

OECD REVIEW OF
THE CORPORATE GOVERNANCE
OF STATE-OWNED ENTERPRISES

LITHUANIA



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of State-Owned Enterprises**

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FOREWORD

This report evaluates the corporate governance framework for the Lithuanian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (the “SOE Guidelines”). The report was prepared at the request of the Republic of Lithuania. It is the third country review conducted by the OECD Working Party on State Ownership and Privatisation Practices, the body responsible for encouraging and overseeing the effective implementation of the SOE Guidelines. The review process is open to OECD countries as well as partner countries.

The report is based on information volunteered by the Lithuanian authorities, including in response to a questionnaire sent in November 2014, during discussions held with Lithuanian governmental and non-governmental representatives during meetings and interviews held in Vilnius in April and September 2015, as well as independent research undertaken by the OECD Secretariat. Input was also provided by non-governmental stakeholders, including the Baltic Institute of Corporate Governance. The report was produced by Korin Kane and Hans Christiansen of the OECD Secretariat in collaboration with Lars-Erik Fredriksson of the Swedish Ministry of Finance. It was approved for publication under the authority of the Working Party in November 2015.

The report is structured as follows. Part I provides information about the context in which Lithuanian SOEs operate. Part II refers successively to the different chapters of the SOE Guidelines, evaluating Lithuanian norms and practices in their light. The final section sets out the Working Party’s conclusions and recommendations for improving the corporate governance framework applicable to Lithuanian SOEs. The recommendations are forward-looking, aiming to assist policy makers and the government agencies exercising the ownership function in responding to emerging developments and challenges.

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ABBREVIATIONS

Art.	Article
BAS	Business Accounting Standards
BICG	Baltic Institute of Corporate Governance
CEO	Chief Executive Officer
CRA	Communications Regulatory Authority
EU	European Union
EUR	Euro
GDP	Gross Domestic Product
GCC	Governance Coordination Centre
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
LLC	Limited Liability Company
LTL	Lithuanian Litas
MoF	Ministry of Finance
MoTC	Ministry of Transport and Communications
NAO	National Audit Office
NCC	National Commission for Energy Control and Prices
OECD	Organisation for Economic Co-operation and Development
PPO	Public Procurement Office
SOE	State-Owned Enterprise
USD	United States Dollar
VSE	Vilnius Stock Exchange
WP SOPP	Working Party on State Ownership and Privatisation Practices

INTRODUCTION

The purpose of this report is to evaluate the corporate governance framework for the Lithuanian state-owned enterprise sector – in force at the time of writing – relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (the “SOE Guidelines”),¹ to which the governments of OECD’s 34 member countries adhere.

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 OECD Working Party on State Ownership and Privatisation Practices (the “Working Party”). They complement and are compatible with the OECD Principles of Corporate Governance. 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.

The report was prepared by staff members in the OECD Corporate Affairs Division providing secretariat support to the Working Party² with the participation of a member of the Working Party Bureau, Mr. Lars Erik Fredriksson of the Swedish Ministry of Finance. Information included in this report is based on a variety of primary and secondary resources current as of 30 October 2015, including: responses by the Lithuanian authorities to a standard questionnaire on the SOE Guidelines; Lithuanian authorities’ written responses to follow-up questions from the OECD Secretariat at various stages throughout this exercise; two fact-finding visits to Vilnius including meetings with government officials as well as representatives of civil society, business organisations and SOE board members; and additional desktop research. The full report was discussed by the Working Party during its review of Lithuania’s position relative to the SOE Guidelines on 28 October 2015.

Following this introduction, Part A of the report provides information about the context in which Lithuanian SOEs operate. Part B refers successively to the different chapters of the Guidelines, evaluating Lithuanian norms and practices in their light. The final section sets out the report’s conclusions and recommendations. Complementary information can be found in the annexes.

Part A

THE SOE LANDSCAPE

1. Context for Lithuania's SOE sector

Economy. The Republic of Lithuania (hereafter Lithuania) joined the European Union (EU) in 2004 and adopted the Euro in January 2015. Lithuania's GDP grew by 2.9% year-on-year in 2014, making it the eighth fastest growing economy in the EU and bringing its growth rate higher than 2008 (pre-crisis) levels. Unemployment fell from 11.8% to 10.7% in 2014. The Ministry of Economy attributes recent growth mainly to strong domestic demand. During that same period, net exports fell drastically: the balance of goods and services exports as a percentage of GDP fell from 1.3% to 0.1%.³ Much of this drop is likely due to the slowdown in both EU and the Russian Federation (hereafter Russia), which are Lithuania's biggest trading partners. The EU accounts for over half of Lithuania's exports and two thirds of its imports, while Russia accounts for about one fifth of Lithuania's imports and exports respectively⁴.

Lithuania is generally considered to have a sound business environment and consistently ranks in the top third or higher of global cross-country economic rankings. Lithuania ranked 24th out of 189 economies in the World Bank Group's Doing Business 2015⁵. It ranked 41st out of 144 economies in the World Economic Forum's Global Competitiveness Report 2014-15, up from 48th out of 148 in the 2013-14 report.⁶ Finally, Lithuania ranked 39th out of 175 countries and territories in the 2014 Transparency International Corruption Perceptions Index survey, up from 54 in 2012 (meaning that public perceptions of corruption, as measured by the Index, fell relative to the other countries in the list).⁷

Government. Lithuania is a parliamentary republic with a unicameral parliament, the Seimas. Parliamentary elections for its 141 seats are held every four years. About half of the deputies (71) are elected by single-member constituencies and the other half (70) through a nationwide vote based on proportional representation by party lists. Lithuania's highest executive authority resides with the Council of Ministers, which is led by the Prime Minister and composed of 13 Ministers which currently form a coalition government. The President appoints the country's Prime Minister, subject to parliamentary approval. The Prime Minister appoints the Council of Ministers, subject to Presidential approval. The latest parliamentary elections were held in October 2012. On 22 November 2012, the Seimas approved Algirdas Butkevičius of the Social Democratic Party as Prime Minister. The current coalition government comprises representatives of the Lithuanian Social Democratic Party, the Labour Party and the Order and Justice Party. President Dalia Grybauskaitė assumed office in 2009 and was re-elected for a second five-year term in May 2014.

Legal system. Lithuania is a civil law country. Legal acts are subject to a constitutional review by the Constitutional Court of the Republic of Lithuania.

Capital market. Listed companies are listed on the Vilnius Stock Exchange (Nasdaq OMX Vilnius) which, together with the Riga and Tallinn stock exchanges, forms the Nasdaq OMX Baltic market. The Baltic market seeks to facilitate cross-border trading and attract investment in the Baltic countries of Estonia, Latvia and Lithuania, by reducing costs via a shared trading platform and harmonising country standards and practices.⁸ The Vilnius Stock Exchange (VSE) was established in 1993 and is

directly owned by the Swedish-Finnish private financial services company OMX, which is part of the Nasdaq OMX group.

Financial markets in Vilnius are regulated by the Law on Markets in Financial Instruments (2007), whose stated objective is to harmonise Lithuanian financial markets regulation with relevant EU legal acts.⁹ The Supervision Service of the Bank of Lithuania is responsible for the supervision of financial institutions and markets, and notably for monitoring financial market participants' compliance with Lithuanian laws and International Financial Reporting Standards.¹⁰

Companies listed on the Vilnius Stock Exchange are encouraged to abide by the Corporate Governance Code for the Companies Listed on Nasdaq OMX Vilnius (2006, amended in 2009), which comprises recommendations addressed by the stock exchange to listed companies regarding their governance arrangements and corporate disclosure practices. Companies are not required to abide by the code in order to list their shares, but the Law on Securities requires that companies whose securities are traded on the stock exchange report on their compliance with the code in their annual reports. Specifically, Art. 21(3) states that "The annual report of the issuer whose securities are traded on a regulated market operating in the Republic of Lithuania shall contain a notification that the issuer complies with the Code of Governance of the companies whose securities are traded on a regulated market approved by the operator of the regulated market concerned. In the event the Code of Governance or certain provisions thereof are not complied with the annual report shall specify which provisions are not complied with and for what reasons."¹¹

2. Overview of the state-owned sector

a. Types of SOEs and sectoral distribution

As of end 2014, the Lithuanian central government was majority or full owner of 131 enterprises (not counting subsidiaries separately)¹². The SOE sector is valued at approximately USD 5.6 billion and employs just over 42 000 people. The majority of SOEs by value are found in the electricity and gas sector (38%), followed by transportation (36%) and the primary sectors (21%) (1 and 1). The transportation sector (which in Lithuania's definition includes the postal service) accounts for over half of all SOE employment followed by the electricity and gas sector, which accounts for about one fifth (2). The largest SOE employers are Lithuanian Railways, Lithuanian Energy and Lithuanian Post, together employing 23 020 people. Annex 1 provides a more detailed overview of the structure, activities and size of Lithuania's ten most economically significant SOEs.

Table 1. Overview of Lithuanian SOEs by sector, employment and value (2014)

	Number of enterprises	Number of employees	Value of enterprises (USD million)
Total	131	42 098	5 598
Primary sectors	42	3 731	1 167
Manufacturing	4	365	28
Finance	5	127	38
Telecoms	1	329	35
Electricity and gas	9	9 462	2 133
Transportation	20	22 797	2 012
Other activities	50	5 287	185

Source: Information provided by the Lithuanian authorities, based on unaudited data for the financial year 2014. Subsidiary companies are not counted as separate companies; their employment and value figures are included in parent company figures.

Figure 1. Sectoral distribution of SOEs by value

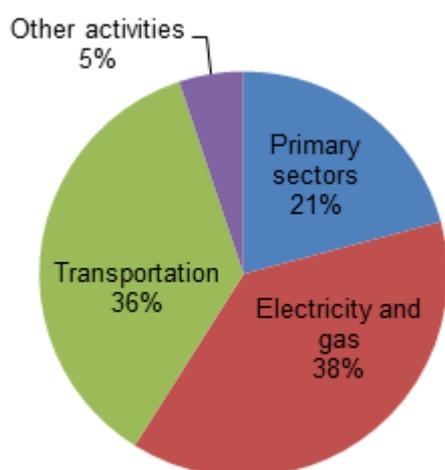
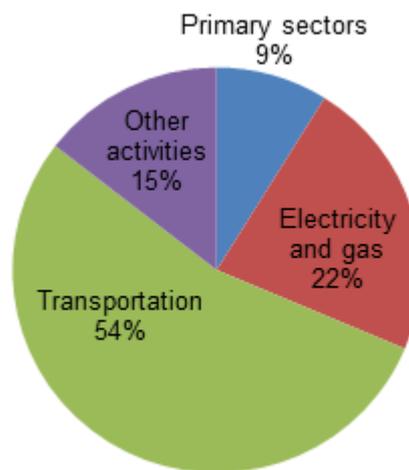


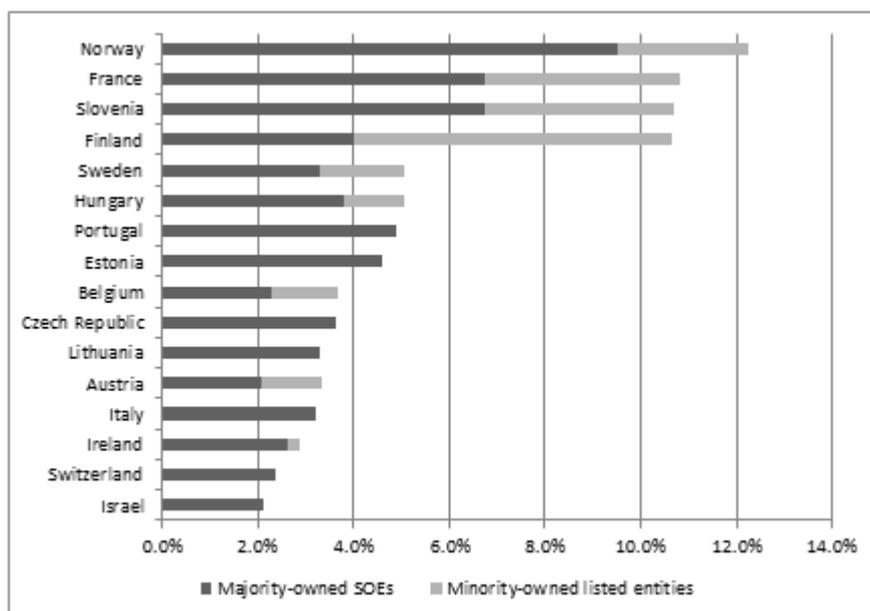
Figure 2. Sectoral distribution of SOEs by employment



Source: Information provided by the Lithuanian authorities, based on unaudited data for the financial year 2014. *Uniquely for the purpose of Figures 1 and 2, "Other activities" includes the manufacturing, finance and telecoms sectors, which each account for less than 1% of SOE value and employment.

The size of the SOE sector in Lithuania relative to its national economy (as measured by employment share) is somewhat higher than OECD averages. As shown in 3, SOEs in Lithuania account for approximately 3.2% of national employment, which compares with a 2.4% average for all OECD countries and places Lithuania in line with the top 15 OECD countries with the largest SOE sectors relative to national employment.

Figure 3. SOEs' share of national dependent employment: Comparison with OECD top 15*



Note: * OECD area data relate to end-2012. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD (2014), *The Size and Sectoral Distribution of SOEs in OECD and Partner Countries*, and Secretariat estimates for Lithuania.

When the comparison with OECD countries is broadened to include all state-invested enterprises (including state minority-owned enterprises), the size of Lithuania's SOE sector – which has no minority state-owned enterprises – becomes less of an outlier, with the state-invested sectors in four OECD countries (Norway, France, Slovenia and Finland) exceeding 10% of national employment. The size of the Lithuanian SOE sector can be considered broadly comparable to many of the other post-transition economies in Eastern Europe.

(i) Legal forms

Lithuanian SOEs can take one of three legal forms: (i) state enterprises (“Valstybės įmonės” – statutory SOEs), which have no shares and can only be owned by the state; (ii) private limited liability companies (“Uždariosios akcinės bendrovės”) which must have less than 250 shareholders and whose shares cannot be traded publicly, unless laws provide otherwise; and (iii) public limited liability companies (“Akcinės bendrovės” – joint stock companies), which must have at least 250 shareholders and whose shares can be sold and traded on a stock exchange¹³. Throughout this report, state enterprises are referred to as “statutory SOEs” and SOEs that are incorporated as limited liability companies, and thus subject to general company law, are referred to as “fully corporatised SOEs”. As of end-2014, the legal forms of Lithuania's 131 SOEs are as follows:

- **79 statutory SOEs** (of which 42 are forestry enterprises);
- **32 private limited liability companies**; and
- **20 public limited liability companies** (without counting separately the five subsidiaries of Lithuanian Energy and EPSO-G, which are all public LLCs).

(ii) Categories according to objectives

The Lithuanian government also classifies all centrally-owned SOEs into three distinct groups according to their broad objectives for the state. Enterprises in Group 1A are expected to maximise profits and (for LLCs) dividend yields; those in Group 1B are expected to also fulfil objectives in the national strategic interest; and those in Group 2 are primarily expected to fulfil social and political objectives, with profit-making taking on a secondary role (Box 1). Annex 2 provides an overview of all Lithuanian SOEs according to their legal form and objectives.

Box 1. Classification of Lithuanian SOEs according to national objectives

Group 1A: Enterprises from which the state expects growth in business value and a yield from dividends (for limited liability companies) or profit contributions (for statutory SOEs). As of December 2014, 24 enterprises belonged to Group 1A.

Group 1B: Enterprises from which the state expects – in addition to growth in their business value and a yield from dividends or profit contributions – safeguarding of national strategic interests: national economic security, implementation of strategic projects, quality infrastructure and other objectives. As of December 2014, 63 enterprises belonged to Group 1B, including the 42 SOEs operating in the forest industry.

Group 2: Enterprises in which the state gives priority to the implementation of social and political objectives, and profit activities play a secondary role. The enterprises of this group must engage in non-commercial operations which other profit-making companies would refuse to perform or would require compensation to do so. As of December 2014, 42 enterprises belonged to Group 2.

Two SOEs were not assigned a category: the Public Investment Development Agency, which was established on 11 April 2013 and in which the Ministry of Finance exercises ownership; and the monthly science and technology magazine UAB Mokslas ir Technika, in which the public institution Lithuanian Academy of Sciences exercises ownership.

Source: Lithuanian Ownership Guidelines (Government of the Republic of Lithuania, 2012, “Resolution on the approval of the procedure for the implementation of the state’s property and non-property rights at state-owned enterprises”) and preliminary version of the 2015 state aggregate report on SOEs (which is based on SOE data and information at end-2014).

(iii) Listed SOEs

As of end-2014, the Lithuanian government directly or indirectly held shares in seven listed SOEs or subsidiaries, as follows: two companies whose shares were held directly by ownership ministries (Klaipėda Oil and Lithuanian Shipping Company); two subsidiaries of wholly state-owned EPSO-G (Amber Grid and Litgrid); and three subsidiaries of wholly state-owned Lithuanian Energy (Lithuanian Energy Production, Lesto and Lithuanian Gas)¹⁴. 2 provides an overview of evolutions in Lithuanian government holdings of listed companies, notably reflecting restructurings in the energy sector that took place in 2013-14. The stock market activity for SOEs’ listed shares arguably merit further examination, particularly given the extremely low free float (less than 5%) for the majority of listed SOEs in the energy sector.

Table 2. Companies with state ownership listed on Vilnius stock exchange (2012-2014)

2012		2014	
Company	State's share	Company	State's share
Klaipeda Oil	72.3%	Klaipėda Oil	72.3%
Lithuanian Shipping Company	56.66%	Lithuanian Shipping Company	56.66%
Lithuanian Energy	96.1%	Lithuanian Energy Production ("Lithuanian Energy" renamed and its activities restricted to energy production)	96.1%
Lesto	82.6%	Lesto*	94.4%
Litgrid	97.5%	Litgrid	97.5%
Lithuanian Gas	17.7%	Lithuanian Gas	96.9%
		Amber Grid**	96.6%

Notes: * In 2014, Lithuanian Energy purchased 11.76% of Lesto Shares from E.ON Ruhrgas International GmbH, increasing the state's total shareholding to 94.4%.

** Amber Grid was established on 11 June 2013 in implementation of European Union legislation requiring the separation of natural gas production and transmission systems (the natural gas transmission operations of Lithuanian Gas were transferred to the newly established Amber Grid).

Sources: Information provided by the Lithuanian authorities and company annual reports.

b. Organisation of state enterprise ownership by sector

Lithuania has a decentralised SOE ownership structure, with 12 ministries (in their own capacity, or via ministerial departments) and 5 other public institutions responsible for exercising ownership rights (3)¹⁵. Under the current SOE framework, there is no clear overall separation between the state's ownership function and other functions that can influence conditions for Lithuanian SOEs. A number of line ministries simultaneously exercise sectoral regulation and ownership rights in SOEs. In some cases, the sectoral regulation and ownership functions are carried out by different departments within the concerned ministry, consistent with the recommendations of the Ownership Guidelines (described in the section on "SOE-specific regulations").

Table 3. Government ministries or public sector bodies responsible for SOE ownership (2014)

Government ministry or public institution responsible for exercising the ownership function	Number of SOEs
Ministry of Environment	3
Directorate General of State Forests	42
Ministry of Agriculture	19
National Land Service	1
Ministry of Transport and Communications	11
Lithuanian Road Administration	11
Ministry of Energy*	6
Ministry of Economy	9
Ministry of Finance**	6
Bank of Property (Turto Bankas)	6
Ministry of Justice	1
Prison Department	1
Ministry of Culture	2
Department of Cultural Heritage	1
Ministry of the Interior	2
Ministry of Education and Science	1
Ministry of Health	1
Ministry of Social Security and Labour	2
Department for the Affairs of Disabled	1
Government of the Republic of Lithuania	-
Department of Physical Education and Sports	1
Lithuanian Academy of Sciences	1
Bank of Lithuania	1
Statistics Lithuania	1
Office of the Seimas	1
Total SOEs	131

Notes: * In addition to its direct ownership of the six SOEs in the energy sector, the Ministry of Energy is also responsible for the two subsidiaries of UAB EPSO-G: AB Litgrid and AB Amber Grid.

** In addition to its direct ownership of the five SOEs in the financial sector and Lithuanian Energy, the Ministry of Finance is also responsible for the subsidiaries of Lithuanian Energy, which are not counted separately.

Source: Questionnaire response submitted by the Lithuanian authorities.

The remainder of this section provides an overview of the state ownership and regulatory arrangements in individual sectors. It includes information on those sectors in which government ministries simultaneously exercise ownership rights in SOEs and set sectoral policy or play a regulatory role. It also highlights instances where some degree of separation has taken place within sectors or for individual SOEs. Where individual SOEs are identified as having “primarily commercial”, “primarily social or public policy” or “mixed” objectives, this is based on the Lithuanian authorities’ classification of SOEs first outlined in the 2012 Ownership Guidelines (and detailed in Box 1 above), applied to Lithuania’s 131 SOEs in the state’s 2015 aggregate report on SOEs (a preliminary version of the report, scheduled for publication in 2015, was shared with the OECD Secretariat and contains data from end-2014.) To facilitate reading, unofficial English translations are provided following the enterprise names in Lithuanian. Annex 2 provides an overview of all SOEs along with the ministry or other public institution responsible for exercising the state’s ownership rights.

(i) Sectors that are mostly commercially oriented

For the purpose of this section, “commercial” denotes economic activities motivated solely or mostly by profit-making and an increase in long-term corporate value. Sectors that are mostly commercially oriented are those in which a non-trivial number of SOEs are categorised by the Lithuanian authorities as having primarily commercial or mixed objectives (corresponding to groups 1A and 1B, outlined in Box 1).

Energy

The Ministry of Energy is responsible for implementing sectoral policy in the energy sector, which includes the goals of achieving energy security, promoting a competitive energy sector and ensuring minimum standards of energy availability and affordability¹⁶. An independent energy regulator, the National Commission for Energy Control and Prices (NCC) is in place (further detailed in section A.4.c below). In implementation of European Union energy market legislation requiring vertical separation in the energy supply chain, UAB EPSO-G was established in 2012 to acquire the energy transmission grids from Lithuanian Energy Group. To “separate” the activities, UAB EPSO-G is overseen by the Ministry of Energy while Lithuanian Energy Group (undertaking primarily energy generation) is overseen by the Ministry of Finance (detailed further below)¹⁷.

(i) Energy SOEs overseen by the Ministry of Energy

The Ministry of Energy exercises state ownership rights in six SOEs: UAB EPSO-G (which, as mentioned, has two listed subsidiaries: AB Litgrid and AB Amber Grid, which operate respectively the electricity and the natural gas transmission grid); AB Klaipėdos Nafta (Klaipėda Oil); VĮ Energetikos Agentūra (Energy Agency, responsible for drafting the National Energy Strategy); VĮ Ignalinos Atominė Elektrinė (Ignalina Nuclear Power Plant, which is in the process of being decommissioned); VĮ Radioaktyviųjų Atliekų Tvarkymo Agentūra (Radioactive Waste Management Agency); and VĮ Lietuvos Naftos Produktų Agentūra (Lithuanian Oil Products Agency). The four statutory SOEs in the energy sector are all classified as having primarily social or public policy objectives, while the two fully corporatised SOEs, Klaipėda Oil and EPSO-G, have mixed objectives.

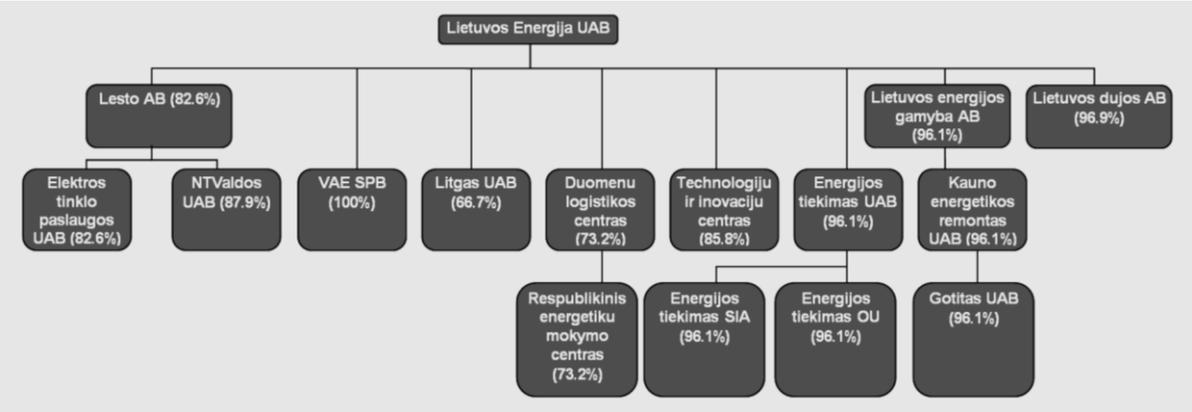
(ii) Energy SOEs in which ownership and regulation are undertaken by separate ministries

For several SOEs in the energy sector, the state’s ownership and regulatory functions have been separated. This applies notably to: Lithuanian Energy, in which the Ministry of Finance exercises ownership rights; VĮ Visagino Energija (Visaginas Energy), in which the Ministry of Economy exercises ownership rights; and AB Geoterma (which conducts research in geothermal energy

production), in which VĮ Turto Bankas (Bank of Property, a statutory SOE under the Ministry of Finance) exercises ownership rights. (In 2014, the State Property Fund under the Government of Lithuania was merged with the Bank of Property.)

As alluded to above, state ownership rights in Lithuanian Energy were previously exercised by the Ministry of Energy but were transferred to the Ministry of Economy and then to the Ministry of Finance in 2012-13 in implementation of the 2009 Third Energy Package of the European Parliament, which required that the ownership of energy generation and sale be separate from the ownership of energy transmission networks. 4 provides an overview of the structure of Lithuanian Energy and its subsidiaries as of end-2013. The group is composed of the parent holding company and 14 direct and indirect subsidiaries operating in many areas including power and heat generation, natural gas distribution, and maintenance and support services. The eight direct subsidiaries of Lithuanian Energy are as follows: electricity distribution network operator Lesto (82.6%); advisory business VAE SPB (100%); gas supplier Litgas (66.67%); ITT maintenance service provider Data Logistics Centre (73.2%); ITT service provider Technology and Innovation Centre (85.8%); power supply company Energijos tiekimas (96.1%); electricity and heat producer Lithuanian Energy Production (96.1%); and gas supplier Lithuanian Gas (96.9%).

Figure 4. Lithuanian energy and its subsidiaries



Source: Lithuanian Energy (2013), Lietuvos Energija: Annual Report 2013. Percentages reflect the effecting shareholding of Lithuanian Energy in each subsidiary as of end December 2013.

Finance

The Ministry of Finance develops and oversees the implementation of financial policy and regulation, with the goals of supporting national financial stability and economic development¹⁸. It also oversees fiscal policy and the use of public funds and promotes financial sector development. In addition to exercising state ownership rights in Lithuanian Energy (discussed above), the Ministry exercises full ownership rights in five SOEs operating in the financial sector: UAB Būsto Paskolų Draudimas (Housing Loan Insurance); VĮ Indėlių ir Investicijų Draudimas (Deposit and Investment Insurance); VĮ Lietuvos Prabavimo Rūmai (Lithuanian Assay Office); UAB Viešųjų Investicijų Plėtros Agentūra (Public Investment Development Agency) and VĮ Turto Bankas (Bank of Property)¹⁹.

Forestry

The Directorate General of State Forests at the Ministry of Environment is responsible for implementing the country's forestry development policy in state forests²⁰. It also exercises the ownership rights in 42 state-owned forestry enterprises, all of which are statutory SOEs. According to the state's 2015 aggregate report on SOEs, almost all of the state forest enterprises have mixed commercial and public policy objectives. The only forestry SOE categorised as having primarily commercial objectives is owned directly by the Ministry of Environment: the state enterprise VĮ Valstybinis Miškotvarkos Institutas (State Forest Management Institute).

Transport

Transportation sectoral policy is set by the Ministry of Transport and Communications²¹. The Ministry exercises full or majority ownership rights in 9 SOEs operating in the air, maritime, road and rail transportation sectors. These are: AB Lietuvos Geležinkeliai (Lithuanian Railways); AB Lietuvos Jūrų Laivininkystė (Lithuanian Shipping Company, 56.66% state-owned); AB Smiltynės Perkėla (Smiltynė Ferry Terminal); VĮ Oro Navigacija (Air Navigation, the sole provider of air navigation services in the country); VĮ Klaipėdos Valstybinio Jūrų Uosto Direkcija (Klaipėda State Seaport Authority); VĮ Vidaus Vandens Kelių Direkcija (Inland Waterways Authority); and VĮ Lietuvos Oro Uostai (Lithuanian Airports). The Ministry of Transport and Communications also exercises full ownership rights in the demolition company AB Detonas and the road construction materials company AB Problematika.

Furthermore, the Lithuanian Road Administration under the Ministry of Transport and Communications is charged with implementing the state's policy on road maintenance and development. The state's policy in this regard is formulated by the national Parliament and embodied in programmes developed by the Ministry of Transport and Communications. The Lithuanian Road Administration is responsible for co-ordinating the construction, maintenance and development of roads deemed of national significance, while ensuring traffic safety²². The Lithuanian Road Administration exercises ownership rights in 11 road maintenance enterprises, all of which have the legal form of state enterprise.

One SOE in the transportation sector, the car rental company AB Autoūkis, is slated for privatisation and is 87.4%-owned by the Bank of Property.

Electronic communications and post

The Ministry of Transport and Communications is also responsible for sectoral policy in the electronic communications and postal sectors, but both are regulated by an independent regulator, the Communications Regulatory Authority (CRA). The CRA's mission is to promote competition and maintain service quality in both the electronic communications and postal sectors. It was established through the Law on Telecommunications in compliance with European Union Directives.

The Ministry of Transport and Communications exercises full ownership rights in AB Lietuvos Paštas (Lithuanian Post) and AB Lietuvos Radijo ir Televizijos Centras (Lithuanian Radio and Television Centre). The state divested its shares in previously state-owned Lithuanian Telecom in 1998. Today, the company is 88% owned by TeliaSonera, which itself is 37.3% owned by the Swedish state and 7.8% owned by the Finnish state. In 2006, Lithuanian Telecom was rebranded as Teo LT.

Agriculture

The Ministry of Agriculture is responsible for formulating and implementing the state's policies in the agricultural sector²³. The Ministry exercises majority or full ownership rights in 19 SOEs. Seven of

those SOEs have either primarily commercial or mixed objectives: AB Jonavos Grūdai (Jonava Grains, 70.1%), UAB Panevėžio Veislininkystė (Panevėžys Breeding, 97.85%), UAB Šilutės Polderiai (Šilutė Polders, 81%), UAB Valstybinė Projektų ir Sąmatų Ekspertizė (State Expertise of Projects and Estimates, 100%), UAB Aerogeodezijos Institutas (Aerogeodesy Institute, 99.8%), UAB Dotnuvos Eksperimentinis Ūkis (Dotnuva Experimental Farm, 100%) and UAB Upytės Eksperimentinis Ūkis (Upytė Experimental Farm, 100%). The remaining 12 SOEs are classified as having primarily social or public policy objectives.

The National Land Service under the Ministry of Agriculture also exercises state ownership rights in the state enterprise Distantinių Tyrimų ir Geoinformatikos Centras Gis-Centras, which is responsible for the management and development of the Lithuanian Spatial Information Infrastructure portal (www.geoportal.lt), a national reference base cadaster, as well as the development of new spatial information web services.

Ministry of Economy Portfolio

In addition to exercising majority ownership rights in Visaginas Energy (discussed above), the Ministry of Economy also exercises majority or full ownership rights in two SOEs that are classified as having primarily commercial objectives: hazardous and non-hazardous waste management company UAB Toksika (92.5%); and exhibition centre UAB Lietuvos Parodų ir Kongresų Centras (98.8%) (Lithuanian Exhibition and Congress Centre). One SOE in the financial sector that is owned directly by the Ministry of Economy is categorised as having primarily social or public policy objectives: UAB Investicijų ir Verslo Garantijos (Investment and Business Guarantees), which provides loans and loan guarantees to small- and medium-sized enterprises.

Finally, two commercial enterprises in which the Ministry of Economy previously exercised ownership were transferred to the Bank of Property under the Ministry of Finance in 2014: arms ammunition manufacturer AB Giraitės Ginkluotės Gamykla (Giraitė Armament Factory) and the hotel resort UAB Poilsio Namai Baltija.

(ii) Sectors that are less commercially oriented

Culture

The Ministry of Culture is responsible for formulating and implementing the state's cultural policies, including the promotion of cultural activities and institutions and the safeguarding of intellectual copyrights²⁴. The Ministry exercises full ownership rights in three SOEs: UAB Lietuvos Kinas (Lithuanian Cinema); VĮ Vilniaus Pilių Direkcija (Vilnius Castle Directorate); and VĮ Lietuvos Paminklai (Lithuania Sights), the latter owned through the Ministry's Department of Cultural Heritage. All three SOEs are classified as having primarily social or public policy objectives.

Education

The Ministry of Education and Science is responsible for implementing the state's policies with respect to national education. This involves regulating the national curriculum, giving accreditation to state-run educational institutions, and establishing vocational schools²⁵. The Ministry is a majority shareholder of one SOE: UAB Kauno Petrašiūnų Darbo Rinkos Mokymo Centras (Kaunas Petrašiūnai Job Market Training Centre, 54.2%), which serves primarily a social or public policy role. The Ministry previously exercised ownership rights in the publishing house Mintis (an entity with primarily commercial objectives), but its shares were transferred to the Bank of Property under the Ministry of Finance in 2014. Also in the educational sector, the public institution Lithuanian Academy of Sciences is full owner of the monthly science and technology magazine UAB Mokslas ir Technika.

Environment

The Ministry of Environment is responsible for environmental policy, regulation and protection (in addition to forestry development policy, discussed in above section on “Forestry”)²⁶. In addition to exercising ownership in the State Forest Management Institute, the Ministry also exercises full ownership rights in UAB Projektų Ekspertizė (Project Expertise), which provides technical expertise on construction quality and safety, and the state enterprise VĮ Statybos Produkcijos Sertifikavimo Centras (Building Production Certification Centre), which provides certifications for building product quality and safety standards.

