The Belgian State as a shareholder

A comparison with international best practices and OECD Guidelines on Corporate Governance for State-owned Enterprises

March 2014

Ref. PG032014-1-03EN

Table of Contents

1. Introduction 4
2. Dimensions analysed 5
3. How to organise State shareholding at best? 6
   3.1. The OECD point of view 6
   3.2. The Belgian situation 9
   3.3. International examples 13
      3.3.1. Finland 13
      3.3.2. France 16
      3.3.3. Germany 18
      3.3.4. Hungary 20
      3.3.5. Norway 22
      3.3.6. Singapore 25
      3.3.7. Spain 27
      3.3.8. Sweden 29
      3.3.9. The Netherlands 32
      3.3.10. United Kingdom 35
      3.3.11. Global summary of international examples studied 37
   3.4. Reflexion on the Belgian approach 40
   3.5. Recommendations for improving public governance in Belgium 42
      3.5.1. Towards a modern organisation of the State's participations 42
      3.5.2. A better understanding of the long-term strategy, the ambition as well as the outcome of government interference 45
      3.5.3. Clarifying the role of the different actors and improving the communication 46
      3.5.4. Classification of the shareholdings according to relevant criteria 47
      3.5.5. Graphical representation of the recommendations 48
4. How to select public directors and organise their relations with the State? 51
   4.1. The OECD's point of view 51
      4.1.1. The selection and nomination of board members 51
      4.1.2. The dialogue between government, board & management and the balance between the public interest and the corporate interest. 55
   4.2. The Belgian situation 57
      4.2.1. Selection and nomination process 57
      4.2.2. The role and duties of the board of SOEs 62
   4.3. International examples 63

© GUBERNA 2014

4.3.1. Denmark 63
4.3.2. Finland 64
4.3.3. France 66
4.3.4. Germany 69
4.3.5. Hungary 69
4.3.6. Luxemburg 69
4.3.7. Norway 70
4.3.8. Sweden 73
4.3.9. United Kingdom 74
4.4. Reflexion on the Belgian approach 77
4.5. Recommendations 80
4.5.1. Towards the presence of 'independent directors' in all public organisations 81
4.5.2. The evaluation as part of the selection process 82
4.5.3. Towards a greater involvement of the chairman and the incumbent board in the selection process 82
4.5.4. The 'Knowledge and Support Centre' as actor in the selection process 83
4.5.5. Improvement of the interaction between the State, the public directors and the SOEs 84
5. General conclusion 85
6. References 90
7. Thanks 93
8. Appendix 1: detailed overview of the Belgian shareholding model 94

© G U B E R N A 2014

1. Introduction

Governments have become an important shareholder in our Western economies. Whereas in former times the State intervention was often limited to certain specific sectors with a rather public good character and/or with a specific spearhead importance, the financial crisis has given rise to a much broader public funding of our economy. This increasing importance should be complemented with an increased attention for the specific needs such ‘public’ shareholding poses. In a world where governments regulate the governance of corporations more and more, they cannot escape the public scrutiny when it comes to their own public governance. So developing a well-founded and rationally supported framework for State shareholding seems a must.

GUBERNA, whose mission is to stimulate good governance in all types of organisations, has been promoting public governance for years now. But like with any company, installing a new governance framework necessitates first of all willingness by those in power, to shift gear to a more modern approach with sufficient checks and balances and procedures of delegation that are fully complied with as well as clear accountabilities and transparency. We are very grateful that **numerous public organisations have developed a profound interest in improving their governance ‘from the inside’**. Over and over again, we hear that these State-owned enterprises (SOEs) hope their (main) ‘shareholder’, will further support these initiatives. **Unfortunately, in practice political decision-makers show less appetite for installing and applying the same robust governance approach as they have required from the private business world** (especially the listed companies). **Notwithstanding some best practices** (which we will reveal in this report**), Belgian public governance lags behind**, as our international comparison will abundantly demonstrate.

This observation is not new, on the contrary, press articles in the early 2000’s were already very critical on the role of the state as a shareholder. The financial newspaper ‘De Tijd’ ran as headline on 18 May 2002: ‘The government is an unreliable shareholder’. The article, based on an interview with the former CEO of the Belgian postal company (Frans Rombouts), stated that public enterprises were hampered with a shareholder, that interfered too much with a political agenda while delivering insufficient input and feedback from an economic and business perspective (and this due to a lack of sufficient business insight and experience within the government).

Notwithstanding the fact, that there have been applaudable initiatives to improve public governance, our research reveals that Belgian politicians should give more priority to modernising and professionalising public governance practices, along the lines set out internationally. Of course, one has to acknowledge that there is no European pressure to install good governance practices as is the case for listed companies. This is also in sharp contrast with the OECD (Organisation for Economic Co-operation and Development), which has been very active over the last 10 years in promoting professional governance in State-owned enterprises. In order to help governments assess and improve the way they exercise their ownership rights, **the OECD developed the Guidelines on Corporate Governance of State-owned Enterprises in 2005**. Those guidelines have been built after a large consultation of a variety of different stakeholders and became the reference worldwide. By the way, as indicated by the name, OECD recommendations are only guidelines and are not legally binding. Therefore, there is no ‘comply or explain’ approach as it is often the case for the national codes of corporate governance (for listed companies). However, **our international analysis will reveal that those guidelines are widely applied and have led to**

©GUBERNA 2014

interesting best practices that can inspire Belgian politicians to improve our public governance practices.

This report aims to analyse the degree of compliance of Belgium with the OECD recommendations and to compare the Belgian situation to other countries. Within the broad set of OECD recommendations for SOEs, we will focus on those that relate to the topic of the 'State as shareholder'. For each issue tackled, we will follow the same approach. First, we will look at the OECD point of view. Second, we will analyse the practice in Belgium. Third, we will examine the situation in other countries. Interesting evolutions are indeed occurring abroad that could be an inspiration for Belgium. Finally, we will conclude with a reflexion on the Belgian approach and recommendations to improve it.

2. Dimensions analysed

Our research of the governance of State-owned enterprises was developed along two main dimensions: the organisation of the shareholding function within the state administration ("How to organise State shareholding at best?") and the characteristics of the boards of directors (focusing on "How to select public directors and organise their relations with the State?"). Each of these questions calls for sub-questions dealing with issues like the role of different Ministries and the government administration in organising State shareholdership and selecting board members, the criteria used to decide on this shareholding organisation, how to decide on the respective roles of the board and the shareholder, how to reach the correct balance between public and corporate interest, etc.

According to the OECD Guidelines, the State should play a major, preferably even a pro-active role in professionalising the governance of the companies and organisations it invests in. An effective implementation of good governance within State-owned enterprises begins with a clear organisation of the shareholding function within the public administration. The State also has to deal with issues, such as the composition and the structure of the boards, the selection and nomination of directors and the definition of the board's responsibilities.

©GUBERNA 2014

The issues tackled in this report can be represented as follows:

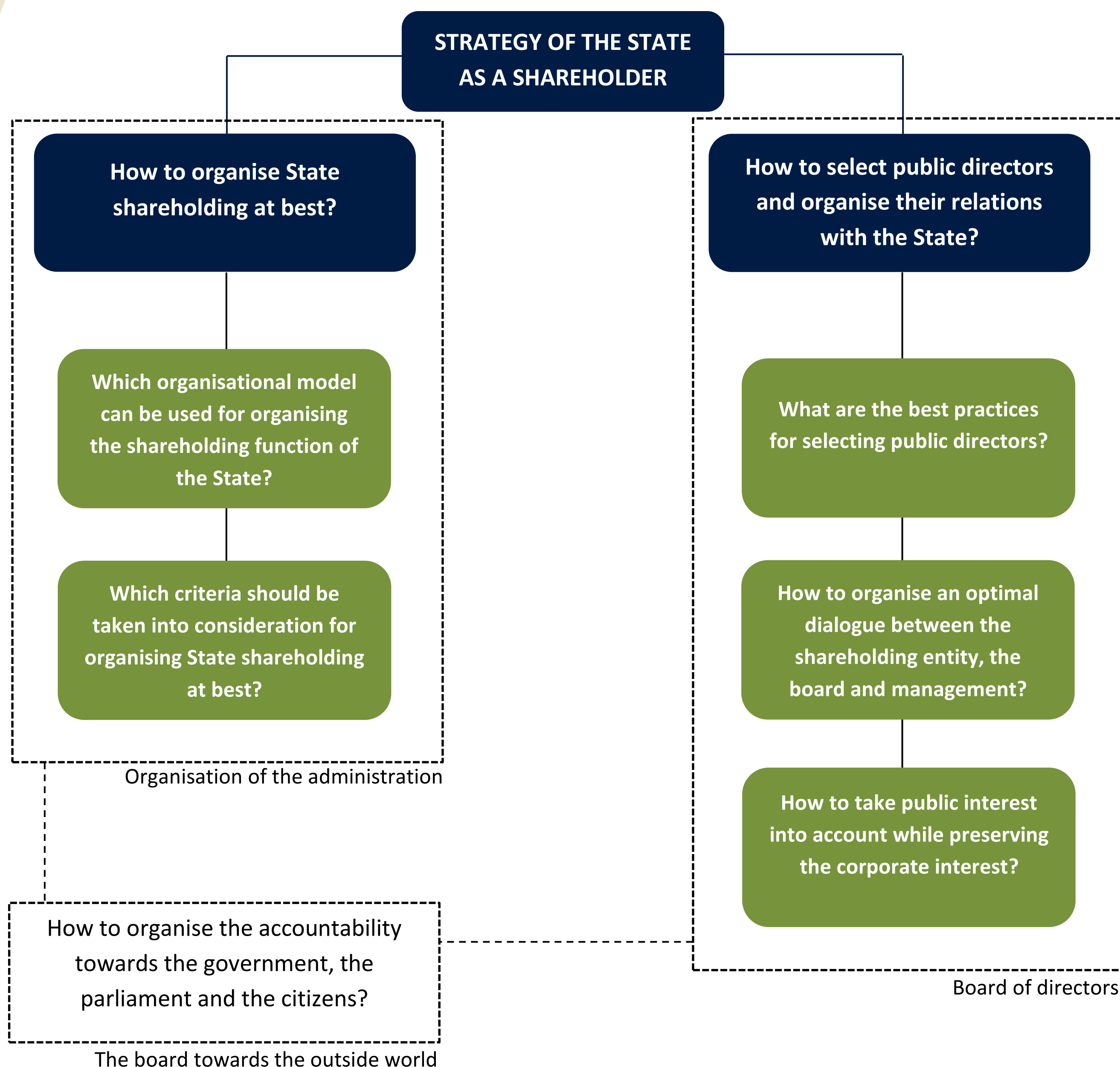

Figure 1 - Issues tackled by the report

3. How to organise State shareholding at best?

3.1. The OECD point of view

According to the OECD, the organisation of the State's shareholdings plays a critical role and is a key factor in the search for good governance in State-owned enterprises. **A major challenge for the State as shareholder is to find a balance between its responsibilities for actively exercising its ownership function while at the same time refraining from imposing undue political interference in the management of the company.** Moreover, the State should ensure a clear separation between

©GUBERNA 2014

its ownership function and other functions that may influence the conditions for State-owned enterprises, particularly with regard to market regulation.

The OECD proposes that "To achieve a clear identification of the ownership function, it can be centralised in a single entity, which is independent or under the authority of one ministry" (2005 [1], pp. 30-31). "This approach would help in clarifying the ownership policy and its orientation, and would also ensure its more consistent implementation" (OECD, 2005 [2], p.51). **The OECD identifies the centralisation as being an interesting way for organising the shareholdings of the State**. It is important to note that those guidelines are primarily oriented to SOEs having a commercial activity.

The exercise of ownership rights within the State administration varies from one country to another. Although the recent evolutions mostly go into the direction of a more centralised approach, also other models are in existence today, certainly when all types of State-owned enterprises are considered. As challenges, issues and purposes are dramatically different according to the kind of companies, the distribution of shareholding among different agencies can also offer advantages if based on relevant and rational criteria. **Whenever the centralised model is not adopted by a country, then, it is recommended to organise State shareholding in a coherent way.** Based on their international comparison, the OECD highlights three main types of organisations (historically) practiced among the OECD countries.

The first model is the **decentralised model** (or sector ministry model) where State-owned enterprises are under the responsibility of relevant sector ministries. This decentralised model is the oldest format of State ownership (in the 70's this model was the practice in most of the OECD countries). But **such a model causes major drawbacks**. The OECD (2005 [2], p.45) underlines that "The main drawbacks or dangers resulting from a decentralised model are the greater difficulty in clearly separating the ownership function from other State functions, particularly its regulatory role and industrial policy. Achieving such a clear separation has been a main driving force in the evolution towards a more centralised model of SOE management together with the tendency to locate regulatory duties in special institutions. […] Another major drawback in the decentralised model is the difficulty in clearly identifying who is running the SOE. With sector Ministries in charge, the general public perception tends to be that the Ministry is de facto running the SOE, instead of the board".

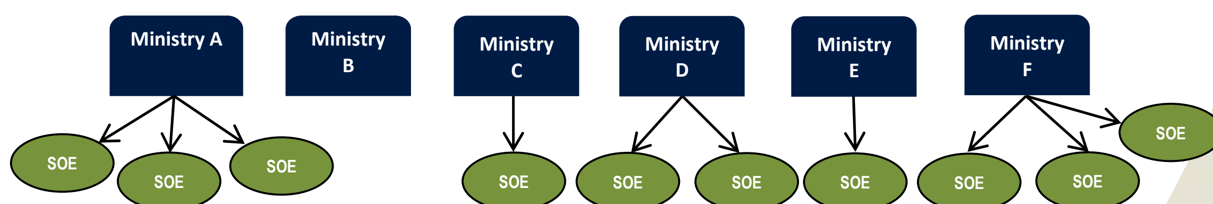

Figure 2 - The decentralised model

Today, the most prevalent model is the **dual model** where the responsibility is shared between the sector ministry and a 'central' ministry or entity, usually the Finance Ministry or the Treasury. In this case, both sector ministries and a 'common' ministry are responsible for exercising the ownership rights. Actually, "in most countries the dual organisation results more from the power and importance of the Ministry of Finance than from design, while the sector ministries were traditionally in charge of the SOE in view of their role in industrial policy" (OECD, 2005 [2], p.47).

©GUBERNA 2014

However, an international comparison highlights that each country has its own characteristics and that the role of the entities can vary from one country to the other. Therefore, **this dual model can have pros and cons according to its effective implementation**.

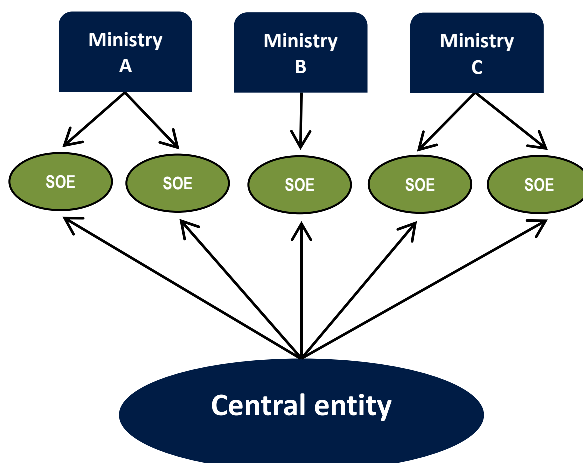

Figure 3 – Dual model

The third model is the **centralised model** in which the ownership responsibility is centralised under one main ministry or agency. The OECD (2005 [2], p.49) notices that "in most cases this is the Ministry of Finance or the Ministry of Industry which used to have the most important SOEs under its responsibility in the previous model of sector ministry organisation. […] In a few cases a specific Agency has been established, and this Agency is more or less autonomous, usually reporting once again to the Ministry of Finance". **This last model is the one recommended by the OECD** and it has been on the increase over the past few years. **Today, the trend is clearly towards a greater 'centralisation' of the ownership function.**

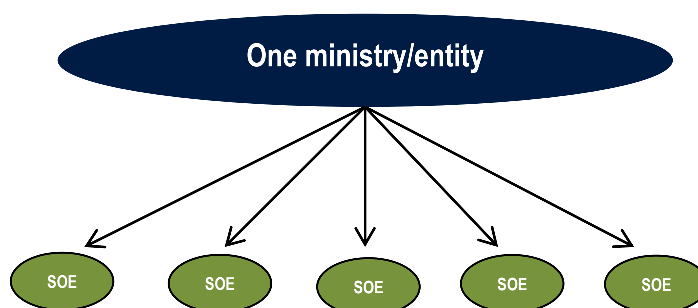

Figure 4 - The centralised model

As stated previously, the centralisation of the shareholdings of the State offers many advantages. First, it allows the State to clearly separate the ownership function from other State functions. Second, it facilitates a greater unity and consistency of the ownership policy; "It helps in implementing unified guidelines regarding disclosure, board nomination or executive remuneration" (OECD, 2005 [2], p.51). Third, centralisation is an opportunity to elaborate aggregate financial reporting on State ownership. Finally, the "centralisation of the ownership function could also allow for reinforcing and bringing together relevant competencies by organising 'pools' of experts on key matters, such as financial reporting or board nomination" (OECD, 2005 [1], pp. 30-31).

To be complete, there exists an additional model that is used in some countries be (partly) organising State shareholding through **holding companies**. In this case, "the ownership of most or a

 © G U B E R N A 2014

specific list of SOEs has been transferred to one or several holdings which are in turn owned by the State and under the responsibility of one Ministry. […] However, this type of organisation is not frequent and has shown its limitations. It has led to excessive indebtedness and has not proven to be efficient either in terms of corporate restructuring or in financial management" (OECD, 2005 [2], p.59).

Finally, the OECD (2005 [2], p.64) notices that "some countries have set up **specialised consulting companies** to advise the State ownership entity. These are usually relatively small units, but with highly qualified experts. These consulting companies pool expertise and provide assistance to the ownership unit within the administration, giving second opinions and specialised advice. They may focus, for example, on performance monitoring, board assessment and the appointment process. They enjoy more flexibility in terms of hiring and remuneration policy, and may be also more independent of overall government policy. They are therefore perceived as being less easily captured by a line agency or sector ministry. They may also focus more strictly on shareholder value and are less suspected of pursuing other agendas, including political ones. The boards concerned feel that they are monitored by governance professionals".

All those observations show the complexity of the landscape in terms of public shareholdings among the OECD countries. Various models are coexisting and are resulting from historical reasons and socio-economic situations. Each model has shown its advantages and drawbacks but according to the OECD, the trend towards a certain degree of centralisation of the State's participations is the way forward.

A better organisation of the State shareholding must go hand in hand with a clearer definition of the State strategy. According to the OECD (2010, p.114), "At the aggregate level, the government should define its own overall objectives and ownership practices." As recommended by the OECD Guidelines, an effective way of doing so is by developing an ownership policy for the State shareholder. To the OECD (2010, p.114), "An ownership policy serves as an effective tool for public communication and provides companies, the market and the general public with a clear understanding of the State's objectives as an owner and of its long-term commitments." As the Belgian analysis will demonstrate, the State ownership might substantially gained from eliminating any vague, complex or contradictory objectives.

3.2. The Belgian situation

The analysis of the organisation of the Belgian State's shareholdings shows that Belgium does not really fit into one of the OECD models. In its publication '*Corporate Governance of State-owned Enterprises: A survey of OECD countries (2005)*', the OECD identifies Belgium as having a centralised organisation of the ownership function. However, in a later publication, the OECD (2011, p.13) mentions that "the Belgian authorities have notified a small inaccuracy in previous reporting concerning their ownership architecture. [Belgium was described as having a wholly centralised structure]. The responsibility is mostly with the Minister for State Owned Assets, but some government participations are owned by a separate holding company". A deeper analysis of the Belgian situation actually shows a much more complex organisation.

©GUBERNA 2014

While the OECD says that the responsibility is mostly with the **Minister for public enterprises**, it appears that this Minister has only four companies in his portfolio[1] (formerly five, but one less since the disappearance of the holding company of the NMBS/SNCB). Even if these companies are of a critical importance for the Belgian economy, they do not constitute the majority of the Belgian shareholdings. The four companies which are under the responsibility of the Minister for public enterprises are called **'autonomous public enterprises' and are governed by the Law of 21 March 1991 which sets their key governance principles**. Today, these four companies make up a rather heterogeneous portfolio as they possess different characteristics both in terms of their shareholding structure and the nature of their market context. Two of them have been partly privatised (via private shareholders and then via the stock exchange) and are operating in a (highly) competitive environment, what makes the direction of the company by a public shareholder even more complex. Other SOEs still fulfil public service oriented missions which requires – in light of international practices – another kind of ownership approach.

These four companies make up a rather heterogeneous portfolio. The State is the majority shareholder (with 53% of the shares) of **Belgacom** (telecommunication) which is a listed company acting in a competitive and commercial market and which nearly does not offer public services as such. The public functions, detailed in the management contract of Belgacom represent less than 0.1% of the total turnover. In **bpost** (postal services), the State is also the majority shareholder with a bit more than 50% of the shares. Since 2013, bpost is the second listed majority-owned State enterprise at the Brussels stock exchange. There, the relative importance of public services is still rather important, albeit an increasing role is given to commercial services (such as Taxipost and Postbank). Finally, there are the two entities of the Belgian railways (**SNCB** and **Infrabel**) which are fully-owned by the State. Albeit some parts are offering commercial services, most of the transport services and infrastructures have a public good character without open competition (at least for the transportation of persons). Today, those four companies possess differences characteristics both in terms of their shareholding structure and of the nature of their market.

As mentioned by the OECD, besides the Minister for public enterprises, there is also a separate holding company: the Federal Holding and Investment Company (**FPIM-SFPI**) which is under the responsibility of the **Minister of Finance**. This holding company gathers other participations of the Belgian federal State. Practically, the federal government is the sole shareholder of the FPIM-SFPI and he provides the necessary funds. The FPIM-SFPI centrally manages the federal government's shareholdings, cooperates with the government on specific projects and pursues its own investment policy in the interests of the Belgian economy. Actually, the FPIM-SFPI has **three core businesses**. First, the holding acquires shareholdings in public and private companies that are of strategic importance in terms of federal policy (**holding company** – 17 participations in 2012). Second, it invests in companies with an attractive social value in one of the FPIM-SFPI's priority sectors (**investment company** – 26 participations in 2012). Finally, the Federal Holding and Investment Company cooperates on policy matters with the federal government and works on behalf of the government to implement specific projects (**delegated missions –** 11 participations in 2012). This third function has been notably materialised via the capital support to the banks after the financial crisis.

[1] In his capacity of Minister for public enterprises. He is also responsible for 3 additional SOEs in his capacity of Minister for Development Cooperation.

©GUBERNA 2014

Finally, there are many companies / organisations under the responsibility of a sector ministry. This is for example the case of **Belgocontrol** (air traffic control) which is fully-owned by the State and has the form of an autonomous public enterprise (like the ones in the portfolio of the Minister for public enterprises). One could expect that this company is in the portfolio of the Minister for public enterprises like the other autonomous public enterprises but it is actually under the responsibility of the State Secretary for mobility. To a lesser extent, the State still acts as a shareholder via the decentralisation of *ad hoc* services such as the Belgian Development Agency. In that case, the supervision belongs to the competent Minister (the Minister of Development Cooperation for the Belgian Development Agency).

The Belgian model can therefore be simplified in the following way[2]:

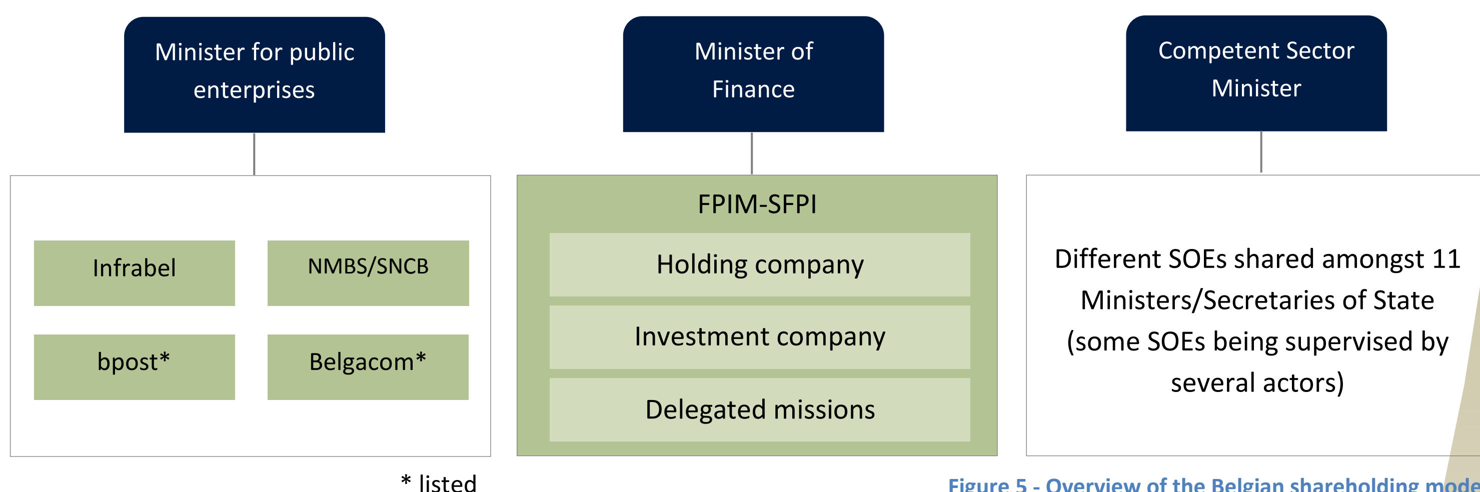

Figure 5 - Overview of the Belgian shareholding model

This overview clearly proves that the Belgian State is actually not in line with the OECD recommendations of a more centralised approach, or at least – in case of a diversified approach –, that the different responsibilities are based on rational and relevant criteria. Of course, the nomination of a Minister for public enterprises could create the impression that the State is willing to centralise its shareholdings (as it was originally interpreted in the first OECD report). However the above scheme proves this is not the case. At the one hand, the analysis demonstrates that, besides the companies under the control of the Minister for public enterprises, the most numerous State participations are included in the FPIM-SFPI holding (under the authority of the Minister of Finance), while others are under the supervision of the competent sector Minister. Moreover, **this distribution of responsibilities is merely a historical phenomenon rather than a well-thought rational process based on relevant differences in the role of these enterprises**.

According to high level Belgian experts (consulted by GUBERNA through expert group meetings), **there is certainly room for improvement to reach a better organisation of State shareholdings in Belgium.** This expert opinion, based on business experience and political expertise is totally aligned with the conclusions of our international research. In fact, **several weaknesses can be identified in the current organisational model of Belgian State shareholdings**:

[2] See appendix 1 for a detailed overview

©GUBERNA 2014

1. There is currently **a lack of transparency** on the (Federal) State shareholdings. An **overall view is lacking completely**, while it is also difficult to investigate the different participations (except for the 'own' FPIM-SFPI portfolio). These difficulties relate to the heterogeneous and complex organisation at the level of the government, the difficulties to identify the 'real shareholder', the opacity over the role of the different ministers, the (sometimes) ambiguous role of the government commissioners, ...

2. The current heterogeneous system is **not supportive for developing a professional State shareholding function,** its ambition and long term (industrial) strategy.

3. **A clear policy for the State's participations is lacking**. There is certainly a need for a clear industrial policy for the commercially oriented participations. But even for those 'enterprises' that perform an important public function, a clear shareholder strategy (that goes beyond the different management contracts) seems a must.

4. **It should be clarified who is acting on behalf of the State to perform its shareholding duties and execute its shareholding rights.** More insight in the process of 'leadership', 'directing' and 'control' – the three essential elements of governance also for SOEs – is completely lacking. The current classification of the shares within the FPIM-SFPI is rather conceptual but there is no formally expressed differentiation in approach according to the kind of participations. The State participations are sometimes 'direct' and sometimes 'indirect'. In both cases the State may be considered being the 'ultimate' shareholder. Who is the (formal) representative of the State for each of those participations? The ministers? The kern? The Prime Minister? The parliament? How does this work out from an organisational perspective? What is the role of the cabinets, the public administration? And how is this process organised when the participation is only indirect? This challenge is again not a recent one, as Prof. Thiry noticed in 2002 that :

   > *"La [...] problématique découle de la difficulté d'identifier véritablement l'interlocuteur au niveau de l'Etat. Est-ce le gouvernement ? Le Parlement ? Au gouvernement, s'agit-il du ministre de tutelle, du ministre-président ou du Premier ministre, du ministre du Budget? Parfois, c'est tout le monde, ce qui conduit à des situations où le commissaire du gouvernement est contraint d'informer trois instances, avec comme conséquences des fuites dans la presse, qui compliquent la gestion de la société." (L'Echo, 25/11/2002).*

   This press article demonstrates that after more than 10 years, the policy-makers have not clarified the situation yet.

5. In many cases there is an **evident lack of communication** between the State (in all its dimensions), its directors and the SOEs and its management.

6. The **political dimension is omnipresent** and often prevails over strategic, business and economic arguments. Because of the absence of an organisation dedicated to shareholding issues, cabinets play a critical role.

©GUBERNA 2014

In light of these critical observations, experts have considered that reforms are necessary. Before digging into suggestions of reforms, we will first analyse the situation in various countries which could be inspiring for Belgium.

3.3. International examples

Given that compliance with the OECD Guidelines is far from straight forward, and taking into consideration the hybrid route followed in Belgium, GUBERNA further analysed the international scenery in order to detect relevant guidance. As for any governance solution, there is certainly no single model that can be copied as such in each country, but foreign examples can provide additional insights to shape the future outline. This section of the report contains an overview of the organisation of the State shareholding in several countries, where interesting evolutions recently occurred. The analysis is based on publicly available information, on specific reports (such as those of the OECD) and on information that GUBERNA could collect through the organisation of high level conferences and roundtables in the presence of (inter)national experts.

