

The OECD review process of
the **Principles of Corporate Governance**
and the **Guidelines on Corporate Governance**
of **State-Owned Enterprises**

**TUAC's priorities regarding
stakeholders' rights**
OECD HQ, Paris 25 June 2014

The current text – biased against stakeholders?

- F. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
 - 1. Institutional investors acting in a fiduciary capacity should disclose their overall 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.
 - 2. Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

- A. The rights of stakeholders that are established by law or through mutual agreements are to be respected.

TUAC key advocacy points

- review of the Principles

	Ch I	Ch II	Ch III	Ch IV	Ch V	Ch VI
	Supervision	Shareholder rights	Minority shareholders	Stakeholders	Transparency & reporting	The board
Raising the voice of workers				Title, A, C, F	A6, A7	C
Accountability of investment chain		F1, F2			F	
Responsible use of shareholder rights		Title, C3, F, E1				
Reinforcing board accountability						A, D7, E, New text
Reining in executive pay		C3			A4	D4

TUAC key advocacy points

- review of the SOE Guidelines

	Ch I	Ch II	Ch III	Ch IV	Ch V	Ch VI	Ch VII
	Rationale	State ownership policy	Marketplace & level playing field	Minority shareholders	Stakeholders & sustainability	Transparency & reporting	The Board
Raising the voice of workers					New text	D8	
SOEs' Human right responsibilities					A		
Responsible use of shareholder rights		F, F1, F7, F8				D4	
Board nomination process		F2					
Board-level employee representation							D, F
Public-Private Partnerships				Title, new text, D6			
Reporting and risk management					B	D5	B

TUAC marked-up of the Principles

Human Rights Responsibilities

- Stakeholder Chapter

Ensure compliance with internationally recognised standards, including reference to OECD MNE Guidelines and the UN Guiding Principles...

IV.A 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.

In all OECD countries, the rights of stakeholders are established by law (e.g. labour, business, commercial and insolvency laws) or by contractual relations. Even in areas where stakeholder interests are not legislated, ~~many firms~~ should comply with internationally recognised standards. In particular firms should undertake human rights due diligence under the responsibility of the Board of directors, in order to avoid infringing on the human rights of others and should refer to the United Nations Guiding Principles for Business and Human Rights and Chapter IV (Human Rights) of the OECD Guidelines for Multinational Enterprises. ~~make additional commitments to stakeholders, and concern over corporate reputation and corporate performance often requires the recognition of broader interests.~~

TUAC marked-up of the Principles **Human Rights Responsibilities** **- Board Chapter**

*... its
implications for
the board of
directors
responsibilities...*

VI.C 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.

The board has a key role in setting the ethical tone of a company, not only by its own actions, but also in appointing and overseeing key executives and consequently the management in general. (...) The latter might include a voluntary commitment by the company (including its subsidiaries) should 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* as well as the *United Nations Guiding Principles for Business and Human Rights*. The OECD's Action Plan on Base Erosion and Profit Shifting (BEPS) provides important orientation in the area of tax governance. Regular due diligence procedures should be undertaken in order to avoid infringing on stakeholders' rights.

TUAC marked-up of the Principles

Human Rights Responsibilities

- Transparency Chapter

*... and its
reporting
requirements.*

V.A.6 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.

Users of financial information and market participants need information on reasonably foreseeable material risks that may include: risks that are specific to the industry or the geographical areas in which the company operates; dependence on commodities; financial market risks including interest rate or currency risk; risk related to derivatives and off-balance sheet transactions; and risks related to environmental liabilities; risk related to human and labour rights violation and risk related to aggressive tax planning and tax evasion.

The Principles ~~do not~~ envision the disclosure of sufficient and comprehensive information ~~in greater detail than is necessary~~ to fully inform investors of the material and foreseeable risks of the enterprise. Disclosure of risk is most effective when it is tailored to the particular industry in question. Disclosure about the system for monitoring and managing risk is increasingly regarded as good practice and should be mandatory for large listed companies.

TUAC marked-up of the Principles

Human Rights Responsibilities

- Shareholder rights Chapter

*Recognising
responsible
investment best
practices*

II.F. The exercise of ownership rights by all shareholders, including responsible investment practices ~~institutional investors~~, should be facilitated.

(...) Nevertheless, in—considering the costs and benefits of exercising their ownership rights, ~~many investors are likely to conclude that long term~~ positive financial returns and growth can be obtained by undertaking a reasonable amount of analysis and by using their rights. 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.

