OECD Review of the Corporate Governance of State-Owned Enterprises

BULGARIA
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Foreword

This report evaluates the corporate governance framework of the Bulgarian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (the “SOE Guidelines”). It was prepared at the request of the Republic of Bulgaria with the purpose of being recognised as an Adherent to the SOE Guidelines. It takes place in the context of Bulgaria’s commitments toward joining the European ERM-II exchange rate mechanism and Banking Union. Bulgaria engaged to implement a number of commitments in relevant policy areas, including improving the governance of SOEs by revising and aligning national legislation with the SOE Guidelines. The project was supported financially by the EU Structural Reform Support Service (SRSS) Programme.

It is the fifth country review conducted by the OECD Working Party on State Ownership and Privatisation Practices (the "Working Party"), the body responsible for encouraging and overseeing the effective implementation of the SOE Guidelines. The report was produced by Arijete Idrizi and Korin Kane under the guidance of Hans Christiansen of the OECD Corporate Governance and Corporate Finance Division that provides secretariat support to the Working Party. Additional support was provided by an informal task force of Working Party delegates including representatives of Sweden, Lithuania, Latvia and Spain.

In parallel with developing this Review, the OECD also supported Bulgaria’s legislative and institutional reform efforts by providing administrative and technical support in developing the new “Law on Public Enterprises” which was adopted on 26 September 2019 and promulgated by Decree No.79 on 8 October 2019. The new Law addresses the main vulnerabilities in state ownership practices identified by the SOE Review. It establishes a legislative foundation for stronger ownership coordination and monitoring; more independent, qualified and transparently-nominated boards of directors; improved disclosure at both the level of individual enterprises and the level of the state; and a more level playing field with private companies through the foreseen phasing out of the separate legal form of “state enterprises” for SOEs that are engaged in commercial activities.

The report is structured as follows: Part I provides background information on the Bulgarian SOE sector, including the applicable legal and regulatory framework, while Part II provides an assessment of Bulgaria’s existent legislation relative to the standards of the SOE Guidelines. The final part sets out the conclusions and recommendations for improving the corporate governance framework applicable to Bulgarian SOEs. The recommendations are forward-looking, aiming to assist policymakers and government bodies exercising ownership functions in responding to remaining challenges and needed developments. More information can be found in Annexes A to G.
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<th>Description</th>
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<tbody>
<tr>
<td>AGM</td>
<td>Annual general meeting</td>
</tr>
<tr>
<td>BEH</td>
<td>Bulgarian Energy Holding</td>
</tr>
<tr>
<td>BNB</td>
<td>Bulgarian National Bank</td>
</tr>
<tr>
<td>BSE</td>
<td>Bulgarian Stock Exchange</td>
</tr>
<tr>
<td>BSP</td>
<td>Bulgarian Socialist Party</td>
</tr>
<tr>
<td>CA</td>
<td>Commerce Act</td>
</tr>
<tr>
<td>CDAD</td>
<td>Central Depository AD</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief executive officer</td>
</tr>
<tr>
<td>CoM</td>
<td>Council of Ministers</td>
</tr>
<tr>
<td>CPC</td>
<td>Commission on Protection of Competition</td>
</tr>
<tr>
<td>CPOSA</td>
<td>Commission for Public Oversight of Statutory Auditors</td>
</tr>
<tr>
<td>CSD</td>
<td>Center for the Study of Democracy</td>
</tr>
<tr>
<td>ESMA</td>
<td>European Securities and Markets Authority</td>
</tr>
<tr>
<td>ESSF</td>
<td>Energy System Security Fund</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EWRC</td>
<td>Energy and Water Regulatory Commission</td>
</tr>
<tr>
<td>FSC</td>
<td>Financial Supervision Commission</td>
</tr>
<tr>
<td>GAAP</td>
<td>Generally Accepted Accounting Principles</td>
</tr>
<tr>
<td>GERB</td>
<td>Citizens for European Development of Bulgaria (political party)</td>
</tr>
<tr>
<td>GCO</td>
<td>Global Competitiveness Index</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross domestic product</td>
</tr>
<tr>
<td>GNI</td>
<td>Gross national income</td>
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<tr>
<td>GSM</td>
<td>General shareholders’ meeting</td>
</tr>
<tr>
<td>IAS</td>
<td>International Accounting Standards</td>
</tr>
<tr>
<td>IAU</td>
<td>Internal audit unit</td>
</tr>
<tr>
<td>IBEX</td>
<td>Bulgarian Independent Energy Exchange EAD</td>
</tr>
<tr>
<td>IFRS</td>
<td>International Financial Reporting Standards</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IPO</td>
<td>Initial public offering</td>
</tr>
<tr>
<td>ISA</td>
<td>International Standards on Auditing</td>
</tr>
<tr>
<td>LCI</td>
<td>Law on Credit Institutions</td>
</tr>
<tr>
<td>MiFIA</td>
<td>Market in Financial Instruments Act</td>
</tr>
<tr>
<td>NAO</td>
<td>National Audit Office</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
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<td>NCGC</td>
<td>National Corporate Governance Code</td>
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<td>PFIA</td>
<td>Public Financial Inspection Agency</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>POSA</td>
<td>Public Offering of Securities Act</td>
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<tr>
<td>PPCA</td>
<td>Privatisation and Post-Privatisation Control Agency</td>
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<tr>
<td>ROCE</td>
<td>Return on capital employed</td>
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<tr>
<td>ROE</td>
<td>Return on equity</td>
</tr>
<tr>
<td>SJC</td>
<td>Supreme Judicial Council</td>
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<tr>
<td>SMC</td>
<td>Sofia Municipal Council</td>
</tr>
<tr>
<td>SME</td>
<td>Small- and medium-sized enterprise</td>
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<tr>
<td>SOE</td>
<td>State-owned enterprise</td>
</tr>
<tr>
<td>USD</td>
<td>United States of America Dollars</td>
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Introduction

The purpose of this report is to describe and evaluate the corporate governance framework of the Bulgarian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (the “SOE Guidelines”), to which the governments of all OECD’s member countries adhere. It was prepared as part of the OECD Working Party on State Ownership and Privatisation Practices’ (the “Working Party”) procedures to respond to Bulgaria’s request for adherence to this OECD instrument. On the basis of the information contained herein, the Working Party recommended the OECD Council to accept Bulgaria’s request for adherence.

Since their inception in 2005, the SOE Guidelines have provided concrete advice to countries on how to manage more effectively their responsibilities as company owners, thus helping to make state-owned enterprises more competitive, efficient and transparent. The non-binding SOE Guidelines were developed by the Working Party. They complement and are compatible with the OECD Principles of Corporate Governance and the Anti-Corruption and Integrity Guidelines for State-Owned Enterprises. The SOE Guidelines, and therefore this report, are primarily oriented to SOEs using a distinct legal form (i.e., separate from the public administration) and engaging in economic activities (i.e. with the intention that the bulk of their income comes from sales and fees), whether or not they pursue a public policy objective as well. These SOEs may be in competitive or in non-competitive sectors of the economy. When necessary, the SOE Guidelines distinguish between listed and non-listed SOEs, or between wholly-owned, majority-owned, as well as in some cases also partly state-owned enterprises, since the corporate governance issues are somewhat different in each case. This report also applies the SOE Guidelines, where relevant, to the subsidiaries of these aforementioned entities as well as to enterprises owned at the sub-national levels of government. The corporate governance framework of municipality-owned enterprises is showcased through the examples of the municipalities of Sofia and Burgas who have volunteered information about their SOE portfolios and agreed to be included in this review.

This review was prepared by Arijete Idrizi and Korin Kane, under the guidance of Hans Christiansen of the OECD Corporate Governance and Corporate Finance Division that provides secretariat support to the Working Party. Information included in this report is based on a variety of primary and secondary sources as of March 2018 (developments relative to the adoption of the new Law on Public Enterprises have been subsequently referenced in the document). These sources include information provided by the Bulgarian authorities through responses to a standard questionnaire on the SOE guidelines, as well as additional documents and information; two fact-finding visits to Sofia including meetings with government officials, representatives of civil society, business organisations, and SOEs; and additional desk research.
Part I. The state-owned enterprise landscape in Bulgaria
1. Economic and political context of Bulgaria

The Republic of Bulgaria (hereafter “Bulgaria”) is located in South-eastern Europe. It has a population of 7.1 million people as of 2017 (World Bank, n.d.[1]) and is divided into 28 provinces/regions and 264 municipalities. It is a unitary state with a high degree of political, administrative and economic centralisation, as regional governors are directly appointed by the Council of Ministers (CoR, n.d.[2]). Bulgaria joined the North Atlantic Treaty Organisation (NATO) in 2004 and the European Union (EU) in 2007.

Table 1. Selected economic and social indicators for Bulgaria (2015 – 2018)

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018 (est.)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Output and labour market</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GDP, current prices (in bln USD)</td>
<td>50.201</td>
<td>53.231</td>
<td>58.245</td>
<td>64.781</td>
</tr>
<tr>
<td>GDP per capita, current prices (in USD)</td>
<td>6994</td>
<td>7468</td>
<td>8231</td>
<td>9227</td>
</tr>
<tr>
<td>Real GDP growth (annual %)</td>
<td>3.5</td>
<td>3.9</td>
<td>3.8</td>
<td>3.8</td>
</tr>
<tr>
<td>Inflation rate, average consumer prices (annual % change)</td>
<td>-1.1</td>
<td>-1.3</td>
<td>1.2</td>
<td>2</td>
</tr>
<tr>
<td>Unemployment rate (as % of total labour force)</td>
<td>9.2</td>
<td>7.7</td>
<td>6.2</td>
<td>6</td>
</tr>
<tr>
<td>General government gross debt (as % of GDP)</td>
<td>25.2</td>
<td>28.6</td>
<td>25.6</td>
<td>23.6</td>
</tr>
<tr>
<td>Current account balance (as % of GDP)</td>
<td>0</td>
<td>2.3</td>
<td>4.5</td>
<td>3</td>
</tr>
<tr>
<td><strong>Social indicators</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Per capita GNI (in US$)</td>
<td>6853</td>
<td>7449</td>
<td>8339</td>
<td></td>
</tr>
<tr>
<td>At-risk-of-poverty rate (as % of total population)*</td>
<td>22</td>
<td>22.9</td>
<td>23.4</td>
<td></td>
</tr>
</tbody>
</table>

Note: *According to Eurostat, at-risk-of-poverty rate is the share of people with an equivalised disposable income (after social transfer) below the at-risk-of-poverty threshold, which is set at 60% of the national median equivalised disposable income after social transfers.
Source: IMF, World Economic Outlook, April 2018; World Bank; Eurostat and data submitted by Bulgarian authorities.

Economy. After a difficult transition to a market-based economy in the 1990s and the repercussions of the 2007-08 global crisis, Bulgaria’s economy has improved significantly over the last decade. The country’s annual GDP growth stood at 3.8% in 2017, with a low – albeit increasing – inflation rate of 1.2% (IMF, 2018[3]). The country has also been experiencing relatively low levels of unemployment (6.2% in 2017) and had a government debt-to-GDP ratio of 25.6% in 2017, the third lowest in the EU.

Despite this, Bulgaria remains the EU-member state with the lowest income per capita and one of the highest shares of population at risk of poverty (23.4%). Bulgaria is also regularly perceived as having problems with corruption; it ranks 71st out of 180 countries in Transparency International’s Corruption Perceptions Index (where lowered-ranked countries have relatively higher perceptions of corruption), with government procurement being one of the most critical areas (European Commission, 2016[4]).

Government. Bulgaria is a Parliamentary Republic, as established by the Constitution of 1991. The Head of State is the President, elected by popular vote for a five-year term, while the Head of Government is the Prime Minister, elected by the largest political party in the
I. THE STATE-OWNED ENTERPRISE LANDSCAPE IN BULGARIA

Parliament. The Prime Minister chairs the Council of Ministers, which is the main body of the executive power in Bulgaria. Legislative authority is vested in the unicameral National Assembly (Narodno Sabranie) consisting of 240 national representatives, elected by proportional representation for a four-year term.

Following parliamentary elections of March 2017, Bulgaria’s centre-right party Citizens for European Development of Bulgaria (GERB) reaffirmed its dominant position in the National Assembly receiving 32.65% of votes, followed by the main opposition party, the Bulgarian Socialist Party (BSP), with 27.19% of votes and the far-right party United Patriots (a bloc of three nationalist parties) with 9.07%. The current government of Prime Minister Boyko Borissov is a coalition of GERB and United Patriots, which holds a narrow majority in the parliament (122 of 240 seats, or 50.83%).

Legal system. Bulgaria is a civil law jurisdiction wherein the national Constitution and acts of parliament are the primary sources of law. Because Bulgaria 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: 1) regional, district and administrative courts; 2) courts of appeal; and 3) the Supreme Court of Cassation and Supreme Administrative Court, as last instances (European e-Justice Portal, n.d.[5]). Bulgarian courts are organised according to the provisions of the Judicial System Act, which sets out the structure and operating principles of judicial and executive bodies. It identifies the Supreme Judicial Council (SJC) as the highest administrative authority of the judiciary, in charge of governing the judiciary and ensuring its independence. Despite continued EU monitoring and assistance, the Bulgarian judicial system continues to be one of the least trusted institutions in the country (European Commission, 2016[4]).

Figure 1. Business climate measures of Bulgaria

Note: Distance to frontier score: 0 = lowest performance, 100 = frontier or highest performance. The distance to frontier score captures the gap between an economy’s performance and a measure of best practices across the entire sample of 31 indicators for 10 Doing Business topics.

The GCI Score ranges on a scale from 1-7, with 7 being the most desirable outcome based on the economy’s performance in the 12 pillars of the GCI.

Sources: (World Bank, 2018[7]); (World Economic Forum, 2017[6])

Business climate. Bulgaria ranks 50th out of 190 countries in the 2018 World Bank Ease of Doing Business report and 49th out of 137 economies in the Global Competitiveness Index (GCI) 2017 – 2018 (Figure 1), placing it ahead of other regional EU member economies.
such as Latvia (54th), Slovakia (59th) and Romania (68th). Areas of particular concern include issues with intellectual property protection and the country’s capacity to attract and retain talent (World Economic Forum, 2017[6]).

**Capital market.** The Bulgarian Stock Exchange (BSE) is the only functioning stock exchange in Bulgaria. It was officially licensed to operate as a stock exchange by the Bulgarian Securities and Stock Exchange Commission in 1997, although it only began regular operations in the early 2000s. Financial instruments admitted to trading on the BSE include stocks, corporate and municipal bonds, compensatory instruments, subscription rights, warrants and government securities. The stock exchange publishes four main indices reflecting market performance: BGBX40, BGTR30, BGREIT, and SOFIX, which is the exchange’s official market index (BSE, n.d.[8]).

BSE is a state-owned company listed on the stock exchange. It is one of only two SOEs listed on the stock exchange, the other one being Sunny Beach, a resort on the Black Sea Coast. The state, through the Ministry of Finance, is BSE’s majority shareholder (50.05%), while the remaining shares are held by brokerage firms and banks (17.56%), other legal persons (18.82%) and individuals (13.57%) (BSE, 2017[9]). BSE has a one-tier board structure comprising five members, including the chief executive officer (CEO). The board is elected and approved by the general meeting, which is the highest decision-making authority of the stock exchange (BSE Portal, n.d.[10]).

BSE comprises two listing tiers, the Premium Segment, which has elevated corporate governance requirements, and the Standard Segment. Companies that do not fulfil the capital thresholds of these listing tiers can list equities on the Alternative Market. In addition to the two aforementioned SOEs that have equity traded on the stock exchange, one SOE, Bulgarian Energy Holding, has issued traded bonds.

The country is gradually recovering from the financial crisis of 2007-08. BSE saw an improvement in 2017 as the two previous years were marked by extremely low liquidity. As of end-2017, BSE had 324 listed companies and a total market capitalisation of approximately EUR 12.1 billion (BGN 23.6 billion), representing 23.95% of GDP (BSE, 2017[9]). This is in line with the ratio in the neighbouring upper-middle and high-income countries of Turkey and Greece (26.73% and 25.27%, respectively) (The World Bank, 2018[11]). In general, shareholding in Bulgaria is concentrated and characterised by low dynamics in the transfer of ownership (Nedelchev, 2017[12]). Unlike in many other post-transition economies, following mass privatisations, the ownership of Bulgarian companies did not become highly dispersed. In fact, in most companies, a strategic investor owns more than 50% of shares (CSD, n.d.[13]).
Figure 2. Market capitalisation & number of listed companies for selected regional countries (2017)

Sources: own elaboration based on World Bank data (World Bank, 2018[7]); and BSE for Bulgaria.

The banking sector is regulated by the Bulgarian National Bank (BNB), while the non-banking financial sector is regulated by the Financial Supervision Commission (FSC). Set up by the Financial Supervision Commission Act, the FSC was established in 2003 as the regulatory body responsible for capital markets, insurance and pension insurance markets (FSC, n.d.[14]). The FSC is an independent institution that reports to the National Assembly. It is a collective body comprising five members, all elected by the National Assembly for a six-year term. The FSC can impose sanctions and fines and refers criminal cases to either the criminal or special administrative courts (World Bank, 2008[15]).
2. Overview of the Bulgarian state-owned sector

2.1. Number and types of state-owned enterprises

According to the Bulgarian National Statistical Institute (NSI), there is a sizeable state-owned sector consisting of approximately 350 SOEs held by the central government and 580 by subnational government units including municipalities. Line ministries, however, report only 221 central SOEs under their remit - significantly lower than the 350 SOEs reported by the NSI. The number reported by the NSI includes entities which are not considered SOEs by the Ministry of Finance, such as government agencies generating revenues from selling goods and services (i.e. quasi-corporations) and SOEs in liquidation or insolvent. Most of the information on central SOEs included in this review concerns the 221 SOEs reported by line ministries.

The Bulgarian state is also a minority shareholder (10-50% ownership) in 41 companies, mainly through the Ministry of Agriculture, Food and Forestry (13), Ministry of Energy (10), Ministry of Economy (9) and the Ministry of Health (5). The full list is provided in Annex F.

SOEs in Bulgaria can have three legal forms: (1) limited liability companies; (2) joint-stock companies; and (3) statutory SOEs, referred to in national nomenclature as “state enterprises”. Sections 3.2 and 3.3 provide more information on, respectively, the number of SOEs of each legal form and the main associated corporate governance requirements.

2.2. Sectoral distribution of SOEs

Despite large-scale privatisations in the 1990s (see section 2.5), SOEs still occupy a central place in the Bulgarian economy in terms of both their size and their dominance in strategic sectors like energy and transport. The overall SOE sector (including the sub-national level) is valued at approximately 12 billion USD and employs over 186 000 people (representing 6.6% of total employment) (OECD Secretariat estimates based on NSI and ILO data). Table 2 and Figure 3 give, respectively, a numerical and visual overview of the sectoral distribution of the 350 centrally-held SOEs, which together employ over 140 000 people and are valued at nearly 11.5 billion USD).
### Table 2. Sectoral distribution of central SOEs by employment and value (2016)

<table>
<thead>
<tr>
<th>Sector</th>
<th>No. of enterprises</th>
<th>No. of employees</th>
<th>Value of SOEs (USD thousand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary sector</td>
<td>33</td>
<td>17,897</td>
<td>1,000,972</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>16</td>
<td>6,133</td>
<td>134,267</td>
</tr>
<tr>
<td>Finance</td>
<td>14</td>
<td>269</td>
<td>2,147,039</td>
</tr>
<tr>
<td>Telecoms</td>
<td>6</td>
<td>641</td>
<td>76,028</td>
</tr>
<tr>
<td>Electricity and gas</td>
<td>12</td>
<td>12,513</td>
<td>4,247,939</td>
</tr>
<tr>
<td>Transportation</td>
<td>18</td>
<td>38,413</td>
<td>2,785,721</td>
</tr>
<tr>
<td>Water supply and Sewerage</td>
<td>32</td>
<td>15,742</td>
<td>40,819</td>
</tr>
<tr>
<td>Healthcare and social activities</td>
<td>117</td>
<td>37,840</td>
<td>291,106</td>
</tr>
<tr>
<td>Other activities</td>
<td>102</td>
<td>8,206</td>
<td>710,225</td>
</tr>
<tr>
<td>Total</td>
<td>350</td>
<td>144,373*</td>
<td>11,434,116</td>
</tr>
</tbody>
</table>

*Note: *The data for two SOEs are not provided owing to corporate confidentiality concerns.

*Source: Questionnaire responses from the Bulgarian authorities.

### Figure 3. Sectoral distribution of central SOEs by number of enterprises (2016)

SOEs in Bulgaria range from small local entities with only a few employees to large-scale companies such as those in the energy and transport sectors. In a breakdown by sector, healthcare facilities account for about a third of the total number of national SOEs and a fourth of total SOE employment at the national level. Measured by output and value-added, however, the majority of SOEs are found in the energy and transport sectors (Figure 4). The largest individual SOE employers are the Bulgarian Energy Holding company (21,128), the National Railway Infrastructure Company (11,260) and the Railway Holding Company, BDZ EAD (9,352).
There are only two listed SOEs: the Bulgarian Stock Exchange (owned at 50.05% through the Ministry of Finance) and the seaside resort Sunny Beach, which is 75% owned through the Ministry of Tourism.

### 2.3. SOEs’ share of national employment

At the national level, SOEs employ 144,373 people, which, if Bulgaria was an OECD country, would place it among the top 15 OECD countries with the largest central SOE sectors as measured by share of national non-agricultural employment (5.1%, compared to an OECD unweighted average of 2.2%)\(^2\).

**Figure 5. SOEs’ share of total non-agricultural dependent employment compared with OECD countries**

*Note:* Based on 350 SOEs as per NSI methodology. The aggregate figures for SOE employment and valuation should normally not be affected by the differences in methodology between the NSI and the Ministry of Finance.*

*Source:* OECD Secretariat estimates based on data collected for (OECD, 2017[16]) and ILOSTAT figures on non-agricultural employment in 2015.
2.4. Operational performance of SOEs

While the performance of Bulgarian SOEs is highly heterogeneous, a recent survey of 782 state- and municipality-owned enterprises, conducted by the IMF, found that SOEs’ performance in Bulgaria is generally weak (compared to both SOEs in neighbouring countries and to private companies in Bulgaria) and profitability is very low. Both firm profitability (measured by the return on equity – ROE) of SOEs and resource allocation efficiency (measured by the return on capital employed – ROCE) are significantly lower in most sectors than in the private sector, most notably in the case of the railway passenger service company. This, coupled with relatively poor labour productivity and output quality (electricity supply, railroad and port infrastructure) could hinder the competitiveness and productivity of the Bulgarian economy (IMF, 2016[17]).

As a consequence, many SOEs in Bulgaria are heavily loss-making and indebted, especially in the energy sector. Heavy losses in the state-owned energy sector can be mostly attributed to the National Electricity Company’s (Natsionalna Elektrcheska Kompania - NEK) structural tariff deficit. As of 2014, the company had long-term unpaid bills of BGN 3 billion (approximately EUR 1.5 billion), while the overall energy sector’s liabilities accounted for around 8.6% of GDP. The accumulated long-term liabilities of NEK were subsequently financed by BEH EAD (NEK’s mother company) and two bonds were placed for this purpose in 2013 and 2016 for EUR 500 million and EUR 550 million, respectively. In the transport sector as well, the Bulgarian State Railways company (Bâlgarski Dârzhavni Zheleznitsi – BDZ) and the National Railway Infrastructure Company had commitments of 2.6% of GDP in the same period. As a solution, the Bulgarian government approved the granting of a concession for the operation of Sofia Airport, the advance payment of which will be used for repaying the debt of BDZ (IMF, 2016[17]). The use of this type of financing arrangement – where payments from the concession contract for operating one SOE are used to boost up another SOE – raises some concerns regarding the extent to which SOEs in Bulgaria face market-consistent financing terms. However, according to the Ministry of Finance this is an exceptional case.

Hence, while some SOEs function effectively, others accrue large deficits (see Box 1 for a discussion of deficits in the energy sector). While most SOEs are not officially part of the state budget (or so-called general government accounts[4]), their financial situation impacts public finances and can present significant financial risks to the Bulgarian economy. Indeed, as evidenced by several recent policy studies carried out by the European Commission and the IMF, while only the debt of SOEs operating within the general government is explicitly accounted for in fiscal accounts, the aggregate debt of SOEs outside the general government can pose significant risks to public finances through contingent liabilities (representing approximately 13.07% of GDP in 2016 according to Eurostat data). This risk is particularly elevated among state enterprises (statutory SOEs) and SOEs with monopoly status in certain sectors. Because these enterprises are by law protected from insolvency, the state implicitly holds the burden for any of their unpaid liabilities.
Box 1. Financial challenges in the state energy sector

The electricity market in Bulgaria consists of a regulated segment and a liberalised one. In recent years, the government has been gradually reforming the electricity sector in order to fully liberalise it. The pricing of activities for the regulated segment is performed by an independent regulator, the Energy and Water Regulatory Commission (EWRC).

Partially because of SOEs’ fragmented management, the IMF identified in its 2017 survey an accumulated financial deficit in the regulated electricity sector due to a shortfall of revenues, i.e. tariffs set below the cost borne by the energy companies to generate, transport and commercialise electricity. As the de facto single buyer for the regulated sector, the accumulated tariff deficit was most evident for NEK, a subsidiary of the Bulgarian Energy Holding (BEH).

A series of legislative and regulatory measures were taken in order to address these challenges in the Bulgarian energy sector. In particular, the Energy Act was amended in 2015, notably to increase tariffs and establish the independence of the EWRC. This legislative reform also introduced a new Energy System Security Fund (ESSF) with the objective of managing the funds to cover the expenses incurred by NEK and ultimately reduce the company’s financial deficit. As a result, NEK has stopped buying electricity at excessive prices from inefficient combined heat and power/cogeneration producers and reduced its cost for purchasing electricity from producers connected to the transmission grid under long-term power purchase agreements, as well as electricity generated from renewable sources. The long-term mechanism for compensating the accrued deficit resulting from the enterprise’s financial obligations is currently being discussed. However, prior to that, the EWRC has to undertake additional analysis and verification concerning the actual amount of uncompensated costs that the company incurred. The resulting compensation mechanism (and amount) will be notified to the European Commission.

Sources: Based on information provided by the Bulgarian Ministry of Finance, (IMF, 2016[17]); and Ministry of Energy (2018).
The excessive indebtedness of SOEs could burden Bulgaria’s public finances if the government has to step in with state guarantees. According to the Bulgarian authorities, explicit state guarantees are issued following a strict procedure involving compliance with national and European legislation on state aid. The latest Eurostat data show that state guarantees to public corporations only amounted to 0.47% of GDP in 2016, although other sources reported a total amount of subsidies and capital transfers from the state amounting to BGN 2.7 billion (or 3.1% of GDP) (IME, 2016[18]). While the stock of state guarantees appears rather insignificant and below the EU average of 3.7%, the risks associated with contingent liabilities are important and could, if realised, drain public finances and hamper economic activity, especially if loss-making beneficiaries such as BDZ do not improve their financial situation. The IMF reports that 60% of total liabilities belong to high-risk SOEs.

Figure 6. State guarantees and total liabilities (2016)

Note: * Total liabilities of government controlled entities classified outside general government
Source: OECD Secretariat elaboration based on Eurostat data.

The discrepancy in performance between companies might be explained by the differing nature and objective of their activities. Indeed, while many SOEs are expected to seek profits, others are (simultaneously) expected to fulfil public policy objectives, which – when uncompensated – often impairs their ability to generate profits and compete successfully with private companies. While many SOEs with primarily public-policy objectives are part of the “general government accounts”, this is not always the case. According to the Bulgarian authorities, most SOEs (even commercial ones) have public policy objectives, generally assigned through the relevant legal act (including sectoral legislation) or through a public procurement procedure. The fragmented nature of these
public policy objectives makes it however quite difficult to identify their exact nature and content. Those SOEs that engage in both public policy and competitive activities generally carry out the public policy activities on the basis of a management contract concluded with their line ministry. Based on this contract, the state provides funds in advance (either through a capital transfer or subsidy) for compensating the cost of public policy objectives as defined by the State Budget Law for the respective year.5

With regards to performance control and monitoring of SOEs, practices are highly heterogeneous and differ significantly from one line ministry to another. While most SOEs are not subject to minimum rate-of-return requirements on competitive activities, there are certain exceptions, for example for SOEs operating under sectoral regulation establishing such requirements. This is, for example, the case for the SOEs operating within the Bulgarian Energy Holding, for which an ROE target is established by the Energy and Water Supervision Commission in accordance with market conditions. In other cases, such as in the water supply and sewerage sector, line ministries benchmark their SOEs with foreign and regional water operators. Hence when they do exist, performance indicators vary significantly from one ministry to another and, according to the IMF, are often ignored in favour of volume targets (Table 3).

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>● Sales volume</td>
<td>● Sales revenue</td>
<td>● Sales revenue</td>
<td>● 9 solvency and liquidity-related ratios</td>
</tr>
<tr>
<td></td>
<td>● New markets</td>
<td>● Gross profit/sales</td>
<td>● Gross profit/sales</td>
<td>● Return on Equity (ROE)</td>
</tr>
<tr>
<td></td>
<td>● Productivity</td>
<td>● Operational expense/income</td>
<td>● Operational income/expense</td>
<td>● Rate of collection</td>
</tr>
<tr>
<td></td>
<td>● Use of facilities</td>
<td></td>
<td></td>
<td>● Net profit/sales</td>
</tr>
<tr>
<td></td>
<td>● Financial obligations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>*</td>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

Source: (IMF, 2017[10]) based on information provided by the Bulgarian authorities.

Concerning mechanisms for monitoring SOEs’ performance, most SOEs report to their respective line ministries on the implementation of approved “business programmes” containing specific performance indicators such as profitability, productivity, sales volume, profits or loss reduction, new markets, use of facilities, investments, etc. Business programmes are usually prepared by the management teams of SOEs and then approved by the relevant line minister or Municipality Council for a duration of 3-5 years. They act as a mechanism for encouraging positive performance results from the management body, whose remuneration and contract duration often depend on performance. An overview of the contents of the business programme of Bulgaricum, an SOE in the portfolio of the State Consolidation Company under the remit of the Ministry of Economy, is provided in Annex C as an example. Additional illustrative information on SOEs’ performance, in the form of financial data for select Bulgarian SOEs, is provided in Annex D.
2.5. Evolution of the SOE sector: a historical perspective

Following the transition from a planned to a market economy that began in 1989, Bulgaria – along with other Eastern Bloc countries – undertook a series of important economic and social reforms. Central to this transition was the privatisation process, which for many post-socialist countries was expected to put an end to the inefficiencies associated with central planning. Bulgaria’s transition was, however, marked by several difficulties which resulted in a general lack of public support for market-driven reforms and ultimately a slower privatisation process than in neighbouring countries (EBRD, 1996[20]).

The privatisation process started in 1992 with the enactment of the Law on the Transformation and Privatisation of State-Owned and Municipal Enterprises and the establishment of a state Privatisation Agency. The law divided SOEs into three categories depending on their value. The privatisation of the largest enterprises (worth over 10 000 current BGN or 5 000 EUR and falling into the second and third categories) was to be carried out by the Privatisation Agency, while the privatisation of the smallest SOEs (those falling into the first category) was to be entrusted to line ministries (PPCA, n.d.[21]). The first transaction took place in 1993, but transaction volumes remained very low until 1996-97, mostly due to the poor financial conditions of these enterprises. Most of the SOEs slated for privatisation were unprofitable and had acquired considerable debt (most notably non-collaterised or insufficiently collaterised loans from the Bulgarian National Bank) (Andronova Vincelette, 2001[22]). Ultimately, the lack of adequate bankruptcy regulations and the accumulation of non-serviced debt contributed to the Bulgarian financial collapse in 1996.

The situation improved significantly with the introduction of structural stabilisation reforms, including the establishment of a currency board in 1997. Ultimately, the financial and economic crisis of 1996 served as a trigger to launch a mass privatisation programme, whereby the ownership of many SOEs was transferred to citizens through investment vouchers.6 The process was mainly carried out by the Centre for Mass Privatisation, an independent entity in charge of the implementation of the programme. In total, shares of 1 050 enterprises were offered for sale, corresponding to 15% of total SOE assets and approximately 22% of total state-owned assets slated for privatisation (PPCA, n.d.[21]). A second wave of mass privatisation was launched in 1999, offering 12.5 million shares from 547 enterprises for sale (IMF, 2001[23]). This is when the privatisation process hit a record high of approximately 17% of state-owned assets going to private hands.
In 2002, a new Privatisation and Post-Privatisation Control Act was adopted under which the functions of privatisation and post-privatisation control were separated. The whole activity regarding the sale of state interest in the enterprises was exclusively entrusted to the Privatisation Agency (with the exception of municipal property, to be administered by Municipal Councils) while the responsibility of post privatisation control was entrusted to the Post-Privatisation Control Agency, an independent agency reporting to the Council of Ministers (PPCA, n.d.[21]). These two agencies were later merged into one single entity in 2010 (Box 2).

The Privatisation and Post-Privatisation Control Act also introduced for the first time a list of SOEs not subject to privatisation. The list has been amended several times over the years and currently comprises 177 SOEs (see Annex B for the full list), operating in very diverse sectors of the economy (e.g. water utilities, hospitals, ports, etc.). Amendments and supplements to secondary legislation in 2003 led to an acceleration of the privatisation process through broader use of the Bulgarian Stock Exchange mechanism by holding unattended public auctions, centralised public auctions and public offerings. By the time the new Privatisation and Post-privatisation Control Act came into force, only 46 sales had been made through public offering of share packages at BSE.
Box 2. The Privatisation and Post-Privatisation Control Agency

The Privatisation and Post-Privatisation Control Agency (PPCA) was established by the Bulgarian Republic in 2010 by merging the Privatisation Agency with the Post-Privatisation Control Agency. The PPCA is supervised by the Council of Ministers, and its budget is provided by the state. Its main functions are defined by the Privatisation and Post-Privatisation Control Act and mainly consist of implementing privatisation policy; supervising the concluded privatisation contracts; and conducting planned and extraordinary inspections of certain concession contracts (as per the Concession Act, promulgated in 2017).

In addition to listing shares on the stock exchange, privatisation methods include public tenders and public auctions (attended or unattended). The distribution of proceeds from the privatisation of state-owned assets follows specific procedures established in Article 8 of the Privatisation and Post-Privatisation Control Act. Revenues can go to, amongst others: a) the central budget, predominantly to the State Fund for Guaranteeing the Stability of the State Pension System; b) the account of the privatised corporation, with or without a resolution of the PPCA and after consultation with the sole owner of the capital (i.e. line ministry or Council of Ministers) or c) the budget of the PPCA, depending on the nature of the cash proceeds.

Starting October 2019, the PPCA will be entrusted with the function of a state ownership coordination unit and renamed Public Enterprises and Control Agency (PECA). The new functions of the agency are described in the Law on Public Enterprises (of 8 October 2019) [they are listed in section 6.3 – Part I of this document] and will be further detailed in its Rules of Procedure (to be adopted three months after the entry into force of the Law).

*Note: The Post-Privatisation Control Act and other relevant laws and regulations will be amended accordingly.

*Source: PPCA, 2018; and submissions from the Bulgarian authorities.

For the past two decades, the trend has been to reduce state participation in SOEs through privatisation (and when necessary, liquidation) of enterprises as well as through the awarding of concessions. As a result, the number of SOEs has been reduced dramatically in the last two decades. The last decade, however, has witnessed relatively low privatisation volumes (Table 4). According to data published by the PPCA, as of end December 2017, the shares and parts of 5281 SOEs had been sold since 1992 – that is, 2399 whole SOEs and 2342 separate units, representing 98% of total SOEs originally slated for privatisation. With some exceptions (e.g. the Fund Manager of Financial Instruments, incorporated in 2015), there have been no new SOEs established in recent years. According to the Bulgarian authorities, limited resources for carrying out privatisations, coupled with a lack of investor interest for the remaining SOEs, has recently prompted the Bulgarian Government to draft a bill requiring parliamentary approval for future privatisations of SOEs and their subsidiaries (including the sale of private public properties by regional governors), thus lifting this right from the Privatisation and Post-Privatisation Control Agency. Many leading politicians in Bulgaria reportedly believe that Bulgaria’s privatisation potential has been exhausted.
### Table 4. Privatisation: Sales of shares of companies with more than 50% state participation in the capital (2008-2018)

<table>
<thead>
<tr>
<th>Company</th>
<th>Date of privatisation</th>
<th>Buyer</th>
<th>State share sold (%)</th>
<th>Contracted payments (in USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Cash</td>
</tr>
<tr>
<td>1</td>
<td>&quot;Agroplasment and trade&quot; EAD, Pleven</td>
<td>28-03-2008</td>
<td>&quot;Aladin&quot; EOOD, Sofia</td>
<td>100</td>
</tr>
<tr>
<td>2</td>
<td>&quot;Hopromags&quot; EOOD, Vidin</td>
<td>01-04-2008</td>
<td>&quot;VESTID INTERESTS&quot; EOOD, Vidin</td>
<td>100</td>
</tr>
<tr>
<td>3</td>
<td>&quot;BALKANKAR-ZFI&quot; EAD, Breznik</td>
<td>07-04-2008</td>
<td>&quot;ZSI&quot; OOD, Breznik</td>
<td>67</td>
</tr>
<tr>
<td>4</td>
<td>&quot;Navigation Maritime Bulgare&quot; EAD, Varna</td>
<td>06-08-2008</td>
<td>&quot;K G Maritime Shipping&quot; AD, Sofia</td>
<td>70</td>
</tr>
<tr>
<td>5</td>
<td>&quot;TPP Bobov dol&quot; EAD, Kustendil</td>
<td>01-09-2008</td>
<td>&quot;Consortium Energy MK&quot; AD, Sofia</td>
<td>100</td>
</tr>
<tr>
<td>6</td>
<td>&quot;Center for new goods and fashion&quot; EOOD, Sofia</td>
<td>07-01-2009</td>
<td>Iovka Koleva Tomova, Sofia</td>
<td>100</td>
</tr>
<tr>
<td>7</td>
<td>&quot;Bulgartabac holding&quot; AD, Sofia</td>
<td>12-09-2011</td>
<td>&quot;BT Invest GmbH&quot;, Austria</td>
<td>79.83</td>
</tr>
<tr>
<td>8</td>
<td>&quot;Industrial Building Holding&quot; EAD, Sofia</td>
<td>19-09-2011</td>
<td>&quot;Vodstroi 98&quot; AD, Sofia</td>
<td>100</td>
</tr>
<tr>
<td>9</td>
<td>&quot;Technoeexportstroy &quot; EAD, Sofia</td>
<td>05-09-2012</td>
<td>&quot;Engineering&quot; OOD, Sofia</td>
<td>100</td>
</tr>
<tr>
<td>10</td>
<td>&quot;Atur&quot; EOOD, Sofia</td>
<td>28-11-2012</td>
<td>Sergei Fedev Chaushev, Dospat</td>
<td>100</td>
</tr>
<tr>
<td>11</td>
<td>&quot;Ira - commercial&quot; EOOD, Burgas</td>
<td>04-12-2012</td>
<td>&quot;Ira - commercial - 5&quot; AD, Burgas</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: Conversion to USD based on a 2017 average exchange rate of 1.735 BGN per USD.
3. Legal and regulatory environment

3.1. Main laws and regulations on corporate governance

3.1.1. Commerce Act

The normative and legal corporate framework in Bulgaria is rooted in the Commerce Act (last amended in 2017) which applies to all companies (state- or privately owned) and establishes certain corporate governance requirements, for example concerning the respective rights and responsibilities of shareholders, the board of directors and management. The Commerce Act allows for different legal forms to perform business activities, the most common ones being limited liability companies and joint-stock companies. The Commerce Act also allows for joint-stock companies to be overseen by either a one-tier or two-tier board of directors, although the law prescribes the type of board structure for certain types of regulated businesses. The Commerce Act has been amended extensively over time with a view, among others, towards harmonising the Bulgarian legal framework with the EU acquis communautaire.

Several corporate governance provisions have been introduced into the Commerce Act over the last decade, including on: a) strengthening shareholder rights; b) defining the rights and obligations of (supervisory) board members; and c) improving disclosure. While these provisions lay a good foundation, their efficiency in practice is reportedly not very high. This is the case especially among non-listed companies. More details on provisions of the Commerce Act applicable to SOEs are provided in section 3.3.2.

3.1.2. Laws and regulations on capital markets

Additional corporate governance requirements, applicable to listed companies, can be found in the legislation regulating the capital markets, which includes the Public Offering of Securities Act (POSA), promulgated in 1999 and last amended in 2017) and the Markets in Financial Instruments Act (promulgated in 2007 and last amended in 2017) (The Law Reviews, 2017[24]). Both have been harmonised with EU law over the last decade. The POSA contains specific regulations applicable to publicly-traded joint-stock companies and securities. It was recently amended as part of the strategy for development of the capital market in Bulgaria, to include clarifications on the issuance, trading and restructuring of bonds, as well as on the procedure for convening general shareholders’ meetings, amongst other aspects (The Law Reviews, 2017[24]).

The Market in Financial Instruments Act (MiFIA) is the main law regulating the activities of investment intermediaries and securities markets in Bulgaria. A new law building on the existing MiFIA entered into force in February 2018, transposing the requirements of the EU Markets in Financial Instruments Directive (MiFID II) into Bulgarian Law. The new MiFIA aims at increasing investor protection and market transparency, while preventing unregulated trading in financial instruments. The main changes to the legal framework include: a) more stringent requirements for investment companies (with regards to board members’ qualifications and transparency, among others); b) extended regulatory and
supervisory powers of the FSC; c) additional requirements for performing algorithmic trading on the part of investment firms; and d) the establishment of a “growth market”, a new type of multilateral trading system for small- and medium-sized enterprises offering lower fees and regulatory requirements (The Law Reviews, 2017[24]).

Other relevant laws and regulations on capital markets include the Measures against Market Abuse with Financial Instruments Act (promulgated and last amended in 2016), the Financial Supervision Commission Act (promulgated in 2003 and last amended in 2017) and the Rules and Regulations of the BSE (The Law Reviews, 2017[24]).

3.1.3. National Corporate Governance Code

The Bulgarian National Corporate Governance Code (NCGC) was adopted in October 2007 and amended in 2016, drawing on the G20/OECD Principles of Corporate Governance. The code was developed by a task force comprising the BSE, the FSC, business representatives, government and civil society organisations and the academic community. It is implemented on a comply-or-explain basis and applies specifically to all issuers listed on the BSE Main Market, but not to those listed on the Alternative Market.

Pursuant to the Public Offering of Securities Act, all listed SOEs have to comply with the requirements of either the Bulgarian NCGC or other relevant international code. SOEs and non-listed companies – especially those that are planning to go public – are also advised to comply with the code, although there is no obligation for them to do so (Georgiev, Todorov & Co, 2011[25]). The BSE has established an index (CGIX) comprising the seven companies listed on the exchange with the best corporate governance. A National Corporate Governance Commission was created in 2009 as a permanent body to monitor implementation of the code and disseminate good practices. However, no monitoring reports has been issued so far (EBRD, 2017[16]).

3.1.4. Laws and regulations on banking institutions

The corporate governance framework for banking institutions is set forth in the Commerce Act, the Law on Credit Institutions (LCI) and specific regulations and ordinances issued by the Bulgarian National Bank. The LCI (promulgated in 2006 and last amended in 2018), in particular, has detailed provisions on risk management and internal controls to complement the existing regulatory framework. In the case of listed banks, additional requirements are laid out in the POSA and Listing Rules of the BSE. The law creating the state-owned Bulgarian Development Bank (BDB) also contains specific corporate governance requirements including on board composition and ownership structure (World bank, 2017[26]).

Finally, relevant provisions can also be found in the Rules of the Commercial Registry and the by-laws (statutes) and statutory acts of individual companies. In particular, by-laws usually contain provisions regarding the scope of activity and specific types of shares and rights of the company, amongst other aspects. The Rules and Procedures (Charter) of the board can also – when they exist – regulate aspects relative to the board and management of a company (Georgiev, Todorov & Co, 2011[25]).

3.2. Legal forms of Bulgarian SOEs

The majority of Bulgaria’s 221 SOEs are incorporated as joint-stock companies (55%, by number of enterprises), 37% as limited liability companies and 8% as state enterprises (Figure 8).
The Bulgarian authorities did not provide disaggregated data on SOE value according to legal forms, which would be useful to obtain a more complete overview of the relative economic importance of fully-corporatised and state enterprises. However, disaggregated data on employment was made available (although based on the NSI’s total of 350 SOEs) showing that the majority of SOEs as measured by employment are joint-stock companies (representing 57% of total labour in centrally-owned SOEs), followed by other types of SOEs (23%) and LLCs (20%). As mentioned, other types of SOEs include entities which are not considered SOEs by the Ministry of Finance, such as government agencies generating revenues from selling goods and services (i.e. quasi-corporations).

Figure 8. Legal forms of Bulgaria’s SOEs (by number of enterprises), 2016

According to the Bulgarian authorities, most of Bulgaria’s 17 central state enterprises perform primarily public policy functions. However, a few of them do engage in commercial activities and can be considered economically important. These include notably: the National Railway Infrastructure Company and two infrastructure construction and repair companies, all under the Ministry of Transport, Information Technology and Communications; and six forestry enterprises under the Ministry of Agriculture. Table 5 provides a list of Bulgaria’s 17 state enterprises SOEs, together with their responsible ownership ministry and main activities.
Table 5. List of state enterprises (statutory SOEs) in Bulgaria

<table>
<thead>
<tr>
<th>Responsible ownership ministry</th>
<th>Name of state enterprise</th>
<th>Main activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Energy</td>
<td>State Enterprise Radioactive Waste</td>
<td>Decommissioning of nuclear power plants</td>
</tr>
<tr>
<td>Ministry of Transport, IT and Communications</td>
<td>State Enterprise Port Infrastructure</td>
<td>Construction of buildings and facilities</td>
</tr>
<tr>
<td></td>
<td>State Enterprise Communications Construction and Renovation</td>
<td>Construction of communications infrastructure (e.g. telephone cables)</td>
</tr>
<tr>
<td></td>
<td>State Enterprise Transport Construction and Rehabilitation</td>
<td>Construction and repair of railway tracks</td>
</tr>
<tr>
<td></td>
<td>Bulgarian Air Traffic Services Authority (BULATSA)</td>
<td>Provision of air navigation services in Bulgarian airspace</td>
</tr>
<tr>
<td></td>
<td>National Railway Infrastructure Company</td>
<td>Running the Bulgarian railway infrastructure network</td>
</tr>
<tr>
<td>Ministry of Labour and Social Policy</td>
<td>Bulgarian-German Vocational Training Centre State Enterprise</td>
<td>Providing vocational training for unemployed and employed adults</td>
</tr>
<tr>
<td>Ministry of Youth and Sports</td>
<td>Bulgarian Toto (Bulgarian Sports Totalizator)</td>
<td>Gambling/lottery</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Southwest State Enterprise – Blagoevgrad</td>
<td>Forestry</td>
</tr>
<tr>
<td></td>
<td>South East State Enterprise – Sliven</td>
<td>Forestry</td>
</tr>
<tr>
<td></td>
<td>South Central State Enterprise - Smolyan</td>
<td>Forestry</td>
</tr>
<tr>
<td></td>
<td>Northwestern State Enterprise - Vratsa</td>
<td>Forestry</td>
</tr>
<tr>
<td></td>
<td>Northeastern State Enterprise - Shumen</td>
<td>Forestry</td>
</tr>
<tr>
<td></td>
<td>North Central State Enterprise - Gabrovo</td>
<td>Forestry</td>
</tr>
<tr>
<td></td>
<td>Kabiuk Horse Farm</td>
<td>Animal husbandry</td>
</tr>
<tr>
<td>Ministry of Justice</td>
<td>State Enterprise Prison Service Fund</td>
<td>Construction and repair of penitentiary facilities</td>
</tr>
<tr>
<td>Ministry of Environment and Water</td>
<td>Enterprise for Management of Environmental Protection Activities</td>
<td>Support for environmental protection and conservation projects</td>
</tr>
</tbody>
</table>

Source: Information provided by the Bulgarian authorities, supplemented with information obtained on enterprise websites.

3.3. Legal and regulatory framework applicable to SOEs

3.3.1. General legal framework

According to the Bulgarian authorities, SOEs do not have any special legal privileges (including sovereign immunity to lawsuits) and most SOEs do not benefit from exemptions to taxation, competition, environmental and/or zoning regulations. Only one state enterprise (the Prison Service Fund) is reportedly exempted partially from taxation on its income, but it is still subject to other taxes including VAT. One important exemption concerning bankruptcy proceedings exists for state enterprises and state-owned monopolies. Article 612 of the Commerce Act establishes that “no bankruptcy proceedings shall be initiated for SOEs exercising a state monopoly or established by a special law” (the latter referring to state enterprises). These enterprises’ insolvency procedures and relationships are to be “arranged by a separate law”.

Until recently, SOEs (with the exception of listed SOEs) were not obliged to comply with the NCGC or any other corporate governance requirement, with the exception of those laid out in the Commerce Act. Since October 2019, the regulatory framework applicable to SOEs in Bulgaria include provisions of the new “Law on Public Enterprises” which sets corporate governance requirements to all SOEs, including those operating at the municipality level. [More information on the new Law can be found in section 6.3 (part I)
Previously, SOEs in Bulgaria were governed by a set of primary and secondary legislation covering state property and ownership rights, which includes sectoral legislation, in addition to internal line ministry and company rules and regulations, all of which made the legal and regulatory framework applicable to SOEs quite fragmented. Some degree of coordination of actions and policies among sectoral ministries was, however, provided for by the state ownership regulations for fully corporatised SOEs (“Regulations on the procedures for exercising the rights of the state in Companies with state participation in the capital”, adopted with Decree of the Council of Ministers №112 of 23.05.2003”), which include certain mandatory provisions for all SOEs, for example on the composition of boards, management competencies, determination of management bodies’ remuneration, and special rules for the conclusion of certain types of contracts (see section 3.3.3 for more details).

