

International guidelines and the Brazilian law of state-owned companies: convergence toward cutting-edge integrity, *compliance*, and anti-corruption practices

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Abstract

This article aims to investigate the convergence of the integrity, compliance, and anti-corruption guidelines introduced by the Brazilian law of state-owned companies, in view of the best international practices, adopting as an analysis parameter the Anti-Corruption and Integrity Guidelines for State-Owned Companies, published by the Organisation for Economic Co-operation and Development (OECD). This descriptive study used bibliographic and documentary research and adopted a comparative analysis between the integrity, compliance, and anti-corruption system introduced by the Brazilian law of state-owned companies and the guidelines established by the OECD. The practices analyzed suggest a considerable degree of convergence between the Brazilian legislation and the OECD guidelines. Thus, the Brazilian legal system presents what can be considered a cutting-edge normative arrangement of integrity, *compliance*, and anti-corruption practices. However, despite substantially adhering to the transnational recommendations, the law still presents gaps and omissions in at least three perspectives: integrated risk management; internal controls, ethics, and *compliance*; and autonomy of state-owned companies and their decision-making bodies. The research results point to a propositional agenda for future studies, focusing on investigating the alternatives for improving the law of state-owned companies and the Brazilian institutional environment, based on the gaps identified. It also points to an agenda of applied studies devoted to investigating and understanding the challenges of law implementation and its concrete results in the universe of state-owned companies.

Keywords: Integrity. Anti-corruption. Law of State-owned Companies.

A lei das estatais e as diretrizes internacionais: convergências para o estado da arte em integridade, compliance e anticorrupção

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La ley de responsabilidad de las empresas estatales y las recomendaciones internacionales: convergencias con los últimos avances en integridad, compliance y anticorrupción

Resumen

El objetivo de este artículo es investigar la convergencia de las directrices de integridad, cumplimiento y anticorrupción introducidas por la ley de responsabilidad de las empresas estatales, en vista de las mejores prácticas internacionales, adoptando como parámetro de análisis las Directrices Anticorrupción e Integridad para Empresas del Estado, publicadas por la Organización para la Cooperación y el Desarrollo Económicos (OCDE). De naturaleza descriptiva, el estudio articula la investigación bibliográfica y documental. Para lograr los objetivos propuestos, la técnica adoptada implica un análisis comparativo entre el sistema de integridad, cumplimiento y anticorrupción introducido por la ley de responsabilidad de las empresas estatales y las pautas establecidas por la OCDE. Como resultado, se observó que la ley de responsabilidad de las empresas estatales presenta un grado considerable de convergencia en vista de las buenas prácticas analizadas, al haber introducido en el sistema legal brasileño un arreglo normativo de integridad, cumplimiento y anticorrupción, que avanza hacia lo que podría considerarse el último avance. Por otro lado, a pesar de cumplir sustancialmente con las recomendaciones transnacionales, la ley aún presenta brechas y omisiones en al menos tres perspectivas: gestión integrada de riesgos; controles internos, ética y cumplimiento; y autonomía de las empresas estatales y sus órganos de decisión. Los resultados de la investigación apuntan a una agenda propositiva para futuros estudios, con un enfoque en la investigación de alternativas para mejorar la ley de responsabilidad de las empresas estatales y el entorno institucional brasileño. Por otro lado, también apunta a una agenda de estudios aplicados dedicada a investigar y comprender los desafíos de la implementación de la ley y sus resultados concretos en el universo de las empresas estatales.

Palabras clave: Integridad. Anticorrupción. Ley de responsabilidad de las empresas estatales.

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INTRODUCTION

Anti-corruption, integrity, and compliance are priority issues in the modern corporations' agenda, increasingly gaining the attention of boards, regulatory bodies, and legislatures. These issues have inspired concerns and debates throughout companies, governments, and multilateral organizations.

In the case of state-owned enterprises (SOEs) in Brazil, recent and repeated scandals of fraud and corruption revealed after investigations from the Brazilian Federal Police and prosecutors offices¹ – especially from the second decade of the 21st century – exposed weaknesses and inefficiencies in integrity, compliance, and anti-corruption arrangements hitherto in place. These events directly affected the SOEs' credibility and reputation (Coutinho, Mesquita & Nasser, 2019).