Healthcare

The Ministry of Health is responsible for implementing state policy in the healthcare sector, including oversight of a number of state hospitals²⁷. None of Lithuania’s state hospitals operate as SOEs. However, the Ministry exercises state ownership rights in one limited liability company, UAB Universiteto Vaistinė (University Pharmacy), which has primarily commercial objectives. Other ministries and public institutions exercise ownership in three small healthcare facilities that are incorporated as private LLCs.

The Ministry of Social Security and Labour exercises majority ownership rights (70.6%) in UAB Baldžio Šilas, a physical rehabilitation and health treatment centre. It also exercises full ownership rights in the elderly care facility UAB Senevita and the sanatorium UAB Sanatorija Pušyno Kelias (Pine Forest Road Sanatorium)²⁸.

Physical education and sports

The Department of Physical Education and Sports, under the Government of the Republic of Lithuania, is responsible for developing and overseeing implementation of the state’s policy in the field of physical education and sports. The Department exercises full ownership rights in one SOE: UAB Respublikinė Mokomoji Sportinė Bazė (Republican Instructional Sports Base). It previously exercised ownership rights in UAB Sportininkų Testavimo ir Reabilitacijos Centras (Athletes Testing and Rehabilitation Centre), which in 2014 were transferred to the Bank of Property under the Ministry of Finance.

(iii) Corporatised government agencies

A number of state institutions exercise state ownership rights in SOEs which appear to have primarily public policy or administrative functions. These are as follows:

- The **Lithuanian Office of the Parliament** exercises ownership in the state enterprise VĮ Seimo Leidykla Valstybės Žinios (Seimas Publisher State Journal), which is the Parliament official gazette, responsible primarily for publishing laws both online and in print.
- **Statistics Lithuania** exercises ownership in AB Informacinio Verslo Paslaugų Įmonė (Information Business Services Company), which allows customers to pay for public utility services online. This SOE is categorised in the state aggregate SOE report as having primarily profit-making objectives, but appears nonetheless to fulfil a primarily public service role.
- The **Ministry of the Interior** exercises ownership in two statutory SOEs: VĮ Infostruktūra, which is responsible for developing the national information and communication

infrastructure for the public administration; and VĮ Regitra, which issues driving licenses and vehicle registrations.

- The **Ministry of Justice** exercises ownership rights in the state enterprise VĮ Registrų Centras (Centre of Registers), which is responsible for administering the state-run registries of property, legal entities and addresses. The Ministry's Prison Department exercises ownership rights in the statutory SOE Mūsų Amatai, which oversees three correctional facilities located respectively in the cities of Alytus, Marijampolė and Pravieniškės.
- The **Ministry of Economy** exercises full ownership rights in five metrology services located respectively in the cities of Klaipėda, Šiauliai, Vilnius, Kaunas and Panevėžys, all incorporated as public LLCs.
- The **Central Bank of Lithuania** exercises ownership in the national mint, which is incorporated as a private LLC: UAB Lietuvos Monetų Kalykla (Lithuanian Mint).

3. Operational performance of SOEs

a. Rates of return on equity of the SOE portfolio

At the end of 2012, a 5% rate-of-return on equity requirement was applied to all SOEs engaged in commercial activity, by Government Resolution No. 1511. In 2013, the SOE portfolio earned an average return on equity of 2.7%, while SOEs engaged in commercial activities achieved an average return on equity of 2.4% (the categorisation of SOEs according to their commercial orientation was undertaken in 2012 and published in the Ownership Guidelines, which are outlined in section A.4.b below). According to the state's 2014 aggregate report on SOEs, the 5% return-on-equity expectation – which was placed on 99 SOEs – was achieved by only 21 enterprises. Also of note, the state-owned forestry enterprises, although engaged in commercial activities, were exempt from the 5% return requirement, and instead subject to a minimum average net profit expectation. This exemption is apparently in part due to the fact that, according to the Law on Forests, the state-owned forestry enterprises do not include the value of state forests in their balance sheets, making it difficult to calculate an appropriate rate-of-return target.

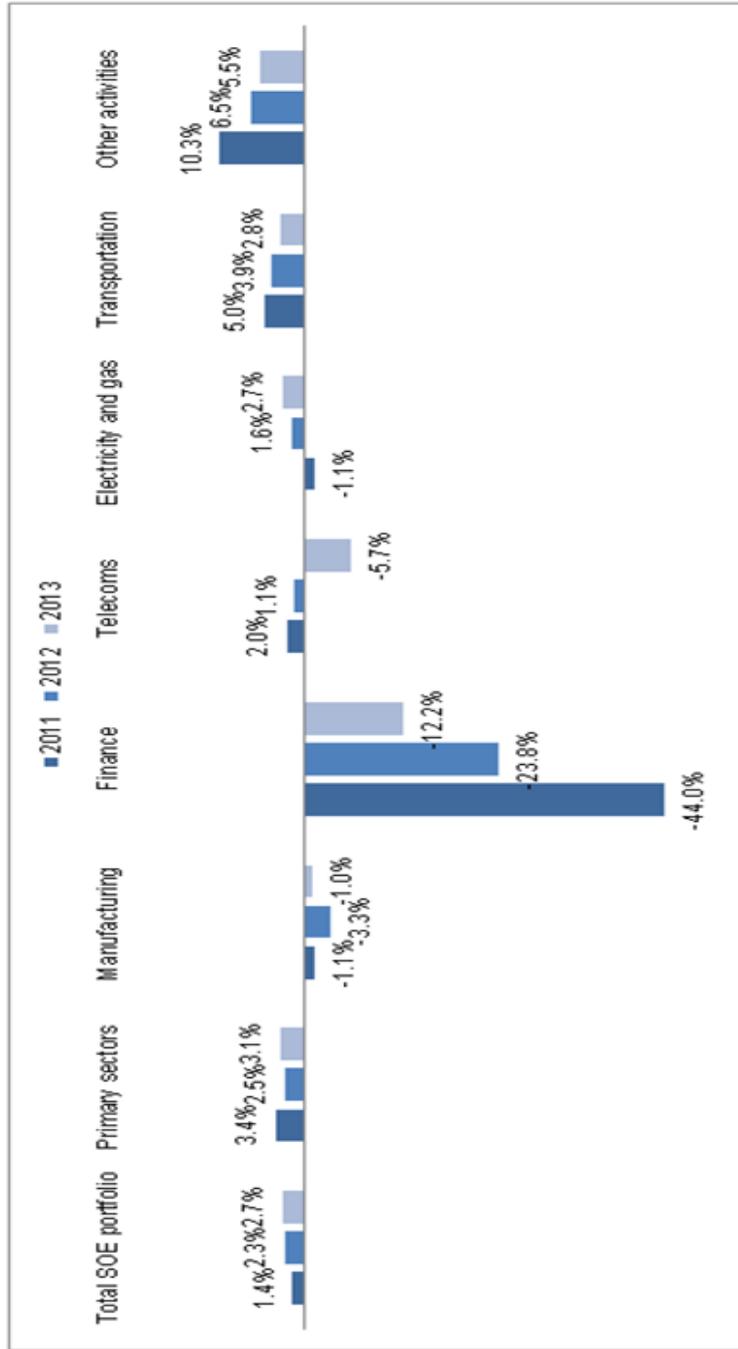
Table 4. Operational performance of SOEs by sector (2013)

(USD mn)	Sales	Operating profit	Normalised net profit	Return on equity	Debt-to-equity ratio
Total SOE portfolio	2 452.7	144.4	161.8	2.7%	0.15
Primary sectors	172.9	14.1	34.9	3.1%	0.00
Manufacturing	22.0	-0.2	-0.3	-1.0%	0.80
Finance	5.0	-5.4	-3.9	-12.2%	0.83
Telecoms	20.3	-1.9	-2.1	-5.7%	0.22
Electricity and gas	1 258.5	69.3	74.1	2.7%	0.17
Transportation	825.8	61.1	52.1	2.8%	0.17
Other activities	148.1	7.3	7.0	5.5%	0.38

Source: Information provided by the Lithuanian authorities.

As shown in Figure 5, the average return on equity of the SOE portfolio has risen from 1.4% in 2011 to 2.7% in 2013, suggesting that the establishment of rate of return requirements at the end of 2012 has begun to bear fruit. However, an examination of sector-specific rates of return over that same period paints a somewhat less positive picture of SOEs' performance: SOEs' rates of return on equity have actually declined since 2011 in the primary sectors, telecoms, transportation and other activities. In 2013, SOEs operating in the manufacturing, finance and telecoms sectors all posted negative rates of return on equity. The fact that the average return on equity remains positive despite negative returns in those sectors is due to the heavy weight of the electricity and gas and transportation sectors, which both posted positive returns on equity in 2013. Preliminary data from the financial year 2014 indicate that the SOE portfolio's average return on equity has improved somewhat, reaching 3%.

Figure 5. Historical returns on equity by sector (2011-2013)



Source: Information provided by the Lithuanian authorities.

According to a recent analysis by the Lithuanian authorities, the rates of return on equity of SOEs in both the energy and the transport and communications sectors were particularly low by international standards in 2013²⁹. The analysis found that the return on equity of Lithuanian state-owned energy companies was nearly half that of comparable international companies, while Lithuanian state-owned transportation and communications enterprises achieved less than one third the rates of return of international counterparts (5).³⁰ SOEs in both sectors also recorded relatively low asset turnover, suggesting insufficient sales revenues as compared to assets. Also of note is the fact that state-owned transportation and communications enterprises are not as highly leveraged as their foreign counterparts.

Table 5. SOEs' performance compared to international standards: Energy and transportation

	Energy		Transportation and communications	
	Lithuanian SOEs	Comparable foreign companies	Lithuanian SOEs	Comparable foreign companies
Return on equity	2.66%	5.36%	2.64%	8.93%
Net profit margin	5.89%	4.41%	5.91%	5.13%
Asset turnover	0.24	0.65	0.26	0.92
Financial leverage ratio	1.83	1.86	1.60	1.81

Source: State-Owned Enterprises Governance Coordination Centre (2014), State-Owned Enterprises in Lithuania: Annual Report 2013.

There are a number of possible reasons for SOEs' less than optimal performance. Perhaps top among them is the fact that most SOEs are simultaneously expected to undertake profit-seeking commercial activities and to deliver a public service or other public policy objective. For the majority of SOEs, public policy objectives are not adequately compensated by the state budget, leading in many cases to cross-subsidisation from the profits of commercial activities. In practice, the lack of separate accounting for SOEs' public policy objectives makes it difficult to apply market consistent return requirements to SOEs' commercial activities, leading to the application of lower return requirements as a means to partially compensate SOEs for their public policy objectives. Another possible reason for SOEs' under-performance could be cheap financing compared to their private sector counterparts, leading to over-investment and inefficient use of assets. Insufficient clarity about the nature, scope and costs of public policy objectives can lead to opaque financing mechanisms, impede the establishment of clear objectives for SOEs and the monitoring of related performance. The reasons behind SOEs' underperformance merit further examination.

b. Cost of public policy objectives and impact on SOE performance

In 2013, a first attempt to identify and quantify the costs of SOEs' public policy objectives was undertaken. The government's disclosure guidelines for SOEs ("Transparency Guidelines", discussed in section A.4.b below) were amended to include a new provision authorising the Ministry of Economy to develop recommendations for defining SOEs' public policy objectives ("special obligations" by national nomenclature) and for establishing related reporting requirements.

Based on information provided by 137 SOEs³¹, 74 were implementing public policy objectives in 2013 (of which notably 42 were state-owned forestry enterprises and 11 were state-owned road maintenance enterprises). In total, SOEs' public policy objectives had a net estimated cost of

72.1 USD mn, of which 16.3 USD mn was compensated by the state, resulting in total related losses of 55.8 USD mn that were compensated internally (by profits resulting from SOEs' commercial activities). 6 reproduces information on the nature and funding arrangements of the public policy objectives that generated the highest costs, based on the 2014 aggregate report on SOEs.

The largest loss-making public policy objective was the passenger transport service undertaken by Lithuanian Railways, which had an initial net cost of ~40.7 USD mn, of which only ~244 000 USD was compensated by the state budget, leading to a total loss from the activity of ~40.5 USD mn that was financed by commercial activities. The state-owned forestry enterprises had the second most costly public policy objectives, which do not generate any revenue and are almost entirely financed by commercial activities. Lithuanian Post, on the other hand, received compensation from the state that exceeded slightly the cost of its public policy objectives. Lithuanian Post is one of the few SOEs for which compensation is calculated based on the actual estimated cost of the public policy activities undertaken, as determined by an independent regulator, the Communications Regulatory Authority (see section A.2.b). However, a closer examination of the funding arrangements for Lithuanian Post points to possible broader issues with the defined scope of public policy objectives included in the calculations. The compensation provided to Lithuanian Post reportedly covered the cost of delivering periodicals to subscribers in rural areas, but not the net cost of universal postal service provision at least five working days per week, an activity which was uncompensated.

The collection of information on SOEs' public policy objectives has introduced greater transparency regarding their nature and scope, as well as their impact on SOEs' operational and financial performance. However, a few limitations to the data merit mention:

- The information is based on self-reporting by SOEs and their ownership entities, which could arguably have an incentive to over-report the costs of their public policy objectives to avoid higher return requirements from the state.
- The methodology for identifying public policy objectives excluded a number of activities from the analysis, notably: commercial activities with regulated prices (electricity generation, distribution, transmission and related services); and non-commercial activities that are necessary for the implementation of commercial activities (e.g. reforestation activities undertaken by the state-owned forestry enterprises).
- In some cases, SOEs are partially compensated for their public policy objectives in the year following the activity, making the annual cost and revenue figures for public policy objectives (PPOs) somewhat misleading. For example, in 2013 Lithuanian Railways reportedly received 2.7 USD mn (8 LTL mn) in compensatory payments from the state, which are not captured in the above figures.

Table 6. Nature and cost of SOEs' public policy objectives (2013)

SOE	Nature of public policy objective	Revenue generated from public policy objective (USD mn)	Costs of public policy objective (USD mn)	Costs compensated by state* (USD mn)	Loss of enterprises not covered from external sources (USD mn)
Road maintenance enterprises	Maintenance of roads of national importance and implementation of traffic safety measures	67.3	68.5	0.0	-1.2
Lithuanian Railways	Public services of passenger transport by rail on local routes	12.1	52.8	0.2	-40.5
Lithuanian Oil Products Agency	Purchase, sale and renewal (replacement) of the national oil product stock	45.9	45.9	0.0	0.0**
Lithuanian Post	Provision of universal postal services at least five working days per week; delivery of periodicals to subscribers in rural areas	22.6	26.3	4.8	1.1
Forest enterprises	Development of forest selection, conservation of forest resources, afforestation, forest protection (fire prevention, sanitary protection) and forest adaptation to scientific and public needs	0.0	9.1	0.3	-8.8
Ignalina Nuclear Power Plant	Safe decommissioning of the Ignalina Nuclear Power Plant	3	7.7	0.0	-4.7
Other public policy objectives		11.8	24.4	11.0	-1.6
Total public policy objectives		162.7	234.8	16.3	-55.8

Note:* "Costs compensated by state" were reported as "costs excluded from profit (loss) statement". In cases where compensation is not provided by the state, the cost of the public policy objective is generally recorded as an expense in SOEs' income statements. For Lithuanian Railways and the state-owned forestry enterprises, the costs have been rounded up in the and amounted to USD 244 000 and 297 000 USD respectively.

** For the Lithuanian Oil Products Agency, costs of PPOs exceeded compensation from the state by -140 USD (400 LTL).

Source: State-Owned Enterprises Governance Coordination Centre (2014), *State-Owned Enterprises in Lithuania: Annual Report 2013*. Information originally reported in LTL; exchange rate used 1 LTL=0.34 USD.

4. The legal and regulatory framework applicable to SOEs

a. *Legal framework*

The following laws govern Lithuanian SOEs, depending on their legal form, and are described in further detail throughout the report.

Law on Companies

The Law on Companies applies to all enterprises whose capital is divided into shares, i.e. public and private limited liability companies (LLCs). This applies to 51 SOEs in Lithuania (subsidiaries not counted separately). Of note, the Law stipulates that private LLCs in Lithuania are not required to establish supervisory or management boards, while public LLCs must establish at least one type of board³². Private LLCs are only required to establish a “one person management body”, i.e. a CEO. In instances where neither board is formed, the Law stipulates that the functions of governing the enterprise that are normally the purview of the management board are to be delegated to the CEO, except where the Law provides otherwise. This has implications on fully corporatised SOEs in Lithuania, the majority of which have not established supervisory boards and 17 of which have no board in place (see section A.5.a for further details on the structure and composition of SOE boards). The chosen legal form and board structure must be reflected in the articles of association, but the responsibilities of the governance organs only need to be enumerated if they differ from those outlined in the Law on Companies.

One provision of the Law on Companies regarding the rights of controlling shareholders merits particular mention: according to Art. 18, any shareholder or group of shareholders who hold or control at least half of company shares has the explicit right to access all company documents, pursuant to submitting a pledge to the company – in a form approved by the company – not to disclose commercial or industry secrets.

Law on State and Municipal Enterprises

The Law on State and Municipal Enterprises governs the creation, operations, reorganisation and liquidation of all state enterprises (statutory SOEs) in Lithuania. This applies to 86 SOEs. It stipulates that statutory SOEs are to be established by Government resolution, unless other laws provide otherwise. Concerning the governance of statutory SOEs, the Law notably provides for the following:

- *Governance organs.* The required governance organs of a statutory SOE are the “institution exercising the rights and duties of the owner of the enterprise” (the ownership entity)³³ and the “single person management body” (the manager/CEO). The articles of association, which are to be approved by the ownership entity, may also provide for the establishment of a unitary board. The Law does not allow for the establishment of a two-tiered board structure. The articles of association must indicate the respective responsibilities of the enterprise’s governance organs only if different from those explicitly enumerated in the Law on State and Municipal Enterprises.
- *Composition of boards.* If a board is established through the enterprise’s articles of association, it must include at least three persons and its members must be civil servants and other natural persons. The CEO of the enterprise may also be appointed a member of the board. For large statutory SOEs, other natural persons must make up at least 1/3 of board members³⁴. A number of general qualifications necessary for natural persons to serve on boards are established (see section B.7.c).

- *Responsibilities of the ownership entity.* The ownership entity is responsible, among others, for approving the enterprise’s strategy, appointing and dismissing the CEO, appointing and removing board members (if established) and selecting the auditor or auditing firm. The ownership entity has the explicit right to remove all or some of the board members before the expiry of their four-year term of office. Where individual board members are removed or resign, new board members shall be appointed to the standing board until the expiry of the term for which the board was formed.
- *Responsibilities of the board.* Where a board is established, it is responsible, among others, for determining the structure of the enterprise and communicating to the ownership entity drafts (for approval) of the enterprise’s strategy, activity report(s), and other operational documents outlined in the Law.
- *Responsibilities of the CEO.* The CEO (“manager” by national nomenclature) is responsible, among others, for drafting the enterprise’s strategy, activity report(s) and other operational documents, and for communicating them to the board (if established) or the ownership entity.

Law on the Management, Use and Disposal of State and Municipal Assets

The Law on the Management, Use and Disposal of State and Municipal Assets applies to all state assets, including securities held by the state. It stipulates that the responsibility for the ownership function of state assets resides with the Seimas (the Lithuanian parliament) and the Government (the Council of Ministers). It outlines that state and municipal assets must be used, managed and disposed of in an efficient manner, with a view to ensuring the public interest and according to procedures established by law.

Law on the Manager of State Assets Managed on a Centralised Basis

The Law on the Manager of State Assets Managed on a Centralised Basis, promulgated in March 2014, lays out the functions of the state enterprise (statutory SOE) entrusted with (i) managing and maintaining state-owned real estate assets; (ii) carrying out the privatisation of state-owned shares that the Government has decided to privatise; and (iii) (as of amendments passed in March 2015) coordinating the implementation of the state’s governance policy for SOEs. These functions are carried out by the Bank of Property under the Ministry of Finance. See sections A.6.a and A.6.b for more information on the legal and institutional framework for privatisations.

b. Ownership policy and related SOE regulations

(i) Ownership Guidelines

The Ownership Guidelines (approved by the Government Resolution number 665 “On the Approval of the Procedure for the Implementation of the State’s Property and Non-Property Rights at State-owned Enterprises”, 2012) outline the rights and responsibilities of all state ownership entities regarding the implementation of SOE governance arrangements. (In Lithuania, Government Resolutions are what in many other jurisdictions would be called either “decrees” or “administrative acts”.) This is the document by which the Lithuanian government outlines its ownership policy for SOEs. It includes both mandatory standards imposed on state ownership entities³⁵ – such as ensuring the establishment of management boards in all SOEs of a certain size – as well as optional provisions which state ownership entities are expected to implement on a “comply-or-explain” basis. The main provisions of the Ownership Guidelines are outlined below. As of amendments to the Ownership

Guidelines passed in June 2015, the provisions related to board composition and to board member selection criteria and nominating procedures are not applicable to statutory SOEs, for which a separate Government resolution outlines the related criteria and process.

- *The Governance Coordination Centre.* The Governance Coordination Centre (GCC) is established as an authority designated to monitor and analyse the implementation of the Ownership Guidelines by state ownership entities. Its mandate is reproduced in Box 2.
- *Separation of the state's role as an owner and a regulator.* Where a state ownership entity in a given sector exercises both the state's ownership rights and a sectoral policy function, these must be carried out by separate departments to avoid conflicts of interest. It is recommended that public servants involved in sectoral policy do not serve on the boards of SOEs operating in the concerned sector.
- *Categorisation of SOEs according to their objectives.* State-owned enterprises are classified into three groups according to their objectives (those in group 1A are expected to maximise profits, those in 1B to also fulfil objectives in the national strategic interest, and those in group 2 to primarily fulfil national social or political objectives, with profit seeking taking a secondary role). State ownership entities shall, when necessary, review SOEs' objectives as well as the rationale for their continued state ownership and their legal form.
- *Objectives of individual SOEs.* State ownership entities shall ensure that SOEs in groups 1A and 1B seek growth in business value and obtain an adequate return on capital for the state, and that SOEs in group 2 seek profitability. Every three years the GCC shall calculate the target capital structures for all SOEs and, with the consent of the shareholding entity, submit them to the Government for approval. Short- and long-term financial and non-financial objectives shall be set for SOEs and their implementation monitored by their governance organs.
- *Procedures for objectives-setting.* The "relevant governance organs" of SOEs are to develop annual strategies and submit them to the GCC for review and comment, following which the state ownership entity submits the strategies to the Government for approval.
- *Supervision of implementation.* State ownership entities shall ensure that the governance organs responsible for developing SOEs' strategies report annually on strategy implementation. State ownership entities shall submit the strategy implementation reports to the GCC, who within two months shall submit a summary report on strategy implementation to the Government.
- *Sanctions in case of failure to achieve objectives.* If an SOE fails to achieve its objectives, state ownership entities shall: examine the suitability of relevant members of the management board; ensure that the variable part of remuneration is reduced or not paid to the CEO and, where applicable, management board members.
- *Formation of boards.* SOEs are divided into five size categories according to sales revenue and assets (4 below). State ownership entities shall ensure that all large SOEs (size categories I and II), or those of strategic importance to national security, establish management boards³⁶.
- *Board committees.* State ownership entities shall ensure that all large SOEs establish both an internal control committee and a remuneration committee. Both committees must be

composed of at least three members. The internal control committee must include one independent member.

- *Ministerial selection committees for SOE boards.* A board selection committee is established comprising the Minister of Economy, the Minister of Finance and the head of the ownership entity. The GCC is invited to provide technical advice to the selection committee, where appropriate.
- *Duties of the state ownership entity.* State ownership entities shall appoint one employee or civil servant to oversee a specific SOE. They should ensure timely transfer of SOE dividends or profit contributions to the state budget.
- *Exercising the state's rights as a shareholder.* State ownership entities shall ensure that SOEs' articles of association empower the board to adopt specific decisions referenced in the Lithuanian Law on Companies and applicable to the boards of private enterprises. State ownership entities may nominate an authorised representative to vote on their behalf at general meetings.
- *Composition of SOE boards.* State ownership entities shall ensure that the majority of SOE board members are not employees of the enterprise and that in large SOEs one third of management board members are independent. Boards are advised not to elect the CEO as chair of the management board, unless a supervisory board is also in place.
- *Selection criteria for board members.* General selection criteria for both board members and the CEO are established, including notably educational level and lack of criminal record. Criteria are established for board members to be considered independent, including not being an employee of the enterprise or of the state ownership entity. Ministerial selection committees are invited, where appropriate, to develop more specific selection criteria for the board members of large SOEs.
- *Process of board nomination.* The process for board nomination for large fully corporatised SOEs (categories I and II) is laid out as follows: board conducts an annual self-evaluation, the state ownership entity sends results to the GCC; the GCC sends results and recommendations to the Ministerial selection committee; if selection committee fails to agree then the nomination shall be decided by the Government.
- *Remuneration of SOE board members and executives.* It is recommended that for fully corporatised SOEs, remuneration of supervisory and management board members be a fixed amount not exceeding one quarter of the CEO's remuneration. It is recommended that remuneration be reduced or discontinued for board members that do not regularly attend meetings or vote on agenda issues.

Box 2. The mandate of the Governance Coordination Centre

The Governance Coordination Centre shall carry out the following functions:

- Receive, analyse and summarise the information disclosed by State-owned enterprises, including an enterprise's sets of financial statements, audit findings and audit reports, annual and interim reports of State-owned companies, annual and interim activity statements of State enterprises, as well as actions in submitting sets of financial statements, annual reports, activity statements and other information to the relevant authorities, and make a public statement on compliance with the provisions of the Guidelines for ensuring transparency of the activities of State-owned enterprises, approved by Resolution No 1052 of the Government of the Republic of Lithuania of 14 July 2010 (Official Gazette, 2010, No 88-4637) (hereinafter referred to as 'the Transparency Guidelines'), and present its evaluations and summaries along with conclusions and proposals to the Government of the Republic of Lithuania (hereinafter referred to as 'the Government') and, where appropriate, to the Ministry of Economy and the authority representing the State;
- Monitor and analyse the financial and non-financial performance indicators of State-owned enterprises and present the Government and the authority representing the State with proposals for the improvement of the performance efficiency of the State-owned enterprise;
- Prepare proposals to the Government and the Ministry of Economy regarding the improvement of the governance policy for State-owned enterprises;
- Summarise the governance practices of State-owned enterprises, develop methodological recommendations on the governance of State-owned enterprises and present them to the authorities representing the State;
- Perform the monitoring and analysis of the application of the Procedure and submit related recommendations to the Government;
- Provide technical service to the authority representing the State and the selection committee when they carry out their functions in relation to the selection and appointment of candidates for membership in the organs of State-owned enterprises;
- At the request of the authority representing the State, present its opinion or recommendations on specific issues in the governance of State-owned enterprises;
- At the request of the authority representing the State, advise it in the process of evaluating the performance of the members and leaders of the supervisory and management organs of State-owned enterprises;
- At the request of the authority representing the State or an organ of a State-owned enterprise, advise it in the process of drafting the working procedure of the collegial organ, the job description of the organ's leader, as well as other documentation relating to the management organisation of the State-owned enterprise;
- Present its opinion on whether or not it would be reasonable to invest State assets;
- Perform other functions assigned to it by the Procedure and other legal acts.

Several provisions of the Ownership Guidelines apply differently to large and smaller SOEs. To support this dichotomy the Guidelines elaborate a size categorisation based a combination on enterprises' sales revenues and assets on a scale ranging from roman numbers I to V (reproduced in 7). In most cases the highest standards of governance apply to SOEs in the two largest categories. As of end-2013, 25 individual SOEs and three subsidiaries fell under the categories I and II. Importantly, the Ownership Guidelines do not apply explicitly to the subsidiaries of SOEs under direct state ownership. Instead, ownership entities are encouraged to strive towards the application, within SOE subsidiaries, of those elements of the Ownership Guidelines pertaining to the establishment and monitoring (involving the GCC) of enterprise-specific objectives, return targets and strategies.

Table 7. Size categories of SOEs

Assets, EUR mn	Sales revenues (past financial year), EUR mn					
	up to 3	3 to 6	6 to 15	15 to 30	30 to 60	60 and above
up to 3	V	V	IV	IV	III	III
3 to 6	V	IV	IV	III	III	II
6 to 15	IV	IV	III	III	II	II
15 to 30	IV	III	III	II	II	I
30 to 60	III	III	II	II	I	I
60 and above	III	II	II	I	I	I

Source: Lithuanian Ownership Guidelines (2012)

(ii) Transparency Guidelines

The Transparency Guidelines (approved by the Government Resolution number 1052 “On the Approval of the Guidelines for Ensuring Transparency of the Activities of State-Owned Enterprises and Designating a Co-ordinating Authority”, 2010) establish disclosure standards that all SOEs are required to implement on a “comply or explain” basis. They also designate the Ministry of Economy as the authority responsible for formulating and coordinating the implementation of policies relating to SOE governance. Their main provisions can be summarised as follows:

- *Scope of applicability.* The disclosure standards must be observed by all SOEs, irrespective of size or legal form, on a “comply or explain” basis. Importantly the subsidiaries of companies under direct state ownership are not explicitly included in the scope of applicability.
- *General information disclosure requirements.* All SOEs shall implement the information disclosure standards outlined in the Corporate Governance Code for listed companies. All

SOEs shall prepare annual reports (for fully corporatised SOEs) or annual activity statements (for statutory SOEs). Large SOEs shall also prepare interim (quarterly) reports and statements. Information should be publicly accessible on the website of the SOE or the state ownership entity.

- *Content of annual and interim reports.* Annual and interim reports (or activity statements for statutory SOEs) should include, among others, information on: performance against strategic objectives; social and environmental policies and initiatives; and compliance with the provisions of the Transparency Guidelines, including explanations for any provisions not implemented.
- *Accounting and auditing standards for financial statements.* All SOEs shall keep accounts in accordance with international accounting standards. Financial statements shall be prepared on a quarterly and annual basis and be audited in accordance with international audit standards.
- *Submission and publication of reports and financial statements.* SOEs shall publish their annual and interim reports and financial statements on their websites or that of the state ownership entity, according to a specified schedule. SOEs should also publish information on any legally prescribed “special commitments” imposed by the state to implement social, strategic or political goals. SOEs shall submit their reports and financial statements to the relevant state ownership entity, along with information on senior executive remuneration for the preceding year.
- *Drafting and publication of the state’s annual aggregate report.* The state ownership entity shall send (i) the aforementioned reports and financial statements to the GCC and (ii) information on the implementation of governance policies to the coordinating authority (Ministry of Economy). The GCC shall assess SOEs’ compliance with the Transparency Guidelines and draft the state’s annual aggregate report on SOEs. The GCC shall also submit proposals to the Government concerning the nature of SOEs’ “special commitments”, related funding arrangements and impact on SOE performance indicators.

c. Regulatory framework

Based on the laws and regulations examined, Lithuanian SOEs do not appear to enjoy any regulatory exemptions compared with private enterprises. SOEs are notably included under the scope of the following laws that are also applicable to private enterprises: the Law on Competition, enforced by the Competition Council; the Law on Public Procurement, enforced by the Public Procurement Office; and the Law on Energy, enforced by the National Commission for Energy Control and Prices. The following provides a brief overview of those laws and describes the roles and functions of their implementing bodies, with the purpose of highlighting instances in which enforcement agencies and independent regulators have contributed to greater separation of the state’s ownership and regulatory functions *vis-à-vis* SOEs.

(i) Competition Law and Competition Council

Consistent with EU legislation, SOEs are not excluded from the application of Lithuania’s Law on Competition (1999, amended in 2012), which explicitly prohibits anti-competitive activities by “entities of public administration and economic entities which restrict or may restrict competition [...] except in cases where [the Law] or laws governing individual areas of economic activity provide for exemptions”. In addition, public administration entities are obligated to “ensure freedom of fair

competition” when carrying out tasks related to the regulation of economic activities. The Law on Competition provides for managers³⁷ of undertakings to be held personally liable for infringements that involve cartels or abuse of a dominant position, with associated fines of up to EUR 14 481 and the possibility to be barred from management, supervisory or board positions of public and/or private legal entities for a period from three to five years. Also a fine of up to 10 per cent of the gross annual income in the preceding business year can be imposed on undertakings for prohibited agreements, abuse of a dominant position, implementation of a notifiable concentration without permission of the Competition Council, continuation of concentration during the period of its suspension, and infringement of concentration conditions or mandatory obligations established by the Competition Council.

The Competition Council of the Republic of Lithuania is an independent competition authority responsible for ensuring compliance with the Law on Competition as well as coordinating EU state aid issues³⁸. It has the power to adopt legal acts within its competence, to investigate alleged infringements of the Law on Competition and to impose related penalties. Investigations can be launched either following complaints from interested parties or upon the initiative of the Council. Entities that are found by the Council to have infringed the Law on Competition can appeal the decision through the administrative court system, which consists of five regional courts and the Supreme Administrative Court of Lithuania.

The Council is a state budgetary institution financed directly from the Lithuanian state budget. It is composed of a Chair and four members, all appointed by the President upon recommendation of the Prime Minister for six-year terms. The Administration of the Competition Council serves as its secretariat and is divided into nine administrative and topical divisions. In 2013 the Council had a budget of USD 1.76 million and employed 69 people, comprising 8 economists, 29 lawyers, 6 other professionals, 25 support staff, and 4 Council members (including the Chair).

According to information provided by the Lithuanian authorities to the OECD concerning competition policy developments over the period 2009-13, a number of investigations conducted by the Competition Council involved SOEs. Box 3 provides some illustrative examples.

Box 3. Selected investigations of the Competition Council involving Lithuanian SOEs (2009-13)

Lithuanian Post (public LLC in which the Ministry of Transport and Telecommunications exercises the state's ownership rights). In 2009, the Supreme Administrative Court of Lithuania upheld a 2007 Resolution of the Competition Council establishing that Lithuanian Post had infringed Article 9 of the Law on Competition (abuse of dominant position) and should be fined LTL 80 000. The case involved a public procurement tender for invoice printing and enveloping services announced by Vilnius Energy, involving Lithuanian Post and two competitors. It was found that Lithuanian Post had abused its dominant position by offering abusively low fees in an attempt to prevent its competitors from concluding the supply contract with Vilnius Energy.