In addition, public law provisions applicable to SOEs include the Public Procurement Act, the Civil Servants Act, and the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act, all of which apply to representatives of the state or municipality in the management or supervisory bodies of any enterprise wherein the state or municipality holds an interest in the capital. Most of these documents are expected to be amended to reflect specific dispositions of the new Law on Public Enterprises.

The Civil Servants Act (promulgated in 1999 and last amended in 2016) sets out the rights and responsibilities of civil servants in public institutions including SOEs (i.e. board members representing the state). It aims to define procedures for recruiting high-level civil servants and de-politicise the public service. The aforementioned state ownership regulations for fully corporatised SOEs regulate the procedure for exercising the rights of the state on stocks or shares of companies. They contain provisions on the formation, transformation and dissolution of companies with state participation in the capital, as well as on the competence and composition of the bodies of sole-owner companies with state majority participation in the capital. Finally, the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (promulgated in 2018), also stipulates certain relevant responsibilities of public officials, including the submission of declarations of assets and interests. It also establishes an anti-corruption state body, the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission, which has the authority to initiate proceedings against public officials.

The Public Sector Internal Audit Act (promulgated in 2006 and last amended in 2017) regulates the nature, principles and scope of internal audit in public sector organisations, including SOEs. It specifically defines those organisations that must have their own internal audit function and those for which it is optional. Other relevant laws in this field include the Public Sector Financial Management and Control Act and the Public Sector Financial Inspection Act, which assign the Ministry of Finance responsibility for coordinating and harmonising financial management and control. All these bills were amended in 2006 to harmonise the Bulgarian public sector audit and control legislation with EU law (Murphy, 2009[27]). The sections that follow provide more details on the content of individual laws and regulations applicable to SOEs.

### 3.3.2. Main individual laws applicable to SOEs

**Commerce Act**

Article 62 of the Commerce Act stipulates that state-owned enterprises must be formed as “single-owner limited liability companies”, “single-shareholder joint-stock companies”, or state enterprises (to be established via separate law). Although this would appear to limit
the national definition of SOEs to only wholly-owned enterprises, nothing in the Commerce Act explicitly prohibits the inclusion of other shareholders in the capital of a state-owned JSC or LLC at a later date, after the formation stage. Additionally, in practice, the Bulgarian state holds majority shareholdings in several commercial enterprises, which would by OECD definitions be considered SOEs. Why the Bulgarian authorities have chosen to limit the national definition of SOEs to wholly state-owned enterprises is unclear, particularly since no separate laws or regulations establish any requirements specifically applicable only to SOEs as defined in the Commerce Act. In fact, several state ownership regulations establish rules applicable specifically to companies with at least 50% state ownership. In any event, for SOEs that do in fact operate as single-owner companies, the Commerce Act provides that the responsibilities normally granted to the general shareholders’ meeting can be undertaken directly by the single owner (in the case of an SOE, the line minister). In practice, this means that line ministers can make significant corporate decisions – among others, CEO appointment (in the case of single-owner LLCs), dismissal and remuneration, external auditor selection and determination of dividend levels – without the same record-keeping requirements that are placed on the general shareholders’ meeting in companies with more than one shareholder. Table 6 provides an overview of the respective responsibilities of SOEs’ governance organs as laid out in the Commerce Act. The basic corporate governance requirements applicable to SOEs and established via either the Commerce Act or, for state enterprises, enterprise-specific rules, can be summarised as follows.

**Limited liability companies** can be formed by one or more persons who are liable to the extent of their contribution to the capital. Company capital must amount to at least BGN 2 (USD 1.18). Limited liability companies must establish a general shareholders’ meeting and have a managing director. There is no requirement that they be overseen by a board of directors. If the company has over 50 employees, then the CEO and employees take part in the general shareholders’ meeting in an advisory capacity. Limited liability companies may, via their memorandum of association, decide to appoint a comptroller to supervise the observance of the memorandum of association.

**Joint-stock companies** have capital that is divided into shares and must amount to at least BGN 50 000 (USD 29 600). These companies are liable to creditors in the amount of their assets (property). Joint-stock companies must establish either a one-tier (unitary) board structure or a two-tier (supervisory board and management board) structure. The articles of association of joint-stock companies must contain information on the company’s governance organs, their mandates and their members, as well as any advantages granted to the founders. Board members (regardless of the board structure in place) are elected for a maximum term limit of five years, without restrictions to re-election, and may be dismissed before the expiration of the term for which they have been elected. In a one-tier system, the general shareholders’ meeting elects members of the unitary board. In a two-tier system, the general shareholders’ meeting elects members of the supervisory board and the supervisory board elects members of the management board. In two-tier boards, the relationship between the company and any member of the management board (presumably including the CEO) is arranged by a management contract concluded on behalf of the company through the chairman of the supervisory board.

**State enterprises** are established via an act of parliament and are not regulated by the Commerce Act (although they are referenced in the section of the act that defines SOEs). Their governance bodies are the responsible minister, a unitary (management) board and an executive director (CEO). Specific governance arrangements are set forth in each SOE’s respective “Rules of Organisation and Procedure”, issued by the responsible minister.
Importantly, state enterprises cannot be privatised or declared bankrupt. Given that state enterprises are established by an act of parliament, they may only be transformed into single-owner LLCs or JSCs through an act of parliament.\(^4\)

In addition to setting forth requirements for different companies’ governance organs – namely, the general shareholders’ meeting (or in the case of wholly-owned SOEs, the state shareholder), the board(s) of directors and the CEO – the Commerce Act also outlines the respective responsibilities of these governance organs for limited liability and joint-stock companies (summarised in Table 6). For state enterprises, the Commerce Act does not enumerate any explicit responsibilities accorded to the state, the board(s) of directors or the CEOs of state enterprises. Provisions in the Commerce Act applicable to fully corporatised SOEs are complemented by a Council of Ministers regulation setting out additional rules for SOEs, outlined in Box 3 in the following section.

**State Property Act**

The State Property Act regulates the acquisition, management and disposal of state property, including real estate. As per Article 2 of the law, state and municipal ownership may be public or private. In particular, public state property is defined as:

- The facilities and properties under Article 18[1] of Constitution of the Republic of Bulgaria designated by law as being exclusive state property; the facilities, properties and movable properties designated by law or by an act of the Council of Ministers as being public state property;
- Properties made available to agencies for discharging their duties;
- Properties of national significance designated to serve public needs of national importance by public use, determined by the Council of Ministers;
- Landed properties subject to a zoning plan, assigned for frontier examination posts, and the buildings erected on the said properties.

Public state property belongs exclusively to the Bulgarian state and includes notably underground resources, beaches, waters, forests and parks of national significance. Private state property is all other state property that is not defined by law as public property. Private state property can include, for example, moveable property such as cars, computers and furniture as well as immoveable property such as land and housing. The benefits and profits of public state property also constitute private property of the state.

Recently the Bulgarian President Rumen Radev vetoed provisions of the amendments to the State Property Act adopted by the 44th National Assembly on October 2018, arguing that the changes would create an opportunity for “stealth privatisation” of SOEs belonging to the “list of SOEs not subject to privatisation” (see Annex B).
### Table 6. Selected responsibilities of SOEs’ governance organs established by the Commerce Act

<table>
<thead>
<tr>
<th>Legal form</th>
<th>Sole owner of capital</th>
<th>General meeting</th>
<th>Unitary board (one-tier)</th>
<th>Supervisory board (two-tier)</th>
<th>Management board (two-tier)</th>
<th>CEO/managing director</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Limited liability company</strong></td>
<td>In a single-member LLC:</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>Relationship between CEO and company is arranged by a management contract</td>
</tr>
<tr>
<td></td>
<td>• Manage and represent the company, either personally or (if sole owner is a juridical person) through a managing director</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>Manage the business of the company</td>
</tr>
<tr>
<td></td>
<td>• Decide on the issues within the powers of the general meeting</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>Ensure proper bookkeeping</td>
</tr>
<tr>
<td></td>
<td>• Appoint the comptroller</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>Is financially liable for any damages caused to the company</td>
</tr>
<tr>
<td></td>
<td>• Record certain decisions in the Commercial Register</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>In a single-shareholder JSC:</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Decide on the issues within the powers of the general meeting</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Decide on certain transactions enumerated in the Commerce Act (e.g. disposal of assets exceeding one half the company value)</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Maintain written record of decisions</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Approve annual financial statement</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Select and dismiss members of the supervisory or one-tier board</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Select remuneration of non-managing members of supervisory or one-tier board</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Appoint and dismiss auditors</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Dismiss board members</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Relationship between company and executive board members is arranged by a management contract</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Create annual financial statement and annual report</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Represent the company collectively or empower one of its members to do so</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Appoint and dismiss members of management board</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Approve management board’s rules of procedure</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td><strong>Joint-stock company</strong></td>
<td>In a single-shareholder JSC:</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>Create annual financial statement and annual report</td>
</tr>
<tr>
<td></td>
<td>• Decide on the issues within the powers of the general meeting</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>Represent the company collectively or empower one of its members to do so, subject to supervisory board approval</td>
</tr>
<tr>
<td></td>
<td>• Decide on certain transactions enumerated in the Commerce Act (e.g. disposal of assets exceeding one half the company value)</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>Report on its business to supervisory board at least once every three months</td>
</tr>
<tr>
<td></td>
<td>• Maintain written record of decisions</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>Assign the management of the company to one or more of its executive members and determine their remuneration</td>
</tr>
<tr>
<td></td>
<td>• Approve annual financial statement</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Select and dismiss members of the supervisory or one-tier board</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Select remuneration of non-managing members of supervisory or one-tier board</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Appoint and dismiss auditors</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Dismiss board members</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Relationship between company and supervisory board members is arranged by a contract if provided for in articles of association, approve certain transactions</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Create annual financial statement and annual report</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Represent the company collectively or empower one of its members to do so</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Appoint and dismiss members of management board</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Approve management board’s rules of procedure</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Assign the management of the company to one or more of its executive members and determine their remuneration</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Create annual financial statement and annual report</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Represent the company collectively or empower one of its members to do so</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Appoint and dismiss members of management board</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Approve management board’s rules of procedure</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Assign the management of the company to one or more of its executive members and determine their remuneration</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Relationship between CEO and company is arranged by a management contract</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Manage the business of the company</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Ensure proper bookkeeping</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Is financially liable for any damages caused to the company</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

For joint-stock companies, minutes of the decisions of the unitary, supervisory, or management board must be kept, including the vote of each member (Article 239 of the Commerce Act).

**State enterprise** | Not set forth in Commerce Act | N/A | Not set forth in Commerce Act | N/A | N/A | Not set forth in Commerce Act

Accountancy Act

The Accountancy Act regulates enterprises’ accounting practices, the content of financial statements and management reports, obligations for external audit and the related responsibilities of enterprise managers. For the purpose of the Act, “enterprises” are defined to include (among several other categories of enterprise) merchants and all “local legal entities other than merchants” as well as all “budget-funded enterprises”¹, which taken together comprises all SOEs. The Accountancy Act stipulates that the manager of the enterprise is responsible for preparing and publishing the financial statements and other reports required by the Act. The following aspects of the Act merit highlighting for general background and/or their specific relevance to the SOE sector:

- Four size categories of enterprises are established: micro, small, medium and large enterprises, based on their assets, revenue and number of employees. The category of public interest enterprises (Box 3) – which includes several SOEs identified by name or primary business activity in the Act – shall face the same requirements as large enterprises, with the exception of the requirements on accounting standards.

- Applicable accounting standards are established based on enterprise size and/or classification. In particular: micro, small, medium and large enterprises shall draw up financial statements in accordance with national accounting standards. Public interest enterprises (which, as already mentioned, includes some SOEs, notably the state-owned railway company, large energy companies and the water and sewerage companies) shall draw up financial statements in accordance with international accounting standards. Budget-funded enterprises shall keep their accounts in accordance with the requirements of the Public Finance Act.

- The financial statements of enterprises must include at least a balance sheet, income statement and notes (which can be in summary form for small enterprises).

- Enterprises that are controlled by the state or municipalities or “granted subsidies, preferential loans, government guarantees or other forms of state aid” may be required by the Ministry of Finance to prepare additional statements and information that differs in content or timing from the other requirements of the Accountancy Act.

- An independent external audit of financial statements is required for: public interest enterprises; medium and large enterprises; small enterprises that meet established size thresholds; medium and large groups of enterprises or groups that include at least one public interest enterprise; all LLCs and JSCs with shares. “Budget-funded enterprises” (which includes at least some SOEs) are exempt from the Act’s provision requiring an independent external audit.

- Enterprises shall submit their annual financial statements to the Commercial Register by 30 June of the year following the financial year.

- Enterprises shall draw up an annual management report. Certain public interest enterprises shall include in their management report a corporate governance statement in accordance with the Public Offering of Securities Act.

- Enterprises shall draw up a non-financial declaration describing policies regarding environmental and social issues, employees, human rights and anti-corruption.
Large and public interest enterprises operating in the mining, quarrying or forestry sectors shall publish annual reports on payments made to governments.

Fines are foreseen in case of violation by an enterprise manager of certain provisions of the Act.

**Box 3. Definition of Public-Interest Entities (PIEs)**

The Accountancy Act provides the following list of Public-Interest Entities:

- Entities whose transferrable securities are traded on the regulated market in a Member State of the EU (e.g. BSE; Sunny Beach)
- Credit institutions (e.g. Bulgarian Development Bank AD)
- Insurance and reinsurance companies (e.g. Bulgarian Agency for Export Insurance EAD)
- Pension insurance companies and the funds managed by them;
- Investment brokers which are large entities according to the AA;
- Collective investment schemes and management companies in accordance with the provisions of the Law on the Activities of Collective Investment Schemes and of Other Collective Investment Entities which are large entities in accordance with the AA;
- Financial institutions in accordance with the Law on Credit Institutions which are large entities in accordance with the AA;
- BDZ Holding EAD and its subsidiaries; the National Company Railway Infrastructure;
- Commercial companies whose main activity is the production and/or the transportation, and/or selling of electrical energy and/or thermal energy and which are large entities;
- Commercial companies whose main activity is the import and/or transport and/or distribution, and/or transit or natural gas and are large entities in accordance with the AA;
- Water supply and sewerage operators under Article 2, para 1 of the Law on the Regulation of the Water Supply and Sewerage Services which are medium or large entities.

3.3.3. **SOE-specific regulations on ownership and reporting**

*The Law on Public Enterprises (2019)*

The Bulgarian authorities recently adopted a new harmonised law on state ownership (“the Law on Public Enterprises”), which is expected to align Bulgaria’s state ownership practices with the standards of the SOE Guidelines [Box 4]. The new law, which received continued assistance from the OECD Secretariat, addresses the main vulnerabilities in state ownership practices identified in this review. It includes the following aspects:
Establishment of an ownership coordination unit to mitigate shortcomings associated with Bulgaria’s decentralised ownership arrangements (e.g. conflicts of interest and limited monitoring capacity).

Elaboration of an ownership policy and SOE objectives-setting mechanism;

Development of aggregate reporting to address gaps in accountability for SOEs’ performance, corporate governance and disclosure practices;

Introduction of a harmonised SOE board nomination process requiring a minimum proportion of independent directors; and

Corporatization of commercially-oriented statutory SOEs to level the playing field with private companies.

The new legislation applies to fully and majority-owned SOEs (including their subsidiaries) at the central level of government, with the exception of the Bulgarian Development Bank for which the laws and regulations on banking institutions apply. Stricter requirements may apply to “large SOEs” as defined in Chapter Two, Section I and II of the Accountancy Act. Municipal SOEs, on the other hand, are required to apply Chapters Two, Five, Six and Seven of the new law (referring to boards of directors, accounting, auditing and public disclosure).

**Box 4. Alignment of the Law on Public Enterprises with the SOE Guidelines’ main standards**

Although the Law on Public Enterprises will not address all of the ownership and corporate governance vulnerabilities affecting Bulgarian SOEs, it can be expected to establish a solid legislative foundation to implement Bulgaria’s most urgent related policy and institutional priorities, as identified in the SOE Review.

**Strengthening the state ownership function**

*Establishment of an ownership coordination unit.* The law foresees the establishment of an ownership coordination entity, the Public Enterprises and Control Agency, which will report to the Council of Ministers. This will help address what is currently a major departure from the SOE Guidelines, namely the fact that ownership rights in Bulgaria are highly decentralised and often simultaneously exercised by line ministries with sectoral regulatory functions. The law also outlines the primary foreseen responsibilities of the state (i.e. the Council of Ministers) as shareholder, which are broadly aligned with those set forth in the SOE Guidelines and include notably: being represented at shareholders’ meetings and setting up reporting systems to monitor and assess SOEs’ performance.

*Elaboration of an ownership policy.* The law foresees the development and recurrent review of a national, publicly disclosed, state ownership policy outlining the rationales for state ownership and defining the roles and responsibilities of state bodies involved in its implementation. The law also makes reference to the need for SOEs to maximise value for society, with clear reference to an efficient allocation of resources in the delivery of public services or the fulfilment of public policy obligations, amongst other aspects.

*Clarification of SOEs’ financial and non-financial performance objectives.* The law foresees the development of enterprise-specific financial and non-financial performance objectives (including public service obligations), which can be considered a step forward
in implementing the SOE Guidelines’ recommendation that the state define, disclose and regularly review the rationales for owning individual SOEs.

**Maintaining a level-playing field with private companies**

*Streamlining SOEs’ legal and corporate forms.* The law foresees a number of steps to level the playing field between SOEs and private companies, including the gradual phasing out of commercially-oriented and large “state enterprises” through their conversion to joint-stock companies, amongst other aspects. It also establishes a number of principles consistent with ensuring a level playing field between SOEs and private companies, including by explicitly prohibiting unfair competition and abuses of monopoly. This will enshrine in law some important basic principles related to SOEs’ competitive position in the marketplace, which will then need to be implemented in practice to achieve the intended outcomes of the SOE Guidelines in this domain.

**Improving transparency and disclosure practices**

*Development of aggregate reporting.* The most significant advancement in the domain of disclosure and transparency is the foreseen publication of an aggregate report on SOEs in Bulgaria by the Public Enterprises and Control Agency. The development of aggregate reporting will constitute an important step forward in strengthening the accountability of the state as a shareholder. The law’s provisions concerning disclosure at the enterprise level are broadly aligned with the SOE Guidelines’ standards in this domain. Importantly, a provision is included calling for all SOEs’ financial statements to be subject to an independent audit, which is consistent with the SOE Guidelines.

**Strengthening board autonomy and independence**

*Establishment of professional, independent and empowered boards of directors.* The law establishes several important foundational elements to better align SOE boards’ operations with the standards of the SOE Guidelines, notably regarding their responsibilities, composition, nomination procedures and operational practices. The law notably calls for all SOE board members to act in good faith in the best interests of the enterprise and its shareholders and establishes that state representatives have the same obligations and rights as other board members. It also establishes minimum requirements for independent members on SOE boards and bars acting politicians from serving as SOE board members. Finally, it foresees the development of a competitive nomination process for SOE board members.

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The State Ownership Regulations on the Procedures for Exercising the Rights of the State in Companies with State Participation in the Capital

*Note:* Both Decree 112 and Decree 114 described below are expected to be repealed in 2020, following the adoption of the Implementing Rules of the Law on Public Enterprises by the Council of Ministers. Until then, they will continue to apply with the exception of provisions contradicting those of the Law on Public Enterprises. They constitute nevertheless important legislations to understand the legislative and institutional framework under which SOEs operated in Bulgaria until October 2019.

Decree 112 of the Council of Ministers on state ownership rights for fully corporatised SOEs (the “Regulations”), promulgated in May 2003, sets forth the ownership responsibilities of the state vis-à-vis fully corporatised SOEs. In some cases, the regulations
reiterate relevant provisions of the Commerce Act applicable to limited liability and joint-stock companies, for example concerning shareholder responsibilities. They also establish a number of rules for situations not addressed in the Commerce Act, for example concerning public procurement procedures, the admission of new partners in an SOE’s capital, details on the contents of management contracts and the determination of SOE board member remuneration. Box 5 provides a synthesis overview of their content.

Box 5. Main content of the State Ownership Regulations for Fully Corporatised SOEs

Section II. Formation and dissolution of fully corporatised SOEs

- The Council of Ministers may establish single-member limited liability companies (LLCs) and single-shareholder joint-stock companies (JSCs) with state participation in the capital under the Commerce Act. The Council of Ministers may also make decisions on the participation of the state in existing companies with these legal forms.

Section III. Governance bodies of fully corporatised SOEs

- Recalls the required governance bodies of state-owned limited liability and joint-stock companies, as established in the Commerce Act. These are, for LLCs: the sole owner and managing director(s) and for JSCs: the sole owner and either a unitary board of directors (in a one-tier system) or the supervisory and management boards (in a two-tier system).
- Establishes that the relevant sectoral Minister shall represent the state in the general shareholders’ meetings.

Section IV. Roles of governance bodies in fully corporatised SOEs

- Recalls the responsibilities of the state shareholder in state-owned LLCs and JSCs, as established in the Commerce Act’s provisions outlining the responsibilities of the general shareholders’ meeting. For LLCs, the state shareholder shall notably: decide on the distribution of profit; select, dismiss and determine the remuneration of the managing director; appoint and determine the remuneration of a comptroller; and select and dismiss the external auditor. For JSCs, the state shareholder shall notably: decide on the distribution of profit; select, dismiss and determine the remuneration of members of the unitary board (one-tier system) or supervisory board (two-tier system); select and dismiss the external auditor; approve annual financial statements after certification by the external auditor;

Section V. Special rules for the conclusion of certain types of contracts

- Establishes that when concluding contracts for financial services with credit or financial institutions, state majority-owned companies shall ensure compliance with dedicated rules on the selection of contractors for the provision of financial services. These rules are provided in Annex 3 of the Regulation and notably establish criteria for ensuring that the selection process is characterised by transparency, fair competition, non-discrimination and accountability. This section also establishes rules concerning, among others: real estate rental; disposal of long-term assets, acquisition or disposal of shares in companies; and signature of credit agreements.
Section Va. Special rules for admitting new partners into an SOE’s capital

- Establishes rules and procedures for admitting new partners into an SOE’s capital through the issuance of new shares. This notably requires a decision of the sole owner of capital (or of the general shareholders’ meeting). The process shall be carried out after conducting a competition, the procedures of which are laid out in the Regulations and include the establishment of a selection board comprising representatives of the Council of Ministers, the Ministry of Economy, the Ministry of Finance, the relevant sectoral ministry as well as professional experts in the fields of law, economics and the relevant industry.

Section VI. Board composition in fully corporatised SOEs

- Establishes minimum criteria for serving on the boards, or as managing directors, of SOEs, with different criteria depending on the type of company. It notably prohibits several categories of politically-affiliated individuals from serving as managing directors of state-owned LLCs or on the boards of state-owned JSCs (includes notably members of Parliament, ministers and in the case of LLCs deputy-ministers, district and deputy governors, mayors and deputy mayors, the chairs of government agencies, etc.) Board membership (of the supervisory or single-tier board, as relevant) is limited to a maximum of seven members.

Section VII. Obligations of management and control bodies

- Requires quarterly reporting to the state shareholder from management and control bodies regarding their activities, the company’s financial and economic condition, as well as any issues and foreseen measures to address them.

Section VIII. Arrangements for management and control of fully-corporatised SOEs

- Outlines the use and contents of management contracts, to be signed between board members and the state shareholder, for periods not exceeding three years. The contracts are to specify, among others, the requirement for board members to draw up business programmes including key economic indicators, as well as remuneration details and grounds for termination of the contract.

Section IX. Remuneration of executive and supervisory board members

- Establishes detailed references for calculating board member remuneration levels, based on the SOE’s fixed asset value, number of staff and profitability. Board member bonuses are foreseen if there is an increase in accounting profit and no overdue liabilities or uncovered losses from the previous year.

Section X. Registration of fully corporatised SOEs

- Establishes the required contents of SOE registrations, which must be kept on file in the relevant sectoral ministries.

Source: “Regulations on the procedures for exercising the rights of the state in companies with state participation in capital”, adopted by Decree of the Council of Ministers № 112 of 23.05.2003.
Council of Ministers Decree on Monitoring the Financial Position of SOEs

Decree 114 on Monitoring SOEs’ Financial Position (the full title is “Decree 114 of the Council of Ministers on the monitoring and control of the financial position of state-owned enterprises and companies with state participation in the capital in excess of 50% and of the companies they control”), promulgated in June 2010, establishes requirements for the content and timing of regular reporting from SOEs to line ministries, from line ministries to the Ministry of Finance and from the Ministry of Finance to the general public (through its official website).

Many of the Decree’s provisions on reporting appear to mirror requirements established separately for enterprises (including at least some SOEs) via the Accountancy Act, although the Accountancy Act focuses mostly on the standards and content of corporate reporting, whereas the Decree focuses more on the timeline for reporting this information to the relevant public bodies.

The Decree first establishes that all line ministries responsible for wholly- or majority-owned SOEs must submit a list of these enterprises to the Ministry of Finance, to be updated in case of partial privatisation (where the state’s share drops below 50%). It then establishes that all SOEs must electronically submit quarterly and annual financial statements, prepared in accordance with the Accountancy Act, to their respective line ministries (more specifically, “the ministers and heads of respective institutions according to their sectoral competence”). These financial statements are to be accompanied by an activity analysis and a financial position analysis. Line ministries are then required to submit these reports to the Ministry of Finance, which shall publish them on its official website within three days of receipt. Finally, the Decree establishes that its reporting requirements are to be included in the management contracts signed between line ministries and SOE management. According to the Bulgarian authorities, the majority of line ministries and SOEs comply with these reporting and disclosure requirements. The Ministry of Finance’s website reproduces the information submitted by line ministries, including enterprise-specific financial statements and, where available, annual reports.

3.3.4. Applicability of market regulation to SOEs

Based on the laws and regulations examined for this review, Bulgarian SOEs – with the exception of those established as state enterprises, which cannot be subject to court injunctions or bankruptcy proceedings – do not appear to benefit from any overarching exemptions from the laws and regulations applicable to private companies. These include notably: the Law on Protection of Competition, enforced by the Commission on Protection of Competition (CPC); the Law on Public Procurement, enforced by the Public Procurement Agency under the Ministry of Finance (and partly also by other state bodies that undertake ex-post control); and sectoral regulation enforced by independent sectoral regulators established notably in the energy, water and communications (including postal services) sectors. The following highlights some key content of these laws and provides examples of their application to SOEs, with the purpose of highlighting instances where enforcement agencies and independent regulators have contributed to greater separation between the state’s ownership and regulatory roles.

Law on Protection of Competition and Commission on Protection of Competition

The Law on Protection of Competition seeks to protect against “agreements, decisions and concerted practices, abuse of monopolistic and dominant position on the market and any other acts or actions that may result in prevention, restriction or distortion of competition in the country and/or affect the trade between the Member States of the European Union,
as well as against unfair competition” (Article 1). The Law also regulates merger control. The Law applies to two categories of entities whose activities could restrict or distort effective competition on a given market: (i) undertakings (making no distinction between state-owned and private companies) and (ii) state and local authorities. For undertakings, the Law notably bars: (i) prohibited agreements, decisions and concerted practices; and (ii) abuse of monopoly or dominant position.

The Commission on Protection of Competition, responsible for enforcing the Law, is an independent state agency, not subordinate to any single ministry, whose members are elected by, and report to, Parliament. The CPC has the power to impose sanctions for infringements to the Law, to undertake sectoral inquiries concerning the competitive environment and to issue advocacy opinions on whether draft laws or administrative acts comply with the provisions of the Law. The CPC’s advocacy opinions are non-binding. Over the past decade, the CPC has issued a number of advocacy opinions on the potential competitive impact of draft legislative or administrative acts bearing on SOEs (Box 6 provides some examples). The CPC does not monitor compliance with EU state aid rules, but can in practice inform the Ministry of Finance (the national state aid monitoring authority) of potential cases of state aid.

**Box 6. Commission on Protection of Competition: Advocacy opinions regarding SOEs**

*Compensation to the municipal trolley-bus operator for the transportation of certain categories of passengers at preferential prices.* In 2013, the CPC adopted an opinion regarding compensation provided by the municipality to its trolley-bus operator in the town of Vratsa for providing reduced-price tickets to certain categories of passengers (an obligation established via municipal ordinance). In its decision the CPC upheld that there is no deviation from the principle of competitive neutrality if the granting of privileges aims to compensate an undertaking for certain obligations, provided there is no over-compensation. The CPC assessed that the compensation provided by the municipality was addressed to the consumers, not to the transport company.

*Requirements regarding advertisement on public radio and television.* In 2015, the CPC adopted an opinion regarding the provisions of the Radio and Television Act. One of the issues analysed by the CPC was whether the financing of the Bulgarian National Television and the Bulgarian National Radio by both state subsidies (through the Radio and Television fund) and advertising contradicts the principle of competitive neutrality. The CPC concluded that if the state subsidy is insufficient for the effective performance of the public functions of the BNT and the BNR, an additional financing, e.g. by advertising, may be necessary. However, it considered that the allowed advertising time in public radio and television should be restricted in comparison to commercial radio and television in order to avoid over-compensation of public service media. It recommended the establishment of an objective process, undertaken by a state body other than the two SOEs, to determine the best ratio between state subsidies and permitted advertising time.

*Compensation provided to tourist information centres.* In 2016, the CPC adopted an advocacy opinion on a draft ordinance regulating tourist information centres. In its opinion, the CPC analysed the potential market impact of funding provided by the state or municipalities to tourist information centres, which compete with private tour operators and tourist agencies on the market for tours and booking services. The CPC concluded that any compensations provided to the tourist information centres for services of public interest should not exceed the amount necessary for performing these services.

*Source:* Information provided by the Bulgarian Commission on Protection of Competition.
Public Procurement Act and Public Procurement Agency

The Public Procurement Act establishes that public procurements shall be awarded in accordance with EU rules and respecting the principles of: equal treatment and non-discrimination; free competition; proportionality; and publicity and transparency (Article 2). It was adopted in 2016 (to replace the former Public Procurement Act of 2004) and transposes EU directives on public procurement in general and specifically in the water, energy, transport and postal services sectors. The Public Procurement Agency, which is a body under the Ministry of Finance, undertakes ex-ante and ongoing control of public procurement procedures. Both the Public Financial Inspection Agency and the National Audit Office, discussed in greater detail in the below section on financial control of SOEs, also undertake ex-post inspections of compliance of public procurement procedures with applicable rules.

Concerning its scope of applicability, SOEs acting as bidders for public procurement contracts do not benefit from any explicit exemptions from the rules established by the Act. However, procurement by SOEs can be treated as in-house procurement if the SOE is sufficiently controlled by the public contracting entity (e.g. line ministry).

SOEs as procurers are only explicitly subject to the act’s general public procurement rules (i.e. are treated as “public contracting entities” as defined by the act) if they are incorporated as state enterprises or represent state-owned medical treatment companies that rely on state funding for over 50% of their revenues². Although SOEs are not explicitly treated as contracting authorities by law, the Public Procurement Agency can determine that an SOE is considered a contracting authority and should thus be subject to the general government’s public procurement procedures. In this regard, the Bulgarian authorities elaborate that many SOEs could be considered public contracting authorities by virtue of their status as “public-law bodies”, which is determined on a case-by-case basis. Among the criteria to be considered a public-law body, an SOE needs to carry out an activity in the public interest, but this activity does not need to constitute the entity’s sole or predominant activity. Other criteria taken into account when determining an SOE’s status as a public-law body are, according to the Bulgarian authorities, the entity’s objectives, whether it operates in a competitive environment and whether it undertakes profit-seeking activities.

In addition to the category of “public contracting entities”, the Law establishes the category of “sector contracting entities”, subject to their own specific public procurement procedures. The category of “sector contracting entities” includes representatives of state enterprises and state-owned monopolies (regardless of legal form) operating in the following sectors: natural gas and heat; electricity; water; transport services; exploitation of a geographical area (including the use of airports and ports as well as oil, gas and coal extraction); and postal services (Article 123)³. Sector contracting entities can be exempt from their established public procurement procedures under certain conditions. The potential exemptions include cases when these “sector contracting entities” procure: outside of the EU (Article 15.2); through a controlled “affiliated entity”, which would presumably include subsidiaries (Article 15.5); or for any activities other than the defined “sector activities”.

Furthermore, the Act does not apply to public procurements undertaken by SOEs considered sector contracting entities operating in the aforementioned sectors, provided the activity is exposed to competition and there are no market restrictions (Article 130). The procedure for excluding such procurements from public procurement rules is established in the act and requires that the Council of Ministers submit a request to the European Commission to establish that a particular activity is exposed to competition (Article 131).
4. Ownership arrangements and responsibilities

4.1. Ownership coordination

4.1.1. Ownership policy and framework

The ownership arrangements for SOEs in Bulgaria are largely decentralised, with individual ministers (or ministries) simultaneously exercising state ownership and regulatory functions within their respective sectors. In particular, the Regulations establish that “the Council of Ministers or the Ministers shall exercise the rights of the state in companies with state participation in the capital according to their sectoral competence” (Article 8[1]). They further establish that the relevant sectoral minister shall “represent the state in the general shareholders’ meeting of the company (Article 10[1]). In practice, however, powers are delegated to a ministry representative.

Following the adoption of the Law on Public Enterprises in October 2019, some degree of centralisation has been introduced with the establishment of a new ownership coordination entity – the Public Enterprises and Control Agency – in charge of developing and monitoring compliance the state’s governance and disclosure policy. Under this new framework, the Council of Ministers and Ministers will continue to exercise state ownership rights (with the possibility to delegate such functions to the new coordination entity, if preferred).

While Bulgaria has not yet developed a harmonised state ownership policy, the new Law on Public Enterprises foresees its upcoming preparation and implementation – to be carried out by the new coordination unit, in consultation with relevant government departments. Until then, some elements of an ownership policy can be gleaned within the legal framework covering SOEs, in particular within the aforementioned “Regulations”. In addition, several ministries, such as the Ministry of Health and the Ministry of Agriculture, Food and Forestry have reportedly established ownership policies at the sectoral level. However, the mission team has not come across examples of such policies.

Generally, each SOE implements the policies of the line ministry in accordance with sectoral policies and national priorities, including those set in the Government Programme 2017-2021, when applicable. The Government Programme covers 20 areas, 65 priorities and 902 measures to achieve them. The stated overarching priorities of the current coalition government include: income; security; economic progress; freedom and democracy; and government transparency, amongst other aspects (CoM, 2017[28]). In addition, the state’s overall objectives and expectations for individual SOEs are laid down in their respective statutory acts and/or sectoral legislation defining their activities and the rules for their acquisition, management and ownership. Such acts are adopted by the National Assembly and the Council of Ministers after public consultation, as it is usually the practice for such type of acts. Finally, elements of a state ownership policy can be gleaned from individual SOEs’ statutes (articles of association), rules of organisation and business programmes.
4.1.2. The main institutional actors

**Council of Ministers**: the Council of Ministers (CoM) is the main body of the executive power in charge of the overall SOE policy in Bulgaria. It is chaired by the Prime Minister and includes the deputy prime ministers and ministers. It is usually formed by the majority party in Parliament (alone or with coalition partners if no majority exists) and must resign if the National Assembly passes a vote of no confidence in the Council. The Council is responsible for carrying out state policy, managing the state budget and ensuring public order and national security. The Council is supported by two commissions: 1) the Council of Structural Reform; and 2) the Council of Education, Science, Culture, Health and Social Reform, which are chaired by deputy prime ministers (with ministers also participating ex officio).

**Line ministries**: Line ministries in Bulgaria are responsible for the implementation of the government’s policy in their relevant sphere of activity. The main organisational sub-units within ministries are – in hierarchical order – directorates, departments and sectors. The relations within a ministry are defined by internal regulations, instructions and orders issued by the relevant minister. The secretary-general, who is the top-ranking civil servant in a ministry, is responsible for the implementation and overall management of inter-ministerial relations. The minister is the key figure with authority to issue rules, regulations, instructions and orders (OECD, 1999[29]). At present there are 17 ministries exercising ownership over SOEs (Figure 9).

As illustrated, some ministries have ownership rights over a large number of enterprises, while others oversee as little as one SOE. The ministries with the largest number of SOEs under their purview are the Ministry of Health (64 SOEs), the Ministry of Regional Development and Public Works (39) and the Ministry of Economy (29). Other ministries with over ten SOEs in their portfolio include the Ministry of Transport (20), the Ministry of Defence (16), the Ministry of Agriculture, Food and Forestry (15) and the Ministry of Energy (12).

![Figure 9. Number of SOEs per Ministry (June 2018)](image)

*Note: Subsidiaries are counted separately.*

*Source: Data from 221 SOEs appearing on the list of SOEs declared by line ministers under Decree No. 114/2010 of the Council of Ministers (as of 30 June 2018).*
Depending on the internal structure of the line ministry, ministers are supported by dedicated units within the ministry that deal with SOEs. Their primary objective is to support the minister in his capacity of representing the owner (the state) in SOEs. Related tasks include: a) supporting the management of SOEs in performing their functions; b) preparing the management contracts and monitoring their implementation; c) analysing the economic and financial performance of SOEs; and d) preparing reports for the minister. In ministries where no such ownership unit exists, government employees from different directorates perform these functions.

Table 7. State ownership rights in Bulgarian SOEs

<table>
<thead>
<tr>
<th>Type of SOE</th>
<th>Powers attributed to line ministries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority-owned joint-stock companies</td>
<td>● Amending articles of association &lt;br&gt; ● Increasing and decreasing capital levels &lt;br&gt; ● Appointing and dismissing members of the boards of directors or supervisory boards (in two-tier JSCs) &lt;br&gt; ● Approving the remuneration levels of board members (and senior managers included in the one-tier board) &lt;br&gt; ● Approving bond issuance &lt;br&gt; ● Approving annual accounts &lt;br&gt; ● Appointing external auditors &lt;br&gt; ● Deciding on dividend policies &lt;br&gt; ● Reorganisation and dissolution</td>
</tr>
<tr>
<td>Fully-owned joint-stock companies</td>
<td>(additional to the aforementioned powers) &lt;br&gt; ● Concluding a management contract with each member of the board &lt;br&gt; ● Approving business programmes &lt;br&gt; ● Approving borrowing &lt;br&gt; ● Approving of disposal and lease of fixed assets, where the value exceeds 5% of the book value of total fixed assets &lt;br&gt; ● Approving the acquisition and disposal of other companies’ shares &lt;br&gt; ● Approving pledges of fixed assets &lt;br&gt; ● Approving debt assumption and relief &lt;br&gt; ● Approving compulsory property insurers</td>
</tr>
<tr>
<td>Limited liability companies</td>
<td>(additional powers to those granted to JSCs) &lt;br&gt; ● Approving the provision of loans and guarantees &lt;br&gt; ● Approving all disposal of real estate &lt;br&gt; ● Appointing financial controllers</td>
</tr>
<tr>
<td>State enterprises</td>
<td>(additional powers) &lt;br&gt; ● Approving the internal organisational structure &lt;br&gt; ● Approving the disposal and lease of all movable and immovable properties &lt;br&gt; ● Approving employment and wage policies</td>
</tr>
</tbody>
</table>

Note: non-exhaustive list of powers and attributes.
Source: Information provided by the Bulgarian authorities based on reports by international financial institutions as well as Extract from (IMF - unpublished, 2017[29]) based on Decree 112-2003 of the Council of Ministers, the Commerce Act and Rules of DP Port Infrastructure.

The Public Enterprises and Control Agency. Starting October 2019, the Public Enterprises and Control Agency (a transformation of the current Privatisation and Post-Privatisation Control Agency) will be tasked with coordinating and monitoring the SOE sector in Bulgaria (Box 7). In line with the current Government’s state policy to reduce the administrative burden, the Bulgarian authorities expressed a preference to assign this function to an already existing institution, instead of establishing a new one. The rationale was that the PPCA (which has had very limited activities in the last 10 years) could be restructured to undertake this function, while maintaining the existing functions, structure and resources of the PPCA (approximately 65 full-time employees). While the new agency will report to the Council of Ministers, it will operate as a second budget spending unit subject to funding allocated as part of the budget of the Ministry of Economy.
The PPCA (as will be its successor) is governed by a two-tier board: 1) a Supervisory Board consisting of 7 members, elected and dismissed by the National Assembly; and 2) an Executive Board consisting of three members, appointed and dismissed by the Council of Ministers. Both the Supervisory Board and the Executive Board will continue to exercise their powers under the new structure provided by the law. Their composition should remain unchanged (with the exception of board members who do not meet the eligibility requirements established by Article 11[3] of the new Law on Public Enterprises).

### Box 7. Functions of the Public Enterprises and Control Agency

Article 12 of the Law on Public Enterprises: The Agency for Public Enterprises and Public Enterprises and Control shall carry out the functions under Article 11[1] by:

1. Developing the state ownership policy of public enterprises;
2. Monitoring the implementation of the state ownership policy and provide for its regular update;
3. Assisting the authorities exercising state ownership rights in formulating the general strategic objectives of their enterprises and the key financial and non-financial performance indicators included in their business programmes;
4. Monitoring public enterprises and preparing an aggregate report covering their activity for the previous year in the format and scope defined by law;
5. Cooperating with other state administrations, non-governmental and international institutions on issues related to the management of public enterprises;
6. Publishing updated information and reports on the activity of public enterprises, incl. financial and non-financial information on the enterprises;
7. Monitoring the competitive procedure for the selection and appointment of members of the management and control bodies of public enterprises;
8. Evaluating the implementation of the approved business programmes of public enterprises and making proposals for improving their management;
9. Exercising the powers of the state in public enterprises when delegated by the Council of Ministers;
10. Upon request, assisting the municipalities with regard to the management of municipal public enterprises;
11. Preparing an assessment and analysis of the approved business programmes of public enterprises and their implementation as well as recommendations regarding their impact on public finances, including the potential effects and risks for the consolidated debt and deficit/surplus indicators of the General Governance Sector;
12. Instructing on the application of the law

*Note:* Designates “members of supervisory board and management board in two-tiered joint-stock companies; members of the board of directors in one-tiered joint-stock companies; managers and controllers of limited liability companies; and the members of the management board and the executive directors in the state enterprises” as defined in the additional provisions of the Law.
The text that follows introduces the main line ministries in Bulgaria responsible for commercially significant SOE portfolios, comprising notably enterprises operating in the primary sectors, manufacturing, transport, electricity and gas, telecoms and finance. Although the largest number of SOEs in Bulgaria operate in the healthcare and water utilities sectors (overseen, respectively, by the Ministry of Health, with 64 enterprises, and the Ministry of Regional Development and Public Works, with 42 enterprises), their ownership portfolios and regulatory functions are not detailed below, since most of the SOEs under their remit undertake primarily public-policy functions, with limited competitive activities in the marketplace. This being said, the assessment sections of this review do include some information on the corporate governance and regulation of water utilities SOEs, which often have shared ownership between the central and municipal governments. Most of Bulgaria’s water utilities companies are state or municipally-owned, with the exception of one private operator in Sofia.

Ministry of Finance

The Ministry of Finance is the key authority in the financial control of SOEs. Its main objective is to “sustain a transparent fiscal, financial and budgetary policy in compliance with the government strategy for fully-fledged EU membership” (MoF, n.d.[30]). The Ministry is divided into 19 Directorates, one of which, the State Aid and Real Sector Directorate, is in charge of implementing the government budgetary policy monitoring state participation in fully or majority-owned SOEs, in line with EU state aid legislation. In addition, the Ministry of Finance is tasked with collecting and publishing SOEs’ quarterly financial reports, as well as the annual audit reports of individual SOEs on its website. The ministry does not conduct any aggregate performance review of SOEs, however it can, on a discretionary basis, prepare individual or consolidated analyses of SOEs’ financial situation, to be submitted to the Council of Ministers for discussion. These analyses are not published and are for internal use only.

The Ministry of Finance itself has three majority-owned SOEs under its purview: the Bulgarian Stock Exchange AD, the Fund Manager of Financial Instruments EAD and the Independent Bulgarian Energy Exchange EAD (IBEX), whose ownership was transferred in 2017 from Bulgarian Energy Holding (BEH) to the Bulgarian Stock Exchange, in which the Ministry of Finance is responsible for the state’s 50.05% shareholding. The ownership transfer was initiated at the request of the European Commission, to prevent abuse of dominant position on the market for the wholesale supply of electricity.

Ministry of Economy

The Ministry of Economy was created in 2014 following a decision of the Bulgarian National Assembly to divide the existing Ministry of Economy, Energy and Tourism into three distinct entities. It was established with the purpose of developing a “clear and transparent economic policy” as well as promoting and fostering investments, innovation and competitiveness in Bulgaria. With regards to SOEs, the Ministry of Economy has important regulatory powers and has adopted over the years a certain number of regulations on the role and competencies of the state as an owner. The Ministry also publishes information regarding tenders and competitions organised by SOEs for sales contracts, exchange and renting out of fixed assets and property insurance.

The Ministry of Economy is the direct owner of eight SOEs, including three large holdings (in total, 29 SOEs when counting subsidiaries separately). These are the National Company Industrial Zones EAD, the economically important holding company State Consolidation Company EAD, and the Bulgarian Development Bank. Table 8 provides an overview of
the portfolio of the State Consolidation Company (DKK EAD), which comprises 14 majority-owned companies. The company was established in 2010, in order to prepare the privatization of state-owned minority shares in 55 firms. Its operations were expanded in 2018 to include maintenance and repairs of reservoirs and dams owned by the government or local authorities.

Table 8. Subsidiaries of the State Consolidation Company (December 2018)

<table>
<thead>
<tr>
<th>Name of company</th>
<th>Sector</th>
<th>Percentage state ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stara Zagora Airport LLC (single-member)</td>
<td>Air transport</td>
<td>100</td>
</tr>
<tr>
<td>NITI JSC (single-shareholder)</td>
<td>Arms manufacturer</td>
<td>100</td>
</tr>
<tr>
<td>National Institute for the Study of Wine, Spirits and</td>
<td>Winemaking industry</td>
<td>100</td>
</tr>
<tr>
<td>Institute of Marketing JSC (single-shareholder)</td>
<td>Marketing and research</td>
<td>100</td>
</tr>
<tr>
<td>LB Bulgaricum JSC (single-shareholder)</td>
<td>Dairy processing</td>
<td>100</td>
</tr>
<tr>
<td>Installations JSC (single-shareholder)</td>
<td>Manufacturing; engineering</td>
<td>100</td>
</tr>
<tr>
<td>Bulgarploeksport LLC</td>
<td>Agriculture</td>
<td>99.1</td>
</tr>
<tr>
<td>Elektroneksport LLC (single-member)</td>
<td>Engineering</td>
<td>100</td>
</tr>
<tr>
<td>Certification JSC (single-shareholder)</td>
<td>Product certification</td>
<td>100</td>
</tr>
<tr>
<td>Kintex JSC (single-shareholder)</td>
<td>Import and export</td>
<td>100</td>
</tr>
<tr>
<td>Vazov Machine Works JSC (single-shareholder)</td>
<td>Production and trade of special equipment</td>
<td>100</td>
</tr>
<tr>
<td>Avhonams JSC</td>
<td>Maintenance and repair of aircraft</td>
<td>99.97</td>
</tr>
<tr>
<td>Ecoengineering-RM LLC (single-member)</td>
<td>Design and construction</td>
<td>100</td>
</tr>
<tr>
<td>Eco Anthracite JSC (single-shareholder)</td>
<td>Coal mining (design and conservation)</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Information provided by the Bulgarian authorities.

