

Principles of Corporate Governance: the OECD Perspective¹

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1. Introduction³

This article provides an overview of the work of the OECD⁴ in the field of corporate governance, focussing on the *OECD Principles of Corporate Governance* (“the Principles”).⁵ The Principles may be considered as a global benchmark for the numerous national and institutional guidelines and principles developed around the world over the past decade. This article does not provide an answer to the question raised in the February 2007 issue of ECL, “Corporate Governance Principles: How Many Are There Around?” For an answer to this question in particular the database set up by the European Corporate Governance Institute may be useful.⁶ In relation to this wide spectrum of corporate governance codes and guidelines this article will discuss a newly developed methodology to assess on a national basis the impact of all these corporate governance codes and regulations, presented by the OECD in December 2006. Moreover the article merely focuses on the OECD’s work on corporate governance. To that end the article begins by explaining the purpose of the Principles and their review in 2004. Each of the six chapters of the Principles is then discussed. Furthermore, the article addresses the use of the Principles, in particular it summarises the role of the aforementioned assessment methodology; and finally it discusses OECD efforts to promote good corporate governance.

2. Background

2.1 General

In the aftermath of the Asian financial crisis in 1997, the OECD Council Meeting at Ministerial level called upon the OECD to

develop, in conjunction with national governments, other relevant international organisations and the private sector, a set of corporate governance standards and guidelines. The private sector had previously published a call for the OECD to develop such a set of principles. Subsequently the first version of the Principles was agreed by the OECD members in 1999. Since then, the Principles have gained worldwide recognition as the international benchmark for good corporate governance.

The Principles are primarily intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries. They can be used by policymakers as they develop and improve the legal and regulatory frameworks for corporate governance that reflect their own economic, social, legal and cultural circumstances. Also, they may provide guidance and suggestions for stock exchanges, investors, companies, and other parties that have a role in the process of developing good corporate governance. As such, the main purpose of the Principles is to serve as a source of reference. The Principles place emphasis on “outcomes” and therefore on functional equivalence. By the latter is meant that there are many different ways, institutions, laws etc, for achieving the “outcomes” advocated by the Principles. Thus, it is recognised in the preamble to the Principles that implementation needs to be adapted to national circumstances. It is the emphasis on “outcomes” that makes the Principles an international benchmark. The Principles focus on publicly traded companies, both financial and non-financial. The Principles are non-binding and non-prescriptive. This characteristic serves the need to adapt

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3 The author would like to thank Gerry ter Huurne, member of the OECD Steering Group on Corporate Governance, and Mats Isaksson and Grant Kirkpatrick, Head respectively Senior Economist of the Corporate Affairs Division of the OECD, for their contributions to the original (2006) version.

4 The Organisation for Economic Co-operation and Development (“the OECD”) groups 30 member countries sharing a commitment to democratic government and the market economy. With active relationships with some 70-100 other countries, NGOs and civil society, it has a global reach. Its work covers economic and social issues from macroeconomics to trade, education, development, science and innovation. The OECD plays a prominent role in fostering good governance in the public service and in corporate activity.

5 The full text of the Principles can be obtained from the website: <http://www.oecd.org/daf/corporate/principles/>.

6 In this respect reference is made to the website of the European Corporate Governance Institute, www.ecgi.org, which contains an extensive database of corporate governance codes around the world.

implementation of the Principles to varying legal, economic and cultural circumstances.

2.2 International benchmark

The OECD plays a leading role in the international movement towards raising the quality of corporate governance. Today, the Principles enjoy worldwide recognition and have been endorsed as one of the Financial Stability Forum's ("FSF") *Twelve Key Standards for Sound Financial Systems*⁷ considered essential for countries to follow in order to promote international financial stability. The Principles also provide the basis for an extensive programme of cooperation between OECD and non-OECD countries and form the basis of the corporate governance component of World Bank/IMF Reports on the Observance of Standards and Codes ("ROSC"). Furthermore, the importance of corporate governance in the financial sector has long been recognised by, *inter alia*, the Bank for International Settlements ("BIS")⁸ that has issued a guidance for banks, *Enhancing Corporate Governance for Banking Organisations* (September 1999),⁹ based on, *inter alia*, the Principles; as well as by the International Association of Insurance Supervisors. The purpose of the guidance is to assist governments in their efforts to evaluate and improve their frameworks for corporate governance of banks and to provide guidance for financial market regulators and participants in financial markets. Finally, Heads of State of the G8 countries at the 2003 Evian Summit endorsed the review of the Principles and called for continued global efforts to enhance corporate governance.

