of SOEs.* In particular, it examines: (i) the rationales for state ownership, (ii) the organisation of the state ownership function, (iii) the level playing field between SOEs and private companies, (iv) the treatment of non-state shareholders and other investors, (v) principles and standards of responsible business conduct, (vi) transparency and disclosure policies and practices, and (vii) the roles and responsibilities of the boards of directors of SOEs.

2.1. Rationales for state ownership

The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review.

2.1.1. Articulating the rationales for state ownership

> *A. The ultimate purpose of state ownership of enterprises should be to maximise value for society, through an efficient allocation of resources.*

According to Romania's state ownership policy adopted in 2016, the rationale for establishing or maintaining state ownership in certain companies or sectors is based on "economic, social, structural or national security" reasons, including four key objectives: (i) retaining control over natural resources, (ii) managing natural monopolies, (iii) delivering essential public services, and iv) producing "strategic" goods and services.

Box 2.1. Rationales for state ownership according to the 2016 state ownership policy

- **Control over natural resources**. Holding stakes in key areas, such as energy and the environment, including the forestry, mining and hydrological sectors, is based on the belief that the revenues generated by these natural resources must benefit society as a whole.
- **Natural monopoly** (such as electricity and natural gas transmission infrastructure; railway infrastructure). At present, the state maintains majority stakes in public enterprises operating in these non-competitive sectors, and it is more economical to manage these networks through a single economic agent than through several.
- **Public service**. If a service is considered essential for the economic and social development of a certain category of citizens, or of a certain region, or of the population as a whole, the state may impose on economic agents – either public enterprises or private companies – the obligation to provide that service even if it would not normally be justified on commercial grounds for the enterprise concerned.
- **Strategic business reasons**, which are based on the production and capitalisation of various products and services that are realised through these SOEs.

Source: Romanian Government (2016[1]), *Romanian State Ownership Policy*, https://www.gov.ro/ro/guvernul/sedinte-guvern/memorandum-cu-tema-participarea-statului-in-economie-orientari-privind-administrarea-participatiilor-statului-in-intreprinderi-publice-rolul-si-a-teptarile-statului-ca-proprietar

For this purpose, the ownership policy also classifies SOEs into two overarching categories: commercially-oriented enterprises which are expected to maximise economic value, and those with public service and policy objectives. Overall, while the first three rationales for state ownership are soundly defined – notably given Romania's SOE landscape characterised by a large share of public enterprises operating in the energy and transport sectors, it should be noted that the rationale for owning SOEs for "strategic business reasons" is generally vague and may potentially be used to justify direct state intervention in any industry (across a wide range of economic activities and sectors) where a more solid rationale (e.g. market failure or public service requirements) cannot be provided.

It should also be noted that as a transition economy, Romania inherited a large state-owned sector from the communist period, notwithstanding recent large-scale privatisation efforts since 1990s – including

through divestiture, privatisations, floating of shares and sales. As such, the ownership policy also recognises that "diversifying the shareholding in these [state-owned] companies through minority shareholdings, including listing, can be beneficial for their effectiveness and profitability". It is also stated that "the exploitation of natural resources may in some cases be concessioned to private agents, following a cost-benefit analysis and depending on the macroeconomic situation at the time".

2.1.2. The ownership policy

> *The government should develop an ownership policy. The policy should inter alia define the overall rationales for state ownership, the state's role in the governance of SOEs, how the state will implement its ownership policy, and the respective role and responsibilities of those government offices involved in its implementation.*

As alluded to above, in 2016, the government adopted an ownership policy aiming to define, at national level, the policy underpinning the management of state holdings in public enterprises "where the state is the sole or majority shareholder, or exercises control". The ownership policy was developed by the government – together with the Ministry of Finance and line ministries with ownership rights – which then sought to align with international best practice, in particular taking the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (thereafter "SOE Guidelines") as a model. As such, the ownership policy includes the main areas recommended by the SOE Guidelines, and effectively outlines the state's overall ownership objectives and its expectations from public enterprises, as well as the roles and responsibilities of those exercising ownership functions (Box 2.2).

Box 2.2. Overview of the 2016 state ownership policy

The policy includes three main sections, each defining: (i) the rationale for state ownership in SOEs, (ii) the roles, responsibilities and levels of decision-making in SOE governance, and (iii) expectations of the state owner.

Rationales for state ownership in SOEs

The first section briefly outlines the importance of SOEs in the national economy, before setting out the four main rationales underpinning state ownership in public enterprises. The section also lays out the government's vision regarding the role of the state as a shareholder, as well as regarding the performance of SOEs over the long term.

Roles, responsibilities and levels of decision-making in the governance of public enterprises

The second section provides an overview of the main roles and responsibilities of the stakeholders involved in the governance of SOEs – including the ownership rights of line ministries (known as "public supervisory authorities"), and the monitoring powers of the Ministry of Finance. The section also outlines high-level principles regarding the separation of responsibilities of the annual general shareholder's meeting and of the board, calling for the state to respect the independence of boards by refraining itself from the operational procedures and functioning of boards, emphasising that the state should refrain itself from excessively intervening in the operational management of public enterprises. This section also calls for respecting the rights of information of all shareholders (especially of minority (non-state) shareholders).

Expectations of the state as shareholder

The third section outlines the expectations of the state owner with regard to the financial performance of SOEs, the dividend policy, non-financial expectations, risk management and internal control

mechanisms, as well as business ethics, integrity and conflicts of interests, trainings, and transparency and disclosure.

Source: Adapted from Romanian Government (2016[1]), *Romanian State Ownership Policy*, https://www.gov.ro/ro/guvernul/sedinte-guvern/memorandum-cu-tema-participarea-statului-in-economie-orientari-privind-administrarea-participatiilor-statului-in-intreprinderi-publice-rolul-si-a-teptarile-statului-ca-proprietar

The policy was introduced in the context of concerns regarding the inefficiency of SOEs likely due to political clientelism and a general lack of accountability of public enterprises, in turn negatively impacting their financial performance and causing *inter alia* accumulation of losses and arrears, which can represent a potential medium-term risk for fiscal sustainability. The ownership policy thus aims to improve the corporate governance and performance of SOEs. The policy was introduced at the same time as important amendments to the legal framework on SOEs, notably the adoption of Law no. 111/2016 (approving and amending GEO no. 109/2011) and GD no. 722/2016. In many ways, the policy reiterates legal provisions into a policy document.

> *C. The ownership policy should be subject to appropriate procedures of political accountability and disclosed to the general public. The government should review at regular intervals its ownership policy.*

As a government decision, the ownership policy was published both in the Official Gazette of Romania and on the government's website. As the policy reiterates to a large extent legal provisions applicable to SOEs, the government, Ministry of Finance, and line ministries verify the implementation of the provisions of the ownership policy as part of their duties. The Court of Accounts also exercises an oversight role with regard to the implementation of legislation including aspects related to the ownership policy. To date, the ownership policy has not been reviewed since its adoption in 2016.

2.1.3. Defining SOE objectives

> *D. The state should define the rationales for owning individual SOEs and subject these to recurrent review. Any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly mandated by the relevant authorities and disclosed.*

The rationale for ownership of public enterprises is set out in the substantiation notes which form the basis of the legislative acts of incorporation of SOEs (including applicable laws and government decisions). The revision of these incorporation documents is common practice, since amendments are necessary when new elements appear, which were not taken into account at the time of issuance of the incorporation documents. In addition, line ministries are responsible for defining the objectives of every SOEs in their respective portfolio, which should be based on sectoral strategies developed by the government. SOE objectives (set out through "letters of expectations") are required to be published by line ministries on their websites.

2.2. The state's role as an owner

The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness.

2.2.1. Simplification of operational practices and legal form

> *A. Governments should simplify and standardise the legal forms under which SOEs operate. Their operational practices should follow commonly accepted corporate norms.*

In Romania, the majority of centrally-owned SOEs are established as joint-stock companies (JSCs) according to the provisions of the Companies Law (no. 31/1990), which is also the legal form that all stock-market listed SOEs must take. As of end 2020, there were 121 JSCs (of which 18 were listed) – accounting for more than half of the 216 active and centrally-owned SOEs considered in this review (56%). State-owned enterprises can also operate as limited liability companies (LLCs), pursuant to the Companies Law. As of end 2020, there were 10 such active LLCs. Romanian SOEs can also take the form of autonomous administrations ("regii autonome") – a legal form created according to Law no. 15/1990 to reorganise state enterprises as companies in the post-communist period – which are fully-owned by the state. As of end 2020, there were 36 active autonomous administrations under the oversight of central government institutions in Romania.

Overall, all fully or majority-owned SOEs (including JSCs, LLCs, and autonomous administrations) broadly operate on the basis of rules applicable to private companies. While all three SOE legal forms are subject to the main law bearing on the corporate governance of SOEs (Law no. 111/2016 amending and approving GEO no. 109/2011), the law also applies to subsidiaries of SOEs. It should however be noted that Law no. 111/2016 provides for slightly different provisions regarding the composition of boards, the selection process of board members, and the responsibilities of ownership entities (i.e. central government authorities) vis-à-vis SOEs depending on their legal form – with specific requirements applicable to (fully-owned) autonomous administrations on one hand, and to (majority-owned) companies incorporated according to the Companies Law on the other hand, albeit with only minor procedural differences (Table 2.1). Financial and non-financial disclosure requirements prescribed by Law no. 111/2016 apply to all SOEs indifferently (see sub-section F.5 and section 2.6 for details).

Table 2.1. Differentiated provisions of Law no. 111/2016 according to SOE legal forms

	Autonomous administrations established by the state	Companies established according to the Companies Law (no. 31/1990), fully or majority-owned by the state, or in which the state has a controlling stake	Subsidiaries (i.e. Companies in which one or more SOE(s) hold(s) a majority or controlling stake)
Ownership rights of central government institutions	• to draft the letter of expectations and to publish it on its own website in order to be acknowledged by the candidates shortlisted for the position of administrator or director; • to appoint and dismiss the members of the administrative board; • to negotiate and approve financial and non-financial performance indicators for the administrative board; • to conclude mandate agreements with the administrators; • to monitor and assess the performance of the administrative board, in order to ensure, on behalf of the State or of the founding administrative-territorial unit, that the principles of economic efficiency and profitability in the	JSCs: • to draft the letter of expectation and to publish it on its own website in order to be acknowledged by the candidates shortlisted for the position of administrator or director; • to propose, on behalf of the State or of the administrative-territorial unit shareholder, candidates for the positions of members of the administrative board or, as the case may be, the supervisory board, in compliance with the conditions of qualification and professional experience and selection provided by this emergency ordinance; • to appoint the representatives of the State or, as the case may be, of the administrative-territorial unit in the general assembly of shareholders or associates and to approve their mandate;	• to ensure that the public enterprise exercises the capacity of shareholder with economic and strategic efficiency; • to ensure that the controlled company complies with the principles of economic efficiency and profitability; • to ensure through the representatives in the general assembly of shareholders and through the corporate governance structures the implementation of the requirements of the expectation letter in the financial and non-financial performance indicators that constitute an annex to the mandate contract; • to monitor and evaluate through its own corporate governance structures the financial and non-financial performance indicators attached to the mandate contract;

	Autonomous administrations established by the state	Companies established according to the Companies Law (no. 31/1990), fully or majority-owned by the state, or in which the state has a controlling stake	Subsidiaries (i.e. Companies in which one or more SOE(s) hold(s) a majority or controlling stake)
	functioning of the public company are respected; • to monitor and evaluate through its own corporate governance structures the financial and non-financial performance indicators included in the annex to the mandate contract; • to draft and publish on its own website the list of the administrators in office at public companies; • other duties provided by law;	• to empower its representatives in the general assembly of shareholders to negotiate and approve financial and non-financial performance indicators for the administrative board; • to monitor and evaluate through its own corporate governance structures the financial and non-financial performance indicators appended to the mandate contract; • to monitor and assess through its representatives in the General Assembly of Shareholders the performance of the administrative board, in order to ensure, on behalf of the State or of the territorial-administrative unit, that the principles of economic efficiency and profitability in the functioning of the Company are observed; • to ensure the transparency of the state shareholding policy within the companies over which it exercises the powers of supervisory public authority; • other duties provided by law; **LLCs**: To exercise all of the above, and approve the articles of association regulating the number of board members, the selection procedure and the constitution of board committees, where applicable.	• other duties provided by law;
	to monitor and evaluate through its own corporate governance structures the application by SOEs of corporate governance provisions of GEO 109/2011 (as amended and approved by law 111/2016), and to report to the Ministry of Public Finance on it and on the fulfilment of its own duties in the application of this emergency ordinance;		
	to establish integrity criteria for board members, and ensure their inclusion thereof in their mandate contracts;		
Board composition	The board must be composed of 3-7 members, including one representative from the Ministry of Finance, one representative from the relevant line ministry, and between 1-5 independent members who may not be public servants, or state representatives from the line ministry or other public institution, all of which should have relevant experience, and a majority of which should be non-executive and independent directors appointed according to the requirements provided by Article 138 of the Companies Law (no. 31/1990).	**JSCs**: One-tier boards must be composed of 3-7 members, and may only include one state representative. In the case of large enterprises with over 50 employees and a turnover of over EUR 7.3 million, the board of directors can also be formed of 5-9 members, with a maximum of two seats for state representatives, who must be evaluated by the selection committee and comply with the same standards of professional qualifications imposed on all candidates (according to Article 28 of GEO no. 109/2011). The majority of board members should be non-executive and independent, as per the requirements of article138 of the Companies Law (no. 31/1990). **LLCs**: The number of board members is decided by the line ministry through the articles of incorporation of the companies in question.	
Board selection process	After the vacancy announcement is published, the selection process is conducted by a committee set – which must be composed of independent experts for large enterprises, and the line ministry appoints board members (based	**JSCs**: After the vacancy announcement is published, the selection process is conducted by the board nomination committee, or by human resources recruitment specialists for large companies, and board members are appointed by the AGM (with the cumulative voting method at the request of minority shareholders). **LLCs**:	

	Autonomous administrations established by the state	Companies established according to the Companies Law (no. 31/1990), fully or majority-owned by the state, or in which the state has a controlling stake	Subsidiaries (i.e. Companies in which one or more SOE(s) hold(s) a majority or controlling stake)
	on the proposal of independent experts for large enterprises).	The selection procedure, as well as the establishment of certain board committees, are decided by the line ministry through the articles of incorporation of the companies in question.	

While autonomous administrations were exempted from the application of insolvency rules until 2014, provisions were amended in 2014 by the Insolvency Law no. 85/2014 (Article 3 (2)) to apply to all SOEs equally, and as such does not protect any SOE from insolvency procedures according to their specific legal status. However, according to the provisions of Law no. 137/2002 (as amended by Law no. 173/2020) on measures to accelerate privatisation, SOEs slated for privatisation which ultimately remained in the state's portfolio are protected from insolvency proceedings.

According to Law no. 85/2014, the minimum amount of the claim in order to file the request to open insolvency proceeding is of RON 50 000 (amounting to approximately EUR 10 000) for both creditors and debtors. As of end 2020, 194 majority-owned SOEs were in different stages of insolvency proceedings, including 179 JSCs, 7 LLCs, five autonomous administrations and three national research and development institutes.

According to the Romanian authorities, all employees of state-owned enterprises are subject to the provisions of the Labour Code (Law no. 53/2003) and to the same conditions as those applicable to the employees of private enterprises, and as such do not benefit from special treatment according to the legal form of SOEs.

2.2.2. Political intervention and operational autonomy

> *B. The government should allow SOEs full operational autonomy to achieve their defined objectives and refrain from intervening in SOE management. The government as a shareholder should avoid redefining SOE objectives in a non-transparent manner.*

In Romania, state capture of SOEs has been a cause for concern. According to Romania's state ownership policy, political intervention in the operations of SOEs has been a widespread phenomenon, materialising through "political appointments to the management of public enterprises or even by illegal practices (such as preferential contracts) which are currently being investigated by competent bodies" (Section 3.9.3). The ownership policy further states that "while good practice calls for the General Assembly to meet at least once (and a maximum of twice) a year to approve the annual financial statements, there are cases where such meetings have been held monthly [and cases where the board has met as often as twice a month, compared to the normal practice of seven to eight times a year on average]" (Section 2.5). Finally, the ownership policy also posits that line ministries "very often call the executive managers of SOEs for bilateral meetings on operational management issues" (Section 2.7). While this can effectively hamper SOEs' operational autonomy, this can also give rise to information asymmetries in enterprises where the state is not the sole shareholder. Although provisions were adopted to address these concerns, according to information gathered by the review team, this practice seems to persist, as the Ministry of Transport reportedly continues to meet with executive managers of SOEs on a bilateral basis; however, when this is the case, information is reportedly disclosed to all shareholders.

Against this background, safeguards were introduced in the legal framework on SOEs, with Article 4 of GEO no. 109/2011 (as amended and approved by Law no. 111/2016) stating that "line ministries and the Ministry of Finance may not intervene in the administration and management of public enterprises". The law further provides that "the board of directors and executive management shall be competent to take decisions on the management of the public enterprise and shall be responsible, in accordance with the

law, for their effects". This is reiterated by the ownership policy, which states that line ministries should not intervene in the day-to-day operations of SOEs, which should be left to executive management, and that SOE boards are responsible for supervising executives on behalf of line ministries. While executive managers are selected by the board of directors, and are liable exclusively before the board (pursuant to the Companies Law no. 31/1990), GEO no. 109/2011 also introduced important provisions to ensure the appointment of professional and independent board and executive members in SOEs in order to address widespread concerns over politicised boards and executive management (see sub-section F.2 of section 2.2.6 for details).

In order to improve SOEs' autonomy and further insulate them from political interference, Law no. 111/2016 introduced "letters of expectations" as the main tool for the state to communicate broad mandates and objectives to SOEs, which are to be designed with a sufficiently low level of granularity in order to avoid 'micromanaging' SOEs' operations. These letters are drawn by line ministries – in consultation with shareholders owning at least 5% of the share capital – for individual SOEs in their portfolio, and set out expectations of the state for SOEs for the medium term (i.e. four years). In particular, they should include:

- A summary of relevant government programme(s), strategies and policies in the area/sector in which the SOE operates, including fiscal-budgetary policies
- The general vision of the ownership entity and other shareholders with respect to the mission and financial and non-financial objectives of the SOE, including information about any public policy objective, their cost and funding (in accordance with Article 11 of Annex 1 of GD 722/2016)
- Expectations regarding the dividend and investment policies applicable to the SOE
- A classification of the SOE into the following three categories: commercial, regulated monopoly or public service entity
- Recommended performance indicators (or binding performance targets in accordance with relevant legislation in force, if applicable)
- Other expectations.

According to applicable provisions, these broad mandates and objectives should be established and communicated to board and executive candidates as part of their selection process, and are also required to be made publicly available on the websites of line ministries. Upon their appointment, SOE board and executive members are in turn required to jointly draft an "administration plan" for approval by the board of directors, which should set out concrete actions and objectives to reflect the state's expectations – albeit at a higher level of granularity than those set out in the letter of expectations, and stand as a roadmap for the SOE during the board's term of office. In particular, these administration plans should set out missions to be undertaken over the medium term (i.e. four years), along with their associated resources and performance indicators. However, it should be noted that this process does not apply to temporary members directly appointed by the state, which currently account for the large majority of board and executive positions. As such, at present, financial objectives are set on a quarterly basis,[1] which de facto limits the operational autonomy of boards.

Overall, while these provisions seek to ensure that SOEs operate at arm's length from government, concerns remain with regard to the political insulation of SOE boards and key executives. Indeed, while the law provides for the appointment of professional and independent board and executive members, a loophole in the legal framework simultaneously allows for the appointment of interim board and executive members for a period not exceeding six months, which may bypass independence requirements. As mentioned in Chapter 1, while this provision was initially envisaged as a transitory measure, it has become widespread practice: as of end 2021, across the 50 largest SOE (in equity value and number of employees), 72% of board positions were temporary appointments, and 61% of executive managers were temporary appointments (Figure 1.15).

As mentioned above, these temporary appointments have been criticised by minority shareholders, as they are considered as exclusively based on political criteria and lacking relevant professional qualifications. Overall, this practice raises concerns about whether the operational autonomy of SOEs is effectively safeguarded.

2.2.3. Independence of boards

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

As mentioned above, Romanian SOEs have historically been subject to excessive political interference and state capture, notably through political appointees on boards and in executive positions. Starting in 2011, significant efforts were undertaken to professionalise boards and improve their performance management framework, in the aim of enhancing their autonomy and independence. While boards are required to be comprised of a majority of non-executive and independent members appointed according to clearly set criteria of professional qualifications and independence, they should also abide by applicable conflict of interest provisions and adopt a code of ethics within 90 days of their appointment. However, as mentioned above, the widespread practice of interim board appointments bypassing these criteria – as provided by Law no. 111/2016, albeit as a transitory arrangement – raises concerns around whether SOE boards can be considered to operate fully independently from company shareholders, management, and in some cases, regulators.

According to applicable provisions, in theory SOE boards are granted full responsibility and autonomy to define strategies for the company, in line with the objectives established by government. As previously mentioned, Law no. 111/2016 provides that general medium-term objectives be established by line ministries for individual SOEs at the start of the board selection process, in consultation with shareholders owning – either individually or collectively – at least 5% of the share capital of the enterprise. Based on these state expectations, board (and executive) candidates are required to prepare a "declaration of intent" presenting their vision for the development of the company, and within 90 days of their appointment (according to due process), selected board and executive members are required to jointly draft an "administration plan" outlining missions and objectives to be achieved during their four-year term, along with their allocated resources and performance indicators. However, as mentioned above, this process does not apply to interim appointees, which currently account for the large majority of board and executive positions, for whom financial objectives (derived from the approved) are set and reviewed on a quarterly basis.

According to the Romanian authorities, state representatives appointed on the board of SOEs according to the provisions of GEO no 109/2011 (i.e. maximum of two state representatives on the board of autonomous administrations, and one on the board of JSCs and LLCs), are subject to the same rules as those applicable to other board members. While the Companies Law no. 31/1990 also requires board members to "act in the interest of the company [and to] exercise their mandate with loyalty towards the company" (Article 144), according to the Romanian authorities, the mandate contracts of board members (including state representatives) usually also include confidentiality clauses, prohibiting them to disclose confidential information to third parties. However, as mentioned, the large majority of politically appointed (and politically connected) interim members on SOE boards legitimately raises concerns around the ability of boards to exercise independent judgment.

2.2.4. Centralisation of the ownership function

> *D. The exercise of ownership rights should be clearly identified within the state administration. The exercise of ownership rights should be centralised in a single ownership entity, or, if this is not possible, carried out by a co-ordinating body. This "ownership entity" should have the capacity and competencies to effectively carry out its duties.*

As mentioned above, while the exercise of ownership rights is rather decentralised across central government institutions, significant efforts to strengthen the state ownership function were undertaken in 2016 through the adoption of Law no. 111/2016 (amending and approving GEO no. 109/2011), which (i) required the establishment of 'corporate governance structures' within line ministries to exercise ownership rights, and (ii) attributed a monitoring function to the Ministry of Finance. However, evidence suggests that the Ministry of Finance currently has insufficient enforcement powers, and that the current institutional set-up of some ministerial corporate governance structures may not enable them to exercise their ownership function completely separately from other regulatory powers of the ministry. As such, consideration could be given to further centralising the ownership function.

Ownership rights exercised by line ministries' corporate governance structures

As mentioned in Chapter 1 above, in order to delineate the ownership function from other conflicting roles of the state with regard to regulating markets and setting industrial policies, Law no. 111/2016 requires government authorities overseeing SOEs (i.e. line ministries) to establish a dedicated "corporate governance structure" tasked with carrying out ownership rights over the public enterprises in their respective portfolios. While the staff of these corporate governance structures have the status of civil servants, they are required to be competent and operate at arm's length from the ministerial officials involved in the drafting of policies impacting the sectors in which SOEs operate.

According to the provisions of Law no. 111/2016, corporate governance structures are mainly responsible for: appointing state representatives to SOE boards; overseeing the selection process of independent executive and non-executive directors, and proposing candidates for appointment (in accordance with applicable requirements regarding qualifications and experience); establishing and monitoring performance objectives; monitoring the implementation of the remuneration guidelines, as well as conflicts of interests, and approving related party transactions. In practice, this entails that corporate governance structures are responsible for designing various corporate governance instruments for SOEs in their portfolios and for monitoring their implementation, including letters of expectations; evaluation grids for the declarations of intent of SOE board and executive candidates; performance indicators for SOE board members and executive managers; mandate contracts; and annual processes for evaluating the performance of the board.

However, as mentioned in Chapter 1, wide disparities seem to exist with regard to the resources of these corporate governance structures across line ministries, which can range from including three to 16 civil servants. These disparities in available resources do not seem to be explained by variations in the size of SOE portfolios across line ministries. Further, these structures do not seem to have been established in all central government institutions, as legally required. In some instances, it is also unclear what mechanisms are in place to ensure that they are effectively insulated from other ministerial departments with regulatory powers. This is specifically a concern for the corporate governance structure located in the Ministry of Transport, which retains important regulatory powers.

Monitoring and enforcement powers attributed to the Ministry of Finance

Law no. 111/2016 (Article 3) also attributes a "co-ordination" role to the Ministry of Finance (MoF), which is responsible for monitoring the implementation of corporate governance requirements (as provided by Law no. 111/2016, amending and approving GEO no. 109/2011) by both line ministries and SOEs. For this purpose, the MoF administers a reporting system to collect data from both public enterprises and their shareholding ministries, which it uses to prepare and publish an annual aggregate report including information on the economic and financial performance of SOEs, as well as assessments of the degree of compliance by SOEs and line ministries with corporate governance requirements (see Section 2.6.3 for details). While the MoF also has sanctioning powers in case of non-compliance with the provisions of the law, evidence suggests that the amounts of these monetary fines are insufficient to deter bad behaviour[2]

(Box 2.3). Last but not least, the MoF is also responsible for developing – together with relevant ministries – methodological rules and guidelines, such a methodology on performance evaluation, board and executive remuneration, and models of "letters of expectations" issued by line ministries to SOE boards (outlining the expectations of the state towards public enterprises for a period of four year). For details on the responsibilities of the MoF, see Table 1.9.

Overall, this framework represents an improvement compared to the previous institutional set-up where ownership was fully dispersed and is notably beneficial with regard to the streamlining of reporting requirements to enable co-ordinated monitoring of SOEs' economic and financial from both line ministries and the Ministry of Finance. However, it is unclear whether the Ministry of Finance currently has sufficient enforcement powers to foster compliance with corporate governance standards, notably those related to board and executive appointments (with regard to due process), as well as transparency and disclosure requirements.