Ministry of Energy

The Ministry of Energy was established as a separate entity in 2014 to “lead a transparent energy policy to protect the state and the public interest” (Ministry of Energy (n.d.))[39]). It is the owner of 12 SOEs, 8 of which operate under the Bulgarian Energy Holding EAD. These include a nuclear power plant, hydropower plants, coal mining and gas and electricity transmission companies, which among other things produce and operate close to half of the national electricity capacity (see section 4.2.1). As the owner of an important SOE portfolio (representing approximately 37% of total SOE value at the national level), the Ministry of Energy has established designated a directorate (with two departments) within the Ministry entirely dedicated to the oversight of its SOEs.
### Table 9. SOEs under the Ministry of Energy (2017)

<table>
<thead>
<tr>
<th>Name</th>
<th>Main sector of operation</th>
<th>Corporate form</th>
<th>No. Employees</th>
<th>Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Bulgarian Energy Holding EAD</strong></td>
<td>Electricity, gas, steam and air conditioning supply</td>
<td>JSC</td>
<td>21,128</td>
<td>100% Ministry of Energy</td>
</tr>
<tr>
<td><strong>1.1 NPP Kozloduy EAD</strong></td>
<td>Electricity, gas, steam and air conditioning supply</td>
<td>JSC</td>
<td>3,716</td>
<td>100% BEH EAD</td>
</tr>
<tr>
<td></td>
<td>- NPP Kozloduy EAD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- NPP Kozloduy – New Builds EAD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Interpriborservice OOD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>1.2 Elektroenergien Sistemen Operator EAD (Electricity System Operator)</strong></td>
<td>Electricity, gas, steam and air conditioning supply</td>
<td>JSC</td>
<td>4,184</td>
<td>100% BEH EAD</td>
</tr>
<tr>
<td><strong>1.3 Bulgartransgaz EAD</strong></td>
<td>Electricity, gas, steam and air conditioning supply</td>
<td>JSC</td>
<td>1,160</td>
<td>100% BEH EAD</td>
</tr>
<tr>
<td><strong>1.4 Natsionalna Elektricheska Kompania EAD (National Electricity Company)</strong></td>
<td>Electricity, gas, steam and air conditioning supply</td>
<td>JSC</td>
<td>2,001</td>
<td>100% BEH EAD</td>
</tr>
<tr>
<td><strong>1.5 Mini Maritsa-Iztok EAD</strong></td>
<td>Mining and quarrying</td>
<td>JSC</td>
<td>7,273</td>
<td>100% BEH EAD</td>
</tr>
<tr>
<td><strong>1.6 TPP Maritsa East 2 EAD</strong></td>
<td>Electricity, gas, steam and air conditioning supply</td>
<td>JSC</td>
<td>2,405</td>
<td>100% BEH EAD</td>
</tr>
<tr>
<td></td>
<td>- PFC Beroe Stara Zagora EAD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- TPP Maritsa East 2 (9 and 10) EAD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>1.7 Bulgargaz EAD</strong></td>
<td>Electricity, gas, steam and air conditioning supply</td>
<td>JSC</td>
<td>54</td>
<td>100% BEH EAD</td>
</tr>
<tr>
<td><strong>1.8 Bulgartel EAD</strong></td>
<td>Telecommunications</td>
<td>JSC</td>
<td>16</td>
<td>50% ESO EAD, 50% Bulgartransgaz EAD</td>
</tr>
<tr>
<td><strong>2. MINPROEKT EAD</strong></td>
<td>Architecture and engineering; technical testing and analysis</td>
<td>JSC</td>
<td>94</td>
<td>100% Ministry of Energy</td>
</tr>
<tr>
<td><strong>3. Project Company Oil Pipeline Burgas Alexandropolis BG EAD</strong></td>
<td>Investment in oil transportation system</td>
<td>JSC</td>
<td>1</td>
<td>100% Ministry of Energy</td>
</tr>
<tr>
<td><strong>4. DP RAO (State Enterprise “Radioactive Waste”)</strong></td>
<td>Waste management</td>
<td>State Enterprise</td>
<td>1,011</td>
<td>100% Ministry of Energy</td>
</tr>
<tr>
<td><strong>Lukoil Neftochim Burgas AD</strong></td>
<td>Manufacturing</td>
<td>JSC</td>
<td>1,369</td>
<td>0% (but one golden share) Ministry of Energy</td>
</tr>
</tbody>
</table>

**Total** | 44,412

*Note:* Lukoil Neftochim Burgas is the only major oil refinery in Bulgaria. It is not an SOE, but is reported as the Bulgarian Government holds a golden share in it. The articles of association of the company allow the government to appoint one member of the Supervisory Board. Explicit consent of the state is required for the adoption of certain decisions by the GSM (e.g., termination or significant decrease in oil refining or fuel production; restructuring of the company; relocation of its headquarters; refusal to access port infrastructure or pipelines under specified condition).

**Source:** Questionnaire responses from the Ministry of Energy, 2018
The main goals of the ministry include: guaranteeing the security of Bulgaria’s energy supply, turning Bulgaria into an energy independent and competitive country, and improving energy efficiency in line with the Energy Strategy adopted by the Parliament for the period 2011-2020 and the Europe 2020 Strategy, which reflects policy priorities for the Government of Bulgaria pursuant to the European energy policy framework. The Ministry of Energy is currently preparing a new Sustainable Energy Strategy for the period beyond 2020. The document is subject to the review and approval of the Bulgarian government and parliament and should be adopted by the end of 2019 (CMS Cameron Mckenna and Nabarro Olswang LLP, 2018[31]).

Generally, the Bulgarian energy sector is characterised by poor energy efficiency and high dependency on foreign sources for its energy supplies, especially Russian gas which accounts for approximately 90% of total gas supply (CSD, 2014[32]). In fact, large Russian energy players have significant market powers on Bulgaria’s energy industry: Russian energy giant Gazprom is Bulgaria’s only natural gas provider and owns half of the country’s biggest retail gas distribution company, while oil giant Lukoil (for which the Bulgarian state holds a golden share in the local subsidiary) controls Bulgaria’s only oil refinery and half of its wholesale fuel market.

In theory, the Bulgarian energy market is totally liberalised since 2007 – that is, all consumers have free and fair access to the electricity grid and are free to choose their supplier, in accordance with the EU’s Electricity Directive. In practice, however, the electricity and gas market appears to be rather concentrated and to lack genuine competition mainly due to entry barriers (Mateina, 2018[33]). Currently the electricity market in Bulgaria is shaped as a hybrid model consisting of a regulated market where prices/tariffs are determined by the EWRC (Box 8) and a liberalised segment where prices are freely negotiated between traders, consumers and independent energy producers (Andreeva, 2018[34]). According to the World Bank, the regulated segment has been shrinking substantially over the years, although market incentives continue to be weak for household customers (Spassov, 2018[35]).

Another issue concerns potential state subsidies and abuse of dominant market position in certain segments of the energy sector which have been the subject of complaints to the Commission on Protection of Competition (CPC) of Bulgaria (Patricolo, 2018[36]). (The CPC does not undertake investigations of alleged cases of state aid, for which responsibility is vested in the European Commission, with the Ministry of Finance serving as the national state aid monitoring authority.) Recent amendments to the Energy Act in 2018 have done little to alleviate these concerns. The amended legislation introduced an entirely new support scheme for renewable energy, however, the European Commission declared it unlawful as the allocation of state aid under this new scheme had not been previously notified to the EC (the notification is still ongoing) (CMS Cameron Mckenna and Nabarro Olswang LLP, 2018[31]).
Box 8. Energy and Water Regulatory Commission

The Energy and Water Regulatory Commission (EWRC) was established in 1999 as Bulgaria’s national regulatory agency for the electricity, district heating, natural gas and water supply and sanitation services. Since 2015, it operates as an independent entity, responsible for tariff setting and monitoring the quality of services of enterprises in the gas, electric, district heating and water supply and sewerage sectors; as well as for licensing of enterprises in the gas, electric and district heating sectors. It also issues permits for construction of transit gas or oil pipelines, amongst other aspects.

Key powers of the EWRC in regulating the activities in the energy sector include:

- Adopt secondary legislative acts, provided in the Energy Act;
- Exercise control, analyse, periodically review and request amendment of the pricing mechanisms contained in the long-term contracts for availability and electricity purchase concluded with the Public Provider, when they are contrary to the EU law or are not in accordance with the EU policies;
- Monitor the implementation of all measures adopted for fulfilment of the public service obligations, including energy services users protection and environmental protection, and their possible effect on national and international competition and informs the EC of these measures and their amendments;
- Carry out price regulation in the cases provided for in the Energy Act and set annually the balancing energy market transactions marginal price;
- Determine for each price period a marginal cost value for the electricity network operators to purchase cold reserve availability through a tender procedure;
- Examine energy companies’ requests for compensation resulting from imposed public service obligations costs under Art. 34 and 35 of EA, approve their justified amount and determine the manner they should be compensated, in compliance with state aid requirements;

The Commission is constituted of nine members nominated by parliamentary resolution and appointed for a five-year period. It is financed from fees collected under the Energy Act and the Water Supply and Sewerage Services Regulation Act.

Source: (EWRC, n.d.,[37])

Ministry of Transport, Information Technology and Communication

The Ministry of Transport, IT and Communication exercises ownership rights in 20 SOEs, including the National Railway Infrastructure Company, the Bulgarian State Railways Holding (BDZ) and Bulgarian Post. In most of its SOEs, state participation is reportedly maintained for ensuring the universal provision of public services. However, the creation and maintenance of state participation in these enterprises is rather historical and the trend is to permanently reduce this participation via privatisation, liquidation and/or concessions of enterprises. The most recent example is the tender of Sofia airport which has recently been relaunched in 2017, after an unsuccessful attempt in 2016 (Reuters, 2018[38]).

An Integrated Transport Strategy was adopted by the Council of Ministers in June 2017. The strategy underlines the main focus of the national transport system strategy until 2030.
Key priorities of the transport sector include 1) the improvement of the management of the transport system, 2) improvement of the conditions for the implementation of the principles for liberalisation of the transport market, 3) reduction of the consumption of fuel and increasing of the energy efficiency of transport, and 4) the effective development, modernisation and maintenance of the transport infrastructure – especially the railway infrastructure (Ministry of Transport, n.d.[39]). The relevant allocations from the state budget are defined in three-year budget forecasts. In particular, the Ministry of Transport has indicated that the amount of funding (through capital transfers and/or subsidies) is determined within the framework of a long-term contract between the state (represented by the Minister of Finance) and the Minister of Transport, IT and Communication on the one hand, and the SOE (mostly the National Railway Infrastructure Company) on the other.

Ministry of Agriculture, Food and Forestry

The Ministry of Agriculture, Food and Forestry (MAFF) is the ministry in charge of regulating agriculture and forestry, and upholding the EU Common Agricultural Policy (CAP) in Bulgaria. It was founded as the Ministry of Agriculture and State Property in 1911, after its separation from then Ministry of Commerce and Agriculture. The ministry exercises ownership rights over 15 SOEs, including six state enterprises in charge of managing state wooded areas in the country (financial indicators are available in Annex D). They were established under the legal form of “state enterprises” (under the Forestry Act of 2011) mainly to preserve state assets and property. State Forest enterprises have a two-level structure – headquarters and territorial units (branches) resulting in a total of 164 state forest enterprises and state hunting reserves (Stoeva, Markoff and Zhiyanski, 2018[40]). The adoption of the new Forestry Act in 2011 also resulted in the division of control and management functions between the state forestry enterprises and the Executive Forestry Agency (EFA) - a legal entity operating under the MAFF and financed by the state budget. The Agency is responsible for the regulation and control of international and national policy in this sector.

4.2. Description of selected Bulgarian SOEs

4.2.1. The Bulgarian Energy Holding EAD

Bulgarian Energy Holding (BEH) EAD is a vertically-integrated energy company wholly owned by the Bulgarian state, through the Ministry of Energy. It is included in the list of SOEs not subject to privatisation listed in Annex 16. It has a dominant position in the Bulgarian electricity and gas market through its ownership of Bulgaria’s most important power generation assets (representing about half of total power capacity). This includes three of the main electricity generation companies in Bulgaria, the largest mining enterprises for lignite coal, as well as the transmission and transit grids for electricity and natural gas. The group also includes public suppliers of electricity and gas and is a strategically important SOE, generating around 60% of the electricity in the country, through thermal, nuclear, and hydro power plants (BEH EAD, n.d.[41]).

The company is the successor of former state-owned company Neft I Gas established in 1973. It was restructured as a single owner joint-stock company in 1993 and reorganised as a holding in 2008 (Bulgargaz Holding EAD) and renamed Bulgarian Energy Holding. In January 2014, BEH established two new subsidiaries, the Independent Energy Exchange and the Energy Investment Company. A number of BEH subsidiaries are natural and/or legal monopolies. They have operational autonomy and own separate licenses but they are wholly owned and directly subordinated to the holding (CSD, 2010[42]). BEH appoints the
boards of directors (and supervisory boards, when applicable) of its subsidiaries, and is directly involved in their financial management, project management, corporate governance, business planning, legal and regulatory issues, as well as public relations and communications.

BEH’s senior managers work closely with the Minister of Energy. In the management process of the holding and its subsidiaries, all important decisions related to the management strategy and future development are taken after being agreed and approved by the Minister of Energy.

**Figure 10. Structure of the Bulgarian Energy Holding EAD (as of 2017)**

The rationale for the establishment of such an integrated structure (holding) is officially to guarantee the independence of transmission operators within the structure and to create economies of scale within the European market. However, as has been the case in other countries reviewed by the OECD, Bulgaria also seems to use the holding company structure as a means to more readily shift capital from more performant SOEs to financially distressed ones. This type of financing arrangement can allow for a sort of cross-subsidisation within the holding company structure, effectively allowing SOEs to receive the functional equivalent of a subsidy, without the same transparency or other requirements associated with financing provided directly from the fiscal budget. This being said, the Bulgarian Ministry of Energy reports that the Bulgarian Energy Holding applies a “market interest rate policy” in cases of intragroup financing among its subsidiary companies.

BEH is mandated to manage all important Bulgarian government projects in the energy sector in line with the national energy policy. In fact, BEH or its subsidiaries are participating in five international gas pipeline projects, namely the South Stream pipeline and four interconnection pipeline projects between Bulgaria and Greece, Romania, Serbia and Turkey, respectively, which are at different stages of development (some have in fact been stalled) (BEH EAD, n.d.[41]).
The European Commission has, on several occasions, expressed concerns over BEH’s market powers in the non-regulated wholesale electricity market in Bulgaria – accusing the company of, amongst other things, “hindering the resale of electricity by imposing territorial restrictions on traders” (European Commission, 2015[43]). The Commission initiated formal proceedings in 2012 and 2013, to investigate whether BEH was abusing its dominant market position in the wholesale electricity market. To address the Commission’s concerns, BEH established an independent power exchange in 2014, after committing to offer certain volumes of electricity on an independently-operated day-ahead market: the Independent Bulgarian Energy Exchange (IBEX). Ownership of the exchange was recently transferred from Bulgarian Energy Holding EAD to the Bulgarian Stock Exchange at the request of the European Commission to prevent abuse of a dominant position by the holding.

Table 10. Indicators for BEH EAD (consolidated data, in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>4 385 773</td>
<td>4 009 798</td>
<td>3 832 905</td>
<td>3 703 526</td>
<td>3 269 293</td>
<td>3 944 405</td>
</tr>
<tr>
<td>EBITDA</td>
<td>430 872</td>
<td>408 918</td>
<td>204 335</td>
<td>431 025</td>
<td>327 396</td>
<td>517 296</td>
</tr>
<tr>
<td>Net Profit</td>
<td>844</td>
<td>-14 986</td>
<td>-171 657</td>
<td>75 896</td>
<td>-41 750</td>
<td>72 917</td>
</tr>
<tr>
<td>Dividends *</td>
<td>94 783</td>
<td>144 985</td>
<td>12 689</td>
<td>0</td>
<td>7 943</td>
<td>0</td>
</tr>
<tr>
<td>Assets</td>
<td>9 761 346</td>
<td>10 480 198</td>
<td>9 621 484</td>
<td>9 659 956</td>
<td>9 270 199</td>
<td>10 711 122</td>
</tr>
<tr>
<td>Equity</td>
<td>7 045 509</td>
<td>7 200 119</td>
<td>6 179 949</td>
<td>6 266 427</td>
<td>6 043 879</td>
<td>6 970 229</td>
</tr>
<tr>
<td>Provisions</td>
<td>47 847</td>
<td>144 985</td>
<td>12 689</td>
<td>0</td>
<td>7 943</td>
<td>0</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>1 305 463</td>
<td>1 876 598</td>
<td>1 800 262</td>
<td>1 691 445</td>
<td>2 578 760</td>
<td>2 311 341</td>
</tr>
<tr>
<td>ROA</td>
<td>0.01%</td>
<td>-0.14%</td>
<td>-1.78%</td>
<td>0.79%</td>
<td>-0.45%</td>
<td>0.68%</td>
</tr>
<tr>
<td>ROE</td>
<td>0.01%</td>
<td>-0.21%</td>
<td>-2.78%</td>
<td>1.21%</td>
<td>-0.69%</td>
<td>1.05%</td>
</tr>
</tbody>
</table>

Note: * Dividends based on previous year(s) net profit
Source: Questionnaire responses from the Bulgarian authorities, 2018

In recent years, the financial position of the group has been negatively affected by the established regulatory framework, which determines the operating conditions of the regulated market segment, resulting in a substantial tariff deficit accumulated in the public electricity supplier NEK EAD (Box 1). The company issued three rounds of debt financing in 2013, 2016 and 2018, each worth around EUR 500 million, to finance its liabilities. BEH’s last Eurobond (worth EUR 600 million) was issued with the EBRD’s financial support and started trading in July 2018 on both the Irish and Bulgarian stock exchanges (followed by two tap issues in August and October 2018).

4.2.2. The Bulgarian State Railways Holding

The Bulgarian State Railways Holding (Bulgarski Darzhavni Zheleznitsi – BDZ Holding) is Bulgaria’s state railway company and the largest rail carrier in the country. Since 2007, BDZ operates as a holding company with two subsidiaries established as legally independent companies, operating respectively in: freight transport (BDZ Cargo) and passenger transport (BDZ Passenger Services). The company used to also manage the country’s railway infrastructure, however, with the entry into force of the Railway Transport Act in 2002 (in line with EU regulations), infrastructure management became the responsibility of a new SOE: the National Railway Infrastructure Company. According to the World Bank, the move was made in order to “eliminate the possibility of cross-subsidies between freight and passenger services, to enhance accounting transparency, and
establish a contractual basis for the relationship between the parent company and subsidiaries" (World Bank, 2016[44]). The state is the sole owner of both companies, through the Ministry of Transport, Information Technologies and Communication. The holding currently employs approximately 9,300 employees.

According to official data, the financial situation of BDZ started deteriorating substantially in 2002 due to a significant loss of market share (in favour of road transport) and years of mismanagement, amongst other aspects. In 2010 BDZ was on the verge of bankruptcy with its indebtedness amounting to approximately USD 425 million (compared to approximately USD 108 million debt in 2002). This prompted the Bulgarian authorities to announce a restricting aid plan to BDZ, aimed at dealing with the company’s liquidity crisis. The plan, which involved approximately EUR 281 million subsidy to the company (to be provided in six tranches over the period 2011-2016) was in fact never implemented. Instead, the Bulgarian authorities intended to refinance BDZ Holding's liabilities by cancelling part of the company’s debts (EC, 2017[45]). The European Commission undertook an investigation to assess these measures under EU state aid rules and concluded in 2017 that the planned debt cancellation (amounting to approximately EUR 114 million) was in line with the Commission's 2008 Guidelines on state aid for railways, and necessary to support BDZ’s operations (EC, 2017[46]).

According to the World Bank, the continued poor financial performance of BDZ reflects “an inability to respond to changing market conditions”, which in turn, hinders investment and renovation (World Bank, 2011[47]). While the level of indebtedness of the company seems to have improved over the last few years, much of it has reportedly more to do with changes in the accounting policy (e.g. revaluation of fixed assets) rather than debt repayment (IME, 2016[48]). In fact, the Bulgarian railways infrastructure is in poor shape as reform remains sensitive – BDZ is one of Bulgaria’s largest employers (with over 20 000 employees), and improvements could involve massive layoffs and the privatisation of some of its assets. An earlier attempt to privatise BDZ’s freight unit was stopped by the previous socialist-led government.

### Table 11. Indicators for BDZ Holding EAD (consolidated data, in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>282 681</td>
<td>301 649</td>
<td>247 097</td>
<td>218 951</td>
<td>198 968</td>
<td>235 063</td>
</tr>
<tr>
<td>EBITDA</td>
<td>54 826</td>
<td>75 988</td>
<td>30 412</td>
<td>31 366</td>
<td>11 402</td>
<td>9 945</td>
</tr>
<tr>
<td>Net Profit</td>
<td>-21 468</td>
<td>-7 463</td>
<td>-30 791</td>
<td>-18 827</td>
<td>-12 243</td>
<td>-10 168</td>
</tr>
<tr>
<td>Dividends*</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Assets</td>
<td>585 057</td>
<td>534 928</td>
<td>401 372</td>
<td>348 058</td>
<td>353 284</td>
<td>364 428</td>
</tr>
<tr>
<td>Equity</td>
<td>38 986</td>
<td>26 402</td>
<td>-7 616</td>
<td>7 336</td>
<td>43 710</td>
<td>39 434</td>
</tr>
<tr>
<td>Provisions</td>
<td>796</td>
<td>253</td>
<td>278</td>
<td>352</td>
<td>292</td>
<td>217</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>196 795</td>
<td>170 560</td>
<td>68 278</td>
<td>53 640</td>
<td>34 754</td>
<td>20 332</td>
</tr>
<tr>
<td>ROA</td>
<td>-3.67%</td>
<td>-1.40%</td>
<td>-7.67%</td>
<td>-5.41%</td>
<td>-3.47%</td>
<td>-2.79%</td>
</tr>
<tr>
<td>ROE</td>
<td>-55.07%</td>
<td>-28.27%</td>
<td>-</td>
<td>-256.66%</td>
<td>-28.01%</td>
<td>-25.78%</td>
</tr>
</tbody>
</table>

*Note: Annex D provides separate information on the performance indicators of BDZ’s two subsidiaries BDZ Passenger Services and BDZ Cargo.*

*Source: Questionnaire responses from the Bulgarian authorities, 2018*
4.2.3. The Bulgarian Posts EAD

The Bulgarian Posts provides domestic and international postal and commercial services in Bulgaria. This includes money transfers, bill-paying services and distribution of publications and philatelic products. It was established in 1992, after the split of the Bulgarian Posts and Telecommunication company (Balgarski Poshti i Dalekosaobshtenia OOD) a state-owned provider of postal and telephony services into two companies: the Bulgarian Posts and the Bulgarian Telecommunications Company EAD. In 1997, the Bulgarian Posts was transformed into a joint-stock company (100% owned by the Ministry of Transport, Information Technology and Communication) and was introduced within the list of SOEs banned from privatization. It currently employs about 10,300 employees.

The company is managed by a Board of Directors consisting of 3 members and appointed by the Minister of Transport, IT and Communication.

Table 12. Indicators for Bulgarian Posts EAD (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>95,544</td>
<td>101,051</td>
<td>90,053</td>
<td>83,017</td>
<td>81,413</td>
<td>99,699</td>
</tr>
<tr>
<td>EBITDA</td>
<td>4,743</td>
<td>1,762</td>
<td>-222</td>
<td>1,408</td>
<td>-1,272</td>
<td>713</td>
</tr>
<tr>
<td>Net Profit</td>
<td>-1,383</td>
<td>-5,179</td>
<td>-4,352</td>
<td>-1,392</td>
<td>-3,882</td>
<td>-2,255</td>
</tr>
<tr>
<td>Dividends*</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Assets</td>
<td>92,715</td>
<td>90,298</td>
<td>78,078</td>
<td>69,272</td>
<td>84,719</td>
<td>110,492</td>
</tr>
<tr>
<td>Equity</td>
<td>20,097</td>
<td>18,631</td>
<td>9,357</td>
<td>6,328</td>
<td>14,868</td>
<td>13,894</td>
</tr>
<tr>
<td>Provisions</td>
<td>6,441</td>
<td>7,159</td>
<td>5,867</td>
<td>5,601</td>
<td>4,859</td>
<td>5,600</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>22,183</td>
<td>21,936</td>
<td>12,213</td>
<td>10,266</td>
<td>4,833</td>
<td>7,199</td>
</tr>
<tr>
<td>ROA</td>
<td>-1.49%</td>
<td>-5.74%</td>
<td>-5.57%</td>
<td>-2.01%</td>
<td>-4.58%</td>
<td>-2.04%</td>
</tr>
<tr>
<td>ROE</td>
<td>-6.88%</td>
<td>-27.80%</td>
<td>-46.51%</td>
<td>-22.00%</td>
<td>-26.11%</td>
<td>-16.23%</td>
</tr>
</tbody>
</table>

Source: Questionnaire responses from the Bulgarian authorities, 2018

Following amendments to the Postal Services Act in 2010, the state entrusted the Bulgarian Posts with the obligation to provide universal postal service in the country, including in remote areas, with a certain quality level and at accessible prices. The decision was based on the fact that Bulgarian Posts is the only entity in Bulgaria which has the infrastructure to provide these kinds of services. In turn, the postal operator is entitled to compensation from the state budget, when the universal service obligation results in net costs and represents an unfair financial burden for it (Bulgarian Posts (n.d.)[55])

The company suffered considerably following the elimination of its state monopoly on the so-called “reserved services” (small parcels up to 50g) after the liberalization of the postal service market in 2011.

4.3. Financial controls in the SOE sector

Bulgarian SOEs are subject to several external and internal control mechanisms, including those undertaken by state bodies and enterprise-specific internal audit units. In particular, all SOEs are subject to external control by the National Audit Office – NAO (pursuant to Article 6 of the NAO Act) and the Public Financial Inspection Agency - PFIA (pursuant to Article 4 of the PFIA Act). The sections that follow describe the main functions undertaken by these bodies vis-à-vis SOEs.
National Audit Office

The National Audit Office is Bulgaria’s supreme audit institution. It is independent from the executive power and reports to the National Assembly on the lawful and efficient execution of the state/municipal budgets in accordance with the NAO Act and internationally-agreed standards. In particular, the NAO is responsible for controlling the reliability and credibility of the financial statements of all budget-funded organisations (including some SOEs) as well as the lawful and efficient management of public funds. If required, the NAO can also provide up-to-date assessments on SOEs’ economic effectiveness and/or social efficiency.

The scope of its audit activities includes public undertakings fully-owned by the state; companies where the state or municipal participation exceeds 50% of the equity, and entities whose debts are secured by government guarantees or collateralised by state or municipal assets. The NAO performs financial audits of certain SOEs’ financial statements, when provided in law. Its main tasks are to ensure legal compliance with legislation, internal rules and contracts of the audited entity, as well as to assess whether public funds and activities are managed economically, effectively and efficiently (in terms of value for money).

NAO’s audit activities result in the production of an audit reports which, once finalised, become publicly available. Audit reports generally contain recommendations for the auditees (including individual SOEs), as well as a deadline for taking remedial action, past which if no corrective measure is taken, the NAO can report it to the National Assembly, Council of Ministers or relevant line ministry. Specifically in case of non-compliance with the Public Procurement Act, the NAO is empowered to impose administrative sanctions under the Public Procurement Act (EC, 2014[49]).

The office operates on the basis of an annual audit programme that is presented to the National Assembly. The National Assembly may also issue decisions assigning the NAO to carry out up to five additional audits (other than those included in the annual audit programme) on an annual basis. Structurally, the NAO’s board consists of five members, including the chair, two deputy chairs and two other members, appointed by the National Assembly for seven-year terms.

The Public Financial Inspection Agency

The Public Financial Inspection Agency (PFIA) performs financial inspections for compliance with statutory acts governing the budgetary, financial, economic and accounting activity of SOEs as well as the activity of awarding and executing public procurements. The PFIA is an administrative body that reports to the Minister of Finance. It was reorganised as a separate entity in 2006 upon the recommendation of the European Commission, when the functions of audit and inspections were separated. Similar to the NAO, the PFIA can impose sanctions to individuals in case of infringements.

The entities where the PFIA can perform its inspection activities are specified in the Public Financial Inspections Act. They include all the various bodies funded by the public budget, the SOEs defined in Article 62 of the Commercial Act, municipal enterprises and enterprises where the state has a golden share. Any commercial entity that has used state guarantees can also be inspected (consortia, NGOs, etc.). The PFIA does not intervene in companies where no public resources are involved.

More specifically, the agency’s main duty is to protect public financial interest by: i) carrying out ex-post financial inspections on compliance with rules and regulations on the
budget, financial, economic or reporting activities and public procurement in companies within its remit – upon request, complaints or reports filed by public authorities, private individuals and/or legal entities; ii) detecting infringements of regulations on the budget, financial, economic or reporting activities and indications of possible fraud; iii) investigating the usage of state aid and targeted grants in a given year, at the request of the Council of Ministers or the Minister of Finance; iv) initiating procedures for imposing administrative penalties and fines on guilty parties, in cases where there are legal grounds for such actions; and v) detecting irregularities affecting the financial interests of the European Communities. In addition, the PFIA also performs checks on public contracting authorities that are not subject to financial inspections.

Following a 2012 legislative amendment, the PFIA carries out inspections of public procurement procedures on the basis of an annual plan. The frequency of those inspection activities is determined on the basis of an analysis of public procurement activities and a risk assessment, taking into account the agency’s administrative capacity. The PFIA draws up an annual performance report that the Minister of Finance presents to the Council of Ministers. This report is then forwarded to the National Assembly for information. Since 2008, the PFIA has the power to assist the European Commission inspectors in their control activities on-the-spot, pursuant to Council Regulation EC No. 2185/96 where a person who is the subject of an inspection refuses to allow their premises and/or documents to be inspected. The PFIA interacts and exchanges information with the Prosecutor’s Office, the Ministry of Interior, the NAO, the Public Procurement Agency and other public authorities on the basis of signed agreements.

Structurally, the agency is organised into two main directorates, one which is responsible for ad hoc inspections and another which works on the basis of pre-approved activities. Ad hoc inspections take place upon referrals (mainly through whistle-blowing) regarding a legal entity or institution or at the request of different authorities. Whether planned or ad hoc, an inspection will always start with an order issued and signed by the director of the agency, indicating the scope of the inspection engagement, the name of the inspector (or team) and a timeline for completion. The agency also has a directorate which provides legal support for inspection activities. The results of all financial inspections, ad hoc or planned, are made public.

Additional external audit requirements

Since October 2019, all SOEs are required to have their financial statements reviewed by an independent external auditor in line with Article 26 of the Law on Public Enterprises. This requirement extends therefore the scope of Article 37[1] of the Accountancy Act which imposes the same requirement to a set of SOEs (but not all of them). Both the Accountancy Act and the Law on Public Enterprises specify that the external auditor needs to be appointed by the general meeting and after a recommendation from the audit committee, for those companies that have such a committee. (In Bulgaria, the audit committee is an external supervision unit reporting to the ownership ministry, not a subsidiary of the board of directors.) The Independent Financial Audit Act regulates the execution of external audit. The requirements for auditors are the same as for private companies, including on other services, rotation, independence and nomination.

The independent auditor must be an individual or an audit company registered with the Institute of Certified Public Accountants, and must confirm in the Independent Financial Audit Contract that the requirements of the Independent Financial Audit Act and the Ethics Code are met. A Declaration of Independence and Declaration of Confidentiality are also signed. The auditor issues an opinion on whether the annual financial statements give a true
and fair view of the financial position of the entity and of its financial performance and its cash flows for the year in accordance with the applicable financial reporting framework.

Finally, the role of audit authority for EU funds and programmes in Bulgaria is assigned to the Audit of EU Funds Executive Agency, which was set up in 2008. The agency’s special audit activities concerning EU funds and programmes are mainly regulated by the Public Sector Internal Audit Act. It operates on the basis of strategic and annual plans, based on risk assessments. Functionally and structurally, the Executive Agency is set up as a separate organisation, independent from the authorities responsible for the management and execution of payments for all the programmes co-financed by the European Union (EC, 2014[49]).

**Internal audit units and committees**

In addition to this, the Public Sector Internal Audit Act (Art.12) requires the establishment of internal audit units (IAUs) in all ministries as well as in all SOEs with over 50% state or municipal participation in the capital and with annual turnover exceeding BGN 10 million (approximately EUR 5 million) for each of the past three years (including subsidiaries). The IAUs comprise a head of unit and internal auditors who report directly to the line minister and are members of its staff. When no internal audit structures are in place within SOEs, internal audit is performed by the internal audit directorate within the respective line ministry.

Internal audit tasks include identifying and assessing risks in the company, assessing the adequacy and efficiency of financial management and control systems and issuing recommendations on how to improve the company’s operations. The responsibility for ensuring the independence of internal auditors in internal audit planning, auditing and reporting on the results resides with the relevant line minister.

According to Article 40 of the Public Sector Internal Audit Act, the Heads of IAUs (in ministries) must prepare and submit to the head of the organisation [i.e. the line Minister] a consolidated annual report containing information from the annual reports of the internal audit units on the budget authorised by sub-delegation, as well as on the companies and state enterprises within the organisation. The consolidated report is then sent by the line minister to the Minister of Finance.

The Independent Financial Audit Act also requires every public interest entity (Box 3 provides a definition) to have an audit committee, which in this case refers to a committee of the board. These committees are supervised by the Commission for Public Oversight of Statutory Auditors (CPOSA), which is the national public oversight body in Bulgaria. Their members are appointed by the general meeting upon a proposal by the chairman of the board of directors or the managing director of the entity, from among the non-executive members of the supervisory and management bodies of the entity. The general meeting approves the statutes of the audit committee in which its functions, rights and responsibilities are stipulated.

In addition to the internal and external audit and financial inspection authorities, there are also inspectorates attached to each ministry. Established under the Administration Act, inspectorates directly report to the relevant line minister for the exercise of administrative control. The main role of inspectorates is to prevent administrative irregularities and to ensure that anti-corruption procedures are followed. When detecting irregularities, inspectorates can propose disciplinary proceedings or alert the prosecuting authorities on potential criminal offences (article 46 of the Administration Act). Individual inspectorates are required to report annually to a Chief Inspectorate (established at the level of the
Council of Ministers) which coordinates and supports the activities of individual inspectorates by providing methodological guidance for their operations.

**Ministry of Finance**

In accordance with the Financial Management and Control Act, the responsibility for coordinating and harmonising activities in the area of financial management and control (including in internal audit units of all public sector organisations) is assigned to the Minister of Finance. For that purpose, a Control Methodology and Internal Audit Directorate was set up within the ministry, to support the minister in his functions. It is structured in two divisions: 1) the Control Methodology Division and 2) the Internal Audit Division, each of which has specific competencies and activities (Ministry of Finance, n.d.[50]). The Ministry of Finance works in cooperation with the NAO, the EU Funds Executive Agency and the Public Financial Inspection Agency. In fact, a cooperation agreement has been signed in order to raise synergies between these institutions. The parties agreed to cooperate and exchange information, as well as to develop methodologies and harmonise terminology amongst other aspects, in order to improve efficiency and avoid overlap in the timing and scope of audits.

To facilitate the work of the Ministry of Finance, responsible authorities within SOEs have to provide the minister of finance with information about the performance, effectiveness and efficiency of their financial management and control systems, on an annual basis. This information is provided by SOEs’ managers based on a standard questionnaire developed by the Ministry of Finance. Through this questionnaire, managers evaluate the general state of the management and controls systems of the company and identify measures for improvement. In addition, managers must also submit an annual report on the internal audit activity of the company, which is prepared on the basis of information provided by the internal audit unit. The minister of finance can impose a fine in case of non-compliance with the established deadline. As a final step, the information obtained from the annual reports and the questionnaire is summarised in a consolidated report and presented by the Council of Ministers to the National Assembly.

### 4.4. Boards of directors of SOEs

**Structure and composition of SOE boards**

As mentioned, SOEs in Bulgaria can have different board structures depending on their legal form:

State enterprises (statutory SOEs) have a management board and an executive director (CEO).

Limited liability companies do not have boards. Their governing bodies are the general shareholders’ meeting and the managing director(s) which report(s) directly to the responsible line ministry. When the company has multiple managing directors, each of them may act independently unless the articles of association provide otherwise.

Joint-stock companies have either one-tier or two-tier boards.

When they are in place, boards of directors exercise some control rights, however in practice, evidence shows that managers have the most active influence on decision-making. Board size can be from 3-5 members. A larger number may be determined with the consent of the Council of Ministers, but this rarely occurs in practice.
Information provided by the Bulgarian authorities on the 13 largest commercial Bulgarian SOEs (in terms of equity value and employment) shows that most large SOEs (regardless of their legal form) have adopted one-tier boards mixing executive and non-executive directors. In most cases the boards have only three members, including the CEO of the company and ministerial appointees (Annex A). The ministerial appointees may include high-level civil servants, or in some cases deputy ministers, as well as independent directors. In a more unusual case, the energy holding BEH EAD has a board consisting of its CEO and the CEOs of two of its subsidiary companies, making it essentially an internal management board for the group as a whole (or at least for an important part of the group).

Based on discussions with Bulgarian authorities and corporate governance experts there are a couple of reasons for these, by international comparison, very small boards of directors. First, within the public sector, boards are widely seen as having compliance functions and as sources of administrative costs rather than as value-creating corporate bodies. Secondly, there seems to be a public perception that large SOE boards would be at risk of becoming sources of political patronage for the ministers appointing their members.

Board nomination procedure

The board nomination process is currently not explicitly regulated in Bulgaria and is generally at the discretion of line ministries. However, according to the new Law on Public Enterprises, a competitive procedure should be established for the selection and appointment of SOE board members, and detailed in the upcoming Rules of Implementation to be developed within 6 months of entry into force of the Law. Previously, the legislative framework in place did not require a public recruitment process for CEOs and/or board members, although Article 25 of the state ownership regulations for fully corporatised SOEs stipulates that an open procedure may be applied. In practice, however, board members were most often appointed directly by the responsible line minister (Table 13). More specifically:

In one-tier board systems, board members were elected by the general shareholders’ meeting (or by the line minister in 100% state-owned companies).

In two-tier board systems, the government appointed the supervisory board, which in turn, appointed the management board. Generally, no nomination committees were in place.

In state enterprises and single-owner LLCs, it was the responsibility and authority of the line minister to appoint top managers (including the CEO). A management contract was signed between the line minister and the CEO. In fully-owned JSCs, however, ministers appointed the members of the board of directors or supervisory board, but not the CEO. In this case, the CEO was appointed by the management board (from among its members) or the supervisory board in two-tier systems, and a management contract was concluded in writing between the CEO and the chairman of the board, on behalf of the company. In two-tier JSCs, the CEO (who was elected from among the members of the management board) signed a contract with the chairman of the supervisory board.

However, while there were no overarching guidelines concerning board selection procedures in all SOEs, there were some examples of SOEs for which related guidelines or regulations were established. For example, in the case of the stock exchange BSE, board member nomination procedures were established by law. The elected candidates were to be approved by the regulator on the basis of requirements laid down in the Markets of Financial Instruments Act. Similarly, a regulation applicable to water supply and sanitation operators was adopted, introducing requirements for a more stringent board selection procedure. The regulation stipulated that members of the managing bodies of those...
operators were to be appointed only after a contest was conducted by a special committee. The whole process was to take place in three stages: (1) pre-selection of the candidates; (2) development of a business development plan for a five-year management period and (3) interviews with admitted candidates.

Even within the new legal framework, public officials can be appointed to SOE boards, if they act as representatives of the state, including in listed SOEs such as the Bulgarian Stock Exchange, where until recently public officials are elected by the general shareholders’ meeting based on a state nomination. The possibility for government employees and politicians to serve on SOE boards is regulated in Article 7[3] of the Civil Servant Act, Article 107a[2] of the Labour Code and Article 19[8] of the Administration Act, which stipulates that public officials shall not receive any remuneration for their state representation on boards. As mentioned in Box 5, the state ownership regulations for fully corporatised SOEs explicitly prohibit several categories of politically-affiliated government employees from serving on SOEs’ boards or as managers. This includes notably members of parliament, ministers and deputy-ministers, district and deputy governors, mayors and deputy mayors, chairs of government agencies, etc. The Law on Public Enterprises further specifies that SOE board members cannot hold a “senior public office” as defined in article 6[1] par. 1 - 38 and 41-45 of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act, or be member of a political cabinet or a municipality’s secretary.

Table 13. Board nomination procedure and CEO appointment in Bulgarian SOEs (as of October 2019)

<table>
<thead>
<tr>
<th>Governing bodies</th>
<th>State enterprises (statutory SOEs)</th>
<th>Fully corporatised</th>
<th>Joint-stock companies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Management board</td>
<td>General shareholders’ meeting (GSM)</td>
<td>GSM</td>
</tr>
<tr>
<td></td>
<td>Managing director (CEO)</td>
<td>No board</td>
<td>One-tier board</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Managing director(s), reporting directly to the line ministry</td>
<td>Managing director</td>
</tr>
<tr>
<td>Unitary board (management board in one-tier system)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supervisory board</td>
<td>Appointed by GSM (line minister if 100% state-owned)</td>
<td></td>
<td>Appointed by GSM (line minister if 100% state-owned)</td>
</tr>
<tr>
<td>Management board</td>
<td>Appointed by GSM (i.e. line minister)</td>
<td>Appointed by GSM (i.e. line minister)</td>
<td>Appointed by the supervisory board</td>
</tr>
</tbody>
</table>

*The CEO nomination by non-executive members of the board of directors is foreseen by law, however in practice, it is the line minister who appoints the CEO since most SOE boards comprise just the CEO and ministerial representatives.*

**Source:** Questionnaire responses from the Bulgarian authorities, 2018.

**Criteria for board member selection**

Until October 2019, there were generally, with some exceptions, no selection criteria or well-defined job requirements and qualifications for the appointment of board members. There were also no requirements for independent directors. In some cases, nomination
criteria were legally defined in relevant sectoral legislation. This was, for example, the case in the banking sector and for listed companies such as BSE, which had to comply with the requirement of having at least 1/3 of its board composed of independent members as established by Article 116a[2] of the POSA.

The following definition of “independence” is provided in the POSA:

An independent member of the board may not be:

1. An officer in the public company;
2. A shareholder who owns directly or through related persons at least 25 percent of the votes at the general meeting or is a person related to the company;
3. A person who has lasting trade relations with the public company;
4. A member of a management or supervisory body, procurator or officer in a company or another legal entity under items 2 and 3;
5. A person related to another member of a management or supervisory body of the public company.

Despite the lack of well-established selection criteria, SOEs usually reported nominating board members on the basis of proven qualifications and professional experience within the scope of activity of the SOE. The independence of board members was, however, still questionable in many cases. Political interference in management decisions was reportedly widespread and most visible through the frequent change in management with political cycles. In general, the fact that board members and senior executives of SOEs were often directly appointed by the respective minister made them more evidently subject to “party patronage”. In addition, the law was such that new governments were able to easily restructure ministries and agencies (including SOEs) to eliminate certain positions and create new ones (Kopecký, Mair and Spirova, 2012[51])

Since October 2019, all board members are required to fulfil strict criteria regarding reputation and integrity, suitable education, and solid professional experience amongst other aspects [Box 9].

### Box 9. Criteria for board member selection

Art. 20[1] of the Law on Public Enterprises establishes that: “A manager or a member of a collective body for the management and control of a public enterprise may be a Bulgarian or foreign national of the European Union or a country which is party to the Agreement on the European Economic Area or of the Swiss Confederation who:

1. Has higher education;
2. Has at least 5 years of professional experience;
3. Has not been placed under legal interdiction;
4. Has not been convicted of intentional offences of a general nature;
5. Is not deprived of the right to occupy the post;
6. Has not been declared bankrupt as a sole trader or a member having unlimited liability in a commercial company which has been declared insolvent if the creditors have remained unsatisfied;
7. Has not been a member of a company’s management or control body, or a cooperative dissolved as a result of insolvency in the 2 years prior to the appointment, in the case of other unsatisfied creditors;

8. Is not a spouse or legal partner, a relative in a straight line, in a collateral line, up to and including the fourth degree, and by affinity — to the second degree including the manager or a member of a collegiate body, for the management and control of the same public enterprise;

9. Does not hold a senior public office as defined in Article 6 par 1, p. (1) - (38), (41-45), of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act, and is not a member of a political cabinet or a municipality’s secretary.

10. Does not carry out commercial transactions out of one’s own or under a foreign name;

11. Is not a partner in partnerships, limited partnerships and limited liability companies;

12. Is not a manager or member of an executive or supervisory body of another public enterprise;

13. Meets other requirements laid down in the company’s statutes.

[2] Prohibitions in paragraph 1, p. 10 and 11 shall apply when an activity similar to that of the company is carried out.

[3] Persons who work under a contract of employment or an employment relationship shall not be managers and executive members of the boards of directors and management boards.

The Law on Public Enterprises also establishes minimum requirements for independent members on SOE boards (which must constitute at least 1/3 but not more than 1/2 of board composition) and further specifies independence requirements [Box 10].

**Box 10. New independence requirements for SOE board members**

Article 23 [1]: Independent board members shall comply with the requirements set out in Article 20.

(2) An independent member shall not be:

An employee of the public enterprise;

A shareholder in the same public enterprise;

A person who, personally or through related parties, has a commercial relationship with the public enterprise;

A sole trade, a shareholder or member of a trading company having the same or a similar object of activity as the public enterprise;

A person related to the another member of the governing bodies the public enterprise

(3) Representatives of the State […] shall not be independent members.

(4) Members of the Management Board in two-tiered joint-stock companies shall be independent of the State, respectively the Municipality.
Board role and competencies

Currently, the responsibilities of the boards of directors are generally set in the Commerce Act, the statutes and articles of association of each SOE as well as in the management and control contracts signed between the line minister and board members (in two-tiered structures, ministers signs control contracts with members of the supervisory board, and the members of the management board sign contracts with the chair of the supervisory board). Board responsibilities for state enterprises, however, are set forth in enterprise-specific Rules of Organisation and Procedure, adopted by the Council of Ministers or the responsible minister.

According to Article 237 of the Commerce Act, board responsibilities for fully corporatised SOEs are the following:

1. Board members shall have equal rights and obligations, regardless of the internal division of functions among them and any management and representation rights granted to some of them.

2. Board members shall perform their functions with the care of a prudent businessman and in the interest of the company and all shareholders.

3. Board members shall, prior to their election, notify the General Shareholders’ Meeting or the Supervisory Board, respectively, of their membership in any company as a general partner, of their holdings exceeding 25 percent of the capital of other companies, as well as of their involvement in the management of other companies or cooperatives as an authorised officer, managing director or board member [...].

4. Members of the board of directors and of the management board may not, on their own behalf or on behalf of other persons, conduct commercial transactions, be general partners in companies or authorised officers, managing directors or board members of other companies or cooperatives, the businesses of which compete with the business of the company. This restriction shall not apply, if the Articles of Association allow it expressly or when the body, electing the board member, has given its express consent.

5. Board members shall not disclose any information they have become aware of in that capacity, if that could affect the business and development of the company, including after they are no longer board members. This obligation shall not apply to any information, which, pursuant to a law, shall be available to third parties or has already been disclosed by the company.

6. Paragraphs 1 - 5 shall apply also to the natural persons, representing juridical persons, which are board members, in accordance with Article 234[1].

According to the Bulgarian authorities, public officials when elected in SOE boards act independently, have the same rights and obligations as other board members and do not receive instructions on how to vote on the agenda. In certain cases, they can submit a report to the minister (on their own initiative) when they consider a topic of high importance, however they are obliged to protect company secrecy and not to disclose sensitive company information. Public officials can only be part of one SOE board and cannot hold the position of managing or executive director. They also do not receive remuneration for their role in the board.
The Bulgarian authorities also report that SOE boards have complete decision-making autonomy and full responsibility. They are accountable before shareholders in accordance with the applicable legislation, the company’s articles of association as well as management and control contracts concluded between the ministers and board members. In fact, board members are obliged to submit a written report to the minister describing their operations, the financial and economic situation of the company and existing problems and measures to solve them (Article 23 of the state ownership regulations for fully corporatised SOEs).

In practice, however, the scope of ownership rights exercised by line ministries is extensive. There is a lack of clear boundaries between the roles of the boards in individual SOEs and line ministries which essentially allows the government to expand the ownership rights to SOEs without limitation. For example, under the existing legislation, state ownership rights in wholly-owned fully corporatised SOEs allow the state to exercise extensive control over companies’ transactions. State ownership rights in state enterprises are even more expansive, including control over enterprises’ day-to-day operations, such as internal organisational structures and employment policies (IMF, 2017[19]).

The state ownership regulations for fully corporatised SOEs and the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act contain dispositions on anti-corruption and integrity in SOE boards and provide, amongst other aspects, a definition of “conflicts of interest” (Chapter VIII of the CCUAAA) as well as a requirement (as per Article 22 of the state ownership regulations) that board members (including managers) sign a Declaration of Assets and Interest which is to be continually updated. Certain SOEs such as BSE are obliged to developed internal rules for potential conflicts of interest within their boards.

The remuneration policy for SOE board members and other executives is set forth in Section IX of the State Ownership Regulations for fully corporatised SOEs, and usually depends on the quarterly profit/loss of the company. As established by Article 33[1], the remuneration of members of the executive and supervisory bodies of SOEs shall be determined according to the value of the tangible fixed assets, number of staff, profitability, financial result, change in value added per employee, servicing of obligations, as well as according to the specific commitments and responsibilities assumed in the contracts concluded with the relevant minister. The remuneration of executive directors may not exceed twelve times the minimum monthly salary established for the country for the relevant month. Determination of remuneration is made at the end of each reporting quarter (for the first two months an advance payment is made on the basis of a previous quarter). It bears repeating that, until October 2019, board members that are public officials were not remunerated.

The use of specialised board committees is not required of, nor commonly practiced by, Bulgarian SOEs. There is no requirement or restriction to establish specialised committees, with the exception of audit committees, which are required for public interest enterprises (as defined by the Accountancy Act) in accordance with the Law for the Independent Financial Audit. Listed companies, however, must establish an audit committee, nomination committee and remuneration committee.
5. State-owned enterprises at the sub-national level

Ownership at the sub-national level is usually exercised by municipalities, which are the basic administrative territorial unit at the level of which self-government is practiced in Bulgaria. There are currently 265 municipalities in the country. For the purpose of this review, the municipalities of Sofia and Burgas have volunteered information about their SOE portfolios. Both are important administrative units in Bulgaria. The Municipality of Sofia is part of the greater Sofia Province which includes 22 municipalities. The municipality itself is divided into 24 districts (including the capital city of Sofia) which are administered by local mayors. Similarly, the Municipality of Burgas is part of the greater Burgas Province and is itself divided into several districts, including the city of Burgas which is the second largest city on the Bulgarian Black Sea Coast and the fourth largest in Bulgaria.

Both municipalities contribute significantly to the Bulgarian economy (with Sofia accounting for about 39% of Bulgaria’s GDP in 2016) and have received substantial structural funds from the EU for their development. The Metropolitan company (which runs Sofia’s underground system) alone, had received BGN 1 043 billion (~EUR 500 billion) in EU funds by 2015 (IME, 2016[52]). Recently, the EU invested over EUR 293 million from the Cohesion Fund to improve the port railway connection between Plovdiv and Burgas, one of Bulgaria’s most important ports on the Black Sea (EC, 2018[53]). Burgas has been investing a lot in developing its tourism industry and creating industrial zones over the last few years.

