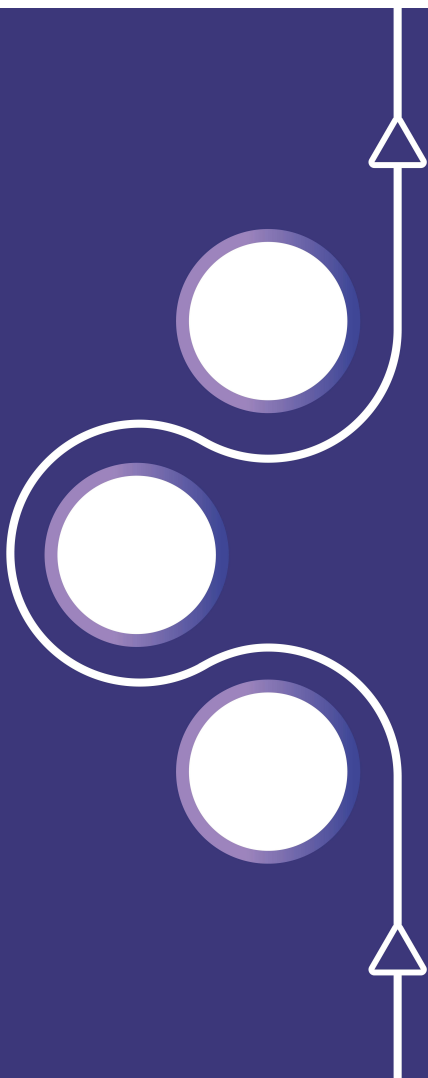




Maintaining competitive neutrality

**Voluntary transparency and disclosure
standard for internationally active state-owned
enterprises and their owners**



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Foreword

This voluntary standard outlines a set of best practices for transparency and disclosure by internationally-active SOEs and their owners. The aim of this standard is to complement the existing provisions of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* as well as the *Recommendation of the Council on Competitive Neutrality*. These instruments support the preservation of competitive neutrality. This standard aims to ensure that internationally-active SOEs operate efficiently, transparently and on equal footing with private companies in the global marketplace.

It was developed in response to a request made in June 2017, at the Meeting of the OECD Council at Ministerial level (MCM), which called on the OECD “to examine the possibility to develop a voluntary global reporting standard for internationally active SOEs.” ([2017 Ministerial Council Statement – “Making globalisation work: better lives for all”, paragraph 17](#)).

The voluntary standard was developed by the Working Party on State Ownership and Privatisation Practices further to discussions held in March and October 2020. It was developed in consultation with the Secretariat serving the policy communities of the Trade, Investment, Competition, Steel and Shipbuilding Committees, in addition to consultation partners Business at OECD and TUAC.

The development of the standard was led by Sara Sultan Balbuena of the Corporate Governance and Corporate Finance Division in the OECD Directorate for Financial and Enterprise Affairs. It was finalised with the support of Katrina Baker and Henrique Sorita Menezes. For more information, readers are invited to visit:

www.oecd.org/corporate/soes

www.oecd.org/competition/competitive-neutrality.htm

Maintaining competitive neutrality: Voluntary transparency and disclosure standard for internationally-active SOEs and their owners

Context

Globally, SOEs represent a significant and, by some measures, growing share of the economy ([OECD, 2020](#)). Their share in total economic activity (measured by GDP, employment or investment) varies significantly across economies. SOEs can represent from 10 to 30 per cent of economic activity in emerging economies whereas their share ranges from 0.5 to 2 per cent in most OECD economies ([OECD, 2017](#)).

Regardless of their size and weight, SOEs are important elements of most national economies and operate in sectors that provide essential public services vital to competitiveness, such as transportation, public utilities and finance. The concentration of SOEs in these sectors can have direct implications on the global competitive landscape. Firstly, state intervention in these sectors plays an important upstream and downstream role in international supply chains. Secondly, a high degree of cross-border trade and investment takes place in most of these sectors. Thirdly, SOEs in the network industries often operate as vertically integrated structures with incipient monopolies in parts of their value chains. This means that they can have an impact on the entry conditions of would-be competitors across a number of commercial activities.