The negative repercussions of such scandals on the market and society push SOEs to improve integrity and anti-corruption mechanisms. This measure has become indispensable not only for companies directly exposed in corruption inquiries but for all SOEs, which are marked by the stigma of corruption and represent an important part of the Brazilian economy.

Against this backdrop, legal acts were enacted to prepare the national legal system to promote advances in preventing and combating corruption (Fortini & Sherman, 2016). An example is Law 13303 (Lei nº 13.303, 2016), known as the law of state-owned enterprises or state-owned enterprises responsibility law. The legislation is a landmark in the regulation of SOEs and modernization of their corporate governance arrangements and integrity and anti-corruption mechanisms.

The law of SOEs led these organizations – regardless of their specificities – to modernize integrity, compliance, and anti-corruption systems. The introduction of guidelines favored organizational arrangements that facilitate preventive internal control, focusing on more transparent and risk-aware management, driven by the commitment to disclosure, compliance, and social accountability (Lei nº 13.303, 2016).

Thus, it is important to comprehend the institutional advances introduced by the law of SOEs from the perspective of promoting integrity and preventing corruption, considering this particular moment of reconstruction of the SOEs' institutional place. This reconstruction responds to the society's perception of corruption as one of the main national problems (Confederação Nacional da Indústria [CNI], 2018). It also responds to the national and subnational governments' interests in the privatization agenda (Lei nº 13.334, 2016), considering the widespread rhetoric built around cases of embezzlement involving SOEs.

Against this backdrop, this article investigates the convergence of the integrity, compliance, and anti-corruption guidelines introduced by the Brazilian law of SOEs in view of the best international practices. The study adopts the Guidelines on Anti-Corruption and Integrity in State Owned Enterprises (ACI Guidelines) as a parameter for best practices published by the OECD (2019b).

This study opens space for propositional agendas by putting the law of SOEs and international best practices into perspective. Such agendas should contemplate critical and constructive reflection on national legislation to promote integrity and compliance focusing on SOEs.

¹ Corruption schemes revealed within the scope of the so-called Operation Car Wash started in 2014, are examples worth mentioning. Operation Car Wash is considered the largest anti-corruption and money laundering operation in the history of Brazil. The investigation found evidence of embezzlement in contracts made with the state-owned oil company Petrobras and revealed an extensive corruption scheme involving federal government agencies and fraudulent contracts made with state governments (Ministério Público Federal [MPF], 2019).

INTEGRITY, COMPLIANCE, AND ANTICORRUPTION: PERSPECTIVES

Discussions on integrity and compliance are at the center of the debate and a priority agenda for companies and governments, gradually gaining decision-makers' attention. This topic has gained space on the boards' agenda, and compliance assumes a strategic position within organizations. According to KPMG (2018, p. 4, our translation):

Regulatory changes, risk of reputation damage, large fines imposed by supervisory bodies, pressure from shareholders and stakeholders. All of these factors led executives to face compliance as an investment rather than a cost.

The debate on integrity and compliance is also intense regarding concepts and outlines (and it is possible to observe the use of the two words as synonyms). Compliance may be understood as ensuring conformity with regulations or seen as a broader concept encompassing conformity with regulations, ethics, and integrity.

This study presents a cross-sectional re-reading of the issues around the debate, considering its complexity and the research purpose (which does not intend to exhaust the discussions or introduce a definitive solution to its dilemmas). This article points out the relevant aspects to help understanding integrity, compliance, and anti-corruption.

The term compliance "[...] refers to a set of procedures adopted within society that seeks to enhance the organization's ability to conform with legislation, regulations, and policies, mitigating risks and liabilities" (Alves & Pinheiro, 2017, pp. 43-44). Compliance involves instruments strategically organized as a program to ensure that the company and its representatives follow the rules and regulations.

In this sense, the concept of compliance takes on a highly regulatory nature, and the term could be used interchangeably with the term conformity, maintaining the same meaning. However, this study adopts a broader perspective, understanding compliance as more than fully following regulations, including aspects related to ethics – internal and external to organizations. This perspective considers the role of compliance in an expanded and more structured way, encompassing elements of ethics and integrity.

According to Ribeiro and Diniz (2015, p. 88), "compliance cannot be confused with simply following formal and informal rules. It has a broader scope." For the authors, compliance can be considered

a set of rules, standards, ethical and legal procedures that, when defined and implemented, will be the guidelines for the institution's behavior in its market, as well as for its employees' attitude (Candeloro, Rizzo & Pinho, 2012, p. 30, as cited in Ribeiro & Diniz, 2015, p. 88, our translation).