Vilnius International Airport (statutory SOE in which the Ministry of Transport and Telecommunications exercises the state's ownership rights). In 2010, Vilnius International Airport was found to have abused its dominant position in the market for jet fuel supply, following a complaint by its competitor *UAB RRS Motors* that the Airport had refused to allocate to *UAB RRS Motors* the space it requested for fuel storage and parking for its supply vehicle. The Airport was fined LTL 76 000 and obligated to allocate the requested space and parking to *UAB RRS Motors*. Following appeal, the Vilnius Regional Administrative Court upheld the decisions of the Competition Council. The Competition Council also made a recommendation to the Ministry of Transport and Communications – owner of Vilnius International Airport and regulator responsible for implementing regulations on the provision of ground services – to take measures to ensure fair competition in the market for jet fuel supply.

Lithuanian Railways (public LLC in which the Ministry of Transport and Telecommunications exercises the state's ownership rights). In 2009, an investigation involving Lithuanian Railways' potential abuse of its dominant position in the market for maintenance and repair services for Klaipeda State Sea Port was terminated. The investigation concluded that while Lithuanian Railways had charged higher fees to *UAB Klaipedos konteineriu terminales* than for its competitors in the stevedoring (loading and unloading) market, the pricing was justified given that in exchange for higher fees, the company also received additional services not provided to its competitors.

Sources: Annual reports on competition policy developments in Lithuania (2009-2013) provided to the OECD Competition Committee (reports available online here: <http://www.oecd.org/daf/competition/annualreportsbycompetitionagencies.htm>).

(ii) *Law on Public Procurement and Public Procurement Office*

The Law on Public Procurement establishes the procedures for public procurement and outlines the rights, obligations and responsibilities of all “contracting authorities,” i.e. authorities that procure goods, services or public works. According to the Law, public procurement procedures must be conducted in a non-discriminatory manner and be subject to minimum standards of transparency.

The Law defines contracting authorities included in its scope as all state and public authorities, as well as any public or private legal person that meets at least one of the following criteria: (i) at least 50% of its activities are financed by the state budget; (ii) it is subject to control (management) by state or local authorities or (iii) at least half of the members of its administrative, managerial or supervisory board are appointed by the state or local authorities. SOEs are therefore all included in its scope as “contracting authorities”. Concerning prospective suppliers for public procurement contracts, the provisions of the Law notably exclude from its application any controlled subsidiary entity³⁹ with a separate legal status that derives at least 80% of its turnover from the contracting authority. This would in principle apply to subsidiaries of SOEs that meet those requirements. Information on such contracts must be provided in the context of yearly public procurement plans that contracting authorities must publish on the Central Portal of Public Procurement.

The Public Procurement Office (PPO) is responsible for overseeing the state's public procurement system and monitoring compliance with the Law on Public Procurement. Among its functions are to draft legal acts regulating procurement, assess and recommend improvements to the procurement system, provide methodological assistance to contracting authorities and monitor their compliance with the Law and its implementing legislation. According to the Law on Public Procurement, the PPO

is subordinate to the Ministry of Economy and its regulations are subject to the Ministry's approval. The Law also stipulates that the Director of the PPO "shall be recruited and dismissed by the Minister of Economy" (Art. 8).

Given its subordination to the Ministry of Economy – an owner of seven SOEs – there is arguably a potential for conflict of interest in the PPO's application of the Law on Procurement, i.e. in instances where SOEs owned by the Ministry of Economy engage in public procurement. The Lithuanian authorities assert that the PPO is an independent institution whose Director is in practice appointed by the President of the Republic.

(iii) *Law on Energy and National Commission for Energy Control and Prices (NCC)*

A number of Lithuania's most economically significant SOEs operate in sectors regulated by the National Commission for Energy Control and Prices (NCC). The NCC is an independent national regulatory authority responsible for regulating prices in the energy sector (i.e. the markets for electricity, natural gas, heating, drinking water and wastewater treatment). It is also responsible for setting maximum tariffs for passenger transportation on domestic trains and for passenger and vehicle transportation via the Klaipeda national sea port. The NCC is responsible for ensuring energy quality and availability for consumers as well as maintaining fair competition among market participants.

The NCC is a state budgetary institution financed directly from the state budget. It was established in 1997 under the Law on Energy. It is composed of five members – a Chair and four Commissioners – all appointed by the Parliament upon nomination by the President for five-year terms. The NCC is account to Parliament. Its work is supported by an Administration composed of nine topical and administrative divisions, with a staff of 90 people.

According to its regulations, the NCC is expected to "closely co-operate" with the Ministry of Energy and the Competition Council. One of its explicit rights is "to provide proposals to the Government, the Ministry of Energy and the municipality" concerning regulated activities in the energy sector⁴⁰.

5. Governance structure and responsibilities in Lithuania's largest SOEs

a. *Structure and composition of boards*

As noted in section A.4.a, the legal framework for both fully corporatised and statutory SOEs in Lithuania provides for considerable flexibility regarding both the board structures put in place and the respective responsibilities of the SOEs' governance organs (i.e. state ownership entity, supervisory board, management board, CEO and general meeting). As of March 2015, two-tiered board structures (with supervisory and management boards) have been established in five individual SOEs and five SOE subsidiaries, while 115 SOEs have unitary boards and 17 have no board in place (see Annex 2 for an overview of all SOEs and their board structures).

For the purpose of this report, the term "unitary board" is used in cases where a one-tiered board has been established (a "management board" by national nomenclature). The term "unitary board" is adopted regardless of the relative proportion of executive and non-executive directors that compose it. The terms "supervisory board" and "management board" are used only in cases where a two-tiered board structure is in place, or where it is necessary to distinguish between the two (e.g. where legislative text applies specifically to all "management boards" regardless of whether a supervisory board is also in place). The boards of statutory SOEs are simply referred to as "boards" or "unitary boards", given that the legal framework does not allow for the establishment of two-tiered board structures in such enterprises.

Based on an examination of the board structures and composition of Lithuania's largest SOEs (detailed in 8) a few general observations suggest themselves:

- Two of Lithuania's largest SOEs in the energy sector have not established boards: EPSO-G (private LLC) and Lithuanian Oil Products Agency (statutory SOE). EPSO-G was established in 2012 and, as of September 2015, is reportedly in the process of reorganising its governance structure.
- Among the other large SOEs in the energy sector, most have established two-tiered board structures. Supervisory boards comprise mainly representatives of ownership ministries, but most also include at least one third independent members. The management boards of the largest state-owned energy companies comprise mainly senior executives, but some also include independent board members. Ignalina Nuclear Power Plant is the only large energy SOE with a unitary board, and it comprises uniquely representatives of the ownership entity and the CEO.
- The large SOEs in the transportation sector have unitary boards which are dominated by representatives of the ownership ministries. In four transportation SOEs, the boards are chaired by vice ministers or other politically affiliated individuals (Lithuanian Railways, Klaipeda State Seaport Authority, Lithuanian Post and Lithuanian Airports). Only the boards of Lithuanian Post and Lithuanian Railways include one third independent members⁴¹.

Table 8. Board structure and composition of Lithuania's largest SOEs and subsidiaries (March 2015)

SOE	Legal form	Responsible ministry	Board structure and composition	
Lithuanian Railways	Public LLC	Ministry of Transport and Communications (MoTC)	Unitary	Chair: Saulius Girdauskas (MoTC, Vice Minister) Tomas Karpavičius (MoTC, Chancellor of the Ministry) Alfonas Macaitis (MoTC, Advisor to the Minister) Algimantas Variakojis (independent) Ričardas Čepas (independent)
Lithuanian Energy	Private LLC	Ministry of Finance (MoF)	Two-tiered	Supervisory board: Chair: Šarūnas Kliokys (independent) Antanas Danys (independent) Virginijus Lepeška (independent) Aloyzas Vitkauskas (MoF, Vice Minister) Rasa Noreikienė (Ministry of Economy, Vice Minister) Tomas Garasimavičius (Prime Minister's Office, Advisor to the Minister) Rokas Baliukovas (Ministry of Energy, Vice Minister) Management board: Dalius Misiūnas (CEO) and four members of management
➤ Lithuanian Energy Production	Public LLC	MoF	Two-tiered	Supervisory board: Chair: Dalius Misiūnas (Lithuanian Energy, CEO) Mindaugas Keizeris (Lithuanian Energy, Strategy and Development Service Director) Pranas Vilkas (independent) Management board: Juozas Bartlingas (CEO) and four members of management
➤ Lesto	Public LLC	MoF	Two-tiered	Supervisory board: Chair: Darius Kašauskas (Lithuanian Energy, Director of Finance and Treasury) Petras Povilas Čėsna (independent) Ilona Daugėlaitė (Lithuanian Energy, Director of Organisational Development) Management board: Aidas Ignatavičius (CEO) and four members of management
EPSO-G	Private LLC	Ministry of Energy	No board	
➤ Litgrid		Ministry of Energy	Two-tiered	Supervisory board: Chair: Aleksandras Spruogis (Ministry of Energy, Vice Minister) Audrius Misevičius (Prime Minister's Office, Advisor to the Minister) Mindaugas Vaičiulis (independent) Management board: Davis Virbickas (CEO) and four members of management

SOE	Legal form	Responsible ministry	Board structure and composition	
Klaipeda Oil	Public LLC	Ministry of Energy	Two-tiered	Supervisory board: Chair: Agnė Amelija Petravičienė (Ministry of Energy) Romas Švedas (independent) Eimantas Kiudulas (independent) Management board: Mantas Bartuška (CEO) Dainius Bražiūnas (Ministry of Energy) Rytis Ambrazevičius (independent) Mindaugas Jusius (independent)
Ignalina Nuclear Power Plant	State enterprise	Ministry of Energy	Unitary	Chair: Rokas Baliukovas (Ministry of Energy) Agnė-Amelija Petravičienė (Ministry of Energy) Patricija Ceiko (Ministry of Energy) Darius Janulevičius (Director General)
Lithuanian Oil Products Agency	State enterprise	Ministry of Energy	No board	
Klaipeda State Seaport Authority	State enterprise	MoTC	Unitary	Chair: Tomas Karpavičius (MoTC, Chancellor of the Ministry) Andrius Šniuolis (MoTC) Saulius Kerza (MoTC) Toma Kuzmickaitė (MoTC)
Lithuanian Post	Public LLC	MoTC	Unitary	Chair: Alfoncas Macaitis (MoTC, Advisor to the Minister) Janina Laskauskienė (MoTC) Irma Kirklytė (MoTC) Jonas Butautis (independent) Linas Sasnauskas (independent)
Lithuanian Airports*	State enterprise	MoTC	Unitary	Chair : Arijandas Šliupas (MoTC, Vice Minister) Gražvydas Jakubauskas (MoTC) Vilius Veitas (MoTC) Indrė Bernotaitė (MoTC) Janina Laskauskienė (MoTC)
Turto Bankas	State enterprise	Ministry of Finance	Unitary	Chair: Aloyzas Vitkauskas (MoF, Vice Minister) Gintautas Bagotyrus (MoF, Advisor to the Minister) Gediminas Onaitis (Ministry of Economy, Vice Minister) Irina Urbonavičiūtė (Prime Minister's Office, Advisor to the Prime Minister) Aušra Vičkačkienė (Ministry of Finance)

Note: * On 1 July 2014 Vilnius International Airport, Kaunas Airport and Palanga International Airport were merged and the three combined airports formed the state enterprise Lithuanian Airports.

Source: 2014 state annual aggregate report on SOEs. Notes: "Largest SOEs and subsidiaries" are those with separate reporting in the aggregate report that are placed in the largest size category as defined by the Lithuanian Ownership Guidelines (category I). This notably applies to the two listed subsidiaries of Lithuanian Energy: Lithuanian Energy Production and Lesto and the one listed subsidiary of EPSO-G: Litgrid. The subsidiaries of Lithuanian Railways and Lithuanian Post are not reported on separately so it was not possible to identify whether any of them would individually fall under the largest size category.

b. *Respective responsibilities of the state and SOE boards*

An examination of the articles of association of Lithuania's largest SOEs (see 9) offers further clarity regarding the respective powers of the state as an owner and the boards of SOEs. Together with the structure and composition of select boards outlined above, the following general remarks can be made⁴².

(i) Statutory SOEs

First, for the statutory SOEs examined, the state ownership entity is generally mandated by the articles of association to fulfil functions that would traditionally be assigned to a company board, notably approving enterprise strategy and appointing and dismissing the CEO. The ownership entity also has the explicit right to appoint and revoke board members, with (until recently) no apparent nomination procedure in place to ensure that they are nominated based on their qualifications⁴³. The CEO can unilaterally conclude contracts, subject to board approval beyond a specified value threshold (see 9). In practice this approval is likely to be given by the state ownership entity, since for the statutory SOEs examined, the articles of association explicitly state that boards can only include the CEO and public officials of the ownership entity.

(ii) Fully corporatised SOEs

For fully corporatised SOEs, the functions of approving company strategy and hiring and firing the CEO are generally the purview of the management board (or unitary board), arguably paving the way for a more arms-length relationship with the state as owner, as compared with statutory SOEs. However, the extent to which this actually delimits the scope of the ownership entity's influence in practice arguably depends on the composition of the board, and notably the relative proportion of outside (independent) directors, company executives and public officials from the ministry. As shown in 8 above, the boards of many SOEs are dominated by public officials, while in some of them independent directors are in place. As for the supervisory board in fully corporatised SOEs (when it is formed), according to the applicable laws, it appears to play a primarily advisory role, submitting its opinions on company strategy to the general meeting, as well as providing feedback to the management board on its decisions. The Lithuanian authorities assert however that the supervisory board legally has powers that go beyond an "advisory capacity". The Law on Companies notably accords the supervisory board the power to elect and remove members of the management board (or the CEO if no management board is in place) and requires that the supervisory board consider the "suitability" of the management board (or the CEO if no management board is in place) if the company is operating at a loss.

(iii) SOEs without boards

While it is not a common practice, one of Lithuania's largest SOEs – electricity and gas transmission operator EPSO-G, with assets of about EUR 740 million – has no board and thus merits specific mention. EPSO-G's only governance organs are the general meeting (the Ministry of Energy since it holds 100% of shares) and the CEO. The Ministry is responsible for approving company strategy and for appointing and recalling the CEO. The CEO implements the Ministry's decisions and can conclude transactions on behalf of the company, but subject to Ministry approval following certain established thresholds, for example investments or acquisitions exceeding ~3 000 USD and for entering into a loan contract. In such a situation – and perhaps also for the other 16 Lithuanian SOEs with no board in place – the ownership entity appears to play the role of the board and even in some cases the management, given its explicit power to approve relatively minor transactions.

Table 9. Key governance responsibilities in Lithuania's largest SOEs established by articles of association

	Ownership entity	General meeting (In wholly-owned SOEs, the ownership entity is the general meeting)	Supervisory board	Management board	CEO*	Other key provisions
Lithuanian Railways (Public LLC)	- Right to access all company documents**	- Elect and dismiss management board members - Approve management board investment decisions beyond a certain proportion of capital	Not applicable	- Consider and approve company strategy - Elect and recall CEO - Approve all transactions over ~ USD 170 000 (LTL 500 000)	- Execute decisions of the management board - Act on behalf of the company and settle transactions unilaterally (with management board approval beyond established size thresholds) - Enter into agreement with audit company	
Lithuanian Energy (Private LLC)	- Right to access all company documents	- Elect and dismiss supervisory board members	-Elect and recall management board members - Submit feedback to AGM on strategy and proposals to management board on its decisions - Appoint and dismiss the internal audit structural unit	- Consider and approve company strategy - Approve all transactions over ~ USD 3.4 mn (LT 10 mn) - Elect and recall CEO, taking into account opinion of supervisory board	- Implement company strategy and decisions of the management board	- Lithuanian Energy parent company shall not be liable for the liabilities of the subsidiary companies

	Ownership entity	General meeting (In wholly-owned SOEs, the ownership entity is the general meeting)	Supervisory board	Management board	CEO*	Other key provisions
➤ Lithuanian Energy Production (Public LLC)	- Right to access all company documents	- Adopt decisions regarding the terms of agreements with supervisory board members	- Elect and recall management board members - Submit feedback to AGM on strategy and proposals to management board on its decisions	- Consider and approve company strategy - Approve all transactions over ~ USD 3.4 mn (EUR 3 mn) - Elect and recall CEO, taking into account opinion of supervisory board	- Implement company strategy and decisions of the management board - Act on behalf of the company and settle transactions unilaterally (with management board approval beyond established size thresholds)	
➤ Lesto (Public LLC)	- Right to access all company documents	- Approve or disapprove annual report - Conclude contracts with supervisory board members	- Elect and recall management board members - Supervise activity of management board and CEO - Submit feedback to AGM on strategy and proposals to management board on its decisions - Appoint and dismiss the internal audit structural unit	- Consider and approve enterprise strategy - Approve all transactions over ~ USD 3.4 mn (LT 10 mn) - Elect and recall CEO, considering opinion of supervisory board	- Implement enterprise strategy and decisions of the board - Act on behalf of the company and transact at his discretion (subject to established thresholds) - Conclude contract with audit company	

	Ownership entity	General meeting (In wholly-owned SOEs, the ownership entity is the general meeting)	Supervisory board	Management board	CEO*	Other key provisions
EP SO-G (Private LLC)	- Right to access all company documents	- Approve or disapprove annual report - Approve annual budget and strategy - Appoint and recall CEO - Decide on voting and participation in the general meetings of EP SO-G subsidiaries	Not applicable	Not applicable	- Implement decisions of the general meeting - Act on behalf of the company and unilaterally conclude transactions (with general meeting approval required for obtaining loans and for transactions beyond established size thresholds)	
➤ Litgrid (Public LLC)	- Right to access all company documents	- Elect and dismiss supervisory board members - Elect and dismiss the audit company - Approve or disapprove annual report	- Elect and recall management board members - Ensure the effectiveness of the internal control system	- Consider and approve company strategy - Approve all transactions over ~ USD 3.4 mn (LT 10 mn) - Elect and recall CEO	- Implement company objectives	- A provision explicitly states that independent members may be elected to the supervisory board
Klaipėda Oil (Private LLC)	- Right to access all company documents	- Elect and dismiss supervisory board members - Elect and dismiss the audit company	- Elect and recall management board members - Guarantee an effective internal control system	- Consider and approve company strategy - Approve all investments exceeding 1/20 of the capital - Elect and recall CEO	- Implement company objectives	- The election of 1/3 independent members on the supervisory board is established as an aim (not a requirement)

	Ownership entity	General meeting (In wholly-owned SOEs, the ownership entity is the general meeting)	Supervisory board	Management board	CEO*	Other key provisions
Ignalina Nuclear Power Plant (State Enterprise)	<ul style="list-style-type: none"> - Establish business strategy - Appoint and remove from office CEO - Select audit firm - Appoint and revoke management board members 	Not applicable	Not applicable	<ul style="list-style-type: none"> - Approve all transactions over ~ USD 340 000 (EUR 300 000), except where transaction is concluded with the Ministry of Energy 	<ul style="list-style-type: none"> - Conclude transactions on behalf of the enterprise (with board approval beyond a specific threshold) - Responsible for enterprise performance results 	
Lithuanian Oil Products Agency	<ul style="list-style-type: none"> - Determine company strategy - Appoint and remove CEO from office - Select audit firm - Approve annual acquisition and borrowing plans 	Not applicable	Not applicable	Not applicable	<ul style="list-style-type: none"> - Unilaterally conclude transactions, except those that require ownership entity's prior approval 	
Klaipėda State Seaport Authority (State Enterprise)	<ul style="list-style-type: none"> - Define enterprise strategy - Appoint and remove from office CEO - Appoint and revoke management board members - Select audit firm 	Not applicable	Not applicable	<ul style="list-style-type: none"> - Approve all transactions over ~ USD 560 000 (EUR 0.5 mn) 	<ul style="list-style-type: none"> - Conclude transactions on behalf of the enterprise (with board approval beyond a specific threshold) - Establish internal control system - Responsible for enterprise results and reporting to MoTC 	<ul style="list-style-type: none"> - Board can only comprise MoTC officials and the CEO - Board members may not be remunerated

	Ownership entity	General meeting (In wholly-owned SOEs, the ownership entity is the general meeting)	Supervisory board	Management board	CEO*	Other key provisions
Lithuanian Post (Public LLC)		<ul style="list-style-type: none"> - Elect and dismiss members of the unitary board - Elect and dismiss the audit company - Approve financial statements and profit (dividend) distribution 	Not applicable	<ul style="list-style-type: none"> - Approve company strategy, annual report - Elect and remove from office CEO, determine salary - Approve certain transactions exceeding specified thresholds (e.g investments exceeding 1/20 of company's capital) 	<ul style="list-style-type: none"> - Act on behalf of the enterprise and unilaterally conclude transactions (with board approval beyond a specific threshold) - Conclude contract with auditor 	<ul style="list-style-type: none"> - General meeting may revoke all or some board members before the end of their term of office
Lithuanian Airports (State Enterprise)	<ul style="list-style-type: none"> - Establish business strategy - Appoint and remove from office CEO - Select audit firm - Appoint and revoke management board members 	Not applicable	Not applicable	<ul style="list-style-type: none"> - Approve all transactions over ~ USD 500 000 (LT 1.5 mn) 	<ul style="list-style-type: none"> - Conclude transactions on behalf of the enterprise (with board approval beyond a specific threshold) - Establish internal control system - Responsible for enterprise results and reporting to MoTC 	<ul style="list-style-type: none"> - Board can only comprise MoTC officials and the CEO - Board members may not be remunerated

	Ownership entity	General meeting (In wholly-owned SOEs, the ownership entity is the general meeting)	Supervisory board	Management board	CEO*	Other key provisions
Turto Bankas (State Enterprise)	<ul style="list-style-type: none"> - Appoint and remove from office the CEO - Examine matters explicitly under its purview as laid out in the Centrally Managed State Assets Manager Law) 	Not applicable	Not applicable	<ul style="list-style-type: none"> - Determine the structure of the enterprise - Approve the strategic plans for submission to the ownership entity 	<ul style="list-style-type: none"> - Organise the enterprise's activities and act on behalf of the enterprise in dealings with third parties - Oversee the enterprise's internal control system - Report activity and financial statements to the MoF 	<ul style="list-style-type: none"> - Board members may not be remunerated - No term of office may be set for board members - The CEO shall attend meetings of the board "in an advisory capacity"

Note: *"CEO" as used throughout the text also refers, as applicable, to "general manager", "director general" and "managing director".

** As an entity holding at least ½ of the shares, the state ownership entity has the right to access all company documents following submission of a company-approved written pledge of confidentiality. The Law on Companies already grants this right to the controlling shareholders or groups of shareholders of all corporations, but is also reiterated in the articles of association of all incorporated SOEs examined.

Sources: Enterprises' articles of association, provided by the Lithuanian authorities or available online.

6. Privatisation

a. *Legal framework for privatisations of state assets*

The following laws govern the privatisation of state assets:

- The *Law on Privatisation of State-Owned and Municipal Shares* governs the transfer of state- and municipal-owned shares to private shareholders. It applies only to shares that the Government of Lithuania decides to privatise and outlines the procedures that must be followed in order to transfer them to private owners. The Law explicitly applies only to shares “which the Government of Republic of Lithuania or a municipal council decides to privatise” and excludes from its scope of applicability all SOEs that have the legal form of “state enterprise” or “municipal enterprise”⁴⁴. The implication is that only SOEs that are incorporated as limited liability companies can in principle be privatised, and that privatisations require the approval of the Government. Prior to amendments that came into force in October 2014, privatisation of state and municipal property (real estate) was also included in the scope of the Law. The amendments restricted privatisations to state- and municipal-owned shares. The Law provides for privatisation to be carried out according to six possible methods: (1) public sale of shares; (2) public auction; (3) public tender; (4) direct negotiations; (5) transfer of control of state- or municipally-controlled enterprises; and (6) sale of shares to shareholders in the case of SOEs incorporated as private LLCs.
- The *Law on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises Important to Ensuring National Security* lists all enterprises – including SOEs – and “facilities” that are considered of strategic national importance, and places limits on their partial or full privatisation. It stipulates that the state enterprises on the list can only be incorporated into limited liability companies following the passage of a relevant law by the Parliament. It also lists 4 “facilities” that must belong fully to the state – the public railways, roads of national significance, the infrastructure of the Klaipeda State Seaport and flight control system facilities⁴⁵ (Article 3). Finally, it lists 8 existing SOEs whose capital can be held by private owners, provided that the power of decision is retained by the state (Article 4). The list of enterprises and facilities is provided in the following table.

According to the Law on Privatisation of State-Owned and Municipal Shares, once the Government has decided that a (fully corporatised) SOE is to be privatised, its ownership is transferred from the state ownership entity (e.g. line ministry) to the Manager of State Assets Managed on a Centralised Basis (a function carried out by the Bank of Property), which is responsible for all privatisation procedures. The privatisation of certain state-owned enterprises is prohibited by other laws or Government decisions. This concerns notably all statutory SOEs and those recognised by law as being of strategic national importance (see 10 above).

Table 10. Lithuanian SOEs considered of strategic national importance

State and municipal enterprises that must be owned by the state*	State-owned limited liability companies whose capital can be shared, provided that the state retains power of decision	Other enterprises identified of importance to national security, and for which laws may set forth additional requirements for their operation
<ul style="list-style-type: none"> • Lithuanian Post** • Ignalina Nuclear Power Plant • Klaipėda State Seaport Authority • Lithuanian Oil Products Agency • Air Navigation • Regional road enterprises (all ten are listed individually) • Automagistralė (national expressway) • Inland Waterways Authority • Lithuanian Airports • Šiauliai Airport (municipal enterprise) 	<ul style="list-style-type: none"> • Detonas • Lithuanian Railways • Lithuanian Radio and Television Centre • Jonava Grains • Lithuanian Energy • Litgrid • Lesto • Klaipėda Oil • Liquefied Natural Gas (LNG) terminal operator and project implementation company 	<ul style="list-style-type: none"> • ORLEN Lietuva • Lithuanian Gas • Project implementation company defined in the Law of the Nuclear Power Plant • TEO • Achema • Water supply and wastewater extraction service companies according to the list approved by the Government • Giraitė Armament Factory • Amber Grid

Notes: * Given that state enterprises are created via special law, their conversion to a limited liability company requires the passage of a relevant law by the Parliament.

** Lithuanian Post, although currently a private LLC, is included in this category because until December 2005 it was a statutory SOE.

Source: Law on State Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security, English translation provided by the Lithuanian authorities.

b. Institutional framework for privatisation

Bank of Property (Turto Bankas)

As mentioned above, the Bank of Property is currently the state enterprise entrusted with carrying out privatisations of state- and municipal-owned shares on behalf of the state, as per the Law on the Manager of State Assets Managed on a Centralised Basis. Privatisation procedures of state shareholdings and real estate assets were previously carried out by the State Property Fund (Valstybės Turto Fondas). In March 2014, the State Property Fund was subsumed by a merger with the Bank of Property, itself a statutory SOE. The merged entities adopted the name Bank of Property. The State Property Fund was subsumed by the merger and no longer exists⁴⁶.

The Privatisation Commission

The Privatisation Commission is a state institution responsible for political oversight of privatisations in Lithuania. It comprises seven members, five of which (including its chair) are appointed and removed from office by the Government, and the remaining two of which are appointed and removed from office by the Lithuanian Parliament. The Privatisation Commission is accountable to the Government. It notably has the right to:

- approve or reject proposed privatisation programmes, transactions and the list of strategic investors identified by the State Property Fund;
- suspend privatisation programmes and/or declare them completed; and
- approve or reject the sale of blocks of state- or municipal-owned shares that have been transferred to the State Property Fund.

c. Privatisations to date

Since the restoration of Lithuania's independence in 1990, there have been three main phases of privatisation, discussed below.

Voucher privatisations (1991-1995)

The voucher privatisation programme provided Lithuanian citizens with vouchers allowing them to obtain shares in state-owned companies or to purchase housing from the state. The voucher programme led to the privatisation of the majority of all state-owned construction and household services companies. The majority of agricultural assets and land were also privatised via a mix of vouchers and restitution of land to former owners.

Cash privatisations (1995-1997)

The second privatisation phase began in July 1995, with the passage of the Law on the Privatisation of State and Municipal Property, and the resultant establishment of the Privatisation Agency, responsible for carrying out all privatisation procedures⁴⁷. This stage was characterised by the sale of state- and municipal-owned assets (both real estate and enterprises) for cash, and the possibility for foreign investors to purchase privatised property and shares.

Privatisations undertaken by the State Property Fund (1997 to 2013)

As mentioned above, the State Property Fund (Valstybės Turto Fondas) was established in 1997. It replaced the Privatisation Agency and was given responsibility for managing and privatising all state assets. The cash privatisations undertaken by the State Property Fund remained open to foreign investors, on equal footing with national investors. Prior to 2005, some notable privatisations include:

- Lithuanian Telecoms (AB Lietuvos Telekomas): in 1998, 60% of company shares were sold for EUR 2.04 billion to Amber Teleholding A/S, a consortium between Swedish Telia AB and Finnish Sonera Oy. Today, TeliaSonera (which is 37.3% owned by the Swedish state) holds 88% of the shares of Teo LT (previously Lithuanian Telecoms).
- Western Power Grid (AB Vakarų Skirstomieji Tinklai): in 2003, 77% of company shares were sold for EUR 45.28 million to a consortium of nine Lithuanian natural persons.
- Lithuanian Airlines (AB Lietuvos Avialinijos): in 2005, 100% of company shares were sold for EUR 7.53 million to the investment management company Investicijų Valdymas.

Tables 11 and 12 provide more detailed statistics on the privatisations undertaken from 2005 to 2013.

Table 11. Method and value of privatisations undertaken from 2005 to 2013

Method of privatisation	Number of assets sold	Total selling price (EUR mn)
Public auction	1156	62.7
Public tender	8	28.9
Public sale of shares	8	2.2
Direct negotiation	11	0.3
Total	1183	94.1

Source: Information provided by the Lithuanian authorities. Note: figures include privatisations of real estate assets and enterprises held at both the state and municipal levels.

Table 12. Largest privatisation transactions undertaken from 2005 to 2013

Year	Company name	State or municipal shareholding that was privatised	Price (EUR)	Method of privatisation
2005	Lithuanian Airlines (AB Lietuvos Avialinijos)	100%	7 465 760	Public tender
	Lithuanian Export and Import Insurance (UAB Lietuvos Eksperto ir Importo Draudimas)	99.92%	6 100 000	Public tender
	Mažeikiai Power Station (AB Mažeikių Elektrinė)	85.72%	5 155 236	Public tender
2006	Lithuanian News Agency (AB Lietuvos Telegramų Agentūra ELTA)	39.51%	514 654	Public auction
2007	Lithuanian Sanatorium (UAB Lietuvos Sanatorija)	-	9 021 982	Public auction
2008	Panevezys Glass (AB Panevėžio Stiklas)	34.22%	941 781	Public auction
	Vilnius Sigma (AB Vilniaus Sigma)	15.21%	606 366	Public auction
2009	Šilutė Hydro Project (UAB Šilutės hidroprojektas)	50.99%	321 767	Public auction
	Vilnius Hydro Project (UAB Vilniaus Hidroprojektas)	53.57%	260 686	Public auction

Year	Company name	State or municipal shareholding that was privatised	Price (EUR)	Method of privatisation
2010	Tukompa (AB Tukompa)	99.2%	3 800 335	Public auction
	Dzukia Pinewood (UAB Dzūkijos Šilas)	100%	738 531	Public auction
	Raseiniai Reclamation (AB Raseinių Melioracija)	76.18%	991 369	Public auction
2011	Visaginas Transport Centre (UAB Visagino Transporto Centras)	100%	1 387 022	Public auction
2012	Road Safety (UAB Eismo Sauga)	100%	149 733	Public auction
2013	New Town Kaunas Labour Market Training Centre (UAB Kauno Naujamiesčio Darbo Rinkos Mokymo Centras)	78.49%	368 251	Public auction

Source: Information provided by the Lithuanian authorities. Note: does not include privatisations of real estate assets.

Privatisations in progress

As of September 2015, there are two SOEs in the process of being privatised: Klaipėda Ship Repair (Klaipėdos laivų remontas) and Klaipėda Airport (Klaipėdos aerouostas). Six SOEs are slated for privatisation, meaning that they are on the Government-approved list of entities to be privatised but the privatisation process has not yet commenced. An overview of these entities is provided in 13.

7. Recent and ongoing reforms

a. SOE reform programme

In 2010, Lithuania embarked on an ambitious SOE reform programme, led by the Ministry of Economy. The stated objectives of the reform programme were to: (i) separate SOEs' commercial and non-commercial functions; (ii) set clear objectives for SOEs; (iii) separate ownership and regulatory functions; and (iv) improve the transparency of SOEs.

Among the early fruits of the reform effort was the publication in 2010 of Lithuania's first aggregate report on SOEs, "Annual review: Lithuanian state-owned commercial assets 2009", produced by the Ministry of Economy with the support of the Ministry of Finance and the Office of the Prime Minister. The report provided an overview of all of Lithuania's state-owned commercial assets and notably brought to light the low average returns on the national SOE portfolio. It also gave an impetus for the July 2010 adoption of the Transparency Guidelines, essentially enshrining in law minimum disclosure standards for SOEs and their ownership entities, albeit on a "comply or explain" basis. Since that year, Lithuania has regularly published aggregate reports on the size, performance and activities of all SOEs. In December 2010, the Government adopted by resolution the "Concept on Improvement of the Efficiency of State-Owned Enterprises", which outlined the main thrust of its SOE reform agenda.