Box 2.3. Amounts of sanctions targeting line ministries and SOEs, as provided by Law no. 111/2016

Sanctions targeting line ministries

According to Article 59 (1), a warning or fine of between RON 3 000 and RON 5 000 can be issued to line ministries if they fail to comply with the following requirements:

- Publish on their website the letter of expectations of shortlisted candidates for the position of board members of executive manager, both for autonomous administrations and other companies (as per articles 3 (1) (a) and (2) (c)).
- Publish the vacancy notice on board and executive management positions in at least two widely distributed economic or financial newspapers and on their website, along with the conditions to be met by the candidates and the criteria for their assessment (as per Article 5 (8) and Article 29 (7)).
- Corporate governance structures within line ministries are required to report the performance indicators used to monitor SOEs to the Ministry of Finance, on a quarterly basis (as per Article 57 (2)).
- Publish a report on SOEs in their portfolio on their website by the end of June of each year (as per Article 58 (1)).

Sanctions targeting SOEs

According to Article 59 (2), a warning or fine of between RON 2000 and RON 4 000 can be issued to the chairman of the supervisory board of SOEs if they fail to comply with the following requirements:

- Publish the vacancy notice on board and executive management positions in at least two widely distributed economic or financial newspapers and on the SOE website, along with the conditions to be met by the candidates and the criteria for their assessment (as per Article 5 (8) and Article 29 (7)).
- Publish on the SOE website the policy and criteria for the remuneration of board members (or non-executive directors) and executive managers (or executive directors), as well as the level of remuneration and other benefits offered to individual board members and executive managers.

In addition, according to Article 51 (1), a warning or fine of between RON 1 000 and RON 3 000 can be issued to the chairman of the supervisory board of SOEs if they fail to publish on the SOE's websites the following documents for access by shareholders and the general public:

- resolutions of the general meetings of shareholders within 48 hours of the date of the meeting
- annual financial statements, within 48 hours of approval
- half-yearly accounting reports, within 45 days of the end of the six-month period
- annual audit report
- the list of directors and executive managers, the CVs of the members of the supervisory board (or non-executive directors) and the members of the management board (or executive directors)
- reports of the board of directors/supervisory board
- annual report on the remuneration and other benefits granted to non-executive and executive directors during the financial year
- Code of Ethics, within 48 hours of its adoption, and on 31 May of each year, in the event of its revision.

If infringements lead to the establishment of remedial measures and a deadline for that purpose is laid down, failure to comply with the measures ordered, within the prescribed period, constitutes an administrative offence and is punishable by a fine, the minimum and maximum of which are, respectively, twice the limits of the fine laid down by law for the offence in respect of which remedial measures have been ordered.

Source: Romanian Government (2016[2]), *Law no. 111/2016*, https://legislatie.just.ro/Public/DetaliiDocumentAfis/178925

2.2.5. Accountability of the ownership entity

> *E. The ownership entity should be held accountable to the relevant representative bodies and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions.*

While line ministries are not accountable to Parliament, the Ministry of Finance is required to submit to the government each year and publish on its website an annual report on SOEs, reporting on the activities carried out by autonomous administrations and companies in which the state holds a majority or full ownership stake. Line ministries are also required to publish each year on their websites a report on the SOEs in their portfolio, including information regarding the shareholding policy, restructuring processes, changes in the capital structure, and the financial and non-financial performance of SOEs. These reports are prepared based on information submitted by SOEs to line ministries on a quarterly basis regarding their financial and non-financial performance, which is then transmitted to the Ministry of Finance for centralisation and monitoring purposes.

The activities of SOEs and line ministries are subject to audits by the Court of Accounts (CoA), which itself reports to Parliament. According to the provisions of Law no. 94/1992, the CoA carries out performance and compliance audits of state-owned enterprises with more than 50% of state shareholding, which are planned according to an annual activity programme. If irregularities are found, a notice is sent to SOEs' management, as well as to the ownership entity, who are required to take measures to address the issues identified according to a set deadline. Audit reports are made publicly available on the CoA's website and are also presented to Parliament annually.

2.2.6. The state's exercise of ownership rights

> *F. The state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise. Its prime responsibilities include:*
>
> *F.1. Being represented at the general shareholders meetings and effectively exercising voting rights;*

State representation in general shareholders' meetings falls under the prerogative of corporate governance structures of line ministries, which are responsible for appointing state representatives to the general shareholders' meeting, who will vote according to the mandate received. According to the provisions of GEO no. 109/2011, state representatives of line ministries in the general shareholders' meeting are mandated to: (i) negotiate and approve the financial and non-financial performance indicators for the board of directors, (ii) monitor and assess the performance of the board of directors in order to ensure that economic efficiency and profitability are observed in the company's operations, and (iii) ensuring the transparency of the state shareholding policy in companies in the line ministries' portfolio. According to the provisions of Ordinance no. 26/2013 (Article 14), state representatives may not receive additional compensation for these duties.

The duties and responsibilities of the general meeting of shareholders are regulated by the Companies Law no. 31/1990, as well as by the provisions of companies' articles of associations. In particular, the articles of association prescribe conditions under which SOEs may require the approval of the general shareholders' meeting to adopt certain decisions. However, according to the state ownership policy, this had led to significant dysfunctions in the Romanian corporate governance system, with the general shareholders' meetings of SOEs convening much more often than international best practice would recommend (i.e. monthly in some cases). As such, the ownership policy recommends reviewing the articles of association of companies, as well as other statutes that "create the obligation or possibility to convene AGMs in situations other than those provided for by the Companies Law no. 31/1990".

> *F.2. [The state's prime responsibilities include:] Establishing well-structured, merit-based and transparent board nomination processes in fully- or majority-owned SOEs, actively participating in the nomination of all SOEs' boards and contributing to board diversity;*

In Romania, substantial reform efforts were undertaken since 2011 to improve the structure, selection criteria and transparency of the board nomination process, in the aim of professionalising boards and insulating them from political interference. At present, the selection and nomination process for board members (and executive managers) of fully and majority-owned SOEs is clearly defined and regulated by Law no. 111/2016 (amending and approving GEO no. 109/2011) and the methodological rules set in GD no. 722/2016. While different procedures apply according to the corporate form and size of SOEs (i.e. autonomous administrations, companies incorporated according to the Companies Law no. 31/1990, and "large" companies), they nonetheless share several common features.

For all SOEs, the selection process starts with an open call for applications, whereby line ministries and SOEs are required to publish the vacancy announcement on their websites as well as in at least two widely read newspapers, which should specify the candidate profile and the applicable assessment criteria. Candidate profiles are established by line ministries, in collaboration with SOE boards, and comprise two components: (i) a description of the role derived from the specific requirements of the SOE, and (ii) a description of the specific mix of skills and selection criteria for each candidate. While candidate profiles should take into account the general criteria set by Law no. 111/2016,[3] the specific selection criteria are established by the SOE's board nomination and/or independent experts (as applicable) by considering the company's activities and the requirements set in the letter of expectations established by the line ministry. In order to guide the selection process, additional criteria are set out in GD no. 722/2016 for consideration by line ministries (Article 33 of Annex 1) (Box 1.8).

For **fully incorporated companies**, candidates are selected by the board nomination committee, which may be assisted by independent human resources experts, whose costs are borne by the line ministry. It should be noted that if line ministries are to propose board candidates, these proposals should be subject to a prior selection made by a committee of human resources recruitment specialists. For 'large' companies (with at least 50 employees and a turnover of EUR 7.3 million), the selection process must be carried out by human resources recruitment companies or independent recruitment specialists. On the basis of the letter of expectation established by the line ministry, all shortlisted candidates are required to develop a declaration of intent. For **autonomous administrations**, the selection of board members is made by committees of human resources specialists set up by the line ministry, and for those with more than 500 employees, the line ministry is required to mandate human resources recruitment companies or independent recruitment specialists to carry out the selection procedure on its behalf.

While board members of **autonomous administrations** are appointed by the line ministry (based on the proposal of the independent expert when applicable), board members of **fully incorporated companies** are appointed by the general meeting of shareholders among the shortlisted candidates. Of note, shareholders owning (individually or collectively) at least 5% of the SOE's share capital may request the application of the cumulative voting method by written proposal within 15 days as of the date of publication in the Official Gazette of Romania of the convening notice of the general meeting of shareholders which has on its agenda the election of the board members. If the request is made by a shareholder holding more than 10% of the SOE's share capital, the application of the cumulative vote method is mandatory. The cumulative voting method allows shareholders to cast all of their votes for one or more shortlisted candidates(s). While these provisions do not apply to companies in which the state is a minority shareholder, the state is entitled to nominate board member of minority-owned SOEs (pursuant to the Companies Law no. 31/1990).

While these provisions can be considered comprehensive and make for a robust framework underpinning the board selection process, important caveats exist with regard to the state of its implementation. As previously mentioned, a loophole in Law no. 111/2016 currently allows for interim appointments of board members and executive managers (similar to the provisions introduced by Article 137 of the Companies Law no. 31/1990), who can be directly proposed by the state and should serve for a period not exceeding six months. While this provision was initially envisaged as a transitory measure, this practice remains widely used by line ministries to appoint SOE directors without due process. Although compliance has slightly increased since the process was introduced, as of end 2021, almost three-quarters of board positions in centrally-owned SOEs were temporary appointments (72%). It is also worth noting that in 2020, while the board selection process was initiated in 92 centrally-owned SOEs, it was completed in only 31 SOEs (Ministry of Finance, 2021[3]).

While this is reportedly due to a lack of candidates, this may also be taken to indicate that the selection process as required by law may be too cumbersome and resource-intensive for line ministries to implement in the current ownership framework. According to interviews with stakeholders, line ministries sometimes justify bypassing the process by explaining that they do not have the required budget to recruit independent experts, as required by law. Another reason may be that the length of the prescribed process.

> *F.3. [The state's prime responsibilities include:] Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels;*

As mentioned above, significant efforts to improve the performance management framework for SOEs were undertaken in 2016, notably through the adoption of Law no. 111/2016 (amending and approving GEO no. 109/2011), as well as the introduction of Government Decision (GD) no. 722/2016 which sets out methodological norms for the establishment of performance indicators. In particular, Law no. 111/2016 provides for the introduction of "letters of expectations" to be drawn by ownership entities (i.e. line ministries) as part of the board selection process, setting out broad mandates and objectives for individual SOEs for the medium term (i.e. four years).

Of note, according to Annex 1 of GD no. 722/2016, a section of the letter of expectations should be dedicated to the dividend policy and the payment of net profits applicable to SOEs, over a period at least equal to the mandate contract of SOE management, as dividends received by the state from SOEs constitute a significant source of revenue for the state budget. Annex 1 of GD no. 722/2016 also prescribes that a section of the letter of expectations be devoted to the principles to be followed by SOE management with regard to its investment policy and its general capital expenditure, which should specify the following:

- general rules on the approval of future capital expenditure
- expectations related to the reduction of outstanding payments and receivables
- expectations regarding the quality of service and/or the management of the infrastructure
- expectations related to improving operational performance, such as labour productivity, cost reduction and so on, without an indication of the lines of action to improve operational performance, but only of expected results
- any concerns about the ex-post evaluation of performance indicators by the management and board of the public undertaking.

Based on these state expectations and upon their appointment, SOE board and executive members are then required to prepare an "administration plan" (for approval by the board of directors) outlining the mission of the enterprise, its objectives, strategic actions to be undertaken and the resources to be devoted to this end, as well financial and non-financial performance indicators to measure the performance of specific activities for a period not exceeding four years.

Based on these agreed medium-term objectives, specific key performance indicators are negotiated between board and executive members of individual SOEs and the respective corporate governance structures of line ministries and included in their "mandate contracts" upon their nomination, in accordance with the provisions of Law no. 111/2016. While mandate contracts should include the general objectives and KPIs established by the General Assembly, as well as those from the letter of expectations, they are also required to include quantifiable objectives regarding the reduction of outstanding liabilities, details on the management of receivables and their recovery, the implementation of the investment plan and the assurance of cash flow for the activities performed. As such, the performance indicators most often used are those recommended by Annex 2 of Government Decision no. 722/2016 (Article 35), including:

- **Financial indicators**, comprising outstanding payments, operating expenses, current liquidity, EBITDA, work productivity, etc.
- **Operational indicators**, comprising the achievement of public policies, quality of services/products, coverage of services/products, productivity of assets, customer satisfaction, etc.
- **Corporate governance indicators**, comprising the development of an internal management control system, establishing risk management policies and risk monitoring.

According to Article 35 of Annex 2 of GD no. 722/2016, when setting performance indicators, corporate governance structures may be assisted by independent experts. According to applicable legal provisions, the performance of board and executive members is assessed on an annual basis by the general meeting of shareholders (for JSCs and LLCs) and by the ownership entity (for autonomous administrations) – who may both be assisted by independent experts – considering the degree of achievement of financial and non-financial KPIs established in their contracts. These KPIs also underpin their variable remuneration component, which should be established based on calculation models set out by GD no. 722/2016 (see sub-section F.7 below for details).

Overall, while this procedural framework can be considered robust in theory, important caveats exist with regard to the state of its implementation, which seems to remain largely suboptimal in practice. As previously mentioned, this performance management framework is intertwined with the nomination process of board and executive members, which is itself often bypassed due to a loophole in Law no.

111/2016. This entails that KPIs are only set for board and executive members appointed according to due process as provided Law no. 111/2016, and not for those "interim" board and executive members appointed for a period not exceeding six months. As of end 2020, KPIs for board members had only been set in 31 centrally-owned SOEs (out of 151 SOE subject to the requirement), and in 26 SOEs for executive managers (Ministry of Finance, 2021[3]). At present, in practice, financial objectives of SOEs with interim appointees are established on a quarterly basis, and mainly include revenue and expenses forecasts derived from the approved budget.

> *F.4. [The state's prime responsibilities include:] Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards;*

All majority-owned SOEs – regardless of their corporate form – are subject to the reporting requirements of GEO no. 109/2011 (as amended and approved by Law no. 111/2016). All SOEs are also required to abide by the provisions of the Accounting Law no. 82/1991, and to submit their annual financial statements, and the consolidated statements with the auditor's report, to the Ministry of Finance and their ownership entities within 150 days of the end of the financial year (i.e. by May of the following year).

For autonomous administrations, according to Article 9 of Law no. 111/2016, SOE boards are required to prepare "monthly reports to the supervisory public authority [regarding] the fulfilment of the financial and non-financial performance indicators, annex to the mandate contract, as well as other data and information of interest to the public supervisory authority, at its request", as well as to "prepare the semestrial report on the activity of the public enterprise and submit it to the public supervisory authority". For fully incorporated SOEs, according to Article 55, the board of directors must submit on a semestrial basis a report on the activity of the SOE at the general shareholders' meeting, which should include information on the performance of the mandate contracts of board members, details on the operational activities and financial performance of the company, as well as the semestrial accounting reports of the company. Further, according to Article 57, the board must also submit information (including statements and reports) relating to the activity of the SOE to the line ministry, Ministry of Finance, and shareholders with more than 5% of ownership on a quarterly basis and whenever requested "in the format and within the deadlines established by orders or circulars of the beneficiaries".

However, as outlined above, KPIs are currently rarely established for SOE board and executive members. At present, for SOE board and executive members appointed on an interim basis, only financial objectives (restricted to revenue and expense forecasts derived from the approved budget) are set on a quarterly basis. As such, for interim appointees who do not have financial and non-financial indicators established in their mandate contracts, the reporting requirements provided by law (as described above) do not apply.

Reporting requirements also apply to ownership entities (i.e. line ministries) regarding information collected from the SOEs under their oversight that should be transmitted to the Ministry of Finance for centralisation and monitoring purposes, subject to monetary fines in case of non-compliance. According to Order of the Minister of Finance no. 1952/2018, line ministries should submit to the Ministry of Finance information regarding: (i) the state of implementation of the corporate governance provisions of GEO no. 109/2011 (as amended by Law no. 111/2016) on a bi-annual basis; (ii) audits of the annual financial statements and the key financial and non-financial performance indicators from the mandate contracts of executive and non-executive directors of the SOEs in their portfolio, on an annual basis; and (iii) the list of SOE board members, on a bi-annual basis. Order no. 1951/2018 also provides that this information be transmitted electronically through the standardised online "S1100 form" administered by the Ministry of Finance and available on its website.[4] However, evidence suggests that line ministries do not always comply with these reporting requirements: as of end 2021, nine central government institutions had not reported information about 16 SOEs.

As mentioned above, this information is in turn used by ownership entities to assess the performance of SOE board and executive members against the financial and non-financial indicators set out in their

administration plans and mandate contracts. According to the Romanian authorities, this is done on an annual basis after the annual financial statements are approved, based on the directors' report and the report of the external auditor. However, KPIs remain widely not set, with the large majority of SOEs boards comprised of members appointed on an interim basis. As such, in practice, the performance of interim executive and non-executive directors of SOEs is assessed against the degree of achievement of the quarterly financial indicators, derived from the approved income and expenditure budget.

According to applicable provisions, SOEs' compliance with applicable corporate governance standards is also monitored by both ownership entities and the Ministry of Finance. Based on the information collected, line ministries and the Ministry of Finance are also required to prepare and publish on their respective websites an annual aggregate report on SOEs, reporting on their economic and financial performance, as well as on their overall degree of compliance with corporate governance requirements.

> *F.5. [The state's prime responsibilities include:] Developing a disclosure policy for SOEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information;*

Financial and non-financial disclosure requirements are provided by Law no. 111/2016 (amending and approving GEO no. 109/2011), and apply to all majority-owned SOEs regardless of their corporate form (including autonomous administrations, and SOEs incorporated according to the Companies Law). In order to ensure equal access to information by all shareholders and the general public, the law requires SOEs to have their own websites (according to Article 40), and to publish – through the care of the board chair – the following information (according to articles 51 and 56):

- resolutions of the general shareholders meeting (within 48 hours of the meeting)
- annual financial statements (within 48 hours of approval)
- half-yearly accounting reports (within 45 days of the end of the six-month period)
- annual audit reports
- directors' reports (on 31 May of each year)
- the list of directors (or supervisory board members, in the case of two-tier board) and their CVs
- annual report on the remuneration and other benefits granted to non-executive and executive directors during the financial year
- Code of Ethics (within 48 hours of its adoption, and on 31 May of each year, in the event of its revision).

The law also provides for the application of sanctions in case of non-compliance, and prescribes the Ministry of Finance (through the General Directorate of Economic and Financial Inspection) to issue a warning or fine of between RON 1 000 and RON 3 000 to the board chair of non-compliant SOEs. However, evidence suggests that the sanctioning system might be ineffective, as non-compliance remains high among centrally-owned SOEs: as of end 2020, only around three-fifths of SOEs had complied with these requirements on average. Beyond mere compliance, it is also unclear how the quality of disclosures is ensured in practice. While the law prescribes ownership entities to monitor the implementation of corporate governance requirements (including transparency and disclosure requirements) by SOEs in their portfolio, it is unclear how individual corporate governance structures proceed to ensure that the public enterprises they oversee respect high disclosure standards, and if such procedures exist, whether they are standardised across line ministries.

> *F.6. [The state's prime responsibilities include:] When appropriate and permitted by the legal system and the state's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs;*

According to Law no. 162/2017, SOEs are required to have an external audit, under the co-ordination of the audit committee. According to applicable provisions, the external auditor is selected by the audit committee, and appointed by the general meeting of shareholders for companies, and by the board for autonomous administrations, for a period of three years.

The report of the statutory auditor is submitted to the annual general shareholders' meeting, and informs the General Assembly's approval of the annual financial statements. Should the auditor's report include opinions with reservations, measures to address and prevent these concerns should be included in the annual report of the line ministry.[5]

> *F.7. [The state's prime responsibilities include:] Establishing a clear remuneration policy for SOE boards that fosters the long- and medium-term interest of the enterprise and can attract and motivate qualified professionals.*

According to the provisions of Law no. 111/2016 (amending and approving GEO no. 109/2011) and the methodological rules set in GD no. 722/2016, remuneration packages of non-executive directors (or supervisory board members, in the case of two-tier boards) should include both a fixed and variable component for all SOEs (regardless of their corporate form), which are both capped. While the amount of the fixed remuneration component may not exceed twice the average of the last 12 months of the average gross monthly salary in the sectors in which SOEs operate, the variable component is capped at 12 times the amount of the fixed component. These limits apply to both autonomous administrations and fully incorporated companies (pursuant to the Companies Law no. 31/1990). The amount of the fixed component may differ across board members according to the number of meetings they attend, their participation in board committees, and any other specific duties established in their mandate contracts.

According to applicable legal provisions, the variable remuneration component of non-executive directors should be based on the financial and non-financial KPIs negotiated and approved by the general shareholders' meeting (for corporatised SOEs). In particular, according to the provisions of GD no. 722/2016, the weight of financial and non-financial KPIs differs when determining the amount of the variable component, with corporate governance KPIs accounting for between 50-75% of the performance-based remuneration component, and financial and operational KPIs accounting for between 5-20%. Conversely, the variable remuneration of executive directors is mainly based on financial KPIs (25-50%), with corporate governance KPIs accounting for only between 10-25% of the amount. While this methodology applies to all SOEs regardless of their corporate form, for fully incorporated companies, the remuneration of board members should be formalised at the annual shareholders' meeting.

According to the Romanian authorities, the variable remuneration component is revised on an annual basis according to the level of achievement of the objectives included in the administration plan and the degree of fulfilment of the financial and non-financial performance indicators approved by the line ministry and included in the mandate contract. However, an important caveat of this framework is that performance-based remuneration is not granted to interim non-executive and executive directors, as KPIs are not set for temporary appointees. This can significantly reduce their remuneration levels, compared to the amount granted to duly appointed non-executive and executive directors (with performance indicators set in their mandate contracts).[6] As temporary appointments currently account for the majority of board positions among central and majority-owned SOEs, this may be a cause for concern as it may disincentivise board members to act in the best interest of the company.

2.3. State-owned enterprises in the marketplace

Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field when SOEs undertake economic activities.

2.3.1. Separation of functions

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

According to Romania's ownership policy, the state's regulatory and ownership functions should be clearly separated so as not to favour SOEs over private counterparts "under any circumstances". This effectively incorporates a recommendation included in a 2015 World Bank report entitled "decision-making, roles and responsibilities in state energy enterprises" issued as part of a technical assistance project (Frederick, 2015[4]). In practice, as mentioned above, this entails that line ministries acting as supervisory authorities are legally required (by Law no. 111/2016) to set up separate structures within their ministries (known as "corporate governance structures") responsible for exercising ownership rights and for monitoring the implementation of corporate governance provisions in SOEs in their respective ministerial portfolios. Importantly, these structures should be comprised of specialised staff different from those involved in policy making – including the drafting of sectoral policies, laws and opinions.

These provisions represent a significant improvement in the corporate governance framework of SOEs, as no clear requirements for delineating ownership from industrial/sectoral policy making functions existed before 2016, which then represented a risk for potentially conflicting interests and priorities to arise in the exercise of state ownership. However, evidence gathered by the review team suggests that some gaps remain in practice. While it is unclear whether corporate governance structures are sufficiently staffed to effectively exercise their ownership rights and oversight functions, in some line ministries which retain important regulatory power (e.g. Ministry of Transport) it is unclear how the ownership function is kept separate from other regulatory functions. Of note, energy SOEs undertaking supply and distribution activities operate under the oversight of separate central government institutions, which stands in line with applicable EU regulations.

SOEs (similar to private companies) are subject to oversight by the Competition Council, as well as by a number of sectoral regulatory bodies, the most relevant of which (in the case of SOEs) include:

- National Energy Regulatory Authority (ANRE)
- National Agency for Mineral Resources (ANRM)
- Romanian Railway Authority (AFER)
- Railway Surveillance Council
- Romanian Civil Aviation Authority.

In the case of the transport sector, as mentioned above, it should however be noted that only limited regulatory scope is attributed to the Romanian Railway Authority, and as such that significant regulatory powers remain within the Ministry of Transport where the ownership function is also located. Other potential concerns exist in the energy sector, where the energy regulator ANRE was investigated in 2019 by the European Commission over concerns of political interference that may have led to significant market distortions (Box 2.4).

Box 2.4. Allegations of political interference in ANRE in 2019

Allegations included:

- Reported meetings between politicians, government officials and ANRE's senior members outside working hours with a view to influence the regulation of electricity and gas prices,
- Allegations that a controversial emergency ordinance requesting the capping of gas and electricity prices, which led to significant market distortions this year, may have been written by at least one member of the regulator at the instructions of a senior government official.
- ANRE agreeing to cap electricity prices for producers following requirements stemming from the government's emergency ordinance 114/2018, despite overriding EU free market principles obligating free price formation embedded in the third energy package, which member states are required to uphold.
- Allegations that the regulator may have set suppliers' rate of return with a political goal in mind, rather than to create a fair market environment.

It should also be noted that the call for investigation against ANRE came shortly after parliamentary attempts to amend legislation that would exonerate senior ANRE members of any allegations of negligence that may have led to significant market distortions. The amendments also sought to increase the power of the regulator as a result of a 2% tax imposed by government on the gross margins of energy companies.

Source: ICIS (2019[5]), *Romanian regulator faces political influence claims*, https://www.icis.com/explore/resources/news/2019/11June10440676/exclusive-romanian-regulator-faces-political-influence-claims/

2.3.2. Stakeholder rights

> *B. Stakeholders and other interested parties, including creditors and competitors, should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated.*

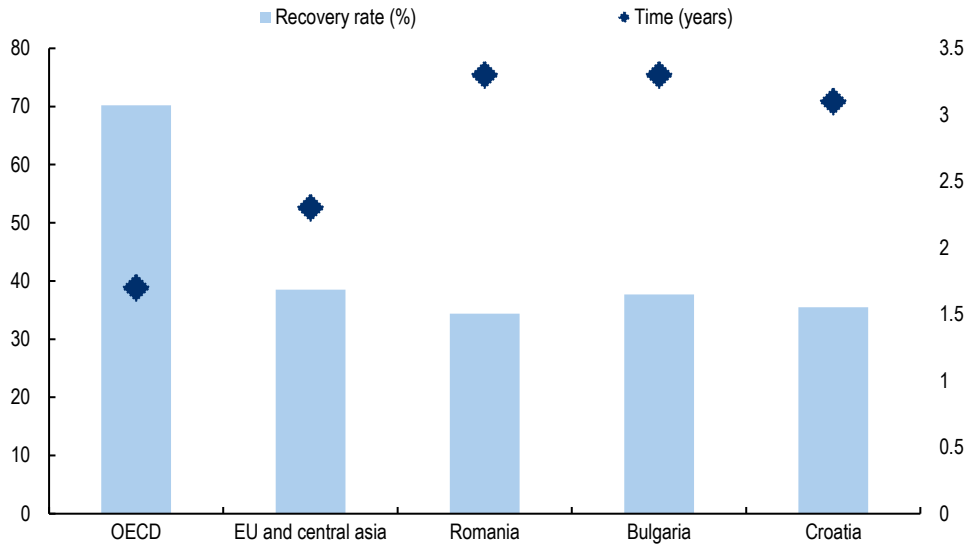
According to the Romanian authorities, stakeholders of SOEs are subject to the same legal and arbitrational mechanisms for redress as those applicable to stakeholders in private companies. The rights of contractual partners of SOEs are regulated by the contractual agreements concluded, in accordance with applicable laws and regulations (such as for instance GD no. 1/2018 for the approval of the general and specific conditions for certain categories of procurement contracts related to the investment objectives financed from public funds), and disputes are solved in arbitration courts.

