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

OECD releases revised Principles of Corporate Governance – Unions call for more ambition

Paris, 7 September 2015

1. A revised set of the OECD Principles of Corporate Governance[i] was disclosed on the occasion of the G20 Finance Ministers' meeting. While the updated text offers some improvements compared with the previous version (which dates back to 2004), trade unions have said that governments must show more ambition if they intend to build trust in the role of the private corporation and its accountability to society. It also appears out of sync with parallel initiatives on responsible business conduct and responsible investment within and beyond the OECD.

2. After a year-long review process, the revised principles – which have been released as a joint G20/OECD text, endorsed in the G20 Finance Ministers and Central Bank Governors communiqué on September 5 in Ankara – do not make fundamental changes to the 2004 version. They contain five chapters covering: the supervisory framework (I), shareholder rights (II), institutional investors & markets (III), stakeholders (IV), transparency & disclosure (V), board of directors (VI).

3. The most significant change is the addition of chapter III on the governance of "Institutional Investors, Stock Markets, and Other Intermediaries". Greater emphasis is also put on the transparency and governance of private exchanges, other trading venues (such as "dark pools") and new forms of trading practices such as high frequency trading and the use of derivatives (Ch. I & III).

4. The revised text also has the merit of recognising the role of board level employee representatives by integrating existing text from the 2005 OECD Guidelines for the corporate governance of state-owned enterprises.

5. However, on many key corporate governance issues, the revised Principles fall short of what TUAC called for in terms of sufficient post-crisis policy lessons within the OECD and beyond:

- The chapter on the "role" of stakeholders (ie. employees, local communities and creditors) is practically left untouched. It clearly is out of sync with the requirements laid down in the OECD Guidelines for Multinational Enterprises, which were revised in 2011;
- The text on executive remuneration has also been left almost untouched with only limited additions in the annotations on claw back provisions and on "say-on-pay" (but not on the disclosure of the CEO/worker pay ratio). Nothing in the text would suggest that executive pay – or shareholder compensation via dividends and share-buybacks – could risk reaching excessive levels, despite the OECD's own findings confirming this fact;
- Responsible investment practices are ignored throughout text. Even the proposal by the TUAC that responsible investment practices "be disclosed" was not taken on board. Apparently the USD59tr worth institutional investors having signed on the UN Principles for Responsible Investment are not worth a consideration in the revised text;
- Corporate reporting on social and environmental performance and broader sustainability reporting is mentioned in passing in the annotations, despite being a wide spread practice thanks to forums such as the Global Reporting Initiative and a regulatory requirement in the EU;
- Separation of CEO and Chair positions is still not considered as a valid principle. Gender balance is barely mentioned in the annotations;

15, rue La Pérouse - 75016 Paris - France
Tel: +33 (0)1 55 37 37 37 - Fax: +33 (0)1 47 54 98 28 - tuac@tuac.org -www.tuac.org

- Despite the OECD leadership in curbing corporate aggressive tax planning under the G20 BEPS Action Plan, there is little in the text that suggests that tax risk should be considered as an issue for the board of directors. Reference to it is symbolically located in the principle on board ethics (and not in the separate principle on directors' duties).

6. The revised text continues to reflect an outdated "maximising shareholder value" model of governance, despite the calls by TUAC and others for a stakeholder friendly approach to the governance of the firm. As William Lazonick (University of Massachusetts Lowell) wrote to the OECD as part of a public consultation in January 2015: "shareholders are not the only investors in the firm and not all shareholders are investors in the firm".

7. On implementation, the text equally falls short. The preamble re-asserts that the Principles are non-binding and "do not aim at detailed prescriptions". Rather, they "seek" to identify objectives and "suggest" various means for achieving them. What works well in one company, for one investor or a particular stakeholder – we are told – may not necessarily be generally applicable (…) in another context and under different circumstances.

8. The TUAC will soon deliver an in-depth assessment of the Principles, and will hold a meeting on 20 November at the OECD to consider next steps together with affiliates and partner organisations.

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[i] http://www.oecd.org/corporate/principles-corporate-governance.htm