

# Coordination Mechanism Framework

## Executive Summary

The mechanism outlined in this note describes the process for a) the formulation of the SOE's mandate; b) the agreement on performance contracts c) the formulation of Statement of Commitments d) the involvement of the SOE in the development strategy of the State. Moreover, it describes the framework and processes through which EDIS will successfully assume its role, in close cooperation with technical Ministries and the Ministry of Finance (acting through the Cabinet Committee, or the Steering Committee), the SOEs and the relevant stakeholders, as appropriate.

The role of the State in the coordination mechanism shall be agreeing the mandate of the SOEs with HCAP/EDIS, in line with the best practice principles, commissioning of specific special obligations objectives as needed, and engaging with the SOE in relation to regional, sectoral or industrial initiatives;

HCAP's Strategic Plan is provided as input to the Coordination Mechanism process between the State, the subsidiaries of HCAP and the SOEs described in the present document.

The Investment Policy of HCAP is provided as input to the Coordination Mechanism process between the State, the subsidiaries of HCAP and the SOEs described in the present document.

The objectives setting process between HCAP and SOE should take into account the potential availability of financing by HCAP investment budget and the potential effect on the company's operation of the State's investment plan and or sectoral policies.

The design of the coordination mechanism should ensure compliance with EU legislation regarding SGEIs and relevant national sectoral legislation, and best practices, including applicable OECD principles and in particular the OECD Guidelines on the Governance of State-Owned Enterprises and OECD Accountability & Transparency framework, on the basis that HCAP/EDIS shall exercise the State's ownership rights in respect of shareholdings owned by EDIS.

## Relevant frameworks

The coordination mechanism applies the following frameworks:

- The EU acquis on SG(E)Is, in particular Article 14 TFEU, the Charter of Fundamental Rights and Protocol No 26 on Services of General Interest.
- OECD principles regarding SOEs, in particular the OECD Guidelines on Corporate Governance and Accountability and Transparency of State-Owned Enterprises
- The Commission's State Aid Package for SGEIs, in particular the Communication on a European Union framework for State aid in the form of public service compensation (the SGEI Framework)
- Commission Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (the Transparency Directive)
- National legislation and sectoral regulatory framework
- Principle V of OECD Guidelines for Corporate Governance for state – owned enterprises, which will be taken into account in order for EDIS to promote consultation of SOEs' stakeholders, according to the provision of law 4389/2016 article 197 on EDIS.

## Other legal obligations

For avoidance of doubt, obligations which stem from / relate to legal or regulatory requirements, are not Special Obligations for the purpose of this Coordination Mechanism, even if those legal, regulatory or other obligations stem from social or public policy objectives of the State. This Coordination Mechanism does not affect or restrict the State's ability to implement social or public policy through legislation or regulation, or through the terms of concessions, licenses or similar instruments.

## **Key elements of the Coordination Mechanism**

The coordination mechanism describes the processes and the outputs (where applicable) for the coordination between the State, the HCAP and the SOEs on the following issues:

1. The SOE's mandate
2. Where special obligations are entrusted to the SOE, a performance contract setting out the special obligation
3. A statement of commitments, which deals with the SOE's objectives relating to its activities other than special obligations, and which should be in line with the Strategic Plan of HCAP (which in turn is in line with the Ministerial Guidance)
4. Decisions related to the involvement of the SOEs in the State's development policy.

The timeline for the elaboration of each process will be agreed between the participating parties during their first meeting.

### **1. SOE's Mandate**

The SOE's main activities are set out in a mandate. This is described in more detail below in Step 2 of the Coordination Mechanism Process.

### **2. Performance Contracts**

Special obligations (defined below) will be entrusted to an SOE using a Performance Contract.

Performance Contracts, the main output of the entrustment process, will allow the efficient and coherent implementation of special obligations by Greek SOEs

These contracts, will:

1. Clearly state the mission and objectives of the special obligations
2. Define financing for the achievement of the stated objectives, in particular for any Special Obligation
3. Specify the role and commitments of all signing parties.