3.3.1. Finland

Finnish State-owned enterprises are basically divided into two categories: (1) companies that **do not operate on market terms** are under the responsibility of the sector ministries while (2) **commercially oriented companies** are with the Ownership Steering Department. This Department has been set up in 2007 within the Prime Minister's Office and is responsible for three groups of SOEs, defined according to specific criteria as explained below. The third group gathers three companies, including the holding company Solidium Oy. Solidium Oy is an independent market-based operator which is responsible for 'non-strategic' **listed companies, where the State owns less that less than 50%.**

©GUBERNA 2014

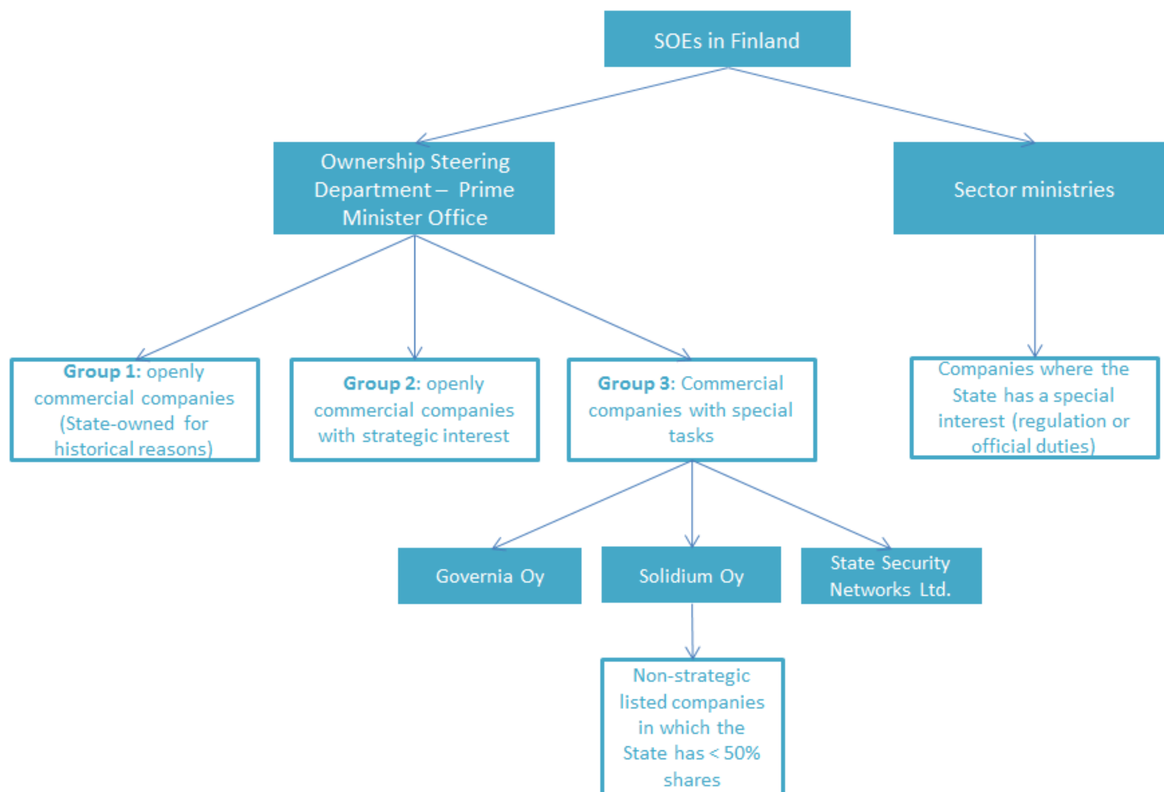

Figure 6 - Overview of the Finnish ownership model

The Finnish State is the single largest shareowner in Finland even if it does not own more than 10% of the total market cap in Helsinki Stock Exchange. Following the Matti Vuoria report on State ownership policy (2003), the Ownership Steering Department has been established in 2007. Before this date, the State ownership steering was dispersed among several ministries (namely the Ministry of Trade and Industry, the Ministry of Finance and jointly the Ministry of Finance and the Ministry of Transport and Communication) making no clear distinction between the role as shareholder and the role as regulator. The general goal of the concentration movement in 2007 was to further **harmonise the procedures of the State's ownership policy and thus make the ownership policy more predictable and transparent**. This step towards centralisation has **engendered many positive effects**: separation from regulation; one single implementation of the State's ownership policy; one single line of decision-making; independence from other State organisations; coherent ways of everyday work; improved grip on strategy planning; much improved corporate analysis; improved contact with top management of the companies; improved credibility on the financial market as responsible owner.

Most of the SOEs have been transferred from sector ministries with policy and regulatory capacities to this Steering Department under the Prime Minister's office. Actually, the Prime Minister's office has been chosen because of its 'neutral' characteristics. It has indeed no regulatory tasks. However, the Prime Minister is not, himself, responsible for Ownership policy and steering: another Minister, with no conflicting regulatory tasks, is to be appointed to the Prime Minister's office with the responsibility for ownership policy and steering.

©GUBERNA 2014

The Ownership Steering Department is responsible for State ownership steering in companies operating on market terms. Within the Ownership Steering Department, there are **three groups of commercial companies**. The first group gathers ten companies where the State has only or almost exclusively a strong shareholder interest. Companies of this group are openly commercial and are State-owned for various and mainly historical reasons. In this group, we can find basic industries. In the second, there are 19 companies where the State has, besides a strong shareholder interest, also strategic interests. Those companies are also openly commercial companies but are State-owned for strategic reasons. Here, we can find infrastructure companies (power and heat, oil refining, transportation, postal services, …). In this second group of SOEs, the strategic interests of the State take precedence over the economic interests. Thirdly, the Department is also responsible for ownership steering in respect of a number of companies with a special task. One of these sub-entities, overseen by the Steering Department is Solidum Oy, a State holding company established in late 2008. The State has transferred to Solidium Oy all State-owned shares in twelve listed companies in which the State owns less than 50% of the shares and which were classified as 'non-strategic'. Its mission is to strengthen and stabilise Finnish ownership in nationally important companies and increase the value of its holdings in the long term. Practically, Solidium Oy is considered as a company with special tasks under the administration of the Ownership Steering Department but has its own independent board, management and organisation. It is an independent market-based operator (focusing on creating value added in important companies), not an instrument of industrial policy.

It is important to underline that steering of any new commercial company will be taken over directly by the Ownership Steering Department at the moment of establishment.

In addition to this centralisation of commercial companies under the Ownership Steering Department, there are **companies that do not operate under market conditions but perform a special assignment**. These companies remain under the responsibility of the **sector ministries**. This group contains 21 companies where the State as an owner has a special interest related to regulation or official duties: the company has an industrial, societal or other political mission defined by the State or some other special role and does not operate on market terms. We can find in this group SOEs like the alcohol retail monopoly, the lottery monopoly, the financial tools for regional support, etc.

Concerning the organisation of the shareholding function within the State administration, it appears that Finland tends to move to a more centralised model. In the eyes of the Finnish authorities themselves, they appreciate the key achievements of this centralised reorganisation, such as the separation of ownership function from that of regulation, implementation of the State's ownership policy through one single decision making line, independence from other State's organisations and a harmonised approach for daily routine work. However, this is not yet a centralisation in a single entity: some participations are under the responsibility of the Ownership Steering Department (sometimes via Solidium Oy which is assigned to the Ownership Steering Department) while the rest is staying under the responsibility of the relevant ministry. The 'public policy companies' are shared among seven different in-line ministries.

While Finland has not centralised all its shareholdings within a single entity as recommended by the OECD, it has organised its participations according to rational and relevant characteristics.

©GUBERNA 2014

Companies operating on market terms are gathered within the Ownership Steering Department while companies having a public policy function (with an industrial, societal or political mission) stay under the responsibility of the relevant sector ministry. The various portfolios are now made up of **homogeneous participations** regarding certain objective criteria: majority participations in commercial firms with either a focus on economic drivers (shareholder interest for the State), strategic drivers (priority of strategic interests over the economic interests) or special tasks defined by the State versus non-strategic minority stakes in listed companies (economic interest focus) or a completely different approach for companies acting in a non-market environment. Remarkably, all the listed companies are not gathered in one single entity. Non-strategic listed companies in which the State owns less than 50% of the shares are directly under the stewardship of the holding company Solidium Oy (with a priority for economic interests), while three other strategic listed companies, where the State is a majority shareholder[3], remain under the direct responsibility of the Ownership Steering Department (in the 'Group 2').

Concerning the accountability of the Ownership Steering Department towards ministers and Parliament, two reporting elements are required: a semi-annual reporting to the Cabinet of Ministers and an annual reporting to the Parliament.

3.3.2. France

The French shareholding model is characterised by the **centralisation** of the SOE's within the APE (State shareholding agency). The APE has been set up in 2004 and is currently under the joint authority of the Minister of Industrial Renewal and the Minister for the Economy. The agency has a heterogeneous portfolio of State stakes in various kinds of companies.

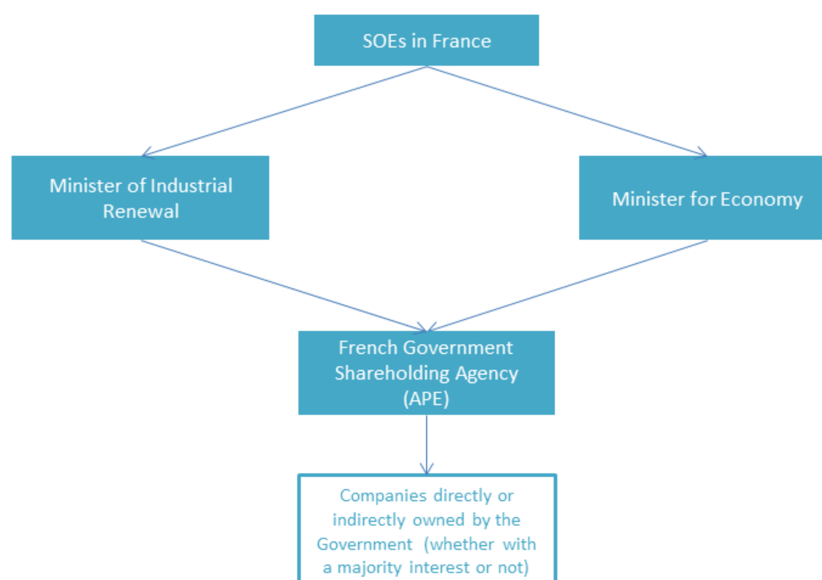

Figure 7 - Overview of the French ownership model

[3] According to the OECD Corporate Governance Working Papers No. 5 (Christiansen, 2011), there are 47 listed companies where the State has a majority stake in the OECD area. These companies can be found in 14 OECD countries: Poland (13), Korea (8), Greece (7), Finland (3), Norway (3), Slovenia (3), Austria (2), France (2), Belgium (1), Chile (1), Czech Republic (1), New Zealand (1), Switzerland (1) and United Kingdom (1). This analysis is based on 2009 data and the situation may have changed since then. It is for example the case for Belgium since bpost became listed in June 2013.

©GUBERNA 2014

The last decennium, France experienced **important evolutions** in the organisation of its State shareholdings. **A centralised agency for State shareholdings** has been created in 2004: the APE (Agence des Participations de l'Etat). The creation of this agency has been decided by the Ministry of Finance and Economy, following the publication of a special report on State ownership (Rapport Barbier de la Serre, February 2003). Practically, since 2012, the APE is under the joint authority of the Minister for the Economy and the Minister of Industrial Renewal and ensures the coordination with other State functions, through an Orientation Committee**. Its mission is to act as a shareholder for the French Government in order to develop its assets and maximize the value of its shares**. The agency represents the State at the general assemblies of the companies. The **main emphasis is on managing its investments from an industrial perspective**, and on establishing a clear, long-term industrial and economic development strategy for the companies concerned. This strategy must simultaneously optimise the value of its assets and the specific business and social aims of each of the companies concerned. The French law says that "The Agency is responsible for the Government as shareholder assignment in companies and organisations which are directly or indirectly controlled or held by the Government, whether with a majority interest or not" (Decree no. 2004-963, 2004, Art. 1). There is therefore **no compartmentalisation according to the weight of the shares** the State owns.

The APE's portfolio contains about 70 SOEs **which are not public policy executors**. We can therefore conclude that these SOEs are **mainly commercially oriented** (even though the degree of commerciality varies from company to company as the portfolio is very heterogeneous). French SOEs are active in various domains such as transports (SNCF, Air France, …), infrastructures (airports, harbours, railways,…), media (television, radio), energy (Areva, EDF, GDF Suez), financial services (Dexia), defence (EADS, Thales, Safran, …), postal services, …

The **creation of the APE engendered positive effects** such as a clear distinction of the various functions of the State allocated to separate entities within the State administration. This specific identification of the responsibilities for the ownership function improves the strategic thinking, the transparency and reinforces the boards of SOEs. Moreover, this centralised entity ensures that the directors representing the State have coherent positions during board meetings. The APE became the privileged and professional interlocutor for the management of the SOEs. Moreover, since the APE centralises all the ownership functions, it also appoints the representatives of the State in SOEs boards. Such a model allows the constitution of pools of experts as predicted by the OECD. In a more and more complex economic and financial environment, it is beneficial to develop and gather together the necessary expertise in a centralised agency.

Concerning the reporting to the shareholders, it is worth to underline that the financial results of the SOEs where the State is the majority shareholder are presented to the Parliament. As described in the figure above, a detailed process also regulates the relationship between the SOEs and the ownership entity:

©GUBERNA 2014

Acting as an interface between companies and the government as a shareholder, the APE looks after the following aspects:

1. **Monthly reporting implementation**: Companies transmit monthly to the APE sourced directors reports containing the main financial indicators and if necessary qualitative indicators of the activity based on the main financial indicators and if necessary qualitative indicators of the activity based on the Executive Committee's internal reporting. The choice of indicators is adapted to each company and is revised regularly.

2. **Regular financial book meetings and preparation of important milestones**: On a regular basis and at least once a year company management teams meet the APE to present main transactions and strategic prospects. These meetings are also the preferred time to highlight the relationship between the APE and the companies and to measure compliance with governance rules… During work on annual budgets for government companies milestone meetings are organised between the concerned public services and the company for a detailed discussion if arbitration is needed. Exceptional investments and external growth operations are subject to detailed upfront presentations before any validation process. Meetings are organised to define accounting methods before the Board of Directors' review of the books.

3. **Searching for better company operational knowledge**: Management teams define regular correspondents as contact points within the APE. Management teams propose to their APE contacts fixed meetings programs relative to their specific areas of activity as well as site visits.

Figure 8 - Relationship between SOEs and the ownership entity (APE) and contact points in France (OECD 2010, p.56)

3.3.3. Germany

The German ownership model is not very elaborated because (long-term) **public ownership is not a widely spread practice in Germany**. As far as commercially oriented companies are concerned, the State mainly has minority stakes. For the public policy purposes the organisations mainly operate without an autonomous capital base. Actually, the Finance Ministry sets out the framework for managing State holdings, which is then executed by the individual government departments according to **their fields of responsibilities**.

© G U B E R N A 2 0 1 4

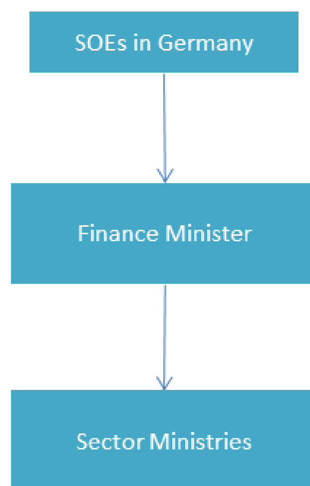

Figure 9 - Overview of the German ownership model

In 2009, Germany had a stake in 3 minority-owned listed companies (Deutsche Telecom, Deutsche Post and Commerzbank), 57 non-listed companies and 2 statutory corporations[4]. **The German government asserts that the State is not the best entrepreneur and must therefore give the preference to privatisation**. The German State via the Minister of Finance - evaluates once a year its shareholdings and keeps a stake in companies only when it is really necessary. Otherwise, it will opt for a reduction of its participation in view of a privatisation process. **The initial aim of the German shareholding is therefore not to make profit but well to compensate deficiencies of the private sector. However, when having a stake in a company, the State will manage the enterprise as efficiently as possible.**

At first sight, the German organisation of State shareholding is quite simple as it combines a central approach by the Finance Minister, with an execution by the respective sector Ministries. The principle is that the Finance Ministry sets out the framework for managing State holdings, which is then executed by the individual government departments according to their fields of responsibilities. In practice, the Finance Ministry is responsible for developing the principles of the privatisation policy and for reviewing whether it is in the interest of the German government to have a stake in a company or not. The sector ministries are then responsible for the supervision and the management of SOEs. As sector ministry, the Ministry of Finance is also responsible for the management of the SOEs that are in its scope.

As "different sector ministries are responsible for their respective SOEs, with one ministry (Finance) being 'more equal than others'" (OECD 2005 [2], p.45), **the German ownership model can be characterised as a combination of centralisation and decentralisation**. Indeed, the OECD (2005 [2], p.46) adds that "the Ministry of Finance elaborates guidelines for the ownership and the privatisation policy, and authorises changes in holdings." Also from a transparency perspective a centralised approach is applied. The German Ministry of Finance publishes every year a 'Report on Government Holdings'. "These reports enable the parliament and the public at large to have a view on the economic activities of the federal government and to follow changes in the challenges, tasks and policies of the federal government, on its holdings and privatisation." (OECD 2005 [2], p.106).

[4] A statutory corporation is a corporate body created by statute. It typically has no shareholders and its powers are defined by the Act of Parliament which creates it. Such a body is often created to provide public services.

©GUBERNA 2014

3.3.4. Hungary

Hungarian State-owned enterprises represent an important number of rather heterogeneous organisations. The State shareholdings are split into three main bodies: the Hungarian National Asset Management (HNAM), the Hungarian Development Bank and the sector ministries. The central ownership entity is the HNAM established in 2008 under the responsibility of the Minister for State Assets. This is an asset management company which owns **non-profit** and **for-profit** companies; most of them are **majority-owned** and **non-listed**. In its portfolio, there is only one minority stake in a listed company. While the non-profit / for-profit nature of a company is officially determined according to the degree of profitability, it appears that for-profit enterprises are mainly **commercially oriented**. **Public benefit organisations** form a specific group within the non-profit organisations as they are enjoying public subsidies. Besides the HNAM, the Hungarian Development Bank which is under the responsibility of the Minister for National Development exercises State ownership rights in SOEs active in various sectors such as infrastructure, trade, tourism, sport, agriculture and forestry. Finally, statutory corporations (**no commercial objectives**) are under the responsibility of the sector ministries.

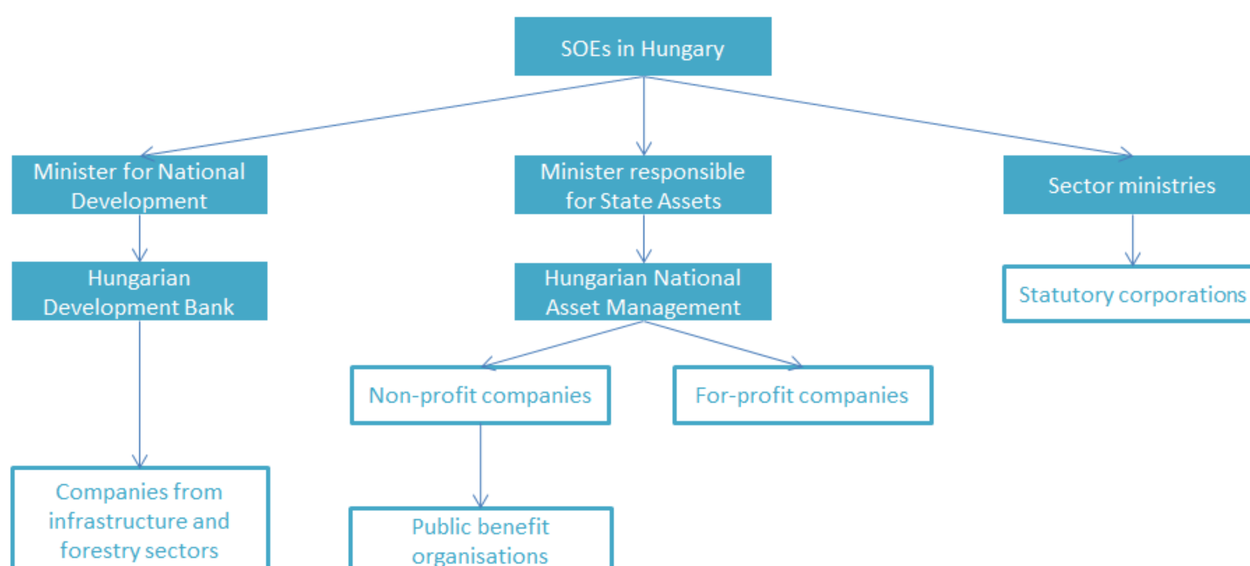

Figure 10 - Overview of the Hungarian ownership model

The Hungarian National Asset Management Inc. (HNAM) has been created in 2008 in order to succeed its predecessor organisations: the State Privatisation and Holding Company, the Treasury Property Directorate and the National Land Fund Management Organisation. This former ownership organisation with three entities led to various strategies for the different asset groups. As a result, each group was treated separately which engendered a lack of coherence in the ownership policy.

The creation of the Hungarian Asset Management as centralising stewardship entity has had many positive effects and gave more consistency to the Hungarian ownership policy. It is important to realise that Hungary has much more SOEs than western European countries, as almost the entire business sector was State-owned prior to 1990. The creation of a centralised entity clarified the

 © G U B E R N A 2 0 1 4

SOEs' landscape as it facilitated the development of a unified record of assets allowing a better transparency on the size, content and fair value of the State assets. The now unified State asset management organisation also allows to enforce efficiency and to save costs through economies of scale. Moreover, the HNAM can develop coherent lines of conduct towards the management of SOEs and therefore encourage best practices raised in one company of its portfolio to the others.

The holding company is placed under the responsibility of a government minister designated in the SOE Act as 'The Minister Responsible for State Assets'. There is no stipulation of which Ministry should hold the post but it will normally be a part of government without significant direct responsibilities for SOE regulation. The responsibility is currently with the Minister for National Development.

However, **even if there is apparently a trend toward centralisation of the State shareholdings, one cannot classify the Hungarian model as a wholly centralised model since SOEs are in practice still shared among three actors**:

- The HNAM whose portfolio gathers hundreds of majority-owned non-listed enterprises and only one minority-owned listed enterprise.
- The Hungarian Development Bank (a 100% State-owned financial institution under the responsibility of the Minister for National Development) which gathers about 40 SOEs from – amongst others – infrastructure and forestry sectors.
- The sector ministries which mainly gather the statutory corporations which generally have no commercial objectives.

However, the HNAM owns the large majority of SOEs and can be considered as the main ownership entity in Hungary. The HNAM is essentially an asset management company operating pursuant ordinary commercial law. In practice, one can say that the HNAM is quite 'hands-on' and **acts like a private equity company**. Yearly a comprehensive planning guideline is prepared by HNAM, specifying the principles and basic requirements for the next year's business planning. For example, the remuneration guideline is a general guideline issued by HNAM and applied by SOEs. Once again, centralisation affords a consistent and uniform remuneration policy for all the enterprises being part of the HNAM's portfolio.

As mentioned before, the HNAM nearly exclusively gathers majority-owned non listed enterprises. At first sight, the HNAM seems therefore homogeneous. However, within those majority-owned non-listed enterprises, there are non-profit and for-profit companies (according to their profit orientation). The distinction between non-profit and for-profit is not based on either public policy or business orientation, but on the actual profitability of a given company orientation. Nevertheless, **companies classified as non-profit companies usually have public policy objectives while for-profit companies mainly have commercial tasks and are requested to operate efficiently and to increase the rates of return**. It is however important to mention that for-profit SOEs may also pursue public policy objectives alongside with their commercial tasks (ex: postal services are a fully State-owned for-profit company but it carries out compulsory public service tasks). In practice, it seems to be highly complex to determine whether to establish a non-profit or for-profit company for a given purpose.

©GUBERNA 2014

Non-profit and for-profit organisations are part of the same HNAM's portfolio (under the responsibility of the same minister) but are **the object of different legal conditions** (non-profit status means that the company is subject to specific law). We also note that a further subdivision of non-profit companies exists for companies having the status of public benefit organisation which means that they enjoy public subsidies and are requested to provide yearly 'public benefits report' alongside with their financial reporting.

3.3.5. Norway

SOE's in Norway can basically be divided into **commercially oriented** companies (subdivided into 3 categories) and companies having **sector policy objectives**. The latter forms the fourth category and is under the responsibility of the sector ministries. Commercial companies are administered by the Department of Ownership within the Ministry of Trade, Industry and Fisheries. These companies are classified into relevant groups according to criteria detailed hereafter. This is a global picture of the Norwegian model but exceptions exist and are mentioned in the following analysis.

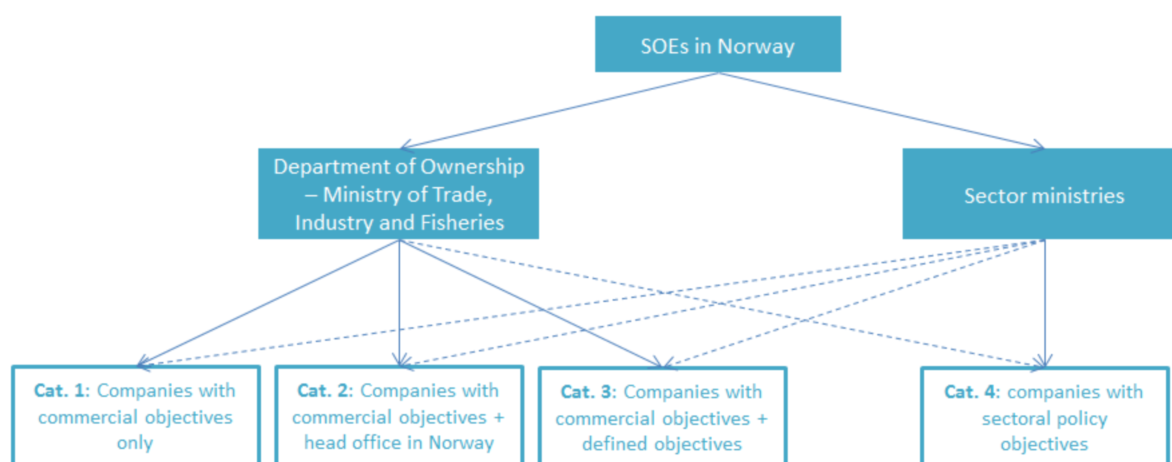

Figure 11 - Overview of the Norwegian ownership model

Norwegian SOEs constitute an important part of the national economy and are particularly well represented in the Norwegian stock market (with majority stakes (3; see footnote 1) as well as minority stakes). In contrast to most Western countries where the wave of State intervention in the financial sector dates back to the recent financial crisis, in Norway State intervention is of an older date. Norway, being faced with a serious banking crisis in the 1990s, was already at that time heavily involved in investing in many banks in order to avoid the bankruptcy of socially critical financial institutions. Although most of them have subsequently been privatised (Norwegian Ministry of Trade and Industry[5] (2011) [2], p.20) it remains a political desire to promote national industrial growth and invest in enterprises that are considered of strategic importance. To this end, **the Norwegian government attaches much importance to good corporate governance. There is a high degree of transparency, clear division of roles, and the State is perceived as an owner that does not**

[5] Ministry of Trade and Industry is the former designation of the actual Ministry of Trade, Industry and Fisheries

©GUBERNA 2014

intervene in the companies' on-going commercial assessments. Moreover, State ownership is not used to achieve short-term Norwegian national interests in a larger political perspective.

The Norwegian authorities highlight the fact that the exercise of ownership is just one of the State's many responsibilities and that it is important to distinguish this function from other State functions. Since 2002, a system has been developed whereby, unless special considerations apply, commercial companies are administered by the Ministry of Trade, Industry and Fisheries. **Recently numerous efforts were taken to increase the organisational distance between the State's role as owner and the role of the different authorities while concentrating the State's commercial ownership interests in one central administration. These efforts helped to increase trust in the State's administration of its ownership and to reduce role conflicts.**

In addition, this trend toward centralisation seems to have a positive effect on the ownership policy. The underlying rationale for this was to develop the Ministry further as a **centre of expertise for State ownership**. However, the Norwegian model cannot be considered as a centralised model because many State shareholdings are actually managed by sector ministries. **The Norwegian ownership structure is a 'dual' one, in the sense that commercially-operating SOEs are, with some exceptions, overseen by the Ownership Department in the Ministry of Trade, Industry and Fisheries, whereas the ownership function vis-à-vis sector-oriented SOEs is in the hands of various line ministries**. The Norwegian government grants high importance to clarity of SOE objectives. It assumes that clear objectives for State ownership forms the basis for more active, value-creating ownership. This is why we can observe the division of Norwegian into two main categories, namely companies with commercial objectives and companies with sector policy objectives.

Most of the State's commercial ownership interests are administered by the Department of Ownership within the Ministry of Trade and Industry. The department is organised with a view to combine the requirements for operational capacity (for the exercise of State ownership) with the requirements for a smooth decision-making process in the ministries. Actually, within the Ministry of Trade and Industry, we can find different kinds of commercially oriented companies which are grouped into three distinct categories. The first category gathers companies with commercial objectives only. The second category contains companies with commercial objectives and head office functions in Norway. Finally, the third category includes companies with commercial objectives and other specific, defined objectives. **The main objectives of the ownership management of the companies in categories 1 to 3 is to maximise the value of the State's shares and contribute to the sound industrial development of these companies**.

Besides those first three categories, there is a fourth category which gathers companies with sectoral policy objectives, supervised by the specific sector or line ministry. In practice, the sectoral policy companies need to realise social objectives and execute a sectoral policy. It is important to note that their degree of commercial orientation varies. By the way, although the sectoral policy companies' main objectives are not commercial, financial results and the efficient use of society's resources are of course also important in these companies.

In principle, the companies under the supervision of the Ministry of Trade, Industry and Fisheries, are rather homogeneous, as they mainly gather the State's commercial ownership interests. However, no further distinction has been made according to criteria like, the relative stake in the capital (majority versus minority) or the fact that companies are listed or not. Within the 21 companies (of categories 1 to 3) of the portfolio of the Ownership Department in the Ministry of

Trade, Industry and Fisheries, there are indeed listed and non-listed companies as well as companies where the State has the majority of the shares or is a minority shareholder. Moreover the reality is somewhat less homogeneous than the conceptual approach might insinuate. Under the Ownership Department of the Ministry of Trade, Industry and Fisheries there is also one company of category 4 (non-commercial interest) and four companies are governed by other departments of this Ministry.

In practice, there are other important exceptions to the theoretical model. In this respect, Statoil ASA which is a listed company (and thus commercially oriented) is an important exception as it is administrated by the Ministry of Petroleum and Energy. For that matter, the Ministry of Petroleum and Energy has a specific section dedicated to State participation. There are also exceptions observed in the portfolio of the Ministry of Transport and Communications. While NSB AS, BaneService AS and Posten Norge AS largely operate in markets exposed to competition, it is considered that they also play a key sectoral policy role and are therefore administered by the Ministry of Transport and Communications.

Other State sectoral policy companies are supervised by different ministries: Ministry of Finance (3 companies), Ministry of Fisheries and Coastal Affairs (2 companies), the department of ownership within the Ministry of Health and Care Services (8 companies), Ministry of Local Government and Regional Development (1 company), Ministry of Culture (10 companies), Ministry of Education and Research (4 companies), Ministry of Agriculture and Food (5 companies), Ministry of Petroleum and Energy (6 companies including Statoil ASA evocated before), Ministry of Transport and Communications (4 companies including the ones evocated hereinabove), the Ministry of Foreign Affairs (1 company) and the Ministry of Defence (1 company).

Besides developing a detailed organisation for its large portfolio of State shareholdings, **Norway also set up in 2002 ten main principles on which the administration of State ownership in individual companies should be based**:

Box 3.1 The State's principles for good ownership

1. All shareholders shall be treated equally.
2. There shall be transparency in the State's ownership of companies.
3. Owner decisions and resolutions shall be made at the general meeting.
4. The State may set performance targets for each company, together with other owners. The board will be responsible for meeting these targets.
5. The capital structure of the company shall be appropriate given the objective of the ownership and the company's situation.
6. The composition of the board shall be characterised by competence, capacity and diversity and shall reflect the distinctive characteristics of each company.
7. Compensation and incentive schemes shall promote the creation of value in the companies and generally be regarded as reasonable.
8. The board shall exercise independent control of the company's management on behalf of the owners.
9. The board shall adopt a plan for its own work and work actively to develop its own competencies. The board's activities shall be evaluated.
10. The company shall recognise its responsibility to all shareholders and stakeholders in the company.