3. The 2004 review of the principles

The OECD countries in 2002 requested an assessment and review of the Principles, which resulted in a revised version of the Principles which was endorsed by the OECD Council in May 2004. The assessment concluded that although the Principles were fundamentally sound, they should be revised to take into account new developments and concerns, while retaining their

non-binding principles-based approach. The review, which was carried out under the responsibility of the OECD Steering Group on Corporate Governance, paid particular attention to the improvements and emerging good practices catalogued in the *Survey of Corporate Governance Developments in OECD Member Countries* (2004).¹⁰ Observers from key international institutions, including the BIS, the International Monetary Fund, the World Bank, the European Union, the Financial Stability Forum, the International Organisation of Securities Commissions and the Basel Committee,¹¹ participated actively in the assessment process. Consultations were held with the private sector, labour organisations and civil society. Public comments on a draft of the Principles were sought via the internet and attracted many constructive suggestions.

Consultations with non-member countries also took place, mainly through the meetings of the five Regional Corporate Governance Roundtables (to be discussed hereinafter), through which the OECD promotes corporate governance reform, in partnership with the World Bank Group. Additional input was obtained from a special meeting attended by 43 non-member countries at the end of 2003. The consultation process made clear that a particular issue for policymakers throughout the world has been the lack of effective implementation of the corporate governance policy framework; mostly due to insufficient institutional and human resources. In addition the issue of enforcement appears to be a great challenge. In particular in non-member countries,¹² but also in OECD countries due to the often opaque status of corporate governance codes based on the "comply-or-explain" concept¹³ (mostly adopted on a "voluntary" basis, without specifying what this means in terms of enforcement) and unclear hierarchy between hard law and soft law provisions.¹⁴

4. The principles

4.1 General

The revised Principles include an important chapter which sets broad principles for effective implementation and enforcement

7 The G7 countries agreed in 1999 to launch the FSF, involving all of the major players in the international financial system, including a number of other financial centres such as Singapore and Hong Kong. See <http://www.fsforum.org/home/home.html>. The World Bank is playing an integral role in monitoring and promoting the implementation and use of the FSF standards through its Reviews of Standards and Codes.

8 The BIS (established in 1930) is an international organisation which fosters international monetary and financial cooperation and serves as a bank for central banks; see also: <http://www.bis.org>.

9 This guidance is currently in the process of being updated by the BIS; in connection therewith the BIS, in July 2005, issued the Consultative Document titled *Enhancing corporate governance for banking organisations*, issued for public comment by 31 October 2005, see <http://www.bis.org/publ/bcbs117.pdf>.

10 See <http://www.oecd.org/dataoecd/58/27/21755678.pdf>.

11 The Basel Committee (established in 1974) provides a forum for regular cooperation on banking supervisory matters. Over recent years, it has developed increasingly into a standard-setting body on all aspects of banking supervision, including the Basel II regulatory capital framework. The Committee's members come from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, United Kingdom and United States.

12 See S. Claessens and E. Berglöf, *Corporate Governance and Enforcement*, September 2004, World Bank Policy Research Working Paper No. 3409.

13 See Eddy Wymeersch, *Enforcement of Corporate Governance Codes*, June 2005, ECGI Working Paper Series in Law Working Paper No. 46/2005; furthermore: T. Raaijmakers, "Zelfregulering" van corporate governance van beursondernemingen, WPNR, 2004, No. 6563; M. Das, *Geldt de Code?*, Ondernemingsrecht, Issue 4, 2004.

14 In connection herewith reference is made to Euronext's position formulated in Announcement 2005-043, of 24 June 2005 (regarding Appendix X of the Listing and Issuing Rules) which has explicitly stated that "when applying and interpreting the Listing and Issuing Rules or the General Rules, Euronext Amsterdam will allow the (future) provisions of the Code and current (and future) legislation to prevail over any contradictory provisions contained in the Listing and Issuing Rules, or the General Rules, in any case including Article 6, Section B, Appendix X of the Listing and Issuing Rules; see http://www.euronext.com/file/view/0,4245,1626_53424_607848262,00.pdf.

and therefore sets essential criteria for policy choice. The revised Principles aim to tighten the oversight of management by the board, and to improve the accountability of the board to shareholders. The Principles include an explicit call for the exercise of informed ownership by shareholders through both strengthening their ability to influence the board and by lowering the costs of exercising ownership rights. In addition, the Principles call for increased attention to managing conflicts of interest through enhanced disclosure and transparency. The need to disclose and manage conflicts of interest concerns not only managers and controlling shareholders, but also institutional investors, auditors, brokers and analysts.