The contracts shall be prepared through a structured contractualisation process between:

- EDIS (acting on behalf of HCAP for the management of its portfolio of SOEs),
- each of the SOE under its portfolio which the State will require to undertake Special Obligations, and
- the Cabinet Committee

Based on best international and European practices, Performance Contracts describe specific goals, actionable targets, performance metrics to reflect them, as well as appropriate financing of Special Obligations. The achievement of goals described in performance contracts will be evaluated on a regular basis

### **Special Obligations Framework**

Special obligations may be assigned to SOEs directly by the State to achieve public policy goals. These special obligations will be set out as binding performance contracts between the SOE, relevant State entities, and EDIS/HCAP where appropriate. Such special obligations must be for the purpose of ensuring the delivery by the State of a service of general economic interest.

If special obligations are entrusted to an SOE through the coordination mechanism (that is, where they do not arise from legislation, regulation or other instruments) then the SOE will be fully compensated by the State for their costs, including a reasonable profit as provided by national sectoral legislation and any applicable regulatory framework. Costs shall be determined in accordance with EU legislation (in particular State aid rules and the SGEI package) to ensure that the cost calculation is transparent for the State, and to prevent overpayment to the SOE. The State needs to monitor and review the effective fulfilment of special obligations set out in performance contracts.

SOEs will only be obliged to undertake special obligations if they have been explicitly assigned and compensated as described above. An SOE may, in all cases, undertake activities on its own initiative as part of carrying out its mandate that are consistent with public policy goals. It will not be entitled to compensation for activities that are within the generally accepted norm in terms of public service considering its business model. An activity will not necessarily fall outside the generally accepted norm simply because it is loss-making (for example, community engagement programs or corporate social responsibility).

The goals and the financing mechanisms for the Special Obligations, as well as the methodology for the calculation and the allocation of the cost, shall be agreed between the SOE, EDIS and the Cabinet Committee in accordance with Greek and EU legislation and the existing best practices. They shall be clearly set out in the Performance Contract for the SOE.

## **Special Obligations Definition**

Special Obligations stem from social or other public policy objectives that fall within the SOE's jurisdiction, and are activities that the SOE is required to undertake that the SOE would not elect to undertake beyond the generally accepted norm in terms of public service, or would undertake only under different conditions in terms of, for instance, objective quality, safety, affordability, equal treatment, non - discrimination or universal access.

Activities such as corporate social responsibility programs, corporate citizenship sponsorships or similar loss-making products / activities or services, will not necessarily fall within the definition of Special Obligations simply because they are loss-making. These activities would be expected to be part of the SOE's normal business.

## **3. Statement of Commitments**

The Statement of Commitments will set out strategic objectives for the SOE's independent management, agreed between the SOE board and EDIS as a shareholder. The objectives will be consistent with the SOE's mandate and with HCAP's Strategic Plan, (which in turn will be consistent with the Ministerial Guidance). They will set out the financial and other objectives for the SOE, such as objectives related with the implementation of best practices for socially and environmentally sustainable business, consultation with stakeholders, governance, financial management, and transparency. The Statement of Commitments will also include the operational objectives that the SOE will pursue in order to meet the strategic objectives. These objectives should be consistent with the long-term financial value maximization purpose of HCAP and should reflect a balanced and holistic approach to ensure its long - term financial sustainability and ongoing improvement of the SOE's operations.

SOEs should be required over time to earn rates of return that are, taking into account their operational conditions including socio-economic and market conditions, consistent with those obtained by well-regarded and comparable private and where appropriate, public enterprises.

After being agreed between EDIS and the board of an SOE, the objectives for an SOE's activities other than the Special Obligation(s) shall be set out in a document called "Statement of Commitments". The "Statement of Commitments" is a document that describes the core goals for each SOE on an annual basis, for a period of 3-5 years.