Figure 12 - The Norwegian State's principles for good ownership (Norwegian Ministry of Trade and Industry (2011) [2], p.30)

©GUBERNA 2014

Finally, **Norway established a specific reporting system towards the stakeholders and the parliament**. SOEs are mainly supervised through the Ministry's internal analysis of the boards' yearly report and the audited financial accounts. The Department of Ownership has established its own expectations of results and profitability for each company, which have been communicated to the board and the management and discussed with them.

Concerning the accountability of the government towards the parliament, it is interesting to note that "Pursuant to Part 3 of Article 12 of the Constitution, administration of State ownership is delegated to the ministry under which the company sorts. The minister's administration of ownership is exercised under constitutional and parliamentary responsibility." (Norwegian Ministry of Trade and Industry (2011) [2], p.25). According to the Norwegian Constitution, the parliament must decide on most changes in State ownership, such as a capital increase in an existing SOE, investments to establish a new State-owned company or a new investment or disinvestment by the State in an existing company. Depending on the State's shareholding in the company, it may be necessary to submit such matters to the Storting (= Norwegian Parliament).[6]

3.3.6. Singapore

Singapore opted for a strong **commercially oriented** and **centralised** management of its shareholdings via the establishment of Temasek Holdings in 1974 whose sole shareholder is the Ministry of Finance. Temasek must be seen as an **investment company** that focuses on **returns on the long term** and that enjoys a high degree of autonomy from the government.

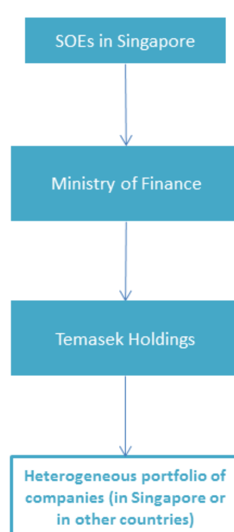

Figure 13 - Overview of the Singapore ownership model

Although Singapore is not a European country, its ownership model deserves special attention. Actually, the Singapore model is characterised by a strong commercially oriented management of

[6] "Depending on the State's shareholding in the company, it may be necessary to submit such matters to the Storting (= Norwegian Parliament). State companies will normally be able to buy and sell shares in other companies and acquire or dispose of parts of companies when this represents a natural part of the process of adapting the company's object-specific operations, without needing to obtain the consent of the Storting. However, in State limited companies (companies where the State is the sole shareholder), the consent of the Storting must be obtained in respect of decisions which would significantly change the State's commitment or the nature of the business. In partly-owned companies, issues are occasionally considered which must be brought before the shareholders' general meeting (e.g. mergers or demergers)." (Norwegian Ministry of Trade and Industry (2011) [2], p.25).

©GUBERNA 2014

shareholdings not only in Singapore but also abroad. **The Singapore State as a shareholder acts like a real investor and not only like a public-utilities provider**. **Consequently, the SOEs produce a substantial part of the country's GDP.**

At independence, the Singapore government had ownership or joint ownership of a number of companies active in different sectors. Until 1973, most of these stakes were held by the Ministry of Finance. But, **in 1974, it was decided to form the Temasek Holdings in order to manage investments commercially, including the possibility of investing overseas**. The Ministry of Finance was set up as (and remains) Temasek's sole shareholder. This move from the Ministry of Finance to Temasek Holdings had for aim to enable the Singapore Government to focus on its core role of policymaker and regulator.

Temasek Holdings is thus an investment company fully-owned by the Government of Singapore and active in various sectors (such as financial services, telecommunications & media, technology, transportation, industrials, real estate, energy and resources). The portfolio of Temasek contains 35 companies and is quite heterogeneous not only in terms of sectors but also in terms of types of companies, geographical areas and relative weight of the State share. Actually, several of the companies in Temasek's initial portfolio were subsequently publicly listed even if the holding kept a large (or even majority) stake. However, Temasek also holds many minority stakes in non-listed companies. As mentioned before, Temasek is not only active in Singapore but also in other continents, mainly in emerging markets (but also in Europe and in Belgium[7]!). In fact, the participation in Singapore are only representing 30% of the shareholdings (in 2012) while 42% are located in different Asian countries and 28% are outside Asia. It is important to highlight that this policy of foreign investments from a government holding has already raised sensitive issues (especially when investing in strategic sectors) and has caused protests in several countries (e.g. India and the United States).

Even though Temasek is fully-owned by the State, the holding is not strictly a sovereign wealth fund in the sense that it is a fund completely separated. When the holding wants to invest beyond its own cash flow, it has to sell assets to raise capital for new investments. Moreover the government doesn't need to give approval for each investment Temasek makes. **There is indeed a clear policy of limiting the government's impact to the one of a shareholder, as is the case in any business firm**. According to the holding, neither the President of Singapore nor the shareholder (to be understood as the Singapore government) is involved in the business decisions. Temasek is of course not totally independent of its shareholder, but has to respect the traditional shareholder rights: subject to the President's concurrence, the shareholder has the right to appoint, remove or renew board members. In addition, Temasek's board is also accountable to the President to ensure that every disposal of investment is transacted at fair market value.

The priority of Temasek is to manage the assets with full commercial discretion and flexibility, and this, to create and maximise risk-adjusted returns over the long term. In turn, Temasek also behaves as a shareholder in the companies they invest in. This means that the day to day operations and commercial decisions of the investee companies are part of the responsibilities of their

---

[7] Temasek is for example the 100% shareholder of PSA International Pte Ltd who operates several terminals of the Antwerp and Zeebrugge ports. In 2000, Temasek also bought 5% of Seghers' shares, a waste processing company located in the Province of Antwerp.

respective board and management. The holding is not involved in the commercial or operational decisions of the companies.

Compared to other countries analysed, Singapore appears to have other ambitions that guide their investments and shareholder behaviour. The State ownership is not seen as a tool for managing historical parts of the national economy, for offering public utilities to the population, for securing strategic sectors or for helping banks in difficulties. Temasek's investment strategy is basically guided by four themes: transforming economies, growing middle income populations, deepening comparative advantages and developing emerging champions. The ultimate goal of the Singapore ownership strategy is therefore to make profit and to create value across generations, and this, through its centralised holding agency Temasek.

3.3.7. Spain

Two ministries play a critical role in the Spanish State ownership policy. Firstly, the Ministry of Finance and Public Administrations has created two vehicles for managing 'its' SOEs. SEPI is responsible for **industrially-oriented companies** (minority and majority-owned) active in various sectors. In order to give more coherence to the policies, a formal classification has been made within SEPI, according to the **companies' fields of activities**. The holding SEPI has to foster the **highest possible profitability**. In addition to SEPI, the Ministry of Finance and Public Administrations is also responsible for the Directorate for State Assets, gathering **public policy oriented SOEs**. Secondly, the Ministry for Infrastructures manages SOEs active in the transport and infrastructure **sectors**.

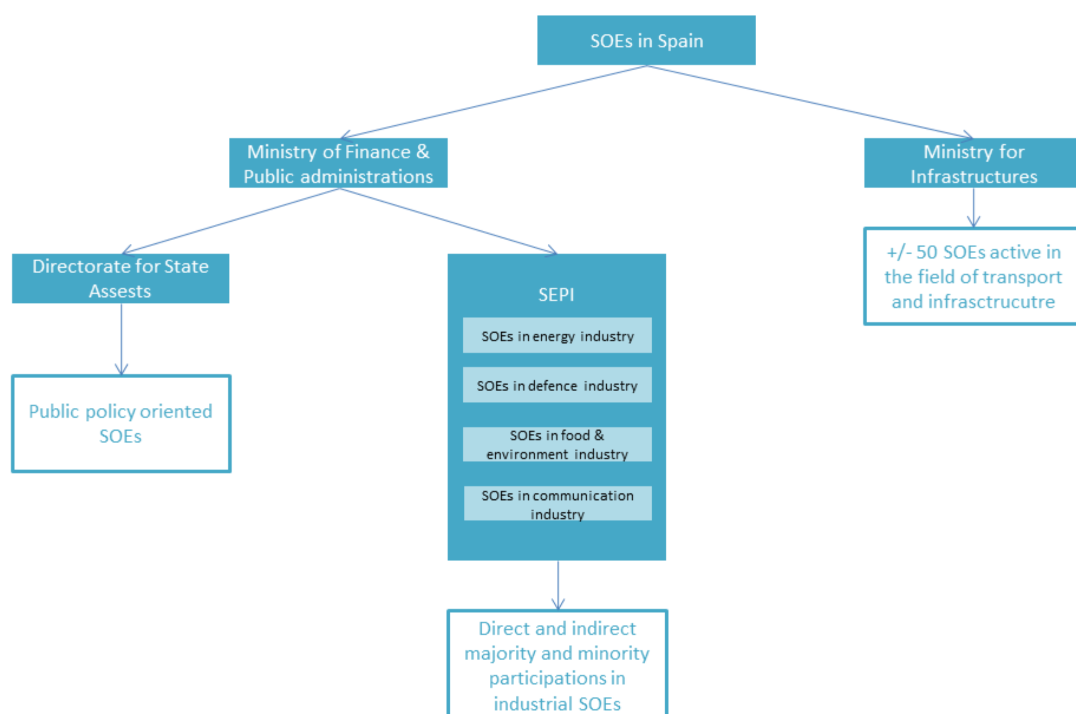

Figure 14 - Overview of the Spanish ownership model

Spain has direct shares in about 150 SOEs. Most of them are majority-owned non-listed enterprises. There is only one listed company in which the Spanish State has a stake, albeit a minority one (Red

©GUBERNA 2014

Electrica). Although the total number of 150 SOEs may seem high, a large number of them are small instrumental companies. Actually, **the Spanish entrepreneurial public sector has been much reduced, as a result of privatisations carried out during the nineties**, and it has nearly disappeared altogether from industries such as electricity, telecommunications, iron and steel, etc.

There are basically three groups of SOEs in Spain: the SOEs belonging to the holding SEPI attached to the Ministry of Finance and Public Administrations, the SOEs in the portfolio of the Ministry for Infrastructures and the SOEs belonging to the Directorate General for State Assets within the Ministry of Finance and Public Administrations.

SEPI has been created in 1995 under the form of a public law entity whose activities follow the private legal system. Its creation took place within the framework of the **process for the reorganisation and modernization of the State-owned entrepreneurial sector**. SEPI is attached to the Ministry of Finance and Public Administrations and reports therefore directly to the Minister. **The holding is controlled by the parliament, through information summons in the chamber and the senate and also through parliamentarian initiatives and the periodical submission of policy and financial information**. In 2012, SEPI had a direct and majority participation in 18 companies. In addition, SEPI had a minority direct shareholding in 7 companies and indirect shareholding in more than 100 companies. Those companies form a highly diversified group on account of their corporate object: media, shipbuilding, mining, nuclear energy, … This diversity incited the SEPI to internally organise its shares into 4 categories according to their field of activities:

- SOEs active in the energy industry;
- SOEs active in the defence industry;
- SOEs active in the food and environment industry;
- SOEs active in the communication industry.

SEPI seems to position its role as an active investor (like private equity firms may do). The normal management of the SOEs stays in the hands of their managing bodies. However in companies where they have a direct participation, SEPI is **responsible for setting the strategy, overviewing the planning as well as for following-up and controlling its execution**. SEPI is an agent with management functions within the State-owned entrepreneurial sector, whose mission is to make profitable its entrepreneurial participations as well as to orient all its activities with respect for the public interest. **Even if SEPI is responsible for combining the objectives of economic profitability and public function (social profitability), the main objective of SEPI is to achieve the highest possible profitability from its shareholdings**.

Besides SOEs gathered in the SEPI's portfolio, **more than 50 companies are gathered under the responsibility of the Ministry for Infrastructures**. Those corporate public sector bodies are active in sectors such as railways, airports and seaports.

Finally, **other SOEs with primarily a public policy function are attached to the Directorate General for State Assets** within the Ministry of Finance and Public Administrations. Actually, those companies constitute a heterogeneous group of public companies in non-industrial sectors that operate as flexible instruments in the execution of specific public policies.

In conclusion, we can say that **the Spanish system is articulated around three entities**. The affiliation of a SOE to one or the other entity is determined by the fact that the company has an

©GUBERNA 2014

industrial (and commercial) character or a public-utility goal and in a second instance by its field of activities (as SOEs active in the field of transport and infrastructures are gathered within the Ministry for Infrastructures).

3.3.8. Sweden

The core entity of the Swedish ownership model is the specialised management organisation at the Ministry for Financial Markets. Within this Ministry the shareholder tasks are split into two divisions: the division for SOEs, grouping the investment managers who work at the company boards and the division for corporate governance, responsible for the corporate governance documentation and the follow-up of the financials targets. Besides the SOEs under the responsibility of the Ministry for Financials Markets, there are SOEs that are in the portfolio of sector ministries. **Since criteria** determining whether the companies are in the portfolio of the Ministry for Financial Markets or under the responsibility of a sector ministry **are unclear**, **the Swedish authorities plan to reform their ownership policy**. The project of reformed ownership model is discussed hereafter.

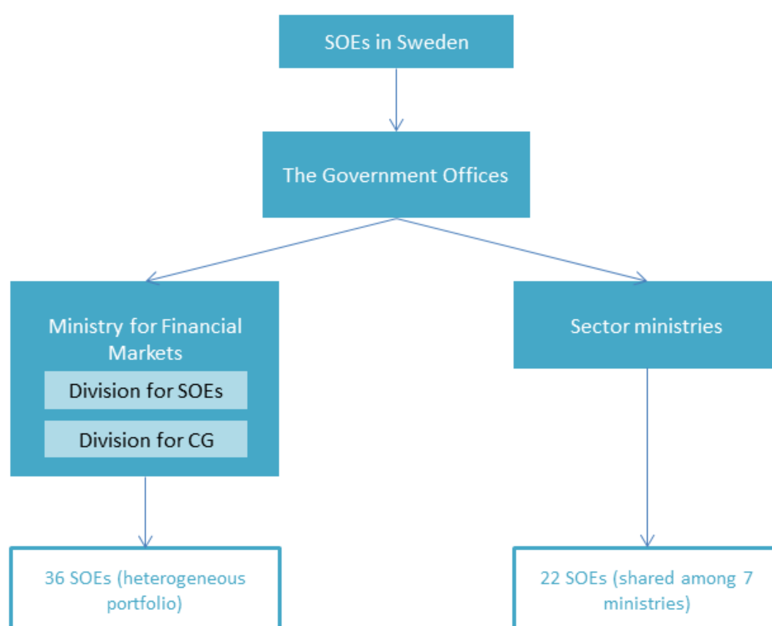

Figure 15 - Overview of the current Swedish ownership model

The case of Sweden is particularly interesting since a broad reflexion on how to improve the organisation of State shareholding is currently in progress (even if at the end of 2013, the project of reform seemed to be put on ice, due to changes in the political agenda). **The Swedish State is a significant business-owner**: it has an ownership stake in 58 companies and three of them are listed on the stock exchange (SAS, Nordea and TeliaSonera). There are actually 43 wholly and 15 partly-owned SOEs. This portfolio includes small and large enterprises within a broad field of operations such as mining and forest industry, energy and environment, transport and infrastructure, banking and finance, innovations, culture, IT and telecommunications. These enterprises constitute thus a heterogeneous group. Some operate with a complete or partial monopoly on their market while others are exposed to open competition. Furthermore, some enterprises are partially financed by

 ©GUBERNA 2014

subventions. However, we can observe that most of these SOEs operate in fully competitive markets where the State as owner engages in value-creating activities. In principle, the Swedish government does not consider that the State should operate in commercial markets with open competition, unless the company has a specific public service function that is difficult to achieve with any other form of ownership. Accordingly, the Government aims to reduce the level of State ownership in companies that operate in commercial markets with effective competition.

The government has been commissioned by the parliament to actively manage these State's assets. **All the official documents of the Swedish authorities highlight that the government manages these companies on behalf of the parliament and ultimately they are owned collectively by the Swedish people**. Practically, in order to be an active owner with clear targets and guidelines for the SOEs, the Government Offices have **a specialised management organisation** at the Ministry for Financial Markets. Since 2012, the Ministry for Financial Markets is thus responsible for most SOEs, and this, in accordance with the Government's ownership policy[8].

The specialised management organisation within the Ministry for Financial Markets is composed of **two divisions**: the division for State-owned enterprises and the division for corporate governance and analysis. These divisions are responsible for developing and coordinating corporate governance for all the companies managed by the Government Office and for the corporate governance of 36 of the total of 58 state-owned companies. **The division for State-owned enterprises** has **investment managers who work on the company boards and engage in an on-going dialogue with the companies**. **The division for corporate governance and analysis has experts in the fields of company analysis, sustainable business, corporate law and board recruitment**. The division is responsible for overall corporate governance documentation, such as owner policy, as well as for formulating and following up financial targets. It also coordinates work on nominations to the boards of SOEs.

While most of the SOEs are gathered under the responsibility of the Ministry for Financial Markets, other (sectoral) ministries are responsible for the management of a minor part of the State-owned companies. Those ministries are: the Ministry of Justice (1 SOE), the Ministry of Culture (3 SOEs), the Ministry of the Environment (1 SOE), the Ministry of Business, Energy and Communications (9 SOEs), the Ministry of Health and Social Affairs (5 SOEs), the Ministry of Education and Research (1 SOE) and the Ministry for Foreign Affairs (2 SOEs).

Besides companies under the responsibility of the Ministry for Financial Markets or other sector ministries, there are also additional companies managed by government agencies other than the Government Offices that are also required to apply the State-ownership policy.

Criteria determining whether the companies are in the portfolio of the Ministry for Financial Markets or under the responsibility of a sector ministry are unclear. This is why, among other reasons, the Government appointed in May 2011 a committee of inquiry to review how administration of the State-owned companies should be conducted and organised to ensure the best possible and most appropriate management.

[8] The Ownership policy is a governance document in which the government provides an account of its administrative mandate, the laws and rules governing its administration, the corporate governance framework and the relationship between owner, board and management, as well as the government's position on certain matters of principle in corporate governance.

© G U B E R N A 2 0 1 4

This committee conducted an in-depth analysis and a large consultation. They consulted company directors, private owners and owner managed-businesses, examined models applied in other countries and compared models (previously) used in other areas of the Swedish central government.

The committee identified a number of problems in the current ownership administration model. Two of them are directly related to the organisation of the State shareholding. **The first problem raised is the fact that the complicated owner tasks and complex goals that characterise many of the SOEs have not been sufficiently clarified to be able to form the basis for clear and effective corporate governance. Secondly, the current ownership model is considered to be too uniform and leads to an undifferentiated management model that does not suit all the enterprises.**

According to the committee, **in order to solve these problems,** "**an independently accountable, professional organisation for operative corporate administration should be established as a link between the political and strategic governance from the Riksdag** (= Swedish Parliament) **and the Government on the one side, and the individual portfolio companies on the other.**" (Swedish Ownership Committee 2012, p.25). Therefore, the committee proposes that the executive administration of enterprises owned by the State be transferred to two 100% State-owned limited company that owns the shares in the portfolio companies. **Dividing the administration of SOEs between two holding companies is motivated by the fact that two main categories of State-owned enterprises have been identified**:

- enterprises whose fundamental objective is to generate financial value (holding company 1);
- enterprises whose fundamental objective is to create public benefit (holding company 2).

This solution would allow a clearer structure and **division of roles and responsibilities in the administration of the State's corporate ownership**. In the framework of this model, the responsibility for the overarching and strategic governance of the State's ownership and the tasks of the enterprises will continue to rest with the parliament and the government while execution and implementation of this strategy in the different SOEs will be taken care of by the holding companies.

Looking deeper at the two holding companies, the **'holding company 1'** should comprise SOEs which **focus on financial value generation** as their main task. They may also be subject, to the extent deemed necessary, to supplementary conditions of a public benefit nature. The concrete governance target for this holding company is to generate overall long-term stable value growth. By the way, the committee suggests to divide the 'holding company 1' based upon different governance rationale into **two sub-categories**: **large enterprises** (mature companies that are commercially run but may have certain special commitments or restrictions) and **small and medium-sized enterprises** (companies which may be deemed to have considerable development potential).

The 'holding company 2' should gather SOEs whose overarching task is to create public benefit. The main task of this holding would be therefore to develop methods and techniques for the efficient administration of these specific SOEs. As for the first holding, the 'holding company 2' should also be **divided into two sub-categories**, according to the type of public policy aim. The companies in the enterprise policy area that often have no profitability targets and whose purpose is to support economic **growth** would be gathered in a first sub-category. The other proposed sub-category would contain companies whose purpose is to contribute to public **welfare**. These companies are actually active in several policy areas; most of them have socially, culturally and/or environmentally motivated assignments.

©GUBERNA 2014

The report from this committee has been circulated for comment in 2012 and the holding companies would not start operations before the summer 2013. However, as mentioned earlier, this reform was not seen as priority anymore by the government at the end of 2013.

The reformed Swedish ownership model could potentially look like this:

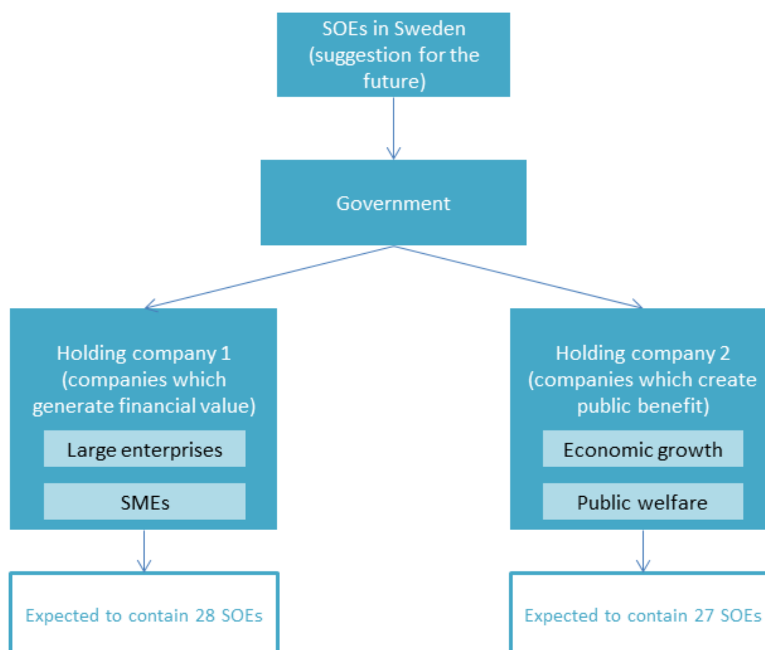

Figure 16 - Overview of the project of reform of State shareholding in Sweden

In order to improve their ownership model, the Swedish authorities plan to split their shareholdings into two holding companies: the first holding would gather companies whose main objective is to generate financial value while the second holding would contain public utility oriented companies. Within the first holding company, a distinction would be made between large enterprises and SMEs because challenges are different. Also in the second holding company a distinction would be made between two types of SOEs: companies that offer public welfare versus those that are set up in order to support economic growth.

3.3.9. The Netherlands

The Financial Directorate of the Ministry of Finance has a major role in the supervision of SOEs in The Netherlands. It actually gathers all the Dutch SOEs as there is no formal classification according to the kind of company: every SOE is expected to be **profit-maximizing** whatever its nature. However, the achievement of **non-commercial objectives** is monitored by the respective line-ministries. Besides this main portfolio, the Ministry of Finance is also responsible for the NL Financial Investment (NLFI) which has been set up in 2011 in order to manage in a **transparent and autonomous way** the two **financial institutions** owned by the State.

©GUBERNA 2014

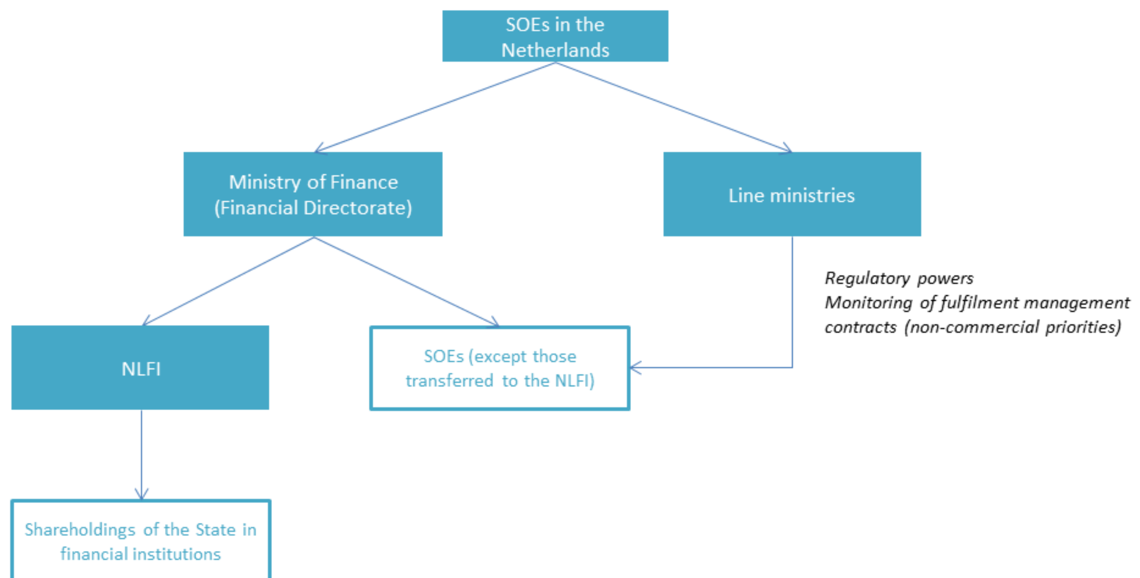

Figure 17 - Overview of the Dutch ownership model

State ownership in The Netherlands must be analysed in light of the long history of critically appreciating the need for privatising SOEs from the moment the government considered it no longer necessary to keep those companies in public ownership. In 2007 (so before the financial crisis) this traditional approach was partially reviewed. At that time, **a new public ownership policy** was established. This revision reflects a political shift, based on the conviction that the State could make better use of its corporate shareholding to foster public interest issues (that were often at the origin of the State's intervention in the SOE). More attention was placed on combining the corporate with the public interest. The aim was to make optimal use of the public shareholder power to enshrine this balance of interests in the SOEs' articles of association. This increased focus on the public policy goals is of course also linked to the character of the 'remaining' SOEs. Except for the 2 State-owned banks, the remaining SOEs operate in much less competitive environments than those previously privatised. Actually, if a shareholding satisfies the following three criteria, it will in principle be privatised:

- the government's holding no longer helps to safeguard the public interest;
- private ownership would benefit the business and the quality of its operations;
- private ownership would not endanger the continuity of the service.

At end-2009, the Netherlands comprised 28 State-owned enterprises, mostly concentrated in the financial, infrastructural and transport sectors. The Dutch SOEs are for example monopolies where investment costs are so high that there are unlikely to be competitors (Dutch Railways, Schiphol Airport, TenneT) or companies that provide services for the government or associations associated with the government (Bank for Netherlands Municipalities). Although the Dutch government is cautious about investing in new government holdings, they had to invest in two distressed banks during the financial crisis of 2008, and this, in order to safeguard the stability of the financial markets. Despite these takeovers by the government, the Dutch SEO economy remains relatively small due to the privatization process mentioned before.

©GUBERNA 2014

Globally speaking, the Dutch SOEs have similar characteristics as they are all non-listed and majority-owned by the State. Compared to criteria retained for a classification in other countries, one can observe that there is no formal classification of Dutch SOEs, neither according to their corporate form nor to their operational priorities. As mentioned earlier, all SOEs are fully corporatized and the government works on the assumption that all enterprises are profit maximizing. While the Dutch State-owned enterprises are considered to be commercially oriented, specific non-commercial objectives may be imposed on individual SOEs, through performance contracts, regulation (by line ministries) or shareholder action (the Ministry of Finance can block major decisions that are out of sync with the intension of its investment). The achievement of those non-commercial priorities is monitored by the respective line ministries.

The ownership function for SOEs mainly resides with the Financial Directorate within the Ministry of Finance. However, there are exceptions as the ownership of two State-owned financial institutions (ABN Amro and ASR Nederland) has been transferred in 2011 to an autonomous body 'NL Financial Investments (NLFI)', which is expected to function broadly like the UK Financial Investments Ltd (see hereunder). NLFI is under the responsibility of the Minister of Finance and undertakes to manage the holdings of the State of the Netherlands in financials companies. NLFI is a not-for-profit organisation with a statutory mandate. Actually, **the establishment of NLFI was the result of a parliamentary resolution to ensure a commercial, non-political governance of ABN AMRO and ASR Nederland, and a transparent separation of interests**. Communication and exchanges are nevertheless regular between the NLFI and the Ministry of Finance. **In 2012 and 2013, other State's shares were transferred to the NLFI holding.** It is for example the case of SNS Reaal N.V. that has been transferred in December 2013 (after receiving the green light from the European Commission). Today, NLFI's prime mandate is exercising the shareholder rights in ABN AMRO Group N.V., ASR Nederland N.V., Propertize B.V., RFS Holdings B.V. and SNS Reaal N.V. The articles of association state that "In exercising the rights attached to the shares, the corporation will be guided primarily by the financial and economic interests of the holder of the depositary receipts for shares issued by the corporation, taking into account the interests of the company and the entities affiliated with it and all the employees concerned." In conclusion, the NLFI can be described as a financial holding managing the shares that the Dutch State owns in the financial sector and whose aim is to **maximise the profit for the State in exercising sustainable and responsible business practices**.

While the Ministry of Finance (and in a lesser extent the NLFI) is responsible for the ownership function, **line ministries still have regulatory powers over the SOEs** in their respective areas, and in some cases also initiate legislation bearing on the SOEs. They are especially **involved in the monitoring of SOEs' fulfilment of management contracts (and hence they monitor the performance of the public policy function)**. This relatively strong separation of powers is related to a central dictum of Dutch ownership policy: State control over SOEs should be exerted through legislation, regulation or contracts (e.g. management or concession contracts), but only as a last resort through the exercise of shareholder powers. The main justifications for this approach include transparency and the maintenance of a level playing field in areas where competition occurs or could occur.

Concerning the reporting to the parliament, it is formally prescribed that SOE ownership is subject to an annual review by parliament as part of the fiscal budget procedure.

©GUBERNA 2014

3.3.10. United Kingdom

The UK ownership model is articulated around two main actors: the Shareholder Executive (ShEx) and the UK Financial Investments Ltd. (UKFI). The ShEx is part of the Department for Business, Innovation and Skills and is driven by several political leaders (three different Ministers and one Secretary of State). The ShEx manages government's shareholder relationships with a **heterogeneous** portfolio of 17 minority and majority-owned companies. However, while ShEx acts as a shareholder towards these companies, they are formally owned by a sector ministry (or a Secretary of State). As for the UKFI, it is an independent **holding which acts on commercial basis** and is responsible for managing State stakes in the **financial sector**. It is actually under the responsibility of the HM Treasury and is a part of the UK's response to the 2008 financial crisis.

