



TRADE UNION ADVISORY COMMITTEE  
TO THE ORGANISATION FOR ECONOMIC  
COOPERATION AND DEVELOPMENT  
COMMISSION SYNDICALE CONSULTATIVE  
AUPRÈS DE L'ORGANISATION DE COOPÉRATION  
ET DE DÉVELOPPEMENT ÉCONOMIQUES

# The review process of the OECD Principles of Corporate Governance Assessment by the TUAC Secretariat Paris, 24 September 2015

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## Executive summary

1. After a year-long review process, the OECD released a new set of Principles of Corporate Governance on the occasion of a meeting of G20 Finance Ministers and Central Bank Governors, 5 September in Ankara. The updated text, rebranded as a “G20/OECD” instrument, offers some improvements compared with the previous version, which dates back to 2004, and as such could be said to meet the initial expectations set by the OECD Committee in charge of the review. However the revised Principles do not to reflect appropriately broader OECD policy lessons from the crisis, manifested by its New Approaches to Economic Challenges, nor do they appear consistent with other OECD instruments on responsible business conduct and long term investment. The revised text falls short of TUAC’s expectations for the review.

2. As with the previous version of the Principles, the revised text contains five chapters respectively on: the supervisory framework (I), shareholder rights (II), institutional investors & markets (III), stakeholders (IV), transparency & disclosure (V), and the organisation of the board of directors (VI). The most significant change to the structure of the Principles is with chapter III which now deals with “investment chain” issues, including governance of institutional investors and of markets, which is welcome. The revised Principles also put a much needed emphasis on the supervision of private exchanges and other trading venues (such as “dark pools”) and of new forms of trading practices such as high frequency trading and trading of equity-related derivatives (Ch. I & III). From a trade union and broader stakeholder perspective, the revised text has the merit of recognising the role of board level employee representatives by integrating existing text from the 2005 OECD Guidelines on Corporate Governance of State-Owned Enterprises.

3. However, on many key corporate governance issues the revised text falls short of what TUAC called for during the process:

- Ch. IV on “the role of stakeholders” (i.e. employees, local communities and creditors) is largely unchanged and does not take on board the requirements laid down in the OECD Guidelines for Multinational Enterprises, which were revised in 2011;
- The text on shareholders’ rights concerning executive remuneration (Ch. II) has not been improved significantly, with only a reference to claw-back provisions and to “say-on-pay” in the annotations. Nothing in the text would suggest that executive pay – or shareholder compensation via dividends and share-buybacks – could risk reaching excessive levels;
- Responsible investment practices are ignored throughout text. Even the proposal that responsible investment practices be disclosed was not taken on board;
- Corporate reporting on social and environmental performance and broader sustainability reporting are mentioned only in passing in the annotations, despite being widespread practices thanks to forums such as the Global Reporting Initiative and new EU regulatory requirements;
- On board organisation, the separation of CEO and Chair positions is still not considered as a valid principle. Gender balance in the boardroom is mentioned in the annotations, but is not recommended as such;

- Despite OECD leadership in curbing aggressive tax planning, there is little in the text that suggests that tax risk should be considered as an issue for the board of directors.

4. The revised Principles represent the lowest common denominator between participating jurisdictions. They nevertheless reflect the “maximising shareholder value” model of governance with priority given to corporate access to capital. Proponents of a stakeholder approach will consider the outcome of the review process a disappointment.

5. For the future TUAC would call for more participatory involvement of stakeholders in the review of such a flagship instrument. The OECD could reflect on its own procedures whereby consultation has fallen short of that in the Review of other important instruments such as the OECD Guidelines on Multinational Enterprises.

## The process

6. After a year-long review process, the OECD released a revised set of Principles of Corporate Governance<sup>1</sup> on 5 September 2015 on the occasion of a meeting of the G20 Finance Ministers and Central Bank Governors in Ankara. First drafted in 1999 (following the Asian Financial crisis) and revised in 2004 (Enron & WorldCom series of corporate scandals), the third edition of the Principles was long awaited. In Ankara, the revised text was endorsed by all G20 countries<sup>2</sup>. Accordingly the Principles, previously a stand-alone OECD instrument, are rebranded as a “G20/OECD” initiative.

## The Committee

7. Within the OECD, the Principles fall under the responsibility of the Corporate Governance Committee. Committee members include all 34 OECD member states. Individuals attending the committee sessions most often come from the Finance or Justice ministries and from supervisory authorities (securities exchanges). Several non-OECD countries are also represented at the Committee sessions: Brazil, Colombia, Hong Kong, India, Indonesia, Lithuania, Malaysia, Russia, Saudi Arabia, Singapore and South Africa. Among international organisations, the Basel Committee on Banking Supervision (BIS), the Financial Stability Board, the World Bank and the EU are represented.

8. The Bureau of the Committee has a role in the Committee’s work and priority setting. It is led by the Committee Chair: Mr Marcello Bianchi (CONSOB, Italy). Vice-chair positions are filled by Japan (Financial Services Agency), the United States (Department of the Treasury) and Turkey (Capital Markets Board). Other members of the Bureau include Poland (Financial Supervision Authority), Spain (Comisión Nacional del Mercado de Valores) and Sweden (Ministry of Justice). Within the OECD Secretariat, the Committee is supported by the Corporate Affairs Division (headed by Mats Isaksson) within the Directorate for Financial and Enterprise Affairs.

9. In the aftermath of the financial crisis of 2008, the Committee took the time needed to lay the ground for a new round of revision. “Key findings” and “emerging good practices” were first released respectively in 2009 and 2010<sup>3</sup>. Further to that, the Committee engaged in a series of “thematic peer reviews” covering: board practices (2011)<sup>4</sup>, related party transactions (2012)<sup>5</sup> and supervision and enforcement (2013). The review process was officially launched in October-November 2013 when the Committee adopted a “roadmap”<sup>6</sup> for the review which was followed, on substance, by an “Issues paper”<sup>7</sup> released in February 2014.

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<sup>1</sup> <http://www.oecd.org/corporate/principles-corporate-governance.htm>

<sup>2</sup> <http://www.oecd.org/corporate/new-g20oecd-principles-of-corporate-governance-will-promote-trust-and-improve-functioning-of-financial-markets.htm>

<sup>3</sup> Corporate Governance and the Financial Crisis: Key Findings and Main Messages, OECD 2009  
[www.oecd.org/daf/ca/corporategovernanceprinciples/43056196.pdf](http://www.oecd.org/daf/ca/corporategovernanceprinciples/43056196.pdf) & Corporate Governance and the Financial Crisis: Conclusions and Emerging Good Practices to Enhance Implementation of the Principles, OECD 2010  
[www.oecd.org/daf/ca/corporategovernanceprinciples/44679170.pdf](http://www.oecd.org/daf/ca/corporategovernanceprinciples/44679170.pdf)

<sup>4</sup> Board Practices: Incentives and Governing Risks, OECD 2011 doi:10.1787/9789264113534-en

<sup>5</sup> Related Party Transactions and Minority Shareholder Rights, OECD 2012 doi:10.1787/9789264168008-en

<sup>6</sup> Roadmap and terms of reference for the review of the Principles of Corporate Governance, DAF/CA/CG(2013)11, OECD Secretariat, 15 October 2013

<sup>7</sup> Review of the OECD Principles of Corporate Governance: Issues Note, 24-Feb-2014 - DAF/CA/CG(2014)2

### ***The timeline***

10. On 17 March 2014, the Committee chair convened a group of corporate governance experts which had been selected by the OECD Secretariat, to discuss the content of the above “issues paper”. The meeting was followed on 18-19 March by a formal session of the Committee to address a first “marked-up” proposal of the Principles which had been prepared by the OECD Secretariat. The session was preceded by a 1 hour consultation with TUAC and BIAC which had previously received the marked-up proposal on a confidential basis.

11. The Committee held three other sessions respectively on 14-15 October 2014, 18-19 February 2015 and 23-24 March 2015, each being preceded by a 1 hour consultation with BIAC and TUAC. In parallel, the OECD released a draft proposal for public consultation in November 2014. The Committee received 75 written comments from the public<sup>8</sup>. Most were provided by business organisations, auditors, banks and asset managers. A handful of sustainability or stakeholder-oriented NGOs and experts submitted comments<sup>9</sup>.

