State-Owned Enterprise Governance

A STOCKTAKING OF GOVERNMENT RATIONALES FOR ENTERPRISE OWNERSHIP



OECD

State-Owned Enterprise Governance: A Stocktaking of Government Rationales for Enterprise Ownership



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Foreword

This report reviews the rationales offered by national governments for including or maintaining certain corporate assets in state ownership. It is based on inputs from 24 countries: Canada, Chile, the Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Israel, Italy, Japan, Lithuania, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal the Slovak Republic, Slovenia, Sweden, Switzerland, the United Kingdom, and Turkey. The national contributions and the present report have been reviewed by the OECD Working Party on State Ownership and Privatisation Practices (Working Party), which developed, and oversees the implementation of the OECD Guidelines on Corporate Governance of State-Owned Enterprises (the "Guidelines"). The information presented in the report is therefore based on self-reporting, but has been made subject to a peer review.

In 2014, the OECD undertook a review of the 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 assesses participating countries' state enterprise ownership policies using the SOE Guidelines developed in 2005 as a benchmark.

The report aims to provide guidance, based on other countries' experience, to authorities seeking to reform or review their ownership policies. It applies two practical approaches. First, it provides an inventory of national practices regarding the application of the Guidelines recommendation that governments should develop and issue an ownership policy. This policy should define the overall objectives of state ownership, the state's role in the corporate governance of state-owned enterprises (SOEs), and how it will implement its ownership policy. Second, the report illustrates how the state enterprise ownership policy is applied in situations where new SOEs are created, or when the state decides to terminate its enterprise ownership.

Information included in the report is current as of October 2014. The report was given final approval and declassified by the Working Party in November 2014. It was prepared by Mary Crane-Charef with guidance and inputs from Hans Christiansen, both of the Corporate Affairs Division of the OECD Directorate for Financial and Enterprise Affairs.

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Executive summary

This stocktaking report presents national practices of state enterprise ownership, based on responses to a questionnaire (see Annex A) circulated to the Working Party on State Ownership and Privatisation Practices (Working Party). The exercise serves two purposes. First, it serves as an inventory of national practices regarding application of Chapter 2.A. of the OECD Guidelines on Corporate Governance of State-Owned Enterprises ("OECD Guidelines"), which calls on governments to develop and communicate an ownership policy "that defines the overall objectives of state ownership, the state's role in the corporate governance of SOEs, and how it will implement its ownership policy." Secondly, the report takes stock of state practices in situations where a) new SOEs are created, or b) situations in which the government terminates enterprise ownership. In all cases, the report focuses on the rationale for ownership of SOEs that are of a wholly or mostly commercial nature, as opposed to corporate entities that have been established to carry out well-defined public policy objectives.

Twenty-four jurisdictions responded to the Working Party government ownership rationale questionnaire. Based on these responses, this report provides the following overall findings:

- **Ownership policies:** More than half (15 out of 24) of the countries participating in this stocktaking have explicit ownership policies defining the overall objectives of state ownership. Of the remaining ten countries, seven said that the expectations for state ownership could be ascertained from other laws and regulations pertaining to SOEs or company-specific acts.
- **SOE creation:** Procedures for establishing an SOE are usually set forth either in laws on the establishment of SOEs, or in the instrument creating the specific SOE (i.e. legislation, decree, resolution, executive order, etc.). Most governments must rationalise the need for state enterprise ownership (often to Parliament) when deciding to create a new SOE and, in some cases, must also provide a framework for operationalising the new business. This can include estimated cost structures, corporate governance frameworks, staffing requirements, etc. (See, for example, the second column in Tables 1.1 and 1.2 below.)

- **SOE termination:** The procedures for terminating SOE ownership or divesting state shares are similar to those for SOE-creation. Again, Governments must explain (usually to Parliament) the reasons for terminating state ownership. These reasons include: the national interest is no longer served by state ownership; the company may be more efficient and competitive with private owners; and/or there is a need for alternative sources of financing and to reduce public costs.

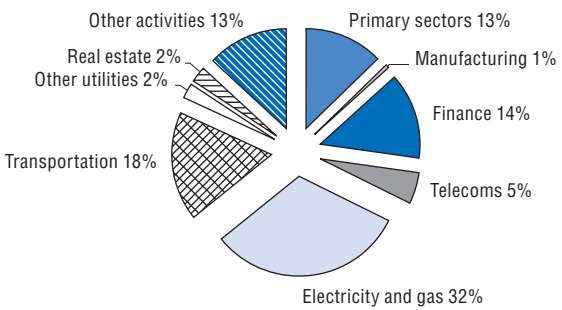
Chapter 1

Approaches to developing and communicating rationales for SOE ownership

This section aims to highlight the various ways in which governments develop and communicate their rationales for state enterprise ownership, as well as whether or how these ownership policies define the overall objectives of state ownership, as per Chapter 2, Recommendation A of the SOE Guidelines. This section also addresses, to the extent possible, countries' practices for reviewing and updating their ownership rationales and objectives for state ownership.

Of the 24 jurisdictions[1] participating in this stocktaking exercise, 15 jurisdictions[2] report that they have explicit ownership policies. All but one of the jurisdictions with explicit ownership policies are found in Europe, particularly in northern and Eastern Europe. The only non-European country in this first category is Chile. These countries also generally have a larger SOE portfolio than countries without an explicit ownership rationale. On average, the 14 countries with ownership rationales have 100 SOEs in their portfolio, with the highest concentration of SOEs in Hungary (371), Poland (326), Lithuania (131), and the Czech Republic (125).[3] Table 1.1, below, also shows that, generally, eastern European countries express their ownership rationale via legislation, while in northern European countries, particularly in Scandinavia, where the ownership rationale is expressed via government policy or decision. The sectorial breakdown of SOEs in all 13 of these jurisdictions is provided in Figure 1.1, below.

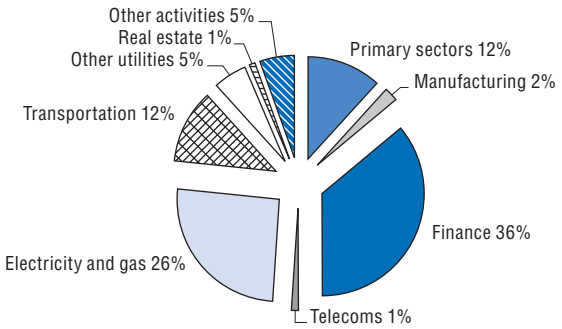
Figure 1.1. **Sectorial breakdown of SOEs in jurisdictions with explicit ownership rationales**



Source: OECD (2014), *The Size and Sectoral Distribution of SOEs in OECD and Partner Countries*, OECD Publishing, *http://dx.doi.org/10.1787/9789264215610-en*.

In the remaining nine jurisdictions, the motivation for state enterprise ownership is implicit and can be ascertained from a wide range of sources, including past practice, the country's overall legal framework, and/or SOE-specific laws, regulations, and practice (see Section 1.2). The geographic representation in this category is also more varied than the first, ranging from the Americas and Europe to the Middle East and Asia. The SOE portfolio is generally much smaller, with on average 35 SOEs.[4] The sectorial breakdown of SOEs in these ten jurisdictions is provided in Figure 1.2, below.[5]

Figure 1.2. **Sectorial breakdown of SOEs in jurisdictions with implicit ownership rationales**



Source: OECD (2014), *The Size and Sectoral Distribution of SOEs in OECD and Partner Countries*, OECD Publishing, *http://dx.doi.org/10.1787/9789264215610-en*.

While the 24 jurisdictions participating in this stocktaking exercise may express their ownership rationale in different ways, their overall objectives for state enterprise ownership generally fall into the following categories:

- support national economic and strategic interests;
- ensure continued national ownership of enterprises;
- supply specific public goods or services (after deeming the market cannot supply the same goods or services);
- perform business operations in a "natural" monopoly situation; and
- create a state-owned monopoly (or oligopoly) where market regulation is deemed infeasible or inefficient.

The ways in which governments may develop and communicate their enterprise ownership rationale and objectives are described in further detail, below. The application of this framework is discussed later in this report, in Chapter 2.

1.1. Jurisdictions with explicit state enterprise ownership rationales

Sources for the ownership rationale

Responses from the 14 countries with an explicit ownership policy are included in Table 1.1, below. The ownership policies in these countries are set forth in different ways. The ownership rationale is established via legislation in five countries (Estonia, Germany, Hungary, Lithuania, and Poland); via government decision, resolution, or decree in four countries (Chile, Finland, Norway, Sweden, and Switzerland); via government policy statements in two countries (Ireland and the Netherlands); via both legislation and government

decree in one country (Czech Republic); and via legislation, government decree and cabinet decision in one country (Portugal).

Ownership objectives

The overall objectives for state ownership policy, listed in Section 1.1 above, are usually complemented by objectives set forth in supplementary legislation, regulations, or policies. These can include targets for earnings, rates of return and capital structure, as well as the delivery of SOE-specific public policy objectives. In Portugal, for example, sectorial ministries set policies for their sector that further specify the state ownership objective for SOEs in those sectors and influence SOEs' objectives, operations and the level of public services that the SOEs in those sectors are expected to provide. In the more "advanced" examples of public and corporate governance, SOEs are evaluated against their fulfilment of these priorities in a process not unlike the evaluation of financial performance. This is the case, for example, in Switzerland, where SOEs must report to the annual general meeting on their fulfilment of both strategic and public service objectives, which are specified every four years. Fulfilment of these objectives is also discussed in reports made to Parliament by the Federal Council, which exercises the ownership function over Swiss SOEs, and in annual hearings called by the parliamentary finance and control committees with SOE executives and line ministries.

The state's expectation of SOEs is further clarified in some cases by the classification of groups of SOEs (Chile, Finland, Lithuania, Norway, Portugal and Switzerland). In Finland and Norway, for example, SOEs are divided into categories: 1) commercial SOEs with commercial objectives and no strategic interest; 2) commercial SOEs with strategic interest; and 3) SOEs with special tasks and objectives. Strategic interests of SOEs in both countries should be defined and disclosed. In Finland, SOEs in the third category are established and incorporated as joint stock companies under the Companies Act that are 100 per cent state-owned. They usually operate in a monopoly situation and have additional features, such as specific tasks, reporting duties, requirements for the composition of supervisory boards, etc., which are separately stipulated in the relevant laws. In Norway, SOEs in the third category usually include their strategic tasks and objectives in their articles of association.[6] In a similar way, Lithuanian SOEs are divided according to their objectives: 1) SOEs in which the state seeks to increase the value of the enterprises' business, dividends, or contribution to the state budget; 2) SOEs in which the state also seeks to secure strategic interests; and 3) SOEs with non-commercial objectives, through which the state seeks to achieve social and political objectives.