Therefore, to comply means "[...] to be in conformity with laws and ethical standards, acting preventively, trying to anticipate undesirable behaviors and creating mechanisms to avoid actions that may lead the company to fail in following the set of norms and ethical principles that regulate its activity" (Oliveira, Agapito & Miranda, 2017, p. 367, our translation).

When broadly understood, the concept of compliance gains more flexible contours, encompassing "[...] ethics, sustainability, corporate culture, cyber risk, data and customer information management, supply chain, among several other emerging risks" (KPMG, 2018, p. 4, our translation). From a practical perspective, compliance expands its limits, focusing on conformity with norms and following ethical and integrity issues. Thus, it is worth exploring the term integrity and how it relates to compliance.

According to Killinger (2010, as cited in Zenkner, 2019, p. 46, our translation), "in general, when one thinks of integrity as a term, a direct relationship is established with values supported by concepts extracted from ethics and morality." For DeGeorge (1993, as cited in Brown, 2005, pp. 4-5), "[...] acting with integrity is the same as acting ethically or morally."

However, despite being closely related, the concepts of ethics and integrity should not be considered synonyms since they occupy different spectra in the field of human conduct and behavior. While ethics brings more philosophical and intangible connotations, integrity is more concerned with the individuals' daily behavior and with decision-making processes (Huberts, 2014 as cited in Zenkner, 2019).

As observed with compliance, there is no normative and definitive concept for integrity. There is a set of concepts that, individually, contribute to a more substantial understanding of what integrity is, not as a substitute for ethics, but as a relevant complement (Brown, 2005). Among the various meanings that can be attributed to integrity, the notion based on the term's etymology can be a starting point for any further analysis.

Derived from the Latin word *integer* (meaning "whole"), integrity is associated with the concept of wholeness, of completeness (Zenkner, 2019, p. 47). The notion of "whole" is inseparable from the idea of parts, i.e., the whole exists because of the existence of its parts.

From the point of view of an individual, a person of integrity is not divided. Integrity is associated with a person in their whole character performing their duties according to the same ethical standards, regardless of circumstances (Zenkner, 2019).

From the corporate point of view, the challenge of integrity is to ensure consistency between organizational values and individual conduct (Brown, 2005). For Paine (1994), it is not possible to dissociate individual integrity from organizational integrity:

Many people resist acknowledging the influence of organizational factors on individual behavior – especially on misconduct – for fear of diluting people's sense of personal moral responsibility. But this fear is based on a false dichotomy between holding individual transgressors accountable and holding "the system" accountable. Acknowledging the importance of organizational context need not imply exculpating individual wrongdoers. To understand all is not to forgive all (Paine, 1994, p. 109).

In the field of public administration, where collective powers and responsibilities are delegated to civil servants, integrity as a moral guideline is unquestionable and expected (Luijk, 2004, p. 39). The concept of integrity has specific contours based on the notion of public interest. The OECD (2017, p. 7) states that "[p]ublic integrity refers to the consistent alignment of and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector."

It is possible to argue that, from the perspective of public administration, one of the central goals of compliance is to prevent and fight corruption. The intention is to improve the population's quality of life by ensuring the correct use of taxpayers' money (Alves & Pinheiro, 2017).

According to the Brazilian office of the Comptroller General of the Union (CGU, 2017), public integrity is a condition of wholeness and guides an immaculate performance, free of deviations, and oriented by the public interest.

[The] concept of public integrity represents a state or condition of a "complete, whole, healthy" public body or entity. In other words, the performance is immaculate, without deviations, following principles and values that should guide the performance of public administration (CGU, 2017, p. 5, our translation).

Between politics and the market, state-owned enterprises (SOEs) occupy a somewhat sui generis place, balancing public and private aspects. Mixed-capital enterprises, in particular, are structured in an arrangement of dual interests, resulting from the hybrid configuration between public and private capital, which produces its own complexity. Such organizations pose challenges to the design of integrity, compliance, and anti-corruption arrangements to tackle their complexities and paradoxes.

