

The implementation of integrity standards from the perspective of the Organization for Economic Cooperation and Development

Daniela MITUȚOIU, PhD

Universitatea Națională de Știință și Tehnologie, Politehnica București

Abstract. *The current economic context requires quick measures to be taken to create the legislative and administrative premises that lead to increasing the efficiency of economic operators. Given the important role that state-owned enterprises play in many economies and their increasing participation in the global marketplace and the large benefits resulting from good corporate governance in state-owned enterprises. Public enterprises - autonomous kings and commercial companies in which the state holds full or majority shares - represent an important segment of the national economy and, consequently, the solvency and functionality of these companies have a determining influence on the stability of the economy as a whole. The state and administrative-territorial units are shareholders/associates in public enterprises, respectively owners in the central and local autonomous governments.*

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In the light of the corporate governance principles of state-owned enterprises, developed by the Organization for Economic Cooperation and Development (OECD) based on the most advanced legislative standards and good corporate practice, it is necessary to establish levers to guarantee the objectivity and transparency of management selection and of the members of the administrative bodies, to ensure the professionalism and responsibility of the managerial decision, additional mechanisms for the protection of the rights of minority shareholders and a heightened transparency towards the public, both of the activity of state companies and of the state's shareholding policy.

The OECD promotes at the government level a unitary approach regarding the integrity of the public sector, implicitly of public enterprises. Integrity systems must be based on effective accountability, strong corruption risk management frameworks and control activities, as well as robust enforcement mechanisms that can detect, investigate and sanction non-implementation of integrity standards.

OUG no. 109/2011¹ regulates the organization, functioning and governance of public enterprises and ensures the increase of transparency and the improvement of the quality of the information publicly presented by them, by implementing the principles of corporate governance of public enterprises.

The state is requested to expand the monitoring of the performance of state-owned enterprises to include compliance with the applicable requirements on the anti-corruption and integrity level.

¹ The Government's Emergency Ordinance no. 109/2011 regarding the corporate governance of public enterprises, Published in the Official Monitor no. 883 of December 14, 2011.

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Organisation for Economic Co-operation and Development (OECD) recommend to Romania actively promote the implementation of the Guidelines in establishing their ownership practices and defining a framework for corporate governance of state-owned enterprises.

Integrity in SOEs is somewhat hampered by "lack of awareness among employees of the need for or priority given to integrity" and "lack of knowledge of legal requirements". Cases of corruption in some state-owned enterprises and their involvement at all levels of the corporate hierarchy suggest that state expectations are not understood or implemented in practice.

One of the OECD's recommendations is to Exercise State Ownership for Integrity, so that anti-corruption and integrity are included in formal state expectations or requirements for public enterprises.

This can be done in various ways, for example by introducing relevant clauses into state policies (whether property or anti-corruption), through strategies, programmes, plans or laws. These should be explicitly communicated to SOE boards, which can be encouraged to disseminate expectations throughout the corporate hierarchy.

Furthermore, the Anti-Corruption and Integrity Guidelines recommend that the State engage in discussions with the boards of state-owned enterprises regarding efforts to mitigate the risk of corruption.

Specialized staff and those working in the field of anti-corruption and integrity in state-owned enterprises must undergo continuous training to keep abreast of evolving legal requirements and best practices. This includes constant training, development of guides, manuals, instructions.

Another recommendation concerns the promotion of integrity and prevention of corruption at enterprise level.

Integrity can be defined as the consistent alignment and adherence to shared values, principles and ethical norms to uphold and prioritize the public interest over private interests.

Creating and promoting a "culture of integrity" involves adopting a code of conduct, establishing integrity standards, ongoing training, whistleblower protection measures, ethics and integrity courses, guidance and training, establishing oversight and reporting procedures, as well as internal investigations.

A very important role is played by the Whistleblower in the public interest - the natural person who makes a report or publicly discloses information related to violations of the law, obtained in a professional context.

Law no. 361/2022² on the protection of whistleblowers in the public interest - constitutes the general framework for the protection of persons who report violations of the law, which have occurred

² Law no. 361/2022 regarding the protection of whistleblowers in the public interest, published in the Official Monitor no. 1218 of December 19, 2022

or are likely to occur, within the authorities, public institutions, other legal entities under public law (including public enterprises), as well as within private legal entities.

Authorities, public institutions, other legal entities under public law, regardless of the number of employees, as well as legal entities under private law that have at least 50 employees have the obligation to identify or establish internal reporting channels and establish reporting procedures internal and for carrying out subsequent actions.