Box 1.1. **Examples of Swiss SOE objectives set forth in supplementary legislation**

- **Swiss Post**'s objective is to provide national postal financial services, as well as regional passenger transport services, as per Art. 3 of the Federal Act on the Organisation of Swiss Post. Public service objective – including providing services universally and affordably – are set forth and described in the Postal Act (Arts. 1b, 13ff); Postal Ordinance; Swiss Post AG's articles of association (Art. 1), and the Federal Council's strategic objectives for the Swiss Post for 2013-2016.[1]
- **RUAG AG**'s objective is to ensure the equipment of the army at the federal (and not Canton) level, as per Art. 1 of the Federal Law on Federal Armaments Companies. This objective is reiterated in RUAG AG's articles of association.[2]
- **Swisscom AG**'s objective is to provide, in Switzerland and abroad, telecommunications, broadcasting and related products and services, as per Art. 3 of the Federal Act on the Organisation of the Federal Telecommunications Company. As the 2008-2017 licensee for Switzerland's universal telecommunications service license, Swisscom must provide these services reliably and affordably throughout Switzerland, as per the terms of the universal service license, the Telecommunications Act (Arts.14-19), and the Ordinance on Telecommunications Services (Chap. 3). Swisscom's obligations are reiterated in the Federal Council-mandated objectives for 2014-17.[3]
- **Swiss Federal Railways'** objective is to provide public transport services, particularly in the areas of infrastructure, regional or long-distance passenger and freight rail transport, as per Art. 3 of the Act on Federal Railways. This objective is further elaborated in the Federal Council-mandated strategic objectives for 2011-2014, which call on the Swiss Federal Railways to provide safe, timely, and quality rail transport and to provide the infrastructure for this purpose.[4]

1. Federal act on the Organisation of Swiss Post (*www.admin.ch/opc/en/classified-compilation/20070599/index.html*); Postal Act (*www.admin.ch/opc/fr/classified-compilation/20070597/index.html*); Postal Ordinance (*www.admin.ch/opc/fr/classified-compilation/20112357/index.html*); Swiss Post strategic objectives for 2013-16 (*www.uvek.admin.ch/themen/00681/00988/00992/00993/index.html?lang=fr*).
2. Federal Law on Federal Armaments Companies (*www.admin.ch/opc/fr/classified-compilation/19970426/index.html*).
3. Federal Act on the Organisation of the Federal Telecommunications Company (*www.admin.ch/opc/fr/classified-compilation/19970161/index.html*); universal telecommunications service license (*www.bakom.admin.ch/themen/telekom/00457/02107/index.html?lang=en*); Telecommunications Act (*www.admin.ch/opc/en/classified-compilation/19970160/index.html*); Ordinance on Telecommunications Services (*www.admin.ch/opc/en/classified-compilation/20063267/index.html*); Swisscom strategic objectives for 2014-2017 (*www.uvek.admin.ch/themen/00681/00988/00992/index.html?lang=fr*).
4. Act on Federal Railways (*www.admin.ch/opc/fr/classified-compilation/19983388/index.html*); Swiss Federal Railways strategic objectives for 2011-14 (*www.uvek.admin.ch/themen/00681/00988/00990/index.html?lang=fr*).

Source: Switzerland's response to the Working Party questionnaire on state ownership rationales.

Reviewing and updating the ownership policy

Some of the respondents further described procedures for the regular review and update of their ownership rationales. In roughly half of the countries with explicit ownership policies, these rationales are reviewed regularly at the Government level. In Sweden, Finland, and Germany, the policy is reviewed every year, every four years, and every two years, respectively. In the Netherlands, Norway, and Switzerland, the policy is reviewed regularly and/or as needed, but there is no rule on the frequency with which reviews must be undertaken. In Portugal, the state ownership policy is reviewed and updated via Government decision.

1.2. Jurisdictions without explicit state enterprise ownership rationales

Sources for the ownership rationale

Responses from the ten countries that do not have an explicit ownership policy are included in Table 1.2. In three countries, the ownership rationale may be ascertained from SOE-specific statutory legislation, articles of association and contracts between the SOE and relevant shareholder agencies (Canada, Italy, and Japan). (See also Section 1.3) In four countries, the Government's ownership policy can be gleaned from the Government's overall legislative and policy framework, including company and public administration law and sectorial policies (Mexico, the Slovak Republic, Slovenia, and Turkey). In Israel, New Zealand and the United Kingdom, there are no formal ownership criteria.

Ownership objectives

In the ten countries with implicit ownership policies, the overall objectives for state enterprise ownership are the same do not depart from the broad objectives listed in Section 1.1, above. For example, in Israel, the informal practice is that SOEs are established when: there is a market failure or there is a national interest in, or need to provide a specific activity that cannot be provided in another way. In Canada and Italy, the state establishes or maintains state ownership to pursue specific public policy objectives. In Italy, state enterprise ownership is also justified in strategic sectors, such as energy, aerospace and defence.[7] In Mexico and Turkey, SOEs are expected to help the Government meet strategic objectives, to provide a public social service, and/or to generate value. The ownership policy in the United Kingdom depends to a significant extent on the category of the entity (see Box 1.2), though the Government's overall position is that private sector ownership is preferable, where possible, for commercially oriented entities.

Box 1.2. **Categories of government-owned bodies in the United Kingdom**

The UK state enterprise ownership policy is determined by the category of the entity. The categories of state-owned entities include:

- Public corporations

Public corporations are mainly trading, market bodies that operate commercially and recover most of their costs from fees charged to customers. Public corporations can include several forms, including: chartered or statutory corporations, which are established to deliver a public service in a given industry sector where ministers want to retain control over the body's remit; Government-owned companies (such as companies limited by shares or by guarantee) undertaking a commercial function; and joint venture or public-private partnerships, which are partnerships or limited companies run in conjunction with a private sector partner. (Examples include the UK's Channel 4, the Civil Aviation Authority, and the CDC Group.)

- Trading funds/agencies

Trading funds are set up through statutory instruments under the 1973 Government Trading Funds Act. They are normally established under circumstances where agencies (or other parts of government) can charge for their goods or services through a genuine customer-supplier relationship and have a reliable income stream (at least 50% from commercial activities). (An example of a trading fund is Companies House [*www.companieshouse.gov.uk/*].)

- Non-departmental public bodies

NDPBs are usually established under statutory legislation or under the Companies Act. A small number of NDPBs have been established by Royal Charter. NDPBs work at arm's length from the Government within a strategic framework set by ministers, undertaking or delivering a public service in a given sector. Generally, commercial operations are undertaken to support strategic goals, rather than for profit. (Examples include the Arts Council England, the British Council, the Information Commissioner and the Parole Board.)

Source: The United Kingdom's response to the Working Party questionnaire on state ownership rationales and the Government guidance, "Categories of Public Bodies: A Guide for Departments", December 2012 (*www.gov.uk/government/uploads/system/uploads/attachment_data/file/80075/Categories_of_public_bodies_Dec12.pdf*).

Reviewing and updating the ownership policy

Some countries may review their framework for state ownership in the context of assessing individual SOEs' fulfilment of their objectives and the justification for the Government's continued ownership of shares in the enterprise. This is the case, for example, in Israel, as well as in Turkey,

where the review includes results of annual SOE audits undertaken by the Turkish Court of Accounts. Some countries conduct similar assessments through the process of annual aggregate SOE sector reporting. Finally, Turkey also reviews its ownership framework more generally in the preparation of the Government's development plans, medium-term programmes, and annual investment and financing programmes.

1.3. Corporate statutes and statutory corporations

Almost all of the survey respondents stated that, regardless of whether they had an explicit or implicit state enterprise ownership policy, the overall ownership rationale is often complemented – or, as the case may be, established – by the legislation and regulation bearing on individual SOEs. In the case of companies established under general company laws, etc., this may be done through their corporate bylaws and articles of association. In the case of statutory corporations, their goals and purpose can be gleaned from the establishing legislation. Some examples include:

- *Canada*. The state enterprise ownership rationale can be generally understood by referencing Crown corporations' constituting legislation, articles of incorporation, or Letters Patent. (Examples are included in Box 1.3)
- *Chile*. In some cases, the rationale for state ownership in specific enterprises is included in messages accompanying bills establishing an SOE. For example, the message accompanying the bill establishing National Television of Chile (TVN) cites Art. 19, Number 12 of the Constitution, which gives the State the right to create, operate, and maintain television stations. The message also states TVN will provide information, entertainment and cultural development in a pluralistic and independent way to all Chileans at all times and in all places.
- *Germany*. Since the Federation's ownership of equity shares in a commercial enterprise is based on, and legitimated by, the need to fulfil specific tasks, these tasks must be included in each enterprise's internal body of rules and regulations, such as statutes, rules of procedure for the supervisory body, or the rules of procedure for management.
- *Ireland*. Most SOEs are established in response to a particular "policy" concern, while being required to operate on a commercial basis. Each individual SOE has legislation underpinning its corporate structure and activities.
- *Japan*. SOEs are established through company-specific legislation that provides the objective and legal and regulatory status of the enterprise concerned and requires the state own all or a specific per centage of the enterprise. Examples of company-specific legislation include: the Expressway Company Law; the Act on Japan Environmental Safety Corporation; the Act on Nippon Telegraph and Telephone Corporation; the Japan Finance

Box 1.3. **Examples of Canadian Crown corporations and their contribution to the overall state enterprise ownership rationale**

Generally, Canadian Crown corporations are established to implement certain public policy objectives. While there is no explicit Canadian state enterprise ownership rationale, the Government's though ownership policy can be ascertained from Crown companies' constituting legislation, articles of incorporation, or Letters Patent. Examples include:

- Canadian Broadcasting Corporation

The CBC has a legislated mandate under the Broadcasting Act to provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains that should be, among others, predominantly and distinctively Canadian, reflects Canada and its regions to national and regional audiences, while serving the special needs of those regions, actively contributes to the flow and exchange of cultural expression, and reflects the multicultural and multiracial nature of Canada.

- Canadian Museum of History and National Gallery of Canada

The Museum has a statutory mandate to enhance Canadians' knowledge, understanding and appreciation of events, experiences, people and objects that reflect and have shaped Canada's history and identity, and also to enhance their awareness of world history and cultures. Similarly, the National Gallery of Canada has a mandate to develop, maintain and make known, throughout Canada and internationally, a collection of works of art, both historic and contemporary, with special but not exclusive reference to Canada, and to further knowledge, understanding and enjoyment of art in general among all Canadians.

- Petro-Canada

In a commercial context, Petro-Canada was incorporated in 1975 to establish within Canada's energy industries a Crown-owned company with authority to: explore for hydrocarbon deposits; negotiate for and acquire petroleum and petroleum products from abroad to assure a continuity of supply for Canada's needs; develop and exploit deposits of hydrocarbons within and outside Canada in the interests of Canada; carry out research and development projects in relation to hydrocarbons and other fuels; and engage in exploration for, and the production, distribution, refining and marketing of, fuels. This Crown corporation was privatised in 1991, with the Government holding a decreasing number of shares in the company until 2009, when the government's shares were completely divested. (See also Section 1.2.a)

Source: Canada's response to the Working Party questionnaire on state ownership rationales.

Corporation Act; the Japan Bank for International Cooperation Act; the Japan Tobacco Inc. Act; the Act on Special Provisions for customs Procedure by means of Electronic Date Processing System; and the Nippon Alcohol Corporation Act.

- *Mexico*. As an example, the law establishing PEMEX (Ley de Petróleos Mexicanos) states that PEMEX's Board and CEO must carry out their duties in pursuance of "generating economic value, in favour of Mexican society, with environmental responsibility".
- *Netherlands*. For some statutory SOEs, the law states explicitly that the state must hold all or the majority of the enterprise's shares. This is the case, for example, with the Dutch electrical grid operator Tennet and Schiphol Airport.
- *New Zealand*. Generally, the state does not explicitly provide a rationale for its ownership of specific enterprises. Some entities choose to highlight in their public documentation (i.e. statements of intent and annual reports) the unique value they contribute to the state and to the public.
- *Poland*. The rationale for state enterprise ownership is usually not included in SOEs' articles of association. However, three SOEs explicitly refer to state ownership by the State Treasury in their articles of association: the Polish Security Printing Works, Polish Radio and Polish Television.
- *Slovenia*. Laws establishing 100 per cent state-owned statutory SOEs in Slovenia include SOE-specific objectives. INFRA d.o.o., which regulates water and energy infrastructure in the Lower Sava River region; DRI d.o.o., which manages the public railway infrastructure; Kontrola zračnega prometa d.o.o., Slovenia's air traffic controller; Luka Koper d.d., established under the Maritime Code and the Regulation on Granting Concessions for the Management, Development and Maintenance of Port Infrastructure in the Port of Koper; and Slovenske železnice d.o.o. (Slovenian Railways), operating under the Resolution on Transport Policy of the Republic of Slovenia, Railway Transport Act and Slovenian Railway Company Act.
- *Turkey*. Almost all SOEs refer to the rationale for state ownership in their articles of association. Examples include: The centralised public purchase institution, the State Material Office (DMO), whose main stated objective is supplying the State's material and service needs; the Turkish Petroleum Corporation (TPAO), whose stated objective is organising the public petroleum sector; and the Machinery and Chemical Industry Institution (MKEK), whose main objective is to meet the needs for national defence in an economical way.

