

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **A**  
ECONOMIC AND SCIENTIFIC POLICY



The European Union's Role in International Economic Fora Paper 3: The OECD

**Economic and Monetary Affairs**

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# The European Union's Role in International Economic Fora Paper 3: The OECD

Study for the ECON Committee





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY**

# **The European Union's Role in International Economic Fora Paper 3: The OECD**

**STUDY**

## **Abstract**

This paper forms part of a series of nine studies on the role of the European Union in international economic fora, prepared by Policy Department A at the request of the Committee on Economic and Monetary Affairs of the European Parliament. It provides factual background information about the OECD, the EU's role and representation therein, its accountability as well as the coordination and impact thereof. Key conclusions are that, despite the particular importance the OECD gained during the financial crisis, there is limited knowledge as to how it operates and is governed. Although EU Member States constitute more than half of the OECD countries and the EU contributes substantially to the OECD budget on a voluntary basis, the ambiguous and out-dated status of the OECD deprives the EU from voting rights and budgetary oversight. The EU shall pay more attention to this 'policy pathfinder' OECD, including when its Member States' economic trends are being examined and when tailor-made advice is given to EU Member States in economic distress, as well as on critical tax policy issues. Therefore, the EU could formalise its status, develop a consistent and comprehensive coordinated approach on OECD issues by overhauling its long-standing coordination mechanisms, and establish a regular, open and effective reporting intra-EU institutions, which could allow for parliamentary oversight.

This document was requested by the European Parliament's Committee on Economic and Monetary Affairs.

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## LIST OF ABBREVIATIONS

<b>AEOI</b>	Automatic Exchange of Information
<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>BEPS</b>	Base Erosion and Profit Shifting
<b>BIAC</b>	The Business and Industry Advisory Committee to the OECD
<b>BIS</b>	Bank for International Settlements
<b>CJEU</b>	Court of Justice of the European Union
<b>COREPER</b>	The Permanent Representatives Committee
<b>CPR</b>	Council of Permanent Representatives
<b>DAC</b>	Development Assistance Committee
<b>DG</b>	Directorate-General
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EC</b>	European Commission
<b>ECFIN</b>	Economic and Financial Affairs
<b>ECOFIN</b>	Economic and Financial Affairs Council
<b>ECON</b>	Economic and Monetary Affairs
<b>ECB</b>	European Central Bank
<b>EDRC</b>	Economic Development Review Committee
<b>EEC</b>	European Economic Community
<b>EEAS</b>	European External Action Service
<b>EFC</b>	Economic and Financial Committee
<b>EFTA</b>	European Free Trade Area
<b>EMU</b>	European Monetary Union

- EPC** Economic Policy Committee
- ESAs** European Supervisory Authorities
- ESCB** European System of Central Banks
- EU** European Union
- Euratom** European Atomic Energy Community
- FAO** Food and Agriculture Organisation
- FATF** Financial Action Task Force
- FISMA** Financial Stability, Financial Services and Capital Markets Union
- FSB** Financial and Stability Report
- G5** Group of Five (Brazil, China, India, Mexico, South Africa)
- G7** Group of Seven (Canada, France, Germany, Italy, Japan, UK, US)
- G8** Group of Eight (G7 + Russia)
- G20** Group of Twenty (G8, G5, Australia, Turkey, Argentina, Saudi Arabia, South Korea, Indonesia, European Union)
- GAAR** General Anti-Abuse Rule
- GATT** General Agreements on Tariffs and Trade
- GDP** Gross Domestic Product
- GNP** Gross National Product
- IBRD** International Bank for Reconstruction and Development
- IEA** International Energy Agency
- ILO** International Labour Organisation
- IMC** International Management Cycle
- IMF** International Monetary Fund
- IPA** Instrument for Pre-Accession Assistance



- IO** International Organisation
- LEED** Local Economic and Employment Programme
- LOB** Limitation of Benefits
- MAI** Multiannual Agreement of Investment
- MCM** Multiannual Council Meeting
- MENA** Middle East and North Africa
- MDGs** Millenium Development Goals
- MNCs** Multinational Corporations
- MoU** Memorandum of Understanding
- MS** Member States
- NAFTA** North Atlantic Free Trade Agreement
- NATO** North Atlantic Treaty Organisation
- NEA** Nuclear Energy Agency
- OECD** Organisation for Economic Cooperation and Development
- OEEC** Organisation for European Economic Cooperation
- OIV** International Organisation of Vine and Wine
- OLIS** OECD's Online Information Service
- PAC** Public Affairs and Communications
- PISA** Programme for International Student Assessment
- PPP** Purchasing Power Parity
- PD** Permanent Delegation
- PIACC** Programme for International Assessment of Adult Competences
- SCIMF** Subcommittee on IMF
- SIGMA** Support for Improvement in Governance and Management

- SWOT** Strengths, Weaknesses, Opportunities and Threats
- TAXUD** Taxation and Customs Union
- TEU** Treaty of the European Union
- TFEU** Treaty on the Functioning of the European Union
- TPC** Trade Policy Committee
- TUAC** Trade Union Advisory Committee
- QMV** Qualified Majority Voting
- Cop16** Conference of the Parties
- UN** United Nations
- UNCTAD** United Nations Conference on Trade and Development
- UNESCO** United Nations Educational Cultural and Scientific Organisation
- UK** United Kingdom
- US** United States
- WHO** World Health Organisation
- WTO** World Trade Organisation

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## EXECUTIVE SUMMARY

### Background

With the G20 becoming the premier forum for global economic governance since the financial crisis, the Organisation of Economic Cooperation and Development (OECD or the Organisation) partly filled its Secretarial vacuum, preparing its summits, elaborating reports, and overseeing policy implementation. Its work is increasingly commended by the G20 and it has become a key driver in setting global standards in the area of taxation, for instance. Moreover, it plays a major role in European economic governance through its peer reviews, high-level contacts in ECOFIN and Eurogroup summits and tailor-made advisory reports for EU Member States in economic distress. Although more than half of the OECD Member States are emanating from the EU, the EU's role in the OECD is being endangered by the new non-EU members and by its unclear status, which deprives it of voting rights and budgetary oversight. The EU and its Member States are the biggest contributors to the OECD budget but some countries such as the U.S. seem to maintain a dominant position in the Organisation. Moreover, the EU's coordination system is not adapted to the new conditions in the global governance architecture, undermining the EU's ability to speak with one voice. Although the OECD's scope covers 99 % of the EU's exclusive and shared competences and focuses on a wider area than trade, in particular on economic policies and taxation, the EU's position is formulated by the Commission's DG Trade and in the Council's Trade Committee in a very informal way, as there is no Working Group on the OECD. The parliamentary oversight is rather weak as the EU delegates in the OECD from the European Commission, the European Central Bank (ECB) and the European External Action Service (EEAS) only report back to their hierarchy. The OECD's opaque working methods as well as external stakeholders' limited say in its decision-making mechanism is in contrast with the EU's quest for greater transparency and enhanced involvement of the civil society. Moreover, the OECD standards seem to be beneficial to G7 and G20 Member States, while the smaller EU Member States or non-OECD EU Member States could be excluded from important decisions. At the same time, due to the OECD's asymmetrical geometry, non-OECD Members with weaker democratic credentials such as China might be able to push for standards, which could undermine the EU citizens' rights. Therefore, the EU shall play a more active role in the process of global economic governance by establishing stronger contacts with the OECD, and creating regular platforms to hold the OECD officials accountable, a potential inspiration being the OECD's annual debates in the Parliamentary Assembly of the Council of Europe.

### Aim

The aim of this study is to shed light on the interactions between the OECD and the EU, while trying to define the EU's role in the Organisation. We will follow a three pronged analytical approach.

- First, we will analyse the OECD's organisational structure, its statute, its accession criteria, its decision-making bodies, its budgetary process, its stakeholders as well as its role in the global economic governance.
- Second, we will focus on the EU's legal status at the OECD and its legal obligations regarding the external representation of the Union, including the coordination mechanisms in place among various EU participants. We will also compare standard-setting activities at the OECD and at the EU.
- Third, we will evaluate the OECD's accountability according to ILA standards and we will try to give recommendations to increase the accountability of both the OECD and EU delegates involved.

## 1. INTRODUCTION

### KEY FINDINGS

- The OECD is an intergovernmental organisation, where 34 like-minded Member States are committed to promote economic growth, prosperity and sustainable development.
- The OECD was recently granted the nickname of the 'World Tax Organisation', due to its increasing role in this field of global economic governance and its symbiotic relationship with the G20.
- Critics compare the OECD with a 'black box' as most of the OECD meetings are held behind closed doors, whilst stakeholders are often excluded from its standard-setting process.
- The OECD plays a major role in the EU's economic governance through its peer reviews, high-level contacts in EU summits and other international platforms as well as specialised country reports.

The OECD is an intergovernmental organisation, where 34 like-minded Member States adhering to democracy and market economy work together to promote economic growth, prosperity and sustainable development. The Organisation is best known for its data collection, benchmarking, research and analytical work and country reviews which seek policy convergence, mostly by means of soft regulation and peer pressure.

While the Organisation's policy orientations and objectives changed over time, its statute and governance structure remained intact. The OECD is classified as an organisation of 'limited competences'<sup>1</sup> and has a less clearly defined role in comparison with other entities of the international economic architecture such as the World Bank, IMF and WTO. In fact, the OECD's large scope of economic activity often put it in competition with IMF<sup>2</sup>, GATT/WTO<sup>3</sup> and even with G7<sup>4</sup> but the Organisation managed to reinvent itself through a unique adaptation capacity throughout history<sup>5</sup>.

Many refer to the OECD as a 'black box', as most of the OECD meetings are held behind closed doors and stakeholders are often excluded from its standard setting process. Lack of transparency was seen useful and necessary by some Members of the 'rich man's club', especially when dealing with market-sensitive issues and negotiations.

This opacity and secrecy, however, which was targeted by anti-globalisation protesters, was partly responsible for the OECD's identity crisis in the 1990s, and accompanied by large budget cuts imposed by major contributors such as the US and the UK.

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<sup>1</sup> Sands Q.C. and Klein (2009), p. 185.

<sup>2</sup> The Secretary-General of the OECD Emile Van Lennep asked the US why G5 and the IMF had been given a role of multilateral surveillance of balance of payments and exchange rate policies of states while the OECD's Working Party 3 would have been more suitable for it in 1982. See Reinalda (2009), p. 552.

<sup>3</sup> In 1971, the US suggested to establish a high level Committee within the OECD to deal with proposals for trade and economic reform. For industrialised states this made the OECD a more important forum for international matters than the GATT. See Reinalda (2009), p.111. Moreover, the OECD was also picked as a pre-negotiating platform for the WTO. See Ougaard (2004).

<sup>4</sup> Some politicians such as Jacques Delors have complained about the OECD serving as a preparatory meeting for G-7. See Reinalda, p. 553.

<sup>5</sup> Caroll and Kellow (2011).

The Organisation was often criticised for its Anglo-Saxon mind-set and neoliberal tendencies, and labelled as 'the strongest advocate of market economy on the world stage'<sup>6</sup>.

These views were not supported by its European Member States, which favoured welfare economics for a long period of time. Although the Organisation was of a European character, the OECD's Global Relations Strategy changed the internal balance of the international body, by enlarging towards emerging economies. While this was justified by the drop of OECD Member States' share in the world economy from 80 % in 1960 to 57 % in 2008-2009<sup>7</sup>, the presence of a new bloc is often seen as posing a threat to the EU's presence at the OECD<sup>8</sup>.

The EU and the OECD share a common history since their very foundation. According to the former President of the European Commission José Manuel Barroso 'it is difficult to find two organisations closer in their goals and missions than the OECD and the European Union'<sup>9</sup>, which is probably another demonstration of the constructive ambiguity tactics widely used in EU-policy and diplomacy<sup>10</sup>.

Out of 34 Member States of the OECD, 21 are EU Member States. The EU itself has a privileged observer status at the OECD and is represented by its Delegation in Paris, which involves Commission officials, EEAS representatives and national delegates. Moreover, experts from the ECB and the European Commission attend the OECD's large spectrum of Committees.

Besides developing statistical indicators to measure economic policy performance and its peer reviews enhancing macroeconomic policy coordination, the OECD made milestone achievements in supporting GATT trade negotiations in the 1960s and 1970s, in the area of environment and climate change with its 'polluter pays' principle in the 1970s as well as its carbon trading system. The OECD's work on aid effectiveness, Jobs Strategy, PISA programme and e-commerce is widely appreciated.

The OECD's role as a standard setter is increasingly recognised in recent years as research points out to its soft power governing 'through deliberation, persuasion, surveillance and self regulation'<sup>11</sup>. Moreover, the OECD's standard-setting authority was increased thanks to G20's commitment to the OECD's agenda<sup>12</sup>. In parallel, its multilateral surveillance instruments, such as peer reviews and confrontation techniques, are seen as one of the Organisation's biggest trumps. Common standards and norms for specific problems influence international and national debate on a policy issue, thus the OECD can have a profound impact on national policies, as well as European policies.

Perhaps, the OECD's function of an 'ideational artist'<sup>13</sup> has not been fully grasped by the EU leadership, due to its rather 'informal structure'<sup>14</sup> with little enforcement and sanctioning powers, its size and its functioning based on voluntary cooperation.

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<sup>6</sup> Sands and Klein (2009), p. 186.

<sup>7</sup> Ahearn (2011), p.3.

<sup>8</sup> United States Mission to the OECD (<http://usoecd.usmission.gov/mission/overview.html>).

<sup>9</sup> Barroso (2014).

<sup>10</sup> Avery (2012), p.179.

<sup>11</sup> Marcussen (2004), p.103.

<sup>12</sup> Wouters and Kerckhoven (2011), p. 21.

<sup>13</sup> Marcussen (2004).

<sup>14</sup> Interview with the EU Permanent Delegation to the OECD.

99 % of the OECD's activities are covered under exclusive and shared EU competences. However, experts say that neither the EU nor the OECD seem to make the best out of their privileged relationship<sup>15</sup>.

Although the Lisbon Treaty increased the EU's visibility at the OECD, the EU member states in the OECD are not in favour of speaking with a single voice due to the Treaties' lack of clarity, the OECD's rather informal nature and the fact that not all EU Member States are represented in the Organisation<sup>16</sup>.

This may be exacerbated by the EU's ambiguous and out-dated status at the OECD, its unconventional coordination mechanisms and its haphazard participation in the OECD's closed and complex Committee system. An upgrade of the OECD-EU relations is needed more than ever if the EU is committed to becoming a stronger global actor.

It goes without mentioning that the OECD plays a major role in the European economic governance through its peer reviews, high-level contacts in ECOFIN summits and Eurogroup meetings, and individualised advisory reports for EU Member States in economic distress<sup>17</sup>.

In the G7-G20 context, the OECD has been particularly active and influential, for example, by setting accountability standards of Multinational Corporations (MNCs) and international business coalitions as well as anti-corruption regulations<sup>18</sup>. Furthermore, the OECD's work on the development cooperation endorsed by G8 leaders in 1988 constituted the basis for the Millennium Development Goals.