STATE-OWNED ENTERPRISES AND THEIR PARADOXES: BETWEEN PUBLIC AND PRIVATE

With a long tradition in developing sectoral public policies, the state’s business activities produce a significant impact on a vast number of sectors, directly affecting indicators related to Brazilian economic and social life. State-owned enterprises (SOEs) operate in several fields such as credit and capital market, development of intensive industrial sectors in technology and innovation, energy, logistics, scientific and technological research, and other segments relevant to the national strategy (Silva, Schmidt & Kliass, 2019).

According to the Organisation for Economic Cooperation and Development (OECD, 2019a, p. 14), a state-owned enterprise is “[A]ny corporate entity recognised by national law as an enterprise, and in which the state exercises ownership or control,” including statutory organizations structured by specific laws and whose activities are predominantly economic.

In Brazil, the terminology “*empresa estatal*” (state-owned enterprise) encompasses three types of organizations: *empresas públicas* (state-funded enterprises), *sociedades de economia mista* (mixed-capital enterprises), and other state-controlled companies.

In Brazilian law, the term *empresas estatais* [state-owned enterprises] includes three types of entities, namely: *empresas públicas* [state-funded enterprises], *sociedades de economia mista* [mixed-capital enterprises], and other corporations previously controlled by private capital and purchased by the government without specific authorizing legislation or without observing procedures applicable to state-funded enterprises or mixed capital enterprises (Schirato, 2005, p. 210, our translation, italics added).

In practice, the national legal framework divides SOEs into state-funded enterprises (SFE), mixed-capital enterprises (MCE), and subsidiary SOEs. The legislation attributes legal and institutional particularities to each of them, as defined by the Federal Decree 8945 (2016):

Box 1
Definitions of state-owned enterprises according to Federal Decree 8945 (2016)

Decree 8945 (2016) – Regulates the state-owned enterprises responsibility law	
<i>Empresa Estatal</i> (State-owned enterprise): Legal entity submitted to private law, where voting capital is mostly owned by the federal government, directly or indirectly.	<i>Empresa Pública</i> (state-funded enterprise): state-owned enterprise, where the majority of voting capital belongs directly to the state and the share capital consists of funds raised exclusively from the public sector. <i>Sociedade de Economia Mista</i> (mixed-capital enterprise): state-owned enterprise, where the majority of voting shares belongs directly to the state and the share capital may count on funding from the private sector. <i>Subsidiária</i> (subsidiary state-owned enterprise): state-owned enterprise, where the majority of voting shares belongs directly or indirectly to a state-funded enterprise or to a mixed-capital enterprise.

Source: Elaborated by the authors based on Decree 8945 (Decreto nº 8.945, 2016).

The legal definition demonstrates that the concept of SOEs is quite broad. It can be applied to any legal entity of the public administration submitted to private law whose voting capital is mostly owned by the state.

The SFEs and MCEs are legal entities submitted to private law, distinct from each other by the share capital composition and state participation. SFEs are characterized by the composition of the share capital, exclusively coming from the public sector. Also, these companies’ voting capital must belong directly to the state (federal, state, or local government). The share capital of MCEs may count on private resources, but the majority of voting shares must belong to the state (Decreto nº 8.945, 2016).

Subsidiary SOEs result from developments of the corporate structure of SFEs and MCEs. They are legal entities indirectly controlled by the state, defined as companies “[...] where the majority of voting shares belong directly or indirectly to a state-funded enterprise or to a mixed-capital enterprise” (Decreto nº 8.945, 2016).

Whatever the type of SOE, the debate about their role is controversial and touches the discussion about the state’s role in the economy. In the view of Mello (2002), MCEs, SFEs, and other state-controlled entities engendered by the government in the legislation are different subjective forms that may implement public interest strategies. Thus, SOEs are a unique legal model, idealized and used by the state to carry out specific activities and goals in which the instruments, techniques, and virtues of the business world may be helpful and necessary (Pinto, 2010).

The discussion regarding the legal regime of SOEs derives, to a large extent, from the dichotomy “public service” vs. “economic activity” (Coutinho et al., 2019). The dualities between state and market and between public interests and private interests produce direct effects on the SOEs’ corporate governance model, introducing their somewhat unique challenges to the design of adequate integrity, compliance, and anti-corruption arrangements.

Unlike the controlling group of a private company, the government entity that owns an SOE does not necessarily aim primarily to maximize results. This position may lead to disputes among the different groups and coalitions of power who cooperate around the SOE’s goals and strategies. In this context, there is less concern with minority shareholders and investors, given the state’s capacity to provide capital (Fontes-Filho, 2018).