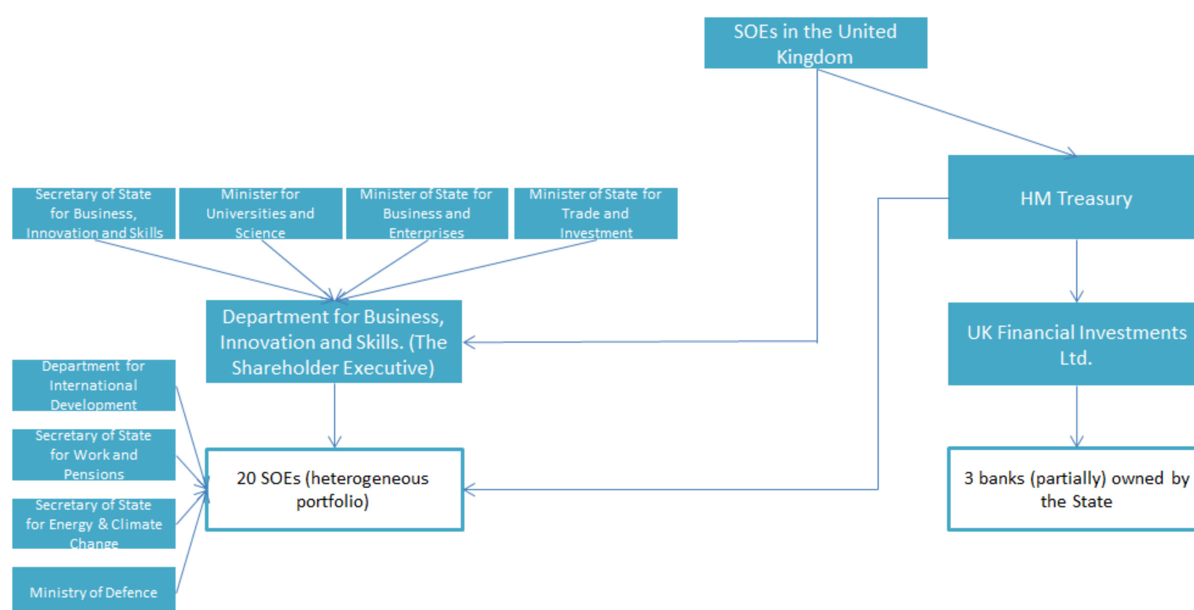

Figure 18 - Overview of the UK ownership model

After extensive privatizations of publicly-owned companies during the Thatcher administration, there remain only a few SOEs in the United Kingdom. Today, most of **these government shareholdings are gathered into 'The Shareholder Executive' (ShEx)** within The Department for Business, Innovation and Skills. This department is driven by several political leaders: Secretary of State for Business, Innovation and Skills; Minister for Universities and Science; Minister of State for Business and Enterprises; Minister of State for Trade and Investment. The ShEx reports directly to The Department for Business Innovation and Skills and its ministers and permanent secretary.

The ShEx manages the government's shareholder relationships with the (wholly or partly-owned) business firms either directly (on its own behalf), in joint venture or indirectly (together with or as advisor for the ministry departments). In those firms the ShEx has a clear shareholding mandate or a seat on the board. Practically, the ShEx's involvement in each business varies depending on the agreed role and liability. The ShEx can play an executive role (where ShEx is accountable to ministers

©GUBERNA 2014

directly), a joined team role (where ShEx works alongside shareholder teams within departments) or an advisory role (where ShEx advises shareholder teams within department).

The ShEx's aim is to be an effective shareholder of businesses owned or partly-owned by the government and to manage government's interventions in the private sector in order to secure best value for taxpayer. The ShEx's portfolio is quite heterogeneous as it contained during the financial year 2012-2013 twenty SOEs from organisations as large as the Royal Mail to smaller businesses like the UK Hydrographic Office.[9] Some companies are fully-owned by the State while in others the State is a minority shareholder. Moreover, the legal status and effective ownership strongly differ from company to company. One company is wholly-owned by The Department for International Development, another is owned (at 49%) by The Secretary of State for Transport, three others are held by The Secretary of State for Energy and Climate Change (through a holding company NNL Holdings Ltd.) and another is owned (at one-third) by The Secretary of State for Work and Pensions. Besides these companies owned by specific ministries, there are 5 trading funds (three of The Department for Business, Innovation & Skills, one of the HM Treasury and one of the Ministry of Defence). Then, there is one statutory corporation, one Ministerial Government Department, one non-departmental public body sponsored by the Department for Energy and Climate Change and two limited companies.

This list demonstrates the high degree of heterogeneity among those companies. Some of them are commercially oriented while others are dedicated to public services. The analysis of the dividend policies demonstrates the differences of objectives. Some of them pay dividend to their shareholder while others make no profit and therefore pay no dividend. In other cases, the commercial income is used to supplement direct government funding.

Actually, it appears from this analysis that the **UK model is quite complex** and roughly different from models observed in other countries. In this case, **the role of The Shareholder Executive is rather to monitor the SOEs on behalf of ministries, in working closely with policy teams**. We can conclude that the ShEx assumes the shareholder responsibilities while the ownership stays at another level.

Besides the Shareholder Executive, the UK Financial Investments holding (UKFI) has been created in November 2008 as part of the UK's response to the financial crisis. UKFI is responsible for managing the Government's shareholdings in the banks (Lloyds Banking Group plc, The Royal Bank of Scotland Group plc and the UK Asset Resolution Ltd (UKAR which gathers the activities of Bradford & Bingley plc)). UKFI acts under the responsibility of the HM Treasury who is its 100% shareholder. A framework document has been drawn up in order to set up the objectives of the UKFI but the HM Treasury remains responsible for all the issues which are not tackled in the document.

UKFI is required to manage the shareholdings on a commercial basis, actively engaging at a strategic level rather than intervening in day-to-day management decisions. This approach aims to ensure that value is re-established in the banks under the leadership of their own boards and management teams, to the ultimate benefit of taxpayers. The UKFI's level of involvement varies between the partly and wholly-owned institutions:

---

[9] On 15 October 2013 Royal Mail became a listed company with shares traded on the London Stock Exchange. The HM Government (via the Shareholder Executive) still remains the main shareholder with 38% of the shares.

©GUBERNA 2014

- In UKAR where the government is a 100% shareholder, **UKFI directly operates with the board and the management team in a manner similar to any financial sponsor who is the sole owner of a company** (approval of board nominations, representation at board meetings, approval of business plans, …).

- **In contrast, UKFI takes a more arm's length approach to its interactions with Lloyds and RBS, recognising that, as listed companies, their directors have fiduciary duties to act in the commercial interests of all shareholders, not just the largest one.** UKFI therefore exercises its voting rights and engage actively with the boards and senior management on key strategic issues, while preserving their independence and freedom to determine their own commercial policies and business plan.

Actually, UKFI is responsible for devising and recommending to HM Treasury a strategy for returning the banks to private ownership, and for executing the chosen strategy. UKFI must therefore be seen as a temporary tool created in a crisis context.

By the way, the UK's organisation approach towards State shareholding is not based on fostering a long term ownership policy, not even from a pure public services perspective. As part of the government's growth and efficiency agenda, the ShEx is mandated to critically investigate its SOE portfolio. **For its core assets, alternative ownership structures have to be investigated, while for the non-core assets suggestions for potential sale have to be developed** by the ShEx. One can thus conclude that the UK gives the preference to privatisation and does not want to keep its shareholding at any price, except for clear and significant reasons.

3.3.11. Global summary of international examples studied

The table below summarises the main findings of our detailed international research. This analysis demonstrates that **most of the countries opted for a reorganisation that gives priority to some form of centralisation**. However, this trend towards centralisation **does not mean that most models can be classified as fully centralised**. The summarising table shows that in some of the countries, there remain SOEs under the direct responsibility of sector ministries (such as in Finland, Hungary, Norway and Spain). In other countries several ministries have to collaborate together to steer the central shareholder entity (such as in France, The Netherlands, the UK and Sweden). The exceptions are Germany and Singapore, opting for a fully centralised model under the Ministry of Finance. But in Germany this central ministry sets out the framework while the sector ministries are responsible for executing the shareholding role.

This trend towards centralisation has generated many positive effects. In Finland, for the SOEs which have (mainly) a commercial goal, the ownership function has been **separated from the other State functions such as the regulation**. The management of the shareholdings has been clearly facilitated through **a coordinated and single implementation of the State's ownership policy**. There is (for the companies under the responsibility of the Ownership Steering Department) one single line of decision-making which gives **coherency** to the everyday work. All those initiatives have **improved the strategy planning, the contact with the top management of the companies and the credibility on the financial markets**.

©GUBERNA 2014

In France, the centralisation has been coupled with **a cross-fertilisation process** through the setting up of the APE. The centralisation had as main consequence the **professionalization of board members and the creation of a pool of experts** able to lead State-owned enterprises in a professional way.

In Hungary, the centralisation process has led to **more transparency**, to the publication of a unified report on State participations, to an increase in **consistency** to the Hungarian ownership policy, to a rationalisation of the institutions, to the elaboration of a single remuneration policy and to the definition of a single strategy for the State as a shareholder.

In Norway, the trend towards centralisation has produced increases **in trust towards State ownership** and improved expertise of the administration responsible for this policy. Moreover, it has also led to **decrease of role conflicts**.

In addition to the analysis of the degree of centralisation, the research demonstrates that specific criteria have often been set in order to determine the affiliation of an SOE to one or the other entity. As it will be discussed in the next point, it is probably on this issue that room for improvement exists in Belgium.

©GUBERNA 2014

Country	Organisational structure					Criteria retained				
	Sector ministries Direct/Indirect	**Centralised agency**	**Central Ministry**	**Holding company**	**Financial holding**	Commercial / non-commercial	Listed / non-listed	Minority-owned / majority-owned	Financial / non-financial	Industrial / non-industrial
Finland	Direct	X (Ownership Steering Department)	Prime Minister	X (Solidium) Sub-holding		X	X	X		
France	Indirect	X (APE)	Economy/ Industrial Renewal			X				
Germany	Indirect		Finance							
Hungary	Direct		State Assets	X (HNAM)		X		X		
Norway	Direct		Trade & Industry			X				
The Netherlands	Indirect		Finance		X (NLFI)				X	
United Kingdom	Indirect	X (ShEx)	Several		X (UKFI)				X	
Singapore			Finance	X (Temasek)						
Spain	Direct	X (Directorate State Assets)	Finance	X (SEPI)		X				X
Sweden	Direct		Financial markets							
Sweden post reform	Indirect			2 holdings		X				

Figure 19 - Summary of the observations from international examples

3.4. Reflexion on the Belgian approach

As we have been observing internationally, also Belgian State ownership evolved in different directions over time. Due to the privatisation process in the 90ies the role of the State as a shareholder clearly diminished. But in the post financial crisis era the importance of public funding has been drastically increasing again.

The current Belgian State's ownership model seems to be the consequence of historical evolutions and in need of a critical revision. Making abstraction for the important step made in 1991 with a thorough reflection on the governance of (some of) the State-owned enterprises, an overall review or framework is lacking. Even worse, the OECD guidelines that were established nearly 10 years ago, have not been used to make an in-depth examination of our public governance, this in contrast to most of the European countries. In light of these observations, GUBERNA proposes to the political decision makers to take advantage of the establishment of a new government (both at federal and regional level) to use this momentum to engage for a more professional and effective public governance for its heterogeneous set of SOEs. Before proposing some routes for further reflection, it is good to make a brief picture of the actual situation (for a more detailed review we refer to point 3.2. above).

First of all, there are the four companies under the control of the Minister for public enterprises. These were formerly administrations, delivering public utilities but becoming autonomous companies in 1991. Some of them have drastically changed over time due the heavily competitive market they are operating in (like Belgacom), the decreasing role they play in public service terms and the fact that they have been listed in the meantime (like Belgacom and bpost). Others are still 'enjoying' a monopoly situation (like Infrabel and to a lesser extent NMBS/SNCB) and are mainly offering public services. In the last two entities, the State is the only shareholder, whereas in the listed companies the State, while remaining the majority shareholder, has to collaborate with private investors (formerly private equity or private consortia; now the capital market).

A second category of participations is the consequence of the financial turmoil which forced the government to intervene in the capital of financial institutions in distress. These participations are linked to the Minister of Finance, through the FPIM-SFPI. This holding is also responsible for different other types of investment portfolios (with minority as well as majority stakes) in commercially oriented firms.

On top of that some SOEs are directly governed by specific sector ministries.

Consequently **the Belgian ownership model lacks consistency and is missing out opportunities to further build synergies and create value added for its SOEs and society at large**. The heterogeneous set of companies under the control of the Minister for public enterprises is not in line with the international best practices to clearly distinguish between commercially oriented and public policy-oriented SOEs. Second, a reflection on the rationality behind the segmentation of SOEs over the different ministries is lacking completely. But even worse, there is no alignment of the governance approach for this heterogeneous set of companies, nor is there a level playing field between the commercially oriented companies. Moreover, the specific competencies on shareholder organisation developed at the level of the federal holding (FPIM-SFPI), respectively the Ministry of Finance and

©GUBERNA 2014

the Ministry for public enterprises is not used to reach better synergies and improve the quality and return of State ownership.

Based on the above analysis, GUBERNA organised a broad discussion with national and international experts in public governance. Notwithstanding some nuances as to the concrete details, **there was clearly consensus on the need for reforms in Belgium.** It seems urgent to clarify the ownership structure of Belgian SOEs as well as to improve the effectiveness of the State as a shareholder, with the potential to upgrade financial return and societal welfare.

The OECD recommendations and the foreign examples show that **different paths of reforms are possible**. In its guidelines, the OECD gives the preference to a wholly centralised model like France did for example. But other more fragmented systems are probably also valid as far as they are built on rational grounds and lead to the same outcome in efficiency. **Belgium has its characteristics and the Belgian government must stay the sole master in defining the ideal ownership,** with enough attention (and justification) for a tailor-made approach. It is not different in private companies where flexibility and tailor-made approach are offered, provided that enough explanations are given on the choices made (via the "comply or explain" principle). Before developing our proposal in more detail (see point 3.5.), we reflect on some of these possible routes of reform.

A first solution could be to apply the French (or German, or Singapore) approach and gather under one special purpose entity all government shareholdings in a separate legal entity, under the supervision of one specific Ministry (preferably not a sector Ministry because of potential conflicting roles). May be that this route is the most stringent one, but many other countries show that other models might be envisaged too. The most prevailing organisation that reigns in many OECD countries (like Finland, Norway, Spain, Hungary) is based on the distinction between commercially oriented SOEs and public policy-oriented SOEs. The shareholding role in companies with mainly a public service function has a totally different goal and answers to quite distinctive business criteria than a corporation faced with an open competitive market. Although SOEs with a mainly commercial character may still have a minor role to play in the direction of public service providers, it is clear that their involvement in open competitive markets puts their governance and corporate interest on a completely different footing than the one of pure public service providers. The current reflexion occurring in Sweden is articulated around the same observation: **companies having financial value generation as main task should be gathered in another entity than companies responsible for public utilities**.

Focusing on the public governance experience in other countries (e.g. Finland, Norway, Hungary) this centralised entity, responsible for 'corporate' shareholding of the State, could further be structured along the most relevant (business) lines. A separate division for the control of shareholding in **listed companies and companies where the government works with important outside shareholders** might be a solution. Governance of this type of companies is **quite different than the one where the government is the sole owner**. But other lines of demarcation might be **sector or strategically-oriented**. Different countries (like The Netherlands or the UK) dedicated a specific vehicle to govern the participations in the financial sector.

For the central organisation governing the SOEs with primarily a business focus, inspiration should not only be found in other public governance circles internationally, but also in the rich world of private equity firms and participation holdings. It would be good to further analyse what lessons

©GUBERNA 2014

could be learned from the best practices in this respect[10]. One of their best practices, that is worthwhile to study further is **the need for more expertise and specific knowledge development to better support the government as well as the public directors in performing a more professional role of steering and monitoring SOEs.**

International examples show how important the economies of scale can be if the government organises its shareholding function in a professional way. It allows a more optimal use of funds and a better return for the investment of public money. In times of austerity, higher profitability via a better use of public assets would be more than welcome.

3.5. Recommendations for improving public governance in Belgium

Thanks to deep research and analysis, to the organisation of international conferences and high level expert group meetings, GUBERNA is able to suggest recommendations, based on international best practices, while taking into account the complexity of the Belgian model as well as the political constraints. As mentioned earlier, there is no optimal model that can work for every situation. GUBERNA's recommendations are in line with international recommendations and best practices but do not copy/paste an existing model. **Four main recommendations have been formulated to better organise the Belgian State shareholdings**.

3.5.1. Towards a modern organisation of the State's participations

Starting from the actual Belgian situation one could think of a dual organisation. The Minister for public enterprises could become responsible for all SOEs that have an important public function and do not (fully) operate in a competitive environment. All participations in companies operating in a competitive environment and having no or only a very limited public service function could than become grouped under the FPIM-SFPI, supervised by the Minister of Finance (as is the case in many other countries). Direct steering for public service oriented SOEs by a dedicated Minister seems defendable, guaranteeing a clear distinction with Ministries that have a regulatory role. If need be, sector ministries could additionally give input to fine-tune the development and monitoring of the management contract with those companies. On the other hand, indirect steering and centralising all commercially oriented SOEs in a specialised vehicle offers the best chance for a professional approach with remote (indirect) political influence and focused expertise and support. In fact, this 'dual' model is largely in line with the OECD recommendations, given that those recommendations mainly focus on the SOEs operating in a commercial and competitive environment.

However, this dual approach may need additional support and synergy focus. Therefore, GUBERNA would like to suggest **setting up a kind of 'Knowledge & Support Centre'** (K&S Centre) preferably within the FPIM-SFPI, that could develop into a holding as well as a K&S Centre. In this last capacity, the aim would be to professionally support and align the shareholdings of the Federal State (like it is also proposed in the Swedish model). With this innovation we potentially reach the OECD goal of

[10] To this end we would like to refer to the current research done by GUBERNA on the governance frameworks developed by private equity firms (the governance side of the investor as well as the one of the investee companies are under study).

©GUBERNA 2014

more centralisation and exploitation of synergies. Such a centre should be more than a consultative centre while also being recognised as having a sufficient political **independence** at the crossroad between the government and the companies. Basically, **the K&S centre should be seen as the linking pin between the government and the SOEs to promote good governance practices**. As far as pure commercially active SOEs are concerned, the K&S Centre would be the only interface between the government and the SOEs. For SOEs with a major public service function, those companies would have a double line of governance, one related to the development of professional governance practices (with the help of the K&S centre) and one related to the Ministry for public enterprises, to steer and monitor the SOEs under its direct control. For what concerns commercially oriented SOEs with a limited public function on top, they too would have a double line of governance, albeit of another character. The monitoring role of the Minister for public enterprises would be strictly limited to overseeing the execution of the management contract, being the emanation of the responsibilities in relation to the public service function.

In order to eliminate excessive political pressure and respect governance principles "It is also important that active ongoing monitoring by the ownership entity does not bypass the board and result in interference in management. The board must be allowed to exercise its responsibilities and the ownership entity's discussions on performance should typically be with the board, even if the ownership also has a dialogue with senior management. This allows the board to retain responsibility to monitor management performance per se, as recommended by the Guidelines. There is a balance to be found between ensuring effective ongoing monitoring of SOE performance and avoiding excessive interference in SOE management." (OECD 2010, p.54).

Given previous observations and taking into consideration that commercially oriented SOEs also form an important part of the Belgian SOEs landscape (some of them even work with public funds within the capital market – 'listed companies') we propose that these companies should respect at minimum the requirements for listed companies. As Lars-Johan Cederlund says (OECD 2010, p.4), greater transparency is usually very effective in triggering further support for reforms. This is also in line with the OECD recommendations saying that "[…] SOEs are the ultimate public companies, as they are owned in fine by the general public, the State being the agent of this general public. They should thus be subject to at least the same level of transparency and disclosure requirements as listed companies." (OECD 2010, p.68).

In any case, the **government should maintain control over the definition of its industrial policy in general and should explicitly approve the strategy of the different SOEs**. However, the role of the K&S Centre in the strategy approval must not hide the prevailing role the boards have to play in the definition of their own strategy. The OECD underlines important issues about the respective roles of the board and the ownership entities in the whole process of defining and agreeing on the objectives. "The fact that objectives have to be officially approved, and that in some cases boards might not even have the final say in case of disagreement, can be perceived by the boards, and rightly so, as an usurpation of their authority. This could also lead to reduced accountability by the board, especially when strategic issues are addressed. It is thus critical to ensure an appropriate definition of respective roles in the process of defining objectives and ensure that it will maintain appropriate board accountability." (OECD 2010, p.39). "Boards are expected to enter into a process of dialogue with the ownership entity to arrive at an appropriate understanding of the company's objectives based on the government's policy priorities. This specific dialogue between SOE boards

©GUBERNA 2014

and the State shareowner is not possible or strictly regulated in case of partially owned SOEs, as this would breach the principle of equitable treatment of shareholders." (OECD 2010, p.40).

The (direct) control over the execution of the SOE-strategy could remain with the experts of the K&S Centre, certainly as far as the commercially oriented SOEs are concerned. In fact, the Knowledge and Support Centre could play an important role in supporting the board and the public directors to fine tune the strategy approval and the evaluation of its execution. In turn, this centre should become accountable towards the government and the parliament for the results of the industrial policy in general and the specific output of those SOEs under its direct control. Indeed, the K&S Centre should be placed under the control of the government (direct role for the Minister of Finance, but with a final role of the Kern for important decisions) and its strategic goals and ambition should be regulated by a management contract, supervised by a government commissioner. The monitoring of commercially oriented SOEs would remain with the experts of the K&S Centre, without any direct interference from the government (and no government commissioner).

This process could be drastically different in SOEs with primarily a public service function. Here, the development of the strategic framework, formalised in the management contract and the supervision of its execution would remain with the Minister for public enterprises, supported by a government commissioner per SOE. Public service oriented SOEs could remain directly accountable towards the government and the parliament.

The creation of such a 'Knowledge & Support Centre' would **present at least 6 advantages**:

1) This centre would be the **unique reference** concerning shareholding and governance issues for the companies as well as for the government. It would facilitate the development of more value added, thanks to the concentrated focus on expertise, synergies and clear communication lines.

2) There would be **more continuity**, which is fundamental in a complex and/or competitive business environment that needs important long-term investments. Thanks to the centre, there could be a 'memory' to oversee the shareholding strategy on a long term basis and guarantee (as far as possible some/more) independence towards evolving political constellations.

3) The **approbation of the overall (industrial) strategy** would stay in the hands of the politicians while monitoring the detailed plans per SOE would be the responsibility of the centre. The K&S Centre would be able to build on specific sector, financial and governance know-how.

4) This would allow **redefining the accountability towards the parliament** (a necessity for commercially-driven SOEs). For such commercially oriented SOEs their accountability is directly to their shareholders, and the general annual assembly of shareholders is the forum to organise this accountability. On top of that, they need to present an annual report in which they report on their societal role and the way they cope with their corporate social responsibility and the respect for the needs of the stakeholders at large. For those companies it would be better to organise the accountability towards the parliament in an

©GUBERNA 2014

indirect way. It would no longer be the management and/or the board of individual SOEs that have to defend their industrial strategy before the parliament and answer to detailed questions that may represent more of a political agenda than a pure business rationale. Instead the Knowledge & Support Centre would be responsible for overseeing (in a professional and expert way) the individual SOEs, while being at the same time accountable towards the parliament for the overall execution of its important public role.

For the SOEs with mainly a public function role, this accountability is more complicated. Here it is more defendable that there is a direct accountability towards the parliament. However also for those companies one should critically evaluate whether the actual approach should not be rationalised. Having yearly thousands of detailed questions to answer before a plenary parliament or a parliamentarian commission is certainly not the most optimal solution in a modern society.

5) **The government and the respective Ministers**, monitoring the SOEs (either directly or indirectly) **could also count on the expertise of the specialists of the centre to support them in their governance role**. Since they will have to develop (more than before) an overall strategy and organise a professional monitoring process, the K&S Centre could be an important partner in supporting them in these challenging roles. In fact, the centre could drastically improve the quality of the communication from final owner (government) to their board representatives (public directors) and SOE management and vice versa.

6) This centre would allow the **creation of a pool of independent experts** (all the more relevant if coping with huge investments in complex industrial and financial enterprises) as **well as potential board candidates**.

As it is not the intention to reinvent the wheel, this new knowledge and support centre should make use – as much as possible – of the existing organs. Therefore, as mentioned before, the 'Knowledge & Support Centre' **could be organised within the existing FPIM-SFPI under the condition that a number of modifications are installed**.

3.5.2. A better understanding of the long-term strategy, the ambition as well as the outcome of government interference

It is commonly agreed by all that **the Belgian State lacks a global shareholding strategy**. Foreign examples as well as the OECD recommendations[11] emphasise the need for a clear strategy framing the active role of the State as a shareholder. According to GUBERNA, **a declaration should be done – at the start of each legislature – on the general policy around SOEs as well as on the industrial strategy underlying public shareholding**. This was already indirectly evocated in 2002 by Frans Rombouts (ex-CEO of the Belgian post): "Rombouts pleit daarom om voor afspraken bij de regeringsvorming over de doelstellingen en wil die tijdens de legislatuur opvolgen met behulp van benchmarking en objectieve parameters. Dan pas wordt de ministeriële verantwoordelijkheid

[11] OECD Guidelines 2005 (Guideline II.A): "The government should develop and issue 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."

concreet." (De Tijd, 2002). Already in 2001, press articles mentioned the need for the State to fully play its role as shareholder: "Aujourd'hui, l'Etat ne va pas au bout de sa mission d'actionnaire: primo, en ne régulant pas assez certains marches; secundo, en ne suivant pas d'assez près ses administrateurs; et tertio, en n'étant pas assez clair sur la place des entreprises publiques et sur les alliances possibles." (Philippe Defeyt in L'Echo, 2001).

International examples have demonstrated that such a professional approach brings numerous advantages. This declaration would make the strategy clear to companies but also to the public at large (via the parliament, the media, etc.). Such transparency would enhance public accountability, while at the same time facilitating the interaction between management, board and shareholders of the different SOEs. This would allow the directors and managers of SOEs to get a better view on the rules of the game, i.e. the ambitions and objectives of the State shareholder, their responsibility and hence accountability for developing the best way forward. International examples have proven that such approach can also lead to more efficiency and a better outcome (in terms of societal effects as well as in profitability terms, an advantage of great importance in times of huge pressure on public budgets). Also the OECD identifies a number of advantages (OECD 2010, p.12): 1° It helps government to avoid the usual pitfalls of passive ownership and excessive interference, which often follow from multiple and contradictory objectives. 2° The ownership policy also serves as an effective tool for public communication and provides companies, the market and the general public with a clear understanding of the State's objectives as an owner and its long-term commitments. It thus helps the State to clearly position itself as a predictable and long-term owner.

In addition to the general policy around SOEs and the industrial strategy underlying public shareholding such a declaration of general policy should also define: "1° The mandate given to the ownership entity in exercising the State ownership rights. 2° The main functions fulfilled by the ownership entity(ies). 3° The organisation of the ownership function within the State administration and its evolution. 4° The main principles followed or policies implemented by the ownership entity regarding the exercise of ownership rights. Issues covered could include directions on the nomination of SOE boards, the role of general meetings, the role and functioning of boards, the appointment of external auditors, the remuneration of management, etc." (OECD 2010, p.13).

The issue of the strategy is really essential in the debate on the role of the State as a shareholder. It is clear that the State lacks of a global strategy and this has been highlighted for years. Already in 2002, Frans Rombouts pointed out that "het gebrek aan visie en besluitvorming van de overheid als aandeelhouder is nefast voor de overheidsbedrijven" (De Tijd, 2002).

3.5.3. Clarifying the role of the different actors and improving the communication

The role of the different actors is currently unclear, if not confusing and there is a lack of a clear internal and external communication. **The reorganisation of the State's shareholdings should improve the communication between the actors and clarify the role of each of them**.

As evocated before, **the State** (via the Council of Ministers) **should be responsible for its own industrial policy and for (indirectly) approving the strategy of each of the SOEs**. These State strategies are the starting point for the operations of the 'Knowledge & Support Centre' that should support and professionalise the State's participations. It is this centre that should be in direct

 ©GUBERNA 2014

contact with the SOEs. However it remains important that such 'delegation of power' to the K&S Centre is embedded into a governance framework supported by the supervising Minister and in fact by the full government (via the Council of Ministers). In order to guarantee the respect of the industrial and specific corporate strategies and develop the specific role to be played by the K&S Centre, a management contract could be concluded between the government and the K&S Centre. A government commissioner could control the correct execution of this specific management contract.

In case of public service oriented SOEs, the State, represented by the Minister for public enterprises, will also conclude directly **management contracts with the specific SOEs**. In such cases there could additionally be a second line of (indirect) monitoring by specific sector ministries. The minister for public enterprises could be supported by a **government commissioner** in order to directly control the fulfilment of the obligations indicated in the management contract. The role of the government commissioner should be clearly defined with a focus on the control of compliance (with laws and management contract) while limiting the check on opportunity of decisions unless the fulfilment of the management contract could be endangered.

Also the role of the **directors – nominated by the State –** has to be clearly defined. In the public governance context, public directors are torn between the interest of the company and these of the shareholders. From a legal point of view, directors **should act primarily in the interest of the company**. However, from practical observations, it appears that **public directors should also consider the strategy of their shareholder**. To do so, the State has to clearly express its expectations towards its directors. In this model, the mission should be detailed by the State to the K&S Centre and the **centre should be responsible for informing the directors on their missions, the strategy to be accomplished and for helping them with technical expertise**. The first advantage would be that the public directors can perform their mandate in a professional way with the support of dedicated experts. This would be all the more relevant in an environment of complex business and investment proposals. In case of private-public shareholding, it would also allow building in countervailing expertise towards the well supported private directors. But another, may be even more important advantage, could be that in this way, the public directors would not have a direct contact with the minister and his/her cabinet, leading to the **advantage of decreasing direct political influence**.

3.5.4. Classification of the shareholdings according to relevant criteria

Based on the international best practices and on the discussions with the Belgian experts, GUBERNA wants to emphasize the **need for a relevant segmentation of the shareholdings** due to the fact that the governance must be adapted to the specifics of each kind of companies. The analysis of foreign models demonstrated that a common parameter for classification is the finality of SOEs: **public service oriented or commercially oriented**.

To this end, GUBERNA already proposed in the previous paragraphs to start off with a dual model. Since the dual model will be supported with a dedicated **K&S Centre**, it is important to clearly fine tune the specific role this Centre might perform towards each of these two Ministries and sub-organisations (like the FPIM-SFPI). To this end, a differentiation has been suggested in the degree of direct involvement of the political powers (the government, the Ministries, the cabinets etc.). For commercially oriented SOEs, the State (the Minister of Finance, in consultation with the Kern or the Council of Ministers) should define a general industrial policy and give the K&S Centre the

©GUBERNA 2014

responsibility of its implementation in each of the SOEs. Companies being public service oriented, will be more directly steered and monitored by the State (the Minister for public enterprises, in consultation with the Kern or the Council of Ministers) mainly on the base of the management contract. For these SOEs, a government commissioner should control the respect of this contract and of the law, and this, in order to preserve the public interest. Those SOEs should also rely on the K&S Centre for the development and implementation of a 'tailored' governance framework.