5.1. Overview of the SOE sector at the municipal level

**Types of SOEs.** According to the National Statistical Institute, there are approximately 580 fully or majority-owned SOEs at the sub-national level in Bulgaria (Table 14). The Municipality of Sofia owns 57 SOEs, while the Municipality of Burgas owns 27 SOEs. Just like on the national level, most of them are wholly-owned commercial companies, constituted as single-owner LLCs or JSCs, with only a few statutory enterprises (“municipal enterprises”) and one majority-owned company (PFC ‘Neftochimik — 1962’ AD, which is owned at 80.82% by the Municipality of Burgas, with the remaining part owned by a non-municipal minority shareholder). Municipal enterprises differ, however, from state enterprises held by the national government, in that they are formed by decision of the Municipal Council (MC), while state enterprises are formed by law adopted by parliament. Furthermore, pursuant to Article 52 of the Municipal Property Act, all municipal enterprises operate based on rules adopted by the MC and are funded by the municipal budget. They are not legal entities. In contrast, commercial companies owned by municipalities are independent and self-financed legal entities with their own property.
Table 14. Bulgarian SOEs by sector: sub-national level (2016)

<table>
<thead>
<tr>
<th>Sector</th>
<th>No. of enterprises</th>
<th>No. of employees</th>
<th>Value of SOEs (USD thousand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary sector</td>
<td>13</td>
<td>165</td>
<td>7 219</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>17</td>
<td>462*</td>
<td>1 147</td>
</tr>
<tr>
<td>Electricity and gas</td>
<td>7</td>
<td>2398</td>
<td>99 759</td>
</tr>
<tr>
<td>Water supply and sewerage</td>
<td>45</td>
<td>2765</td>
<td>29 418</td>
</tr>
<tr>
<td>Transportation</td>
<td>32</td>
<td>10 469</td>
<td>188 764</td>
</tr>
<tr>
<td>Telecommunication</td>
<td>12</td>
<td>33</td>
<td>-62</td>
</tr>
<tr>
<td>Healthcare and social activities</td>
<td>300</td>
<td>22 578</td>
<td>161 513</td>
</tr>
<tr>
<td>Other</td>
<td>155</td>
<td>3 635</td>
<td>138 113</td>
</tr>
<tr>
<td>Total</td>
<td>581</td>
<td>42 505</td>
<td>605 871</td>
</tr>
</tbody>
</table>

Note: * Includes individuals employed in mining and quarrying.
Source: Questionnaire responses by the Bulgarian authorities, 2018.

Sectoral distribution. Similar to the national level, the healthcare sector accounts for the largest proportion of enterprises and SOE employment at the sub-national level. However, in terms of valuation it is much more important at the sub-national level, accounting for 27% of the total value of sub-national SOEs (in comparison to 2% at the national level). The transportation and energy sectors are also important at the sub-national level, although to a lesser degree than at the national level. In general, most municipality-owned SOEs are small entities providing utility, transport and community services (e.g. waste management, cultural centres, etc.). This is for example the case for the Municipality of Sofia, where the turnover of five utility and transport companies alone accounted for around 80% of total municipality SOE turnover as of end-2014 (IMF, 2017[19]). In Sofia and Burgas, most of the largest SOEs operate in the medical or transport sector.

Figure 11. Sectoral distribution of SOEs, sub-national level (2016)

Note: Based on the NSI’s list of 350 enterprises held at the sub-national level.
Source: Questionnaire responses from the Bulgarian authorities, 2018.

Operational performance. Generally, a similar pattern of indebtedness can be observed at the municipality level where, for example within the Sofia Municipality, several enterprises in the transport and banking sectors have significant liabilities. According to
I. THE STATE-OWNED ENTERPRISE LANDSCAPE IN BULGARIA

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the IMF, the total liabilities of the Sofia Municipality’s SOEs reach around 32% of those of state-level SOEs (IMF, 2017[19]). Information on the operational performance of sub-nationally held SOEs has not been requested for the purpose of this review, with the exception of information on monitoring practices, which, for the most part, do not differ from the national level. For example, the Municipality of Sofia reportedly monitors and reviews the performance of municipal SOEs within its jurisdiction on a quarterly basis, based on an analysis of selected financial criteria such as the value of tangible and intangible assets, operating income, average number of employees, financial autonomy ratio, etc. As with the national level, criteria differ from one company to another depending on the company’s specific business programme, sectoral activity and/or public policy objectives.

5.2. Legal and institutional framework at the sub-national level

**Legal and regulatory framework.** Article 140 of the Constitution of the Republic of Bulgaria establishes that Bulgarian municipalities have the right to own property, which they shall use in the interest of the territorial community. The same laws and regulations generally apply to SOEs managed at the national and municipal levels, including the Law on Public Enterprises (for which only chapters II, V, VI and VII referring to boards of directors, accounting, auditing and public disclosure, are applicable). Municipal SOEs are additionally governed by the Municipal Property Act regulating the acquisition, management and disposal of property and chattels constituting municipal property, as well as municipal ordinances and regulations for the organisation and operation of local Municipal Councils. These include the so-called “Ordinances on the Terms and Procedure for Exercising the Ownership Rights in Commercial Companies” adopted by the Municipal Councils of Sofia and Burgas. These ordinances include dispositions on the rights and obligations of the municipality as an owner, board nomination procedures, and remuneration of elected managers amongst other aspects. In Burgas, the Municipal Council has also adopted a 2016-2019 strategy for the management of municipal property, in compliance with the requirements of Article 8[8] of the Municipal Property Act. This strategy determines the development policy of the municipality and its economic activity. It contains the general objectives, principles and priorities for acquisition and management of municipal property; and the needs for new property and methods of acquisition thereof.

**Institutional framework.** Municipalities have their own property (public and private) and budgets which they independently govern according to the Municipal Budgets Law, adopted in 1998. The relationship between the local budgets and the state budget is regulated by the Public Finance Act (State Gazette 15/2013) and by the annual state budget acts. Central funds can be made available in the form of subsidies, subventions or state revenue cessions.

Self-government at the municipality level is regulated through the Local Government and Local Administration Act (State Gazette No. 77/1991, with subsequent amendments) which describes the competences attributed to municipalities. In particular, local government authorities are represented by the Municipal Council (MC) which determines the municipality’s policies, and the mayor who performs executive functions supported by the municipal administration. Both the MC and the mayor are elected by popular majority vote for a four-year term. The Sofia Municipality Council has 61 members, while in Burgas it consists of 51 municipal councillors. Members of the Municipality Council usually participate in different commissions (or directorates), according to their respective
competences. These commissions/directorates operate within the administration of their respective municipality and are usually assigned specific activities, including the disposition and acquisition of the municipality’s ownership rights and/or other business activities. There is also a Municipal Privatisation Agency in charge of the privatisation of municipally-owned enterprises in Sofia (Sofia Municipality, n.d.[54]).

When exercising ownership rights over municipal assets, the Municipal Council performs the functions of a general shareholders’ assembly. The basic competences of the Municipal Council include: a) determining the policy of the municipality with regard to local development; b) determining its own structure (e.g. by establishing statutory or *ad hoc* committees); c) determining the structure and functions of the municipal administration; d) passing the municipal budget and setting local fees; and e) deciding on the management of municipally-owned property and municipal enterprises and trade companies. The management and procedures of disposition and acquisition of the ownership and material rights for municipal properties are regulated by ordinances adopted by the Municipal Council, as well as by the Rules of Procedures of the municipality’s administration. The Municipality of Burgas has also indicated that the management of municipal property is defined in the Strategy for Municipal Property Management for the period 2016-2019, which defines the development policy of the municipality.

**Box 11. Rights of the Sofia Municipality Council in municipal joint-stock companies**

The Sofia Municipality Council, exercising the rights of the sole owner of the capital in municipal joint-stock companies, shall have the power to (non-exhaustive list):

- Amend and supplement the company’s articles of association;
- Increase and decrease the capital of the company;
- Transform and terminate the company;
- Elect and dismiss members of the board of directors and the supervisory board, respectively, and determine the remuneration of those not entrusted with the management of the company;
- Approve the annual accounts after endorsement by the appointed expert accountant, decide on the distribution of the profit and its payments […];
- Decide on the issuance of bonds;
- Decide on the opening, transfer or closure of branches of the company or of significant parts of it;
- Decide to participate in other companies by approving the draft statute or contract;
- Authorise the disposal of the tangible fixed assets of the company;
- Authorise the conclusion of contracts for the lease of real estate and other fixed assets with a book value exceeding 5% of the total book value of the fixed assets of the company at 31 December of the previous year […]

*Source:* Questionnaire responses from the Municipality of Sofia based on the Trade Act, Commerce Act and municipal Ordinance on the Procedure for Setting up Commercial Companies and Exercising the Municipality’s Property Rights in Commercial Companies.
At the sub-national level as well, SOEs’ managers are required to prepare a three-year business programme, to be approved by the Municipality Council. Box 12 summarises the content of enterprise-specific business programmes elaborated for Sofia Municipality companies.

**Box 12. Business programmes for Sofia Municipality companies**

Business plans are prepared by the management of municipality-owned companies and adopted by the Municipality Council. They define financial criteria, targets for the company capital structure, as well as acceptable levels of financial risks. Business programmes contain at least the following information:

- Financial analysis of the company: assets and liabilities, revenues/expenses, cash flows, human resources etc.
- Targets and objectives for the development of the company
- Means for achieving the objectives: resources, investment costs, etc.
- Expected results: operating income, profit/loss, liabilities, etc.

The draft business programmes shall be published on the official website of the company and submitted to the Sofia Municipal Council no later than 31 March. Business programmes are subject to quarterly and annual implementation reports, assessing the degree of implementation of the business programme, amongst other aspects.


The Management in municipality companies is, in principle, empowered to take independent decisions in accordance with national and municipal legislation as well as company bylaws and business programme – although some of their decisions may need approval by the Municipality Council (e.g. deals (sale, purchase) involving tangible assets and leasing agreements for short-term assets with net book value exceeding 5% of total value of the assets and/or for a lease period above three years).

### 5.3. Financial control and audit at the sub-national level

Municipality-owned enterprises are usually subject to the same external and internal control mechanisms as those performed at the national level (i.e. NAO, PFIA, etc.). In terms of internal audit, only larger companies have an internal auditor (or comptroller), generally appointed by the CEO, with approval of the Municipal Council. When the statutory act does not provide for a comptroller, the internal audit is carried out by the municipality. For example, the Municipality of Sofia has indicated that “the control is carried out by the Municipality’s Committee on Economics and Property or another permanent commission of the MC, whose portfolio falls within the activity of the company”. Furthermore, in both municipalities, SOEs are subject to an independent financial audit, to be carried out by registered auditors elected by their respective Municipal Councils.

The reporting system for companies owned by both municipalities includes monthly, quarterly and annual reports for established financial criteria, submitted to the MCs (together with the annual financial statement). The reports and financial statements are
published on the official website of the municipalities, as well as on the Trade Register Agency’s website. All municipality companies in Sofia and Burgas (with a few exceptions consisting of smaller companies) have adopted IFRS, in line with good international practices.

5.4. Boards of directors at the sub-national level

Structure and composition. Boards at the sub-national level are also generally constituted as (one-tier) three-member boards. However, specifically in the case of Sofia, SOEs are headed by management boards comprised solely of executive directors, while in Burgas municipal enterprises have always one representative of the Municipality Council in their boards.

Board nomination procedure. Similar to SOEs held at the national level, there is no overarching guideline concerning board selection and nomination procedures at the sub-national level. However, the Municipality of Sofia has indicated that all board members within its SOEs are always selected by the Municipal Council based on a public competition. In turn, board members appoint the CEO from among themselves, while the rest of the management team is nominated by a decision of the Municipal Council. All members of the management team are assigned with a management contract for a term no longer than three years.

As established in the aforementioned “Ordinance” of the Municipality of Sofia, the announcement for the public competition for board members is published in at least one widely circulated newspaper and on the website of the Sofia Municipal Council. Criteria include: a) higher education; b) at least three years management experience; c) absence of conviction for a general offence; and d) the right to exercise a commercial activity or occupy a material accounting position. The typical procedure takes places in three stages: 1) verification of compliance with the above-mentioned requirements; 2) presentation of the applicant’s business programme for the company; and 3) interview with the final candidates (carried out by a committee representing the Municipality Council, main political groups and the administration). Furthermore, the Municipality of Sofia has also indicated that according to its regulations, public officials cannot be members of a company’s board and/or management, which differs from requirements applied to SOEs held at the national level. The Municipality of Burgas, on the other hand, does not systematically nominate board members after a competition process. Most board members are nominated based on the Municipality Council’s decision.

Board duties. As for national-level SOEs, board responsibilities are generally set in legislation (notably the Commerce Act, for LLCs and JSCs), the statutes and articles of association of each SOE, as well as the management and control contracts signed between the company and the mayor. According to the ordinances of both municipalities, a three-year business programme must be prepared by the management of each company, to be approved by the Municipality Council. Board members are also subject to rules on remuneration, as per municipality ordinances which set financial criteria for board remuneration similar to those established at the national level.

Board committees. As mentioned, the use of specialised board committees is not widespread among Bulgarian SOEs in general, including those owned by municipalities.
Box 13. Corruption case in a municipal enterprise in Sofia

Toplofikacia Sofia EAD is a majority-owned municipal enterprise engaged in the production, transmission and distribution of heat energy in Sofia. Several top executives of the heating plant, including its former CEO, were arrested in 2006 in connection with a scandal involving charges of money laundering, tax evasion and mismanagement. It is claimed that they committed asset fraud through parallel import of unnecessary equipment at prices several times higher than those already delivered by the World Bank and the International Bank for Reconstruction and Development. After his arrest in 2006, Toplofikacia’s former CEO was found to be linked to an eminent party leader of the Bulgarian Socialist Party and a former minister, signalling evidence of party and state interference in state and municipality-owned companies and corruption.

Source: (Kabakchieva and Ganev, 2017[55])
6. Recent and ongoing reform

6.1. Legislative amendments since 2008

Since its accession to the European Union in 2007, Bulgaria has implemented several economic and administrative legislative reforms in line with the EU Directives, some of which have had a direct impact on corporate governance and state-owned enterprises more particularly. In addition. Table 15 presents a summary of some of the most important reforms bearing on SOEs having been implemented over the last decade.

Table 15. Recent reforms on corporate governance of SOEs (2008-2018)

<table>
<thead>
<tr>
<th>New or amended Law or Regulation</th>
<th>Year</th>
<th>Relevant provision(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Servants Act</td>
<td>2008</td>
<td>Prohibition for civil servants, deputy ministers and other senior managers to receive remuneration for their participation in SOE boards. (This provision was later expanded in 2012 to include all types of boards, committees, commission, working groups etc.).</td>
</tr>
<tr>
<td>Labour Code</td>
<td>2008</td>
<td>The National Audit Office shall carry out audits of SOEs referred to in article 62[3] of the Commerce Act [i.e. state enterprises]; commercial companies with over 50% state/municipality participation in the capital; and legal entities for which the state or municipality is the guarantor.</td>
</tr>
<tr>
<td>Administration Code</td>
<td>2008</td>
<td>Ministry of Finance (MoF) begins collecting information on SOEs included in general government accounts (incl. financial statements and forecasts, balance sheets and income statements).</td>
</tr>
<tr>
<td>Decree 114 of the Council of Ministers</td>
<td>2013</td>
<td>MoF begins collecting financial statement, reports and analyses from all SOEs on a quarterly basis. Received documents are published on the Ministry of Finance's webpage.</td>
</tr>
<tr>
<td>State Property Act</td>
<td>2013</td>
<td>Incorporation of new rules regarding public-private partnerships with certain blocking rights granted to the state/ SOE.</td>
</tr>
<tr>
<td>Regulations (Annex 3)</td>
<td>2013</td>
<td>Adoption of new rules for SOEs when contracting financial services from credit or financial institutions*.</td>
</tr>
<tr>
<td>Public Offering of Securities Act</td>
<td>2016</td>
<td>Obligation for all SOEs to provide financial statements and additional information to the Financial Supervision Commission (since 2017, only SOEs operating in regulated sectors are obliged to do so).</td>
</tr>
<tr>
<td>Accountancy Act</td>
<td>2016</td>
<td>Introduction of a definition of &quot;public interest enterprises&quot; and obligation for them to use IFRS (amongst other aspects).</td>
</tr>
<tr>
<td>“Regulations”</td>
<td>2017</td>
<td>Introduction of several amendments including 1) mandatory notification of all tenders or competitions regarding the conclusion of contracts for sale, exchange and renting out of fixed assets, for property insurance of fully-owned SOEs to the ministry of Economy; 2) introduction of special rules for the conclusion of certain types of contracts to SOE’s subsidiaries .</td>
</tr>
<tr>
<td>Public Finance Act [art.73]</td>
<td>2018</td>
<td>Ministry of Finance begins collecting information on SOEs with liabilities above 0.1% of GDP (considered to have potentially large impact on the General Government Sector)</td>
</tr>
<tr>
<td>Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act</td>
<td>2018</td>
<td>All SOE board members are required to provide declarations of incompatibility and declarations of assets and interest to the respective line minister or to the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission</td>
</tr>
<tr>
<td>Concession Act</td>
<td>2018</td>
<td>Prohibition for SOEs to grant concessions (previously possible, but never used in practice)</td>
</tr>
</tbody>
</table>

* According to these Rules, SOEs should diversify their bank accounts so that the net exposure to a single credit or financial institution may not exceed 25 per cent of the total amount of the SOEs’ cash.

Source: Questionnaire responses from the Bulgarian authorities, 2018.
6.2. Previous attempts at legislative reforms

Two recent attempts to adopt a new dedicated law on SOEs were undertaken in 2014 and 2016, respectively. In 2014, a draft legislative proposal was prepared by a working group chaired by the then-Deputy Prime Minister (representing the then-ruling Bulgarian Socialist Party) under the 2013-14 Cabinet. The draft was ultimately not approved by the Council of Ministers or presented to Parliament. Two years later, in 2016, the same draft was used as a basis for a second legislative proposal, which was introduced directly to Parliament (without approval by the Council of Ministers) by an opposition party (Bulgarian Socialist Party) and was ultimately not adopted. An in-depth evaluation of the contents of these legislative proposals goes beyond the scope of this review, but for context to Bulgaria’s current legislative agenda, some of their elements merit mentioning and can be summarised as follows (taken from a draft of the 2016 proposal presented to parliament):

- Introduced a broader national definition of SOEs than the definition presented in the Commerce Act, notably including state majority-owned companies in the scope of entities considered SOEs.
- Affirmed that SOEs are to be created and managed in the interests of citizens and society and to operate on a level playing field with private companies.
- Proposed the requirement that the boards of state-owned joint-stock companies comprise at least one third independent directors, with independence defined *inter alia* in relation to the company and its management.
- Recalled the responsibilities of fully corporatised SOEs’ boards of directors, as set forth in the Commerce Act, and outlined the responsibilities of SOE management boards in state enterprises not regulated by the Commerce Act.
- Established internal governance requirements for fully corporatised SOEs, for example relating to risk management, corporate governance codes and codes of conduct.

6.3. The Law on Public Enterprises (2019)

As mentioned, the Bulgarian authorities recently adopted a new Law on Public Enterprises, which establishes the legislative foundation for stronger ownership coordination and monitoring; more independent, qualified and transparently-nominated boards of directors; improved disclosure at both the level of individual enterprises and the level of the state; and a more level playing field with private companies through the foreseen phasing out of the separate legal form of “state enterprises” for SOEs that are engaged in commercial activities [see section 3.3.3, part I for more information]. As a next step, the law foresees the adoption of secondary legislation to support the implementation of the law, including (1) rules guiding the selection and appointment procedure for board members selection and nomination (2) the ownership policy expressing how the state should exercise its powers; and (3) an ordinance establishing clear transparency and disclosure requirements. The OECD Secretariat will continue providing assistance to the Bulgarian authorities in this process.
6.4. Ongoing legislative reforms within the ERM-II accession framework

In August 2018, the Bulgarian government approved an Action Plan for joining the Exchange Rate Mechanism (ERM-II) and Banking Union, a system designed to prepare member countries to join the euro by limiting exchange rate fluctuations.

The Action Plan consists in a series of reforms needed for the country to progress further on its path to joining ERM-II by the end of 2019 and ultimately the Eurozone following the fulfilment of all convergence criteria. Bulgaria’s commitments towards a more robust financial sector, stronger institutions and more efficient economic structures, include:

**Banking supervision**: strengthening the supervision framework by introducing legislative amendments to enter into close cooperation with the European Central Bank (ECB) in line with the existing procedures;

**Macro-prudential supervision**: adoption of legislative amendments to introduce borrower-based macro-prudential tools in the Law on Credit Institutions;

**Non-banking supervision**: strengthening the supervision of the non-banking financial sector (pension funds and insurance companies);

**Insolvency framework**: revision of the existing insolvency and stabilisation framework; review of the existing system for data collection and publication; and training of trainers, trustees and fiduciaries, amongst other aspects;

**Anti-money laundering framework**: Strengthening the Bulgarian anti-money laundering framework through the adoption of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018

**Modernisation of the framework for management of state-owned enterprises in line with the good international practices**: legislative amendments and/or adoption of a new law on SOEs with a view to modernising the framework for management of SOEs, in line with the OECD Guidelines on Corporate Governance of State-Owned Enterprises, and with the assistance of the SRSS.

Ratification of the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund by the National Assembly.

The ECB and the European Commission will monitor the effective implementation of these commitments acting within their respective areas of competence. Once they have provided a positive assessment, a decision will be taken by the ERM II parties on the formal application of the Bulgarian authorities for ERM II participation.
Part II. Assessment of Bulgaria relative to the SOE Guidelines
7. 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.

7.1. 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.

The new Law on Public Enterprises outlines the rationale for state ownership by declaring that “Public enterprises shall be [...] established and managed for the benefit of citizens in order to achieve maximum value for the society through efficient resource allocation whenever necessary to: (1) eliminate existing market failures; (2) provide goods and services of strategic importance or those related to national security or development; and (3) manage assets of strategic importance for the state.”

Prior to the adoption of the new SOE law, however, the Bulgarian authorities had not explicitly articulated the rationales for state ownership. While the rationales for state ownership of SOEs with public-policy functions could often be gleaned from relevant sectoral regulation, the rationales for maintaining predominantly commercially-oriented companies in state ownership were not as clearly articulated.

In general, the rationale for the establishment of SOEs by the state or its participation in the capital of commercial companies may come from a decision of the Council of Ministers (as per Article 57 of the State Property Act) or a dedicated act establishing a “state enterprise” (e.g. Bulgarian Development Bank Act, National Railway Infrastructure Company, etc). Hence, the overall rationale for state ownership in particular SOEs could be gleaned from specific sectoral policies or dedicated acts, although in most cases, no reference to value maximisation or efficient allocation of resources was made. The rationales for establishing or maintaining state ownership of SOEs was generally linked to the “interest of the general public” and set forth in the relevant sectoral regulation(s). This is the case, for example, in the water supply and sewerage sector, where the objective for state ownership, as established in the Water Act, is to ensure water supply and purification services to the population; or in the transport sector where state participation in postal services and rail transport is maintained mainly for ensuring geographic coverage of these services.

In most cases, objectives for the creation and maintenance of state ownership in certain SOEs have been inherited from the planned economy in the cold war era. These original objectives were revised in 1992 with the adoption and implementation of the Transformation and Privatisation of State and Municipal Enterprises Act, which initiated the privatisation process in Bulgaria; and subsequently with the adoption of the Privatisation and Post-Privatisation Control Act in 2002, which included a list of SOEs that
II. ASSESSMENT OF BULGARIA RELATIVE TO THE SOE GUIDELINES

are not to be offered for privatisation (Annex A), as they were considered of “strategic importance”.

At the municipal level, Article 140 of the Constitution of the Republic of Bulgaria establishes that Bulgarian municipalities have the right to own property, which they shall use in the interest of the territorial community. As mentioned previously, the management, disposition and acquisition of ownership rights for municipal properties are regulated by ordinances adopted by the local Municipal Council. In Burgas, the Municipality Council has also adopted a management strategy for municipal property for the term of its mandate (2016-2019), in compliance with the requirements of Article 8[8] of the Municipal Property Act. The strategy determines the municipality’s development and economic activity and contains general objectives, principles and priorities for the acquisition, management and administration of municipality-owned property. The Municipality Council of Sofia has also adopted a similar programme (publicly available) based on which companies with municipal participation in the capital can be created. The programme contains an analysis and justification for the establishment of commercial companies with municipal participation in the capital. The procedure for establishing such companies must be opened by a resolution of the Municipal Council, which shall contain: 1) the general conditions for municipal participation; 2) the number of stakeholders and shareholders; and 3) a list of documents to be provided and the deadline for their submission. The Municipality of Sofia maintains a public electronic register of sole municipal companies and of companies in which the municipality is a shareholder or a partner.

7.2. Ownership policy

B. 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 mentioned, the Law on Public Enterprises foresees the elaboration of an ownership policy defining the overall rationale for state ownership, the role of the state in the governance of SOEs, the implementation of the ownership policy as well as the roles and responsibilities of line Ministries and other state agencies involved in the implementation of the policy. The ownership policy is to be drafted by the Public Enterprises and Control Agency (in collaboration with relevant stakeholders) and adopted by the Council of Ministers.

Until then, Bulgaria did not have a state ownership policy as such, although there were elements of an ownership policy within the previous legal framework covering SOEs, including in the aforementioned state ownership regulations for fully corporatised SOEs, which defined how ownership rights in these SOEs were to be exercised by the state administration. Generally, SOEs would implement the policies of their line ministry in accordance with sectoral policies and national priorities as well as individual objectives and expectations which are laid down in their respective statutory acts (when applicable), statutes, rules of organisation and business programmes. While these objectives would constitute publicly available information (with the exception of those laid down in business programmes) they did not provide SOEs or the general public with a clear understanding of the state’s overall objectives as an owner.

Similarly, at the municipal level, SOEs are subject to their local ordinances and individual rules and regulations, which often contain elements of an ownership policy. Following the
adoption of the Law on Public Enterprises, municipalities shall also develop ownership policies setting general expectations for their enterprises.

7.3. Ownership policy accountability, disclosure and review

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 per the requirements of the new Law on Public Enterprises, an ownership policy shall be established within six months of its entry into force. It shall be published on the official websites of the Public Enterprises and Control Agency and of the Council of Ministers and shall be reviewed at least every four years by the Council of Ministers, on the basis of proposals submitted by the coordination unit. It is unclear however through what mechanism(s) this update will take place.

Under the previous regulatory framework, the aforementioned elements of a state ownership policy, namely those contained in the state ownership regulations for fully corporatised SOEs, were disclosed to the general public. In general, national and sectoral legislation bearing on SOEs (including the adoption of SOE statutory acts) follows the legislative procedure, according to which drafts are published for public consultation online for 30 days. Depending on national priorities, the government reviews these drafts and, if necessary, proposes amendments. All these documents are publicly available on the government website.

At the municipal level, information is available only for Burgas, where the draft programme on the management and disposition of municipal property is published on the Municipal Council’s website and is publicly available for comments before its approval. The programme is adopted on an annual basis and is followed by an annual report on its implementation. Updates can be made through a motivated note prepared by the municipal administration and after the approval of the Municipal Council of Burgas.

7.4. 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.

As mentioned, the Bulgarian state has not yet developed a comprehensive overview of each SOE’s individual objectives. In general, the rationale (and broad objectives) underpinning the formation of an SOE are set forth in relevant national and sectoral legislation, as well as in the statutes of the SOE. Specifically in the case of SOEs established as state enterprises, objectives are also reflected in the draft of the individual legislative act establishing the SOE (statutory act) as well as in the “motives” accompanying the draft act. The rationale is also included in the line minister’s report accompanying the draft Order of the Council of Ministers based on which the respective SOE is formed.

In practice, enterprise-specific objectives are often laid out in business programmes, which are generally not made available to the public. This leads to a certain lack of transparency regarding the nature and extent of individual SOEs’ obligations and their overall impact on the SOE’s resources and economic performance.
The way ministries define and communicate the rationales for owning individual SOEs varies across the state administration. The rationales for continued state ownership are in some cases based on performance against the provisions of management contracts. The Ministry of Regional Development and Public Works, for example, has stated that “the rationale for owning individual SOEs is assessed based on the performance of the SOEs, its business activity, and public policy objectives”. These public policy objectives are reportedly subject to a review at least once per year. This, however, appears to refer mostly to decisions regarding the maintenance of the enterprise in state ownership, rather than to the rationale underpinning its state ownership in the first place. Also, this does not seem to be a widespread practice among other ministries.

The new Law on Public Enterprises should provide some clarity as it foresees the development of enterprise-specific financial and non-financial performance objectives by line ministries (along with the ownership coordination unit in an advisory capacity).
8. 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.

8.1. 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.

The legal forms under which SOEs may operate are not fully standardised in Bulgaria: state-owned enterprises can be constituted as fully corporatised SOEs formed under the Commerce Act or as “state enterprises” (i.e. statutory corporations) formed by a dedicated act, under Article 62[3] of the Commerce Act. Commercial companies can be set up either as single-member limited liability companies (EOOD) or single-shareholder joint-stock companies (EAD) – although, as mentioned, nothing precludes SOEs from including other shareholders at a later stage and becoming regular LLCs (OOD) or joint-stock companies (AD). As a reminder, most SOEs in Bulgaria are structured as joint-stock companies (55%) and limited liability companies (37%) - including at the municipal level.

For fully corporatised SOEs, the rules concerning the composition and structure of corporate boards and the authority of boards vis-à-vis the ownership function are the same as for private companies (as per the Commerce Act). State enterprises, however, are typically regulated by the respective Rules for Organisation and Procedure, adopted by the Council of Ministers. In practice, state enterprises differ from fully corporatised SOEs mainly in the extended authority and powers granted to the line ministry and the composition and structure of the board. State enterprises (and enterprises exercising a state monopoly) are also exempted from bankruptcy procedures (art. 612 of the Commerce Act).

Furthermore, state enterprises (17 in total) are generally established for the purpose of performing public obligations explicitly defined in the relevant law. For this purpose, the state allocates assets constituting public and private state property, although the state is not liable for the obligations incurred by the enterprises. The enterprises are liable for their obligations only up to the amount of “private state property” allocated to them. In other words, “public state property”, which must remain in state ownership, cannot be used by a state enterprises to pay its debts.

As a positive development, the new Law on Public Enterprises calls for the Public Enterprises and Control Agency to carry out an analysis of statutory SOE’s objectives and the appropriateness of their legal form. Based on this, the law foresees their conversion into either joint-stock companies or administrative structures, depending on whether they perform primarily commercial functions or primarily administrative/public policy functions (to take place within three years of adoption of the legislation). In addition, the
law specifically bans the establishment of new state enterprises carrying out predominantly commercial activities.

8.2. 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.

Despite affirmations by the Bulgarian authorities that the government does not interfere in SOEs’ day-to-day operations, in practice, the state – as a sole or dominant shareholder in most SOEs - may control corporate decisions (due to the appropriation of powers generally conferred to the general shareholders’ meetings) and thus limit SOEs’ operational autonomy, especially with regards to hiring decisions. In addition, SOEs’ boards and management seem to be subject to a high degree of political intervention (e.g. CEOs changing with electoral cycles).

The Bulgarian legislation contains provisions regarding the separation of powers and competencies between government bodies and SOEs (including the Law on Public Enterprises which prohibits authorities exercising ownership rights on behalf of the state from “interfering with the management or the ongoing operational activities of the public enterprise” and requires them to “respect the rights of the public enterprise to exercise ownership rights over its subsidiaries”). Those are, however, very fragmented and dispersed among the Commerce Act, the state ownership regulations for fully corporatised SOEs, statutory acts, sectoral legislation, and the management contracts signed between the responsible minister and board members (and those signed between management boards and supervisory boards in two-tier systems).

In principle, government ownership entities (i.e. line ministries and municipal councils) are responsible for providing strategic guidance to SOEs (in line with national policies) either through regular communication channels or through more “informal” approaches, depending on the ministry. Line ministries (and municipal councils at the sub-national level) are also responsible for approving business programmes prepared by SOE boards in line with the company’s development strategy. Business programmes contain specific economic indicators such as profitability, productivity, profits, loss reduction, financial obligations, investments, etc. which are regularly monitored and updated by SOE boards.

8.3. Independence of boards

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

The Law on Public Enterprises introduces the requirement for SOE boards of directors to be comprised of “at least one-third but no more than half” of independent directors, and provides clear criteria for their independence, including from the shareholder and from the company and its management [see boxes 9 and 10]. Boards of “large” SOEs are required to be chaired by an independent member.

Prior to this, however, there were no requirement for SOE boards to include independent directors (except for listed SOEs). As a result, a large majority of SOE boards do not have independent board members, and cannot be considered to operate independently of company shareholders and management. In most cases, boards are composed of ministry representatives and senior managers of the company (directly appointed by line ministers).
As mentioned in Article 3 of the Transition Provisions of the Law on Public Enterprises, the composition of SOE boards should be adjusted within one year of its entry into force to meet new independence requirements established by the Law.

Government representatives, when appointed in SOE boards, are said to act independently, to have the same rights and obligations as other board members and to not receive written instructions on how to vote on the agenda.4 In certain cases, state officials can present reports to the minister, on their initiative, when they consider some topics to be of high importance for the SOE. In all cases, however, board members are obliged to protect company secrecy and to not disclose sensitive company information, in accordance with Article 237[5] of the Commerce Act. It is important to mention that following the adoption of the Law on Public Enterprises, government representatives will have the right to be remunerated for their board service. This is a positive development as the previous lack of remuneration for civil servants serving on SOE boards was likely to create a perception that they were to act in their ministerial capacity, rather than the interests of the enterprise.

8.4. 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.

According to Article 13 of the Law on Public Enterprises, “the Council of Ministers shall exercise the powers of the state in public enterprises […] it may delegate these powers to Ministers according their sectoral competence and/or to the Public Enterprises and Control Agency”. Depending on the internal structure of the line ministry, ministers exercising ownership rights are supported by dedicated ownership units within the ministry. In ministries where no such ownership unit exists, government employees from different directorates performed these functions. Their financial resources are part of the budget of the ministry, approved with the state budget each year. Similar directorates/commissions exist in municipalities as well, although ownership rights are generally exercised by Municipality Councils. A special role is also played by the Privatisation and Post-Privatisation Agency (now Public Enterprises and Control Agency), which can, in some cases, authorise decisions on SOEs’ full or partial privatisation.

Prior to the adoption of the Law on Public Enterprises, ownership rights were assigned to the Council of Ministers and Ministers according to their sectoral responsibilities as per the Article 57 of the State Property Act. In practice, the management and performance of SOEs was not discussed by the Council of Ministers, but only by line ministers who had the responsibility to monitor and control SOEs’ operations independently. There was no coordination between the different ministries and institutions responsible for SOE ownership, nor was there a centralised ownership entity or strong co-ordinating entity. Minimal coordination was provided by the Ministry of Finance, although mostly limited to financial management and control of SOEs (and public bodies in general).

Following the adoption of the Law on Public Enterprises, a new ownership coordination entity was established: the Public Enterprises and Control Agency. It is legally mandated to coordinate the development of the state’s ownership policy, monitor its implementation and report to the public on both. The Agency will also be able to functionally exercise ownership rights, under the delegated authority of the Council of Ministers.
8.5. 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."

The accountability requirements of the ownership bodies (i.e. the line ministries) to the parliament are defined indirectly via the accountability of government ministers. There are, however, no specific requirements for the line ministries, nor the units within them that are responsible for SOEs, to report directly to parliament regarding the carrying out of their state ownership function.

The activity of state- and municipally-owned enterprises is externally audited by the National Audit Office and the Public Financial Inspection Agency, which report to the parliament and Ministry of Finance, respectively. As mentioned, the NAO controls the reliability and credibility of the financial statements of budget organisations, as well as the lawful and efficient management of public funds and activities. The parliament may issue decisions instructing the NAO to carry out up to five additional audits (on an annual basis) other than those included in the office’s annual programme. The Public Financial Inspection Agency, on the other hand, performs subsequent financial inspections for compliance with the statutory acts governing the budgetary, financial, economic or accounting activity as well as the activity of awarding and executing public procurements. In addition, there are internal audit units in all ministries and some SOEs, which are directly subordinated to the responsible minister.

8.6. 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. I. Being represented at the general shareholders meetings and effectively exercising voting rights;

The rules and procedures guiding state representation in general meetings are defined in the Commerce Act, the Law on Public Enterprises and the state ownership regulations for fully corporatised SOEs. Article 16 of the Law on Public Enterprises establishes that: “The authority exercising shareholder rights of the state in a public enterprise shall participate in person or through an authorized representative in shareholders’ meetings, shall represent the state and shall vote on the basis of the number of shares held by the State. When an authorisation is given, the relevant power of attorney shall indicate the voting method concerning each item on the agenda.” Thus, the state representative in the general meeting holds an express power of attorney in writing, signed by the respective minister which states how to vote on each item on the agenda. Following the general meeting, the authorised representative shall draw up a report. The minister decides on the issues that are within the competence of the general meeting. The decisions are prepared in a Protocol, signed by the responsible minister. It is however unclear how actively represented the state is at the general shareholders’ meetings of minority state-owned companies (which are not considered SOEs and are thus not a focus of this review) and how frequently it exercises its voting rights.

At the municipal level, dispositions on municipality representation in shareholders’ meetings exist in municipal ordinances and regulations applicable to enterprises. The Municipality of Burgas has for example indicated that, in commercial companies where the
municipality is the majority shareholder, the Municipal Council elects a representative which shall be part of the general assembly of each company individually. He or she makes a proposal for the agenda of a forthcoming meeting of the general assembly and determines the voting method for each of the issues on the preliminary agenda.

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:

As mentioned, the new Law on Public Enterprises foresees the elaboration of Implementing Rules regulating the selection, and appointment of members of supervisory and management boards in fully majority-owned SOEs. The Rules [to be adopted by the Council of Ministers within six months of entry into force of the new Law] will establish a “competitive procedure” for the selection and appointment of board members, based on pre-determined professional and personal criteria for candidates [Box 9], and monitored by the Public Enterprises and Control Agency.

As mentioned, prior to this, the board nomination process in SOEs was not explicitly regulated in Bulgaria. There were dispositions in the Commerce Act, statutory acts, the state ownership regulations for fully corporatised SOEs and the statutes of individual SOEs, but they were not conducive to transparent or clearly structured nomination processes. Article 25 of the state ownership regulations, for example, stipulates that an open procedure may be applied. However, in practice, board members were most often appointed directly by the responsible line minister without specific criteria or competencies required.

A competitive selection process was only mandatory for listed SOEs (e.g. BSE) and water supply and sanitation operators, who were required to conduct a contest led by a special committee. The Municipality of Sofia had also implemented a mandatory public competition for selecting board members, however, the process was not mandatory in the Municipality of Burgas (it was optional as per the municipal ordinance).

Where the state was not the sole owner, board members were elected by the general meeting in accordance with the Commerce Act. The general meeting is generally empowered to make key strategic and executive decisions regarding the company, including the appointment of managing directors and board members. More specifically, Article 19[4] of the state ownership regulations provide that “in the election of board members (including supervisory boards) in joint-stock companies with state participation in the capital, the line minister or the person authorised by him/her to represent the state in the general meeting, shall propose a number of members, corresponding to not less than the proportionate participation of the state in the capital of the company”. It is unclear however if the line minister systematically used this right in practice.

Where the state held a minority share in a company (which, again, would not be considered SOEs for the purpose of this review), it did not reserve the right to appoint board members. It would offer nominations like any other shareholder, but this did not guarantee their election (which was subject to the majority vote). In principle, each shareholder was empowered to vote at the general meeting, following the principle of “one share, one vote” unless otherwise stipulated in the articles of association of the company.

Criteria relevant to the nomination of board members existed only in certain companies (mostly the banking sector and the water supply and sanitation sector). The Bulgarian authorities, however, report that SOE board members were nominated based on proven qualifications and professional experience within the scope of activity of the SOE. The Municipality of Sofia had also established the following minimum requirements for
applying as a board member (as per the Municipality’s Ordinance): 1) higher education, 2) at least three years of management experience, 3) not having been convicted for a general offence resulting in incarceration (unless having been rehabilitated); and 4) having the right to exercise in commercial companies and hold a material accounting position. The ordinance also established that the announcement for public competition should be published in at least one popular newspaper and on the websites of the Municipality.

No measures to encourage gender diversity on boards and senior management exist in Bulgaria.

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;

While sectoral legislation and enterprise-specific business plans (both discussed in more detail below) often set forth SOEs’ objectives and some financial performance criteria, the Bulgarian state as an owner has generally not consistently set financial targets, capital structure objectives and risk tolerance levels for the SOEs in its portfolio. This should however change as the new Law on Public Enterprises clearly stipulates that line ministries (with the assistance of the Public Enterprises and Control Agency) ought to determine strategic goals for their SOEs.

Until now, broad mandates and objectives for SOEs were only set through national and sectoral legislation, as well as within statutory acts establishing individual state enterprises. They generally defined the predominant activities of an SOE and gave some indications regarding its main economic activity and, where relevant, public policy objectives. While broad mandates were generally established for SOEs constituted as state enterprises, they were generally less clear for fully corporatised SOEs.

More specific objectives are generally set and monitored through the preparation of “business programmes” for the whole duration of the management contract. These programmes are to be approved by line ministers (or the municipality councils at the sub-national level) and monitored on a quarterly basis as well as at the end of each financial year. Business programmes contain specific indicators (e.g. profitability, productivity, sales volume, profit and loss, new markets, etc.) which vary from one company to another. Annex C provides an illustrative example of one business programme for Bulgaricum, an SOE in the portfolio of the State Consolidation Company under the Ministry of Economy. Under the new legal framework, business programmes are also to be evaluated by the Public Enterprises and Control Agency, who then shall provide recommendations to address risks related to public finances.

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;

Under the new institutional framework brought by the Law on Public Enterprises, monitoring activities will be performed by the new ownership coordination entity, who will be responsible for overseeing the implementation of SOE business programmes and for preparing an aggregate report on the SOE sector, amongst other aspects.

Prior to this, Bulgaria had established a central reporting system by which the Ministry of Finance would collect SOEs’ financial statements and annual reports, but would not undertake any aggregate analysis to assess the performance of the state’s SOE portfolio as such. Furthermore, no mechanism was in place to monitor SOEs’ compliance with
applicable corporate governance standards (reflecting primarily the fact that SOEs were not subject to specific corporate governance standards).

Line ministers would generally monitor SOE performance (through specialised directorates/internal audit units) based on a quarterly and annual evaluation of SOEs’ business programmes, activity reports and financial reports. In particular, Article 23 of the state ownership regulations establishes that: “within 25 days after the expiry of each quarter and until the 25th of April of the following year, management and control bodies of sole owner companies with state participation in the capital shall submit to the body exercising the rights of the state in companies with state participation in the capital a written report about their operations, the financial and economic condition of the company, as well as about the existing problems and measures to solve them.”

Furthermore, under the Decree of the Council of Ministers No. 114/2010, SOEs were “obliged to submit in electronic form […] quarterly and annual financial statements, balance sheets, profit and loss accounts, equity statements, and statements of cash flows and their annexes prepared in accordance with the Accountancy Act and applicable accounting standards, accompanied by an activity analysis and a financial situation analysis. Annual reports and analyses were to be submitted by 25 April of the following year and quarterly reports and analyses by the 25th day of the month following the respective reporting period”. In some sectors such as in the water and sewerage sector, line ministries also performed benchmarking relative to foreign and regional water operators, as well as national (private and public) operators.

At the municipal level as well, SOEs were required to report on their performance on a quarterly basis. The information provided was analysed based on some selected financial criteria, including the value of tangible and intangible fixed assets, operating incomes, the average number of employees, and liquidity ratio amongst other aspects.

The external reporting systems and standards of corporate governance for SOEs are detailed in section 6.1.2 (part II).

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;

According to the new Law on Public Enterprises, SOEs will be required to publish financial and non-financial information about their enterprises in accordance with the applicable legislation and forthcoming implementing rules. As per the Law, financial statements shall include at least (1) the balance sheet; (2) profit and loss statement; (3) statement of changes in equity; and (4) the cash flow statement, in accordance with applicable accounting standards.

Non-financial information shall include risk assessment reports, reports on human resources and labour relations, sustainability, environmental impact, related-party transactions, a report on the board of directors (both supervisory and management boards in two-tiered structures), including a report on their remuneration; and a report on the performance of the public service obligations and other objectives. Increased disclosure requirements will be applied to SOEs categorized as “large” as per the definition of the Accounting Act.

Before that, there was no standard policy outlining the financial and non-financial disclosure requirements for SOEs. Several laws and regulations did however require SOEs to provide information (mainly financial statements) to several public bodies (however
without apparent standards in place concerning the quality of information provided by SOEs. Reporting requirements were notably due to:

**Ministry of Finance:** Annual and quarterly financial statements, along with management reports as per the Council of Ministers Decree No. 114/2010; and quarterly reports on cash flows per the Public Finance Act for SOEs that are part of the general government sector. (Financial statements are published on the MoF official website, or that of the Municipal Council, in case of municipally-owned SOEs).

**Commercial Register:** financial statements (individual and consolidated), and annual management reports as per the Commerce Act and the Accountancy Act.

**Financial Supervision Commission:** annual financial statements, as per the POSA.

**National Revenue Agency:** annual financial statements (in standardised form), as per tax laws.

**National Statistical Institute:** annual activity reports (in standardised form) containing statistical summaries and accounting documents (financial statements), as per the Statistics Act.

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**Box 14. Content of companies’ annual management reports on the Bulgarian Commercial Register**

Important information is publicly available on the Bulgarian Commercial Register, the centralised database for company information in the country. Access to this database is free and open, although downloading documents may require an electronic signature. The register offers information on companies’ annual financial reports, form of business, address as well as shareholders and managers’ names. If a company is obliged to, but does not, declare the required information, they can be fined. The Commercial Register also publishes the annual management reports of companies, which according to the Accountancy Act, shall contain at least the following information:

1. **An objective review, giving a true and fair view of the development and results of the operations of the enterprise and of its position, together with a description of the main risks facing it;**
2. **An analysis of financial and non-financial key performance indicators relevant to the business, including information on issues related to the environment and employees; when preparing the analysis for the management report references to expenses reported in the annual financial statements and additional explanations thereon may be included therein;**
3. **All significant events that have occurred after the date of drawing up the annual financial statements;**
4. **Potential future developments of the enterprise;**
5. **Activities in the area of research and development;**
6. **Information on the acquisition of own shares as required under Article 187 of the Commerce Act;**
7. **Existing branches of the enterprise;**
8. Any financial instruments used by the enterprise, and where material for the purposes of evaluating the assets, the liabilities, the financial position and the financial result, the following shall be disclosed:

9. The objectives and policies of the enterprise concerning financial risk management, including its hedging policy for each main type of hedged item to which hedge accounting is applied;

10. The enterprise’s exposure to price, credit and liquidity risks and cash flow risk.

Furthermore, under Article 48 of the Accountancy Act, large public interest enterprises which, as of 31 December of the reporting period, have more than 500 employees, shall include a non-financial declaration in their management report with the following content:

1. A brief description of the business model of the enterprise – goal, strategy, organisational structure, infrastructure, products, policies pursued in relation to the primary and ancillary activities of the enterprise and other;

2. A description of the policies adopted and followed by the enterprise in respect of environmental and social issues, including the activities performed during the reporting period and the results thereof;

3. The objectives, risks and tasks that lie ahead in terms of environmental and social policies, including a description of activities that would have an adverse impact on ecology, employees or other social issues;

4. A description of the key indicators of the results of the activities related to environmental and social issues.

Finally, some SOEs do publish on their webpage information on public procurements. Information on tenders and competitions in SOEs is published on the Ministry of Economy’s website.

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 the Ministry of Finance, the state itself does not have a specific dialogue with external auditors. The Independent Financial Audit Act (IFAA) sets out the general rules of communication between external auditors and the audited enterprise. SOEs that are subject to independent financial audits appoint each year an external auditor (by decision of the general meeting/line minister or the municipal council in case of municipality-owned companies) to audit the annual financial statements of the company. In that light, the company and the appointed auditor engage in a dialogue on the company’s activity on an annual basis. In some SOEs, however, a dialogue is established only on a case-by-case basis (in case of questions from one of the parties for example).

Dialogue with specific state control organs such as the NAO and the PFIA is regulated by their respective legislation. According to Article 17 of the Public Sector Internal Audit Act, the head of the organisation and other high-ranking officials are obliged to assist the internal auditors in carrying out their duties. In particular, Article 27[1] of the Public Sector Internal Act further specifies that the heads of the internal audit unit must regulate the dialogue between the unit and the audited entities. At the sub-national level, the Municipality of Sofia has indicated that: “twice per year, the external auditors prepare reports to the sole owner (i.e. the Municipal Council) which include findings and
recommendations regarding the auditing activity. A dialogue can be established for solving emergency cases.”

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.

In practice, remuneration levels for SOE board members are reportedly below private sector levels and generally do not reflect market conditions. This could make it difficult for the Bulgarian state as an owner to attract and retain qualified professionals to serve on SOE boards. It bears repeating that state officials serving on SOE boards were not remunerated until recently. The Law on Public Enterprises introduces for the first time, the right for state representatives to receive remuneration for their board service.

