

# Activity Update

July 2015



BUSINESS AND INDUSTRY ADVISORY COMMITTEE TO THE OECD (BIAC)



## Committee leadership

### Investment & Responsible Business Conduct Committee

- Winand L.E. Quaedvlieg, Chair  
VNO-NCW (Netherlands)
- Arturo Gonzalo Aizpiri, Vice-Chair  
Repsol S.A. (Spain)
- Kimberley Claman, Vice-Chair  
Citigroup (USA)
- Soichiro Sakuma, Vice-Chair  
Nippon Steel & Sumitomo Metal Corp. (Japan)

### Task Force on Anti-Bribery/Corruption

- Klaus Moosmayer, Chair  
Siemens AG (Germany)
- Corinne Lagache, Vice-Chair  
Safran SA (France)
- Joost Wiebenga, Vice-Chair  
Tyco International (USA)

### Committee on Corporate Governance

- Dan Konigsburg, Chair  
Deloitte Touche Tohmatsu Ltd. (USA)
- Murat Dogu, Vice-Chair  
Dogan Holding A.S. (Turkey)
- Christian Stiefel, Vice-Chair  
Swiss Holdings (Switzerland)

## Investment, Responsible Business Conduct, Anti-Bribery, Corporate Governance

As the officially recognized voice of business to the OECD, the Business and Industry Advisory Committee to the OECD (BIAC) conveys business perspectives and expertise to policymakers on a broad range of global economic governance and policy issues.

In the framework of its consultative status with the OECD, BIAC keeps the OECD informed of the private sector's response to different policy options, thus giving the business community the opportunity to shape the development of long-term policies in OECD countries.

This update provides an overview of key activities of the BIAC Investment & Responsible Business Conduct Committee, its Task Force on Anti-Bribery/Corruption as well as the Corporate Governance Committee.



The voice of the OECD in defending an open international investment environment is more important than ever.

## Investment

### Investment focus at the 2015 Ministerial Council Meeting

BIAC leadership participated in the June 2015 OECD Ministerial Council Meeting, which focused on unlocking investment for sustainable growth and jobs. BIAC appreciated that investment was the overarching theme of the Ministerial meeting and made an active contribution to the preparations for the meeting. To read the BIAC statement, please click [here](#).

Among others, Ministers welcomed the updated [OECD Policy Framework for Investment](#) (PFI), encouraged its broad use and agreed to increase cooperation in the area of international investment. Ministers also discussed how the OECD could enhance an inter-governmental and multi-stakeholder dialogue on investment treaties and on the global investment environment through its [Freedom of Investment Roundtable](#). The OECD Freedom of Investment process is an intergovernmental forum hosted by the OECD, which brings together over 50 governments from around the world to exchange information and experiences on investment policies. Ministers also called on the OECD to analyze how sustainability and responsible business conduct can be promoted through trade and investment. For further information, and to read the full Ministerial statement, please click [here](#).

Building on the outcome of the Ministerial Meeting, investment will remain high on the OECD agenda going forward. In BIAC's view, the OECD can play an important role by providing fact-based policy analysis to inform both national and international discussions in this field. BIAC will remain actively involved going forward.

### Revision of the OECD Policy Framework for Investment

Since 2006, the OECD Policy Framework for Investment (PFI) has provided a comprehensive and systematic approach for governments to implement specific policy reforms to create a robust and competitive environment for domestic and foreign investment. The PFI has been widely used for the OECD's country-specific investment policy reviews, and has served as a reference point for investment promotion agencies and donors. It is the most comprehensive and systematic approach for improving investment conditions ever developed.

To reflect developments that have reshaped the global investment landscape, such as the emergence of new outward investors, the spread of global value chains, and growing investment protectionism, the PFI was updated in 2014/2015.

In its comments, BIAC underlined that the update needs to ensure that the PFI remains focused on its main objectives, i.e. addressing barriers to investment flows which can foster growth and development. To read the BIAC comments, [click here](#). The updated PFI was approved on the 3-4 June at the OECD Ministerial Council Meeting. BIAC will remain involved in activities regarding the implementation of the PFI.