12. The final version of the revised Principles was adopted by the Committee in April 2015. The text (including minor edits) was formally endorsed by the OECD Council on 8 July and was released publicly and endorsed by the G20 two months later on the occasion of the G20 Central Bankers and Finance Ministers’ meeting in Ankara, 8 September 2015. The media visibility of the public release has been low. A week after the release, a web search in English indicates that the revision has been reported by two media: The Hindu (India) and the Hurriyet (Turkey).

### **The outcome**

13. Overall the review process has not led to fundamental changes to the structure of the Principles and its five thematic chapters. The most notable change is with chapter III, which previously dealt with the protection of minority shareholders (from abusive practices by controlling shareholders) and which now deals with “investment chain” issues: the shareholder policy of institutional investors (pension funds, insurance companies, mutual funds, other asset management entities), other financial intermediaries and trading venues. Most of the revisions involve small changes to the 2004 text. In what follows, key changes to each chapter are highlighted. A more detailed presentation is shown in Annex I.

#### *Ch. I “Ensuring the Basis for an Effective Corporate Governance Framework”*

14. Two stand-alone principles have been added to the chapter, reflecting the post-2008 crisis concern about weak supervision and enforcement:

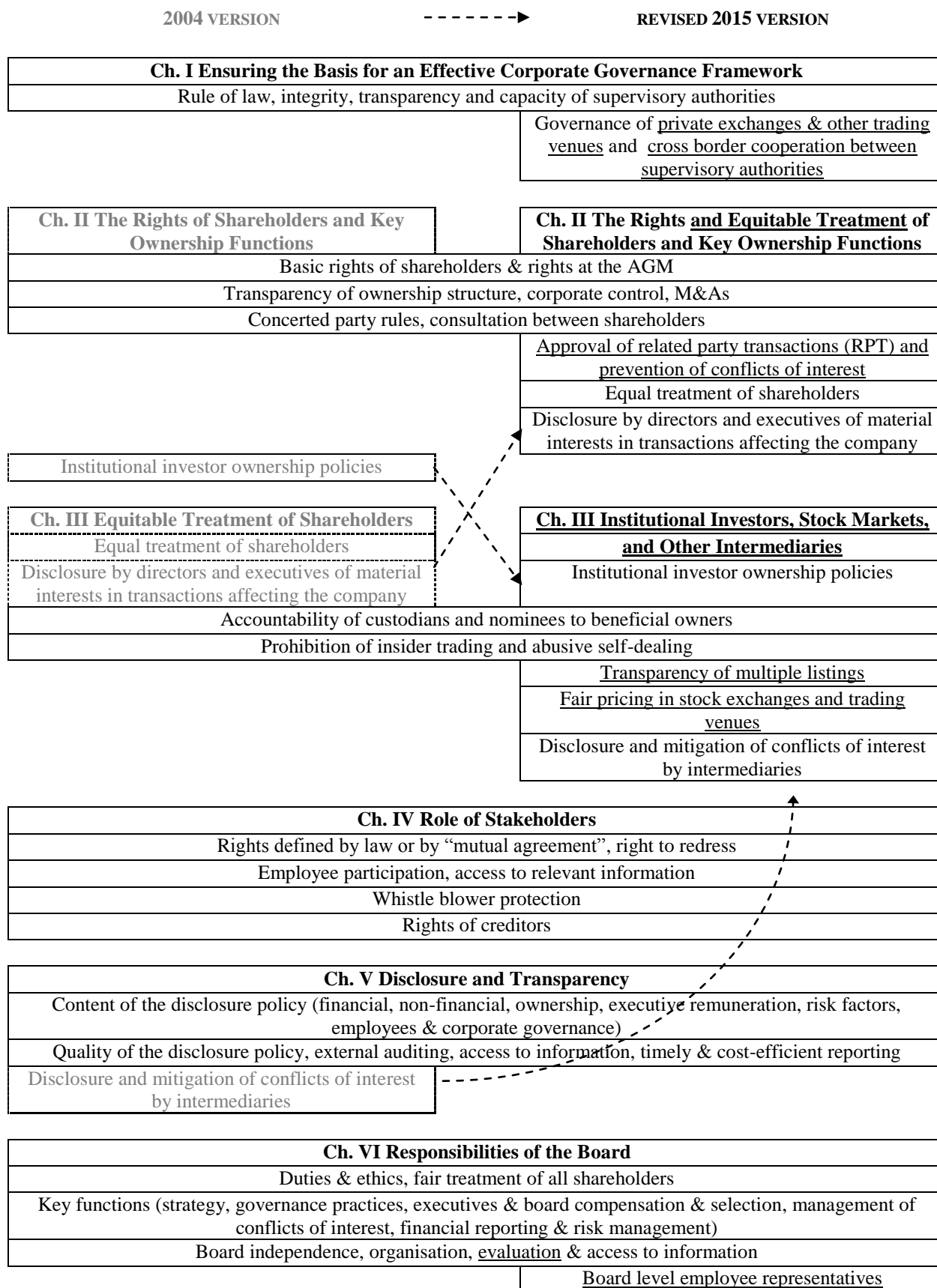
- transparency and governance of private exchanges and “other trading venues” (I.D);  
and
- cross-border cooperation between supervisory authorities (I.F).

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<sup>8</sup> <http://www.oecd.org/daf/ca/public-consultation-review-oecd-principles-of-corporate-governance.htm>

<sup>9</sup> Including FinanceWatch, Frank Bold, Prof. Bill Lazonick, Tax Research LLP (Richard Murphy), Institute for Human Rights and Business, and the Global Reporting Initiative.

Structure of the Principles, 2004 versus 2015



### *Ch. II “The Rights and Equitable Treatment of Shareholders and Key Ownership Functions”*

15. The revised chapter regroups existing Principles on shareholder rights (previously located in Ch. II) and on protection of minority shareholders (previously in Ch. III), while sections on institutional investors have been moved to the new Ch. III. The revised version also includes:

- an emphasis on abusive related party transactions (II.F.1&2, II.G) and on transparency of the ownership structure (II.E.2); and
- reference to the right of shareholders to “say-on-pay” and disclosure of multiple directorships (annotations to II.C.4).

### *Ch. III “Institutional Investors, Stock Markets, and Other Intermediaries”*

16. This chapter is the main novelty of the review process. The new chapter covers the shareholder policy of institutional investors (previously in Ch. II), conflicts of interest of intermediaries and advisors (previously in Ch. V) and new Principles on exchanges and trading. In the revised version, it is worth noting:

- reference to the “complexity” of the investment chain (header of the chapter) and to the role of asset managers(annotations to III.A) and their “fee structure” (annotations to III.C);
- new principles on transparency of multiple listings (III.F), and on fair pricing of trading venues and private exchanges (III.G) to account for the growing use of equity derivatives; and
- strengthened text on conflicts of interest of intermediaries (brokers, analysts, rating agencies), including on proxy voting advisors who should disclose their methodology (III.D).

### *Ch. IV “The Role of Stakeholders”*

17. This chapter has been left untouched as far as its principles are concerned. The review has led to minor changes in the annotations, including:

- reference to “international conventions” that recognise workers’ right to information, consultation and negotiation” (annotation to IV.C); and
- reference to the OECD Guidelines for Multinational Enterprises and its due diligence procedure (annotations to IV.A) and NCP procedure (annotations to IV.E);

### *Ch. V “Transparency & Disclosure”*

18. The changes to the principles of this chapter are relatively modest as well, and are primarily found within annotations. Key changes to the chapter include

- an emphasis on limiting the reporting burden for businesses (header of the chapter);
- reporting requirements for “non-financial information” are enhanced (V.A.2) and reference to social issues and human rights, political donations, and country-by-country reporting (annotations to V.A.2);
- existing reference to the disclosure of beneficial ownership is upgraded from annotations to the Principle text (V.A.3);
- text on board & executive remuneration is almost unchanged (V.A.4); and

- reference to collective bargaining coverage and mechanisms for employee representation (annotations to V.A.8); and
- disclosure of the “rationale” for cumulating CEO and chair positions is suggested (annotations to V.A.9).

#### *Ch. VI “The Responsibilities of the Board”*

19. This chapter deals with issues that are at the heart of corporate governance: what happens inside the boardroom. Given its importance relative to the other chapters, the changes in the revised version are not excessively ambitious. The most notable changes are:

- reference to aggressive tax planning in the section on board ethics (annotations to VI.C) ;
- reference to claw back provisions (annotations to VI.D.4),
- reference to social issues, human rights, environment and taxation in the section on board risk management and compliance policy (annotations to VI.D.7);
- minor change to the text on the separation of CEO and chair positions (now considered as “a good practice”, while the 2004 version suggested that separation “may be regarded” as a good practice (annotations to VI.E);
- emphasis on the role of specialised committees, including audit committees (VI.E.2);
- new principle on the evaluation of the board (VI.E.4); and
- new principle on board-level employee representatives (VI.G).