Overall, the rights of creditors, consumers and business partners are regulated by applicable laws and regulations, including the Civil Code (Law no. 287/2009), Fiscal Code (Law no. 227/2015), Fiscal Procedure Code (Law no. 207/2015), and Insolvency Law (no. 85/2014). Contentious procedures carried out before competent courts, as well as arbitral procedures, are regulated by the Civil Procedure Code (Law no. 134/2010).

With regard to creditor protection in particular, Romania has made progress with regard to its insolvency framework (with the adoption of Law no. 85/2014). However, the time required to resolve insolvency proceedings (3.3. years on average in 2020) and share of claims recovered from insolvent firms (34.4% in 2020, compared to the OECD average of 70%) stand well below OECD and EU averages (but remain on par with its regional peers). It should also be noted that according to the World Bank's ease of doing

business index, as of 2020, Romania ranked higher than both OECD and EU averages regarding the quality of judicial processes for enforcing contracts (World Bank, 2020[6]).

Figure 2.1. Recovery rate and time of insolvency proceedings in Romania (as of 2020)



Source: World Bank (2020[6]), Rankings on Doing Business topics – Romania, https://archive.doingbusiness.org/en/data/exploreeconomies/romania#DB_ec

2.3.3. Identifying the costs of public policy objectives

> *C. Where SOEs combine economic activities and public policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas.*

As far as could be established by the review team, SOEs that undertake both economic and public policy activities in Romania mainly operate in the transport sector. These SOEs, similar to private capital railway companies, are subject to Law no. 202/2016, EC financing regulations and GEO no. 12/1998, which require SOEs to maintain separate cost and revenue structures according to their type of activities (policy or commercial) and source of financing. Further, according to the provisions of Law no. 500/2002 on public finances, budget allocations (from the state budget) to finance SOEs' public policy objectives and their related costs should be included in SOEs' financial statements and publicly disclosed. This structural separation is subject to verification by the Railway Supervisory Board within the Competition Council.

2.3.4. Funding of public policy objectives

> *D. Costs related to public policy objectives should be funded by the state and disclosed.*

The public policy objectives of SOEs are defined in their normative acts and articles of association, where their sources of financing are also provided. According to Law no. 500/2002 on public finances, any expenditure made from the state budget allocated to public policy objectives is made on the basis of a law approved for this purpose, authorising related costs to be funded by the budget of line ministries. The budget of the SOE is approved by the general shareholders' meeting, thus providing for equal access to

information by all shareholders. As mentioned above, these subsidies should be included in the SOEs' revenue and expenditure budget and publicly disclosed.

For instance, in the case of CFR and CNAIR, the state budget law annually approves amounts from *inter alia* the state budget and European funds within approved investment programs for the management of transport infrastructures. According to the Romanian authorities, these allocations also finance related costs, such as those related to expropriations, utility taxes, and environmental taxes. In addition, railway service providers (such as Metrorex or CFR Calatori) also receive subsidies from the state budget within public service contracts.

2.3.5. General application of laws and regulations

> *E. As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations. Laws and regulations should not unduly favour SOEs over their market competitors. SOE's legal form should allow creditors to press their claims and to initiate insolvency procedures.*

SOEs do not seem to benefit from any overarching exemptions from the application of laws and regulations applicable to private companies, nor from any special legal privileges (such as immunity to lawsuits for executive and board members). However, as previously mentioned, SOEs subject to provisions of Law no. 137/2002 (as amended by Law no. 173/2020) – which include those slated for privatisation which ultimately remained in the state's portfolio – are protected from insolvency proceedings. According to the law, "the budgetary creditors will suspend, until the transfer of the ownership right over the shares, the application of any forced execution measure started on the commercial company and will not take any steps to institute new such measures. The same provisions are applicable to the public institution involved, if it has the capacity of a creditor."

Romanian SOEs and private companies are both subject to the provisions prescribed by the Competition Law (no. 21/1996) and enforced by the Competition Council. State aid regulations must also be adhered to by all market players regardless of the nature of the aid (i.e. capital injections, fiscal benefits, guarantees and loans). EU Regulation no. 696/2014 on market abuse also applies to listed SOEs, including provisions on insider trading. The Competition Council has both a preventive function – involving the surveillance of markets and respective players, and a corrective function – aiming to correct market distortions and ensure fair competition. As the body responsible for the enforcement of the EU *acquis communautaires*, it also stands as the national contact point between the European Commission on one hand, and the public institutions which are state aid suppliers and beneficiaries on the other hand.

While competitive neutrality provisions apply to SOEs and private companies indifferently, distinct procedures exist with respect to passing or amending legislations bearing on SOEs, with regard to analysing their respective implications on competition and state aid. In particular, all draft government decisions or laws presented before government must fill in a rubric on its "implications on competition and state aid". When that rubric is triggered for government decisions or laws on SOEs (including for instance those approving the tariffs or budget of an SOE), unlike for private companies, the Competition Authority submits an opinion to government on their implication for competition. This procedure has had positive results in the past with regard to safeguarding a fair competitive environment, and has for instance enabled the inclusion of a provision in a government emergency ordinance prescribing SOEs operating in the energy sector to sell the majority of their product through transparent markets (i.e. OPCOM or BRM).

Certain sectors are reportedly subject to particular attention by the Competition Authority, including the utilities, rail and naval sectors, where SOEs have in the past been identified and sanctioned for engaging in anti-competitive behaviours and abuses of dominance – notably leading to the issuance in 2010 and 2006 respectively of substantial fines of EUR 24 million for the National Post Office, and EUR 7 million for the state freight operator CFR Marfa (Competition Council, 2010[7]; Competition Council, 2006[8]). More recently, Hidroelectrica was also investigated for alleged abuse of dominance (Competition Council,

2018[9]). The Competition Authority also reports specific concerns with regard to public bid rigging, which has been the subject of specific investigations – including in but not restricted the coal transport sector (Competition Council, 2019[10]). As such, the Competition Authority has published a guide for implementing the OECD bid rigging best practices, especially in conjunction with public procurement procedures (Competition Council, 2016[11]).

Regarding EU state aid regulations, while the decision on the merits of awarding state aid belongs to the relevant line ministries, the assurance of the conformity of the state aid with applicable regulations falls within the purview of the Competition Authority. As such, the Competition Authority ensures the implementation of the OECD Recommendation on Competitive Neutrality (adopted by the OECD Council in May (2021[12])). Of note, some SOEs have recently been found by the European Commission to have benefitted from unlawful state aid, including the energy producer Hunedoara Energy Complex (CE Hunedoara) which had to repay around EUR 6 million of incompatible state aid, and more recently CFR Marfă which needs to return EUR 570 million of incompatible state aid (EC, 2018[13]; EC, 2020[14]).

2.3.6. Market consistent financing conditions

> *F. SOEs' economic activities should face market consistent conditions regarding access to debt and equity finance.*
>
> *In particular:*
>
> *F.1. SOEs' relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds.*

According to the Romanian authorities, the creditor/debtor relationship is conducted at arm's length from government, on purely commercial terms and free from undue influence by government officials. Further, financial institutions controlled by the state may be creditors for other SOEs, in accordance with the general rules applicable to all enterprises. It should however be noted that there appears to be no cross-requirements for benchmarking SOE transactions based on transactions carried out by private operators in comparable situations.

In terms of the main creditors of SOEs, as of end 2020, the total debts of SOEs amounted to RON 83 136 billion (USD 20 962 billion), out of which around 81% was owed to "private companies", 5% to banks, 5% to the state's consolidated budget, 2% to SOEs, and 7% to "other creditors", which mainly represent SOE debts to employees. Of note, SOE debts to "private companies" mainly represent the amount remaining to be amortised from the concession contract that CNAIR concluded with the Ministry of Transport and Infrastructure (total of RON 63.7 billion).

> *F.2. [SOE's economic activities should face market consistent conditions regarding access to debt and equity finance. In particular] SOEs' economic activities should not benefit from any indirect financial support that confers an advantage over private competitors, such as preferential financing, tax arrears or preferential trade credits from other SOEs. SOEs' economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors.*

Although under the law, SOEs do not benefit from direct competitive advantage compared to private companies in like circumstances, it can be argued that the recent cases of unlawful state aid granted to Hunedoara Energy Complex and CFR Marfa (described above) raise concerns about the preferential treatment of SOEs in the energy and transport sectors. Overall however, according to the Romanian authorities, SOEs are subject to a similar tax treatment as private competitors in like circumstances, and are therefore liable to enforcement measures by the tax administration in accordance with applicable laws and regulations. While commercial credits between SOEs are not allowed, in practice SOEs can accumulate tax arrears like private companies subject penalties, according to applicable laws and regulations.

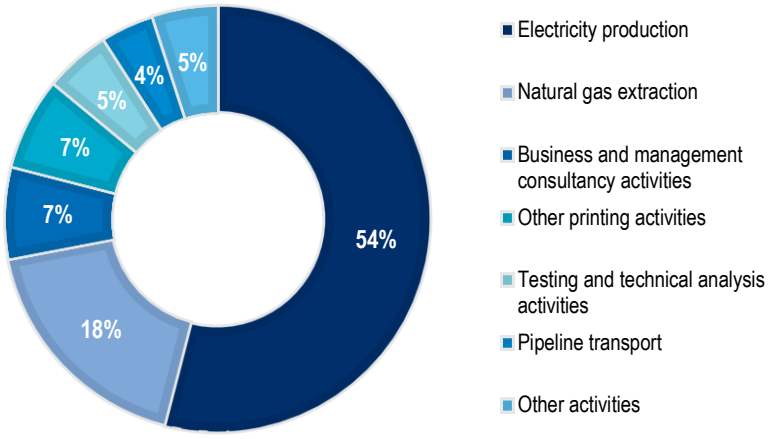
> *F.3. [SOE's economic activities should face market consistent conditions regarding access to debt and equity finance. In particular] SOEs' economic activities should be required to earn rates of return that are, taking into account their operational conditions, consistent with those obtained by competing private enterprises.*

According to the Romanian authorities, there are apparently no formal requirements for SOEs engaged in competitive activities to achieve a minimum rate-of-return on those activities. In addition, SOEs differ significantly from private companies with regard to their dividend pay-out ratios.

Government Ordinance no. 64/2001 on the distribution of profit (in national enterprises, national companies and fully or majority state-owned companies, as well as autonomous administrations), approved with modifications by Law no. 769/2001, provides that the accounting profit left after deduction of the corporate income tax should be distributed in a minimum share of 50% transfers from the dividends of national enterprises, national companies and fully or majority state-owned companies, to the state budget. Of note, Article 1 of GO no. 64/2001 was amended by Government Emergency Ordinance no. 29/2017, which now provides that SOEs' financial reserves may be redistributed in the form of dividends to the state or local budget. This law also stipulates that the result carried forward in the balance on 31 December of each year (reported result) may be distributed in the form of dividends to the state or local budget.

This decision was based on the government's findings that "the reserves established as a self-financing source from the undistributed profit for compulsory destinations [were] not used by companies where the state holds a majority stake, [as] the surplus is reflected in their liquid assets". Further, according to GEO no. 114/2018, it was established that a percentage of 35% of the SOEs financial reserves found in cash should be distributed as dividends. As such, since 2016, some SOEs have distributed 85%-90% of their net profit as dividends to the state budget, and mainly operate in the energy sectors (Figure 2.2).

Figure 2.2. Structure of dividends / payments distributed to the state budget from the profit realised in 2020 by SOEs



Source: (Ministry of Finance, 2021[3]).

2.3.7. Public procurement procedures

> *G. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency.*

Similar to private companies, all SOEs are required to abide by the provisions of Law no. 98/2016 on public procurement and Law 99/2016 on sectoral procurement, along with the methodological norms set in GD

no. 394/2016 and GD no. 395/2016. These laws and regulations transposed the provisions of the EU Directive on procurement (EC 2014/25/EU) into national legislation, and treat public and private enterprises – when acting as bidders – equally. SOEs operating in competitive markets do not seem to be exempted from the application of these provisions. In order to ensure transparency of the procurement process, Law no. 98/2016 mandates the publication of the contract notice in the e-Procurement system, applicable to all procurement procedures (except negotiations without publication) (Article 145 and 215). SOEs are also required to publish notices of procurement awards in the e-Procurement system within 30 days of the award, and must also publish a notice in case of negotiations.

However, evidence suggests the existence of restrictive tendering and single bidding in the energy sector. According to a study of the public procurement from 2015 to 2020 in all energy sub-sectors in Romania, contracting authorities seem to award contracts through less-transparent procedures. In the electricity sector in particular, evidence suggests that 42% of contracts were negotiated without prior publication procedure, while in the oil and gas sub-sector, the majority of contracts (34%) were awarded via open procedures, followed by negotiated procedures with bidders (31%). Overall, the majority of contracts were awarded using the lowest price criterion (95% for electricity and 96% for oil and gas), thus avoiding the evaluation of qualitative, social and/or environmental aspects of tenders (CSD, 2022[15]).

Overall, financial audits of SOEs have also regularly revealed irregularities in the area of public procurement, thus suggesting that it remains an area of high risk across all sectors (Box 2.5).

Box 2.5. Selected cases of irregularities in public procurement involving SOEs, according to audits by the Court of Accounts

Transelectrica

- Inefficient use of funds for the implementation of an investment project, through the purchase of similar equipment at different prices, contracted in the same year (in the estimated amount of RON 3 348 000), as well as through the purchase of equipment/licenses (in the estimated amount of 7 930 000), which have not been installed, having expired warranty.
- Inefficient use of funds, in the amount of RON 7 652 000 (without VAT), by accepting for payment some works carried out by SC Smart SA, overvalued, that consisted in incorporating some materials (switches) purchased at prices higher than those existing on the market.
- Failure to comply with the legal provisions regarding the purchase of IT equipment, meaning the purchase of products/services at prices higher than the prices practiced on the market, having the consequence of making additional payments in the amount of RON 8 770 000.

SMART

- The purchase of goods and services at overvalued prices compared to the market price (switches, tool kits, measurement and control equipment, machine tools, snow blowers, tires), resulting in additional payments in the amount of 10 596 000.

Apelor Minerale

- The entity had unjustified expenses in the amount of RON 55 000 for the procurement of consulting services in the management of delivery contracts, although the company, through the Administrative Commercial Department, had specialised personnel with duties in the field, set through the Organization and Operation Regulation and through job descriptions.

CNCIR

- Inefficient use of funds, estimated at RON 379 000, through the purchase of services/goods (technical expertise, feasibility studies, trolleys/backpacks), at overvalued prices, respectively at prices higher than those existing on the market at the time of the purchase.

Source: Information provided by the Romanian authorities.

2.4. Equitable treatment of shareholders and other investors

Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information.

2.4.1. Ensuring equitable treatment of shareholders

> *The state should strive toward full implementation of the OECD Principles of Corporate Governance when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs. Concerning shareholder protection this includes:*
>
> *A.1. The state and SOEs should ensure that all shareholders are treated equitably.*

Equal treatment of all shareholders is encouraged by line ministries and stands as a core recommendation of Romania's state ownership policy issued in 2016. As mentioned in other sections, this is because of concerns around excessive political intervention in SOEs in the past, which notably entailed a high number of bilateral meetings between the state and SOE executives, which can give rise to information asymmetries in SOEs where the state is not the sole shareholder.

In particular, the protection of minority shareholders is regulated by Law no. 24/2017 on issuers of financial instruments and market operations, FSA Regulation no. 5/2018 on issuers of financial instruments and market operations, and GEO no. 109/2011. These laws and regulations provide non-state shareholders with the same rights as those of the majority shareholders, the most relevant of which include:

- **The right to be informed** with regard to any information related to the way the company is organised and operates (e.g. type of contracts concluded, identification of business partners, legal status of the company's assets, estimates of the company's profit, content of annual financial documents, regime investments, etc.).
- **The right to participate in general shareholders' meetings and to cast a vote:** all shareholders have the right to participate and cast their vote in the general meetings of shareholders. Upon reaching certain value thresholds in relation to the size of the company's share capital (e.g. shares representing 5% of the total share capital), the minority shareholder has a number of additional prerogatives (e.g. the right to request the convening of the general meeting of shareholders, the right to request the introduction of new items on the agenda of the shareholders' meeting, etc.).
- **The right to request the appointment of directors by the cumulative voting method:** in the case of listed companies (public limited companies), as well as SOE subject to GEO no. 109/2011, minority shareholders exceeding a certain share threshold may request the appointment of the directors of the company by the cumulative voting method.

- **The right to challenge the decisions of the general meeting of shareholders:** in a company the majority will be imposed on the will of the minority, in which case the decisions of the general meeting of shareholders are binding even for shareholders having voted against or absent from the meeting. However, to the extent that the decision taken by the majority shareholder contravenes the company documents and / or the law, minority shareholders have the possibility to challenge the validity of the decision before the courts.
- **The right to receive dividends from the company's profit:** in the event that the company registers a profit, it can be distributed in the form of dividends to shareholders.

Obligations, responsibilities and protection mechanisms of minority shareholders are provided by articles 40-41 of GEO no. 109/2011 (as amended and approved by Law no. 111/2016), and Article 117 of the Companies Law no. 31/1990. Redress mechanisms are stipulated in Article 43 of GEO no. 109/2011, and Article 132 of the Companies Law, as well as by other regulations in force. Of note, if they consider that their rights have been violated, minority shareholders may challenge in court any decision they deem discriminatory or illegal.

Box 2.6. Proposed share capital increase at Bucharest Airport challenged before the court by Fondul Proprietatea

Fondul Proprietatea investment fund, minority shareholder (20%) of Bucharest Airport, filed a claim of annulment in 2021 against the extraordinary general shareholder meeting (EGSM) resolution no. 15 (of 26 October 2021), which approved the increase of the share capital from RON 143 772 150 to RON 4 912 283 610 as a result of the contribution in kind of the Romanian State with the land inside the Băneasa airport, giving Fondul Proprietatea the option to participate by subscribing for 95 370 229 shares with a value of RON 953 702 290 to avoid being diluted. This increase would also have created legal risks for the listing of Bucharest Airport (which is the primary candidate for listing from the Ministry of Transport's portfolio), which would also have endangered one of the milestones included in Romania's Recovery and Resilience Plan.

The representatives of the Romanian Government justified the high value of the land by the high interest of the real estate investors in the area where the airport is located. Fondul reportedly proposed to the Ministry of Transport to cancel the general meeting resolution and re-do the valuation with the help of a reputable independent valuator, but the ministry reportedly took no action. Upon the filing of the complaint by Fondul, ANEVAR (the National Association of Authorised Appraisers from Romania) sanctioned the valuator who performed the valuation report, with a suspension from the profession for six months.

Fondul's request for the suspension of the EGSM decision regarding the share capital increase was admitted by the Bucharest Court of Appeal in January 2022.

Source: https://www.fondulproprietatea.ro/files/live/sites/fondul/files/en/investor-reports/2021/Share%20cap%20increase%20Buch%20Airp.pdf?mc_cid=22a3c2ae13&mc_eid=607bd7d763

> *A.2. [Concerning shareholder protection this includes:] SOEs should observe a high degree of transparency, including as a general rule equal and simultaneous disclosure of information, towards all shareholders.*

Regarding the mechanisms in place to ensure that all shareholders have equal and timely access to material information needed to make informed investment decisions, the convening notices of the general meetings of shareholders are published in the Official Gazette of Romania, Part IV (art. 117 para. (3) in

Law no. 31/1990 republished, as subsequently amended and supplemented) and on the company's web page. Further, every shareholder may address to the board of directors/management written questions regarding the company's activity, before the date of the meeting (art. 1 172 para. (3) in Law no. 31/1990) and the answer shall be given either during the meeting or be published on the company's website. However, it should be noted that almost 40% of central and majority-owned SOEs had not published resolutions of the general shareholders' meeting in 2021. Companies whose shares are admitted for trading are also required to publish with the Bucharest Stock Exchange periodical (quarterly, half-yearly and annual) reports, reporting on key financial and non-financial information.

> *A.3. [Concerning shareholder protection this includes:] SOEs should develop an active policy of communication and consultation with all shareholders.*

As far as could be established by the OECD review team, SOEs are not required to develop an active policy of communication and consultation with all shareholders, nor are they encouraged to go beyond the standards prescribed by law. Conversely, as flagged in other sections, concerns may exist with regard to bilateral (i.e. informal) communication channels between the state and SOEs (especially those with a majority of politically appointed directors), which may negatively hamper minority shareholder rights.

> *A.4. [Concerning shareholder protection this includes:] The participation of minority shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election.*

As mentioned above, applicable laws and regulations allow all shareholders to cast a vote in the general meetings of shareholders. In the case of companies whose shares are admitted for trading, the issuers are required to elaborate procedures that give to the shareholders the possibility to vote in person or in absentia (according to Article 92 of Law no. 24/2017). The shareholders can be represented in the general meeting of shareholders by other persons than shareholders, based on a special or general power of attorney.

Board members are elected and revoked by the general meeting of shareholders, through secret vote, under conditions of fulfilment of requirements of attendance of the shareholders and with the majority of the votes cast (according to Article 112 of the Companies Law no. 31/1990). According to the Companies Law no. 31/1990, decisions are taken with the majority of vote held by the shareholders present or represented. The decision of amendment of the main object of activity of the company, of reduction or increase of the share capital, of changing the legal form, of merger, division or dissolution of the company shall be taken by a majority of at least two-thirds of the voting rights held by the shareholders present or represented. The articles of incorporation may provide requirements for a bigger quorum and majority.

It should be noted that the main law on SOEs (Law no. 111/2016, amending and approving GEO no. 109/2011) provides for a stronger legal framework than the Companies Law and Capital Markets Law in terms of the right of minority shareholders to use the cumulative voting method to nominate board members. According to the provisions of Law no. 111/2016, shareholders owning (individually or collectively) at least 5% of the SOE's share capital may request the application of the cumulative voting, and if the request is made by a shareholder holding more than 10% of the SOE's share capital, the application of the cumulative vote method is mandatory.

> *A.5. [Concerning shareholder protection this includes:] Transactions between the state and SOEs, and between SOEs, should take place on market consistent terms.*

In Romania, there appears to be no special rules or procedures to ensure that transactions in the SOE sector are executed on market consistent terms. According to the Romanian authorities, as mentioned above, all transactions between the state and state-owned enterprises are analysed in terms of the measure in question observing the economic, budgetary and financial policies of the state. Any draft measure susceptible of representing state aid shall be analysed by reference to applicable procedures and

regulations in the field of state aid. However, the irregularities detected in procurement (as outlined in previous sections) may cast doubts over the market consistency of other SOE transactions as well.

2.4.2. Adherence to corporate governance code

> *B. National corporate governance codes should be adhered to by all listed and, where appropriate, unlisted SOEs.*

Listed SOEs are required to abide by the Bucharest Stock Exchange (BVB) Corporate Governance Code, on a comply-or-explain basis. However, it seems that not all SOEs do: the board of Transgaz currently includes a Secretary of State from the Ministry of Energy, which is not in line with listing rules. Further, all members of the Romanian-American Chamber of Commerce (AmCham) – including both SOEs and private companies – are also required to adhere to AmCham Romania Code of Corporate Governance (2010[16]).

2.4.3. Disclosure of public policy objectives

> *C. Where SOEs are required to pursue public policy objectives, adequate information about these should be available to non-state shareholders at all times.*

As mentioned in previous sections, according to the provisions of Law no. 111/201 (amending and approving GEO no. 109/2011), medium-term objectives for SOEs – including information about any public policy objective, their cost and funding – are set in the letters of expectation drawn by line ministries for individual SOEs in their portfolio, in consultation with shareholders owning at least 5% of the share capital of the company. In addition, costs related to public policy objectives are funded by the state through budget allocations which are approved on an annual basis, and disclosed in SOEs' budget. As SOEs' budgets are formally approved by the general shareholders' meeting, this ensures equal access to material information by all shareholders. Overall, according to Law no. 111/2016, all relevant information that allows the adoption of a decision is shared with all shareholders through materials which form the basis of the items on the agenda of the general shareholders' meeting (such as decisions of the board, analysis and substantiation notes, etc.).

2.4.4. Joint ventures and public private partnerships

> *D. When SOEs engage in co-operative projects such as joint ventures and public-private partnerships, the contracting party should ensure that contractual rights are upheld and that disputes are addressed in a timely and objective manner.*

Co-operative projects such as concessions, public-private partnerships (PPPs), management delegation contracts and joint ventures are regulated by Law 100/2016 on works concessions and service concessions, GEO 39/2018 on public-private partnerships, Law 51/2006 on community services of public utilities, the Commercial Code and the Civil Code. Of note, management delegation contracts are awarded in compliance with the provisions of Law 100/2016 on works concessions and service concessions. The legal frameworks regulating concessions and PPPs mainly differ in one respect. In the case of PPPs, the law provides that more than half of the revenues to be obtained by the project company from the use of the good(s) or public service activity that is the subject of the project are sourced by payments made by the public partner or by other public entities for the benefit of the public partner (as per Article 2 of GEO 39/2018 on public-private partnership).

SOEs may be involved in concession projects and public-private partnerships, insofar as they have the quality of contracting authorities (according to Article 7 of GEO 39/2018 and Article 9 of Law 100/2016). In practice, concessions and management delegation contracts are used more often than PPPs and joint ventures in Romania, which is due to the fact that at present, there are no guidelines and methodologies

to facilitate the preparation and implementation of projects for PPPs. In general, the settlement of disputes must be negotiated and transposed into the documents which shall be signed by the parties (agreements, articles of incorporation, and in the case of joint ventures, contracts).