## OECD Forum on Investment Treaties

On 16 March, BIAC members participated in the OECD Forum on Investment Treaties, which brought together senior investment policy makers from the 54 OECD and non-OECD countries participating in the OECD-hosted Freedom of Investment Roundtable, business, academia as well as international organizations. The OECD Freedom of Investment process helps exchange information and experiences on investment policies and provides guidance for open, transparent and non-discriminatory investment policies.

The objective of the OECD Forum was to assess opportunities and challenges associated with investment treaties, including possible changes. The conference was held back-to-back with a consultation with the OECD Investment Committee on 17 March at which a broad range of issues were discussed, including investment treaties and the implementation of the Policy Framework for Investment (PFI).

## The importance of effective Investor-State Dispute Settlement

Open, transparent and non-discriminatory investment policies and agreements, ensuring a predictable and fair treatment of investors and protecting investors against arbitrary behavior of host states are essential to stimulate inward investment. In this context, Investor-State Dispute Settlement (ISDS) provides for a neutral and high-quality mechanism of legal dispute resolution in cases of breaches of investment treaties by host states, which make effective the substantive protections offered by investment treaties.

In light of the current widespread emotional and politicized debate putting the ISDS system as such into question, BIAC believes that it is crucial that the discussion is put back in the right perspective and that common misrepresentations are effectively addressed. The OECD, as an internationally recognized forum for fact-based and objective analysis, and with a long track record of fostering open, transparent and non-discriminatory investment policies, should play a role in providing objective analysis. To read the BIAC paper, [click here](#).

**Investor-State Dispute Settlement is a vital part of investment protection and an important mechanism to enforce the rule of law and protect companies against arbitrary behavior of states.**



# Responsible Business Conduct

## New BIAAC publication on OECD Guidelines for Multinational Enterprises

The OECD MNE Guidelines provide voluntary principles and standards, covering all major areas of responsible business conduct (RBC). Adhering governments have committed to promote them globally and have established National Contact Points (NCPs), which provide a non-judicial grievance mechanism to contribute to the resolution of issues that may arise in relation to the implementation of the Guidelines. They are thus the only international corporate responsibility instrument with such a grievance mechanism in place, of which business at large should be aware. In response to frequent requests from members, BIAAC has just issued a new [brochure](#) on “The OECD Guidelines for Multinational Enterprises (MNEs) – What business needs to know”.

The BIAAC brochure provides a concise overview of what business needs to know about the MNE Guidelines and the NCP process, as well as a summary of key business recommendations on RBC. We encourage members to contact the BIAAC secretariat to provide feedback or in case they have any questions on the process

## Strong BIAAC delegation at the OECD Global Forum on Responsible Business Conduct

A strong business delegation participated in the annual [OECD Global Forum on Responsible Business Conduct](#), which took place in Paris on 18-19 June. The Global Forum is intended to strengthen international dialogue on responsible business conduct and provide a platform to exchange views on how to contribute to sustainable development.

BIAAC nominated speakers for most of the sessions, including China’s approach to responsible business, international sporting events, competition law and responsible business conduct, responsible garment and textiles supply chains, due diligence along agricultural supply chains, responsible business conduct in the extractive sector, and business action on the Sustainable Development Goals. BIAAC also participated in several side-meetings regarding some of the sector-specific « proactive agenda projects » under the MNE Guidelines.

**BIAC considers responsible business conduct as promoted by the OECD Guidelines as an essential part of an open investment climate and in the best interest of business.**

## **BIAC survey on MNE Guidelines and NCP procedure**

In 2015, BIAC conducted a business survey to gather information about the experiences of individual companies with National Contact Point (NCP) specific instances. This third edition of the BIAC survey was intended to provide concrete business feedback on how NCPs perform in practice in light of the core criteria as set out in the Guidelines and experiences with notifying parties. On the basis of the responses, BIAC made a number of recommendations to adhering governments, their NCPs, the OECD and stakeholders for strengthening the effectiveness of NCP specific instance procedures. The survey also provided feedback on the general visibility of the MNE Guidelines in the business community.