In early 2011, a two-year SOE reform programme (2011-12) was passed by Government Resolution, with the aim of improving the efficiency, performance and transparency of SOEs through improved corporate governance. (As mentioned previously, in Lithuania, Government Resolutions are what in many other jurisdictions would be called either “decrees” or “administrative acts”.) The programme identified four specific objectives: establish performance targets for SOEs; draw up a mechanism for identifying the costs of SOEs’ public policy objectives and improve their funding mechanisms; develop an ownership policy outlining how the state should implement its ownership rights; and improve the transparency of SOEs’ activities. The Government’s reform programme document attributed SOEs’ under-performance to their poor governance, citing challenges such as “subordination of state-owned enterprises to specific ministries which protects many of them from external competition” and noting that excessive intervention by ministries in SOE governance “worsened their financial results and led to inevitable conflicts of interest” (see Annex 3 for the full text of the 2011-12 SOE reform programme.) As shown throughout this report, progress has been achieved on all of these objectives.

Table 13. SOEs undergoing or slated for privatisation

Name of company	Main activity	State shareholding*	Capital (EUR)	Number of employees
Klaipėda Ship Repair (AB Klaipėdos Laivų Remontas)	Ship repair and construction	0%	4 521 880	64
Klaipėda Airport (UAB Klaipėdos Aerouostas)	Air transport and entertainment	0%	2 910	3
Baltija (UAB Baltija)	Accommodation services and rehabilitation	100%	6 229 970	50
Giraitė Armament Factory (AB Giraitės Ginkluotės Gamykla)	Ammunition manufacturing	100%	6 237 030	68
Mintis (AB Mintis)	Publishing and distribution	80.7%	137 150	11
Autoūkis (AB Autoūkis)	Leasing of vehicles and industrial premises	87.4%	2 004 760	23
Jaugvila (UAB Jaugvila)	Non-operating	24.86%	47 440	2
Athletes Testing and Rehabilitation Centre (UAB Sportininkų Testavimo ir Reabilitacijos Centras)	Sports rehabilitation	100%	582 240	17

Note: * At the time of writing, the state shareholdings in Klaipėda Ship Repair and Klaipėda Airport have been sold. Both companies remain on the privatisation list because they continue to carry out commitments for the state agreed during the privatisation process.

Source: Information provided by the Lithuanian authorities.

Early reform efforts initially sought to centralise the state ownership function, at first in the form of a state holding company, but these were unsuccessful. Instead, the government opted for the establishment of a coordinating function, described above, undertaken by the Ministry of Economy, which was among other things mandated to formulate the governance policy for all SOEs. In 2011, a new unit was established in the public institution under the Ministry of Economy with the tasks of monitoring the implementation of the Transparency Guidelines and preparing aggregate interim and annual reports on SOEs. The existence and full functions of the Governance Coordination Centre were formally established with the 2012 adoption of the Ownership Guidelines. The Ownership Guidelines (discussed in section A.4.b) outline broadly applicable governance standards for SOEs and also classify SOEs into three groups according to their national objectives, thus setting the stage for clarifying SOE objectives. A number of other Government resolutions related to SOE reform were passed from 2010 to 2013, and are listed in Box 4.

Box 4. Reform of SOEs: Government resolutions from 2010 to 2015

14 July 2010: Government Resolution No. 1052 “On the Approval of the Guidelines for Ensuring Transparency of the Activities of State-Owned Enterprises and Designating a Coordinating Authority” (“Transparency Guidelines”).

1 December 2010: Government Resolution No. 1731 “On the Approval of the Concept for Improvement of the Efficiency of State-Owned Enterprises”.

9 February 2011: Government Resolution No. 172 “On the Approval of State-Owned Enterprises Reform Programme for 2011-2012”.

8 April 2012: New version of Government Resolution No. 20 “Regarding Dividends on the Company Shares Owned by the State by Right of Ownership and Contributions from the Profit of State Enterprises”.

6 June 2012: Government Resolution No. 665 “On the Approval of the Procedure for the Implementation of the State’s Property and Non-Property Rights at State-Owned Enterprises” (“Ownership Guidelines”).

12 December 2012: Government Resolution No. 1511 “On the Determination of the Cost of Equity Capital of State-Owned Enterprises”.

17 June 2015: Government Resolution No. 631 “On the Approval of the Procedure for the Selection of Candidates to the Board of a State Enterprise or Municipal Enterprise”.

Source: Information provided by the Lithuanian authorities.

Lithuania’s progress on SOE reform has been recognised in the context of its EU convergence programme, under which Lithuania was subject to regular monitoring of its structural policies and budgetary position prior to joining the euro monetary union in 2014. The last EU Council Recommendation to address SOE reform areas prior to Lithuania’s euro adoption, adopted in June 2013, notably recognised that the country’s SOE reform was “relevant and credible” and called upon Lithuania to “Complete the implementation of the reform of state-owned enterprises as planned; in particular by finalising the separation of commercial and non-commercial activities, further professionalising executive boards and closely monitoring compliance with the requirements of the reform”⁴⁸. In its 2015 country report for Lithuania, the EU Commission rated related progress on SOE reform as “substantial”. The latest country-specific recommendations (CSRs) for Lithuania do not call for any further action from the Lithuanian authorities in this respect. This reflects both a prioritisation

of other areas for reform as well as a willingness to recognise the substantial steps Lithuania has taken since 2011 to implement the EU's country-specific recommendations pertaining to SOE reform⁴⁹.

Today, while line ministries continue to be the main bodies responsible for exercising the state's ownership rights, the Ministry of Economy does play at least a nominal role in coordinating SOE governance policies and practices across sectors. The GCC continues to be responsible for monitoring SOEs' performance and compliance with the above-mentioned guidelines, as well as playing an advisory role regarding SOE governance practices. Initially a unit of public institution under the Ministry of Economy, the GCC was in 2012 transferred to the State Property Fund, a state enterprise under the Government. In 2014 the State Property Fund was merged with the Bank of Property under the Ministry of Finance. At the time of writing, the staff of the GCC consisted of only five people. Its future role and resourcing are unclear. The fact that it was transferred from the Ministry of Economy – the institution responsible for coordinating SOE governance policy – to an individual state enterprise arguably raises questions about its institutional role and its capacity to effectively monitor SOE governance practices and advise on their improvement.

b. Recent legislative reform

(i) Amendments to the Law on State and Municipal Enterprises

The Law on State and Municipal Enterprises was amended in 2014, notably allowing for the unitary boards of statutory SOEs to, in principle, include independent members. The previous version of the Law explicitly limited board membership to civil servants and the CEO. The amended version, which came into force on 1 March 2015, allows for “other natural persons” to also serve on boards, requiring that they make up at least 1/3 of all board members for large statutory SOEs. The amendments also establish minimum general qualifications for all board members, including the absence of any relationships with other legal persons that could cause a conflict of interest. Other amendments of note include an overview of the procedure by which board nominations are to take place in statutory SOEs, notably requiring ownership entities to define specific selection criteria and publish board positions according to a pre-determined timeline. At the time of writing, the boards of all statutory SOEs were entirely composed of public officials and CEOs. The Law requires that independent board members be selected for statutory SOEs by 1 September 2015, according to a procedure outlined in a June 2015 government resolution. The foreseen selection procedure involves a seven-person selection commission, composed as follows: one member nominated by the Prime Minister of Lithuania, one nominated by the Ministry of Economy, one nominated by the Ministry of Finance, one nominated by the GCC and another three nominated by the institution exercising ownership rights. The Minister of Economy approves the list of permanent members of the selection commission. Implementation will have to be assessed as boards are re-elected.

(ii) Amendments to the Law on Companies

The Law on Companies was amended on 5 June 2014. Among the provisions perhaps most relevant to SOEs, all public LLCs are now required to establish either a supervisory or a management board. Prior to the amendments, neither public nor private limited liability companies were required by law to establish either type of board. Importantly, this provision did not come into force until July 2015. The amendments also allow for companies that have not established supervisory boards to assign, via the articles of association, certain specific supervisory functions to the management board. These amendments appear designed to curb the powers of the CEO, allowing the following functions to be assigned to the management board: supervising the CEO and providing feedback on the CEO's activities to the general meeting; calling into question the suitability of the CEO if the company is lossmaking; and submitting proposals to the CEO to revoke his or her decisions that contradict the law or the company's articles of association.

(iii) Amendments to the Law on the Manager of State Assets Managed on a Centralised Basis

In March 2015, the Law on the Manager of State Assets Managed on a Centralised Basis (first adopted in March 2014) was amended, notably transferring the function of coordinating SOE governance policy, previously undertaken by the GCC (a division of the State Property Fund under the Government), to the Bank of Property under the Ministry of Finance (the staff of the GCC was also transferred to the Bank of Property). The Ministry of Economy is still responsible for formulating SOE governance policy, while the Bank of Property is responsible for ensuring and monitoring its implementation. The division of responsibility between the two entities may need to be clarified.

(iv) Amendments to the Law on Forests

Amendments to the Law on Forests passed by the Lithuanian Parliament in May 2015 explicitly established the preservation of the 42 existing state-owned forestry enterprises, to prevent any reorganisation that might lead to a smaller number of state forestry enterprises. President Grybauskaitė attempted to veto the amendments, but they passed with 103 votes in favour, 8 against and 4 abstentions. The amendments were reportedly the subject of intense lobbying from representatives of the forestry enterprises. According to interviews with non-governmental stakeholders, resistance to reorganisations within the state-owned forestry sector reflect in part concerns related to potential loss of local employment and business linkages, as well as a broader sentiment that corporatisation could be a “slippery slope” leading ultimately to divestment of state assets.

(v) Amendments to the Ownership Guidelines

The Ownership Guidelines – which have the status of a Government Resolution – were amended in June 2015, notably excluding statutory SOEs from the provisions related to board composition, candidate selection criteria and nomination procedures. Changes were reportedly made in order to maintain consistency with the previously cited amendments to the Law on State and Municipal Enterprises and the supporting Government resolution outlining the selection procedure for the boards of those enterprises. In brief, the changes essentially mean that the state ownership entities of statutory SOEs (even large ones) are no longer required to respect the Ownership Guidelines’ provisions concerning the minimum proportion of independent members, the maximum proportion of employees on boards, or the criteria for independence.

c. *Prospective reorganisations in the transport sector*

According to information provided by the Ministry of Transport and Communications, there are plans to create a holding company for the state-owned transportation and telecoms companies, which are currently all directly owned (or, in the case of state enterprises, under the management of) the MoTC. A related draft decree has reportedly been submitted to the government. The holding company would, in a first phase, bring together the fully corporatised SOEs under the purview of the MoTC, including notably Lithuanian Post, Lithuanian Railways and Lithuanian Shipping Company. This development is potentially of some concern because, first, the Ministry’s portfolio of enterprises is wide-ranging and there appears to be no strong corporate rationale for consolidating them. Secondly, according to the regulations currently in place, any corporate governance or transparency standards currently imposed on SOEs through the government’s related guidelines would no longer explicitly apply if the concerned SOEs were to become subsidiaries within a holding company. As these changes are still under discussion, they are provided for information only and are not taken into account in the assessment that follows.

Part B

ASSESSMENT OF LITHUANIA RELATIVE TO THE SOE GUIDELINES

By way of introduction, it should be noted that attempts to evaluate the quality of corporate governance of SOEs in Lithuania have been undertaken in recent years, notably by the non-governmental Baltic Institute of Corporate Governance (BICG) in a 2012 report on SOE governance in the Baltic states and, as mentioned in section A.7.a, by the EU Commission as part of Lithuania's convergence programme. Assessments by both pointed to a number of non-trivial shortcomings in the corporate governance arrangements of Lithuanian SOEs, while the latest country-specific report by the EU Commission (2015) rated Lithuania's recent progress on SOE reform as "substantial".

The present report assesses Lithuania's SOE governance arrangements without prejudice to these and other opinions expressed by state and non-state actors prior to 2015. This section reviews Lithuanian practices relative to the Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises (OECD 2015) that was adopted by the Council in 2015⁵⁰. It builds on the landscape provided under Part A and refers successfully to the different chapters of the SOE Guidelines, referencing their relevant annotations where appropriate.

1. Rationales for state ownership

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

a. *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 rationales for state ownership in Lithuanian SOEs can be gleaned from relevant provisions of the Law on the Management, Use and Disposal of State and Municipal Assets. The Law does not explicitly say that SOEs must create value for society. However, it does outline specific criteria that must be fulfilled in order to justify state ownership in limited liability companies.

According to the Law, the Government's decision to invest assets in a new limited liability company must be economically and socially justified and must fulfil at least three criteria among a list of criteria which includes: the fulfilment of strategic or national security interests; the development of infrastructure in the public interest; and contributions to increased economic growth or dependence, among others (see Box 5 for a full list of criteria). However, it should be kept in mind that these provisions apply to investment in new corporate assets – they are not necessarily applied to corporate assets that have long been in state ownership. Concerning statutory SOEs, the Law on State and Municipal Enterprises states that their purpose "shall be to provide public services, to manufacture products and to carry out other activities with a view to satisfying public interests"(Article 2.3).

Box 5. Criteria for state investment in a new limited liability company

The Law on the Management, Use and Disposal of State and Municipal Assets states that in order for the Government to invest its assets in a new limited liability company, the investment must fulfil at least three of the following criteria (Articles 22.2.1 through 22.2.9):

- 1) The investment fulfils Lithuania's obligations originating from international agreements;
- 2) The investment is made in companies or equipment that play a strategic or important role for national security;
- 3) The investment spurs Lithuania's economic growth and strengthens economic independence and/or international competitiveness;
- 4) The investment will seek to achieve the country's economic and social cohesion within the European Union or on a regional or global basis;
- 5) The investment will create or develop infrastructure that is beneficial for society (spur internal competition; improve quality, availability, and accessibility of public services);
- 6) The investment will create an added-value and will ensure the economic sustainability of this added-value-activity;
- 7) The investment will bring not only profit (revenue), but also a social result (education, culture, science, environment, health and social protection, etc.) or will ensure a more efficient execution of the state functions;
- 8) The investment will be made in economic and social innovations, development of the knowledge economy, creation of high technologies, if it is one of the key purposes of the object that is being invested in;
- 9) The purpose and sought result of the investment are established in the legal acts which implement strategic planning documents.

Source: Questionnaire response from the Lithuanian authorities and Law on the Management, Use and Disposal of State and Municipal Assets.

An additional consideration relates to the relative importance of effectiveness and efficiency. The rationales for investment in corporations provided by the Law mostly aim to ensure that the state acts for rational reasons and that it receives a measure of "value for money". In the absence of an evaluation of the outcomes of an alternative usage of the same resources it does not automatically follow that the Guidelines' recommendations regarding efficiency and value maximisation are implemented.

b. 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 roles and responsibilities of those government offices involved in its implementation.

The Lithuanian authorities have developed an ownership policy in the form of the 2012 Ownership Guidelines (detailed in section A.4.b). The Ownership Guidelines outline the respective roles and

responsibilities of the main entities responsible for their implementation, notably placing responsibility for their implementation on state ownership entities (ministries and other public authorities), and responsibility for monitoring implementation on the entity carrying out the function of the Governance Coordination Centre (GCC), which is currently the Bank of Property under the Ministry of Finance.

While the Ownership Guidelines represent a definite improvement, some concerns arguably remain regarding the degree to which they are implemented in practice. The implementation of an ownership policy did, as mentioned earlier, occur during a reform process during which a centralisation of SOE ownership was strongly resisted by a number of line ministries. This, in turn, may give rise to questions about the degree to which the agreed policy is widely accepted and implemented on a whole-of-government basis.

c. 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.

The Ownership Guidelines were adopted by the Lithuanian Government. According to the Lithuanian authorities, all legal acts, including Government resolutions, are presented to the public for comments and opinion. The Ownership Guidelines are furthermore easily accessible to the general public online. They are notably published on the websites of the Lithuanian Parliament (<http://www.lrs.lt>), the Register of Legal Acts (<https://www.e-tar.lt/portal/index.html>) and the GCC (<http://vkc.turtas.lt/en>).

There is no fixed mechanism in place to ensure a regular review of the ownership policy. In the context of the present review this is not (yet) an issue as the policy was developed quite recently. However, as mentioned earlier the GCC is mandated to “prepare proposals for the Government and the Ministry of Economy regarding the improvement of the governance policy for SOEs”, by Art. IV of the Ownership Guidelines. The Ministry of Economy is designated by the Transparency Guidelines as the authority responsible for “formulating the good governance policy of [state-owned enterprises] and [...] coordinating the implementation of this policy”. Together these provisions would in principle allow for an ongoing, although informal, review of the state’s ownership policy by both bodies. Box 2 in section A.4.b reproduces the full mandate of the GCC.

d. 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 in section B.1.b above, SOEs are divided into three groups according to their national objectives. These groups (detailed in section A.2.a, Box 1) notably identify those SOEs that are expected to fulfil public policy objectives, effectively defining their rationales for state ownership. Enterprises in Group 1B are, in addition to seeking profits, expected to fulfil public policy objectives, such as the safeguarding of national strategic interests or national economic security, the implementation of strategic projects and the development of infrastructure. Those in Group 2 are expected to pursue non-commercial social or political objectives which other profit-making companies would refuse to perform or would require compensation to do so. As for enterprises in Group 1A, their rationales for state ownership are perhaps less evident. For those SOEs, the state expects primarily a growth in business value and a yield from dividends (or profit contributions for statutory SOEs).

There is no formal mechanism in place for the recurrent review of SOE objectives. The classification of SOEs according to their objectives is based on reporting by state ownership entities, which arguably may have an incentive to place some SOEs in Group 2 to avoid subsequent performance or governance requirements applicable solely to Group 1A and/or 1B enterprises. In practice, the review of SOEs' objectives does take place. For example, in June 2014 nine of the SOEs under the purview of the Ministry of Agriculture were reclassified, by Government resolution, from Groups 1A and 1B to Group 2. The reclassification of SOEs requires a Government resolution, but it is undertaken upon proposal from the line ministry.

SOEs' public policy objectives, or "special obligations" by national nomenclature, are in principle mandated by law. The nature and cost of special obligations must be disclosed by SOEs according to a 2013 amendment to the Transparency Guidelines. The accompanying Recommendation of the Ministry of Economy (Minister of Economy Decree of 20 December 2013) "On the Approval of the Recommendations on Identifying and Providing Information on SOEs' Special Obligations" defines special obligations as "functions performed by the SOEs, which the SOEs are obligated to carry out by law or another legal act, in order to ensure the implementation of specific social, strategic and political goals of the state". According to the Recommendation, an SOE is considered to be carrying out a special obligation if the following two criteria are met:

- The SOE is obligated by law or another legal act to carry out a function (offer a service, produce products or sell goods) which is not required to be performed by other market participants;
- The SOE has exclusive (monopoly) rights to carry out a function which, under normal market conditions, would not be or could not be performed by other market participants. These "normal market conditions" apply to: (a) the price of the service, production or goods; (b) objective quality requirements for the service, production or goods; and (c) its continuation and possibility for market participants to use the service, production or goods.

These criteria preclude a number of "informal" obligations that SOEs may be expected to fulfil (for example related to employment levels or local political or community causes), some of which could, for the purpose of the SOE Guidelines, be considered public policy objectives. Insofar as these informal obligations go unreported by individual SOEs and/or their ownership ministries, it cannot be concluded that SOEs' public policy objectives are unequivocally mandated by law and disclosed. The calculation of costs related to public policy objectives, and related funding arrangements, are discussed respectively in sections B.3.c. and B.3.d below.

2. The state's role as an owner

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

a. 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.

As outlined in section A.2.a., Lithuanian SOEs can take one of three legal forms:

1. Private limited liability companies;
2. Public limited liability companies; and

3. State enterprises (statutory SOEs).

Fifty-one SOEs are incorporated as public or private limited liability companies, and are thus obliged to operate under the same laws applicable to private companies, notably the Law on Companies. 86 statutory SOEs are not incorporated according to ordinary company law. Their legal form can be considered partially standardised since all statutory SOEs operate under one unified law, the Law on State and Municipal Enterprises. However, for those statutory SOEs that perform primarily commercial functions, and especially those in competition with private enterprises, the fact that they are not fully corporatised is not consistent with the recommendations of the SOE Guidelines.

A “simplification” of the legal forms of SOEs may also be taken to imply that there should not be a larger number of SOEs than what is needed for efficient operation. In this context it is preoccupying that Lithuania continues to maintain no less than 42 separate state-owned forestry enterprises and 11 road maintenance enterprises. The latter is formally motivated by the country’s regional structure (10 regions plus one state road network) but contrasts with most OECD countries which tend to have only one such firm, if (as is not always the case) the state acts as an enterprise owner in this sector. The large number of state-owned forestry enterprises (compared with just one SOE in this sector in neighbouring Latvia [OECD, 2014]) reflects historical traditions and development but the structure is apparently kept alive by ongoing political considerations, including at the local or sub-national level. It further raises concerns about the governance requirements of these companies because their dispersion in all cases maintains their individual size below the thresholds (Categories I and II according to the Ownership Guidelines) at which level higher standards are demanded.

No explicit specificities in SOEs’ legal status protect them from insolvency or bankruptcy procedures, or provide for differences of treatment of employees as compared to private enterprises (e.g. concerning remuneration, pension rights and job protection). However, the legal framework for statutory SOEs does differ from that of fully corporatised SOEs in a few important respects related to corporate governance:

- Since statutory SOEs manage state assets on behalf of the state, and are not legally the owners of those assets, creditors’ ability to initiate insolvency procedures against those SOEs, and access collateral, is arguably quite limited.
- Statutory SOEs may only establish unitary boards, while public and private limited liability companies can establish either unitary or two-tiered boards.
- For statutory SOEs, the power to hire and remove the CEO/manager is explicitly under the remit of the state ownership entity. This function is the responsibility of boards for limited liability companies (or the general meeting if neither a supervisory nor a management board is formed).
- The boards of statutory SOEs may include the CEO. For fully corporatised SOEs with unitary boards, the Law on Companies explicitly prohibits the CEO from serving on the board if the articles of association have accorded the board, among others, the function of supervising the CEO’s activities.
- The responsibility for approving the enterprise’s strategy falls to the state ownership entity for statutory SOEs, whereas this is the function of the management boards in limited liability companies (or the CEO if a management board is not formed).

b. 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.

Prior to examining in some detail the legal framework affecting SOEs' operational autonomy (below), a couple of points regarding the potential for political intervention in SOEs merit mention. First, as shown in 8 under section A.5.a., the boards of some of Lithuania's most economically important SOEs are in many cases predominantly composed of representatives of the ownership entity, and in some of the largest SOEs, of politically connected officials such as vice ministers. Secondly, for SOEs with unitary boards, the ownership entities are effectively given the explicit legal right to remove any and all board members prior to the expiry of their term of office, arguably introducing the risk that board appointments follow political cycles⁵¹. The nomination process for the board members of large fully corporatised SOEs would appear to introduce more structure and transparency, and is outlined in section B.2.f2 below.

(i) Fully corporatised SOEs

For fully corporatised SOEs, the legal powers of the state, and the extent to which it can intervene in day-to-day management, vary according to the board structure and composition. As mentioned, the majority of fully corporatised SOEs have unitary boards. For these SOEs, the Law on Companies requires management boards to "consider and approve: [...] the business strategy of the company [...] the management structure of the company and its employees", in addition to electing and removing from office the CEO (Art. 34.1 and 34.2). The Law also lists a number of explicit domains in which the management board is competent to take decisions (Art. 34).

Of note, the Law on Companies allows for a company's articles of association to require the approval of the general meeting for certain transactions (e.g. those outlined in Article 20, including increases or reductions in capital and distribution of dividends). This could in principle convey on the ownership entity a high degree of control over SOEs' operational autonomy. A recent study of the CEOs in Lithuanian SOEs found some, albeit not overwhelming, evidence of political affiliations and links with the electoral cycle in the top management of a number of companies (Baltic Institute of Corporate Governance, 2013).

(ii) Statutory SOEs

Concerning statutory SOEs, the Law on State and Municipal Enterprises accords state ownership entities the explicit right to approve enterprise strategy, appoint and remove the CEO and unitary board members (if formed) and select the auditor or audit firm (Article 4.4.8). Given that statutory SOEs can only have unitary boards, which must include civil servants, the legal framework arguably allows for non-trivial state intervention in the day-to-day management of SOEs.

c. Independence of boards

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

In respecting the independence of SOE boards, the annotations to Chapter 2, Recommendation C propose that when the state is a controlling shareholder, it has a legitimate right to nominate and elect board members without the consent of other shareholders. In exercising this right, the state should

avoid nominating an excessive number of board members from the state administration, and ensure that any civil servants nominated to SOE boards meet appropriate qualification standards. In this respect, the predominance of civil servants of the boards of most SOEs in Lithuania is of considerable concern, and should be borne in mind when reading the below sections.

(i) Fully corporatised SOEs

As further detailed in sections B.2.f and B.7.c, some mechanisms have been established to promote board independence, but most are limited to large, fully corporatised SOEs. Of note, the following requirements apply to fully corporatised SOEs in the largest size categories (I and II), as per the Ownership Guidelines: (i) the management board must comprise at least 1/3 independent members (according to independence criteria outlined in section B.7.d); (ii) the management board as an entity must include minimum financial and commercial expertise; and (iii) the selection process for board members must involve an inter-ministerial selection committee (outlined in section B.2.f2). All of these measures should contribute to increased board independence, but they are notably not applicable to statutory or smaller, fully corporatised SOEs. For the latter, in the absence of an independent selection committee responsible for nominating board members, ownership entities generally play this role, suggesting the SOE board members are probably not very independent from the state as an owner.

(ii) Statutory SOEs

Recent amendments to the Law on State and Municipal Enterprises allow for the presence of independent board members on statutory SOEs (see section A.7.b). However, in the absence of more explicit independence criteria, there is arguably scope for politicisation of “independent” board members. Furthermore, the analysis of the articles of association of Lithuania’s largest SOEs (section A.5.b) brings to light a number of potential barriers to board independence for statutory SOEs, linked to both the composition of boards and their role in approving transactions. Concerning their composition, the articles of association for the statutory SOEs examined explicitly state that the boards can only include the CEO and public officials of the ownership entity. Arguably for those SOEs, the ownership entity and the public officials which it employs effectively play the role of board, making it difficult to conclude that the state allows those SOE boards to exercise their responsibilities in an independent manner. Furthermore, boards are often mandated through the articles of association to approve relatively small transactions. This can effectively give the ownership entity a role in the day-to-day management of the SOE. This, coupled with the presence of vice ministers on the boards of several statutory SOEs, would suggest a high potential for politicisation, and for a low degree of independence.

d. 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.

Lithuania has not established a centralised ownership entity to exercise state ownership. As mentioned earlier, its decentralised ownership model consists of 12 ministries or ministerial departments and 7 other public institutions that exercise ownership rights in SOEs (see 3 in section A.2.b for an overview of the institutions exercising state ownership). With some exceptions, the state ownership function tends to be exercised by the governmental bodies that also regulate the relevant markets.

In the absence of a centralised ownership entity the GCC as well as the Ministry of Economy effectively serve a policy coordination function. As per the Transparency Guidelines, the Ministry of Economy is responsible for coordinating policies and guidelines related to SOE governance. As per the Ownership Guidelines (outlined in section A.4.b), the GCC is responsible for monitoring compliance with those policies and guidelines and preparing the state's aggregate report on SOEs. The GCC also exercises some level of policy coordination, for example through its mandate to provide technical advice, as requested, to individual ownership entities on such areas as the board self-evaluation process and working methods. Its mandate is reproduced in Box 2 under section A.4.b. The function of the GCC was previously exercised by a public institution under the Ministry of Economy, but has since been transferred to the State Property Fund (in 2012).

Important questions arise in connection with the resourcing of the coordinating function(s) as well as the relative effective influence of the government institutions involved in SOE ownership. Currently the staffing of GCC is five full-time employees, whereas (as mentioned elsewhere) the line ministries are expected to allocate one official to the oversight of each SOE in their portfolio. This is very low in international comparison. For example, five years ago when the OECD conducted a review of Israel, the country's ownership coordination entity – the Government Companies Authority – had 50 staff members to oversee the ownership of 68 SOEs (OECD, 2011). This raises concerns, first about whether the GCC is effectively able to fulfil the multiple roles assigned to it by the Ownership Guidelines; secondly, given the regulatory roles of the line ministries about the separation of ownership and regulation.

Additional questions relate to the ability of GCC to ensure implementation of relevant government decisions. Its main leverage (apart from raising issues via its aggregate reporting) consists of notifying the Ministry of Economy of its concerns about the conduct of SOEs or line ministries. Whether the Ministry takes corrective action may in practice depend both on political considerations and its administrative capacities. The fact that (as demonstrated below) the Ownership Guidelines, which have been approved by the whole of Government, have been only partly implemented in a number of cases does give rise to concerns in this respect. Other countries with coordination agencies have developed models that may serve as an inspiration for the Lithuanian government. For example, in Latvia recent legal amendments have called for the establishment of a Coordination Institution Council, composed of representatives of relevant line ministries and stakeholder groups, to review and endorse the Co-ordination Institution's draft guidelines before their approval. When a line Ministry or SOE board of directors disagrees with the opinion of the Co-ordination Institution over an SOE's medium term strategy or other significant operation influencing achievement of the strategy, the Council may review the decision and make a recommendation without the participation of the relevant Ministry. While the Ministry or SOE is not obligated to follow the recommendation of the Council, it may give the Coordination Institution and its recommendations a significant degree of leverage and visibility.

e. Accountability of the ownership entity

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

The Ministry of Economy, which plays (at least nominally) a policy coordinating function, is accounto the Government, which in turn is accounto Parliament. The GCC, which plays an advisory/monitoring function, is a unit of the Bank of Property under the Ministry of Finance, and therefore has less direct accountability to representative bodies. Individual ownership entities (i.e. ministries, ministerial departments and other public institutions), are held accounto the Ministry of Economy and the GCC for a number of reporting requirements, as per the Ownership Guidelines and the Transparency Guidelines. However, there is no formal requirement for ministries and other public

institutions to report to Parliament on the exercise of their state ownership function, or the activities and performance of the enterprises under their purview.

Box 6. Performance audit of forestry enterprises: Press release from the National Audit Office (2010)

23/04/2010: Public forests could give more benefit

“Activities of the most forest enterprises, which manage public forests, and of the Directorate General of State Forests coordinating their activities are not sufficiently effective,” says Deputy Auditor General Viktoras Švedas. “If the number of forest enterprises, which incur losses, keeps on growing further, they may not be able to carry out functions assigned to them,” he adds.

The audit report evaluating the effectiveness of the management of State-owned forests points out that the Lithuanian Forestry Policy and Its Implementation Strategy has not been updated since it was issued in 2002, therefore it does not take into account substantial changes in Lithuanian economy, which have occurred during the last eight years. Furthermore, as Government institutions still have not made the final decision on the optimum number of forest enterprises, the objective of the Strategy is not yet implemented: to reorganize and optimize State regulation system of public forestry. Auditors pointed out that directions of the National Forestry Policy had to be established by the Seimas; however, in 2002 they were established by the Minister of Environment, who thus exceeded his authority.

The NAO noted that Lithuanian forest enterprises use their resources with different effectiveness, therefore the price of timber sold by different forest enterprises differs by more than a third, and costs of its preparation differ by up to 42 per cent.

The NAO also found out that information system “Forest accounting”, development and introduction of which used LTL 2.5 million, was used insufficiently effectively. Although the information system was started to be used in the end of 2004, however, the Directorate General of State Forests, which commissioned the system does not yet use it, and forest enterprises use not all the functions of this system.

The NAO says that cadastral measurements of public forest land lots and registering them on behalf of the State, as well as transferring them to be managed in trust to forest enterprises fall behind schedule. If forest land and forest value is not accounted for in financial accounts, it will not be clear how much and how valuable property the State has.

The NAO gave recommendations to the Government to draft amendments of legislation ensuring that State-owned forests and land would be accounted for in financial accounts; it was also recommended to amend the Forest Law and establish directions of forestry policy. It was recommended to approve the forestry strategy, which would cover issues of development of management of forests and increasing of efficiency of activities, as well as to make decisions on optimum number of forest enterprises. The Ministry of Environment was recommended to evaluate the coordination and control of forest enterprises conducted by the Directorate General of State Forests. The Directorate General of State Forests was instructed to correct scope of cutting and selling of timber according to trends in forestry market and to start using the information system “Forest accounting”.

Source: Press released reproduced (with minor edits) as published on the website of the National Audit Office of Lithuania (2010) (http://www.vkontrole.lt/pranesimas_spaudai_spausdinti_en.aspx?id=17267)

The National Audit Office (NAO) of Lithuania may conduct performance audits of ownership entities and individual SOEs (as long as the state exercises ownership of at least 50% of shares).⁵² The NAO does not systematically conduct performance audits for the entire SOE sector. During the period 2009-2014, the NAO conducted ten performance audits related to SOEs. The NAO reports to the Lithuanian Parliament. Its Public Audit Programme is confirmed by the Auditor General, upon having

assessed recommendations given by the Parliamentary Audit Committee. A performance audit is defined by the Law on National Audit Office as an “evaluation of the economy, efficiency, and effectiveness of the public and internal administration activities of the audited entity” (Law on National Audit Office, Art.2). Box 6 provides an illustrative example of a performance audit conducted by the NAO in 2010, related to the state forestry enterprises. As shown below, its findings and recommendations apply not only to the performance of individual enterprises, but also to the activities of the ownership and regulatory entities (the Directorate General of State Forests and the Ministry of Environment). Assessing the impact of SOE performance audits is not the goal of this review. However, it bears mentioning that some of the more salient aspects of the NAO’s proposals – e.g. the suggestion to amend legislation to ensure that forestry land is accounted for in entities’ financial statements, or the recommendation to define the “optimal” number of state-owned forestry enterprises – apparently remain issues of contention. This raises questions regarding the extent to which the NAO’s performance audits can influence the actions or policies of individual ministries and/or the Parliament.

f. State’s exercise of ownership rights

F. The state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise. Its prime responsibilities include:

F.1. Being represented at the general shareholders meetings and effectively exercising voting rights;

(i) Fully corporatised SOEs

For fully corporatised SOEs, the procedures for state representation in general meetings, including the process for selecting authorised representatives to vote on behalf of the state, are laid out in the Ownership Guidelines. They specify that when the state is the sole shareholder, its written decisions are to be treated as equivalent to decisions by the general meeting of shareholders (Art. XV). Concerning the authorised representative, the Ownership Guidelines recommend – but do not require – that in selecting a representative to vote on behalf of the state, the authorisation should include, among others, information on (i) the date of the general meeting and term of authorisation; (ii) how the representative should vote on every issue on the agenda; and (iii) if relevant, any new draft decisions to be proposed at the general meeting and voted on. Only civil servants or employees of the State Property Fund (as of recently, the Bank of Property) can act as authorised representatives⁵³. A number of decisions may only be voted on by an authorised representative following a specific Government resolution, for example decisions to liquidate or reorganise a fully corporatised SOE.