#### **Assessment**

20. Taken in isolation, each of these changes is welcome and constitutes an improvement to the 2004 version of the Principles. However, it can be argued that the 2004 version of the text had become outdated in light of the 2008 financial crisis and should not necessarily be considered the point of reference for this review. In what follows, the revised text is compared with four separate ‘benchmarks’ or set of expectations:

- The initial terms of reference set by the OECD Committee on corporate governance itself in 2013;
- The broader policy lessons from the crisis as outlined in the OECD “New Approaches to Economic Challenges” project (2012-2014);
- Other OECD instruments on responsible business conduct and on the investment chain, primarily; and
- TUAC’s own set of expectations for the review process;

#### ***The Committee’s own expectations***

21. When looking at the initial expectations set by the Committee itself, it is fair to say that the ambition for the size and depth of review process was relatively low. Prior to the review, the Committee had been satisfied with the relevance of the 2004 version of the text. Drawing lessons from the 2008 financial crisis, the Committee concluded in 2010 that the then current version of the Principles “provide[d] for a good basis to adequately address the key concerns that have been raised”<sup>10</sup>. The summary report of the Committee session in

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<sup>10</sup> OECD 2010 [www.oecd.org/daf/ca/corporategovernanceprinciples/44679170.pdf](http://www.oecd.org/daf/ca/corporategovernanceprinciples/44679170.pdf)



November 2013 confirms that the mood then tended towards a “limited review” because the Principles had “stood the test of time”<sup>11</sup>.

22. On substance, and as noted above, the Committee adopted a “roadmap” (on process) and “Issues note” (on substance) respectively in November 2013 and February 2014. In addition to its “key findings” (2009), “emerging good practices” (2010) and the thematic peer reviews (2011-2013), the content of the roadmap draws on the reports of various OECD regional roundtables on corporate governance and a separate project on “corporate governance, value creation and growth” (2012-2013)<sup>12</sup>.

23. While the documents of reference are diverse and cover a wide range of issues, the “roadmap” itself puts strong emphasis on financial stability and corporate access to capital: “the review will be guided by the objectives (...) to contribute to economic efficiency, sustainable growth and financial stability by improving corporate governance practices”. Because the Principles are part of the Financial Stability Board (FSB) list of key standards<sup>13</sup>, the “roadmap” asserts that the review process should aim at the FSB’s “commitment to pursue the maintenance of financial stability and the openness and transparency of the financial sector”.

24. For its part, the “issues note” of February 2014 puts emphasis on the following challenges:

- the severe *shortcomings in the boardroom* and in the responsibility of shareholders to exercise stewardship as identified in the “Conclusions and emerging good practices” adopted by the Committee in 2010 in light of the 2008 financial crisis;
- *the changing nature of ownership structure* and of *trading patterns* (rise of private exchanges and trading through “dark pools”, of high frequency trading, of derivatives);
- the increasing *complexity and lengthening of the investment chain* linking ultimate owners of shares (including institutional investors) and invested companies; and
- concerns about the ability of “*growth companies*” (i.e. start-ups in the IT sector) to develop when traditional corporate listings do not properly account for the valuation of their *intangible assets*;

25. These policy challenges are broadly addressed in the revised version of the Principles. This is particularly true regarding the challenges posed by unconventional trading patterns which are addressed in Ch. I and Ch. III. The issue of the lengthening of the investment chain is addressed in Ch. III, although, and as discussed below, it is not necessarily deep enough on the issue of asset manager accountability. By opposition, the “issues paper” makes no case of the rights of stakeholders – symbolically, the first question for discussion listed under chapter IV on stakeholders is about... the corporate bond market. Developments in the fields of responsible investment practices by investors and corporate responsible business conduct

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<sup>11</sup> Draft Summary Record: 25th Meeting of the Corporate Governance Committee, 12-13 November 2013, DAF/CA/CG/M(2013)2, OECD Secretariat, 18 December 2013

<sup>12</sup> Corporate Governance, Value Creation and Growth: The Bridge between Finance and Enterprise, OECD 2012 doi: 10.1787/9789264179547-en & Who Cares? Corporate Governance in Today’s Equity Markets, OECD Corporate Governance Working Papers, No. 8, 2013 doi:10.1787/5k47zw5kdnmp-en

<sup>13</sup> [http://www.financialstabilityboard.org/what-we-do/about-the-compendium-of-standards/key\\_standards/](http://www.financialstabilityboard.org/what-we-do/about-the-compendium-of-standards/key_standards/)

(UN Principles for Responsible Investment, Global Reporting Initiatives, MNE Guidelines, UN Guiding Principles, etc.) are left aside.

26. Overall, when considering the initial terms of reference – the “roadmap” and “issues paper” set by the Committee – it can be argued that the outcome of the review process meets the initial ambition set by the OECD Committee and its understanding of what corporate governance is about: first and foremost about access to capital. This view transpires upfront in the very first paragraph of the new introduction to the Principles: improving corporate governance “is *primarily* achieved by providing shareholders, board members and executives as well as financial intermediaries and service providers with the right incentives to perform their roles within a framework of checks and balances”.

### ***The broader post-crisis policy lessons***

27. Looking at the broader context of the OECD policy lessons of the 2008 crisis brings a different light to the outcome of the review process. These policy lessons are best captured by the organisation-wide initiative that the OECD set in motion in 2012: the New Approaches to Economic Challenges (NAEC) project<sup>14</sup>. The framework paper of the project identifies a number of policy challenges that, arguably, have some bearing on corporate governance, including:

- The *under-pricing of risk* in the financial sector, including equity and credit markets, that created “the wrong incentives and led to insufficient and ineffective regulatory and risk management frameworks”;
- *Rising inequality* across OECD and G20 economies, and the need to shift toward more inclusive approaches that combine “social equilibrium” with “economic equilibrium”;
- The *undesirable effects of pro-growth policies* that have generated “negative externalities” on societies, and the *evolving nature of global value chains*, including the role of knowledge-based capital.

28. The OECD concern about the under-pricing of risk would arguably translate in corporate governance terms into stronger requirements for the board of directors to have oversight over the company’s risk management policy. It would also imply greater attention to the role and responsibility of intermediaries, and of asset managers in particular – in line with the above discussion on the lengthening of the investment chain. On both accounts, the revised text offers some form of response.

29. On the other hand, the other policy challenges identified by the NAEC project – rising inequality, the need for a “social equilibrium”, and the concerns about negative externalities created by “pro-growth policies” – are not dealt with appropriately in the revised text. For example, regarding income inequality, there is nothing in the revised text that suggests that executive compensation, shareholder dividends and share buybacks could reach excessive levels and thereby fuel income inequality. Yet, current OECD work on rising inequality would merit closer scrutiny from a corporate governance perspective. To the question of “what drives the upward trend in top income shares” a recent OECD paper refers to the

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<sup>14</sup> New Approaches to Economic Challenges - A Framework Paper, Meeting of the OECD Council at Ministerial level, 23-24 May 2012 <http://www.oecd.org/general/50452415.pdf>

“financialisation” of markets and the “increasingly important role of stock options in top executives’ remuneration” as a key driver<sup>15</sup>.

### ***Coherence with the MNE Guidelines and the LTI Principles***

30. The revised text also appears to be somewhat disconnected with parallel OECD initiatives that relate to corporate responsibility, namely the 2011 version of the Guidelines for Multinational Enterprises<sup>16</sup> (the MNE Guidelines) and to asset management accountability, the 2013 High-Level Principles of Long-Term Investment Financing by Institutional Investors<sup>17</sup> (the LTI Principles). They are not aligned on several key questions:

*Should the board integrate environment, social and tax issues in the risk management system?*

31. Under the MNE Guidelines, enterprises have a responsibility to avoid being involved in adverse impacts, to address such impacts when they occur and to “carry out risk-based due diligence (...) to identify, prevent and mitigate actual and potential adverse impacts (...) and account for how these impacts are addressed” (Ch.II.10). This includes adverse social, human rights (including labour rights) and environmental impacts. Enterprises are also required to treat “tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated” (Ch. XI.2). The revised Principles do not include equivalent recommendations.