Overall, it should be noted that a few high-profile cases have highlighted that some SOEs have entered into contracts on unfavourable terms in recent years, which have reportedly caused insolvency. This includes Hidroelectrica, which entered into 11 "bad contracts" reportedly detrimental to the company due to unfavourable clauses before being declared insolvent,[7] as well as Oltchim, which seems to have entered into several ineffective contracts before going into insolvency, some of them reportedly with connected parties.[8]

Box 2.7. Contractual disputes in transport infrastructure

As major construction and rehabilitation projects are often subject to delays (especially in transport infrastructure, which ranks among the least developed in the EU according to the European Investment Bank), Romanian authorities have had to deal with a rising number of contractual disputes or claims over the past decade in which contractors are requesting financial compensation for years of delays. For instance, between 2007 and 2019, the road, railway, and metro companies received claims from contractors amounting to EUR 2.2 billion. Evidence suggests that some contractors have taken advantage of this situation and even succeeded in obtaining financial compensations exceeding their effective financial losses.

Against this background, Romania concluded a project with EIB under the PASSA agreement requesting advice in contract and claims management, whereby it was found that although the claims for prolongation were generally well-founded, this was not the case for the financial claims, which in many cases were substantially higher than the costs incurred by the contractors. Under the terms of the project, it is estimated that the Romanian authorities were able to lower the contractors' financial claims by 39%, on average. Over the course of a year, only EUR 50 million out of the EUR 85 million claimed by contractors for railway and metro disputes, were granted.

Source: https://www.eib.org/en/products/advisory-services/passa/romanian-transport-infrastructure-roller-coaster-ride.htm

2.5. Stakeholder relations and responsible business conduct

The state ownership policy should fully recognise SOEs' responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has in respect of responsible business conduct by SOEs.

2.5.1. Recognising and respecting stakeholders' rights

> *A. Governments, the state ownership entities and SOEs themselves should recognise and respect stakeholders' rights established by law or through mutual agreements.*

While there appears to be no legal provisions, regulations or mutual agreements that establish specific rights for the stakeholders of Romanian SOEs (e.g. employees, consumers and creditors), the rights of trade unions to information and consultation is recognised by law. In particular, information and consultation procedures are regulated by Law no. 53/2003 on the Labour Code, Law no. 467/2006 on establishing the general framework for informing and consulting employees, and Law no. 62/2011 of the

social dialogue. The relationship between employees and the management of SOEs is regulated by the Collective Labour Agreement, which establishes the rights and obligations of both parties. There are no special rule for employee board representation in SOEs. Regarding the protection of whistleblowers, Law no. 571/2004 "on the protection of personnel from *public authorities and public institutions* who report violations" applies equally to SOEs (including both central and local autonomous administrations, and SOEs incorporated according to the Companies Law).

For companies whose shares are admitted to trading, Law no. 24/2017 regarding the issuers of financial instruments and market operations, and Regulation no. 5/2018 of the Financial Supervisory Authority, provide for a series of continuous information and reporting requirements, in order to provide all shareholders and interested parties with up-to-date information on aspects related to the company's management activity, remuneration policy, significant transactions, and financial audit.

Regarding special consultations with stakeholders groups, Law no. 292/2018 on assessing the impact of certain public and private projects on the environment provides that the procedure for assessing the environmental impact of a project be an integral part of the procedure for issuing development approval, and establishes in this regard clear mechanisms by which the general public can be consulted on a project (according to Article 2 (5)e.).

2.5.2. Reporting on stakeholder relations

> *B. Listed or large SOEs should report on stakeholder relations, including where relevant and feasible with regard to labour, creditors and affected communities.*

In Romania, EU Directive 95/2014 NFRD (Non-Financial Reporting Directive) was transposed into national legislation through Order of the Ministry of Finance 1938/2016, and later through Order of the Ministry of Finance 3456/2018, which extended the initially envisaged scope of the Directive to all companies regardless of size with more than 500 employees. As such, all large entities (including SOEs) with more than 500 employees are required to include in the director's report a non-financial statement containing information regarding environmental, social, and employee-related aspects, as well as aspects related to human rights, and the fight against corruption and bribery. In particular, it should contain the following information:

- a brief description of the entity's business model
- a description of the policies adopted by the entity with respect to these aspects, including the necessary diligence procedures applied
- the results of those policies
- the main risks related to these aspects which arise from the entity's operations, including, when relevant and proportional, its business relationships, its products or services which could have a negative impact on those fields and the manner in which the entity manages those risks
- key non-financial performance indicators relevant for the entity's specific activity.

In spring 2022, the Bucharest Stock Exchange (BVB) also published its first environmental, social and governance (ESG) reporting guidelines for listed companies,[9] developed with the technical assistance of the European Bank for Reconstruction and Development (EBRD). The ESG Reporting Guidelines for issuers were prepared in co-operation with sustainability consultancy Steward Redqueen, and intend to provide clear and comparable information to investors and assist compliance with forthcoming EU reporting requirements under the Sustainable Finance Disclosure Regulation (SFDR) and the Corporate Sustainable Reporting Directive (CSRD)" (EBRD, 2022[17])

In addition, for SOEs subject to Law no. 111/2016 (amending and approving GEO no. 109/2011), according to Article 52, boards are required to inform shareholders of all transactions concluded with SOE board members, employees, controlling shareholder, as well as their spouse, relatives or in-law up to the fourth

degree, or to convene the shareholders' meeting to approve such transaction if its value accounts for more than 10% of the SOEs' net assets or turnover. The board should also inform shareholders of transactions of at least the equivalent of EUR 100 000 concluded with another SOE or line ministry. These transactions should also be reported in the board's annual reports.

2.5.3. Internal controls, ethics and compliance programmes

> *C. The boards of SOEs should develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption. They should be based on country norms, in conformity with international commitments and apply to the SOE and its subsidiaries.*

In Romanian SOEs, the company's risk policy is submitted by the board for approval by the general shareholders' meeting. Further, according to applicable provisions, internal management control systems, risk management policies and risk monitoring are required to be implemented in SOEs as part of the "corporate governance indicators" set for individual board members and executive managers upon their appointment, as part of the objective-setting process. According to GD no. 722/2016, the degree of compliance with these corporate governance KPIs should determine between 50-75% of the variable remuneration of board members, and between 10-25% of the variable remuneration of executive managers. However, as this is linked to the due appointment process which is itself often bypassed, KPIs – including corporate governance indicators – remain widely unused for individual SOE board and executive members. While in some companies – notably within the financial sector – a risk committee is formed within the board, it is unclear whether adequate risk management frameworks have been established in all SOEs.[10]

In spite of this, all SOEs are subject to Law no. 672/2002 on internal public audit, which requires internal auditors to independently assess risk management, control and governance processes, and to report directly to the board. According to Law no. 162/2017, SOEs are also required to have an external audit under the co-ordination of the audit committee, which is responsible for selecting the external auditor, for ensuring his/her independence and objectivity, and for monitoring the external audit of financial statements. While this stands in line with good practice, some issues may exist with regard to the independence of the audit committee in some SOEs. Indeed, while SOEs are also required to establish an audit committee comprised of a non-executive and independent members, for SOE boards with a majority interim appointees bypassing independence criteria, it may be inferred that the composition of the audit committee may not fully comply with independence requirements. However, according to the Romanian authorities, independence requirements of audit committee members are usually complied with.

With regards to integrity measures and mechanisms, the board of each SOE is required to establish a policy related to conflicts of interest and its implementation plan. In that aim, the board adopts, within 90 days of its appointment, a code of ethics, which should be revised annually, and be approved by the internal auditor. The code of ethics should be published by the chair of the board on the SOE's webpage within 48 hours of its adoption and, in case of revision, on 31 May of the current year. However, as of 2020, only 61% of centrally-owned SOEs subject to this requirement had published the code of ethics. Further, while the largest SOEs seem have adopted such codes of ethics, it is unclear how they are monitored. (OECD, forthcoming[18]).

Board members and executive managers of SOEs are required to disclose declarations of assets and interests, which can be completed and submitted through the e-DAI platform administered by the National Integrity Agency (ANI) and is monitored by ANI. This tool has reportedly enabled ANI to better monitor conflicts of interest, with SOE board and executive members being revoked when irregularities are found (Table 2.5).

In the case of listed SOEs, according to provision A.2 of BVB Corporate Governance Code, "provisions for the management of conflicts of interest must be included in the board regulation. In any case, board

members must notify the board of any conflicts of interest that have arisen or may arise and refrain from participating in discussions (including by the default, unless the failure to appear would prevent the formation of the quorum) and from voting for the adoption of a resolution concerning the matter giving rise to such conflict of interest". Further, according to provision A.5, "other relatively permanent professional commitments and obligations of a member of the board, including executive and non-executive positions in the board of some companies and non-profit, must be disclosed to the shareholders and potential investors prior to appointment and during the term of office thereof." Likewise, according to provision A.6, "any member of the board must submit to the board information on any relationship with a shareholder directly or indirectly owning shares representing over 5% of all voting rights. This obligation refers to any relationship that may affect the position of the member on matters decided by the board".

While elements for ensuring integrity and fighting corruption can include codes of conduct, compliance function, integrated risk management, and internal and external controls, and are usually integrated into SOEs' corporate governance structure, they may also be integrated into specific "integrity programmes". In Romania, SOEs which adhere to the National Anti-Corruption Strategy (NAS) commit to developing "integrity plans" which contain measures identified by the company's management as remedies for the risks and institutional vulnerabilities to corruption. While these plans are actively recommended by the NAS, evidence suggests that their uptake remains the exception rather than the rule (and may be restricted to the largest SOEs only), as they are developed on a voluntary basis. It is also unclear what these integrity plans should include. Overall, consideration should be given to ensure that risk management and control activities be truly integrated into company strategy and processes, and not siloed in stand-alone programmes.

Box 2.8. National anti-corruption strategy (NAS) 2021-25

The Romanian Government introduced its first national anti-corruption strategy (NAS) for the period 2001-04, in the context of widespread corruption concerns. Anti-corruption strategies are approved by government decision, but stand under the overarching responsibility of the Ministry of Justice. Each strategy includes sets of objectives, performance indicators and associated risks.

In recent years, strategies have included provisions directly aimed at strengthening integrity in the business environment – including in the state-owned enterprise sector, which was identified as one of the "priority sectors" particularly prone to corruption risks. The development of integrity plans by SOEs was first recommended by the NAS 2012-15 and reiterated by the following NAS 2016-20 due to implementation shortcomings. Provisions related to procurement and disclosure were also included the NAS 2012-15 and NAS 2016-20, respectively.

Building on these measures, the NAS 2021-25, which was formally approved by government decision no. 1 269 in December 2021, mainly aims to further strengthen (i) the use of integrity plans as managerial tools to promote organisational integrity in SOEs, as well as (ii) disclosure requirements by SOEs. It also includes (iii) compliance functions to be introduced by law in SOEs, along with a national compliance monitoring system at SOE-level, as well as (iv) provisions to strengthen integrity in public procurement, through open contracting data standards and the uptake of anti-corruption contract clauses.

Table 2.2. Specific objective no. 4.5 of the NAS 2021-25: "Increasing integrity, reducing vulnerabilities and the risk of corruption in the business environment"

Specific objectives	KPI / performance indicator	Risks
1. Continue Romania's efforts to become a full member of the OECD and relevant working groups, especially the	• Completion of implementation projects	• OECD reserves regarding the extension of the composition of the working group.

Anti-bribery working group, which also implies accession to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted in 1997 and effective since 1999.	jointly with the OECD Secretariat. • Business integrity projects / promotion activities.	• Failure to implement OECD recommendations.
2. Regulate the introduction of the **compliance function** within public enterprises and create an occupational standard suitable for compliance officers.	• Adoption of a normative act for regulation of the compliance function. • Development of occupational standards for compliance officers. • Number of public enterprises that have designated a compliance officer.	• Delays in adopting the normative act. • Failure to implement the provisions of the new normative act. • Lack of knowledge/specialised skills of employees regarding the compliance environment.
3. Develop a national **compliance monitoring system** from the perspective of integrity, at the level of public enterprises.	• Functional compliance monitoring system. • Number of reporting SOEs.	• Delays in ensuring the functionality of the compliance monitoring system. • Lack of adequate human and financial resources.
4. Consolidate the use **of integrity plans** as managerial tools for promoting organisational integrity frameworks within public enterprises	• Number of integrity plans adopted by public enterprises.	• Adoption of plans non-adapted to the organisational integrity context. • Lack of financial and human resources to develop adequate integrity plans.
5. **Exchange of good practices** in the implementation of integrity programs between the private and public sectors.	• Number of identified good practices. • Number of common professional training activities. • Degree of adoption of good practices.	• Low level of participation and involvement of representatives of the public sector and the business environment.
6. **Publish economic and financial indicators in open format** (including budgets and grants received from public authorities) for enterprises in which the state is a shareholder.	• Database available in open format containing the list of enterprises in which the state is shareholder (through central and local institutions) with the following indicators: financial data, KPIs, letter of expectations, the mandate contract, grants received.	• Lack of information on enterprises in which state is the shareholder.
7. **Elaborate a study** on integrity and security incidents, and remedy measures taken in the business environment in Romania.	• Study developed and published.	• Lack of adequate human and financial resources. • Failure to use the study developed by the group aim
8. Implementation of **open contracting data standards** (OCDS).	• Number of published datasets. • Institutions and public authorities that have implemented OCDS.	• Failure to implement OCSD public institutions. • Lack of adequate human and financial resources.
9. Encourage private operators to enter in **anti-corruption contract clauses**, which stipulates that any contract is considered null if one party is convicted for corruption.	• Number of awareness campaigns. • Number of presentation of good practice activities. • Number of disseminated educational materials.	• Low level of application of anti-corruption clauses.

Source: OECD (forthcoming[18]), *Stocktaking of the Public Integrity System of Romania: strengthening integrity measures in the health, education and SOEs sectors*, based on OECD (2021[19]), *National Anti-Corruption Strategy 2021-25*, https://sgg.gov.ro/1/strategia-nationala-anticoruptie/

2.5.4. Responsible business conduct

> *D. SOEs should observe high standards of responsible business conduct. Expectations established by the government in this regard should be publicly disclosed and mechanisms for their implementation be clearly established.*

As mentioned, according to Order of the Ministry of Finance no. 3456/2018, large entities (including SOEs) with more than 500 employees are required to include in the director's report a non-financial statement containing *inter alia* information regarding environmental, social, human rights aspects. In particular, with respect to environmental aspects, the non-financial statement must contain details regarding the current and predictable impact of the entity's operations on the environment and, as applicable, on health and safety, as well as on the use of renewable and non-renewable energy, greenhouse gas emissions, water use and air pollution.

With regard to the social and employee-related aspects, the information supplied through the non-financial declaration may refer to the actions taken to ensure gender equality, the implementation of the fundamental conventions of the International Labor Organization, labour conditions, social dialogue, the observance of the workers' right to be informed and consulted, the observance of union rights, health and safety at work, dialogue with the local communities and/or actions taken to ensure the protection and development of these communities.

With respect to human rights, fighting corruption and bribery, the non-financial statement may include information regarding the prevention of abuse in the field of human rights and/or regarding the instruments established for fighting corruption and bribery. The non-financial statement must also include an assessment of the entity's impact – including the use of the goods and services it produces – on climate change, as well as over its commitments in favor of sustainable development, the fight against food waste and in favor of the fight against discrimination and diversity promotion.

2.5.5. Financing political activities

> *E. SOEs should not be used as vehicles for financing political activities. SOEs themselves should not make political campaign contributions.*

According to Law no. 334/2006, SOEs are prohibited from financing political activities and electoral campaigns. In particular, according to Article 14, "the use of financial, human and technical resources belonging to public institutions, autonomous administrations, companies regulated by the Companies Law no. 31/1990, and credit institutions in which the state is a majority shareholder, to support the activity of political parties or their electoral campaign, other than under the conditions established by electoral laws, [is prohibited]." Further, "political parties may not accept donations or services provided free of charge from public institutions, autonomous administrations, companies regulated by the Companies Law no. 31/1990, and credit institutions in which the state is a majority shareholder".

In spite of these provisions, it should be noted that several criminal investigations of corruption cases involving SOEs were initiated by the National Anticorruption Directorate in recent years (Table 2.3). While some of these cases relate to ongoing court proceedings and are reported here without prejudice to the question of guilt and eventual outcomes of the cases, it is nevertheless worth noting that several former Ministers and Secretaries of State are involved – mainly for influence peddling offences. When executive

managers of state-owned enterprises have been indicted, it is mainly for taking bribes, abuse of office and money laundering (OECD, forthcoming[18]).

As alluded to in previous sections, state capture of SOEs has been reported as one of Romania's main governance problems throughout its transition to a market economy, with cases of extensive political interventions and use of public assets for personal gains (State capture, 2018[20]). While this is likely to affect SOEs' economic performance as a going concern, in the case of SOEs that are slated for privatisation it may negatively affect the sale conditions. Overall, the mere perception of interference in SOEs can provide disincentive for investment (OECD, forthcoming[18]).

Table 2.3. Selected criminal investigations involving SOEs over the past five years

Concluded investigation	Criminal investigation details
No. 916/VIII/3 (17 December 2020)	The former Secretary of State in the Ministry of Transport and adviser to the minister (at the time of the facts) were investigated for traffic of influence and money laundering for crimes allegedly committed between June-September 2012. In particular, in the period immediately following the change of government, based on information that the new government would no longer be interested in investing in the expansion of the Bucharest subway network, defendants allegedly claimed a bribe from the company in charge of executing the works in exchange of use of influence at the decision-making level of the Ministry of Transport in June 2012. The defendants also allegedly received money transfers between July-September. The criminal investigation was completed in end 2020, and the indictment and plea agreements were then sent to court. Source: DNA (2020[21]), Press release no. 916/VIII/3 of 17 December 2020, https://www.pna.ro/comunicat.xhtml?id=10122
No. 648/VIII/3 (2 October 2020)	The then CEO and head of sales of a SOE wholly owned by the Ministry of Health were sent to trial in June 2020 for taking bribes, abuse of office, complicity to traffic of influence and instigation to forgery in the context of the COVID-19 outbreak. These crimes occurred in the aftermath of the Government's issuance of Order no. 11/2020 on emergency medical stocks, as the SOE was assigned the purchase of such equipments. These purchases have occurred in violation of Law 98/2016 on public procurement, in exchange of bribes and traffic of influence. Source: DNA (2020[22]), Press release no. 648/VIII/3 of 2 October 2020, https://www.pna.ro/comunicat.xhtml?id=10983
No. 904/VIII/3 (15 November 2019)	The then Minister of Finance and Secretary of State of the Ministry of Transport, along with a former member of parliament, a former employee of the Ministry of Finance and a person formerly close to the Romanian National Railway Company's management were charged with traffic influence and taking bribes for offenses committed from 2005 to 2017, in the context of a tender for the rehabilitation of a railway. Source: DNA (2019[23]), Press release no. 904/VIII/3 of 15 November 2019, https://www.pna.ro/comunicat.xhtml?id=10707
No. 404/VIII/3 (3 March 2019)	Several people – including the then Minister of Communication and Information Society, state secretary within the ministry, and CEO of the National Company Poșta Română (CNPR SA) – were indicted for taking bribes, traffic of influence, complicity in abuse of office, and money laundering. These crimes were committed in 2010, in the context of the purchase of postage machines in violate of due procurement procedures (i.e. at an overestimated price). Of note, eight other cases were previously sent to trial for offences that caused damage to the Romanian Post National Company. In three of these cases, the courts ruled decisions of final conviction. Source: DNA (2019[24]), Press release no. 404/VIII/3, https://www.pna.ro/comunicat.xhtml?id=10969
No. 174/VIII/3 (20 February 2017)	The then CEO of a SOE in the air transport sector and the then administrator of a commercial company were indicted for respectively taking and giving bribes in 2011-12, in the context of public tender procedures ignoring principles of competition and transparency. Source: DNA (2017[25]), Press release no. 174/VIII/3, https://www.pna.ro/comunicat.xhtml?id=10979

2.6. Disclosure and transparency

State-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies.

2.6.1. Disclosure standards and practices

> *A. SOEs should report material financial and non-financial information on the enterprise in line with high quality internationally recognised standards of corporate disclosure, and including areas of significant concern for the state as an owner and the general public. This includes in particular SOE activities that are carried out in the public interest. With due regard to company capacity and size, examples of such information include:*

All SOEs in which the state is a majority or controlling shareholder – regardless of their size or legal form[11] – are required to abide by the same financial and non-financial disclosure requirements, as provided by Law no. 111/2016 (amending and approving GEO no. 109/2011). According to Article 51 of the law, all majority-owned SOEs[12] are required to set up a website, on which the following information should be made available for access by shareholders and the general public: resolutions of the general shareholders' meeting (within 48 hours of the meeting); annual financial statements (within 48 hours of approval); half-yearly accounting reports (within 45 days of the end of the semester); annual audit reports; directors' reports (on 31 May of each year); the list of non-executive directors (or supervisory board members, in the case of two-tier board) and their CVs; annual reports on the remuneration and other benefits granted to non-executive and executive directors during the financial year; and codes of ethics (within 48 hours of their adoption, and on 31 May of each year, in the event of their revision).

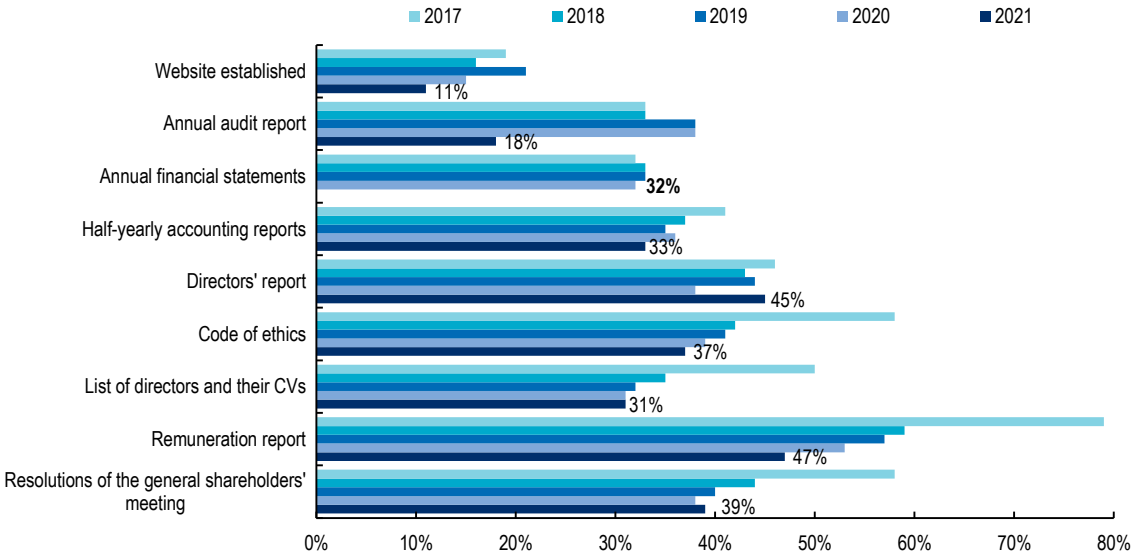
According to Law no. 111/2016, the annual financial statements, half-yearly accounting reports, directors' reports and annual audit reports should remain available on the websites of SOEs for a period of at least three years from the date of publication. Further, according to the provisions of Article 2 of Law no. 544/2001 on free access to information of public interest, public enterprises are considered as "public institutions", and as such are also required to respond to ad-hoc requests for information of public interest. SOEs with shares traded on the stock exchange are also required to abide by applicable capital market requirements, such as those provided by Law no. 24/2017 on issuers of financial instruments and market operations as amended and supplemented by Law No. 158/2020, Financial Supervisory Authority (FSA) Regulations, and the provisions of the Bucharest Stock Exchange (BVB) Corporate Governance Code (applicable on a comply-or-explain basis). Minority-owned SOEs which are fully incorporated according to the Companies Law are required to abide by applicable laws and regulations, including the requirement to disclose their financial statements in the commercial register.

As already mentioned in previous sections, although sanctions are foreseen by Law no. 111/2016 in case of non-compliance by SOEs in which the state is a majority or controlling shareholder,[13] the overall degree of compliance with disclosure requirements remains relatively low across central and majority-owned public enterprises, with little progress made since 2017 – especially with regard to the disclosure of financial information – and apparent stagnation since 2018 (Figure 2.3). As of end 2020, more than 30% of SOEs had not published their annual financial statements and half-yearly accounting reports, and almost 40% had not published their annual audit report. As of end 2021, almost half of SOEs (45%) had not published the directors' report. Although some progress was made since 2017 regarding disclosure of board composition and their remuneration, as of end 2021, around one-third of SOEs had not published the list of directors and their CVs, and almost half (47%) had not disclosed information on the remuneration of executive and non-executive directors. It is also worth noting that almost 40% of SOEs had not published resolutions of the general shareholders' meeting in 2021, which can negatively impact the right to

information of non-state shareholders in particular, hence hampering the principle of equal treatment of all shareholders.

Figure 2.3. Degree of non-compliance with disclosure requirements by majority-owned SOEs (2017-21)

According to the provisions of Law no. 111/2016 (amending and approving GEO no. 109/2011)



Note: Data refers to non-compliance rates with disclosure requirements by central and majority-owned SOEs subject to Law no. 111/2016 (amending and approving GEO no. 109/2011), including 144 SOEs in 2021, 151 in 2020, 146 in 2019, 147 in 2018 and 145 in 2017. Indicated labels refer to 2021 data, except for "annual financial statements" where data for 2021 is unavailable and 2020 data is indicated instead.
Source: OECD Secretariat, based on data retrieved from the Ministry of Finance's website, https://mfinante.gov.ro/domenii/guvernanta/rapoarte-generale-periodice

According to the Romanian authorities, this is mainly due to non-compliance by smaller enterprises. However, an analysis of disclosure practices by 16 large SOEs (by number of employees and equity value or market valuation) reveals some degree of non-compliance with disclosure requirements even by large SOEs (Table 2.4). For instance, five of these 16 SOEs have not disclosed their directors' reports and annual audit reports in recent years, including four of the largest SOEs in the Ministry of Transport's portfolio, some of which have also not recently disclosed their annual financial statements, bi-annual accounting reports and resolutions of general shareholders' meetings. Regarding the latter, disparities in transparency levels exist, with some SOEs publishing the underlying material of agenda items for discussion by the general meeting, and some only publishing resolutions of the general meeting (although this information is not always available without a password). Overall, variations exist across these large SOEs regarding the accessibility of disclosed information, which is not always available in a machine-readable format (nor in English). Gaps in the quality and accessibility of information are especially pronounced across SOEs depending on their listing status. As such, consideration could be given by the state to aspire to similar transparency levels for both listed and unlisted enterprises.