While recognizing the constructive dialogues that have taken place in several specific instances, the survey also revealed that in a number of cases notifying parties were not constructively engaging and acting in disregard of the nature of the specific instance procedure. To read the BIAC survey result, click [here](#).

## **OECD Proactive Agenda of the MNEs Guidelines**

The proactive agenda is an approach to develop, on the basis of the 2011 Guidelines, practical tools for

addressing specific challenges, products, sectors or countries. BIAC has underlined that the proactive agenda is not intended to create any additional expectations and obligations on enterprises and should not introduce prescriptive guidance that would go beyond the Guidelines. The objective should be to foster multi-stakeholder dialogue, take stock of existing tools and develop practical tools that would be of concrete value to companies as they develop due diligence.

BIAC is directly involved in all current proactive agenda projects, including on stakeholder engagement in extractive industries; agricultural supply chains; due diligence in the financial sector as well as responsible supply chains for textiles.

## **Business considerations on the UN Treaty Process on Business and Human Rights**

Under the leadership of IOE, BIAC joined a task force of international business organizations that developed a paper on the « UN Treaty Process on Business and Human Rights – Initial Observations by the International Business Community on a Way Forward. » The paper will provide input from business to the open-ended intergovernmental working group, which is tasked to draft the treaty. Business concerns must be given due attention in the discussions about a potential UN treaty on business and human rights. To access the paper, please click [here](#).

## Increased cooperation with China on Responsible Business Conduct

Over the last year, cooperation between China and the OECD on RBC has greatly increased. This cooperation just reached new heights with the Chinese Prime Minister's visit to the OECD to sign a paper on the vision for the middle-term as well as a program of work for 2015-2016. Amongst the RBC topics brought to the table were the following:

- Due diligence guidelines, audit programs, and tools on **responsible mineral supply chains** for the Chinese industry.
- Joint study on a mapping of Chinese approaches and initiatives on **RBC** against the OECD MNE Guidelines.
- Joint work to set up a **platform for RBC in China**, to assist and support Chinese industry to apply and implement RBC, including sector-specific instruments and guidelines.

On 28 May, a workshop with China was organized around National Approaches to Responsible Business Conduct and the Role of the OECD Guidelines for Multinational Enterprises. At this workshop, BIAC was represented by the chair of its China Task Force, Mr. Joerg Wuttke.

## Facilitating adherence to the OECD MNE Guidelines

The OECD Guidelines for Multinational Enterprises are an integral part of the OECD Declaration on International Investment and Multinational Enterprises (MNEs). The Declaration consists of four pillars: national treatment, international investment incentives and disincentives, conflicting requirements, and the MNE Guidelines.

The Guidelines are thus part of a package and part of a mutual commitment. On the one hand, the Declaration commits adhering countries to improve the investment climate. On the other hand, companies are encouraged to apply the standards of responsible business conduct as elaborated in the MNE Guidelines.

At the 2015 OECD Ministerial Council Meeting, Ministers reaffirmed the importance of the OECD Declaration on International Investment and of non-Members adhering to it. They also encouraged efforts to widen adherence to the MNE Guidelines and invited to OECD to study options in this regards. Based on a first discussion at the March 2015 Investment Committee, BIAC underlined that potential adherence to the MNE Guidelines only raises a number of strategic issues which should be carefully discussed among all those involved.

## Long term vision on Responsible Business Conduct

The private sector has long recognized the importance of responsible business conduct. As the OECD started discussions on a long-term vision for future work on responsible business conduct, BIAC submitted [initial comments](#) underlining the need to consider the link between work on responsible business conduct and on investment; a clear understanding of the respective roles of governments and of business; the importance of fostering outreach and global engagement; and the need to focus on OECD's unique added value. Work on additional activities should not take attention away from the fundamental ongoing work regarding the implementation of the OECD MNE Guidelines and the OECD Investment Committee more broadly, which BIAC actively supports.