The state’s board remuneration policy is set forth in the state ownership regulations for fully corporatised SOEs, while for municipal SOEs, the municipalities’ related policies are established in ordinances. The state ownership regulations establish that: “the remuneration of members of executive and supervisory bodies of [fully-owned SOEs] shall be determined according to the value of the tangible fixed assets, number of staff, profitability, financial result, change in value added per employee, servicing of obligations, as well as according to the specific commitments and responsibilities assumed in the contracts concluded” (article 33). In fact, the monthly remuneration may not exceed twelve times the amount of the minimum monthly salary established for the country for the respective month. Remuneration is determined at the end of each reporting quarter (for the first two months an advance payment is made on the basis of a previous quarter).

Similar dispositions exist at the municipal level as well. The Ordinance of the Municipality of Sofia, for example, states that the remuneration of board members and executives is determined on the basis of certain financial criteria including the value of tangible and intangible fixed assets, operating income, and the average number of employees amongst other aspects. Remuneration depends therefore on the quarterly profit/loss of the company. In addition, the local ordinance specifies that non-executive board members (including management and supervisory boards) can receive monthly remuneration in the amount of 70% of the remuneration of executive board members.

Listed SOEs and the Central Depository AD apply the remuneration policy for board members established by the relevant EU and national legislation, while (other) SOEs that are not 100% state-owned as well as credit and financial institutions can decide on different rules and policies regarding remuneration. This is the case for the Fund Manager of Financial Instruments in Bulgaria EAD (FMFIB) and the Bulgarian Development Bank for example, which have their own internal rules on remuneration.
9. 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.

9.1. Separation of functions

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

As outlined in the SOE landscape section of this review, there is often no separation between the state’s ownership and regulatory functions under the current state ownership arrangements in Bulgaria. While the new ownership coordination entity will be granted some regulatory and monitoring functions, state ownership rights will continue to be exercised by line ministries (with possibility for delegation to the Public Enterprises and Control Agency) who simultaneously undertake sectoral regulatory functions.

This being said, some degree of functional separation occurs in markets where an independent sectoral regulator is in place. This is the case, for example, in the energy, water, telecommunications and postal services sectors, where independent regulators report directly to Parliament and are therefore not beholden to ownership ministries. The Commission on the Protection of Competition (CPC) also regularly publishes advocacy opinions regarding state decisions on SOEs (e.g. the decision to provide compensation for public-interest activities) that could distort the competitive landscape with private companies. Five of Bulgaria’s ownership ministries, including the Ministry of Energy, have also taken steps to separate ownership and regulatory functions through the establishment of different departments responsible for these two functions.

In addition, although the absence of a complete separation of ownership and regulatory functions will continue to constitute a departure from the SOE Guidelines, the introduction of greater ownership coordination constitutes a first, transitional step towards centralisation and potential complete separation of ownership and regulatory functions.

Concerning municipal SOEs, separation of ownership and regulatory functions is generally only in place in situations where an independent regulator has been established. This applies, for example, to Toplofikacia-Sofia, the district heating company in Sofia for which regulatory functions are undertaken by the state-level Energy and Water Regulatory Commission and ownership functions by the Sofia Municipal Council. The importance of separating ownership and regulatory functions is arguably less relevant for the many municipal SOEs that provide public goods and services in non-competitive markets, for example public transportation, electricity and other utilities.
9.2. 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.

As a general rule, SOEs’ stakeholders, including creditors and competitors, have access to the same means of redress, including legal or arbitration processes, as the stakeholders of private companies. Commercial disputes between SOEs are to be settled through the court system or, if established via contract between the parties, arbitration. This applies equally to SOEs held at the central and municipal levels of government.

A number of possible exemptions to the above exist in cases where an SOE’s assets must legally remain in state ownership. SOEs undertaking a “property management function” over “public state property” cannot, according to the Bulgarian authorities, be the subject of court injunctions, such as a court order to restore property to lenders. The State Property Act defines such “public state property” to include, among others: any facilities or properties declared as “public state property” by act of the Council of Ministers; properties made available to state agencies for undertaking their functions; and a number of specific national assets that must, according to the Constitution of the Republic of Bulgaria, remain exclusively under state ownership. These national assets include “underground resources; beaches and national thoroughfares […] waters, forests and parks of national importance” (Article 18). Lenders of SOEs that manage these assets (for example the forestry SOEs or the state-owned beach resort) may have difficulties accessing collateral in the case of non-payment, given that property that would normally constitute a company’s assets, and thus be available for collateral, must legally remain under state ownership.

9.3. 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.

So far, the Bulgarian authorities have not undertaken a comprehensive review of the SOEs that simultaneously undertake economic and public policy activities, which would be necessary to determine how the costs of public policy objectives were identified and disclosed across the entire SOE sector. However, since October 2019, public service obligations, which may be assigned to public enterprises by line ministries, shall “include specific reference to the enterprise(s) concerned, details about the nature of the obligation and terms and conditions for their performance.” The information shall also be made public by the Public Enterprises and Control Agency on its official website.

While this should help provide some clarity in the future, information currently available points to different practices across ministries and SOEs in this respect. For example, the costs of railway maintenance activities undertaken by the National Railway Infrastructure Company are estimated in advance by the company based on their annual and five-year programmes. They are then identified in a contract signed between the Minister of Finance, the Minister of Transport and the railway company. In the state-owned forestry sector, the costs of reforestation and road construction are reflected in separate accounts kept by the company and are financed from enterprise profits.

Many SOEs in Bulgaria are likely to undertake additional public policy objectives that were not reflected in the information provided by the Bulgarian authorities. These include, for
example, public service obligations placed on the national railway company or the postal services operator. Based on the information available, there appears to be limited transparency regarding the costs of these public service obligations.

An additional point relates to the low financial performance by some SOEs, which could point to the existence of “informal” expectations from the state that are not purely commercial, for example maintaining employment levels or otherwise contributing to local communities. The costs of achieving these informal objectives are not well-defined or disclosed in Bulgaria.

9.4. Funding of public policy objectives

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

Funding arrangements for SOEs’ public policy objectives vary across ministries and SOEs. Practices included the following:

- Some SOEs pursue public policy objectives that are funded directly through capital transfers from the state budget. These are disclosed in the annual state budget reports and subject to EU state aid rules. Such funding arrangements reportedly “should be” disclosed in SOEs’ annual financial statements, but more information would be needed on disclosure practices by SOEs to make an informed related assessment.

- Some SOEs pursue non-commercial objectives that are either partially or fully financed from profits on their commercial activities. For example, public policy objectives pursued by SOEs under the Ministry of Youth and Sports are financed by both SOEs’ income and the state budget, based on incurred costs.

- In the energy sector, enterprises are permitted by the Energy Act to request compensation for certain public obligations imposed on them, many of which are enumerated in the Act (e.g. obligations to use local energy sources; to protect critical infrastructure sites; or to purchase electricity at preferential prices). Requests for compensation are submitted to the Energy and Water Regulatory Commission, accompanied with information on the legal grounds for the obligation and on the associated costs. The Commission’s decisions on such requests are published on its website. In practice, some energy sector SOEs have suffered significant uncompensated losses for the provision of public policy objectives. This was in particular the case for the National Electricity Company (a subsidiary of Bulgarian Energy Holding), owing to imposed electricity tariffs insufficient to cover the actual costs of electricity generation and distribution activities. The Energy and Water Regulatory Commission is reportedly currently analysing the situation with a view to establishing a long-term mechanism for full compensation of this company’s non-commercial objectives.

- For municipal SOEs, the limited information provided indicates that in some cases funding for public-policy activities is disclosed in enterprises’ annual reports (probably in cases where the SOE in question receives a direct subsidy for delivering a clearly-defined public service obligation).

Again, some clarity should be provided by the requirements of the Law on Public Enterprises which establishes that expenditures associated with the fulfilment of specific public service obligations or objectives shall be financed by the state/municipal budgets according to the procedure established by the law and disclosed in annual financial reports.
In addition, the new law makes SOEs entrusted with public service objectives subject to increased public disclosure requirements, similar to those applied to SOEs categorised as “large”.

### 9.5. 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. SOEs’ legal form should allow creditors to press their claims and to initiate insolvency procedures.**

Bulgarian SOEs incorporated as limited liability or joint-stock companies – including municipal SOEs – are not formally exempt from the application of general laws, tax codes and regulations. Furthermore, in practice, both central and municipal SOEs have been the subject of several proceedings initiated by the Commission of Protection of Competition for potential infringement of the Treaty on the Functioning of the European Union and/or the national Law on the Protection of Competition. This indicates that SOEs are not systematically “protected” from competition law by virtue of their state ownership. The Bulgarian authorities provided details on 29 proceedings initiated against central or municipal SOEs between 2008 and 2017, 13 of which resulted in sanctions.

Although fully corporatised SOEs are subject to the same general laws and regulations applicable to private companies, SOEs established as state enterprises benefit from some exemptions. In particular, state enterprises and state-owned monopolies are explicitly exempt from bankruptcy proceedings, according to the Commerce Act. This constitutes a potential competitive advantage for these SOEs compared to private companies. The Constitution of Bulgaria establishes state monopolies over, notably, “railway transport, the national postal and telecommunications networks, the use of nuclear energy […and…] armaments”.

In addition to being exempted from bankruptcy proceedings, Bulgaria’s 17 state enterprises may also, owing to their legal form, be protected from court injunctions. This is (also) the case for all assets that are considered “public state property”. In practice, this means that any assets at an SOE’s disposal that are considered “public state property” cannot be seized by court order, for example to compensate creditors for unpaid loans.

Concerning SOEs’ tax treatment, the Bulgarian authorities report only one SOE, the Prison Service Fund (a state enterprise) from being exempted from income tax. The Prison Service Fund is an SOE under the Ministry of Justice that undertakes construction and maintenance activities in state-run prisons and receives part of its income from the sale of manufactured items produced by prison labour.

### 9.6. 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.**
9.6.1. Conditions for commercial debt financing

Concerning the potential for advantageous commercial financing conditions, Bulgarian SOEs do not as a rule benefit from explicit state guarantees that could result in preferential interest rates from private lenders. Such state guarantees are indeed possible, but subject to strict conditions established by the Government Debt Act as well as EU state aid rules. According to the Government Debt Act, the conditions and requirements to be met by investment projects financed by government loans and projects applying for government guarantees on financing are determined in the Ordinance adopted by Council of Ministers (Decree No. 337 of 01.12.2015). EU state aid rules generally prohibit any form of state support – such as subsidies, guarantees, or preferential access to services – that, among others, confers a selective competitive advantage or otherwise distorts competition, unless it is justified by “reasons of general economic development”.

Although the possibility for state guarantees on commercial debt could in principle confer a competitive advantage on Bulgarian SOEs, government guarantees currently in place, are, according to applicable legislation, only issued to companies undertaking public-policy functions and/or services in the general economic interest (for example electricity provision and public transport such as the Sofia District Heating Company, Kozloduy Nuclear Power Plant, Maritsa Power Plant 2, and Pernik District Heating Company). As another example, plans to develop a natural gas interconnector between Greece and Bulgarian (involving a joint venture with Bulgarian Energy Holding and a foreseen state guarantee on a commercial loan) have been notified to the EU Commission and found to be in line with EU state aid rules. The use of state guarantees therefore does not appear to confer an undue advantage on SOEs’ economic activities.

Concerning potential sources of competitive disadvantage, however, there are some elements that could make it more difficult (or at least more complicated) for Bulgarian SOEs to access commercial debt financing. According to the state ownership regulations for fully corporatised SOEs, the state shareholding entity (in practice, the relevant Minister) holds responsibility for approving the conclusion of credit agreements. Similarly, state enterprises are prohibited from accessing loans from commercial banks without an explicit decision by the Council of Ministers. While these rules do not necessarily constitute a disadvantage (it could be relatively easy for SOEs to obtain such ministerial approval), it does establish different operational conditions as compared to private companies, who can access credit on the marketplace without such governmental approval. Similar potential limitations are present for municipal SOEs, whose state ownership regulations also accord the ownership entity (the Municipal Council) the right to approve credit agreements, meaning that SOE management must seek Municipal Council approval in order to access commercial financing.

9.6.2. Provision of financing from the state or state-owned financial institutions

The only state-owned bank in Bulgaria (apart from the Central Bank, the Bulgarian National Bank) is the Bulgarian Development Bank. The Bulgarian Development Bank provides financing to companies and projects in support of national economic development. Like private companies, SOEs can receive loans from the Bulgarian Development Bank. Direct loans from the state to SOEs are not a common practice, although the Bulgarian authorities report that the government does lend directly to the National Electricity Company as a form of financial assistance. This government support has been notified to the European Commission and is subject to EU state aid rules.
Equity capital injections from the state to SOEs can take the form of cash, real estate or debt-to-equity swaps. They are subject to EU state aid rules, which require that the state adopt the same conditions as a private investor would in like circumstances, including by requiring a minimum rate-of-return on capital. The Public Finance Act establishes the procedures for capital injections by the state, which include the requirement to undertake an assessment of compliance with EU state aid rules.

State capital injections in the form of state property granted to SOEs may in practice confer a competitive advantage, since private companies do not have the same degree of access to state real estate. The implementing regulations of the State Property Act establish the conditions for calculating the value of such capital injections, which, in the absence of an established market price, are valued at their tax-assessment value plus 40%.

F.2. [SOEs’ 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.

As discussed in the section on the general application of laws and regulations, only one SOE, the Prison Service Fund, is exempted from income tax. All other SOEs face the same tax treatment as private companies. Concerning other potential sources of indirect financial support, the Bulgarian authorities report that trade credits and deferred payments are common between some SOEs, but that they do not constitute a significant proportion of SOEs’ financing overall.

However, during interviews of private sector representatives undertaken in the course of this review, one case has emerged wherein cross-financing from profitable SOEs to a loss-making SOE was facilitated through the use of deferred payments within a holding company structure. This concerns Bulgarian Energy Holding, which essentially used revenues from its more profitable subsidiary companies to purchase significant unpaid receivables associated with payments owed by the Sofia district heating company to the gas distribution company Bulgargaz. More specifically, Bulgarian Energy Holding signed an agreement with the Sofia district heating company for a deferred payment of its accumulated debt at an interest rate of 3.25% for a period of 20 years (initially private sector representatives reported that the loan was offered free of interest, but the Bulgarian authorities have clarified that the loan is subject to a 3.25% interest rate). This type of cross-financing between SOEs could constitute a significant departure from the SOE Guidelines’ provisions calling for market-consistent financing between SOEs. Even if the interest rate applied to the deferred payment agreement is itself market-consistent (as asserted by the Bulgarian authorities), questions arise regarding whether the decision to offer the loan was made on a purely commercial basis, or whether the fact that both companies are owned by government entities could have played a role. Since the deferred payment agreement was made, the Bulgarian authorities have reportedly established a more sustainable funding mechanism to compensate for losses incurred by the municipal heating company, which stem partly from the low electricity prices imposed by the regulator to achieve minimum affordability criteria.

F.3. [SOEs’ 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.
Most SOEs in Bulgaria are not subject to specific rate-of-return requirements. Most often, SOEs are simply expected to generate profits or, for those that are not profitable, to reduce their losses. Individual SOEs’ financial objectives are established in their business programmes, approved by shareholding ministers. Municipal SOEs are similarly not generally subject to minimum rate-of-return expectations.

One area where SOEs’ financial conditions differ significantly from those of private companies concerns dividend pay-out ratios. The state’s dividend expectations are determined annually by the Council of Ministers, based on a proposal by the Ministry of Finance. They are primarily influenced by state budgetary needs, rather than based on benchmarking with the private sector. The state’s latest dividend expectations concerning 2017 income are set forth in Council of Ministers Decree of March 2018 “For the establishment and payment to the state deductions from the profit by state enterprises and companies with state participation in the capital”. For all SOEs (with the exceptions of healthcare SOEs and companies in the water and sewerage sector), dividend expectations for 2017 income were set at 50% of net profit. For municipal SOEs, annual dividend pay-outs are similarly not benchmarked against industry standards or subject to any harmonised dividend policy.

9.7. 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.

Bulgaria’s Public Procurement Act establishes that public procurements shall be awarded in accordance with EU rules and respecting the principles of: equal treatment and non-discrimination; free competition; proportionality; and publicity and transparency.

9.7.1. Treatment of SOEs as bidders for public procurement contracts

The Public Procurement Act provides for non-discrimination in the awarding of public contracts, in line with EU rules, and establishes a number of procedural requirements to ensure fair competition among potential contractors. The Bulgarian authorities report that SOEs as bidders for public procurement contracts are generally subject to the same requirements as private operators, albeit with some exceptions that are in line with EU rules. The Public Procurement Act applies equally to SOEs held at the central government and municipality levels.

The exceptions to Bulgaria’s public procurement rules may confer an advantage to SOEs as bidders for public procurement contracts. In particular, contracting entities (which would include ownership ministries) are not required to go through a public procurement process if: (1) they exercise a sufficient degree of control over a concerned contracting entity (specifically, control “similar to that which it exercises over its own departments”); more than 80% of the contractor’s activities are “entrusted by the contracting entity”; and the contract has no private capital, with the exception of non-controlling shareholdings that do not confer decisive control. It is certainly possible that at least some SOEs would fulfil these criteria, meaning that in practice SOEs might be in a position to procure goods and services to their ownership ministries without an open competition, effectively conferring a competitive advantage over private companies. However, this issue requires some further examination, since the Bulgarian authorities have expressed doubts regarding the presence of an undue competitive advantage stemming from the aforementioned exceptions.
Some additional provisions in the Public Procurement Act exempt specific contractors from the public procurement rules, for example those operating in the postal sector that are engaged in profit-making services provided by electronic means and certain postal logistics services that “combine physical delivery and/or warehousing with other non-postal functions” (Article 14). These provisions transpose relevant EU directives.

9.7.2. Treatment of SOEs as procurers

As outlined in the landscape section on the legal and regulatory framework applicable to SOEs, SOEs as procurers can be exempted from pre-established public procurement rules under certain conditions. However, these exemptions are reportedly in line with EU rules on public procurement. Notably, SOEs that undertake “sector activities” (those related to: natural gas and heat; electricity; water; transport services; airports and ports; oil, gas and coal exploration; and postal services) in markets exposed to direct competition are exempted from the Act’s provisions otherwise applicable to these so-called “sector contracting entities”. SOEs operating a state-owned monopoly in the aforementioned sectors, however, they are in principle not exempted from the provisions. The Act allows for “sector contracting entities” to choose from four options when awarding public procurements: (i) open procedure; (ii) restricted procedure; (iii) negotiated procedure with prior call for competition; and (iv) competitive dialogue.
10. Equitable treatment of shareholders and other investors

10.1. Ensuring equitable treatment of shareholders

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.

A. 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:

1. The state and SOEs should ensure that all shareholders are treated equitably.

Only two SOEs in Bulgaria – the Bulgarian Stock Exchange and the resort company Sunny Beach – currently have shares listed on the stock exchange, with private minority shareholders owning 25% and 49.95% of their capital, respectively. An additional six non-listed SOEs have minority private shareholders, four of which are held directly by line ministries and two of which are held by the State Consolidation Company under the Ministry of Economy. Private minority shareholders hold less than 1% of the capital in each of these six non-listed SOEs. According to corporate governance professionals interviewed for this review, most minority shareholders in Bulgaria, with the exception of institutional investors or small professional investment firms, are quite inactive in corporate decision-making.

Given the relative infrequency of non-state minority shareholders in SOEs’ capital, the information in this section focuses primarily on the legislation bearing on shareholders’ rights which would affect SOEs’ minority shareholders if, for example, the Bulgarian authorities chose to list shares of additional SOEs on the stock exchange. The information also only applies to SOEs that are incorporated as joint-stock or limited liability companies, since state enterprises cannot by law include private investors in their capital. For background, according to representatives of the stock exchange interviewed for this review, many SOEs were in the past successfully listed on the exchange, but mostly in the context of their eventual privatisation, which in most cases ultimately ended in their voluntary delisting by the new owners.

This section does not present any separate information concerning the treatment of minority shareholders within municipal SOEs, since the national legislation on minority shareholders’ rights applies equally to companies held at the municipal level of government. In other words, municipal SOEs incorporated as limited liability or joint-stock companies are subject to the same laws and regulations as national SOEs incorporated under these legal forms.

10.1.1. General legal framework for shareholders’ rights in Bulgaria

The Commerce Act and the Public Offering of Securities Act together establish shareholders’ equal rights to information, to vote in general shareholders’ meetings and to
a dividend. All shareholders of an equal class of shares are to be treated equally in Bulgaria. As an EU member country, Bulgaria is furthermore subject to relevant EU rules and has reportedly transposed the 2007 EU Shareholder Rights Directive (2007/36/EC) into national law. Bulgaria has, however, not yet transposed the amendments to this Directive that were adopted in 2017 (2017/828/EC) and for which compliance is required by 10 June 2019. The amendments notably establish new requirements concerning: shareholder identification; transparency on investment intermediaries; voting and reporting on remuneration policy; and approval of related party transactions.

**Commerce Act.** The Commerce Act enumerates several shareholders’ rights, establishing that “no restriction of the rights of individual shareholders of the same class shall be allowed” (Article 181). The Act distinguishes between limited liability and joint-stock companies as follows.

- For limited liability companies, all partners (shareholders) “may be involved in the management of the company, participate in the distribution of earnings, be informed on the course of the company’s business, review the company’s documents and be entitled to receive a liquidation share” (Article 123).

- For joint-stock companies, all shareholders are entitled to vote on issues discussed at the meeting, to receive a dividend and to vote at the general meeting the number of votes corresponding to shares held (Article 183). All shareholders also have the right to receive all written materials related to the general meeting, at the time that notice of the meeting is made (Article 223a). The general meeting cannot make any decisions on issues that were not notified in advance to all shareholders, unless all shareholders are present or represented and do not object to the decision (Article 231). Shareholders owning at least 5% of the capital for more than three months have the right to call a general meeting. Joint-stock companies may issue shares with special rights (preference shares), whose existence must be reflected in the Articles of Association.

For both types of companies, in cases of presumed violation of their rights, all minority shareholders may seek redress through a district court in Bulgaria, according to the Commerce Act (Article 71). Also applicable to both types of companies, shareholders holding more than 10% of shares may invoke the liability of board members for damages caused to the company (Article 240a).

**Public Offering of Securities Act.** The Public Offering of Securities Act supplements the basic shareholder rights set forth in the Commerce Act, for example allowing for shareholders to vote by mail or electronically prior to the general meeting, if called for in the company’s articles of association. Its provisions are applicable to situations involving either a public offering of securities or the issuance of dematerialised securities. “Public offering” is defined as an offer communicated to at least 150 persons, or to an unrestricted number (Article 4).

### 10.1.2. Potential source of advantageous “dividend” pay-outs to the state

The Bulgarian authorities report one area that could in practice constitute a disadvantage of non-state shareholders concerning the right to a dividend. In particular, according to the 2018 State Budget Act, SOEs that rent out immovable properties that have been granted to them by the state must transfer 50% of rental profits to the state (or the municipality, in the case of municipal SOEs). In cases where such SOEs have minority shareholders, this practice could be considered the functional equivalent of a difference in dividend pay-out.
ratios between the state and non-state shareholders. It also constitutes a difference in operational conditions as compared to private companies, thus distorting the level playing field. In practice, these payouts are made directly to the state or municipal budget and not the shareholding entity. The Bulgarian Stock Exchange reportedly negotiated an exemption to this rule, pointing to scope for applying different treatment to SOEs in this regard.

Box 15. Sunny Beach resort matter involving minority shareholder rights

Recent attempts to nationalise land owned by Sunny Beach Resort (a joint-stock company which is 75% owned by the state and 25% by private investors) illustrates the risk that actions by state representatives may undermine the interests of minority shareholders’ in Bulgarian SOEs. According to online news reports – the validity of which has yet to be confirmed – in 2014 the Regional Governor of the Burgas Region signed a decree declaring a segment of land owned by Sunny Beach Resort as state property. The land was apparently intended to serve as an extension of a vacation area used by Bulgaria’s Council of Ministers (Bivol, 2014[56]). The uncompensated expropriation of land owned by a joint-stock company constitutes a violation of shareholders’ property rights. More information on this case – for example whether the nationalisation was contested by minority shareholders – would be useful to assess the extent to which shareholders’ rights are upheld by the Bulgarian courts in practice.

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.

According to information available at the time of writing, the simultaneous disclosure of material information to all shareholders is not explicitly provided for by Bulgarian law. As mentioned above, all shareholders have the explicit right to access information related to the general meeting in advance. All shareholders of the same class are entitled to equal treatment, a protection which extends to the minority shareholders of SOEs. However, neither the Commerce Act nor the Public Offering of Securities Act appear to contain any provisions related to the disclosure of information beyond documents related to the upcoming or previous general meetings. For example, the law does not require simultaneous notification to all shareholders of material events that may significantly impact the company’s finances. A detailed investigation of shareholders’ information rights goes beyond the scope of an SOE review (particularly since only two SOEs have listed shares in Bulgaria and they are subject to the same disclosure requirements as companies owned by non-state investors). However, this could be an area for further exploration, since corporate transparency challenges are often equally present, if not exacerbated, in the state-owned enterprise sector.

Another area of potential concern – which would really only come to the forefront if more SOEs were to include private shareholders in their ownership – relates to the state’s board representation. A board dominated by state representatives can be a channel for the state to gain privileged access to information not available to minority shareholders. In Bulgaria, listed companies are required to staff their boards with at least one third independent directors, which could provide a counterbalance for a predominance of state representatives on boards. However, how this plays out in practice depends in large part on the procedures for nominating independent board members, including the role of minority shareholders in board members’ selection. If independent board members are in practice nominated by the
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state, they may be considered “beholden” to the political powers and therefore not be in a position to act in the interests of all shareholders, including minority shareholders.

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

The two listed Bulgarian SOEs are not subject to any specific state policies regarding communication and consultation with all shareholders. More information would be needed from the Bulgarian authorities on corporate practices in this area to make an informed assessment in this regard.

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.

The annotations to the SOE Guidelines suggest that SOE boards identify all non-state shareholders, keep them duly informed about material events and general meetings and, when relevant, engage in active consultation with minority shareholders.

Regarding the identification of shareholders in Bulgaria, joint-stock companies are required by the Commerce Act to maintain a shareholders’ register recording the names of the owners of registered shares (not of bearer shares), but this is not made public (Article 179). The Commerce Act also requires that a list of shareholders having attended the general meeting be established in the meeting minutes. As mentioned above, the information-disclosure requirements applicable to listed companies in Bulgaria relate primarily to the general meeting and not to ongoing disclosure, for example regarding material events. Finally, concerning active communication and consultation with minority shareholders, more information on corporate practices – for example instances where the minority shareholders of SOEs were specifically consulted prior to making a corporate decision – would be necessary to make a fully informed assessment.

Also relevant to minority shareholders’ participation in corporate decisions such as board election, it bears noting that cumulative voting is not possible in Bulgaria. Cumulative voting allows a shareholder to use all votes towards a single nominee (rather than using a maximum of one vote per share for any particular nominee).

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

As discussed in the Chapter 3 assessment of the level playing field with private companies, SOEs in Bulgaria are subject to state aid rules, which should go some way towards ensuring that any transactions between the state and SOEs take place on market-consistent terms. There are, however, a couple of types of transactions involving SOEs that are mentioned elsewhere in this report and that, while not specific to listed companies, could certainly disadvantage private shareholders if the concerned SOEs had any. This concerns notably: (i) the aforementioned requirement that SOEs receiving rental income on state property pay 50% directly to the state or municipal budget (and not to direct shareholders, such as the ownership ministry or any non-state shareholders); and (ii) the use of a holding company structure to funnel capital from profit-making to loss-making SOEs, which departs from the market-consistent financing principle (the specific case relating to the Bulgarian Energy Holding is discussed in more detail in the Chapter 3 assessment section on market-consistent financing conditions).
10.2. Adherence to corporate governance code

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

Bulgaria’s two listed SOEs are, like all listed companies, encouraged to implement the national corporate governance code or any other relevant international corporate governance code on a comply-or-explain basis. Non-listed SOEs, with the exception of public-interest SOEs, are not required to implement the code’s relevant provisions. However, the code itself states the following: “Considering its national scope, the code should also be adopted and applied by Bulgarian companies with predominant state and municipal ownership”. Although this statement does not constitute a requirement for SOEs to adhere to the national corporate governance code, it does signify an explicit recognition by the Bulgarian authorities of the importance of implementing sound corporate governance practices in SOEs.

Listed companies are required to report on compliance with the code by providing the so-called “declaration on corporate governance” (Art. 100n, para. 7 and 8 of POSA) supplementing their annual reports which are reviewed by external auditors and should be made available on their websites. Bulgaria’s two listed SOEs report on their compliance with the corporate governance code (or report on corporate governance practices more generally) by providing the aforementioned declarations and by publishing them on their websites (available only in Bulgarian) - although the Bulgarian Stock Exchange provides its financial statements and management reports in English too.

10.3. 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.

Based on information provided by the Bulgarian authorities, it would appear that SOEs with non-state shareholders do not as a general rule disclose information on the costs and funding arrangements related to their pursuit of public policy objectives. In cases where Bulgarian SOEs receive direct subsidies or loans from the state budget, these are included in the annual State Budget Act and therefore made available to the public, which would include non-state shareholders. However, no examples were provided concerning company-level board practices to communicate the details of public policy objectives to non-state shareholders.

As mentioned, however, following the adoption of the Law on Public Enterprises, expenditures associated with the fulfilment of specific public service obligations or objectives shall be disclosed in SOEs’ annual financial reports. In addition, SOEs entrusted with public service objectives are now subject to increased public disclosure requirements, similar to those applied to SOEs categorised as “large”.

10.4. 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.

With the exception of SOEs in the energy sector, the Bulgarian authorities report that no SOEs currently engage in co-operative projects such as joint ventures and public-private
partnerships. Such projects are in principle regulated by relevant provisions of the State Property Act and the new Concessions Act (adopted in November 2017, revoking the 2006 Concessions Act as well as the 2013 Public-Private Partnerships Act). The Concessions Act defines a concession as a “public private partnership whereupon an economic operator executes works or provides services awarded by a public authority by way of a works concession or a services concession” (Article 1).

Concerning dispute resolution, the Concessions Act stipulates that concession contracts must be concluded in writing and outline “the terms and procedures for settlement of dispute between the parties” (Article 122). It furthermore states that “any disputes regarding the conclusion, performance, modification and termination of a concession contract shall be settled according to the procedure established by the Code of Civil Procedure” (Article 154).

The Bulgarian authorities report that in practice in the case of joint ventures, mechanisms for timely dispute resolution are usually foreseen in the relevant shareholders’ agreement, for example in cases of deadlock on certain project decisions. Joint ventures involving SOEs do not appear to be very common in Bulgarian, but the Bulgarian authorities did reference three joint ventures in the energy sector. These included (1) two projects that have been suspended (the Burgas-Alexandroupolis Oil Pipeline Project Company, which is 100% owned by the Bulgarian stake and has a 24.5% stake in the international project company Trans Balkan Pipeline; and Bulgarian Energy Holding’s 50% stake in the international gas pipeline joint venture South Stream Bulgaria, which has since been suspended); and (2) one joint venture between Bulgarian Energy Holding and IGI Poseidon to build a natural gas interconnector between Bulgaria and Greece.

The Bulgarian authorities provided an example of foreseen dispute settlement mechanisms contained in the Project Development Agreement of the planned Greece-Bulgaria gas pipeline (which involves state-owned Bulgarian Energy Holding). The agreement’s clause on dispute resolution notably foresees arbitration in the case of disputes in accordance with the UNCITRAL Arbitration Rules. The arbitration is to be undertaken by three arbitrators appointed by the International Chamber of Commerce.
11. Stakeholder relations and responsible business

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.

11.1. 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.

There are no legal provisions, regulations or mutual agreements establishing specific rights or requirements for stakeholders (e.g. employees, consumers, creditors) in Bulgarian SOEs. Certain SOEs, such as water supply and sewerage operators, apply relevant sector rules, which establish certain consumer rights (e.g. business programmes subject to public consultation).

Furthermore, according to the Ministry of Finance, the different legal forms of SOEs do not provide for different treatment of employees (e.g. regarding remuneration, pension rights and job protection). The rights and obligations of SOE employees are the same as those in private companies. In particular, employment relationships in Bulgarian companies are regulated by the Labour Code, which allows collective agreements to be negotiated with trade unions, who usually monitor compliance over time. Articles 136 and 220 of the Commerce Act also allow employees in companies with more than 50 employees to be represented in the general meeting by one person entitled to an advisory vote. In some cases, laws and regulations also provide for special rights to certain groups such as consumers or disadvantaged persons for which the Labour Code provides special protection.

There are no specific policies or practices for providing stakeholders with timely and adequate information about SOEs, other than those mentioned in part II, section 2 of this document. This concerns mostly information about SOEs’ legal structure, capital, management bodies, etc. which can be obtained by any interested party from the Commercial Register and the Register of Non-Profit Legal Entities. Other information can be published by SOEs themselves on their websites, while listed SOEs have to comply with the relevant European and national legislation (including dispositions of the National Corporate Governance Code) concerning the relations between listed companies and their stakeholders. In particular, the code stipulates that “companies should post information about the implementation and compliance with the code on their websites and include it in their annual reports”. In specific cases, interested parties can also be provided with written information upon request (under the Access to Public Information Act).

11.2. 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.
II. ASSESSMENT OF BULGARIA RELATIVE TO THE SOE GUIDELINES

Listed and large public interest SOEs in Bulgaria are required to report on stakeholder relations through relevant national legislation and standards, notably the Accountancy Act and the corporate governance code applicable to listed companies. Information on the related disclosure practices of Bulgaria’s large SOEs would be useful to undertake a more complete assessment in this regard.

According to Article 41 of the Accountancy Act: “large enterprises which are public interest enterprises and which, at 31 December of the reporting period, exceed the criterion of average number of employees during the financial year of 500 people, shall include a non-financial declaration in their management report”. The non-financial declaration “shall contain a description of the policies of enterprises regarding their activities in the field of ecology, social issues and those related to employees, human rights and the fight against corruption, including, where appropriate, additional explanations on the amount of expenses reported in the annual financial statements. More specifically, the non-financial declaration shall include (as per Article 48 of the AA):

A brief description of the business model of the enterprise – goal, strategy, organisational structure, infrastructure, products, policies pursued in relation to the primary and ancillary activities of the enterprises and other;

A description of the policies adopted and followed by the enterprise in respect of environmental and social issues including the activities performed during the reporting period and the results thereof;

The objectives, risks and tasks that lie ahead in terms of environmental and social policies, including a description of activities that would have an adverse impact on ecology, employees or other social issues

A description of the key indicators of the results of activities related to environmental and social issues.

The AA also specifies that “enterprises shall not be required to publish information on upcoming changes in their policies relating to environmental or social issues which are in the process of negotiation, and/or when the publication of such information would harm the enterprises […] When such information is not published, the manager and the members of the management and supervisory bodies of the enterprise shall submit a reasoned opinion for not publishing the information.”

In addition, the Bulgarian National Corporate Governance Code also recommends that companies periodically report on economic, social and environmental issues of concern for stakeholders (e.g. anti-corruption policies, labour policies, corporate and social responsibility policies, environmental protection etc.). Companies should publish information about implementation and compliance with the code on their websites and annual reports. Finally, bond issuers such as BEH, have the obligation under Article 100b[8] of the Public Offering of Securities Act to present a quarterly Report regarding the fulfilment of their obligations to bondholders. The report contains information on compliance with certain financial covenants, interest and principal payments and use of proceeds, as well as indicators of the financial results and the financial condition of the holding company.

11.3. 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
Based on available information, it does not appear that all SOEs in Bulgaria consistently establish internal controls, ethics and compliance measures, including those dedicated to preventing fraud and corruption. However, SOEs are subject to existent public-sector internal control requirements, which are detailed below.

Heads of SOEs are required – as per the Financial Management and Control in the Public Sector Act (FMCPSA) - to perform internal management and control through the following interrelated components:

Control environment (Art. 11) – includes aspects governing 1) the personal integrity and professional ethics of the management and staff of the company; 2) the organisational structure of the company (ensuring separation of duties, hierarchy and clear rules, rights, responsibilities and lines of reporting); and 3) the Human Resources Management policies and practices; and the competences of the staff.

Risk management (Art. 12) – includes 1) the identification and assessment of possible events or situations which could have a negative impact on the attainment of the SOE's goals and aims at providing a reasonable assurance that the goals will be attained; 2) the approval of a strategy, which shall be updated every three years or whenever material changes in the risk environment occur. The control activities aiming at risk mitigation shall be analysed at least once a year; and 3) the organisation and reporting to the competent authorities of the measures undertaken for risk prevention of fraud and irregularities, affecting the financial interests of the European Communities.

Control activities (Art. 13) – refers to the introduction of control activities, including written policies and procedures, established for the purpose of providing reasonable assurance that the risks are reduced to the acceptable limits,. Control activities shall be adequate and the cost of their implementation shall not exceed the expected benefits. The heads shall establish and implement control activities, including as a minimum: 1) procedures for permission and approval, 2) segregation of duties [...], 3) dual signature system [...], 4) rights of access to assets and information, 5) ex-ante control for legality [...]; 6) procedures for complete, true, accurate and timely accounting of all operations, 7) reporting and monitoring of activities; 8) human resources management rules, and 9) rules for documenting all transactions and activities, related to the operation of the organisation.

Information and communication (art. 14) – Heads shall establish and operate information and communication systems ensuring 1) dissemination in an appropriate format and deadline of reliable and truthful information which allows each official to assume a certain responsibility, 2) efficient horizontal and vertical communication to all levels in the hierarchy, and 3) documenting all operations, processes and transactions in order to ensure an adequate audit trail for follow up and monitoring, amongst other aspects.

Monitoring (art. 15) – including current supervision, self-assessment and internal audit.

In addition, SOEs and their staff are obliged to comply with the Public Sector Internal Audit Act and the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act, which amongst other things obliges board members of SOEs to submit declarations of assets and interests.

SOEs (including listed ones) are not required to develop internal codes of ethics in Bulgaria, with the exception of SOEs operating in the energy sector (e.g. IBEX, BEH) which have all developed an internal code of ethics following the adoption of an Anti-
Corruption Plan for the energy sector in 2015. Other measures include the establishment of hotlines, rotation of internal auditors and members of internal commissions, as well as transparency and cooperation with state authorities, civil society, media and business, amongst other aspects. Some other SOEs such as BSE or SOEs under the Ministry of Agriculture, Food and Forestry have also adopted internal code of ethics on their own initiative.

Municipal SOEs would presumably be included in the scope of the aforementioned public sector rules on internal control and audit, but no additional information on applicable policies or practices was provided by the surveyed municipalities.

11.4. 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.

The Bulgarian government has not established or communicated specific expectations concerning SOEs’ respect for high standard of responsible business conduct (RBC). There are certain expectations regarding RBC set forth in the National Corporate Governance Code, which is not mandatory for SOEs and is implemented on a comply-or-explain basis for listed companies.

According to the Bulgarian authorities, each SOE independently defines specific expectations concerning high standards of responsible business conduct. They are generally part of the company’s corporate strategy and are monitored by the internal control mechanisms.

11.5. Financing political activities

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

The use of SOEs to finance political activities is illegal in Bulgaria pursuant to the Political Parties Act. The activities of political parties are funded by their own revenues and from a state subsidy. Article 24 clearly stipulates that political parties cannot receive:

Anonymous donations in any form;
Funds from legal persons and from sole traders;
Funds from religious institutions;
Funds from foreign government or from foreign state-owned enterprises, foreign commercial companies or non-profit making foreign organisations.

Political parties also cannot receive movable and immovable property for gratuitous use or services in any form by these entities. They can, however, receive for their free use, movable and immovable property owned by natural persons, as well as gratuitous services performed only with personal labour. Political parties cannot use public administrative resources free of charge.

Financial control over the activities of the political parties and the management of the property provided to them is carried out by the NAO.
12. 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.

12.1. Disclosure standards and practices

The below introductory text gives an overview of the general disclosure landscape for SOEs in Bulgaria and is followed by an assessment against the relevant sections of the SOE Guidelines.

12.1.1. Accounting and disclosure standards applicable to all SOEs or categories of SOEs

SOEs in Bulgaria are subject to various requirements of the Accountancy Act, which establishes basic standards concerning the content and publication of financial reports, management reports and reports on any payments made to the government. Some of these standards differ according to enterprise size and/or legal form. For example, “budget-funded enterprises” are subject to separate requirements established by the Public Finance Act. SOEs (at both the national and municipal levels) are included in the scope of the Accountancy Act by virtue of their status as either “merchant”, as defined by the Commerce Act, or “budget-funded enterprises”. In addition to the relevant provisions of the Accountancy Act, all SOEs are required by a Council of Ministers Decree (10 June 2010) to send quarterly and annual financial statements to the Ministry of Finance according to a predetermined timeline, following which the Ministry of Finance is required to make those reports publicly available on its website. Following the adoption of the Law on Public Enterprises, quarterly and annual financial statements shall also be made available to the Public Enterprises and Control Agency for analysis and publication.

As mentioned, the Accountancy Act subjects enterprises to different standards of accounting and disclosure according to their size category (micro, small, medium or large, as measured by the criteria of asset value, revenues and number of employees). The application of these different standards notably affects SOEs as follows:

- Concerning accounting standards, large public interest enterprises, which includes several SOEs, are required to draw up their financial statements in accordance with international accounting standards. Other enterprises, including the majority of SOEs, are required to prepare their financial statements in accordance with national accounting standards. Budget-funded enterprises are required to keep accounts in accordance with the provisions of the Public Finance Act.

- Concerning disclosure requirements for financial information, most SOEs, by virtue of their status as “merchant” in the Commerce Act must make their financial statements public in the Commercial Register. Small enterprises and “budget-funded enterprises” are subject to separate requirements established by the Public Finance Act.
funded enterprises” that are not subject to an independent financial audit (which presumably includes some of Bulgaria’s 17 state enterprises, but it is not clear which ones) are exempted from the Accountancy Act’s public disclosure requirements. Increased disclosure requirements apply to the public enterprises categorized as “large” (which include public enterprises entrusted with the obligation to carry out public service obligations as per the Law on Public Enterprises). Budget-funded enterprises are subject to separate requirements for reporting their financial statements to the Ministry of Finance, according to the Public Finance Act.

- Concerning disclosure requirements for non-financial information, all medium and large enterprises are required to publish an annual management report, to include, among others, reporting on key performance indicators. Large public interest enterprises are also required to include a corporate governance statement in their management reports. This category notably includes a number of SOEs operating in the energy sector. Medium-sized enterprises are exempt from the non-financial information disclosure requirements for management reports.

As mentioned, the Law on Public Enterprises foresees the elaboration of specific rules on transparency and disclosure for SOEs (to be elaborated in the upcoming implementation rules of the Law). Currently it includes minimum requirements on both financial and non-financial information, with increased requirements for “large” SOEs.

Regarding enforcement of the Accountancy Act’s provisions, fines are foreseen in cases of non-compliance. For example, enterprise managers that do not comply with the requirement to prepare financial statements and/or annual reports are subject to a fine ranging from BGN 1 000 to BGN 3 000 (~USD 600 to USD 1 700), while the concerned enterprise is subject to a fine ranging from BGN 2 000 to BGN 3 000 (~USD 1 200 to USD 1 700). There do not appear to be any measures in place to comprehensively monitor SOEs’ compliance with the Accountancy Act’s provisions. With all of the aforementioned differences in accounting and disclosure rules according to enterprise size, it could be useful for the Bulgarian authorities to develop an overview of how these different rules apply to all SOEs in Bulgaria. Having an overview of all SOEs and their accounting and disclosure requirements could also facilitate monitoring of compliance by the central government.

According to the mission team’s assessment, there does not appear to exist any major issues concerning SOEs’ compliance with their required accounting, disclosure and reporting requirements. The Ministry of Finance reports that most, if not all, SOEs provide their required reporting documents to their responsible line ministries. This being said, interviews with non-governmental representatives undertaken during this review suggested some other potential sources of disclosure gaps, notably concerning the availability of SOEs’ public reporting documents on the national company register. The mission team was unable to assess whether related limitations were due to enterprises not providing the information, or the company register not publishing them.

Concerning municipal SOEs, they are subject to the same basic requirements for periodic disclosure, established primarily by the Accountancy Act, as SOEs held at the national level. Practices for reporting to the state ownership entity differ between Sofia and Burgas municipality: in Sofia, municipal SOEs are required to send monthly, quarterly and annual reports to the administration of the municipality, which subsequently publishes them on its website. No similar reporting system exists for Burgas municipality.
Table 16. Disclosure practices by Bulgaria’s 10 largest SOEs

<table>
<thead>
<tr>
<th>Disclosure areas included in corporate reporting</th>
<th>Bulgarian Energy Holding</th>
<th>NPP Kolozdav</th>
<th>Electricity System Operator</th>
<th>Bulgartransgaz</th>
<th>National Electricity Company</th>
<th>Maritsa East Mining</th>
<th>TPP Maritsa East 2</th>
<th>National Railway Infrastructure Company</th>
<th>Bulgarian Posts</th>
<th>BDZ Holding</th>
<th>Bulgarian Ports Infrastructure Company</th>
<th>Bulgarian Development Bank</th>
<th>VMZ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting standards used</td>
<td>IFRS</td>
<td>IFRS</td>
<td>IFRS</td>
<td>IFRS</td>
<td>IFRS</td>
<td>IFRS</td>
<td>IFRS</td>
<td>IAS</td>
<td>IFRS</td>
<td>IFRS</td>
<td>IFRS</td>
<td>IFRS</td>
<td>NAS</td>
</tr>
<tr>
<td>Statement of enterprise objectives and fulfillment</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>Unclear</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Financial and operating results</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>Unclear</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Ownership and voting structure</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>Unclear</td>
<td>Partial</td>
<td>Unclear</td>
<td>Partial</td>
<td>Unclear</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Applicable corporate governance code/policy and reporting on implementation</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>Unclear</td>
<td>X</td>
<td>Partial</td>
<td>X</td>
<td>Unclear</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Board member and key executive remuneration</td>
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<td>Partial</td>
<td>Partial</td>
<td>Partial</td>
<td>Partial</td>
<td>Unclear</td>
<td>Partial</td>
<td>Partial</td>
<td>Partial</td>
<td>Partial</td>
<td>Partial</td>
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<td></td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Board member roles in other companies and state bodies</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td>X</td>
<td>X</td>
<td>X</td>
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<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Information on board nomination process</td>
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<td>✓</td>
<td>✓</td>
<td>Unclear</td>
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<td>X</td>
<td>Unclear</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Material risk factors and measures taken to manage risks</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>Unclear</td>
<td>✓</td>
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<td>✓</td>
<td>✓</td>
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<tr>
<td>Financial assistance received from the state</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td>Partial</td>
<td>X</td>
<td>N/A</td>
<td>✓</td>
<td>Unclear</td>
<td>✓</td>
<td></td>
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<tr>
<td>Material transactions with the state and other related entities</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td>X</td>
<td>✓</td>
<td>Unclear</td>
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<td></td>
</tr>
<tr>
<td>Employee and other stakeholder issues</td>
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<td>✓</td>
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<td>Unclear</td>
<td>X</td>
<td>Unclear</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** *NAS = national accounting standards. On “board member and key executive remuneration”, reporting is considered “Partial” when corporate disclosure only includes aggregate amounts for board member remuneration, rather than individual board members’ remuneration. “Unclear” indicates that responses from the Bulgarian authorities did not appear to concern enterprises’ disclosure practices in the specified area and that more information is needed.

**Source:** As reported by the Bulgarian authorities, who were requested to provide information on whether enterprises include information on each area of disclosure in their publicly available corporate reporting.
12.1.1. Disclosure practices of select large SOEs

Information on the disclosure practices of 13 large Bulgarian SOEs (reported by the Bulgarian authorities and synthesised in Table 16) suggests that, measured against the standards of the SOE Guidelines, most of the enterprises implement sound public reporting in basic areas of corporate disclosure (e.g. concerning enterprise objectives, financial and operational results and financial assistance received from the state). Also, with only a few exceptions, large SOEs report according to IFRS. In fact, the vast majority of Bulgarian SOEs (113 out of 221) reportedly disclose in accordance with IFRS. However, the information on disclosure practices by large SOEs has not been independently verified and it appears that the Bulgarian authorities have in some cases provided information concerning SOEs’ practices in certain areas, rather than on the existence of publicly available reporting relating to those practices. For example, for the National Railway Infrastructure Company, information was provided on the composition of the board rather than on whether public corporate reporting includes such information. Similarly, most SOEs are reported to disclose information on (i) board members’ status as “independent”; (ii) their board nomination processes; and (iii) implementation of applicable corporate governance codes. It is unclear what enterprise reporting on these areas would consist of, since it is the understanding of the mission team that (i) independent board members are not present in Bulgarian SOEs; (ii) there is no uniform process for SOE board member nominations; and (iii) SOEs are not required to implement any specific corporate governance code. Therefore additional qualitative and explanatory information from the Bulgarian authorities on the content of corporate disclosure would be necessary to form a fully informed assessment in this regard.

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 enterprise capacity and size, examples of such information include:

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);

SOEs are not required to make public any explicit information regarding their objectives or the mandate(s) placed on them by their respective ownership entities. The Bulgarian authorities report that in practice, SOEs’ published management reports usually include information on the enterprise’s main objectives. More explicit objectives are usually included in SOEs’ business programmes, but there is no requirement or common practice to publish these business programmes.

Concerning municipal SOEs, objectives are also generally included in enterprise-specific business programmes, which are developed by management and approved by the respective Municipality Councils.

A.2. [Examples of such information include:] Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives;

With the exception of “budget-funded enterprises”, all SOEs by virtue of their status as “merchants” are required to prepare and publicly disclose financial statements that “give a true and fair view of the property and financial position and financial performance of the
enterprise, its cash flows and equity” (Law on Accountancy, Article 24). This requirement applies equally to municipal SOEs with the legal status of “merchant”.