*Do workers have a principled right to information, consultation and negotiation?*

32. Ch. V of the MNE Guidelines recognises a number of rights for workers, including the right to information, consultation and negotiation. By contrast, Ch. IV of the revised Principles restricts the rights of stakeholders (including workers) to those provided by domestic law only (not internationally-recognised standards) as shown in the header of the chapter and in Principles IV.A. In the annotations to IV.C however, it is stated that “international conventions (...) recognise the rights of employees to information, consultation and negotiation”.

*Do shareholders have due diligence responsibilities over the company’s observance of human rights?*

33. In an opinion on the application of the MNE Guidelines to the financial sector, the OECD makes clear that shareholding, including by minority shareholders, amounts to a “business relationship” with the invested company<sup>18</sup>. Accordingly, shareholders have a responsibility to exercise due diligence over the invested company’s observance of the MNE Guidelines with regard to its social, human rights (including labour rights) and environmental impacts. The revised Principles offer no such recognition of shareholder responsibilities.

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<sup>15</sup> Top Incomes and Taxation in OECD Countries: Was the crisis a game changer?, May 2014, Directorate for Employment, Labour and Social Affairs, OECD <http://www.oecd.org/social/OECD2014-FocusOnTopIncomes.pdf>

<sup>16</sup> <https://mneguidelines.oecd.org>

<sup>17</sup> <http://www.oecd.org/daf/fin/principles-long-term-investment-financing-institutional-investors.htm>

<sup>18</sup> <https://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-2.pdf>

*Should asset managers be accountable to asset owners?*

34. According to the LTI Principles, institutional investors should observe “fiduciary duties towards the ultimate owners or beneficiaries of the assets they oversee (...) including shareholder and creditor rights”. The text goes further and underlines the responsibility of asset managers where it reads: “those persons and entities involved in the management of the assets of institutional investors should act in consistency with those fiduciary duties or their associated contractual obligations”. In the revised Principles, section III.C on fiduciary duties fails to fully address the pivotal role of asset managers.

*Should investors integrate environmental and social criteria in their risk management policy?*

35. According to the LTI principles, institutional investors “should ensure that the institution can properly identify, measure, monitor, and manage the risks associated with long-term assets as well as any long-term risks – including environmental, social and governance risks - that may affect their portfolios”. In the revised Principles, Ch. III is meant to address investors’ “active ownership” (header of the chapter). However, there is nothing in that chapter that would suggest integration of environmental and social criteria in investor risk management.

36. Finally, and perhaps most importantly, the revised Principles contain a serious misconception about the MNE Guidelines. The MNE Guidelines set out *governments’* expectations of business. Although their observance by MNEs may be legally non-binding, observance is applicable to *all* irrespective of the views of company’s boards and CEO. In other words, the applicability of the MNE Guidelines is *not* conditional on any voluntary commitment made by the company. That is precisely the misconception in the revised Principles, which portray the MNE Guidelines as a purely voluntary instrument in the annotations to both IV.A (firms making “additional commitments to stakeholders (...) may in some jurisdictions” use the MNE Guidelines) and VI.C (self-made corporate codes of conduct can “sometimes” be based on “broader codes of behaviour” including “a voluntary commitment” to the MNE Guidelines).

***TUAC’s key advocacy points***

37. In its submissions during the review process (see annex IV), the TUAC outlined five key topics: (i) Raising the voice of workers in the firm, (ii) Accountability along the investment chain, (iii) Responsible use of shareholder rights, (iv) Reinforcing board accountability; and (v) Reining in executive pay. These were articulated in key advocacy points as shown in the table below and in specific proposals of amendments to the text listed in annex III.

***Workers’ voice  
(ch. IV, V, VI)***

- Recognising workers’ right to information, consultation, representation and negotiation based on the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights;
- Protecting workers’ creditor claim (in case of bankruptcy); and
- Promoting sustainability & tax reporting.

***Investment  
chain (ch. III)***

- Ensuring transparency and accountability of asset managers and other intermediaries to asset owners and addressing conflicts of interests; and

- Reducing the reliance on performance-related pay.
- Shareholder rights (ch. II)**
- Securing shareholders' right to hold boards to account ;
  - Promoting responsible use of shareholder rights to help curb short-termist market behaviours; and
  - Recommending that merger and takeover rules be subject to the long term interest of the company.
- Board organisation & duties (ch. VI)**
- Setting principles for board diversity (gender, minorities and employee representation);
  - Enhancing the duties of directors and risk management to account for the growing complexity of businesses and their responsibility vis-a-vis all stakeholders; and
  - Adopting separation of CEO and chair functions as a principle.
- Executive pay (ch. III)**
- Reining in executive pay to rebuild confidence and trust in executive management, including through reducing the reliance on performance-related pay and designing remuneration packages in line with the long term interest of the firm; and
  - Ensuring disclosure of individual pay and CEO/worker ratio, and approval by shareholders and independent directors.

38. A comparison between the specific TUAC amendment proposals (in Annex III) and the outcome of the review shows that TUAC's concerns have not been taken on board. What follows provides a chapter by chapter overview of these discrepancies.

*Ch. II "The Rights and Equitable Treatment of Shareholders and Key Ownership Functions"*

39. The revised Ch. II includes a slight improvement to the rights of shareholders to "say-on-pay" (mentioned in the annotations to II.C.4) but it is not fully recommended. Equally disappointing is the absence of reference in the chapter to responsible investment practices. The TUAC wording proposal – that responsible investment practices should be "facilitated", shareholder rights should be exercised in a "responsible way", taking account of the long term interest of the company, including its "capacity to invest and the resilience of its balance sheet, and its social and environmental performance and impact", etc. – is not addressed. Even the proposal that responsible investment practices should be "disclosed" was a bridge too far. The TUAC proposal that rules governing mergers and acquisition should take into account the "long term interest of the companies involved" is also ignored.

*Ch. III "Institutional Investors, Stock Markets, and Other Intermediaries"*

40. Dedicating Ch. III to institutional investors is a welcomed revision given the important role they play in corporate governance matters. The text however does not sufficiently address the accountability of asset managers and other financial intermediaries to asset owners. For example, explicit reference to asset managers appeared in a previous OECD draft marked-up proposal of Principle III.C (on fiduciary duties) but was dropped in the final revised version. The TUAC also called for disclosure of asset manager fees. The revised text suggests that fees should be "transparent" but it is unclear to whom that transparency should benefit (to asset owners? to regulators? to the public? to asset managers themselves?).

#### *Ch. IV “The Role of Stakeholders”*

41. Ch. IV on the “Role of Stakeholders” has been primarily kept the same. The Committee never really paid attention to this chapter prior to the launch of the review, and the review process was no different. The title of the chapter still symbolically refers to the “role” of stakeholders, rather than the “rights” of stakeholders. Explicit compliance with internationally recognised standards and principles (i.e. beyond local laws) is not expected. The TUAC pushed for the Principles to recognise the right for workers to be informed and consulted. As noted above, the revised text only mentions that right in the annotations to IV.C. The MNE Guidelines are presented as a purely voluntary instrument (which they are not) in the annotations to IV.A and IV.E (on whistle-blower protection). Reference to the United Nations Guiding Principles on Business and Human Rights is also missing.

#### *Ch. V “Transparency & Disclosure”*

42. Most of TUAC’s proposals have not been taken on board. Sustainability reporting is not explicitly addressed, despite it being mandatory in Europe<sup>19</sup>. Instead, annotations to V.A.2 suggest that “non-financial” risks should include business ethics, the environment and “where relevant”, human rights and social issues. There is no substantial change to the text on executive pay (V.A.4) despite recent reforms in favour of disclosure of the CEO pay / median wage worker ratio in the United States (Dodd-Frank Act<sup>20</sup>). In fact, the 2004 wording on materiality has been weakened. In the header of the chapter, it now offers two competing definitions: material to all users of information (2004 version) and material to investors only (added text).