# Anti-Bribery/Corruption



## Implementation of the OECD Anti-Bribery Convention

The [OECD Anti-Bribery Convention](#) is a landmark in the global fight against corruption and bribery. The Convention is the only international legally binding instrument that specifically addresses the bribing of public foreign officials and has become a recognized international standard. While not yet truly global, the 41 parties to the Convention represent a significant proportion of global trade and outward foreign direct investment.

Countries' implementation and enforcement of the Convention are monitored through a rigorous peer review system, which has so far taken place in three phases, with phase 1 evaluating the adequacy of a country's legislation to implement the Convention, phase 2 assessing whether a country is applying this legislation effectively, and phase 3 focusing on enforcement of the Convention, the 2009 Anti-Bribery Recommendation, and outstanding recommendations from phase 2.

As the OECD has started reflecting on the phase 4 review, BIAAC submitted detailed recommendations (click [here](#)). BIAAC will remain actively involved in the upcoming discussions.

## OECD/G20 High-level Anti-Corruption Conference

A strong BIAAC delegation participated in the Fifth Annual High-Level Anti-Corruption Conference, which was jointly organised by the Turkish Presidency of the G20 and the OECD in Istanbul on 6 March. The conference brought together a wide range of senior experts from the OECD and other international organizations, business, public institutions and civil society in G20 countries and beyond to discuss a wide range of issues on the anti-corruption agenda, including compliance versus non-compliance; risks and best practices for fast-growing companies in regional hubs; promoting a safer environment for business at home; emerging issues and innovative solutions.

The discussions at the conference also informed the implementation of the 2015-2016 Anti-Corruption Action Plan and the B20 efforts to fight corruption. Ms. Corinne Lagache, Vice Chair of the BIAAC Anti-Bribery/Corruption Task Force, chaired the panel on promoting a safer environment for business at home.

**The OECD Anti-Bribery Convention remains a landmark in the global fight against bribery and corruption.**

### **BIAC contributes to OECD Forum on Integrity**

Since its establishment, the [OECD Integrity Forum](#) has developed into an important annual event for the global fight against corruption. The 2015 Forum, which took place in Paris on 25-26 March, focused on the effect of corruption on investment. Public and private investment are essential to long-term economic growth, yet corruption remains an obstacle preventing countries from obtaining the full benefits of public and private investment. Discussions focused on existing mechanisms to properly address corruption risks all along the investment policy cycle and explore good practices in mitigation strategies to fully reap the benefits of investment. Centring discussion on investment aligned the OECD Integrity Week with the overarching theme of the OECD Ministerial Council Meeting in June.

BIAC's Anti-Corruption/Bribery Task Force was again actively involved in the Integrity Forum. BIAC Task Force Chair Dr. Klaus Moosmayer spoke in the plenary session on reaping the benefits of investment for all.

### **OECD Trust and Business Project**

The [OECD Trust and Business Project](#) is intended to bridge the gap between business standards and their implementation by identifying how a company's corporate governance framework can strengthen its ability to do business with integrity and prevent corporate misconduct. The OECD is home to several instruments that promote business integrity, including the OECD MNE Guidelines, the Principles of Corporate Governance, the Anti-Bribery Convention, and recommendations on combating hard-core cartels and bid-rigging in public procurement.

The project does not aim to create any new standard, but to support the implementation of the existing framework by encouraging companies to adopt business integrity policies rooted in effective corporate governance frameworks. BIAC has provided active input to the project by commenting on the project outline (click [here](#)), organizing a series of meetings between OECD and business experts facilitating participation in the OECD survey, and speaking at the special sessions on the trust and business project at the OECD Integrity Forum in March and at the OECD Forum in June.

*In the framework of the evaluation process, BIAC regularly establishes links between the OECD and the business community to ensure that business can provide input to the country reviews.*

*To read the most recent country reports on the implementation of the OECD Anti-Bribery Convention, click [here](#).*

# Corporate Governance



## Review of OECD Corporate Governance Principles

The OECD Corporate Governance Principles are widely recognized by policy makers and business as a key international point of reference and form the basis for countless local codes of corporate governance around the world. They offer a principles-based approach to address key corporate governance issues and are one of the 12 key standards for international financial stability of the Financial Stability Board. First released in May 1999 and then revised in 2004, the OECD launched a further review of the Principles in 2014.

