

TUAC Roundtable on the Review of the Principles of Corporate Governance and of the Guidelines on Corporate Governance of State-Owned Enterprises (SOEs)

Paris, 25 June 2014

SUMMARY REPORT

TUAC Secretariat

The OECD is currently reviewing two flagship instruments on corporate governance: the Principles of Corporate Governance (hereafter “the Principles”) and the Guidelines on Corporate Governance of State-Owned Enterprises (“the SOE Guidelines”). The two processes are run in parallel respectively by the Committee on Corporate Governance and the Working Party on State-Owned Assets and Privatisation Practices, and are coordinated by the Corporate Affairs Division of the OECD Secretariat. The TUAC, alongside BIAC and a selected number of corporate governance experts have had opportunities to share comments and make formal submissions in the course of both review processes.

The TUAC roundtable on 25 June 2014 – open to OECD country delegations, to BIAC and to the OECD Secretariat staff – was an opportunity to raise the visibility of the two review processes and to share views on their implications for stakeholders’ rights to participate in the corporate governance of private sector companies and of SOEs. The list of participants is added to the annex.

The OECD review processes indeed provide opportunities to bring forward a stakeholder approach to corporate governance and more specifically, to make the case for the right of workers to information, consultation and representation within the firm. They may also help raising the human rights responsibilities of executive management, of boards of directors, but also of shareholders following recent OECD work around the application of the Guidelines for Multinational Enterprises, and the UN Guiding Principles on Business and Human Rights to the financial sector.

The roundtable was organised in four parts: introductory remarks by the TUAC, presentations by Lene Wendland (UN Office of the High Commissioner on Human Rights) and by Margaret Wachenfeld (Institute for Human Rights and Business) and a Q&A session with participants.

Introductory remarks by the TUAC Secretariat

In the absence of representatives from the OECD Secretariat – which sent apologies – the TUAC gave an overview of the on-going review process of the Principles and the SOE Guidelines. The TUAC Secretariat regretted that no public consultation on the review of Principles is to be expected before December 2014 at the very earliest. This stands in contrast to the revision of the SOE Guidelines, for which a public consultation process is on-going (a draft proposal is posted on the OECD website for comments by 8 September). The absence of a public consultation on the Principles is detrimental for all stakeholders involved in corporate governance. This is particularly the case for proponents of a “stakeholder approach”, who – as TUAC argued – have very limited access to the OECD corporate governance experts and do not belong to the “usual suspects” of OECD- and World Bank-led roundtables and meetings on corporate governance.

The TUAC outlined its main advocacy points on both review processes:

- For the Principles: (i) recognising workers' voice and human rights in corporate governance; (ii) ensuring accountability and transparency of the investment chain and of asset managers in particular; (iii) recognising that shareholders have rights but also responsibilities; (iv) ensuring greater board accountability through diversity, enhanced duties, and separation of CEO and chair; and (v) curbing executive pay.
- SOE Guidelines: (i) ensuring transparent board nomination processes; (ii) addressing the specific human right responsibilities of SOEs; (iii) effective exercise of voting rights; (iv) curbing executive remuneration and dividend levels; (v) managing exposure to Public-Private Partnerships; (vi) worker representation and board-level employee representation; (vii) enhancing reporting and board risk management policy.

Presentation by Lene Wendland (UN Office of the High Commissioner on Human Rights)

Video recording posted at <http://vimeo.com/99974370>

Wendland presented the Framework for the UN Guiding Principles on Business and Human Rights including: State Duty to Protect (through policies, regulation and adjudication), the Corporate Responsibility to Respect (acting with due diligence to avoid infringement, addressing adverse impacts on human rights), and Access to Remedy (effective access for victims, judicial and non-judicial recourse). In doing so, the Guiding Principles (GP) do not add any new legal obligations on governments or on business but rather specify and elaborate on the implications of existing obligations.

While in principle the responsibilities are distinct and complementary between governments and companies, they may overlap in the case of SOEs. In this respect, Lene Wendland cited Guiding Principle 4 which among others requires governments to “take additional steps to protect against human rights abuses by business that are owned or controlled by the State” as well as Principle 8 according to which governments “should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates”.