#### *Ch. VI “The Responsibilities of the Board”*

43. The revised chapter includes a new stand-alone principle on board-level employee representatives (VI.G) which is welcome. The new text is drawn from the 2005 version of the OECD Guidelines for the corporate governance of state-owned enterprises. Other than that however, the revised text does not include any substantial improvement. There is a timid opening in the annotations to VI.D.7 on board responsibilities to “non-financial” risk management issues, but no serious changes to the Principles themselves. Even the proposal by the Bureau of the Committee on Fiscal Affairs – which has oversight over the G20 ‘BEPS’ Action plan – to refer to aggressive tax planning in annotations to VI.A (duties of directors) was rejected. Instead, reference to tax is located in VI.C on board ethics which arguably is less effective than if it had been referenced under the primary principal VI.A on directors’ duties.

44. Regarding issues related to board organisation, the wording on CEO and chair separation is essentially the same as in 2004 (considered as a “good practice” in the annotations to VI.E). There is a minimalist reference to gender balance; the OECD Recommendation on gender, which recommends gender balance in the boardroom, is not mentioned.

#### *Aspirational or aiming at the lowest common denominator?*

45. In its initial statement in the review process, in March 2014 the TUAC called upon the revised Principles to become “aspirational” and to “aim at the highest standards of governance to achieve the long term interest of the company”. TUAC then argued that the

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<sup>19</sup> large companies with over 500 employees (EC Directive 2014/95/EU) [http://ec.europa.eu/finance/company-reporting/non-financial-reporting/index\\_en.htm](http://ec.europa.eu/finance/company-reporting/non-financial-reporting/index_en.htm)

<sup>20</sup> <https://www.sec.gov/spotlight/dodd-frank-section.shtml#953>

2004 version “gives in many ways the impression of a lowest common denominator between all jurisdictions. (...) The review should be both aspirational and comprehensive enough to account for the diversity of national regimes”.

46. This concern by TUAC has not been taken on board. Overall, the revised Principles text seems to be tainted by a form of relativism in which the famous “no-one-size-fits-all” rule and the notion of “flexibility” in implementation are prioritized. The preamble re-asserts that the Principles are non-binding and “do not aim at detailed prescriptions”. “What works well in one company, for one investor or a particular stakeholder” the reader is told, “may not necessarily be generally applicable (...) in another context and under different circumstances”. Rather than providing a rationale for the associated Principles, the annotations in most cases consist of (long) lists of different possible practices: “in some countries” companies do this, “in many countries” they do that, etc. Many key corporate governance practices are also “buried” in the annotations, presumably because they could not meet full consensus within the Committee.

#### *The inexplicable weakening of the draft in March 2015*

47. What happened during the last session on the review of the Principles of the Committee on 23-24 March 2015? Nobody knows outside Committee members because Committee sessions are held behind closed doors. What is sure is that this session led to a substantial weakening of the revised text on a number of TUAC priorities: workers’ rights, asset managers’ accountability to asset owners, MNE Guidelines, sustainability reporting, the role of the board in monitoring tax risks. The draft that was then submitted to the Committee for discussion (reference DAF/CA/CG(2014)3/REV4 – seen by the TUAC on a confidential basis) was close to the version that had been released for public comment in November 2014. As shown in Annex II, the key changes between the November 2014 and the final version adopted as an outcome of the March session were all about weakening TUAC’s priorities (with exception of the wording on the role of audit committees which was a BIAC priority). This weakening cannot be explained by the outcome of the public consultation (the written comments did not touch upon TUAC’s priorities with the notable exception of tax risk).

### **Conclusion**

48. In line with the previous 2014 version, the Principles reflect the lowest common denominator between participating jurisdictions (that is the 34 OECD member states plus 11 non-OECD countries). It is not a given however that the outcome is serving the interest of the OECD as whole. Aiming at the lowest common denominator is not necessarily appropriate for non-binding instruments, like the Principles, which would be of higher value had they been drafted in a more aspirational way. The revised text does not seem consistent neither with other OECD instruments, including the MNE Guidelines and the LTI Principles. In fact, the revised text fuels a serious misconception about the MNE Guidelines which are portrayed in the revised Principles as a purely voluntary instrument, which they are not.

49. The OECD could also reflect on its own “corporate governance” and the extent to which keeping the entire process of review of a flagship instrument under the control of Committee sessions held behind closed doors is a desirable way to proceed in the future.

50. For proponents of a corporate accountability and responsible investment approach to corporate governance, the outcome of the review clearly is a disappointment. It is fair to say

that the text remains imbedded in a classic form of “maximising shareholder value” model of governance. Corporate access to equity matters of course, but shareholders are not alone in having a stake in the firm, and the way they behave matters as well (whether or not it is for the long term interest of the firm). As William Lazonick (University of Massachusetts Lowell) wrote to the OECD in January 2015: “shareholders are not the only investors in the firm and not all shareholders are investors in the firm”<sup>21</sup>.

51. Despite delivering three substantive submissions over the course of 2014, including concrete proposals of amendments to the text, as well as linguistic translations in French, Spanish and Portuguese, and the participation of a dozen of trade union experts in the four consecutive consultations with the Committee, it is of concern that so few of TUAC’s proposals have been taken on board.

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<sup>21</sup> <http://www.oecd.org/daf/ca/Lazonick2015CGP.pdf>



## Annex I: Comparison between the 2004 and 2015 versions

CH.	2004	2015	CHANGES
<b>I</b>	<b>Ensuring the Basis for an Effective Corporate Governance Framework</b> A: Role of a corporate governance framework B: rule of law, transparency and enforcement  C: division of labour between authorities to serve public interest   D: integrity, transparency and capacity of authorities	<b>Ensuring the Basis for an Effective Corporate Governance Framework</b> A: Role of a corporate governance framework B: rule of law, transparency and enforcement  C: division of labour between authorities to serve public interest  <u>D. corporate governance of private exchanges</u>  E: integrity, transparency and capacity of authorities  <u>F. cross border cooperation between supervisory authorities.</u>	Header: complementary role of soft law and “comply or explain” principle  Annotations: ref to sanctioning powers of authorities  Annotations: conflict of interest of authorities cumulating regulatory mandates with attracting business objectives; human rights and environmental laws influencing corporate governance practices Annotations: supervisory role to assess the corporate governance of stock exchanges and other trading venues
CH.	2004	2015	CHANGES
<b>II</b>	<b>The Rights of Shareholders and Key Ownership Functions</b>  A: basic rights of shareholders B: decisions concerning fundamental changes C, C1-3, C5-6: rights at the AGM C4: appointment & remuneration of board members & key executives  D: transparency of the capital structure E, E1-2: corporate control, M&As, poison pills not to weaken board accountability F: institutional investors ownership policies  F.1: disclosure of institutional investors voting	<b>The Rights <u>and Equitable Treatment</u> of Shareholders and Key Ownership Functions</b>  A: basic rights of shareholders B: decisions concerning fundamental changes C, C1-3, C5-6: rights at the AGM C4: appointment & remuneration of board members & key executives  D. concerted party rules, consultation between shareholders (ex-II.G) E, E1 equal treatment of shareholders (ex-III.A,A1) E2: transparency of the capital structure (ex II.D)  <u>F, F1: Approval of related party transactions (RTP) and prevention of conflicts of interest</u> F2 disclosure by directors and executives of material interests in	Merger with ex-ch. III on minority shareholders, text on institutional investors (ex-F1&2) moved to new ch III Unchanged Minor changes Minor changes Principle: right to make “views known” on compensation. Annotations: ref. to say on pay rules and to disclosure of other board positions by nominees Minor changes Minor changes Minor changes regrouping of various RTP-related sections under a single series of Principles Minor changes