The review was intended to ensure the continuing high quality, relevance and usefulness of the Principles taking into account recent developments, including in the areas of supervision and enforcement, intermediaries, disclosure, board responsibilities, and shareholders. BIAC contributed all along the process, both during the public consultation and in direct discussions at OECD Committee level. The comments, which BIAC submitted throughout the process are available on the [BIAC website](#). The Corporate Governance Principles will be submitted for formal approval to the OECD Council in July 2015, and then to the G20 Finance Ministers Meeting in September for transmission to the G20 leaders meeting in November.

## Update of the OECD Guidelines on Corporate Governance of State-Owned Enterprises

In parallel with the update of the Corporate Governance Principles, BIAC actively contributed to the review of the OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOEs). The Guidelines represent an internationally-agreed standard on how governments should exercise ownership of SOEs.

BIAC has been actively involved in the discussions underlining that the ongoing revision presents an opportunity to strengthen the Guidelines as a global benchmark for SOE governance with a view to foster competitive neutrality, avoid distortions of competition, and foster open trade and investment. The revised Guidelines include a new section on definitions, a new chapter on the rationales for state ownership, as well as updates made in existing chapters. The Guidelines are intended to help ensure that on the one hand states exercise their ownership functions responsibly and on the other that they do not abuse their power. The comments BIAC submitted are available on our [website](#).

The SOE Guidelines will be formally approved by the OECD Council in July. Going forward, they will also contribute to the OECD horizontal project on “state-owned enterprises in the global market place.”

**BIAC strongly supports corporate governance principles that promote long-term business sustainability and that facilitate the continued stability of capital markets.**

### **BIAC Roundtable on Director Skills for effective governance**

Good governance starts and is driven from the top. It is therefore of the highest importance that companies wishing to benefit from the revised OECD Principles of Corporate Governance have an effective board. The responsibilities of the board are diverse and require a balanced team of directors with the right skills sets. As the OECD Corporate Governance Principles apply to a wider variety of ownership structures, including majority-controlled and state-owned firms across the world, expectations of directors and their skills are likely to increase as well.

To meet these expectations, BIAC organized a roundtable on Director skills for effective governance on 17 February

The roundtable brought together corporate governance experts from OECD and non-OECD countries, BIAC members and the leadership of the OECD Corporate Governance Committee to discuss the importance of obtaining and continually enhancing the optimal mix of director skills and how these discussions relate to the OECD Corporate Governance Principles and future work in this area.

### **G20/OECD Corporate Governance Conference in Istanbul**

On 10 April, BIAC participated in a high-level conference organized jointly by the OECD and the G20 to further discuss the content and the direction of the review of the OECD Principles with a particular focus on having the new Principles contribute to making the financial sector serve the real economy.

Given the strong interest of the G20 in this topic, the revised Principles will be submitted to the meeting of G20 Finance Ministers and Central Bank Governors in September 2015 for transmission to the Summit. The forum also addressed the institutional capacity of small and medium-sized companies to grow as well as capital market development in emerging market economies.

Dan Konigsburg of Deloitte, Chair of the BIAC Corporate Governance Committee represented BIAC as a speaker on the first panel on “Having Finance Serve the Real Economy: Towards New OECD Principles of Corporate Governance.”

## Upcoming meetings in 2015

Please find below a non-exhaustive list of upcoming meetings. Please note that some meetings are subject to confirmation and others might be added. Please contact the BIAC Secretariat for final confirmation.

### **12-16 October:**

OECD Investment Week (date of the consultation tbc)

### **27 October:**

Consultation with the Working Party on State Ownership and Privatization Practices

### **November:**

Forum on Responsible Mineral Supply Chain  
(precise date tbc)

### **18 November:**

Consultation with the OECD Corporate Governance Committee

### **7-11 December:**

OECD Investment Week (date of the consultation tbc)

### **Week of 7 December:**

OECD Working Group on Bribery (date of the consultation tbc)

**For further information, please contact**



# BIAC

THE VOICE OF  
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