A.3. [Examples of such information include:] The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;

SOEs are not explicitly required to report on their ownership and voting structure, nor on the content or implementation of any enterprise-specific corporate governance codes. Joint-stock companies (for which disclosure of ownership information is the most relevant) are required by the Commerce Act to maintain a shareholders’ register recording the names of the owners of registered shares (not of bearer shares), but this is not made public (Article 179). Reporting of additional ownership information is not required of SOEs, but this is arguably not very relevant for most SOEs in Bulgaria, most of which are wholly owned by the state. The two listed SOEs are subject to relevant requirements of the Public Offering of Securities Act.

Concerning reporting on corporate governance codes and practices, certain public interest enterprises, including some SOEs, are required by the Accountancy Act to include a corporate governance statement in their management reports, to be made available on their websites (Article 40). (See Box 3 for a list of public-interest enterprises enumerated in the Accountancy Act.) The required contents of this corporate governance statement are laid out in the supplementary provisions to the Public Offering of Securities Act. All listed companies, including listed SOEs, are required by the Public Offering of Securities Act to publish a corporate governance report (Article 100m).

A.4. [Examples of such information include:] The remuneration of board members and key executives;

SOEs are not as a general rule required to disclose information on the remuneration of individual board members or key executives. However, joint-stock companies are required by the Commerce Act to include in their annual reports the sum total of all payments made to board members (Article 247).

A.5. [Examples of such information include:] 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;

SOEs are not required to disclose information on their board selection process or on the qualifications or status (as independent or not) of board members. However, joint-stock companies are required by the Commerce Act to include in their annual reports information on the role of any board members on the boards or management of other companies (Article 247). Additionally, listed companies, including listed SOEs, are required by the Public Offering of Securities Act to report on the composition of all boards and their committees, as well as the company’s board diversity policy, or an explanation for the absence of such a policy. As an example of how joint-stock companies disclose information on board members’ role(s) in any other company boards, the Bulgarian authorities provided an extract from the annual report of Bulgarian Energy Holding, which gives detailed information on the five board members’ roles in other company boards.
A.6. [Examples of such information include:] Any material foreseeable risk factors and measures taken to manage such risks:

SOEs are, by virtue of their status as “merchants”, required by the Accountancy Act to include in their annual management reports an “objective review […] of the operations of the enterprise and of its position, together with a description of the main risks facing it” (Article 39). They are furthermore required, when “material for the purposes of evaluating the assets”, to disclose information on “the objectives and policies of the enterprise concerning financial risk management […]” (Article 39).

A.7. [Examples of such information include:] 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;

SOEs are not as a general rule required to report on financial assistance received from the state or on contingent liabilities related to public-private partnerships. However, in practice many SOEs do report on such issues in their financial statements and/or annual reports as relevant. For example, energy company SOEs reportedly disclose in their financial statements information on significant commitments and contingent liabilities, such as: obligations under power purchase contracts; investment commitments; and substantial litigation and arbitration claims.

Subsidies provided to SOEs from the state budget are published separately in the annual State Budget Act. The Bulgarian authorities furthermore report that, in practice, SOEs include information on state subsidies or loans in their annual reports and financial statements.

The Bulgarian authorities report that no SOEs engage in public-private partnerships, although several of them engage in concession contracts.

A.8. [Examples of such information include:] Any material transactions with the state and other related entities, including other SOEs;

The new Law on Public Enterprises provides an explicit requirement for SOEs in Bulgaria to report on material transactions with the state and other related entities, including other SOEs. Before that, only certain SOEs, namely “large companies and public interest enterprises operating in mining, quarrying or logging of primary forests” were required by the Accountancy Act to prepare a separate annual “report on payments to governments” (Article 53). This report must quantify these payments and categorise them according to type of payment, for example identifying whether they relate to income tax, dividends, licensing fees and others.

A.9. [Examples of such information include:] Any relevant issues relating to employees and other stakeholders.

The Accountancy Act establishes detailed requirements for enterprises – including SOEs with the status as “merchants” under the Commerce Act – to report on stakeholder issues. Enterprises included in the scope of the Accountancy Act’s provisions must notably prepare a non-financial declaration describing their policies related to the environment, social and employment issues, human rights and the fight against corruption (Article 48). The declaration must also include information on “the objectives, risks and tasks that lie ahead in terms of environment and social policies, including a description of activities that would have an adverse impact on ecology, employees or other social issues (Article 48).
12.2. External audit of financial statements

B. SOEs’ financial statements should be subject to an annual independent external audit based on internationally recognised standards. Specific state control procedures do not substitute for an independent external audit.

The Law on Public Enterprises recently introduced the requirement for all SOEs, regardless of their size, to be subject to an independent financial audit, conducted by “registered auditors” in accordance with the Accountancy Act and the Independent Financial Audit Act, and performed strictly in accordance with international auditing standards. It therefore significantly extends the previous requirement established by the Accountancy Act which required such an audit to be carried out in most SOEs (specifically: small enterprises exceeding certain size thresholds; medium-sized and large enterprises; public interest enterprises; medium-sized and large groups; and other enterprises for which such an audit is established by law).

Registered auditors who carry out financial audits are explicitly required by the Accountancy Act to give an opinion regarding, inter alia: whether the management report matches the financial statement for the period in question; the conformity of the management report and corporate governance statement with legal requirements; whether a non-financial declaration and report of payments to governments have been prepared and conform with the Accountancy Act’s requirements.

The financial statements of SOEs in Bulgaria are not subject to financial audits by state bodies. However, the National Audit Office does conduct other types of audits of SOEs, including those for which a state guarantee is in place for the enterprise’s liabilities. The National Financial Inspection Agency also undertakes financial inspections of SOEs, the primary purpose being to identify illegal behaviour and fraud. Neither governmental body conducts audits of SOEs’ financial statements.

Before the adoption of the Law on Public Enterprises, it was difficult to clearly identify exactly which SOEs, or even what approximate proportion of SOEs – at both the national and municipal levels – were required by the Accountancy Act to subject their financial statements to an independent financial audit. To illustrate, the municipality of Burgas reported that the questions on auditing standards and practices were not applicable to its municipal SOEs, whereas the municipality of Sofia reported that external audits were conducted in accordance with international auditing standards, by registered auditors appointed by the Sofia Municipal Council. This pointed to scope for clarifying the scope of applicability of existent audit requirements across the SOE sector.

12.3. 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.

As an important advancement in the domain of disclosure and transparency, the Law on Public Enterprise foresees the publication of an annual aggregate report on SOEs to be carried out by the Public Enterprises and Control Agency. The report should contain information on the implementation of the state ownership policy and should review the business performance of all SOEs, including by sector and categories (e.g. large) of SOEs, including municipal ones. The aggregate report is to be submitted by the Public Enterprises and Control agency to the Council of Ministers on 31 October each year (for the following
year) and should be submitted for approval to the national assembly within one month of its approval by the Council of Ministers. It should then be published on the Agency’s official website.

So far, the state has never published an annual aggregate report on the activities and performance of state-owned enterprises. However, the Ministry of Finance would publish individual SOEs’ quarterly financial and (as required) non-financial reports on its website. Currently, the information on the Ministry’s website consists of 17 links (one per ownership ministry) to downloadable files containing individual enterprises’ reporting documents. The Ministry of Finance used this reporting to prepare a consolidated analysis of SOEs’ financial situation, which was in practice used to inform discussions by the Council of Ministers regarding SOE management. While some analysis of the collected documents was undertaken to inform internal government decisions, no effort was made to undertake any qualitative assessments of SOEs’ reporting for the benefit of the general public. Additionally, the fact that enterprise-specific information was non-standardised made it quite difficult to undertake any comparisons of operational performance. As previously mentioned, in practice, compliance with the state’s reporting requirements by ministries and SOEs appeared (and is reported to be) quite high. However, there were no penalties foreseen in cases of non-compliance.

The municipalities of Sofia and Burgas do not produce annual aggregate reports on the municipal SOEs under their remit. However, both appear to have in place some form of centralised reporting system similar to that in place at the national level. For example, the Sofia Municipality reportedly publishes quarterly financial reports of some SOEs on its website. In Burgas, SOEs’ financial statements are presented on a six-monthly basis to the members of the Burgas Municipal Council.
13. 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.

13.1. 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.

As mentioned in Part I, section 5 of this document, state and municipality-owned enterprises have different board structures and arrangements depending on their legal forms. SOEs which are structured as limited liability companies (or State Enterprises under the Commerce Act) do not have boards. Their governing bodies are the general meeting and the managing director(s). When the company has multiple managing directors, each of them may act independently unless the articles of association provide otherwise. SOEs that are structured as joint-stock companies can choose between a one-tier or two-tier board structure, while state enterprises are led by the respective line minister and a management board including the CEO. Their terms of office are generally determined by management contracts, unless otherwise specified by law or statute.

Board size can be 3-5 members as per Article 19[3] of the state ownership regulations for fully corporatised SOEs, which also authorises a larger number of members subject to the approval of the Council of Ministers. Boards of “large” SOEs are to be composed of at least 5 members according to the Law on Public Enterprises. In practice, however, a large majority of SOE boards are rather small (typically composed of only three members, representing the ownership ministry and the company’s executive management) which in most cases does not allow them to carry out their functions effectively.

The responsibilities of SOE boards are weakly defined in the Commerce Act or company statute/articles of associations. Beyond the basic responsibilities established therein, board responsibilities are detailed in management contracts signed between the line minister (or the mayor in case of municipal SOEs) and board members. Annex E provides an illustrative example of a management contract template. As a reminder, in two-tier board systems, the minister signs a management contract with members of the supervisory board, while members of the management board sign such contracts with the chair of the supervisory board. The responsibilities of management board members in state enterprises are set forth in enterprise-specific rules of organisation and procedure, adopted by the Council of Ministers or the responsible minister.

In general, board members are responsible and accountable for the overall management of the company pursuant to the provisions of the Commerce Act, company rules and regulations as well as the management contracts. They are obliged to perform their
functions “with the care of a diligent businessman and in the interest of the company and all shareholders” (art. 237[2] of the Commerce Act). This requirement was further reiterated by the recent Law on Public Enterprises which requires “members of management and control bodies [to] act well informed, in good faith, with due diligence and care, and in the best interest of the enterprise and the owners of the capital”. In terms of accountability, only BSE, as a listed SOE is required to prepare and publish quarterly directors’ reports. In other SOEs, management and control bodies are obliged to submit quarterly and annual written reports to their line minister (or the Municipal Council at the sub-national level) detailing their operations and providing information on the financial and economic situation of the company, existing problems and measures to solve them (Article 23 of the state ownership regulations).

Furthermore, in compliance with the Accountancy Act, SOEs must also prepare an annual management report (see section 2.6, Part II for details) along with the annual financial statements. When externally audited, issues identified through these corporate disclosure documents are usually reported by independent auditors to the shareholders, which they can use to hold SOE management accountable through the mechanism of the general meeting. Auditors themselves, however, cannot hold the board accountable.

SOE board members are obliged to provide a “guarantee”, or deposit, for the whole duration of their tenure, the type and amount of which is to be reflected in the management contract (art. 27[2] of the state ownership regulations). This requirement is also applicable to the boards of some private companies. Specifically, for joint-stock companies, article 240[1] of the Commerce Act specifies that: “members of the supervisory board, management board and the board of directors shall deposit a guarantee for their management in an amount determined by the general meeting, but not less than their three-month gross remuneration. The guarantee may be in the form of deposited shares or bonds of the company. In the event of damage/infringement, board members are responsible for the full amount of their damages. State officials do not provide such guarantees as they do not receive remuneration for being SOE board members.

The guarantee provided is reimbursed after the termination of the management contract and upon decision of the ownership entity (i.e. line ministry or Municipal Council). When the guarantee has been paid in cash, the interest on the amount paid is also subject to reimbursement. The management contract also generally specifies: 1) the rights and obligations of the parties; 2) the remuneration; 3) the liability of the parties in case of non-performance of the contract; and 4) the grounds for termination of the contract (art. 27[1] of the state ownership regulations).

Board members are jointly liable for any damages caused to the company as a result of their actions. There is no difference between the liabilities of different board members, whether they are nominated by the state or any other shareholders or stakeholders. Any board member may be released from liability if it is established that the damages were caused through no fault of their own. Shareholders holding at least 10% of a company’s capital may file a claim demanding that board members (including supervisory and management board members) be held liable for damages caused to the company (article 240a of the Commerce Act). There is a legal notion of a “shadow director” in Bulgaria, although it only applies to listed companies (article 118a of the POSA).
13.2. 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.

According to the Bulgarian authorities, SOE boards have the ability to effectively carry out their functions of setting strategy and supervising management as set out in the legislation. In particular, the Commerce Act, the state ownership regulations and the Law on Public Enterprises contain certain dispositions on the distribution of powers of the governing bodies in SOEs which, in principle, should limit political influence over board decisions. As mentioned, board members have the legal obligation to act in the best interest of the enterprise and to treat all shareholders equitably (art.237 of the Commerce Act and Article 6 of the Law on Public Enterprises) and have certain rights and obligations under the management contract which, in case of infringements can result in removal from the board, and/or reclaim of the provided guarantee, amongst other measures. There is, however, no legal definition of “undue influence” or “political interference” in SOE boards’ operations, and in practice, SOE boards appear to have limited ability to carry out the functions of setting strategy and supervising management.

In particular, boards do not always have the authority to effectively monitor and, if necessary, change the top management. According to the state ownership regulations for fully corporatised SOEs, the management in SOEs is elected by the line minister and its functions are set forth in management contracts concluded between each member of the management body and the line minister or chairman of the board on behalf of the company (art. 24 of the state ownership regulations). In one-tier joint-stock companies, line ministers appoint the board of directors, which then assigns the management of the company to one or several executive members elected among its members and determines their remuneration (art. 244[4] of the Commerce Act). Each executive member has the obligation to immediately report to the chairman of the board any and all occurring circumstances of material significance to the company.

In two-tiered boards, the supervisory board has the obligation to monitor the management board of the SOE and, if necessary, has the right to replace its members at any moment (Article 241 of the Commerce Act). The supervisory board appoints members of the management board, who sign management contracts with the chair of the supervisory board on behalf of the company (the responsible line minister is not involved). As mentioned, the management board has the obligation to report to the Supervisory board at least once every three months. The supervisory board may, at any time, require that the management board submit information or a report on any matter concerning the company. The supervisory board may also carry out any investigation required to perform its duties, for which it may employ the services of experts as per Article 243 of the Commerce Act.

In any case, SOE boards are rarely empowered, in practice, to appoint and/or dismiss the CEO, which makes it difficult for SOE boards to fully exercise their monitoring function and assume responsibility for SOEs’ performance. The rules and procedures for nominating and appointing the CEO are generally opaque and not based on pre-established professional criteria.
13.3. 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.

Until now, the absence of a transparent and competitive SOE board nomination procedure, together with the limited presence of independent directors on SOE boards, significantly limited SOE boards’ ability to exercise objective and independent judgement without political interference. This is bound to change as the Law on Public Enterprises foresees the elaboration of implementing rules establishing a “competitive procedure” for the selection and appointment of board members, within six months of the entry into force of the Law on Public Enterprises. The procedure will apply to fully and majority-owned SOEs, and be conducted on the basis of pre-determined professional and personal criteria for candidates. The law also sets a requirement for at least a third (but not more than half) of SOE boards to be composed of independent directors.

Concerning board composition in practice, among Bulgaria’s 13 largest SOEs, most do not include a particularly high proportion of line ministry representatives, but a few economically important SOEs have at least one line ministry representative. In two of Bulgaria’s largest SOEs, boards include high-level officials from the ownership ministry: the Ministry of Transport’s Secretary General on the board of the National Railway Infrastructure Company and a Deputy Minister of Economy serving as Chairman of the supervisory board of Bulgarian Development Bank. Given the Bank’s significant public-policy objectives in the field of development, the presence of a politically-affiliated individual on the supervisory board is less problematic than it would be in the case of an SOE with purely commercial objectives.

In general, however, most board members in Bulgaria’s largest 13 SOEs are either members of the SOE’s own executive team or independent professionals (with no current employment contract with the state or the SOE sector) (Figure 12).

**Figure 12. Board composition in Bulgaria’s 13 largest SOEs**

Note: Based on information provided on 13 SOEs comprising a total of 49 board members, including supervisory boards in two-tiered boards. This sample mostly reflects SOEs active in the energy sector. Source: Information provided by Bulgarian authorities, 2019.
As mentioned, before the adoption of the Law on Public Enterprises, there was no standard procedure for board nomination in Bulgarian SOEs. While article 25 of the state ownership regulations stipulated that an open procedure may be applied, in practice, board members were most often appointed directly by the responsible line minister. According to anecdotal information gathered by the OECD mission team, the “independent” board members are in practice often personal acquaintances or political associates of the ownership ministers. In majority-owned SOEs, the general meeting appointed members of the board of directors or the supervisory board. Other shareholders could also offer and nominate members, for which a simple majority was generally needed.

A competitive selection process was only mandatory for the water supply and sanitation operators, who were required to conduct a contest by a special committee to take place in three stages: 1) pre-selection of the candidates by a documents; 2) development of a business programme for a five-year management period; and 3) interview with admitted candidates.

In addition, a small number of SOEs were required to implement specific regulated board nomination procedures. These included the Central Depository, the financial institution FMFIB and the BSE, which were required to implement the European Securities and Markets Authority (ESMA)’s guidelines on the management body of market operators and data reporting service providers. Generally, the lack of transparency and competition surrounding board appointments in Bulgaria prevented SOE boards from effectively exercising objective and independent judgment and taking strategic decisions.

As per the state ownership regulations for fully corporatised SOEs, government employees can serve on SOE boards if they act as “representatives of the state or municipality” (Article 7[3] of the Civil Servant Act and Article 107a [2] of the Labour Code). In fact, representatives of the state must be civil servants and “persons working in the state administration”. Until recently, they did not receive remuneration for holding their position as they “would serve by virtue of a law or of an act of the Council of Ministers” according to Article 19[7] of the Administration Act. They also “could participate in not more than one body for management or control of such companies” and could not be elected as executives. In the Municipality of Sofia, however, the municipality’s regulations prevent civil servants and government officials to participate as board members in municipally-owned companies. These restrictions apply to deputies, municipal councillors, mayors of municipalities, districts or mayoralties, deputy mayors, as well as municipality and district secretaries.

The categories of government employees who do not have the right to be members of the board are listed in Article 22 of the state ownership regulations. These include members of parliament, ministers, regional governors, deputy-regional governors, mayors, deputy-mayors, vice-mayors, municipal secretaries, chairpersons of government agencies, members of government commissions, executive directors of executive agencies, heads of government institutions set up with a law or an act of the Council of Ministers, who are entrusted with functions relating to the exercise of executive power; the executive directors, the members of the supervisory and of the executive board of the Privatisation and Post-privatisation Control Agency.

Once appointed, SOE board members (at least for fully corporatised SOEs) in principle have the same responsibilities and liabilities as the board members of private companies. The rights, obligations and liability of board members are outlined in the Commerce Act, the state ownership regulations and the management and control contracts of the company. Article 236[1] of the Commerce Act stipulates that “board members shall have equal rights
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and obligations, regardless of the internal division of functions among them and any management and representation rights granted to some of them”. This is further reiterated by the Law on Public Enterprises which also stipulates that “state representatives shall have the same rights, duties and obligations as the other members of the management and control bodies, including the right to receive remuneration and the obligation not to disclose business secrets of the public enterprise”. Thus, liabilities do not differ between board members nominated by the state and those nominated by other shareholders and/or stakeholders. Board members acting as “representatives of the state” are, however, also subject to certain public laws and regulations such as the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act.

13.4. 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.

Until recently, there was no requirement or widespread practice to nominate a certain number of independent directors in SOEs, at either the national or municipal levels of government. Only listed companies such as BSE had to comply with the requirement that at least one-third of the board members be independent, and comply with the definition of “independence” set forth in Article 116a[2] of the POSA:

An independent member of the board may not be:

1. An officer in the public company;
2. A shareholder who owns directly or through related persons at least 25% of the votes at the general meeting or is a person related to the company;
3. A person who has lasting trade relations with the public company;
4. A member of a management or supervisory body, procurator or officer in a company or another legal entity under items 2 and 3;
5. A person related to another member of a management or supervisory body of the public company.

Non-listed SOEs did not have specific requirements for independent SOE board members (an exception from that rule is the Central Depository AD, which was required to have at least one independent director according to EU Regulation 909/2014 on improving securities settlement in the EU and on central securities depositories) and water supply and sanitation operators, whose board members were required to be appointed based on a competitive selection procedure.

Since October 2019, all SOE boards shall, as mentioned, include at least a third, and not more than a half, of independent members. Independent board members are required to comply with the applicability criteria set out in Article 20 of the Law [Box 9] as well as with specific independence requirements set out in Article 23 of the Law [Box 10].

In addition the Law on Public Enterprises establishes that “board members shall have diverse qualifications and professional experience corresponding to the specific activities carried out by the enterprise; meet strict criteria in terms of good reputation and integrity and should be able to allocate sufficient time to fulfil the obligations assigned to them.” These criteria also apply to representatives of the state to the board.
13.5. 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.

To address potential conflicts of interest within SOE boards, board members are required to submit declarations of incompatibility, assets (including property) and interest, indicating any change in the declared circumstances pursuant to the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (CCUAFA). Article 37 of the aforementioned act stipulates that “declarations of assets and interest shall be submitted (1) within one month from the assumption of the senior public office; (2) annually by the 15th of May for the previous calendar, (3) within one month from the release from office, and (4) within one month from the expiry of one year after the submission of the declaration referred to in Item (3). Paragraph 2 of the Supplementary Provisions further mentions that:

The provisions of Chapter 5 (Declarations), 8 (Conflict of Interest) and 15 (Administrative Penalty Provisions) herein shall apply, mutatis mutandis, to:

1. Representatives of the State or of the Municipalities on the management bodies or monitoring bodies of commercial corporations wherein the State or a municipality holds an interest in the capital or of non-profit legal entities […]

2. The managing directors and members of the management bodies or monitoring bodies of municipally-owned or state-owned enterprises and the heads of the territorial divisions thereof, as well as of other legal persons which are budgetary organisations within the meaning given by Item 5 of § 1 of the Supplementary Provisions of the Public Finance Act […]

Supplementary requirements are also applied to individual SOEs. This includes BSE, which, in its capacity as a market operator, is obliged to develop rules for potential conflicts of interest within its own board as per ESMA’s Guidelines, and the Central Depository which must follow the dispositions of EU Regulation 909/2014.

The Municipality of Sofia has also introduced special requirements in its ordinance restricting certain individuals from serving as SOE board members. According to Article 29 of the ordinance, board members (including supervisory and management boards) cannot be natural persons who:

1. By their own name or by a foreign name, carry out commercial transactions;
2. Are partners in collective, limited partnerships and limited liability companies;
3. Have been deprived of their right to take a record of accounting or administrative sanctions;
4. Have been members of a management or supervisory body of a company terminated due to insolvency during the last two years preceding the date of the bankruptcy decision if there are unsatisfied creditors;
5. Are spouses or relatives up to third degree in a straight or collateral line, including by marriage, to another member of a management or control body of the company;
6. Are managers or members of executive or supervisory bodies of another municipal single trade company;
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7. Are deputies, municipal councillors, mayors of municipalities, mayors of districts or mayoralities, deputy mayors of municipalities, secretaries of municipalities or of districts;

8. Do not meet any other requirements provided for in the company’s Articles of Association.

13.6. Role and responsibilities of the Chair

F. The Chair should assume responsibility 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.

In Bulgaria, the chair of an SOE board generally does not act as the primary point of contact between the enterprise and the ownership entity (i.e. line ministry). It is rather the CEO that, in practice, acts as the representative of the company and thus as the main contact point with the ownership entity, according to Bulgarian legislation. In general, the chair (where there is one) does not have significant authority to effectively promote board efficiency and effectiveness.

Although there is no explicit prohibition in the legislation, it is rather uncommon for the CEO of an SOE to serve at the same time as chair of the board, both at the national and municipal level. Even when the board consists of only three members, one of them is usually the CEO and another the chair.

13.7. 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.

Employee representation on SOE boards of directors is not required by applicable legislation and does not appear to be done in practice (both at the national and municipal level). This could even be “illegal” as Article 22[3] of the state ownership regulations prohibits “persons working under a labour contract or having an employment relationship with the company” from serving as an executive member of the board of directors.

13.8. 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.

There is no legal or regulatory requirement for SOEs with boards of directors to establish specialised board committees, with the exception of listed companies, which are required to have an audit committee, nomination committee and remuneration committee.1 At the sub-national level, SOEs owned by the Municipality of Sofia are required to establish an audit committee which operates on the basis of a contract with the Municipality Council, as the owner of the capital. There is no similar requirement for SOEs owned by the Municipality of Burgas.
Although they are not required to, certain SOEs have established specialised committees voluntarily. This includes Bulgarian Energy Holding EAD which has set up a special risk management committee, and certain SOEs within the Ministry of Health which have set up public procurement committees. When they exist, the mandates, composition and working procedures of these committees seem to be well-defined and disclosed.

13.9. 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.

Until recently, there was no legal requirement or widespread practice for SOE boards of directors to carry out self-evaluations appraising their performance and efficiency (at either the national or municipal levels). In general, SOEs’ annual performance evaluation system only consisted of the evaluation of the company performance (based on financial criteria established in the management and control contracts) and would constitute therefore an assessment of the outcome of SOE boards but not an evaluation of its internal functioning.

Following the adoption of the Law on Public Enterprises, however, SOE boards (including management boards in two-tiered structures) are now required to prepare an annual self-assessment on their activities and effectiveness. The assessment and its conclusions are to be submitted to the line Ministry of the company and to the Public Enterprises and Control Agency.

13.10. 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.

SOEs in Bulgaria are subject to internal, external and independent auditing in compliance with applicable EU and national laws and regulations. Although many SOEs are required to establish internal audit units, these units generally report to the shareholding ministry rather than to an audit committee of the board (which is not commonly in place in Bulgarian SOE boards). The absence of board audit committees in most Bulgarian SOEs, particularly in large commercially-oriented SOEs, departs from international good practice.

Concerning the internal audit requirements placed on certain SOEs, Article 12 of the Public Sector Internal Audit Act (PSIAA) requires the establishment of internal audit units (IAUs) in (1) companies, including medical institutions, with over 50% state and/or municipal participation in the capital and with annual turnover exceeding BGN 10 million (~ EUR 5 million) for each of the past three years; (2) companies whose capital is owned by the companies under item 6 with annual turnover exceeding BGN 10 million for each of the past three years; and (3) SOEs under art. 62[3] of the Commerce Act (i.e. statutory SOEs) with annual turnover exceeding BGN 10 million for each of the past three years.

Where no IAUs are in place, internal audit is performed by the internal audit directorate of the responsible line ministry. IAUs report to the responsible line minister or municipal council at the sub-national level. According to Art.12 [2], items 6-8 of the PSIAA, the heads of the internal audit units in SOEs must prepare an annual report on their internal audit activity and submit it to the internal audit unit of the line ministry/Municipal Council by 31
January of the following year. In turn, the head of the internal audit unit in that ministry/municipality shall prepare and submit a summary report to the minister on the overall internal audit activity (including internal audit of SOEs), which the respective minister has the obligation to submit to the Ministry of Finance by March 10 of the following year. Heads of internal audit units also coordinate the interaction with external auditors following Art. 27[1], item 1 of the PSIAA.

Furthermore, the Independent Financial Audit Act requires every public interest entity to establish an audit committee, to be supervised by the Commission for Public Oversight of Statutory Auditors. Members of these audit committees are to be appointed by the general meeting upon proposal of the chairman of the board (or the Managing Director) of the entity, based on criteria set by art.107[3] of the IFAA: “Persons, who have acquired an academic qualification degree of "Master" and knowledge in the field of operation of the entity, shall be elected to be members of the audit committee, where at least one of the members thereof must have at least 5 years of professional experience in the field of accounting or audit”.

Members of the audit committees may be chosen from among the members of the supervisory or management bodies of the entity (excluding executive members), however the majority of the members must be external to and independent from the SOE. Art. 107[4] of the IFAA stipulates that an “independent member of an audit committee cannot be:

1. A member of the management body, an executive member of the supervisory body or an employee of the entity;
2. A person, who is in long-term commercial relations with the entity;
3. A member of a management or supervisory body, a procurator or an employee of a person under Item 2;
4. A Person related to another member of a management or supervisory body of the public interest entity.

The general meeting then approves the statute of the audit committee in which its functions, rights and responsibilities with respect to the financial audit, internal control and internal audit, as well as in respect to its relations with the management bodies, shall be stipulated.
Part III. Conclusions and recommendations
With the adoption of the Law on Public Enterprises on 26 September 2019 – the Bulgarian authorities took an important step towards aligning their state ownership practices with the standards of the SOE Guidelines. Over the past decade, Bulgaria had already undertaken some steps to clarify the state’s expectations of SOEs and professionalise ownership practices. These include notably: the elaboration of several whole-of-government policy documents outlining the respective responsibilities of state bodies and boards vis-à-vis SOEs and establishing some – albeit quite limited – standards for SOEs’ corporate governance; improvements in SOE monitoring through requirements for regular reporting to the Ministry of Finance; and the widespread use of business programmes introducing greater clarity, at least within the state administration, regarding SOEs’ financial performance and operations.

Although the new legislation will not address all of the ownership and corporate governance vulnerabilities affecting Bulgarian SOEs, it can be expected to establish a solid legislative foundation to implement Bulgaria’s most urgent related policy and institutional priorities, as identified in this review [see section 6.3, Part I]. Its outcome will, however, depend to a large extent on the effective and practical implementation of the Law. Hence, as a near-term priority, all relevant Bulgarian public authorities (including, where applicable, Municipal Councils) should ensure implementation of the Law on Public Enterprises by developing the necessary implementing rules of the law, in coordination with the Public Enterprises and Control Agency, within the deadlines established by the Law. In this regard, the OECD encourages the Bulgarian authorities to continue working with the Working Party and its Secretariat to ensure continued alignment with the SOE Guidelines.

Near-term priorities

In particular, the implementation phase should focus on:

**Empowering the Public Enterprises and Control Agency.** Bulgarian authorities should ensure that the new coordination unit is effectively empowered to operate as an autonomous and independent body by ensuring that 1) its executive management is subject to a well-structured and competitive recruitment procedure, and 2) it is equipped with the necessary resources (in terms of finance, staff and institutional authority) to effectively carry out its functions of policy development (in coordination with other government bodies), monitoring of implementation and public reporting. While Bulgarian authorities have indicated that the agency is sufficiently resourced to effectively undertake its functions, there are concerns that the agency might lack autonomy as it will be operating as a “second budget spending unit” subject to funding allocated as part of the budget of the Ministry of Economy. Best practices would require the unit to have its budget directly approved by Parliament to avoid conflicts of interest – especially considering that the Ministry has direct ownership rights in several SOEs that would be overseen by the agency. In addition, there are doubts as to whether the existing staff of a (near-defunct) privatisation agency would provide for sufficiently qualified professionals to the new Agency, allowing it to effectively carry out its functions.

**Development of the ownership policy and annual aggregate reporting.** Ensuring that the coordination unit is sufficiently resourced and empowered will be a first step towards guaranteeing the successful delivery of important inputs mentioned in the Law on Public Enterprises such as the ownership policy and aggregate reporting, both of which will act as important tools for clarifying the role(s) of the state with respect to SOEs, and for setting clear performance objectives for the SOE sector in general. This, in turn, should support a
meaningful SOE performance monitoring and assessment regime and ultimately drive improvements in their performance.

Disclosure and transparency. The forthcoming Implementing Rules should ensure timely submission of all material financial and non-financial information of enterprises to the line ministries, the Ministry of Finance and the new coordination unit. The submission of the information shall take place according to the time schedule established by the law. Implementing rules could also foresee penalties in cases of non-compliance.

Establishing adequate rules and procedure for the competitive selection and appointment of Directors in SOEs. Bulgarian authorities (including Municipalities) should ensure that the selection and appointment of Directors in SOEs strictly follows the procedure established in the forthcoming Implementation Rules of the Law. In all cases, the Implementing Rules should provide for an open and transparent procedure allowing for a merit-based selection process of SOE Directors. The coordination unit should appropriately be empowered to monitor the process as stipulated in the Law on Public Enterprises.

Long-term recommendations

As mentioned, the new Law on Public Enterprises constitutes only one element – albeit an important one – of the legal and regulatory environment for Bulgarian SOEs. While it provides for appropriate and feasible measures for the current legal and institutional framework of Bulgaria, several addition changes in ownership and corporate governance practices could be envisaged going forward, including:

Strengthening the state ownership function. Within the new framework, Bulgaria will maintain its current decentralised ownership arrangements – in which 17 ministries oversee a portfolio of 221 SOEs. While the establishment of an ownership coordination unit should bring some clarity to the exercise of ownership rights by the state administration - notably through its important monitoring and policy coordination functions - the new entity will be granted only limited ownership rights over SOEs (upon delegation by the Council of Ministers). While advocacy efforts of the Competition Commission and the apparent strength of independent sectoral regulators in many key sectors (e.g. energy, water and communications) might alleviate concerns regarding the insufficient separation of ownership and regulatory functions usually associated with such decentralised ownership arrangements, the risk that line ministries make politically-motivated decisions at the expense of SOEs’ commercial performance still remain relevant. To further align Bulgarian practices with the SOE Guidelines, Bulgarian authorities should consider the possibility of centralising the state ownership function under the coordinating entity in the future. In practice, the coordination unit could be granted direct ownership rights for a defined portfolio of SOEs, with a view to eventually broadening the portfolio to include all SOEs. This should contribute towards exercising state ownership rights on a whole of government basis; as well as separating ownership and regulatory rights in a more consistent way.

- Strengthening disclosure requirements. While the new Law calls for all SOEs’ financial statements to be subject to an independent audit, accounting standards still vary at the level of individual SOEs, depending on their size and/or other characteristics. To further strengthen accounting and disclosure requirements, the OECD would recommend at least all large SOEs, to keep accounts in accordance with IFRS and be subject to the same disclosure standards as listed companies.
- **Strengthening boards of directors.** While SOEs board should, in principle, be better equipped (in terms of size, independence and responsibilities) to fulfil their essential strategy-setting and corporate oversight roles under the new legal and institutional framework, the OECD would recommend (1) to eventually release the current restriction on the maximum number of independent members in SOE boards (which is set to one-half) to align with the requirements applicable in the private sector, and ensure that SOE boards are able to exercise independent judgement, absent political interference and in the interest of the enterprise and its shareholder; and (2) to improve the rules and procedures for nominating and appointing the CEO. In line with OECD best practices, boards of directors should have the power to appoint and remove the CEO (or at least be consulted in case of fully state-owned enterprises). In any case, rules and procedures should be transparent and respect the line of accountability between the CEO, the board and the ownership entity.

*Maintaining a level-playing field with private companies.* While the new Law enshrines some important basic principles related to SOEs’ competitive position in the marketplace (notably by explicitly prohibiting unfair competition and abuses of monopoly), several elements could still distort the level playing field between SOEs and (actual or potential) private competitors, including *inter alia:* the use of holding companies to facilitate intra-group financing among subsidiaries and shortcomings in the applicability of public-procurement rules to SOEs as procurers, amongst other aspects. Appropriate measures should implemented to remedy these concerns and further align Bulgarian ownership practices with the SOE Guidelines.
Notes

1 In this review, “a listed company” is defined as a company whose shares/equities are traded on an official stock exchange. Therefore companies issuing only bonds are not considered as “listed.

2 Sunny Beach is currently listed, however according to the Bulgarian authorities, it is essentially non-operational.

3 Comparable recent data was not available for neighbouring Romania or Serbia, but market capitalisation as a percentage of GDP was below 10% in both countries in 2011.

1 After 1989, Bulgaria undertook reforms to the healthcare system, in line with recommendations of international financial institutions, to allow hospitals and medical centres to operate in the commercial marketplace principally as joint-stock companies under the Commerce Act.

2 This may, however, be a high-end estimate as it is based on the NSI’s comparatively broad definition of what constitutes an SOE.

3 The Ministry of Finance has indicated that this is a provision of the national budget act (approved by the Parliament), which has also been approved by the European Commission.

4 There are currently 79 SOEs included in the general government budget according to the National Statistical Institute.

5 Budget subsidies are, however, relatively limited due to EU state aid rules.

6 The mass privatisation programme had already been debated since 1993 but didn’t gather enough political support until 1996. It ensured an equal right for every citizen over 18 years old to take part in the process.

1 More generally, the Protection of Competition Act (promulgated in 2008, last amended in 2018), the Accountancy Act (promulgated in 2015) and the Law for the Independent Financial Audit (promulgated in 2016) also contain relevant provisions for commercial companies.

2 The Alternative Market was created in 2012 for the securities that do not meet the listing requirements of the Main Market.

3 The difference in record-keeping requirements is perhaps most pertinent in the case of JSCs. For LLCs, the Commerce Act does in fact state that in cases when the sole owner decides on issues within the power of the general meeting, “minutes […] shall be taken in the relevant form for the general meeting decisions”. For JSCs, the Commerce Act simply stipulates that “a written record shall be created on the decisions of the sole owner of the capital”.

4 Since October 2019, the Law on Public Enterprises prohibits the establishment of new state enterprises (under the meaning of Article 62[3] of the Commerce Act) if they are intended to carry out predominantly commercial activities. Importantly, the Law also foresees the gradual phasing out of already existing commercially-oriented state enterprises within 12 months of the entry into force of the Law.

1 The Commerce Act stipulates that, for single-member limited liability companies, “the sole owner shall decide on the issues within the powers of the General Meeting, minutes of which shall be taken in the relevant form for the General Meeting decisions” (Article 147) and that “any contracts
between the sole owner and the company, when it is represented by the sole owner, shall be concluded in writing” (Article 147).

2 According to the Commerce Act, in limited liability companies, “The Memorandum of Association may provide for the appointment of a comptroller who shall supervise the observance of the Memorandum of Association, the preservation of the company’s property, and shall report to the general meeting” (Article 144).

3 For limited liability companies, the Commerce Act states that “Any general meeting decisions, which are related to the records under Article 119, Paragraph 2, must be recorded in the Commercial Register” and that this provision applies also “to the decisions of the owner of a single-member company” (Article 140). The “records” referred to in Article 119, Paragraph 2 relate notably to the business name, amount of capital and “management and manner of representation”. Limited liability companies are furthermore required to keep a “minutes book” on decisions of the general meeting (Article 143).

4 The Commerce Act states that in joint-stock companies, “a written record shall be created on the decisions of the sole owner of the capital” (Article 232). Joint-stock companies are required to maintain the minutes of the general meeting in a special book, which must include a number of specific items, such as a list of attendees including those from the supervisory and/or management boards, as well as a record of votes and objections. The minutes are to be kept for a period of five years and made available to shareholders upon request (Article 232).

1 The Accountancy Act defines budget-funded enterprises as “all persons that apply budgets, accounts for European Union Funds, and accounts for external funds pursuant to the Public Finance Act, including the National Social Security Institute, the National Health Insurance Fund, public institutions of higher education, the Bulgarian Academy of Sciences, the Agricultural Academy, the Bulgarian National Television, the Bulgarian National Radio, the Bulgarian News Agency, as well as all other persons that are budgetary organisations within the meaning of § 1, item 5 of the Public Finance Act.” § 1, item 5 of the Public Finance Act define budgetary organisations as “all legal persons whose budgets are incorporated in the state budget, the budgets of municipalities, or the budgets of social security funds, as well as any other legal persons whose funds, revenues and payments are included in the consolidated fiscal programme by virtue of a legislative instrument or pursuant to Article 171”.

2 The conclusion that state enterprises are considered “public contracting entities” is based on the Act’s provisions that define “public contracting entities” to include “the heads of institutions of the State established by law […] where they are legal persons and budget authorisers” and “the representatives of bodies governed by public law” (Article 5).

3 Specifically, the category of “sector contracting entities” includes representatives of: (i) public entities pursuing one or several “sector activities” and (ii) merchants or other persons “pursuing one or several sector activities on the basis of special or exclusive rights” (Article 5). The OECD Secretariat understands “on the basis of special or exclusive rights” to denote a state-mandated monopoly situation.

1 The Bulgarian government recently survived a vote of no-confidence brought by the opposition Bulgarian Socialist Party in September 2018, citing the current government’s failure to overhaul the weak healthcare sector. This was the third vote of no-confidence against the current cabinet – previous votes having been made on the grounds of the government’s failure in the security sector and the fight against corruption.

2 Ibex was originally established as a fully-owned subsidiary of BEH EAD. It now operates as a subsidiary of the BSE.

3 The National Company Industrial Zones is specialised in industrial park development, management of industrial zones and innovation centres. Its goal is to facilitate the inflow of Foreign Direct Investment in the country by offering industrial terrains to foreign firms.
4 The Energy Investment Company was a subsidiary of BEH until its liquidation in 2017.

5 Changes in ownership may have occurred in recent years, although the Ministry of Energy was not able to determine the extent of it.

6 The Bulgarian authorities report that the SOEs not subject to privatisation can in fact be privatised, but only after parliamentary approval, whereas the privatisation of other fully-corporatised SOEs can be undertaken directly by the Privatisation and Post-Privatisation Control Agency and without Parliamentary approval.

7 Initially, the holding structure also included a third subsidiary active in traction services, which was later merged into BDZ Holding.

8 The CPOSA is the entity in charge of approving and registering statutory auditors and audit firms in Bulgaria.

9 The Law on Public Enterprises establishes the requirement for boards of large SOEs to consist of at least five members.

10 In two-tier structures, the supervisory board has the obligation to monitor and control the management of the SOE and the right to change the management board.

11 The restriction includes a broad list of public officials including members of Parliament, ministers; deputy-ministers, district and deputy governors, mayors and deputy mayors, the chairs of government agencies, etc.

12 Control contracts are signed with members of the Supervisory Board in two-tier joint-stock companies.

1 According to the Municipality of Burgas, 20 are commercial enterprises while 7 are second-level budget spending units.

2 However, it is worth noting that under the new framework set by the law, the ownership coordination unit will be available to provide advisory services to municipal ownership entities upon request, but won’t have any supervisory authority over these entities as such.

3 Starting October 2019, the board nomination procedure will be established as per the requirements of the Law on Public Enterprises, which applies to municipality-owned enterprises as well.

4 The Municipality of Sofia has indicated that in fully-owned joint-stock companies, management contracts applying to non-executive members of the board were signed with the Mayor of the Municipality, while for those applying to executive members were signed with the Chairman of the board.

1 In accordance with Article 12[4] of the Constitution, a state monopoly may be established by a law on rail transport, the national postal and telecommunication networks, the use of nuclear energy, the manufacture of radioactive products, weapons, explosives and biologically potent substances.

2 Fully corporatised SOEs which are not exempt from bankruptcy proceedings, generally follow the general insolvency provisions of the Commerce Act (or of the Bankruptcy Act in case of the state-owned Bulgarian Development Bank AD).

3 Specifically in the case of the Bulgarian Development Bank, it is the Council of Ministers that has to approve its strategy.

4 The Law on Public Enterprises further reiterates this requirement by stating that “representative of the State shall have the same rights, duties and obligations as the other members of the management and control bodies, including the right to receive remuneration and the obligation not to disclose business secrets of the public enterprise.”

5 The new ownership coordination unit will be directly accountable to the Council of Ministers.
According to Article 1[2] of the Public Internal Audit Act, IAUs are to be established in a) commercial companies with over 50% state and/or municipal participation in the capital and with an annual turnover exceeding BGN 10 million for each of the last three years; b) commercial companies, the capital of which is owned by the companies under item 6 with an annual turnover exceeding BGN 10 million for each of the last three years; c) in state enterprises under Article 62[3] of the Commerce Act with an annual turnover exceeding BGN 10 million for each of the last three years. Where companies do not meet these conditions, they are included within the scope of the internal auditing unit of the ministry.

Following the adoption of the Law on Public Enterprises, all municipalities are required to establish a competitive procedure for the selection and appointment of board members in municipal enterprises, in line with the requirements and criteria set by the law and its implementing rules.

Representatives of the Bulgarian Stock Exchange, where the state-owned Sunny Beach Resort is listed, report that beaches in Bulgaria can only be owned by the state and that Sunny Beach Resort has already sold off most of its assets.

The new law on Public Enterprises introduces a reference to the fact that “business activities of SOEs shall be conducted on an equal footing with other economic actors and abuses of monopoly situations or unfair competition shall not be allowed”.

In addition, the new Law on Public Enterprises clearly requires all partners/shareholders in SOEs to be treated equally.