While shareholders occupy a central role among private companies’ stakeholders, their influence is overshadowed amidst the many and varied interests shaping the SOEs’ operation and strategy. Thus, whatever the model of integrity, compliance, and anti-corruption adopted, it must deal with many and varied expectations and influences that are difficult to reconcile, coming from a broader set of actors who evaluate the company’s results differently (Fontes-Filho, 2018).

SOEs may be subject to undue interference and political motivation, producing misleading accounting reports and demonstrating a lack of accountability and low efficiency in corporate operations. Also, the lack of inspection due to passive or distant state ownership can weaken the incentives for SOEs and their employees to work in the best interest of the company and the general public, who is the ultimate shareholder, represented by government officials (OECD, 2015).

Yeung (2005, as cited in Fontes-Filho, 2018) highlights that the SOEs’ governance is subject to influences from the state, the market, and civil society. These are very different influences in terms of sources of power, values, rationalities, and norms, potentially generating conflicts in company guidelines and risks to integrity and compliance.

In Brazil, the law of SOEs channels efforts to improve the integrity, compliance, and anti-corruption systems of SFEs and MCEs, transforming principles, guidelines, and best practices in law.

THE LAW OF STATE-OWNED ENTERPRISES AND THE ACI GUIDELINES: STANDARDS AND BEST PRACTICES ON INTEGRITY, COMPLIANCE, AND ANTI-CORRUPTION

The law of state-owned enterprises

Law 13303 (Lei nº 13.303, 2016) was designed to regulate the first paragraph of article 173 of the 1988 Brazilian Constitution. Known as the law of state-owned enterprises (SOEs) or state-owned enterprises responsibility law, it provides for the legal status of SOEs (wholly-owned by the state or where the state holds the majority of the shares) and their subsidiaries.

Inspired by the atmosphere of national reconstruction and the moto of preventing and fighting corruption, the concern with governance and corporate integrity stands out in the law of SOEs. The legislation promotes practices of transparency, compliance, risk management, and internal control. Such rules and guidelines are essential “[...] to guide, from now on,

the structuring and performance of state-owned enterprises, mitigating as much as possible the diversion opportunities and guaranteeing a minimally safe environment for business development and service delivery” (Fortini & Sherman, 2016, p. 175, our translation).

Organized around two major titles, the law of SOEs establishes what could be called the corporate governance regime of SOEs, introducing specific rules and guidelines for integrity, compliance, and anti-corruption, applicable to state-funded enterprises (SFEs), mixed-capital enterprises (MCEs), and subsidiary SOEs. The regulation regarding integrity and corruption presents a broad scope, mostly expressed in Title I of the law. The guidelines range from the mandatory elaboration and disclosure of a code of conduct and integrity to structuring a specific unit dedicated to risk management and compliance.

The legislation is applicable to any SFEs and MCEs (owned by the Union, states, the federal district, and municipalities) that explore an economic activity of production or commercialization of goods or services, even if the economic activity is subject to the Union’s monopoly regime (Lei nº 13.303, 2016). Special purpose companies controlled by SFEs or MCEs are also subject to the law.

Although the legislation is applicable to the entire universe of SOEs, some explicit exceptions guide the application of provisions according to specific realities of the different types of enterprises. Among the exceptions in the legislation, the corporate governance regime referred to in Title I stands out. In this case, the provisions do not have to be fully applied to all SFEs and MCEs.

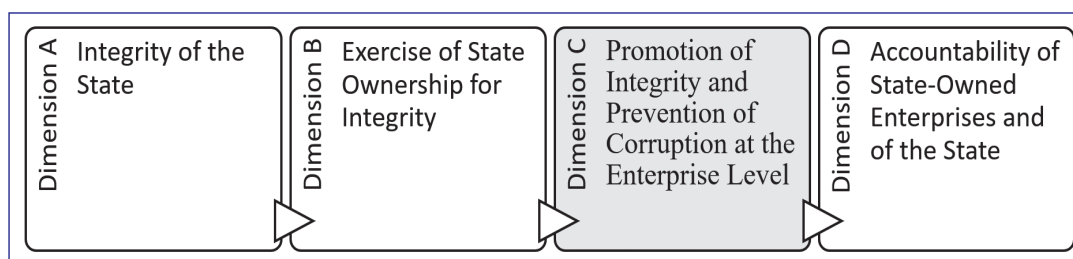
The OECD’s guidelines on anti-corruption and integrity

The ACI Guidelines were developed by the Working Party on State Ownership and Privatization Practices of the OECD Corporate Governance Committee and published in 2019. The guidelines were prepared in cooperation with other units of the OECD and counted on contributions from businesses, unions, civil society, partner countries, and other relevant stakeholders (OECD, 2019b).