The Organisation managed to assert itself as one of the main actors in the global governance system, by fulfilling the function of a Secretariat for G7 and G20. No wonder why commentators refer to the OECD as 'World Tax Organisation'<sup>19</sup> as the OECD Convention on Mutual Administrative Tax Matters was one of the first tools to develop a multilateral approach to tax matters. This endeavour to promote tax information sharing is referred to 'a quiet revolution' by some scholars<sup>20</sup>.

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<sup>15</sup> Interview with a national delegate to the OECD.

<sup>16</sup> Coeure and Pisani-Ferry (2007), p.50.

<sup>17</sup> For example: Portugal : Reforming the State to Promote Growth (2013), Greece, 2015: [http://greece.greekreporter.com/2015/03/12/oecd-to-assist-greek-govt-with-new-reforms-package/..](http://greece.greekreporter.com/2015/03/12/oecd-to-assist-greek-govt-with-new-reforms-package/)

<sup>18</sup> Reinalda (2013), p.517.

<sup>19</sup> Cockfield (2006).

<sup>20</sup> Woodward (2009), pp.87-89.



## 2. INSTITUTIONAL SET-UP AND ORGANISATIONAL STRUCTURE OF THE OECD

### KEY FINDINGS

- Replacing the OEEC, an Organisation responsible for implementing the Marshall Plan, the OECD was created by 18 European countries as well as the US and Canada.
- The OECD expanded at a rather slow pace and restricted its membership to a narrow group of countries between 1960 and 1990, yet the end of the Cold War and changing global shift in economic power brought about new enlargement waves towards the Asia-Pacific Economic Cooperation (APEC) bloc.
- The OECD traditionally assisted G7 with Secretariat functions by preparing summits, conducting analyses and sustaining the pulse between meetings. Hence, the OECD was a natural choice to fill G20's Secretarial vacuum.
- The OECD's main decision-making body is its Council, which meets annually at the Ministerial level and more regularly at the Ambassador's level. The EU also participates in these meetings as a quasi-member. The OECD's Secretariat works together with the OECD Committees to develop products (standards, guidelines, decisions, recommendations etc.) in various policy areas. The work programme of the OECD is planned biannually together with its budget envelope but the development of a product depends on Member States' collective willingness and the OECD's consensus-building capability.
- More than half of the OECD Member States come from the EU and the EU is represented through its Permanent Delegation to the OECD, involving officials from the European Commission, the EEAS and national delegates. Representatives of the European Commission and the ECB also participate in relevant Committee meetings of the OECD.
- The EU Member States are the biggest contributors to the OECD budget and the EU separately makes voluntary contributions. However, the EU does not have neither voting rights nor effective budgetary control due to its special status, which stayed intact since the 1960s, in the OECD Convention and its additional Protocol.
- Although external stakeholders such as the BIAC and TUAC were given an advisory status since 1962, their actual contribution to the OECD's decision-making mechanism is much debated. The OECD's new Global Relations Strategy aims at involving Non-Members more in its activities and makes it possible for key partners such as Brazil, Russia, India, Indonesia and South Africa to participate in its Committees as well as its Ministerial meetings, which might pose a threat to the EU's presence in the OECD.

### 2.1. The Inception of the OECD

The OECD was created in 1961, and succeeded the Organisation for European Economic Cooperation (OEEC), which served to finance the recovery of post-war European economies through the Marshall Plan (in conjunction with the American Economic Cooperation Administration) between 1948 and 1961. As the Soviet Union and its allies in Eastern Europe rejected the Marshall aid, 18 countries and territories (Austria, Belgium, Denmark, France, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey and the United Kingdom, and the Commanders-in-Chief of the

French, United Kingdom and United States Zones of Occupation of Germany) became the signatories of the Convention for Establishment of the OEEC on 16 April 1948. Although Article 25 of the OEEC Convention states that the OEEC is 'open to any signatory European country', the Organisation's composition was predominantly Western European, with its headquarters being at Chateau de la Muette in Paris.

The reasons for its establishment were the inability of the Bretton Woods institutions such as the International Bank for Reconstruction and Development (IBRD) and International Monetary Fund (IMF) to finance the reconstruction of Europe, the failure of the 1947 Moscow conference on the future of Germany, the US belief that a permanent organisation was needed to remove barriers to European trade and payments, and the discourse of a united Europe in the face of a Communist threat<sup>21</sup>.

The end of the Marshall Plan and the creation of NATO threatened the "raison d'être" of the OEEC, yet the OEEC and NATO managed to find a way to complement each other's activities<sup>22</sup>.

The various OEEC Member States had different expectations from the Organisation. France and the Netherlands, for instance, supported a supranational approach with regards to economic and social policy rather than an inter-governmentalist one championed by the UK. Failing to reach an agreement within the OEEC, the supra-nationalist league established the European Economic Community (France, Germany, Italy, The Netherlands, Belgium, Luxembourg) in 1958<sup>23</sup>. These developments made the OEEC and the EEC close competitors as they had overlapping roles in economic and policy coordination. However, tensions tempered when the UK joined the EEC in 1971. Upon the formation of the European Union in 1993, the EEC was incorporated into the Union and rebaptised as the European Community. In 2009, the European Community institutions were absorbed into the EU's wider framework and the Community ceased to exist.

Following the completion of its reconstruction mission and the contestation of new drivers of European integration, the OEEC became rather obsolete. The deterioration of transatlantic relations to defence related issues, and the US desire to 'streamline Western relations' and 'to weigh upon' the EEC's economic policies created the motif for the transformation of the OEEC. In parallel, European countries showed an interest to engage with other major Western economies<sup>24</sup>. This materialised into the establishment of the OECD by 18 OEEC states, the US and Canada in 1961 as the 'economic counterpart to NATO'<sup>25</sup>. The OECD inherited much of the institutional structure from the OEEC but it lacks the sanctioning power, financing capacity and conditionality of the latter.

The removal of 'European' from the Organisation's name reflected the OECD's broader scope of cooperation of peoples of the world and its wider membership. Yet, according to Sands Q.C. and Klein, the OECD 'is treated as a European Organisation as its links with the OEEC and its predominantly European character justify this course'<sup>26</sup>. Nevertheless, the EU's declining economic power combined with the OECD's perceived lack of accountability by mass protesters and the Organisation's identity crisis leading to large budget cuts of 18 % imposed by the US<sup>27</sup> in 1990s made the Organisation eager to engage with new partners among the emerging countries. The emergence of a new bloc with considerable

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<sup>21</sup> Reinalda (2009), pp. 406-408.

<sup>22</sup> NATO (1950).

<sup>23</sup> Reinalda, pp. 410-411.

<sup>24</sup> Verschaeve and Takacs (2013), p.1.

<sup>25</sup> Martens and Jacobi (2010), p.3.

<sup>26</sup> Sands Q.C and Klein (2009), p. 186.

<sup>27</sup>

weight within the APEC region (United States, Canada, Australia, New Zealand, Mexico, Chile, Japan, Korea etc.) might pose an increasing challenge to the EU.

The OECD expanded at a rather slow pace and restricted its membership to a narrow group of countries between 1960 and 1990 earning the Organisation the nickname of a 'rich man's club'. In addition to its 20 founding members from Europe and North America, the OECD spanned to the Asia-Pacific region with Japan joining in 1964. Finland, Australia and New Zealand joined the Organisation respectively in 1969, 1971 and 1973. After signing NAFTA with the US and Canada in 1993, Mexico became the first South American country to accede to the OECD in 1994. The end of the Cold War and changing global shift in economic power brought about new enlargement waves: The Czech Republic (1995), Hungary (1996), Poland (1996), Korea (1996) and Slovak Republic (2000). The latest accession took place in 2010 when Estonia, Slovenia, Chile and Israel joined.

## **2.2. Legal Status of the OECD**

In a traditional sense, an international organisation should:

- be created under international law by an international agreement amongst states;
- possess a constitution and organs separate from its Member States;
- have a legal personality<sup>28</sup>.

The OECD is an intergovernmental organisation created by its original members (Austria, Belgium, Denmark, France, The Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the UK and the US). It was established by an international agreement, the OECD Convention, which was signed in Paris on 14 December 1960 and which came into force on 30 September 1961. Its organs are the Council, the Secretariat and the Committees.

The OECD has a legal personality and, therefore, can sign contracts, acquire and sell movable and immovable property, file litigation, have bank accounts and manage its resources.

Whereas the aim of the OEEC was to build a strong European economy in order to maintain peace, OECD's objectives have a global nature. The OECD's mission, as defined by the Organisation, is setting global standards in economic policies, disseminating policies fostering growth, boosting employment, raising living standards, fostering world trade, research work, statistics and publications. The OECD has translated this mandate to 'better policies for better lives'<sup>29</sup>.

Article 1 of the OECD Convention describes the Organisation's aims as follows:

- to achieve the highest economic growth and employment and a rising standard of living in Member countries while, maintaining financial stability and, thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development and;
- to contribute to the expansion of world trade on multilateral, non-discriminatory basis in accordance with international obligations.

The means of achieving these aims are listed in Article 2 as being the efficient use of economic resources, pursuing policies to achieve growth and stability without engendering

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<sup>28</sup> ILA (2004), p. 4.

<sup>29</sup> OECD (2015).

other economies, minimising trade barriers and contributing to the economic development of other countries. Article 3 emphasizes the need of information sharing, consultation and coordinated actions.

The OECD's mission is one of the least well defined among international organisations and it is engaged in all policy areas except for culture, sports and defence<sup>30</sup>.

### **2.3. The Role of the OECD in Global Economic Governance Architecture**

The role that the OECD plays in the global governance architecture can be best identified by looking at its activities for other institutions such as G7 and G20, which don't have a Secretariat and lack the capacity to conduct research and analytical work. This allows the OECD to develop norms, which are diffused to a larger and more global audience<sup>31</sup>.

The OECD traditionally assisted G7 with Secretariat functions by preparing summits, conducting analyses, sustaining momentum and keeping stock of developments between G7 meetings'. This put the OECD in a peculiar situation where it had to endorse policies, which 'would not necessarily be accepted by all its members, whilst participating in work that only benefited some of them'<sup>32</sup>.

Its Heiligendamm L'Aquila Process, defined as the highest point of G7/G8 and the OECD relations by Wouters and Van Kerckhoven, aimed at institutionalising high-level dialogue between the G8 and the five most important emerging economies (China, Mexico, India, Brazil, South Africa) while establishing a common G8/G5 platform at the OECD premises under the supervision of the OECD Secretary-General between 2007 and 2009. In a sense, it facilitated the transition from G8 to G20.

G20 was revived with the global financial crisis as the premiere platform to decide on economic and financial issues, leading to its upgrade to a Leader's Summit at the 2009 Pittsburgh Forum. Since then, the OECD's 'entrepreneurial' Secretary-General is represented in the G20<sup>33</sup>.

The OECD participates in G20 meetings including Summits, Ministerials', Sherpas' meetings, Deputies' meetings, working groups and task forces together with the FSB, ILO, IMF, UN, World Bank and WTO. Furthermore, the Secretary-General attends annual meetings of the World Bank, the IMF, World Economic Forum, UN Summit on MDGs and Cop-16.

As the OECD has supported G7 for more than 30 years as a 'handmaiden'<sup>34</sup>, it was the natural choice for G20. At the same time, the fact that Russia was not an OECD member didn't contribute to its budget caused substantial problems regarding the OECD's involvement when Russia hosted the G8 summit in 2006. This is likely to be the case for some future G20 summits<sup>35</sup>.

Thanks to the OECD's subordination to G20, increased political clout is given to the OECD work making the latter an alternative platform for policymaking for its presumably technical nature<sup>36</sup>. At the same time, the OECD can exercise a reverse influence on the G20 as the

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<sup>30</sup> Wouters and Van Kerckhoven, 2011, p. 6-7.

<sup>31</sup> Carroll and Kellow, p. 7.

<sup>32</sup> Wouters and Van Kerckhoven, p. 12.

<sup>33</sup> Eccleston (2011), p. 252.

<sup>34</sup> Eccleston, Corroll and Kellow (2010), p.3.

<sup>35</sup> Eccleston (2011), p.252.

<sup>36</sup> Wouters and Ramopoulos (2012), pp.766-767.

G20 'is increasingly relying upon the OECD to assist its functioning' and increasingly endorses the OECD's work in the global agenda<sup>37</sup>.

The Secretary-General's Strategic Orientations for 2011 (as well as its 50<sup>th</sup> Anniversary Vision Statement) includes a commitment to support G20's priorities on growth, employment, trade liberalisation and investment, anti-corruption, elimination of fossil fuel subsidies, improvement of taxation systems, food security and Seoul Consensus for Development. The OECD Council of 2012 welcomes 'the OECD's active role in various fora including the G8 and G20 processes in those areas where it has comparative advantage.'

G20 interacts with key international institutions in the area of coordination of financial and macroeconomic surveillance led by the IMF, which receives inputs from the OECD, FSB and other international organisations<sup>38</sup>.

Interestingly, at the London summit held in April 2009, G20 endorsed the OECD work on tax havens and agreed to target noncompliant jurisdictions, by use of sanctions, if necessary, and declared the era of banking secrecy over<sup>39</sup>.

This triggered 'the largest coordinated action against tax evasion the world has ever seen'<sup>40</sup>. The 2013 OECD Ministerial Council adopted a Declaration on Base Erosion and Profit Shifting (BEPS) to ensure that loopholes in tax systems are eliminated and corporate profits are taxed in the place of economic activity and value creation, while encouraging all countries to join the Convention on Mutual Administrative Assistance in Tax Matters, and to provide for automatic exchange of information (AEOI).

In 2014 Brisbane Summit, G20 leaders committed to finalising BEPS by late 2015 and making AEOI operational by 2017 and 2018<sup>41</sup>. 193 jurisdictions already adhered to this timetable and compliance is being reviewed by the OECD's 121-nation Global Forum on Transparency and Exchange of Information for Tax Purposes. 62 countries representing 90 % of the world economy are involved in BEPS. The OECD is now asking for a mandate to develop a multilateral instrument on treaty-related BEPS measures in order to update more than 3000 tax treaties<sup>42</sup>.

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<sup>37</sup> Wouters and Van Kerkhoven, (2011), pp: 11-15.

<sup>38</sup> Giovannini et.al (2012), p.11.

<sup>39</sup> Jackson (2010), p.4.

<sup>40</sup> Johanesson and Zucman (2012), p.22.

<sup>41</sup> Bassot and Szczepański (2015), p. 6.

<sup>42</sup> OECD Secretary-General's Report to G20 Finance Ministers, Istanbul, February 2015, p. 3-6.

## 2.4. Governance Structure of the OECD

### 2.4.1. Who can participate/become a Member?

**Table 1: OECD Members, Accession Countries and Key Partners**

OECD Members	Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States
OECD Accession Countries	Latvia, Lithuania, Costa Rica, Colombia, Russia (postponed)
OECD Enhanced Engagement Partners (Key Partners)	Brazil, India, Indonesia, China, South Africa

**Source:** OECD, 2015.

Article 16 of the OECD Convention of 30 September 1961 stipulates that it is open to 'any government prepared to assume the obligations of membership to accede to this Convention' by unanimous invitation of the OECD Council. The EU enjoys a special status at the OECD, which will be discussed in detail later.