TUAC marked-up of the Principles

Workers' Rights

- Stakeholder Chapter

Recognise workers' right to information, consultation and negotiation ...

IV.C 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 ~~Performance-enhancing mechanisms for employee participation should be permitted to develop.~~

The degree to which employees participate in corporate governance depends on national laws and practices, and may vary from company to company as well. 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). In the context of corporate governance, ~~performance enhancing~~ mechanisms for employee participation may benefit companies directly as well as indirectly through the readiness by employees to invest in firm specific skills. Examples of mechanisms for employee participation include: employee representation on boards; and governance processes such as works councils that consider employee viewpoints in certain key decisions. With respect to performance enhancing mechanisms, employee

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Workers' Rights

- Transparency & Shareholder rights Chapters

*... and reporting
on it.*

V.A.7 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.

~~Companies should be encouraged, and in some countries even obliged, to provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company. Disclosure should~~ may include management/employee relations, including remuneration, collective bargaining coverage, and mechanisms for employee representation, and relations with other stakeholders such as creditors, suppliers, and local communities. (...)

*Mergers and
takeovers to take
account of the
company's and
its stakeholders'
interest and
rights*

II.E.1 The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions 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.

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Workers' Rights

- Board Chapter

Insert an amended version of the OECD SOE Guideline VI.D on employee representation

VI.# 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]

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.

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.

TUAC marked-up of the SOE Guidelines

Human Rights Responsibilities

- Preamble

*Referencing the
UN Guiding
Principles in the
Preamble*

[preamble] #6. SOEs also face some distinct governance challenges. (...)To structure this complex web of accountabilities in order to ensure efficient decisions and good corporate governance is a challenge. The United Nations Guiding Principles on Business and Human Rights require governments and states to “take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State”. Because states, and their representative governments, individually are the primary duty-bearers under international human rights law, an abuse of human rights by an SOE may entail a violation of the State’s own international law obligations.

TUAC marked-up of the SOE Guidelines

Human Rights Responsibilities

- Stakeholder Chapter

Recognising the human rights responsibilities of SOEs

V.A Governments, the co-ordinating or ownership entities and SOEs themselves should take additional steps beyond generally-observed market practices, to ensure compliance with internationally recognised standards and protect against human rights abuses recognise and respect stakeholders' rights established by law or through mutual agreements, and refer to the OECD Principles of Corporate Governance United Nations Guiding Principles on Business and Human Rights in this regard.

Human rights, ESG & tax reporting

V.B ~~Listed or large SOEs, as well as SOEs pursuing important public policy objectives,~~ should report on stakeholder relations and on human rights, labour environmental and tax-related risks and how these risks are being addressed and mitigated.

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Human Rights Responsibilities

- Transparency & Board Chapters

<p><i>Human rights, ESG & tax reporting</i></p>	<p>VI.D. SOEs should disclose material financial and non-financial information (...) Examples of such information include: (...)</p> <p>5. Any material foreseeable risk factors, <u>including human rights, labour, environmental and tax-related risks</u>, and measures taken to manage such risks; (...)</p>
<p><i>Board risk management responsibilities</i></p>	<p>VII.B SOE boards should carry out their functions of supervising management, <u>including oversight of the SOE's risk management policy</u>, and providing strategic guidance, subject to the objectives set by the government and the ownership function. They should have the power to appoint and remove the CEO.</p>
	<p>Annotations to VII.B could refer to the need for <u>SOE boards to have risk management policies that include human rights due diligence to identify, prevent, mitigate and account for how the SOE addresses adverse human rights impacts, as well as labour, environmental and tax-related issues.</u></p>

TUAC marked-up of the SOE Guidelines

Workers' Rights

- Stakeholder & Transparency Chapters

*New guideline on
worker
representation...*

V.# Mechanisms should be in place for employees and their representatives to be 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.

The annotations could refer to collective bargaining, international framework agreements and to various governance mechanisms including works councils and board-level employee representation and to the OECD Guidelines for Multinational Enterprises with regard to the substance of workers' right to information, consultation and negotiation.

*...and reporting on
it*

VI.D. SOEs should disclose material financial and non-financial information (...). Examples of such information include: (...)

8. Any relevant issues relating to employees, including remuneration, training, collective bargaining coverage, mechanism for employee representation, and other stakeholders.

#corpgov

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