One area where further scrutiny is warranted relates to the exercise of state ownership rights in the subsidiaries of SOEs under direct state ownership, which, as mentioned in section A.4.b, are not explicitly under the scope of the Ownership Guidelines’ provisions. By way of example, Lithuanian Energy, as the parent company of an energy group, is responsible for exercising the shareholding rights in its subsidiaries. While this is not necessarily a cause for concern (indeed it is common practice in company groups), it is something that should be monitored as a potential source of weakened governance or transparency standards among SOEs’ subsidiaries.

(ii) Statutory SOEs

Statutory SOEs are not required by law to hold general meetings, and since they can only be owned by the state, the question of voting rights is irrelevant. The Law on State and Municipal Enterprises offers some indication on how the ownership entity is to exercise its ownership rights. For example, Art. 4.6 requires that all decisions of the ownership entity be “executed in writing” (Art. 4.6).

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;

(i) Fully corporatised SOEs

Formal board nomination procedures are only in place for fully corporatised SOEs in the largest size categories (I and II). As mentioned earlier smaller SOEs are not required to establish boards. In those small SOEs that do have boards, the ownership entity nominates all board members on behalf of the state, and there are no specific nomination criteria or procedures.

The nomination procedures for board members of large fully corporatised SOEs (regardless of the type of board in place) are outlined in the Ownership Guidelines (Art. XVII). The process involves an inter-ministerial selection committee composed of the Minister of Economy, the Minister of Finance and the representative of the ownership entity (e.g. the Minister of Energy). The foreseen process can be summarised as follows: (i) the ownership entity identifies the need to appoint new board members and initiates the nomination process; (ii) the inter-ministerial selection committee agrees on the specific qualification requirements (if any) for board candidates; (iii) the GCC suggests candidates that match the committee's selection criteria, based on a list of candidates maintained by the GCC and (iv) the selection committee recommends its selected candidates to be voted for at the general meeting. If the ownership entity disagrees with the consensus of the other members of the selection committee, it can exercise a veto right, in which case the decision regarding the individual candidate is passed to the Government.

Importantly, according to the 2014 state aggregate report on SOEs, Lithuanian Energy was the only state-owned company with at least one board member nominated by the inter-ministerial selection committee. Lithuanian Energy and Lithuanian Mint were the only two companies to have undergone an open board member recruitment process. This raises doubts about the transparency of the board nomination processes in SOEs, and more generally the implementation of the Ownership Guidelines in this and other corporate governance areas.

(ii) Statutory SOEs

The nomination procedures for the board members of statutory enterprises are outlined in the Law on State and Municipal Enterprises. They can be summarised as follows: (i) the ownership entity outlines the special requirements for the position of board member (those in addition to the general requirements established by the Law, summarised in section B.7.c); (ii) within five days of the establishment of those special requirements, the enterprise publishes a notice on the electronic public notices system of the Register of Legal Entities; (iii) natural persons meeting the general and specific qualifications submit applications within 20 days of the public notice publication; (iv) within five days of that time limit, the SOE submits all applications received to the ownership entity; and (v) candidates are selected "in accordance with the procedure established by the Government" (Art. 10).

Furthermore, a June 2015 Government Resolution outlines the selection process for board candidates to statutory SOEs⁵⁴. It stipulates that candidates to the boards are to be selected by a selection commission which consists of seven members: one member is nominated by the Prime Minister of Lithuania, one by the Ministry of Economy, one by the Ministry of Finance, one by the GCC and another three by the state ownership entity (the authority exercising the state owner's rights and obligations). The latter three serve respectively as Chairman, Deputy Chairman and general member of the commission. The ownership entity may also nominate a non-specified number of advisory members to the commission (e.g. those with sector-specific expertise), who are not accorded

voting rights. The Minister of Economy approves the list of permanent members of the commission. This process arguably has the potential to become highly politicised.

The selection procedure as laid out in the Government resolution also outlines the timelines that must be respected by potential board candidates, and lists documentation that must be provided by applicants to an authorised person within the SOE. According to corporate representatives interviewed for this review, in practice the application procedure for interested board candidates for statutory enterprises has in some cases been burdensome, leading to the rejection of applications that might otherwise have qualified, based on “administrative” issues (e.g. difficulties obtaining educational certifications for candidates residing abroad).

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;

Financial targets have been established for all SOEs pursuing primarily commercial or mixed objectives (categories 1A and 1B), in the form of a uniform 5% rate-of-return on equity requirement for the 2013-15 period. This requirement was set forth in Government Resolution No. 1511 adopted in December 2012. Forestry enterprises were excluded from this requirement, and instead required to earn an aggregate annual consolidated net profit equivalent to approximately USD 32 million for that same period.

Concerning capital structure objectives, the Ownership Guidelines require that once every three years, the GCC calculates for all SOEs the cost of equity capital and the resultant optimal capital structure, based on a methodology presented in an annex to the Guidelines. With the consent of the ownership entity, the GCC then submits this information to the Government for approval. No such capital structure targets have been set, but they are reportedly expected by end 2015.

No formal expectations concerning the state’s risk tolerance levels for SOEs have been established. However, in 2012, the Ministry of Finance and the Ministry of Economy published “Financial Risk Management Guidelines for SOEs”, outlining key principles that SOEs should follow when elaborating and implementing policies related to financial risk management. The guidelines were developed after the bankruptcy of Snoras bank in 2011 and the subsequent losses incurred by 34 SOEs that had accounts with the bank. Following the publication of the guidelines, a public audit was conducted to assess the quality of SOEs’ financial risk management. The public audit examined practices in 29 SOEs and resulted in recommendations from the NAO to the Government, ministries and the PPO. Box 7 reproduces the executive summary of public audit report’s conclusions. According to the report, approximately two years after the publication of the “Financial Risk Management Guidelines for SOEs”, nearly a third of the SOEs examined still had not established any corporate documents addressing financial risk management. It would therefore be reasonable to conclude that in a non-trivial number of SOEs, there is an implementation gap between the risk tolerance levels announced by the state, and the measures put in place within SOEs to respect them.

Box 7. Financial risk management in Lithuanian SOEs: Conclusions of the 2014 public audit

1. When managing monetary resources and conducting other financial transactions necessary for ensuring their business activities, state-owned enterprises are exposed to financial risks; however, the assessment of 29 enterprises during the audit found there is insufficient management of the financial risk in the state-owned enterprises, with too little emphasis laid on the development and implementation of the financial risk management policy:
 1. 31 per cent of the audited enterprises within the governance areas of the Ministers of the Interior, Agriculture, Health, Education and Science, Finance, and Culture do not have any corporate documents on financial risk management. Two enterprises within the governance areas of the Minister of the Interior and the Minister of Education and Science failed to approve financial risk management documents even after they had lost almost LTL 17 million due to the bankruptcy of bank Snoras.
 - The financial risk management process is not regulated in almost half of the enterprises:
 - Persons and/or units to be responsible for the preparation and submission of investment proposals and decision-making have not been designated in 48 per cent of the audited enterprises;
 - No accountability to the senior management for investment has been provided for in 44 per cent of the enterprises.
 2. 28 per cent of the enterprises have not determined the financial instruments for investing their temporary idle funds.
 3. Financial risk management limits have been set only in enterprises which have an approved financial risk management document.
 4. The enterprises have not been sufficiently diversifying their financial resource: 31 per cent of the audited enterprises have not been diversifying, or have been inadequately diversifying, their financial resources by economic entities.
2. It is not clear how to apply the Law on Public Procurement in managing financial risk and purchasing banking and investment services, therefore, enterprises do not always follow the requirements of this law.
3. The Law on Public Procurement and the Methodology for Estimating the Value of Public Procurement do not indicate how the purchase value should be estimated when purchasing banking and investment services and generating revenue. Therefore, the enterprises have not been classifying investments in fixed-term deposits as services subject to the provisions of the Law on Public Procurement, or choosing a wrong method of procurement.
4. It is difficult for enterprises to evaluate changes in the condition of banks and the credibility of commercial banks in due time because it is not always clear whether the credit risk indicators are relevant: not all credit risk indicators of the bank are publicly available and not all banks indicate the credit rating and/or the date of its approval.

Source: National Audit Office of Lithuania (2014), "Financial Risk Management in State-Owned Enterprises and Public Establishments: Executive Summary of the Public Audit Report", 30 June 2014. Available here: http://www.vkontrole.lt/pranesimas_spaudai_en.aspx?id=18067.

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;

The Transparency Guidelines are the main document establishing a reporting system that allows for regular monitoring and assessment of SOE performance. Compliance with applicable corporate governance standards (i.e. those required by the Ownership Guidelines) is assessed by the GCC, according to a clearly defined mandate and scheduled reporting procedure. The GCC is notably mandated to “summarise the governance practices of SOEs, develop methodological recommendations and present them to the authorities representing the state” (Art. IV). Together, these documents notably result in the yearly publication of the state’s annual aggregate report on SOEs, which includes information on SOEs’ financial performance as well as aggregate information on the quality of SOEs’ corporate governance. The specific reporting requirements applicable to SOEs are discussed in greater detail in section B.6.a.

Importantly, the reporting requirements laid down in the Transparency Guidelines are not mandatory for SOEs, which are requested to either comply with the standards or explain their reasons for non-compliance. This is formally justified by comparison with the transparency rules applied to listed companies (which are issued on a comply-or-explain basis), but in comparison with a number of OECD countries this is a non-standard practice. If the state formulates standards of corporate transparency then it would normally expect the companies that it controls to implement these standards without the option of non-compliance.

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;

The Transparency Guidelines constitute the state’s disclosure policy for SOEs. They are applicable to all SOEs, regardless of legal form or size, which are required to respect their provisions on a “comply or explain” basis. The Transparency Guidelines clearly list all financial and non-financial information that SOEs must disclose publicly. Regarding the channels for public disclosure, SOEs are required to publish their annual – or for large enterprises, quarterly – reports online, on the websites of either the enterprise or the ownership entity. The specific reporting requirements applicable to SOEs are discussed in greater detail under section B.6.a.

Regarding mechanisms for ensuring quality of information, a number of concerns suggest themselves. First, there are no apparent standards in place concerning the quality of explanations given by SOEs in case of non-compliance with the Transparency Guidelines. Secondly, although the Transparency Guidelines (which are comply-or-explain) call for the use of international accounting standards by SOEs, the state’s 2014 aggregate report noted that only 14 SOEs had used them in 2013. Finally, further raising questions about the quality of SOEs’ financial reporting, the audited statements of 14 SOEs received qualified opinions from their auditors (i.e. indicating that the auditor could not give an unqualified approval of the SOEs’ financial statements) at least twice during the three years preceding the publication of the 2014 aggregate report. It appears that the reasons for those qualified opinions are often related to concerns with asset valuation techniques. This could be due to the fact that national accounting standards – which are used by most SOEs – differ from international accounting standards with respect to asset valuation methods. To illustrate, Box 8 gives an overview of the main reasons for auditors’ qualified opinions in select SOEs.

Box 8. Reasons given for qualified opinions on SOEs' audited accounts

Giraitė Armament Factory: Concerns related to the valuation of stocks of slow-moving raw materials and other current assets.

Select SOEs under the Ministry of Agriculture: Concerns related to the scope of audit activity and doubts regarding the accuracy of entities' balance sheets.

Litgrid: No impairment test performed for tangible fixed assets owing to expectation of significant changes in the regulatory environment.

Amber Grid: Auditor unable to determine the long term impact of impairments to tangible fixed assets due to uncertainties related to the evolving regulatory environment in the gas sector.

Lesto: Concerns related to estimating the fair value of tangible fixed assets and the fact that no impairment test was performed on those assets.

Source : Information provided by the Lithuanian authorities

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;

(i) Fully corporatised SOEs

For fully corporatised SOEs, the Law on Companies gives the general meeting (for all intents and purposes the ownership entity) the right to “elect and remove a certified auditor [...] or an audit firm for the carrying out of the audit of a set of annual financial statements, set conditions for payment for audit services” (Art. 20.1). Presumably this would allow for a continuous dialogue between the ownership entity and the external auditors. The NAO, as already mentioned in section B.2.e above, can conduct performance audits of all SOEs. While it is an independent entity, there are no legal provisions preventing ownership entities from engaging in dialogue with the NAO.

(ii) Statutory SOEs

For statutory SOEs, the Law on State and Municipal Enterprises explicitly provides for the ownership entity to select the external auditor or audit firm responsible for auditing the financial statements (article 4.4.8). The auditor or audit firm must be selected in accordance with the procedure established by the Law on Public Procurement. The contract is then concluded between the auditor, the enterprise and the ownership entity (Art. 17.1). Presumably this would allow for a continuous dialogue between the ownership entity and the external auditor. Regarding the relationship with the NAO, ownership entities may petition for a performance audit of individual enterprises, but the decision rests with the NAO, which has the legal right to conduct state performance audits of all statutory SOEs.

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.

It would not appear that the state has established a clear board member remuneration policy that takes into account the dual needs of fostering the long-term interest of the enterprise and attracting qualified professionals. However, a recent Government Resolution sets clear limits on the salaries of key executives of both statutory and fully corporatised SOEs⁵⁵. (For the statutory SOEs, the limits are mandatory, while for fully corporatised SOEs the limits are purely recommendations, since executive remuneration is the legal purview of the board.) Furthermore, the Ownership Guidelines contain recommendations concerning maximum remuneration as a proportion of CEO salary, applicable to the board members of fully corporatised SOEs. As for statutory SOEs, the Law on State and Municipal Enterprises includes similar proportional limits on the remuneration of board members. These are described in further detail below.

The fact that the recommended (or legally imposed) board member remuneration levels are linked to CEO remuneration is not without consequence. CEO remuneration itself is regulated by Government Resolution No. 1318 (14 October 2009) which divides all SOEs – regardless of their legal form – into four size categories and sets CEO remuneration limits accordingly.

According to information provided by corporate practitioners, insufficient remuneration for executives and board members poses a challenge to attracting qualified professionals to the boards of Lithuanian SOEs. Some even posit that the very reason for the establishment of management boards in some SOEs could be that it allows executive management to access an additional source of income to augment their total remuneration.

(i) Fully corporatised SOEs

The Ownership Guidelines recommend that the remuneration of board members for all fully corporatised SOEs be a fixed amount (without a variable component) not exceeding $\frac{1}{4}$ of the CEO's total remuneration, or $\frac{1}{3}$ for the chairperson of the supervisory board. They further recommend that any potential bonuses be discussed at the beginning of a board member's term of office, that they be based on clear objectives and criteria, and that they not exceed the same proportional thresholds as those recommended for fixed remuneration. Finally, they recommend that a board member's remuneration be reduced or discontinued if he or she does not attend meetings or vote on decisions.

(ii) Statutory SOEs

The Law on State and Municipal Enterprises states that “for their work on the board, board members shall be remunerated from the enterprise's funds in accordance with the procedure established by Government”. It also limits the remuneration of board members to $\frac{1}{5}$ of the average monthly salary of the CEO (Art. 10.17). Given that civil servants are prohibited by the Law on Civil Service from receiving remuneration for their board duties, the limitations on remuneration apply only to any independent board members of statutory SOEs⁵⁶.

3. State-owned enterprises in the marketplace

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

a. 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 noted earlier (section A.2.b), under the current SOE framework, there is no clear overall separation between the state's ownership function and other functions that can influence conditions for Lithuanian SOEs. In many cases, ministries that are responsible for sectoral policy and/or regulation also exercise ownership in SOEs that operate in the relevant markets. Some degree of functional separation occurs in markets where there is an independent sectoral regulator, but most regulation bearing on SOEs is the responsibility of ministries and their subordinate institutions.

The Ownership Guidelines require that state ownership entities establish separate units to undertake, respectively, the functions of state ownership and of sectoral policy development and implementation. They further recommend – but do not require – that any civil servants employed by an ownership entity and involved in sectoral policy functions do not serve on the boards of SOEs operating in the relevant market. In practice, SOE boards do in a number of cases include vice ministers from the state ownership entity, which would appear to go against the spirit of relevant provisions of the Ownership Guidelines (see 8 under section A.5.a for an overview of the board composition in the largest SOEs). As an example, within the Ministry of Energy, ownership policy is carried out by the legal division while regulatory policy is carried out by the relevant sectoral divisions (e.g. oil and gas division, electricity sector division).

b. 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.

SOEs' stakeholders have, in principle, access to same legal and arbitration processes as those available to the stakeholders of private companies. Commercial disputes between SOEs are to be resolved through the court system and without special arbitration procedures. The rights of these and other stakeholders are discussed more generally in section B.5.a. As already mentioned, the fact that statutory SOEs do not legally own the state assets under their management could in practice limit the ability of lenders to access collateral in the case of non-payment.

c. 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.

The nature, scope and cost of SOEs' public policy objectives are not always well defined in Lithuania. Many SOEs are simultaneously engaged in commercial activities while also filling a public

policy function, and usually the two types of activities are not subject to separate accounting. However, a 2013 amendment to the Transparency Guidelines and an accompanying Decree by the Ministry of Economy (Minister of Economy Decree of 20 December 2013 “On the Approval of the Recommendations on Identifying and Providing Information on SOEs’ Special Obligations”) requires SOEs to identify and disclose the costs related to existing public service obligations (“special obligations” by national nomenclature). The nature of these “special obligations”, and the processes by which they are mandated, are discussed in section B.1.d.

As discussed in section A.3.b, the scope and cost estimations for SOEs’ special obligations were disclosed for the first time in the state’s 2014 annual aggregate report on SOEs, based on information provided by 137 individual SOEs and/or state ownership entities to the GCC. About half of all SOEs reported that they were subject to public policy objectives. SOEs’ public policy objectives had a net estimated cost of 72.1 USD mn, of which 16.3 USD mn was compensated by the state, resulting in total related losses of 55.8 USD mn that were compensated internally (by profits resulting from SOEs’ commercial activities). Of note, those SOEs included all 42 forestry enterprises and 11 road maintenance enterprises. Box 9 provides some examples of the special obligations performed by SOEs.

Overall, Lithuania’s practices toward identifying (and in some cases covering through budgetary allocations) the costs of public policy obligations go beyond, and are superior to, what is seen in most OECD countries. However, as mentioned earlier, the strong element of self-reporting does create a level of uncertainty about the accuracy of the information – except for the cases where actual subsidies have been the subject of audits by the state auditors. Also, the relatively low rates of return in the SOE sector may contribute to an impression that certain “informal obligations” (e.g. in terms of staffing, contributions to politically favoured causes, etc.) continue to exist and largely go unreported.

Box 9. Examples of special obligations performed by Lithuanian SOEs

Forestry enterprises are required to perform a variety of special obligations that are not placed on private enterprises, such as forest conservation and afforestation.

Smiltynė Ferry Terminal, in addition to its standard passenger and freight ferry service, is required to transport local inhabitants to and from the Curonian lagoon free of charge.

Jonava Grains, in addition to its main activity of grain and rapeseed processing and wholesale trade, is required to preserve the national grain reserves.

Source: Information provided by the Lithuanian authorities

d. Funding of public policy objectives

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

As mentioned in the previous section, the estimated costs related to public policy objectives were disclosed for the first time in 2014. Practices for funding the costs of public policy objectives vary and include the following:

- Some SOEs receive yearly funding to contribute to the delivery of their public policy activities. The amount of funding is partially linked to the foreseen scope or cost of public policy activities (e.g. road maintenance SOEs receive funding in accordance with foreseen works needed to deliver a certain level of service provision). If costs exceed funding amount,

the remainder is funded by cross-subsidisation from commercial activities. This applies, for example, to the road maintenance SOEs.

- Some SOEs are compensated for their public policy activities based on the actual cost of activities undertaken. This applies notably to Smiltynė Ferry Terminal and Lithuanian Post. For Lithuanian Post, the related costs are evaluated by an independent regulatory authority.
- Some SOEs are only partially compensated for their public policy activities and the remainder is funded by cross-subsidisation from their commercial activities. This applies to Lithuanian Railways, for which the nature and scope of public policy activities are agreed in advance via a contract with the state.
- Some SOEs are not compensated for their public policy activities, which are funded entirely by cross-subsidisation from commercial activities. This applies notably to the state-owned forestry enterprises. (According to the 2014 aggregate report, forestry enterprises did receive grants from the state, but they only represented about 3% of the cost of public policy objectives, meaning the large majority of PPOs were financed by commercial activities.)

In these respects Lithuania does not appear to differ materially from most OECD countries. For example, a large number of countries rely on regulation and legislation to ensure universal coverage and affordability in the utilities sector. This effectively implies a redistribution within these companies' client base rather than (as recommended by the SOE Guidelines) a transparent monetary compensation by the state for these obligations. However, it should be noted that the definition of public policy objectives employed by the Lithuanian authorities excludes a number of other potential sources of competitive distortion related to objectives other than profit maximisation, for instance maintaining SOE employment at levels that a private company could not viably pursue.

e. 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 discriminate between SOEs and their market competitors. SOEs' legal form should allow creditors to press their claims and to initiate insolvency procedures.

Lithuanian SOEs are not formally exempt from the application of general laws, tax codes and regulations. However, OECD experience indicates that statutory SOEs, in particular, may in practice benefit from some advantages arising from their less complete state of corporatisation. In the case of Lithuania the generally weaker corporate governance-related requirements that are placed on statutory SOEs could be a source of competitive advantage. On the other hand, their legal framework may also be a source of competitive disadvantage: as discussed in section B.3.f2 that follows, Lithuanian statutory SOEs, with some exceptions, are required by the Law on State and Municipal Enterprises to distribute 50% of profits to the state budget, an obligation that is not placed on fully corporatised SOEs.

f. 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.

Concerning the conditions for private debt financing, SOEs do not as a rule benefit from state guarantees that could motivate preferential rates by commercial lenders. The Law on State Debt explicitly identifies the types of loans for which state guarantees can be issued, which notably include: (i) loans that are used to finance state investment projects; and (ii) loans that are used to refinance existing state-guaranteed loans (Article 4). As a recent example, the Lithuanian Parliament granted a twenty-year state guarantee to Nordic Investment Bank for its commercial loan to Klaipeda Oil, in support of implementation of the Liquefied Natural Gas (LNG) terminal project⁵⁷.

Furthermore, concerning the conditions for public debt financing, Lithuania as a general rule does not have state-owned financial institutions (beyond a few entities with a very narrowly-defined commercial focus) that would provide loans to SOEs. As a member of the European Union Lithuania is obliged to follow the European State Aid regulations which place relatively strict restrictions on the amount of public money that can be granted to companies for purposes other than compensating for services in the general economic interest.

That said, large or systemically important SOEs will, like in most other countries, be perceived by commercial lenders as being backed by an “implicit guarantee” from their government owners. The Lithuanian authorities have taken no measures to eliminate the commercial advantages that SOEs may derive from this source of concessionary funding.

There is furthermore evidence to suggest that, at least in some cases, the relationship between SOEs is not based on purely commercial grounds. In a recent example, Lithuanian Shipping Company was on the verge of entering insolvency procedures in August 2015 following the sequester of several of its ships in foreign ports as collateral for unpaid debts. After some negotiations, the company's creditors agreed to postpone a loan payment, bringing the company temporarily out of insolvency and allowing it to withdraw from the bankruptcy proceedings (Box 10 provides highlights from related press reports).

Lithuanian Shipping Company has since received a EUR 3 million loan from Lithuanian Railways and a EUR 500 000 loan from Smiltynė Ferry Terminal. As of September 2015, the state-owned shares in Lithuanian Shipping Company have been transferred to Lithuanian Railways. All three SOEs are under the purview of the Ministry of Transport and Communications, whose Vice Minister chairs the boards of both Lithuanian Railways and Lithuanian Shipping Company and serves on the board of Smiltynė Ferry Terminal. According to the MoTC, three banks were approached to finance the distressed SOE, and none were willing to provide financing. This arrangement is therefore arguably not consistent with the guidance in Chapter III.F on the market consistency of financing conditions. At the time of writing, the terms of the loan have not been disclosed – although the Lithuanian authorities assert that the terms are consistent with commercial practices – and legal experts in Lithuania consulted for this report expressed uncertainty as to whether a decision to rescue an SOE with a loan by another SOE may lead to a reaction by the EU Commission.

Box 10. Lithuanian Shipping Company acquires loan from Lithuanian Railways: Press reports

According to press reports, the Lithuanian Minister of Transport and Communications announced on 22 July 2015 its intention to initiate bankruptcy proceedings for Lithuanian Shipping Company. Many of the company's vessels were being held in foreign ports as surety for the company's unpaid debts, altogether totalling EUR 20 million, of which EUR 1.5 million was owed to the company's employees. The company's shareholders had come to the decision to file for bankruptcy at the insistence of its supervisory board.

Lithuanian Shipping Company withdrew its application to initiate bankruptcy proceedings on 24 July, when the privately owned Swedish SEB Bank agreed to issue a EUR 3 million loan subject to a guarantee agreed by Lithuanian Railways. According to these reports, in compensation for the loan guarantee, the Ministry of Transportation and Communications agreed to reduce Lithuanian Railways' annual dividend payment to the state treasury for the same amount.

Reacting to the news, the Lithuanian Competition Council warned on 28 July that, if the SOE guarantee was issued at other than market terms, it would be deemed State aid and would require a prior approval of the European Commission. The government's plans also prompted sharp criticism from local finance professionals who questioned the financial rationale behind the rescue plan. On 4 August, Lithuanian Shipping Company announced via stock exchange that, rather than receiving a loan guarantee, it agreed to borrow EUR 3 million directly from Lithuanian Railways. On 6 August, the company called an extraordinary shareholder meeting with the intention of granting collateral to Lithuanian Railways*.

The option of creating a transport holding company, comprising notably Lithuanian Shipping Company and Lithuanian Railways, is reportedly being considered. On 21 September 2015, Lithuanian Shipping Company announced via the stock exchange that the Government of the Republic of Lithuania had decided to transfer its 56.66% share ownership in Lithuanian Shipping Company to Lithuanian Railways.

Note: * <https://newsclient.omxgroup.com/cdsPublic/viewDisclosure.action?disclosureId=671289&messageId=836402>

Sources : Baltic News Service (2015), "Analyst: attempts to rescue the LSC could complicate prospects for OECD membership", 11 September 2015 (in Lithuanian); DELFI News (2015), "Bankruptcy order against the Lithuanian Shipping Company", 22 July 2015; The Baltic Course (2015), "Bankruptcy proceedings of Lithuanian Shipping Company to be stopped", 24 July 2015; Competition Council of Lithuania (2015), "Opinion on State Aid for Lithuanian Shipping Company" (in Lithuanian), 28 July 2015; Verslo žinios (2015), "Analysts Bewildered for LSC Rescue" (in Lithuanian), 24 July 2015; Lithuanian Shipping Company (2015), "Notification on material event: Extraordinary general meeting of shareholders", 6 July 2015; Lithuanian Shipping Company (2015), "Notification on material event: Regarding the passing of shares of PC : Lithuanian shipping company", 21 September 2015.

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.

Most SOEs face the same tax treatment as private enterprises, according to the Lithuanian authorities. All SOEs notably fall under the purview of the Law on Corporate Income Tax, which applies a 15% tax rate on income (Article 5). However, statutory SOEs are subject to additional financial obligations which in practice can confer a competitive disadvantage compared to private companies. They are notably required by the Law on State and Municipal Enterprises to distribute 50% of profits to the state budget (with exceptions possible, e.g. if the enterprise is implementing a strategic project for the state) (Article 15). While this could be considered a dividend payment, the fact that, unlike dividends, the rate is non-negotiable makes it the functional equivalent of a tax rate that is higher than the 15% tax on income provided for by the Law on Corporate Income Tax. Other laws applicable to specific categories of statutory SOEs impose additional tax obligations. For example,

according to the Law on Forests, state-owned forestry enterprises must pay to the state budget an additional 10% turnover tax on income from the sale of round wood. This tax is not applicable to private forestry enterprises. According to information provided to the OECD Secretariat, payment arrears among non-financial SOEs in Lithuania do not commonly occur and/or do not exceed what would be permitted for a private firm.

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.

As discussed in section B.2.f3, SOEs with primarily commercial or mixed objectives (categories 1A and 1B) are required to earn rates-of-return on equity of 5% for the period 2013-15. They are therefore not, as rule, required to benchmark their rate-of-return targets against the returns obtained by competing private enterprises. What is more, to this point the SOE sector as a whole has been able to achieve only about half of this relatively modest target. As also mentioned earlier state-owned forestry enterprises are notably excluded from the 5% rate-of-return obligation and were instead required to achieve a minimum aggregate average net profit over the same period. From 2015, the GCC will reportedly calculate enterprise-specific rate-of-return expectations for all SOEs with primarily commercial or mixed objectives.

The state's dividend expectations for SOEs are well defined but not explicitly linked to those placed on comparable privately-owned enterprises. Fully corporatised SOEs are required to pay dividends of at least 7% of equity capital but not exceeding 80% of company net profits, according to Government Resolution No. 20 "On the Dividends of Company Shares Held by the State [...] and Profit Contributions from State Enterprises". Requiring SOEs to achieve a return on equity of 5% and then distribute 7% in dividends raises questions regarding the rationale behind those dual financial targets, and notably whether the state is attempting to withdraw excess capital from SOEs⁵⁸. Statutory SOEs are required to pay 50% of annual profits in the form of "profit contributions", according to the Law on State and Municipal Enterprises (Art. 15.6). Together, these documents outline a number of situations wherein a state ownership entity can propose a lower dividend (or "profit contribution") expectation than those outlined above, or wherein statutory SOEs can be exempt from the payment of a profit contribution. These include notably instances where:

- The statutory SOE is implementing a project of strategic national importance that is recognised as such by Government resolution or other legal act.
- The SOE is identified as an enterprise of strategic importance to national security (see 10 in section A.6.a for a list of the enterprises currently concerned).
- The prices or tariffs of goods or services sold by the SOE are regulated by law. This is effectively a means by which the state can finance public policy objectives via foregone dividend revenues.
- The resultant dividend levels would be so high as to cause the SOE's equity capital to fall below the authorised capital or mandatory reserve.

g. 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.

SOEs acting in a capacity as procuring entity or supplier for public procurement contracts are included in the scope of the Law on Public Procurement, which requires that public procurement procedures respect minimum standards of non-discrimination and transparency (more details in section A.4.c). As is the case with state aid, in this area the Lithuanian authorities are also subject to EU legislation imposing standardised rules aimed at safeguarding a level playing field in public procurement.

In practice, SOEs that act as prospective suppliers for public procurement can benefit from exemptions to the Law which could arguably jeopardise fair competition and transparent procedures. First, if an SOE procures goods or services from a subsidiary company that derives most of its commercial activity from the parent company, then the contract in question does not have to go through the standard procurement process. As outlined in Part A.4.c, the provisions of the Law relative to prospective suppliers for public procurement contracts notably exclude from their application any controlled subsidiary entity with a separate legal status that derives at least 80% of its turnover from the contracting authority. This would in principle apply to subsidiaries of SOEs that meet those requirements (Article 10.5). This could potentially lead to competitive distortions if SOE subsidiaries operate in competition with private enterprises (e.g. in the railway sector). Secondly, if the public procurement contract in question is below a certain value threshold, then it does not have to go through the standard procurement process (Article 86.3). This provision is not in itself a cause for concern, but one implication is that small statutory enterprises, e.g. in the forestry and road maintenance sectors, are not required to publish tenders.

4. Equitable treatment of shareholders and other investors

a. 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.

This and the following sections only apply to SOEs that are incorporated as public or private limited liability companies. Statutory SOEs by law may not include non-state investors.

(i) General legal framework for minority shareholders' rights

Concerning the general legal framework for shareholder rights, fully corporatised SOEs are subject to the relevant provisions of the Law on Companies, which guarantees certain rights to all shareholders, among others the right to: receive a share of profits as dividends; vote in shareholder meetings; receive information on the company; and access to redress in court (Articles 15 and 16). The Law also states that "Each shareholder shall have such rights in the company as are incidental to the

shares in the company owned by him. Under identical circumstances all holders of shares of the same class shall have equal rights and duties” (Art. 3).

Concerning minority shareholders’ rights, Art. 28 of the Law on Companies provides specific protections, notably requiring qualified majorities for certain decisions including amendments to the articles of association, dividend decisions and changes in capital structure. Art. 25 provides additional rights concerning the agenda of general meetings, e.g. giving shareholders that hold at least 1/20 of company shares to propose – at any time prior to or during the general meeting – new draft decisions on agenda items, on additional board candidates, and on the auditor or audit firm. It also allows those minority shareholders to supplement the agenda with additional items, provided the request for amendment is submitted no later than 14 days prior to the general meeting. Shareholders with less than 1/20 of shares may also have those rights if provided for in the articles of association.

The role of the state as shareholder differs materially from that of minority shareholders in eight strategically important SOEs identified as such in the Law on Enterprises and Facilities of Strategic Importance to National Security (see 10 in section A.6.a for a full list of those SOEs)⁵⁹. The Law stipulates that in those SOEs, “the capital may be held by private national and foreign persons conforming to the national security interests, provided the power of decision is retained by the State” (Art. 4.1). Article 7 of the Law provides that any investor seeking to acquire 5% or more of the votes in strategically important SOEs must be screened by a commission set up by the Government. Such a transaction can only take place if the commission concludes that the concerned investor meets criteria in line with national security interests.