Table 1.1. **Examples of explicit rationales for SOE ownership**

Country	Source for ownership rationale	Main purpose of state ownership	Review/update procedures	Specific objectives or classifications supplementing the ownership rationale	Classifications for individual (groups of) SOEs
Chile	Cabinet decision	The purpose of the State as an owner is to maximise the economic value of the SOEs and their contributions to the national budget.			SOEs are divided into two groups: (1) SOEs under the supervision of the Public Enterprise System (SEP) and (2) state-owned statutory corporations. The decision as to which SOEs fall under the supervision of the SEP is taken on a case-by-case basis, depending on the specific objective the SOE fulfils, the sector in which it operates, and/or the capital it requires to operate.
Czech Republic	Legislation (including Act No. 77/1977, Coll. Of Czech Law) and government decree	SOEs are founded to fulfil important social, strategic or public beneficial interests			
Estonia	Legislation (State Assets Act[1])	The state participates in a company for a public purpose and/or for the purpose of earning revenue.	An annual aggregate SOE report is submitted to Cabinet for yearly review and approval. The State Assets Act was last amended in 2010.	In addition to financial targets, certain tasks are assigned to specific statutory SOES that are 100 per cent state-owned.[2]	

Table 1.1. **Examples of explicit rationales for SOE ownership** *(cont.)*

Country	Source for ownership rationale	Main purpose of state ownership	Review/update procedures	Specific objectives or classifications supplementing the ownership rationale	Classifications for individual (groups of) SOEs
Finland	Government resolution (Government Resolution on State Ownership Policy, November 2011[3])	The Government Resolution on State Ownership Policy does not offer a main purpose for SOE ownership, but classifies SOEs into three groups: (1) commercial SOEs with no strategic interest; (2) commercial SOEs with strategic interest; and (3) SOEs with special tasks.	Following parliamentary elections every four years, the Government issues a Government Resolution on State Ownership Policy that updates Finland's ownership policy. The last update was on 3 November 2011.		The ownership policy divides SOEs into three categories: (1) commercial SOEs with no strategic interest; (2) commercial SOEs with strategic interest; and (3) SOEs with special tasks. For SOEs in category (2), the strategic interest is defined and disclosed. SOEs in category (3) are usually statutory SOEs that are 100 per cent state-owned and operate in a monopoly situation.
Germany	Legislation (Section 65 of the Federal Budget Code, complemented by the Cabinet's Principles of Good Corporate Governance for Indirect or Direct Holdings of the Federation and related Guidance Notes)	The Federation should only establish or participate in a commercial enterprise if there is an important interest for the Federation and the purpose intended by the Federation cannot be achieved in a better or more efficient way (Section 65.1, Federal Budget Code)	The Ministry of Finance publishes an annual report on the state's enterprise ownership ("Die Beteiligungen des Bundes") and a biannual "Report on the Reduction of Government Holdings". Both reports are provided to Parliament and made public.	State enterprise ownership is conditional upon the state-owned or partially state-owned enterprise having a specific purpose or objective the Federation aims to achieve. These objectives are incorporated into the enterprise's internal body of rules and regulations, such as statutes, rules of procedure for the supervisory body, or the rules of procedure for management. Objectives must be clearly defined. The purpose of every enterprise with direct state ownership is published in the Ministry of Finance's annual report (see column 3).	

Table 1.1. **Examples of explicit rationales for SOE ownership** *(cont.)*

Country	Source for ownership rationale	Main purpose of state ownership	Review/update procedures	Specific objectives or classifications supplementing the ownership rationale	Classifications for individual (groups of) SOEs
Hungary	Legislation (Act on State Party and the Act on National Assets; supplemented by Act on State Budget, Act on the Sound Operation of Companies in Public Ownership, and Labour Act)	The state exercises enterprise ownership rights and asset management to: ensure state property is used appropriately and efficiently; to fulfil government duties and satisfy social needs; to facilitate the Government's overall economic policy; to protect and preserve the nation's assets, as well as to increase national assets (Art. 2§1, Act on State Property).		Specific SOE objectives may be elaborated via contractual agreements between the SOE and the state shareholder, as per Art. 30§5 of the Act on State Property. (Rules for state enterprise ownership – including for setting objectives – are set forth in the Act on National Assets.)	The Act on National Assets distinguishes between for-profit and non-profit SOEs, including their ability to establish subsidiaries.
Ireland		A new government policy is currently under consideration. The State's current (ownership) policy is focused on the retention of natural monopolies and other strategically important infrastructural assets under public ownership.	The New Economy and Recovery Authority (NewERA), established in September 2011 under the stewardship of the National Treasury Management Agency (NTMA), is reviewing and refining the ownership objectives for the five commercial semi-state entities within its remit.[4]	Most SOEs are established in response to a particular "policy" concern, while being required to operate on a commercial basis. Each SOE has legislation underpinning its corporate structure and activities. SOE-specific financial and policy objectives are decided by relevant ministries.	

Table 1.1. **Examples of explicit rationales for SOE ownership** *(cont.)*

Country	Source for ownership rationale	Main purpose of state ownership	Review/update procedures	Specific objectives or classifications supplementing the ownership rationale	Classifications for individual (groups of) SOEs
Lithuania	Legislation (Law on the Management, Use, and Disposal of State and Municipal Assets)	Through SOE ownership, the state seeks to: (1) increase the value and contribution to the state budget of SOEs, and (2) secure strategic interests for the country, such as economic security, implementation of strategic projects (i.e. quality infrastructure), to achieve social and political objectives, etc.		Guidelines have been developed (Guidelines for Implementation of Property and Non-Property Rights of Ownership within SOEs ["Ownership Guidelines"]).	The Ownership Guidelines divide SOEs into three groups, according to their objectives: (1) SOEs in which the state seeks to increase the value of the enterprises' business, dividends, or contribution to the state budget; (2) SOEs in which the state also seeks to secure strategic interests, such as economic security or the implementation of strategic projects, quality infrastructure, etc.; and (3) SOEs with non-commercial objectives, through which the state seeks to achieve social and political objectives, as well as to ensure profitability.
Netherlands	Policy document (State Participations Policy Memorandum [Nota Deelnemingenbeleid Rijksoverheid] [5])	The state as shareholder ensures that the authorised capital invested in state participation is managed in a responsible manner. For this purpose, state enterprise ownership: (1) contributes to guaranteeing public interests; (2) aims to retain the financial value represented by state participation; and (3) contributes to good corporate governance.	There is no set procedure for reviewing and updating the Memo, which was last updated in 2013 and 2007.	The State Participations Policy Memorandum distinguishes between SOEs slated for privatisation and those that the Cabinet seeks to retain in its portfolio.	

Table 1.1. **Examples of explicit rationales for SOE ownership** *(cont.)*

Country	Source for ownership rationale	Main purpose of state ownership	Review/update procedures	Specific objectives or classifications supplementing the ownership rationale	Classifications for individual (groups of) SOEs
Norway	Government decision. (White paper to the Parliament [Meld. St. 27 (2013-2014)], A diverse and value creating ownership)[6]	National anchoring of important companies and key expertise; management of shared natural resources and its returns; sectorial policy considerations; production in the event of market failure; and the administration of monopolies.	The Government regularly presents Norway's ownership policy to Parliament, including the definition of the overall objectives of state ownership. While there is no rule on the frequency for parliamentary review, the ownership policy has been updated four times in the last 12 years.		SOEs are classified into four groups with different objectives for state ownership: (1) companies with commercial objectives; (2) companies with commercial objectives and national anchoring of their head office functions (i.e. develop Norwegian markets in Norway); (3) companies with commercial and other specifically defined objectives; (4) Companies with sectorial policy objectives.
Poland	Legislation (Civil Code; Act on the Rules Exercising the Powers Attributable to the State Treasury; Act on Commercialisation and Privatisation; Act on Harbours and Marinas; geological and Mining Law)	The State Treasury is the owner or co-owner of entities deemed to be of particular importance for the economy. This may for example reflect concerns about energy security, monopoly powers, or the implementation of public policy objectives.		Financial objectives by the State Treasury may be supplemented by programmes adopted by the Government and/or legislation requiring SOEs to undertake specific tasks (i.e. the Forest Management and Geodesy Bureau and establishment the Polish Steamship Company).	
Portugal	Legislation (Decree-Law No. 133/2013, October 3rd), government decree and cabinet decision.	The main purpose of state enterprise ownership is to implement a system that actively contributes to limiting public expenditure.	The ownership policy is reviewed and updated by government decision.	The objectives of state ownership are further defined by sectorial ministries, which are responsible for setting sectorial policy. Sectorial policies directly influence SOEs objectives, operations, and the level of public service to be provided by SOEs.	The Resolution of the Cabinet of Ministers No. 36/2012, March 26th (RCM No. 36/2012), determines the classification of SOEs and sets forth evaluation criteria.

Table 1.1. **Examples of explicit rationales for SOE ownership** *(cont.)*

Country	Source for ownership rationale	Main purpose of state ownership	Review/update procedures	Specific objectives or classifications supplementing the ownership rationale	Classifications for individual (groups of) SOEs
Slovenia	Legislation (Under the newly amended Slovenian Sovereign Holding Act, the state enterprise ownership policy will be determined in an ownership policy that is developed by the Government and which requires parliamentary approval.[7])	(The ownership policy, including the purpose of state ownership, was under review at the time of writing.)			Under the ownership policy that was under consideration at the time of writing, SOEs would be classified into three groups: SOEs with strategic assets, those with important assets, and those with portfolio assets.
Sweden	Government decision (State Ownership Policy 2013[8])	As a matter of principle, the Government believes that the state should not own companies that are active in competitive commercial markets unless the company has a specific public service assignment that would be difficult to fulfil in any other way.	The state's ownership policy calls for the government to continuously assess its enterprise ownership and to consider the reasons for continued ownership. To this end, the state's ownership policy is submitted via an annual aggregate SOE report to Parliament.	Under the state ownership policy, the Government considers it to be of the utmost importance that SOEs are proactively and professionally managed. Value generation is an overriding objective. However, as of 2013, evaluation processes are also applied to non-financial targets connected to the specific public service obligations of some SOEs.	

Table 1.1. **Examples of explicit rationales for SOE ownership** *(cont.)*

Country	Source for ownership rationale	Main purpose of state ownership	Review/update procedures	Specific objectives or classifications supplementing the ownership rationale	Classifications for individual (groups of) SOEs
Switzerland	Government decision (Corporate Governance Report 2006 and Federal Council Guidelines, determined by decree of the Federal Council and acknowledged by competent parliamentary committees)	Under the Constitution and interpretation of the Constitution by the Federal Court, the state participates in economic activity on a legal basis and in the public interest.	The ownership policy is conceived as a long-term instrument. Thus, reviews are not undertaken on a regular basis. Amendments are possible as needed.	Strategic objectives are set every four years for each SOE. Objectives include public service obligations (PSOs).	SOEs are generally classified into two groups: (1) entities with a basically commercial orientation operating under (close to) market conditions, and (2) entities operating in a (close to) monopolistic environment.

1. Available online here: *www.riigikogu.ee/index.php?page=en_vaade&op=ems&enr=437SE&koosseis=11*.
2. These SOEs include: AS Eeasti Loto, organises the lottery, as per the Gambling Act ; the Estonian Oil Stockpiling Agency, which maintains and manages the state's liquid fuel stocks, as per the Liquid Fuel Stocks Act ; the KredEx Krediidikindlustus, which issues state export guarantees, as per the State Export Guarantees Act ; Estonian Air Navigation Services, which operates under the Aviation Act ; and Eesti Loots AS, which is responsible for ensuring maritime safety, as per the Maritime Safety Act ; and the Bureau for Forest Management and Geodesy, which manages the forestry sector, as per the Forest Act .
3. Available online here: *http://valtionomistus.fi/english/files/2011/12/Periaatepaeaetoes03112011_eng.pdf*.
4. The entities currently under NewERA's remit are: Electricity Supply Board (ESB); Bord Gáis Éireann; EirGrid, Bord na Móna and Coillte.
5. Available online here: *www.rijksoverheid.nl/onderwerpen/staatsdeelnemingen*.
6. Available online here: *www.regjeringen.no/nb/dep/nfd/dok/regpubl/stmeld/2013-2014/Meld-St-27-20132014.html?id=763968*.
7. The Draft of the Strategy is in a process within the Ministry of Finance and should be presented to the Parliament by the end of the year 2014.
8. Available online here: *www.government.se/sb/d/11996/a/227313* (see pages 123-129).

Source: Responses to the Working Party questionnaire on state ownership rationales and secretariat research. Information is current as of November 2014.