CH.	2004	2015	CHANGES
	policy F.2: disclosure of institutional investors conflict of interest policy G: concerted party rules, consultation between shareholders	transactions affecting the company (ex-IIIC) G. minority shareholder protection from abusive actions & self-dealing (ex-III.A2 & ex-IIIB) H, H1-2: poison pills not to weaken board accountability (ex-E, E1-2)	Annotations: ref to complain mechanisms Annotations: ref to transparent and fair pricing to protect shareholders
CH.	2004	2015	CHANGES
<b>III</b>	<b>Equitable Treatment of Shareholders</b>	<b><u>Institutional Investors, Stock Markets, and Other Intermediaries</u></b>	new chapter based on former II.F on institutional investors Header: ref to the lengthening and complexity of the investment chain and role of intermediaries Annotations: disclosure of voting records considered “good practice” Annotations strengthened
	A, A.1: equal treatment of shareholders	A: disclosure of institutional investors voting policy (ex-II.F1)	Annotations: the “fee structure” of asset managers and other intermediaries “should be transparent” Annotations strengthened; disclosure by proxy advisors of their methodology Principle: ref to enforcement Annotations strengthened
	A.2: protection from abusive actions by controlling shareholders	B: accountability of custodians and nominees to beneficial owners (ex-III.A3)	Annotations strengthened
	A.3: role of custodians and nominees to beneficial owners	C: disclosure of institutional investors conflict of interest policy (ex-II.F2)	Annotations: the “fee structure” of asset managers and other intermediaries “should be transparent” Annotations strengthened; disclosure by proxy advisors of their methodology
	A.4: cross-border voting facilitated	D: disclosure and mitigation of conflicts of interest of analysts, brokers, rating agencies (ex-V.F)	Principle: ref to enforcement Annotations strengthened
	A.5: equitable treatment at the AGM	E: prohibition of insider trading and market manipulation (ex-III.B)	Annotations strengthened
	B: prohibition of insider trading and abusive self-dealing	<u>F: transparency and disclosure rules for companies listed in another jurisdiction than the jurisdiction of incorporation</u>	new stand-alone principle
	C: disclosure by directors and executives of material interests in transactions affecting the company	<u>G: fair price formation in stock exchanges and trading venues</u>	new stand-alone principle, implicit reference to high frequency trading
CH.	2004	2015	CHANGES
<b>IV</b>	<b>Role of Stakeholders</b>	<b>Role of Stakeholders</b>	Unchanged
	A: rights defined by law or by “mutual agreement”	A: rights defined by law or by “mutual agreement”	Annotations: ref to the MNE Guidelines & due diligence procedures
	B: right to redress	B: right to redress	Unchanged
	C: development of employee “performance-enhancing” mechanisms not outlawed	C: development of employee “performance-enhancing” mechanisms not outlawed	Annotations: ref to international conventions recognising workers’ right to information, consultation and negotiation
	D: access to relevant information	D: access to relevant information	unchanged
	E: whistle blower protection	E: whistle blower protection	Annotations: ref to the NCP procedure of the MNE Guidelines
	F: rights of creditors (beyond those as established	F: rights of creditors (beyond those as established by law)	unchanged

CH.	2004	2015	CHANGES
	by law)		
CH.	2004	2015	CHANGES
<b>V</b>	<b>Disclosure and Transparency</b>	<b>Disclosure and Transparency</b>	Header: Reducing reporting burdens on business highlighted Unchanged
	A, A.1 financial and operating results A.2: Company objectives	financial and operating results A.2: Company objectives <u>and non-financial information</u>	Annotations: ref to material information on “social issues and human rights”, to “non-financial” reporting, political donations and country-by-country reporting
	A.3: Major share ownership and voting rights	A.3: Major share ownership, <u>including beneficial owners</u> and voting rights	Annotations: good practice to disclose shareholdings of directors Minor change
	A.4: Remuneration policy for members of the board and key executives and Information about board members and other company directorship and independent directors	A.4: Remuneration <del>policy for</del> <u>of</u> members of the board and key executives A.5: Information about board members and other company directorship and independent directors	Annotations: ref to disclosure of CB coverage and of mechanisms for employee representation Annotations strengthened
	A.5: related party transactions	A.6: related party transactions	Minor changes
	A.6: foreseeable risk factors	A.7: foreseeable risk factors	Annotations: ref to disclosure of CB coverage and of mechanisms for employee representation
	A.7: employees and other stakeholders	A.8: employees and other stakeholders	Annotations disclosure of rationale for cumulating CEO & chair positions minor changes
	A.9: corporate governance	A.9: corporate governance	Annotations strengthening regarding audit fees
	B: quality of the disclosure policy	B: quality of the disclosure policy	Unchanged
	C: quality of the external auditing	C: quality of the external auditing	Unchanged
	D: access to information	D: access to information	Unchanged
	E: timely & cost-efficient reporting	E: timely & cost-efficient reporting	minor changes
	F: prevention of conflicts of interest of analysts, brokers, rating agencies		
CH.	2004	2015	CHANGES
<b>VI</b>	<b>Responsibilities of the board</b>	<b>Responsibilities of the board</b>	Header: unchanged
	A: duties	A: duties	Unchanged
	B: fair treatment of all shareholders	B: fair treatment of all shareholders	Unchanged
	C: ethics & interest of stakeholders	C: ethics & interest of stakeholders	Annotations: ref to aggressive tax avoidance practices
	D, D.1-D.8: key functions	D, D.1-D.8: key functions	executive remuneration claw back provisions, role of the audit committee in overseeing the “integrity of the internal control system”

CH.	2004	2015	CHANGES
	E: independence of the board	E: independence of the board	minor changes related to CEO/chair separation
	E.1: role of non-executive directors	E.1: role of non-executive directors	unchanged
	E.2: organisation of board committees	E.2: organisation of board committees	importance of committees for the purpose of audit, risk management and board remuneration
	E.3: commitment of board members	E.3: commitment of board members	minor changes
		<u>E.4: board evaluation</u>	new stand-alone principle, minor ref to gender diversity
	F: board access to information	F: board access to information	minor changes
		<u>G: board level employee representatives</u>	new stand-alone principle, drawn from the SOE Guidelines

## Annex II: Key changes between the public consultation draft (Nov. 2014) and the final 2015 version

CH. DRAFT FOR PUBLIC COMMENT – NOVEMBER 2014	FINAL VERSION – APRIL 2015	TREND
<p><b>III Institutional Investors, Stock Markets, and Other Intermediaries</b></p> <p><b>A. Institutional investors acting in a fiduciary capacity, <u>including asset managers</u>, should disclose their <del>overall</del>-corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights. <u>Disclosure of actual voting records is considered good practice, especially where an institution has a declared policy to vote.</u></b></p> <p><b>C. Institutional investors acting in a fiduciary capacity, <u>including asset managers</u>, should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.</b> (annotations to III.C) <u>Fee structures for asset management and other intermediary services should be transparent throughout the investment chain.</u></p>	<p><b>Institutional Investors, Stock Markets, and Other Intermediaries</b></p> <p><b>A. Institutional investors acting in a fiduciary capacity, <u>including asset managers</u>, should disclose their <del>overall</del>-corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights. <del>Disclosure of actual voting records is considered good practice, especially where an institution has a declared policy to vote.</del></b></p> <p><b>C. Institutional investors acting in a fiduciary capacity, <u>including asset managers</u>, should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.</b> (annotations to III.C) <u>Fee structures for asset management and other intermediary services should be transparent throughout the investment chain.</u></p>	<p><i>Weakening</i></p> <p><i>Weakening</i></p> <p><i>Weakening</i></p>
<p><b>IV Role of Stakeholders</b> (header) <i>The corporate governance framework should recognise the rights of stakeholders established by law, <u>international agreements</u> or <del>through</del> mutual agreements, and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.</i> (Annotations to IV.A) <u>Best practice calls for implementation of internationally recognised agreements and verification through due diligence procedures, notably as provided for in the OECD Guidelines for Multinational Enterprises and its general principles on due diligence.</u> (Annotations to IV.E) <u>Additionally or alternatively, any case of violations of the recommendations provided for in the OECD Guidelines on Multinational Enterprises can be brought to the National Contact Point (NCP).</u></p>	<p><b>Role of Stakeholders</b> (header) <i>The corporate governance framework should recognise the rights of stakeholders established by law, <u>international agreements</u> or <del>through</del> mutual agreements, and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.</i> (Annotations to IV.A) <u>For multinational enterprises, this may in some jurisdictions be achieved by companies using the <i>OECD Guidelines for Multinational Enterprises</i> for due diligence procedures that address the impact of such commitments.</u> (Annotations to IV.E) <u>Many countries also provide for the possibility to bring cases of violations of the <i>OECD Guidelines for Multinational Enterprises</i> to the National Contact Point.</u></p>	<p><i>Weakening</i></p> <p><i>Weakening</i></p> <p><i>Weakening</i></p>
<p><b>V Disclosure and Transparency</b> (annotations to the header) Material information can be defined as information</p>	<p><b>Disclosure and Transparency</b> (annotations to the header) Material information can be defined as information</p>	<p><i>Weakening</i></p>

whose omission or misstatement could influence the economic decisions taken by users of information.

(Annotations to V.A.1) Some countries require additional disclosures for large companies, for examples net turnover figures or payments made to governments broken down by categories of activity and country (country-by-country reporting), or fees paid to auditors for non-audit services.