The accession policy of the OECD is rather restrictive with a consideration render the Organisation homogenous and effective. An open economy, a pluralist democracy and respect for human rights are key requirements for the OECD membership. According to the OECD Strategy for Enlargement and Outreach, 'a candidate country should be a like-minded and a significant player, provide mutual benefits and have global considerations'<sup>43</sup>. Having a 'GDP per capita (PPP) at least as high as the poorest OECD member.' is also cited as a criterion by some scholars.

The OECD expects that Member States' legislation satisfies the OECD norms. Their compliance with some 250 legal instruments, called the OECD acquis, aims at fostering a gradual convergence in economic structure and income.

Individual accession roadmaps provide a framework for candidate countries, ensuring that OECD standards and guidelines, generally related to economic development and trade, are adopted. The OECD Convention doesn't set democracy as a condition for accession but current members have a tendency to follow the steps of its founding members, which were advanced economies and democracies<sup>44</sup>.

The accessions after the end of the Cold war in the 1990s were handled according to a 'symmetrical' membership logic. Although many Eastern European countries wanted to join, non-European newcomers were pushed into the Organisation to 'dilute its Europeanness'. As a result, only three European candidates (Czechoslovakia, Poland and Hungary) were admitted in exchange of two non-European candidates (Mexico and South Korea) in 1990s<sup>45</sup>.

<sup>43</sup> OECD, 2015.

<sup>44</sup> Wouters and Van Kerckhoven, p. 25.

<sup>45</sup> Clifton and Diaz-Fuentes, p. 558.



Insiders acknowledge that the recent enlargement of the OECD (Israel, Chile, Estonia and Slovenia) is also marked by an 'implicit consensus' among Member States to integrate European and non-European countries at the same time, in order to keep the geographical balance intact and to avoid the overrepresentation of European countries<sup>46</sup>. In 2013, the OECD approved the opening of accession negotiations with Latvia as well as Colombia and agreed to consider opening negotiations with Lithuania and Costa Rica in 2015. Russia was given observer status in 1996 and signed a roadmap for accession in 2007 but was not granted membership. Its accession process was postponed following the Russia-Ukraine war in March 2014. In parallel, an agreement was reached to increase the OECD-Ukraine cooperation.

Although the OECD is open for the future membership of its key partners, little is known about these countries' eventual intentions regarding accession as they tend to enter into partnership agreements with the OECD on their own terms<sup>47</sup>.

#### 2.4.2. OECD's Internal Bodies

There are three institutions involved in the OECD's decision-making mechanism: The Council, the Secretariat and the Committees. Figure 1 illustrates their tasks.

**Figure 1: The OECD's Decision-making Mechanism**



**Source:** OECD, 2015.

According to Article 7 of the OECD Convention, the main decision making body from which 'all acts of the Organisation derive' is the Council. It is constituted by one representative per Member State and a representative of the EU.

The Council's role is oversight and strategic direction. The Council regularly meets at Ambassadors and at the level of Ministers once a year.

#### 2.4.3. The Council of Permanent Representatives (CPR)

The Council of Permanent Representatives (CPR) is the equivalent of the Board of Directors in the corporate world if we consider Member States as shareholders.

<sup>46</sup> Interview with a national delegate.

<sup>47</sup> Woodward (2009), p.105.

Article 10.2 of the OECD Convention states that the Secretary-General shall chair the Council at sessions of Permanent Representatives, assisting and submitting proposals to the Council.

The OECD Convention doesn't establish a set of rules regarding these meetings. Thus, unlike other international organisations, the CPR is not accountable to any separate assembly.

The Permanent Representatives are semi-senior Ambassadors exercising their public service for 3-4 years. The CPR is supported by four key standing Committees: Executive, Budget, External Relations and Evaluation Committees. The Executive Committee assists the Council to prepare its legal acts and Ministerial meetings, while advising on strategic and policy issues. The Budget Committee is in charge of advising on budget priorities and envelope as well as voluntary contributions, implementation of the budget and integrated management cycle. The External Relations develops strategies on external relations with non-Members and international organisations, monitors their implementation, and advises on the coordination of activities with non-Members<sup>48</sup>. Finally, the Evaluation Committee monitors the effectiveness of the OECD bodies. These Committees water down the Council's work by leaving the Council free to focus on major concerns. The standing Committees are chaired by annually elected Chairs. While Chairs are elected by the Council, Vice-Chairs are elected by the Committees.

The CPR has a political role of overseeing the proposals of the Secretary-General and assessing its political implications, where the Council is considering adopting one of the three formal acts (decisions, recommendations, resolutions) or an informal declaration.

The second role of the CPR is endorsing the recommendations of the Committees<sup>49</sup>. In practice, it is rare that the Council rejects any proposal for an act or declaration, as contentious issues are filtered in standing or substantial Committees, keeping in mind that consensus is needed to reach most decisions<sup>50</sup>.

The CPR also fulfils the function of resource allocation. As the OECD Committees refer their draft work programme for approval to the CPR, the latter has formal authority to make a decision. Nevertheless, Permanent Delegations (PD) forming the CPR, maintain a delicate relationship with the national delegates in the Committees, as they cannot easily contradict the government representatives they are serving. To avoid any potential conflict, the CPR asks the OECD governments the amount they are prepared to contribute to the total budget in the beginning of the budget cycle, which in turn has the downside of making the budgetary estimates mostly inaccurate. The budgetary process is further complicated by the Secretary-General's lobbying activities among the national delegates<sup>51</sup>.

Since 2005, the CPR develops Strategic Medium Term Objectives in order to be able to set up priorities for the OECD's future work.

#### 2.4.4. Ministerial Council Meetings (MCM)

The Ministerial Council Meetings (MCM), which last up to two days, are presided by a rotating Presidency elected for a year together with two Vice-Chairmen.

The participation in Ministerials is very complex and diverse (see Table 2). The Chairs and Vice-chairs are usually Heads of States accompanied by their Ministers of Economy, Finance, Trade and Foreign Affairs. The Ministers of Labour, Science, European Affairs,

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<sup>48</sup> Revised Resolution of the OECD Council on a New Governance Structure for the Organisation of 11 May 2006.

<sup>49</sup> Caroll and Kellow, p. 11.

<sup>50</sup> Caroll and Kellow, pp.12-13.

<sup>51</sup> Caroll and Kellow, p. 14.



Tourism, Education etc. may also represent Member States in the MCMs while representation varies from the level of Minister, Vice-Minister, State Secretary, to Undersecretary, Ambassador or senior official. The delegations may consist of one or a dozen representatives from Member States and the EU is represented by the various competent Commissioners. Outreach participants include accession countries, enhanced engagement countries, some observer countries, guests as well as international organisations<sup>52</sup>.

By endorsing a set of agreed priorities for the future activities of the Organisation, which are already agreed upon by the Secretariat and Committees, the Ministerial Council gives a mandate to the Secretariat. While expressing a certain legitimacy and authority, this represents a great opportunity for the rotating chair to emphasise a priority area for future work. Being of a rather symbolic nature, the utility of these MCMs has been debated but no major reform took place until now<sup>53</sup>.

Sometimes, Ministerial meetings may take place at sectorial level and for specific reasons. For instance, the Committee for Agriculture met four times at ministerial level 1962-68 when Common Agricultural Policy of the EU was discussed which shows that the OECD played a key standard setting role for the European and global food and agriculture industry. Since the 1970s, Sectorial Ministerials' agendas are also approved by the Council. Having no legal influence and legal status, these meetings give weight for substantive Committee recommendations regarding new programmes and new funding, sometimes supporting Directorates facing budgetary cuts and resolving conflicts through peer pressure<sup>54</sup>.

**Table 2: Overview of the OECD Ministerials**

Official Participants	Date	Major Priorities	Outreach Participants
Chair: French Minister for the Economy, Industry and Employment Christine Lagarde Vice-chairs: Mexico, Switzerland Participants: 30 Member States EU: Joaquín Almunia, Commissioner for Economic and Monetary Affairs	June 2008	Launch of Strategic Response to the Financial and Economic Crisis Sovereign Wealth Funds Investment PCD, MDGs, Aid Effectiveness	Candidate countries: Chile, Estonia, Israel, Russia, Slovenia Enhanced engagement countries: Brazil, India, Indonesia, China, South Africa
Chair: Korean Prime Minister Han Seung-soo Vice-chairs: Denmark, United Kingdom, Italy Participants: 30 Member States	May 2009	Recovery Green Growth Open Markets Propriety, Integrity	Non-Members: Brazil, Chile, Estonia, India, Indonesia, Israel, China, Russia, Slovenia, South Africa (Argentina and Hong Kong only for trade)

<sup>52</sup> OECD, 2015.

<sup>53</sup> Carroll and Kellow, p. 11.

<sup>54</sup> Carroll and Kellow, p.13.

States EU: Joaquin Almunia, Commissioner for Economic and Monetary Affairs		Transparency	session) IOs: Bank for International Settlements, IMF, World Bank, WTO
Chair: Italian Prime Minister Silvio Berlusconi Vice –chairs: Australia, Norway Participants: 30 MS EU: Karel De Gucht, Commissioner for Trade and Olli Rehn, Commissioner for Economic and Monetary Affairs	May 2010	Jobs rich recovery Innovation Green Growth Fiscal Consolidation Trade Structural Reforms Convention on Mutual Administrative Assistance in Tax Matters	Candidate countries: Estonia, Israel, Russia, Slovenia, Enhanced Engagement countries: Brazil, India, Indonesia, China, South Africa Observers to the Trade Committee: Argentina, Hong Kong, China (only trade session) IOs: BIS, Council of Europe, EFTA, International Fund for Agricultural Development, ILO, IMF, World Bank, WTO Experts: BIAC and TUAC
Chair: US Secretary of State Hillary Rodham Clinton Vice-chairs: Germany Participants: 30 MS EU: President of the European Commission, Jose Manuel Barroso, Commissioner for Trade, Karel de Gucht, Commissioner for Development Andris Piebalgs, Commissioner for Economic and Monetary Affairs Olli Rehn	May 2011	Economic Outlook Growth, Jobs, Innovation, Skills (Launch of the Green Growth Strategy) Women’s Employment Development (Tax and Development Program) Trade and Jobs	Non-Members: Latvia, Lithuania, Brazil, India, Indonesia, China, South Africa, Russia, Argentina, China, Hong Kong, Morocco, Egypt, Romania, Peru IOs: BIS, EFTA, ILO, IMF, the World Bank, UNDP, UNEP, WTO Experts: BIAC, TUAC
Chair: Turkish Deputy Prime Minister for Economic and Social Affairs Ali Babacan Vice-chairs: Chile, Poland Participants: 34 Member States EU: Karel De Gucht, Commissioner for Trade	May 2012	Inclusive Growth and Jobs (Launch of the Skills Strategy) Development Strategy Global Policy Network Efficiency, Effectiveness, Transparency	Non-Members: Russia, Brazil, China, India, Indonesia, South Africa, Argentina, China, Hong Kong IOs: BIS, EFTA, FSB, ILO, IMF, World Bank, UNDP, UN Women, UNEP, WTO

Chair: Norwegian Minister of Foreign Affairs Espen Barth Eide Vice-chair: Australia, Estonia Participants: 34 MS EU: Karel De Gucht, Commissioner for Trade Experts: BIAC, TUAC Guest: Mario Monti,	May 2013	Jobs, Equality, Trust (New Approaches to Economic Challenges, launch of PIACC on skills, Base Erosion and Profit Shifting, Doha Round, Global Value Chains)	Non-Members : Russia, Brazil, China, India, Indonesia, South Africa IOs: EFTA, the World Bank, IMF, BIS, ILO, WTO
Chair : Japanese Prime Minister Shinzo Abe Vice-chairs: Slovenia, United Kingdom Participants: 34 MS EU: Commissioner for Employment, Social Affairs and Inclusion Laszlo Andor, Director General from DG ECFIN, DG Trade, Deputy Director General for Trade, EU PD to OECD	May 2014	Resilient Economies, Inclusive Societies, Jobs and Growth (Update of Innovation Strategy, digital economy, Privacy Guidelines and Internet Policy Principles, BEPS, AEOI, NAEC- Green Growth, Trade, Business Climate)	Non-Members: Latvia, Lithuania, Colombia, Costa Rica, Brazil, China, India, Indonesia, South Africa, Argentina, China, Hong Kong IOs: African Development Bank (AfDB), BIS, EFTA, FSB, ILO, IMF, World Bank, UNDP, UN Women, UNEP, WTO Experts: BIAC, TUAC

**Source:** Author (Compilation of data from OECD 2008; OECD 2009; OECD 2010, OECD 2011, OECD 2012, OECD 2013, OECD 2014; OECD 2015.).

#### 2.4.5. Secretariat

The Secretariat's main task is research, compile and analyse information in the economic field, which is fed to the Committees and made available to the Member states. Headed by a Secretary-General with the important power of being able to submit his/her own proposals to the Council or any other body of the organisation. At the same time, the Secretary-General presents his Strategic Orientations to Member States in Ministerial Meetings<sup>55</sup>. The Council appoints the Secretary-General for a period of 5 years.

The Paris-based Secretariat has 2500 officials, predominantly economists and statisticians. It is comprised of the Secretary-General's Office (Secretary-General, Chief of Staff and 4 Deputy Secretaries Generals), the General Secretariat with its five divisions (International Futures Programmes, Council and Executive Committee Secretariat, Directorate for Legal Affairs, Global Relations Secretariat, Internal Audit and Evaluation), Public Affairs and Communications Directorate responsible for Media Relations, Public Affairs, Publishing and OECD Centres (Berlin, Mexico, Tokyo, Washington).

12 Policy Departments in the OECD Secretariat deal with a wide range of policy areas, including economics, development, education, employment, entrepreneurship, financial and enterprise affairs, public governance, science and technology, statistics, tax policy, trade and agriculture.

<sup>55</sup> OECD Secretary-General's Strategic Orientations (2011) (<http://www.oecd.org/about/secretary-general/MCM-2014-Strategic-Orientations-SG.pdf>).

The OECD also has autonomous agencies and special entities. These include Development Centre since 1962, the International Energy Agency (IEA) since 1974, the Nuclear Energy Agency (similar to Euratom) since 1957, the Sahel and West Africa Club since 1973. These semi-autonomous institutions own their own administrative bodies.

The vast variety of economic challenges addressed by the OECD makes it necessary to decentralise its activities, and create agencies. Agencies are distinct from the organisation's own organs but related to them in different degrees and varying membership. While the IEA has 26 members, the Nuclear Energy Agency has 28 members, including Russia.

#### 2.4.6. Committees

The OECD has a complex hierarchical Committee system as 40.000 senior officials from national administrations participate in the Committees as delegates. 250 Committees and subsidiary bodies (around 26 main Committees, 180 working parties, schemes, expert groups, programmes) supervise and monitor the activities of the Secretariat. The Committee meetings are an important channel of communication and negotiation between the Secretariat and the national delegates, serving as an 'early warning system'<sup>56</sup>.

Some argue that the Committee system makes the OECD 'a pre-eminently functional organisation' as it ensures economic and social cohesion among its Members<sup>57</sup>.