The Law on Public Enterprises sets forth the possibility for boards of directors to set up special committees from among their members such as Remuneration Committee or Risk Management Committee to prepare decisions to be taken by the board. These committees shall always be chaired by an independent member of the board.
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## Annex A. Board composition of Bulgaria’s largest SOEs

<table>
<thead>
<tr>
<th>SOE</th>
<th>Legal form</th>
<th>Responsible ministry</th>
<th>Type (one-tier board; unitary supervisory board; mixed management/supervisory; two-tier board);</th>
<th>Board structure and composition</th>
<th>((a) civil servants; (b) politicians such as deputy ministers, parliamentarians or state secretaries; (c) members of the SOE’s own executive team (specifying if CEO); (d) members of another SOE’s executive team (specifying if CEO); or (e) independent professionals (with no current employment contract with the state or the SOE sector)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgarian Energy Holding EAD (BEH EAD)</td>
<td>Single shareholder joint-stock company</td>
<td>Ministry of Energy</td>
<td>one-tier board</td>
<td>Board of Directors</td>
<td>Peteyo Ivanov – (c) CEO of BEH EAD; Executive member; 15.02.2016; employment outside the board: Chairperson of the Board of the Directors of Bulgargaz EAD, Member of the Board of ContourGlobal Operations Bulgaria AD, Member of the Board of Directors of South Stream Bulgaria AD. Petar Iliev - (d) CEO of NEK EAD. Chairman;29.06.2017; ref details under NEK Zhitkvo Dinchev (d) CEO of TPP Maritsa East 2 EAD - Member; 09.03.2015; ref details under TPP Maritsa East 2</td>
</tr>
<tr>
<td>NPP Kolzoduy EAD</td>
<td>Single shareholder joint-stock company</td>
<td>100% owned by BEH EAD; Ministry of Energy</td>
<td>one-tier board</td>
<td>Board of Directors</td>
<td>Nasko Mihov – (c) CEO of NPP Kolzoduy EAD; Executive member; 27.11.2018; Member of the Board of the Directors of Kozloduy NPP - New Builds EAD Jacklen Cohen – (e) Chairman; 10.12.2013 - 06.02.2017, 07.07.2017 - present Ivan Yonchev – (e) Member of the board; 16.07.2014</td>
</tr>
<tr>
<td>Electricity System Operator EAD</td>
<td>Single shareholder joint-stock company</td>
<td>100% owned by BEH EAD; Ministry of Energy</td>
<td>two-tier board</td>
<td>Supervisory Board:</td>
<td>Severin Vartigov – (d) Chairman ; 27.05.2014 Kostadin Yazov – (e) Deputy Chairman; 09.03.2015 Plamen Radonov – (e) Member 15.05.2015</td>
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<td></td>
<td>Management Board:</td>
<td>Angelin Tsachev – (c) CEO of ESO EAD; Executive member; 14.02.2018 Anton Slavov – (e) Chairman; 14.02.2018 Plamen Yordanov – (e) Member; 14.02.2018</td>
</tr>
<tr>
<td>SOE</td>
<td>Legal form</td>
<td>Responsible ministry</td>
<td>Type (one-tier board; unitary supervisory board; mixed management/supervisory; two-tier board);</td>
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<tr>
<td>Bulgartransgaz EAD</td>
<td>Single shareholder joint-stock company</td>
<td>100% owned by BEH EAD; Ministry of Energy</td>
<td>two-tier board</td>
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<td></td>
</tr>
<tr>
<td>National Electricity Company EAD (NEK)</td>
<td>Single shareholder joint-stock company</td>
<td>100% owned by BEH EAD; Ministry of Energy</td>
<td>one-tier board</td>
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</tr>
<tr>
<td>Maritsa-East Mining EAD (Mini Maritsa Iztok)</td>
<td>Single shareholder joint-stock company</td>
<td>100% owned by BEH EAD; Ministry of Energy</td>
<td>one-tier board</td>
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</tr>
<tr>
<td>TPP Maritsa East 2 EAD</td>
<td>Single shareholder joint-stock company</td>
<td>100% owned by BEH EAD; Ministry of Energy</td>
<td>one-tier board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National Railway Infrastructure Company</td>
<td>State enterprise</td>
<td>Ministry of Transport, Information Technology and Communications</td>
<td>one-tier board</td>
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</tr>
</tbody>
</table>

**Board structure and composition**

- (a) civil servants; (b) politicians such as deputy ministers, parliamentarians or state secretaries; (c) members of the SOE’s own executive team (specifying if CEO); (d) members of another SOE’s executive team (specifying if CEO); or (e) independent professionals (with no current employment contract with the state or the SOE sector)

**Supervisory Board:**
- Kiril Georgiev – (e) Chairman; 15.12.2014
- Vladimir Mitrushev – (e) Deputy Chairman; 15.12.2014
- Ventzislav Tzvetanov – (e) Member; 13.05.2016

**Management Board:**
- Tanya Zaharieva – (e) Chairperson; 08.01.2015
- Delyan Dimitrov – (e) Member; 08.01.2015
- Vladimir Malinov – (c) CEO of Bulgartransgaz; Executive member; 01.03.2018

**Board of Directors:**
- Petar Bliev – (c) CEO of NEK: Executive member; 03.12.2014, employment outside the board: Chairman of the Board of Directors of Bulgarian Energy Holding EAD, Member of the Board of Directors of ContourGlobal Maritsa East 3; Member of the Supervisory Board of Pension Insurance Company Allianz Bulgaria AD; Member of the Board of Directors of ZAD “ENERGY”, Manager and sole owner of the capital of P:ON-2000 EOOD, Manager and sole owner of the capital of P:IN Engineering EOOD, Member of the Managing Board of Association Bulgarian Branch Chamber of Power Engineers
- Hristo Georgiev – (e) Chairman; 01.04.2015 - 10.02.2017, 07.07.2017 - present
- Momchil Vanov – (d) Member; 10.02.2014

**Board of Directors:**
- Andon Andonov – (c) CEO of Mini Maritsa Iztok; Executive member; 20.08.2014; employment outside the board - Member of Managing Board of the Scientific and Technical Union of the Power Engineers
- Nikolay Dikov – (e) Chairman; 02.12.2014 - 21.03.2017, 25.08.2017 - present
- Georgi Koev – (e) Member; 25.08.2017

**Board of Directors:**
- Zhivko Dinchev – (c) CEO of TPP Maritsa East 2 EAD; Executive member; 04.12.2009; employment outside the board - Member of the board of Directors of Bulgarian energy Holding EAD, Member of the Board of Directors of TPP Maritsa East 2 (9 and 10) EAD
- Boncho Bonev – (e) Chairman; 05.09.2018
- Dyian Dimitrov – (e) Member; 04.12.2014

**Board of Directors:**
- Krasimir Hristov Papukchiyski – (c) Director General, 10.02.2017;
- Ivan Vasilev Markov – (a) Secretary general MTITC, Deputy chairman, 20.06.2010;
- Hristo Vladimirov Alexiev – (e) Deputy director general, Chairman, 05.05.2017
<table>
<thead>
<tr>
<th>SOE</th>
<th>Legal form</th>
<th>Responsible ministry</th>
<th>Type (one-tier board; unitary supervisory board; mixed management/supervisory; two-tier board);</th>
<th>Board structure and composition (</th>
<th>Board structure and composition</th>
<th>Board structure and composition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgarian Posts EAD</td>
<td>Single shareholder joint-stock company</td>
<td>Ministry of Transport, Information Technology and Communications</td>
<td>one-tier board</td>
<td>Deyan Stoyanov Daneshki – (c) CEO, 11.11.2014; Nikola Angelov Sherletov – (N/A) Chairman, 15.11.2011; Emiliya Dimitrova Facheva - (c) Deputy executive director, 17.07.2017</td>
<td></td>
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</tr>
<tr>
<td>Bulgarian Ports Infrastructure Company</td>
<td>State enterprise</td>
<td>Ministry of Transport, Information Technology and Communications</td>
<td>one-tier board</td>
<td>Anguel Borisov Zabourtov – (c) Director General 04.02.2014; Georgi Georgiev Todorov – (c) Chairman, 15.02.2017; Vladimir Traykov Todorov – (c) 13.06.2011 Members of Supervisory board [as of end 2017]: Lachezar Borisov – (b) Chairman. No share in the capital or participation in the management of other companies. State representative Mitko Simeonov – (c) Deputy Chairman. Member of the SB from 27.11.2017. No share in the capital or participation in the management of other companies, independent member Velina Burska – (c) Member of the SB from 27.11.2017. No share in the capital or participation in the management of other companies, independent member</td>
<td></td>
<td>Members of Supervisory board [as of end 2017]: Lachezar Borisov – (b) Chairman. No share in the capital or participation in the management of other companies. State representative Mitko Simeonov – (c) Deputy Chairman. Member of the SB from 27.11.2017. No share in the capital or participation in the management of other companies, independent member Velina Burska – (c) Member of the SB from 27.11.2017. No share in the capital or participation in the management of other companies, independent member</td>
</tr>
<tr>
<td>Bulgarian Development Bank AD</td>
<td>Joint-stock company</td>
<td>Ministry of Economy</td>
<td>two-tier board</td>
<td>Rumen Mitrov – (d) Deputy Chairman. Member of the MB from 06.10.2017. Mr. Mitrov is also a Member of the Board of Micro Financing Institution Jobs EAD. Member of the MB from 06.10.2018., independent member Nikolay Dimitrov – (d) Member of the MB from 06.10.2017. Mr. Dimitrov is also a Member of the Board of Micro financing Institution EAD, independent member</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOE</td>
<td>Legal form</td>
<td>Responsible ministry</td>
<td>Type (one-tier board; unitary supervisory board; mixed management/supervisory; two-tier board);</td>
<td>Board structure and composition</td>
<td>Board structure and composition</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
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<td></td>
</tr>
<tr>
<td>Vazovski Mashinostroiteli Zavodi EAD (VMZ)</td>
<td>Single shareholder joint-stock company</td>
<td>100% owned by State Consolidation Company (DKK EAD), Ministry of Economy</td>
<td>one-tier board</td>
<td>Ivan Yordanov Getzov – (c) Executive director (CEO) and member of Board of Directors from 15.09.2015</td>
<td>Atanas Trinofov Bogdanov – (e) Chairman of the Board of Directors from 17.11.2016, freelance lawyer, independent member</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>trifon Vasiliev Kumchev – (d) Vice Chairman of Board of Directors -from 08.06.2017, freelance lawyer, independent member</td>
<td></td>
</tr>
</tbody>
</table>
Annex B. SOEs not subject to privatisation

Article 3[1] of the Privatisation and Post-Privatisation Control Act states that “the state-owned participating interest in the capital of all commercial corporations shall be presumed to be put up for privatisation […], with the exception of the corporations included in the list under Schedule 1 to this Act.” The corporations included in this “non-privatisation” list, together with their responsible ownership ministries, are as follows.

Ministry of Regional Development and Public Works
1. Water Supply and Sewerage EOOG, Blagoevgrad
2. Water Supply and Sewerage EAD, Burgas
3. Water Supply and Sewerage OOD, Varna
4. Yovkovtsi Water Supply and Sewerage OOD, Veliko Turnovo
5. Water Supply and Sewerage EOOG, Vidin
6. Water Supply and Sewerage OOD, Vratsa
7. Water Supply and Sewerage OOD, Gabrovo
8. Water Supply and Sewerage AD, Dobrich
9. Water Supply and Sewerage OOD, Kurdjali
10. Water Supply and Sewerage AD, Lovech
11. Water Supply and Sewerage OOD, Montana
12. Water Supply and Sewerage OOD, Pernik
13. Water Supply and Sewerage EOOG, Pleven
14. Water Supply and Sewerage EOOG, Plovdiv
15. Water Supply and Sewerage OOD, Isperih
16. Danube Water Supply EOOG, Razgrad
17. Water Supply and Sewerage OOD, Rousse
18. Water Supply and Sewerage OOD, Silistra
19. Water Supply and Sewerage OOD, Sliven
20. Water Supply and Sewerage EOOG, Smolyan
21. Water Supply and Sewerage EOOG, Stara Zagora
22. Water Supply and Sewerage OOD, Turgovishte
23. Water Supply and Sewerage OOD, Dimitrovgrad
24. Water Supply and Sewerage EOOD, Haskovo
25. Water Supply and Sewerage OOD, Shoumen
26. Water Supply and Sewerage EOOD, Yambol
27. Water Supply and Sewerage EOOD, Sofia
29. National Centre for Regional Development EAD, Sofia
30. Research Institute of Construction-NISI EOOD, Sofia
31. Avtomagistrali EAD, Sofia
32. Geoplanproekt EAD, Sofia
33. Construction Materials Research Institute EOOD, Sofia
34. Kyustendilska voda EOOD, Kyustendil
35. Water Supply and Sewerage EOOD, Pazardzhik
36. Fund for Local Authorities and Governments - FLAG EAD, Sofia

Ministry of Transport, Information Technology and Communications
37. Bulgarian State Railways (BDZ) EAD, Sofia
38. Sofia Airport EAD, Sofia
39. Gorna Oryahovitsa Airport EAD, Gorna Oryahovitsa
40. Plovdiv Airport EAD, Plovdiv
41. Rousse Airport EOOD, Rousse
42. Port of Rousse Authority EAD, Rousse
43. Port Complex Lom EAD, Lom
44. Port of Vidin EOOD, Vidin
45. Port of Varna EAD, Varna
46. Port of Bourgas EAD, Bourgas
47. Bulgarian Posts EAD, Sofia
48. Bulgarian Maritime Training Centre EAD, Varna
49. Transport Diagnostics and Consultation Centre EOOD, Burgas
50. General Hospital for Active Treatment - Varna EOOD, Varna
51. Contactless Multiplexing Systems - EOOD, Sofia

Ministry of Agriculture, Food and Forestry
52. Irrigation Systems EAD, Sofia
53. Agrolesproekt EOOD, Sofia
54. Kabiyuk State-Owned Enterprise, Shoumen
55. Vrana EAD, Sofia
56. Agrovodinvest EAD, Sofia
57. Zeminvest EAD, Sofia
58. The North-Western State Enterprise
59. The North-Central State Enterprise
60. The North-Eastern State Enterprise
61. The South-Eastern State Enterprise
62. The South-Western State Enterprise
63. The South-Central State Enterprise
64. Fish Resources EOOD, Sozopol

Ministry of Defence
65. TEREM Military Repair Factories EAD, Sofia
66. MoD Procurement and Trade EOOD, Sofia
67. Triarmstroyinvest EOOD, Sofia
68. PRONO EOOD, Sofia
69. Supply Services EAD, Sofia
70. MOBA - EOOD, Sofia
71. Vita General Hospital for Further and Prolonged Treatment and Rehabilitation EOOD, Velingrad

Ministry of Education and Science
72. Student Canteens and Hostels EAD, Sofia
73. Education and Science EAD, Sofia
74. Uchenicheski otdih I sport EAD, Sofia
75. Unique Devices and Systems EOOD, Sofia

Ministry of Culture
76. National Agency "Music" EOOD, Sofia
77. Restoration EAD, Sofia
78. Audiovideo Orpheus EAD, Sofia
79. Vreme Film Studio EOOD, Sofia
80. Alliance EOOD, Sofia

Ministry of Health
81. National Complex of Specialised Rehabilitation Hospitals EAD, Sofia
82. Kamena Hydrotherapy Centre EAD, Velingrad
83. BB - NCIPD EOOD, Sofia
84. Kiten Recreation Centre EAD, Kiten
85. Specialised Rehabilitation Hospital - Touzlata EOOD, Balchik, Touzlata Locality
86. Specialised Rehabilitation Hospital - Marikostinovo EOOD, Marikostinovo, Petrich Municipality
87. Specialised Rehabilitation Hospital - Bourgaski Mineralni Bani EAD, Bourgas
88. Specialised Hospital for Further and Prolonged Treatment and Rehabilitation - Kotel EOOD, Kotel
89. Specialised Internal Diseases Hospital for Further and Prolonged Treatment and Rehabilitation - Mezdra EOOD, Mezdra
90. N.I. Pirogov General University Hospital for Active Treatment and Emergency Medicine EAD, Sofia
91. St Sophia Specialised Hospital for Active Treatment of Pulmonary Diseases EAD, Sofia
92. Specialised Hospital for Active Treatment of Pulmonary Diseases - Gabrovo EOOD, Gabrovo
93. Children's Specialised Hospital for Further and Prolonged Treatment of Pulmonary Diseases - Tryavna EOOD, Tryavna
94. Specialised Hospital for Further and Prolonged Treatment of Pneumological and Phthisiological Diseases and for Rehabilitation - Radountsi EOOD, Radountsi Village, Muglizh Municipality, Stara Zagora Region
95. Specialised Hospital for Further and Prolonged Treatment of Pulmonary Diseases - Roman EOOD, Roman
96. Specialised Hospital for Active Treatment of Pulmonary Diseases - Pernik EOOD, Pernik
97. Specialised Hospital for Active Treatment of Pulmonary Diseases - Troyan EOOD, Troyan
98. Saint Petka of Bulgaria Specialised Pneumological and Phthisiological Diseases Hospital for Further and Prolonged Treatment and Rehabilitation - Velingrad EOOD, Velingrad
99. King Ferdinand Specialised Hospital for Further and Prolonged Treatment and Rehabilitation of Pneumological and Phthisiological Diseases EOOD, Iskrets Village, Sofia Region
100. Prof. Boicho Boichev Specialised Hospital for Active Treatment in Orthopaedics EAD, Sofia
101. Academician Ivan Penchev Specialised Hospital for Active Treatment in Endocrinology EAD, Sofia
102. Maichin Dom Specialised Hospital for Active Treatment in Obstetrics and Gynaecology EAD, Sofia
103. Alexandrovska General University Hospital for Active Treatment EAD, Sofia
104. National Specialised Hospital for Physical Therapy and Rehabilitation EAD, Sofia
105. St Ekatherina Specialised Hospital for Active Treatment of Cardiovascular Diseases EAD, Sofia
106. Specialised Hospital for Active Treatment of Children with Oncohaematological Diseases - Sofia EOOD, Sofia
107. St Nahum Specialised Hospital for Active Treatment in Neurology and Psychiatry EAD, Sofia
108. Specialised Hospital for Active Treatment in Oncology EAD, Sofia
109. Specialised Hospital for Active Treatment of Paediatric Diseases EAD, Sofia
110. Queen Giovanna General University Hospital for Active Treatment - ISUL - EAD, Sofia
111. Dr Georgi Stranski General University Hospital for Active Treatment EAD, Pleven
112. St John of Rila General University Hospital for Active Treatment EAD, Sofia
113. General University Hospital for Active Treatment - Stara Zagora EAD, Stara Zagora
114. St Marina General Hospital for Active Treatment EAD, Varna
115. St George General University Hospital for Active Treatment EAD, Plovdiv
116. Prof. Ivan Kirov Specialised Hospital for Active Treatment of Infectious and Parasitic Diseases EAD, Sofia
117. General Hospital for Active Treatment - National Heart Hospital EAD, Sofia
118. Specialised Hospital for Active Treatment in Facio-Maxillary Surgery EOOD, Sofia
119. Specialised Orthopaedic Hospital for Active Treatment - BUL-PRO EAD, Sofia
120. Specialised Hospital for Active Treatment of Oncological Diseases - Sofia Region EOOD
121. Mental Health Centre - Sofia EOOD
122. Specialised Hospital for Active Treatment of Pneumological and Phthisiological Diseases - Sofia Region EOOD
123. General Hospital for Active Treatment - Blagoevgrad AD, Blagoevgrad
124. General Hospital for Active Treatment - Bourgas AD, Bourgas
125. St Anna General Hospital for Active Treatment - Varna AD, Varna
126. Dr Stefan Cherkezov General Hospital for Active Treatment - Veliko Turnovo AD, Veliko Turnovo
127. St Petka General Hospital for Active Treatment AD, Vidin
128. Hristo Botev General Hospital for Active Treatment AD, Vratsa
129. Dr Tota Venkova General Hospital for Active Treatment AD, Gabrovo
130. General Hospital for Active Treatment - Dobrich AD, Dobrich
131. Dr Atanas Dafovski General Hospital for Active Treatment, Kurdjali
132. Dr Nikola Vassiliev General Hospital for Active Treatment, Kyustendil
133. Prof. Dr Paraskov Stoyanov General Hospital for Active Treatment AD, Lovech
134. Dr Stamen Iliev General Hospital for Active Treatment AD, Montana
135. General Hospital for Active Treatment - Pazardjik AD, Pazardjik
136. Rahila Angelova General Hospital for Active Treatment AD, Pernik
137. General Hospital for Active Treatment - Plovdiv AD, Plovdiv
138. St John of Rila General Hospital for Active Treatment - Razgrad AD, Razgrad
139. General Hospital for Active Treatment - Rousse AD, Rousse
140. General Hospital for Active Treatment - Silistra AD, Silistra
141. Dr Ivan Seliminski General Hospital for Active Treatment AD, Sliven
142. Dr Bratan Shoukerov General Hospital for Active Treatment AD, Smolyan
143. St Ann General Hospital for Active Treatment AD, Sofia
144. Prof. Dr Stoyan Kirkovich General Hospital for Active Treatment AD, Stara Zagora
145. General Hospital for Active Treatment - Turgovishte AD, Turgovishte
146. General Hospital for Active Treatment AD, Haskovo
147. General Hospital for Active Treatment - Shoumen AD, Shoumen
148. St Pantheleymon General Hospital for Active Treatment - Yambol AD, Yambol
149. Specialised Hospital for Active Treatment of Haematological Diseases EAD, Sofia
150. Specialised Hospital for Active Treatment of Pneumological and Phthisiological Diseases - Shumen OOD, Shumen

Ministry of Economy
151. LB Bulgaricum Trading Company EAD, Sofia
152. Bulgarska Rosa State Laboratory EOOD, Sofia
153. Eco-Medet EOOD, Panagyurski Kolonii Village
154. Bulgarian Export Insurance Agency EAD, Sofia
155. NITI EAD, Kazanlak
156. Vazovski Mashinostroitelni Zavodi EAD, Sopot
157. Kintex EAD, Sofia
158. Ecoengineering EOOD, Sofia
159. ECO ANTHRACITE EAD, Dimitrovgrad
160. Training and Consulting Complex EOOD, Berkovitsa
161. Certification EAD, Sofia
162. National Wine and Spirituous Beverages Research Institute EAD, Sofia
163. State Consolidation Company EAD, Sofia
164. National Company for Industrial Zones EAD, Sofia
165. Sofia Tech Park EAD, Sofia
166. Stara Zagora Airport EAD, Stara Zagora

Ministry of Youth and Sports
167. National Sports Facilities EAD, Sofia, as well as the following self-contained items of the company: Belmekin High-Mountain Sports Complex; Vassil Levski National Stadium; Diana National Sports Complex; Sport Palace National Sport Centre, Varna;
Serdika Velodrome, Sofia; National Canoeing Centre, Kardjali; Tsar Samuil National Sports Centre, Petrich; Sofia Hall; Rakovski National Sports Halls.

168. Academica 2011 – EAD
169. Specialised Traumatology, Orthopaedics and Sports Medicine Hospital for Active Treatment EAD, Sofia

Ministry of Finance
170. Information Services AD, Sofia

Ministry of Interior
171. Radioelectronic Systems EOOD, Sofia
172. Proinvex EOOD, Sofia

Ministry of Energy
173. Bulgarian Energy Holding EAD, Sofia
174. Minproekt EAD, Sofia
Annex C. Example of the contents of an SOE business programme

<table>
<thead>
<tr>
<th>Contents of Bulgaricum’s business programme (2014-16)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The below provides an extract of the table of contents of Bulgaricum’s 2014-16 business programme, which is supplemented with an annex containing financial projections. The business programme was discussed and approved by the company’s board of directors at a January 2014 meeting.</td>
</tr>
<tr>
<td>Introduction</td>
</tr>
<tr>
<td>1. Company background</td>
</tr>
<tr>
<td>1.1. Ownership</td>
</tr>
<tr>
<td>1.2. Main activities</td>
</tr>
<tr>
<td>1.3. Mission, vision, strategic objectives</td>
</tr>
<tr>
<td>1.4. Values</td>
</tr>
<tr>
<td>2. Company standing</td>
</tr>
<tr>
<td>2.1. Financial and economic standing of the company</td>
</tr>
<tr>
<td>2.2. Licensing and intellectual property protection</td>
</tr>
<tr>
<td>2.3. Research and development</td>
</tr>
<tr>
<td>2.4. Production and trade</td>
</tr>
<tr>
<td>2.5. Management and organisational structure</td>
</tr>
<tr>
<td>3. Characteristics of the market environment</td>
</tr>
<tr>
<td>3.1. Main trends in market development</td>
</tr>
<tr>
<td>3.2. Market positions and competitive strategy</td>
</tr>
<tr>
<td>4. Objectives and priorities in the period 2014-2016</td>
</tr>
<tr>
<td>5. Key indicators for the period 2014-2016</td>
</tr>
<tr>
<td>6. Events and actions for program implementation</td>
</tr>
<tr>
<td>7. Marketing</td>
</tr>
<tr>
<td>8. Investment activities</td>
</tr>
<tr>
<td>9. Production program</td>
</tr>
<tr>
<td>10. Human resources</td>
</tr>
<tr>
<td>11. Financial plan</td>
</tr>
<tr>
<td>11.1. Expected revenues in the period 2014-2016</td>
</tr>
<tr>
<td>11.2. Expected expenses in the period 2014-2016</td>
</tr>
<tr>
<td>12. Organisation and implementation of the business program</td>
</tr>
</tbody>
</table>
## Annex D. Financial performance indicators for selected largest SOEs

### Bulgarian Energy Holding EAD – individual (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>377,708</td>
<td>173,869</td>
<td>54,865</td>
<td>52,051</td>
<td>63,081</td>
<td>100,738</td>
</tr>
<tr>
<td>EBITDA</td>
<td>164,849</td>
<td>273,282</td>
<td>152,478</td>
<td>42,073</td>
<td>57,700</td>
<td>48,937</td>
</tr>
<tr>
<td>Net Profit</td>
<td>193,018</td>
<td>279,231</td>
<td>164,784</td>
<td>69,287</td>
<td>67,052</td>
<td>64,623</td>
</tr>
<tr>
<td>Dividends *</td>
<td>94,971</td>
<td>144,812</td>
<td>12,702</td>
<td>0</td>
<td>7,938</td>
<td>0</td>
</tr>
<tr>
<td>Assets</td>
<td>2,080,960</td>
<td>3,051,902</td>
<td>2,911,845</td>
<td>2,668,237</td>
<td>3,222,190</td>
<td>3,739,018</td>
</tr>
<tr>
<td>Equity</td>
<td>2,078,716</td>
<td>2,292,294</td>
<td>2,170,305</td>
<td>2,016,785</td>
<td>2,011,832</td>
<td>2,356,332</td>
</tr>
<tr>
<td>Provisions</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>189</td>
<td>683,729</td>
<td>720,482</td>
<td>647,182</td>
<td>1,194,438</td>
<td>765,907</td>
</tr>
<tr>
<td>ROA</td>
<td>9.28%</td>
<td>9.15%</td>
<td>5.66%</td>
<td>2.60%</td>
<td>2.08%</td>
<td>1.73%</td>
</tr>
<tr>
<td>ROE</td>
<td>9.29%</td>
<td>12.18%</td>
<td>7.59%</td>
<td>3.44%</td>
<td>3.33%</td>
<td>2.74%</td>
</tr>
</tbody>
</table>

### NPP Koloduy EAD – individual (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>572,060</td>
<td>517,113</td>
<td>526,720</td>
<td>473,036</td>
<td>451,533</td>
<td>570,287</td>
</tr>
<tr>
<td>EBITDA</td>
<td>237,203</td>
<td>173,003</td>
<td>187,415</td>
<td>157,927</td>
<td>98,506</td>
<td>197,475</td>
</tr>
<tr>
<td>Net Profit</td>
<td>104,205</td>
<td>29,619</td>
<td>48,140</td>
<td>45,816</td>
<td>731</td>
<td>72,266</td>
</tr>
<tr>
<td>Dividends *</td>
<td>124,531</td>
<td>82,497</td>
<td>16,982</td>
<td>25,750</td>
<td>21,349</td>
<td>374</td>
</tr>
<tr>
<td>Assets</td>
<td>1,748,557</td>
<td>1,660,584</td>
<td>1,474,467</td>
<td>1,903,352</td>
<td>1,798,254</td>
<td>2,082,037</td>
</tr>
<tr>
<td>Equity</td>
<td>1,151,279</td>
<td>1,145,336</td>
<td>1,039,811</td>
<td>1,477,144</td>
<td>1,403,850</td>
<td>1,668,127</td>
</tr>
<tr>
<td>Provisions</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>393,282</td>
<td>363,953</td>
<td>303,368</td>
<td>307,582</td>
<td>278,303</td>
<td>290,263</td>
</tr>
<tr>
<td>ROA</td>
<td>5.96%</td>
<td>1.78%</td>
<td>3.26%</td>
<td>2.41%</td>
<td>0.04%</td>
<td>3.47%</td>
</tr>
<tr>
<td>ROE</td>
<td>9.05%</td>
<td>2.59%</td>
<td>4.63%</td>
<td>3.10%</td>
<td>0.05%</td>
<td>4.33%</td>
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</tbody>
</table>
### Electricity System Operator EAD – individual (in thousand USD)

<table>
<thead>
<tr>
<th>Year</th>
<th>Turnover</th>
<th>EBITDA</th>
<th>Net Profit</th>
<th>Dividends</th>
<th>Assets</th>
<th>Equity</th>
<th>Provisions</th>
<th>Long-term debt</th>
<th>ROA</th>
<th>ROE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>362,715</td>
<td>-19,245</td>
<td>-25,815</td>
<td>51,747</td>
<td>84,369</td>
<td>48,405</td>
<td>0</td>
<td>5,776</td>
<td>-30.60%</td>
<td>-53.33%</td>
</tr>
<tr>
<td>2013</td>
<td>285,708</td>
<td>3,763</td>
<td>-3,279</td>
<td>0</td>
<td>133,488</td>
<td>44,996</td>
<td>0</td>
<td>7,843</td>
<td>-2.46%</td>
<td>-7.29%</td>
</tr>
<tr>
<td>2014</td>
<td>321,410</td>
<td>75,981</td>
<td>12,160</td>
<td>0</td>
<td>1,409,459</td>
<td>1,190,733</td>
<td>0</td>
<td>156,332</td>
<td>0.86%</td>
<td>1.02%</td>
</tr>
<tr>
<td>2015</td>
<td>347,674</td>
<td>99,921</td>
<td>35,084</td>
<td>0</td>
<td>1,500,292</td>
<td>1,242,712</td>
<td>0</td>
<td>207,210</td>
<td>2.34%</td>
<td>2.82%</td>
</tr>
<tr>
<td>2016</td>
<td>359,168</td>
<td>102,459</td>
<td>39,696</td>
<td>0</td>
<td>1,475,335</td>
<td>1,229,404</td>
<td>0</td>
<td>196,022</td>
<td>2.69%</td>
<td>3.23%</td>
</tr>
<tr>
<td>2017</td>
<td>414,71</td>
<td>22,375</td>
<td>17,463</td>
<td>0</td>
<td>1,679,707</td>
<td>1,395,313</td>
<td>0</td>
<td>222,361</td>
<td>1.04%</td>
<td>1.25%</td>
</tr>
</tbody>
</table>

### Bulgartransga EAD – individual (in thousand USD)

<table>
<thead>
<tr>
<th>Year</th>
<th>Turnover</th>
<th>EBITDA</th>
<th>Net Profit</th>
<th>Dividends</th>
<th>Assets</th>
<th>Equity</th>
<th>Provisions</th>
<th>Long-term debt</th>
<th>ROA</th>
<th>ROE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>289,242</td>
<td>108,128</td>
<td>73,517</td>
<td>131,106</td>
<td>1,367,751</td>
<td>1,286,540</td>
<td>0</td>
<td>87,584</td>
<td>-30.60%</td>
<td>-53.33%</td>
</tr>
<tr>
<td>2013</td>
<td>274,867</td>
<td>111,581</td>
<td>59,864</td>
<td>54,542</td>
<td>1,422,572</td>
<td>1,326,137</td>
<td>0</td>
<td>91,529</td>
<td>-2.46%</td>
<td>-7.29%</td>
</tr>
<tr>
<td>2014</td>
<td>225,159</td>
<td>46,880</td>
<td>46,880</td>
<td>33,204</td>
<td>1,287,420</td>
<td>1,180,831</td>
<td>0</td>
<td>156,332</td>
<td>0.86%</td>
<td>1.02%</td>
</tr>
<tr>
<td>2015</td>
<td>202,160</td>
<td>51,778</td>
<td>51,778</td>
<td>22,716</td>
<td>1,210,227</td>
<td>1,112,224</td>
<td>0</td>
<td>207,210</td>
<td>2.34%</td>
<td>2.82%</td>
</tr>
<tr>
<td>2016</td>
<td>178,371</td>
<td>35,700</td>
<td>35,700</td>
<td>22,560</td>
<td>1,189,547</td>
<td>1,097,807</td>
<td>0</td>
<td>196,022</td>
<td>2.69%</td>
<td>3.23%</td>
</tr>
<tr>
<td>2017</td>
<td>222,264</td>
<td>1,434,735</td>
<td>37,645</td>
<td>18,299</td>
<td>1,434,735</td>
<td>1,292,697</td>
<td>0</td>
<td>222,361</td>
<td>1.04%</td>
<td>1.25%</td>
</tr>
</tbody>
</table>

### National Electricity Company EAD (NEK) – individual (in thousand USD)

<table>
<thead>
<tr>
<th>Year</th>
<th>Turnover</th>
<th>EBITDA</th>
<th>Net Profit</th>
<th>Dividends</th>
<th>Assets</th>
<th>Equity</th>
<th>Provisions</th>
<th>Long-term debt</th>
<th>ROA</th>
<th>ROE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>2,028,108</td>
<td>-23,095</td>
<td>-63,215</td>
<td>59,975</td>
<td>4,589,436</td>
<td>2,866,643</td>
<td>93</td>
<td>411,999</td>
<td>-1.38%</td>
<td>-2.21%</td>
</tr>
<tr>
<td>2013</td>
<td>2,091,35</td>
<td>-32,322</td>
<td>-153,294</td>
<td>0</td>
<td>5,028,507</td>
<td>2,834,026</td>
<td>40</td>
<td>766,737</td>
<td>-3.05%</td>
<td>-5.41%</td>
</tr>
<tr>
<td>2014</td>
<td>1,847,220</td>
<td>-311,236</td>
<td>-363,266</td>
<td>-43</td>
<td>3,169,870</td>
<td>1,014,564</td>
<td>68</td>
<td>879,771</td>
<td>-11.46%</td>
<td>-35.81%</td>
</tr>
<tr>
<td>2015</td>
<td>1,778,841</td>
<td>-9,718</td>
<td>-49,568</td>
<td>-49,568</td>
<td>2,798,414</td>
<td>783,259</td>
<td>45</td>
<td>706,731</td>
<td>-1.77%</td>
<td>-6.33%</td>
</tr>
<tr>
<td>2016</td>
<td>1,629,928</td>
<td>-11,213</td>
<td>-69,262</td>
<td>-69,262</td>
<td>2,848,196</td>
<td>688,924</td>
<td>43</td>
<td>1,580,863</td>
<td>-2.43%</td>
<td>-10.05%</td>
</tr>
<tr>
<td>2017</td>
<td>1,898,492</td>
<td>85,336</td>
<td>4,210</td>
<td>4,210</td>
<td>3,281,189</td>
<td>788,103</td>
<td>53</td>
<td>1,834,019</td>
<td>2.62%</td>
<td>2.91%</td>
</tr>
</tbody>
</table>
## Maritsa-East Mining EAD (Mini Maritsa Iztok) – individual (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>341,320</td>
<td>313,359</td>
<td>305,963</td>
<td>32,350</td>
<td>273,150</td>
<td>346,904</td>
</tr>
<tr>
<td>EBITDA</td>
<td>52,772</td>
<td>42,659</td>
<td>43,804</td>
<td>59,083</td>
<td>42,332</td>
<td>60,920</td>
</tr>
<tr>
<td>Net Profit</td>
<td>4,971</td>
<td>2,274</td>
<td>2,688</td>
<td>1,462</td>
<td>796</td>
<td>3,436</td>
</tr>
<tr>
<td>Dividends *</td>
<td>19,484</td>
<td>3,018</td>
<td>1,402</td>
<td>1,447</td>
<td>707</td>
<td>455</td>
</tr>
<tr>
<td>Assets</td>
<td>747,756</td>
<td>764,835</td>
<td>748,099</td>
<td>810,530</td>
<td>640,845</td>
<td>711,567</td>
</tr>
<tr>
<td>Equity</td>
<td>503,840</td>
<td>524,866</td>
<td>463,956</td>
<td>464,966</td>
<td>450,845</td>
<td>512,713</td>
</tr>
<tr>
<td>Provisions</td>
<td>47,849</td>
<td>52,807</td>
<td>53,245</td>
<td>55,617</td>
<td>50,981</td>
<td>60,920</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>136,320</td>
<td>134,009</td>
<td>128,398</td>
<td>129,855</td>
<td>124,397</td>
<td>132,768</td>
</tr>
<tr>
<td>ROA</td>
<td>0.66%</td>
<td>0.30%</td>
<td>0.36%</td>
<td>0.18%</td>
<td>0.12%</td>
<td>0.48%</td>
</tr>
<tr>
<td>ROE</td>
<td>0.99%</td>
<td>0.43%</td>
<td>0.58%</td>
<td>0.31%</td>
<td>0.18%</td>
<td>0.67%</td>
</tr>
</tbody>
</table>

## TPP Maritsa East 2 EAD - individual (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>456,744</td>
<td>415,934</td>
<td>364,685</td>
<td>353,001</td>
<td>297,494</td>
<td>372,326</td>
</tr>
<tr>
<td>EBITDA</td>
<td>128,562</td>
<td>91,123</td>
<td>28,922</td>
<td>22,496</td>
<td>7,026</td>
<td>-44,068</td>
</tr>
<tr>
<td>Net Profit</td>
<td>31,131</td>
<td>3,730</td>
<td>-21,691</td>
<td>-40,017</td>
<td>-52,974</td>
<td>-99,844</td>
</tr>
<tr>
<td>Dividends *</td>
<td>28,775</td>
<td>25,610</td>
<td>2,299</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Assets</td>
<td>1,094,529</td>
<td>1,099,530</td>
<td>1,021,309</td>
<td>902,217</td>
<td>855,959</td>
<td>966,971</td>
</tr>
<tr>
<td>Equity</td>
<td>611,777</td>
<td>618,208</td>
<td>539,860</td>
<td>444,881</td>
<td>401,903</td>
<td>355,409</td>
</tr>
<tr>
<td>Provisions</td>
<td>0</td>
<td>3,257</td>
<td>2,970</td>
<td>2,761</td>
<td>2,768</td>
<td>3,265</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>254,477</td>
<td>246,359</td>
<td>183,116</td>
<td>143,340</td>
<td>166,558</td>
<td>193,776</td>
</tr>
<tr>
<td>ROA</td>
<td>2.84%</td>
<td>0.34%</td>
<td>-2.12%</td>
<td>-4.44%</td>
<td>-6.19%</td>
<td>-10.33%</td>
</tr>
<tr>
<td>ROE</td>
<td>5.09%</td>
<td>0.60%</td>
<td>-4.02%</td>
<td>-9.00%</td>
<td>-13.18%</td>
<td>-28.09%</td>
</tr>
</tbody>
</table>

## National Railway Infrastructure Company - individual (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>231,066</td>
<td>225,660</td>
<td>210,760</td>
<td>197,524</td>
<td>198,233</td>
<td>242,742</td>
</tr>
<tr>
<td>EBITDA</td>
<td>75,060</td>
<td>64,672</td>
<td>57,448</td>
<td>57,786</td>
<td>57,142</td>
<td>82,542</td>
</tr>
<tr>
<td>Net Profit</td>
<td>-4,869</td>
<td>-13,784</td>
<td>-11,337</td>
<td>-11,765</td>
<td>-15,376</td>
<td>-31,068</td>
</tr>
<tr>
<td>Dividends *</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Assets</td>
<td>1,963,917</td>
<td>2,166,749</td>
<td>2,286,562</td>
<td>2,272,295</td>
<td>2,310,744</td>
<td>2,629,861</td>
</tr>
<tr>
<td>Equity</td>
<td>1,124,686</td>
<td>1,147,173</td>
<td>986,901</td>
<td>860,801</td>
<td>813,108</td>
<td>894,804</td>
</tr>
<tr>
<td>Provisions</td>
<td>93,699</td>
<td>94,327</td>
<td>80,935</td>
<td>69,529</td>
<td>66,022</td>
<td>76,372</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>35,410</td>
<td>29,477</td>
<td>18,286</td>
<td>42,728</td>
<td>135,359</td>
<td>134,982</td>
</tr>
<tr>
<td>ROA</td>
<td>-0.25%</td>
<td>-0.64%</td>
<td>-0.50%</td>
<td>-0.52%</td>
<td>-0.67%</td>
<td>-1.18%</td>
</tr>
<tr>
<td>ROE</td>
<td>-0.43%</td>
<td>-1.20%</td>
<td>-1.15%</td>
<td>-1.37%</td>
<td>-1.89%</td>
<td>-3.47%</td>
</tr>
</tbody>
</table>
### Bulgarian Ports Infrastructure Company - individual (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>56,208</td>
<td>26,802</td>
<td>24,640</td>
<td>23,337</td>
<td>20,779</td>
<td>25,685</td>
</tr>
<tr>
<td>EBITDA</td>
<td>4,868</td>
<td>11,910</td>
<td>-8,582</td>
<td>-8,732</td>
<td>-6,447</td>
<td>3,024</td>
</tr>
<tr>
<td>Net Profit</td>
<td>4,463</td>
<td>10,159</td>
<td>-9,402</td>
<td>-9,282</td>
<td>-4,846</td>
<td>2,726</td>
</tr>
<tr>
<td>Dividends *</td>
<td>0</td>
<td>2,990</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Assets</td>
<td>594,328</td>
<td>608,252</td>
<td>546,765</td>
<td>514,315</td>
<td>479,225</td>
<td>542,467</td>
</tr>
<tr>
<td>Equity</td>
<td>456,287</td>
<td>542,747</td>
<td>477,944</td>
<td>458,318</td>
<td>456,945</td>
<td>530,656</td>
</tr>
<tr>
<td>Provisions</td>
<td>0</td>
<td>848</td>
<td>2,298</td>
<td>2,114</td>
<td>2,301</td>
<td>2,558</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>82,864</td>
<td>72,749</td>
<td>59,440</td>
<td>54,484</td>
<td>50,374</td>
<td>49,074</td>
</tr>
<tr>
<td>ROA</td>
<td>0.75%</td>
<td>1.67%</td>
<td>-1.72%</td>
<td>-1.80%</td>
<td>-1.01%</td>
<td>0.50%</td>
</tr>
<tr>
<td>ROE</td>
<td>0.98%</td>
<td>1.87%</td>
<td>-1.97%</td>
<td>-2.03%</td>
<td>-1.06%</td>
<td>0.51%</td>
</tr>
</tbody>
</table>

### Vazovski Mashinostroit elni Zavodi EAD (VMZ) - individual (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>46,616</td>
<td>30,350</td>
<td>48,054</td>
<td>81,014</td>
<td>274,782</td>
<td>321,328</td>
</tr>
<tr>
<td>EBITDA</td>
<td>-2,010</td>
<td>-6,650</td>
<td>2,642</td>
<td>16,550</td>
<td>107,068</td>
<td>106,972</td>
</tr>
<tr>
<td>Net Profit</td>
<td>-4,653</td>
<td>-9,443</td>
<td>164</td>
<td>13,722</td>
<td>92,380</td>
<td>91,952</td>
</tr>
<tr>
<td>Dividends *</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6,767</td>
<td>45,976</td>
</tr>
<tr>
<td>Assets</td>
<td>109,518</td>
<td>101,600</td>
<td>101,997</td>
<td>128,929</td>
<td>207,918</td>
<td>276,678</td>
</tr>
<tr>
<td>Equity</td>
<td>2,173</td>
<td>12,166</td>
<td>10,560</td>
<td>23,160</td>
<td>116,472</td>
<td>216,873</td>
</tr>
<tr>
<td>Provisions</td>
<td>1,552</td>
<td>1,180</td>
<td>1,451</td>
<td>1,804</td>
<td>2,250</td>
<td>3,087</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>4,487</td>
<td>1,617</td>
<td>4,798</td>
<td>5,008</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>ROA</td>
<td>-4.25%</td>
<td>-9.29%</td>
<td>0.16%</td>
<td>10.64%</td>
<td>44.43%</td>
<td>33.23%</td>
</tr>
<tr>
<td>ROE</td>
<td>-214.10%</td>
<td>-77.62%</td>
<td>1.55%</td>
<td>59.25%</td>
<td>79.32%</td>
<td>42.40%</td>
</tr>
</tbody>
</table>

### Bulgarian Development Bank - consolidated (in thousand USD)

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>59,231</td>
<td>52,819</td>
<td>45,174</td>
<td>38,150</td>
<td>37,219</td>
<td>42,904</td>
</tr>
<tr>
<td>EBITDA</td>
<td>6,546</td>
<td>12,370</td>
<td>5,680</td>
<td>24,192</td>
<td>27,167</td>
<td>14,787</td>
</tr>
<tr>
<td>Net Profit</td>
<td>5,735</td>
<td>10,860</td>
<td>4,823</td>
<td>21,496</td>
<td>24,168</td>
<td>12,676</td>
</tr>
<tr>
<td>Dividends *</td>
<td>3,642</td>
<td>5,012</td>
<td>2,012</td>
<td>0</td>
<td>10,393</td>
<td>0</td>
</tr>
<tr>
<td>Assets</td>
<td>1,143,374</td>
<td>1,267,194</td>
<td>1,173,393</td>
<td>887,421</td>
<td>1,019,069</td>
<td>1,506,999</td>
</tr>
<tr>
<td>Equity</td>
<td>452,953</td>
<td>479,404</td>
<td>422,516</td>
<td>399,697</td>
<td>413,850</td>
<td>474,928</td>
</tr>
<tr>
<td>Provisions</td>
<td>-29,138</td>
<td>-20,061</td>
<td>-23,940</td>
<td>1,357</td>
<td>2,062</td>
<td>-13,543</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>426,079</td>
<td>396,073</td>
<td>305,443</td>
<td>167,950</td>
<td>265,224</td>
<td>601,444</td>
</tr>
<tr>
<td>ROA</td>
<td>0.50%</td>
<td>0.86%</td>
<td>0.41%</td>
<td>2.42%</td>
<td>2.37%</td>
<td>0.84%</td>
</tr>
<tr>
<td>ROE</td>
<td>1.27%</td>
<td>2.27%</td>
<td>1.14%</td>
<td>5.38%</td>
<td>5.84%</td>
<td>2.67%</td>
</tr>
</tbody>
</table>
### HOLDING BDZ EAD (as of 31.12.2017)

<table>
<thead>
<tr>
<th></th>
<th>BDZ Holding – Individual</th>
<th>BDZ Passenger Services EOOD</th>
<th>BDZ Cargo Services EOOD</th>
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<tbody>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>7,569</td>
<td>166,524</td>
<td>68,814</td>
</tr>
<tr>
<td>Operating</td>
<td>6,725</td>
<td>166,340</td>
<td>68,482</td>
</tr>
<tr>
<td><strong>Expenditures</strong></td>
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<td></td>
</tr>
<tr>
<td>Total</td>
<td>12,639</td>
<td>171,776</td>
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<tr>
<td>Operating</td>
<td>12,449</td>
<td>171,163</td>
<td>71,755</td>
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<tr>
<td>Incl. depreciation</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>and amortization</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>468</td>
<td>35,916</td>
<td>4,152</td>
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<tr>
<td><strong>Net profit/loss</strong></td>
<td>-5,070</td>
<td>-5,252</td>
<td>-3,207</td>
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<tr>
<td><strong>Assets</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>179,279</td>
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<td>126,211</td>
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<tr>
<td>Long-term</td>
<td>140,316</td>
<td>177,196</td>
<td>100,250</td>
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<td>14,173</td>
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<td>Long-term</td>
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<td>67,654</td>
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<td>Short-term</td>
<td>164,410</td>
<td>59,557</td>
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<td><strong>Equity</strong></td>
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<tr>
<td>Total</td>
<td>14,575</td>
<td>86,066</td>
<td>61,521</td>
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<td>Subscribed capital</td>
<td>17,745</td>
<td>6,068</td>
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<td>Reserves</td>
<td>90,713</td>
<td>126,005</td>
<td>121,457</td>
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<td>Accumulated</td>
<td>-93,884</td>
<td>-46,007</td>
<td>-74,188</td>
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<td>financial result</td>
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<td></td>
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### Six forestry state enterprises (as of 31.12.2017)

<table>
<thead>
<tr>
<th></th>
<th>South-West SE - Blagoevgrad</th>
<th>South-East SE - Sliven</th>
<th>South-Central SE - Smolyan</th>
<th>North-West SE - Vratsa</th>
<th>North-East SE - Shumen</th>
<th>North-Central SE - Gabrovo</th>
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<td><strong>Revenues</strong></td>
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<td>Total</td>
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<td>51,428</td>
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<td>51,323</td>
<td>15,710</td>
<td>25,781</td>
<td>21,168</td>
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<td><strong>Expenditures</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Total</td>
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<td>49,790</td>
<td>15,494</td>
<td>25,562</td>
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<td>Operating</td>
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<td>41,431</td>
<td>49,391</td>
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<td>20,193</td>
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<td>2,739</td>
<td>1,595</td>
<td>1,890</td>
<td>791</td>
<td>1,326</td>
<td>1,070</td>
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<td><strong>Net profit/loss</strong></td>
<td>622</td>
<td>710</td>
<td>1,638</td>
<td>229</td>
<td>267</td>
<td>845</td>
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<tr>
<td>Total</td>
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<td>36,455</td>
<td>85,490</td>
<td>16,366</td>
<td>37,495</td>
<td>46,383</td>
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<td>Long-term</td>
<td>151,596</td>
<td>29,167</td>
<td>27,510</td>
<td>12,095</td>
<td>23,169</td>
<td>31,120</td>
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<td>Short-term</td>
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<td>7,288</td>
<td>57,979</td>
<td>4,271</td>
<td>14,325</td>
<td>15,263</td>
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<td>Incl. cash</td>
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<td>4,462</td>
<td>54,586</td>
<td>3,557</td>
<td>11,773</td>
<td>12,939</td>
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<td><strong>Liabilities</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>46,572</td>
<td>22,530</td>
<td>64,636</td>
<td>10,359</td>
<td>21,432</td>
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<td>Long-term</td>
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<td>51,011</td>
<td>6,783</td>
<td>15,953</td>
<td>9,540</td>
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<td>Short-term</td>
<td>9,363</td>
<td>8,392</td>
<td>13,625</td>
<td>3,575</td>
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<td>5,426</td>
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<td><strong>Equity</strong></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
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<td>20,854</td>
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<td>Subscribed capital</td>
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<td>10,510</td>
<td>14,545</td>
<td>4,910</td>
<td>4,992</td>
<td>5,730</td>
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<td>Reserves</td>
<td>104,524</td>
<td>3,408</td>
<td>4,688</td>
<td>857</td>
<td>10,064</td>
<td>24,661</td>
</tr>
<tr>
<td>Accumulated financial result</td>
<td>622</td>
<td>917</td>
<td>1,621</td>
<td>240</td>
<td>267</td>
<td>725</td>
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</tbody>
</table>
Annex E. Example of an SOE management contract template

FOR THE MANAGEMENT OF SINGLE-OWNER JOINT-STOCK COMPANY WITH PUBLIC SHREHOLDING AND ONE-TIER MANAGEMENT SYSTEM

This contract was made and executed this ...................................(date) pursuant to Article 219 (2), Article 221, 4) and 5), and Article 244 (7) of the Commerce Act, in relation to Article 8 (1), Article 12, 4) and Article 24 (1) of the Rules governing the exercise of the State’s rights in commercial companies with public shareholding (RGESRCCPS), approved with Council of Ministers’ Decree No. 112/23.05.2003 and Protocol No. ………………………/…………………….. (date) of the Minister of Economy and Energy, by and between “……………………………….” EAD, place ………………………., through the minister of economy and energy exercising the rights of the sole owner of company’s capital, hereinafter “PRINCIPAL” and

………………………………. having PIN 0000000000, with permanent address: place ………………., “………..”, block 2, entrance 3, holder of ID card No. 0000000000, issued on 00.00.2011 by Ministry of Interior – (place) …………………………., hereinafter called “member of the Board of Directors” of “……………………………….” EAD, (place) ………………….

NOW THEREFORE, in consideration of the premises and mutual covenants and agreement set forth herein, the parties agree as follows:

I. SUBJECT OF THE CONTRACT

1. The Principal hereby appoints the member of the Board of Directors and the member of the Board of Directors hereby agrees to manage and represent single-owner joint-stock company with public shareholding “……………………………….” EAD, place ………………………., in accordance with the existing legislation, the Statutes of the company and the clauses hereof.

II. DURATION OF THE CONTRACT

2. This contract is concluded for a period up to ………………………………….

III. RIGHTS AND OBLIGATIONS OF THE PRINCIPAL

3. The Principal shall exercise the rights of the State in the company under the terms and procedure as regulated in the Commerce Act, other legislative instruments and the Statutes of the company.
4. The Principal shall be entitled to:

4.1. Request and receive from the member of the Board of Directors information about the business of the company.

4.2. Oversee the activity of the members of the Board of Directors and establish the deadlines within which they are under an obligation to take measures to remove any shortcomings of work identified.

4.3. Decrease the remuneration of the member of the Board of Directors set herein by up to 50 per cent for a period of 3 months where such member fails to fulfil any decision of the Principal or acts in breach of the regulations and of the obligations hereunder.

4.4. Visit personally all job places in the company and the branches and representations thereof or authorise other persons to that effect.

4.5. Send the member of the Board of Directors on assignment trips abroad under terms and procedure set by the Principal in accordance with the existing regulations.

4.6. Approve and supervise the implementation of the company’s business programme and approve programmes for the business and development of the company, as necessary.

IV. RIGHTS AND OBLIGATIONS OF THE MEMBER OF THE BOARD OF DIRECTORS

5. The member of the Board of Directors shall, collectively with the other Board members:

5.1. Manage the company and its property in good faith, upholding the interest of the sole owner of the capital, in accordance with the business programme approved by the Principal.