When non-compliance is identified, there are no interim steps that line ministries resort to before sanctions are issued (i.e. whereby line ministries would first reach out to SOEs bilaterally to check why they have not yet complied, and ensure that they intend to comply before issuing sanctions). In practice, non-compliant SOEs are flagged by their respective line ministries to the Ministry of Finance, who then issues sanctions

to the chair of the board. Sanctions can also be issued to line ministries that fail to transmit information to the Ministry of Finance for monitoring purposes, as required by Order no. 1952/2018 (Box 2.3). As of end 2021, nine central government institutions had not reported information about 16 SOEs[14] to the Ministry of Finance (including seven fully incorporated companies and nine subsidiaries) (Ministry of Finance, 2021[3]). To some extent, this might help explain some of the degree of non-compliance by SOEs with disclosure requirements as reported by the Ministry of Finance (detailed in Figure 2.3). Overall, consideration could be given to increasing the amounts of monetary fines, which at present may not bear a strong enough deterrent effect against non-compliance with disclosure requirements by both SOEs and line ministries.

According to the Romanian authorities, SOEs usually do comply with applicable reporting requirements, even when this information is not publicly disclosed. As mentioned above, according to the provisions of Law no. 111/2016 (amending and approving GEO no. 109/2011) and Order no. 26/2013 (on the degree of quarterly achievement of the indicators from the approved revenue and expenditure budgets), SOEs are required to report financial and non-financial information to their line ministries, to the Ministry of Finance and to the general shareholders' meeting on a regular basis. SOEs are also required to abide by the same financial reporting requirements as those applicable to private companies, including the provisions of the Accounting Law no. 82/1991, Order no. 1802/2014 (which transposed the requirements of the EU Accounting Directive into national legislation), Order no. 2873/2016 and Order no. 58/2021, as well as those of Law no. 24/2017 (for listed SOEs). According to Order no. 666/2015 adopted upon the recommendation of the IMF and World Bank, 16 majority-owned SOEs (identified in the Annex to the Order) are required to prepare financial statements in accordance with IFRS since 2016, in addition to those listed on the Bucharest Stock Exchange since 2012.[15]

Table 2.4. Disclosure practices by 16 large majority-owned SOEs by equity value and number of employees (as of end 2020)

	Romgaz	Nuclear-electrica	Trans-gaz	Trans-electrica	Conpet	Hidro-electrica	Oltenia	Romsilva	Posta Romana	CFR	CNAIR	CFR Marfa	CFR Calatori	CEC Bank	Bucharest Airport	RAAPPS
% state ownership	70	82.5	58.5	58.7	58.7	80	78	100	93.5	100	100	100	100	100	80	100
Website available in English	✓	✓	✓	✓	✓	✓	Partial	X	Partial	X	Partial	Partial	Partial	X	Partial	X
Annual audit report	✓	✓	✓	✓	✓	✓	✓ ❖	✓ ❖	✓ ❖	✓ ❖	X	X	X	✓ ❖	X	X
Annual financial statements	✓	✓	✓	✓	✓	✓	✓ ❖	✓ ❖	✓ ❖	✓ ❖	X	X	✓	✓ ❖	X	✓ ❖
Bi-annual accounting reports	✓	✓	✓	✓	✓	✓	✓	✓ ❖	✓ ❖	✓ ❖	X	X	X	✓ ❖	X	✓ ❖
Director's report	✓	✓	✓	✓	✓	✓	Partial	✓ ❖	✓ ❖	✓ ❖	X	X	X	✓ ❖	X	X
Code of ethics	✓	✓	✓	✓	✓	✓	✓ ❖	✓ ❖	✓ ❖	X	✓ ❖	✓ ❖	✓ ❖	X	✓ ❖	X
List of directors and their CVs	✓	✓	✓	✓	✓	✓	✓ *	✓ *	✓ *	✓ *	✓	✓ *	✓	Partial	✓	Partial*
Remuneration report	✓	✓	✓	✓	✓	✓	X	✓ ❖	X	✓ ❖	✓ ❖	X	✓ ❖	✓ ❖	X	X
Resolutions of general meetings	✓	✓	✓	✓	✓	✓	✓ ❖	✓ ❖	✓	✓	✓ ❖	X	✓ ❖	X	✓ ❖	X

Note: As a credit institution, CEC Bank is exempted from the application of GEO no. 109/2011, but is included in this table for comparative purposes. "❖" means "available in Romanian only". For **SOE websites** where availability in English is indicated as "partial", this either means that not all information is available in English, or that while tabs are available in English, the underlying documents usually are not. Regarding the **annual audit report**, CNAIR's 2021 report is not available, while it has only been published up to 2018 by CFR Marfa, up to 2019 by CFR Calatori, and up to 2014 by Bucharest Airport. Likewise, the **annual financial statements** of CNAIR are not available for 2021, while they are only available up to 2018 for CFR Marfa and Bucharest Airport. **Bi-annual accounting reports** are not available for 2021 for CNAIR, and have only been published up to 2019 by CFR Marfa. While the **director's report** of Oltenia does not seem to include information on risk management (as provided by Law no. 111/2016), it has only been published up to 2020 by CNAIR, up to 2018 by CFR Marfa, up to 2014 by Bucharest Airport, and up to 2017 by the Property Administration (RAAPPS). All SOEs disclose the **list of directors and their CVs**, except for CEC Bank and RAAPPS where CVs are not available. It should also be noted that only two listed SOEs (Romgaz and Nuclearelectrica) disclose the independence status of directors; however for other SOEs, their appointment status is often indicated (i.e. whether they are interim or tenured appointees, or state representatives). In the case of Oltenia, Romsilva, Posta Romana, CFR Marfa and RAPPS, directors' statements of interest and assets are publicly disclosed (which is not the case for other SOEs, as far as could be established by the review team). Regarding the **remuneration report**, Oltenia and CFR Marfa only publish the remuneration policy (and not actual remuneration levels of SOE board and executive members), and Posta Romana and Bucharest Airport have only published it until 2019 and 2018 (respectively); for Posta Romana, it is also missing for 2016.
Source: OECD Secretariat, based on desk research.

> *A.1. A clear statement to the public of enterprise objectives and their fulfilment (for fully-owned SOEs this would include any mandate elaborated by the state ownership entity);*

As provided by Law no. 111/2016 (amending and approving GEO no. 109/2011), corporate governance structures of line ministries are required to set objectives for individual SOEs in their respective portfolios, based on government programmes and sectoral strategies. This is done through "letters of expectations" establishing objectives for a period of at least four years, which should set out: (i) the summary of the government strategy in sectors and fields of activities where SOEs operate, including sectoral and fiscal objectives, and (ii) the general vision of the line ministry and of the shareholders with respect to the mission and objectives of the SOE resulting from the government policy in sectors and fields of activities where SOEs operate.[16]

While letters of expectations are only required to be published on the websites of line ministries (and not on those of SOEs[17]), according to Article 56 of Law no. 111/2016, SOEs are required to publish an annual report on their websites by 31 May of each year, which should report on the activities of the SOE undertaken during the previous fiscal year, including measures adopted to meet the objectives mentioned in the letter of expectations. However, it is unclear whether SOEs do in practice comply with this requirement.[18] SOEs are also required to prepare and publish a directors' report accompanying their annual financial statements, which should also include information about achievement of objectives. However, as mentioned above, only 55% of central and majority-owned SOEs had published their directors' report as of end 2021 (Figure 2.3).

While SOEs are also required to publish a remuneration report, which should include information on the degree of fulfilment of key performance indicators (KPIs) underpinning the amount of performance-based remuneration granted to board and executive members (hence also providing information on the degree of fulfilment of objectives, as KPIs should be derived from the objectives set in the letters of expectations for SOEs), it should be noted that KPIs are rarely set in practice for board members and executive management, due to the widespread practice of interim appointments. In addition, between 2018-21, only around 40%-50% of SOEs had published this remuneration report.

> *A.2. Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives;*

As mentioned above, according to the provisions of Law no. 111/2016, SOEs are required to disclose their annual financial statements, bi-annual accounting reports, and audit report on their websites, which should remain publicly available for a period of at least three years. However, since 2018, around 30% of central and majority-owned SOEs on average have not published these reports (Figure 2.3). SOEs with shares traded on the stock exchange are subject to more stringent provisions. According to Article 63 of Law no. 24/2017, listed SOEs are required to send quarterly, half-yearly and annual reports to the Financial Supervisory Authority (FSA) and to make them available to the public. According to the provisions of the law, listed SOEs are required to publish these reports within five days from the date of approval, and to inform investors about their availability through a press release published in at least one widespread daily newspaper (Article 63 (2)). While the law provides for the FSA to issue regulations regarding the content of these reports, it also states that the reporting should include "any significant information for investors to make a substantiated assessment of the company's activity, profit or loss", and that "the financial situation [should be] presented in comparison with the existing financial situation in the same period of the previous financial year". Further, according to Article 65, listed SOEs should publish an annual financial report no later than four months after the end of each financial year and ensure its public availability for at least 10 years, which should comprise: (i) audited annual financial statements, (ii) the directors' report, and (iii) the audit report.[19]

For railway companies undertaking both commercial and public policy objectives, the separation of accounts between commercial and non-commercial activities is prescribed by Law no. 202/2016 on the integration of the Romanian railway system into the single European railway area, applicable EC financing regulations, as well as by Ordinance no. 12/1998 regarding the transport on Romanian railways and the reorganisation of the National Society of Romanian Railways. In practice, this entails that the activities of the railway freight and passenger transport operators, with both state and private capital, are separated from those of the railway infrastructure administrator. Further, according to the Romanian authorities, in the case of CFR, revenues and expenses are disclosed separately depending on the type of activities delivered and their sources of financing, and in the case of rail passenger transport operators, accounting of the revenues related to the delivery of the public service and those related to commercial activities are kept separate and are also disclosed separately. However, as mentioned above, it should be noted that CFR Marfa (the state-owned freight railway operator) has not published its annual financial statements, bi-annual accounting reports and annual audit report since 2018. According to the Romanian authorities, the structural and economic-financial separation of accounts is subject to verification by the Railway Supervisory Board within the Competition Council.

Overall however, it is unclear to what extent other SOEs (operating in other sectors than the railway transport sector) are required to disclose the costs and funding arrangements pertaining to public policy objectives. However, it should be noted that the annual budgets of SOEs are approved by government decisions which are made public.[20] The Ministry of Finance also publicly reports on an annual basis on the total amount of subsidies granted to central SOEs – including a breakdown of subsidies granted for SOEs' operating activities or investments, as well as according to their sector of operation (by reporting information on the amounts of subsidies granted to individual line ministries from the state budget).

> *A.3. The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;*

According to the provisions of Article 51 of Law no. 111/2016 (amending and approving GEO no. 109/2011), central and majority-owned SOEs are required to publish all the decisions of the general shareholders' meeting on their websites – which should in principle ensure transparency around the decisions related to the governance, ownership and voting structure of the enterprise. However, as mentioned above, only around 60% of SOEs on average have published the resolutions of general meetings in recent years.

Of note, SOEs with shares traded on the stock exchange are also required to abide by reporting requirements of major holdings, as provided by Law no. 24/2017.

> *A.4. The remuneration of board members and key executives;*

As previously mentioned, SOE boards are required to prepare and disclose on their websites an annual remuneration report including information on the level of remuneration of board and executive members including information on the remuneration and other advantages granted to board members and executive managers during the financial year. At a minimum, the report should include information regarding:

- The structure of the remuneration, with explanation of the share of the variable component and of the fixed component
- performance criteria which substantiate the variable component of the remuneration, the ratio between the performance obtained and the remuneration
- the considerations which justify any scheme of annual bonuses or non-monetary advantages
- the possible additional or anticipatory pension schemes
- information about the term of the agreement, the negotiated prior notice period, and the amount of damages for revocation without just cause.

However, as mentioned above, almost half of central and majority-owned SOEs (47%) subject to this requirement had not publish this report as of end 2021. In addition, disparities in disclosure practices among the 16 large SOEs surveyed in Table 2.4 seem to exist. According to a review of individual practices, while some SOEs disclose remuneration levels, some enterprises only disclose the remuneration policy. For SOEs that do disclose remuneration levels, variations also exist with regard to the format, as some SOEs disclose aggregate levels, while others disclose individual remuneration amounts. These variations also exist across listed SOEs.

While Article 107 of Law no. 24/2017 requires listed SOEs to prepare and disclose a remuneration report, applicable provisions are also provided by the Bucharest Stock Exchange corporate governance code. According to provisions C.1, "the company must publish on its website the remuneration policy and include a statement in the Annual Report on the implementation of the remuneration policy during the annual period under review. The remuneration policy must be formulated so as to allow shareholders to understand the principles and arguments underlying the remuneration of the board members and of the CEO and the members of the Executive Board in the two-tier system. It must describe the process management mode and the decision-making related to the remuneration, detail the components of the remuneration of the executive management (such as salaries, annual bonuses, long-term incentives related to the value of the shares, benefits in kind, pensions and others) and describe the purpose, principles and assumptions underlying each component (including the general performance criteria related to any form of variable remuneration). Furthermore, the remuneration policy must specify the term of the contract of the CEO and the prior notice period stipulated in the contract, as well as possible compensation for revocation without a just cause."

> *A.5. Board member qualifications, selection process, including board diversity policies, roles on other company boards and whether they are considered as independent by the SOE board;*

According to Law no. 111/2016, SOEs are required to publish on their websites the list of directors along with their CVs. However, as of end 2021, only 70% of SOEs had complied with this requirement. Further, according to a review of the websites of 16 of the largest SOEs (by number of employees and equity value), all SOEs disclose the list of directors and their CVs, except for CEC Bank and RAAPPS where CVs are not available. It should also be noted that only two listed SOEs (Romgaz and Nuclearelectrica) disclose the independence status of directors, as this does not seem to be required for (unlisted) SOEs. However for other SOEs, their appointment status is often indicated (i.e. whether they are interim or tenured appointees, or state representatives). In the case of Oltenia, Romsilva, Posta Romana, CFR Marfa and RAAPPS, directors' statements of interest and assets are publicly disclosed (which is not the case for other SOEs, as far as could be established by the review team).

It should also be noted that the announcement of the board selection process should be published on the websites of SOEs (as well as in two widespread newspapers); according to a review of 16 large SOE websites, this requirement seems to be complied with in practice, at least by the largest and economically important SOEs.

> *A.6. Any material foreseeable risk factors and measures taken to manage such risks;*

As mentioned above, SOE boards are required to prepare a directors' report for each fiscal year, which should contain a true presentation of the development and performance of the entity's activities and of its position, as well as a description of the main risks and uncertainties it is facing. In particular, the director's report should include information about the entity's exposure to price risk, credit risk, liquidity risk and cash flow risk. However, as highlighted above, almost half of SOEs subject to this requirement had not published their directors' report as of end 2021. According to the Romanian authorities, SOEs' annual report should also present information about the risk management applied by the enterprise; however, it is unclear whether these reports are published by SOEs in practice, as it is not required by Law no. 111/2016. Further, according to applicable provisions, information about the treatment of off-balance-sheet assets and

liabilities should be included in the explanatory notes to the annual financial statements; however, again, around 30% of central SOEs had not disclosed their annual financial statements in 2021.

> *A.7. Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE, including contractual commitments and liabilities arising from public-private partnerships;*

According to the Romanian authorities, information regarding the subsidies received by the SOEs as well as the guarantees received from the state can be found in the directors' reports accompanying the annual financial statements, in the annual financial statements, as well as in the activity reports of the state enterprise, all of which are required to be published on SOE websites. However, as mentioned, almost half of SOEs had not published the directors' report as of end 2021.

> *A.8. Any material transactions with the state and other related entities;*

Related parties, and disclosure requirements of RPTs, are defined by Order of the Ministry of Finance no. 1802/2014. In addition, according to the provisions of GEO no. 109/2011, boards are required to inform shareholders of all transactions concluded with SOE board members, employees, controlling shareholder, as well as their spouse, relatives or in-law up to the fourth degree, or to convene the shareholders' meeting to approve such transaction if its value accounts for more than 10% of the SOEs' net assets or turnover. The board should also inform shareholders of transactions of at least the equivalent of EUR 100 000 concluded with another SOE or line ministry. These transactions should also be reported in the board's annual reports.

> *A.9. Any relevant issues relating to employees and other stakeholders.*

According to the provisions of Order of the Ministry of Finance no. 1802/2014, SOEs are required to prepared non-financial statement to accompany the annual financial statements. Further, the reporting requirements for all SOEs regarding the relationship with stakeholders are provided by articles 52 and 53 of GEO no. 109/2011 (as amended and approved by Law no. 111/2016).

2.6.2. External audit of financial statements

> *B. SOEs' annual financial statements should be subject to an annual independent external audit based on high-quality standards. Specific state control procedures do not substitute for an independent external audit.*

According to Article 34 of the Accounting Law no. 82/1991, the annual financial statements of fully or majority-owned SOEs, as well as those of autonomous administrations, are subject to statutory audit, which should be performed by authorised financial auditors or audit companies, and carried out in accordance with International Audit Standards, EU Regulation no. 537/2014, and Law no. 162/2017. According to articles 47-48 of GEO no. 109/2011, the audit committee should select the external auditor, who should be appointed by the general meeting of shareholders for companies, and by the board for autonomous administrations, for a period of at least three years.

However, in light of potential concerns regarding the independence of audit committees (as outlined above), this may also give rise to the existence of concerns regarding the independence and objectivity of external auditors operating under the oversight of board audit committees. In addition, while line ministries are required to publish the opinions of external auditors in their annual reports, as well as measures taken to address any concerns raised by external auditors, it is unclear whether all line ministries do in fact disclose this.

2.6.3. Aggregate annual reporting on SOEs

> *C. The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs. Good practice calls for the use of web-based communications to facilitate access by the general public.*

Annual reports prepared by line ministries on the activity of SOEs in their portfolios

According to Article 58 of Law no. 111/2016 (amending and approving GEO no. 109/2011), central government institutions – also known as "public supervisory authorities" – (i.e. line ministries) are required to prepare annual reports on the activity of SOEs in their respective portfolios (excluding those in insolvency, dissolution or bankruptcy proceedings), which should be published on the websites of line ministries in June of each year. According to legal provisions, these annual reports should include information regarding:

- the shareholding policy of the public supervisory authority
- strategic changes in the functioning of public enterprises (e.g. mergers, divisions, transformations, changes in the capital structure, etc.)
- the evolution of the financial and non-financial performance of the public enterprises under the oversight of the public supervisory authority (e.g. reduction of outstanding payments, profit, etc.)
- the economic and social policies implemented by the public enterprises under the oversight of the public supervisory authority and their costs or benefits
- data on qualified opinions of external auditors and concerns for their removal and prevention
- other elements established by decision or order of the public supervisory authority.

The law also provides that at a minimum, information regarding the shareholding policy of line ministries should specify relate to encompass concern: (i) the objectives of the shareholding policy expressed by the letter of expectations and set out in the mandate contract; (ii) the evolution of the state's participation in public enterprises (such as privatisation, acquisition of new shares); (iii) the amounts of dividends distributed to the state shareholder; (iv) the selection of board members and executive managers, and the implementation of their mandates.

In practice however, it is unclear whether all line ministries do prepare and publish this report, as it seems that some reports are missing for some ministries, and for some years. The format and content of these reports also seem to vary from year to year and across line ministries, which may be due to inconsistent methodologies used across line ministries for reporting on SOE performance. Overall, this can hamper comparability of information.

Annual aggregate report prepared by the Ministry of Finance on the entire SOE portfolio

Law no. 111/2016 also provides that in August of each year, the Ministry of Finance is to prepare and submit to the government an annual report on SOEs based on the information collected from line ministries, which should report on the activities of central and local SOEs during the previous fiscal year (starting on 1 January and ending on 31 December). The report is to be made publicly available on the Ministry of Finance's website.

At present, the annual report is structured into two parts: a first part reporting on the activity of centrally-owned SOEs, and a second part reporting on the activity of local enterprises. Each part includes four chapters. The first two chapters describe year-on-year changes in the number of SOEs, and evolutions regarding state participations in public enterprises. The following two chapters respectively describe the main economic and financial indicators of SOEs, and report on the compliance with the provisions of Law no. 111/2016 by both SOEs and their ownership entities (Box 2.9).

Box 2.9. Overview of the structure of the annual aggregate report on centrally-owned SOEs

At present, the Ministry of Finance's annual report on SOEs, following a brief introductory text providing general information, is comprised of two parts focusing on central and locally owned SOEs respectively. The two parts follow a similar structure, illustrated as follows:

PART I – Report on the activity of Central Public Enterprises in 2020.

- Chapter 1 – Evolution of the number of central public enterprises owned by central public authorities during 2020
- Chapter 2 – Evolution of State Participations in Central Public Enterprises Owned by Central Public Guardianship Authorities
- Chapter 3 – Main economic and financial indicators recorded in 2020 by central public enterprises
  - 3.1 – The main economic-financial indicators of the active central public enterprises
  - 3.2 – Situation of the main economic and financial indicators of the active central public enterprises grouped by activity sectors according to net turnover
  - 3.3 – Evolution of outstanding payments by central public enterprises
  - 3.4 – Development of staff and staff costs at central public enterprises
  - 3.5 – Subsidies from the State Budget granted to central public enterprises
  - 3.6 – Dividends and payments distributed and transferred by central public enterprises
  - 3.7 – The first ten active central public enterprises that recorded a gross loss in 2020
- Chapter 4 – Application of the provisions of GEO no. 109/2011 and the principles of corporate governance in central public enterprises owned by central public supervisory authorities
  - 4.1 – The stage of transmission of the information by the central tutelary public authorities according to the provisions of OMFP no. 1952/2018
  - 4.2 – Status of the selection process of the board of directors or supervisors and of the directors or directorates of the central public enterprises
  - 4.3 – Status of key performance indicators in the mandated contracts of directors and directors / directorate at central public enterprises
  - 4.4 – The structure of the management bodies of the central public enterprises, during the year 2020
  - 4.5 – Evolution of the application of the provisions and principles of transparency to central public enterprises
- Recommendations

Source: Ministry of Finance (2021[3]), *Annual report on SOEs 2020*, https://mfinante.gov.ro/documents/35673/220982/raportanual2020.pdf

While these reports provide transparency around the financial performance, total employment, and application of the corporate governance provisions of GEO no. 109/2011 (regarding compliance with the board selection process and transparency and disclosure requirements) of the entire state-owned portfolio, consideration could be given to expand their coverage.

2.7. The responsibilities of the boards of state-owned enterprises

The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

2.7.1. Board mandate and responsibility for enterprise performance

> *A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role of SOE boards should be clearly defined in legislation, preferably according to company law. The board should be fully accountable to the owners, act in the best interest of the enterprise and treat all shareholders equitably.*

Romanian SOEs established pursuant to the Companies Law no. 31/1990 can be administered under both a unitary or two-tier structure, which may only be changed by the general shareholders' meeting. In practice, SOEs tend to have one-tier boards, which are subject to requirements set by GEO no. 109/2011 (as amended and approved by Law no. 111/2016) and the Companies Law no. 31/1990. For SOEs with one-tier boards, Article 28 of GEO no. 109/2011 provides that the boards of autonomous administrations and JSCs be comprised of three to seven members, and of five to nine members for 'large' JSCs (with more than 50 employees and a turnover of over EUR 7.3 million). For SOEs with two-tier boards, Article 31 provides that supervisory boards include five to nine members, and management boards be composed of three to seven members. In the case of LLCs, board composition requirements and the selection procedure of board members are decided by the line ministry through the articles of incorporation of the companies in question.

For **fully incorporated majority-owned SOEs**, the main responsibilities of the supervisory board (or non-executive directors) are those provided by the Companies Law no. 31/1990. According to applicable provisions, non-executive directors (of companies with **one-tier boards**) have the following main competencies (which cannot be delegated to executive directors): (i) establishing the main lines of activity and development of the company; (ii) establishing the accounting policies and the financial control system, as well as the approval of the financial planning; (iii) appointing and revoking executive directors and setting their remuneration; (iv) supervising the activity of executive directors; (v) preparing the annual (directors') report, organising the general meeting of shareholders and implementing the decisions thereof; (vi) filing the request for opening the insolvency procedure for the company. In the case of **two-tier boards**, the supervisory board has the main following duties: (i) exercising permanent control over how the company is managed by the management; (ii) appointing and revoking the member of the management board; (iii) verifying compliance with the law, with the articles of incorporation and with the decisions of the general meeting of the operations of company management; (iv) reporting at least once a year to the general meeting of shareholders with respect to the supervisory activity it has performed.

As previously mentioned, according to the provisions of Law no. 111/2016 (amending and approving GEO no. 109/2011), SOE boards (of autonomous administrations and fully incorporated companies) are also required to: analyse and approve the administration plan drafted in collaboration with executive directors, in accordance with the letter of expectations and candidates' declaration of intent; negotiate financial and non-financial performance indicators with the line ministry; prepare the semestrial report on the activity of the SOE for submission to the line ministry (for **corporatised SOEs**); prepare monthly reports for submission to the line ministry regarding the fulfilment of the financial and non-financial performance indicators annexed to the mandate contract of individual board members, as well as other data and information of interest at the request of line ministries (for **autonomous administrations**); verify the

functioning of the internal or managerial control system; and monitor and manage potential conflicts of interest at the level of the supervisory and management bodies;

In terms of accountability, as already mentioned above, SOE boards are required to issue a directors' report on an annual basis, which should contain a true presentation of the development and performance of the entity's activities and of its position, as well as a description of the main risks and uncertainties it is facing. The directors' report should be approved by the board as a whole and signed by the board chair, and should accompany the SOE's financial statements, which should in turn be submitted to the statutory auditors (along with supporting documents) at least 30 days before the date of the annual general shareholders' meeting. Of note however, while directors' reports are also required to be published by SOEs on their websites, as of end 2020, less than two-thirds (62%) of companies subject to this requirement had done so (Ministry of Finance, 2021[3]).