In addition to their national role, SOEs are increasingly active in the global marketplace. Today, one quarter of the world's largest multinationals are effectively under state control ([OECD, 2020](#)). Cross-border mergers and acquisitions (M&A) have been an important channel for the rapid internationalisation of SOEs. Since 2005, M&A by SOEs has grown rapidly and is increasingly moving up the value chain. Disregarding a notable surge in 2008-09 during the economic and financial crisis, cross-border M&A by SOEs has been rising in the decade to follow. It is expected that SOEs are likely to remain a prominent feature of the global marketplace.

Transparency and disclosure

Ensuring high standards of transparency and high quality of disclosure are the very basis of any sound corporate and public governance regime. Information disclosure and high standards of accountability in SOEs, can contribute to improved efficiency and performance of SOEs. Information disclosure including

both financial and non-financial data is essential for the government, so it can be an effective owner; the Parliament to evaluate the performance of the state as an owner; the media to raise awareness on SOE efficiency; and taxpayers and the general public to have a comprehensive picture of SOE performance.

Transparency and disclosure is also key to ensure competitive neutrality with other market participants. It ensures that other market actors and regulatory authorities can objectively assess SOEs' business and governance practices based on a broad range of criteria, including: (1) corporate orientations of a SOE; (2) the clarity of objectives pursued by a SOE (i.e. public policy or other non-economic objectives); (3) its governance (i.e. by the government owner, ownership arrangements and regulatory treatment; and in the independence and autonomy of the board); (4) transparency, accountability and disclosure practices related to public policy objectives, subsidies or other forms of governance support; (5) the competitive situation of a SOE (regulatory treatment and funding and financing situation); and, (6) responsible business conduct practices.

One of the basic tenants of the OECD [*Guidelines on Corporate Governance of State-Owned Enterprises*](#) (hereinafter “SOE Guidelines”) are that SOEs should be as accountable to the public as listed companies are expected to be towards their shareholders. The SOE Guidelines call for the state – which exercises the ownership of SOEs on behalf of the general public – to be transparent to its citizens about the objectives, operations and performance of SOEs. Emphasis is placed on aggregate reports that synthesize information on the performance of state-owned enterprises, which contribute to a culture of greater accountability in the public administration. For individual SOEs, the Guidelines place emphasis on the availability of financial and non-financial information.

Since the SOE Guidelines were adopted over a decade ago, many countries around the world have instituted reforms leading to increased transparency in the state-owned enterprise sector, both at the level of individual SOEs and at the level of the state. Heightened disclosure practices have often occurred in tandem with other trends, including the professionalization of the state-ownership function, SOEs' corporatisation and the listing of some SOEs on stock exchanges. In most cases, such efforts have brought practices closer to the SOE Guidelines.

Despite good practices in a number of OECD and non-OECD economies, the level of implementation of the Guidelines in the area of transparency and disclosure still varies considerably from one jurisdiction to another. Practices vary in individual jurisdictions depending on the corporate form of an SOE and the size of the overall portfolio (with due regard to enterprise capacity and size). The completeness and reliability of information is uneven in jurisdictions where SOEs are subject to weak disclosure regimes or are not subject to the same rules and regulations applicable to privately-owned companies.

Recent trends in treaty practice highlight the need for continued emphasis on transparency and disclosure by state-owned enterprises and their owners. Recent documented approaches have focused on transparency and disclosure of information on the portfolio of companies owned by the state; governance frameworks; information about the extent of government ownership or control; and, non-commercial assistance (e.g. subsidies and other forms of government support (direct or indirect)) provided to SOEs.

About this standard

This voluntary standard is intended to outline a set of best practices for transparency and disclosure by internationally-active SOEs and their owners. The aim of this standard is to complement the existing provisions of the SOE Guidelines to support the preservation of competitive neutrality and ensure that internationally-active SOEs operate efficiently, transparently and on equal footing with private companies in the global marketplace.

The rest of this standard is organised around three parts, as follows:

1. Principles for transparency and disclosure by SOEs

2. Principles for transparency and disclosure by the state-owner
3. Ensuring access to information and facilitating international cooperation

The first two parts covering transparency and disclosure set out guiding principles; give examples as to the content and quality of transparency and disclosure; and outline some measures for verification and accountability.