Regarding the specific responsibilities of senior management and the executive board, Lene Wendland referred to Principle 15 which requires companies to “have in place policies and *processes* appropriate to their size and circumstances” including a “due diligences process to identify, prevent, mitigate and account” for human rights impacts and processes to enable remediation.

Presentation by Margaret Wachenfeld (Institute for Human Rights and Business)

Video recording posted at <http://vimeo.com/100538930>

Wachenfeld framed the discussion by questioning the “supremacy” of the shareholder value model, pointing to the rise of short-termist patterns including: high frequency trading, declining innovation, race to the bottom on employment conditions, and aggressive tax

planning – as well as situations leading to a “privatisation of profits and a socialisation of costs”. Wachenfeld suggested that the on-going review of the Principles could contribute to changing the current policy direction and help build a “corporate governance framework for the 21st century”. For that to happen, she suggested five steps / conditions/ guiding principles:

- Vision: Adopt a broader vision of what corporate governance should look like based on sustainable value in organisations and society;
- Process: Open up the corporate governance debate beyond the “usual suspects” by engaging and widening public consultations and reaching out to human rights organisations, organisations working on reshaping the financial sector, and responsible investment initiatives such as the Principles for Responsible Investment;
- Policy coherence: Ensuring that relevant OECD initiatives are integrated into the revision of the Principles, including the OECD Guidelines on Multinational Enterprises (and recent OECD work on the application of the MNE Guidelines to the financial sector) and the Action Plan on Base Erosion and Profit Shifting (BEPS);
- Rights and Responsibilities: Balancing of rights and responsibilities of all parties, the company as whole, the board, the shareholders, but also the stakeholders and strengthening the focus on stakeholders in the Principles.

Q&A session

Video recording posted at <http://vimeo.com/100538930>

A representative from the Dutch government asked the panellists if they planned to make specific proposals in the on-going review processes as well as for advice on how to improve policy coherence between the various OECD standards and norms.

- Wendland responded that the UN office would certainly be interested in contributing to the process on a formal or informal basis. On substance, and looking specifically at the current text on stakeholder rights contained in the SOE Guidelines, Wendland said that there certainly was room for improvement. The current text could be expanded, where it reads that the SOE has a responsibility vis-à-vis stakeholders by including the responsibility for managing the risks and impacts on stakeholders. The current text is “very insufficient” in this regard.
- Wachenfeld agreed and stated that her think tank would definitely provide comments on the SOE Guidelines. Regarding the Principles, she would hope that OECD governments will help open up the process to outside stakeholders.

A representative from the French Force Ouvrière suggested that the main obstacle to effective human rights risk management might mostly be due to badly designed executive remuneration packages. The incentive structure of companies, he argued, does not play in favour of responsible management behaviour over the long-term.

- Wendland underlined that the UN GP do not have “an opinion” on executive remuneration as such. However, experience shows that the incentive structure within management plays a key role in ensuring effective implementation of social and environmental standards. Citing an individual case involving project finance by the World Bank (IFC), Wendland argued that if the incentive structure within management does not follow and is “misaligned”, it can lead to situations in which social and environmental risks, despite being taken on board in the contract terms, are “completely disregarded” in the implementation phase.

- Wachenfeld added that both the design and the disclosure of the pay structure of CEOs and management is needed for stakeholders and the broader public to make informed judgement about the company.

With regard to the UN GP, a representative from the British TUC reported that draft legislation on modern slavery is under consideration in the UK. He asked the panellists for their views on the soft versus hard law approach to responsible business conduct and on the role of social, environmental and HR corporate reporting and auditing in strengthening risk assessment and management.

- Wendland called for a “smart mix” of soft and hard laws. Experience with the enforcement of human rights shows that the regulatory option alone does not necessarily meet expectations. A smart mix combining the regulatory “stick” with policy incentives (the carrot) is warranted. The UN GP in fact call for governments to have effective regulations and policies.
- Wachenfeld agreed with opting for the/ a smart mix approach. She specified that the soft versus hard law discussion should also be seen in the context of policy coherence. When taking the example of modern slavery, one can see that despite robust national regulatory frameworks, modern slavery still exists across Europe. This could be partly explained by the lack of coherence with other policy areas, such as migration policy. Policy coherence also matters in the context of global supply chains, when costs are externalised to communities and workers in jurisdictions with weak regulatory frameworks and/or social protection systems.