The Principles identify several fundamental elements that qualify as necessary components of an effective and internationally recognised corporate governance framework. These elements are discussed in six chapters covering (I) Ensuring the Basis for an Effective Corporate Governance Framework, (II) the Rights of Shareholders and Key Ownership Functions, (III) the Equitable Treatment of Shareholders, (IV) the Role of Stakeholders in Corporate Governance, (V) Disclosure and Transparency and (VI) the Responsibilities of the Board. Each of the chapters starts with one lead Principle which is followed by a number of supporting principles. The Principles are supplemented by annotations that contain commentary on the individual Principles and are intended to explain their rationale. The annotations also contain descriptions of relevant trends. The annotations respond to the need for guidance as to how the Principles can be implemented and enforced through references to evolving practices and perceptions about what constitutes good practice.

Hereinafter each of the six chapters of the Principles will shortly be discussed and where relevant with reference to the annotations. The supporting principles will not be discussed. It should be noted that this article is not intended to be a substitute for reading the Principles in depth.

4.2 Ensuring the basis for an effective corporate governance framework

Principle: The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities. The first chapter was newly included in the 2004 review. The principles in chapter one reflect the aforementioned concern about the issues of implementation and enforcement. The chapter sets out broad principles for governments to follow

when reviewing their corporate governance policy framework. Broad supporting principles have been developed covering effective and efficient implementation and enforcement, and the mechanisms which should be established for parties to protect their rights.

4.3 The rights of shareholders and key ownership functions

Principle: The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

There is widespread agreement that corporate governance weaknesses in many OECD countries can be attributed to an important extent to a lack of effective ownership. In connection therewith three aspects need to be kept in mind: (i) the structure of ownership and its concentration; (ii) the instruments of control; and (iii) the exercise of control.¹⁵ This chapter covers what are agreed to be fundamental shareholder rights to ensure the integrity and efficiency of equity markets. Basic rights include the right to influence the company, the right to information, the right to sell or transfer shares (exit) and the right to participate in the profits or earnings of the company. Shareholders' rights to influence the company focus on certain fundamental issues such as the election of board members, or other means of influencing the composition of the board and amendments to the company's articles of association. The Principles consider that the costs of voting can and should be reduced, and the benefits in terms of what can actually be achieved from ownership participation must also be improved.

4.4 The equitable treatment of shareholders

Principle: The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

The outcome advocated by this Principle is to preserve the integrity of capital markets by protecting non-controlling shareholders from potential abuse such as manipulation by boards, managers and controlling shareholders. Investors' confidence that the capital they provide will be protected from misuse or manipulation by corporate managers, board members or controlling shareholders is an important factor in the capital markets. Such confidence will reduce the risk premium investors will demand for making an investment, lower capital costs and thus raise the value of equity. In providing protection to investors, the annotation to the principle notes that a distinction can be made between *ex ante* and *ex post* shareholders' rights. *Ex ante* rights are, for example, pre-emptive rights and qualified

¹⁵ The relevance of this issue is further underlined by the recent proposal for a Directive, issued by the European Commission on 5 January 2006, which aims to facilitate the cross-border exercise of shareholders' rights in listed companies, through the introduction of minimum standards. The proposed Directive seeks to ensure that shareholders, no matter where in the EU they reside, have timely access to complete information and simple means to exercise certain rights – notably voting rights – at a distance; *see also*: http://europa.eu.int/comm/internal_market/company/shareholders/index_en.htm.

majorities for certain decisions. *Ex post* rights cover access to redress once rights have been violated, i.e. whether shareholders can obtain redress for grievances at a reasonable cost and without excessive delay. In relation to this *ex post* aspect of the principle, attention needs to be paid to the avoidance of excessive litigation. Therefore many jurisdictions have developed alternative adjudication procedures, such as administrative hearings or arbitration procedures organised by the securities regulators or other regulatory bodies, which may be an efficient method of dispute settlement.

