Proposals for future OECD work on corporate governance

BIAC has been actively involved over the last two years in discussions on the update of the OECD Corporate Governance Principles, which were adopted by the OECD Council in June and subsequently endorsed by G20 Finance Ministers in September, thus further raising their visibility. Now that the Principles have been adopted, the focus needs to be on dissemination, adoption, monitoring and implementation, while at the same time anticipating future trends and including them in work going forward. We therefore support the proposed next steps concerning strong focus on the dissemination of the Principles as well as work on the methodology of assessing implementation and peer reviews.

We appreciated the opportunity to provide comments throughout the consultation process and thank the OECD for having taken into consideration a number of comments we provided during the review process (for the latest BIAC comments, click here). We trust that our comments, both those that were addressed and those that were not fully addressed, will be considered during the discussion on the implementation of the Principles and follow-up work in this area. Issues such as for example the importance of auditor independence and a focus on governance mechanisms that oversee auditor independence should be an integral part of the follow-up work.

We underline the importance of an appropriate balance between laws and other regulatory prescriptions on the one hand and self-regulation via governance codes and similar instruments on the other hand. Going forward, we call upon the OECD to continuously highlight the importance of governance codes and other soft law instruments complementing regulatory elements of the corporate governance framework.

BIAC is pleased to submit the following initial proposals for future work and would be pleased to provide active input as the program of work is being designed and implemented:

- **Implementation**: The implementation of the Principles should be the top priority of the Committee going forward, including both country-specific and horizontal peer reviews. In this context, we recommend looking at gaps between corporate governance regulations, principles and codes and their implementation. Issues to be considered could include, among others, the corporate governance culture or lack thereof, how to generate a better corporate culture, board composition, succession
planning and evaluations. It would also be helpful to consider what has changed in the area of monitoring and enforcement and disseminate best practices to OECD member as well as non-member countries.

- **Assessment methodology**: The development of a coherent analytical framework is necessary to support ongoing dialogue and implementation of the OECD recommendations to demonstrate which countries have to make improvements and where. As the updated Principles contain a number of changes compared to the previous version, the review of the assessment methodology is clearly a priority. Due consideration should be given to the importance of new developments and techniques in monitoring the implementation of corporate governance recommendations as well as to the development of a self-assessment toolkit.

- **Reporting and disclosure requirements**: While it is recognized that disclosure and reporting need to go beyond financial reporting, the additional costs for companies, including for smaller companies, connected with complex disclosure and reporting requirements should be carefully considered and weighed against the benefits of providing additional information and the confidence it engenders in investors. The OECD should help shed further light on which particular issues and which non-financial reporting are desirable and which are not. This could include a study on the amount of reporting obligations in different jurisdictions, including identification of overlaps and analysis of the objectives of introducing new requirements. In this regard, due attention should be paid to the role of integrated reporting.

- **Addressing the risk of over-regulation**: Over-regulation and overlapping regulations can be impediments to economic growth and hamper the development of market-driven corporate governance practices. Regulatory impact assessments and stakeholder consultations are important tools for understanding the likely impact of new regulation and whether the marginal benefits exceed the costs. The OECD can make a useful contribution by addressing this issue, giving careful consideration to situations where regulation may be contrary to recommendations in the Principles, and by fostering cooperation between OECD corporate governance and regulatory policy experts.

- **The role of technology**: Technology will play an increasingly important role in the context of the annual general meeting. The OECD could undertake a study on the exercise of cross-border voting, digitalization of the general assembly to increase the number of participants and electronic or online election of (supervisory) board members; the digitalization of the internal communication within a group of companies and how to avoid legal claims and problems in case of technical problems during the shareholders meeting.

- **Corporate responsibility and corporate governance** are two different, but complementary concepts. Recognizing that the two concepts are becoming
increasingly intertwined, the OECD could help clarify differences and complementarities and underline the importance of keeping a focused approach on corporate governance.

- **Controlling shareholders**: Many countries face issues of controlling shareholders, whether they are state or family shareholders. The OECD could undertake research, such as peer reviews of some countries, into family companies and how family control affects corporate governance approaches, interface and accountabilities, as well as the focus on the long-term sustainability of the organization. At the same time, due consideration should be given to the fact that in many economies small family-based businesses constitute an important part of the economy. This underlines the need for special structures and provisions, e.g. the right to transfer the company to a successor such as a family member.

- **Institutional investors**: We appreciate the increased focus on institutional investors in the updated version of the Principles. We underline the importance of institutional investor engagement and encourage the OECD to investigate the incentives and obligations for investors to monitor and engage with their investments, ways to minimize misalignments between investors and companies where they invest, and consider the role of stewardship codes.

- **Role of bondholders**: Given their size in today’s capital markets, creditors are a conspicuous absence from the Principles. We believe the OECD should pay more attention to the role of bondholders in corporate governance, including whether there could be incentives for their constructive involvement in company governance.

- **Knowledge center**: One of OECD’s key strengths is the collection and compilation of fact-based information, which is of great value to business and policy makers to ensure that discussions are based on objective data. We appreciate the OECD Corporate Governance Factbook, which could be usefully expanded across a number of other topics and should be kept current. The OECD might among others gather and provide information on what has recently been mandated in many jurisdictions, removed from corporate governance codes, and why. We support the proposal to continue to update the Factbook on a regular basis, including with results from the peer reviews.

- **Skills**: Good governance starts and is driven from the top. The responsibilities of the board are diverse and require a balanced team of directors with the right skills sets. Expectations of directors and their skills are likely to increase as well. Building on the discussions at the BIAC skills roundtable, which took place in February 2015, we encourage the OECD to share best practices on obtaining and continually enhancing the optimal mix of director skills. To access the summary of the skills roundtable and individual contributions from some of the speakers, click [here](#).
• **Public sector:** Due attention also needs to be given to risk management / resilience in the public sector, as an important part of good (public sector) governance and enhancing public financial management, and especially public financial accounting and reporting. As mentioned in our recent comments to the OECD Working Party on State Ownership and Privatization Practices (click [here](#)), we support a strong focus on the implementation of the OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOEs) as well as the Working Party’s contribution to horizontal initiatives, such as the trust and business project as well as the SOEs in the marketplace project.