On top of this dual approach, the organisation of the State's shareholdings in commercially oriented SOEs could be further structured along some additional criteria (as it is the case in many European countries). For example, from a governance perspective the **shareholding structure** might be a very relevant factor to further optimise the organisation structure within the FPIM-SFPI. To this end a **specific department could be dedicated to listed companies and one to companies operating with private equity partners** (or in the frame of a public-private partnership) as the governance of these kinds of companies requires specific attention and competence. Another differentiation might be based on the distinction between companies where the State is the **sole shareholder** versus those where the State is a **majority shareholder (or has a controlling position)** and those where the State only has a **minority stake**. It could also be relevant to foresee differentiated support according to the specific sectors. Such a structure would afford the constitution of various pools of experts dedicated to a specific kind of company and governance.

Finally it would be good to critically screen the whole portfolio of SOEs to detect how **sector-specific** knowledge and expertise could be better developed and optimised. This could be through departmentalisation or through the organisation of dedicated expert pools.

3.5.5. Graphical representation of the recommendations

Although our proposed model is based on a **dual approach**, we however would like to reflect on the opportunity of **combining all shares within the K&S Centre** (under the control of the Minister of Finance and the Treasury). This proposal allows consistency as well as optimal use of knowledge and expertise. Within this K&S Centre a specialised department could be installed that develops and gathers all legal, financial and governance expertise as to the execution of shareholder rights and the full respect of shareholder duties. This is why we propose that this Centre would be directly accountable to the Council of Ministries and the Parliament.

While the K&S Centre owns shares of both public service and commercially oriented SOEs, the role towards those two kinds of companies is clearly different. For the commercially oriented SOEs they are the direct monitor for steering the strategy and monitoring its execution, for controlling the results and for all other governance matters (such as nomination and evaluation of directors). For public service oriented SOEs on the contrary, they only perform an advisory and supportive role (mainly in relation to governance matters), while the direct steering and monitoring rests with the Minister for public enterprises and his government commissioners. The Minister and his commissioner are responsible for finalising and controlling the execution of the management contract between the State and the public service oriented SOEs (and eventually with commercially oriented SOEs if they still assume public service missions). As to commercial SOEs that still perform a (minor) public service function, there is a dotted line between those SOEs and the Minister for public enterprises, because this Minister remains responsible for overviewing the related management

©GUBERNA 2014

contract and its execution in practice. However this intervention is rather limited, and should be fully in line with the limited character of the public service function and the limited scope of his/her intervention, i.e. just to see to the correct respect of laws and regulations from the perspective of the management contract.

The suggestions given in the figure below are only tentative examples, since the final classification needs to be further defined by the policy-makers.

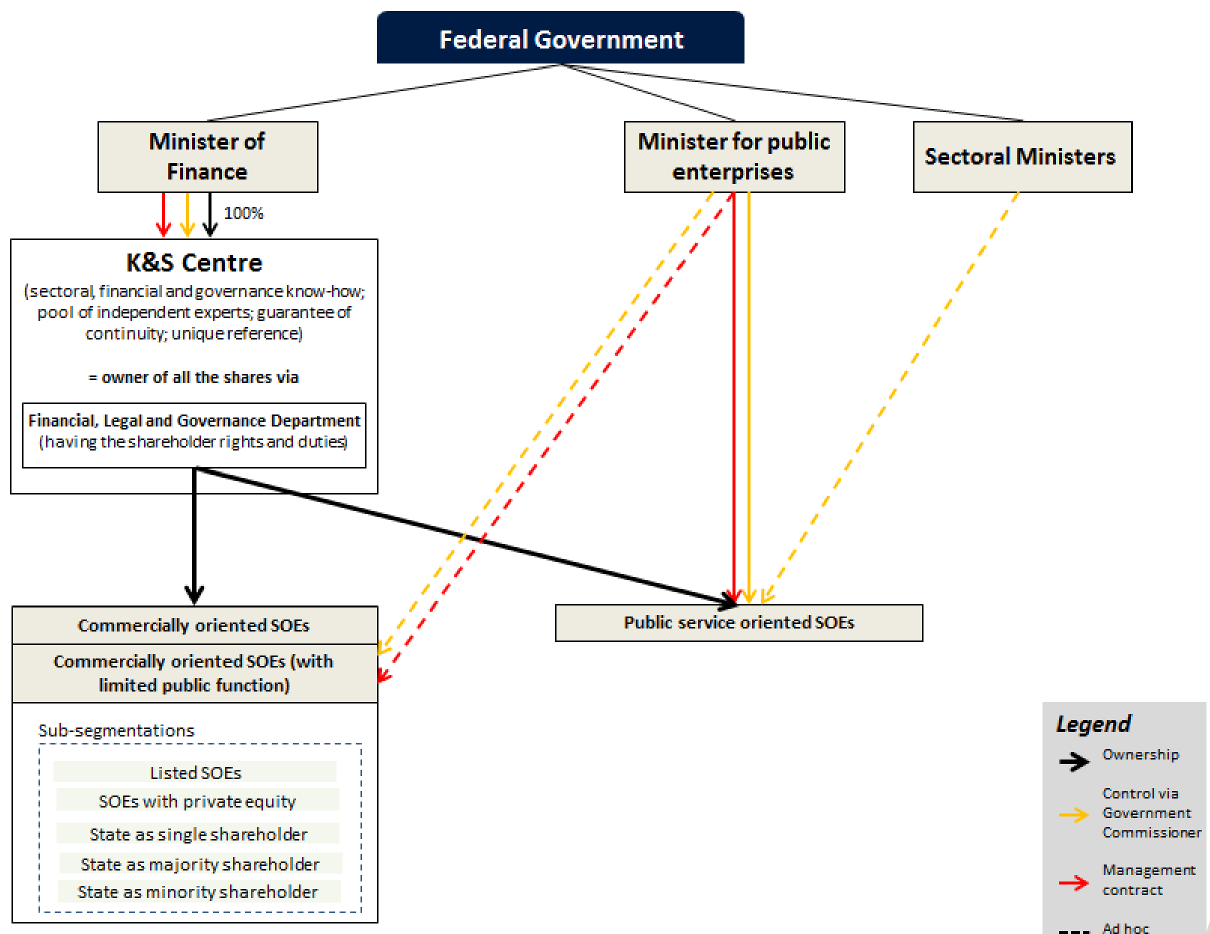

Figure 20 - Suggested public shareholding organisational model

Figure 20 is based on figure 19 and highlights the responsibilities of every actor. It emphasizes the necessary checks and balances within the suggested model.

©GUBERNA 2014

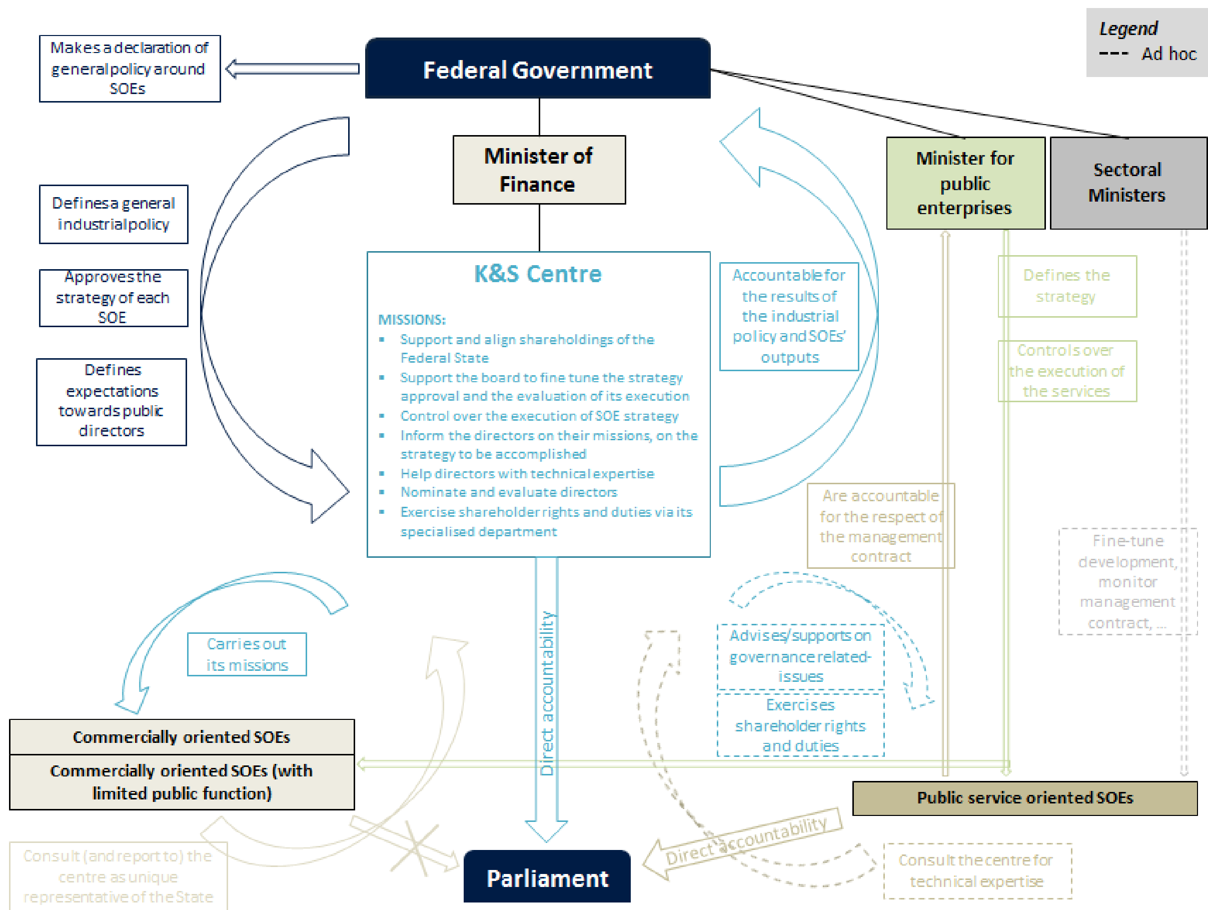

Figure 21 - Suggested accountability system

© G U B E R N A 2014

4. How to select public directors and organise their relations with the State?

Besides the organisation of the shareholding function within the public administration, a second important challenge for optimising the role of the State as a shareholder concerns the effectiveness of the boards of SOEs. The State acting as an active owner should pay particular attention to the composition of these boards, the selection of directors and the package of responsibilities delegated to these boards. Moreover, the State should make sure that the reporting from the board to the authority works properly and that the accountability of public directors is clearly defined. Another important challenge for public boards (or in general boards of SOEs) is to find the right balance between fostering the corporate interest (and creating economic value) with performing a public policy function (and creating social welfare). To this end, the distinction made between commercially oriented organisations and public policy oriented organisations might be very relevant as well.

Having a professional board of directors is a challenge for each company but it is even more complex in a public context. Numerous problems need further investigation, such as (1) the large impact of political considerations, when selecting public directors; (2) a clear definition of the responsibilities of the SOE board (which necessitates – like in every company – a tailor-made approach within a well-defined reference framework); (3) the way the State (in all its dimensions) will, can and must interact with the SOEs' directors and management; (4) and how (and towards whom) the SOE directors are accountable. This challenge is even more complex than in a traditional company, where the shareholder is often himself present at the board.

This second part of the report will further analyse these challenges and will be built around the same structure as the previous part. First, the OECD point of view will be analysed. Second, the current Belgian situation will be presented. Third, interesting foreign examples will be highlighted. Finally, we will conclude with a reflexion on the Belgian approach and propose a number of recommendations.

4.1. The OECD's point of view

4.1.1. The selection and nomination of board members

From a general governance perspective, the board of directors, eventually supported by a nomination committee, guides and coordinates the selection process of new directors, but it is the right of the shareholders to finally nominate the directors. To this end, the shareholders can give input and provide candidates to be proposed for nomination. However, governance recommendations clearly propose that this selection and nomination process be conducted in a professional and transparent way under the final responsibility of the board of directors. Although there is still quite some room for improvement in the private sector, there is a clear trend towards more transparency and professionalism and an increasing role for boards in guiding the selection process, certainly when it comes to the nomination of independent directors.

 ©GUBERNA 2014

To reach the required degree of transparency and professionalism, the nomination process of public directors still has a much longer route to go. In most cases, the nomination is a government responsibility and therefore subject to political equilibriums. At national, as well as international level, there is **growing criticism to this sometimes highly political process**, that might ignore not only governance best practices but even go counter to the compliance with the governance principles of the (commercially oriented) SOEs.

In a public context, the challenge is to select directors in a transparent way in order to ensure that the process is professional and not only based on political bargains. As mentioned by Frederick (2011), "Political interference in the nomination process has in the past led to inefficient outcomes in the long term, resulting in excessive turnover, a lack of desired profiles on the board, or even stagnation due to the lack of fresh faces or innovative persons." Also OECD research (2005 [2], p.130) notices that "In practice, the nomination of SOE boards is sometimes complex and may also lack transparency. The ownership entities are not always the main decision bodies regarding the nomination of SOE board members, and more particularly State representatives within SOE boards. Many different Ministries or other government organs may be involved, especially where the dual model of ownership is used, and strong political influence is frequent. Very few countries have set up clearly defined processes for the nomination of SOE boards."

In light of this, the OECD points out that an efficient selection process starts with a **strong nomination framework** which will shield the board from direct political intervention. In this respect, **a rules-based selection process overseen by a governmental ownership function is required**: "overseeing the board nomination process is among the primary responsibilities of the ownership function" (OECD 2013, p.30). The OECD (2013, p.31) recommends to set up "an authority that will formally exercise, oversee or audit the nomination process, and to warrant a formal, competitive and transparent recruitment process that avoids ad hoc interventions or deviations from the (formally) stated procedures." However, the international organisation stays realistic when adding that there is probably no way to entirely shield the board from some degree of political overlay.

The main OECD recommendation can therefore be summarised as follows: "Establishing a transparent and consistent method to identify applicants from a wider pool of talents will improve board composition and bring uniformity in the assessment process." (OECD 2013, p.34).

The OECD identifies various tools that the ownership function may use in the selection process of SOEs' directors:

- pre-declaration of formal qualification requirements;
- informal processes to vet or advice on ministerial appointees;
- formal or informal nomination committees.

By the way, "Where a centralised ownership unit has been established, it is common for the unit to have responsibility for soliciting/receiving applications and then vetting these applications against any pre-determined qualification criteria." (OECD 2013, p.35). In this respect, the practice demonstrates that ownership entities use different methods:

- pools of directors (managed by the ownership unit itself or by the national institute of directors);
- recruitment of professionals (for a limited part of the selection process);
- reliance on the incumbent board.

©GUBERNA 2014

As it will be demonstrated through international best practice examples, “The key elements of a robust nomination framework will include clearly specifying the person or body responsible for nominating board members; being transparent about any qualifications that may be required, or guidelines that exist on appointments; and pursuing a consistent approach across all SOEs. **Ultimately countries which follow a robust nomination framework report that they have had the best possible outcomes in terms of finding qualified people for the job.**” (OECD 2013, p.31). It is however important to preserve a certain degree of flexibility when setting up formal requirements since OECD notices that good practice increasingly relies on tailored approaches to identify per SOE the right mix between skills, experience and personal characteristics.

Regarding those observations and recommendations, it appears that **responsibilities, including the one of selecting public directors, must be clearly identified within the ownership model**. This means that installing (identifying) a dedicated (central) organisation of the State shareholding within the public administration – as discussed in the first part of the report – is a prerequisite for a coherent director selection process. “There is a fairly clear distinction between those jurisdictions that have centralised ownership, for instance through an ownership agency, and those that do not. In the former, one Minister usually is in charge of the ownership function, and in the case of highly commercial SOEs usually is in charge of board nominations. Where SOEs are subject to sector interest (and sector regulation) it is more likely for the nomination process to be coordinated across government.” (OECD 2013, p.32). **OECD research demonstrates that with different ministries involved in the appointment process this may lead to less optimal board composition and governance dynamics**. If directors of a specific SOE are appointed by different ministers, the risk might be that those directors see their role mainly as representing the interest of the specific sector Minister that appointed them, so giving priority to his/her specific political interest, rather than owing their duties to the company as a whole. This also touches upon the balance between corporate and public interest that will be discussed later on in this report.

Another dimension that may influence the governance effectiveness of SOEs is that the nomination process should be aligned with the type of SOE under consideration. As the international research has shown the world of SOEs might be very heterogeneous in practice. “**The level of formality of the nomination framework will vary according to the level of commercialisation and corporatisation in addition to the stake in ownership (i.e. whole or partial ownership)**” (OECD 2013, p.31).

The selection process has a substantial impact on the final composition of the board which is also of critical importance in corporate governance and is often the subject of criticisms in the public sector. The OECD (2005 [2], p.122) states that “In a number of OECD countries SOE boards still tend to be too large, excessively staggered with too many State representatives lacking business perspective and often independence. They may also be deprived of some of their critical responsibilities, to the benefit of shareholding ministers or the management”. Confronted by this situation, the OECD (2005 [1], p.49) recommends that “SOE boards should be protected from undue and direct political interference that could detract them from focusing on achieving the objectives agreed on with the government and the ownership entity”. There is a general consensus amongst OECD countries to say that SOE directors cannot be directly linked with the executive powers (e.g. ministers and their close associates). This leads to the recommendation that persons directly linked with the executive powers should not sit on boards and that other State representatives should be nominated based on qualifications, subject to specific vetting mechanisms.

© G U B E R N A 2 0 1 4

4.1.1.1. Focus on the nomination of independent directors

When looking at the composition of SOE boards, the question of independence needs special attention, not only because this concept is also relevant to the governance of SOEs, but also because the nomination process for independent directors seems to be quite different from the one for shareholder representatives, as we have generally observed in the private and public sector. It should however be acknowledged that the appetite for nominating independent directors is less developed in the public sector than it is the case in the private sector.

The rigorous selection process described by the OECD is of particular relevance when speaking about the selection of independent directors. However, 'independence' is an unclear term in corporate governance, especially in a public context. In practice, most of the countries have a mix of State, State-appointed and independent representatives at SOE boards. A previous GUBERNA report (2006) had already highlighted the controversy around 'independence' in public organisations. Some people say that we can never talk about independent directors in the public sector because everybody has a political colour or at least a political preference. For others, it is still possible to identify directors fulfilling a minimum number of independence criteria. In this respect, in its latest report on Governance of State-owned Enterprises in the Baltic States, the Baltic Institute of Corporate Governance (2012, p.77) points out that "Whether or not a board member can be classified as independent can be a matter of judgment. […] There is, at times, margin for interpretation, and some board members fall into a grey zone. Overall, a narrow definition of independence is applied with respect to parliamentarians, members of political parties, political donors and individuals with strong links to the state or the government. Such board members may possess some independence of mind in fact; however, the basic assumption is that strong political and government links pose a significant potential conflict among board members of SOEs. At the very least, such individuals are not considered the optimal choice when seeking to enhance SOE board independence". According to the OECD (2005 [2], p.193), "Independence requires that all board members carry out their duties in an even-handed manner with respect to all shareholders […] It means that board members should not be guided by any political concern when carrying out their board duties." However, the OECD underlines that 'board independence' should not be confused with 'independent directors'. What is important is to have an objective and independent board. The notion of independent director is actually subject to national definition and varies a lot from one country to the other. In this respect, the OECD Working Party on State Ownership and Privatisation described the extent of the term independence in the following way:

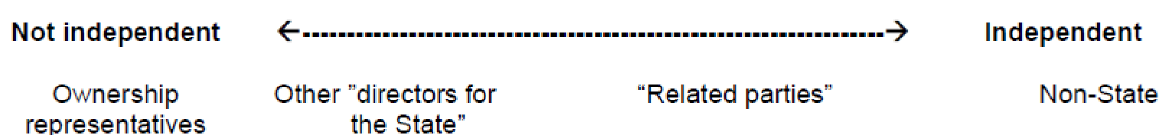

Figure 22 - A continuum of board 'independence' (OECD 2013, p.50)

The OECD emphasizes that good practice wants that **persons linked with the executive public**

© G U B E R N A 2014

power should not sit on SOE-boards, that other **State representatives should be nominated based on qualifications**, subject to vetting mechanisms and that independent directors do not represent stakeholder interest in the company but bring skills and competencies to the board (independent from management, government, business relationships, …). This definition of the position and role of 'independent' directors has been transposed in the new Flemish Decree on governance in the public sector, requiring a minimum of 1/3 of independent directors in all boards of SOEs by mid 2018.[12]

The OECD notices that **where the State is a 100% shareholder, good practice would call for a majority of independent board members**. Where the State is a majority or controlling shareholder, the legislation may still require for the board to be composed of both State-appointed and 'independent' directors. For State-appointed directors, the responsible ministers have the ultimate responsibility for nominations in order to bring legitimacy to the process while not undermining the role of the ownership function. However, according to the OECD and to observed best practices, **all nominees should be approved by the Annual General Meeting of shareholders (AGM), regardless of how the board is composed.**

The OECD calls for a rigorous selection process for **independent directors**. The organisation recommends that for each vacancy, the required skills should be clearly spelled out in an **open** and **transparent** way. Such **professional selection procedure** should be set up for all SOEs. However, it can be relevant to slightly adapt the procedure according to the kind of organisation considered.

The practices for the nomination of **State-appointed directors** should still be **based on a competitive process**. The fact that State-appointed directors are not 'independent' does not mean that the selection process of these directors must not be based on their professional merit and competence. Such a competitive and professional process will thereby reinforce their 'independence'.

Once again, it seems important to make a distinction between companies having commercial objectives and companies that are public utilities oriented since the justification for public sector representatives is probably stronger when the non-commercial objectives of the enterprise are more prominent.

4.1.2. The dialogue between government, board & management and the balance between the public interest and the corporate interest.

The OECD guidelines make a plea for respecting the governance structure and clearly distinguishing the respective roles and duties of the shareholders, the board and management. However, applying such international principles may reveal special problems in SOEs. One element of complexity is the difficulty to identify the final shareholder and how best to organise the (direct) link between the shareholder, the board and the management. Moreover, one cannot forget that the government is in turn accountable to the parliament.

According to the OECD (2013, p.30), "The State acting in its capacity as shareholder needs to form ideas about whom it wants on the board to act in its own and the company's best interest. However, unlike the private sector, Ministers are not the 'owners' of SOEs, nor do they directly take part in the

[12] Articles 4 and 32 of the 'Decreet betreffende deugdelijk bestuur in de Vlaamse publieke sector' (22/11/2013), Official Belgian Gazette of 9 January 2014, p.876.

© GUBERNA 2014

board process. **The challenge is to avoid excessive politicisation and to base decisions on clear rationale and justification**.” In this respect, as evocated before, the implementation of a clear and transparent process for selecting board members is required. This OECD recommendation also raises the issue of the balance between the public interest and the corporate interest. The international examples analysed in the report will demonstrate that countries do not have the same approach on this.

When considering the role of the different actors, it appears that “The board of directors must act essentially as the intermediary between the State, as the shareholder, and the company. It actually ‘has as duty to act in the best interest of both’ […] In the case of wholly-owned SOEs, the owner and the shareholder are essentially the same, but the board still has a duty to act in a way that represents both the “owner’s” interest, (i.e. the ownership function) and the shareholder interest (i.e. the general public – assumed to be represented by government/parliament). Board members must act in a way that does not compromise their duty of loyalty of both interests” (OECD, 2012, p.10).

The international organisation recommends that “all directors, in principle, should have the same responsibilities and be required to act in the best interests of the owner and/or the SOE. **The various representatives on the board should not be seen as competing fractions representing different interests. The best interests of the State should be weighed with that of the company (and in accordance with the high level objectives set by the ownership entity).**” (OECD 2013, p.49).

In order to picture the relations between those different actors, the OECD Working Party on State Ownership and Privatisation set up the following figure:

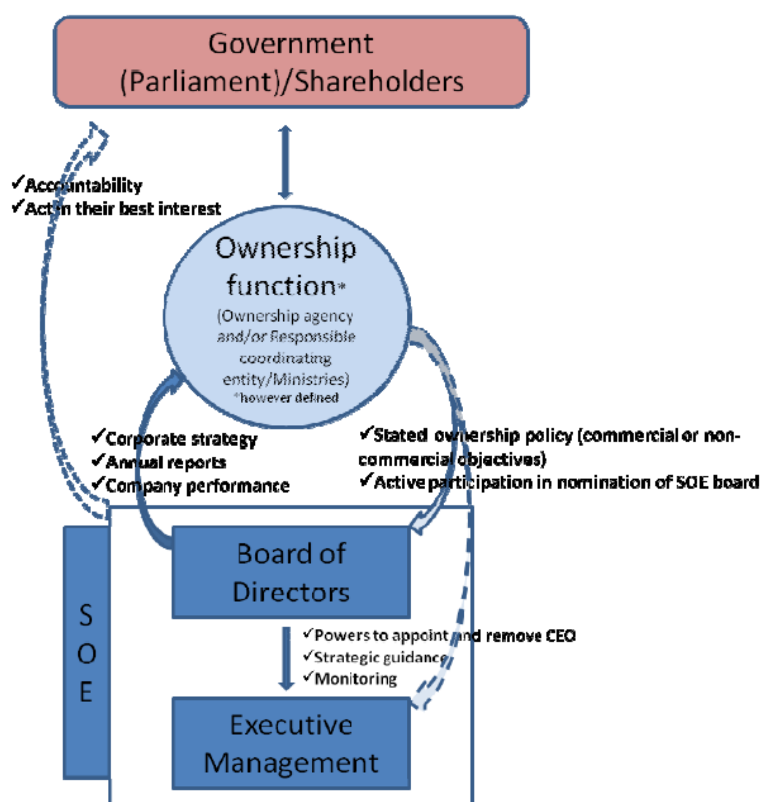

Figure 23 - The role of the board in a three-layer governance structure (Source: OECD 2012, p.11)

©GUBERNA 2014

Based on this figure, the OECD states that it is **important that proper channels exist between the State and the board in order for the State to be able to inform the board of its objectives and priorities without infringing upon board autonomy and independence.** It has to be avoided to appoint a small number of "'directors for the State' who act as custodians of the government interest from within the boardroom. The relevant decisions need to be made by, or communicated to, the board of directors, as a unit" (OECD 2013, p.26).

According to this OECD's figure, **the SOE board of directors should have the powers to appoint and remove the CEO, like it is the case in the private companies**. However, in a number of countries SOE boards do not fulfil this key function. This may engender diverse fallouts: **"without this crucial role of nominating the CEOs, and without the power to remove the latter in case of poor performance, it is difficult for the boards to fully exercise their monitoring function and to feel responsible for the performance of the company. This deprives SOE boards from one of the most powerful accountability levers and is considered as one of the most significant issues in SOE governance in many OECD countries"** (OECD, 2005 [2], p.142). In addition, if the CEO is directly appointed by the government, there is a risk that he takes instructions directly from political circles, circumventing the board of directors, what can lead to a significant weakening of public governance.

4.2. The Belgian situation

4.2.1. Selection and nomination process

The selection of board members in Belgian public enterprises is of special importance. This is not only due to the increasing role of the State as a shareholder, but also because of the huge attention SOEs receive in today's society. In this respect, one can just refer to the avalanche of recent media messages stating that the current system needs to be improved. Politicians have been urged to stop what is called the 'carrousel' or the nomination circus, blaming that the nominations have been delayed, sometimes for years, whereas some nominations were finally decided overnight, without serious screening. It is **criticized that there is more attention for political equilibriums and for the primacy of political interventionism than for a professional selection process**. Already in 2002, the newspaper 'De Tijd' pointed out in an article about the Belgian Post: "Bij overheidsbedrijven als de NMBS en De Post zijn de meeste bestuurders aangesteld door politieke partijen. Hun visie stemt niet noodzakelijk overeen met wat het beste is voor het bedrijf. […] Zo werd iemand zonder enige managementervaring lid van het directiecomité omdat de raad van bestuur dat besliste. Een ander maakte het zo bont dat zijn eigen partij hem terugfloot." (De Tijd, 2002). This article demonstrates that the problem of political interventionism is not new, but the recent avalanche of media criticism shows that it has seriously increased over the last decennium.

The composition and the structure of the boards differ sharply amongst SOEs. But generally, the boards of Belgian SOEs are characterised by a high number of State-appointed directors. **'Independent' directors are only found in a limited number of cases**, especially because of the legal obligations. Moreover, transparency on the nomination process is lacking in most of the cases.

Responsibilities in this nomination process are not transparent, while actors are hesitant on the procedure to follow. In practice, one can notice that the composition of the boards reflects mainly a political choice. However, a process led by the government does not mean that the selection is not

 ©GUBERNA 2014

professional. **Yet there are good practices as well, practices that should be encouraged, generalised and formalised**.

Our analysis of the Belgian practice is limited to the selection process in the SOEs of the portfolios of the Minister for public enterprises and of the wholly State-owned holding (FPIM-SFPI), having three different kinds of participations. Besides those two main shareholding entities, there are still other SOEs (mainly public service oriented) that are under the responsibility of sector ministers where usually no 'independent' directors and/or a formal selection process can be identified. Those SOEs are not directly analysed in the framework of this document.

The four companies that are under the supervision of the Minister for public enterprises are governed by the law of 21st March 1991 which limits the size of the boards (it is also the case for Belgocontrol which is governed by this law as well). Actually, in 2012, the average of board members in those autonomous public enterprises is 10. The law of 1991 provides that the King (to be understood as the government), via ministerial decree, determines the number of directors and appoints them (if the autonomous public enterprise has not the form of a public limited company). The composition of the boards reflects therefore a political choice. The law of March 1991 also contains a measure towards gender diversity saying that at least one third of the directors must be from the opposite sex.

Within this group there is Belgacom, a listed company where the State is majority shareholder. On top of the 1991 law this company follows regulations and recommendations for (private) listed companies. Proportionate to its shareholding, the State appoints directors who will seat together with 'independent' directors appointed by the other shareholders (via the general assembly). Actually, in the case of listed companies, the board has to count a minimum of three independent directors within the meaning of the article 524 of the Belgian company law. Moreover, board committees have to be composed of a majority of independent directors[13]. However, the definition of independence does not take into account any political dimension.

The situation within the FPIM-SFPI is depending on the kind of participations concerned. Logically, the holding has the right to appoint directors according to the weight of its shares. But the selection and the nomination of the board members are not governed by specific laws. The selection process is sometimes led by the Finance Ministry and as such is also dependant on the political hazards. However this does not mean that the selection is not professional. Recent nominations in FPIM-SFPI participations have been externally led by executive search agencies and have been set up according to high standards. Such an approach should become the norm.

The figure below describes the theoretical selection practices in Belgian SOEs from the portfolio of the Minister for public enterprises and of the FPIM-SFPI holding:

[13] By law, the remuneration committee must be composed by a majority of independent directors while the audit committee must include at least one independent director. The corporate governance code 2009 is more demanding than the law as it states that the audit committee should also be composed by a majority of independent directors.