To avoid duplication with existing OECD recommendations bearing on transparency and disclosure, relevant provisions of these recommendations are cited in the standard and reproduced in boxes as relevant. The relevant recommendations draw from the: G20/OECD *Principles of Corporate Governance* (hereinafter “CG Principles”), OECD *Guidelines on Corporate Governance of State-Owned Enterprises* (hereinafter “SOE Guidelines”), *Anti-Corruption and Integrity Guidelines for State-Owned Enterprises* (hereinafter “ACI Guidelines”) as well as the *Recommendation of the Council on Competitive Neutrality*.

Coverage, applicability and definitions

With due regard to enterprise capacity and size, the focus of this standard is on large¹ state-owned enterprises (SOEs) that are engaged in economic or commercial activities and are active in international markets. A company is considered “active” in international markets if it engage in international trade or investment, or whose activities are integral to cross-border corporate value chains and whose operation affects or could affect cross-border trade and investment.

The SOE Guidelines define a SOE, taking into account a number of criteria, beyond the corporate form, which include the degree of ownership and control. For the purpose of the Standard and in line with the SOE Guidelines, the following definitions are provided as a guidepost for what may be referred to when discussing a “SOE”:

Defining ownership:

- Any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership. This includes joint stock companies, limited liability companies and partnerships limited by shares.
- Statutory corporations, with their legal personality established through specific legislation, if their purpose and activities, or part of their activities are of a largely economic nature.
- Minority ownership by the state if corporate or shareholding structures confer effective controlling influence on the state.

Defining control:

- Enterprises that are under the control of the state, either by the state being the ultimate beneficiary owner of the majority of voting shares, or otherwise exercising an equivalent degree of control. Whether a “golden share” amounts to control depends on the extent of the powers it confers to the state.
- Other situations in which the state in effect exercises control over an enterprise (other than through bona fide regulation). This might include, but not limited to, the number of independent board members sitting on the board, the extent to which members of the board may take instructions from the government, etc.

Other important definitions:

¹ For the purpose of this standard “large” is defined based on thresholds established by national authorities in a given jurisdiction or as established in applicable international/multilateral/bilateral agreements.

- *Independence:* The standard will make a number of references to the governing bodies of SOEs, independent directors and overall board independence. The scope and definition of “independent” varies according to national context and codes of corporate governance. However, it can be inferred that an “independent and objective” board is one that operates under a legal framework which allows it to take into account the interest of the company irrespective of instructions received from the government shareholder. Independent directors (subject to national definitions) are individuals who, first, are not directly representing any particular stakeholder interest in the company, but whom are thought to bring certain skills and competencies to the board. These persons are also independent from management, government and business relationships.
- *Economic versus non-economic (commercial versus non-commercial) activities:* An economic activity is one that involves offering goods or services on a given market and which is offered in markets where competition occurs (or has the potential to occur). Non-economic activities (such as public policy objectives) can be pursued separately from or in combination with, economic activities.
- *Competitive neutrality:* A principle according to which all enterprises are provided a level playing field with respect to a state’s (including central, regional, federal, provincial, county, or municipal levels of the state) ownership, regulation or activity in the market.

1. Principles for financial and non-financial reporting by SOEs

1.1 General principles

With due regard to enterprise capacity and size, the state should expect that SOEs observe high standards of transparency and be subject to high quality accounting, disclosure, compliance and auditing standards in line with internationally recognised standards, and including areas of significant concern for the state as an owner and the general public. This includes in particular SOE activities that are carried out in the public interest.

Disclosure for SOEs covered by this standard should not be different than for commercial companies operating in like circumstances, unless the specific nature of their activities, for example carrying out non-commercial activities, necessitates additional disclosure. Consistent with G20/OECD Principles for Corporate Governance, disclosure requirements should not place unreasonable administrative or cost burdens on enterprises. Nor are companies expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform investment decisions and to avoid misleading the investor, other market participants or regulators. In order to determine what information should be disclosed at a minimum, many countries apply the concept of materiality.²

SOEs whose activities are covered by this standard should be transparent and observe high standards of transparency in line with SOE Guidelines, Chapter VI, including in areas necessitated by relevant regulatory review procedures or other binding agreements (e.g. trade and investment agreements). The remainder of this chapter should be read in light of these general principles.

