

Czech republic's ownership policy in resort of Ministry of Transport or else Who governs Czech railways and other state-owned enterprises in transport sector?

Analysis by Frank Bold, Naši Politici and Czech Transport Federation of NGOs, December 2015

English summary

Ministry of Transport is one of the important executive institutions which should be – together with its subordinated organisations and state-owned enterprises against which the Ministry of Transport (hereinafter MT) acts as an ownership entity – changed by the implementation of components and principles of good governance. This basic aim has been selected for the project named Transparent transport (Průhledná doprava, www.pruhlednadoprava.cz) by the Dopravní federace NNO (Czech Transport Federation of NGOs) in cooperation with organizations Naši politici, Frank Bold and Oživení. This analysis is one of the main outputs of the mentioned project.

The purpose of the analysis is to identify possible shortcomings or vice versa highlight examples of good practice in corporate governance of selected, economically important state-owned enterprises and to make corresponding recommendations addressed to the Ministry of Transport.

The analysis aims for two aspects of the corporate governance of state-owned enterprises (SOEs hereinafter) against which the Ministry of Transport acts as an ownership entity for the state. Those two aspects are the state ownership policy and the legal regulation of the nomination process, i.e. filling of positions in bodies of following state-owned enterprises. The current legal regulation and practice have been compared with the OECD recommendations and with the best practice of selected OECD member states and further recommendations which implementation might tackle the legal loopholes, shortcomings and problems in corporate governance of SOEs in the resort of MT.

In the area of ownership policy and implementation of the Transport policy were identified following problems:

1. The task of creating state ownership policy for trade companies and state enterprises, mentioned in the Anti-Corruption Action Plan for year 2015, has not been fulfilled yet.
2. Currently, there is no legal framework which enables Ministry of Transport to systematically govern individual state-owned enterprises and to give them binding orders that must be followed by the bodies of such SOEs.
3. Ministry of Transport may, however, define basic principles of management of state-owned enterprises and set up general development policy of the SOEs. MT may also give strategic orders to the members of the SOE's Board of Directors.
4. MT is not involved in the creating of unified policy of the ČD concern which means that the MT is not involved in setting up objectives and outcomes that shall be pursued by the ČD concern's members.

To tackle those issues and to adopt the MT's ownership policy, we recommend implementing following measures:

1. Ministry of Finance should submit the state ownership policy.
2. MT should adopt its own ownership policy – a conceptual document that may facilitate the general objectives of the state, contained in the public policy documents, namely the Transport policy, to the individual state-owned enterprises in the transport sector.
3. MT may initiate changes in the ČD's corporation charter in a way that empowers general meeting (ČD Steering committee respectively) to adopt ownership policy which must be respected and implemented by the ČD Board of directors in their day-to-day management.
4. Subsequently the corporation charters of the ČD's subsidiary companies shall be amended in an appropriate manner so the boards of directors of those companies will have to implement the orders given by the ČD

general meeting (ČD Board of directors respectively) accordingly to the unified policy uniform of the ČD concern.

5. In case of Air Navigation Services of the Czech Republic, MT shall amend its status to contain basic principles of management of this state-owned enterprise and to set up general development policy of the SOE which will be in accordance with the Transport policy and other ministerial documents.

In the area of nomination policy and processes to bodies of state-owned enterprises in Transport sector following problems were identified:

1. The Government Committee for Personal Nominations (Vládní výbor pro personální nominace) assess the nominees in cases of filling positions in SOE's supervisory boards only.
2. The very composition of the Government Committee for Personal Nominations is problematic as it basically replicates the composition of the current government coalition.
3. The only standards for nominations which are in accordance with the good practice described by the OECD are the nominations of the state representatives to supervisory boards of state enterprises such as the Air Navigation Services of the Czech Republic because the nominees are assessed by the Government Committee for Personal Nominations. In case of ČD, only two nominations to its supervisory board have been assessed by the aforementioned committee in 2015. However even in these two cases the nomination process is far from perfect because it is not transparent.
4. The persons nominated to positions in ČD supervisory board are not assessed by the Government Committee for Personal Nominations probably because the members of supervisory board are nominated by the ČD Steering committee instead of Ministry of Transport which can be considered as a gap in Government Committee for Personal Nominations authority.
5. The nomination process for positions in ČD Steering committee is not regulated at all.
6. The nomination process for positions in bodies of ČD's subsidiary companies is not regulated. The nominees are assessed by the ČD Steering committee.
7. MT has no internal regulation for filling positions in boards of directors in state-owned enterprises. The nomination process to other bodies than supervisory boards (regulated by the Government Decree number 177) is not regulated legally.
8. There are no transparent qualification criteria for nominees to SOE's bodies except of the basic legal requirements anchored in Civil Code, Law on commercial corporations and Act on state-owned enterprises.

To tackle those issues and to fulfil the OECD standards for nomination process to bodies of state-owned enterprises in the resort of Ministry of Transport, we recommend implementing following measures:

1. The composition of the Government Committee for Personal Nominations shall be regulated by the new Act on selection of persons to the boards of state-owned enterprises which is currently being prepared by the Ministry of Finance.
2. The MT should create its own nomination committee to assess the nominees that might not be assessed by the Government Committee for Personal Nominations. This ministerial committee should fulfil basically the same role as the Government Committee for Personal Nominations.
3. The MT should develop its own qualification criteria on the basis of which the nominees shall be proposed or appointed to the SOE's boards. The qualification criteria for the members of the ČD Steering committee appointed from the ranks of MT's public servants should be established. The other ministries whose public servants are members of the ČD Steering committee should do the same.
4. Ministry of Transport should continue coordinate its filling of positions in ČD supervisory board with the ČD Steering committee so the nominees will be assessed by the Government Committee for Personal Nominations.
5. The ČD Steering committee should assess the nominees on the basis of predetermined qualification criteria defined for particular positions using the British good practice as a model.

6. The alternative to the previous recommendation is to amend the prepared Act on selection of persons to the boards of state-owned enterprises in a way that it regulates the nomination process to the subsidiary companies of the state-owned enterprises.



nadace
partnerství



*Podpořeno grantem z Islandu, Lichtenštejnska a Norska v rámci EHP fondů.
www.fondnno.cz a www.eeagrants.cz*