Consultation with the
OECD Corporate Governance Committee
2 November 2017

BIAC Key Messages on the future program of work

As mentioned in the program of work, the world is undergoing profound changes, including in the areas of capital formation, capital allocation, corporate structures, complexity of the investment chain and the number of listed companies, which are affecting the conditions for effective corporate governance. These changes and the continued need to work towards effective implementation of the G20/OECD Corporate Governance Principles underline the importance of OECD work to analyze new trends, facilitate stakeholder awareness, and ensure sound corporate governance arrangements that are supportive of long-term investment and corporate access to capital markets with a view to ensure sustainable growth of our economies. Business at OECD (BIAC) supports an active role of the OECD in the area of corporate governance and is pleased to offer the following comments on the main pillars of the proposed future program of work:

1. Standard setting, monitoring, implementation and reform assistance

Thanks to the updated OECD/G20 Corporate Governance Principles and SOE Guidelines, the OECD is widely recognized as an international standard setter in the field of corporate governance. The Principles have become an international benchmark for policy makers, investors, corporations and stakeholders worldwide and play a major role in informing local codes and practices around the world. The implementation of the Principles should remain a top priority of the committee. We welcome the close cooperation with non-OECD G20 countries as well as with international organizations, such as the FSB. We also believe that cooperation in the context of the accession process, including with the six countries which have expressed an interest in adhering to the OECD, represents an important opportunity for further implementation of the Principles.

We appreciate that the OECD is carrying out thematic peer reviews. We have read with great interest the first chapters regarding the peer review on flexibility and proportionality, and would like to draw the Committee’s attention again to our comments which are summarized in the background paper, which we presented at the last meeting (available here).
We would also like to recall our previous recommendations that thematic reviews could focus for example on developments in risk governance practices and how individual countries are tackling the need for better corporate governance culture in companies. We had also recommended looking at gaps between corporate governance regulations, principles and codes and their implementation. Issues to be considered in thematic reviews could include, for example, the important issue of board independence, succession planning and evaluations, the role of the board chairman, and the role of board committees.

Further topics to be considered for thematic reviews include the risk of over-regulation and the effects of regulatory inconsistencies and regulatory fragmentation in the implementation of the Principles. It would also be helpful to consider what has changed in the areas of monitoring and enforcement and disseminate best practices to OECD member as well as non-member countries.

We support the proposal to organize dedicated roundtables on the proposed peer reviews and appreciated the opportunity to contribute to the discussions at the roundtable on proportionality and flexibility at the last meeting.

We also express our appreciation for the regional programs, which are an important channel for implementation and reform assistance. BIAC supports these programs, but would appreciate regular and early information on these roundtables in order to facilitate optimum participation from the business community.

2. Data and analysis

BIAC has consistently underlined the importance of OECD’s role as a knowledge center, recognizing its strength in the collection and compilation of fact-based information to contribute to policy discussions which must take into account economic realities.

BIAC welcomes the Corporate Governance Factbook, and strongly supports that the committee intends to update and regularly publish the Factbook. The Factbook is a unique source of factual information on institutional, legal and regulatory frameworks. We would be pleased to contribute to discussions as future focus areas are considered, for example, the topic of shareholder activism, or succession planning. We also encourage the OECD to make available the data underlying the Factbook for researchers and others to use in ways that might advance the cause for better corporate governance.

3. Multi-disciplinary and horizontal work

Given the underlying importance of good corporate governance, we are supportive of an active contribution of the Corporate Governance Committee and its Working Party to cross-cutting OECD work. In this respect, we would like to express again our appreciation for the Working Party’s contribution to the horizontal project on SOEs in the global market place, which provided important
insight regarding the internationalization of SOEs as well as some of the advantages they enjoy, and which lead to an unlevel playing field.

In addition to the work that has already been carried out—including with regard to gender, as well as planned work in the area of disclosure—we would like to underline again the importance we attach to the issue of skills. As highlighted during the special roundtable we organized in 2015, a diverse and balanced team of directors with the right skills set is of fundamental importance. We encourage the OECD to address the issue of skills and share best practices on obtaining and continually enhancing an optimal mix of director skills.

We also believe that cooperation with other parts of the Organization would be helpful to address the risk of over-regulation and regulatory fragmentation. The Corporate Governance Committee could work together with the OECD regulatory experts to identify and address situations where regulation may be contrary to certain recommendations in the Principles.

4. Additional comments and suggestions

**Stakeholder and shareholder expectations**

Consideration should be given to how boards can balance competing pressures, such as the growing expectations of stakeholders (for sustainability, a long-term orientation, etc.) and on the other hand, certain institutional shareholders, whose focus may be more on short-term performance expectations. The OECD might therefore help shed light on the question of how issuers can best balance between a shareholder centric approach and a stakeholder centric approach.

**The links between the Principles and the SDGs**

The OECD could look at the link to the SDGs, which might manifest itself in ensuring that the Principles encourage Boards to focus on environmental and social outcomes in addition to economic ones. As is the case with other Codes such as the UK and the Netherlands, consideration should be given to the Board’s role in the long-term success and sustainability of the company. This would involve a stronger emphasis on the corporate culture.

**Corporate governance of SOEs**

We underline the importance of OECD work related to SOEs and the important role that the Working Party on State Ownership and Privatization Practices is playing in this respect. We appreciated the
opportunity to participate in the special roundtable on integrity and the fight against corruption in SOEs as well as the consultation with the Working Party on 23 October 2017.

On a practical matter, we would also like to reiterate our suggestion to organize meetings of the Working Party to the extent possible back-to-back with the meetings of the Corporate Governance Committee to facilitate maximum participation in both meetings.

**Bondholders and corporate governance**

Particularly at financial institutions, shareholders often contribute just a few percent to the balance sheet of a globally significant bank, yet the Principles say little about bondholders, beyond the fact that their contractual rights should be respected and their role and rights as creditors at large when firms near bankruptcy. For banks, and increasingly for other large enterprises, the OECD can play a meaningful role in describing how creditors can play a constructive role in the governance of firms.

**The Role of Stock Exchanges in Flexibility and Proportionality**

We are witnessing the emergence of new kinds of exchanges in the US that provide a greater focus on long-term approaches to investment and management of the enterprise. BIAC would welcome research from the OECD that looks into how these new exchanges might best foster not just long-term thinking but flexibility and proportionality in governance.

**Annex:** Comments to the Working Party on State Ownership and Privatization Practices