Table 1.2. **Examples of frameworks for state ownership without an explicit ownership rationale**

Country	Sources for ascertaining an ownership rationale	Main purpose of state ownership and/or SOE objectives, if stated	Review/update procedures, if available
Canada	Statutory legislation establishing Crown corporations, articles of incorporation, and Letters Patent usually express the purpose for state enterprise ownership.	Crown enterprises are usually created and maintained to implement certain public policy objectives, especially when day-to-day managerial autonomy from Ministers and government departments is a key requirement.	
Israel	Few formal criteria for establishing SOEs have been made public.	Informally, SOEs are established when: there is a market failure; there is a national interest in, or need for providing a specific activity that cannot be provided in another way. SOE objectives are included in the enterprise's by-laws.	The Government Companies Authority (GCA) periodically reviews each SOE's fulfilment of its objectives, the enterprise's status as an SOE, and justification for the Government's continued ownership of shares in the enterprise.
Italy	There is no explicit enterprise ownership rationale, though special obligations are usually set forth in the "Public Service Agreements" signed between an SOE and the relevant Minister, in accordance with the Italian Minister of Economy and Finance. These agreements aim to ensure end-users have access to safe, reliable services at reasonable prices. Agreements also clearly state SOE objectives and how they are to be financed (i.e. fees for services and/or State subsidies).	The Italian Government has privatised most state-owned commercial companies. Italian SOEs are either: (1) engaged in public service management, or (2) operate in strategic sectors, such as energy, aerospace and defence.	
Japan	SOEs are established under company-specific legislation.	Company-specific legislation provides the objective and legal/regulatory status of the enterprise. Given the specific nature of these laws, it is difficult to provide a national overview of the rationale for state enterprise ownership in Japan.	Four SOEs are required to publicly disclose the results of evaluations by an evaluation committee or auditor under the Act on Access to Information Held by Incorporated Administrative Agencies: the Okinawa Development Finance Corporation, the Japan Bank for International Cooperation, the Japan Finance Corporation, and the New Kansai International Airport Company, Ltd.

Table 1.2. **Examples of frameworks for state ownership without an explicit ownership rationale** *(cont.)*

Country	Sources for ascertaining an ownership rationale	Main purpose of state ownership and/or SOE objectives, if stated	Review/update procedures, if available
Mexico	The legal framework that can be interpreted as forming the rationale for SOE ownership includes: the Mexican Constitution; the Federal Public Administration Law (Ley Orgánica de la Administración Pública Federal [LOAPF]); the Federal Law of Public Sector Entities (Ley Federal de las Entidades Paraestatales [LFEP]); and LFEP's related regulation (Reglamento de la Ley Federal de la Entidades Parestatles [RLFEP]).	The LFEP provides overall objectives for Mexican SOEs. These include: (1) performing activities in priority or strategic areas[1]; (2) providing a public or social service; and (3) obtaining or applying funds for purposes of social security or social assistance. The overall framework provides that sector ministries shall establish the priorities and programmes of SOEs in their portfolios. The framework is further supplemented in some cases by legislation creating statutory SOEs with specific obligations.[2]	
New Zealand	The SOE legislative framework does not specify criteria for retaining state ownership of these enterprises.[3]		
Slovak Republic	The legal framework can be partly ascertained through Section 10, par. 2 of the Act No. 92/1991 Coll. On the Conditions for the Transfer of State Property to Other Persons lists the wholly or majority-owned SOEs operating in monopoly situations, as well as the policy statement of the Government for 2012-2016 and the Government's resolution of 2 March 2011 on the rules for selecting, management, and remuneration of state representatives in SOEs.	The main goals of state ownership are to: support national economic and strategic interests; to create a state-owned monopoly (or oligopoly) where market regulation is deemed not feasible or inefficient; and to perform business operations in a "natural" monopoly situation.	The Government policy statements are reviewed following parliamentary elections every four years.
Turkey	The framework that can be interpreted as forming the rationale for SOE ownership includes: Turkey's SOE law (Decree Law Nr. 233); sector-specific laws (for example, in the electricity, mining, natural gas, and railway transport sectors); development plans established by parliamentary decree; medium-term government programmes established by Council of Ministers decree; company-specific programmes, also established via decree by the Council of Ministers; and sector-specific strategy papers, established via decree by the High Planning Council.	The overall objectives for state enterprise ownership under this framework are: to generate value and to achieve important public policy goals.	While SOE performance is audited annually by the Turkish Court of Accounts, the rationale for SOE ownership is considered in the preparation of the state's development plans, medium-term programmes, and annual investment and financing programmes.

Table 1.2. **Examples of frameworks for state ownership without an explicit ownership rationale** *(cont.)*

Country	Sources for ascertaining an ownership rationale	Main purpose of state ownership and/or SOE objectives, if stated	Review/update procedures, if available
United Kingdom	The Government interacts with SOEs on a case-by-case basis. Ownership rationale can vary depending on the category of SOE. These include: Public corporations; trading funds/agencies; and non-departmental public bodies.[4]	While private sector ownership is preferable for commercial oriented entities, the Government will consider enterprise ownership when considering the balance between public service/policy needs and taxpayer value.	

1. These are defined in Art. 28, par. 4 of the Constitution as: the postal service, telegraph and telegraphy services, management of radioactive minerals and nuclear power generation, planning and control of the electricity system, transmission and distribution of electricity, and exploration and extraction of oil and other hydrocarbons.
2. Examples include: the Law of Petróleos Mexicanos (Ley de Petróleos Mexicanos), which regulates the oil company PEMEX and its subsidiaries; the Electricity Public Service Law (Ley del Servicio Público de Energía Eléctrica), which regulates the electric utility Comisión Federal de Electricidad (CFE); the Law of Airports (Ley de Aeropuertos), regulating state-owned airports and air services; the Federal Law on Roads, Bridges and Federal Motor Carrier (Ley de Caminos, Puentes y Autotrasnporte Federal), regulating the federal tolling authority, Caminos y Puentes Federales de Servicios Conexos (CAPUFE); and the Law of Investment Funds (Ley de Fondos de Inversión) and the Law of Credit Institutions (Ley de Instituciones de Crédito) regulating Mexican development banks.
3. The SOE legislative framework in New Zealand is made up of the State Owned Enterprise Act, the Crown Entities Act, and specific legislation for individual crown entities, which give guidance as to what is expected of SOEs' commercial and policy objectives.
4. See online here: *www.gov.uk/government/uploads/system/uploads/attachment_data/file/80075/Categories_of_public_bodies_Dec12.pdf*.

Source: Responses to the Working Party questionnaire on state ownership rationales and secretariat research.

Chapter 2

Decision criteria and practices for SOE creation and termination

The stocktaking survey also asked respondents to explain procedures and practice for creating and terminating SOEs in their jurisdictions, as a way of illustrating how ownership rationales (both explicit and implicit) are applied in practice. The two Sections below outline these practices in some jurisdictions and are complemented, where available, by concrete examples of SOE creation and termination.

2.1. The creation of SOEs

The procedures for creating SOEs in the 24 countries participating in the stocktaking survey fall into various categories. In the first category, representing the majority of participating jurisdictions, legislation or a resolution authorising the creation of a new SOE must receive parliamentary approval.[8] In the second category, representing a sizeable minority of countries, the creation of a new SOE relies on the adoption of Cabinet decisions or decrees.[9] In one country, the procedure depends on the type of SOE being created (Mexico), and in another (Finland), legislation appears necessary only when a new SOE would have an impact on public finances, for example by receiving public subsidies for the provision of public services. Whether a country has an explicit or implicit state enterprise ownership rationale appears to have no bearing on the procedures for creating SOEs.

An example of an SOE established via legislation requiring parliamentary approval includes the Canadian Air Transport Security Authority (CATSA), which was created under the Budget Implementation Act, 2001 as part of the Government's response to the events of 11 September 2001.[10] An example of SOE creation in the second category includes Estonia's KredEx Krediidikindlustus, which was established by Government order to provide credit insurance and other financial services according to Estonia's State Support of Enterprise and State Loan Guarantees Act and the State Export Guarantees Act.[11] The specific country cases, below, provide further details on how SOEs are created in jurisdictions participating in this stocktaking exercise.

Canada

If the government wishes to create a new Crown corporation, the proposal to create a new entity must first be submitted to and approved by the Prime Minister, as the creation of the new entity would affect the structure of the Government of Canada.[12] After this stage, the proposal must be approved by Cabinet through a Memorandum to Cabinet. If the proposal to create a new Crown corporation is approved by the Prime Minister and Cabinet, then a bill must be passed by Parliament, if the Crown Corporation is to be established by statute, as is normally the case. In Parliament, the bill must be introduced by a Minister and passed by the House of Commons and the Senate before receiving Royal Assent and becoming law.

Two examples of Canadian crown corporations established via this procedure are the Post Office Department and CATSA. The former was established in 1981, after numerous previous attempts to provide satisfactory postal service had failed. CATSA was created in 2002 to manage several key aviation security services in Canada previously provided by airlines, airports, and others, which were seen as inadequate after the September 2001 terrorist attacks in the United States.

Chile

The state and its agencies may conduct or participate in a business only if they are authorised by law with a qualified quorum, as per Art. 19, No. 21, second paragraph of the Constitution of the Republic. These laws, Chile explains, require an affirmative vote of an absolute majority of representatives and senators to pass. Further, the specific procedures for creating an SOE, Chile notes, are not outlined in a particular law. Rather, the law creating the SOE also determines the procedure for establishing the enterprise.

Czech Republic

Specific procedures are outlined in Act No. 77/1977, Coll. of Czech Law. An example of the establishment of an SOE in the Czech Republic is Povodí Labe, which was created in 2001 under the River Basins Act No. 305/2000. Reporting to the Ministry of Agriculture, Povodí Labe is responsible for the management of the Elbe River Basin and the basin's waterways and tributaries.

Estonia

Specific procedures for SOE-creation are outlined in the State Assets Act. In short, the ministry in whose sector the SOE will operate or which will have an ownership stake in the SOE prepares relevant documentation for review first by the Ministry of Finance and then by the Government. These documents include a draft government order, an explanatory memorandum, financial plans and appraisals, as well as a description of the purpose(s) for which the state ownership is needed. The Ministry of Finance must first assess whether state ownership in the specific case is justified before the documentation is submitted to the Government for review and approval. Two examples of how this procedure was applied in practice include:

- AS Estonian Air: The state increased its shareholding in AS Estonian Air from 34 per cent to 97.34 per cent in order to ensure direct flight connections between Tallinn and major cities in Europe.
- AS KredEx Krediidikindlustus: The state established AS KredEx Krediidikindlustus, to offer credit insurance services that were not offered on the market or were offered in only marginal volumes.

Finland

The procedures for establishing an SOE and for increasing or decreasing the state's shares in an SOE are promulgated in the Act on State Shareholdings and Ownership Steering (1386/2007). The principal decision-making body is the Cabinet of Ministers. If state funds are to be invested in an SOE, then the decision to release these funds is taken by Parliament through budgetary procedures.

Few or no new SOEs have been created in Finland since the 1990s. Since then, all new SOEs have been crated through the corporatisation of state agencies.

Germany

If a Ministry seeks to create a new SOE or to purchase equity in an existing company, it must seek approval from the Ministry of Finance. This requires submitting an application justifying the creation of the enterprise or the share purchase according to the state enterprise ownership rationale, expressed in Par. 65 of the Federal Budget Code (see Box 2.1).

As an example, the Federal Agency for Financial Market Stabilisation (FMSA; "Bundesanstalt für Finanzmarktstabilisierung") was established in 2008 with the adoption of the Financial-Market Stabilisation Fund Act (FMStFG; "Finanzmarktstabilisierungsfondsgesetz"). This law was adopted as

Box 2.1. **Germany's state enterprise ownership rationale**

Federal Budget Code, Par. 65:

The Federation should take part in the founding of a private-law enterprise or take a holding in an existing enterprise with a legal form of this kind only if:

1. There is an important interest on the part of the Federation and the purpose intended by the Federation cannot be achieved better or more efficiently in any other way,
2. The Federation's obligation to make contributions is limited to a specific amount,
3. The Federation is granted appropriate influence, particularly on the supervisory board or in an equivalent supervisory body and
4. It is ensured that the annual financial statements and the management report will be prepared and audited in analogous application of the regulations of Part Three of the Commercial Code relating to large corporations, unless other more extensive legal regulations apply or it conflicts with any other legal regulations.