(Annotations to V.A.2) In addition to their commercial objectives, companies are encouraged to disclose policies relating to business ethics, the environment, human rights, including where relevant within their supply chain, and other public policy commitments.

(Annotations to V.A.2) In many countries, such disclosures are required for large companies, typically as part of their management reports. Many companies have started to embrace concepts such as sustainability or “integrated” reporting.

whose omission or misstatement could influence the economic decisions taken by users of information. Material information can also be defined as information that a reasonable investor would consider important in making an investment or voting decision.

(Annotations to V.A.1) ~~Some countries require additional disclosures for large companies, for examples net turnover figures or payments made to governments broken down by categories of activity and country (country-by-country reporting), or fees paid to auditors for non-audit services.~~

(Annotations to V.A.2) In addition to their commercial objectives, companies are encouraged to disclose policies and performance relating to business ethics, the environment, human rights, including where relevant within their supply chain, and, where material to the company, social issues, human rights and other public policy commitments.

(Annotations to V.A.2) In many countries, such disclosures are required for large companies, typically as part of their management reports, or companies disclose nonfinancial information voluntarily. Many companies have started to embrace concepts such as sustainability or “integrated” reporting.

*Weakening*

*Weakening*

*Weakening*

## VI Responsibilities of the board

(annotations to VI.A) In nearly all jurisdictions, the duty of care does not extend to errors of business judgement so long as board members are not grossly negligent and a decision is made with due diligence etc., or to an obligation to pursue aggressive tax avoidance.

(annotations to VI.C) ~~The latter might include a voluntary~~ A good practice is the commitment by the company (including its subsidiaries) to comply with the OECD Guidelines for Multinational Enterprises which reflect, inter alia, all four principles contained in the ILO Declaration on Fundamental Labour Rights.

(annotations to VI.D.4) It is considered good practice ~~in an increasing number of countries~~ that remuneration policy and employment contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors.

**VI.D.7 Ensuring the integrity of the corporation’s accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk**

## Responsibilities of the board

(annotations to VI.A) In nearly all jurisdictions, the duty of care does not extend to errors of business judgement so long as board members are not grossly negligent and a decision is made with due diligence etc., ~~or to an obligation to pursue aggressive tax avoidance.~~

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(annotations to VI.D.4) In large companies, it is considered good practice ~~in an increasing number of countries~~ that remuneration policy and ~~employment~~ contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors

**VI.D.7 Ensuring the integrity of the corporation’s accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk**

*Weakening*

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management, financial and operational control, and compliance with the law and relevant standards. Large companies should be encouraged to put in place an internal audit function and an audit committee of the board to oversee the effectiveness and integrity of the internal control system.

(annotations to VI.E.4) Measures such as voluntary targets, disclosure requirements and private initiatives that enhance gender diversity on boards and in senior management should be encouraged.

**VI.G When employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of board skills, information and independence.**

management, financial and operational control, and compliance with the law and relevant standards. ~~Large companies should be encouraged to put in place an internal audit function and an audit committee of the board to oversee the effectiveness and integrity of the internal control system.~~

(annotations to VI.E.4) Countries may wish to consider measures such as voluntary targets, disclosure requirements boardroom quotas, and private initiatives that enhance gender diversity on boards and in senior management should be encouraged.

**VI.G When employee representation on the board is mandated, mechanisms should be developed to guarantee facilitate access to information and training for employee representatives, so that this representation is exercised effectively and best contributes to the enhancement of board skills, information and independence.**

*Weakening*

*Strengthening*

## Annex III: Comparison with the TUAC Marked-up proposal

TUAC marked-up	OECD final revised version
<b>RAISING THE VOICE OF WORKERS</b>	
<b>IV. THE <del>ROLE</del> <u>RIGHTS</u> OF STAKEHOLDERS <del>IN CORPORATE GOVERNANCE</del></b>	Ignored
<b>IV.C <u>Mechanisms should be in place for employees and their representatives to be represented, informed and consulted about the business plan and foreseeable risk factors and to negotiate with management in case of substantial change in working conditions and pay and in case of restructuring process</u> <del>Performance-enhancing mechanisms for employee participation should be permitted to develop.</del></b>	Ignored
ANNOTATIONS: (...) <u>There are however a number of international conventions and norms that establish the right of employees to information, consultation and negotiation, such as the OECD Guidelines for Multinational Enterprises (Chapter V on Employment and Industrial Relations).</u>	Accepted (excluding ref to the MNE Guidelines)
<b>V.A. <u>Disclosure should include, but not be limited to, material information on: (...) Issues regarding employees, including remuneration, training, collective bargaining coverage, mechanisms for employee representation, and other stakeholders.</u></b>	Addressed in the annotations
<b>IV.F (...) ANNOTATIONS: (...) <u>Workers' creditor claims over the firm (unpaid wages, severance, unemployment, pension, other benefits) should have senior status and precedence over other creditors than tax collectors.</u></b>	Ignored
<b>IV.A <u>The company should ensure compliance with the rights of stakeholders that are established by law or, through mutual agreements or by internationally recognised agreements are to be respected, including through due diligence procedures.</u></b>	Ignored
ANNOTATIONS: (...). Reference to the <u>United Nations Guiding Principles for Business and Human Rights and Chapter IV (Human Rights) of the OECD Guidelines for Multinational Enterprises.</u>	Addressed
<b>VI.C <u>The board should apply high ethical standards. It should take into account the interests of stakeholders and undertake due diligence procedures in order to avoid infringing on stakeholders' rights.</u></b>	Ignored
ANNOTATIONS: reference to the <u>United Nations Guiding Principles for Business and Human Rights</u> . And to the <u>OECD's Action Plan on Base Erosion and Profit Shifting (BEPS)</u>	Ignored
<b>V.A.7 <u>Disclosure should include, but not be limited to, material information on (...) Foreseeable risk factors, including human rights, labour, environmental and tax-related risks, and measures taken to manage such risks.</u></b>	Addressed in annotations to V.A.2
<b>ACCOUNTABILITY ALONG THE INVESTMENT CHAIN</b>	
<b>III.C <u>Institutional investors acting in a fiduciary capacity should disclose (...) the structure of their remuneration when managing assets of third parties.</u></b>	Partly addressed in the annotations
<b>III.A (...) <u>Asset managers should be accountable to their clients and observe their fiduciary duties towards the ultimate owners or beneficiaries of the assets they oversee.</u></b>	Ignored
<b>III.D <del>The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by</del> <u>Asset managers and other intermediaries such as analysts, brokers, and rating agencies and others, that is relevant to decisions by investors, free from should disclose</u> material conflicts of interest that might compromise the integrity of their <u>services</u> <del>analysis or advice.</del></b>	Addressed



## RESPONSIBLE USE OF SHAREHOLDER RIGHTS

<p><b>II.C.4 Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be <u>secured facilitated</u>. Shareholders should be able to make their views known, <u>including through votes at annual shareholder meetings, on the remuneration policy and packages for board members, and for key executives in one-tier board systems</u>. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.</b></p>	Partly addressed
<p><b>Header of Ch. III (...) ANNOTATIONS: (...) <u>Shareholder rights should be exercised in a responsible way. Shareholder practices taking account of the long term interest of the company, including its capacity to invest and the resilience of its balance sheet, and its social and environmental performance and impact should be facilitated. Shareholders are expected to exercise due diligence over the company regarding observance of international norms and standards as outlined in the UN Guiding Principles on Business and Human Rights.</u></b></p>	Ignored
<p><b>II. H.1 Markets for corporate control should be allowed to function in an efficient and transparent manner. (...) Transactions should occur at transparent prices and under fair conditions <u>that take into account the long term interest of the companies involved and protect the rights of all shareholders according to their class and the rights of other affected stakeholders.</u></b></p>	Ignored