Additional accountability mechanisms are also set by the Companies Law no. 31/1990, which requires board members to exercise their mandate with loyalty and in the interest of the company (Article 144), and sets out the conditions under which board members can be held liable. In particular, the law provides that board members are responsible for the fulfilment of all obligations provided by law and the company's articles of association, and that they are to be held liable for the actions of their immediate predecessors if they are aware of irregularities committed by them and have failed to inform the internal auditors, the statutory auditor or the line ministry in this respect. It follows that the liability for deeds or omissions committed by other board members does not extend to those board members who had their disagreement registered in the record of decisions of the board of directors, and had duly informed the company's internal auditors, the statutory auditor and line ministry in writing.

Article 155 of the Companies Law further sets out provisions to take action in case of liability of non-executive directors (as well as executive directors, financial auditors and founders of the company). In the case of majority-owned companies, such actions should be initiated by the line ministry, and the decision to bring them before court should be taken by the general shareholders' meeting, in which case their mandate should be immediately revoked and a process for appointing replacements should be initiated.

While there is no legal notion of "shadow director" in Romania, as already mentioned above, the law provides for the possibility to resort to the appointment of interim directors in the case of one or more vacant board positions, which – in the case of companies with majority state shareholding subject to Law no. 111/2016 (amending and approving GEO no. 109/2011) – are de facto directly appointed by the state. In particular, in the case of one or more vacancy on the board of **autonomous administrations**, interim directors should be directly appointed by the line ministry until the due selection process is complete. For **fully incorporated companies**, the line ministry should convene the general shareholders' meeting to appoint one or more interim directors, and is entitled to submit proposal of candidates for consideration by the general meeting of shareholders. Interim directors are appointed for a mandate of four months, which can be extended for solid reasons to a maximum of six months. However, should the due selection process be suspended or cancelled by the court of law, the mandate of temporary board members should continue until board members are appointed according to due process.

As mentioned in Chapter 1, while this provision initially aimed to create a transitory arrangement at the time of the promulgation of the law, and was initially envisaged as a safeguard in the event of sudden resignations of board members (in accordance with the provisions of Article 153 of the Companies Law no. 31/1990), many line ministries continue to resort to this provision: as of end 2021, 72% of board positions in centrally-owned SOEs were temporary appointments bypassing due process.[21] While this raises concerns around the level of independence and operational autonomy of SOE boards, according to the Romanian authorities, the same duties and liabilities apply to temporary and tenured board members (as provided by Article 144 of the Companies Law).

2.7.2. Setting strategy and supervising management

> *B. SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the government. They should have the power to appoint and remove the CEO. They should set executive remuneration levels that are in the long-term interest of the enterprise.*

As mentioned in previous sections, Article 4 of GEO no. 109/2011 (as amended and approved by Law no. 111/2016) prohibits line ministries and the Ministry of Finance to intervene in the management and supervisory activities of public enterprises, and provides that SOE boards should be responsible and liable for "taking [supervisory] and management decisions for public enterprises". This provision was introduced in the context of concerns around excessive political intervention in SOEs' operations, including *inter alia* through political appointments in the management and supervisory bodies of public enterprises.[22]

Corporate governance instruments were also introduced in 2016 – including letters of expectations and administration plans – in the aim of improving the autonomy of boards in setting operational strategies for SOEs based on broad state objectives, and ensuring their ability to carry out their functions effectively and at arm's length from government. Overall, these instruments also aim to streamline communication methods and reporting requirements between line ministries and SOEs, in order to avoid that SOE objectives and strategies be set in an informal and discretionary manner by the state. However, as these instruments are formalised through the board selection process, which is itself often bypassed, it is unclear whether they are applied to SOEs with a majority of temporary appointments, which may give rise to some concerns regarding the independence and operational autonomy of boards.

The Companies Law no. 31/1990 also includes provisions to ensure that SOE board members base their decisions on the good of the company, which are applicable to both temporary and tenured members indifferently. In particular, Article 144 provides that "the members of the board of directors must exercise their mandate with the prudence and diligence of a good administrator, [and] must adopt business decisions on the basis of adequate information, […] in the interest of the company". Further, "the members of the board of directors may not disclose confidential information and trade secrets of the company they have access to in their capacity as directors". The content and duration of these obligations regarding confidentiality rules should be specified in their mandate contracts. According to the Romanian authorities, board members who are found to have been unduly influenced by outside persons or institutions may be revoked under the law, in accordance with the provisions of their mandate contract, which must include clauses in this respect.

The appointment and revocation of executive managers stands as one of the main competences of the board of directors (as per Article 142 of the Companies Law no. 31/1990). For SOEs subject to GEO no. 109/2011 (as amended and approved by Law no. 111/2016), this process is regulated by clear legal provisions. According to Law no. 111/2016, executive managers are appointed by the board of directors, upon the recommendation of the nomination committee, following a due selection procedure for the position in question, which is initiated after the appointment of board members is completed (in accordance with the provisions of Law no. 111/2016). In doing so, the board may decide to be assisted by – or that the selection be carried out by – an independent recruitment expert, whose services are contracted under the law. The selection criteria are established by the board nomination committee or the independent expert (as applicable) taking into account the particularities of the company's field of activity, and should include at a minimum relevant experience in management consulting or in management of a public or private enterprise. The vacancy announcement for the position should be published on the SOE's website and in at least two widespread newspapers at least 30 days before the deadline for applications.

However, it should be noted that as this process is conditional on the completion of the selection of board members according to due process (which is currently often bypassed), in many cases it has not been initiated. In practice, as of end 2021, 61% of executive managers of the 50 largest SOEs (in equity value and number of employees) were interim appointments directly appointed by the state. In the same vein,

while the board is responsible for setting remuneration levels of executive managers (based on prior annual evaluations) according to a methodology provided by law,[23] the remuneration of interim appointees does not include a performance-related component, as KPIs are not set in their mandate contracts. This may disincentivise them to act in the company's best financial interest.

2.7.3. Board composition and exercise of objective and independent judgment

> *C. SOE board composition should allow the exercise of objective and independent judgment. All board members, including any public officials, should be nominated based on qualifications and have equivalent legal responsibilities.*

As mentioned in previous sections, the selection process for SOE board members is clearly defined by Law no. 111/2016 and GD no. 722/2016, which provide that all board members be nominated based on qualifications criteria. In particular, Article 28 of GD no. 722/2016 provides that a 'board profile matrix' be established by the board nomination committee, together with the line ministry, which must include the following information: specific selection criteria; evaluation grids for all criteria; weights for each criterion (depending on their importance); the grouping of criteria for comparative analysis; a collective minimum threshold for each criterion (if applicable); subtotals, totals, weighted totals of all criteria for individual board members. Overall, these provisions aim to ensure for a transparent, standardised and competitive selection process.

However, as already mentioned, at present the process prescribed by the law is often bypassed, due to a loophole in Law no. 111/2016 enabling line ministries to appoint board members without regard to the prescribed selection criteria, independence requirements and mandated procedures, for an interim period of six months.[24] As of mid-2022, the selection process had not been initiated in at least ten of the most economically important SOEs, including Bucharest Airport, Constanta Port, Salrom, Romaero, Posta Romana, Danube maritime and fluvial ports, Plafar and Oltenia.

This also applies to listed SOEs:

- Although **Nuclearelectrica** duly completed the appointment process of all its seven board members which are currently appointed for four years (2018-22), the CFO was appointed on a temporary basis in February 2022 (despite the fact that financial directors are required to be duly appointed according to the provisions of GEO no. 109/2011).
- The board of **Romgaz** is composed of seven interim members appointed since July 2022, but shareholders approved the initiation of the selection process in 2022.
- Although the board of **Electrica** is composed of seven members duly appointed for four year (2021-25), the selection of the CEO is ongoing.
- The board of **Transelectrica** is composed of seven members appointed for six months (August-December 2022).
- Although the mandates of three duly appointed members of the board of **Transgaz** were extended (2021-25), two members are appointed on a temporary basis.
- The board of **Conpet** is composed of seven temporary members appointed for six months (August-December 2022).
- All seven board members of **Oil Terminal** are appointed on a six-month basis (August-December 2022), but shareholders approved the initiation of the selection process in June 2022.

Overall, for companies with a majority of such interim members on their boards, this raises concerns around the ability of the board to exercise objective and independent judgment for the long-term interest of the company.

2.7.4. Independent board members

> *D. Independent board members, where applicable, should be free of any interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgment.*

While the Companies Law no. 31/1990 provides that the articles of incorporation or a decision of the general meeting of shareholders may provide that one or several directors should be independent, in the case of SOEs, GEO no. 109/2011 (as amended and approved by Law no. 111/2016) provides that "the majority of board members must be non-executive and independent", in accordance with the independence criteria set by the Companies Law. According to Article 198 of the Companies Law, the nomination of the independent board members should take into account the following criteria:

a) that he/she is not a manager of the enterprise or of a company controlled by it and he/she has not held such a position in the last five years
b) that he/she is not an employee of the enterprise or of a company controlled by it and he/she has not had such a work relationship in the last five years
c) he/she should not receive or have received from the enterprise or from a company controlled by it an additional remuneration or other advantages, other than those corresponding to his/her capacity of non-executive administrator
d) he/she should not be a significant shareholder of the enterprise
e) he/she should not have or have had in the last year business relationships with the enterprise or a company controlled by it, either personally, or as shareholder, executive manager, director or employee of a company which has such relationships with the company if, due to their significant nature, they could affect his/her objectivity
f) he/she should not be or have been in the last three years a financial auditor or an employed shareholder of the current financial auditor of the enterprise or of a company controlled by the enterprise
g) he/she should not be a CEO/executive director in another company where a CEO/executive director of the enterprise is non-executive administrator
h) he/she should not have been a non-executive director of the company for more than three mandates
i) he/she should not have family relationships with a person who is in one of the situations provided under letter a) and d).

The Bucharest Stock Exchange (BVB) Corporate Governance Code also recommends that the majority of board members of listed companies be non-executive and independent. In particular, for companies with two-tier boards, not less than two non-executive members must be independent, and in the case of one-tier boards, at least one non-executive member must be independent. The Code requires each board member to submit a declaration that he/she is independent at the time of appointment, as well as when any change in his/her status arises, by demonstrating the ground on which he/she is considered independent according to clearly set independence criteria, which are similar to those provided by the Companies Law no. 31/1990. It should however be noted that the Code provides a more detailed definition of "significant shareholder of the enterprise" (under criteria d)), which is defined as a shareholder "controlling more than 10% of voting rights or with a company controlled by it".

In the case of unlisted SOEs, Law no. 111/2016 requires that the majority (i.e. more than half) of board members be non-executive and independent, inferring that independent members must account for at least half plus one of the total number of board members. Further, according to the law, boards composed of three to seven members may not include more than one civil servant (and a maximum of two civil servants for boards comprised of five to nine members).

However, at present, it seems that independence criteria are not taken into account in the appointment of interim board members which are proposed or directly appointed by the state. According to data provided the Romanian authorities, as of end 2021, the boards of the top ten SOEs included less than two independent directors on average. However, according to evidence gathered by the review team, it seems that some of these board members categorised as "independent" are in fact politically connected (see section 1.4.4 for details). It is also unclear whether/how the Ministry of Finance currently keeps a record of appointed board members according to their status (i.e. independent or non-independent).

2.7.5. Mechanisms to prevent conflicts of interest

> *E. Mechanisms should be implemented to avoid conflicts of interest preventing board members from objectively carrying out their board duties and to limit political interference in board processes.*

According to Law no. Regulation (EC) 161/2003, conflicts of interest are defined as situations whereby "the direct or indirect personal interest of a board member contravenes to the company's interest so that it affects or might affect its independence and impartiality in taking business decisions, or in fulfilling his/her duties with objectivity during his/her mandate". Such conflicts of interest are managed in accordance with applicable laws and regulations, including the Regulation of Organisation and Operation of the company, and the Regulation of Organisation and Operation of the Board of Directors. Conflicts of interest of a criminal nature are defined by Article 301 of the Criminal Code, although it should be noted the existence of a conflict of interest of an administrative nature does not presuppose the automatic existence of an act of corruption.

According to the Romanian authorities, the mandate contracts of individual board members should include clear provisions according to which board members must avoid conflicts of interest relative to the company, and must inform the board when such a situation occurs. In particular, board members must refrain from participating in deliberations or from taking any decisions that would contravene to the company's interest, and are prohibited to use the company's confidential information for commercial and personal purposes, the company name in his/her own interest or in the interest of another, as well as to request or accept business related directly or indirectly to the production of goods and services in the same sector of operation as the company (including its competitors or clients). Of note, interim board members are also required to abide by these provisions. In practice, conflicts of interest are monitored by the National Integrity Agency, and board members can be revoked for conflicts of interests and incompatibility.

Table 2.5. Cases of conflicts of interest involving board and executive members of SOEs

SOE	Case details
	Unjustified wealth
CFR Calatori	In August 2011, ANI ascertained in the case of NOAPTEŞ ALEXANDRU, an unjustified wealth between the acquired wealth and the incomes earned between 2005 – 2007, amounting to RON 9 825 978,49 (EIUR 2 795 601,03), while acting as General Director and Board Chair of the National Railway Transport Company "C.F.R. Călători"- SA. Through the civil sentence from May 2013, the Bucharest Court of Appeal ordered the confiscation of RON 6 364 413 (EUR 1 438 567). The evaluation report remained definitive and irrevocable through the High Court of Cassation and Justice Decision.
	Administrative conflict of interest
Romanian Radio Broadcasting Company (SRR)	In November 2016, ANI has ascertained that FUGARU MIRELA IOANA, former Member within the Administration Council of the Romanian Radio Broadcasting Company, breached the legal regime of administrative conflicts of interest. Thus, between 29 June 2010 – 29 June 2014, FUGARU MIRELA IOANA participated and voted as a full member of the Administration Council on the occasion of the adoption of some decisions regarding the managerial plan of the cultural events on the S.R.R. agenda. Subsequently, having a personal interest of a patrimonial nature, FUGARU MIRELA IOANA concluded with SRR several service contracts for the organisation and monitoring of cultural events, amounting to RON 63 842. Through the High Court of Cassation and Justice Decision from January 2021, the evaluation report remained definitive and irrevocable. Between 28.01.2021 – 28.01.2024, FUGARU MIRELA IOANA is under the interdiction to exercise a public office or dignity.

SOE	Case details
	In September 2014, ANI has ascertained that MICULESCU OVIDIU breached the legal regime of administrative conflicts of interest, as in his capacity of President – General Director of the Romanian Radio Broadcasting Company (SRR), signed his own appointment order as Institutional Co-ordinator within a project funded through European Funds, acquiring a net income in the amount of RON 42 710. Through the High Court of Cassation and Justice Decision from May 2018, the evaluation report remained definitive and irrevocable. Previously, in October 2013, ANI has also ascertained the state of incompatibility in the case of MICULESCU OVIDIU.
Incompatibility	
Romanian Television Company (SRTv)	In October 2020, ANI has ascertained the state of incompatibility in the case of LAZEA DORIN DAN, as during his capacity as Member in the Administration Council of the Romanian Television Company (SRTv), LAZEA DORIN DAN also held the position of advisor (contract staff) within a parliamentary group of a political party. The case is still pending before the High Court of Cassation and Justice.

Source: Information provided by ANI.

2.7.6. Role and responsibilities of the Chair

> *F. The Chair should assume responsibilities for boardroom efficiency, and when necessary in co-ordination with other board members, act as the liaison for communications with the state ownership entity. Good practice calls for the Chair to be separate from the CEO.*

According to applicable provisions, in the absence of contrary provisions in companies' articles of association, the chair represents the board of directors in relation to third parties and in court. The articles of incorporation may authorise the chair and one or several board members to represent the company, acting either jointly or separately. Based on unanimous agreement, the board of directors may authorise one of them to conclude certain operations or types of operations. In the case of SOEs, the chair of the board of directors may not at the same time be appointed as CEO of the company (as per GEO no. 109/2011). In spite of this provision, some cases where the CEO also acts as the chair of the board have been found by the DNA and ANI in the context of investigations for corruption and conflicts of interests. It should also be noted that this separation (between the CEO and chair of the board) is not provided by the Companies Law no. 31/1990.

According to the Romanian authorities, the chair of the board acts as the primary point of contact between the ownership entity and the board. While this stands in line with best practice – in particular by ensuring formal communication channels with line ministries, cases where the board chair is directly appointed by the state for an interim period of six months may give rise to concerns, as it may lead to informal exchanges with the state, which may in turn lead to information asymmetries in SOEs where the state is not the sole shareholder. As previously mentioned, until 2016 these informal communication practices were widespread, with the state very often "calling the executive managers of SOEs for bilateral meetings on operational management issues" (as posited by Romania's state ownership policy). While the legal framework on SOEs was amended in 2016 to address these concerns, evidence suggests that these issues might be allowed to persist with the current practice of temporary appointments.

2.7.7. Employee representation

> *G. 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.*

According to applicable laws and regulations, employee representation is not mandated on the board of SOEs in Romania, and employee representatives may only participate in board meetings which debate upon issues related to the company's employees.

2.7.8. Board committees

> *H. SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration. The establishment of specialised committees should improve boardroom efficiency and should not detract from the responsibility of the full board.*

According to the provisions of Law no. 111/2016 (amending and approving GEO no. 109/2011), SOE boards are required to establish two board committees – an audit committee, and a nomination and remuneration committee – and follow specific requirements regarding their composition. In particular, the audit committee must be comprised of at least three non-executive and independent members, out of which at least one must have competencies in the field of accounting and statutory audit (according to Article 140 of the Companies Law no. 31/1990). The nomination and remuneration committee must be composed of non-executive members, out of which at least one is independent. The independence criteria are those set out by the Companies Law (Article 198).

While it is unclear whether these committees have been duly established in all SOEs, it is also unclear how these independence requirements can be complied with in practice, considering the widespread practice of interim appointments and the relatively low share of independent directors serving on boards on average. According to Article 34 of Law no. 111/2016, other committees may be established at the discretion of the board (such as strategy committees), with duties and responsibilities established by statute or internal regulation. For large SOEs where these committees have been established, it seems that they are not composed of independent members.

Consideration could also be given to requiring SOEs to establish risk management committees, which is identified as an area for improvement. Indeed, as far as could be established by the review team, internal management control systems, risk management policies and risk monitoring are required to be implemented in SOEs as part of the "corporate governance KPIs" set for individual board members and executive managers upon their appointment, as part of the objective-setting process. However, as this process is often bypassed and KPIs are not set for interim appointees, it is unclear whether adequate risk management frameworks are actually established in SOEs.

2.7.9. Annual performance evaluation

> *I. SOE boards should, under the Chair's oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency.*

According to the provisions of Law no. 111/2016 (amending and approving GEO no. 109/2011) and the methodological norms set by GD no. 722/2016 (Annex no. 1b), the board can carry out internal annual self-evaluations, but it is not mandatory. According to applicable norms, internal self-evaluations generally refer to assessments of the following considerations:[25]

- how the legal reporting requirements provided by the legislation on corporate governance, asset protection, risk management, financial reporting requirements have been fulfilled
- how the activity of the executive management has been supervised, how the achievement of the revenue and expenditure budget has been sought, the investment programme
- how the implementation of the shareholders' decisions, of the legal provisions in force has been sought; the opinions of the independent financial auditor, the decisions of the control bodies
- the degree of fulfilment of the financial and non-financial performance indicators
- how the measures from the integrated administration plan have been implemented (the administration component and the management component)
- board members' conduct (participation to the activity of consultative committees, attendance of the meetings of the board of directors).

Overall, however, it is unclear whether and to what extent this is effectively practiced by SOE boards. Notwithstanding this, SOE boards are however required to undergo annual performance evaluations aiming to assess performance against the measures included in the board administration plan and the mandate contracts of individual board members (the latter including the negotiated and approved financial and non-financial KPIs). While the annual performance evaluation is conducted by the line ministry for **autonomous administrations**, and by the general shareholders' meeting for **fully incorporated companies**, they both may be supported by independent experts. According to applicable provisions, board members who fail to achieve the performance indicators established in their mandate contract may be removed by the general shareholders' meeting, after which they may not apply for SOE board positions for five years. However, as previously mentioned, many SOE boards currently include a majority of temporary members appointed without negotiated KPIs. As such, in practice, their performance is assessed against the degree of achievement of the quarterly financial indicators, derived from the approved income and expenditure budget.

2.7.10. Internal audit

> *J. 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 corporate organ.*

All Romanian SOEs are subject to Law no. 672/2002 on internal public audit, which requires internal auditors to independently assess risk management, control and governance processes. While according to the law, internal auditors of public entities should report to the "head of the institution", in the case of SOEs the board is inferred as the highest level of decision within the entity.[26] This stands in line with the provisions of Law no. 111/2016, which require internal auditors of SOEs to report to the board audit committee (in line with the recommendation of the SOE Guidelines).

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Notes

[1] As previously mentioned, interim board members are appointed for four months with the possibility of extension for another two months; however, If the selection procedure is suspended or cancelled by the court of law, the mandate of the interim director continues until the new board member is appointed according to due process.

[2] In practice, sanctions are issued the General Directorate of Economic and Financial Inspection (DGIEF), a control body within the Ministry of Finance. According to the Romanian authorities, in 2021, DGIEF initiated 35 investigations, out of which 16 were finalised. Of these, 30 sanctions were issued, including 28 fines amounting to RON 92 000, as well as two warnings.

[3] Law no. 111/20116 requires that board members should, at a minimum: (i) have the minimum knowledge, skills, and experience necessary to fulfil the mandate successfully; (ii) know the responsibilities of the position and be able to have both medium- and long-term perspectives; (iii) be able to assume the duties towards the whole board and demonstrate integrity and independence; and (iv) have the necessary knowledge, skills, and experience in constructive criticism, teamwork, communication, financial culture, decision-making, and pattern detection to contribute to the board's work as a whole.

[4] The order also provides that any change in the information to be transmitted by line ministries (detailed in the annexes no. 1-3 of the S1100 form) is to be made at the request of the General Directorate of Legislation and Regulation in the field of state assets, by a note approved by the co-ordinating secretary of state. Any new version of the online application of the S1100 form is to be published on the Ministry of Finance's website.

[5] According to applicable provisions, line ministries are required to prepare annual reports on the activity of SOEs in their respective portfolios, which should be made publicly available on their website in June of each year (see Section 2.6.3 for details).

[6] For instance, in the case of Hidroelectrica, following the appointment of board members according to due process, the remuneration of non-executive directors almost doubled.

[7] https://balkangreenenergynews.com/romanian-hidroelectrica-not-insolvent-ipo-to-follow-soon/#:~:text=Hidroelectrica's%20troubles%20were%20caused%20by,could%20not%20have%20been%20ended

[8] https://www.imf.org/external/pubs/ft/scr/2015/cr1580.pdf

[9] https://www.bvb.ro/info/Rapoarte/Ghiduri/ESG_Reporting_Guidelines.pdf

[10] The establishment of a risk committee within the board of directors is only required by law for credit and financial institutions. While this is not mandatory for other SOEs, a risk committee can be established by the board at the discretion of individual SOEs.

[11] This includes (i) autonomous administrations, (ii) companies established pursuant to the Companies Law in which the state holds a majority or controlling stake, and (iii) subsidiaries (i.e. companies where one or more SOE(s) (described in (i) and (ii)) hold(s) a majority or controlling stake).

[12] This excludes two SOEs exempted from the application of Law no. 111/2016 on national security grounds – namely, Rasirom and Romtehnica, as well as credit institutions.

[13] According to Article 51(1) of Law no. 111/2016, the Ministry of Finance can issue a warning or fine of between RON 1 000 and RON 3 000 to the chairman of the supervisory board of majority-owned SOEs that fail to comply with disclosure requirements.

[14] In particular, no information was reported from the Ministry of Public Works and Administration, Ministry of Culture, Ministry of National Defence, and Agency of the State Domain about SOEs in their portfolios. The Ministry of Research and the Ministry of Agriculture did not report information for around half of SOEs in their respective portfolios, while the Ministry of Economy, the Ministry of Energy and the Authority for Managing State Assets did not report information about only a few SOEs under their oversight (Ministry of Finance, 2021[3]).

[15] These include: Posta Romana, CFR, Oltenia Energy Complex, CFR Calatori, CFR Marfa, CNAIR, Hidroelectrica, Metrorex, Electrocentrale Bucharest, National Lottery Company, Tarom, Hunedoara Energy Complex, Salrom, Romatsa, Bucharest Airports, Romanian Car Registry, and the National Society of Radio Communications.

[16] While according to the legal framework these general objectives should underpin more detailed strategies elaborated by board and executive members in the administration plan, in turn informing the selection of granular performance indicators to be included in the mandate contracts of SOE directors and monitored by the ownership entity and the Ministry of Finance on a regular basis, these provisions remain rarely implemented, due to the widespread practice of interim appointment in SOE board and executive positions. As such, in practice, for interim board members, only financial indicators – derived from the approved budget – are set on a quarterly basis.

[17] However, in practice, some large SOEs do publish their "administration plan" (elaborated by SOE board and executive members upon their appointment, based on the objectives of the letter of expectations), but this seems to be done on an ad-hoc and voluntary basis.

[18] According to a review of the websites of 16 large and economically important SOEs (identified in Table 2.4), it seems that only some SOEs publish this annual report.

[19] Disclosure requirements of the quarterly and half-yearly reports are also provided by Law.

[20] According to GO no. 11/2016 (amending GO no. 26/2013), unlisted SOEs are required to submit the income and expenditure budget (as approved by the general shareholders' meeting) for approval by the government within 45 days from the date of approval of the Annual State Budget Law. According to the Romanian authorities, the government approves these budgets within 45 days from the date of submission (see section 1.4.3 for details).

[21] As mentioned above, it is also worth noting that while the due selection process was initiated in 92 central SOEs in 2020 to comply with legal requirements, it was completed in only one-third of them (31 SOEs). While the cause is unclear, this may be taken to indicate that the due selection process may be too cumbersome for ownership entities (i.e. line ministries) in the current institutional set-up.

[22] In particular, a 2018 report illustrates the frequent change of SOE executive members in line with electoral cycles (State capture, 2018[20]).

[23] According to the provisions of Law no. 111/2016 and GD no. 722/2016, the remuneration of executive directors should consist of a fixed and variable component. The fixed component should not exceed six times the average for the last 12 months of the average gross monthly salary in the sectors in which SOEs operate according to the classification of activities in the national economy, communicated by the National Institute of Statistics prior to the appointment. The variable component should be based on the financial and non-financial performance indicators, negotiated with and approved by the line ministry, and should be different from those approved for non-executive administrators.

[24] It should however be noted that financial directors of SOEs are required to be appointed according to the provisions of GEO no. 109/2011.