Source: Germany's responses to the Working Party questionnaire on state ownership rationales.

a means to stabilise banks with guarantees and/or capital during the economic and financial crisis. It was later complemented by the Restructuring Act (RSTrukFG; "Restrukturierungsfondsgesetz"), which aims to avoid another major banking crisis and to support the restructuring of banks.

Hungary

SOEs can only be established after their purpose and planned operations have been properly defined, and the necessary funds have been provisioned. The only public entities with the right to acquire shares on behalf of the state or to create a new SOE are: entities defined by an act or minister's decree; the National Asset Management Inc. (MNV);[13] or entities empowered by agreement with the MNV (Art. 29, Act on State Assets).

As an example of this procedure, in 2011, the Hungarian Government issued a decree on the restructuring of the Hungarian film industry (1167/2011 [v.26]), which also established the Hungarian National Film Fund Public Benefit Non-profit Inc. The SOE was established to provide State funding and subsidies to the Hungarian film industry. The decree instructed the Minister of National Development to establish the company via the MNV.

Ireland

The recent establishment of Irish Water illustrates how Ireland's ownership policy and SOE-creation procedures are applied in practice. Established in March 2013 as a semi-state company under the Water Services Act 2013, Ireland's water utility company, Irish Water, will bring the water and wastewater services of Ireland's 34 local authorities together under one national service provider. Once fully established and operational, Irish Water will be responsible for the operation of public water services, including management of national water assets, maintenance of the water system, investment and planning, managing capital projects and customer care and billing.

The Government decided to establish Irish Water after detailed consideration by the responsible Ministry, which advised the Government on the relative costs and benefits of Irish Water's establishment.[14] Once the decision was made to establish Irish Water, the Water Services Act 2013 was drafted and presented before the parliament for consideration and ultimate sanction.

Israel

The procedure for establishing a new SOE involves a formal government decision, based on a series of mandatory parameters, as stated in the Government Companies Law (GCL). These parameters include the proposed SOE's objectives, equity structure, shareholder rights, the number of directors

on the board, and the method for financing the SOE's activities. The GCL states that the government decision is then reviewed by the GCA. The government decision and the GCA's opinion on the proposal to establish the SOE are submitted to Parliament's Finance Committee for review. Once the Government agrees to establish the SOE, its objectives are included in the enterprise's bylaws.

Italy

New SOEs are created via statutory legislation. Once established, SOE objectives are usually set forth in "public service agreements" that are signed between the enterprise and the relevant Minister, in accordance with the Minister of Economy and Finance. The agreements aim to ensure that end-users have access to safe, reliable services at reasonable prices. These agreements also define the services the SOE should provide, as well as the SOE's cost structure (i.e. fees for services versus government subsidies). One recently created SOE is the Italian air traffic service provider Enav S.p.A., which is a joint stock company wholly owned by the Ministry of Economy and Finance. Enav S.p.A. is a former public agency ("Azienda autonoma di assistenza al volo per il traffic aereo generale"), whose legal status was transformed to an SOE with the passage of the Law 21 December 1996, No. 665.

Japan

The steps for establishing a new SOE and its operations are generally stipulated by laws in the form of company-specific legislation. For example, this was the case in the recently created Cool Japan Fund Inc., which was established under the Cool Japan Fund Inc. Act in November 2013 as a joint partnership between the Government of Japan and the private sector. Under the Cool Japan Fund Inc. Act, the enterprise's purpose is to contribute to the sustainable development of Japan's economy by providing finance or other support to business activities abroad (*www.cj-fund.co.jp*).

Lithuania

An institution initiates the process for creating an SOE by submitting to the Government a draft resolution, together with the criteria for investment as required under Government Resolution No. 758, adopted on 4 July 2007. The SOE is created upon the adoption of the Government resolution. This process was followed, for example, in the creation of the Public Investment Development Agency (UAB Viešųjų investicijų plėtros agentūra [VIPA]) in November 2012 under resolution No. 1428. VIPA is responsible for providing financial services for public sector investment in public infrastructure and public service modernisation projects.

Once established, the investment of state assets in the SOE is governed by the Law on the Management, Use and Disposal of State and Municipal Assets. Different kinds of SOEs, once created, are also subject to separate laws: (1) state enterprises are established under the State and Municipal Enterprise Law; (2) public and private limited liability companies are created under the Law on Companies. After the SOE is established, the Government assigns it to one of the three groups as laid down in the Government resolution, "Guidelines for Implementation of Property and Non-Property Rights of Ownership within SOEs," which defines the State's goals for the enterprise and requires the enterprise to either reach a specific rate of return set by the Government, to reach a specific rate of return and to secure strategic interests of the state, or to execute specific non-commercial activities, as well as to ensure profitability.

Mexico

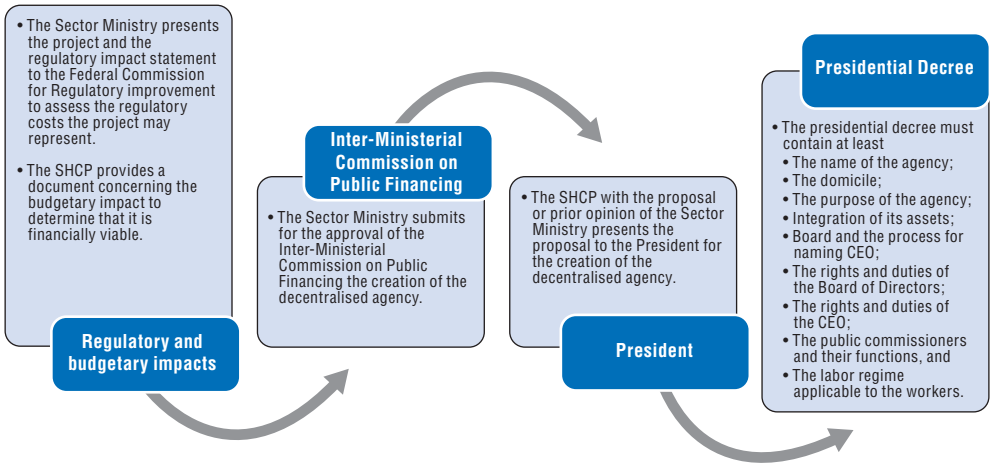
Mexico's SOE framework applies to three types of entities: decentralised agencies, majority-owned companies, and public trusts. The procedures for all three categories are provided below.

Establishment of decentralised agencies.[15] Decentralised agencies are established by Presidential decree or law or decree of Congress. To establish a decentralised agency by Presidential decree, first, the sector ministry presents before the Federal Commission for Regulatory Improvement (Comisión Federal de Mejora Regulatoria [COFEMER]), a statement of regulatory impact that the creation of the new decentralised agency may represent and, before the Finance Ministry (Secretaría de Hacienda y Crédito Público [SHCP]) a budgetary impact statement. The sector ministry will also submit the proposal for the new agency for the approval of the Inter-Ministerial Commission on Public Financing (Comisión Intersecretarial de Gasto Público, Financiamiento y Desincorporación [CIGFD]). Finally, SHCP, with the proposal or prior opinion of the sector ministry, presents the proposal for the new decentralised agency to the President.

Once these considerations are complete, the President issues a decree creating the decentralised agency. The decree must specify: the name of the agency; its domicile; its purpose; a financial summary and business plan; details on the creation of the agency's board and appointment of the CEO; the rights and duties of the board of directors and of the CEO; public commissioners and their functions; and the labour regime applicable to the agency's employees.

Alternatively, the President can establish a decentralised agency by law of Congress following the process described in Box 2.2, as long as the draft law is submitted with the proposals and related documentation prepared by the SHCP or the sector ministry.

Figure 2.1. **Creation of decentralised agencies in Mexico by decree of the President**



Source: Mexico's response to the internal Working Party questionnaire on state ownership rationales.

Box 2.2. **Examples of the establishment of two decentralised agencies**

- The **Financiera Nacional de Desarrollo Agropecuario, Rural, Forestal y Pesquero** was established in 2002 by law of Congress as a decentralised agency. The agency's aim is to promote the development of agriculture, forestry, fishing and all other economic activities linked to rural areas, in order to raise productivity and to improve Mexicans' living standards in these areas. It does this by extending credit and providing other financial services to producers and rural financial intermediaries.
- The **Agencia Espacial Mexicana** was established in 2010 by law of Congress as a decentralised agency. The agency is responsible for: implementing Mexican Space Policy through the development and implementation of the National Program of Space Activities; promoting the development of space activities; developing Mexico's scientific and technological capacity in the field; and promoting international cooperation on space activities.

Source: Mexico's response to the internal Working Party questionnaire on state ownership rationales.

Establishment of majority state-owned companies. These entities are defined in Mexican law[16] as companies, including national auxiliary credit institutions and the national insurance and surety institutions, that meet any or several of the following requirements: 1) the Federal Government or one or more public entities jointly or separately contributes or owns more than 50% of the share capital; 2) the shares series includes preferred stock that may only be owned

by the Federal Government; 3) the Federal Government appoints the majority of the members of the board of directors or its equivalent, or the managing director; or 4) the Federal Government can veto, and thereby overrule, decisions taken by the board of directors. Majority state-owned companies can also include national credit institutions, as well as civil societies or associations in which most of the partners are government ministries or public entities of the Federal Public Administration or which receive most of their funding from the State.

To create, acquire, or increase the state's interest in a for-profit, majority state-owned company, the Federal Government, a Ministry, or a public entity must first submit a proposal to the SHCP and then to the CIGFD. Once the SHCP and the CIGFD approve the proposal, then the procedure for establishing a majority state-owned company follows a process similar to that for private companies: The company is first established before a notary public, according to the General Corporations Law (Ley General de Sociedades Mercantiles, and then its charter is registered in the Public registry of Commerce (Registro Publico del Comercio).

Establishment of public trusts. Public trusts are established in the same way as decentralised agencies, by law or decree of Congress or by Federal Executive order. Once created, the SHCP acts as the sole trustee on behalf of the Government.

Netherlands

The establishment of the State's participation is presented to Parliament in accordance with the Government Accounts Act. The procedure for presenting the creation of a new SOE to Parliament is outlined under Section 34 of the Act (see Box 2.3). The State Participations Policy Memorandum requires that the Government consider the following four criteria prior to establishing

Box 2.3. **Procedures for submitting the creation of a new SOE to the Dutch Parliament**

Government Accounts Act, Section 34

1. The establishment or joint establishment, or the causing of the establishment, by the State of a legal person constituted under private law shall not take place until at least 30 days after Our Minister concerned has notified the States General of this intention in writing, in agreement with the views of the Cabinet.
2. Our Minister concerned shall not ask the Cabinet for its views until he has consulted the Court of Audit on the juristic act he intends to perform.

Box 2.3. **Procedures for submitting the creation a new SOE to the Dutch Parliament** *(cont.)*

3. If, within the period referred to in subsection 1, a request is made by or on behalf of either House of the States General or by at least one fifth of the constitutionally established membership of either House for further information on the intended juristic act, the juristic act in question shall not take place until such information has been provided.
4. If, within 30 days of the written notification being given or within 14 days of the information being provided, either House expresses the view that the intended juristic act requires prior statutory authorisation, the juristic act in question may not take place until such authorisation has been given.
5. Where a financial interest is involved that is greater than an amount to be set by Our Minister of Finance, the acquisition by the State of shares in a public company or a private company with limited liability in which the State holds, or through such acquisition would hold, five per cent or more of the issued share capital shall not take place until at least 30 days have elapsed after written notice of such a proposal has been given to the States General. Subsections 3 and 4 shall apply mutatis mutandis.
6. Where a financial interest is involved that is greater than an amount to be set by Our Minister of Finance, subsection 5 shall also apply to the granting by the State of loans convertible into shares to a public company or a private company with limited liability in which the State holds, or, if conversion were take place immediately, through such granting would hold, five per cent or more of the issued share capital.
7. Subsections 5 and 6 shall not apply if the State does not intend through the acquisition of shares or the granting of a loan to increase, immediately or in the future, its relative interest in a company as referred to in those subsections.
8. After the juristic act has been performed, Our Minister concerned shall notify the States General in writing of any acquisition of shares other than as referred to in subsection 5, of any granting of loans other than as referred to in subsection 6, of any acquisition of shares and granting of loans as referred to in subsection 7 and of the full or partial disposal of shareholdings and of loans convertible into shares by the State.