EDIS is responsible for agreeing strategic and operational objectives with the boards of SOEs in accordance with the framework set out below, including in relation to SGEI shared values, and financial principles.

## **Process**

After a constructive dialogue between the board of the SOE and EDIS, HCAP and EDIS shall have full competence to independently agree objectives with the boards of SOEs in accordance with their shareholder rights under Greek corporate governance and S.A. legislative framework and the provisions of this section. HCAP and EDIS should pursue consultation with relevant stakeholders and coordination with local / regional / national government authorities in cases this is beneficial in terms for instance of territorial cohesion and / or in cases where this would facilitate the achievement of their goals.

As a guide, the following sources may be referred to in defining holistically objectives for each SOEs' activities, taking into account decisions related to the participation of the SOE in the State's development policy taken through the process described in section 4 below:

- Overall or specific reports of the company, prepared by the SOE, in close cooperation with EDIS, delivering a clear statement of the management's vision, its financial value, key priorities in terms of development, capex programs, restructuring, and a relevant SWOT analysis. These reports will be based on information derived from various sources, such as financial statements of SOEs, relevant stakeholders and other public sources, with additional recourse to external consultancy if needed.
- The SOE's annual report

To sum up, objectives for the activities of each SOE shall be consistent with:

- Shared values, as set out in this section
- The SOE's mandate
- HCAP's Strategic Plan
- HCAP's and EDIS's internal regulations
- The Hellenic Republic's sectoral policy for the sectors in which the SOE has activities
- HCAP's investment policy
- Existing legislation and regulatory framework

## **EU Shared Values for SGEIs**

SOEs active in key public service sectors should operate with due regard for the public importance of their activities. Accordingly, their objectives should reflect the EU shared values for SGEIs as described below, to the extent that doing so is complementary to the interest of the company and appropriate to its business model. This will not oblige an SOE to ensure, on its own initiative, the delivery of social or public policy goals related to SGEIs – that remains a role of the State.

The EU shared values for SGEIs are:

1. A high level of quality
2. A high level of safety
3. A high level of affordability
4. Equal treatment
5. Promotion of universal access
6. Promotion of users' rights

## **Financial principles**

Objectives shall be consistent with the following principles:

- SOEs are expected to consistently increase their long-term financial value.
- SOEs shall apply principles of sound financial management, including taking into account their cost of capital.
- SOEs shall be required to earn, over time, rates of return that are, taking into account their operational conditions including socio-economic and market conditions, consistent with those obtained by well-regarded and comparable private and, where appropriate, public enterprises.
- SOEs shall determine an optimal capital structure and measures for complying with it over time.

## **Objectives Presentation**

Within the Statement of Commitments document, each SOEs' objectives could be categorized as following:

### *A. Strategic Objectives*

Strategic objectives, (up to 4) cover the following areas: i) economic, commercial and financial performance ii) investments, major projects, innovation, R&D and human capital iii) services provision iv) governance and internal control, accountability, transparency and participation of the stakeholders. The social and environmental impact of the Strategic Objectives shall be taken into account as needed, as part of developing and assessing the objectives.

Strategic objectives could indicatively be: improve financial performance, invest in infrastructure/network modernization, invest in human resources and training, promote environmentally sustainable technologies and innovative services/products, increase quality, affordability and accessibility of services, reinforce internal audit and reporting systems, introduce stakeholders' consultation and accountability procedures.

Key strategic projects may also be described (description of the investment or project/ responsibility allocation / actions/ planning / timeline)

EDIS is responsible for agreeing holistic and balanced Strategic Objectives for the SOEs with each SOE board, that in their totality should be consistent with: a) each SOE's long-term financial sustainability b) the SOE's mandate c) any exogenous factor such as regulatory & legislative framework, etc, and take into account the SOE's current condition, including as depicted in its annual report.