©GUBERNA 2014

Shareholding entity	Kind of participation	Preparation	Candidate identification	Assessment of candidates	Selection and nomination	Notes
Minister for public enterprises	**Listed companies (Belgacom; bpost)**	A formal function profile is set up by the board of the SOE and forwarded to the Minister. BP: Belgacom Required profile set up by the board	CV (+ cover letter) are forwarded to the company.	The board deliberates based on the candidates' profile and the advice of the Nomination and Remuneration Committee. Board issues a recommendation to the Minister.	The Minister prepares the royal decree and the file for the Council of Ministers. The Minister asks the advice of the Inspectorate of Finance and the approval of the Minister of Budget. The Council of Ministers takes the final decision and submits the Royal Decree to the signature of the King.	Besides the State-appointed directors, the law provides for the presence of minimum 3 independent directors. Those directors are appointed by the other shareholders than the State via the AGM (BP: Belgacom). BP: The nominations are approved by the Council of Ministers, what gives legitimacy and consensus to the decision.
	Non-listed companies (SNCB; Infrabel)		CV (+ cover letter) are forwarded to the company. (BP): some years ago, the SNCB/NMBS advertised job offers for vacant board mandates	The board deliberates based on the candidates' profile and the advice of the Nomination and Remuneration Committee. Board issue a recommendation to	The Minister prepares the royal decree and the file for the Council of Ministers. The Minister asks the advice of the Inspectorate of Finance and the approval of the	The State-appointed directors nominated by a royal decree and therefore not elected by the AGM as for the other directors. BP: The nominations are approved by the

©GUBERNA 2014

				the Minister	Minister of Budget. The Council of Ministers takes the final decision and submits the Royal Decree to the signature of the King.	Council of Ministers, what gives legitimacy and consensus to the decision.
FPIM-SFPI Holding	**Investment holding**	No formal procedure, this is just a board decision: directors appointed by the FPIM-SFPI are sometimes chosen within the FPIM-SFPI staff while they are sometimes external directors.				
			For external directors, FPIM-SFPI hires external executive search agencies	For external directors, FPIM-SFPI hires external executive search agencies		
	Public holding	No formal procedure: FPIM-SFPI is in principle represented but the representation is sometimes purely formal. It appears that the government plays a prevailing role in the selection of the FPIM-SFPI's directors as the Council of Ministers makes the decision that will formally be voted at the AGM.				
	Delegated missions	No formal procedure: the political influence is even stronger. While the FPIM-SFPI is the formal shareholder and therefore proposes board members, the government stays the key actor all through the process and makes the final decision.				
			BP: Belfius Professionalization via external head hunters.	BP: Belfius Professionalization via external head hunters. BP: Banks: external assessment via NBB ("Fit and Proper")		

Figure 24 - The (theoretical) selection process of public directors in Belgian SOEs

© G U B E R N A 2014

According to Belgian experts and practitioners consulted by GUBERNA, the 'conceptual' processes described in the figure are not always followed in the Belgian practice, although pressure mounts to do so. For example, as far as non-listed companies under the responsibility of the Minister for public enterprises are concerned, it appears that the law and the recommendations providing a role for the board of directors in the selection process of 'public' directors is often not respected in practice. The selection 'right' to propose specific public directors and top managers is actually the result of a negotiation between political parties based on their respective democratic weight. The board of directors is insufficiently involved or consulted throughout the process. Such process might create the impression that directors are mainly selected thanks to their political connections rather than primarily on the base of their skills and experiences. However, being appointed by political parties does not automatically mean a lack of competence or experience. Candidates can be politically appointed and highly qualified but **experts deplore the lack of transparency on the process, of board involvement and of disclosure on the required mix of competencies**.

While the Table describes the selection process for public directors in the SOE's within the portfolio of the **FPIM-SFPI**, it does not delve into the process for directors of the FPIM-SFPI's board itself. There is a **set of conditions that apply to the board as a whole**: the board must count a minimum of 12 members; it must be composed of people having relevant and complementary skills; one third of the board members cannot have more than 3 other mandates while another third cannot exceed one other mandate; the board must count the same number of French- and Dutch-speaking members; board members cannot be a member of any parliament, nor a minister, nor a mayor, nor a municipal councillor, nor a chairman of CPAS/OCMW of a town counting more than 30.000 inhabitants; one third of the board members must be from the opposite gender; there is an age limit at 65 years; the chairman must be French-speaking if the CEO is Dutch-speaking (or vice-versa); there must be two vice-chairmen: one Dutch-speaking and one French-speaking; half of the board mandates must be renewed every three years.

The **FPIM-SFPI has set up a formalised process to select the three categories of board members in their corporate board**: the CEO (i), the ordinary directors (ii) and the independent directors (iii). (i) In 2013, the selection of the CEO was done by an external head hunter. The remuneration committee of FPIM-SFPI is involved in the process and establishes a job description that will serve as basis in the selection process. Candidates are identified within the network of the head hunter, combined with input from the government as well as with candidacies resulting from a public announcement of the job offer. Concertations to screen the (numerous) candidates are done in a stepwise approach (from the total group of candidates to a long list and secondly to a short list). The Council of Ministers is responsible for the final nomination. (ii) The 9 ordinary (or public) directors are selected through a negotiation between the governing political parties. (iii) Besides the public directors, there are two independent directors who are selected by a jury (composition determined by royal decree) and formally nominated by the FPIM-SFPI's general assembly. The **criteria of independence** are as follow: no remunerated mandate for the State/Region/Community/Province or any institution depending on them, and this, in the 6 years before the nomination; the same applies to any of the FPIM-SFPI's shareholdings/investments or the FPIM-SFPI itself (but for management functions only); those conditions also apply to family members (up to the second degree) of the candidate.

©GUBERNA 2014

4.2.2. The role and duties of the board of SOEs

Concerning the **package of duties of SOEs' boards**, it appears that Belgium experiences the **drawbacks** highlighted before. **The most important point of attention is that in many Belgian SOEs, the board does not nominate or remove the CEO, which runs totally counter to the recommendations of the OECD.** The board is therefore deprived of one of its most crucial functions. Many Belgian actors and even international experts denounce this as a governance failure. Since the CEO is directly nominated by the State and the board cannot really sanction him/her, the CEO does not really feel responsible towards the board. Moreover, a direct nomination of the CEO by the State tends to reinforce the link between the management and the ownership function or even directly the government in this case. Therefore, there is a risk that the CEO tends to preferably report directly to the government and thereby circumvents the board. In companies that perform an important public service function, this might even be more structural, since it might well be that it is the CEO who directly conducts the negotiations about the management contract (provided for by the law on autonomous public enterprises) between the company and the government. This was already pointed out in 2002 by Prof. Thiry (University of Liege): "[…] dans de nombreuses entreprises publiques, le gestionnaire est en contact direct avec le gouvernement. Le conseil d'administration s'est ainsi transformé en chambre d'entérinement pour des décisions négociées ailleurs, directement avec les autorités. […] Il y a des progrès, mais on n'évolue pas encore vers une situation où le gestionnaire d'entreprise publique est redevable devant le conseil, émanation d'une assemblée générale qui représente les actionnaires. On est toujours dans une logique d'interférences entre entreprise, gouvernement et partis politiques." (L'Echo, 25/11/2002).

Some disposals exist in order to **balance for the fact that the board does not nominate the CEO**. The law of 1991 on SOE's foresees that it is **the board that sets the remuneration of the CEO and other members of the executive committee**[14]. With the recent discussion on remuneration of top management in SOEs this 'balance of power' again shifted backwards to the government. Experts pose serious questions to the legal status of this shift of power, since it is clear from the law of 1991 as well as from the parliamentarian discussion around that law that this **equilibrium between board and State interference and between nomination and remuneration rights (duties) has not been respected in recent nomination dossiers**; all the more reasons for critically reviewing these balancing principles and their (non)respect.

We can observe again that this tendency of the State to interfere is not new, although it is apparently increasing at a higher speed than before. Already in 2001, Prof. Eric de Keuleneer (Solvay) emphasised that "[…] cela ne doit pas non plus se faire en s'immisçant dans la gestion de l'entreprise publique. Elle reste par définition, autonome. L'Etat ne doit donc que faire jouer ses intérêts légitimes en tant qu'actionnaire, sans aller plus loin pour autant." (L'Echo, 20/07/2002).

[14] See articles of the law of 21 March 1991: « Les droits, y compris la rémunération, et obligations mutuels de l'administrateur délégué et des administrateurs-directeurs, d'une part, et de l'entreprise publique, d'autre part, sont réglés dans une convention particulière entre les parties concernées. Lors de la négociation de cette convention, l'entreprise publique est représentée par les membres ordinaires du conseil d'administration. » (Art. 21 §1 + Art. 162 quinquies + Art. 226 §2) // « Le conseil d'administration détermine, sur proposition du comité de nominations et de rémunération, la rémunération et les avantages accordés aux membres du comité de direction. Le comité suit ces questions de manière continue. » (Art. 228 §2 + Art. 161 ter §4 + Art. 221 §2).

©GUBERNA 2014

4.3. International examples

Many countries have conducted reforms in line with the OECD recommendations. While there is no single ideal model, foreign examples and best practices can provide additional insights for shaping the future outline of a reformed Belgian governance framework for SOEs. A set of European countries have developed a structured and uniform process, especially with regard to the selection of 'independent' directors. The proportion of independent directors seems correlates with the degree of commerciality of the SOE. For example, in Sweden, companies with public service obligations tend to have a higher level of public sector directors than those with mainly a commercial orientation. **In Scandinavia, the vast majority of board members are 'independent'** which means that the selection processes described below apply to nearly all board seats in those countries.

4.3.1. Denmark

OECD research demonstrates that ownership entities use different methods for setting up a selection framework. **One of the identified methods is the reliance on incumbent board.** The case of Denmark is a good illustration of this method as not only the board plays a critical role in the process but also and above all the chair of the board. Actually, in Denmark, the chair of the board is involved in all stages of the process.

The chair of the board is involved in all stages of the selection process

The Danish authorities have submitted to the OECD working party on State ownership the details of the process aiming at identifying potential board members in Danish SOEs (OECD 2013, p.42). The process can be described as follow:

- The starting point for board nomination is normally **a discussion between the Minister/the Ministry and the chair of the board about the need to change the board composition** at the next annual general meeting. A need for change can arise because current board members would like to resign, a preference for strengthening the board, a preference for ensuring that board compositions are changed gradually to secure 'new blood' and continuity (by anticipating upon upcoming succession). The initial discussion takes place in the autumn, as the annual general meeting take place in March or April.

- Given a common view of the need to change the composition of a board, **the next step is to form a view on which qualifications and experiences** of potential candidates could strengthen the board's composition. Although not fully established yet, it is the aim to develop a **written profile** of the desired competencies of any board of SOEs.

- Based on a joint view on the desired competencies, the next step is to **identify potential candidates**. It will often be the **chair** of the board that proposes a number of candidates to the Ministry, but candidates may also be proposed by the **Minister**/the Ministry. **Recruitment firms** may be involved in this process, but it is not typical. Based on the actual composition of the board of SOEs, the vast majority of board members are drawn from the private sector. Some have in the past been either employed in the public sector or been

©GUBERNA 2014

politicians (minister/member of parliament), but all have worked in the private sector at managerial level since resigning from public service.

- Based on the **short list**, which is presented **to the Minister**, the most suitable candidates (normally 2-3) to a given board post are identified. The Minister then **submits these proposals for the Government's Appointment and Organisation Committee**, who agrees on which candidate to approach. This Government's Appointment and Organisation Committee is actually composed of the Prime Minister and other key Ministers. The approach to candidates is made either by the Ministry or Board Chair, and it is **typical that the Chair interviews the candidate to make sure that expectations between the candidate and the company are aligned**. Of course, if a new Chair is to be elected, it is the Ministry that may interview the candidate (in particular if the candidate for the chairmanship is not already on the board, and therefore known to the Ministry).

- If the candidate accepts the nomination, the **Minister then presents a final proposal** to the Government's Appointment and Organisation Committee, and if approved can then **elect the candidate at the next general meeting**.

The aim is to develop a written profile of the desired competencies of any board of SOEs

As mentioned before, most of the directors come from the private sector. This can explain why there is a vast majority of independent members in the boards of Danish SOEs. However, a definition of independence in the public sector cannot be found. The law only provides for State directors not to be employees of the company or civil servants.

Also for setting the remuneration, the chair of the board plays a critical role in Denmark. Normally, "it is very uncommon among SOE boards in OECD economies to have a role in setting their own remuneration" (OECD 2013, p.71). But, in Denmark, "the chair would have an informal discussion on remuneration with the Minister, prior to the AGM, where remuneration would be set" (OECD 2013, p.71). Such a system fosters the communication between the board and its main shareholder and can prevent unexpected reactions (or even opposition) during the annual general meeting. Concerning the level of the remuneration for board members, the Danish authorities emphasize that it should be competitive even if, in practice, it is below the remunerations observed in the private sector.

The chair has an informal discussion on remuneration with the Minister, prior to the AGM

4.3.2. Finland

There is no political involvement, no political recruitment nor politicians on boards

In Finland, the establishment of the Ownership Steering Department has been coupled with the willingness to organise the State's participations in a transparent way and follow market-oriented practices as far as possible. **All directors proposed by the State to the AGM are 'independent'.** It is important to note that, in the Finnish terminology, all directors are independent unless they are employed by or otherwise related to the company or a major shareholder. **On**

©GUBERNA 2014

top of that, there is one 'public director' or State Official per board. **In contrast to the 'independent directors', State officials don't need to be assessed by the head-hunter**. In practice these State Officials are appointed by the director general of his/her department. Unless for one 'public director', there is in theory no direct political involvement in the selection process of SOE directors, although the Ownership Steering Committee does play a major role in the selection process.

For the appointment of board members (and auditors), **the Finnish State** (via its agency) is supposed to **exercise its shareholder rights at the annual general assembly** and **does not interfere in board decision-making**. The Ownership Steering Department mentions that board members shall have the necessary authority and competence in terms of experience, expertise, diversity of skills and ability to work as a team. Concerning gender diversity, Finland developed a target of at least 40% women in SOEs' boards. The Finnish system allows State officials to be board member but it is then specified that in his or her capacity as board member, a State official represents the company and all its shareholders and is not allowed to act on the basis of the State's shareholder interests.

A State official represents the company and all its shareholders and is not allowed to act on the basis of the State's shareholder interests

Practically, the selection of public directors in Finland can be broken down into three steps. This process has been submitted by the Finnish authorities in the framework of the OECD working party on State ownership (cf. OECD 2013, p.38):

- First, a bidding contest is arranged to hire a suitable **executive search company**, on the basis of four year consultancy contracts, in order to identify additional candidates. The justification of going with executive search companies is their profound database with suitable profiles. The bidding contest is run in the same way as any small public procurement, invitations are sent to five or six consultants and the most appropriate offer is selected. The contract is based on a fixed annual fee.

- Then, the consultancy firm is responsible for **developing a resource bank**. Suitable candidates are actually added to a pool of candidates based on the criteria set by the Ownership Steering Department (e.g. professional distinction, etc.). New candidates are added to the pool on a regular basis. The Ownership Steering Department also reserves the right to propose candidates whereby they are included according to the same systematic scrutiny applied by candidates identified by the consultancy. To complete the selection process, personal interviews may be conducted.

- The last step of the process consists in the **final selection** from the pool of candidates. The Ownership Steering Department, based on its portfolio of companies, identifies a list of positions for which new candidates are needed. It also defines the particular qualities required from candidates for each position. These requirements are communicated to the consultant. Following this meeting, the head hunter will present a short list of candidates for each position, taking into account the background, qualities and the capabilities as well as potential conflicts of interest of each candidate. A decision is finally made on the short list by the Ownership Steering Department followed by a proposal to the AGM of each company.

©GUBERNA 2014

Concerning the **remuneration** of the board members, it appears that there are **no explicit limits**. The remuneration is **set by the government by reference to the size and the complexity of the business**.

An executive search company is hired in order to identify suitable candidates to be added to the pool of experts

In practice, board members' remuneration in SOEs are lower than in private sector equivalents. Chairmen sometimes denounce this situation by saying that it impacts the candidate quality but those affirmations are not supported by any evidence (OECD 2013, p.104).

Qualities required from candidates for each position are defined

Within the limits of its portfolio, **Solidium Oy** also participates in the nomination of boards and **encourages a more professional approach in the nomination and assessments of boards**. As Solidium Oy manages **minority participations**, it has currently not proposed any members to be elected as board members to its portfolio companies. However, **Solidium influences board elections through nomination boards consisting of the largest shareholders**. In contrast to continental European countries, the Scandinavian countries rely on a nomination committee that is not composed of board members but of major shareholders. As such, it is not a board committee but a shareholder committee, composed by the shareholder meeting. Solidium (2012, p.54) declares that "participation in the work of the portfolio companies' nomination boards is one of the key tools in Solidium's ownership work […] The election of the members to the board of directors should be based on the company's development needs. Solidium's aim is to create the most effective board of directors, whose members have complementary, diverse skills and experience required by the company's strategy and operating environment. Board members' election criteria include professional competence and skill as well as experience, commitment, impartiality and the opportunity to devote sufficient time to work on the board".

Solidium Oy organises board evaluations on a regular basis

Solidium also raises the issue of board evaluations which contribute to improve the quality of the boards. In its annual report, the company highlights that continuous improvement is required of the elected boards, as even the best board can become better next year. In order to promote improvement, the tools for evaluating board performance must be developed further. The company believes that regular external evaluations of the boards will become a standard procedure in larger listed companies.

4.3.3. France

In France, SOE boards are very large in comparison to the boards of private companies. In some of these boards, the number of directors can go up to 27. However, the board size has decreased in recent years towards 10 to 15 members. The reason for this large size of the French SOEs' boards can be found in the legislative clauses. The 1983 'Law on Democratisation of Public Sector' **requires a tripartite board with one third of direct State representatives, one third employees and one third 'qualified personalities'**. In order for all the (political and union) lines to be represented, the size of the board booms.

Regarding the tripartite composition of the board, the OECD (2005 [2], p.129) notices that "The latter two *[i.e. employees and 'qualified personalities']* have a hybrid status as they are de facto

©GUBERNA 2014

nominated by the State, and in some instances may also be civil servants, university professors or researchers. This hybrid status also makes them feel and be perceived as indirect State representatives. This is even more the case since the State tends to believe that as a controlling shareholder, it should have the majority on boards, whereas it is only allowed to control directly one third of board members. It thus uses purposely 'qualified personalities' as indirect representatives. Moreover, these board members often have conflicts of interest with SOEs, being sometimes representatives of the SOE's clients or suppliers. Consequently, **in many cases, these 'qualified personalities' could not really be considered as independent"**.

The French Shareholding Agency proposes candidate directors from its pool of experts

Actually, the State representation is of critical importance for the French State. **The APE plays a central role in the selection of directors of SOEs**. The 2012 report on the French State as a shareholder highlights that "The Participation by Government representatives in the governing bodies of entities within its purview is a crucial aspect of the Government's mission as a shareholder. […] Ensuring the appointment of qualified directors to represent the Government is an important aspect of the Agency's work. The Government Shareholding Agency works to ensure good governance in publicly-held companies and that its representatives are able to discharge their duties effectively" (APE 2013, p.15).

Practically, **board appointments are made by ministerial order** in the case of majority SOEs. **For partly owned public companies, the appointments of the directors is formally made by the ordinary general assembly but the nomination of government representatives is however the responsibility of the competent Minister**. However, the APE plays an important role since the directors who are appointed by decree have to be proposed by the APE. The APE indeed maintains a pool of directors who fill the professional profile required for being a director. It is also **interesting to note that board members representing the Government must come from the public sector, or from majority public owned enterprises**. The notion of independence is therefore relative.

The APE officers have a limited number of board mandates in order to be able to fully exercise them

As stated before, the centralisation of the ownership steering has positive effects on the quality of the boards. One can notice that the APE personnel is diversified in terms of age, background and education. The team of the APE gathers experts from the public and private sector who have an extensive experience in industry or services. In this respect, the French Directors' Institute (IFA) underlines that "the APE has become over the years the uncontested leader in the State representation within the boards of SOEs. The APE officers have a limited number of board mandates (maximum 5) in order to be able to fully exercise them. Therefore, they really became 'professional directors' of the State-owned Enterprises" (IFA, 2011).

The APE, in collaboration with the French Directors' Institute, set up a compulsory education programme designed for the directors representing the State

In order to maintain this high level of competence among the directors of the APE, the agency set up a **compulsory education programme** designed for the directors representing the State. This course has been elaborated in collaboration with the French Directors' Institute and the French Institute for Public Management and Economic Development (IGPDE). Such a continuous education

©GUBERNA 2014

programme has been developed because the French State aims to professionalize its directors what can be seen as a good example in terms of corporate governance. The APE indeed emphasizes that the French State cinches that its officials are able to carry out efficiently their responsibilities and that they take care of the good governance of SOEs. In the past, board members were indeed often nominated without knowing their rights and duties.

However, while the creation of the APE allowed the identification of a clear leader among the State representatives, it seems that **France has not yet been able to set up a clear selection and nomination framework**. Some questions are still latent: who should be chosen to represent the State? How to make sure that public directors act primarily in the interest of the company? How to motivate professional State directors if they are not remunerated? How to avoid conflicts of interest since State directors are often selected by the Ministry in charge of the sector in which the company is active? How to avoid an excessive politicization of the selection process within the APE?

All those questions are still debated in France and highlight the fact that the need for a reflection on the selection of public directors is of critical importance. Some people think that it would be appropriate to set up an official body of directors but implementing these ideas within the public administration seems difficult. Similarly, **it appears that public directors often receive instructions from the State on how to vote on a question. As their accountability is the same as for any other director, they should signify to the State correspondent when the instruction goes against the interest of the company.** According to the experts, if the State instruction persists, the director should ultimately resign (Bailly, 2012).

The dialogue between the government, the board and the management gives also rise to discussions and criticisms. The relations between the ownership entity (APE) and the SOEs are governed by a specific charter. APE nominees representing the government on the boards of directors or supervisory boards of nearly 50 entities in the APE portfolio are interviewed regularly to assess the application of the Charter (that analyses – among others – the relations with the Agency: reporting, regular meetings, etc.). From the interviews, it appears that this relation with the APE is clearly the less good rated factor of all analysed subjects (APE 2013, p.16).

However, **efforts have been recently made to improve the relationship** between the State and the SOEs. For instance, there are now regular meetings between the Minister of Economy, the other Ministers in charge of a sector – 'Technical Ministers' (ex: transport, defence, …) and the managers of the companies, and this, in order to examine together strategic issues (Bailly, 2012).

The last dimension concerns the relationship between the State and the top management of SOEs. As the OECD points out, Belgium is not the only country where the CEO is not nominated by the board: "SOE boards are clearly not in charge of nominating CEOs in several OECD countries, such as Belgium, France, Mexico and Turkey. In France, in the largest SOEs, CEOs are nominated by Presidential Decrees, in accordance usually with the ownership entity which proposes candidates based on their competencies" (OECD 2005 [2], p.140). **In France, the appointment of the top management is often designated as a major problem in the governance of SOEs as it nearly always remains a responsibility of the government**. This can cause important problems since the top manager considers that his legitimacy comes directly from the government and not from his board. According to some experts, the government should at least select the top manager in a shortlist set up by the board to give to the later a real authority (Bailly, 2012). The French institute for directors also highlights that even if the remuneration committee and the board of directors will formally

©GUBERNA 2014

suggest a candidate, it is actually a pure formality as the decision is already taken at the government level (IFA 2012, p.17).

4.3.4. Germany

At first sight, the German selection process of public directors looks relatively simple, just as it is the case for the organisation of the ownership model. Although generally the shareholders have the right to nominate the directors at the occasion of the shareholders' assembly, in SOEs the power of appointment of 'public' directors rests with the responsible (sector) minister. Formally, knowledge, experience and expertise are required for a person to be proposed for nomination. However there is no formal nomination framework for attracting public directors in SOEs in Germany. For direct appointments, candidates are proposed by the ownership unit and are subject to approval by the minister. There is actually no specific nomination committee or pool of candidates. By the way, outsiders may not apply. **In short, the German model lacks a clear framework that allows rationalizing and professionalizing the nomination process of public directors in SOEs, away from a purely political process. It may even be stated that the whole nomination process is somewhat opaque**.

4.3.5. Hungary

The ownership unit is the leading actor in the selection process; Ministers have no role in this process

In Hungary, the responsibility for nominating public directors is with the Minister for National Development. However, the Ministers have no role in the selection process as the Hungarian State Holding Company (HSHC) is the leading actor.

The Holding Company uses two ways for selecting State directors: **it either approaches potential candidates directly or it opts for publicly announcing the director vacancies**. Our research does not allow us to determine which criteria determine the route to follow. Although there are no formal requirements for being a public director, the HSHC imposes a **minimum requirement** of a degree in law, economics or finance for candidate supervisory board members. Throughout the process, the chairman (and potentially other board members) is (are) consulted during the selection process. **Board evaluations (which are compulsory in Hungary)** are also used to guide the selection process. It appears from the analysis that both public and independent representatives are sitting on the board. Once again, the definition of independence in the Hungarian public context is not clearly defined.

Compulsory board evaluations are used to guide the selection process

4.3.6. Luxemburg

While **no public information on the selection and nomination process of public directors** can be found for Luxemburg, this country is still an interesting case when looking at the balance between

©GUBERNA 2014

interests of the State and interests of the SOEs (both public service oriented and commercially oriented). Luxemburg actually has a very specific understanding of the **legal status of public directors: they are considered to be State representatives in the strict sense of the word**.

In the late eighties, Luxemburgish authorities felt the need to clarify the status of public directors as well as the relationship and interaction between those public directors, the company they administer and the State they represent. This analysis and the complimentary parliamentarian debates opted to give **primacy to the State's interests over SOE's (corporate) interests**. In its conclusion, the law commission considered that it is necessary to give the preference to the general interests of the public community above the necessity to give priority to the commercial interests of the company. According to the commission, it is clear that the director representing the State is the agent of the public authorities only. Two legislative disposals illustrate this approach very well.[15]

First, **the State director is not bound to the confidentiality of the meetings of the board** towards the organ that he/she represents. The director has the obligation to forward all the information that can be useful for the constituent. It is noteworthy to underline that this transmission of information is a legal obligation and not a simple authorisation.

The second example is about the public directors' remuneration. The Luxemburgish law provides that **income paid for board mandates is automatically transmitted to the State**. This measure reinforces the idea that the public director works first and foremost for and in the name of the State.

This particular conception of public board mandates in Luxembourg **goes against all the (international) recommendations and best practices which basically support the idea that a public director must act in priority in the interest of the SOE and should respect basic legal principles (such as discretion)**. Notwithstanding these opposing views, an international overview cannot be complete without clearly mentioning this point of view that clearly goes against the mainstream thinking on public governance.

4.3.7. Norway

The Norwegian authorities are very conscious of the importance of an active State ownership policy in terms of selection and nomination of board members. It its annual report 2011, the Norwegian Ministry of Trade and Industry points out that "It is the owners' task to ensure that the companies always have the best possible board composition and that the company's incentive schemes are designed to promote the interests of the shareholders. This requires considerable insight into the company, a clearly articulated objective for the ownership and good processes for choosing board members, setting board terms and evaluation. […] An optimum board composition is essential. Not only should the board members have expertise that is relevant to the current operations of the company, they should also be aware of adjacent businesses that may have a significant impact on the company's development and direction. International experience and insight are therefore very important at board level too". For the Norwegian State as an owner, it is important that the companies have boards with industrial and financial competence that can effectively supervise operations. The boards shall also be responsible for the companies' work on

[15] Cf. Luxemburgish law of 25 July 1990 (Official Luxemburgish Gazette of 31 Augustus 1990, p.550.)

 ©GUBERNA 2014

strategy. Good understanding of the company's role in society and the importance of the individual company to overall commercial development is therefore important.

As already described in point 3.3.5., the Norwegian authorities have developed 10 **principles for good ownership. Some of these principles are also very valid to focus on the professional development of SOEs boards**. Principle 6 provides that "the composition of the board shall be characterised by competence, capacity and diversity and shall reflect the distinctive characteristics of each company". In addition, Norwegian authorities consider that fair remuneration systems are part of the professional development of SOEs boards as the principle 7 of the State's principles for good ownership says that "compensation and incentive systems shall promote the creation of value in the companies and shall be generally regarded as reasonable". Finally, principle 9 emphasises the need for the board to be evaluated in order to guarantee its professional development. This principle provides that "the board shall adopt a plan for its own work and shall work actively with development of its own competence. The board's activities shall be assessed."

The tradition in Norway is to have relatively small boards – between 5 and 9 members – and they usually consist of people from outside the company. There is an exception with the members elected from and among the employees. Like in France, the Norwegian law on employee participation provides for employees the right to elect one third of the board.

Boards in Norway are relatively small – between 5 and 9 members

In practice, board members in **listed companies** are normally nominated by nomination committees. The Norwegian State has actively contributed to the establishment of nomination committees in the large companies. "The **nomination committees comprise representatives of the owners, who jointly prepare proposals for the corporate assembly** or general meetings and election of boards." (Norwegian Ministry of Trade and Industry 2011, p.26). Thanks to these nominations committees, the State, in cooperation with representatives of the other shareholders, endeavours to arrive at the best possible composition of the company's governing bodies. The nomination committees can actually **count on the report of the board of directors who evaluates in a first step their composition and functioning, both individually and as a group**. These reports constitute one of the several sources to identify boards' characteristics and needs. This report also contains a remuneration proposal in accordance with more detailed rules for case processing. In Norway, "**board remuneration in companies where the State holds shares should be on the same level as in the private sector, and are decided upon at the annual general shareholders' meeting**" (Kallevig 2005, p.6).

In **non-listed companies**, the preparatory work for the nomination of board members is carried out by the ownership department itself. "In wholly State-owned companies, the work of composing boards is carried out in a structured manner by the **ministry that manages the State's ownership**" (Norwegian Ministry of Trade and Industry 2011, p.26). While board vacancies are not advertised, Norwegian authorities affirms that the process is not contestable. For wholly-owned companies, the Ministry of Trade and Industry has drawn up instructions for preparations for elections in the companies administered by the Ministry. Pursuant to the instructions, the work shall be organised in an **internal nomination committee for each individual company**. All the public board members are appointed at the shareholders meeting and the nominations are formally made by the Minister.

©GUBERNA 2014

In addition to competence, independence is also an important requirement for the board of directors of SOEs. In listed SOEs, **at least two** of the members of the board elected by shareholders (with another 1/3rd representing employees) should be independent of the company's main shareholder. Actually, **the Norwegian parliament does not allow 'politicians' to sit on the board of SOEs**. Ministry officials are explicitly forbidden to sit on the board of companies where the State holds shares. Active politicians, government ministers and State secretaries, as well as civil servants whose area of responsibility includes regulatory or supervisory powers in relation to a company, or who have matters under consideration of material importance to a company, shall not be elected as board members. **Among other things, this is in order to avoid problems of partiality and conflicts of interests, which could arise when the interests of the shareholders as a whole are not fully in harmony with the interests of the State.** This leads to the issue of the balance between the State and the company interests. As the State does not have its 'own' board members in partially-owned companies, it is presumed that all board members endeavour to further the company's and the shareholders' joint interests.

In listed companies at least two members of the board elected by shareholders must be independent of the company's main shareholder

Concerning the relation between the board and the management in Norway, the board of SOEs is responsible for appointing (and dismissing) the top manager. According to experts and corporate analysts, this is even one of their most important tasks.

The board of SOEs is responsible for appointing (and dismissing) the top manager

There is a **close collaboration** between the Ownership department within the Ministry of Trade and Industry and the company. Actually, the Ownership department establishes its own expectations of results and profitability for each company, which are communicated to the board and the management and discussed with them. "Listed companies usually issue a quarterly report, which is presented in a meeting with stock analysts. Such meetings are attended by people from the Department of ownership. There are also regular one-to-one meetings with the larger companies, going through the report in greater detail." (Kallevig 2005, p.7).