Source: Netherlands' response to the Working Party questionnaire on state ownership rationales.

a new SOE: 1) how the new SOE will contribute to the national public interest; 2) whether the new SOE has a well-defined policy objective, preferably laid down in law and regulations; 3) whether the new SOE will likely provide the State adequate returns on its investment; and 4) how the Government will assess the new SOE's performance and value of the state's ownership in the enterprise.

An example of how the procedures and criteria set forth in the Government Accounts Act and the ownership policy are applied in practice is the Port of Rotterdam. To finance expansion plans, the Government invested funds to support its development of the port, which had been fully owned by the municipality of Rotterdam. The state is now a shareholder alongside the municipality.

New Zealand

The procedures for setting up a new entity tend to be based on past experience and precedent, rather than legislation. SOEs created in recent times have been set up with a specific, time-limited intent, and the expectation is that once their purpose has been fulfilled, they will be wound up.

The procedure for creating a new SOE begins with an assessment by a Minister that there is a problem or an opportunity that could be best address through state enterprise ownership, as opposed to legislative or regulatory changes.

Next, the Minister, with counsel from the State Services Commission, determines the appropriate institutional form that the state enterprise ownership should take and therefore the appropriate legislation under which the enterprise would be governed (i.e. the State Owned Enterprise Act, Crown Entities Act, or other legislation). The Minister then proposes the entity's creation to Parliament, which votes on whether to add the entity to the schedule of the relevant law or on new legislation, if appropriate. If approved, the Parliament then delegates the SOE's line ministry and, if applicable, votes on the entity's funding by the state.

Finally, administrate steps are taken in order to complete the SOE's creation (i.e. creating a company constitution, registering the company, establishing and appointing a board of directors, establishing a monitoring system, etc.). Some practical examples are provided in Box 2.4.

Box 2.4. **Examples of SOE-creation in New Zealand**

- **Rugby New Zealand 2011 Ltd** (RNZ 2011) was established as a limited liability joint venture company, based on a 50:50 partnership between the government and the New Zealand Rugby Union (NZRU). RNZ 2011 was responsible for planning and delivering Rugby World Cup 2011, on behalf of its primary stakeholders and in conjunction with the International Rugby Board. RNZ 2011 is in the final stages of being wound up.
- **Crown Fibre Holdings Ltd** (CFH) was established in 2009 to implement the government's ultra-fast broadband (UFB) objective. The government aims

Box 2.4. **Examples of SOE-creation in New Zealand** *(cont.)*

to accelerate the roll-out of UFB to 75 percent of New Zealanders over ten years, concentrating in the first six years on priority broadband users, such as businesses, schools and health services, plus green-field developments and certain tranches of residential areas. CFH is working with private sector operators to deploy fibre to the telecommunications network.

- **Southern Response Earthquake Services Ltd** (SRES) is the government-owned company responsible for settling claims by AMI insurance policyholders for Canterbury earthquake damage that occurred before 5 April 2012 (the date AMI's non-earthquake related business was sold to IAG). Essentially, SRES operates as a run-off insurer in relation to former AMI policyholders, with the intention of operating its business consistent with normal commercially and financially prudent principles. It will not take on any new insurance business and will eventually cease trading.

Source: New Zealand's response to the Working Party questionnaire on state ownership rationales.

Norway

Parliament, which has a funding mandate, must approve the creation of a new SOE in Norway. Once the Government receives parliamentary approval, SOEs are normally established as limited liability companies in accordance with prevailing law. However, there are some exceptions, where SOEs have been established as statutory companies. The legal framework for SOE-creation is complemented in 2004 by a good practice guidance for establishing SOEs.[17]

The creation of Investinor AS in February 2008 illustrates the application of this procedure in practice. The SOE was created as a limited liability company after the Government obtained the consent of Parliament. The company's purpose is to promote value creation by offering risk capital to internationally oriented companies with a competitive (and usually new) business.

Poland

As noted above, the State Treasury is the owner or co-owner of entities considered to be of particular importance for the economy. Beyond meeting economic criteria, the State Treasury does not need to meet any further specific criteria to create a new SOE. The process by which the State Treasury creates and manages SOEs is determined by the Act on Commercialisation and Privatisation and the Code of Commercial Companies.

Portugal

The decision to create a new SOE is taken at the Government level in Portugal. All new SOEs must meet the conditions set forth in Article 10 of Decree-Law No. 133/2013, which defines the rules for creating new SOEs.

Slovak Republic

There are two kinds of SOEs in the Slovak Republic: enterprises entirely owned by the state, which are regulated under Act. No. 111/1990 Coll. on State Enterprises, and joint stock or limited liability companies which are partly state-owned, which are regulated under the Commercial Code. In most cases, the Government will choose to create the second form of SOEs, since these forms of enterprises are generally more market-oriented.

First, the Government must justify the need for state ownership in the enterprise. If the decision to create the new SOE is approved by government resolution, the Ministry of Finance must then allocate funds to the SOE's line ministry for the enterprise's establishment. Once these steps are taken, the procedure for establishing the partly state-owned joint stock or limited liability company follows similar procedures for creating private sector companies.

Slovenia

SOEs are established under corporate law in the same way as private companies. If SOEs perform special tasks, such as providing public services, then these special tasks are defined via special legislation and the provision of these services must also comply with the Public Utilities Act. New SOEs can be created by the Government or the Slovenian Sovereign Holding. An example of a newly created in Slovenia is the establishment of the Bank Asset Management Company (BAMC), whose tasks were set in accordance with the Act Defining the Measures of the Republic of Slovenia to Strengthen Bank Stability. Going forward, procedures for creating new SOEs will be further developed with the adoption of the state enterprise ownership policy, which was under consideration at the time of writing.

Sweden

Normally, the Government engages in thorough analysis on the rationale for the creation of a new SOE before it takes the decision to establish a new entity. At a minimum, this would require passing a financed parliamentary bill. Examples of SOE-creation in Sweden include the corporatisation of state agencies.

Any decision to create or increase state ownership in an enterprise must be approved by the Riksdag (Sweden's Parliament), according to Chapter 9,

Section 9 of the Instrument of Government (IG), as well as the Budget Act (2011:2013), which states the Riksdag must approve any state acquisition and transfer of property, including shares and participation rights in companies. The same requirement applies to the Government providing capital to a company.

There are several recent examples of SOE-creation in Sweden. One example includes the creation of Vectura in 2009, which was developed out of the merger of two units of the Road and Rail administrations. The SOE was streamlined and sold in 2013 through a structured private sale process. In a second example, the Civil Aviation Authority was split into two in 2010. The Air Traffic Control and Civil Aviation Authority remained a state agency, while the ten largest airports of Sweden were transferred to a new SOE, Swedavia.

Switzerland

SOEs are created following the normal legislative process in Switzerland, which consists of four basic phases. First, it must be established that there is a political need or public interest important enough to initiate a formal legislative process. Second, the Federal Council drafts a new law, or revises an existing law that justifies the SOE's creation and sets forth its purpose and obligations. The draft law is made public and consulted on with political and social stakeholders at the canton and federal levels. Third, once the Federal Council revises the draft law to address comments during the consultation phase, the draft law is presented to Parliament. Fourth, if Parliament adopts the law, voters can choose to hold a referendum on the law. If no referendum is requested, the law is formally enacted and implemented by the Federal Council.[18]

This process was applied in the corporatisation of certain federal central administrative functions (mostly 15 years ago), as well as in the change in legal structure of Swiss Post from a statutory to a joint stock company in 2013.

Turkey

Under Turkey's 1994 Privatisation Law No: 4046, the Privatisation Agency is entitled to decide whether to establish, privatise, terminate or decrease the State's ownership in a state-owned enterprise. The ability to enact this decision requires Cabinet approval via a Council of Ministers decree, according to Decree Law No. 233. Once the decree is enacted to establish a new SOE, the SOE's articles of association are published as a High Planning Council decree in the Official Gazette. Next, the articles of association are published in the Trade Registry Gazette, which gives the SOE status as an operating legal person.

This procedure was applied in the creation of three new Turkish SOEs under council of Ministers Decree Nr. 2001/2026: Electricity Generation Company (EÜAŞ); Electricity Transmission Company (TEİAŞ); and Turkish Electricity Trading and Contracting Company (TETAŞ).

United Kingdom

The process for creating a new SOE depends on the type of entity being established.[19] (See Box 1.2.) For example, most public corporations and non-departmental public bodies (NDPBs) are established as incorporated bodies under specific legislation. This legislation will normally come into force after receiving Royal Assent or following a Commencement Order. The body will formally come into existence as soon as a quorum of Board members has been appointed and, in some cases, the body will then possess its full powers. Other bodies may only take on its main functions, staff, assets and liabilities at a later date either stated in the statutory legislation or determined by secondary legislation. This latter procedure is usually applied where a new public body is taking over functions from one or more existing bodies.

Two recent examples of SOE-creation in the UK include the establishment of the Green Investment Bank (*www.greeninvestmentbank.com*) and the creation (still ongoing at the time of writing) of the British Business Bank (british-business-bank.co.uk). The latter is currently run directly by the Department for Business, Innovation and Skills. Once it has received state aid clearance from the European Commission (expected in late-2014), the British Business Bank will transfer in its entirety to the British Business Bank plc, which will operate as a Government-owned financial institution.

2.2. The termination of state ownership

As noted above, this Section focuses on procedures and practice for terminating SOEs in the countries that participated in this stocktaking exercise. Countries were asked to describe these procedures in order to illustrate how ownership rationales are applied in practice. Generally, the procedures for SOE termination fall into two categories: procedures for terminating an enterprise and procedures for SOE privatisation. Regarding the former, the procedure for SOE termination generally reflects the inverse of the procedure for SOE creation in countries where SOEs are generally established by law. Statutory corporations, in particular, by definition require legislation for their termination. In cases of privatisation, it seems that an even larger number of countries rely on a measure of legislation. Survey responses indicate that, while some governments have the authority to dispose of state-owned corporate assets without parliamentary approval, many prefer to pass a privatisation bill in order to enhance transparency and structure the privatisation process.

In almost all of the stocktaking survey responses, countries stated that the SOE termination and/or privatisation procedures required justifying the rationale for the State's divestment to either Parliament and/or the public. This was the case, for example, when the German Government calculated there was no longer a national interest in maintaining full ownership of Deutsche Post AG

and decided to begin selling State shares in the company. Similar calculations were made and presented to Parliament in the Netherlands, with the 2012 decision to sell Holland Casino, and in the United Kingdom, with the recent privatisation of Royal Mail. The specific country cases, below, provide further details on how the State's ownership stake in SOEs is terminated or privatised in the jurisdictions that participated in this stocktaking exercise.

Canada

The procedure for terminating a Crown corporation is the same as that for creating one: A decision to dissolve or privatize a Crown corporation must receive approval first from the Prime Minister and then by Cabinet through a Memorandum to Cabinet. Then, if a Crown corporation is created by statute, legislation is required to affect the dissolution. In Parliament, the Government must explain the rationale for the dissolution or privatisation. The dissolution may also engage certain restrictions in the Financial Administration Act, including with respect to the sale of state shares.

The example of the termination of state ownership in Petro-Canada provides an example of this procedure in practice (see also Box 1.3 above). When legislation to partly privatise Petro-Canada was introduced in Parliament in 1991 by the Minister of State (Privatisation and Regulatory Affairs), the Minister noted in his initial speech to the House of Commons that the Crown corporation was no longer achieving a public policy role, given the global shift in energy markets, and that in order to remain competitive, the corporation would benefit from a reliable source of new equity. The privatisation also served as part of a broader government effort to move from an interventionist approach to energy policy to one that would rely on market forces.

Chile

The procedure for terminating state ownership of part or all of a state-owned enterprise depends on the law creating the SOE. If the law that created the SOE establishes a required per centage of state ownership or requires that the enterprise remain under state control, then a law authorising privatisation of the state's ownership in the enterprise is required. If the law that created the SOE does not establish these requirements, then no law authorising privatisation is required. Even though it is not required under law, the Government always communicates to the public and explains the reasons why it considers it appropriate to privatise certain corporate assets of the state. Examples are provided in Box 2.5.