(ii) Recent case examples involving minority shareholder rights

In one of those “strategically important” SOEs mentioned above– natural gas provider Litgas – the recent sale by Klaipėda Oil of its 33.33% shareholding in the company offers an illustrative example of a shareholding agreement that may have undermined minority shareholder interests. Litgas’ shareholders – majority state-owned Klaipėda Oil (owner of 33.33% of Litgas shares) and fully state-owned Lithuanian Energy (66.67%) entered into a shareholder agreement in 2013 by which Klaipėda Oil waived its voting rights in Litgas. The waiver of Klaipėda Oil’s voting rights was agreed in order to comply with the Third Energy Package of the EU requiring the separation of energy providers (Litgas) and infrastructure owners (Klaipėda Oil is the owner of a natural gas terminal)⁶⁰. Since no compensation to Klaipėda Oil for the waiver of voting rights was disclosed, the agreement might have negatively affected its shareholders. On 30 April, 2015 Klaipėda Oil announced its board’s decision to sell its shares in Litgas⁶¹.

To protect minority shareholders in cases of concentration of shares in single hands, similar provisions apply to SOEs as to private enterprises. Art. 31 of the Law on Securities⁶² obligates shareholders to announce a takeover bid upon crossing the threshold of 1/3 of all shares. Additionally, as per Art. 37 of the Law, the controlling shareholder may implement a mandatory takeover bid of all shares after having acquired 95% of the company, if announced within three months of crossing the threshold. Minority shareholders may equally request their shares to be purchased during the same timeframe. From 2005 to 2010 in cases of concentrated (95% or more) ownership both the controlling shareholder and minority shareholders had the right to call for a mandatory bid (controlling shareholder) or request that their shares be purchased by controlling shareholder (minority shareholders) at any time. Such developments are significant for SOEs since in most major SOEs with minority shareholders the State’s stake is around 95% or higher (Lietuvos Energijos Gamyba, LESTO, Lietuvos Dujos, LITGRID and Amber Grid).

According to corporate practitioners interviewed for this review, when the aforementioned right of minority shareholders to request the shares to be purchased at any time was still in place, it was notably called into action in 2006 by one of the shareholders of Lietuvos elektrinė (since 2011 part of

Lithuanian Energy). Due to disagreements over the use of the law retroactively (the State crossed the 95% threshold in 2003) as well as the valuation of the shares, the legal dispute between the minority shareholder and the state controlling shareholder lasted for almost a decade and reached the Supreme Court of Lithuania. In November 2014, in its final ruling the court obliged the State to implement the takeover bid of Lietuvos elektrinė shares⁶³. However, to date, this request has yet to be carried out by the state. At the time of writing, the draft government decree to approve the share buyback has been prepared by the Ministry of Energy and proposed to the Government⁶⁴.

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.

For certain information, shareholders have equal access to information by law. Art. 18 of the Law on Companies give all shareholders the explicit right to receive, within seven working days of a written request to the company, specific documents related to the company that do not contain commercial or industry secrets, including among others: the articles of association; the annual accounts, the minutes of the general meetings; the minutes of board meetings; and a list of all shareholders.

Simultaneous disclosure of information to all shareholders is not fully provided for by law, and in particular controlling shareholders can have privileged access to information not available to minority shareholders. Art. 18 of the Law on Companies stipulates that shareholders or groups of shareholders that hold or control more than half of the company's shares can access any and all company documents upon request and after signing a written pledge that they will not disclose any commercial secrets. The form of the written pledge is to be decided by the company⁶⁵. This means that in practice the state as a controlling shareholder can legally access company information that is not simultaneously available to minority shareholders. It also arguably increases the scope for the state's involvement in the day-to-day management of SOEs, although the provision applies equally to the controlling shareholders of companies that are not owned by the state. The confidentiality pledge does provide a measure of protection, but it does not guard the minority investors against the risk of privileged use of corporate information by the state.

Furthermore, the state as a controlling shareholder arguably has privileged access to corporate information compared to other shareholders owing to its board representation. According to corporate practitioners interviewed for this review, the minority shareholders of listed SOEs have little say in the nomination of board members, and all board members either directly represent the state shareholder or, in the case of independent board members, are delegated by the state. By way of example, the non-state shareholders of Lithuanian Shipping Company – although together they hold 43% of company shares – have no board representation. Given that the board is dominated by state shareholding representatives, including in some cases political appointees, the state as a controlling shareholder arguably has access to information discussed by the board that is not available to the minority shareholders⁶⁶. Although all board members in Lithuanian SOEs are expected to act in the interest of the enterprise and its shareholders (for fully corporatised SOEs), arguably those who are simultaneously employed by the state may have incentives that conflict at times with the interests of minority shareholders. See section B.7.a for further details on the legal duties of board members.

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

The annotations to Chapter 4, Recommendation A.3 suggest that SOE boards identify all their non-state shareholders, keep them duly informed about material events and general meetings, and when relevant engage in active consultation with minority shareholders. Concerning the identification of

SOEs' non-state shareholders, Art. 18 of the Law on Companies requires that upon a shareholder's request, a list of all shareholders be provided, including their full names, number of registered shares and address for correspondence, according to the most recent data available to the company. There is therefore not a specific requirement that companies maintain a full list of all shareholders.

As a recent example of active consultation with minority shareholders, according to interviews with representatives of the management of Lithuanian Energy, the company made efforts to actively engage with minority shareholders and the investor community to communicate the planned corporate restructuring and governance changes. This included presentations made to market participants outlining plans prior to their formal approval via shareholder meetings.

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 Chapter 4, Recommendation A.4 give some examples of mechanisms to facilitate minority shareholders' participation in fundamental corporate decisions such as board election. These mechanisms can include notably: the requirement that certain decisions take place through qualified majority rather than simple majority voting; and the possibility for shareholders to vote *in absentia*. As mentioned in section B.4.a, the Law on Companies does require a qualified majority vote (2/3 of all voting rights for the shareholders in attendance at the general meeting unless the articles of association provide for a larger qualified majority) for a number of key corporate decisions, such as amending the articles of association and restructuring or liquidating the company (Art. 28). Board elections are not subject to this qualified majority voting provision. Given that all listed SOEs in Lithuania are, at the time of writing, at least 2/3 owned by the state, this provision arguably has little impact on existing minority shareholders. Voting *in absentia* is also provided for in the Law on Companies: Art. 30 allows for all shareholders to vote in advance via ballot upon request. The ballot must be sent to the shareholder at least ten days prior to the general meeting and allow the shareholder to vote on the draft decisions of the general meeting as well as on the candidates for the board(s) and the audit firm. No listed SOEs allow shareholders to vote electronically, although this is apparently the case for all listed companies in Lithuania.

According to corporate practitioners interviewed for this review, in practice minority shareholders in SOEs are generally not very active in shareholder meetings or corporate decision-making. As alluded to already, this probably reflects in part the low and/or dispersed minority ownership of SOEs (most listed SOEs have less than 5% non-state ownership). Minority shareholders' involvement in key corporate decisions would arguably increase if SOEs augmented their free float on the stock exchange.

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

There are no special rules or procedures regarding the market consistency of transactions between the state and SOEs. However, the provisions and practices discussed in relation to Chapter 3 of the Guidelines (e.g. maintaining a level playing field; public procurement rules; the non-use of SOEs as a source of funding for other SOEs) would seem to go quite some way toward an implementation of this recommendation. An area which is not necessarily covered is the risk of what in the private sector is referred to as "tunnelling" – i.e. the transfer of corporate assets through vertical lines of corporate control with the state at the top.

An examination of the recent restructuring of the energy sector SOEs in Lithuania provides some insight into how the state and SOEs make efforts to ensure market consistency of related party transactions. In 2013, Lithuanian Energy commenced an extensive organisational and corporate governance restructuring to improve business efficiency and transparency. The corporate restructuring

notably involved consolidating most state-owned energy assets under the parent company and centralising all support activities. Key governance changes included the establishment of a two-tiered board structure of the parent company. Box 11 provides an overview of key transactions in the restructuring process, and efforts by Lithuanian Energy to alleviate minority investors' concerns regarding the terms of certain take-over transactions.

Box 11. Overview of transactions between SOEs in energy sector restructuring

Lietuvos Dujos (Lithuanian Gas, gas infrastructure): on February, 2014, 17.7% state-owned shares were transferred from the Ministry of Energy to Lithuanian Energy (LE); in May, 2014 LE increased its stake in the company from 17.7% to 96.6% by acquiring shares from E.ON Ruhrgas and Gazprom

Litgas (supplier of liquid gas): to satisfy the requirements of the EU Third Energy Package, in the Fall of 2013, 66.7% of shares of Litgas were transferred from Klaipeda Oil to LE

Lietuvos dujų tiekimas (supplier of natural gas): in accordance with the EU Third Energy Package requirements, the company was established by LE and took over the gas supply business from Lietuvos Dujos (Lithuanian Gas);

NT Valdos (real estate and transport services): in April 2015, LE acquired shares of the company from other energy companies (mostly LE subsidiaries) increasing its direct ownership from 0.03% to 100%;

Verslo Aptarnavimo Centras (procurements, accounting and human resources): the company was established in 2014 to improve the efficiency of supporting processes, such as public procurement, accounting and human resources; 51% of shares is owned by LE, while the remainder is split among its subsidiaries;

Energijos Tiekimas (electricity supplier): in March 2015, LE acquired 100% of the shares in the company from its subsidiary Lietuvos energijos gamyba (electricity producer);

Technologijų ir Inovacijų Centras (IT services) and **Duomenų Logistikos Centras** (data centre): in December 2013, data and IT services (formerly under one company) were unbundled, whereby Technologijų ir Inovacijų Centras took over the non-commercial functions (maintenance and service of energy sector IT) and Duomenų Logistikos Centras took over the commercial ones (data transmission and lease of data centres)

During Lithuanian Energy's restructuring process, when assets were not traded on public markets, independent external valuation services were reportedly used to determine fair value. Investors nonetheless expressed concern that some of the transactions ran counter to the interest of minority shareholders. For example, the Lithuanian Investors Association raised doubts regarding the fairness of the valuation of Lietuvos Dujos gas supply assets that were taken over by Lietuvos dujų Tiekimas, arguing that the assets were undervalued in the transaction. According to Lithuanian Energy, in response to these concerns, its management met with investor representatives to provide additional justifications for the valuation methods used. The following day, Lietuvos Dujos (the sale side in the transaction) issued a press release providing additional clarifications on the methods used to determine fair value.

In the case of the acquisition by LE of NT Valdos, Lithuanian Energy reportedly took into consideration the concerns of market participants, agreeing to pay the previous shareholders of NT Valdos a margin over the initial acquisition price if future profits exceeded an agreed threshold.

Sources : Lithuanian Energy, Nasdaq Baltic, interviews with investors, press releases from the Lithuanian Investors Association (<http://www.investuotoju.lt/?Article=5490>) and Lietuvos Dujos (<https://newsclient.omxgroup.com/cdsPublic/viewDisclosure.action?disclosureId=627304&messageId=778464>).

b. Adherence to corporate governance code

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

Listed SOEs are required to adhere to the Corporate Governance Code for the Companies Listed on Nasdaq OMX Vilnius on a “comply-or-explain” basis (outlined in section A.1). All SOEs, regardless of legal form or listing status, are required by the Transparency Guidelines to abide by the code’s information disclosure requirements, which are outlined in Box 12 below. Therefore SOEs are not explicitly required to respect the same standards of corporate governance as listed companies. However, the Ownership Guidelines include some provisions which mirror the governance standards of the national corporate governance code, e.g. with respect to board member independence criteria, which are generally applicable only to large SOEs.

Box 12. Key information disclosure standards of the national corporate governance code

10.1. The company should disclose information on:

- The financial and operating results of the company;
- Company objectives;
- Persons holding by the right of ownership or in control of a block of shares in the company;
- Members of the company’s supervisory and management bodies, chief executive officer of the company and their remuneration;
- Material foreseeable risk factors;
- Transactions between the company and connected persons, as well as transactions concluded outside the course of the company’s regular operations;
- Material issues regarding employees and other stakeholders;
- Governance structures and strategy.
- This list should be deemed as a minimum recommendation, while the companies are encouraged not to limit themselves to disclosure of the information specified in this list.

Source: Corporate Governance Code for the Companies Listed on Nasdaq OMX Vilnius

c. 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.

There are no explicit provisions in place to ensure that the nature and scope of SOEs’ public policy objectives are available to non-state shareholders at all times. Public policy objectives are reported to the GCC and disclosed to the public as of 2014, in accordance with the requirements set forth in the Transparency Guidelines. Therefore in principle, non-state shareholders would also have access to this information, but only after the carrying out of the public policy activities. The public disclosure of public policy objectives is discussed in sections B.1.d on “Defining SOE objectives” and B.3.c. on “Identifying the costs of public policy objectives”.

d. 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.

The Lithuanian authorities report that joint ventures and public-private partnerships are conducted either directly by the public authorities or through the involvement of SOEs. As an example, the Rail Baltica project – a new railway connection from Helsinki (Finland) to Warsaw (Poland) – is managed via a joint venture established through SOEs in all three Baltic countries, with co-financing from the EU (the joint venture concerns only the part of the project involving the three Baltic countries).

According to the Lithuanian authorities, in the case of any disputes that may arise over the course of the Rail Baltica project and that are not resolved by the general meeting or supervisory board, it is a foreseen that a new meeting of the relevant body be held within 14 days of the initial discussion, dedicated purely to the resolution of the matter. If consensus is still not reached, the matter is referred to a Steering Committee composed of top-level officials such as vice-ministers or chancellors of the relevant ownership ministry(ies). The Steering Committee’s decisions require full consensus and are compulsory for company management. In case the Steering Committee does not reach consensus within one month, it must meet again within four months. The intervening period allows for company representatives to propose solutions to the Steering Committee. This mechanism is complemented by an inter-ministerial task force consisting of representatives of the relevant ownership entities and involving observers from the EU Commission.

5. 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.

a. 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.

The state ownership policy (the Ownership Guidelines) does not stipulate any specific SOE responsibilities towards stakeholders. It does, however, establish certain disclosure requirements. SOEs are requested to report on material issues affecting employees and other stakeholders (see the following section B.5.b).

Applicable to all corporations, the Lithuanian Labour code establishes the rights of all employees, and is applicable to the employees of SOEs. It notably establishes employees’ right to information and consultation (Art. 47) and to authorise representatives to negotiate on their behalf with employers about “improvements in occupational safety and health”.⁶⁷

b. 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.

All SOEs are required to report on “material issues regarding employees and other stakeholders”, as per the information disclosure standards of the corporate governance code for listed companies (which, as outlined in section B.4.b., SOEs are required by the Transparency Guidelines to respect). The code further recommends that companies disclose “information about the links between the company and its stakeholders, including employees, creditors, suppliers, local community, as well as the company’s policy with regard to human resources, employee participation schemes in the company’s share capital, etc.” (Art. 10.4). Again, it must be kept in mind that the Transparency Guidelines are implemented on a comply-or-explain basis, and it is not clear to what extent they are applied by individual SOEs. According to the Lithuanian authorities, 110 SOEs report regularly on stakeholder relations. Most reporting relates to relations with employees, while the largest SOEs also report on broader stakeholder relations.

c. Internal controls, ethics and compliance programmes

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

There is no general requirement for the boards of SOEs to develop internal controls, ethics or compliance programmes specifically relating to the prevention of fraud and corruption. Internal control systems are required for fully corporatised SOEs, but not for statutory SOEs (details below).

(i) Fully corporatised SOEs

For fully corporatised SOEs, the Ownership Guidelines require that state ownership entities “ensure that an effective internal control system is put in place” which monitors, among others, “compliance with contractual and other obligations to third parties and the management of all related risk factors” (Art. XII). The Ownership Guidelines further require that state ownership entities ensure SOEs’ observance of the sections of the Law on Internal Control and Audit relating to internal control.

Large fully corporatised SOEs (categories I and II) are further required by the Ownership Guidelines to establish either an audit committee or an internal control committee. Of note, all listed companies, including listed SOEs, are required to establish audit committees which, under the Law on Audit, must monitor the efficiency of internal control and risk management systems.

(ii) Statutory SOEs

Statutory SOEs are not subject to any specific requirement to establish internal controls, ethics or compliance programmes or measures. However, the Law on State and Municipal Enterprises does require that the annual reports of statutory SOEs include information on “the internal control system implemented in the enterprise” (Art. 16.2).

d. 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 government does not communicate any specific expectations regarding the responsible business conduct of SOEs. The Transparency Guidelines recommend that all SOEs disclose information on any social or environmental policies.

e. Financing political activities

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

The sources of funding for political parties in Lithuania are explicitly limited by the Law on Political Parties to the following: membership fees; state budget appropriations; money received from “other activities” (e.g. publishing, political and cultural events); bank loans and interest on bank funds; one percent of the annual income tax of any Lithuanian resident who voluntarily allocates it; and campaign donations from individuals that have the right to donate to political parties (Art. 19).

6. Disclosure and transparency

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

a. Disclosure standards and practices

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

(i) Disclosure standards defined by the Transparency Guidelines

The Transparency Guidelines detail the disclosure standards applicable to all SOEs. Before examining the content of their individual provisions (detailed in the following sections), some general observations on their nature and scope of applicability merit mention:

- The Transparency Guidelines are explicitly applicable to all SOEs, regardless of their size, sector of activity or legal form. However, by national definitions, only SOEs under direct state ownership (and not their subsidiaries) are explicitly within the Transparency Guidelines’ scope of applicability. While parent companies would be required to include consolidated financial information on their subsidiaries, the latter arguably face less stringent disclosure standards concerning their non-financial performance.
- In addition to the SOE-specific disclosure standards detailed in the Transparency Guidelines, all SOEs must also comply with the provisions of the national corporate governance code related to information disclosure (Principle 10 of the code, summarised in Box 12 under section B.4.b, and other provisions throughout the code that relate to information disclosure).
- SOEs must abide by the provisions of the Transparency Guidelines on a “comply-or-explain” basis. In case of non-compliance with any provisions, no explicit standards for the quality of explanations have been established. (By way of example, Lithuanian Railways and the state-owned forestry enterprises do not comply with International Financial Reporting Standards [IFRS] and instead use the national Business Accounting Standards. The

Directorate General for State Forests reports that the reason for using national accounting standards is that IFRS require extensive disclosure of financial instruments, which are not used by the forestry enterprises).

- The frequency of required reporting is higher for large SOEs. Annual reports⁶⁸ and financial statements are required of all SOEs, while large SOEs (those in categories I and II) must also produce quarterly reports and financial statements.
- All reports and financial statements must be made available on SOEs' websites, or in the absence of one, on the website of the relevant ownership entity.

(ii) Disclosure practices of select large SOEs

Art. 16 of the Transparency Guidelines outlines that SOEs should keep their accounts in accordance with international accounting standards – a rule which, as mentioned, is implemented on a 'comply or explain' basis⁶⁹. According to the GCC, in practice only nine SOEs out of the total portfolio keep their accounts in accordance with international accounting standards. Among the 14 largest Lithuanian SOEs (including, for example, Lithuanian Railways and Klaipėda Seaport Authority), six still use national accounting standards. According to government representatives and professional auditors interviewed in the context of this review, the national Business Accounting Standards are in line with EU directives and broadly reflect IFRS.

However, there are some exceptional instances in which the application of national standards differs materially from IFRS, primarily to remain consistent with other laws regulating the ownership of strategic state assets. This concerns notably: (1) the state-owned forestry enterprises, which are not required to include the value of forests in their financial statements as per the Law on Forests, even though the enterprises derive economic benefit thereof; and (2) the state-owned road maintenance enterprises, which must, according to Business Accounting Standard Principle 12, include the value of roads in their balance sheets as non-current tangible assets, even though they do not generate revenue for the enterprises. The National Audit Office recommended in 2010 that the state forest enterprises change their accounting practices to reflect the value of state forests in their balance sheets⁷⁰. This issue is reportedly under discussion by the Government and Parliament.

By international comparison the Lithuanian application of transparency rules on a comply-or-explain basis appears rather non-standard. Most governments would request that the SOEs they control meet certain disclosure standards without the option of refusal. In addition to creating concerns about the degree of transparency in the Lithuanian system it also gives rise to additional questions about the conduct of state ownership on a whole-of-government basis (as discussed earlier): the comply-or-explain clause gives rise to suspicions that part of the purpose may have been to allow individual line ministries discretion to select their own standards of corporate transparency.

An examination of the 2014 annual reports of 14 large Lithuanian SOEs (14) finds that measured against the standards of the SOE Guidelines, most implement sound disclosure practices in the basic areas of corporate disclosure (i.e. enterprise objectives, financial and operating results and financial assistance received from the state). However, some non-trivial gaps appear to persist in other important areas of corporate disclosure, notably concerning the remuneration and selection process of board members; the disclosure of material foreseeable risk factors and measures taken to manage such risks; and (for four large SOEs examined) information on issues regarding relations with employees and other stakeholders. Specific standards and practices in these areas, against the relevant sub-Guidelines, are detailed further in the sections that follow.

Table 14. Fulfilment of disclosure requirements by 14 large SOEs

Disclosure requirements	Lithuanian Railways	Lithuanian Energy	Lithuanian Post	Lithuanian Airports	Klaipeda Oil	Lithuanian Oil Products Agency	Visagina Energy	Centre of Registers	Regitra	Lithuanian Radio and Television Centre	Lithuanian Shipping Company	Klaipeda Seaport Authority	EPSO-G	Air Navigation
Accounting standards	BAS	IFRS	IFRS	IFRS	IFRS	BAS	BAS	BAS	BAS	IFRS	IFRS	BAS	IFRS	IFRS
Clear statement of enterprise objectives and fulfilment	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Enterprise financial and operating results	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Governance, ownership and voting structure	Not comprehensive	YES	YES	Not comprehensive	YES	YES	YES	YES	Not comprehensive	YES	YES	YES	YES	No
Board member and key executive remuneration	Only average salary of key executives	Only average salary of key executives	Only average salary of key executives	No remuneration policy	YES	No remuneration policy	No remuneration policy	No remuneration policy	Only average salary of key executives	Only average salary of key executives	No remuneration policy	No remuneration policy	Only average salary of key executives	No remuneration policy
Board member qualifications, selection process, roles on other companies and independence	Just names and roles on other companies	YES	YES (independent members are not marked)	Just names and roles on other companies	YES	No board	No board	Just names and roles on other companies	Just names and roles on other companies	Just names and roles on other companies	YES (independent member are not marked)	Just names and roles on other companies	No board	NO
Material risk factors and measures taken to manage	Only financial risk	YES	YES	Only financial risk	YES	NO	NO	YES	NO	Only financial risk	YES	NO	YES	Only financial risk
Any financial assistance received from the state	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Any material transactions with the state and other related entities	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Employee and other stakeholder issues	YES	YES	YES	Not comprehensive	YES	NO	YES	YES	Not comprehensive	Not comprehensive	YES	Not comprehensive	NO	YES

Source: 2014 annual reports, assessment conducted by the Baltic Institute of Corporate Governance. Note: Enterprise names based on unofficial translations by the OECD Secretariat.

A.1. [Examples of such information include:] 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);

All SOEs' annual reports must include "information on their business strategy and objectives (financial and non-financial)" and the extent to which they have achieved those objectives (Transparency Guidelines, Art. V). SOEs are also explicitly required to publicly disclose the "objectives and tasks set by the authority representing the state" (i.e. the ownership entity) (Transparency Guidelines, Art. IV).

According to the GCC, all SOEs in practice disclose their financial and non-financial objectives in their annual management reports or annual activity reports. The examination of the contents of annual reports outlined in 14 above finds that all of the largest SOEs have published comprehensive statements on their objectives and implementation.

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;

All SOEs are required to disclose their "main financial indicators describing the activities (profitability, liquidity, and asset utilisation)" and changes during the preceding three years (Transparency Guidelines, Art. V). As previously outlined (see section A.3.b) all SOEs are also required to disclose information on the nature and costs related to their public policy objectives, in accordance with the definitions and methodology provided in a related ministerial resolution (Minister of Economy Decree of 20 December 2013 "On the Approval of the Recommendations on Identifying and Providing Information on SOEs' Special Obligations"). In practice, not all SOEs publish information on the costs associated with their public policy objectives, and in fact this does not contradict the Transparency Guidelines, which do not specify the type of information that SOEs must disclose on PPOs. SOEs do, however, provide cost estimates concerning their PPOs to the GCC in the context of the state aggregate reporting process.

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;

The Transparency Guidelines do not explicitly require SOEs to publicly disclose information on their governance, ownership and voting structures. However, the information disclosure standards of the national corporate governance code, which all SOEs are required to implement, state that companies should disclose "information on governance structures and strategy" (Corporate Governance Code, Principle X). Fully corporatised SOEs are furthermore, as per the Law on Companies, required to disclose in their articles of association information on the number of shares, share classes and governance structure (i.e. board structure). Listed SOEs are required as per the Listing Rules (Art. 24.10.2) to disclose information about major shareholders who directly or indirectly hold more than 5% of the outstanding shares.

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

SOEs are required to disclose information on the remuneration of board members and the CEO in accordance with relevant provisions of the national corporate governance code, which call for *inter*

alia, public disclosure of the total remuneration paid to the CEO and to individual members of the supervisory and/or management boards, as well as information on the company’s remuneration policy. The Transparency Guidelines also require that all SOEs provide state ownership entities with information on senior executive remuneration for the previous year and on the performance indicators used to establish the agreed variable component of senior executive remuneration (Art. VII). According to the Lithuanian authorities, “senior executive” refers only to the CEO or the manager of the enterprise.

In practice, disclosure of remuneration levels by SOEs is generally limited to the average salary of SOE employees and the average salary of all executives. Out of the largest SOEs examined, only Klaipėda Oil disclosed its remuneration policy in its most recent annual management report. However, this last issue is not specific to SOEs: according to a report by the Bank of Lithuania, among listed SOEs, the disclosure of remuneration policy is the least respected principle of the corporate governance code.⁷¹

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 explicitly required to publicly disclose information on board member qualifications, selection process, roles on other company boards or whether they are considered as independent. The Transparency Guidelines require all SOEs to disclose information on their governance organs, but do not provide details on what type of information should be disclosed. The corporate governance code’s principles on information disclosure (applicable in principle to all SOEs) recommend disclosure of information on the professional background, qualifications and potential conflicts of interest of board members and CEOs.

Concerning how SOE board members are selected, the process applicable to large fully corporatised SOEs is outlined in the Ownership Guidelines, which are publicly available. See section B.2.f2 for more information on the board nomination process.

In practice, most SOEs disclose only the names and positions of board members. Although there is no formal requirement for SOEs to disclose information on their board composition, this information is collected by the GCC and published on its website: <http://vkc.turtas.lt/en/company>.

A.6. *[Examples of such information include:] Any material foreseeable risk factors and measures taken to manage such risks;*

SOEs are required to disclose information on “material foreseeable risk factors”, as per the information disclosure standards of the corporate governance code. According to the Lithuanian authorities, in practice SOE management boards typically include information on their risk management measures in the annual strategic plans that are submitted to the GCC for review.

According to the GCC, information related to risk factors disclosed by SOEs is generally insufficient. This is particularly relevant for the state-owned forestry enterprises, whose annual reports apparently contain the least robust information on risk factors. Furthermore, the examination of the annual reports of the 14 large SOEs finds that four of them did not provide an overview of risk factors in their most recent financial or management/activity reports, while another four disclosed only the financial risk factors.

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;

The national Business Accounting Standards, which as mentioned previously are used by the majority of SOEs, require disclosure of grants and subsidies in the balance sheet. They also require that the explanatory notes to the financial statements contain detailed information on: the nature and amount of grants and subsidies; a description of off-balance sheet assets and liabilities related to grants and subsidies and their possible impact for company; and information on any other financial assistance provided by the state.

As noted in section B.3.f, SOEs do not as a rule benefit from state guarantees on their commercial debt. SOEs reportedly do not engage in public-private partnerships and as such there are no specific requirements for the disclosure of related contractual commitments and liabilities.

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

The information disclosure standards of the corporate governance code, which all SOEs are required by the Transparency Guidelines to implement on a “comply or explain” basis, call for disclosure of information on “Transactions between the company and connected persons, as well as transactions concluded outside the course of the company’s regular operations” (Principle 10.1). SOEs are not subject to the provisions of the code which explicitly recommend board approval of related party transactions, defined as “transactions concluded between the company and its shareholders, members of the supervisory or managing bodies or other natural or legal persons that exert or may exert influence on the company’s management” (Principle 4.5).

It would appear that in practice SOEs differ significantly with respect to how transactions between SOEs, the state, and other SOEs are disclosed in financial statements. For example, Klaipeda Oil notes in its annual report that “parties are considered related when one party has a possibility to control the other one or has significant influence over the other party in making financial and operating decisions”⁷². In the Explanatory Notes to the Financial Statements it discloses all transactions with state-controlled entities including SOEs and governmental agencies, such as the State Tax Inspectorate. By contrast, Lithuanian Energy and its subsidiaries disclose transactions with all SOEs, but, as stated in its annual report, “For the purposes of disclosure of related parties, the Republic of Lithuania excludes central and local government authorities”⁷³. Litgrid, on the other hand, limits its disclosure of related party transactions to those directly related to its parent company EPSO-G⁷⁴.

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

As noted in previous section on stakeholder relations, all SOEs are required to report on “material issues regarding employees and other stakeholders”, as per the information disclosure standards of the corporate governance code for listed companies (see section B.5.b for more details on the relevant text of the code).

The examination of the annual reports of 14 large SOEs finds that in practice, only two did not disclose any relevant issues related to employees and other stakeholders in their most recent annual reports. Eight of the SOEs examined published detailed information on their corporate social responsibility policies, with three SOEs (Lithuanian Post, Lesto and Lithuanian Energy Production) publishing separate corporate social responsibility reports.

b. External audit of financial statements

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

SOEs' annual financial statements are required to undergo an independent audit, to be published online along with the annual report and financial statements, as per the Transparency Guidelines (Art. VII). The Transparency Guidelines also require that the independent audits be conducted in accordance with international auditing standards (Art. XVIII). For fully corporatised SOEs, as per the Law on Companies, the external auditor is selected by the general meeting. For statutory SOEs, as per the Law on State and Municipal Enterprises, the external auditor is to be selected by the state ownership entity.

According to information provided by the GCC, six SOEs have not changed their external auditor in the last seven years and 18 SOEs have changed their external auditor only once during this period. The professionalism of SOEs' external auditors was called into question by the GCC when two important banks in Lithuania went bankrupt in 2011-12. This led to significant losses for a number of SOEs with deposits in those banks, which were purportedly not adequately accounted for in their annual financial statements (Box 13).

Box 13. Bankruptcy of two Lithuanian banks calls into question external auditors

In 2011-2012, Bank Snoras and Ūkio Bankas went bankrupt and SOEs which had deposits with the banks of over EUR 100 000 (the amount insured by the state) had to write off the losses. Six SOEs, including Oro Navigacija (Air Navigation) and some smaller SOEs had not accounted for the losses in a timely fashion. The losses ranged from EUR 0.1 million to EUR 4.1 million. The GCC stated its negative view of such practices in the 2012 state aggregate report on SOEs: "the financial results will, most probably, have to be recalculated in the future, and the net losses of the portfolio incurred in connection with the bankruptcies of the bank should be larger". However, not all auditors of affected SOEs issued conditional reports.

Source : Information provided by the Baltic Institute of Corporate Governance, based on interviews with the GCC, and GCC (2012), "State-Owned Enterprises in Lithuania Annual Report 2012".

c. 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.

Aggregate reports on the SOE sector have been published annually since 2009. The first report gave an overview of the performance of the SOE sector from 2007 to 2009. The reports are readily accessible on the GCC website and also available in English: <http://vkc.turtas.lt/en>. Starting with its 2013 report, the GCC includes information on the estimated costs related to the implementation of SOEs' public policy objectives. The GCC website also serves as a central repository for the main legal acts and other documents applicable to SOEs in Lithuania. In addition to annual aggregate reports, quarterly aggregate reports have been published regularly since 2011. The website also includes information on SOE governance reforms, standardised financial results of individual SOEs, as well as the names of CEOs and board members of SOEs, including an identification of those which are considered independent.

The Transparency Guidelines establish the process and schedule leading up to the publication of the aggregate reports, including the respective roles of SOEs, state ownership entities and the GCC. SOEs are notably required to submit their annual and quarterly reports and financial statements to the relevant state ownership entities according to a pre-determined timeline. Ownership entities then must submit the information to the GCC, within three working days of the deadline for receiving the information from SOEs. The GCC is then mandated to draft and publish on its website annual and quarterly summary reports on SOEs, including information on SOEs' compliance with the provisions of the Transparency Guidelines. As mentioned earlier, the annual aggregate report must include information on the nature and cost of SOEs' public policy objectives.

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

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

a. 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 discussed in section A.4.a, the legal framework applicable to fully corporatised and statutory SOEs in Lithuania provides for considerable flexibility regarding both the board structures put in place and the respective responsibilities of the SOEs' governance organs. To recall, as of March 2015, two-tiered board structures exist in five SOEs and five SOE subsidiaries, while 115 SOEs have unitary boards and 17 have no board in place. For fully corporatised SOEs, the Law on Companies clearly defines the roles and powers of the respective boards. For statutory SOEs, the Law on State and Municipal Enterprises clearly outlines the roles and responsibilities of the board (if established). The specific responsibilities of boards as prescribed by applicable laws are discussed in greater detail in the sections that follow.

Concerning the board's duty to act in the best interest of the enterprise, this is mandated by relevant laws. The Law on Companies establishes that a company's governance organs "must act in the interest of the company and its shareholders, comply with laws and other legal acts and be governed by the articles of association of the company" (Art. 19.8). The Law on State and Municipal Enterprises states that "the bodies of the enterprise must act in the interest of the enterprise, comply with laws and other legal acts and be governed by the articles of association of the enterprise [...]" (Art. 9.5). These stipulations are essentially repeated in the Civil Code of Lithuania (Art. 2.87), which calls for board members ("members of a legal person's managing bodies") to act in good faith in respect of the enterprise and to be "loyal" to the enterprise.

Furthermore, the articles of association for Lithuania's largest SOEs generally specify that all governance organs must act in the best interests of the enterprise and (for fully corporatised SOEs) its shareholders (see 9 in section A.5.b for an overview of the key governance responsibilities of Lithuania's largest SOEs, as established by their articles of association). That said, the practice of composing a large number of unitary boards entirely of high-level officials from the ministry responsible for exercising the ownership function does raise doubts about the degree to which these legal stipulations are carried out in practice. It could be taken to indicate an expectation that they carry out their board functions as an extension of their ministerial duties.

b. 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.