### *B. Operational objectives*

Operational objectives will further specify and quantify the strategic objectives of each SOE. As a principle, adequate operational objectives will be identified, for each relevant strategic objective, and will indicatively cover issues like: improvement of network efficiency by y% minimum per year, decrease of pollution by x%, increase commercial sales by y% minimum per year, investment of x% of budget in R&D (also aiming at improving efficiency for reducing operational running costs), improvement of users' satisfaction by x%). These should be set out taking into consideration all relevant HCAP objectives and operational principles, as well as peer group comparable data and could include:

- Financial / economic /commercial goals including a return on capital target based on peer analysis, dividend expectations and a target credit rating, sales targets, market share, etc.
- Investment goals, for instance capex leverage, IRR, ROI, etc.
- Provision of services goals, for instance safety, quality, customer satisfaction, affordability, accessibility, etc.
- Protection of natural resources.
- Level of R&D expenses, etc.
- Accountability and transparency goals. For instance, access to information, stakeholder's involvement, etc.
- Governance, financial management and internal control goals, for instance, governance and risk processes.
- The social and environmental impact of the Operational Objectives shall be taken into account as needed, as part of developing the objectives.



Each SOE is responsible for the conversion of its' Strategic Objectives into Operational Objectives and for the relevant drafting.

After the "Statement of Commitments" is agreed between EDIS and the SOE, the final document, accompanied by a report explaining the ways in which each SOEs' targets are in compliance with HCAP's relevant part(s) of the Strategic Plan are achieved, is submitted to the Cabinet Committee. The SOE then makes the Statement available to the Public.

All operational objectives should be expressed as precise key performance indicators (KPIs) with minimum / maximum thresholds. These KPIs could be grouped into "Strategy Maps" (indicatively: financial, economics, investments, provision of services, transparency & accountability, social and environmental impact) and then reported to EDIS within the framework of a scorecard (for example following the Public Value Scorecard methodology).

#### **4. Economic development goals**

In cases where the State foresees a potential role for an SOE in relation to the State's public policy relating to regional, sectoral or industrial activities, the SOE's board, in consultation with HCAP/EDIS, shall engage with the State in good faith to consider such involvement. In doing so the SOE should evaluate the compatibility of any such involvement with its mandate (if applicable) and with its existing goals, strategy and operations. Any obligations agreed by the SOE, the State and/or other relevant parties shall be on arm's length terms and set out contractually unless this is not appropriate or feasible. As a matter of principle, the SOEs / HCAP / EDIS should try to implement important objectives related to the State's development policy where the SOE's board considers that this is in the interest of the company and in line with the Strategic Plan of HCAP and the SOE's' mandate. In case that the SOE considers that it should not participate in such engagement, then at the request of the State, it and HCAP/EDIS will engage with the State in a process of independent mediation to attempt to seek agreement. The ultimate decision of whether to participate in such policy activities will be taken by the Board of the SOE, acting independently and in the interest of the SOE. The SOE, following the mediation procedure, will publish a reasoned report explaining the rationale for not participating in such engagement.

## **Coordination Mechanism Process**

### *Step 1: Government's sectoral policy*

The process begins with a step outside HCAP's framework. This step will deliver a key-input for the next steps of the Coordination Mechanism described onwards. During this first stage, the government develops and publishes its sectoral policy at national and regional level.

The output of this stage constitutes a document that contains the government's sectoral policy goals.

### *Step 2: SOE's mandate*

Based on the government's Sectoral Policy, and after completion of Step 1, EDIS proceeds to the elaboration and drafting of each SOE's mandate. The mandate sets out a simple, high-level objective and mission for the SOE in the long run which includes, a statement on its public value, including its policy goals; defines the main objective of the SOE's mission, and sets out generic goals, such as ambition in terms of market leadership, level of excellence in service delivery or coverage, as well as broad financial goals.