The experience sharing and cross-Committee interaction are key for carrying out the work of the OECD. The Secretariat supports the Committee's operations by providing analysis, comparative data and assessments. Representatives of Members and the EU, along with Partner countries as Invitees, Participants or Associates take part in the work of the Committees and scrutinise each other's policy implementation.

### 2.5. Stakeholder involvement in the Governance Structure

The Global Accountability Report categorises stakeholders as follows: internal and external stakeholders<sup>58</sup>. In this chapter, we will focus on external stakeholders such as Non-Members, international organisations and broader civil society, which influence and can be influenced by OECD's decisions.

#### 2.5.1. Involvement of Non-Members

The OECD ranked first among 10 International Organisations (IOs) in the 2006 Global Accountability Report regarding stakeholder participation but the document highlighted that 'OECD fails to change policy and practice as a result of engagement with its stakeholders'<sup>59</sup>. The situation seems unchanged except from the increasing involvement of Non-Members and IOs in the Organisation's work.

The OECD's Global Relations strategy aims at promoting policy coherence and contributing better living standards in the world by including Non-Members in OECD's work as Article 1 and Article 12 of the OECD Convention specifically mention the engagement with Non-Members.

Following a decision of the 2007 Ministerial, the OECD welcomed for the first time the participation of the candidate countries in all sessions of the MCM as well as a special session of the Executive Committee to prepare Ministerial meetings. For instance, 2013

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<sup>56</sup> Caroll and Kellow, p. 9-10.

<sup>57</sup> Sands Q.C. and Klein, p. 187.

<sup>58</sup> Kovach, Neligan and Burall (2003), p 3.

<sup>59</sup> Blagescu and Lloyd (2006).

OECD Ministerial Council Declaration on BEPS was signed by OECD Member States plus Argentina, Brazil, Indonesia, Russia and South Africa.

In 2010, the Council adopted guidelines to include key Partners of the OECD's Committee work as Invitees gradually evolving to the status of Participants and Associates. The participation of Non-Members is subject to the selection of the Committees and the approval of the Council. Over 100 Non-Members participate in around 250 OECD Committees, working and expert groups and forums.

Upon the OECD's invitation and under a Participation Plan, Associates participate 'in the full range of the body's work including its bureau', making an integral part of the OECD's decision-making mechanism, albeit without voting rights. They are required to pay a fee of either EUR 20,400 or EUR 51,100 for Committees under Part I of the OECD budget<sup>60</sup>. While attending most of the meetings, they are excluded from enlargement discussions. They may be included in databases, standards and instruments to enhance engagement and are expected to show commitment. For bodies, funded by Part II of the OECD budget, where Members' participation is optional, they may pay the same fee as Members.

While Invitees don't pay fees, Participants pay a fee of EUR 10,800 per year to attend a Committee or EUR 3,600 to participate in a Working Party. These two categories don't take part in the body's decision-making process<sup>61</sup>.

The participation of the OECD in the G20 has encouraged more region's governments to request observership in OECD Committees, adhering to instruments, taking part in peer reviews, hosting OECD regional meetings and making voluntary contributions. For instance, Brazil, Argentina, Egypt, Latvia, Lithuania, Morocco, Peru and Romania participated in the Declaration on International Investment and Multinational Enterprises and in the updated Multinational Enterprises (MNE) Guidelines. Russia and Bulgaria adopted the OECD Anti-Bribery Convention and participate as full Members to the OECD Working Group on Bribery. Russia is also a regular observer of the Economic and Development Review Committee (EDRC) for country reviews only.

### 2.5.2. Involvement of International Organisations

The OECD also cooperates with other international organisations Its official partners with which it signed partnership agreements include: Asian Development Bank, European Investment Bank, ILO, Inter American Development Bank, WTO, UNCTAD, the World Bank and WHO.

Other IOs with which the OECD maintains a level of cooperation are African Development Bank, Asia Pacific Cooperation Forum, FAO, IMF, and UNDP, UN Economic Commission for Africa, UNESCO and WTO.

International organisations may have specific arrangements with various OECD Committees. For instance, observers of the Economic Policy Committee (EPC) are BIS, IMF, EFTA, and the World Bank. The IO observers of EDRC, on the other hand, include BIS, EFTA, IMF, the World Bank and WTO. The regular observers in the Committee on Fiscal Affairs are IMF and the World Bank in addition to Non-Members Russia, India, China, South Africa and Argentina,

Furthermore, the OECD proposed the creation of a network among international organisations involved in the G20 (IMF, World Bank, FSB, ILO, WTO and OECD) to increase

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<sup>60</sup> OECD, 2015.

<sup>61</sup> OECD (2012) Resolution of the Council on Partnership in OECD Bodies, pp.48-52.

coordination and exchange of information<sup>62</sup>. The OECD is also a member of the international standard setting body FSB, together with the ECB, IMF and the World Bank.

### 2.5.3. Involvement of Civil Society Representatives

Despite efforts to involve civil society representatives since 1962, their representation is weak and it is hard to judge whether and to what extent their input is reflected in actual decisions<sup>63</sup>. In practice, external stakeholders do not participate in the agenda setting activities or negotiations of decisions incorporated in communiqués or declarations, although there is an institutional obligation to involve them and to ask their opinion.

The OECD officially recognises the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC). The two independent consultative bodies attend high-level OECD meetings, forums, and discussions, advising on policy decisions, peer reviews and instruments while producing position papers on certain policies. They also attend annual Liaison Committee meetings at the Ambassador's level and have consultations with the Chair and Vice-Chairs of the Ministerials. Apart from these official meetings, the BIAC and TUAC can attend 'few meetings of subsidiary' bodies and their participation is limited to selected agenda items under Article 10 of the Rules of Procedure<sup>64</sup>. In general, they use 'informal' channels to meet with Member States' Embassies and national delegates<sup>65</sup>.

Established in 1962, the BIAC has 41 Member Organizations from OECD member countries, 11 observer organisations from non-OECD member countries and 38 associate expert groups from supra-national business organisations, which amounts to an international network of around 2800 business experts<sup>66</sup>.

The TUAC's origins are as old as the OEEC as it was established in 1948 to account for worker's opinions while implementing the Marshall Plan. Today, the TUAC reflects the position of 66 million workers from 58 trade unions in OECD Member States.

Both the TUAC and BIAC have a tiny Secretariat in Paris and their interaction with the OECD is 'of mundane and technical nature', their Members having a shadow role in the OECD Committees. The OECD is also conducting online public consultations the terms of which are defined in specific guidelines. A recent example is its BEPS initiative as it allows for public comments and organise public consultation meetings with external stakeholders. Yet, the OECD doesn't commit itself to actually integrate these comments in its final product.

In 2003, the OECD Watch was created as a global network consisting of 80 civil society organisations in 45 countries. Its aim is to hold business corporations accountable while promoting sustainable development and poverty alleviation. Its Coordination Committee includes SOMO (Netherlands - secretariat), Accountability Counsel (US), Association Sherpa (France), CIVIDEP (India), Green Advocates (Liberia), Jamaa Resources (Kenya), MiningWatch Canada (Canada), Plades (Peru), and Oxfam Australia (Australia)<sup>67</sup>.

This umbrella organisation doesn't enjoy the privileged, formalised and permanent status of the BIAC and TUAC and its role in the decision mechanism system is vague although it

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<sup>62</sup> OECD (2011) Secretary-General's Strategic Orientations for 2011 and beyond.

<sup>63</sup> Burall and Neligan (2005), p. 12.

<sup>64</sup> Carroll and Kellow, pp. 177-182

<sup>65</sup> Woodward (2008), p. 81

<sup>66</sup> BIAC, 2015 (biac.org)

<sup>67</sup> OECD Watch, 2015 (oecdwatch.org)



contributes to the implementation of some OECD guidelines<sup>68</sup>. The OECD Watch is marked by overrepresentation of Northern European countries and it receives grants from the European Commission and Dutch Ministry of Foreign Affairs<sup>69</sup>.

Since 2001, Global Forums provide an opportunity for the civil society to meet in workshops and annual plenary sessions in order to discuss multidisciplinary solutions to specific problems. More importantly, the OECD adopted a 'multi-stakeholder summitry' approach adopted in 2000 by organising an Annual Forum before the Ministerial in view of providing public access to deliberations<sup>70</sup>. It is doubtful whether this 'symbolic and ritualistic' Forum affects the results of the MCM as the agenda of the MCM is determined well ahead of the conference and the communiqué is drafted in advance with respective positions of Member States<sup>71</sup>. The speakers in this forum don't represent all the continents and have a strong bias towards corporate interests and neoliberal media, and the organisers seem to be 'picky' with the selection of the civil society groups<sup>72</sup>.

From 2000 onwards, the OECD put more focus on private sector's involvement as its participation can facilitate 'management of thorny social issues'<sup>73</sup>. Table 3 shows the number of corporate sponsors of the OECD Annual Forums as well as its media and knowledge partners. It is interesting to note that some of the sponsors are recurrent, as is the case of the platinum and gold sponsor Long-term Investor's Club. Whereas it is evident that American businesses and media are well represented, it is striking that Non-Members such as China and Russia are quite visible among the sponsors. Few European Think Tanks, schools and media also participate in the Forum but one would expect the European interests to be more present given that most of the EU Member States are part of the OECD.

**Table 3: Annual Forum of the OECD**

OECD Forum	Date	Sponsors and Partners
'Resilient Economies for Inclusive Societies'	2014	<p><b>Gold sponsors:</b> ANA, Canon, Google, The Lego Foundation, Lukoil, Microsoft, MSD, Nestle, Only Glass, Sodexo, Toyota</p> <p><b>Silver Sponsors:</b> İşbank, Randstad</p> <p><b>Bronze Sponsor:</b> Samsung</p> <p><b>Knowledge Partners:</b> AARP, FGV Projetos, Université de Genève, The University of Sydney, HEC Paris, KEIO Business School, SMERU, TUAC, AmCham, AmCham EU, CEPS, ESSEC, Gandar Institute for Economic Policy, Institute for Economic Thinking, European Policy Centre, Global Economic Symposium, HEC Paris, Ranepa, CDRF, French American Foundation France, International Chamber of Commerce, Observer Research Foundation, Council on Business and Society, IE, South African Institute of</p>

<sup>68</sup> Ougaard (2007), p. 9

<sup>69</sup> Caroll and Kellow, p. 189.

<sup>70</sup> Woodward (2008), p.90.

<sup>71</sup> Caroll and Kellow. p.190.

<sup>72</sup> Woodward, pp.78-91.

<sup>73</sup> Reinalda (2009), p.694.

		<p>International Affairs</p> <p><b>Media Partners:</b> CNBC-e, Reuters, Euronews, Nikkei Asian Review, NHK, NHK World, Caixin, Boao Review, Media India, Sina, Il Sole 24 Ore</p>
"Jobs, Equality, Trust"	2013	<p><b>Platinum Sponsors:</b> The Long-Term Investors Club, SAP AG</p> <p><b>Gold Sponsors:</b> İşbank, Kia, Lukoil, Nestle, Randstad, Sodexo,</p> <p><b>Silver Sponsors:</b> AARP, Novozymes, UniCredit</p> <p><b>Knowledge Partners:</b> AmCham EU, AmCham, BIAC, China Development Research Foundation, Cherie Blair Foundation for Women, European Policy Centre, FGV Projetos, Forum For the Future, French-American Foundation France, Global Economic Symposium, HEC Paris, Institute for New Economic Thinking, INSEAD, Novethic, Observer Research Foundation, OECD Observer Magazine, Russian Presidential Academy of National Economy and Public Administration, South African Institute of International Affairs, TUAC, University of Sydney,</p> <p><b>Partners:</b> Galerie Paris Haussmann</p> <p><b>Media Partners:</b> Reuters, Nikkei, Aftenposten, NRK, Les Echos, Il Sole 24 Ore, Media India, MK Business News, Boao Review, Caixin</p>
"From indignation and inequality to inclusion and integrity"	2012	<p><b>Platinum Sponsor:</b> Long-Term Investors Club</p> <p><b>Gold Sponsors:</b> İşbank, Lukoil, Microsoft, MSD, Nestle, UniCredit</p> <p><b>Other Partners:</b> Galerie Lafayette, Panasonic, Pearson Foundation, Turkish Confederation of Employer Associations</p> <p><b>Knowledge Partners:</b> AmCham EU, AmCham, BIAC, BioVision, China Development Research Foundation, European Forum for New Ideas (EFNI), European Policy Centre, FGV Projetos, Global Economic Symposium, HEC Paris, Institute for New Economic Thinking, INSEAD, Novethic, Observer Research Foundation, OECD Observer Magazine, Polish Confederation of Private Employers, TUAC, UNETE, University of Sydney</p>
"Better Policies for Better Lives"	2011	<p><b>Platinum Sponsor:</b> The Long-Term Investors Club</p> <p><b>Gold Sponsor:</b> Blackberry, China International Capital Corporation Limited, The Global Green Growth Institute, Lukoil, MSD, Nestle, UniCredit, Veolia</p>



		<p><b>Silver Sponsor:</b> AARP</p> <p><b>Partners:</b> Galerie Lafayette, Floriade, FGV, University of Sydney, BIAC, TUAC</p> <p><b>Knowledge Partners:</b> AmCham EU, AmCham, China Development Research Foundation, European Policy Centre, Global Economic Symposium, HEC Paris, INSEAD, Media Tenor, Novethic, 100 UNAM, UNETE</p> <p><b>Media Partners:</b> Bloomberg, Europe's World, Financial Times, France 24, Il Sole 24 Ore, International Herald Tribune, Les Echos, Maeil Business Newspaper, Media India, Nikkei, Reuters, Televisa, Vedomosti</p>
<p>"Road to Recovery: Innovation, Jobs &amp; Clean Growth"</p>		<p><b>Privileged Sponsor:</b> The Long-Term Investors Club</p> <p><b>Sponsors:</b> Lukoil, MSD</p> <p><b>Supporters:</b> The Italian Institute for Foreign Trade, Nestle</p> <p><b>Contributors:</b> Abengoa, Accenture, Areva, Conacyt, Galerie Lafayette, GSM Association, Intesa Sanpaolo, Mota-Engil, Technogym, UniCredit, Vattenfall</p> <p><b>Partners:</b> FGV, University of Sydney, BIAC, TUAC</p> <p><b>Media Partners:</b> E15, Les Echos, Europe's World, Financial Times, France 24, India Strategy Group, Informaçao, International Herald Tribune, Media India Group, El Mercurio, New Europe, Nikkei, The Parliament Magazine, PAP, Reuters, Il Sole 24 Ore, Televisa</p> <p><b>Knowledge Partners:</b> AmCham, be-linked, CEPII, CEPS, China Development Research Foundation, Global Economic Symposium, HEC Paris, INSEAD, Media Tenor, Novethic</p>
<p>"Road to Recovery: Innovation, Jobs &amp; Clean Growth"</p>	<p>2009</p>	<p><b>Sponsors:</b> The Long-Term Investors Club, The Federation of Korean Industries, Invest Slovenia, Spirit Slovenia, MSD</p> <p><b>Supporters:</b> Hyundai, LG, Nestle, Poongsan, Samsung, SK</p> <p><b>Contributors:</b> AARP, Abengoa, Areva, BCG, FCC, Galerie Lafayette, Oracle</p> <p><b>Media Partners:</b> BBC, E15, Les Echos, Espacio, Europe's World, Financial Times, Joong Ang Daily, Maeil Business Newspaper, Media India, New Europe, Nikkei, El Pais, Il Sole 24 Ore, Swissinfo, Televisa</p> <p><b>Knowledge Partners:</b> AmCham, BIAC, China</p>

		Development Research Foundation, CEPII, CEPS, Global Economic Symposium, HEC, INSEAD, Novethic, TUAC, the University of Sydney, World Knowledge Forum
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**Source:** Author (Data compiled from OECD website).