The ACI Guidelines stems from an international consensus inspired mainly by the G20 High-Level Principles on Preventing Corruption and Ensuring Integrity in State-Owned Enterprises in 2018. In practice, it is the first international instrument to support states – in their role as company owners – in fighting corruption and promoting integrity in their companies (OECD, 2019b).

Organized around four dimensions or a group of guidelines, the ACI Guidelines offer recommendations that range from promoting the integrity of the state to promoting integrity and preventing corruption at the company level. Figure 1 shows the dimensions where the guidelines are organized.

Figure 1
Dimensions (group of guidelines) of the ACI Guidelines – 2019



Source: Elaborated by the authors.

Dimension C deals directly with integrity, compliance, and anti-corruption measures within SOEs, which is – as discussed in the methodology – the topic emphasized in this study. This dimension offers 32 specific recommendations, organized into three main actions: i. encouraging integrated risk management; ii. promoting internal controls, ethics, and compliance measures; and iii. safeguarding the autonomy of SOEs' decision-making bodies. Each action has a set of objective guidelines that include mechanisms, instruments, structures, and measures the companies must adopt to promote integrity and prevent corruption.

If implemented, the guidelines in dimension C allow structuring a safer organizational environment, less permissive to breaches of integrity or corruption practices. Therefore, the SOE and its public and private capital are preserved.

METHODOLOGY

Cooper and Schindler (2003) highlight that research in the field of administration must be carried out through systematic investigation based on consistent criteria. This generates reliable information that contributes to understanding the phenomena related to organizations and their institutions.

This descriptive study investigates, in situ, organizational phenomena in SOEs related to corporate governance, integrity, and anti-corruption. It is a bibliographic and documentary research, presenting a theoretical framework supporting the analyses. The main sources for the discussion are the Brazilian law of SOEs and the OECD ACI Guidelines.

A comparative analysis was conducted of the integrity, compliance, and anti-corruption system introduced by the law of SOEs and the ACI Guidelines. The analysis is based on the study of the adherence of the integrity and anti-corruption system introduced by the law of SOEs to the best practices proposed by the OECD, with emphasis on promoting integrity and preventing corruption at the state-owned enterprise level.

The ACI Guidelines are structured around four dimensions or groups of guidelines, each composed of a set of items and sub-items that constitute the inputs of the comparative analysis. Among the four dimensions, the analysis developed in this article is limited to dimension C, which is focused on actions to promote integrity and prevent corruption at the internal level of SOEs. The analysis establishes correlations between guidelines in dimension C and the provisions in the law of SOEs – which emphasizes the internal governance arrangements and integrity applicable to these enterprises.

For each item analyzed, the following categories were assigned: adherent, partially adherent, and non-adherent. The adherent category was identified when the law of SOEs fully implements the ACI Guidelines contained in the item analyzed. The partially adherent category was registered when the law adhered to some guidelines in the item analyzed, but not all of them. Finally, the non-adherent category was registered when the law did not present any convergence with the guidelines contained in the item analyzed.

ANALYSIS AND RESULTS: INTEGRITY, COMPLIANCE, AND ANTI-CORRUPTION IN STATE-OWNED ENTERPRISES – THE LAW AND THE CUTTING-EDGE PRACTICES

This section presents the comparative analysis and discussion of the results. Box 2 summarizes the study's aggregated results and the law of SOEs adherence to each item of the ACI Guidelines.

Box 2
Level of adherence of the law of SOEs to the ACI Guidelines – Dimension C – Brazil – 2020²

ACI Guidelines-Dimension C		Level of adherence Law of SOEs		
Items*		Adherent	Partially adherent	Non-adherent
C.1.i.	Action. integrated risk management	X		
C.1.ii		X		
C.1.iii		X		
C.1.iv			X	
C.1.v		X		
C.1.vi			X	
C.2.i	Action. internal controls, ethics, and compliance measures	X		
C.2.ii		X		
C.2.iii			X	
C.2.iv				X
C.3.i			X	
C.3.ii			X	
C.3.iii		X		
C.3.iv		X		
C.3.v			X	
C.3.vi		X		
C.4.			X	
C.5.i		X		
C.5.ii		X		
C.5.iii				X
C.5.iv			X	
C.6		X		
C.7				X
C.8		X		

²The coding presented in Box 2 reflects the coding adopted by the ACI Guidelines, so that each code is related to a specific item of analysis. Structured in three actions, dimension C of the ACI Guidelines is organized in ten items and respective sub-items, each with a set of guidelines and practices used as a parameter for this study. The analysis verified the adherence of the law of SOEs to each of the items.