Box 2.5. **Decrease of state ownership in three Chilean SOEs**

In 2011, the state sold most of its shares in the sanitation companies Aguas Andinas S.A., Esval S.A., and Essbio S.A., retaining 5 per cent ownership in each. The sales raised 1.5 billion USD in capital.

The state provided four reasons for the sales:

1. To strengthen the Chilean Economic Development Agency's (CORFO) ability to guarantee loans to small- to medium-sized enterprises;
2. To facilitate CORFO investments in future projects;
3. To capitalise state enterprises requiring new resources to carry out socially profitable expansion projects; and
4. To transfer funds to the Treasury to finance other state investments.

Source: Chile's response to the Working Party questionnaire on state ownership rationales.

Czech Republic

The procedure for privatising all or part of an SOE is set forth in Act. No. 92/1991 Coll. of Laws on the Conditions for the Transfer of State Property to Other Subjects. Under this law, the Government is responsible for selecting state property and investments slated for privatisation.

Estonia

The state's ownership of corporate assets is assessed yearly, first at the line ministry level and then at the level of the Cabinet in its review of Estonia's annual aggregate SOE report, prepared by the Ministry of Finance. Should there be a decision to privatise certain state shareholdings, then the government prepares its decision for selling these assets and makes the decision to privatise public. In general, this decision is taken if the Government feels that the shareholding no longer serves a public interest and/or the market is efficiently providing the same product or service.

For example, the state decided to sell its majority stake in television broadcaster Levira. (The state had held 51 per cent of Levira's shares and France's Telediffusion de France held the remaining 49 per cent.) The decision to privatise was taken based on the market situation and the view that state ownership in Levira is not required to guarantee that broadcasting services are offered to the public.

Finland

Under the Act on State Shareholdings, Parliament must approve the reduction of State ownership in an SOE. Privatisations are planned and

negotiated by Finland's central ownership function, the Ownership Steering Department of the Prime Minister's Office. The final decision to dispose of State shares is made by the Cabinet of Ministers.

The criteria for privatising SOEs in Finland are company-specific. Generally, however, criteria for assessing whether to privatise an SOE include: the condition of the market in which the SOE operates; the SOE's status; the SOE's future prospects; the nature of the SOE's prospective new owner and the new owner's future prospects; the proposed sale price and how the sale price will affect the State's finances; the privatisation's impact on employment, etc.

Germany

The German Government may decide to terminate the state's ownership in an enterprise after conducting its biannual review of the German SOE sector. The goal of this review is to assess whether there remains a substantial Federal interest in the state's ownership in commercial entities. The review applies strict standards, as specified in the Federal Budget Code. The results of the review are published in the Ministry of Finance's "Report on the Reduction of Government Holdings". The report provides initiatives for further privatisation activities, in line with the Government's privatisation policy. Furthermore, the parliamentary Budget Committee has established a standing subcommittee that is continuously informed of ongoing privatisation activities.

Recent privatisations that followed this procedure include the Federation's longer-term divestment of state-owned shares in Deutsche Post AG, which began in 2012 with the sale of 60 million shares. The Government also sold two state-owned real estate companies in 2012, TLG Immobilien GmbH and TLG Wohnen GmbH, to investors via a public tender. The Government decided to sell these assets because it felt there was no longer a national interest for maintaining state ownership.

Hungary

While there are procedures for selling state shares in commercial enterprises, there are few SOEs or state-owned shares in commercial enterprises that the Government plans to sell, given that most privatisations were completed in the 1990s. In fact, the Hungarian Government has increased its presence in certain strategic industries and companies in recent years.

Ireland

As of 2012, Ireland reports that it was considering selling: 1) Bord Gáis Éireann's energy business; 2) some of ESB's non-strategic power generation capacity; 3) some non-land assets of Coillte; and 4) the state's shareholding in Aer Lingus.

Italy

Decree law 31 May 1994, No. 332 sets forth the procedure for privatising Italian SOEs, including guidance on the type of sale (i.e. initial public offering, a public auction without flotation, or a direct agreement with one or more potential buyer). In each case of SOE termination, the Government debates why state ownership is no longer necessary to the national interest. Often, the rationale behind such privatisations is the belief that private ownership may increase company's efficiency, ability to compete, and technological developments. For the Government, privatisations are also seen as a way to reduce the "public debt on GDP" ratio.

Japan

Privatisations are usually carried out upon the adoption of supplementary provisions to company-specific legislation, or via Cabinet decision. An example of the former includes the adoption of Article 2 of the Supplementary Provisions of the Nippon Alcohol Corporation Act, which provides that the Corporation be privatised as early as possible. An example of the latter is the Cabinet's 1997 decision to privatise the electricity company J-Power, in the context of the Government's plans for administrative and regulatory reform.

Lithuania

The procedure to privatise an SOE is triggered by a proposal by the line ministry or institution, which is submitted to the Property Bank. The Property Bank is responsible for the privatisation of state property. The Property Bank then submits the privatisation proposal to the Government, which reviews the pros and cons of the proposal. The Government's decision on the proposal is publicly accessible.

Mexico

The privatisation procedure for Mexican SOEs depends on the type of SOE (for examples, see Box 2.6):

Decentralised agencies and public trusts cannot be privatised and are therefore subject to liquidation procedures. The procedures for launching this process are the same as those followed to create decentralised agencies and public trusts: by law or decree of Congress or by Federal Executive order. In both cases, if the agency or trust is terminated via Federal Executive order, the decree must justify the reasons for the termination. Executive decrees to terminate SOEs in this category should be included in the annual report of the Executive Government, which is submitted annually to Congress. Once the decision for decentralised agencies takes effect, the agency is liquidated – a process that is overseen by the SHCP. For public trusts, the SHCP (in its capacity as trustee) or the technical

committee of the trust in question may issue guidelines pursuant to which it will carry out the process of the trust's termination.

Majority state-owned companies that no longer fulfil their purpose or no longer operate to the benefit of the national economy or public interest are identified for privatisation by the SHCP, which then proposes to the Federal Executive their sale, dissolution or liquidation. In these cases, the privatisation procedures are determined by the company's bylaws, particularly in situations where the company has established restrictions on the free circulation of shares held by shareholders. As part of the privatisation process, which is overseen by the majority state-owned company's line ministry, the decision to privatise is published in the Official Gazette and in the appropriate media. Regardless of the type of SOE, the CIGFD plays an important role in coordinating, guiding, and monitoring the divestiture process of public entities.

Box 2.6. **Three examples of Mexico's liquidation or sale of SOEs**

- **Luz y Fuerza del Centro:** In October 2009, the Federal Executive issued an Extinction Decree to liquidate the decentralised agency, Luz y Fuerza del Centro (LFC), a former state power company. LFC's liquidation was carried out by the Servicio de Administración y Enajenación de Bienes according to guidelines prepared by LFC's line ministry, the Ministry of Energy.
- **Ocean Garden Products:** The development bank El Banco Nacional de Comercio Exterior (BANCOMEXT) received SHCP authorisation in June 2004 to sell Ocean Garden Products (OGP), a former majority state-owned exporter and importer of seafood whose shares had been transferred to BANCOMEXT in 1996. In order to proceed with OGP's sale, BANCOMEXT through the SHCP, was required to present a sale strategy to the CIGFD that included the following steps: 1) receive approval to commence the sale of OGP; 2) appointment of a financial agent; 3) finalisation of the sale strategy; 4) audit the sale; 5) develop promotional documents; 6) open the sale to bidders; 7) approve and formalise the sale.
- **Aseguradora Hidalgo:** The CIGFD agreed in March 2001 to the proposal by the General Direction of Insurance and Securities (DGSV) to sell its shares in Aseguradora Hidalgo (AHISA), a former majority-owned company that had been responsible for providing life insurance coverage to government employees. Following a competitive bidding process, CIGFD accept the bid from Metlife, Inc. The sale was concluded in June 2002.

Source: Mexico's response to the Working Party questionnaire on state ownership rationales.

Netherlands

As per the State Participations Policy Memorandum, the state evaluates each SOE every seven years whether state ownership – as an additional safeguard, apart from laws, regulations, and supervision – still has added value. The evaluation focuses on assessing: 1) the public framework; 2) corporate governance; 3) the SOE's business position; 4) the company's strategic environment; and 5) the manner in which the SOE's public objectives have been achieved. The review results in an Annual Report on State Participations Management, which is sent to Parliament. Parliament is involved in considerations as to whether the state should keep or (partly) dispose of its shareholding in evaluated SOEs.

This procedure will be applied if the Government carries through with the Cabinet's decision to sell Holland Casino. The Cabinet's opinion is that gambling is not a service that should be offered by the government and that public interests can be better served by laws and regulation, rather than state ownership. Another argument put forth by the Cabinet is that the profits it receives from the casino's business are contradictory to the policy objectives of the Government to prevent gambling. (Currently, the casino is owned by the Ministry of Finance. The Ministry of Justice regulates gambling.)

New Zealand

There has been no full divestment by the state of SOEs since the 1990s. The current Government included in its 2011 re-election manifesto a programme of intended partial asset sales (up to 49 per cent of a small number of large SOEs). To date, two energy companies have been partially privatised and the state's shareholding in an already partially state-owned airline was further reduced. The Government's rationale and guiding principles in these privatisations was included in the publicly available 2010 Investment Statement.[20]

There have also been examples of SOEs privatising subsidiary businesses for commercial reasons. The decision to divest is taken by the SOE's board, though shareholding ministries may be consulted if the decision to divest is sufficiently material to the SOE's business (typically above 10 per cent of the SOE's total assets). A recent example includes telecommunications company Kordia's disposal of broadband provider Orcon to reduce its debt and to re-align its business strategy.

Norway

Rationales for reducing state ownership or divesting an SOE include, *inter alia*, the view that state ownership is no longer necessary to achieve certain political objectives; a wish to gain access to private capital, for example through an initial public offering; and/or the acknowledgement that, in particular cases,

other owners with industrial or commercial expertise may be better owners than the state. One example is the privatisation of Secora AS in 2012. The State sold its holding to an industrial owner because the Government ascertained that they would be better owners for Secora. Another example is the liberalisation of the telecom market in Norway in the early 1990s. For a long time, the telecom sector was considered a natural monopoly, where state ownership was preferred. However, the development of new technologies diminished this argument and the telecom sector has now become a fully commercial and competitive market. This development led to the partial privatisation of Telenor ASA through an initial public offering on the Oslo Stock Exchange in 2000.

Poland

As per the Act of 8 August 1996 on the rules of exercising the powers attributable to the State Treasury (i.e. Journal of Laws of 2012, item 1224), the Minister of the State Treasury prepares an annual report that is submitted to the Cabinet of Ministers and, on behalf of the Cabinet, to the Parliament and the State Audit Office on the SOE sector that includes an annually updated Directions of Privatisation and the Assessment of Progress in Privatisation of Assets. The State Treasury's privatisation proposals and justifications for privatisation of Polish state assets should also be attached to the Government's draft budgetary act, as per the Act of 27 August 2009 on public finance (i.e. Journal of Laws of 2013, item 885).

The legal basis for choosing State Treasury companies for privatisation, and the method by which they should be privatised, is the Act of 30 August 1996 on commercialisation and privatisation (i.e. Journal of Laws of 2013, item 216 as amended). This law is supplemented by specific provisions for segments of the economy regulated by sector-specific measures. (These measures include, for example, the Strategy for the Development of Marine Harbours until 2015, the Energy Policy of Poland to 2030, the Programme for Power Engineering Industry, the Strategy on Restructuring and Privatisation of the Great Chemical Synthesis Sector, and the Strategy for the Petroleum Industry). The legal basis for privatisation has been further supplemented, in recent years by the Government's Privatisation Plan for 2008-11 and the Privatisation Plan for 2012-13, which highlighted specific entities for privatisation.

The Government is not legally required to justify a decision to privatise an SOE unless privatisation requires an amendment of the statutory provisions that created the SOE and its shareholding structure.

Portugal

In Portugal, the government is not required to explain any decision to terminate an SOE. However, the decision to do so is usually published in a

Decree-Law with justifications for each termination. This was the case, for example, with the termination of State ownership in ANA – Aeroportos de Portugal, S.A. Decree-Law No. 232/2012, 29 October, included the Government's reasons for terminating its ownership in the SOE as seeking to maximise ANA's financial returns and to strengthen the competitiveness, growth, and efficiency of the company.