#### 2.5.4. Involvement of Parliamentarians

Last but not least, we shall mention the involvement of parliamentarians in OECD's activities. The OECD has close relations with the NATO Parliamentary Assembly since 1976 and with the Parliamentary Assembly of the Council of Europe since 1962. The Council of Europe holds an annual report followed by a debate on the activities of the OECD involving non-OECD national parliaments and the European Parliament. This relationship seems to be institutionalised as the Secretary-General addresses the Parliamentary Assembly responding to Member's questions. The debate is concluded by a resolution on the activities of the OECD and the OECD prepares an official response the following year<sup>74</sup>.

The Parliamentary cooperation seems to have increased in recent years and the European Parliament also attends the parliamentary days of the OECD. In 2011, the Secretary-General of the OECD launched a Global Parliamentary Network where OECD Member State Parliaments participate and non-OECD countries can become associate members.

As for the effectiveness of this Network in the governance structure, we would like to highlight two points. First of all, this Global Parliamentary Network is distinct from a Parliamentary assembly, which can be found in regional organisations such as the Council of Europe. Being a formal organ of an international organisation, an Assembly doesn't have a decision making power but it enjoys a formal consultative status and can evolve into a real Parliament, a prominent example being the EU<sup>75</sup>.

Secondly, the OECD Global Parliamentary Network is not a result of the efforts of the parliamentarians themselves as was the case in the WTO, the World Bank and IMF. The Parliamentary Conference on the WTO was jointly organised by Inter Parliamentary Union and the European Parliament wanting to exercise effective control over WTO by scrutinising participating governments' activities. Similarly, the Parliamentary Network on the World Bank and IMF was established by parliamentarians as a non-governmental association of private nature to ensure democratic oversight in these two organisations<sup>76</sup>.

## 2.6. Voting Modalities

The voting procedure is specified in Article 6 of the OECD Convention which stipulates 'Unless the Organisation otherwise agrees unanimously for special cases, decisions shall be taken and recommendations shall be made by mutual agreement by all the Members'. The Article explicitly clarifies that a Member State's abstention doesn't invalidate a decision or recommendation. In theory, decisions are binding only upon the Members, which have voted for them, once they have complied with national constitutional requirements<sup>77</sup>. Yet, in practice, adopted standards are applicable even in Member States that abstained<sup>78</sup>.

<sup>74</sup> Blagescu and Lloyd (2006), p.2 (<http://www.oneworldtrust.org/globalaccountability/gar>).

<sup>75</sup> Krajewski (2010), p.16.

<sup>76</sup> Krajewski, pp. 18-32.

<sup>77</sup> Sands Q.C and Klein, p. 187.

<sup>78</sup> Reinalda, p. 424.

For this reason, unanimity rule has never developed into a veto as states in opposition simply abstained. But, in rare occasions, e.g. regarding the accession of new Member States and budgetary matters, the OECD has recourse to unanimity vote.

The consensus vote poses some challenges for swift decision-making as it means that discussions cannot be concluded until everybody agrees. Past attempts to change the voting modalities by introducing Qualified Majority Voting (QMV) met some opposition by Member States, especially by Turkey and Israel, as they feared the entry of Cyprus and of the Arab countries, respectively<sup>79</sup>.

At present, QMV is only used for some administrative issues, which are vaguely listed in the Rules of Procedures. In principle, it is agreed that a blocking minority requires 25 % of the votes by minimum 3 Member States but it has never been used until now<sup>80</sup>. In any event, a blocking minority cannot avoid eventual modifications to the OECD Convention<sup>81</sup>.

The OECD's one country-one vote principle deprives the EU of voting rights, but the Union can influence the final decision through its 21 Member States in the Council, which constitute nearly 62 % of the votes.

## 2.7. Financing of activities of the OECD

The Organisation's member countries fund the budget for Part I programmes, accounting for about 53 % of the consolidated budget. Their contributions are based on both a proportion that is shared equally and a scale proportional to the relative size of their economies.

Part II budgets include programmes of interest to a limited number of members or relating to special sectors of activity not covered by Part I. Part II programmes are funded according to a scale of contributions or other agreements among the participating countries. The International Energy Agency and the European Nuclear Agency, for instance, are financed by Part II budget, which is on a voluntary basis. The total budget envelope for 2014 accounts for EUR 357 million<sup>82</sup>. The OECD has also its own resources including its 250 annual publications, participation fees, sponsorships, voluntary contributions etc. The Secretary-General presents the budget for the Council's approval according to financial regulations. The budget is approved on a biannual basis since 2007.

The OECD makes its financial statements public, which also include the opinion of an external auditor. The bulk of the budget is spent on payables and employee benefits<sup>83</sup>. Critics say that the budget is sometimes used to keep unnecessary and underperforming units open and to guarantee that certain bureaucrats maintain their position<sup>84</sup>.

<sup>79</sup> Interview with a national delegate.

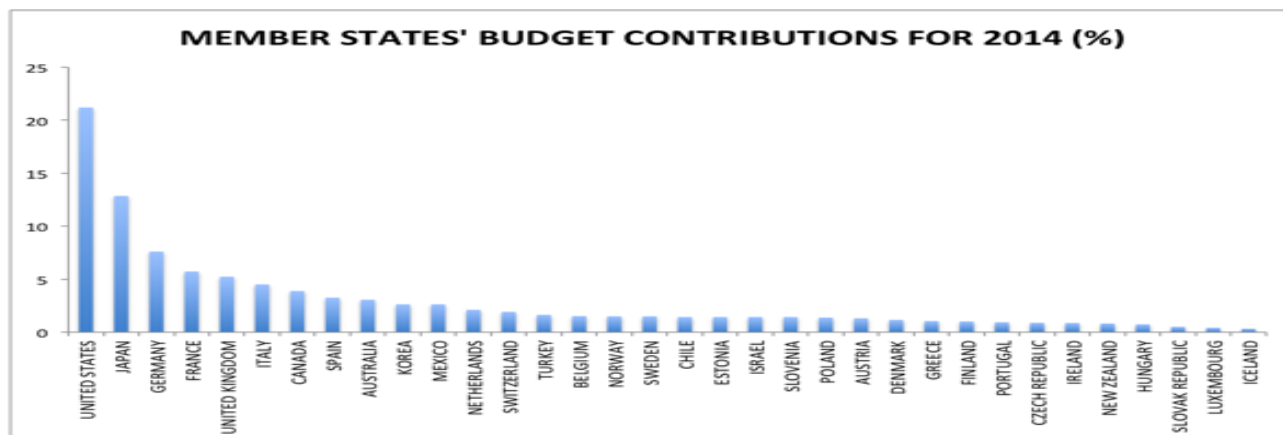
<sup>80</sup> Interview with national delegate.

<sup>81</sup> Blagescu and Lloyd (2006) , p.3.

<sup>82</sup> [www.oecd.org](http://www.oecd.org).

<sup>83</sup> OECD, 2015 ([http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=BC\(2014\)14&docLanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=BC(2014)14&docLanguage=en)).

<sup>84</sup> Interview with former OECD employee.

**Figure 2: Member States' Budget Contributions for 2014 (Part I)**

**Source:** Author (data compiled from the OECD website in 2015).

Budget calculations are subject to a few constraints: No Member States' contribution should exceed 25 %, and no Member State should contribute less than 0.1 %. No Member State contribution can be raised by more than 10 % annually. Due to strong pressures of the US wanting to redistribute the budgetary burden among wealthier Member States, an upper limit of 25 % was established. The contribution of the countries depends on their level of GNP<sup>85</sup>.

As it can be seen in Figure 2, the US funds more than 20 % of the Part I budget whereas Japan comes second with 12 %. Iceland and Luxembourg, on the other hand, only contribute 0,1 %.

There are four trends observed in recent budgetary processes:

1. Larger Member States want to reduce their contribution.
2. Larger Member States want to move new programmes to Part II budget.
3. Larger Member States such as Japan and Germany try to find ways of reduce the extra amounts they have to pay due to the cap of 25 %, which they believe is only favourable for the US.
4. Committees try to obtain funding for new programmes<sup>86</sup>.

Unlike other Members, the EU doesn't contribute to the OECD budget directly but it makes substantial voluntary contributions, which amounted to EUR 39,8 million, EUR 29,9 million and EUR 40,4 million in 2013, 2012, 2011, respectively<sup>87</sup>. Reportedly, the EU paid for joint conferences when the OECD was in financial distress<sup>88</sup>. Besides the EU's being the biggest contributor to the voluntary budget of the OECD, EU Member States contributed to EUR 44,5 million out of EUR 193 million of the Part I budget in 2014. This is more than double what the first contributor (US) paid and almost the quadruple of what the second contributor (Japan) allocated. Germany, France, United Kingdom and Italy alone contributed a bigger amount to the Part I budget than the US<sup>89</sup>.

<sup>85</sup> Caroll and Kellow, p.15.

<sup>86</sup> Caroll and Kellow, p. 16.

<sup>87</sup> Davies (2014).

<sup>88</sup> Noaksson and Jacobsson (2003), p. 56.

<sup>89</sup> OECD, 2015.

## 2.8. Current Membership of the OECD at EU Level

### 2.8.1. Participating entities

EU Member States who are part of the OECD are Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, The Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom. Out of 34 OECD Member States, 21 are EU Member States, which represents a majority in the OECD. Only 7 EU Member States are not represented in the Organisation while two EU Member States, Latvia and Lithuania, are currently negotiating for OECD accession. Moreover, Turkey, a EU candidate having a Customs Union with the Union, is an OECD Member. Last but not least, Iceland and Norway, which are part of the European Economic Area, are also represented in the OECD.

Since 1961, the European Commission also participates in the work of the OECD. Its delegation in Paris, which was created in 1964, was replaced by the EU Permanent Delegation to the OECD (PD) with the entry of the Lisbon Treaty. The PD consists of European Commission and EEAS representatives as well as national delegates. Separately, the European Commission and the ECB participate in OECD Committees, which are relevant to their competence areas.

The European Supervisory Authorities (ESAs) are not officially represented in the OECD gatherings. Given the OECD's increasing role in European economic governance, it would be desirable to include the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority in OECD's activities.

### 2.8.2. Status of membership of the European Commission, ECB and ESAs

Although the OECD rejected the European Commission's application for full membership in 1961 to protect large Member States' interest and to avoid a precedent for other international organisations, the EU has a quasi-member status or privileged observer status at the OECD, albeit without voting rights<sup>90</sup>. Yet, it enjoys more rights with regards to observers such as Tunisia, Morocco and Azerbaijan and can attend meetings without an invitation<sup>91</sup>.

The legal basis for the EU's participation in the OECD is Article 13 of the OECD Convention, which states that 'representation in the Organisation of the European Communities established by the Treaties of Paris and Rome of 18<sup>th</sup> April, 1951, and 25<sup>th</sup> March, 1957, shall be as defined in Supplementary Protocol No. 1 to this Convention.'

By signing an Additional Protocol to the OECD Convention, OECD Member States agreed that the European Commission should take part in the work of the OECD. According to the OECD website, 'The European Commission representatives work alongside Members in the preparation of texts and participate in discussions on the OECD's work programme and strategies, and are involved in the work of the entire Organisation and its different bodies.'

Rule 7 of the OECD's Rules of Procedure also states that 'Representatives of the European Commission, which takes part in the work of the Organisation [...] may attend meetings of bodies of the Organisation.' According to Rule 11, the names of the representatives including from the European Commission shall be communicated to the Secretary-General.

It is surprising to see that other EU actors such as the EEAS and the ECB, which are de facto involved in OECD's work are completely ignored in these formal arrangements. Even

<sup>90</sup> Davies (2014).

<sup>91</sup> Nawparwar (2009), p.40.

more so, when considering that the OECD's Rules of Procedures were updated in 2013, four years after the adoption of the Lisbon Treaty.

### 2.8.3. Membership in internal bodies

- The EU's Participation in the MCM

Traditionally, the OECD Ministerials were held at the level of Finance Ministers, which would correspond to the Commissioner for Economic and Monetary Affairs at the EU level but the picture is rather blurred at present. Recent Ministerials demonstrate a lack of clarity, unpredictability and inconsistency with regards to who will be attending (see in 2.4.4.). Since 2008, either the Trade Commissioner or the Commissioner for Economic or Monetary Affairs or both attended the Ministerial. Exceptionally, for the 50<sup>th</sup> year celebrations of the Organisation, the President of the Commission participated in the company of 3 different Commissioners.

The EU Delegation for the 2014 Ministerial included 5 representatives: Commissioner from DG EMPL, 3 European Commission senior officials from both DG ECFIN and DG Trade and Permanent Representative of the European Union to the OECD and UNESCO<sup>92</sup>. To add to the confusion, the President of the ECB and the Eurogroup President are excluded from the OECD high-level meetings although they attend G7 meetings<sup>93</sup>.

Moreover, we couldn't identify any OECD Ministerial chaired by the EU, although the advantages of the chairmanship were discussed earlier. We only detected one OECD Eurasia sectorial Ministerial, which was co-chaired by the EU and Kazakhstan in 2013<sup>94</sup>.

The coordination of the EU participants' positions is handled in the preparatory meetings in the CPR and OECD Committees as the communiqué is negotiated ahead of the MCM.

- The EU's Participation in the CPR

Article 22.1 of TFEU states that 'Union delegation in third countries shall represent the Union.' Hence, the Delegation of the European Commission was replaced by the European Union Delegation to the OECD.

The EU Permanent Delegation to the OECD has de facto the same role and the same weight as permanent representatives of Member States<sup>95</sup>. The EU delegation is comprised of European Commission representatives, EEAS representatives and seconded national officials. There is a certain division of labour among these participants as the Commission is responsible for Community areas, and the EEAS for the Foreign Policy and Security issues. They speak in meetings in accordance with their competences.

With the entry of Lisbon Treaty, which granted the EU an explicit and equivocal legal personality, its presence became more straightforward and visible in the OECD. For instance, the nameplate of the European Commission was replaced by the European Union while the Commission stays associated with the EU Delegation.

For the Lisbon Treaty confirms the European Commission's primacy in terms of international fora and the Commission has a long history at the OECD, the Commission keeps its dominant position as 3 out of 4 counsellors in the Permanent Delegation, who

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<sup>92</sup> (OECD, 2014).

<sup>93</sup> (Hodson, 2011, p.7-8).

<sup>94</sup> (<http://www.oecd.org/investment/psd/EN2406.pdf>).

<sup>95</sup> Marland, p.174.

deal with the preparations of the Ministerials the same way COREPER does<sup>96</sup>, are Commission representatives<sup>97</sup>.

The EU delegation can attend and chair meetings, suggest agenda items, table amendments and become a rapporteur without a special permission. The EU representatives can be elected to the Bureau and Standing Committees and are entitled to preside them.