(i) Fully corporatised SOEs

For fully corporatised SOEs, the Law on Companies accords management boards the power to approve the company's operating strategy, to appoint and remove the CEO from office, and to set the CEO's remuneration levels (Art. 34). As for the supervisory board (if one is established by the articles of association agreed by the general meeting), the Law on Companies accords it, among others, the power to elect and remove from office members of the management board and supervise the activities of the management board and the CEO (Art. 32).

The functioning of the two-tier board system within Lithuania's energy sector merits particular scrutiny. Contrary to the practice in OECD countries with two-tiered board systems (e.g. Germany), the supervisory board in Lithuania is not accorded the powers to approve strategy or appoint the CEO, but rather plays a primarily advisory or compliance monitoring role. In Lithuania, it is the management board that is responsible for developing company strategy and appointing the CEO. This in itself would not necessarily give rise to concerns if the management board included among its members non-executive directors. However, this is usually not the case.

In addition, CEOs are often accorded considerable powers, such as unilaterally concluding transactions and taking other decisions on behalf of the enterprise. Management boards are therefore arguably not always in a position to effectively monitor the CEO. This gives rise to doubts regarding the extent to which certain corporate boards in Lithuania can really be considered effective "boards" in the traditional sense, i.e. entities tasked with setting strategy and monitoring management. As already mentioned in the introductory section to this Part B, the BICG noted in its 2012 report that the effectiveness and professionalism of SOEs' boards depends heavily on their composition, and notably the relative proportion of executives, non-executives and public officials.

(ii) Statutory SOEs

For statutory SOEs, the Law on State and Municipal Enterprises accords the ownership entity considerable powers that would normally be the purview of a company board. The ownership entity is explicitly responsible for approving the enterprise's strategy, appointing and removing the CEO from office, and setting the CEO's remuneration levels (Art. 4.4). As shown in section A.5.b, 9, the articles of association of Lithuania's largest SOEs generally reiterate this delegation of functions.

However, the fact that many SOE boards have close personal links to the ownership ministries raises the question of whether the boards exercise these powers autonomously or according to ministerial preferences. The study of CEOs in Lithuanian SOEs that was previously cited does indicate a degree of politicisation of the process (BICG, 2014).

c. Board composition and exercise of objective and independent judgment

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

(i) Formal qualifications of SOE board members

In establishing a board that is able to exercise objective and independent judgement, the annotations to Chapter 7, Recommendation C highlight the importance of a transparent nomination process and recommend that SOE board members have sufficient commercial, financial and sector-specific expertise to effectively carry out their duties. In this regard, the Ownership Guidelines establish a nomination process, involving an inter-ministerial selection committee, that is applicable only to the boards of large fully corporatised SOEs (categories I and II) (see section B.2.f2 for an overview of the nomination procedure). The boards of those SOEs must notably include members with financial expertise, strategic planning and management expertise, and sector-specific knowledge and experience (Ownership Guidelines, Art. XVI). The activities of the inter-ministerial selection committee are reportedly ongoing, and the procedure has yet to be fully implemented in practice.

The Ownership Guidelines also establish general selection criteria applicable to the individual board candidates of all SOEs, which are less stringent than those applicable to the boards of large fully corporatised SOEs⁷⁵. All candidates nominated to the board of an SOE must notably: possess a higher education; have the right to occupy the position in question; have not been deselected from the board of a legal person over the preceding five years due to a failure to perform their duties; and not have any conflicts of interest as enumerated in the Law on the Adjustment of Public and Private Interests in the Public Service (Art XVII, Ownership Guidelines). The latter criteria are also applicable to the CEO.

For statutory SOEs, the general qualifications for board members (if a board is established) are outlined in the Law on State and Municipal Enterprises. The Law notably stipulates that in order to become a board member, a natural person must fulfil a number of general criteria, including (i) holding a university degree; (ii) being of “good repute”; and (iii) not having any connections with other legal persons that could cause a conflict of interest (Art. 10). The Law also states that “special requirements for board members shall be set” by the ownership entity, and outlines the general procedure for board member nominations (summarised in section B.2.f2).

(ii) Legal responsibilities of board members

The annotations to Chapter 7, Recommendation C also highlight the importance of ensuring that all board members – including any state representatives – act in the interests of the enterprise, and not the constituencies that nominated them. In this regard, as already mentioned in section B.7.a, the respective laws applicable to fully corporatised and statutory SOEs establish a general requirement that all boards must act in the interest of the enterprise (and its shareholders for limited liability companies).

Concerning the legal responsibilities of individual board members, the Civil Code of Lithuania (Articles 2.86 and 2.87) provides explicitly for equal rights and obligations of the “members of a legal person’s managing body”. It also stipulates that a member of a managing body of a legal person who fails to perform or performs improperly his duties specified in article 2.87 or the certificate of incorporation must redress all damage incurred on the legal person except as otherwise provided by law, incorporation documents or an agreement. For fully corporatised SOEs, the Law on Companies does not make mention of the individual liability of board members but does provide for shareholders to engage in legal action against board members in case of malfeasance in the carrying out of their board duties (Art. 16). For statutory SOEs, the Law on State and Municipal Enterprises establishes the individual liability of board members as follows: “the board members, if the board is formed, who fail to perform or improperly perform their duties set out in the Civil Code, this Law and other laws as well as the articles of association of the enterprise must redress all damage incurred on the enterprise” (Art. 9). This provision is also applicable to the CEO.

According to information obtained from Lithuanian corporate governance practitioners, the fact that Lithuanian SOEs did not generally offer liability insurance to board members was initially an impediment to attracting independent board members. However, nowadays independent board members are generally accorded individual liability insurance on an *ad-hoc* basis.

(iii) Board composition in practice

In practice, the composition of SOE boards raises questions regarding both their ability to exercise independent judgment and their capacity to effectively perform their board duties. Concerning independence, the presence of vice ministers on the boards of several of Lithuania's largest SOEs could be a cause for concern, given the risk that they act on behalf of their constituencies rather than in the long term interest of the enterprise. Furthermore, many boards mostly consist of civil servants from the ownership ministries – who do not receive compensation for their board service. As already mentioned, this could arguably create incentives for such board members to act in the interests of their employers (e.g. state ownership entities) rather than the enterprise. (See 8 under section A.5.a for an overview of the board structure and composition of Lithuania's largest SOEs.) A similar assessment of SOE board composition was put forward by the BICG in a 2012 report, according to which many Lithuanian SOE boards either had a predominance of executive insiders, leading to insufficient oversight, or an excessive proportion of public officials, essentially making the SOE an “extension of the ministry (BICG, 2012) (Box 14).

Box 14. The boards of Lithuanian SOEs: A viewpoint from the Baltic Institute of Corporate Governance

The Baltic Institute of Corporate Governance (BICG) underlines that the nature of corporate governance weaknesses in the boards of Lithuanian SOEs depends in part on the relative importance of executive and non-executive board members, particularly in SOEs with unitary (management) boards. According to the BICG: “Unlike Latvia or Estonia, Lithuanian boards resemble unitary boards typically found in countries such as the US and UK. In Lithuania, as in all countries with unitary board structures, the balance between executives and non-executives is a key concern. In Lithuania board composition is heavily skewed either towards executive insiders, which is mainly the case of SOEs under the Ministry of Energy or ministerial outsiders, which is mainly the case under the Ministry of Transport. In either case, what should be clear lines of accountability between the state and the SOE are often blurred. Outsider dominated boards effectively make the SOE an extension of the ministry. Insider dominated boards make oversight over executives more difficult”.

Source : BICG (2012), Governance of State-Owned Enterprises in the Baltic States

According to information provided by non-governmental sources, although board members of SOEs are fully liable by law for their actions while performing their board duties (as outlined above), there is not a broad-based understanding of this individual responsibility among public officials serving on SOE boards, who may in practice feel obliged to make decisions purely on behalf of their state employers.

Finally, the fact that a number of SOE board members – particularly in the forestry and road maintenance sectors – apparently hold multiple posts could jeopardise their ability to effectively fulfil their board duties. According to the 2014 state aggregate report, the board duties of all 42 state-owned forestry enterprises are exercised by the same eight persons, each of which serves on the board of 21 enterprises. (The group of forestry enterprises as a whole is overseen by the director and two deputy directors of the Directorate General of State Forests.) The ability of 8 persons to effectively monitor the management of 42 enterprises is obviously limited. A similar concern applies to the 11 state-owned road maintenance enterprises, which are collectively governed by the same five civil servants.

d. Independent board members

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

The Ownership Guidelines (outlined in section A.4.b.) require that for SOEs in the largest size categories (I and II) or those of strategic national importance, at least one third of board members be independent. (See 10 in section A.6.a. for a list of all enterprises of strategic national importance). Importantly, under amendments to the Ownership Guidelines passed in June 2015, provisions related to independent board members do not apply to statutory SOEs. The criteria for determining board member independence are reproduced in Box 15 below. The following persons are notably precluded from acting as independent board members: employees of the enterprise, or past employees during the previous five years; the enterprise's CEO, or past CEO during the previous five years; and civil servants or employees of the authority representing the state. No independence criteria are legislated for statutory SOEs or SOEs in the smaller size categories.

For statutory enterprises, the recently amended Law on State and Municipal Enterprises allows in principle for independent members to serve on boards, and requires that for large statutory enterprises at least 1/3 of the board comprise "other natural persons", i.e. persons that are neither civil servants nor representatives of management. However, there is no apparent requirement that these "other natural persons" be considered independent. Large statutory SOEs are defined as those with (approximate values) at least EUR 14 million in assets and at least EUR 6 million in turnover. According to the Lithuanian authorities, the size threshold was chosen in order to avoid placing an excessive administrative burden on small SOEs. The Law does not establish independence criteria. This will most likely present a challenge for the future: as mentioned in a recent study of the Latvian SOE sector previous controversy arose in Latvia from public concerns that board positions were handed as favours to politically-connected individuals, which in turn led to a backlash against (and temporary abolishment of) SOE boards of directors (OECD, 2014). The Lithuanian authorities need to learn from this experience and take credible measures to ensure the independence of board members.

In practice, the boards of 14 SOEs and subsidiaries include independent members, according to information cited elsewhere in this report. Among the largest SOEs, Lithuanian Energy has three independent members on its board; Klaipėda Oil, Lithuanian Post, Lithuanian Railways and Lithuanian Shipping Company have two; and Amber Grid, Lithuanian Energy Production, Lesto and Lithuanian Gas each have one. Concerning the smaller SOEs, both Lithuanian Radio and Television Centre and Lithuanian Mint have two independent members, while five SOEs have one: Smiltynė Ferry Terminal, Toksika, LITEXPO and Business Information Services Company (Informacinio verslo paslaugų įmonė)⁷⁶. In a similar vein as the point mentioned above, whether "independent" board members are *de facto* independent is an area that warrants continued scrutiny.

Box 15. Independence criteria for board members of large fully corporatised SOEs

Article 64: When verifying the independence of a member of an organ of the state-owned enterprise, the following independence criteria shall be applicable:

64.1. He must not be the head of the state-owned enterprise to which he is nominated or an related enterprise and must not have held this post over the last 5 years;

64.2. He must not be an employee of the state-owned enterprise to which he is nominated or an related enterprise and cannot have held such a position over the last 3 years;

64.3. He must not receive and, over the last three years, must not have received a substantial additional remuneration from the state-owned enterprise to which he is nominated or from an related enterprise, except remuneration for work as a member of a collegial organ;

64.4. He must not hold an amount of shares providing more than 5 per cent of total votes and cannot represent such a shareholder;

64.5. He must not have, and must not have had over the last 3 years, any important business relations with the state-owned enterprise to which he is nominated or with an related enterprise, neither directly, nor as a partner, shareholder or manager of an entity having such relations; An entity shall be considered to have business relations if it is an important supplier of goods or services (including financial, legal and consulting), an important client or an organisation receiving substantial payments from the state-owned enterprise or related enterprise.

64.6. He must not be, and must not have been over the last 3 years, a partner or employee of the audit enterprise that is auditing or has audited the state-owned enterprise to which he is nominated;

64.7. He must not have been a member of a collegial organ of the state-owned enterprise for more than 12 years;

64.8. He must not be a close family member of the head of the state-owned enterprise or of the persons mentioned in paragraphs 64.1–64.7 of the Procedure (close family includes spouse (co-habitant), children (adopted children) and parents (adoptive parents));

64.9. He must not be a civil servant or an employee of the authority representing the state;

64.10. There should not be any other circumstances that have caused or may cause a conflict of interest between him or his family member (as defined in paragraph 64.8 of the Procedure) and the state-owned enterprise.

Source: 2012 Ownership Guidelines

e. 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.

There is no broadly applicable mechanism for avoiding conflicts of interest that could prevent SOE board members from objectively carrying out their board duties. Independent board members (required for large fully corporatised SOEs) must meet the selection criteria outlined in Box 15, according to which persons in potential positions of conflicts of interest listed therein may not be considered independent. In addition, among the general criteria for board candidates outlined in the Ownership Guidelines, candidates must respect the provisions of Chapter 5 of the Law on the Adjustment of Public and Private Interests in the Public Service, which precludes members of the civil

service from taking up employment as a board member in a company over which it previously exercised supervision or control, during the year following departure from the civil service. The Law further requires all civil servants, including those serving on SOE boards, to declare any private interests that could affect their decision-making in the discharge of official duties, within one month of the start of their civil service employment (Chapter 1). The Civil Code of Lithuania establishes broader requirements, including that the board members of “legal persons” must notify other members of any conflicts of interest.

For fully corporatised SOEs, the Law on Companies prohibits any board member from voting on issues related to his or her board work or responsibility (Art. 35.6) and states that upon receiving notification of the nature and value of a conflict of interest (as called for by Art. 2.87[5] of the Civil Code), the board must vote on the withdrawal of the concerned board member from voting on issues that give rise to a conflict of interest.

Finally, for statutory enterprises, the Law on State and Municipal Enterprises establishes that all board members (and the CEO) “must avoid situations where their personal interests come or are likely to come into conflict with the interests of the enterprise”, and where such a situation occurs, must inform the ownership entity within ten days (Art. 9.4).

f. 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.

Concerning the separation of the roles of Chair and CEO, the Ownership Guidelines advise – but do not require – that in cases where no supervisory board is in place, management boards should not elect the CEO as Chair (Art XVI). For statutory SOEs, the Law on State and Municipal Enterprises only establishes that the CEO may be appointed to the board and that the chair is to be elected from among its members (Art. 10.3)⁷⁷.

In practice, according to information collected by the GCC, in fully corporatised SOEs with two-tiered boards – including notably the large energy SOEs – the CEO generally chairs the management board while the supervisory board is chaired either by a representative of the state ownership entity. Subsidiaries, like in many OECD countries, usually have “internal boards” consisting of representatives of the executive management of the parent company⁷⁸. An exception is Lithuanian Energy’s supervisory board, which is chaired by an independent board member. In a standard OECD country with a well-functioning two-tiered board system, these practices would be consistent with Recommendation VII.F calling for a separation of the roles of Chair and CEO. However, given the relatively weak governance powers accorded to supervisory boards in Lithuania, and the relatively strong governance powers accorded to both the management board and the CEO, it would seem that practices are not fully consistent with the spirit of Recommendation VII.F.

Concerning SOEs with unitary boards (which, as repeatedly noted, constitute the majority of SOEs), the position of Chair is most frequently undertaken by a public official from the relevant ownership entity. This notably applies to the following large SOEs: Lithuanian Railways, Lithuanian Airports and Bank of Property. It also applies to all state-owned forestry and road maintenance enterprises. In such situations, the roles of Chair and CEO are indeed separate. However, this practice gives rise to other concerns, notably regarding (i) public officials’ ability to devote sufficient time to effectively carry out their board duties and (ii) their degree of relevant commercial competencies and experience.

g. 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.

No legal acts in Lithuania mandate employee representation on the boards of SOEs. According to information collected by the GCC, at the time of writing, no SOE boards had employee representatives. Of course some SOE boards include members of the executive management, which are indeed employees of the companies, but they are not acting in a formal capacity as “employee representatives”.

h. 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 generally applicable requirement for SOEs to establish audit, risk management, remuneration or any other committees. All listed SOEs are required to establish audit committees, as per the Law on Audit, applicable to “companies of public interest”, which includes listed companies. The Ownership Guidelines require the establishment of an internal control committee in all large fully corporatised SOEs (categories I and II) in which an audit committee is not already formed as per the Law on Audit. The internal control committee must be entrusted with the functions outlined in Box 16 below. The Ownership Guidelines also require that all large SOEs, regardless of legal form, establish a remuneration committee.

In practice, according to the 2014 state ownership report, only three SOEs have established an audit committee (Lithuanian Energy, Klaipėda Oil and Lithuanian Shipping Company) and only one SOE has established a remuneration committee (Lithuanian Energy). This means that the majority of large SOEs in Lithuania do not comply with the relevant requirement of the Ownership Guidelines, raising broader questions about their implementation in other corporate governance areas.

Box 16. Mandatory functions of the internal control committee in large SOEs

“The authority exercising the rights and obligations of the owners of an enterprise shall ensure, and the holder of shares shall endeavour or, where the number of votes held permits, ensure:

That a state-owned enterprise falling within categories I or II that does not have an audit committee envisaged by the Law on Audit of the Republic of Lithuania sets up an internal control committee entrusted with the following functions: assessment of the procedure of compiling financial statements; assessment of the efficiency of the state-owned enterprise’s systems for internal control, risk management and internal audit, if any, and the preparation of recommendations for the improvement of said systems; monitoring of auditing procedures; execution of other functions assigned by the board.”

Source: 2012 Ownership Guidelines

The annotations to Chapter 7, Recommendation H underline that specialised board committees must be chaired by a non-executive and comprise an adequate number of independent members. In this regard, the Ownership Guidelines preclude the managing staff of the SOE from serving on the internal control and remuneration committees, which effectively ensures that they are not chaired by enterprise

executives. They also require that at least one member of the internal control committee be independent (Art. XII). Both committees must have at least three members. Since most SOEs do not have committees, these rules on their composition arguably have little impact in practice.

i. 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.

SOE boards are not uniformly required to carry out an annual self-evaluation. However, the Ownership Guidelines require the boards of all large fully corporatised SOEs to do so, and to carry out a needs analysis to identify future expertise required to achieve the SOE's objectives⁷⁹.

The Ownership Guidelines stipulate that self-evaluations are to be reported to the relevant governance organ (i.e. the supervisory board, if in place) as well as to state shareholding entities, the latter obtaining the results by virtue of their shareholding right to access information. State ownership entities are then required to communicate the results of the performance evaluation and needs analysis to the GCC, which summarises the results and sends them – along with its own recommendations – to the inter-ministerial selection committee (see section B.2.f2 for more information on the inter-ministerial selection committee). The results of the performance evaluation are thus, at least according to the Ownership Guidelines, used to inform the board nomination process. However, board self-evaluations are meant first and foremost as a tool for corporate boards to improve their own functioning. Therefore care should be taken to ensure that the extensive process by which evaluations are to be sent to the GCC and then to the inter-ministerial selection committee does not create inefficiencies or weaken the board's role in appraising its own performance and efficiency.

The Ownership Guidelines do not detail any standards according to which self-evaluations must be conducted. However, the GCC has established guidelines for conducting self-evaluations, along with an evaluation template, which are available on its website. SOE boards are invited (but not required) to consult with the GCC during the undertaking of the evaluation. The GCC's guidelines on self-evaluations are generally in line with the annotations to Chapter VII Recommendation I, which notably suggest that self-evaluations should focus on the performance of the board as an entity (but can include information on the performance of individual board members) and should be carried out under the responsibility of the Chair. The guidelines explicitly state that the performance evaluation should be initiated and coordinated by the Chair. The proposed evaluation template invites board members to evaluate: the appropriateness of strategic planning; the efficiency of board meetings; the relationship between the board and the CEO; and the performance of the Chairman. It also includes a section for individual members to conduct a self-evaluation.

Despite the existence of this guidance, according to both the Lithuanian authorities and experts interviewed for this review, self-evaluations by SOE boards comparable to private sector best practices are not commonly occurring among SOEs. A possible reason for this is the high frequency with which SOE boards (and board members) can be replaced, making it difficult to conduct regular yearly evaluations. According to the Lithuanian authorities, as of the second quarter of 2014, only 23 out of 114 SOEs with boards in place for longer than 12 months reported to be carrying out self-evaluations (18 of which were SOEs under the Ministry of Agriculture). Furthermore, no state ownership entities reported any board evaluation results to the GCC, as called for by the Ownership Guidelines.

j. 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.

Internal audit procedures and functions have not been established in all SOEs. As noted in section B.7.h above, listed SOEs are required by the Law on Audit to establish internal audit committees, while unlisted, fully corporatised SOEs in the largest size categories (I and II) are required by the Ownership Guidelines to establish internal control committees which perform functions similar to those normally undertaken by an audit committee. The Ownership Guidelines stipulate that the internal control committees of large fully corporatised SOEs must be entrusted with the following functions: “assessment of the procedure of compiling financial statements; assessment of the efficiency of the state-owned enterprise’s systems for internal control, risk management and internal audit, if any, and the preparation of the recommendations for the improvement of said systems; monitoring of auditing procedures; execution of other functions assigned by the board” (Art. XII).

Internal control committees must include at least three members, of which at least one must be an independent member with financial expertise. Executive management staff cannot serve on the internal control committee. The Ownership Guidelines further state that the internal control committee is an advisory organ of the board, and that it must prepare materials within its competence and make them available to the meetings of the board (or other relevant governance organ). For statutory SOEs, the Law on State and Municipal Enterprises stipulates that “Internal audit of an enterprise shall be carried out in compliance with the legal acts regulating internal audit” (Art. 17.5). This refers notably to the Law on Internal Control and Internal Audit, which requires all statutory SOEs with more than 200 employees to establish an internal audit service. For those with less than 200 employees, ownership entities may, at their discretion, either establish an internal audit service or ensure that the audit is carried out by the ownership entity’s internal audit service.

In Lithuania, internal auditors are accountable to the CEO, not to the audit or internal control committee. The Law on Internal Control and Audit notably states that “the internal audit service shall be subordinate and accountable to the head of the public legal entity that shall ensure functional and organisational independence of the internal auditors” (Art. 7). The Lithuanian authorities state that in practice the internal auditors of SOEs cooperate and share information with the external auditors.

CONCLUSIONS AND RECOMMENDATIONS

Lithuania has made significant progress in SOE reform consistent with the OECD Guidelines over the last five years. The accomplishments include the introduction of annual aggregate reporting at a comparatively high international level; the introduction of an ownership policy, including a classification of SOEs according to types of objectives; the establishment of an ownership coordination function; heightened standards of transparency and disclosure in SOEs; and the inclusion of independent directors in a number of SOE boards. This should, however, not distract from a continued need to clarify the rationales for state ownership of individual enterprises and subject these to recurrent reviews.

A couple of overarching concerns remain. One is the apparent absence of a vigorous, consistent implementation and enforcement of the broadly sound governance and transparency standards that have been developed by the Lithuanian government. Another concern relates to the effective separation of the government's roles as owner and regulator of enterprises, which is exacerbated by the dispersed ownership, the exercise of regulation within different sections of the ownership ministries, and the closeness of many of the SOE boards to the ownership functions. In addition to creating conflicts of interest for the relevant state bodies it also raises the potential for excessive politicisation of individual enterprises. Some remedial measures recommended to the Lithuanian authorities are the following:

- **Strengthening the ownership function.** If a centralisation of the ownership function is not feasible at the current juncture, then the existent coordinating function should be strengthened. The provisions in the Ownership Guidelines are consistent with commonly agreed good practices, but the GCC is currently not resourced to implement them. In addition, the government should give consideration to the institutional status of the GCC which should arguably have an independent legal personality or, at least, not be placed within one of the SOEs it is charged with overseeing. Two areas of priority are:
 - *Well-resourced coordination.* Provide the GCC with more adequate financial resourcing allowing it to employ specialised staff, including persons with strong corporate backgrounds, with expertise in accountancy, corporate law and management.
 - *Enforcement of government decisions.* Create mechanisms that ensure that departures from government policies by SOEs or ministries are promptly addressed on a whole-of-government basis.
- **Improving board autonomy.** Additional steps are needed to safeguard board autonomy. A larger number of independent directors, selected through transparent nomination procedures including outside recruitment specialists is a necessary first step. Board members should have sufficient professional expertise (accounting, relevant sectoral and commercial experience) to be able to effectively monitor strategy and the performance of the CEOs. Where government officials serve on SOE boards they should be selected on the basis of individual merits, and be from parts of the public administration that are not linked with the SOEs in whose boards they partake. Acting politicians should not serve on SOE boards. An

effort should be made to improve the functioning of two-tier boards (where such exist) by strengthening the role of supervisory boards. If this is not feasible the government should consider converting two-tier boards to unitary boards. To improve board autonomy, Chairs should increasingly be nominated from among the independent board members.

- **Streamlining SOEs' legal and corporate forms.** Work remains to be done in terms of simplifying and standardising the corporate form of SOEs. Consistent with current and recent trends across OECD countries, a number of statutory corporations could be converted to limited liability companies. Moreover, measures should be taken to ensure that groups of small SOEs with identical or near identical functions achieve an efficient allocation of resources and are subject to higher standards of governance and transparency (i.e. those standards that are currently only applicable to large SOEs). Two areas of priority are:
 - *Stronger corporatisation.* Identify state enterprises pursuing primarily economic activities and convert them to limited liability companies.
 - *Rationalisation of sectors with multiple SOEs.* Clarify the rationale for maintaining the 42 state forestry enterprises and 11 road maintenance enterprises and organise both sectors with a view to achieving an efficient allocation of resources and implementing high standards of governance and transparency. This could be achieved through a consolidation of the enterprises within each sector.
- **Making disclosure standards mandatory.** The Transparency Guidelines contain sound recommendations consistent with commonly accepted good practices. However, their implementation should be made compulsory for at least the larger SOEs. The fact that similar reporting requirements are implemented on a comply-or-explain basis for listed companies should not provide licence for SOEs to fail to implement their government owners' expectations.

Notes

1. In 2014-15, the OECD undertook a review and update of the SOE Guidelines to take into account developments since their adoption and the experiences of the growing number of countries that have taken steps to implement them. This review evaluates Lithuania's SOE sector relative to the updated SOE Guidelines.
2. Korin Kane, Policy Analyst and Hans Christiansen, Senior Economist, OECD Corporate Affairs Division.
3. Macroeconomic data is from fourth quarter, European System of National and Regional Accounts (ESA 2010).
4. Foreign trade data is from Statistics Lithuania, 2014:
http://osp.stat.gov.lt/documents/10180/2691123/Eksp_imp_pagal_valst_2014_e.pdf
5. World Bank Doing Business report:
<http://www.doingbusiness.org/data/exploreeconomies/lithuania/>
6. World Economic Forum Global Competitiveness Report:
http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf
7. Transparency International Corruption Perceptions Index:
<http://www.transparency.org/cpi2014/results>. The index scores countries and territories on a scale of 0 to 100 based on surveys of public perceptions of corruption, with 0 indicating the highest perceived levels of corruption and 100 indicating the lowest perceived levels of corruption. Lithuania's score improved from 54/100 in 2012 to 58/100 in 2014.
8. For information on the Nasdaq Baltic, see here: <http://www.nasdaqomxbaltic.com/en/exchange-information/about-us/>.
9. An English translation of the Law on Markets in Financial Instruments is available here:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=423819
10. The Bank of Lithuania took over the stock exchange supervisory functions of the now non-existent Securities Commission of Lithuania in 2012 as part of a broader effort to cut costs by centralising the supervision of commercial banks, securities and insurance markets into one state institution. For more information, see here:
http://www.lb.lt/supervision_service_was_established_at_the_bank_of_lithuania_as_a_part_of_the_introduction_of_the_new_financial_market_supervision_model
11. Law on Securities available here: <http://www.lithuanialaw.com/lithuanian-law-on-securities-501>
12. For the purpose of this report, majority-owned subsidiaries of SOEs are not counted separately in the aggregate number of SOEs, although they are considered SOEs. Their value and employment data are included in the figures of their parent companies. No attempt was made to identify all subsidiaries of SOEs.

13. The Law on Companies also stipulates capital thresholds for both types of companies as follows: “the capital of a private limited liability company must be not less than EUR 2 500” and “the capital of a public limited liability company must be not less than EUR 40 000”.
14. As mentioned previously, for the purpose of this report, majority-owned subsidiaries of SOEs are not counted separately in the aggregate number of SOEs, although they are considered SOEs.
15. In addition to ministries and other public institutions, the Bank of Property, itself a statutory SOE under the Ministry of Finance, exercises ownership rights in six enterprises.
16. Ministry of Energy: <http://www.enmin.lt/en/>
17. Technically, the Ministry of Finance only oversees Lithuanian Energy, the parent company of the energy group, which in turn oversees the governance of the subsidiaries.
18. Ministry of Finance: <http://www.finmin.lt/web/finmin/home>
19. Valstybės Turto Fondas (State Property Fund) and Turto Bankas (Bank of Property) were merged in 2014 into a statutory SOE which kept the name Bank of Property.
20. Directorate General of State Forests at the Ministry of Environment Republic of Lithuania: <http://www.gmu.lt/en/>
21. Ministry of Transport and Communications: http://www.transp.lt/en/activities/regulations_of_the_ministry
22. Lithuanian Road Administration under the Ministry of Transport and Communications: http://www.lra.lt/en.php/about_lra/general_information/101
23. Ministry of Agriculture: <http://zum.lrv.lt/lt/>
24. Ministry of Culture: <http://www.lrkm.lt/go.php/lit/English>
25. Ministry of Education and Science: <http://www.smm.lt/web/en/activities>
26. Ministry of Environment: http://www.igmu.lt/en/_ministry_of_environment_of_the_republic_of_lithuania/
27. Ministry of Health: <http://www.sam.lt/go.php/eng/IMG>
28. In 2015, following its merger with UAB Baldžio Šilas, UAB Senevita was converted to a public institution. Also in 2015, the ownership rights in Pine Forest Road Sanatorium were transferred to the Ministry of Health.
29. The analysis was conducted by Lithuania’s SOE performance monitoring body, the “Governance Coordination Centre”, which is introduced in section A.4.b. The analysis, published in the 2014 state aggregate report on SOEs, uses a different sectoral classification than the one adopted for the present report.
30. A more detailed overview of the rates-of-return on equity of Lithuanian SOEs is provided in the state’s 2014 annual aggregate report, available online here: <http://vkc.vtf.lt/en/soe-portfolio/publications>.

31. Three SOEs were excluded from the data on SOEs' public policy objectives: Public Investment Development Agency; Lietuvos Žirgynas (Lithuania Stables); and Kiaulių Veislininkystė (Swine Breeding).
32. The Law on Companies was amended on 14 October 2014, notably introducing the requirement that public LLCs establish boards; prior to the amendments, the Law stipulated that both private and public LLCs could, but were not required to, establish boards.
33. According to the Law on State and Municipal Enterprises, “the owner of a state enterprise shall be the State. The State shall exercise the rights and duties of the owner of the state enterprise via the Government or a state administration institution authorised by it” (Art. 4).
34. This provision on “other natural persons” is applicable to statutory SOEs for which the value of assets is at least ~USD 15 million (EUR 14 million) and the net turnover is at least ~USD 6 million (EUR 5.8 million). Other statutory SOEs falling outside of this size category may, according to the Law on State and Municipal Enterprises, also include such persons in their boards.
35. For the purpose of this report, “state ownership entity” refers to the authority responsible for exercising the state’s ownership rights in a given SOE.
36. Enterprises of strategic importance to national security are explicitly listed in the “Law of the Republic of Lithuania on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security”.
37. “Manager of an undertaking” means a natural person who is in charge of a legal person and is its single-person management body (Art. 3[19] of the Law on Competition).
38. Competition Council of the Republic of Lithuania: <http://kt.gov.lt/en>.
39. Specifically, exclusions from the Law on Public Procurement can be granted to “procurement where the contracting authority awards a contract to an entity holding a separate status of a legal person which it controls as its own service or structural division and in which it is the sole member (or exercises the rights and duties of the state or a municipality as the sole member) and where the controlled entity derives at least 90% of the turnover over the past financial year (Art. 10.5).
40. See Articles 10.39 and 11 of the “Regulations of the National Commission for Energy Control and Prices”, available online here: <http://www.regula.lt/en/Pages/regulations.aspx>.
41. The board composition of the state-owned railway companies in some other Northern European countries offers an illustrative point of comparison. **Danish State Railways:** most board members have predominantly private sector experience. The one board member with public sector experience was previously employed with the ownership ministry and also served as the CEO of the state-owned postal company. No board members are political appointees or current employees of the ownership ministry (<http://www.dsb.dk/om-dsb/in-english/company-profile1/organisational-chart-/the-board-of-directors->). **Swedish State Railways:** most board members have predominantly private sector backgrounds, with the exceptions of the Chair of the Swedish Maritime Administration (which is both a regulator and a state enterprise), who serves as chair of the board, and the Deputy Director of the state ownership unit within the Ministry of Finance, who also serves on the board. (<http://www.sj.se/content/1/c6/17/67/82/SJ%20Annual%20&%20Sustainability%20Report%202013.pdf>, page 57).