[25] These areas of self-evaluation suggest that boards of Romanian SOEs consider themselves as "compliance boards" rather than strategic players in the company. In best practice boards, the main focus of self-evaluations would be board efficiency.

[26] According to the Romanian authorities, internal auditors of SOEs are only administratively subordinated to the management of SOEs as per the provisions of Law no. 672/2002 (by concluding work contracts with internal auditors).

3 Conclusions and recommendations

The Romanian Government has undertaken important reform efforts over the past decade to improve the governance and performance its state-owned enterprises. Yet, significant implementation shortcomings exist. This chapter sets forth policy recommendations to help the Romanian authorities undertake further reforms as well as designing adequate mechanisms to ensure the implementation of the already existent rules for the exercise of state ownership and governance of SOEs.

The Romanian Government has undertaken important reform efforts over the past decade to improve the governance and performance of its SOEs. In particular, the adoption of GEO no. 109/2011, later amended and approved by Law no. 111/2016, provides a strong legal framework for the corporate governance of SOEs. It established, *inter alia*, transparent selection procedures for board and executive members, a clear objective-setting and performance monitoring framework for SOEs and streamlined ownership arrangements with a co-ordination function attributed to the Ministry of Finance.

However, significant implementation shortcomings exist. As both legislations were adopted under the influence of international financial institutions in 2011 and 2016, implementation efforts seem to have stalled once the respective reform projects were terminated, which may signal a lack of sufficient political will to ensure continued implementation of the provisions of the legal framework. In some cases, ownership practices seem to have regressed towards earlier practices of excessive political influence in the more economically important companies.

The ownership framework remains widely decentralised across line ministries, with SOE ownership being exercised by individual corporate governance structures established across line ministries. The co-ordination functions vested in the Ministry of Finance are not extensive and sanctioning powers, while frequently employed, are not strong enough to deter widespread cases of non-compliance with corporate governance provisions. Moreover, corporate governance structures of line ministries are sometimes lacking resources and expertise to effectively exercise their ownership rights and are not effectively insulated from ministerial regulatory and policy making functions in some instances.

The professionalism and autonomy of boards of directors of Romanian SOEs are of particular concern. This is due to actual selection practices of board members, which in most cases depart significantly from the letter of the law. At present, the legislative framework allows for the appointment – and reappointment – of 'interim directors' at the discretion of the state if no adequate directors can be identified via the prescribed nomination procedures. Currently, a majority of SOEs operate with such interim boards, which may be inferred to be politically connected. This is also detrimental for the objective-setting framework for SOEs, as key performance indicators are intertwined with the directors' employment terms, which in turn materially weakens the exercise of financial and non-financial controls over individual companies. In addition, although a state ownership policy was issued at the same time as important amendments to the legal framework on SOEs in 2016, it appears that it is not well known among the main stakeholders and is not actively implemented.

The maintenance of a level playing field between SOEs and private companies is another potential area of concern. Although Romania abides by the state aids provisions of the EU Single Market, several areas of concern remain. These include the existence of "autonomous administrations" (i.e. SOEs with non-standard forms of incorporatisation); low and non-market consistent profitability requirements of a number of companies; and the exemption from insolvency procedures of debt owed by distressed SOEs to the state. Moreover, while Romania's practice of listing minority stakes in SOEs in stock markets should be considered as a good practice, questions remain about the treatment of minority investors in companies that retain important public policy objectives.

Going forward, Romania should seek to design adequate mechanisms to ensure and oversee the continued implementation of existing corporate governance provisions applicable to SOEs. This may entail the assistance of third parties, including in the context of the upcoming OECD accession negotiations with Romania as well as commitments undertaken by the Romanian authorities in the context of the European Union's Recovery and Resilience Plan. The main recommended actions are the following.

3.1. Strengthening the state ownership function

- *Further centralisation of the state ownership function*. There is an apparent need to establish either a central state ownership entity or a co-ordination entity with enhanced powers. Such a body would take the form of an independent public agency, or it could be hosted within a central government institution not otherwise involved in the ownership and regulation of SOEs. Its mandate should be set by law, its executive management should be employed by a term unrelated to the political cycle and it should be granted with adequate resources to perform its responsibilities. This institutional set-up would help ensure that the exercise of the state ownership function is effectively insulated from other regulatory and policy making functions, and that it has sufficient powers with regard to the enforcement of corporate governance provisions.
- *Define clear financial and non-financial performance objectives for individual SOEs*. Currently, for the majority of centrally-owned SOEs with interim appointees on their boards and in their executive positions, financial objectives are set on a quarterly basis, without regard to other non-financial objectives. Going forward, clear financial and non-financial performance objectives should be established for all SOEs along with clear reporting requirements to monitor their performance. The objectives should be communicated to each SOE as a legal entity and be unrelated to the appointment terms of individual board members and executive directors.

3.2. Maintaining a level playing field with other companies

- *Standardise the legal and corporate form of SOEs*. Consideration could be given to incorporate autonomous administrations ("regii autonome") that undertake commercial activities as joint-stock companies (excluding those that are solely policy-oriented or mainly undertake administrative functions) in order to standardise the legal form of SOEs that operate on the basis of GEO no. 109/2011. However, any change in the legal form of SOEs should be based on an informed assessment of individual SOEs' objectives and commercial orientation. A number of "non-commercial" autonomous administrations should normally not retain a corporate form.
- *Remove legal exemptions applicable to SOEs*. Legal provisions protecting SOEs subject to Law no. 137/2002 from insolvency proceedings should be amended in order to ensure that all SOEs operate on a level playing field with private companies.

3.3. Strengthening board autonomy and independence

- *Ensure the establishment of professional and independent boards of directors*. There is an urgent need to address a loophole in the legislative framework allowing for the appointment of interim board (and executive) members at the full discretion of the state owner. Alternative procedures may have to be established with regard to appointing directors in case the ownership ministries fail to do so within the prescribed timeframe. If, as has been asserted, part of the problem is a lack of applicants for board vacancies, alternative means of keeping track of available candidates should be considered.[1] Consideration should also be given to designing a competitive remuneration scheme for board members in order to attract competent professionals, including from the private sector.
- *Empower boards to carry out functions of setting strategy and supervising management.* While the boards' role in this respect is already provided by law, the combination of weak boards and politically affiliated CEOs leave much to be desired. The new ownership or co-ordination entity should be empowered to oversee board appointment procedures in order to ensure a minimal

political interference, and boards should have full discretion to nominate executive managers. Recurrent shareholder meetings to influence corporate decision processes should be avoided.

3.4. Improving transparency and disclosure practices

- *Improve financial and non-financial disclosure by SOEs*. Non-compliance with disclosure requirements remains high across SOEs, with regard to the disclosure of annual financial statements, audit reports, directors' reports, board and executive remuneration, and the resolutions of general meetings. The state owner needs to act decisively to ensure that SOEs effectively disclose financial and non-financial information as prescribed by the existent laws. In the longer term, the SOEs should aspire to similar levels of transparency as listed-company best practices with regard to the accessibility and quality of information disclosed.
- *Expand the coverage of annual aggregate reporting*. The current practice of disclosure by individual ownership ministries could be improved, including by ensuring greater consistency over time and across ministries. More importantly, consideration should also be given to expanding the coverage of the annual aggregate reports prepared by the Ministry of Finance. In addition to the current coverage, annual aggregate reports should also include: (i) key non-financial performance of SOEs (e.g. risk disclosure and mitigation measures; employee and stakeholder relations); (ii) an overview of the SOE portfolio (scope and size) and sectoral distribution; (iii) implementation of public policy objectives; (iv) appointment of SOE board and board composition with regard to independence criteria; and (v) detailed reporting on individual SOEs' performance and targets (by sector or for the most economically important SOEs).

3.5. Strengthening internal control systems

- *Improve the monitoring and implementation of risk management and integrity measures*. Internal controls, risk management, anti-corruption and integrity measures currently exist, but they tend to operate in isolation and to a large extent reflect off-the-shelf mechanisms. Care should be taken to ensure a whole-of-company approach and ensure that all the relevant procedures are effectively monitored. For this purpose, ownership entities should take measures to ensure the independence, qualifications and powers of SOEs' board audit committees.

Note

[1] In some countries, this has been done by establishing pools of directors, sometimes maintained with the help of professional head hunters.

Annex A. Overview of the 216 enterprises fully or majority-owned by the central government

Table A.1. Aggregate data on active SOEs held by the central government (as of end 2020)

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
Authority for Managing State Assets					
COMALEX SA	listed entity	53.7	Retail trade, except of motor vehicles and motorcycles	183 122	4
RECONS SA	unlisted enterprise	66.1	Specialised construction activities	300 545	0
AGROMEC UTVIN SA	unlisted enterprise	67.6	Crop and animal production, hunting and related service activities	259 998	1
ARCADIA 2000 SA	unlisted enterprise	100	Retail trade, except of motor vehicles and motorcycles	435 413	7
ACTIVE CONEXE S.A.	unlisted enterprise	100	Construction of buildings	29 109 790	9
General Secretariat of the Government					
ADMINISTRATIA PATRIMONIULUI PROTOCOLULUI DE STAT RA	statutory corporation	100	Real estate activities	1 306 338 438	2 073
INSTITUTUL NATIONAL DE CERCETARE – DEZVOLTARE IN INFORMATICA – ICI BUCURESTI	statutory corporation	100	Scientific research and development	8 121 457	219
SOCIETATEA NAŢIONALĂ DE TRANSPORT GAZE NATURALE TRANSGAZ SA	listed entity	58.5	Land transport and transport via pipelines	953 641 384	4 145
OPERATORUL PIEŢEI DE ENERGIE ELECTRICĂ ŞI DE GAZE NATURALE “OPCOM” S.A.	unlisted enterprise	100	Activities auxiliary to financial service and insurance activities	9, 543, 823	106
COMPANIA NATIONALA DE TRANSPORT AL ENERGIEI ELECTRICE “TRANSELECTRICA” SA	listed entity	58.7	Electricity, gas, steam and air conditioning supply	852 582 165	2 021
SOCIETATEA PENTRU SERVICII DE MENTENANTA A RETELEI ELECTRICE DE TRANSPORT “SMART” S.A.	unlisted enterprise	100	Repair and installation of machinery and equipment	22 875 178	645
FORMENERG – S.A.	unlisted enterprise	100	Education	1 496 459	26
SOCIETATEA PENTRU SERVICII DE TELECOMUNICAŢII ŞI TEHNOLOGIA INFORMAŢIEI ÎN REŢELE ELECTRICE DE TRANSPORT”TELETRANS” S.A.	unlisted enterprise	100	Telecommunications	7 090 202	221
Ministry of Agriculture and Rural Development					
PISCICOLA SA	unlisted enterprise	99.9	Fishing and aquaculture	619 742	14
I.N.C.D.I.F. – “ISPIF” BUCURESTI	statutory corporation	100	Scientific research and development	- 16 832 918	77

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
SOCIETATEA NAŢIONALĂ CASA ROMÂNĂ DE COMERŢ AGROALIMENTAR UNIREA S.A.	unlisted enterprise	100	Wholesale trade, except of motor vehicles and motorcycles	20 304 645	25
Ministry of Culture					
SOCIETATEA COMERCIALA STUDIOUL CINEMATOGRAFIC ANIMAFILM SA	listed entity	68.5	Motion picture, video and television programme production, sound recording and music publishing activities	111 364	2
Ministry of Development, Public Works and Administration					
COMPANIA NATIONALA DE INVESTITII "C.N.I." SA	unlisted enterprise	100	Construction of buildings	1 373 186	194
Ministry of Economy					
IOR SA	listed entity	8.5	Manufacture of optical instruments and photographic equipment	29 019 439	286
IPROCHIM SA	listed entity	72.9	Architectural and engineering activities; technical testing and analysis	24 674 697	48
INSTITUTUL DE CERCETARI METALURGICE SA	unlisted enterprise	70	Scientific research and development	8 838 927	17
COMPANIA NAŢIONALĂ ROMARM SA – FILIALA SOCIETATEA UZINA AUTOMECANICĂ MORENI S.A.	unlisted enterprise	100	Manufacture of other transport equipment	4 777 972	310
IAR SA	listed entity	75.4	Manufacture of other transport equipment	51 449 682	369
ROMAERO SA	listed entity	56.7	Manufacture of other transport equipment	71 952 217	871
SOCIETATEA NATIONALA A APELOR MINERALE SA	unlisted enterprise	100	Other mining and quarrying	4 842 888	140
SOCIETATEA NATIONALA A SARII SA	unlisted enterprise	51	Other mining and quarrying	114 231 978	1 507
COMPANIA NAŢIONALĂ ROMARM S.A. BUCUREŞTI FILIALA SOCIETATEA UZINA MECANICĂ CUGIR S.A.	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	96 263 190	984
MAMAIA SA	unlisted enterprise	96.6	Accommodation	4 209 158	5
GERMISARA S.A.	unlisted enterprise	100	Other mining and quarrying	285 595	2
COMPANIA NATIONALA A CUPRULUI AURULUI SI FIERULUI 'MINVEST' SA	unlisted enterprise	100	Mining of metal ores	14 155 740	75
AVIOANE CRAIOVA SA	listed entity	95.8	Manufacture of other transport equipment	- 11 853 943	296
SANTIERUL NAVAL 2 MAI SA	listed entity	93.9	Office administrative, office support and other business support activities	6 806 827	7
NEPTUN-OLIMP SA	listed entity	52.2	Accommodation	2 858 112	7
COMPANIA NAŢIONALĂ ROMARM S.A. FILIALA SOCIETATEA UZINA MECANICĂ MIJA S.A.	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	14 531 738	371
COMPANIA NAŢIONALĂ ROMARM S.A.- FILIALA SOCIETATEA UZINA DE PRODUSE SPECIALE DRAGOMIREŞTI S.A.	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	6 116 180	177

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
COMPANIA NATIONALA A CUPRULUI,AURULUI SI FIERULUI "MINVEST" DEVA FILIALA "ROSIAMIN" ROSIA MONTANA SA	unlisted enterprise	100	Mining of metal ores	- 2 563 609	1
DAMEN SHIPYARDS MANGALIA SA	unlisted enterprise	51	Manufacture of other transport equipment	- 65 624 874	2 037
CUPRU MIN SA ABRUD	unlisted enterprise	100	Mining of metal ores	23 953 011	603
SOCIETATEA NATIONALA PLAFAR SA	unlisted enterprise	51	Manufacture of food products	3 314 402	58
COMPANIA NATIONALA "LOTERIA ROMANA" SA	unlisted enterprise	100	Gambling and betting activities	87 599 924	2 580
COMPANIA NATIONALA ROMARM SA	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	43 909 346	64
SOCIETATEA"TOHAN" S.A. FILIALĂ A COMPANIEI NAŢIONALE"ROMARM" S.A.	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	19 003 276	420
UZINA MECANICA PLOPENI SA	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	6 487 112	292
COMPANIA NATIONALA ROMARM SA BUCURESTI FILIALA SOCIETATEA CARFIL S.A.	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	18 747 381	363
COMPANIA NATIONALA A CUPRULUI AURULUI SI FIERULUI MINVEST SA DEVA FILIALA CERTEJ SA	unlisted enterprise	100	Mining of metal ores	- 5 755 792	2
SOCIETATEA BĂIŢA S.A.	unlisted enterprise	100	Mining of metal ores	670 653	75
ŞANTIERUL NAVAL MANGALIA SA	unlisted enterprise	100	Repair and installation of machinery and equipment	7 968 738	30
ELECTROMECANICA PLOIESTI SA	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	17 369 404	343
ARSENAL-RESITA SA FILIALA A COMPANIEI NATIONALE ROMARM SA	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	3 340 672	33
SOCIETATEA "UZINA MECANICĂ SADU" SA FILIALA A COMPANIEI NAŢIONALE "ROMARM" S.A.	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	19 371 171	717
COMPANIA NATIONALA "ROMARM" FILIALA UZINA MECANICA BUCURESTI SA	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	408 589	187
PIROCHIM VICTORIA SA	unlisted enterprise	100	Manufacture of chemicals and chemical products	8 386 767	74
COMPANIA NATIONALA ROMARM S.A. FILIALA SOCIETATEA METROM S.A.	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	- 13 585 087	105
CONVERSMIN SA	unlisted enterprise	100	Mining support service activities	-675 933	44
TELEGONDOLA-MAMAIA SRL	unlisted enterprise	53.5	Air transport	4 520 283	14
UZINA MECANICA ORASTIE SA	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	- 61 383 822	97
COMPANIA NATIONALA A CUPRULUI, AURULUI SI FIERULUI "MINVEST" SA	unlisted enterprise	100	Other mining and quarrying	22 375	0

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
DEVA – FILIALA "SERVICII PUBLICE" SRL					
COMPANIA NAŢIONALĂ ROMARM S.A. BUCUREŞTI FILIALA SOCIETATEA FABRICA DE ARME CUGIR S.A.	unlisted enterprise	100	Manufacture of fabricated metal products, except machinery and equipment	- 3 655 525	882
PRELMEC SA	unlisted enterprise	99.6	Manufacture of machinery and equipment n.e.c.	126 448	12
FABRICA DE PULBERI SA	unlisted enterprise	100	Manufacture of chemicals and chemical products	9 146 807	160
CENTRUL NAȚIONAL DE ÎNVĂȚĂMÂNT TURISTIC S.A.	unlisted enterprise	100	Education	62 949 997	51
Ministry of Education					
SOCIETATEA DE SERVICII IN INFORMATICA SSI PITESTI SA	unlisted enterprise	100	Information service activities	137 483	4
EDITURA DIDACTICĂ ŞI PEDAGOGICĂ S.A.	unlisted enterprise	100	Publishing activities	1 835 433	43
EDITURA DISCOBOLUL SRL	unlisted enterprise	100	Publishing activities	13 492	0
FARMACIA VETERINARA F.M.V. SRL	unlisted enterprise	99.5	Veterinary activities	894 017	57
FMF – DENT SRL	unlisted enterprise	100	Human health activities	33	0
UNATC PRODUCŢIE TEATRU SRL	unlisted enterprise	95.2	Creative, arts and entertainment activities	909	0
AGRO TM CAMPUS SRL	unlisted enterprise	100	Retail trade, except of motor vehicles and motorcycles	-6 845	20
Ministry of Energy					
CONPET SA	listed entity	58.7	Land transport and transport via pipelines	165 660 758	1 585
OIL TERMINAL SA	listed entity	59.6	Warehousing and support activities for transportation	111 691 672	985
INSTITUTUL DE CERCETARE STIINTIFICA, INGINERIE TEHNOLOGICA SI PROIECTARE MINE PE LIGNIT SA	unlisted enterprise	90.4	Architectural and engineering activities; technical testing and analysis	297 529	21
SOCIETATEA NATIONALA "NUCLEARELECTRICA" SA	listed entity	82.5	Electricity, gas, steam and air conditioning supply	1 894 666 144	2 011
SOCIETATEA DE PRODUCERE A ENERGIEI ELECTRICE IN HIDROCENTRALE " HIDROELECTRICA" S.A.	unlisted enterprise	80	Electricity, gas, steam and air conditioning supply	3 651 479 157	3 400
SOCIETATEA NATIONALA DE GAZE NATURALE " ROMGAZ " SA	listed entity	70	Extraction of crude petroleum and natural gas	1 953 167 932	5 673
UZINA TERMOELECTRICĂ MIDIA SA	unlisted enterprise	56.6	Electricity, gas, steam and air conditioning supply	27 311 190	153
MEDSERV MIN SA	unlisted enterprise	98.4	Human health activities	568 376	99
MINPREST SERV SA	unlisted enterprise	95	Public administration and defence; compulsory social security	759 083	1 102
RADIOACTIV MINERAL MAGURELE SA	unlisted enterprise	100	Mining support service activities	1 562 331	17
ENERGONUCLEAR SA	unlisted enterprise	100	Architectural and engineering activities; technical testing and	37 881 841	5

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
			analysis		
COMPANIA NAŢIONALĂ PENTRU CONTROLUL CAZANELOR, INSTALAŢIILOR DE RIDICAT ŞI RECIPIENTELOR SUB PRESIUNE – (CNCIR) SA	unlisted enterprise	100	Architectural and engineering activities; technical testing and analysis	15 528 295	500
SOCIETATEA COMPLEXUL ENERGETIC OLTENIA S.A.	unlisted enterprise	78.4	Electricity, gas, steam and air conditioning supply	300 795 462	12 268
SOCIETATEA NAŢIONALĂ DE ÎNCHIDERI MINE VALEA JIULUI S.A.	unlisted enterprise	100	Mining of coal and lignite	57 336 058	30
ELECTROCENTRALE GRUP S.A.	unlisted enterprise	100	Electricity, gas, steam and air conditioning supply	115 675 499	36
REGIA AUTONOMĂ TEHNOLOGII PENTRU ENERGIA NUCLEARĂ – RATEN	Statutory corporation	100	Scientific research and development	11 180 179	781
SOCIETATEA DE ADMINISTRARE A PARTICIPAŢIILOR ÎN ENERGIE S.A.	unlisted enterprise	100	Activities of head offices; management consultancy activities	342 336 933	40
SNGN "ROMGAZ" SA-FILIALA DE ÎNMAGAZINARE GAZE NATURALE DEPOGAZ PLOIEŞTI SRL	unlisted enterprise	100	Mining support service activities	37 970 025	516
TITAN POWER S.A.	unlisted enterprise	100	Electricity, gas, steam and air conditioning supply	23 739 224	0
Ministry of Environment, Waters and Forests					
REGIA NATIONALA A PADURILOR ROMSILVA RA	statutory corporation	100	Forestry and logging	190 407 425	15 034
ADMINISTRATIA NATIONALA DE METEOROLOGIE RA	statutory corporation	100	Other professional, scientific and technical activities	3 002 974	1 111
EXPLOATARE SISTEM ZONAL PRAHOVA SA	unlisted enterprise	100	Water collection, treatment and supply	6 106 494	272
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NAŢIONAL MUNŢII MĂCINULUI RA	statutory corporation	100	Forestry and logging	11 575	17
R.N.P.ROMSILVA-ADMINISTRATIA PARCULUI NATIONAL CALIMANI RA	statutory corporation	100	Forestry and logging	582 169	0
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NAŢIONAL PIATRA CRAIULUI RA	statutory corporation	100	Forestry and logging	15 078	14
R.N.P. ROMSILVA-ADMINISTRATIA PARCULUI NATIONAL CHEILE BICAZULUI-HASMAS RA	statutory corporation	100	Forestry and logging	-8 996	0
R.N.P. ROMSILVA-ADMINISTRAŢIA PARCULUI NATURAL PUTNA-VRANCEA R.A.	statutory corporation	100	Forestry and logging	183	13
R.N.P. ROMSILVA-ADMINISTRAŢIA PARCULUI NAŢIONAL COZIA RA	statutory corporation	100	Forestry and logging	3 244	15
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NATURAL BUCEGI RA	statutory corporation	100	Forestry and logging	-217	15
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NATURAL PORŢILE DE FIER RA	statutory corporation	100	Forestry and logging	0	23
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NATURAL LUNCA MUREŞULUI RA	statutory corporation	100	Forestry and logging	80 768	13

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NATURAL VÂNĂTORI NEAMŢ RA	statutory corporation	100	Forestry and logging	39 643	15
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NATURAL BALTA MICĂ A BRĂILEI RA	statutory corporation	100	Forestry and logging	668 614	15
R.N.P. ROMSILVA-ADMINISTRAŢIA PARCULUI NAŢIONAL BUILA-VÂNTURARIŢA RA	statutory corporation	100	Forestry and logging	0	8
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NAŢIONAL SEMENIC – CHEILE CARAŞULUI RA	statutory corporation	100	Forestry and logging	0	14
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NAŢIONAL DOMOGLED – VALEA CERNEI RA	statutory corporation	100	Forestry and logging	0	18
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NAŢIONAL CHEILE NEREI – BEUŞNIŢA RA	statutory corporation	100	Forestry and logging	0	14
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NATURAL GRĂDIŞTEA MUNCELULUI – CIOCLOVINA RA	statutory corporation	100	Forestry and logging	-81	14
R.N.P. ROMSILVA – ADMINISTRATIA PARCULUI NATURAL COMANA RA	statutory corporation	100	Forestry and logging	0	11
REGIA NAŢIONALĂ A PĂDURILOR ROMSILVA ADMINISTRAŢIA PARCULUI NAŢIONAL DEFILEUL JIULUI RA	statutory corporation	100	Forestry and logging	249	12
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NAŢIONAL RETEZAT RA	statutory corporation	100	Forestry and logging	40 250	18
R.N.P. ROMSILVA -ADMINISTRATIA PARCULUI NATIONAL MUNTII RODNEI RA	statutory corporation	100	Forestry and logging	0	17
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NATURAL APUSENI RA	statutory corporation	100	Forestry and logging	33 873	23
R.N.P. ROMSILVA – ADMINISTRAŢIA PARCULUI NATURAL MUNŢII MARAMUREŞULUI	statutory corporation	100	Forestry and logging	13 267	13
REGIA NAŢIONALĂ A PĂDURILOR ROMSILVA – MUZEUL CINEGETIC AL CARPAŢILOR “POSADA” RA	statutory corporation	100	Libraries, archives, museums and other cultural activities	880 169	15
Ministry of Family, Youth and Equal Opportunities					
INSTITUTUL NATIONAL DE CERCETARE STIINTIFICA IN DOMENIUL MUNCII SI PROTECTIEI SOCIALE – I N C S M P S	statutory corporation	100	Scientific research and development	927 192	37
SOCIETATEA DE TRATAMENT BALNEAR ŞI RECUPERARE A CAPACITĂŢII DE MUNCĂ “T.B.R.C.M.” S.A.	unlisted enterprise	100	Accommodation	34 687 531	824
Ministry of Finance					
BANCA DE EXPORT IMPORT A ROMANIEI (EXIMBANK) SA	unlisted enterprise	95.4	Financial service activities, except insurance and pension funding	304 993 877	406
CEC BANK SA	unlisted enterprise	100	Financial service activities, except insurance and pension funding	1 131 126 413	5 616
COMPANIA NATIONALA “IMPRIMERIA NATIONALA” SA	unlisted enterprise	100	Printing and reproduction of recorded media	105 141 401	431