1.2 Content and quality of reporting

With due regard to enterprise capacity and size, examples of such information should include, but not be limited to, material information as highlighted by the G20/OECD Principles of Corporate Governance and OECD Guidelines on Corporate Governance of SOEs.

Relevant provisions of SOE Guideline VI.A

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

² Material information can be defined as information whose omission or misstatement could influence the economic decisions taken by users of information. Material information can also be defined as information that a reasonable investor would consider important in making an investment or voting decision.

With due regard to enterprise capacity and size, examples of such information include:

- 1. A clear statement to the public of enterprise objectives and their fulfilment (for fully-owned SOEs this would include any mandate elaborated by the state ownership entity);*
- 2. Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives;*
- 3. The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;*
- 4. The remuneration of board members and key executives;*
- 5. Board member qualifications, selection process, including board diversity policies, roles on other company boards and whether they are considered as independent by the SOE board;*
- 6. Any material foreseeable risk factors and measures taken to manage such risks;*
- 7. Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE, including contractual commitments and liabilities arising from public-private partnerships;*
- 8. Any material transactions with the state and other related entities;*
- 9. Any relevant issues relating to employees and other stakeholders.*

In addition, SOEs covered by this standard should be transparent and observe high standards of transparency in the areas relevant to competitive neutrality and to the extent specified in this document. With due consideration to the general principles listed above, disclosure should aim to:

- Where SOEs combine economic activities and public policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for attribution to main activity areas. In addition, the disclosed information should be sufficient in order for the state as owner to identify rates of return of the companies' economic activities consistent with those obtained by (potentially) competing private enterprises. .
- Disclose any immunities or exemptions from the application of general laws, tax codes and regulations in relation to the economic activity carried out should they result in the favourable treatment of SOEs.
- Disclose any subsidies and other forms of government support (direct or indirect) that confers an advantage to the recipient SOEs over private competitors and accorded by virtue of government ownership or control. These advantages can take the form of (1) grants or debt forgiveness; (2) financing, loans or loan guarantees on terms more favourable than those commercially available; (3) goods or services other than general infrastructure on terms more favourable than those commercially available; (3) equity capital inconsistent with usual investment practice; (4) any inputs (such as energy, water or land) at prices or conditions more favourable than those commercially available; (5) tax arrears; and (6) preferential trade credits.
- Disclose any relation with state-owned financial institutions.
- Where SOEs engage in public procurement and thus subject to public procurement rules, whether as bidder or procurer, the types of contracts and procedures involved should be disclosed, unless such information is disclosed by another contracting party or if the information concerned is commercially sensitive.
- Describe areas relevant to responsible business conduct when applicable and material and in accordance with the OECD Guidelines for Multinational Enterprises.

- Describe the internal control structure and procedures for financial reporting established as per relevant reporting requirements set for listed companies.
- Disclose on board composition including titles of public officials serving on boards, the number of independent directors sitting on the board and any information that would lend itself to understanding the level of board independence.
- Provide information on ownership structure of the SOE, including the ultimate owner (in case of partially owned SOEs), and any special rights or agreements that diverge from generally applicable corporate governance rules, and that may distort the ownership or control structure of the SOE, such as golden shares and power of veto. The existence of shareholder agreements should be disclosed, whereas some of their contents may be subject to conditions of confidentiality.
- Provide information on location where publicly traded (if applicable); and list of subsidiary companies. In addition to overview of products, services and significant business operations of the SOE, relevant to determine a company's business model.

Information should be prepared and disclosed in accordance with high quality internationally-recognised standards of accounting and financial and non-financial reporting. The control environment of a SOE remains an important guidepost to understanding the reliability and credibility of financial and non-financial reporting by SOEs.