Wrap-up

The TUAC Secretariat suggested that there was strong agreement among participants on the need for the OECD to considerably improve the consultation process around the review of the Principles. There was also agreement among panellists and TUAC participants that both the SOE Guidelines and the Principles could be improved by ensuring policy coherence with other, and already agreed upon, OECD and non-OECD standards and norms.

Source & documents of reference

- Webpage of the roundtable: http://www.tuac.org/en/public/e-docs/00/00/0E/F6/document_doc.phtml

Principles of Corporate Governance

- OECD webpage on the review of the Principles of Corporate Governance <http://www.oecd.org/daf/ca/2014-review-oecd-corporate-governance-principles.htm>
- 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
- 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

SOE Guidelines

- Public consultation on the revision of the OECD Guidelines on Corporate Governance of State-Owned Enterprises <http://www.oecd.org/corporate/public-consultation-guidelines-for-soes-2014.htm>
- 05/04/2014| TUAC Marked-Up Proposals of the OECD Guidelines on the Corporate Governance of State-Owned Enterprises http://www.tuac.org/en/public/e-docs/00/00/0E/7E/document_doc.phtml

List of participants**TUAC AFFILIATES AND GLOBAL UNIONS PARTNERS**

Ms. Carla COLETTI	Chair TUAC Working Group on Global Trade and Investment CGIL - Italian General Confederation of Labour	ITALY
Mr. Leopoldo TARTAGLIA	Director Department for Global Policy CGIL - Italian General Confederation of Labour	ITALY
Ms. Bianca CUCINIELLO	Official UIL - Union Italienne du Travail	ITALY
Mr. Hitoshi SUZUKI	Section Chief International Division JTUC-RENGO – Japanese Trade Union Confederation	JAPAN
Mr. Lars HOLMER-HOVEN	UNION	NORWAY
Mr. Paul LIDEHÄLL	International Secretary SACO-Sweden - Swedish Association of Graduate Engineers	SWEDEN
Ms. Susanne LINDBERG-ELMGREN	Research Officer Swedish Trade Union Confederation – LO	SWEDEN
Mr. Sean BAMFORD	International Officer TUC - Trades Union Congress	UNITED KINGDOM
Ms. Cassandra WATERS	Global Worker Rights Fellow AFL-CIO - American Federation of Labor and Congress of Industrial Organizations	UNITED STATES
Ms. Anna BIONDI	Deputy Director, Bureau for Workers' Activities ILO - International Labour Office	GLOBAL
Mr Tom POWDRILL	ITF – International Transport Workers' Federation	GLOBAL
Mr Somirwan SUBASINGHE	Legal Advisor ITF – International Transport Workers' Federation	GLOBAL

PERMANENT DELEGATIONS

Ms. Marie-Christine PONCIN	Conseillère économique	FRANCE
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	Représentation Permanente de la France auprès de l'OCDE	
Ms. Katarzyna MADG	Permanent delegation of Poland to OECD	POLAND
Mr. Noé VAN HULST	Ambassador Permanent Delegation of the Netherlands to the OECD	THE NETHER LANDS
Mr. Yasin AKGELIK	Permanent Delegation of Turkey to the OECD	TURKEY
Mr. Dilara ERTIG	Permanent Delegation of Turkey to the OECD	TURKEY
Mr. Christian SANZE	Permanent Delegation of the European Commission to the OECD	EU
Mr. Minna LURA	Permanent Delegation of the European Commission to the OECD	EU

BIAC SECRETARIAT

Ms. Hanni ROSENBAUM	Senior Policy Manager BIAC – Business and Industry Advisory Committee to the OECD
Ms. Gerelmaa BATCHULUUN	BIAC – Business and Industry Advisory Committee to the OECD

SPEAKERS

Ms. Lene WENDLAND	Adviser on Business and Human Rights Office of the United Nations High Commissioner for Human Rights
Ms. Margaret WACHENFELD	Director of Research and Legal Affairs Institute for Human Rights and Business

TUAC SECRETARIAT

Mr. Pierre HABBARD	Senior Policy Adviser TUAC - Trade Union Advisory Committee to the OECD
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