Furthermore, the Principles support amongst others equal treatment for foreign and domestic shareholders in corporate governance. Impediments to cross-border voting should therefore be eliminated.

Much attention is paid to the protection of non-controlling shareholder rights. In addition to disclosure, a key to protecting non-controlling shareholders is a clearly articulated duty of loyalty by board members to the company and to all shareholders. Indeed, abuse of non-controlling shareholders is most pronounced in those countries where the legal and regulatory framework is weak in this regard. A particular issue arises in some jurisdictions where groups of companies are prevalent and where the duty of loyalty of a board member of an individual group company might be ambiguous to the extent that such duty of loyalty might be interpreted as being owed to the group of companies instead of to the individual company.

4.5 *The role of stakeholders in corporate governance*

Principle: The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Stakeholder in the context of this Principle refers to providers of resources to the company; and thus encompasses investors, employees, creditors and suppliers. Relations between stakeholders and the company will in part be established by the legal system but the principle recognises that the relationship is often contractual. Therefore the annotations note that the governance framework should recognise that the interests of the company are served by recognising the interests of stakeholders and their contribution to the long-term success of the company. The Principles recognise that a productive relationship with stakeholders is necessary to create value and that this might involve some form of stakeholder participation in the corporate governance process. The approach taken is an enabling one: private parties should not be encumbered in establishing the modalities of cooperation which suit them best.

The role of employees as a stakeholder is complemented by supporting principles which call for an ethical code to be established by the board and for effective rewards and penalties to be

established to ensure compliance with relevant laws and standards.

The stakeholder chapter explicitly deals with the role and rights of creditors. In a number of countries the experience has been that poorly defined and ineffectively enforced creditor rights lead to distorted corporate governance, particularly in the presence of controlling shareholders. One supporting principle states that the corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

4.6 *Disclosure and transparency*

Principle: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

The outcome advocated by this Principle is transparency. Transparency being key to (i) shareholders' ability to exercise their ownership rights on an informed basis; (ii) market integrity; and (iii) the accountability of the company to its shareholders. The principles covered by the chapter specify the type of material information which should be disclosed, how and to whom this information should be communicated and the processes by which confidence in the quality of the information can be ensured. They reflect the responsibilities of the board which are covered by the Principles in Chapter VI.

Disclosure requirements are not expected to place unreasonable administrative or cost burdens on enterprises. Key to the operational nature of the chapter is the concept of materiality. In order to determine what information should be disclosed at a minimum, many countries apply the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the economic decisions taken by users of information.

The annotations state that shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for them to assess the stewardship of management, and make informed decisions about the valuation, ownership and voting of shares. Insufficient or unclear information may hamper the ability of the markets to function, increase the cost of capital and result in a poor allocation of resources. Disclosure also helps improve public understanding of the structure and activities of enterprises, corporate policies and performance with respect to environmental and ethical standards, and companies' relationships with the communities in which they operate.

Material information on related party transactions are explicitly covered by the minimum disclosure requirements referred to in supporting principle A. It is important for the market to know whether the company is being run with due regard to the interests of all its investors. Therefore it is essential for the company to fully disclose material related party transactions to the market,

either individually, or on a grouped basis, including whether they have been executed on an arms-length basis.

The duties of auditors are explicitly dealt with in supporting principles and include accountability to shareholders and a duty to the company to exercise due professional care in the conduct of the audit. Attention is also paid to ensuring auditor independence, including steps to manage and to minimise potential conflicts of interest. It is also emphasised that the ultimate responsibility for ensuring independent audit must be with the board.

4.7 *The responsibilities of the board*

Principle: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

The principles covering the structure, operation and duties of the board clearly deal with corporate ethics, compliance with laws and standards, and oversight of internal control and financial reporting systems. The outcome advocated is that companies are professionally managed but subject to effective oversight by the board so as to prevent self-dealing and to ensure that the interests of the company and the shareholders are taken into account by both the board and the management.