Disclosure should be regular, reliable and lend itself to comparability with disclosure of other market participants and offered in sufficient detail for shareholders, potential investors, other stakeholders and relevant regulatory authorities to assess the stewardship of management, and make informed decisions about the voting of shares, valuation, ownership, governance, commercial orientation, and competitive neutrality.

1.3 Verification and accountability

Verification and accountability mechanisms, including external and internal audit and controls procedures and functions, and when relevant state audit, supervision and enforcement should be robust and according to the standards set out in relevant provisions of the CG Principles (V.C and V.D), SOE Guidelines (VI.B, VII.J) and the ACI Guidelines (D.V.4, C.IV.8, C.IV.9, C.IV.10).

State-owned enterprises' decision-making should be held accountable in line with ACI Guidelines C.IV 8 and C.IV10.

Relevant provisions of SOE Guidelines, ACI Guidelines and CG Principles

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

SOE Guidelines VII. J. SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ.

CG Principles V.C An annual audit should be conducted by an independent, competent and qualified, auditor in accordance with high-quality auditing standards in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

CG Principles V.D. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

ACI Guidelines D.V.4 The legal and regulatory requirements that affect corporate governance practices should be enforceable. Ensuring this mostly falls outside the authority of those exercising ownership rights over SOEs, but the ownership entity should cooperate fully with relevant authorities and under no circumstances take steps to hinder ongoing proceedings.

ACI Guidelines C.IV.8 The state should expect that corporate investigative and disciplinary procedures exist to promote compliance and to address, among other things, violations, at all levels of the company, of relevant laws or company's integrity mechanisms.

ACI Guidelines C.IV.9 It is a prime responsibility of the state to ensure that boards have the necessary authority, diversity, competencies and objectivity to autonomously carry out their function with integrity. The corporate governance framework should ensure the board is accountable to the company and to the shareholders and, where legislated, subject to parliamentary control, recognising citizens as the ultimate shareholder.

ACI Guidelines C.IV.10 The state should express an expectation that the board apply high standards for hiring and conduct of top management and other members of the executive management, who should be appointed based on professional criteria. Special attention should be given to managing conflict of interest and, relatedly, movement of actors between public and private sectors (also known as "revolving door" practices).

State-owner accountability

The state-owner should promote a strong disclosure regime, which promotes real transparency to ensure market-based monitoring of companies, competitive neutrality, compliance with regulatory and legal requirements; and so that non-state shareholders are able to exercise their shareholder rights on an informed basis.

The ownership entity should develop a disclosure policy that identifies what information SOEs should publicly disclose, the appropriate channels for SOE disclosure and SOE mechanisms for ensuring quality of information in line with SOE Guidelines II.F.4 and ACI Guidelines A.II.5.viii. The ownership entity should be clear about its expectations for transparency and disclosure requirements that may go above and beyond requirements set for companies operating under like circumstances. If and where necessary, the state owner should expect SOEs to adhere to the highest degree of transparency, disclosure and accountability where their activities affect or could affect cross-border trade and investment.

Ultimately, the ownership entity should hold the decision-making bodies of SOEs accountable for high-quality transparency and disclosure practices.

Relevant provisions of SOE Guidelines and ACI Guidelines

SOE Guidelines II.F.4. Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards.

ACI Guidelines A.II.5.viii Ensuring that the ownership entity is equipped to regularly monitor, review and assess SOE performance, and oversee and monitor SOE compliance with applicable corporate governance standards – including those related to anti-corruption and integrity.

2. Principles for transparency and disclosure by the State

2.1 General principles

The state should lead by example with regards to transparency, actively seeking to improve public knowledge about SOEs, including those which fall under the scope of this standard. It should itself act as a fully informed enterprise owner.

The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs or the portfolio of enterprises that relate to the coverage of this standard. Good practice calls for the use of web-based communications to facilitate access by the general public.

Aggregate reporting should not duplicate but should complement existing reporting requirements, for example, annual reports to the legislature. The ownership entity should develop aggregate reporting that covers all SOEs, including those which are internationally-active, and make it a key disclosure tool directed to the general public, the legislature and the media. For this reason, the nature of information reported should not disclose any information that could be perceived to violate state or corporate confidentiality.