Slovak Republic

Under Section 10, par. 2 of the Act No. 92/1991 Coll. On the Conditions for the Transfer of State Property to Other Persons, the Government is required to provide Parliament with justifications for privatisation of Slovak SOEs. For example, justifications for recent privatisations in the energy sector have included the need to increase the competitiveness of individual entities and the need to obtain funds to reduce the state's debt.

Slovenia

A 2012 Government Decree approved by the National Assembly highlighted 15 enterprises for privatisations, which will be carried by the Slovenian Sovereign Holding out in two phases. For each SOE, the Government provided an explanation for why state ownership in the enterprise is no longer appropriate or necessary. The overall rationale for privatising Slovenian SOEs in these cases was that the state should not remain a sole or major shareholder in companies, which means the withdrawal of the state from the economy

Going forward, procedures for terminating State ownership in an enterprise will be further developed with the adoption of the state enterprise ownership policy, which was under consideration at the time of writing. Until the policy is adopted, the termination of State ownership can be undertaken only with parliamentary consent via the adoption of a new decree, submitted by the Government.

Sweden

The government is required to provide Parliament and the public with a justification for the privatisation of Swedish state assets. The criteria for privatisation usually are: "The state should not own SOE's in fully functioning competitive markets"; or "The state should not be owner and regulator". For example, the latter criteria justified the reduction of state shares in Nordea Bank.

Switzerland

The process for SOE-creation and SOE-termination are the same in Switzerland. This process is triggered by an assessment that the "public

interest" criteria leading to and sustaining state ownership no longer apply. Recent examples include an IPO of Swisscom shares in 1998 that resulted in a decrease in State ownership from 66% to 51%. (Under the law, the Government must retain a majority stake in Swisscom.) The Swiss Federal Council has also submitted draft legislation proposing the privatisation of ethanol provider Alcosuisse, given the Government's assessment that the market can effectively address Switzerland's need for industrial ethanol.

Turkey

As noted above, under Turkey's 1994 Privatisation Law No. 4046, plans to privatise Turkish SOEs, their subsidiaries, or their affiliates, are performed by the Privatisation Agency but only after approval by the Council. The privatisation of these assets is carried out by the Turkish Privatisation Administration.

The main rationale for privatisation of Turkish SOEs is three-part: 1) to limit the role of the state in the economy; 2) to provide a legal and structural environment for free enterprise to operate; 3) to increase the productivity and to add value to the economy by ensuring a more efficient organisation and management of enterprises.

United Kingdom

Parliament is usually informed when the Government plans to terminate its ownership in an SOE, particularly when the public body was established under an Act of Parliament (e.g. in the case of a trading fund). This includes a justification for the sale. Typically, the decision to privatise an SOE must satisfy the value-for-money assessment set out in UK Treasury guidelines.

For example, when Royal Mail was privatised, the Government published its objective for the sale: To sustain the universal service obligation (six-day postal delivery with the same price, anywhere in the United Kingdom) for the benefit of all users by introducing private sector capital and commercial disciplines. This would be achieved by: delivering a sale of shares within the current Parliament; creating an employee share scheme that would lead to at least 10% of the company in employee ownership; and delivering a financial outcome for the taxpayer.

Notes

1. Canada, Chile, the Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Israel, Italy, Japan, Lithuania, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Sweden, Switzerland, the United Kingdom, and Turkey.
2. Chile, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Lithuania, Netherlands, Norway, Poland, Portugal, Slovenia, Sweden, and Switzerland.

3. Figures include majority-owned listed and unlisted SOEs, as well as statutory and quasi-corporations and are current as of end-2012. Source: OECD (2014), *The Size and Sectoral Distribution of SOEs in OECD and Partner Countries*, OECD Publishing, pp. 12-13.
4. Ibid. This list does not include the Slovak Republic.
5. Figure 1.2 does not include the Slovak Republic.
6. For example, the articles of association for Norway's SOE Statkraft SF states that one of the company's objectives is to secure state ownership of Norwegian power plants. See online here: *www.statkraft.com/financial-information/corporate-governance/articles-of-association*.
7. Italy reports that almost all other commercially oriented Italian SOEs have been privatised, including the upcoming privatisation of the shipbuilder Fincantieri, which is 100% owned by Cassa Depositi e Prestiti, which is 80.1% owned by the Italian Ministry of Economy and Finance.
8. Canada, Chile, the Czech Republic, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Slovenia, Sweden, Switzerland, and the United Kingdom.
9. Estonia, Germany, Hungary, Israel, Lithuania, Poland, Portugal, the Slovak Republic, and Turkey.
10. For more information, see online here: *www.tc.gc.ca/eng/aviationsecurity/page-168.htm*.
11. See KredEx Krediidikindlustus's 2013 Annual Report online here: *www.kredex.ee/public/aastaraamat2013/en/index.html*.
12. The process for Cabinet approvals is laid out in the documents, "Guide to Making Federal Acts and Regulations" (2001) and "A Drafter's Guide to Cabinet Documents", (2013) produced by the Privy Council Office.
13. *www.mnvzrt.hu/en/hungariannatassetman*.
14. Ireland specifies that the following laws were consulted in the consideration to establish Irish Water: Civil Liability Act 1961 (No. 41); Companies Acts, Electricity Regulation Act 1999 (No. 23); Financial Emergency Measures in the Public Interest Act 2010 (No. 38); Financial Emergency Measures in the Public Interest Act 2013 (No. 13); Fire Services Act 1981 (No. 30); Foreshore Act 1933 (No. 12); Foreshore Acts 1933 to 2009; Gas (Interim) (Regulation) Act 2002 (No. 10); Gas Act 1976 (No. 30); Gas Regulation Act 2013 (No. 39); Interpretation Act 2005 (No. 23); Local Government (Delimitation of Water Supply Disconnection Powers) Act 1995 (No. 18); Local Government (Financial Provisions) (No. 2) Act 1983 (No. 21); Local Government (Financial Provisions) Act 1997 (No. 29); Local Government (Sanitary Services) Acts 1878 to 2001; Local Government (Water Pollution) Act 1977 (No. 1); Local Government Act 1991 (No. 11); Local Government Act 2001 (No. 37); Minimum Notice and Terms of Employment Acts 1973 to 2005; Organisation of Working Time Act 1997 (No. 20); Planning and Development Act 2000 (No. 30); Protection of Employees (Part-Time Work) Act 2001 (No. 45); Public Health (Ireland) Act 1878 (c.52); Redundancy Payments Acts 1967 to 2012; Roads Act 1993 (No. 14); Unfair Dismissals Acts 1977 to 2007; Waste Management Act 1996 (No. 10); Water Services Act 2007 (No. 30); Water Services Act 2013 (No. 6); Water Services Acts 2007 and 2012.
15. Decentralised agencies (organismos descentralizados) are defined in Art. 45 of the LOAPF as entities with legal personality and assets. (*www.funcionpublica.gob.mx/web/doctos/temas/legislacion/leyes/01_LOAPF_SFP.pdf*).
16. Art. 46 of the LOAPF.

17. This guidance is only available in Norwegian and therefore could not be reviewed by the Secretariat and included in this stocktaking report.

18. This process is set forth in the following instruments: the Federal Constitution, the Act on the Federal Assembly and the Government, and the Administration Organisation Act. More information can be found online in the Federal Office of Justice's legislative guide (in French or German: *www.bj.admin.ch/content/bj/fr/home/themen/staat_und_buerger/legistik/gesetzgebungsleitfaden.html*).

19. A detailed explanation of the procedures required for establishing SOEs in the UK can be found in, "Public Bodies: A Guide for Departments", January 2007 (*www.gov.uk/government/uploads/system/uploads/attachment_data/file/80080/PublicBodiesGuide2006_3_setting_upv2_0.pdf*).

20. *www.treasury.govt.nz/budget/2011/supp2010is/21.htm*.

ANNEX A

Questionnaire on the Rationale for State Ownership

Circulated to the OECD Working Party on State Ownership and Privatisation Practices (Working Party)

Background

The importance of an efficiently functioning SOE sector to the welfare of national economies has been extensively documented. As stated in the OECD Guidelines on Corporate Governance on State-Owned Enterprises (the "SOE Guidelines"), governments can help ensure the efficiency of their SOE sectors by developing and issuing clear and consistent ownership policies. Clearly stated objectives of state ownership can increase confidence and stability in the markets in which SOEs operate. It also enhances the accountability of – and trust in – government.

The OECD Secretariat has prepared this questionnaire as part of the work stream on "assisting SOE governance reform" that the Working Party on State Ownership and Privatisation Practices (Working Party) committed to carry out under the programme of work for 2013-14 [DAF/CA/SOPP(2013)]. It will help inform the review and revision of the SOE Guidelines that is due to take place in the course of 2014.

Responses to this questionnaire will be compiled into a stocktaking report summarising the rationales that OECD and partner governments express for enterprise ownership. The stocktaking will aim to identify challenges and good practices for developing, implementing and communicating such policies, taking as a starting point Chapter 2.A. of the SOE Guidelines and related annotations. Respondents are asked to focus on **SOEs that are of a wholly or mostly commercial nature**. Corporate entities that have been established to carry out well-defined public policy objectives should normally not be included in the responses.

Working Party Delegates and partner countries are invited to respond to the questions in written form. They are kindly requested to email responses to the Secretariat **no later than 5 March 2014**. Contact persons are Mary Crane-Charef (Email: Mary.Crane-Charef@oecd.org; Telephone: +33 (0)1 45 24 9739) and Anne Nestour (Email: Anne.Nestour@oecd.org; Telephone: ++33 (0)1 45 24 8876).

Questions

The following questionnaire is divided into three parts: A) Approaches to developing and communicating the rationales for SOE ownership; B) Decision criteria and practices for SOE-creation; and C) Decision criteria and practices for divestment and other termination of ownership. Respondents are encouraged to provide additional information and background documentation where available.

A. Approaches to developing and communicating rationales for SOE ownership

1. Does your government have an explicit ownership policy defining the overall objectives of state ownership? If yes:
   a) How is this ownership policy determined (e.g. through legislation; cabinet decision; government decree)? How often, if at all, is it reviewed and updated?
   b) What is the main purpose(s) of state ownership offered as part of the ownership policy? (If possible please provide an excerpt of the actual text.)
   c) Is the ownership policy supplemented by specific objectives or classifications for individual (groups of) state-owned enterprises. (If so, please provide detail.)
2. If the answer to question 1 is no (or if certain categories of SOEs operate in a different legal and regulatory environment), can rationales for ownership be gleaned from other applicable laws and regulations, such as general corporate law, laws pertaining to SOEs or company-specific acts of parliament, fiscal bills, or more general "expectations" communicated by the ownership function? If yes:
   a) Please provide details regarding the relevant documents and their legal, regulatory and/or political status.
   b) Please provide an overview of the rationales for state ownership that are offered by these documents. (If relevant, please provide examples of the actual text.)
   c) Is the implementation of these provisions subject to any accountability, performance monitoring, and/or review mechanisms?

3. Regardless of the answers to questions 1 and 2, do individual SOEs have elements of an ownership rationale built into their corporate bylaws, articles of association, etc.? If so, please elaborate and provide examples.

B. Decision criteria and practices for SOE-creation

1. Please describe the procedures in your jurisdiction for creating a new SOE that would be majority-owned or completely owned by the State. What specific processes must be followed, justifications made, etc.?
2. Please identify any laws, regulations, policies, etc., which outline these procedures.
3. If possible, please provide one or two specific case examples of the creation of a new SOE in your jurisdiction.

C. Policies and practices for termination of ownership

1. Please describe the procedures in your jurisdiction (at the administrative and political levels) for deciding to privatise an SOE. In particular:
   a) Does the government need to provide the parliament and public with an explanation of why state ownership is no longer necessary or in the national interest? If so, what main criteria would such explanations usually invoke?
   b) If possible, please provide an example of the rationale(s) provided for relevant cases of state divestment in your jurisdiction.

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State-Owned Enterprise Governance

A STOCKTAKING OF GOVERNMENT RATIONALES FOR ENTERPRISE OWNERSHIP

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