42. This section draws purely on the articles of association for Lithuania’s largest SOEs (those placed in size category I by the Ownership Guidelines) that were provided by the Lithuanian authorities or were already available online.
43. In June 2015, a procedure for nominating board members in statutory SOEs was passed by Government Resolution No. 631 “On the Approval of the Procedure for the Selection of Candidates to the Board of a State Enterprise or Municipal Enterprise”. At the time of writing, it was not possible to adequately assess implementation of the selection procedure.
44. Prior to amendments to the Law passed in October 2014, the provisions on applicability were found in Article 1 of the Law. Information on amendments is as reported by the Lithuanian authorities; the OECD Secretariat has not been provided with a copy of the amended Law.
45. Additionally, the Law stipulates that those four facilities may be leased or transferred under a contract of loan, but only to the SOEs of strategic national importance therein identified.
46. The Bank of Property was first established as a state-owned limited liability company in 1995 as a “bad bank” and in 2011 it was converted to a state enterprise. The State Property Fund was first established as a statutory SOE in 1998 and tasked with carrying out the privatisation of state shareholdings and state-owned real estate. At that time, the State Property Fund’s ownership rights were exercised by the Government of Lithuania (not by an individual line ministry). Its main responsibilities included: drafting a list of entities to be privatised and submitting to the Government for approval; determining privatisation method(s); restructuring state- and municipal enterprises to increase privatisation proceeds; identifying investors; and signing privatisation transactions on behalf of the Government.
47. As mentioned earlier in the report, the Law on the Privatisation of State and Municipal Property was amended in October 2014, and notably is now called the Law on the Privatisation of State and Municipal Shares.
48. Council of the European Union (2013), “Recommendation for a Council Recommendation on Lithuania’s 2013 national reform programme and delivering a Council opinion for Lithuania’s convergence programme for 2012-16”, 19 June 2013, Brussels.
49. The latest country-specific recommendations for Lithuania from the European Commission are available here: http://ec.europa.eu/europe2020/pdf/csr2015/csr2015_lithuania_en.pdf
50. The *Guidelines on Corporate Governance of State-Owned Enterprises* were reviewed and revised in 2015 by the Working Party on State Ownership and Privatisation Practices (subject to approval by the Corporate Governance Committee). As a Participant in the Working Party, Lithuania took part in the revision process.
51. The Law on State and Municipal Enterprises explicitly states that the ownership entity “may remove all or individual board members before the expiry of their term of the term for which the board was formed. Where the individual board members are removed or resign, the individual board members shall be appointed to the current board until the expiry of the term for which the board was formed” (Art. 10.10). The Law on Companies states that if a supervisory board is not formed, then the general meeting (essentially the ownership entity in wholly-owned SOEs) “may remove from office the entire board or its individual members before the expiry of their term of office” (Art. 33.10).
52. In addition to performance audits, the NAO also conducts financial audits of ministries, but not of individual SOEs. SOEs can, however, be included in the scope of a financial audit of a ministry, which could for example monitor the use of state funds allocated to statutory SOEs, or provide an

opinion to ministries on the appropriateness of statutory SOEs' legal form if they are implementing a ministerial programme.

53. If the Bank of Lithuania is the holder of state shares in a company, employees of Bank of Lithuania may act as authorised representatives. A natural person may also act the authorised representative if the holder of state shares is not a public institution, but is a legal person holding the state shares in trust.
54. Government resolution No. 631 “On the Approval of the Procedure for the Selection of Candidates to the Board of a State Enterprise or Municipal Enterprise”, 17 June 2015.
55. “Government of the Republic of Lithuania Resolution on the Remuneration for the Managers, Their Deputies and Chief Accountants of State Enterprises and State-Owned Limited Liability Companies”, passed by the Government on 17 June 2015.
56. The Law on Civil Service prohibits civil servants from being appointed or elected to the boards of enterprises, unless authorised by a state (or municipal) institution. In such cases, any remuneration for board duties must be transferred to the state (or municipal) budget.
57. <http://www.lithuaniatribune.com/69958/parliament-guarantees-lng-loan-to-ab-klaipeidos-nafta-201469958/>
58. However, in most cases this is of theoretical interest because the SOEs do not reach levels of profitability sufficient to make the 7% rule apply.
59. A full text of the Law is available here: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=436571
60. Information on the shareholder agreement is available via the 2013 annual report of Litgas: http://litgas.lt/wp-content/uploads/2014/05/IFRS-FS-UAB-LITGAS_EN-2013_EN_publication.pdf
61. See announcement by Klaipeda Oil on the decision to sell its shares in Litgas here: <https://newsclient.omxgroup.com/cdsPublic/viewDisclosure.action?disclosureId=658215&messageId=818977>.
62. Republic of Lithuania Law on Securities: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=445847
63. See the ruling of the Supreme Court of Lithuania here: http://www2.lat.lt/lat_web_test/getdocument.aspx?id=934d2516-fdd2-4169-94a2-6beee359a2b5
64. <http://vz.lt/rinkos/2015/08/11/7077/siulo-ispirkti-lietuvos-elektrines-smulkiuju-akcininku-akcijas>
65. Any refusal to provide such information must be provided in writing, and disputes are settled in court.
66. The supervisory board of Lithuanian Shipping Company is chaired by a representative of the Chancellery to the MoTC, while the management board is chaired by the Vice-Minister of the MoTC.
67. An English translation of the Lithuanian Labour Code is available here: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_e?p_id=191770
68. For statutory SOEs, the narrative annual and quarterly reports are called “activity statements”.
69. The Law on Accounting (Art. 3.3-3.4) allows for all enterprises, including explicitly public and private limited liability companies as well as state enterprises, to choose between international and

national accounting standards. The Law on Corporate Financial Reporting (Art. 16[1-2]) requires all enterprises to prepare annual financial reports.

70. See the “State Audit Report on the Commercial Activities of State Forests”, 31 March, 2010 (in Lithuanian): http://vkc.turtas.lt/static/uploads/-_Misku_ataskaita_8.pdf
71. Bank of Lithuania, “Corporate Governance Practices Overview” (in Lithuanian) (http://www.lb.lt/bendroviu_valdymo_praktikos_apzvalga).
72. Klaipeda Oil annual report: http://www.nasdaqomxbaltic.com/upload/reports/knf/2014_ar_en_ltl_solo_ias.pdf
73. Lithuanian Energy annual report: http://issuu.com/lietuvosenergija/docs/annual_report_2014
74. Litgrid annual report: http://www.nasdaqomxbaltic.com/upload/reports/lgd/2014_ar_en_ltl_con_ias.pdf
75. According to information provided to the OECD Secretariat, amendments to the Ownership Guidelines passed in June 2015 exclude statutory SOEs from the scope of the provisions related to board composition.
76. For SOEs with two-tiered boards, only the independent members serving on the supervisory boards are included in the categorisation. Of those SOEs, both Klaipeda Oil and Lithuanian Shipping Company also have two independent members on their management boards.
77. Prior to its 2014 amendment, the Law on State and Municipal Enterprises explicitly stated that only the CEO could serve as the chair of the board.
78. By way of illustration, representatives of the state ownership entity chair the supervisory boards of Lithuanian Energy subsidiary Litgrid and of Klaipėda Oil, while the management boards of both companies are chaired by the CEO. Members of Lithuanian Energy’s executive management chair the supervisory boards of its subsidiaries Lithuanian Energy Production and Lesto.
79. This requirement for self-evaluation applies to management or unitary boards, not to supervisory boards.

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Annex 1: Overview of Lithuania's ten most economically significant SOEs

Name of the SOE and its subsidiaries	Main sector of operations	Corporate structure	Size of company - USD million	Share of the company owned by the state	Government body/bodies owning and exercising the ownership function	Changes within the last five years of the ownership and control structures
Public LLC Lietuvos Geležinkeliai (Lithuanian Railways) www.litrail.lt Subsidiaries: 100% Private LLC Geležinkelio Tiesimo Centras 100% Private LLC Geležinkelių Apsaugos Centras 100% Private LLC Vilniaus Lokomotyvų Remonto Depas 100% Private LLC Gelsauga 100% Private LLC Geležinkelių Projektavimas	Land transport and transport via pipelines	Public LLC (unlisted)	AV 2 064 BE 1 137 AT 540 NoE 12 641	100%	Ministry of Transport and Communications	

Name of the SOE and its subsidiaries	Main sector of operations	Corporate structure	Size of company - USD million	Share of the company owned by the state	Government body/bodies owning and exercising the ownership function	Changes within the last five years of the ownership and control structures
Private LLC Lietuvos Energija (Lithuanian Energy) www.le.lt Subsidiaries: 96.1% Public LLC Lietuvos Energijos Gamyba 82.6% Public LLC LESTO 66.7% Private LLC LITGAS 73.2% Public Enterprise Energetiku Mokymo Centras 100% Private LLC VAE SPB 73.2% Private LLC Duomenų Logistikos Centras 85.8% Private LLC Technologijų Ir Inovacijų Centras	Electricity, gas, steam and air conditioning supply	Private LLC	AV 3 209 BE 2 063 AT 959 NoE 4 352	100%	Ministry of Finance	On 13 January 2013 the ownership of LLC Lietuvos Energija was transferred from the Ministry of Energy to the Ministry of Finance.

Name of the SOE and its subsidiaries	Main sector of operations	Corporate structure	Size of company - USD million	Share of the company owned by the state	Government body/bodies owning and exercising the ownership function	Changes within the last five years of the ownership and control structures
Private LLC EPSO-G Subsidiaries: 97.5% Public LLC Litgrid www.litgrid.eu 96.5% Public LLC Amber Grid www.ambergrid.lt	Electricity, gas, steam and air conditioning supply	Private LLC	AV 843 BE 260 AT 203 NoE 673	100%	Ministry of Energy	LLC EPSO-G was founded on 25 July 2012.
Public LLC Klaipėdos Nafta www.oil.lt	Electricity, gas and steam and air conditioning supply	Public LLC (listed)	AV 223 BE 189 AT 42 NoE 367	72.32%	Ministry of Energy	In June 2012 Public LLC Klaipėdos Nafta emitted an additional 38.6 million shares which led to an increase of state ownership from 70.63% to 72.32%.
SE Ignalinos Atominė Elektrinė www.iae.lt	Electricity, gas, steam and air conditioning supply	State Enterprise	AV 698 BE 133 AT 0.1 NoE 2 166	Full ownership	Ministry of Energy	
SE Lietuvos Naftos Produktų Agentūra www.lnpa.lt	Warehousing and support activities for transportation	State Enterprise	AV 109 BE 109 AT 47 NoE 6	Full ownership	Ministry of Energy	
SE Klaipėdos Valstybinio Jūrų Uosto Direkcija www.portofklaipeda.lt	Warehousing and support activities for transportation	State Enterprise	AV 576 BE 467 AT 52 NoE 248	Full ownership	Ministry of Transport and Communications	

Name of the SOE and its subsidiaries	Main sector of operations	Corporate structure	Size of company - USD million	Share of the company owned by the state	Government body/bodies owning and exercising the ownership function	Changes within the last five years of the ownership and control structures
Public LLC Lietuvos Paštas (Lithuanian Post) www.post.lt Subsidiaries: 100% LLC Baltic Post 100% LLC Lietuvos Pašto Finansinės Paslaugos 100% LLC LP Mokėjimų Sprendimai	Postal and courier activities	Public LLC (unlisted)	AV 76 BE 35 AT 67 NoE 6 027	100%	Ministry of Transport and Communications	
SE Tarptautinis Vilniaus Oro Uostas (International Vilnius Airport) www.ltu.lt	Air transport	State Enterprise	AV 111 BE 82 AT 24 NoE 347	Full ownership	Ministry of Transport and Communications	(On 1 July 2014 Kaunas Airport and Palanga International Airport were merged with Vilnius International Airport and the three combined airports formed a state owned airline company Lietuvos Oro Uostai.)
SE Turto Bankas (Bank of Property) http://www.vilnius-airport.lt/	Real estate activities	State Enterprise	AV 118 BE 4 AT 2 NoE 64	Full ownership	Ministry of Finance	

Source: Questionnaire responses from the Lithuanian authorities. Notes: All SOEs and data are as of end 2013. The financial data for Lithuanian SOEs is converted to USD using the exchange rate 1 EUR = 1.13894 USD. Abbreviations are as follows: AV – asset value; BE – book equity; AT – annual turnover; NoE – number of employees; LLC – limited liability company; PI – public institution

Annex 2: List of Lithuanian state-owned enterprises according to objectives (2014)

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
I	1B	UAB EPSO-G	EPSO-G	Ministry of Energy	Private LLC	No board
-	-	➤ AB Amber Grid	Amber Grid	Ministry of Energy	Public LLC	Unitary
I	-	➤ AB Litgrid	Litgrid	Ministry of Energy	Public LLC	Two tier
I	1B	AB Klaipėdos Nafta	Klaipėda Oil	Ministry of Energy	Public LLC	Two tier
I	2	VĮ Lietuvos Naftos Produktų Agentūra	Lithuanian Oil Products Agency	Ministry of Energy	SE	No board
I	1B	UAB Lietuvos Energija	Lithuanian Energy	Ministry of Finance	Private LLC	Two tier
I	-	➤ AB Lietuvos Energijos Gamyba	Lithuanian Energy Production	Ministry of Finance	Public LLC	Two tier
I	-	➤ AB LESTO	Lithuanian Electricity Distribution Network Operator	Ministry of Finance	Public LLC	Two tier
-	-	➤ AB Lietuvos Dujos	Lithuanian Gas	Ministry of Finance	Public LLC	Two tier
I	1B	AB Lietuvos Geležinkeliai	Lithuanian Railways	Ministry of Transport and Communications	Public LLC	Unitary
I	1B	AB Lietuvos Paštas	Lithuanian Post	Ministry of Transport and Communications	Public LLC	Unitary
I	1B	VĮ Klaipėdos Valstybinio Jūrų Uosto Direkcija	Klaipėda State Seaport Authority	Ministry of Transport and Communications	SE	Unitary
I	1B	VĮ Lietuvos Oro Uostai	Lithuanian Airports	Ministry of Transport and Communications	SE	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
II	1A	VĮ Visagino Energija	Visaginas Energy	Ministry of Economy	SE	No board
II	2	VĮ Regitra	Regitra	Ministry of Interior	SE	Unitary
II	2	VĮ Registrų Centras	Centre of Registers	Ministry of Justice	SE	Unitary
II	1A	AB Lietuvos Jūrų Laivininkystė	Lithuanian Shipping Company	Ministry of Transport and Communications	Public LLC	Two tier
II	1B	AB Lietuvos Radijo ir Televizijos Centras	Lithuanian Radio and Television Centre	Ministry of Transport and Communications	Public LLC	Unitary
II	2	VĮ Oro navigacija	Air Navigation	Ministry of Transport and Communications	SE	Unitary
II	2	VĮ Automagistralė	Expressway	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Alytaus Regiono Keliai	Alytus Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Kauno Regiono Keliai	Kaunas Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Klaipėdos Regiono Keliai	Klaipėda Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Marijampolės Regiono Keliai	Marijampolė Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Panevėžio Regiono Keliai	Panevėžys Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
II	2	VĮ Šiaulių Regiono Keliai	Šiauliai Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Tauragės Regiono Keliai	Tauragė Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Telšių Regiono Keliai	Telšiai Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Utenos Regiono Keliai	Utena Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
II	2	VĮ Vilniaus Regiono Keliai	Vilnius Regional Roads	Ministry of Transport and Communications/Lithuanian Road Administration	SE	Unitary
III	2	UAB Žemės Ūkio Paskolų Garantijų Fondas	Agricultural Loan Guarantees Fund	Ministry of Agriculture	Private LLC	Unitary
III	2	VĮ Vilniaus Pilių Direkcija	Vilnius Castle Directorate	Ministry of Culture	SE	No board
III	1A	AB Giraitės Ginkluotės Gamykla	Giraitė Armament Factory	Bank of Property	Public LLC	Unitary
III	2	VĮ Ignalinos Atominė Elektrinė	Ignalina Nuclear Power Plant	Ministry of Energy	SE	Unitary
III	1B	VĮ Panevėžio Miškų Urėdija	Panevėžys Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
III	1B	UAB Būsto Paskolų Draudimas	Housing Loan Insurance	Ministry of Finance	Private LLC	Unitary
III	2	VĮ Indėlių ir Investicijų Draudimas	Deposit and Investment Insurance	Ministry of Finance	SE	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
III	2	VĮ Turto Bankas	Bank of Property	Ministry of Finance	SE	Unitary
III	1B	VĮ Infostruktūra	Infostructure	Ministry of Interior	SE	Unitary
IV	1B	UAB Lietuvos Monetų Kalykla	Lithuanian Mint	Bank of Lithuania	Private LLC	Unitary
IV	1B	AB Jonavos Grūdai	Jonava Grains	Ministry of Agriculture	Public LLC	Unitary
IV	2	VĮ Pieno Tyrimai	Dairy Research	Ministry of Agriculture	SE	Unitary
IV	2	VĮ Valstybės Žemės Fondas	State Land Fund	Ministry of Agriculture	SE	Unitary
IV	2	VĮ Lietuvos Paminklai	Lithuania Sights	Ministry of Culture/Department of Cultural Heritage	SE	Unitary
IV	1A	UAB Toksika	Toksika	Ministry of Economy	Private LLC	Unitary
IV	1A	UAB Lietuvos Parodų ir Kongresų Centras LITEXPO	Lithuanian Exhibition and Congress Centre LITEXPO	Ministry of Economy	Private LLC	Unitary
IV	2	UAB Investicijų ir Verslo Garantijos	Investment and Business Guarantees	Ministry of Economy	Private LLC	Unitary
IV	1B	VĮ Biržų Miškų Urėdija	Biržai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Jurbarko Miškų Urėdija	Jurbarkas Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Kaišiadorių Miškų Urėdija	Kaišiadorys Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Kazlų rūdos mokomoji Miškų Urėdija	Kazlų Rūda Training Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Kėdainių Miškų Urėdija	Kėdainiai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
IV	1B	VĮ Kretingos Miškų Urėdija	Kretinga Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Kuršėnų Miškų Urėdija	Kuršėnai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Mažeikių Miškų Urėdija	Mažeikiai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Nemenčinės Miškų Urėdija	Nemenčinė Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Prienų Miškų Urėdija	Prienai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Radviliškio Miškų Urėdija	Radviliškis Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Raseinių Miškų Urėdija	Raseiniai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Rietavo Miškų Urėdija	Rietavas Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Šakių Miškų Urėdija	Šakiai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Šalčininkų Miškų Urėdija	Šalčininkai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Šiaulių Miškų Urėdija	Šiauliai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
IV	1B	VĮ Šilutės Miškų Urėdija	Šilutė Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Švenčionėlių Miškų Urėdija	Švenčionėliai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Tauragės Miškų Urėdija	Tauragė Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Telšių Miškų Urėdija	Telšiai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Trakų Miškų Urėdija	Trakai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Ukmergės Miškų Urėdija	Ukmergė Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Valkininkų Miškų Urėdija	Valkininkai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	1B	VĮ Vilniaus Miškų Urėdija	Vilnius Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
IV	-	UAB Viešųjų Investicijų Plėtros Agentūra	Public Investment Development Agency	Ministry of Finance	Private LLC	Unitary
IV	1A	AB Problematika	Problematika	Ministry of Transport and Communications	Public LLC	Unitary
IV	1B	AB Smiltynės Perkėla	Smiltynė Ferry Terminal	Ministry of Transport and Communications	Public LLC	Two tier
IV	2	VĮ Vidaus Vandens Kelių Direkcija	Inland Waterways Authority	Ministry of Transport and Communications	SE	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
IV	1A	UAB Geoterma	Geoterma	Bank of Property	Private LLC	Unitary
V	1A	UAB Respublikinė Mokomoji Sportinė Bazė	Republican Instructional Sports Base	Government of the Republic of Lithuania/Department of Physical Education and Sports	Private LLC	Unitary
V	2	UAB Sportininkų Testavimo ir Reabilitacijos Centras	Athletes Testing and Rehabilitation Centre	Bank of Property	Private LLC	Unitary
V	-	UAB Mokslas ir Technika	Science and Technique	Lithuanian Academy of Sciences	Private LLC	No board
V	1A	UAB Panevėžio Veislininkystė	Panevėžys Breeding	Ministry of Agriculture	Private LLC	Unitary
V	1A	UAB Šilutės Polderiai	Šilutė Polders	Ministry of Agriculture	Private LLC	Unitary
V	1A	UAB Valstybinė Projektų ir Šamatų Ekspertizė	The State Expertise of Projects and Estimates	Ministry of Agriculture	Private LLC	Unitary
V	1A	UAB Aerogeodezijos Institutas	Aerogeodesy Institute	Ministry of Agriculture	Private LLC	Unitary
V	1A	UAB Dotnuvos Eksperimentinis Ūkis	Dotnuva Experimental Farm	Ministry of Agriculture	Private LLC	Unitary
V	1A	UAB Upytės Eksperimentinis Ūkis	Upytė Experimental Farm	Ministry of Agriculture	Private LLC	Unitary
V	2	UAB Gyvulių Produktyvumo Kontrolė	Animal Productivity Control	Ministry of Agriculture	Private LLC	Unitary
V	2	UAB Lietuvos Žirgynas	Lithuanian Horse Stable	Ministry of Agriculture	Private LLC	Unitary
V	2	UAB Šeduvo Avininkystė	Šeduva Sheep Breeding	Ministry of Agriculture	Private LLC	Unitary
V	2	UAB Šilutės Veislininkystė	Šilutė Breeding	Ministry of Agriculture	Private LLC	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
V	2	UAB Klaipėdos Žuvininkystės Produktų Aukcionas	Klaipėda Fisheries Product Auction	Ministry of Agriculture	Private LLC	Unitary
V	2	AB Lietuvos Veislininkystė	Lithuanian Breeding	Ministry of Agriculture	Public LLC	Unitary
-	2	AB Kiaulių Veislininkystė	Swine Breeding	Ministry of Agriculture	Public LLC	Unitary
V	2	VĮ Lietuvos Žemės Ūkio ir Maisto Produktų Rinkos Reguliavimo Agentūra	Lithuanian Agricultural and Food Market Regulation Agency	Ministry of Agriculture	SE	Unitary
V	2	VĮ Žemės Ūkio Informacijos ir Kaimo Verslo Centras	Agricultural Information and Rural Business Centre	Ministry of Agriculture	SE	Unitary
V	2	VĮ Distancinių Tyrimų ir Geoinformatikos Centras Gis-Centras	Remote Sensing and Geoinformatics Centre Gis-Centras	Ministry of Agriculture/National Land Service	SE	Unitary
V	2	UAB Lietuvos Kinas	Lithuanian Cinema	Ministry of Culture	Private LLC	No board
V	1A	UAB Poilsio Namai Baltija	Vacation Home Baltija	Bank of Property	SE	Unitary
V	1B	AB Klaipėdos Metrologijos Centras	Klaipėda Metrology Centre	Ministry of Economy	Public LLC	No board
V	1B	AB Šiaulių Metrologijos Centras	Šiauliai Metrology Center	Ministry of Economy	Public LLC	No board
V	1B	AB Vilniaus Metrologijos Centras	Vilnius Metrology Centre	Ministry of Economy	Public LLC	No board
V	1B	AB Kauno Metrologijos Centras	Kaunas Metrology Centre	Ministry of Economy	Public LLC	No board

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
V	1B	AB Panevėžio Metrologijos Centras	Panevėžys Metrology Centre	Ministry of Economy	Public LLC	No board
V	2	UAB Kauno Petrašiūnų Darbo Rinkos Mokymo Centras	Kaunas Petrašiūnai Job Market Training Centre	Ministry of Education and Science	Private LLC	No board
V	1A	AB Mintis	Mintis (Publishing House)	Bank of Property	Public LLC	Unitary
V	2	VĮ Energetikos Agentūra	Energy Agency	Ministry of Energy	SE	No board
V	2	VĮ Radioaktyviųjų Atliekų Tvarkymo Agentūra	Radioactive Waste Management Agency	Ministry of Energy	SE	No board
V	1A	UAB Projektų Ekspertizė	Project Expertise	Ministry of Environment	Private LLC	No board
V	1A	VĮ Valstybinis Miškotvarkos Institutas	State Forest Management Institute	Ministry of Environment	SE	Unitary
V	1B	VĮ Statybos Produkcijos Sertifikavimo Centras	Building Production Certification Centre	Ministry of Environment	SE	No board
V	1B	VĮ Alytaus Miškų Urėdija	Alytus Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Anykščių Miškų Urėdija	Anykščiai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Druskininkų Miškų Urėdija	Druskininkai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Dubravos eksperimentinė mokojoji Miškų Urėdija	Dubrava Experimental Training Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
V	1B	VĮ Ignalinos Miškų Urėdija	Ignalina Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Jonavos Miškų Urėdija	Jonava Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Joniškio Miškų Urėdija	Joniškis Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Kauno Miškų Urėdija	Kaunas Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Kupiškio Miškų Urėdija	Kupiškis Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Marijampolės Miškų Urėdija	Marijampolė Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Pakruojo Miškų Urėdija	Pakruojis Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Rokiškio Miškų Urėdija	Rokiškis Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Tytuvėnų Miškų Urėdija	Tytuvėnai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Utenos Miškų Urėdija	Utena Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Varėnos Miškų Urėdija	Varėna Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary

Size class	Group	Name (Lithuanian)	Name (English)	State ownership entity	Legal form	Board
V	1B	VĮ Veisiejų Miškų Urėdija	Veisiejai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	1B	VĮ Zarasų Miškų Urėdija	Zarasai Forest Enterprise	Ministry of Environment/Directorate General of State Forests	SE	Unitary
V	2	VĮ Lietuvos Prabavimo Rūmai	Lithuanian Assay Office	Ministry of Finance	SE	No board
V	1A	UAB Universiteto Vaistinė	University Pharmacy	Ministry of Health	Private LLC	Unitary
V	1A	UAB Baldžio Šilas	Baldžio Šilas	Ministry of Social Security and Labour	Private LLC	No board
V	1A	UAB Senevita	Senevita	Ministry of Social Security and Labour	Private LLC	Unitary
V	1A	UAB Sanatorija Pušyno Kelias	Pine Forest Road Sanatorium	Ministry of Social Security and Labour	Private LLC	Unitary
V	1B	AB Detonas	Detonas	Ministry of Transport and Communications	Public LLC	Unitary
V	2	VĮ Seimo Leidykla Valstybės Žinios	Seimas Publisher State Journal	Office of the Parliament	SE	Unitary
V	1A	AB Autoūkis	Autoūkis	Bank of Property	Public LLC	Two tier
V	1A	AB Informacinio Verslo Paslaugų Įmonė	Business Information Services Company	Statistics Lithuania	Public LLC	Unitary
-	1B	VĮ Mūsų Amatai	Mūsų Amatai	Ministry of Justice/Prison Department	SE	Unitary

Sources: Information provided by the Lithuanian authorities. Group classification is based on information in the forthcoming 2015 state annual aggregate report on SOEs, a preliminary version of which was shared with the OECD Secretariat. SOE subsidiaries, when reported on, were not given a group classification and are placed beneath parent SOEs in the Table.

Annex 3: 2011-12 SOE Reform Programme

**GOVERNMENT OF THE REPUBLIC OF LITHUANIA
RESOLUTION**

on the approval of the 2011 - 2012 programme for The reform of state-owned enterprises

9 February 2011 No. 172

Vilnius

In the implementation of the Concept for Improving the Efficiency of State-Owned Enterprises approved by Resolution No. 1731 of the Government of the Republic of Lithuania of 1 December 2010 (Official Gazette, 2010, No. 145-7447), the Government of the Republic of Lithuania has resolved:

1. to approve the 2011 - 2012 Programme for the Reform of State-Owned Enterprises (attached).
2. to assign the coordination of the implementation of the Programme approved by this Resolution to the Minister of Economy.

Prime Minister

ANDRIUS KUBILIUS

Minister of Economy

DAINIUS KREIVYS

APPROVED
by Resolution No. 172 of the
Government of the Republic of Lithuania
of 9 February 2011

2011 - 2012 PROGRAMME FOR THE REFORM OF STATE-OWNED ENTERPRISES

I. GENERAL PROVISIONS

1. The 2011 - 2012 Programme for the Reform of State-Owned Enterprises (hereinafter - the Programme) was drawn up in the implementation of the Resolution No. 1052 of the Government of the Republic of Lithuania of 14 July 2010 On the Approval of the Guidelines for Ensuring Transparency of the Activities of State-Owned Enterprises and Designating a Coordinating Authority (Official Gazette, 2010, No. 88-4637) and the Concept for Improving the Efficiency of State-Owned Enterprises approved by Resolution No. 1731 of the Government of the Republic of Lithuania of 1 December 2010 (Official Gazette, 2010, No. 145-7447) (hereinafter – the Concept).

2. The aim of the Programme is to enable the reform of the governance of state-owned enterprises in order to ensure more efficient operations and the use of assets thereof, better performance results and operating transparency of these enterprises.

3. The term *state-owned enterprise* used in the Programme shall mean a state enterprise, public limited liability company and private limited liability company engaged in economic-commercial activities, a part of shares whereof are owned by the state under the right of ownership.

II. ANALYSIS OF THE CURRENT SITUATION

4. The Republic of Lithuania is an important shareholder of public limited liability companies or private limited liability companies as well as of state enterprises. Public authorities (usually ministries) are implementing the rights and obligations of the state as the owner of the company in more than 100 state enterprises, also, property and non-property rights granted by shares of public limited liability companies and private limited liability companies. State-owned enterprises exist in various sectors of economy important to the state: energy, communications, transport and others. They create a considerable economic value and greatly contribute to economic development of the entire country, implementation of social and employment policy, moreover, these are the assets of the entire state, i.e. all taxpayers of Lithuania. Thus, the state must be a professional, responsible owner of enterprises, actively seeking to increase the value of their assets. Governance of such enterprises must be transparent, based on the principles of openness, active participation in capital management and good governance, focused on clear goals.

5. According to the data of the review of the Lithuanian state-owned commercial assets 2009, commercial assets of the state were managed inefficiently, performance results of majority of state-owned enterprises were poor, while financial return of capital of enterprises was far below the European average.

6. The reason of such inefficiency of the activities of these enterprises is their current governance system, which does not promote their profitable operations, set contradictory goals therefor and thus create conditions for improper management thereof. The subordination of state-owned enterprises to specific ministries prevents many of them from external competition. Even though the most important function of ministries should be the regulation of respective management areas, the ministries often start actively participating in the governance of state-owned enterprise, worsen their financial results and lead to inevitable conflicts of interest.

7. The corporate governance problems of state-owned enterprises include:

7.1. insufficiently clear goals of these companies. There is only one goal of private companies - to make a profit; while objectives of the majority of state-owned enterprises are currently very

different and often contradict each other, which leads to vague accountability thereof, does not allow to properly assess managerial skills of Boards and executives of enterprises.

7.2. poor governance of enterprises. In private companies, a lot of focus is placed on the governance of these companies - professional Boards capable of properly representing interests of shareholders are elected, specific goals and business directions are set, supervision of company activities is conducted. Currently, objectives of state-owned enterprises are not clear enough, comprehensive monitoring of their activities is not performed, Boards poorly perform their direct duties and they lack supervision.

7.3. The activities of these enterprises are not transparent enough. Many state-owned enterprises do not publish their annual reports; some of them do publish the reports, but they contain incomplete information.

7.4. These enterprises often fail to separate commercial activities from non-commercial ones in their financial reports, thus making it hard to conduct financial analysis of these companies and to determine their performance results.

III. AIM AND TASKS OF THE PROGRAMME

8. The aim of the Programme is to enable the restructuring of corporate governance of state-owned enterprises in order to ensure more efficient activities and use of assets of these enterprises, better performance results thereof and to increase transparency of activities of state-owned enterprises. The planned more efficient corporate governance model of state-owned enterprises is expected not only to bring direct financial benefit to the state budget of the Republic of Lithuania, but to also improve the quality of services provided to residents of Lithuania. Moreover, proper governance of these companies will have a positive impact on the state's economy and will improve business environment.

9. The following are the tasks of the Programme:

9.1. to set short-term (for 2011) performance targets and sought financial indicators of state-owned enterprises.

Information on the activities of state-owned enterprises, forecasted performance results and financial indicators will be collected. Having analysed and summarized the data presented, short-term (for 2011) performance targets and sought financial indicators of state-owned enterprises in 2011 will be presented and monitoring of the implementation thereof will be conducted. Goal-setting system of state-owned enterprises, which will help planning state finances, will be implemented.

9.2. to draw up recommendations for the separation of commercial and non-commercial state-owned enterprises and/or their functions, definition of non-commercial functions and for setting the price thereof (hereinafter - the Recommendations).

A recommendations document, which will include the analysis of the scope and costs of commercial and non-commercial functions, recommendations for the accounting of non-commercial functions and possible funding schemes of these functions, will be prepared. Pursuant to the drawn up recommendations, plans for separation of commercial and non-commercial state-owned enterprises and/or their functions will be submitted to the Government of the Republic of Lithuania. A funding scheme of non-commercial functions will be created, upon the implementation of which the scope of cross-subsidization will decrease, while non-commercial functions will be carried out on a competitive basis, which will allow improving the quality of performance of non-commercial functions and reducing their costs.

9.3. to prepare guidelines for the implementation of ownership right.

A document establishing guidelines for the implementation of ownership right will be prepared, which will govern the performance of ownership functions and lay down the procedure for the appointment and responsibilities of members of governance bodies of state-owned enterprises and calculation of their remuneration.

9.4. to ensure transparency of company activities.

A system for the submission of financial data of state-owned enterprise will be developed, summary reports on their activities and results will be drawn up. A website for publishing summarized information of state-owned enterprises will be created.

IV. PROGRAMME EVALUATION CRITERIA

10. The implementation of the aim and tasks of the Programme is evaluated based on the following criteria:

- 10.1. 90 percent of set performance targets and sought financial indicators achieved;
- 10.2. recommendations for the separation of non-commercial and commercial functions drawn up;
- 10.3. guidelines for the implementation of ownership right prepared;
- 10.4. a system for the submission of financial data and a website developed, summary quarterly and annual reports on the activities and results of state-owned enterprises prepared.

V. PROGRAMME FUNDING, IMPLEMENTATION AND ACCOUNTABILITY

- 11. The Programme will be implemented in 2011–2012.
 - 12. The Programme will be implemented using the Privatisation Fund.
 - 13. Programme funds will be used in compliance with the Rules for the Use of and Accounting for the Privatisation Fund approved by Resolution No. 152 of the Government of the Republic of Lithuania of 6 February 1998 (Official Gazette, 1998, No. 15-350; 2002, No. 124-5663; 2005, No. 36-1176).
 - 14. The aim, tasks and provisions of the Programme are implemented in accordance with the Action Plan for the Implementation of the Programme for 2011-2012 approved by the Minister of Economy in coordination with the Ministry of Finance.
 - 15. The implementation of the Programme is reported to the Government of the Republic of Lithuania in the procedure prescribed by laws.
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OECD REVIEW OF THE CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES

LITHUANIA

This report evaluates the corporate governance framework for the Lithuanian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises. The report was prepared at the request of the Republic of Lithuania. It is based on discussions involving all OECD countries.