Board structures and procedures vary both within and among OECD countries. Some countries have mostly two-tier boards that separate the supervisory function and the management functions into different bodies (even though company law may provide companies with the option to choose a unitary board). Such systems typically have a supervisory board composed of non-executive board members and a management board composed entirely of executives.¹⁶ Other countries have “unitary” boards, which bring together executive and non-executive board members. In some countries there is also an additional statutory body for audit purposes. The Principles are intended to be sufficiently general to apply to whatever board structure is charged with the functions of governing the enterprise and monitoring management.

The annotations add that together with guiding corporate strategy, the board is mainly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the company. In order for boards to effectively fulfil their responsibilities they must be able to exercise objective and independent judgment. Also, the board is not only accountable to the company and its shareholders but also has a duty to act in their best interests. In addition, boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors,

customers, suppliers and local communities. Observance of environmental and social standards is relevant in this context.

5. **Assessment methodology**¹⁷

5.1 *Introduction*

Following the revision of the Principles in 2004, the OECD Steering Group on Corporate Governance decided that an analytical framework to establish an ongoing dialogue to support their implementation should be developed (the “Methodology”). The Methodology was issued by the OECD Steering Group on Corporate Governance on 1 December 2006. As set out above the Principles are one of the *Twelve Key Standards for Sound Financial Systems* adopted by the FSF. Most standard setters have developed an associated assessment methodology that, together with the standards, forms the basis for the voluntary jurisdiction assessments undertaken by the IMF/World Bank either in the form of the aforementioned ROSC or as part of the Financial Sector Assessment Programme. The Methodology is also intended to serve as the methodology for the ROSCs that use the Principles as the reference standard.

5.2 *Purpose*

The Methodology is intended to underpin an assessment of the implementation of the Principles in a jurisdiction and to provide a framework for policy discussions. The ultimate purpose of an assessment is to identify the nature and extent of specific strengths and weaknesses in corporate governance, and thereby underpin policy dialogue that will identify reform priorities leading to the improvement of corporate governance and economic performance. Since the Principles are concerned in part with company law, securities regulation and the enforcement/legal system, the term “jurisdiction” rather than country is used in the Methodology. Reviewers should note that because sometimes a country may be characterised by several different geographical jurisdictions with separate regulations, a country level assessment, if indeed this is meaningful, would need to take this factor fully into account.

5.3 *Content*

It is important to note that the Methodology underlines the relevance of “outcomes” of policies. The different legal and social traditions in countries around the world that adopt the Principles per definition create different ways for achieving the “outcomes” promoted by the Principles. Therefore the assessment promulgated through the Methodology should not lead to value judgments about the means used to implement the Principles but should provide an insight about the effectiveness and efficiency of

¹⁶ Examples within the OECD include Austria, the Czech Republic, Germany and the Netherlands; China and Indonesia are two non-member countries also having a two-tier board system.

¹⁷ See for the full text of the Methodology the OECD website <http://www.oecd.org/dataoecd/58/12/37776417.pdf>.

present legislation and regulation in achieving the outcome. The Methodology contains four main parts. Part A deals with “Methodological Issues and Procedures” and discusses topics such as how to assess outcomes, but also the role of the reviewer and the assessment process. Part B (“The Corporate Governance Landscape – Necessary Institutional Information”) deals with background issues necessary for putting the assessment into a national or jurisdictional context. Part C discusses each of the chapters of the Principles and provides tools for the actual assessment (“Issues and Assessment Criteria”) of the Principles by outlining so-called “likely practices to be examined” that focus on actual situations and practices that a reviewer will have to deal with and provide guidance by specifying “essential criteria”. Finally Part D (“Forming Policy Options and Recommendations”) contains practical guidance for the reviewer on how the different assessments should be drawn in a final assessment, which should include implications for policy priorities.

5.4 An example: the pilot study on Turkey

In October 2006 the OECD Steering Group on Corporate Governance issued for the first time a member country review based on the Methodology, “Corporate Governance in Turkey: A Pilot Study”.¹⁸ The report evaluates the extent to which the Principles have been implemented in Turkey looking at both the legal and regulatory framework as well as company practices. Although this report, by exemption, has been prepared by the OECD itself, it is intended that in the future the actual voluntary country assessments will be undertaken by the World Bank’s ROSC unit.