2.2 Content and quality of reporting

Aggregate reporting should be presented in a way that allows all readers to obtain a clear view of the overall performance and development of the SOEs, including those which are internationally active. Disclosure should include areas covered by SOE Guidelines VI.C.

Relevant provisions of SOE Guidelines VI.C, Annotations

"This aggregate report should primarily focus on financial performance and the value of the SOEs, but should also include information on performance related to key non-financial indicators. It should at least provide an indication of the total value of the state's portfolio. It should also include a general statement on the state's ownership policy and information on how the state has implemented this policy. Information on the organisation of the ownership function should also be provided, as well as an overview of the evolution of SOEs, aggregate financial information and reporting on changes in SOEs' boards. The aggregate report should provide key financial indicators including turnover, profit, cash flow from operating activities, gross investment, return on equity, equity/asset ratio and dividends."

Additionally state-ownership entities or other competent bodies owning companies covered by this standard are encouraged to disclose, to the extent possible:

- Scope and size of its SOE sector, including where possible, a full list of economically significant commercial entities owned by the state³, and the percentage of voting shares in those entities.
- Information on the organisation of the ownership function, its size, staffing, and placement within the government and accountability mechanisms.
- Quantitative and qualitative information on subsidies and other forms of government support (direct or indirect) provided to SOEs; and total amount received or budgeted per budget year.
- The extent to which SOEs economic activities are subject to state aid rules and/or existing national competitive neutrality frameworks (where established).

Effective monitoring of SOE performance can be facilitated by having adequate accounting and audit competencies within the ownership entity to ensure appropriate communication with relevant counterparts, both with SOEs' financial services, its internal audit function and specific state controllers.

2.3 Verification and accountability

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

When relevant the annual aggregate reporting should be subject to regular review by the legislature and/or other competent bodies.

Relevant state bodies, falling outside the authority of those exercising ownership rights over SOEs, should establish or maintain independent oversight and monitoring of financial assistance/subsidies, explicit or implicit guarantees and any other government support (direct or indirect) provided to SOEs, with due regard to preserving competitive neutrality in the design of such measures. Recipients of support should be responsible for ensuring high standards of transparency and disclosure in relevant as outlined under Section 2.

Relevant state bodies, falling outside the authority of those exercising ownership rights over SOEs, where mandated, could additionally and periodically audit: (i) financial transactions, including subsidies and asset transfers, between the state and SOEs, or between SOEs (as relevant); and (ii) the state's exercise of ownership functions. For SOEs with policy objectives, the state should establish or maintain independent oversight and monitoring to ensure that remuneration is calculated based on clear targets and objectives and based on efficiently incurred costs, including capital costs. Audit findings should be deliberated by the legislature in a timely manner that accords with the budgetary cycle and be made public.

³ Where this may not be possible ownership entities could aim at publishing partial aggregate reports covering SOEs in comparable sectors.

3. Ensuring access to information and facilitating international cooperation

Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Relevant state bodies should be encouraged to co-operate with stakeholders, trade unions, private sector representatives and the public and media in facilitating the analysis of disclosed information and, where appropriate, highlighting and addressing problems of transparency and disclosure concerning SOEs.

Where relevant, state bodies should facilitate international co-operation with relevant authorities to ensure proper exchange information up on request and in view of enforcement and investigation proceedings.

The OECD Working Party on State Ownership and Privatisation Practices, in consultation with other relevant bodies, will be responsible for monitoring the implementation and development of this standard and, when relevant, act as a forum to facilitate international co-operation and exchange of information in the areas covered by this standard.

Maintaining competitive neutrality: Voluntary transparency and disclosure standard for internationally active state- owned enterprises and their owners

This voluntary standard outlines a set of best practices for transparency and disclosure by internationally-active SOEs and their owners. The aim of this standard is to complement the existing provisions of the OECD Guidelines on Corporate Governance of State-Owned Enterprises as well as the draft Recommendation of the Council on Competitive Neutrality. These instruments support the preservation of competitive neutrality. This standard aims to ensure that internationally-active SOEs operate efficiently, transparently and on equal footing with private companies in the global marketplace.

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