According to the EU Permanent Delegation, the EU representatives don't have to wait for Member States to speak first in order to take the floor. One peculiarity regarding the EU's special status in the OECD seems to be 'the EU seat which is not placed according to the alphabetical order as it is the case for Member States'<sup>98</sup>. As a result, the EU appears at the end of the list and sits next to Turkey in OECD Council meetings.

Regular EU coordination meetings are held in Paris. Besides coordination meetings, there are monthly lunch meetings at Ambassadors and deputy level with information exchange and common positions' discussions.

- **EU's Participation in the Committees and Agencies**

The EU participated in 204 Committees and subsidiary organs, chaired four and vice-chaired 12 in 2012<sup>99</sup>. In comparison, the US chaired 29 OECD Committees in 2010<sup>100</sup>. Although its quasi-member status permits the EU to attend most of the OECD Committees and subbodies, its name is almost invisible in the Directory of Bodies of the OECD as it doesn't qualify as a Member, a Non-Member, a key Partner or International Organisation in OECD vocabulary. This is even more alarming given that key Partners, being newcomers and non-OECD members, are being massively included as members, full participants or regular observers in the OECD Committees.

Representatives from the European Commission can attend one or several Committee meetings depending on their policy areas. For instance, DG ECFIN participates actively in certain OECD high-level meetings, in particular Policies for the Promotion of Better International Payments Equilibrium, Macro-economic and Structural Policy and the Economic Policy Committee. In addition, DG ECFIN country desks participate in Economic and Development Review meetings on individual countries. On the other hand, DG TAXUD, DG TRADE and DG GROW are attached to the Committee on Fiscal Affairs, Trade Committee and Corporate Governance Committee, respectively.

There is no publicly available document clearly defining how the European Commission representatives in the OECD Committees are selected. Thanks to our email correspondence with DG FISMA we found out that the Representative responsible for OECD relations was the Head of Unit and Acting Deputy of Financial Services Policy, Relations with the Council. We were also informed that DG FISMA was represented in the OECD's Financial Markets Committee, Investment Committee as well as Task Force on Long Term Investors. Our source noted that 'although the EC is not directly involved in OECD's G20 related work, there is a parallel G20 Working Group on Long Term Investors'<sup>101</sup>.

The inter-service coordination of OECD matters and preparation of OECD meetings are carried out by a Head of Unit at DG Trade who is responsible for WTO coordination and

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<sup>96</sup> Noaksson and Jacobsson (2003), p. 14.

<sup>97</sup> Interview with the Deputy Permanent Representative of the European Union to the OECD.

<sup>98</sup> *ibid.*

<sup>99</sup> Verschaeve and Takacs p. 195.

<sup>100</sup> Jackson (2010), p. 1.

<sup>101</sup> Correspondance with DG FISMA.



export credits at the same time<sup>102</sup>. Meetings at technical expert level are held ahead of or the same day of the Committee meetings and delegates from the European Commission meet with the Councillors of the Permanent Delegation<sup>103</sup>.

Although the status of the ECB in the OECD is not clear to us<sup>104</sup>, we know that the ECB takes part of the EU delegation to the OECD and participates in the work of relevant Committees and Working Groups together with the Commission. The Permanent Delegation informed us that two nameplates are put on the table when the two institutions (European Commission and ECB) are present. The ECB participates in the Economic Policy Committee and its subsidiary body Working Party No.3 on Policies for the Promotion of Better International Payments and it has an active role to play in questions related to economic policy. The EU is a full member of the Working Party No.3 and can exceptionally exercise voting rights. Other Committees, which granted the EU full membership, are Development Assistance Committee (DAC) and its Subcommittees, Chemicals Committee, Steel Committee and LEED Programme. This was partly made possible due to the large autonomy in OECD Committees, which are free to determine their composition and partly due to the existing arrangements in the OEEC, where the Commission was one of the original members of the predecessor of DAC<sup>105</sup>.

As the agencies have an autonomous status, the European Commission appears as a regular observer and is cited as non-Member in the IEA<sup>106</sup>. In addition, only 17 EU Member States are part of the IEA. Similarly, the European Commission participates in the Steering Committee of the NEA as a regular observer under the NEA Statute.

- **EU's Participation in Peer Reviews**

Every two years, the EDRC examines economic trends for Member States and the EU per se, and country reports are prepared by OECD Secretariat in close consultation with the countries under review and adopted by thirty-four members and the European Commission.

Reviews of the euro area are conducted since 2001 and reviews of the EU economy were introduced in 2007 on demand of the APEC countries wishing to merge the EU wide policies into one review instead of dealing with individual reviews in a repetitive and fragmented manner<sup>107</sup>.

These surveys constitute a legally non-binding policy coordination sustained by the OECD's soft regulatory approach through recommendations, best practices, surveys, confrontation techniques and cross-examinations.

The surveys have an ideational authority, as well as a directing and controlling effect. Apprehension of critical OECD Economic Survey, a public document with high media exposure, which also attracts opposition parties' attention, is a driver for adoption of OECD standards by Member States.

Peer reviews can be divided into 6 phases: Planning phase, Consultation phase, Secretariat's draft phase, peer-review phase in EDRC, draft amending period, publication of

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<sup>102</sup> European Commission DG Trade (2015).

<sup>103</sup> Interview with the European Union Permanent Delegation to the OECD.

<sup>104</sup> Our email correspondence with the ECB regarding the mandate and choice of their representatives revealed that the Head of International Relations and Cooperation Division was in charge of OECD coordination but we were informed that ECB officials are not allowed to give interviews to external parties by phone without prior authorization. Although we tried to obtain clearance from "General public enquiries" of the ECB by contacting [info@ecb.europa.eu](mailto:info@ecb.europa.eu), we didn't receive any answer regarding our interview request.

<sup>105</sup> Verschaeve Takacs, pp. 195-205.

<sup>106</sup> OECD (2012) Directory of Bodies of the OECD. Protocol 1.

<sup>107</sup> Verschaeve and Takacs, p.202.



economic survey<sup>108</sup>. The most important one is the peer review phase, where high-level EU civil servants have to come to the EDRC in Paris to explain economic policy in a subject based, sincere and confidential manner<sup>109</sup>. Peer pressure has a coercive effect on policymakers by the mere fact of being 'perceived as legitimate'<sup>110</sup>.

According to Martens and Jacobi, the OECD Secretariat enjoys a lot of discretion during its peer reviews as it suggests a country for review, selects the reviewer, makes personal visits during examinations and prepares publications<sup>111</sup>. In practice, reciprocal relationship is not desirable between reviewers and the country under review, and the reviewers usually consist of one EU and one non-EU OECD Member State<sup>112</sup>. For France, South Korea and Italy are chosen to be examiners, for instance. France is represented by a Director of the Ministry of Finance during the peer review, which lasts one day<sup>113</sup>.

It is argued that countries reviewing each other cannot easily criticise data and analyses of one another due to past peer review experience and fear of reciprocated unfairness. This is referred to as the OECD's 'disciplinary powers'<sup>114</sup>.

The OECD surveys usually involve a government 'buy-in'<sup>115</sup> to the economic policy advice provided by the OECD Secretariat and imply a 'common ownership of the product.' Member State governments and the EU influence the end result as final document has to be approved by them and the exercise is based on voluntary cooperation<sup>116</sup>.

It is worth noting that the OECD Secretary-General and the Commissioner for Economic and Monetary Affairs give a joint press statement upon the release of the Member States', Eurozone and EU Economic Surveys. Considering these factors and the notoriety of these Surveys, a strong need for coordination both at euro area level and EU level arises. Common terms of reference are prepared by EU's Economic and Fiscal Committee (EFC) in liaison with the ECB regarding the monetary issues.

Euro area coordination meetings involving delegates of Eurozone members take place in Brussels and Paris. The euro area-working group within the Council in Brussels and euro area Member State coordination meetings a day before or the same day of the review in Paris constitute platforms for coordination. For the euro area review the Commission, ECB and Eurogroup Presidency represent the Eurozone. By contrast, coordination is more comprehensive for the EU-wide report. The Commission is the lead representative of the entire EU economy and coordinates with Member States.

According to Verschaeve and Takacs<sup>117</sup>, Member States raise issues of competences and contest the EU's position during these reviews fearing a too strong position after the introduction of EU wide reviews.

- Existing Cooperation between the EU and the OECD

Although the OECD assumed a role of assisting Eastern European transformation with its Partners in Transition Programme since the mid-90s, this function lost momentum with the EU enlargement<sup>118</sup>.

<sup>108</sup> Noaksson and Jacobsson, pp.25-29.

<sup>109</sup> Reinalda, pp. 425-426.

<sup>110</sup> Clifton and Diaz-Fuentes, p.555.

<sup>111</sup> Martens and Jacobi, p. 11.

<sup>112</sup> Groenendijk (2009).

<sup>113</sup> Marland, p.175.

<sup>114</sup> Clifton and Diaz-Fuentes, p.555.

<sup>115</sup> OECD, 2015.

<sup>116</sup> Bowett (1982),p.197.

<sup>117</sup> Verschaeve and Tackacs, p. 204.

The EU and the OECD implement joint projects such as SIGMA, an initiative to encourage improvement in governance and management in EU candidates, potential candidates or neighbouring policy partners. In this context, technical assistance in public administration reform is provided to transition countries helping institutional building and includes MENA countries such as Egypt, Jordan, Lebanon, Morocco and Tunisia. Some MENA countries engage in OECD Committees and adhere to legal instruments following the Arab Spring in 2011.

Moreover, the EU and the OECD organise joint seminars, policy formulation, thematic conferences, high level visits etc.

It is worthwhile to highlight that Eurostat and OECD Statistics Directorate have signed a Memorandum of Understanding (MoU) for closer cooperation. The OECD also signed MoUs with the European Investment Bank and the European Pattern Office.

## **2.9. Description of the products and process**

### **2.9.1. Product Type, Product Cycle and Process and Internal Bodies Involved in its Development**

The OECD develops a wide range of products in various policy areas ranging from the regulation on bribery to the 'polluter pays' principle and the PISA standards.

In addition, the OECD releases 250 annual publications per year, which are followed, well regarded and respected in academic, business and public sectors worldwide.

The main types of Council Acts are decisions and recommendations. Whereas international agreements, conventions and decisions of the OECD are legally binding, declarations, recommendations arrangements and understandings are not binding instruments. A recommendation represents policy commitment by governments and a resolution concerns internal workings of the OECD. A declaration is not a formal Act and not specified in the OECD Convention but it gives and added weight to its content<sup>119</sup>.

The OECD acquis comprises about 250 legal instruments. This means that the OECD produces 4 or 5 legal instruments per year, which could be considered as negligible. Yet, it should be noted that the OECD's standard setting activities result more from its soft law instruments such peer reviews, which have a profound impact on economic policy choices. The OECD influences in a significant way the options taken by EU Member States in the economic field through group dynamics, peer pressure, recommendations or expert reports on the economic situation of one or a group of EU Member States.

Furthermore, the OECD serves as a platform for continuous consultation, policy coordination, exchange of data and experience on a wide range of economic issues on which a large number of international economic agreements, standards and public policy ideas have been based.

The Committees work with the Secretariat to produce the following outputs: statistics, indicators, databases, methodological frameworks, benchmarking and comparative reviews, reports and analysis, conferences, workshops, forums, guidelines, recommendations and formal agreements.

The actual adoption of these instruments occurs during the MCM, which lasts about 1-2 days. But the initial negotiations are done at the level of Committees and at the level of

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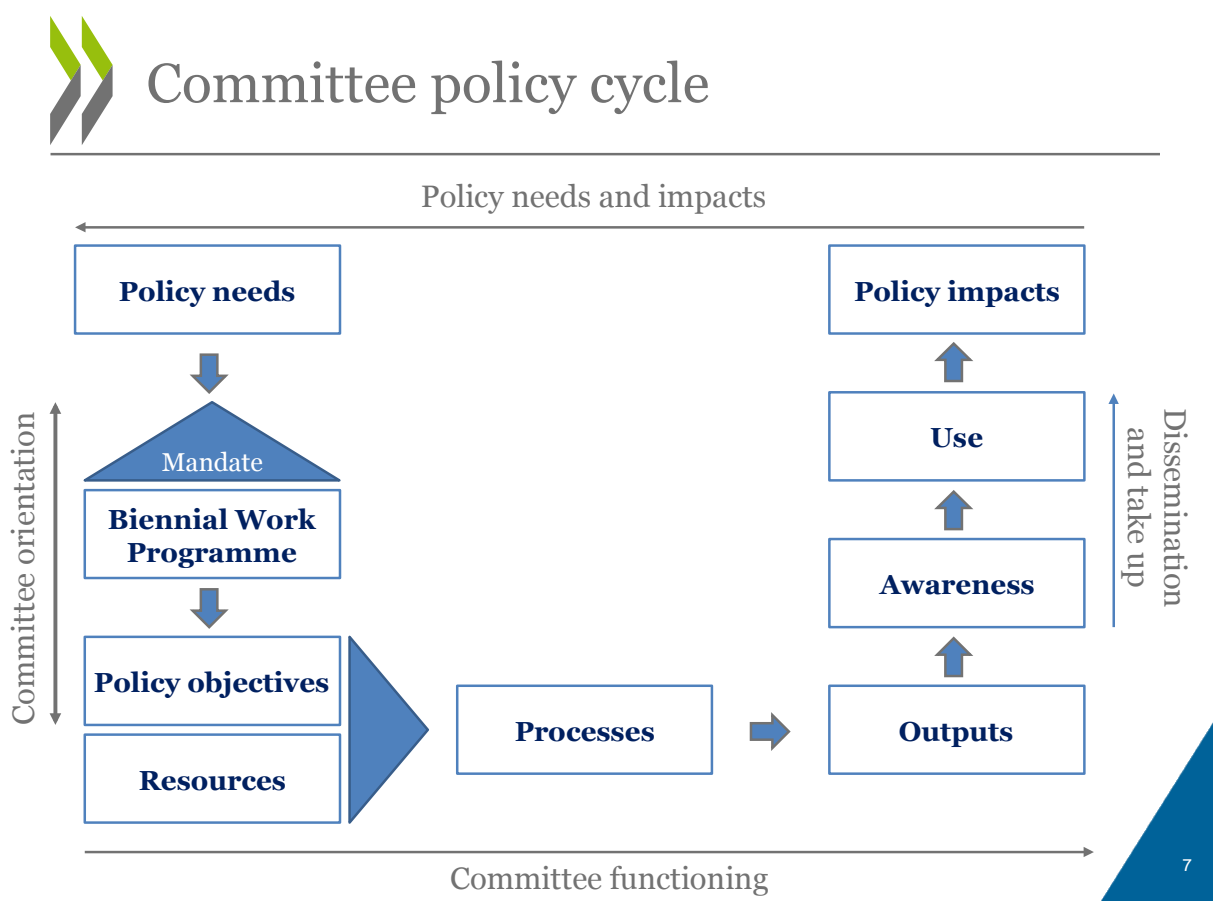
<sup>118</sup> Wouters and Van Kerckhoven (2011), p. 5.

<sup>119</sup> Martens and Jacobi (2010), pp. 4-7.