Reporting on violations of the law is mainly carried out through the internal reporting channels existing at the level of each entity.

Safe reporting channels and adequate whistleblower protection are required.

Reporting channels should be secure, ensure anonymity and provide timely response and feedback.

There must be no retaliation against bona fide "whistleblowers".

Personal integrity should be a formal criterion for public company board membership and executive management. This could be achieved by requiring that this criterion be taken into account when they are selected and make declarations to the competent institutions about their investments, activities, commitments and benefits from which a potential conflict of interest could arise.

It is also very useful for the tutelary public authority to formulate criteria for the selection of administrators and directors by taking into account the specificity and complexity of the activity of the public enterprise and the requirements of the letter of expectations.

There are special regulations on integrity and transparency in public enterprises, which are required:

- to publish on its website the decisions of general meetings of shareholders/annual financial statements/half-yearly accounting reports/annual audit report/list of administrators and directors, CVs of board members and directors, as well as their remuneration level/the reports of the board of directors or, as the case may be, of the supervisory board/the annual report on the payments and other benefits granted to administrators and directors, respectively members of the supervisory board and members of the management during the financial year/the code of ethics.

- appoint a compliance officer.

- to strengthen the use of integrity plans as managerial tools for promoting organizational integrity within state enterprises.

SNA 2021-2025³ encourages the adoption of a code of ethics that promotes organizational integrity and the proper implementation of all integrity standards applicable to SOEs.

³ Government Decision no. 1269/2021 on the approval of the National Anti-corruption Strategy 2021-2025 and its related documents.

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SNA 2021-2025 encourages the assumption by public guardianship authorities of the responsibility for promoting integrity and preventing corruption within the state enterprises they coordinate.

SNA 2021-2025 emphasizes the importance of dialogue and exchange of experience between state-owned enterprises and tutelary public authorities for a better implementation of integrity standards.

Conformable Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises,⁴ in the chapter Disclosure, Transparency and Accountability, State-owned enterprises should respect high standards of transparency, accountability and integrity and to be subject to the same high-quality accounting, disclosure, compliance and auditing standards.

Channels for disseminating information should provide for free and timely public access.

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

The role and duties of SOE boards should be clearly defined in legislation, preferably according to company law.

State ownership entities and SOEs should take action to ensure high standards of integrity in the state-owned sector and to avoid the use of SOEs as conduits for political finance, patronage or personal or related-party enrichment.

When the state plays a role of policy maker, market regulator and owner of SOEs with economic activities, the state becomes at the same time a major market player and an arbitrator. This can create conflicts of interest that are neither in the interest of the enterprise, the state nor the public.

Complete and transparent separation of responsibilities for policy making, ownership and market regulation is a fundamental prerequisite for creating a level playing field for SOEs and private companies and for avoiding distortion of competition. It is also essential for averting undue influence by the state, and therefore also a key recommendation of the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises, which should be fully implemented by the adherents states.

The use of digital technologies, such as e-procurement, may be encouraged to enhance transparency and integrity.

All economic and non-economic activities should be conducted in line with relevant OECD standards bearing on integrity and responsible business conduct.

Full transparency surrounding board member qualifications is especially important for SOEs and should be fully aligned with the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises.

⁴ *Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises*, amended on 03/05/2024, available online on the website <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0414>.

Risk management is a core component of corporate governance and is closely related to the corporate strategy. The risk management system is established to allow SOEs to identify, manage and report on risks to the achievement of an SOEs operational and financial objectives. Risk management processes inform how an SOE can use internal controls to manage risks and mitigate their potential impact, promote integrity within the SOE and encourage compliance with relevant laws or regulations.

Risk processes inform the establishment and maintenance of internal controls, ethics and compliance programmes or measures. Pursuant to the relevant details on internal control in the Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises, such compliance programmes or measures should be applicable to all levels of the corporate hierarchy and all entities over which an SOE has effective control, including subsidiaries.

These programmes or measures may include inter alia establishing codes of conduct or similar and integrating them into human resource or other relevant corporate policies, and establishing clear rules and procedures, such as whistleblower protection, to encourage reporting concerns to the board without fear of retribution.

They should extend, where possible, to third parties. The incentive structure of the business needs to be aligned with its ethical and professional standards so that adherence to the SOE's values is rewarded and breaches of law are met with dissuasive consequences or penalties.