## REINFORCING BOARD ACCOUNTABILITY

<p><b>VI.A (...) ANNOTATIONS: Acting in the best interest of the company should not permit management to become entrenched, <u>nor should it be interpreted as generally requiring companies to engage aggressive tax planning.</u></b></p>	partly addressed in VI.C (board ethics)
<p><b><u>Acting in the best interest of shareholders should not permit management to set shareholder remuneration - dividends and share buy-backs - at unsustainable levels that would weaken the resilience of the company's balance sheet, the capacity to adequately reinvest retained earnings or to implement the company's stakeholder responsibilities adequately.</u></b></p>	Ignored
<p><b>VI.D.7 The board should fulfil certain key functions, including: (...) <u>compliance with the law, international agreements and relevant standards.</u></b></p>	Ignored
<p><b>ANNOTATIONS: (...) Compliance must also relate to other laws <u>and, regulations and international agreements</u> such as those covering securities, competition, <u>taxation, human rights and occupational work and safety conditions.</u></b></p>	Addressed
<p><b>(...) Under the United Nations Guiding Principles for Business and Human Rights <u>all companies are required to respect human rights, which means that they undertake human rights due diligence in order to avoid infringing on the human rights of others.</u></b></p>	Ignored
<p><b>(...) Compliance programmes should also extend <u>where possible to subsidiaries and to third parties with which the company has an established business relationship, such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners and should refer to the OECD Guidelines for Multinational Enterprises.</u></b></p>	partly addressed
<p><b>VI.E The board <u>composition should be able to exercise objective independent judgement on corporate affairs ensure independence from the CEO and executive management and, where appropriate, from controlling shareholders. Board composition should also ensure diversity of gender, of skills and of geographic origins. CEO and chair positions should be separated.</u></b></p>	Ignored
<p><b>ANNOTATIONS: (...) Separation of the two posts <u>may be regarded as good practice, as it can help to achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management. In two-tier structures, former CEOs should not be allowed to become chair of the supervisory board.</u></b></p>	Ignored
<p><b><u>Board composition should meet diversity criteria. The OECD Recommendation on Gender Equality in Education, Employment and Entrepreneurship encourage measures such as voluntary targets, disclosure requirements and private initiatives that enhance gender diversity on boards and in senior management of listed companies, (...). Board</u></b></p>	partly addressed in VI.E.4

diversity of geographic origins, including members of ethnic minorities, and of skills are also encouraged.

**VI.G If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.**[SOE Guideline VI.D unchanged]

Addressed

ANNOTATIONS: [marked-up of text drawn from SOE Guideline VI.D] When employee representation on boards is mandated by the law or collective agreements, it should be applied so that it contributes to the boards' independence, competence and information. Employee representatives should have the same duties and responsibilities as all other board members, should act in the best interests of the company and treat all shareholders equitably. Employee representation on SOE boards should not in itself be considered as a threat to board independence.

partly addressed

Procedures should be established to facilitate access to information, training and expertise ~~the professionalism~~ and the ~~true~~ independence of employee board members from the CEO and management, ~~and to make sure that they respect their duty of confidentiality.~~ These procedures should also include adequate, transparent appointment and democratic election procedures, rights to report to employees on a regular basis – provided that board confidentiality requirements are duly respected – training and clear procedures for managing conflicts of interest. A positive contribution to the board's work will also require acceptance and constructive collaboration by other members of the board as well as by the ~~SOE~~ management.

Addressed

## **REINING IN EXECUTIVE PAY**

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**VI.D.4** The board should fulfil certain key functions, including (...) **Aligning Ensuring key executive and board remuneration does not lead to excessive pay disparity within the company or to excessive management risk taking behaviour and is aligned with the longer term interests of the company and its shareholders.**

Ignored

ANNOTATIONS: (...) While remuneration should be designed to help attract qualified professionals, boards should be concerned with the risk and consequences for setting excessive remuneration levels. High pay disparities within companies hurt employee morale and productivity and bear significant reputational risks. When combined with poorly structured incentive targets high executive pay leads can lead to excessive risk taking. (...)

Ignored

Regarding remuneration design, termination clauses should be aligned with those provided to other employees of the company, performance-related elements should be set at a lower proportion of total pay and asymmetric forms of compensation such as stock options should be discouraged. Clawback provisions should permit the company to recoup incentive compensation payments to executives in certain circumstances (e.g. based on erroneous data where the company is required to prepare an accounting restatement due to noncompliance with any financial reporting requirements).

Partly addressed

**V.A.4** Disclosure should include, but not be limited to, material information on: (...) **Individual remuneration policy for of members of the board and key executives, the pay ratio of the CEO to the average employee and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.**

Ignored

**II.C.4** Shareholders should be able to make their views known, **including through votes at annual shareholder meetings, on the remuneration policy and packages for board members, and for key executives in one-tier board systems.** The equity component of compensation schemes for board members and employees should be subject to shareholder approval.

Partly addressed

## Annex IV: TUAC participation in the review process

### TUAC Submissions to the OECD:

- 10/03/2014| TUAC Submission on the Review of the Principles of Corporate Governance [http://www.tuac.org/en/public/e-docs/00/00/0E/49/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/0E/49/document_doc.phtml)
- 30/04/2014| TUAC Marked-Up Proposals of the OECD Principles of Corporate Governance [http://www.tuac.org/en/public/e-docs/00/00/0E/76/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/0E/76/document_doc.phtml)
- 13/10/2014| TUAC Submission on the Review of the Principles of Corporate Governance [http://www.tuac.org/en/public/e-docs/00/00/0E/F6/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/0E/F6/document_doc.phtml)

### Written comments received during internal TUAC consultation rounds:

- Trade union centres: COSATU (South Africa), TUC (United Kingdom), AFL-CIO (United States), FNV (The Netherlands), RENGO (Japan), DGB (Germany), CCOO (Spain), ETUC (EU).
- Partner organisations: Hans Böckler Stiftung (HBS), Global Unions Committee on Workers' Capital (CWC).

### TUAC representatives in OECD Consultations on the review process

- Janet Williamson (TUC), Brandon Rees (AFL-CIO), Wolfgang Kowalski (ETUC), Olivier Berducou (CFDT), Hitoshi Takezume, Hideyuki Hirakawa & Eiichi Seo (RENGO), John Evans & Pierre Habbard (TUAC), Amanda Card (CWC), Norbert Kluge & Sebastian Sick (HBS).

### TUAC stand-alone meeting during the review process:

- 18/07/2014| TUAC Roundtable on Corporate Governance & Human Rights [http://www.tuac.org/en/public/e-docs/00/00/0E/F6/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/0E/F6/document_doc.phtml)

## Annex V: OECD Source

Webpage on the Principles: <http://www.oecd.org/corporate/principles-corporate-governance.htm>

### *OECD Committee on Corporate Governance*

- Corporate Governance and the Financial Crisis: Key Findings and Main Messages, OECD 2009 [www.oecd.org/daf/ca/corporategovernanceprinciples/43056196.pdf](http://www.oecd.org/daf/ca/corporategovernanceprinciples/43056196.pdf)
- Governance and the Financial Crisis: Conclusions and Emerging Good Practices to Enhance Implementation of the Principles, OECD 2010 [www.oecd.org/daf/ca/corporategovernanceprinciples/44679170.pdf](http://www.oecd.org/daf/ca/corporategovernanceprinciples/44679170.pdf)
- Board Practices: Incentives and Governing Risks, OECD 2011  
doi:10.1787/9789264113534-en
- Related Party Transactions and Minority Shareholder Rights, OECD 2012  
doi:10.1787/9789264168008-en

- Corporate Governance, Value Creation and Growth: The Bridge between Finance and Enterprise, OECD 2012 doi: 10.1787/9789264179547-en
- Who Cares? Corporate Governance in Today's Equity Markets, OECD Corporate Governance Working Papers, No. 8, OECD 2013 doi:10.1787/5k47zw5kdnmp-en
- Roadmap and terms of reference for the review of the Principles of Corporate Governance, DAF/CA/CG(2013)11, OECD Secretariat, 15 October 2013
- Draft Summary Record: 25th Meeting of the Corporate Governance Committee, 12-13 November 2013, DAF/CA/CG/M(2013)2, OECD Secretariat, 18 December 2013
- Review of the OECD Principles of Corporate Governance: Issues Note, 24-Feb-2014 - DAF/CA/CG(2014)2

*Other OECD source*

- New Approaches to Economic Challenges - A Framework Paper, Meeting of the OECD Council at Ministerial level, 23-24 May 2012  
<http://www.oecd.org/general/50452415.pdf>
- Top Incomes and Taxation in OECD Countries: Was the crisis a game changer?, May 2014, Directorate for Employment, Labour and Social Affairs, OECD  
<http://www.oecd.org/social/OECD2014-FocusOnTopIncomes.pdf>
- Guidelines for Multinational Enterprises <https://mneguidelines.oecd.org>
- High-Level Principles of Long-Term Investment Financing by Institutional Investors  
<http://www.oecd.org/daf/fin/principles-long-term-investment-financing-institutional-investors.htm>