6. Use of the Principles

6.1 The Regional Roundtables

In addition to individual efforts in member and non-member countries, the OECD’s main vehicle for promoting the use and implementation of the Principles is through a set of regional corporate governance roundtables involving more than 40 emerging and developing economies. Such Regional Roundtables have been established in Asia, Latin America, Eurasia, Russia, and Southeast Europe and a similar initiative has been launched in the Middle East-North Africa region. The Roundtables are co-ordinated by the OECD’s Corporate Affairs Division under the guidance of the

OECD Steering Group on Corporate Governance and organised in close co-operation with the World Bank Group (including both the World Bank and IFC), the Global Corporate Governance Forum,¹⁹ OECD member countries and key regional partners.

The Roundtables have come to enjoy high level support in the regions and are generally attended by top level officials from both the public and private sectors. The prime task of the Roundtables is to raise awareness, provide an exchange of experiences and to formulate concrete recommendations for reform. The Roundtables also assist decision-makers from the public and private sectors in their efforts to improve corporate governance. This activity has resulted in the preparation of regional White Papers, which developed common policy objectives and highlight recommendations for policy actions; they also brought consensus and ownership in the region about the relevance and need for good corporate governance. The knowledge gained from the Roundtables has been made available to the public and is summarised in a synthesis report,²⁰ which compares the corporate governance problems faced by widely different emerging market economies and the priorities which these countries have set.

Most Roundtables have now moved into a second phase that has focused on making progress in specific priority areas highlighted in the respective White Papers, notably through Task Forces.²¹ In addition to the ongoing regional work, the growing demand from countries for support in implementing the Roundtable’s priorities has led the OECD to contribute to a series of country-focused meetings aimed at improving corporate governance.²² Furthermore stock-taking reports regarding both Asia and Latin America, on progress in implementing the White Paper recommendations were issued in 2006.

6.2 The Board Room Guide to the Principles

In October 2004, OECD member countries invited a Business Sector Group on Boardroom Practices²³ to develop a *Boardroom Guide to the OECD Principles of Corporate Governance* (“the Boardroom Guide”). The initiative reflects the importance that the OECD attaches to the private sector as a leading factor in implementing good corporate governance. The work starts from the premise that the Principles already comprise the generic principles underlying good corporate governance. On this basis,

18 The report can be found on the OECD’s Corporate Affairs Division website at: http://www.oecd.org/document/6/0,2340,en_2649_37439_37490374_1_1_1_37439,00.html.

19 The Global Corporate Governance Forum is a multi-donor trust fund co-founded by the *World Bank Group* and the OECD to promote global, regional, and local initiatives that aim to improve the institutional framework and practices of corporate governance; see <http://www.gcgf.org>.

20 *Experiences from the Regional Corporate Governance Roundtables*, OECD, 2003; see <http://www.oecd.org/dataoecd/19/26/23742340.pdf>.

21 For example the Russian Roundtable set up two Task Forces that each issued a policy brief, one on the adoption of IFRS (see <http://www.oecd.org/dataoecd/16/26/35118918.pdf>) and one on related party transactions (see <http://www.oecd.org/dataoecd/42/54/34946539.pdf>); in Asia the Task Force on Corporate Governance of Banks issued the *Policy Brief on Corporate Governance of Banks in Asia* in June 2006, and in addition the Asian Network on Corporate Governance of State Owned Enterprises has been set up.

22 Notably in China (2004, 2005 and later in 2006), Vietnam (2004), Bangladesh (2005), Indonesia (2005), and India (early 2006).

23 Members of the OECD Business Group on Boardroom Practices (participating in their personal capacity) are: Mr. Ira M. Millstein, Senior Partner, Weil, Gotshal & Manges LLP, USA (Chair), Mme Dominique de La Garanderie, Partner Ginetié, Paley-Vincent, France (Vice Chair), Mr. Peter Dey, Chairman, Paradigm Capital Inc., Canada (Vice Chair), Sir Adrian Cadbury, former Chairman, Cadbury Schweppes, UK, Dr. Gerhard Cromme, Chairman of the Supervisory Board, Thyssen Krupp, Germany, and Mr. Toyoo Gyohten, President, Institute for International Monetary Affairs, Japan.

the purpose of the Boardroom Guide is to express how the aspirations of the Principles can be practically achieved in different regulatory, economic and cultural contexts.

In particular, the Boardroom Guide will focus on providing practical examples of how the Principles can be applied in a world that is necessarily characterised by incomplete law. It will discuss how board members in performing their everyday functions can fill the gaps that laws, regulations and guidelines cannot, and should not, fill. The Boardroom Guide intends to explain and expand on the general concepts and standards set forth in the Principles related to boardroom conduct and activities.