5.2. Apply for entry and disclosure in the Trade Register of the registrable and disclosable circumstances and acts within 7 days of occurrence thereof.

5.3. Design and submit a business programme to the Principle for approval, within two months after the contract is signed, in accordance with terms and procedure as set by the Principal.

5.4. Submit to the Principal a written report on the operation of the company, the financial and economic standing (financial reports prepared in accordance with the Accountancy Act and the applicable accounting standards and analyses thereto), information on the salaries bill and the remuneration determined for the Board members. The information for the year and for Q4 shall be submitted by the 25 of April of the following year and the other quarterly reports, analyses and information – by the 25th day of the month following the relevant reporting period.

5.5. Undertake to notify the Principal in writing within three days of any circumstances which are of material significance for the company and of any occurring circumstances that constitute a regulatory ban on the performance of member’s functions as a member of the Board of Directors and calling for termination of the present contract.

5.6. Approve the organisational and management structure, as well as the internal regulations of the company, in accordance with the existing legislation.
5.7. Create conditions for social development of the staff in the company and ensure occupational health and safety. Approve the draft collective agreement before it is signed and monitor the implementation thereof.

5.8. Organise the drafting of the annual financial statement and annual report within the statutory period and submit them to the registered auditor appointed by the Principal for verification and validation.

5.9. Submit to the Principal a full set of the documents of audits or inspections carried out in the company by competent bodies, within 10 days from receipt thereof.

5.10. Take the necessary steps for preparation of the company or self-contained units thereof for privatisation, as well as for the participation of the company in other commercial companies or other forms of public-private partnerships and joint activities, pursuant to the existing regulations.

5.11. Approve the rules of procedure of the Board of Directors and elect a chairperson, a deputy-chairperson and an executive member(s) from among the members of the Board of Directors.

5.12. Entrust, by an agreement, the management of the company to the elected executive member and determine executive member’s remuneration under the agreement, on the basis of the indicators, criteria and values under Article 33 of the Rules governing the exercise of the State’s rights in commercial companies with public shareholding, adopted with Council of Ministers’ Decree No. 112/23.05.2003. Submit a copy of the agreement with the executive member to the Principal within 10 days after the conclusion or amendment thereof.

5.13. Comply with the Rules for selection of contractors for the provision of financial services by credit or financial institutions (Annex No. 3 to Article 136 of the Rules governing the exercise of the State’s rights in commercial companies with public shareholding, adopted with Council of Ministers’ Decree No. 112/23.05.2003) and submits the information provided therein to the Principal.

5.14. Monitor compliance with the special rules for the conclusion of certain types of contracts under sections V and Va of the Rules governing the exercise of the State’s rights in commercial companies with public shareholding, adopted with Council of Ministers’ Decree No. 112/23.05.2003.

5.15. Organise the implementation of the business programme and of other programmes of the company.

5.16. Dispose of the tangible assets of the company in accordance with the existing legislation, the Statutes of the company and the clauses of the present contract.

5.17. Enter into a compulsory insurance contract upon approval of an insurer by the Principal.

5.18. Authorise a procurator or a business agent upon approval by the Principal.

5.19. Enter into transactions under Article 236 (2) of the Commerce Act Only by decision of the Principal

6. The member of the Board of Directors shall be entitled to:

6.1. Make use of a company car in the fulfilment of their obligations hereunder.
6.2. Enjoy all rights for assignment trips in the country and abroad in the fulfilment of their obligations hereunder, with the use of resources of the company.

6.3. By decision of the general assembly of the workers and employees of the company, make use of the social funds and the forms of social services reflected in the entertainment and cultural allowances section of the collective agreement in the company.

7. The member of the Board of directors shall not, alone or jointly with the other Board members, without authorisation from the Principal:

7.1. Make information, which represents official and commercial secret of the company, available to natural and legal persons within the validity of this contract and for three years after termination thereof.

7.2. Resolve on granting exclusive rights for the manufacturing and sale of products or services for the opening of representations of the company in the country and abroad.

7.3. Grant exclusive rights to legal and natural persons acting as brokers in supplies for ensuring the operation of the company.

7.4. Carry out disposal transactions in fixed assets; rent out real properties with book value exceeding 5 per cent of the total book value of fixed assets at 31 December of the previous year; acquire or dispose of interests and shares owned by the company in other companies; enter into loan contracts or joint-activity agreements; assume obligations arising under bills of exchange; secure claims by mortgaging or pledging fixed assets of the company; furnish security in favour of third parties; enter into judicial or extra-judicial arrangements for recognising liabilities or writing off a debt; carry out significant change in the activities of the company and other significant organisational changes; carry out long-term cooperation of great importance to the company or terminate such cooperation.

8. The member of the Board of Directors may not:

8.1. Resolve on issues that are within the competence of the general meeting of shareholders/the sole owner of the capital/.

8.2. Allow formation, accrual and payment of salaries and wages not in accordance with the increased productivity or labour and the financial and economic standing of the company.

8.3. Carry out business which competes with the business of the company, within the validity of the present contract and for three years after termination thereof.

V. REMUNERATION, SOCIAL SECURITY AND HEALTH INSURANCE OF THE MEMBER OF THE BOARD OF DIRECTORS

9. The remuneration of the member of the Board of Directors shall be determined on the basis of the indicators, criteria and values under Article 33 of the Rules governing the exercise of the State’s rights in commercial companies with public shareholding, adopted with Council of Ministers’ Decree No. 112/23.05.2003. The monthly remuneration shall be for account of company’s wage costs and shall be paid according to the schedule of payment of wages in the company.
10. The member of the Board of Directors shall not receive remuneration for the discharge of their duties hereunder where such member holds the position of a deputy-minister, a single-member body, a deputy thereof or a member of a collegiate authority in the meaning of Article 19 (4) of the Administration Act, a district governor or a deputy-district governor, a public servant or an official employed under an employment contract in the public administration, or any other position specified in an act as an obstacle to receiving remuneration.

11. The member of the Board of Directors shall notify the company and the Principal where the circumstance under 10) above occurs or ceases to exist, within three days after the change has occurred.

12. Upon approval of the annual financial statement of the company, the member of the Board of Directors shall be entitled to receive tantiemes pursuant to Article 33 (9) of the Rules governing the exercise of the State’s rights in commercial companies with public shareholding, adopted with Council of Ministers’ Decree No. 112/23.05.2003, the amount whereof shall be specified by the Principal.

13. The tantiemes under 12) above shall be for the account of the balance-sheet profit after setting aside the statutory parts thereof for reserve and for dividend for the State. The total amount of the tantiemes paid in the company may not exceed 50 per cent of the absolute amount of the increase in profit.

14. The amount of the monthly remuneration of the member of the Board of Directors shall be calculated in the company on the basis of the statutory reporting. The remuneration and the tantiemes shall be taxed pursuant to the Personal Income Tax Act. The member of the Board of Directors shall be responsible for declaring the amounts received in remuneration hereunder and for paying the tax due.

15. The Principal shall not guarantee the amount of the remuneration of the member of the Board of Directors and shall not compensate the member in the event of lack of funds in the company.

16. The compulsory social security and health insurance and the enjoyment of social security and health insurance rights shall be in accordance with the existing regulations.

VI. TERMINATION OF THE CONTRACT

17. This contract shall be terminated upon expiry thereof.

17.1. The contract shall be terminated early:

   a/ by mutual agreement of the parties;
   b/ at the request of the Board member made to the Principal in writing, with a three-month notice;
   c/ at the request of the Principal, with a three-month notice;
   d/ upon transformation or dissolution of the company and in the event of change of the owner of the capital of the company;
   e/ in the event of death of the member of the Board of Directors;
   f/ in the event that the member of the Board of Director is placed under guardianship;
17.2. This contract may be terminated early by the Principal without notice:

a/ if the economic parameters of the business programmes of the company are not achieved;

b/ where the member of the Board of Directors breaches the law in or in connection with the discharge of the duties hereunder or breaches the Rules governing the exercise of the State’s rights in commercial companies with public shareholding, adopted with Council of Ministers’ Decree No. 112/23.05.2003;

c/ in the event of action or failure to act by the Board member, resulting in deteriorated financial results of the company or causing damage to the company.

18. The termination of the contract shall take effect on the date of deletion of the name of the member of the Board of Directors from the Trade Register, and in the cases under Clause 17.1, e) and f) hereof – on the date on which the grounds occur.

19. Where the contract is terminated pursuant to:

19.1. d) and h) of clause 17.1, the Board member shall be paid compensation in the amount of their monthly remuneration hereunder.

19.2. c) of clause 17.1, the Board member shall be paid compensation corresponding to the defaulted notice period.

19.3. b) of clause 17.1, in the event where the member of the Board of Directors is in default of the notice period, such member shall owe compensation to the company corresponding to the defaulted notice period.

19.4. clause 17.2, b) and c), the member of the Board of Directors shall owe compensation to the company in the amount of three monthly remunerations hereunder.

20. Where the member of the Board of Directors has acquired entitlement to a pension for old age and contributory service at the date of termination of this contract, such member shall be entitled to compensation in the amount of two monthly remunerations hereunder and where such member worked in the same undertaking for the past ten years, under whatever type of contract, the compensation shall be in the amount of six monthly remunerations hereunder. The compensation shall be paid provided that the member of the Board of Directors has not made use of this right on other grounds. If the member of the Board of Directors is paid this compensation, such member shall not be entitled to compensation under clause 22 hereof.

21. The amount of the compensation under clauses 19.1-19.4 and clause 20 shall be based on the average monthly remuneration accrued to the member of the Board of Directors under clause 9 for the previous reporting quarter in which such member discharged their obligations hereunder.
22. Upon termination of the contract under c), d) and h) of clause 17.1, the member of the Board of Directors shall be paid compensation corresponding to their remuneration under clause 9, for the period of unemployment of such member, but not more than one month.

23. The amount of the compensation under the preceding clause shall be calculated on the basis of the average daily remuneration accrued to the Board member under clause 9 for the previous quarter in which such member discharged their duties.

VII. OTHER CONDITIONS

24. The member of the Board of Directors shall deposit a guarantee for their management in the amount of three monthly remunerations hereunder. The amount deposited as a guarantee together with the interest accrued thereon shall be refunded to the member of the Board of Directors upon termination of the contract, provided that such member has been granted discharge by the Principal in respect of their obligations, with the exception of the cases under clause 17.2.

25. The parties may renegotiate the terms and conditions of the contract upon subsequent amendment to the regulations or upon significant change in the economic conditions, by entering into additional agreements hereto. In the event of imperative amendments to the regulations occurring after the entry of this contract into force, such amendments shall become binding for both parties without an additional agreement for amendments to the clauses hereof being signed.

26. Any disputes between the parties arising out of this contract and any matters not regulated herein shall be governed by the existing civil legislation.

27. This contract shall take effect upon entry of the election of the member of the Board of Director in the Trade Register in accordance with Article 231 (4) of the Commerce Act.

This contract was executed in two uniform copies, one for each party.

PRINCIPAL:  MEMBER OF THE BOARD OF DIRECTORS:

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Minister of Economy and Energy
## Annex F. List of companies with 10-50% state ownership

<table>
<thead>
<tr>
<th>Ministry</th>
<th>Company</th>
<th>State ownership (as a %)</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Finance</td>
<td>Central Depository AD - Sofia</td>
<td>43.70</td>
<td>Dematerialized shares book-entry registration; Maintain shareholders' registry of traded companies and securities; Immobilize share certificates that are a matter of public trading</td>
</tr>
<tr>
<td>Ministry of Finance</td>
<td>Burgas Free Zone AD</td>
<td>19.45</td>
<td>Loading, unloading and transportation of non-moved goods submitted for exporting and storage</td>
</tr>
<tr>
<td>Ministry of Health</td>
<td>Specialized Rehabilitation Hospital - Bankya AD, Bankya</td>
<td>12.96</td>
<td>Healthcare</td>
</tr>
<tr>
<td>Ministry of Health</td>
<td>Specialized Rehabilitation Hospital - Sapareva bania AD</td>
<td>14.74</td>
<td>Healthcare</td>
</tr>
<tr>
<td>Ministry of Health</td>
<td>Specialized Rehabilitation Hospital - Nessebar AD</td>
<td>16.296</td>
<td>Healthcare</td>
</tr>
<tr>
<td>Ministry of Health</td>
<td>Specialized Rehabilitation Hospital - Bania AD, Pazardjik</td>
<td>17.64</td>
<td>Healthcare</td>
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<tr>
<td>Ministry of Health</td>
<td>Specialized Rehabilitation Hospital - Pazardjik</td>
<td>30</td>
<td>Healthcare</td>
</tr>
<tr>
<td>Ministry of Economy</td>
<td>Instruments and Articles AD</td>
<td>10.97</td>
<td>Production of tools (machine building)</td>
</tr>
<tr>
<td>Ministry of Economy</td>
<td>Pirincomers OOD</td>
<td>11.18</td>
<td>Wholesale and retail</td>
</tr>
<tr>
<td>Ministry of Economy</td>
<td>Plodproduct OOD</td>
<td>12.50</td>
<td>Wholesale and retail</td>
</tr>
<tr>
<td>Ministry of Economy</td>
<td>Mototehnica - I AD</td>
<td>13</td>
<td>Car trade</td>
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<tr>
<td>Ministry of Economy</td>
<td>Mebelsistem AD</td>
<td>14.58</td>
<td>Production of commercial furniture</td>
</tr>
<tr>
<td>Ministry of Economy</td>
<td>Culturinvest OOD</td>
<td>20.05</td>
<td>Investors control</td>
</tr>
<tr>
<td>Ministry of Economy</td>
<td>International Fair Plovdiv AD</td>
<td>20.63</td>
<td>Fairs and exhibitions</td>
</tr>
<tr>
<td>---------------------</td>
<td>-------------------------------</td>
<td>-------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Ministry of Economy</td>
<td>Lesilhart AD</td>
<td>29</td>
<td>Internal and external commercial activity</td>
</tr>
<tr>
<td>Ministry of Economy</td>
<td>Hentsh AD</td>
<td>41.29</td>
<td>Chemical production and trade</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Mizya-2000 OOD, Plevens</td>
<td>38.06</td>
<td>The Company does not operate.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Lomski melnitsi AD, Montana (&quot;Mills of Lom&quot; AD)</td>
<td>34.92</td>
<td>The Company does not operate.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Bolgarproduit AD, Haskovo</td>
<td>34</td>
<td>Production, processing and marketing of fresh, frozen and dried fruits and vegetables; greenhouse production.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>??S? OOD, Plovdiv</td>
<td>24.97</td>
<td>The Company does not operate.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Manufacturers Market - Pazardzhik AD, Ognyanovo village, Pazardjik municipality</td>
<td>22.01</td>
<td>Purchase and sale of agricultural produce, rental of equipped warehouse, refrigeration and retail.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Agrospectar - Varbitsa OOD, Varbitsa</td>
<td>20.01</td>
<td>The Company does not operate.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>V &amp; VGD Orangeryi Petrich Ltd., Petrich (&quot;V &amp; VGD Greenhouses Petrich Ltd, Petrich)</td>
<td>10.35</td>
<td>Purchase and sale of agricultural produce, rental of equipped warehouse, refrigeration and retail space.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>&quot;Niva&quot; AD, Levka village, Haskovo region (&quot;Cultivated Field&quot; AD, Levka village, Haskovo region)</td>
<td>10</td>
<td>The Company does not operate.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Batashki Snezhnik AD, Batak</td>
<td>25</td>
<td>The company is in liquidation proceedings.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Tarzhistna companiya &quot;Maritsa&quot; AD, Haskovo (Market company &quot;Maritsa&quot; AD, Haskovo)</td>
<td>36</td>
<td>The company is in insolvency proceedings.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>National Hippodrome AD, Bankya</td>
<td>32.12</td>
<td>The company is in insolvency proceedings.</td>
</tr>
<tr>
<td>Ministry of Agriculture, Food and Forestry</td>
<td>Orangeryi - Djulyunitsa AD, village of Djulyunitsa, Veliko Tarnovo (&quot;Greenhouses - Djulyunitsa&quot; AD, village of Djulyunitsa, Veliko Tarnovo)</td>
<td>20</td>
<td>The company is in insolvency proceedings.</td>
</tr>
<tr>
<td>Ministry of Transport, Information Technology and Communications</td>
<td>The Vidin-Calafat Danube Bridge AD</td>
<td>50</td>
<td>Management, operation and maintenance of the combined border bridge over the Danube River in Vidin</td>
</tr>
<tr>
<td>Ministry of Transport, Information Technology and Communications</td>
<td>Navigation Maritime Bulgare AD</td>
<td>30</td>
<td>Commercial shipping</td>
</tr>
<tr>
<td>Ministry of Energy</td>
<td>Energy OOD</td>
<td>15.75</td>
<td>The Company does not operate.</td>
</tr>
<tr>
<td>Ministry of Energy through BEH EAD</td>
<td>ICGB AD</td>
<td>50</td>
<td>Transmission of natural gas; construction of gas interconnection Greece - Bulgaria</td>
</tr>
<tr>
<td>Ministry of Energy through BEH EAD</td>
<td>South Stream Bulgaria AD</td>
<td>50</td>
<td>The Company does not operate.</td>
</tr>
<tr>
<td>Ministry of Energy, through NEK EAD</td>
<td>Pension Insurance Company Allianz Bulgaria AD</td>
<td>34</td>
<td>Pension insurance</td>
</tr>
<tr>
<td>Ministry of Energy, through NEK EAD</td>
<td>Hydro Power Company “Gorna Arda” AD</td>
<td>24</td>
<td>Construction of the Gorna Arda cascade</td>
</tr>
<tr>
<td>Ministry of Energy, through NEK EAD</td>
<td>ContourGlobal Maritsa East 3 AD</td>
<td>27</td>
<td>Production of electricity</td>
</tr>
<tr>
<td>Ministry of Energy, through NEK EAD</td>
<td>ContourGlobal Operations Bulgaria AD</td>
<td>27</td>
<td>Operation and maintenance of TPP &quot;ContourGlobal Maritsa East 3&quot;</td>
</tr>
<tr>
<td>Ministry of Energy, through NEK EAD</td>
<td>Trans-balkan Electric Power Trading S.A. (NECO S.A.)</td>
<td>50</td>
<td>Trade in electricity</td>
</tr>
<tr>
<td>Ministry of Energy</td>
<td>Trans-Balkan Pipeline BV, Amsterdam, through PKNBA BG EAD</td>
<td>24.5</td>
<td>The Company does not operate.</td>
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</table>
Annex G. Law on Public Enterprises

LAW ON PUBLIC ENTERPRISES

Promulgated, State Gazette No. 79/08.10.2019

Chapter One

GENERAL PROVISIONS

Art. 1. (1) This law establishes the way of determining and publicizing public policy in the field of public enterprises, the implementation of standards for good corporate governance of public enterprises, as well as the obligations for disclosure and transparency of the activities of the public enterprises management bodies.

(2) The state policy in the field of public enterprises shall be determined and implemented by the Council of Ministers.

(3) The municipal policy in the field of public enterprises shall be determined and implemented by the Municipal Councils.

Art. 2. (1) Public enterprises shall be:

1. Commercial companies with more than 50 per cent of state/municipal shareholding in the capital or in which the State/Municipality otherwise exercises a dominant influence.

2. The subsidiaries of the commercial companies under item (1) and the enterprises under item (3) if through them the State/Municipality controls more than 50 per cent of the voting shares or otherwise exercises effective control.

3. State enterprises, formed by special laws on the grounds of Article 62(3) of the Commerce Act.

(2) The requirements of this Law shall not apply to the Bulgarian Development Bank.

Art. 3. Local government bodies and municipal public enterprises shall apply respectively the provisions of Chapters Two, Five, Six and Seven.

Art. 4. Public enterprises shall be divided into the following categories: “micro”, “small”, “medium-sized” and “large” on the basis of the criteria described in Chapter Two, Section I and Section II of the Accountancy Act.

Chapter Two

PRINCIPLES OF EXERCISING STATE OWNERSHIP RIGHTS OVER PUBLIC ENTERPRISES

Art. 5. Public enterprises shall be legal persons that are established and managed for the benefit of citizens and the society in order to achieve the maximum value for the society through an efficient resource allocation whenever necessary to:
1. eliminate existing market defects;
2. provide goods or services of strategic importance or those related to national security or
development;
3. manage assets of strategic importance for the State.

Art. 6. (1) Business activities of public enterprises shall be conducted on an equal footing with the other
economic operators and abuses of a monopoly position or unfair competition shall not be allowed.

(2) The members of management and control bodies shall act well informed, in good faith, with due
diligence and care, and in the best interest of the enterprise and the owners of the capital.

(3) All partners/shareholders in public enterprises shall be treated equally.

Art. 7. (1) Public service obligations or fulfilment of public policy objectives may be assigned to the public
enterprises, within their competence or according to the procedures laid down by law, by the authorities
exercising the rights of the State/Municipality.

(2) The obligations under paragraph (1) shall be specified by a reference to the obligated public enterprise,
the content of the obligation, the terms and the conditions under which it is to be fulfilled, as well as other
conditions, if any. The information shall be published on the website of the Agency for Public Enterprises
and Control.

(3) The expenditures of the public enterprises in the fulfilment of such obligations under paragraph (1)
shall be financed through the state/municipal budget or according to a procedure established by law and
shall be disclosed in the annual financial report.

Art. 8. Public enterprises entrusted with the obligation to carry out public service obligations or fulfil
public policy objectives shall apply the same public disclosure rules under Chapter Seven as the enterprises
categorized as “large”.

Art. 9. (1) The main legal form of the commercial companies with state shareholding in the capital shall
be the joint-stock company. The legal form of a limited liability company shall be permissible for “micro”,
“small” and “medium-sized” enterprises.

(2) A change in the legal form shall be made if in a period of three consecutive financial years a commercial
company with a public shareholding in the capital meets the criteria for a “large” enterprise, within 1 year.

Art. 10. (1) The Council of Ministers shall adopt the policy in the field of state shareholding in public
enterprises. The policy contains an indication for the reasons why the State should have a shareholding in
public enterprises and the objectives of this shareholding, the role of the State in the management of public
enterprises, the implementation of the policy, and the role and responsibilities of the ministers exercising
the powers of the State and the other state organizations involved in the implementation.

(2) The policy in the field of state shareholding in public enterprises shall be developed by the Agency for
Public Enterprises and Control in cooperation with the authorities exercising the powers of the State in the
enterprises and the other state organizations involved in its implementation.

(3) The policy in the field of state shareholding in public enterprises shall be updated at least every four
years on the basis of the proposals submitted by the Agency for Public Enterprises and Investments.

(4) The policy in the field of state shareholding in public enterprises shall be published on the website of
the Council of Ministers and the website of the Agency for Public Enterprises and Control.

Chapter Three

COORDINATION OF STATE SHAREHOLDING IN PUBLIC ENTERPRISES
Art. 11. (1) The Agency for Public Enterprises and Control shall act as a unit responsible for the coordination of state policy with regard to public enterprises and shall monitor and report its implementation to the Council of Ministers.

(2) The Executive Director of the Agency for Public Enterprises and Control shall be accountable to the Council of Ministers and shall work under the supervision of the Prime Minister or a Deputy Prime Minister appointed by the latter.

(3) Persons with higher education – a master with at least 10 years of professional experience in the field of finance, state governance and/or the sector of real economy, of which at least 3 years at a managerial position, shall be appointed members of the Executive Board of the Agency for Public Enterprises and Control.

Art. 12. The Agency for Public Enterprises and Control shall carry out the functions under Article 11(1) by:

1. developing the policy in the field of state shareholding in the capital of public enterprises;
2. monitoring the implementation of the policy in the field of state shareholding in the capital of public enterprises and preparing its updating;
3. assisting the authorities exercising the powers of the State in formulating the general strategic objectives of the enterprises and the key financial and non-financial performance indicators in the business programmes of the enterprises;
4. monitoring the activities of public enterprises and preparing an aggregate report for the previous year in the format and scope defined by law;
5. cooperating with other state administrations, non-governmental and international institutions on issues related to the management of public enterprises;
6. publishing updated information and reports on the activities of public enterprises, incl. financial and non-financial information on the enterprises;
7. monitoring the competitive selection procedures and the procedures for the appointment of the members of the management and control bodies;
8. evaluating the implementation of the approved business programmes of public enterprises and making proposals for improving their management;
9. exercising the powers of the State in public enterprises when delegated by the Council of Ministers;
10. on request, assisting the municipalities with regard to the management of municipal public enterprises;
11. preparing an assessment and analysis of the approved business programmes of public enterprises and their implementation as well as recommendations regarding the risks and effects on public finances, including the potential effects and risks for the consolidated debt and deficit/surplus indicators of the State Governance Sector;
12. giving instructions on the application of this Law;

Chapter Four

POWERS OF THE STATE IN PUBLIC ENTERPRISES

Art. 13. The Council of Ministers shall exercise the powers of the State in public enterprises. The Council of Ministers may delegate these powers to the ministers according to their sectoral competence and/or to the Agency for Public Enterprises and Control.

Art. 14. The Council of Ministries shall:

1. approve the policy in the field of state shareholding in the capital of public enterprises and its updating based on the proposals of the Agency for Public Enterprises and Control;
2. establish new commercial companies with state shareholding in the capital;
3. approve the common dividend policy;

Art. 15. (1) The authority exercising the powers of the State shall take the decisions which fall within the competence of the General Meeting of the partners/shareholders in single-owner public private enterprises and shall exercise the rights of a partner/shareholder in the public enterprises, in which the State is not the single-owner of the capital.

(2) Where a public enterprise participates in another company, its rights as a partner/shareholder or a single-owner shall be exercised by the person entitled to represent it or by a person which is explicitly authorized by him/her.

(3) The decisions referred to in paragraphs (1) and (2) shall be drawn up in a protocol in a form relevant to the decisions of the General Meeting.

Art. 16. The authority exercising the powers of the State as a partner/shareholder in a public enterprise shall participate in person or through an authorized representative in the meetings of partners/shareholders, shall represent the state shares in them and shall vote on the basis of the number of shares held by the State. When an authorisation is given, the relevant power of attorney shall indicate the voting method concerning each item on the agenda.

Art. 17. (1) The authority exercising the rights of the State as a single-owner of the capital or a partner/shareholder, with the assistance of the Agency for Public Enterprises and Control, shall determine the common strategic goals of the enterprise, assess the performance of the enterprise and its management bodies.

(2) The authority exercising the rights of the state as the single-owner of the capital, respectively the general meeting, shall approve the business programmes and the financial and non-financial performance indicators included in them, adopted by the Supervisory Board, respectively the Board of Directors, with the assistance of the Agency for Public Enterprises and Control.

(3) The Agency for Public Enterprises and Control shall evaluate the implementation of the approved business programmes of public enterprises. The results of the assessment shall be provided to the authority exercising the powers of the State together with proposals for improving the management of the public enterprise.

(4) The procedure for concluding contracts for the assignment of the control with the members of the Supervisory Board, where applicable, and contracts for the assignment of the management with the members of the Board of Directors shall be regulated by the Implementing Rules for this Law.

Art. 18. The authority exercising the powers of the State shall not interfere with the management or the ongoing operational activities of a public enterprise and shall respect the rights of a public enterprise to exercise all ownership rights in its subsidiaries.

Art. 19. The procedure for exercising the powers of the State in the commercial companies with state shareholding in their capital shall be determined by the Council of Ministers in the Implementing Rules for this Law.

Chapter Five

REQUIREMENTS FOR THE MANAGEMENT AND CONTROL BODIES

Art. 20. (1) A manager or a member of a collective management and control body of a public enterprise may be a Bulgarian citizen or a citizen of the European Union, of a country party to the Agreement on the European Economic Area, or the Swiss Confederation, who:
1. has higher education;
2. has at least 5 years of professional experience;
3. has not been placed under interdiction;
4. has not been convicted of an intentional crime prosecuted by public prosecution;
5. has not been deprived of the right to occupy the respective position;
6. has not been declared bankrupt as a sole proprietor or a general partner in a commercial company declared bankrupt, if any unsatisfied creditors have remained;
7. has not been a member of a management or supervisory body of a company or cooperative, respectively, terminated due to bankruptcy during the last two years prior to his/her appointment, if any unsatisfied creditors have remained;
8. is not a spouse or a de facto cohabitant, a relative in the ascending/descending line, in a collateral line – up to the fourth degree inclusive, and by marriage – up to the second degree inclusive, of a manager or a member of the collective management and control body of the same public enterprise;
9. does not hold a senior public position under items 1 – 38 and 41 – 45 of Art. 6(1) of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act, and is not a member of a political cabinet or secretary of a municipality;
10. does not carry out commercial transactions on his/her own or on behalf of others;
11. is not a partner in general partnerships, limited partnerships and limited liability companies;
12. is not a manager or a member of the executive or control body of another public enterprise;
13. meets other requirements stipulated in the Articles of Association of the Company.

(2) The prohibitions under items (10) and (11) of paragraph (1) shall be applied when performing activities similar to the activities of the company.

(3) Persons who work on the basis of an employment contract or an employment relationship may not be managers and executive members of the boards of directors and the management boards.

Art. 21. (1) All members of the management and control bodies shall be elected and appointed following a competition. The terms and procedure for conducting the competition shall be laid down in the Implementing Rules of the Law.

(2) The members of the management and control bodies shall be persons with diverse qualifications and professional experience, corresponding to the specifics of the activities carried out by the respective public enterprise, which meet certain criteria with respect to reputation and integrity and can separate sufficient time to fulfilling the duties assigned to them.

(3) All representatives of the state in the management and control bodies of the public enterprises shall meet the requirements of paragraph (2). The representative of the State shall have the same rights, obligations and responsibilities as the other members of the management and control bodies, including the right to receive remuneration and the obligation not to disclose trade secrets of the public enterprise.

(4) Boards of directors, management and supervisory boards may set up special committees from among their members, such as remuneration committees or risk management committees. The committees shall prepare decisions to be taken by the relevant councils. Decision-making powers shall not be delegated to committees. The committees shall be chaired by an independent board member.
(5) All boards shall prepare annual self-assessments of their activities and effectiveness, which shall be submitted to the authority exercising the rights of the state and to the Agency for Public Enterprises and Control.

Art. 22. (1) In the boards of directors and in the supervisory boards of public enterprises, the independent members must be not less than one-third, and not more than half of the members.

(2) The boards of directors and the supervisory boards of public enterprises, which are categorized as “large”, shall consist of at least five members. The chairman of a board must be an independent member.

Art. 23. (1) Independent members must meet the requirements of Art. 20.

(2) An independent member may not be:
1. an employee in the public enterprise;
2. a shareholder/partner in the same public enterprise;
3. a person who, personally or through related parties, has commercial relations with the public enterprise;
4. a sole proprietor, shareholder or partner in a commercial company having the same or similar object of activity as the public enterprise;
5. a related party with another member of a management or control body of the public enterprise.

(3) The representatives of the state in the management and control bodies shall not be independent members.

(4) The members of the management boards in joint-stock companies with a two-tier structure shall be independent of the state and of the municipality respectively.

Art. 24. (1) The management and control contract of a manager or a member of a collective management and control body of a public enterprise shall be terminated early in the case of:
1. death;
2. filing an application for removal from post;
3. objective inability to fulfil his/her duties for more than 6 months;
4. a conviction for an intentional crime prosecuted by public prosecution;
5. incompatibility with the requirements of Article 20 and Article 23(2);
6. serious breach or systematic failure to perform his/her duties;
7. entry into force of an act establishing a conflict of interest under the Counter Corruption and Unlawfully Acquired Assets Forfeiture Act.

(2) Except in the cases under paragraph (1), the contract may be terminated early and upon removal from post due to non-fulfilment of the indicators set in the approved business programme.

Chapter Six
ACCOUNTING AND AUDITING

Art. 25. Accounting of public enterprises shall be carried out in accordance with the Accountancy Act. Public entities shall prepare their financial statements on the basis of National Accounting Standards or International Accounting Standards, in accordance with the requirements of the Accountancy Act.
Art. 26. The annual and consolidated reports of public enterprises shall be subject to mandatory independent financial audit conducted by registered auditors, in accordance with the Accountancy Act and the Independent Financial Audit Act. Audits shall be performed strictly in accordance with the international auditing standards.

Art. 27. Internal audit of public enterprises shall be organized in accordance with the Internal Audit in the Public Sector Act.

Chapter Seven
PUBLIC DISCLOSURE

Art. 28. Public enterprises shall publish financial and non-financial information about the enterprise in accordance with the provisions of this Law, its Implementing Rules and the applicable legislation.

Art. 29. (1) All public enterprises shall prepare quarterly and annual financial statements, analyzes and reports and shall submit them to the authority exercising the powers of the State and the Agency for Public Enterprises and Control, according to the procedure, format, content and deadlines specified in the Implementing Rules for this Law. Increased disclosure requirements shall apply to the public enterprises categorized as “large”.

(2) The Agency for Public Enterprises and Control shall publish the information received under paragraph (1) on its official website.

(3) The financial statements shall comprise at least the Balance Sheet, Profit and Loss Account, Statement of Changes in Equity, Cash Flow Statement and the notes thereto, prepared in accordance with the Accountancy Act and the applicable accounting standards, accompanied by an analysis of operations.

(4) Non-financial information shall include at least the elements of the non-financial statement under Article 48 of the Accountancy Act, as well as risk assessment reports, reports on human resources and labour relations, sustainability, environmental impact, related party transactions and a report on the members of the Management and Control bodies, including a report on their remuneration, and a report on the performance of the public service obligation assigned and the objectives of public policy.

Art. 30. The Agency for Public Enterprises and Investments shall be responsible for the preparation of the Annual Aggregated Report on Public Enterprises in Bulgaria. The Aggregated Report shall make a review of the business performance of the enterprises as well as a business performance analysis of the enterprises by sectors, and of all public enterprises categorised as “large”. The Aggregated Report shall also contain information on the implementation of the state policy regarding public enterprises.

Art. 31. (1) The Agency for Public Enterprises and Control shall submit the Aggregated Report for the respective year to the Council of Ministers for approval by 31 October of the following year. The Council of Ministers shall submit the Aggregated Report to the National Assembly within one month of its approval.

(2) The Agency for Public Enterprises and Control shall publish the Aggregated Report on its official website as well as in a printed form.

ADDITIONAL PROVISION

§ 1. Within the meaning of this Law:

1. “Business programme” means a document for planning the activities of a public enterprise for a period of at least three years, including key performance indicators for the planned financial and non-financial objectives.
2. “Dominant influence” shall be assumed in any of the cases in which the State directly or indirectly owns over 50 per cent of the enterprise’s subscribed capital, controls the majority of the votes attached to the shares issued by the enterprise or may appoint more than half of the members of the management or control body of the enterprise.

3. “Maximum value to society” means the achievement of added value for citizens by providing long-term investment value and revenues to the state budget from public companies’ trade activities or through the most effective allocation of resources in the performance of public services or the fulfilment of the objectives of public policy.

4. “Non-financial objectives” are the objectives of the public enterprise that derive from the overall strategic goal defined for the public enterprise in regulatory acts and policy planning documents, and that are related to the performance of the functions assigned to the public enterprise.

5. “Public services” means educational, health, water supply, sewerage, heat supply, electricity, gas, telecommunication, postal or other similar services provided to satisfy public needs;

6. “Common strategic objectives” are the objectives that the State/Municipality wishes to fulfil through shareholding in the public enterprise and which derive from regulatory acts and policy planning documents;

7. “Authority exercising the powers of the State” shall be:
   a. an administrative body which by law or according to an order of the Council of Ministers exercises the powers of the State in the capital of a public enterprise under items (1) and (3) of Article 2(1);
   b. a public enterprise referred to in item (2) of Article 2(1) when exercising the rights of ownership in another public enterprise;

8. “Market defects” are the cases where the distribution of goods and services on the free market is inefficient and ineffective.

9. “Representatives of the State in the bodies of management and control of public enterprises” shall be the civil servants and the persons working under an employment relationship in the public administration that are elected or appointed in the management and control bodies.

10. “Good corporate governance standards” means the standards included in the OECD Guidelines for Corporate Governance of State-Owned Enterprises.

11. “Financial objectives” are the objectives of the public enterprise related to its financial activities (including profitability, capital structure, turnover, profit and dividends).

12. “Public policy objectives” shall be the objectives beneficial for the public at large within the framework of the specific competence of public enterprises different from achieving maximum profits and value for the shareholders, for instance public services provision – postal, transport and other special obligations taken in the public interest.

13. “Members of management and control bodies” shall be the members of the supervisory boards and the management boards in the two-tier joint-stock companies, the members of the boards of directors in the one-tier joint-stock companies, the managers and the controllers of the limited liability companies and the members of the management boards and the executive directors in the state enterprises, set up by law.

**TRANSITIONAL AND FINAL PROVISIONS**

§ 2. (1) No state enterprises may be established under Article 62(3) of the Commerce Act if they are intended to carry out predominantly economic activities that could be carried out by a private operator for profit.

(2) The Council of Ministers shall confer the analysis of the state enterprises established by special laws on the grounds of Article 62(3) of the Commerce Act to the Agency for Public Enterprises and Control to clarify the nature of the activities carried out by them – predominantly commercial or predominantly public...
functions and policies. The analysis shall be submitted to the Council of Ministers within 12 months of the entry into force of this Law. On the basis of the analysis, the Council of Ministers shall adopt a programme for their transformation, within three years.

(3) Existing state enterprises created by special laws on the grounds of Article 62(3) of the Commerce Act, which are predominantly engaged in commercial activities, shall be transformed into single-owner commercial companies under Part Two, Title III, Chapter Sixteen, and Section III of the Commerce Act.

(4) Existing state enterprises established by special laws on the grounds of Article 62(3) of the Commerce Act, which carry out predominantly public functions and policies, shall be reorganized into administrative structures, in compliance with the existing regulatory framework, or shall be included in the consolidated fiscal programme, according to Article 13(4) or Article 171 of the Public Finance Act.

§ 3. (1) Within three months from the promulgation of this Law, the Council of Ministers shall adopt the Rules of Procedure of the Agency for Public Enterprises and Control.

(2) Within six months from the promulgation of this Law, the Council of Ministers shall adopt its Implementing rules.

(3) Within six months from the promulgation of this Law, the Council of Ministers shall bring the regulatory framework into compliance with this Law.

(4) Within a year from the promulgation of this Law, the composition of the management and control bodies of public enterprises shall be brought in compliance with the provisions of this Law.

§ 4. The Agency for Public Enterprises and Control shall provide instructions on the application of this Law.

§ 5. (1) The Agency for Privatization and Post-Privatization Control shall be renamed the Agency for Public Enterprises and Control.

(2) The activities, budgets, assets, liabilities, archives and the rights and obligations of the Agency for Privatization and Post-Privatization Control shall be transferred to the Agency for Public Enterprises and Control. The pending cases at the date of entry into force of this Law shall be continued by the Agency for Public Enterprises and Control until their completion in all instances.

(3) The employment and service relationships of the directors and employees of the Agency for Privatization and Post-Privatization Control shall be regulated under the conditions of Article 123 of the Labour Code and Article 87a of the Civil Service Act.

(4) In cases other than those provided for in paragraph (3), the official and employment relations of the employees in the administrations under paragraph (1) whose functions are not transferred to the Agency for Public Enterprises and Control, shall be regulated by the Executive Director of the Agency for Public Enterprises and Control under the terms and conditions of item (2) of Article 328(1) of the Labour Code, respectively under the terms and conditions of item (2) of Article 106(1) or items (5) and (6) of Article 106(1) of the Civil Service Act.

(5) The Agency for Public Enterprises and Control shall assume the rights and obligations of the Agency for Privatization and Post-Privatization Control regarding the contracts concluded by it, including under the Operational Programmes financed by European Union funds.

(6) The Supervisory Board of the Agency for Privatization and Post-Privatization Control shall continue to exercise its powers as a Supervisory Board of the Agency for Public Enterprises and Control as of the effective date of this Law.

(7) The Executive Board of the Agency for Privatization and Post-Privatization Control shall continue to exercise its powers as an Executive Board of the Agency for Public Enterprises and Control as of the effective date of this Law.
(8) Should a member of the Executive Board of the Agency for Privatization and Post-Privatization Control fail to meet the requirements of Article 11(3), his/her powers shall cease as from the date of entry into force of this Law. The members of the Executive Board of the Agency for Privatization and Post-Privatization Control who meet the requirements of Article 11(3) shall continue to exercise their powers as members of the Executive Board of the Agency for Public Enterprises and Control.


1. In Article 1, paragraph (5) shall be inserted:
   “(5) The sale of detached parts under item (3) and item (4) of paragraph (2) may be carried out through the electronic platform under Article 3a”.

2. In Article 3, paragraph (4) shall be amended as follows:
   “(4) In the case of a newly formed company with state shareholding, a decision on privatization shall be adopted by the National Assembly upon a proposal by the Council of Ministers. In the case of a newly formed company with municipal shareholding, a decision on privatization shall be adopted by the municipal council.”

3. In Article 4(2) the words “commercial companies with more than 50 per cent state shareholding in the capital of other commercial companies” shall be replaced by “commercial companies the capital of which is owned by other commercial companies with more than 50 per cent state shareholding in the capital”

4. In Article 5(2) after the word “representation” the following shall be added: “or of activities related to the functions and under the Law on Public Enterprises”.

5. In Article 11, paragraph (2) shall be repealed.

6. The title of Chapter Three “a” shall be amended as follows: “Agency for Public Enterprises and Control”.

7. Article 22a shall be amended as follows:
   “Article 22a (1). This Law shall define the functions of the Agency for Public Enterprises and Control, hereinafter referred to as the Agency.

   (2) The Agency for Public Enterprises and Control is an administration of the Council of Ministers for carrying out privatization and post-privatization control in the cases provided for by this Law, and for carrying out the coordination of public policy regarding public enterprises under the Law on Public Enterprises. The Agency for Public Enterprises and Control shall carry out activities under Article 42 of the Concessions Act.

   (3) The Agency for Public Enterprises and Control shall be a legal person at state budget support, with a seat in Sofia.

   (4) The Management bodies of the Agency for Public Enterprises and Investments shall be:
   1. The Supervisory Board;
   2. The Executive Board.”

8. Article 22b shall be amended as follows:
“Article 22b. (1) The Agency shall organize and carry out the privatization process, carry out post-privatization control on privatization contracts concluded by authorized state bodies in the cases provided for by this Law, perform activities under Article 42 of the Concessions Act and carry out the coordination of the state policy with respect to public enterprises in compliance with the Law on Public Enterprises.”

“(2) In carrying out its functions under paragraph (1), the Agency shall:

1. collect the necessary information about all sites subject to privatization under its jurisdiction;
2. carry out marketing;
3. assign to third parties the performance of activities under Article 5;
4. prepare and conclude the privatization transactions;
5. perform actions for claiming and collecting the penalties, interest, indemnities, bank guarantees, claims on fiduciary accounts and other actions provided for in the privatization contracts in cases of non-fulfilment; may take action to break the privatization contracts when the reasons for doing so are met;
6. control and accept all payments under privatization contracts, including those concluded in accordance with the repealed Law on the Transformation and Privatization of State-Owned and Municipal Enterprises;
7. perform checks on the fulfilment of the obligations assumed under privatization contracts in the privatized sites and request information in the cases of received signals for failure to fulfil the privatization contracts;
8. give permission, consent and approval on behalf of the seller in cases where this is provided for in privatization contracts;
9. issue certificates for the payments made and upon request for the fulfilment of other obligations assumed with the privatization contracts;
10. conclude arrangements or agreements for rescheduling the obligations assumed under the privatization contracts in the cases provided for by this Law;
11. may lodge claims for real execution of outstanding cash or money-based obligations assumed under the privatization contracts for which no penalties or indemnities are provided for in the privatization contracts in the event of their non-fulfilment;
12. may lodge claims related to or resulting from concluded privatization contracts or from concluded arrangements or agreements under item (10) in conjunction with Article 22b¹, paragraphs (1) through (4), or from contracts for fiduciary accounts, bank guarantees or other transaction documents, and may be a defendant to such claims before a court or arbitration;
13. in the cases provided for in the Concessions Act, the Agency shall perform independent control of the performance of certain concession contracts and carry out actions for the award of a state concession and for the execution and termination of the concession contract for this concession;
14. develop a policy for state participation in public enterprises;
15. monitor the implementation of the state participation policy in public enterprises and shall prepare it for updating;
16. monitor the competitive procedures for the selection and appointment of members of management and control bodies;
17. monitor the activity of the public enterprises and shall prepare a summary report for the previous year in the format and scope specified in the Law on Public Enterprises;
18. assist the sector ministers in defining the overall strategic objectives of the enterprises and the key indicators for the implementation of financial and non-financial objectives in the business programmes of the enterprises;

19. cooperate with other state administrations, non-governmental and international institutions on issues related to the management of public enterprises;

20. publish up-to-date information and reports on the activities of public enterprises, including financial and non-financial information on enterprises;

21. assess the implementation of the approved business programmes of public enterprises and shall make proposals for improving their management;

22. in the case of delegation by the Council of Ministers, exercise the rights of the state in public enterprises;

23. prepare assessment and analysis of the approved business programs of the public enterprises and their implementation, as well as recommendations regarding the risks and effects on the public finances, including the potential effects and risks on the indicators for the consolidated debt and deficit / surplus government sector;

24. on request, assist the municipalities in managing the municipal public enterprises.

(3) The Agency shall exercise its powers of post-privatization control and in the cases of privatization transactions concluded pursuant to Art. 32, paragraph (1), item (5), when the buyer has, in addition to paying the purchase price, assumed additional obligations.

(4) When a privatization contract does not stipulate a time limit for exercising the power under paragraph (2), item (8), the Agency shall exercise this power until the full and final fulfilment of all obligations laid down in the contract."

9. Article 22b¹ shall be created:

"Article 22b¹ (1) At the request of the buyers under privatization contracts of companies for which no insolvency proceedings have been initiated or are not in liquidation proceedings and against which the Agency has claims related to penalties and/or price claims awarded by a Court decision that has the force of res judicata or for which a writ of execution has been issued, the Agency may conclude with them a claim rescheduling arrangement or agreement in the case of a security or if a security covering the amount of the claim and the interest due for the rescheduling period is furnished. An arrangement or an agreement may also be concluded for penalties charged by the buyers and set out to the buyers for voluntary payment, together with the interest due.

(2) The period of rescheduling under paragraph (1) may be up to 5 years from the date of signature of the arrangement or the agreement and the purchaser must have paid not less than 5 per cent of the obligation when signing the arrangement or agreement.

(3) When concluding an arrangement or an agreement under paragraph (1), a repayment plan specifying the amount of the instalments within the rescheduling period and the maturities of the instalments shall be drawn up. In the event of default by the buyer for the payment of three instalments, respectively any of the last three instalments, the entire obligation shall be deemed immediately payable at their maturity in the repayment schedule.

(4) From the day of conclusion of the arrangement or the agreement under paragraph (1), the initiated enforcement proceedings to collect the claims subject to the arrangement or agreement shall be suspended and the proceedings shall be resumed at the request of the Agency in the event of default by the buyer for the payment of three instalments or any of the last three instalments, at their maturity in the repayment
schedule. The period during which enforcement proceedings are suspended shall not be taken into account for the application of item (8) of Article 433(1) of the Civil Procedure Code.”

10. In Article 22d, paragraph (4) shall be repealed.

11. In Article 22e, item (7) of paragraph (1) shall be repealed.

12. Articles 23 and 24 shall be repealed.

13. In Article 25, paragraph (1) shall be repealed.

14. In Article 28(10) at the end, the following words are added “and their sale can be made through the electronic platform under Article 3a(1)”.

15. In Article 31(3), the words “at least in two central dailies” shall be replaced by “on the website of the Agency for Public Enterprises and Control”.

16. In Article 32(3), item (3) shall be created:

“3. electronic tender.”

17. Article 43 shall be repealed.

18. Throughout the law, the words “Agency for Privatization and Post-Privatization Control” and “The Agency for Privatization and Post-privatization Control” shall be replaced respectively by “Agency for Public Enterprises and Control” and “The Agency for Public Enterprises and Control”.


§ 10. In the Law on the Settlement of Non-performing Credits negotiated before 31 December 1990 (prom. SG., No. 110 of 1993; amended No. 112 of 1995; No. 55 of 1997; Nos. 12, 90, 103 and 111 of 1999; No. 1, No. 92 of 2000, Nos. 28 and 46 of 2002, No. 115 of 2004; No. 33 of 2006; No. 12 and No. 32 of 2009; No. 18 of 2010) in Article 12a, paragraph (2) the words “The Agency for Privatization and Post-Privatization Control” shall be replaced by “The Agency for Public Enterprises and Control”.

§ 11. In Article 6(1), item (20) of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (prom., SG., No. 7 of 2018, amended Nos. 20, 21, 41 and 98 of 2018 and Nos. 1 and 17 of 2019), the words “The Agency for Privatization and Post-Privatization Control” shall be replaced by “The Agency for Public Enterprises and Control” everywhere.


1. In Article 44(1), the words “The Agency for Privatization and Post-Privatization Control” shall be replaced by “The Agency for Public Enterprises and Control”.

2. In Article 45a, paragraphs (2) and (3) shall be repealed.

3. In Article 57, paragraph (1) shall be repealed.

4. In Article 78, paragraph (2), the words “The Agency for Privatization and Post-Privatization Control” shall be replaced by “The Agency for Public Enterprises and Control”.


This Law was adopted by the 44th National Assembly on 26 September 2019 and was affixed with the official seal of the National Assembly.

For President of the National Assembly:

Emil Hristov
This report evaluates the corporate governance framework for the Bulgarian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises. The report was prepared at the request of Bulgaria. It is based on discussions involving all OECD countries.