



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

Consultation with the OECD Committee on Corporate Governance

TUAC Submission

Paris, 16 November 2010

TUAC welcomes the opportunity to comment on the documents that are for discussion at the 19th Session of the OECD Committee on Corporate Governance. TUAC would like to share the following comments with members of the Committee.

Item 6. Guidelines for Multinational Enterprises

The draft contribution to the Update of the OECD Guidelines for Multinational Enterprises (MNE) – document DAF/CA/CG/WD(2010)10 – seeks to align the text of the MNE Guidelines with the Principles of Corporate Governance (CG) and the Guidelines on the Corporate Governance of State Owned Enterprises (SOE). The draft revisions cover Chapters II on General Policies and III on Disclosure, but do not cover Chapter IV on Employment and Industrial Relations.

TUAC considers this to be regrettable because useful amendments could be suggested by the Committee to align the Employment Chapter of the MNE Guidelines with the stakeholder chapters of the CG and SOE Principles respectively. In particular, the Committee should propose amendments to align the Employment Chapter of the updated MNE Guidelines with CG Principle IV.Cⁱ and SOE Guideline VI.Dⁱⁱ. The Committee should also suggest amendments to Guideline II.9 (General Policies Chapter) on whistleblowers so as to align the text with CG Principle IV.Eⁱⁱⁱ.

Item 7. Relations with the Financial Stability Board

Civil society and trade union organisations currently have no access to the Financial Stability Board (FSB), the working procedures of which are opaque. In its submission to the FSB plenary meeting in June 2010^{iv}, TUAC called on the FSB “to agree on a formal process of consultation with trade unions and other representative civil society organisations” and “since some FSB Plenaries and other meetings take place in Paris”, to take advantage of the opportunity “for interaction with the OECD’s committee structures intersecting with the FSB’s mandate”.

In this respect, TUAC welcomes the decision by the Council to approve OECD membership of the FSB (C(2010)142 & CORR1) and to task the Secretary General with determining the “practical modalities of this participation, including consultations of the relevant substantive committees” and to report “on the OECD activities in the FSB to the relevant substantive committees, as appropriate, and to Council, on a regular basis”.

Accordingly, TUAC would welcome closer cooperation between the Committee and the FSB Secretariat, including, although not exclusively, in the on-going review of implementation of the Principles for Sound Compensation Practices and their Implementation Standards^v.

Item 8. Propriety, Integrity and Transparency

To be effective and credible, implementation of the Declaration on Propriety, Integrity and Transparency (PIT) in the conduct of International Business and Finance (C_MIN(2010)3_FINAL^{vi}) should cross-reference its component OECD instruments and identify areas of overlap. However, differences in the wording or approaches of the various instruments may create uncertainty about the standards and expectations of the Declaration, as a whole. Further work, therefore, is required to provide for consistency between the instruments so as to ensure policy coherence in the implementation of the Declaration. Examples of overlap between instruments include:

- Protection of whistleblowers and corporate risk management and policy are addressed – but treated in a different manner – by the Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions and by the CG Principles.
- Rights of workers to information and consultation within companies are covered – but in different ways – by the MNE Guidelines and the CG Principles.
- Transparency and accountability of regulatory and supervisory authorities are addressed by the Guiding Principles for Regulatory Quality and Performance, the Recommendation on a Policy Framework for Effective and Efficient Financial Regulation, the CG Principles, the SOE Guidelines and the Principles for Transparency and Integrity in Lobbying.

Additionally, it is not clear what level of authority the Principles of the PIT Declaration would have in relation to the relevant OECD instruments that they are supposed to reflect. Codification is a very complicated exercise. For some instruments listed in the Declaration, the corresponding “Principle” does not capture all of the key requirements laid down in the instrument as is the case for the CG Principles (see bullet points 3 & 4 of the PIT Declaration). It is important not to allow a selective reading and hence an implicit re-interpretation of the current Instruments.

Item 10. Peer Reviews

TUAC welcomes the step taken by the Committee to undertake peer review, but urges it to go further, in line with OECD good practice.

The peer review on board practices, incentives and risk (DAF_CA_CG(2010)11) provides an overview of current systems across the OECD (Part 1) and in-depth descriptions for a selection of OECD and non-OECD countries (Part 2). Yet, according to official OECD terminology, a peer review is defined as a “process through which the performance of individual countries is monitored by their peers” (ie. other member states)^{vii}. TUAC would be interested to learn how the Committee plans to incorporate this vital element of peer assessment into future processes.

On substance, the country-specific and the overall “conclusions” are mainly descriptive. TUAC considers that they would be considerably strengthened by the provision of country recommendations, again in line with OECD peer review good practice.

We also regret that so little attention has been paid to the role and impact on stakeholders, and especially employees, of executive remunerations and board risk management processes. With the exception of a brief reference to “wider societal concerns” in the conclusions (para 79^{viii}, and introduction para. 12) stakeholders, and workers in particular, are excluded from the scope of the paper. This is not in line with other recent initiatives in that field^{ix}.

The Committee has also been asked to “evaluate the extent to which the current peer review structure is meeting its objectives” and to set priorities for the next round of reviews (DAF_CA_CG(2010)12). Three themes are suggested by the OECD Secretariat: (i) the role of institutional investors, (ii) board composition and independence, and (iii) minority shareholder protection.

TUAC believes that the Committee should prioritise work on institutional investors and board independence. On institutional investors, we would urge the Committee to focus on the “lengthening of the ownership chain” (para. 16) and the weakening of accountability mechanisms between asset owners and managers, and to focus on ways to promote responsible shareholder activism. Regarding board independence, due consideration should be taken of one-tier versus two-tier board system and of employee and other stakeholder representation on board (in line with CG Principle IV.C, SOE Guidelines VI.D, and in the European context, EC Recommendation 2005/162/EC – annex II).

ⁱ reading “Performance-enhancing mechanisms for employee participation should be permitted to develop” and its annotations specifying *inter alia* “employee representation on boards” and “governance processes such as works councils that consider employee viewpoints in certain key decisions”.

ⁱⁱ reading “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”, the annotations of which specify that “employee representation on [...] boards should not in itself be considered as a threat to board independence” and that employee representation “work will also require acceptance and collaboration by other members of the board as well as by the SOE management”.

ⁱⁱⁱ reading “Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this”.

^{iv} Trade Union Statement to the 4th Plenary of the Financial Stability Forum - Joint statement by ITUC, TUAC & UNI, June 2010. http://www.tuac.org/en/public/e-docs/00/00/07/0C/document_doc.shtml

^v http://www.financialstabilityboard.org/publications/r_100330a.pdf

^{vi} <http://www.oecd.org/dataoecd/15/53/43423249.pdf>

^{vii} OECD webpage “What we do and how”

http://www.oecd.org/pages/0,3417,en_36734052_36761681_1_1_1_1_1,00.html

^{viii} “Finally, perhaps reflecting wider societal concerns about executive and director remuneration, there has been a tendency for practitioners (and policy makers) to also look at the impact of remuneration outcomes on other stakeholders (consistent with Principle VI.C), including firm level employees”

^{ix} For example the Dodd-Frank Wall Street Reform and Consumer Protection Act requires companies to disclose the ratio between the CEO pay and the median annual total compensation of the company's employees (excluding the CEO).