7. The OECD Guidelines on Corporate Governance of State Owned Enterprises²⁴

Good corporate governance is also necessary for state owned companies.²⁵ The ownership function of the state in its companies has yet to be fully resolved, even after taking into account the beneficial effects of partial privatisation, which in many countries has opened the way to unprecedented restructuring initiatives and increased exposure to competition from private entities. State owned enterprises (“SOEs”) face a specific set of governance difficulties. They very often suffer both from passive ownership by the state, or on the contrary, from undue political interference. SOEs in many cases also have a soft budget constraint, being largely protected from the takeover and bankruptcy threats that are essential tools for monitoring management in private sector companies. More fundamentally, SOEs have a complex chain of accountability, with multiple, sometimes remote and not always clearly identifiable principals. These principals may include relevant Ministries, the Parliament, the citizens as ultimate owners, and the SOE itself.

The OECD Working Group on Privatisation and Corporate Governance of State Owned Enterprises has developed the OECD Guidelines on Corporate Governance of State Owned Enterprises (“the Guidelines”) which were endorsed by the OECD Council in April 2005. Similar to the Principles, in relation to the Guidelines a public consultation using the internet was set up at the end of 2004, and consultations were also held in Paris with interested parties from OECD and non-OECD countries. The Guidelines will allow countries to better benchmark the ownership functions of the state. The Guidelines are non-binding and non-prescriptive, and complementary to the Principles. The main elements of the Guidelines are (I) Ensuring an effective legal and regulatory fra-

mework for state owned enterprises, (II) The state acting as an owner, (III) Equitable treatment of shareholders, (IV) Relations with stakeholders, (V) Transparency and disclosure, and (VI) The responsibilities of the boards of state owned enterprises.

The Guidelines and the process used in their development have proved to be successful in raising awareness and there is now a strong demand for more detailed practical experience on how to implement the practices recommended in the Guidelines, both from OECD and non-OECD countries. Similar to the Principles, when endorsing the Guidelines, the OECD Council explicitly called for their active use and widest possible dissemination.

8. Concluding remarks

The Principles should be considered a living document. The OECD promotes wide dissemination and active use of the Principles through sustained policy dialogue among OECD as well as non-OECD countries. A continuing policy dialogue where policymakers, regulators, standard setters and the private sector will be able to exchange practical experiences with implementation. This dialogue among companies, investors, service providers, labour and others aims to be as inclusive as possible to ensure that the Principles remain relevant and are actively used in the private sector.

Although the Principles are explicitly addressed to policymakers, the importance and/or impact of the Principles on European company law and regulation is hard to measure. A quick scan of corporate governance principles and guidelines for listed companies in 31 European countries learns that 15 of them explicitly refer to the Principles as (one of several) benchmark(s) for the respective drafting committees.²⁶ The fact that the OECD Steering Group on Corporate Governance consists of representative policymakers from all OECD member countries (of which 20 are members of the EU, and 23 are geographically located in the wider Europe) as well as representatives from the European Commission, appears to be proof that both national policymakers in European countries do use the Principles when drafting legislation, and Europe’s international policymakers also explicitly make use of the Principles. The Methodology may well serve as an instrument for assessing the actual policy responses from Europe’s policymakers against the benchmark of the Principles. In line therewith it will be interesting to learn the conclusions of future country assessments in Europe, following the 2006 Turkey example.

24 See <http://www.oecd.org/dataoecd/46/51/34803211.pdf>; together with the Guidelines the OECD published the *Comparative Report on Corporate Governance of State Owned Enterprises in OECD Countries* (April 2005) which contains extensive data as well as OECD examples, underpinning the relevance of the Guidelines.

25 In particular considering the fact that the asset value of SOEs may still represent in some OECD countries more than 20% of GDP (Korea, France, Italy, Sweden, the Netherlands, the Slovak Republic, and Finland). SOEs also represent around 5% (France and Slovak Republic) or 10% (Finland, Czech Republic) of employment, and as much as 30% (Finland and Greece) or even more than 50% (Norway) of market capitalisation; see *Comparative Report on Corporate Governance of State Owned Enterprises in OECD Countries* (April 2005).

26 See www.ecgi.org.