Each SOE must contribute to the discussion regarding its mandate formulation with EDIS, providing its knowledge of the sector and the company itself. In other words, in order for the mandate to be formulated, these sources of information should be taken into account: the government's sectoral policy, existing legislation relevant to the SOE, the SOE's own constituent instruments such as its Articles of Association, and the SOE's own knowledge and expertise.

Once drafted by EDIS, the mandate of each SOE must be approved by the Cabinet Committee.

At the end of the mandate - drafting procedure, EDIS should publish the mandate, which could be reviewed if deemed necessary.

### *Step 3: Commissioning of special obligations*

The third step of the procedure is the commissioning of special obligations.

Special obligations shall be set out in Performance Contracts, which shall satisfy the requirements of the SGEI package and/or relevant sectoral regulations and goals, as

applicable. These performance contracts shall comprise the entrustment act required under the SGEI package, or the public service agreement under relevant legislation for harmonized and non - harmonized sectors.

To this end, a special Steering Committee is established. This committee is coordinated by EDIS and consists of representatives from the parties that sign the Contract. The SOE is responsible for drafting the Contract and for retaining the appropriate personnel with the right skills to perform such task.

### Entrustment of Special Obligations

Performance Contracts will deal with entrusting/assigning any relevant Special Obligations to the SOE by the State. Their contents shall satisfy the requirements of the SGEI Framework as applicable, in particular the SGEI Framework (or the SGEI Decision, if applicable), and/or any other legislative requirements for harmonized and non-harmonized sectors under EU law. Performance contracts will also take into account national legislation and related policy goals.

In accordance with the SGEI Framework, Performance Contracts will include:

- the content and duration of the public service obligations. This should include a description of the Special Obligation to an appropriate level of detail, including the targets/operational objectives for the Special Obligation.
- the SOE and, where applicable, the territory concerned
- the nature of any exclusive or special rights assigned to the undertaking by the granting authority
- the description of the compensation mechanism
- the parameters for calculating, monitoring and reviewing the compensation
- the arrangements for avoiding and recovering any overcompensation

### Financing of Special Obligations

#### General principles

Special Obligations will be properly financed to ensure:

- that the SOE is fully compensated for carrying out the special obligation, including a reasonable profit
- that the SOE is not overcompensated for carrying out the special obligation
- the special obligations are undertaken efficiently

- that their financing methods take into account sectoral and national legislation, the requirements of the SGEI Package and any applicable EU law

Compensation for Special Obligations shall be funded by the state and disclosed. Performance Contracts shall include detailed mechanisms for determining the amount of compensation in accordance with the general principles above.

Compensation for Special Obligations may not be funded out of the earnings or dividends of that SOE.

Different financing options may be used when social or public policy is implemented using methods other than the Coordination Mechanism, namely through legislation, regulation or other instruments. For avoidance of doubt, the Coordination Mechanism will not interfere or deal with public policy goals that are implemented through these other methods, even if the goals are set out contractually (see, in this respect, the section headed “Other legal obligations” on executive summary above), and does not limit the State’s ability to use these tools for implementing social or public policy. Nonetheless, for completeness, some details are set out below regarding how social or public policy goals may be funded when these tools are used.

When social or public policy is implemented through legislation, regulation or instruments, then financing other than direct State funding is possible. Depending notably on the overall socio-economic context, the sector, the type of public service obligation or public service, specific EU regulations and cross-subsidization possibilities, various possible financing options, will be considered:

- direct budgetary funding.
- wholly or partly subsidized by users and clients,
- compensation funds constituted by the participation of all enterprises of the sector concerned,
- “play or pay” systems,

Furthermore, those options may be combined in various proportions, and may also evolve over time and/or according to the development of the service, the needs of citizens, the evolution of technology, new obligations stemming from European legislation, etc.

In case of direct budgetary funding, it is important for the state to monitor the effective fulfillment of the relevant special obligations.

#### Accounting and transparency

Each SOE which is commissioned to carry out Special Obligations shall comply with the requirements of the Transparency Directive.