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
BANCA ROMÂNEASCĂ S.A.	unlisted enterprise	99.3	Financial service activities, except insurance and pension funding	162 257 575	1 039
FONDUL NATIONAL DE GARANTARE A CREDITELOR PENTRU INTREPRINDERILE MICI SI MIJLOCII SA – IFN	unlisted enterprise	100	Financial service activities, except insurance and pension funding	270 966 122	232
FONDUL LOCAL DE GARANTARE FOCŞANI IFN SA-FILIALA FNGCIMM	unlisted enterprise	99.9	Financial service activities, except insurance and pension funding	1 606 370	6
COMPANIA DE ASIGURARI-REASIGURARI EXIM ROMANIA (CARE-ROMANIA) SA	unlisted enterprise	98.6	Insurance, reinsurance and pension funding, except compulsory social security	0	46
FONDUL ROMÂN DE CONTRAGARANTARE SA	unlisted enterprise	68	Financial service activities, except insurance and pension funding	108 080 951	34
Ministry of Health					
ANTIBIOTICE SA	listed entity	53	Manufacture of pharmaceuticals, medicinal chemical and botanical products	145 555 231	1 415
COMPANIA NATIONALA UNIFARM SA	unlisted enterprise	100	Wholesale trade, except of motor vehicles and motorcycles	- 75 483 995	57
Ministry of National Defense					
COMPANIA NATIONALA ROMTEHNICA SA	unlisted enterprise	100	Wholesale trade, except of motor vehicles and motorcycles	26 425 344	84
RO-ARMYCATERING SA	unlisted enterprise	100	Food and beverage service activities	-71 182	547
RO-ARMYSECURITY SA	unlisted enterprise	100	Security and investigation activities	562 133	526
Ministry of Research, Innovation and Digitisation					
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU MECATRONICA SI TEHNICA MASURARII – I.N.C.D.M.T.M. BUCURESTI	statutory corporation	100	Scientific research and development	784 507	124
INSTITUTUL NATIONAL DE CERCETARE- DEZVOLTARE PENTRU MICROTEHNOLOGIE – IMT BUCURESTI INCD	statutory corporation	100	Scientific research and development	4 420 891	199
INSTITUTUL DE CERCETARI BIOLOGICE CLUJ FILIALA A INCDSB BUCURESTI	statutory corporation	100	Scientific research and development	3 031 831	35
COMPANIA NATIONALA POSTA ROMANA SA	unlisted enterprise	93.5	Postal and courier activities	99 926 840	24 996
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE AEROSPATIALA “ELIE CARAFOLI” – I.N.C.A.S. BUCURESTI	statutory corporation	100	Scientific research and development	41 676 328	271
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE TURBOMOTOARE – COMOTI	statutory corporation	100	Scientific research and development	20 105 675	347
INSTITUTUL NATIONAL DE CERCETARE – DEZVOLTARE PENTRU PROTECTIA MUNCII -I.N.C.D.P.M. “ALEXANDRU DARABONT” – BUCURESTI	statutory corporation	100	Scientific research and development	-75 393	44

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
INSTITUTUL NATIONAL DE STUDII SI CERCETARI PENTRU COMUNICATII – I.N.S.C.C.	statutory corporation	100	Scientific research and development	171 262	18
INSTITUTUL GEOLOGIC AL ROMÂNIEI – I. G. R. BUCUREȘTI	statutory corporation	100	Scientific research and development	122 520 326	0
INSTITUTUL NAȚIONAL DE CERCETARE-DEZVOLTARE MARINĂ "GRIGORE ANTIPA"- I.N.C.D.M. CONSTANȚA	statutory corporation	100	Scientific research and development	1 076 457	96
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU TEHNOLOGII CRIOGENICE SI IZOTOPICE – I.C.S.I. RAMNICU VALCEA	statutory corporation	100	Scientific research and development	19 892 677	247
Institutul National de Cercetare-Dezvoltare pentru Chimie si Petrochimie – ICECHIM Bucuresti	statutory corporation	100	Scientific research and development	21 523 191	180
INSTITUTUL NAȚIONAL DE CERCETARE-DEZVOLTARE "DELTA DUNĂRII"-I.N.C.D.D.D. TULCEA	statutory corporation	100	Scientific research and development	243 273	112
INSTITUTUL NAŢIONAL DE CERCETARE – DEZVOLTARE PENTRU SECURITATE MINIERĂ ŞI PROTECŢIE ANTIEXPLOZIVĂ – INSEMEX PETROŞANI	statutory corporation	100	Scientific research and development	10 062 602	107
INSTITUTUL NATIONAL DE CERCETARE – DEZVOLTARE PENTRU METALE NEFEROASE SI RARE – IMNR	statutory corporation	100	Scientific research and development	1 622 808	81
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU MASINI SI INSTALATII DESTINATE AGRICULTURII SI INDUSTRIEI ALIMENTARE – INMA	statutory corporation	100	Scientific research and development	2 128 767	135
INSTITUTUL NATIONAL DE CERCETARE – DEZVOLTARE CHIMICO – FARMACEUTICA – I.C.C.F. BUCURESTI	statutory corporation	100	Scientific research and development	14 804 013	90
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE ÎN SUDURĂ ŞI ÎNCERCĂRI DE MATERIALE – ISIM TIMIŞOARA	statutory corporation	100	Scientific research and development	2 445 558	36
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU UTILAJ PETROLIER – IPCUP PLOIESTI	statutory corporation	100	Scientific research and development	- 3 731 657	0
INSTITUTUL NATIONAL DE CERCETARE -DEZVOLTARE PENTRU ECOLOGIE INDUSTRIALA – ECOIND	statutory corporation	100	Scientific research and development	5 022 169	160
INSTITUTUL NATIONAL DE CERCETARE – DEZVOLTARE PENTRU FIZICA SI INGINERIE NUCLEARA " HORIA HULUBEI " – IFIN – HH	statutory corporation	100	Scientific research and development	50 084 944	885
INSTITUTUL NATIONAL DE CERCETARE DEZVOLTARE PENTRU STIINTE BIOLOGICE	statutory corporation	100	Scientific research and development	5 881 396	124
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE SI INCERCARI PENTRU ELECTROTEHNICA-ICMET CRAIOVA	statutory corporation	100	Scientific research and development	9 395 190	130

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
INSTITUTUL DE CERCETARI IN TRANSPORTURI INCERTRANS SA	listed entity	64.5	Scientific research and development	1 914 945	53
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU GEOLOGIE SI GEOECOLOGIE MARINA – GEOECOMAR	statutory corporation	100	Scientific research and development	5 792 752	135
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU FIZICA PAMANTULUI – INCDFP RA	statutory corporation	100	Scientific research and development	1 193 195	105
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE PENTRU FIZICA TEHNICĂ-IFT IAŞI	statutory corporation	100	Scientific research and development	1 488 988	76
INSTITUTUL NATIONAL DE CERCETARE DEZVOLTARE PENTRU FIZICA LASERILOR, PLASMEI SI RADIATIEI – INFLPR RA	statutory corporation	100	Scientific research and development	1 527 675	348
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE PENTRU FIZICA MATERIALELOR – INCDFM BUCUREŞTI	statutory corporation	100	Scientific research and development	1 129 974	310
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU OPTOELECTRONICA INOE 2000 INCD	statutory corporation	100	Scientific research and development	1 914 901	188
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU TEXTILE SI PIELARIE – INCDTP BUCURESTI	statutory corporation	100	Scientific research and development	21 726 678	144
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE PENTRU ELECTROCHIMIE ŞI MATERIE CONDENSATĂ – INCEMC TIMIŞOARA	statutory corporation	100	Scientific research and development	1 564 087	81
SOCIETATEA NATIONALA DE RADIOCOMUNICATII SA	unlisted enterprise	100	Telecommunications	171 343 675	1 255
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE IN TURISM – I.N.C.D.T. BUCURESTI	statutory corporation	100	Scientific research and development	65 245	22
INSTITUTUL NATIONAL DE CERCETARE DEZVOLTARE PENTRU TEHNOLOGII IZOTOPICE SI MOLECULARE I N C D T I M	statutory corporation	100	Scientific research and development	6 837 632	240
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU INGINERIE ELECTRICA ICPE – CA BUCURESTI	statutory corporation	100	Scientific research and development	6 417 300	201
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE IN DOMENIUL PATOLOGIEI SI STIINTELOR BIOMEDICALE "VICTOR BABES"	statutory corporation	100	Scientific research and development	2 318 599	208
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU METALE SI RESURSE RADIOACTIVE – I.C.P.M.R.R. BUCURESTI	statutory corporation	100	Scientific research and development	- 1 408 983	46
ROMFILATELIA SA	unlisted enterprise	100	Publishing activities	4 107 801	64
INSTITUTUL DE CERCETĂRI BIOLOGICE IAŞI FILIALA A INCDSB BUCUREŞTI	statutory corporation	100	Scientific research and development	49 711	20

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU PEDOLOGIE, AGROCHIMIE SI PROTECTIA MEDIULUI – ICPA BUCURESTI	statutory corporation	100	Scientific research and development	515 803	87
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU BIOLOGIE SI NUTRITIE ANIMALA – IBNA BALOTESTI	statutory corporation	100	Scientific research and development	779 920	143
INSTITUTUL NATIONAL DE CERCETARE DEZVOLTARE PENTRU CARTOF SI SFECLA DE ZAHAR-BRASOV	statutory corporation	100	Scientific research and development	1 342 662	56
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE AGRICOLĂ-FUNDULEA	statutory corporation	100	Scientific research and development	40 960 327	278
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE ÎN CONSTRUCŢII, URBANISM ŞI DEZVOLTARE TERITORIALĂ DURABILĂ "URBAN-INCERC"	statutory corporation	100	Scientific research and development	15 312 550	126
INSTITUTUL NATIONAL DE CERCETARE-DEZVOLTARE PENTRU BIORESURSE ALIMENTARE – IBA BUCURESTI	statutory corporation	100	Scientific research and development	8 152 321	95
INSTITUTUL DE STIINTE SPATIALE-FILIALA INFLPR	statutory corporation	100	Scientific research and development	529 808	126
AEROSPACE SERVICES SRL	unlisted enterprise	100	Architectural and engineering activities; technical testing and analysis	116 962	89
POSTA ROMANA BROKER DE ASIGURARE SRL	unlisted enterprise	100	Activities auxiliary to financial service and insurance activities	-531 242	0
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE PENTRU ENERGIE – ICEMENERG BUCUREŞTI	statutory corporation	100	Scientific research and development	7 227 073	59
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE ÎN SILVICULTURĂ "MARIN DRĂCEA"	statutory corporation	100	Scientific research and development	17 908 141	852
INSTITUTUL NAŢIONAL DE CERCETARE-DEZVOLTARE PENTRU PROTECŢIA MEDIULUI BUCUREŞTI	statutory corporation	100	Scientific research and development	1 294 021	110
Ministry of Sports					
BIROUL DE TURISM PENTRU TINERET (B.T.T.) SA	listed entity	87.9	Accommodation	12 498 588	19
B.T.T.PERLA COSTINESTIULUI SA	unlisted enterprise	78.2	Real estate activities	605 529	3
Ministry of Transport and Infrastructure					
COMPANIA NATIONALA DE TRANSPORTURI AERIENE ROMANE TAROM SA	unlisted enterprise	98.7	Air transport	8 328 170	1 549
COMPANIA NATIONALA ADMINISTRATIA PORTURILOR DUNARII FLUVIALE SA	unlisted enterprise	80	Warehousing and support activities for transportation	3 302 778	134
ADMINISTRATIA ROMANA A SERVICIILOR DE TRAFIC AERIAN ROMATSA RA	statutory corporation	100	Warehousing and support activities for transportation	92 967 513	1 637

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
REGISTRUL AUTO ROMAN RA	statutory corporation	100	Architectural and engineering activities; technical testing and analysis	84 511 130	1 669
REGIA AUTONOMA ADMINISTRATIA FLUVIALA A DUNARII DE JOS GALATI RA	statutory corporation	100	Warehousing and support activities for transportation	18 001 994	720
AUTORITATEA AERONAUTICA CIVILA ROMANA RA	statutory corporation	100	Warehousing and support activities for transportation	6 312 698	206
ROFERSPED SA	unlisted enterprise	96.9	Land transport and transport via pipelines	1 942 187	62
COMPANIA NATIONALA DE CAI FERATE “CFR” SA	unlisted enterprise	100	Warehousing and support activities for transportation	562 421 047	23 218
SOCIETATEA NATIONALA DE TRANSPORT FEROVIAR DE MARFA “CFR – MARFA” SA	unlisted enterprise	100	Land transport and transport via pipelines	878 103 203	4 814
SOCIETATEA NATIONALA DE TRANSPORT FEROVIAR DE CALATORI – CFR – CALATORI SA	unlisted enterprise	100	Land transport and transport via pipelines	210 620 120	11 831
SOCIETATEA DE ADMINISTRARE ACTIVE FEROVIARE “S.A.A.F.” SA	unlisted enterprise	100	Warehousing and support activities for transportation	1 966 952	11
COMPANIA NAŢIONALĂ “ADMINISTRAŢIA PORTURILOR MARITIME” – S.A.CONSTANŢA	unlisted enterprise	80	Warehousing and support activities for transportation	213 635 824	873
COMPANIA NAŢIONALĂ ADMINISTRAŢIA CANALELOR NAVIGABILE SA	unlisted enterprise	80	Warehousing and support activities for transportation	21 760 687	417
SOCIETATEA NAŢIONALĂ “AEROPORTUL INTERNAŢIONAL TIMIŞOARA-TRAIAN VUIA-” SA	unlisted enterprise	80	Warehousing and support activities for transportation	10 371 956	241
SOCIETATEA NAŢIONALĂ “AEROPORTUL INTERNAŢIONAL MIHAIL KOGĂLNICEANU-CONSTANŢA” SA	unlisted enterprise	60	Warehousing and support activities for transportation	6 410 342	256
COMPANIA NAŢIONALĂ ADMINISTRAŢIA PORTURILOR DUNĂRII MARITIME SA	unlisted enterprise	79.9	Warehousing and support activities for transportation	4 541 637	135
METROREX SA	unlisted enterprise	100	Land transport and transport via pipelines	- 85 479 688	5 696
SOCIETATEA INTRETINERE SI REPARATII LOCOMOTIVE SI UTILAJE – C.F.R. IRLU S.A.	unlisted enterprise	100	Repair and installation of machinery and equipment	- 29 395 968	1 280
SOCIETATEA TIPOGRAFICĂ FILARET S.A.	unlisted enterprise	100	Printing and reproduction of recorded media	896 096	39
Grup Exploatare si Intretinere Palat C.F.R. SA	unlisted enterprise	100	Real estate activities	22 203 167	43
INFORMATICA FEROVIARA SA	unlisted enterprise	100	Computer programming, consultancy and related activities	20 631 319	230
Telecomunicatii C.F.R. SA	unlisted enterprise	100	Telecommunications	20 011 830	695
COMPANIA NAŢIONALĂ DE ADMINISTRARE A INFRASTRUCTURII RUTIERE S.A.	unlisted enterprise	100	Public administration and defence; compulsory social security	476 939 758	6 916
Electrificare C.F.R. SA	unlisted enterprise	100	Electricity, gas, steam and air conditioning supply	- 1 232 335	2 285
COMPANIA NATIONALA “AEROPORTURI BUCURESTI” SA	unlisted enterprise	80	Warehousing and support activities for transportation	986 215 177	1 459

SOE name	Type of enterprise	State ownership (%)	Sector of operation	Book equity (USD)	Number of employees
REGIA AUTONOMĂ ADMINISTRAȚIA CANALULUI NAVIGABIL BEGA TIMIȘ R.A.	statutory corporation	100	Warehousing and support activities for transportation	4 879 945	12
National Bank of Romania					
IMPRIMERIA BANCII NATIONALE A ROMANIEI RA	statutory corporation	100	Printing and reproduction of recorded media	15 747 452	136
MONETARIA STATULUI RA	statutory corporation	100	Other manufacturing	14 464 077	302
Romanian Intelligence Service					
RASIROM RA	statutory corporation	100	Computer programming, consultancy and related activities	7 049 271	175
State Domains Agency					
AGROPRODCOM LAZAREA SA	unlisted enterprise	65.2	Crop and animal production, hunting and related service activities	26 281	4
AGROPRODCOM ODORHEIU SECUIESC SA	unlisted enterprise	100	Crop and animal production, hunting and related service activities	-279 844	0
SERICAROM SA	unlisted enterprise	100	Crop and animal production, hunting and related service activities	2 064 454	3
The Chamber of Deputies					
MONITORUL OFICIAL RA	statutory corporation	100	Printing and reproduction of recorded media	52 595 585	293

Note: Data includes the 216 active centrally-owned SOEs as of end 2020, including the 49 national research and development institutes exempted from applying the corporate governance provisions prescribed by Law no. 111/2016.
Source: OECD, based on information provided by the Romanian authorities.

Annex B. Listed companies with a consolidated public sector ownership of no less than 10%

Table B.1. Listed companies with at least 10% of state ownership (as of end 2020)

SOE name	Main economic activity	Stock exchange of listing	State ownership (%)	Market value (USD)	Number of employees
OMV PETROM SA	Extraction of crude petroleum	Bucharest Stock Exchange's Main Market	20.6	5 191 662 476	9 939
SOCIETATEA NATIONALA DE GAZE NATURALE " ROMGAZ " SA **)	Extraction of natural gas	Bucharest Stock Exchange's Main Market and London Stock Exchange (GDR)	70	2 730 804 196	5 673
SOCIETATEA NATIONALA "NUCLEARELECTRICA" SA	Electric power generation, transmission and distribution	Bucharest Stock Exchange's Main Market	82.5	1 358 386 270	2 011
SOCIETATEA ENERGETICĂ ELECTRICA S.A.	Management consultancy activities	Bucharest Stock Exchange's Main Market	48.8	1 096 285 210	120
SOCIETATEA NAŢIONALĂ DE TRANSPORT GAZE NATURALE TRANSGAZ SA	Transport via pipeline	Bucharest Stock Exchange's Main Market	58.5	840 140 659	4 145
ROMPETROL RAFINARE SA	Manufacture of refined petroleum products	Bucharest Stock Exchange's Main Market	44.7	489, 360, 830	1 119
COMPANIA NATIONALA DE TRANSPORT AL ENERGIEI ELECTRICE "TRANSELECTRICA" SA	Electric power generation, transmission and distribution	Bucharest Stock Exchange's Main Market	58.7	473 161 986	2 021
CONPET SA	Transport via pipeline	Bucharest Stock Exchange's Main Market	58.7	166 339 797	1 585
TRANSCOM SA	Maintenance and repair of motor vehicles	Bucharest Stock Exchange – AeRO Market	48.1	86 141 779	18
ANTIBIOTICE SA	Manufacture of pharmaceuticals, medicinal chemical and botanical products	Bucharest Stock Exchange's Main Market	53	82 266 840	1 415
ROMAERO SA	Manufacture of air and spacecraft and related machinery	Bucharest Stock Exchange – AeRO Market	56.7	74 976 373	871
IAR SA	Manufacture of air and spacecraft and related machinery	Bucharest Stock Exchange's Main Market	75.4	54 742 010	369
OIL TERMINAL SA	Cargo handling	Bucharest Stock Exchange's Main Market	59.6	27 755 753	985

SOE name	Main economic activity	Stock exchange of listing	State ownership (%)	Market value (USD)	Number of employees
SANTIERUL NAVAL 2 MAI SA	Other business support service activities n.e.c.	Bucharest Stock Exchange – AeRO Market	93.9	24 395 702	7
AVIOANE CRAIOVA SA	Manufacture of air and spacecraft and related machinery	Bucharest Stock Exchange – AeRO Market	95.8	16 193 330	296
IOR SA	Manufacture of optical instruments and photographic equipment	Bucharest Stock Exchange – AeRO Market	95.7	14 440 298	286
SEVERNAV SA ***)	Building of ships and floating structures	Bucharest Stock Exchange – AeRO Market	29	6 330 534	442
NEPTUN-OLIMP SA	Short term accommodation activities	Bucharest Stock Exchange – AeRO Market	52.2	6 285 224	7
BIROUL DE TURISM PENTRU TINERET (B.T.T.) SA	Short term accommodation activities	Bucharest Stock Exchange – AeRO Market	87.9	4 343 182	19
LIDO SA	Real estate activities with own or leased property	Bucharest Stock Exchange – AeRO Market	42.9	2 778 484	4
IPROCHIM SA	Architectural and engineering activities and related technical consultancy	Bucharest Stock Exchange – AeRO Market	72.9	2 140 831	48
VITIMAS SA	Manufacture of structural metal products	Bucharest Stock Exchange – AeRO Market	22	1 012 681	5
COMALEX SA	Retail sale in non-specialised stores with food, beverages or tobacco predominating	Bucharest Stock Exchange – AeRO Market	53.6	1 005 688	4
INSTITUTUL DE CERCETARI IN TRANSPORTURI INCERTRANS SA	Research and experimental development on natural sciences and engineering	Bucharest Stock Exchange – AeRO Market	64.5	233 661	53
SOCIETATEA COMERCIALA STUDIOUL CINEMATOGRAFIC ANIMAFILM SA	Motion picture, video and television programme production activities	Bucharest Stock Exchange – AeRO Market	68.5	27 165	2
METTEXIN SA	Retail sale of textiles in specialised stores	Bucharest Stock Exchange – AeRO Market	41.2	13 511	1

Source: Questionnaire responses from the Romanian authorities.

Annex C. Example of a letter of expectation – Hidroelectrica

LETTER OF EXPECTATION

Within the recruiting process of six member positions within the Supervisory Board of SPEEH HIDROELECTRICA S.A.

SPEEH Hidroelectrica SA ("The Company") is one of the most important of the electric energy producers amongst the generation companies on the energy market, supplying in 2015, 25% of the total of electric energy. The company is the major supplier of ancillary services (at the level of the National Energy System – "SEN", in the year 2015 it supplied about 58% of the secondary regulation, over 79% of the rapid tertiary reserve and 100% of the service of energy insurance discharged or absorbed from the grid in the voltage regulation secondary band).

Besides the electric energy generation within hydropower plants and electric energy sale, the Company carries out ancillary services for SEN, the management of the waters from its own reservoirs by supplying gross water, flow regulations, protection against floods, flow insurance and such other joint services of water management, shipping insurance on the Danube through lock. The Company controls and insures the flood wave mitigation for transporting catastrophic flows within the hydropower developments on the inside rivers which are under its administration.

This document was drawn up pursuant to the provisions of GEO no. 109/2011 concerning the corporate governance of public enterprises, with its further modifications and amendments brought through the Act no. 111/2016 and the Methodological Norms of application of GEO no. 109/2011, with its further modifications and amendments, approved through the GD no. 722/2016, and represents the wishes of the tutelary public authority and the shareholders of SPEEH Hidroelectrica SA, respectively the Ministry of Energy and Fondul Proprietatea S.A., for the company's upcoming 4 year progress.

The letter of expectation will be brought to the knowledge of the candidates on the Shortlist, which will be supplied by the company TRANSEARCH Internațional S.R.L., selected for assisting the tutelary public authority within the process of recruiting six member positions within the Supervisory Board of SPEEH Hidroelectrica S.A.

The vision of the tutelary public authority and of the shareholders concerning the company's mission and objectives

The tutelary public authority and shareholders wish:

- Consolidation and keeping of the company's leading position within the electric energy generation
- Increase and protection of the company's value
- Profitable investments and optimization of production capacities operation
- The company's listing, as in conformity with the provisions of the GD no. 1066/2013 for the approval of the privatization strategy of SPEEH Hidroelectrica SA, with its further modifications and amendments

- Application of the principles of ethics, integrity and corporate governance.

The expectations of SPEEH Hidroelectrica SA's shareholders aim at the following elements:

1. Involvement in preparing and accomplishing the Company's listing
2. Identification and implementation of some solutions for:
   - Modernization and efficiency increase of the Company's activity
   - Optimization of the production capacities functioning
   - Raising awareness in investments
   - Consolidation of the position on the energy and ancillary services wholesale domestic market
3. Refurbishment and modernization of the existent hydropower plants
4. Increasing the efficiency of the Company's maintenance function
5. Clarification of the status of the hydropower developments within the Company's patrimony, which have a limited energy component
6. Optimization and increase of the efficiency of the Company's organizational structure
7. Drawing up a Company's predictable politics of dividends, which should contribute to shape an image of the potential investors concerning the Company's financial structure
8. A Company's regional expansion through the identification of new business opportunities
9. Implementation of corporate governance principles and of a code of ethics and integrity
10. Development of capabilities of reporting, control and risk management
11. A responsible and active involvement in actions of social corporate responsibility.

Evaluation of the tutelary public authority and of the shareholders concerning the risks to which the company is exposed and the actions required to reduce the risks and of reaching the objectives

Starting from the complexity of its activity, the Company can face risks coming from various areas and different fields.

a) *The operational risk* is tightly linked to the position on the market, to the identification and the evaluation of investments, to the profits/ generated losses, to possible fines, penalties, sanctions, to a stabilization or a deficient administration of the contractual obligations.

b) *The Risk associated to the economic environment* – presupposes a special attention in identifying and estimating the investments, in meeting the contracts of credit and such other obligations.

c) *The hydrologic risk* – presupposes a careful monitoring of the climate conditions, a careful approach of the contractual obligations and taking some strategies of production diversification into consideration.

d) *The pricing risk* associated to the energy sale transactions on the market for the Day-Ahead Market (DAM), due to the price's instability on this market.

e) *The environment risk* – new upcoming regulations that involve the revision of the environment agreements and drawing up some new adequate assessment studies and some environment impact assessment reports of the project; in the protected areas there are some risks related to the possibility of transporting the water volumes from a hydrographic basin into another.

f) *The risk associated to the maintenance/ refurbishing works* – appears in a tight connection with the company's funds, the procurement and maintenance planning, the personnel's structure and professional training.

Having in view the above-mentioned perspective, the next Supervisory Board is expected to contribute to raise the clients' confidence and the interested parties' conviction, to enhance both the mandatory and voluntary manner of reporting, the means of control, to assure themselves that resources are efficiently allocated as to mitigate the risk, to limit the Company's losses.

The risk management must become an essential and indispensable component of each project, a part in decision-making, in prioritizing the actions/ investments.

Corporate Governance

OECD Review of the Corporate Governance of State-Owned Enterprises in Romania

The Romanian government has undertaken important legal and institutional changes over the past decade to improve the governance and performance of its state-owned enterprises (SOEs), yet significant implementation shortcomings persist. This review describes and assesses the corporate governance framework of the Romanian SOE sector against the OECD Guidelines on Corporate Governance of State-Owned Enterprises. It also makes recommendations to help the Romanian authorities design adequate mechanisms to ensure the implementation of applicable rules for the exercise of state ownership and the governance of SOEs.

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