Continuation

ACI Guidelines-Dimension C		Level of adherence Law of SOEs		
Items*		Adherent	Partially adherent	Non-adherent
C.9.i	Action. autonomy of SOEs' decision-making bodies		X	
C.9.ii		X		
C.9.iii		X		
C.9.iv		X		
C.9.v			X	
C.9.vi			X	
C.9.vii		X		
C.10			X	

*Note: The codification refers to items and sub-items of dimension C in the ACI Guidelines.
Source: Elaborated by the authors.

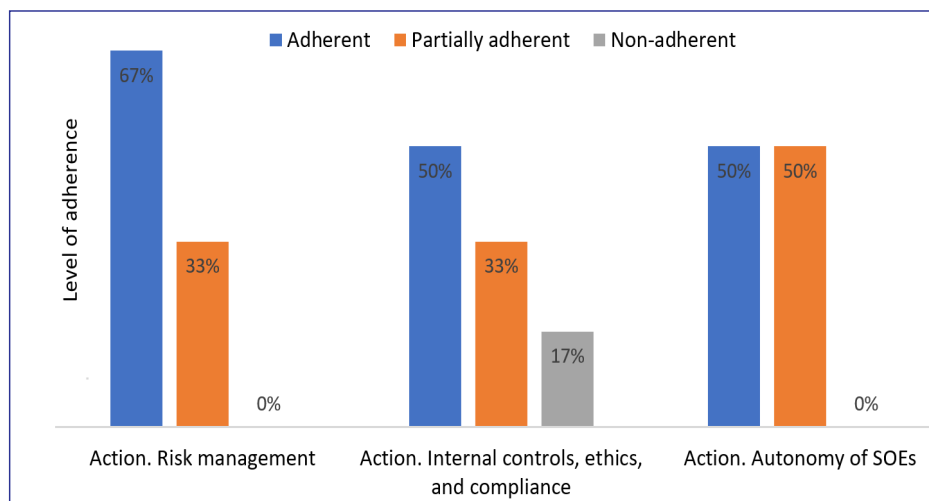
The analysis of the level of adherence of the law of SOEs in view of the set of guidelines established by the OECD reveals that of the 32 items evaluated, the legislation is adherent to 17 (approximately 53%), partially adherent to 12 (approximately 38%), and non-adherent to 3 (approximately 9%).

When analyzed as a whole, the results demonstrated a high level of adherence of the law of SOEs to the guidelines in dimension C of the ACI Guidelines. With regard to promoting integrity and preventing corruption at the internal level of SOEs, law 13303 (2016) contains guidelines that, once implemented, structure a system of integrity and anti-corruption that adheres to more than 50% of the best practices recommended by the OECD.

However, the level of partial adherence was also considerably high. In 12 of the 32 items evaluated, the law partially adheres to the OECD guidelines, covering at least one of the central aspects of the recommendation. In these cases, the necessary adjustments in the law to make it adherent to the guidelines would require less structural improvements.

Finally, in only 3 of the 32 items analyzed, no convergence was identified between the guidelines and the Brazilian legislation. In these items, the law of SOEs does not present any of the aspects contained in the recommendations, and the incorporation of the guidelines proposed by the OECD tends to demand greater efforts. The graph below illustrates the results aggregated by action.

Graph 1
Percentage of the law of SOEs adherence to the ACI Guidelines – Dimension C – Per action analyzed



Source: Elaborated by the authors.

As shown in Graph 1, of the three actions that make up dimension C of the ACI Guidelines, the one that provides for the promotion of internal control, ethics, and compliance had the lowest level of adherence by the law of SOEs, consequently offering more opportunities for improvement. The action related to risk management showed the highest level of adherence (67%), followed by the action autonomy of SOEs and their decision-making bodies, with 50% of the OECD's recommendations observed in the legislation.