An SOE which is commissioned to carry out Special Obligations shall maintain separate accounts in relation to its special obligations.

High standards of transparency and disclosure regarding the SOE's cost and revenue structures must be maintained, allowing for an attribution to main activity areas.

Costs related to special obligations shall be disclosed to the public.

#### *Step 4: Signing of the Performance Contract*

The Contract is signed by the Parties to the Contract, typically the SOE, the technical Ministry and the Ministry of Finance

Performance Contracts will be published by EDIS according to the procedures described into the Reporting & Monitoring Framework of HCAP and EDIS. Indicatively, the Performance Contract will be made publicly available. If the Performance Contract contains commercially sensitive information, then only an edited version of the Performance Contract shall be prepared and made publicly available. Such an edited version should specify which sections of the full report have been omitted and why.

#### Mapping of Special Obligations

To prepare the Performance Contract, the SOE in cooperation with EDIS will examine its activities in order to map existing special obligations. In this context, discussions with relevant stakeholders are required. The result of this exercise will be a list of activities that are identified as special obligations. For the activities identified as special obligations by the SOE and for which the SOE has not already signed a contract, EDIS in cooperation with the Steering Committee reviews the submitted list of activities. EDIS will provide the original list with the results of the review to the Cabinet Committee either directly or through HCAP and / or the regulator if exists, in order for the Special Obligation(s) to be validated as such. The SOE will then prepare an estimate of the costs associated with any such activities. The Steering Committee, with the assistance of the Budget Directorate of the Ministry of Finance, will examine the activities to see whether they remain relevant or desirable, considering their cost. Those activities which are to be retained will then be formally entrusted to the SOE as a Special Obligation.

#### *Step 5: Follow up and evaluation of the execution of the Performance Contract*

Modalities of monitoring the execution of the Performance Contract.

EDIS and the SOE will report to the Steering Committee on the execution of the Contract (every 6 months for each SOE). This reporting will be based on performance indicators. Indicators, through their periodical review, will allow the assessment of the level of achievement of each goal, and contribute to the definition of new actions, if needed, in order to improve performances. Finally, stakeholders' opinions (both internal and external) on the activity of SOEs should be considered in the overall evaluation procedure in order to enhance the impact and efficiency of the evaluation

#### *Step 6: Revision*

The follow-up and evaluation of the Performance Contract might lead to a need for revision. In case of a major change in the environment and the main assumptions on which forecasts have been made, the Contract may be amended, extended or revised. Each Performance Contract will include specific revision clauses.

## *Appendix 1: Committees in the Coordination Mechanism*

**Cabinet Committee:** The public authorities are represented by a Committee set up by the competent supervising Ministries (the “Cabinet Committee”). This Committee - comprises of senior executives of the Ministry of Finance and the relevant technical Ministries (and regional/local authorities where relevant) and the General Accounting Office (GAO). The Cabinet Committee shall coordinate the views of the various ministries to ensure that the government speaks ‘with one voice’, and to prevent the need for EDIS to negotiate or reconcile differing positions among different parts of the government.

**Steering Committee:** The Steering Committee consists of representatives of the parties that sign the Contract.

**Stakeholders:** Internal and external stakeholders of the SOE shall be invited to participate in consultation procedures. Indicatively, the following categories of stakeholders could be implicated: consumers’ associations, end-users, social organizations (from NGOs to social enterprises), environmental organizations, local authorities, business and professional associations, research institutes/universities, etc.

### *Level of representation of the different parties along the process*

EDIS: Head of portfolio investment manager, Performance Contract Expert, SGEI Expert. If necessary, higher levels of the EDIS/HCAP Management can be involved.

SOE: CFO, CEO/deputy CEO as appropriate (typically, a meeting may be arranged systematically between the CEO of the SOE and the CEO of EDIS when time comes to finalize the contract).

Technical Ministry and Budget Directorate: Director Deputy.