Ambassadors. Hence, the development of the product takes a much longer time, which may be a year or two<sup>120</sup>.

The product's life cycle also depends on its acceptability by Member States. Edelman points out to the fact that the OECD is more effective in product development when major powers such as the US are 'sympathetic to the cause'<sup>121</sup>. Thus, the OECD Secretariat has to play a role of 'rule-following bureaucrats'<sup>122</sup> or has to choose 'winning issues', which are often under-exploited by others<sup>123</sup> in order to secure swift political backing. Due to Member States' distinct priorities and the political horse-trading to reconcile divergences, the preparations for the PIACC assessment on adult skills took 3 years, for instance<sup>124</sup>. The fact that the work programme at the OECD is decided by unanimous consent by the Council may further slow down this process.

**Figure 3: The OECD's Product Cycle**



Source: OECD 2015.

Figure 3 above shows the policy cycle of the Committees, which starts with a mandate from the Council defining a biennial work programme, leading to the dissemination and take-up of the product.

<sup>120</sup> Interview with OECD Secretariat.

<sup>121</sup> Edelman, 1998.

<sup>122</sup> Marcussen and Trondal, (2011), p.594.

<sup>123</sup> Dostal, p.456.

<sup>124</sup> Interview with the OECD Secretariat.

## 2.9.2. Who does give a mandate to develop the products?

The OECD Secretariat shall receive its mandate from the Council, one of the three decision-making bodies of the OECD, according to its constituting treaty. However, informal structures such as the G7 or G20 ignore these constitutional arrangements, 'bypassing the formal decision-making mechanism of the latter'<sup>125</sup>. Since the beginning of the crisis, the OECD increasingly works with/for the G20 and other international organisations such as the IMF, World Bank, FSB and WTO. Yet, the 'vertical hierarchy' between these organisations and G20 allows the latter to impose its agenda, weakening the ability of IOs such as the OECD, to opt for different priorities<sup>126</sup>. Another problem arising from this hierarchical relationship is that only 11 members of the G20 are in the OECD while some of them are represented indirectly via the EU's G20 membership. Having this in mind, the OECD strengthened its cooperation with six non-OECD G20 members (Russia, Brazil, Indonesia, India, China, South Africa) since 2007<sup>127</sup>. The only G20 countries left out of the OECD's reach seem to be Saudi Arabia and Argentina, albeit that the latter is somehow involved in OECD's Ministerial meetings and annex activities.

G20's mandates (both at Finance Minister's level and Leader's level) to the OECD and other IOs are illustrated in Table 4 and highlight that the OECD's priorities were mostly shaped by these informal tasks, especially since the beginning of the global economic and financial crisis. The OECD supports the G20 in the field of bribery, development, employment, environment, energy, financial sector reform, green growth, international monetary system, investment and trade, taxation and consumer protection<sup>128</sup>. This is slightly in contrast with Bradlow's coordinated specialisation principle, which puts forward that the relationship between stakeholders in global economic governance should be based on a specific and well-defined mandate in line with the specialisation of each stakeholder<sup>129</sup>.

Table 4 also shows that the OECD is often grouped with other international organisations to perform tasks related to macro surveillance, trade and jobs, but it is the only organisation mandated by G20 to work on tax issues as well as on long-term investment financing.

**Table 4: Products Mandated by the G20 and Developed by the OECD**

G20 Mandate	IOs	Mandated/Developed Product
G20 Finance Ministers 2003, Moreila	OECD	G20 asked OECD to develop standards on tax evasion.
G20 Finance Ministers 2005, Xianghe	OECD	G20 reaffirmed commitment to the standards and applauded OECD Global Forum on Taxation for increasing transparency and exchange of information on taxation.
IMF-OECD cooperation, 2008	OECD/IMF	OECD supported the work of IMF on best practices for Sovereign Wealth Funds.

<sup>125</sup> Wouters and Ramopoulos, p.767.

<sup>126</sup> Heinbecker (2011), p.3.

<sup>127</sup> Wouters and Van Kerckhoven, p.25.

<sup>128</sup> Wouters and Van Kerckhoven, p.13.

<sup>129</sup> Bradlow, p. 990.

G20 Finance Ministers, Washington 2013	OECD	G20 urged all jurisdictions to move towards exchanging information automatically and asked OECD to monitor progress.
G20 Leaders Summit London April, 2009	OECD	OECD issued a black list of tax havens, which became G20's priority. G20 asked OECD to implement and evaluate tax havens' compliance with OECD standards. G20 requested OECD to track flows of trade finance supplied by export credit agencies.
G20 Leaders Summit Pittsburgh, 2009	OECD OECD/ILO	G20 called for the adoption of Anti-Bribery Convention by all G20 Members and Non-Members. OECD assisted ILO's Pittsburgh Summit background report on Protecting People, Promoting Jobs and International trade.
G20 Leaders Summit Toronto, 2010	OECD/WTO/UNCTAD	G20 asked for monitoring and reporting on trade and protectionism.
G20 Finance Ministers Busan, 2010	OECD	G20 asked OECD to develop a Framework for Strong Sustainable and balanced Growth.
G20 Finance Ministers Paris, 2011	FSB / OECD	G20 asked OECD to develop principles in the financial services and praised OECDs work on capital flows.
G20 Leaders Summit Cannes, 2011	OECD/World Bank/ILO	G20 requested a report on jobs and living standards.
G20 Finance Ministers, Mexico City, 2012	OECD/World Bank/IMF/FSB/UN OECD OECD	G20 asked for an assessment on factors affecting long-term investment financing. G20 asked OECD to maintain momentum in the fight against global corruption. G20 asked OECD to report on how to improve effectiveness of information exchange on taxation.

G20 Finance Ministers Cairns, 2014	OECD/IMF	G20 asked for an analysis on tax policy mix and composition of government expenditure for growth outcomes.
	OECD	G20 asked OECD/G20 Task Force to implement G20/OECD High-Level Principles on Long-Term Investment Financing.
	OECD/IMF/World Bank	G20 asked for the development of instruments to promote financing of SMEs. G20 asked for developing countries involvement in BEPS.
	OECD/IMF/World Bank/UN	

**Source:** G20 Communiqués.

### 2.9.3. Is the process of developing 'products' transparent?

The OECD Ministerials and CPR meetings are held behind closed doors. The draft agenda of MCM is published together with background reports and overview papers. There are a number of news conferences and media briefings during the Ministerials. Selected parts of the sessions are webcasted. (Opening remarks, keynote addresses, launch of specific programmes). The communiqué of the Ministerial is made public following the Ministerial together with selected final reports, declarations, recommendations etc. Similarly, conclusions of sectorial Ministerials are also made available. Rule 28 of the OECD Rules of Procedures<sup>130</sup> stipulates that 'all acts, agendas, summary records, reports and other documents of bodies shall be distributed in both the official languages'. The two official languages of the OECD are English and French, which are also two of 24 official languages of the EU. Rule 28 also emphasises that summary record of decisions and conclusions is subject to Council approval. Yet, the OECD is not obliged to make all its decisions public by virtue of its Rules of Procedures which state 'when adopting a Decision or Recommendation, the Council shall decide whether it shall be made public.' Some national delegates also lament the fact that not all documents are translated to and disseminated in French.

While the MCMs present final products or announce new products, the actual product is developed in the Committees in cooperation with the Secretariat. Most of the OECD Committee meetings are closed and participation is based on invitation only for consultative bodies, observers, and associate expert groups<sup>131</sup>. The schedule of the Committee meetings may be publicly available occasionally through Committee newsletters but the content is not disclosed.

Most communications to Member States and the EU-participants are conveyed through the internal OLIS system, which includes information such as work-in-progress, event details, official documents archive, publications and statistics. National and EU delegates use OLIS to interact with the Secretariat in preparation for the Committee meetings.

<sup>130</sup> Rules of Procedures of the Organisation (2013).

<sup>131</sup> BIAC, 2015.

#### 2.9.4. Stakeholder involvement in the product and process

The OECD was criticised since 1970s for having too much power, which is barely controlled. While public criticism was directed at the OECD's liberalisation and privatisation ambitions in the 1980s, it stemmed from disaffection with globalisation in the 1990s. The OECD's Multiannual Agreement on Investments (MAI) agenda in 1995 was an evidence for anti-globalisation movements that corporations could do virtually what they wanted without any restrictions<sup>132</sup>.

Even though many attribute the failure of MAI to the anti-globalisation protesters, the rejection of this instrument was partly made possible by the French veto<sup>133</sup>. Yet, the anti-MAI movement definitely resulted in increased OECD efforts to engage with the civil society, albeit in an institutional and not in an ideational or policy-related manner, through the establishment of Civil Society Coordinators Network<sup>134</sup>.

Although the BIAC and TUAC participated in OECD work, including the revision of Guidelines for Multilateral Enterprises in 1998 and 2000 and of the Principles of Corporate Governance in 2003 and 2004, their traditional 'class-based agendas' were of little relevance to modern multidisciplinary issues covered by the Organisation<sup>135</sup>.

For instance, in the wake of the 1976 adoption of the Declaration on International Investment and Multinational Enterprises, the TUAC's views were not seriously taken into consideration. Moreover, with the shift in OECD's agenda from Keynesian welfare state in the 1960s towards supply side models in the 1970s, the BIAC 'assumed a privileged ideational position within the OECD'<sup>136</sup>. For instance, the BIAC's tax expert was consulted on the harmful tax policies and its ideas on export credits were welcomed by the OECD<sup>137</sup>.

The OECD Watch enjoys a specific role in the Investment Committee as a partner, especially in the implementation for the guidelines; while reporting cases of breach before designated national contact points. This formalised complaint mechanism is an example to the OECD's institutionalised accountability but no sanctions are applied in case of violation<sup>138</sup>.

Although the Investment Committee seems to be open to the OECD Watch input, the influence of the latter is rather 'marginal' as its views are not always feeding into deliberations.

Other NGOs of significance, which work with the OECD can be cited as the European Confederation of Agriculture, International Chamber of Commerce and Transparency International. The former is active at the OECD since 1962 while the latter two played a role during the negotiations on the OECD's Anti-Bribery Convention in the 1990s<sup>139</sup>.

Each OECD Committee establishes links with the civil society in various forms. Many argue that 'peripheral directorates such as agriculture, environment and investment' are more open to encounters with the civil society. However, stakeholders are less successful in penetrating the EPC, where the real power of the OECD is concentrated<sup>140</sup>. The EPC's policy

<sup>132</sup> Reinalda, p. 694.

<sup>133</sup> Caroll and Kellow, p. 190.

<sup>134</sup> Blagescu and Lloyd (2006).

<sup>135</sup> Woodward (2008), p.89.

<sup>136</sup> Woodward, p.82.

<sup>137</sup> Woodward, p.91.

<sup>138</sup> (Ougaard, p.10).

<sup>139</sup> Woodward, p.83).

<sup>140</sup> Woodward, pp.90-94.

process is extremely closed and even the TUAC complains about its opacity and uniform viewpoints resulting in biased surveys<sup>141</sup>.

Furthermore, some scholars argue that 'the effective work is conducted [...] away from public gaze', and richer nations may dominate TUAC and BIAC delegations as the technical nature of OECD's work demands high resources and capacity<sup>142</sup>.

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<sup>141</sup> TUAC, 2015.

<sup>142</sup> Kellow and Carroll, p.191.



### 3. LEGAL FRAMEWORK FOR EU'S PARTICIPATION IN THE OECD, EVALUATION OF THE CURRENT SITUATION AND PRACTICAL RECOMMENDATIONS TO ENSURE EU ACCOUNTABILITY

#### KEY FINDINGS

- The Union's participation in the OECD was already foreseen in the Treaty of Rome and the Commission had a Delegation to the OECD since 1964, which was replaced by the Union delegation after the Lisbon Treaty.
- The EU's internal competences are mirrored in its external representation by virtue of Article 216 TFEU, which is derived from the EU's case law, i.e. ERTA case. According to Article 218 TFEU and the relevant case law, the EU shall establish a Union's position in international organisations affecting its legal order.
- Article 138.2 TFEU calls for a genuine cooperation in international organisations, regardless of the nature of competences exercised in these organisations. By virtue of Article 138.1 TFEU, the Council 'shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions.'
- In reality, both the EU Delegation and the Member States take the floor at the OECD meetings, even when dealing with exclusive competences. In comparison to Brussels, coordination under the leadership of the EU Delegation to the OECD and to UNESCO seems to be better in Paris, where the Lisbon Treaty was operationalised. Yet, the coordination efforts are dominated by the positions of Germany, France, Italy and the UK. Moreover, the ECB's role in the OECD is not clearly defined.
- The coordination in selected fields takes place in Brussels at the Council's Trade Policy Committee in the absence of an OECD Working Group while the horizontal coordination is ensured by DG Trade, being simultaneously responsible for the coordination on WTO and export credits.
- The lack of coordination with regards to the OECD matters at the EU level may result in the EU's buy-in of standards which are not in line with the EU law and which may be imposed by countries with weaker democratic credentials. Whereas the standard-setting at the EU reflects a greater stakeholder involvement and pluralism, the OECD relies on its epistemic community, which operates in a relatively closed manner.
- The OECD strongly influences EU standards, as exemplified by the European Commission Recommendation on Aggressive Tax Planning proposing a General Anti-Abuse Rule (GAAR) in tax treaties, which reflects the same spirit of OECD's BEPS initiative.
- Although the EU might find it convenient to deal with tax matters at the OECD, its limited competences in the area could lead to constitutional challenges and legal uncertainty in EU Member States.

#### 3.1. Legal Basis for EU's Participation in the OECD

Article 220 of the TFEU foresees that 'the Union shall establish all appropriate forms of cooperation with the organs of the UN and its specialised agencies, the Council of Europe,

the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.’ However, the role or the nature of EU actors involved in this cooperation is not specified.

Previously, Article 231 of the Treaty of Rome mandated the European Commission to establish a ‘close cooperation’ with the OECD, which led to the opening of Commission’s Representation in Paris in 1964 in former first pillar policy areas<sup>143</sup>.

### 3.1.1. The external competences of the EU

While Member States keep their external sovereignty, the Union’s external competences are limited and subject to a conferral by Member States. There are different types of external competences: Exclusive, shared, supporting and coordination. The first two appear in Article 5 and Article 2. Article 3, which list the competences of external representation<sup>144</sup>. In particular, Article 3.1 TFEU states that the Union has an exclusive competence in the area of customs union, competition, and monetary policy for the Euro zone and common commercial policy. Economic policy is a complementary competence according to Article 5 TFEU. However, Article 4.1 TFEU and others mention repeatedly that ‘competences not conferred upon the Union in the Treaties remain with the Member States.’

Article 221 TFEU provides that the Union will be presented by Union delegations in third countries and at international organisations. By virtue of Article 17.1 TFEU, it is the Commission that should represent the EU ‘with the exception of the common foreign and security policy, and other cases provided for in the Treaties.’