However, as shown in Box 2 and Graph 1, the actions risk management and autonomy of SOEs do not have any item classified as non-adherent. Thus, they corroborate the legislation's efforts to establish standards emphasizing risk management, encompassing risks of integrity, fraud, and corruption. The law also seeks to limit the opportunities for undue political influence in the SOEs' management, counting on the qualification of the process of appointing members for the companies' boards of directors, executive boards, and their main governance bodies, which are obliged to observe objective requirements and restrictions.

The structuring of the internal control environment around three lines of defense and the integration of risk management with the corporate strategy contributed to strengthening the integrity and compliance system. This had direct effects on the preservation of the organization in the face of the risks of fraud and corruption.

The law also increased the autonomy of the SOEs' management and governance bodies. The provisions in the legislation contributed to mitigate undue political interference in the company. The law explicitly vetoed interferences in ministerial supervision and established specific training and professional experience requirements for appointed directors. These measures reduced the opportunity for mere political appointments, which is a practice to be avoided since a) it destroys the professionalism in the organization's management, affecting business results, and b) it allows margins for conflicts of interest potentially unfolding in physiologism in the company.

However, despite the law establishing criteria and prohibitions for the appointment of administrators and members of governing bodies, the analysis reveals that there is still room to advance in the criteria for the composition of boards of directors and other governance bodies, outlining requirements for specific positions, with regulations directed, for example, to the position of chairman.

The law is consistent in establishing the corporate bases for solid integrity and anti-corruption mechanisms, establishing a specific area responsible for risk management and compliance and structuring the internal control system in three lines of defense. The law follows the international best practices represented by the OECD's guidelines by establishing a specific policy to prohibit corruption and introducing mandatory periodic training in code of conduct, integrity, and risk management

(for both employees and senior management). It also directly assigns responsibility to the board of directors for discussing, implementing, and supervising the company's code of conduct and risk management systems, and internal controls.

However, the law is still bashful in establishing the necessary bases for fostering an open culture, capable of encouraging employees and managers to bring controversial and potentially conflicting situations in a common logic. Thus, it fails to stimulate an institutional environment that is permeable to doubt and preventively deal with potential conflicts of interest, essential aspects of psychological security, indispensable in fostering a culture of integrity.

In addition, although establishing clear recommendations regarding the code of conduct, in the list of topics to be dealt with in the code, the law does not include sensitive issues such as hospitality, entertainment and gifts, donations and charity, and sponsorship. Such topics are important and sensitive to corporate integrity matters so that clarifying company prohibitions or rules for each issue is relevant to the prevention of fraud and corruption.

In the same vein, despite introducing substantial advances in the selection and appointment of managers, the law does not establish specific integrity parameters for the selection of non-managerial employees. There is also room to move forward in setting parameters for rules that expand the application of integrity and anti-corruption measures and policies outside the formal limits of the organization, considering the entire organizational environment in which the company operates, its main stakeholders, and business partners.

This panorama reveals advances already consolidated by the law of SOEs and brings reflections on the horizons yet to be explored, either by improving the law itself or issuing complementary regulations.

FINAL CONSIDERATIONS

The study observed that the Brazilian law of SOEs introduced important advances in integrity and compliance within the internal scope of these companies, particularly regarding the strengthening of risk management and the autonomy of SOEs and their decision-making bodies.

The results show that the law of SOEs introduced a system of integrity, compliance, and anti-corruption relatively adherent to the best international practices that, although incomplete, seems to be moving towards what could be considered cutting-edge practices. In other words, the legislation consolidates relevant contributions to the maturity of integrity and anti-corruption of Brazilian SOEs, introducing in the national legal system a set of rules and guidelines converging to the practices established by the OECD.

Nevertheless, the identified limitations and omissions suggest the need for a propositive research agenda focused on investigating and formulating solutions that address the detected challenges, contributing to improving the law and the institutional environment of promoting corporate integrity and preventing corruption in Brazil.

Although recognizing the limitations of this study, considering it is restricted to a regulatory analysis, the high adherence of the law of SOEs to the international best practices reveals that Brazil is moving in the right direction so that the most immediate effort should perhaps focus on proper implementation and effective use of the available legislation. This finding suggests a need for an applied research agenda that goes beyond the regulatory dimension of this study, exploring the challenges of implementing the law and its concrete results in the universe of state-owned enterprises.

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