TRADE UNION ADVISORY COMMITTEE
TO THE ORGANISATION FOR ECONOMIC
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Consultation with the OECD Committee on Corporate Governance

Raising the Bar – the OECD Principles Deserve Better Than an 'Update'

Paris, 26 November 2012

TUAC welcomes the opportunity to comment on the documents that are for discussion at the 23rd Meeting of the Corporate Governance Committee. We note with interest the items on the agenda of the meeting and will comment on them during the consultation. Our primary message to the Committee for this consultation relates to an issue which unfortunately is not on the agenda: the review of the 2004 Principles of Corporate Governance (the "Principles").

TUAC understands that the decision whether or not to review the Principles has not been finalized. However, we understood that the Committee currently only plans to 'update' the text based on the 2010 "Conclusions and emerging good practices"[1]. Although the findings of the 2010 report provide useful guidance, the Principles themselves are almost ten years old.

TUAC believes that the Committee should raise the bar for companies subject to the Principles. Public trust in the governance of private corporations was seriously damaged with the recent financial crisis. Rather than aiming at the lowest common denominator between all OECD jurisdictions, the Principles should become truly aspirational and help guide positive change, be it in regulation, at the annual general meeting ("AGM"), or inside the boardroom.

To raise the bar for companies subject to the Principles, we believe the OECD should be guided by the following objectives.

We need boards that can constructively challenge senior management

Pale, male and stale "old boys" networks still prevail in boardrooms. This is a serious threat to board accountability. What is at stake is the board's capacity to constructively challenge the CEO and top management. Imposing strict diversity requirements by law (such as gender diversity ratios) is part of the solution.

- Shareholder-appointed directors should be elected individually and democratically by shareholders, free of interference and influence by senior management.

- There can be no justification for allowing CEOs to chair the board in unitary board systems.

- Promoting board diversity (by gender and by professional background and expertise) must become a priority.

[1] http://www.oecd.org/daf/corporateaffairs/corporategovernanceprinciples/44679170.pdf

- The definition of board independence should be limited to senior management and, where appropriate, to controlling shareholders. Non-executive employee representatives on boards should be classified as independent directors.

- Board-level employee representatives bring valuable experience into the boardroom and should be recognised and reinforced as a powerful tool for ensuring independent boards that can constructively supervise the CEO and senior management.

We need to rein in executive remuneration

The self-regulation approach to executive remuneration has failed. In too many OECD countries, executives' remuneration packages do not need to be approved outside the boardroom. Many unions across OECD are calling for a pay ceiling in proportion to the company size and/or average employee pay, a ban performance-based pay such as stock options that encourage excessive risk, and eliminating executive pension schemes that are not open to the whole workforce of the company.

- Individual executive remuneration packages must be disclosed and approved by a third party that is free of conflict of interest vis-à-vis management. This third party would be shareholders in unitary board systems, the supervisory board in two-tier systems.

- Best practices for reining in executive compensation include: setting an upper ceiling in proportion to the company size and average employee pay, enforcing generalised claw-back provisions, and a ban of all performance-related incentives that encourage excessive risk-taking, and pension schemes which general features are not open to management and workforce of the company.

We need accountability throughout the investment chain

The lengthening of the investment chain between asset owners – including workers' pension funds – and invested companies is creating complications for investors wishing to engage long term responsible investment strategies. Conflicts of interest abound in the asset management industry. More should be done to achieve a regulatory environment that is conducive to responsible investment practices and penalise those who seek quick gains on the back of the company's long-term sustainability.

- Disclosure of institutional investors voting policy and the exercise of voting rights by asset managers should be mandatory.

- The design of asset managers and other intermediaries' remuneration should be set against long term metrics, and fully disclosed.

- Shareholders' rights and access to the AGM agenda is a pre-requisite for board accountability and to prevent management entrenchment. In addition, the governance framework needs to reward those who act in the long-term interests of the company and penalise those seeking quick gains. For example, mergers and takeovers ought to be conditioned on a "long-term interest test" for the company.

- Environmental and social reporting should be on equal footing with financial reporting when considering the company's risk management and risk reporting framework.

- Financial reporting should be designed in a way that primarily informs market participants on the long-term performance of the corporation. Quarterly reporting fuels short-termist decision-making in the boardroom and by senior managers.

We need to restore the social function of the corporation

More fundamentally, we need to restore the social function of the private corporation. For far too long we have allowed companies to be ruled by only one metric: maximising shareholder value. It is a model in which a key constituency of the company, the workforce, does not appear on the radar screen. Workers' voices need to be heard in the governance of the corporation. There is no one-size-fits-all to ensuring a stakeholder approach, but the ultimate goal of restoring the social function of the corporation, of ensuring that there are countervailing forces to top management within and outside the firm.

- Corporate governance is about the nexus of contracts that binds the stakeholders of the company. Collective bargaining is an essential form of contract that binds management and workers. Collective bargaining hence is a foundation of long-term good governance of corporations and ought to be recognised as such.

- Workers' rights to information, consultation and participation are recognised across OECD economies. Transparent and democratically elected works councils should have access to the AGM agenda and to board deliberations.

- The combined use of the Principles and the Guidelines for Multinational Enterprises should be promoted by the OECD and the latter should be considered as a benchmark in defining the long-term interests of the company.