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Slovenia Sovereign Holding Act: OECD Comments

These comments were sent to the Slovenian authorities on 18 July 2012 concerning the SSH Act. They were prepared by the OECD Secretariat, based on the relevant OECD committees' position, and reflect their position in the discussions prior to the accession of Slovenia to the Organisation.

In the comments below, the OECD Secretariat has categorised as “positive” or “potential weaknesses” the main provisions of the law, based on the recommendations of OECD’s Corporate Governance Principles and SOE Guidelines. In the case of the weaknesses, we have in each case proposed remedial action that could help address these weaknesses.

Positive developments

- 1) The provision (Article 7) for the creation of overall “investment management guidelines” is a positive step. It is currently a bit weakly worded in the bill, but if crafted into a proper ownership policy for SOEs consistent with internally agreed standards, this would go some way in aligning Slovenian high-level ownership practices with OECD recommendations.
- 2) Idem the three-year investment management strategy (Article 8) which is consistent with OECD recommendations (and even more so the detailed guidance laid down in the Accountability and Transparency Guide) that the ownership agency be subject to a proper strategy of its own.
- 3) The establishment of a ministerial responsibility for state holding company (SSH) which is implicit in the provisions (Article 9) about the Ministry of Finance being responsible for proposing the Strategy to Parliament is consistent with OECD recommendations. (The reservation of one seat on the SSH supervisory board for an appointee by the parliamentary Public Finance Oversight Commission [Article 21] could be seen as further strengthening link.) Without prejudice to whether the most appropriate “ownership ministry” is the Ministry of Finance, most OECD countries have found it useful to have their ownership agency report to a cabinet minister.
- 4) The provision (Article 24) that the SSH shall be subject to ordinary company law where not otherwise specified is consistent with OECD recommendations and is aligned with what is considered good practices in a number of other OECD countries.

Potential weaknesses

- 1) The composition of the SSH supervisory board (Article 21) is a cause for concern, since all nine members are parliamentary appointees. It must be kept in mind that SSH is a state-owned enterprise – not a government agency – and the OECD Guidelines state that the board members of such must be capable of “objective and independent judgment”. In the accession process it was decided that this precludes Ministers and persons closely affiliated with them from serving on supervisory boards. Great care must therefore be taken to ensure that the parliamentary appointees are not, effectively, aligned with the Slovenian executive. Proposal: add to the list of necessary qualifications in Article 21 one provision stating that a member of the supervisory board cannot be the member of the executive power, an

elected body of the Republic of Slovenia or sub-national units of government, nor directly affiliated with, or dependent on, such person.

- 2) Likewise in Article 21, it would seem essential to add a provision about cause for removal of members of the supervisory body. Independence and objectivity cannot be safeguarded if board members can be dismissed by parliament in mid-term. Proposal: add text saying that supervisory board members can only be removed for a cause (e.g. breach of duties or disreputable behaviour).
- 3) The management board of SSH (Article 22) needs to be shielded from day-to-day interventions by the supervisory board. Reflecting the previous two points, they two should be subject to rules regarding independence from political influence and unjustified dismissal.
- 4) The provisions (Article 25) regarding the accreditation commission appear too weakly worded. The role of such commissions in other OECD countries (consistent with the OECD Guidelines) is to avoid arbitrary or politicised board appointments in SOEs. The draft Law defines the commission as an “advisory body” which provides “expert opinions”. It further stipulates that “procedures for determining the appropriateness of candidates and rules of operation of the accreditation commission are determined by the supervisory board...”. This is at risk of reducing the commission to a “rubber stamp”. Proposal: add text saying that the supervisory board must publish criteria for eligibility to SOE boards. The assessment of the accreditation commission must be made against these criteria and the commission’s recommendations disclosed either to the public or a select government oversight body.
- 5) The provisions on reporting (Article 30) seem to fall short of OECD recommendations (as well as the practices of many other OECD countries) and they appear to represent a step backward compared with previous Slovenian practices. As the text currently stands SSH has to report on its performance to parliament once per year, whereas its portfolio companies make annual reports only to SSH’s management board. The standard followed in most OECD countries (and recommended by OECD) is aggregate reporting by the ownership agency of the performance of all SOEs. Proposal: add text saying that SSH must release annually an aggregate report detailing the financial performance and the pursuit of non-financial objectives of each company in its portfolio.

Additional comments

Finally, we would like to share two observations of broader policy relevance.

- The integration of the pension fund KAD into the holding structure under SSH is non-standard compared with other OECD countries. The provisions in Article 27 about keeping KAD’s assets “separately from the remainder”, whilst clearly motivated by a desire to safeguard the integrity of pension assets, go little way in explaining how this is to be achieved in practice and raises questions about why then KAD was included into SSH the first place.
- The provisions in Article 29 about “other activities of SSH” expressly authorise SSH to act as a “bad bank” in the context of restructuring the financial sector. Other OECD countries (e.g. UK and Netherlands recently and the Scandinavians in the 1990s) set up separate entities for this purpose to ring-fence the liabilities accrued and bring in specific financial sector expertise to oversee their unraveling. If Slovenia is not prepared to take that route then specific measures to ensure accountability and transparency will be needed, for instance through the establishment of separate accounts.