Representatives of the Department of ownership attend meetings where stock analysts discuss the quarterly report

As already discussed, the Norwegian parliament has in turn a role to play in the concrete realisation of the State's ownership policy. Actually, according to the Norwegian constitution, the parliament must decide on most changes in State ownership. "Increases in the share capital, as well as the setting up of a new State-owned company is decided by parliament, who must approve the share capital. The buying or selling of State-owned shares must also be voted upon by parliament. While the political situation after each election varies, the parliament, and the relevant committee within parliament, keeps a close watch on the State-owned commercial sector." (Kallevig 2005, p.7).

©GUBERNA 2014

4.3.8. Sweden

The Swedish government offices have **a structured process for board nominations** in order to ensure that the boards have the requisite expertise. Appointing company boards is indeed seen by the Swedish authorities as one of the State's principal instruments of corporate governance. The State makes sure that every board nomination is based on the competency required for the particular board. In addition to this requisite expertise, a board member of a SOE must also have integrity and the ability to work in the best interest of the company. In this respect, the government intends to have only regular members and not deputies.

A SOE's board member must have the ability to work in the best interest of the company

The number of board members should normally be between 6 and 8

By the way, Swedish authorities say that an efficient board should not be too large; the number of members should normally be between six and eight. This number reflects the reality as in 2011, each board of the State-owned portfolio of companies consisted of an average of 6,8 board members.

In Sweden, **a selection framework for public directors has been set up**. The Ministry for Financial Markets' division for corporate governance and analysis has **recruitment specialists** who work exclusively on coordinating recruitments and nominations of board members for the State-owned companies. The selection of members is made from a broad recruitment base with a view to making use of the expertise of women and men, as well as individuals with different backgrounds and experiences. A uniform and structured work method ensures that quality of all nomination-related work. The nomination process can be summarized as follow:

The authorities have recruitment specialists who work exclusively on coordinating recruitments and nominations of SOES' board members

- It starts with an **informal working group, analysing current competency requirements** based on the company's business, current status and future challenges, as well as its current board composition. Any recruitment needs are subsequently established and requirement **profiles produced**, following which the recruitment process starts.
- **Proposals** for board members **are discussed with the government offices**. Even if board nomination is formally a decision of the ownership Ministry, it is actually a collective decision by the government offices; the decision reflects therefore a **collective government decision**.
- Through a decision taken by the minister responsible for the company, the selection is then confirmed and **the candidate(s) is (are) formally proposed for election**.
- The **general meeting** of shareholders then **formally nominates the new board member(s)**.

In their annual report on State-owned enterprises, the Swedish authorities have schematised this board nomination process as follow:

©GUBERNA 2014

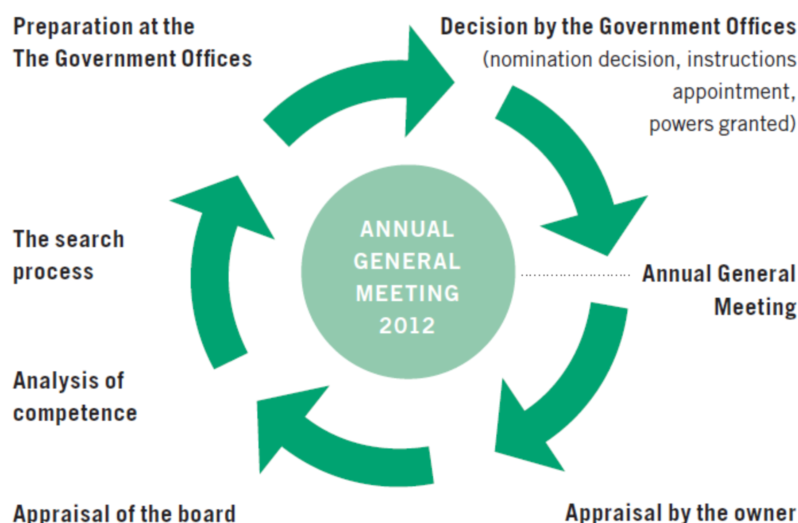

Figure 25 - Cycle of the board nomination process in Swedish SOEs (Swedish Ministry for Financial Markets 2012, p.17)

As demonstrated by this figure, **the appraisal of the board's work is of critical importance in the board nomination process**. This evaluation exercise is indeed a part of the nomination process. Therefore, the board's work is appraised annually and the Chairman of the board is responsible for ensuring that this appraisal takes place. In the wholly-owned SOEs, the chairman informs the responsible ministry about the result of appraisal, while in the partly-owned companies, the nomination committee is informed.

Appraisal of current board composition and competencies allows the elaboration of recruitment profiles

The distinction between companies with public obligations and commercial targets makes sense since public service oriented companies tend to have a higher level of public sector directors. Nevertheless, more than 90 per cent of directors are independent but our research does not allow us to find a clear definition of independence in the Swedish public sector context.

Concerning the remuneration, our analysis shows that SOE board fees are less than 50% of the market. Actually, the Swedish authorities want the fees to be (more) competitive but not market leading. According to them, **in some cases, this low level of board fees has made it hard to attract candidates.**[16]

4.3.9. United Kingdom

Like in Denmark, the United Kingdom also has **a process which formally involves the Board of the SOE in the recruitment and selection process at various stages**. The detail of the board appointment process can also be found in the report of the OECD working party on State ownership.

[16] Cf. OECD 2013, p.106

©GUBERNA 2014

Before digging into the analysis of the selection procedure, it is important to underline that a Commissioner for Public Appointments has been set up in the United Kingdom. His role is "to regulate, monitor and report on Ministerial appointments to the boards of public bodies and statutory office. […] The Commissioner shall […] exercise [his] functions with the object of maintaining the principle of selection on merit in relation to public appointments" (Commissioner for Public Appointments 2012, p.1). However, the ultimate responsibility for public appointments rests with the respective ministers. The departments, in agreement with their ministers, are responsible for designing and delivering appointment processes which meet **three basic principles: merit, fairness and openness**.

A Commissioner for Public Appointments has been set up in order to maintain the principle of selection on merit

Even if there are essential requirements for meeting these principles, there is no one 'right' process for all appointments: processes can and should vary and be proportionate to the nature of the appointment. Nevertheless, essential requirements for each selection process can be identified. Firstly, **a panel must be set up to oversee the appointments process** (with at least one member who is independent of the appointing department and the body to which the appointment is being made). Secondly, the panel must be chaired by an **independent assessor** and a department official. Thirdly, the selection process, selection criteria and publicity strategy for successful appointment must be discussed and agreed, including by the Minister, at the outset of each competition. Then, a **panel report**, signed by the chair of the panel, must be produced at the end of every appointments process. Finally, the **appointment of the successful candidate must be publicised**.

Vacant positions are publicly announced

A detailed analysis of the general Office of Commissioner of Public Appointments (OCPA) recruitment process can be summarised as follows (OECD 2013, p.41):

- **The central ownership advisory unit, the Shareholder Executive (ShEx), and the SOE Chair agree on the mix of skills and experience required**, leading to an agreement on a strategic plan of public appointments. A timetable for recruitment is then agreed between the SOE, the lead director and an independent assessor.

- A draft specification setting out the role and requirements for the board appointment is drafted and agreed with HR and the SOE. The **profile**, describing the role and person specification is then agreed with the body or Minister making the final decision.

- A **candidate search** is undertaken in different directions. The vacant position is publicly announced (i.e. advertised) and often recruitment agencies are used to ensure a more thorough search of potential candidates.

- On the basis of applications received a **long list** of potential candidates is produced. An initial selection, involving ShEx, the independent assessor and the SOE, is conducted to produce a **short list of candidates to interview**.

Recruitment agencies are involved in the process in order to ensure a more thorough search of potential candidates

©GUBERNA 2014

- An **interview panel** is established comprising the lead of ShEx policy official, the independent assessor and the chair of the SOE.

- The panel will then reach agreement on the **preferred candidate** and submit a **panel report** with recommendations to Departmental Ministers.

- Once Ministers have agreed on the recommendation, the appointment can be made.

- An appointment is normally for a **fixed period of 3 years** (which is somewhat longer than the traditional period of 1 year at listed companies) at which point the position is subject to re-election.

- The **remuneration** of the successful candidate, **if over £142.000**, needs to be **agreed with the Chief Secretary to the Treasury**.

There are some slight exceptions as some posts are not OCPA regulated and are therefore not do bound by the process described above. In such cases, the SOE runs the process but follows the OCPA guidelines in most instances. ShEx is closely involved if the post is important (e.g. CEO or Finance Director) in the process. For example, ShEx will be a member of the interview panel. In this way, ShEx is able to make suitable recommendations to give consent for appointments.

As mentioned before, the ultimate responsibility for making public appointments rests with ministers. In order to **ensure a swift involvement of the government throughout the process**, the responsible ministers must be asked to agree on the selection process, selection criteria and publicity strategy and to suggest potential candidates to be invited for application. Then, they must be kept informed about the evolution of the selection progress, including if they wish, being provided with information about the expertise, experience and skills of the candidates. At the end of the process, they **must be given a choice of candidates** assessed by the panel, **unless** only one candidate is proposed by the panel for appointment, in which case that candidate should be presented to the Minister. **On the other hand, the Minister must not add or remove candidates** from the long or short list, sit on the panel, or appoint a candidate not assessed as suitable by the panel. Similarly, should the Minister choose not to appoint any of the proposed candidates, he or she should clearly explain and record the reasons for this decision. In such case, the Minister may choose to re-run the competition for the open board vacancy (Commissioner for Public Appointments 2012, p.4).

Regarding this strong nomination framework, it seems that public directors in the UK are primarily chosen thanks to their experience, skills and knowledge. In this respect, it is worth to mention that **the UK Cabinet Office for Board Appointments published a very detailed guide for departments in order to guide them to make and to manage public appointments**.[17] Academic research noticed that "While the final decision on appointment still lies with the relevant minister, the processes that have been established reduce the scope for cronyism by increasing the probability that such decisions will be publicly exposed." (M. Edwards 2006, p.7).

In the United Kingdom, all the non-executive directors nominated by the State are 'independent', as defined by the UK Corporate Governance Code for listed companies. However, this approach has

[17] Cf. UK Cabinet Office 2006

©GUBERNA 2014

to be critically evaluated, given the interpretations given to the concept of 'independence'. Representatives of the ShEx can sit on boards, whenever there is need for a public presence. Moreover, the code of practice for ministerial appointments to public bodies says that "**Political activity in itself is no bar to appointment**. To allow the **panel to explore such activity** with the candidates in the context of their ability to perform in the role, candidates should declare any significant political activity (which includes holding office, public speaking, making a recordable donation, or candidature for election) which they have undertaken in the last five years. This information will only be provided to the panel for those applicants selected for interview. **Details of the successful candidate's declared political activity must be published by appointing departments when the appointment is publicised."** (Commissioner for Public Appointments 2012, p.3).

Details of the successful candidate's declared political activity must be published by appointing departments when the appointment is publicised

The selection process for the shareholdings under the responsibility of the **UKFI is apparently similar to the one observed in the private sector**. Actually, the UKFI Framework Document only provides that "UKFI will (on HM Treasury's behalf), and consistent with the agreements reached with the Listed Investee Companies, work with the board of directors of each of these financial institutions to strengthen their membership through the appointment of suitably qualified, independent non-executives." (UK Financial Investments ltd 2009, p.5).

4.4. Reflexion on the Belgian approach

As public authority, the State should set the example in following the recommendations of the OECD code on SOEs and where relevant also the private sector rules (e.g. on listed companies). Although the analysis of the Belgian nomination process of directors in SOEs revealed a number of interesting 'practices' (as set out in point 4.2.), overall there is room for improvement, certainly in light of the OECD recommendations (as explained in point 4.1.) and the international best practices of SOE board nomination and board functioning (as explained in point 4.3.). **Also in Belgium, a clear and more structured procedure without undue political interference, could improve the transparency, professionalism and the credibility of the selection and nomination process for members of SOE boards of directors**. In line with the OECD recommendation, Belgium needs to set up a transparent nomination framework and a rules-based selection process, overseen by a governmental ownership function. Although the Belgian State attaches nowadays increasingly more importance to an externally supported selection of board members, this good practice should be generalised and further formalised. To this end, inspiration can be found in the numerous international best practices. These examples can provide food for thought for elaborating an efficient process in Belgium, but at the same time this international analysis demonstrates that several routes towards reform exist.

Many countries tend towards the **centralisation and professionalization of their nomination function** as recommended by the OECD. In Belgium, the situation is dramatically more complex. The nomination of the directors depends on the ownership entity and is therefore not harmonised. It might be right to go for a harmonization and a centralisation of the nomination of the board members. The examples of the APE in France and the OCPA in the UK show that the selection of the directors by one single entity leads to a more transparent and professional selection of the board

© GUBERNA 2014

members. The single entity has indeed some advantages, such as a global overview of the needs of the companies it owns. A single entity can also develop a **pool of experts** to perform dedicated governance functions. Since the directors are gathered in a single entity, they can take profit of a process of 'cross-fertilisation'. Such pools of experts can be found in countries like Finland, France, Sweden and the United Kingdom.

Different countries developed a nomination and selection framework where the **incumbent board plays a central role.** It is for example the case in Denmark and Sweden where the chair of the board is involved at all stages of the process. In Hungary, the chairman (and potentially other board members) is (are) consulted throughout the selection process while in the United Kingdom, the chair of the SOE takes part in the interview panel. The chair's implication in the nomination process can again be inspiring for Belgium.

Another interesting observation from the international examples is the call on **executive search agencies**. While agencies are sometimes solicited in the framework of selection processes in Belgium, this practice is not yet formalised as it is the case in Finland for example. There, an executive company is hired in order to identify suitable candidates for the pool of potential directors and is therefore an integral part of the process. In the United Kingdom, the use of recruitment agencies is also a current practice in order to ensure a more thorough search of potential candidates.

The analysis of international examples highlights another recurrent practice which is the **publicity of the vacant positions**. This practice is in line with the OECD recommendations which encourages more transparent selection processes and is observed in countries such as Hungary and the United Kingdom. In Belgium, vacancies are sometimes publicized but this practice is again not part of a structured and uniform selection framework.

By the way, in order for SOE board members to stay highly qualified, the French State has set up a **compulsory educational programme** that could also be a source of inspiration for Belgium. Such a course could optimize the long-term efficiency of the directors as well as support their commitment as board members. Continuous improvement is indeed seen as a very efficient tool by corporate governance research. Besides specific courses for directors, the **importance of board evaluations** raised by Solidium Oy in Finland and by the Swedish and Hungarian authorities could also be an interesting example to follow in Belgium. The evaluation of board effectiveness and of board composition is promoted by the Belgian Codes of Corporate Governance. Notwithstanding some good practices (often introduced by the CEO and/or the chairman of the board), board evaluations are not yet a regular practice at Belgian SOEs (which also holds for private companies, by the way). Such assessments could certainly improve both the composition (helping to identify missing skills) and the working of the boards.

Concerning the package of tasks of SOE boards, the OECD recommends that boards are **responsible for the whole range of functions** normally dedicated to the board of directors. In Belgium as in some other countries, it seems that this is not the case as far as **the nomination of the CEO** is concerned. In Belgium the CEO of a SOE is appointed by the State (even in listed companies) while this is considered a crucial competence of the board. As stated previously in this report, Belgium would have everything to gain in letting the board nominate directly the CEO. Also in France, voices rise to give the board this important responsibility. Other countries such as Norway are in line with OECD

recommendations and identify this function of appointing and dismissing the top manager as one of their most important tasks.

Our analysis also focussed on the **relations between the State and the SOEs boards**. We learn from our research that the nomination of SOEs' directors is in almost every case a government responsibility. We also learn that there are usually regular meetings between the board (or the chair of the board) and the authorities in order the establish the expectations of results and profitability but also the obligations of public services if applicable. The SOEs are also expected to present their results and fulfilments of objectives before the parliament. Some countries make arrangements to increase the quality of the communication between the State and its SOEs. In Denmark, there is a discussion between the Minister (or Ministry) and the chair about the need (or not) to change the board composition. The chair also has a discussion with the Minister, prior to the AGM where remuneration would be set. Such a communication channel in Belgium would ensure that the SOEs and the Minister are on the same line concerning the remuneration levels. This is an important issue regarding the current burning debate in Belgium on remuneration levels in SOEs.

Finally, it appears that the **equilibrium between the State's interests and the company's interests** is very difficult to reach. This report points out that the large majority of the countries are in line with the widely accepted (international) recommendations which advocate for the board to act primarily in the interests of the company. In Finland, it is prescribed that directors (even if State officials) represent the company and all its shareholders and are not allowed to act on the basis of the State's shareholder interests (only). The French example highlights that since the accountability is the same for all kind of directors, State directors should be able to refuse State instructions if they go against the interests of the company. In Sweden, it is expressly provided that all directors have to work for the best interest of the company. Norway underlines the necessity to find a right balance between different interests as all board members are required to act in the company's and the shareholder's joint interests. However, Luxemburg adopts a totally different perspective in providing for a primacy of State's interests over SOE's interests. Actually, this issue of balance of interests is highly ideological and hardly measurable in practice. Further qualitative research is necessary in order to analyse the practical implementation of the chosen rules and to identify the best systems taking into account the kind of company concerned since the balance will probably incline in one of the other direction according to the degree of commercial orientation of the company.

By way of conclusion, one can mention a research of the University of Canberra that noticed the absence of protocols or a code of best practices or any regular process in board appointments in Australia. Edwards (2006, p.19) says that "Protocols and guidelines, while not necessarily being legally binding, can add clarity, encourage transparent, timely and cost-effective processes, and ensure greater attention is paid to relevant skills and experience and the need for diversity". The author identifies many options for reform that could help to improve existing practices and processes and summarizes them in three models that could be considered and which are not mutually exclusive. The models are built on the assumption that there are five main steps in an appointment process for public directors: the preparation, the candidate location, the assessment of candidates, the selection and the audit. The three identified models range from 'minimalist' to 'radical' and can certainly be a theoretical basis for reflecting on the Belgian desired process.

Appointment stage	Model A – minimalist (transparency)	Model B – moderate (transparency + central oversight)	Model C – radical (transparency + independence)*
Preparation	Code of practice prepared and made publicly available. Position descriptions and selection criteria made publicly available.	Independent authority appointed to oversee appointments – could be a new agency or a parliamentary committee. Code of practice, position descriptions and selection criteria made publicly available.	Independent authority established to manage appointments. Code of practice, position descriptions and selection criteria made publicly available. Independent authority ensures comprehensive selection process in line with merit and diversity principles.
Candidate location	All board positions advertised on central government website + senior positions advertised in popular newspapers.	All board positions advertised on central government website + senior positions advertised in popular newspapers.	All board positions advertised on independent authority's website + senior positions advertised in popular newspapers.
Assessment of candidates	Assessments carried out by departments in accordance with the code of practice. Details of conflicts of interest made publicly available.	Assessment carried out by departments, with participation or oversight by the independent authority. Details of conflicts of interest made publicly available.	Assessments carried out by the independent authority, possibly with a representative from the responsible department providing input.
Selection	Ministers make appointments in accordance with code of practice and relevant protocols. Names of appointees and reasons for decisions made publicly available.	Ministers make appointments in accordance with code of practice and relevant protocols. Names of appointees and reasons for decisions made publicly available.	Appointments made by independent authority. Names of appointees and reasons for decisions made publicly available.
Audit	None	Appointment processes subject to an audit by independent authority and the details of the audit made publicly available.	Appointment processes subject to an audit by ANAO.

*There may be legal provisions specifying that appointments might ultimately need to be made formally by government in which case they would need to be reviewed if Model C were adopted.

Figure 26 - Models for reform of appointment processes for Australian federal public sector boards (Edward, 2006, p.20)

4.5. Recommendations

In light of these critical observations of the governance practices, experts have considered that reforms could improve the credibility and effectiveness of the selection of public and independent directors within SOEs. Thanks to the commitment of experts who have taken part in this reflection, GUBERNA is able to suggest five main recommendations:

© GUBERNA 2014

4.5.1. Towards the presence of 'independent directors' in all public organisations

GUBERNA and its members support and defend the positive role and added value independent directors can bring to all kind of organisations. The need for independent directors in SOEs was already evocated in 2002 as the financial newspaper l'Echo ran as headline "L'indépendance des administrateurs, une nécessité pour les entreprises publiques". (L'Echo, 20/07/2002). However, important opposition against these proposals has long time reigned in public organisations. But, nowadays, the acceptance of independent directors in a public context is gaining more and more support, also in political circles. Independent directors **can bring further objectivity to the debates and fill potential missing skills**. Independent directors can **guarantee that the interests of all shareholders and stakeholders are duly taken into consideration.** Moreover, **independent directors are more detached from political influence** than public directors, allowing that sufficient attention is paid to the corporate interest.

Experts emphasize the need for clearly identifying the independent directors within the board and for clearly defining what expectations exist towards them. The pending issue is the definition of the independence in a public context: **while there are a lot of definitions of independence, not one is generally accepted in a public context**. In this debate, there are generally two trends: on the one hand, those who think that one can never talk about independence in the public sector because everybody (even if not a member of a political party) has a political colour or at least a political preference and on the other hand, those who think that it might be possible to identify a set of principles which can guarantee a certain degree of independence vis-à-vis the stakeholders. From the discussions GUBERNA had with Belgian experts, it seems that most of them are convinced by the second vision of 'independence' in the public sector. **GUBERNA wants not only to support the presence of independent directors in the boards of public organisations but also to promote a good definition**. This is in line with the OECD guidelines who recommend the presence of independent directors in public organisations' boards and even a majority of independent board members in wholly-owned State enterprises. The understanding of the term independence should at least encompass the definition of the company code, as it is already the case in some SOEs. Additional incompatibilities could be foreseen in order to avoid a too narrow relationship between the independent directors and the final shareholder or the Minister who personifies the shareholder.

The selection of independent directors should distance itself as much as possible from political considerations. In case of the presence of other shareholders (in listed companies for example), the State should refrain from nominating the independent directors (as it is already the case at Belgacom for instance). In other cases, a co-optation system could be used, where incumbent directors would nominate new independent directors by consensus.

GUBERNA notices that the exercise of a board mandate requires a deep commitment. Attracting highly qualified independent directors who can bring a substantial added value is not always easy, especially when considering the relatively low remuneration levels granted to directors in most public organisations. **According to most of the experts consulted, independent directors should be remunerated based on market norms, and this to ensure their full involvement in the function**. GUBERNA therefore recommends providing a differentiated remuneration in function of the nature and the size of the company. For commercially oriented SOEs, it could be useful to follow the market norms.

©GUBERNA 2014

4.5.2. The evaluation as part of the selection process

The OECD as well as most governance recommendations encourage boards to proceed with a regular evaluation of their working and composition. In our international analysis we gave quite a number of examples of public authorities that promote a board evaluation as the starting point for the selection of directors. **An evaluation of the board composition in terms of skills, experiences, gender, age, … can help identifying missing profiles within the board and therefore greatly facilitates the development of the desired profile for a board vacancy.** It seems indeed logical to start the selection process with an overview of the needs of the incumbent board. Such an evaluation would afford to set up function profiles which will **guide the actors responsible for the effective search**.

Board evaluation already occurs in some Belgian SOEs on an ad-hoc basis but GUBERNA recommends that these best practices be promoted and generalised to also serve a more professional selection process. The cycle of evaluation and board nomination as described in the Swedish case study can inspire how to develop such professional board nomination process (see point 4.3.8.). While also the Belgian experts consulted are in favour of such board evaluation exercise, they have stressed the **need for a professional, confidential and independent assessment process** which should preferably be led externally.

4.5.3. Towards a greater involvement of the chairman and the incumbent board in the selection process

Most of the analysed OECD countries give a substantial role in the selection process of new directors to the incumbent board and especially to the board chairman. Based on the expert consultations, GUBERNA considers this practice as potential food for thought in Belgium. **Alongside a board evaluation, the incumbent board could make recommendations and play an active role in the development of the vacancy profile and preferably also in (a first round of) assessments of potential candidates**.

In Belgium, this is for example already the case in some State-owned enterprises, at least for the **selection of independent directors**. In those cases, the board deliberates on the vacancy profile and on the process of choosing the right candidate (based on the advice of the Nomination and Remuneration Committee). It is the board who issues a recommendation to the Minister and finally to the general assembly.

The process for the **nomination of public directors** is much less formalised and for these nominations the board of Belgian SOEs is far less involved. However, when developing the process for the selection of public directors, it is **proposed to mirror the practice for the nomination of independent directors as much as possible**. Though it is clear that the involvement of the government will be much more prominent, when public directors are concerned. But this does not mean that the process should not be professional and transparent, certainly for the members and chair of the board of the SOE under consideration. In our international and Belgian analysis we detected some interesting best practices that could be generalised. At least the chairman (if not all directors or at least the nomination committee) of the SOE that has a board vacancy should have an important role to play in a structured and transparent process of public director selection. As

©GUBERNA 2014

observed in foreign countries, one could envisage a discussion between the chair and the responsible Minister on the needs of the board as well as a role for the chair in the profile description, the search process and the assessment of the candidates. As discussed above, if an evaluation exercise takes place, it is the chairman's responsibility to provide feedback on the process. **Once the chairman is given more responsibilities in the selection process, the selection of the chairman should be treated even more professionally**. One can envisage a differentiated selection process for the chairman, which goes deeper in terms of requirements, independence and professionalism.

A point that certainly deserves special attention is the **need to reverse the Belgian practice of nominating the CEO of a SOE by the government**. Today Belgium (together with France and some other countries such as Mexico and Turkey) is an exception to the clear rule of the OECD that it should be the SOE board which has the right to nominate and evaluate the CEO. The Belgian practice goes counter to the key role the board has to play in this respect, at the risk that the monitoring role of the board becomes nearly void. This increased role for SOE boards could be complemented (compensated?) with a better developed reporting and accountability of public directors towards the government (through the K&S Centre for commercially active SOEs). It is important to develop clear lines of reporting and accountability for realising the industrial strategy and the priorities (e.g. for public service provision) as set by the shareholder. In most cases it will be necessary to go beyond the traditional role foreseen for the annual shareholders' meeting and develop a more detailed framework for the concrete governance structures and processes between shareholders, board and management.

4.5.4. The 'Knowledge and Support Centre' as actor in the selection process

The 'Knowledge and Support Centre' suggested in the first part of this report **could play a central role in supporting the selection process of directors of SOEs**. The involvement of the K&S Centre should at least encompass the selection of public directors. It could eventually also play a role in identifying potential candidates for independent directors, but here the process should be primarily led by the board of the SOE rather than by the K&S Centre. The K&S Centre should develop a policy to decide when and how to make use of external search firms.

The list of candidate **public directors** would be evaluated by the K&S Centre in collaboration with the chairman of the board, based on the input of the incumbent board and a detailed evaluation report (eventually by an external head hunter). The Council of Ministers would still have the final say for the formal nomination of public directors, eventually after the specific input and feedback from the Minister for public enterprises (in case of public service oriented SOEs) or the Minister of Finance (for commercially oriented SOEs). This process would have at least three advantages. First, it would give more consistency to the selection process as the K&S Centre would have regular contacts with the SOEs, and this on a long-term basis (independently of the changes of responsible ministers, political majority, …). As governance reference, the K&S Centre would therefore have a better insight on the needs of the SOE to fulfil its strategy at best. In addition, the Centre would be able to clearly assign a mission to the public directors based on the general strategy defined and communicated by the government. Second, the position of the Centre as a professional linking pin between the government and the SOEs would permit a selection process of public directors by the Centre rather

 ©GUBERNA 2014

than primarily focusing on political bargains. This would allow a more consistent and transparent selection process without ignoring the principle of democratic representativeness. Third, a selection process via the K&S Centre would allow the creation of a pool of experts. However, experts warned to be careful in this respect and prevent making a kind of public directors' caste.

As to the nomination of **independent directors**, we not only propose to generalise this concept in all SOEs but at the same time we plead for generalising the best practices already in existence in some of the Belgian SOEs to all SOEs, whether oriented towards commercial and market operations and/or exclusively towards public service functions. For the selection of independent directors, the incumbent board and its nomination committee are in the driving seat. If they consider it relevant they can also rely on the K&S Centre, which may provide them with expertise and suggestions to ensure that a professional search process and a thorough examination can be undertaken.

For both types of directors, the **K&S Centre could play a pivotal role in promoting professional development and education of directors**. While the individual SOEs might be responsible for organising business specific induction and update programs, the K&S Centre can provide professional support and insight into what it means to direct a SOE, what specific expectations the government may have in this respect, what the industrial strategy of the government might be and what eventually the public service function might entail. To this end it might be good to develop some key principles of good public ownership (as in Norway, see point 3.3.5.).

4.5.5. Improvement of the interaction between the State, the public directors and the SOEs

Besides the selection process as such, the interaction between the State, the public directors and the SOEs is of critical importance. Two best practices have been particularly highlighted during the expert group meetings organised by GUBERNA. Firstly, experts have agreed on the **added value engendered by the presentation to the board of the shareholder strategy by the responsible Minister (or by the K&S Centre in case of reform)**. This brings clarity to the State's strategy and expectations towards the board and the directors. Secondly, experts have **suggested to better structure the accountability of the SOEs, its CEO and/or chairman towards the parliament**. While this practice is defendable from the perspective of democratic control, the experts have considered that the **process could be improved in order to avoid confidential and strategic information be diffused in the public square**.[18] A first solution might be to introduce a distinction between the performance of public service functions versus the performance as a commercial organisation. For the first category it might be envisaged that a direct accountability is developed between the SOE, the responsible Minister (for public enterprises) and the parliament. It would be good to limit this public accountability to an annual reporting.

[18] In Canada for example, "Corporate plans are highly confidential in nature. They contain highly sensitive and often commercially confidential information. As submissions to cabinet and as confidences of the Privy Council, corporate plans are treated in a manner comparable to memoranda to cabinet and are subject to the same strict protective measures. Corporations are advised to assist in maintaining this security by adopting their own security measures such as restricting and numbering the copies of their plan. The corporate plan should be distinguished from the corporate plan summary which is tables in Parliament. Sensitive material contained in plans […] should of course not be incorporated in the corporate plan summaries since these become public documents." (OECD 2010, p.42).

©GUBERNA 2014

As far as ad hoc reporting is concerned, it is noteworthy to take into consideration the challenges it raises in Belgium and in other countries. The OECD indeed notices that "Ad hoc reporting is often considered as more action-oriented and more responsive to parliamentary interests and needs than periodic reporting. It can cover any issue that is of interest to parliamentarians, ranging from financial issues to ones of social and environmental concern. Parliaments usually have significant powers to demand information at will and, if need be, can call on a chief executive to provide direct testimony. However, as ad hoc reporting is largely determined by the interests of parliamentarians, some important issues may not receive the attention they deserve […]. Technocrats and politicians may have very different visions of what needs to be reported on, the former often wanting to present hard information on SOE performance and the latter on issues of current interest or social impact. […] Ad hoc reporting sessions are thus sometimes perceived as insufficiently structured and subject to political grandstanding." (OECD 2010, p.87). This latter observation is in line with what is observed in Belgium. Therefore, GUBERNA would recommend that, unless for extreme situations would a more regular reporting should be envisaged. As for commercially-operating SOEs we would like to propose to organise the reporting and accountability more in line with the practices in the private sector. Direct accountability would be organised with the K&S Centre which represents the shareholder towards those companies. Towards the parliament the K&S Centre would be directly accountable for all SOEs under its authority. In case it would be necessary to organise a direct parliamentarian reporting, it would be advisable to look for alternative routes that guarantee confidentiality. As for issues like police investigations ('P-Committee') or weapons export licenses, one could envisage the setting up of a **closed-door committee dedicated to discuss the industrial strategy of SOEs**. This would avoid an overexposure of sensitive issues in the press that can harm (the relationship between the State and) the companies the State invests in. This is also a focal point highlighted by the OECD, particularly whenever SOEs operate in a competitive sector. The organisation recommends (OECD 2010, p.91) "to develop specific procedures to deal with confidentiality issues. Reporting to Parliament, especially ad hoc reporting and specific hearings, should not put these SOEs in a difficult situation, forcing them to disclose commercially sensitive information. These procedures could include requirement that the committee receives the information as private or secret evidence and that the meeting be kept confidential or closed. These procedures could be put in place whenever this is requested by the SOE on legitimate grounds." These mechanisms could indeed limit excessive politicisation and instrumentalisation of these debates for pure political purposes.

