

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
CORPORATE GOVERNANCE COMMITTEE**

Working Party on State Ownership and Privatisation Practices

Submission by TUAC

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For further information, please contact Mr. Hans Christiansen, DAF/CA (Tel.: +33 (0)1 45 24 88 17;
email: hans.christiansen@oecd.org).

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TRADE UNION ADVISORY COMMITTEE
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ET DE DÉVELOPPEMENT ÉCONOMIQUES

Consultation with the OECD Working Party on State Ownership and Privatisation Practices

Written submission

Paris, 29 October 2013

TUAC welcomes the opportunity to comment on the documents that are for discussion at the 21st meeting of the Working Party on State Ownership and Privatisation Practices. The following outlines our comments on some of the agenda items.

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Item 8. Review of Colombia's SOE sector

We welcome the reference to the TUAC submission to the OECD on labour and human right violations in Colombia¹ in the report on the corporate governance of Colombian state-owned enterprises (SOEs) (DAF/CA/SOPP(2013)5) where it addresses compliance with the SOE Guideline IV.A on the recognition and respect of stakeholders' rights (box 13, #203).

Regarding compliance with SOE Guideline IV.C on internal codes of ethics (#206-210), the current text is limited to anti-corruption issues. We suggest broadening the analysis to other ethical areas including (and as called upon in the annotations to IV.C) the "commitment to comply with the OECD Guidelines for Multinational Enterprises, which [...] reflect all four principles contained in the ILO Declaration on Fundamental Principles and Rights at Work".

Item 9. The State in the marketplace

The OECD review of national approaches to financing state-owned enterprises (DAF/CA/SOPP(2013)8) concludes that (OECD-based) SOEs do not enjoy competitive advantage compared to their private sector peers in accessing finance (#38) and that they operate with "quite a high degree of professionalism" (#35). All in all the paper offers a reassuring picture of the role and efficiency of SOEs across OECD economies.

The discussion on SOE financing however is entirely framed within the restrictive requirements for competitive neutrality. SOEs are treated mainly as potential threats to private sector competitiveness (including "perceived" implicit guarantee, inadequate conditions for recapitalisation, absence of or low level of rate of returns, #39). By opposition the paper does not sufficiently emphasise the positive role of SOEs in creating opportunities for active industrial policies for job creation, financing infrastructure, regional and territorial policy. A

more balanced approach should prevail, weighing competitive neutrality and industrial policy objectives.

Requiring rates of return for commercial SOEs is legitimate in its own. But calling for the rates to be comparable with private sector counterparts could lead to unintended consequences (#39). Defining a control group of private sector peers may be a challenging task – particularly for diversified SOE conglomerate. It could also be argued that some parts of the private sector have precisely reached unsustainable levels of rates of return that might be detrimental on the long run. Using unsustainable private sector benchmarks for setting SOEs’ own rates of return would be unacceptable.

Item 11. Peer review: risk management in the SOE sector

Regarding the revised version of the paper (DAF/CA/SOPP/WD(2013)3/REV1), we reiterate our comments on the previous version of the paperⁱⁱ, that is:

- The need to engage a broader discussion on the models of governance that are conducive of excessive risk taking behaviours, drawing on previous OECD work on too-big-to-fail banks.
- The need to elaborate further on “state-supported” financial institutions (by opposition to state-owned) and on the implicit government guarantees benefiting banks that are considered to be “too-big-to-fail” (or at risk of being).

On a separate note, the added box 1.1 on “Risk Transparency and Disclosure in the SOE Guidelines” (#12) makes reference to public private partnerships. The text could usefully refer to and discuss the requirements laid down in the new OECD Principles for the Public Governance of Public Private Partnershipsⁱⁱⁱ.

Item 12. Introductory discussion of the Programme of Work and Budget for 2015-16

We note with interest the preliminary discussion by the Working Party on the 2015-2016 programme of work (DAF/CA/SOPP(2013)6). Our suggested priorities are:

- Competitive neutrality: we suggest intensifying dialogue beyond OECD membership on the need to ensure level playing field between commercial SOEs and with privately-owned companies. A sector-specific approach might be warranted. The paper singles out hydrocarbons and mining sectors but other sectors could be addressed as well, such as the airline industry.
- The state in the market place: while concerns about competitive neutrality are legitimate in their own, the discussion should be framed in a broader context, including the role of SOEs in supporting active industrial policies.
- Implementation of the revised Guidelines: the Working Party has not spent sufficient attention in the past on the effective implementation of the Guidelines. We suggest that adequate resource be allocated to formal peer review processes on the implementation of the Guidelines *within* OECD membership.

Item 13. Preparing the revision of the Guidelines on Corporate Governance of State-Owned Enterprises

Regarding the draft roadmap for revising the SOE Guidelines (DAF/CA/SOPP(2013)7) we are seriously concerned by the proposal to replace current chapter IV on relations with stakeholders with a new chapter V on “corporate ethics” (#7 & #13). Current chapter IV deals with the responsibilities of SOEs, set by law or by mutual agreement, vis-a-vis the

stakeholders. A shift to corporate ethics, as we understand it, could lead to restrict the scope of stakeholder relations to voluntary commitments and practices, leaving aside or toning down the effective compliance with requirements set by law or by collective agreement. Furthermore, ethical behaviour is a cross-cutting issue that is relevant for all chapters contained in the guidelines, not least the chapter on the responsibilities of the board of directors.

We suggest to maintain the current scope and terms of reference of the chapter on stakeholders in the forthcoming revision. We also believe appropriate to have the revision of the chapter be guided by the revised OECD Guidelines for multinational enterprises which themselves are based on the UN Guiding Principles on Business and Human Rights (including its ‘Protect, Respect, Remedy’ Framework)^{iv}.

ⁱ “Rule of Law and Labour Rights in Colombia – TUAC Submission to the 8th meeting of the Regulatory Policy Committee (22-23 April 2013) & the 47th session of the Public Governance Committee (25-26 April 2013) http://www.tuac.org/en/public/e-docs/00/00/0C/BB/document_doc.phtml

ⁱⁱ TUAC Submission to the OECD Working Party on State Ownership and Privatisation Practices Comments on documents for discussion at the 20th Meeting of the Working Party, including on competitive neutrality, SOEs in the development process & risk Governance. 11/03/2013 http://www.tuac.org/en/public/e-docs/00/00/0C/C0/document_doc.phtml

ⁱⁱⁱ <http://www.oecd.org/governance/oecdprinciplesforpublicgovernanceofpublic-privatepartnerships.htm>

^{iv} <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>