5. General conclusion

This GUBERNA report is probably the most comprehensive analysis of the governance principles and practices applied by the Belgian Federal State as a shareholder. It is based on an in-depth comparison of the current Belgian situation with the OECD recommendations as well as with numerous international practices. This comparison clearly shows that numerous issues will have to be tackled, in order to get more aligned with international public governance recommendations and best practices. These issues are also recognised as important points of attention in the Belgian media and by the public at large. Consequently, **our analysis raises a lot of challenges for the upcoming Belgian government**.

©GUBERNA 2014

Given the rather complex material at hand, we propose to **organise the debate along two main headlines**: **'How to organise State shareholding at best?' and 'How to select SOE board members and organise their accountability and interaction with the State as a shareholder?'**. In each part, we briefly position the challenges and consequently summarise our main proposals, as presented in more detail throughout this report. Thanks to our in-depth research, to the organisation of numerous (international) roundtables and expert group meetings, we are able to present a set of recommendations that might inspire politicians in solving the two main issues at hand. Although based upon the input and feedback of many experts and practitioners, these recommendations remain the sole responsibility of GUBERNA and do not represent the individual points of view of our partners, nor of the experts involved in this research.

Recommendations for a better organisation of the State as a shareholder

In order to reach a modern, efficient and consistent organisation of State participations, in line with international best practices and recommendations, there is certainly room for improvement in Belgium. In fact, our analysis confirms most of the weaknesses highlighted in numerous press articles, not only the recent ones, but some already published more than 10 years ago. **The current Belgian organisation model is mainly the consequence of the hazards of history and is certainly not structured according to rational criteria nor has there been any comprehensive examination in light of the 2005 OECD recommendations.** Considering recent evolutions in the State's portfolio, the impact of the financial crisis and the need for a more effective use of State assets in the actual socio-economic context, it seems that the Belgian government can no longer continue on the historical track nor stay partisan of a wait-and-see policy. While none of the international examples analysed has proven to be the ideal model or could be copy-pasted in Belgium, the most important lesson of the international analysis is that most of the analysed countries have invested in a deep reflection on the role of the State as a shareholder and on the optimal organisation of the State's stakes in function of their national contexts and political priorities. Such a reflection is sorely lacking in Belgium and this report aims to be the starting point for a reflection at political level.[19] Our research report revealed different routes of reform. In total, we propose 5 main recommendations for a more professional and effective organisation of the State's shareholdings.

GUBERNA's first recommendation aims at improving our understanding of the ambition and scope of the government's interference as public service provider and as shareholder in business firms, its long-term strategy as well as the outcome envisaged. To this end, **GUBERNA recommends that the government makes a declaration – at the start of each legislature – on the general policy around SOEs as well as on the industrial strategy underlying public shareholding**. International examples have proven that such approach can lead to better efficiency and a better outcome.

Second, GUBERNA pleads for a modern organisation of the State's participations, in accordance with international governance recommendations. The proposed **reorganisation could be primarily based on the degree of commerciality of the State-owned enterprises**. We plead for a dual approach with at the one hand, the commercially oriented SOEs (and SOEs having limited public service functions) and at the other hand the public service oriented organisations. The first category could be governed

[19] Such a reflection has already been started for years by GUBERNA and its members, active in the public sector. In this respect, many State-owned enterprises and public sector experts have demonstrated a profound interest in the issue of the State as shareholder and have started reforms at their level.

©GUBERNA 2014

by the actual FPIM-SFPI holding, under the responsibility of the Minister of Finance. SOEs being (mainly) public service oriented could be supervised by the Minister for public enterprises. As to the additional provision of public services by (mainly) commercially oriented SOEs, the Minister for public services could keep a 'droit de regard' in order to supervise the respect of the adjacent management contract (limited to the provision of public services).

The third GUBERNA's recommendation is to **envisage a further sub classification of the SOEs based on rational and relevant criteria** (as is the case in many European countries). This sub division would mainly hold for the rather heterogeneous set of SOEs under the control of the FPIM-SFPI. Different departments could be organised for groups of companies requiring a comparable kind of governance approach. GUBERNA suggests organising this classification around the following criteria: listed versus unlisted companies, companies where the State is the sole shareholder[20], companies where the State is the majority shareholder and companies where the State has only a minority stake with a special subdivision for companies operating with private equity partner(s) (or in the frame of a PPP).

This 'dual' organisation, could then be complemented and supported by a central 'Knowledge & Support Centre'. The main 'raison d'être' of this Centre would be to effectively promote and support coherent good governance practices in a transparent and professional way. However, the role of the Centre towards specific SOEs will have to be tailored according to the kind of company (with a different approach for commercially or public service oriented[21], minority or majority stake, listed or unlisted; as described in point 3.5.1. of this report). In this respect, we suggest the Centre should be made up of independent experts having relevant skills in finance, governance, law, etc. Without going into too much detail, the Centre would offer many advantages. It would be the central reference concerning shareholding and governance issues for the companies as well as for the government, it would ensure continuity and attention for the long-term strategy, it would execute the overall industrial strategy (that has been defined by the government), it would allow to improve the accountability process of the various actors towards the parliament and finally, it would represent a pool of experts able to support the government and the SOEs in their governance roles (including the selection process of board members). Based on our international analysis and the in-depth reflections with experts and practitioners in Belgium, we have proposed to set up the Knowledge & Support Centre within the existing FPIM-SFPI, under the direct supervision of the Minister of Finance and the indirect control of the Council of Ministers. The government would conclude a management contract with the Centre and install a government commissioner to supervise the respect of the government policy and the execution of the management contract.

Fifth, **GUBERNA recommends to clarify the role of the different actors and to improve their communication and interaction**. The State should be responsible for its own overall industrial policy and for (indirectly) approving the strategy of each SOE. The Minister of Finance – via the FPIM-SFPI – would be responsible for supervising the commercially oriented SOEs while the Minister for public enterprises could be responsible for public service oriented SOEs. All directors nominated by the State should be informed by the Knowledge and Support Centre on their missions and strategy to be accomplished and act ultimately in the best interest of the SOE.

---

[20] Such a distinction is also made by the OECD in its recommendations. In its guide for State ownership (OECD 2010), the international organisation makes a distinction between partially and fully owned SOE when necessary, and this, in order to consider the specifics of each group.

[21] For commercially oriented SOEs, the Centre would become directly accountable towards the government and the parliament for the results of the industrial policy in general and the specific output of the SOEs under its direct control. Public service oriented SOEs could remain directly accountable towards the government and the parliament.

©GUBERNA 2014

Recommendations for a professional selection of SOE directors, a clear accountability and transparent interaction with the State as a shareholder

The second issue we identified is about the selection of directors of SOE boards and their accountability and interaction with the shareholder(s). **Except for some examples of Belgian best practices, our detailed analysis demonstrates a lack of transparency, consistency and efficiency in the selection procedures.** Those conclusions are fully in line with the recent press coverage of what they called the nomination and remuneration saga in State-owned enterprises. This is in contrast to many European countries that have set up formal and structured processes for selecting public and/or independent directors. Our report highlights that much inspiration can be found in the OECD recommendations and reports as well as in the different international practices studied in this research report. This not only holds for guidance in developing a more professional selection and nomination process but also for a more clear communication and support of public directors. GUBERNA's recommendations can again be summarised through five main ideas.

Convinced by the added value independent directors can bring to all kind of organisations, **GUBERNA recommends generalising the presence of 'independent directors' in all public organisations**. While there is no definition of independence commonly accepted in the public context, GUBERNA proposes (and is ready to provide support) developing a clear definition of independence in a public context. Such definition should at least encompass the definition of the company code and ideally include additional incompatibilities in order to avoid a too-narrow relationship between the independent directors and the political decision-makers. In order to ensure the full involvement and commitment of independent directors, GUBERNA recommends remunerating them in line with market norms for that type of organisations.

Second, **GUBERNA recommends considering a critical board and director evaluation as part of the selection process**. Our research and international comparison demonstrate that an evaluation of board composition in terms of skills, experiences, gender, age, … can help identifying missing profiles within the board and therefore greatly facilitates the development of the desired profile for a board vacancy. Particular attention should be given to the professionalism, the confidentiality and the independence of the evaluation process that should preferably be led externally.

The third GUBERNA recommendation is to **give the incumbent board and chairman a more substantial role in the selection process of a new non-executive director and in the nomination of the CEO of a SOE**. Based on a focused board (and management) evaluation, the incumbent board should make recommendations and play an active role in the development of the vacancy profile and preferably in the assessment of potential candidates. As explained in point 4.5.3., the role of the board in the selection process could be different whether the selection concerns public directors or whether independent directors have to be found. In addition, in order for Belgium to respect the OECD recommendations, GUBERNA recommends giving the SOE board the task to nominate the CEO of the company. This would allow to reinforce the role and the legitimacy of the board towards the management and to avoid the board to be circumvented.

Fourth, **GUBERNA pleads for giving the Knowledge & Support Centre an important support role in the professionalization of the board of the SOEs**. The involvement of the Centre should be instrumental when it comes to the selection of public directors. But also for the selection of independent directors this Knowledge and Support Centre could play a supporting role for the board

 ©GUBERNA 2014

of the SOE. GUBERNA recommends the Knowledge & Support Centre playing a prominent role in promoting professional development and education of directors (public as well as independent directors). Such a broad involvement would generate many advantages as detailed in point 4.5.4. of this report.

Finally, **GUBERNA recommends improving the interaction between the State, the public directors and the SOEs**. Convinced by the added value of a constructive interaction between the major governance bodies, GUBERNA recommends that the responsible Minister (or the Knowledge & Support Centre) presents to the board the shareholder strategy (a practice already occurring on an ad-hoc basis). This brings clarity to the State's strategy and their expectations towards the board and the directors. Then, GUBERNA also recommends better structuring the accountability of the SOEs, their CEO and chairman, towards the Parliament. The challenge is to combine the necessary accountability towards the shareholders and society at large with the need for a professional and effective conduct of the business activities. Special attention should be given to optimise this process and avoid that confidential and strategic information be diffused in the public square. Suggestions of reforms are detailed in point 4.5.5.

Some final remarks

The report demonstrates that, for the Belgian State to fulfil its role of shareholder at best, quite a lot of issues need careful reconsideration. However, GUBERNA's critical analysis must not ignore the fact that there are already some best practices and positive evolutions occurring in Belgium. What is however lacking is a critical screening of the global situation in light of the OECD recommendations. Besides these recommendations, inspiration might be found in the Belgian as well as the numerous international best practices to bring the Belgian public governance on a more modern footing. Those best practices must be highlighted, promoted and introduced at all SOEs. Individual organisations are generally aware of the need for good governance practices, especially in the public sector. They are however often dependent upon the political willingness to make things move forward.

This report is a plea towards the political leaders for addressing the challenges State ownership poses in today's society. The socio-economic context, the financial crisis, the growth in the State portfolio, the media focus on SOEs, the public pressure and the upcoming elections make such debate unavoidable and reforms more than welcome. We sincerely hope this report will contribute to this discussion and reform.

©GUBERNA 2014

6. References

APE (2012) *2011 Report – French State as a shareholder*. Paris: Ministère de l'Economie, des Finances et de l'Industrie.

APE (2013) *2012 Report – French State as a shareholder*. Paris: Ministère de l'Economie, des Finances et de l'Industrie.

BAILLY, O. *Speech: "The French State as a shareholder"*. GUBERNA conference on "The State as a shareholder" held on 5 November 2012, Brussels.

BALTIC INSTITUTE OF CORPORATE GOVERNANCE (2012) *Governance of State-owned Enterprises in the Baltic States*. Vilnius: Baltic Institute of Corporate Governance.

BUNDESMINISTERIUM DER FINANZEN (2013) *Die Beteiligungen des Bundes: Beteiligungsbericht 2012*. Berlin: Bundesanzeiger.

CHAMBRE LUXEMBOURGEOISE DES DEPUTES (1989), *Projet de loi concernant le statut des administrateurs représentant l'Etat ou une personne morale de droit public dans une société anonyme*, N° 3272, Session ordinaire du 27 avril 1989.

CHRISTIANSEN, H. (2013), "Balancing Commercial and Non-Commercial Priorities of State-Owned Enterprises", *OECD Corporate Governance Working Papers, No.6.* Paris: OECD Publishing.

CHRISTIANSEN, H. (2011), "The Size and Composition of the SOE Sector in OECD Countries", *OECD Corporate Governance Working Papers, No.5.* Paris: OECD Publishing.

COMMISSIONER FOR PUBLIC APPOINTMENTS (2012) *Code of practice for Ministerial appointments to public bodies*. London: Commissioner for Public Appointments.

DE TIJD (18/05/2002), "De overheid is een onbekwame aandeelhouder", *De Financieel-Economische Tijd*, Brussel.

DEPARTMENT FOR BUSINESS, INNOVATION & SKILLS (2012) *Shareholder Executive: Portfolio Unit.* London: HM Government.

EDWARDS, M. (2006) "Appointments to Public Sector Boards in Australia: A comparative assessment", *Issues Paper Series No. 3*, Canberra: University of Canberra.

FINNISH MINISTRY OF TRADE AND INDUSTRY (2004) *Evaluator Report of the State's Ownership Policy* (Matti Vuoria Report). Helsinki: Ministry of Trade and Industry – Studies and Reports.

FINNISH MINISTRY OF TRADE AND INDUSTRY (2004) *Statement by the Cabinet Committee on Economic Policy*. Helsinki: Ministry of Trade and Industry – Policy documents.

FREDERICK, W. (2011) Enhancing the Role of the Boards of Directors of State-Owned Enterprises . In: *OECD Corporate Governance Working Papers, No. 2*. Paris: OECD Publishing.

FRENCH GOVERNMENT (9 September 2004) *Decree no. 2004-963 establishing an agency with nationwide responsibility, the French Government Shareholding Agency.* Article 1st, II.

 © G U B E R N A 2 0 1 4

GRÖPL, C. and RUPP, M. (2011) *State Assets (Public Ownership) in the Federal Republic of Germany* in Ius Publicum Network Review.

GUBERNA (2006) *Gouvernance publique: des défis essentiels en matière de bonne gouvernance dans les organisations publiques*. Brussels : GUBERNA.

IFA (2011) *Etre administrateur dans le secteur public*. Paris : Institut français des administrateurs.

JOURNAL OFFICIEL DE LA REPUBLIQUE FRANCAISE, *Décret n°2004-963 du 9 septembre 2004 portant création du service à compétence nationale « Agence des participations de l'Etat ».*

JOURNAL OFFICIEL DU GRAND-DUCHE DE LUWEMBOURG, *Loi du 25 juillet 1990 concernant le statut des administrateurs représentant l'Etat ou une personne morale de droit public dans une société anonyme*, Recueil de législation A-N°41, 31 août 1990.

KALLEVIG, M. (2005) *Ownership Function of the Norwegian State*. Moscow: OECD Russian Corporate Governance Roundtable Meeting (2-3 June 2005).

L'ECHO (25/11/2002), "Des administrateurs responsables sauveront les entreprises publiques"

L'ECHO (20/07/2002), "L'indépendance des administrateurs, une nécessité pour les entreprises publiques"

L'ECHO (19/11/2001), "Philippe Defeyt : 'Les entreprises publiques ont besoin de plus d'Etat'"

MINISTERE DE L'ECONOMIE, DES FINANCES ET DE L'INDUSTRIE (2003) *L'Etat actionnaire et le gouvernement des entreprises publiques. Rapport à M. Francis Mer, Ministre de l'Economie, des Finances et de l'Industrie* (Rapport Barbier de la Serre). Paris : Ministère de l'Economie, des Finances et de l'Industrie.

NL FINANCIAL INVESTMENTS (2013) *Annual Report 2012*. The Hague : NLFI.

NORWEGIAN MINISTRY OF TRADE AND INDUSTRY (2012) *The State Ownership Report 2011*. Oslo: Norwegian Ministry of Trade and Industry.

NORWEGIAN MINISTRY OF TRADE AND INDUSTRY (2011) [1] *The State Ownership Report 2010*. Oslo: Norwegian Ministry of Trade and Industry.

NORWEGIAN MINISTRY OF TRADE AND INDUSTRY (2011) [2] *Active Ownership: Norwegian State Ownership in a global economy.* Oslo: Norwegian Ministry of Trade and Industry.

OECD (2013) *Corporate governance: Boards of Directors of State-Owned Enterprises: An Overview of National Practices.* Paris: OECD publishing.

OECD (2012) "Board of Directors of State-Owned Enterprises: An Overview of National Practices", *Working Party on State Ownership and Privatisation Practices*. Paris: OECD.

OECD (2011) *State-Owned Enterprise Governance Reform: An Inventory of Recent Change*. Paris: OECD publishing.

OECD (2010) *Accountability and Transparency: a Guide for State Ownership*. Paris: OECD Publishing.

 ©GUBERNA 2014

OECD (2005) [1] *Guidelines on Corporate Governance of State-owned Enterprises*. Paris: OECD publishing.

OECD (2005) [2] *Corporate Governance of State-Owned Enterprises: A survey of OECD countries*. Paris: OECD publishing.

OECD (2003) Regulatory Reform in Finland. Marketisation of Government Services – State-Owned Enterprises. Paris: OECD Publishing.

OWNERSHIP STEERING (2011) *2011 Annual Report of the Ownership Steering Department in the Prime Minister's Office*. Helsinki: Edita Publishing Ltd.

SHAREHOLDER EXECUTIVE (2012) *Annual Review 2011/2012*. London: HM Government.

SOLIDIUM (2012) *Annual report 2012 for Finnish Ownership*. Helsinki: Solidium Oy.

SWEDISH MINISTRY FOR FINANCIAL MARKETS (2012) *Annual report 2011: State-owned companies.* Stockholm: Regeringskansliet.

SWEDISH OWNERSHIP COMMITTEE (2012) *Förslag till en ny statlig ägaförvaltning.* Stockholm: Ownership Committee.

TEMASEK (2012) *Extending Pathways: Temasek Review 2012.* Singapore: Temasek Holdings (Private) Limited.

UK CABINET OFFICE (2006), *Making and Managing Public Appointments: A Guide for Departments*, 4th edition, London: UK Government.

UK FINANCIAL INVESTMENTS LTD (2012) *Annual Report and Accounts 2011/12.* London: UK Financial Investments Ltd.

UK FINANCIAL INVESTMENTS LTD (2009) *Shareholder Relationship Framework Document (revised version 13 July 2009).* London: UK Financial Investments Ltd.

© G U B E R N A 2 0 1 4

7. Thanks

GUBERNA would like to thank all the people who contributed to this reflection on the State as a shareholder. Their input was of particular importance in the development of this report and in the formulation of the recommendations.

First of all, GUBERNA would like to thank the international experts who came to Brussels to participate in one or the other roundtable that GUBERNA organised in 2012 and 2013: **Mr Olivier Bailly, Mr Arto Honkaniemi, Mr Magnus Johansson, Ms Karianne Kvernmo Wasenden, Mr Kristian Kaas Mortensen, Mr Nigel Smith, Ms Sara Sultan and Mr Tapani Varjas.**

Then, GUBERNA would like to thank the Belgian speakers who participated in the roundtables dedicated to the topic of the State as a shareholder: **Mr Bart Bronselaer, Ms Adelheid Byttebier, Mr Amaury Caprasse, Minister Koen Geens, Mr Eric Kirsch, Ms Christine Vanderveeren and Mr Koen Van Loo.**

GUBERNA is also very thankful to the Belgian experts who dedicated time to the expert group meetings and who shared their skills and experiences in order to formulate relevant recommendations[22]: **Ms Marie-Elisabeth Bellefroid, Mr Bart Bronselaer, Ms Adelheid Byttebier, Mr Amaury Caprasse, Mr Toon Colpaert, Ms Kathleen De Hornois, Mr Jeroen Delvoie, Ms Martine Durez, Mr Alain François, Mr Danny Frans, Ms Catherine Gernay, Mr Jean-Marc Goeders, Mr Dirk Gyselinck, Mr Philippe Lambrecht, Mr Koen Van Loo, Mr Olivier Vanderijst, Mr Guido Vandervorst and Mr Georges Wanet.**

Finally, GUBERNA and its Centre Public Governance are very grateful to their long term partners:

[22] Recommendations included in this report are based amongst others on the mainstream conclusions of the experts' points of view and do not take into consideration all specific individual opinions. Given the broad range of issues tackled and the number of experts involved, it might be possible that one or another recommendation is not entirely shared by all experts.

©GUBERNA 2014

8. Appendix 1: detailed overview of the Belgian shareholding model

Legend:

- Autonomous SOE
- Organisation of public interest (cat.B)
- Organisation of public interest (cat.C)
- Public limited company (of public law)
- Other
- → Shares / Loans
- * Listed company

Under the control of a Government commissioner nominated by:

1 Minister of Finance
2 Minister of Budget
3 Minister of Economy
4 Minister of Health and Social Affairs
5 Minister of Interior
6 Minister for Cooperation and Development
7 Minister of Public enterprises
8 Minister of Foreign Affairs
9 Minister in charge of Cultural Institutions
10 Minister for SME, agriculture and middle classes
11 Secretary of State for Environment, Energy and Mobility
12 Secretary of State for Sustainable development
13 Minister of Pensions
14 Minister of Defence
15 Minister(s) from other level(s) (Regions and/or Communities)

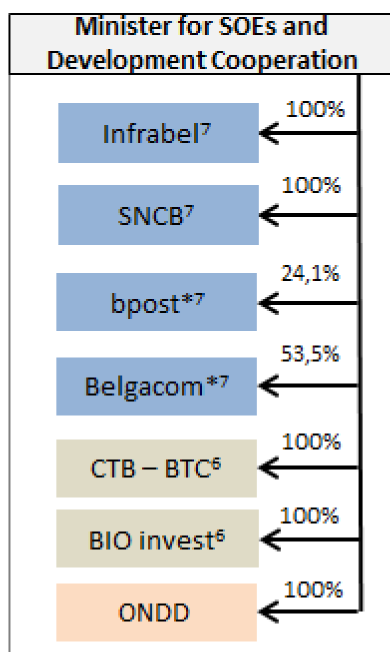

Figure 27 - Portfolio of the Belgian Minister of Public Enterprises

©GUBERNA 2014

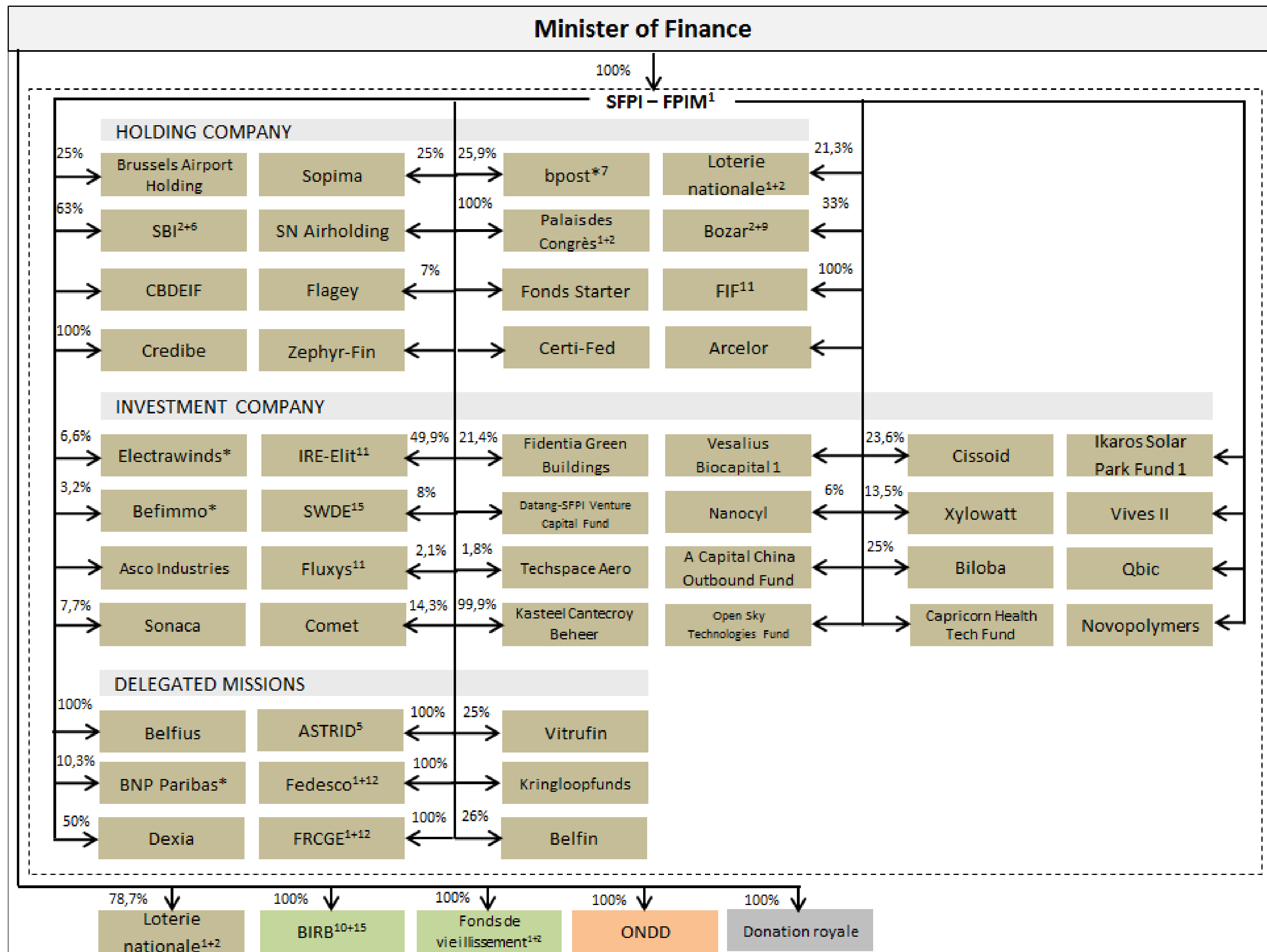

Figure 28 - Portfolio of the Belgian Minister of Finance (updated in May 2014)

© G U B E R N A 2014

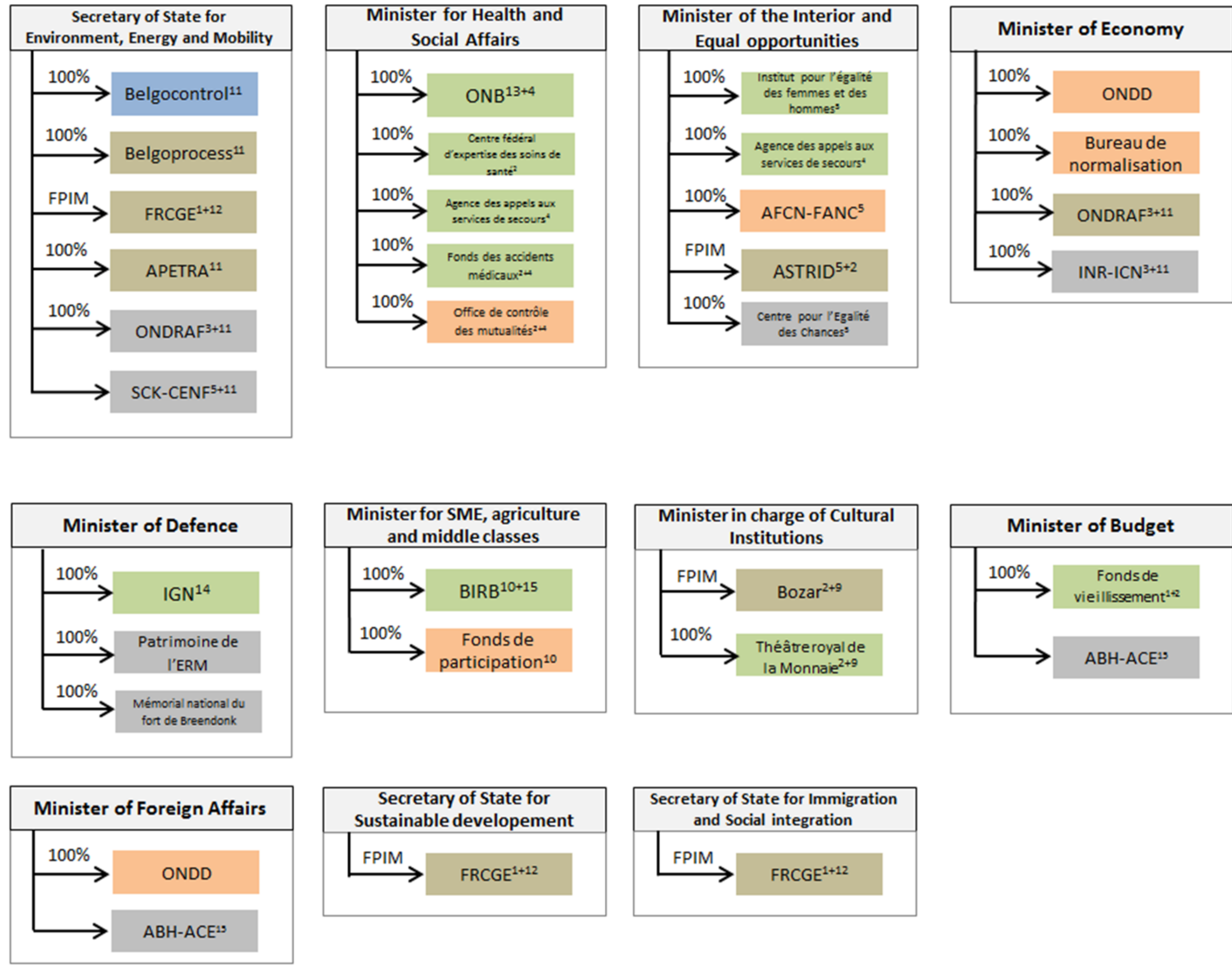

Figure 29 - Portfolio of the Sectorial Ministers (updated in May 2014)

NB: *100% means that the SOE is fully owned by the State. As mentioned in the report, it is sometimes difficult to identify the final shareholder. When a SOE is under the responsibility of more than one minister/actor, 100% appears several times. It must be considered to be owned by the government as a single actor.*

© G U B E R N A 2 0 1 4

CONTACTS

Prof. dr. Lutgart Van den Berghe
Executive Director

Tel: +32 9 210.98.95
Fax: + 32 9 210.98.90

Renaud Van Goethem
Research Associate

Tel: +32 2 518.18.08
Fax: + 32 2 514.32.82
renaud.vangoethem@guberna.be