### 3.1.2. Express external competences

Explicit legal competences regarding the Union’s role in international organisations are hardly to be found in the treaties. Article 211 TFEU is the closest to a conferral, stating that ‘within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations.’ In the absence of explicit competences, the participation in international institutions is based on implied powers only, which find their source in the general competences of the Union in different policy areas<sup>145</sup>. This is a result of the EU case law, which led to the adoption of Article 216 stipulating that external competences can be implicitly derived from internal competences<sup>146</sup>. The formal legal relationships can be derived from Article 216.1 TFEU, allowing for the conclusion of international agreements with third countries or international organisations, and Article 217 TFEU ,referring to the conclusion of association agreements<sup>147</sup>. Moreover, the Union was given a legal personality with the entry of the Lisbon Treaty. (Article 47)

### 3.1.3. Implied external competences

ERTA case of 1971 defines the relation between internal and external competences. According to the Court of Justice of the European Union (CJEU) ruling, the Commission obtained the right to negotiate agreements with third countries, by virtue of the existence of Community regulations in a particular field. Moreover, the CJEU confirmed that when the Community has exclusive competences, ‘the Community alone is in the position to assume and carry out contractual obligations towards third countries’<sup>148</sup>.

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<sup>143</sup> Verschaeve and Takacs, p. 199.

<sup>144</sup> Nawparwar, p. 14.

<sup>145</sup> Wessel, (2011) pp. 624-625.

<sup>146</sup> Gstöhl, p. 10.

<sup>147</sup> Wessel (2011), p. 625.

<sup>148</sup> CJEU (1971) 22-70 Commission vs. Council.

The CJEU ruling on International Fruit Company affirms that an exclusive competence of the Community entitles it for membership in an international organisation<sup>149</sup>.

The CJEU Opinion on Martenczuk<sup>150</sup> gives the EU the power to create new international organisations. Thus, the EU has an implied competence to fully participate in treaty regimes. However, its participation depends on IOs, which may grant the EU observer or full participant status or include a Regional Economic Integration clause to their conventions<sup>151</sup>.

Of particular relevance to the OECD is the CJEU Opinion on Local Cost Standards<sup>152</sup>, which gave the Commission the exclusive power to participate in the OECD Understanding on Local Cost Standard by asserting that export policy is an integral part of commercial policies<sup>153</sup>. With the Court rule on the Third Revised Decision on National Treatment of the OECD, the CJEU decided that the competences to participate in this OECD instrument were shared, thus both Member States and the Union participated<sup>154</sup>.

### 3.2. Legal Obligations for EU Participants in the OECD

#### 3.2.1. Legal Requirement for Establishing Common Positions

Diplomatic missions of the Member States and Union delegations should cooperate and form a common approach according to the Articles 32 and 35 TEU.

According to Article 218 TFEU, the Union establishes 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects'. Yet, in its judgement in Case C-399/12<sup>155</sup> the CJEU dismissed Germany's demand for annulment of a Council decision establishing the Union position to be adopted by Member States in the International Organisation of Vine and Wine (OIV). It is a leading case in the interpretation of Article 218 (9) TFEU<sup>156</sup> as it confirms that the Council shall adopt a Union position in IOs (where EU may or may not be a member) to act jointly in the interest of the Union. This is based on the fact that even OIV resolutions, which are not legally binding, may affect the EU legal order<sup>157</sup>.

In a separate case, the CJEU found that Member States' 'freedom of action is severely curtailed once the EU has internally started the process for the formation of a concerted strategy on a topic. The point of departure was the submission of proposals by the Commission to the Council<sup>158</sup>.

#### 3.2.2. Legal Requirement for Genuine Cooperation

Article 4. 3 of TFEU stipulates 'the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties'.

Article 138.2 foresees 'when it appears that the subject matter of an international convention falls in part within the competence of the Union and in part within that of the Member States, it is important to ensure that there is a close association between the

<sup>149</sup> CJEU (1972) Joined Cases 21 to 24/72 International Fruit Company.

<sup>150</sup> CJEU, Opinion 1/76; Martenczuk 2001.

<sup>151</sup> Wessel 2011, p. 625.

<sup>152</sup> CJEU (1975) Opinion 1/75, Understanding on a Local Cost Standard, ECR i-1362.

<sup>153</sup> Verschaeve and Takacs, p. 201.

<sup>154</sup> CJEU (1995) Opinion 2/92, Competence of the Community or one of its institutions to participate in the Third Revised Decision of the OECD on national treatment, ECR I-521.

<sup>155</sup> CJEU (2012b) 399/12 Federal Republic of Germany v. Council of the European Union.

<sup>156</sup> Wouters, Odermatt and Ramopoulos (2013), p.7.

<sup>157</sup> CJEU (2014), 399/12 Germany v. Council.

<sup>158</sup> CJEU (2012) 246/07 Germany v Council.

institutions of the Union and the Member States both in the process of negotiation and conclusion in the fulfilment of the obligations entered into. 'This duty of cooperation [...] results from the requirement of unity in the international representation of the Union'<sup>159</sup>.

Moreover, the case law points out to the fact that a 'duty of genuine cooperation' arises from both exclusive and shared competences<sup>160</sup>.

### 3.2.3. The Obligation of a Unified Representation for the Euro Area

According to Article 138.1 TFEU, the Council 'shall adopt a decision establishing common positions on matters of particular interest for EMU within the competent international financial institutions and conferences.'

With regards to EMU, competences are shared among Member States, being responsible for fiscal and budgetary matters, and the European Central Bank being responsible for monetary policies.

The Monetary policy of the Eurozone Member States and the conclusion of international agreements in this area are exclusive competences of the Union. On the monetary leg, the external representation for the euro area is provided by the ECB and the European Commission according to Article 219.3 TFEU, which reads as follows:

'Where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union with one or more third States or international organisations, the Council, on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.'

The President of the Bank represents the ECB in external relations<sup>161</sup>. The statute of the European System of Central Banks and the ECB also recognises the ECB's role in providing external representation in the field of international cooperation yet the ECB's role with regards to exchange rate policies has been much debated in academic literature<sup>162</sup>.

The relationship between the EMU and the EU's external representation is blurred and initiatives to clarify it were not reciprocated by third parties. Although the Commission suggested a role for the Council, the Commission and the ECB<sup>163</sup> the lack of clarity of Article 138 and the unwillingness of third parties did not advance this cause<sup>164</sup>. The external representation of EMU is further complicated as the Eurogroup relies on the European Union for a legal personality.

Although exchange rate matters are also an exclusive competence, both the ECB and the ECOFIN Council (de facto Eurogroup) are involved in decisions concerning exchange rates in practice<sup>165</sup>. The President of the ECB meets the President of Eurogroup and the Commissioner for Economic and Monetary Affairs in monthly informal gatherings<sup>166</sup>.

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<sup>159</sup> Wouters, Odermatt, Ramopoulos, p.6.

<sup>160</sup> CJEU (2010) C-246/07 Commission v Greece ECR I-701.

<sup>161</sup> Article 6 and Article 2.13 of the protocol on the statutes of ESCB and the ECB.

<sup>162</sup> Giovannini et.al. (2012), p.162.

<sup>163</sup> Giovannini et.al. (2012), p.216.

<sup>164</sup> Wouters Odermatt Ramopoulos 2013, p. 3.

<sup>165</sup> The External Representation of the EU and EMU.

<sup>166</sup> ECB Monthly Bulletin (2011), The External Representation of the EU and EMU, May 2011, p. 5 ([https://www.ecb.europa.eu/pub/pdf/other/art2\\_mb201105en\\_pp87-97en.pdf](https://www.ecb.europa.eu/pub/pdf/other/art2_mb201105en_pp87-97en.pdf)).

<sup>166</sup> Interview with European Commission delegate.

When it comes to the economic leg of EMU, the representation is less uniform as economic policies are largely a national competence but Member States have to take into account EU-level coordination frameworks. Taxation and financial policies are under the tutelage of the European Commission as well as national authorities, hence there are multiple actors involved in the decision-making mechanism on these two policy areas<sup>167</sup>.

### 3.3. Existing Mechanisms of Coordination and Position Building in the OECD

By virtue of the provisions of the Lisbon Treaty, statements and declarations are now issued by the EU Delegation to the OECD, which has the right to speak on behalf of the entire Union every time a common position is reached within areas of exclusive or shared competences. But in reality, both the EU Delegation and the Member States take the floor at the OECD meetings, even when dealing with exclusive competences. In general, the EU delegation speaks first as a result of a pragmatic compromise. Once there is a common position, Member States usually don't contradict it, respecting the General Arrangements for EU statements in multilateral organisations of the October 2011 Council<sup>168</sup>. The EU can speak on behalf of the Union when it comes to issues falling under national competences, but Member States have to request or sign a clear mandate to the EU<sup>169</sup>. Yet, this type of mandates are rarely observed in the OECD, as Member States tend to be cautious about granting additional powers to the EU. When it comes to exclusive competences, (trade, competition, steel, shipbuilding, export credits), Member States are inclined to leave the floor to and respect the position of the European Commission although there is no such mandatory requirement. Gstöhl says that 'Even though the Commission takes a leading role, EU Member States retain the right to engage in the deliberations in most OECD meetings'<sup>170</sup>.

#### 3.3.1. Coordination in Paris

Before the adoption of the Lisbon Treaty, the European Commission was in charge of the coordination under Community competences. It was the Ambassador of the rotating EU Presidency who had the responsibility to organise these meetings<sup>171</sup>. Statements were issued by the rotating Presidency, which intervened in its individual capacity as an OECD Member State<sup>172</sup>.

At present time, these coordination meetings are organised and led by diplomats of the EU Delegation, or the European Commission, when the former lacks capacity in the specific field<sup>173</sup>. The role of the Presidency evolved to assisting the EU Delegation in preparing common positions and organising coordination meetings, at the initiative of the EU Delegation, or following the request of the Commission or Member States. This may be seen as a necessary improvement given that not every EU Member State is part of the OECD.

The EU delegation has the duty to inform non-OECD EU Member States, especially the accession countries to the OECD. Moreover, these EU Member States are involved in the Council's working bodies in Brussels, which are dealing with the OECD. Non-OECD EU Member States also benefit from the policy process and peer review at the OECD and can be included in reports and statistical comparisons developed for the EU.

<sup>167</sup> ECB Monthly Bulletin, *supra*, p. 4.

<sup>168</sup> EU Statements in Multilateral Organisations, General Agreements 15901/11 of 24 October 2011, p. 199.

<sup>169</sup> EU Statements in Multilateral Organisations, General Agreements 15901/11 of 24 October 2011, p. 204.

<sup>170</sup> Gstöhl (2008), p. 16.

<sup>171</sup> Marland, p.175.

<sup>172</sup> Verschaeve and Takacs, p. 199.

<sup>173</sup> Verschaeve and Takacs., p.198.

An example to coordinated positions at the OECD could be cited as the EU's position on Russia following the Georgian conflict. Another example is the EU's common position on the Ukrainian crisis. In IEA, for instance, the EU held a separate meeting before the Steering Committee to broker a common position<sup>174</sup>. According to Marland, the coordination within the EU is extremely strong among Germany, France, Italy and the UK, which are also G7 and G20 members<sup>175</sup>.

In comparison to Brussels, coordination seems to be better in Paris where the Lisbon Treaty is 'fully operationalised'<sup>176</sup>.

### 3.3.2. Coordination in Brussels

Sources point out to the fact that the lack of a specific Working Group dealing with the OECD matters leads to a lack of coordination in the Council as EU Member State officials attending Council Working groups are not informed about EU Member States' deliberations at the OECD.

The European Commission is mainly in charge of coordination efforts in Brussels. DG Trade coordinates OECD-EU relations horizontally and relevant issues are discussed in the Trade Policy Committee (TPC) of the Council. All DGs follow up on the issues of their competence and decide to what extent EU coordination is desirable with Member States. Some can therefore prefer a single voiced EU whereas others are pragmatic depending on the topic and on the resources.

Intra-Commission coordination is conducted by DG Trade via daily contacts with respective desk officers in the other DGs. It also steers an inter-service group with participation of desk officers from almost all other DGs and EEAS to discuss horizontal OECD issues as well as its relations with third parties<sup>177</sup>. These coordination meetings mainly serve to exchange information and to inform officials about forthcoming events. In a way, they give leverage to DG Trade to influence decisions even in sectors, which are not covered by its scope.

The coordination between the Commission and Member States within the Council occurs in the TPC serving as the forum where dialogue takes place in forms of written notes or discussion. Horizontal issues are dealt with in the TPC even though they are not in line with the scope of this Committee. DG Trade has to cooperate with the EEAS's OECD coordinator from Managing Directorate VI, Multilateral Relations and Global Issues on the political OECD issues, such as accession, relations with Non-Members, relations with G20 or specific issues related to countries. Although the EEAS's involvement is subtle at present, it is likely to have an increasing impact on EU coordination<sup>178</sup>. Communications reports of the EU Delegation to the OECD are not made public.

On the other hand, international meetings at the level of Finance Ministers such as international economic policy cooperation, financial regulation and reform of the monetary system are discussed at euro area and EU level by the Eurogroup and the ECOFIN Council and their representative subgroups such as Eurogroup Working Group and Economic and Financial Committee. There is no evidence that relevant OECD matters are being discussed in a structured matter in these bodies. Last but not least, within the Eurosystem/ESCB, the International Relations Committee of the ECB is responsible for the coordination of the

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<sup>174</sup> Interview with IEA.

<sup>175</sup> Marland, p.175.

<sup>176</sup> Verschaeve and Takacs, p 198.

<sup>177</sup> Verschaeve and Takacs, p. 196-197.

<sup>178</sup> Verschaeve and Takacs p. 197.



international policy areas<sup>179</sup>. We couldn't identify any link between this Committee and other EU bodies with regards to the OECD-related issues. However, a former European Commission delegate informed us that the positions of the ECB and the European Commission participants were informally coordinated on an ad-hoc and voluntary basis<sup>180</sup>.

### 3.3.3. Reporting of the EU Participants

After participating in OECD meetings, the European Commission delegates send mission reports to their hierarchy but sources claim that there is no particular feedback or discussion on these mission reports even at the middle management level<sup>181</sup>.

In comparison to the OECD, there is less transparency in the EU regarding these reports as they are considered as internal documents. This may reflect the little public interest in Brussels on OECD-EU relations.

We asked for an interview from a manager in the Commission, who is in charge of the OECD relations but he didn't respond to our meeting request. Hence, we don't dispose of concrete information on how the delegates attending meetings at the OECD are chosen.

## 3.4. Potential Conflicts of Interests among EU Participants

Unclear division of competences, shortcomings of the Treaties and incomprehensibility of the Union's legal framework pose a challenge for the EU's external representation<sup>182</sup>. As some Treaty provisions are open to interpretation, Member States are wary of delegating representation rights to the Commission when it comes to shared competences<sup>183</sup>. This may imply that the competence would be transferred to the Union although the case law confirms the opposite<sup>184</sup>.

Moreover, the bigger Member States belonging to G7/G8 tend to monopolise the external representation and resist delegating powers to the EU. At the same time, loyalty appears to be stronger to G7 positions rather than to EU positions among big EU Member States<sup>185</sup>.

According to an EEAS Delegate, big OECD Member States such as the UK, France and Germany resist coordination efforts while small Members of the OECD as well as non-OECD EU Member States need this coordination to be better acquainted with the OECD agenda and deliberations. A similar situation is explained in G20 by Nasra and Debaere, who analyse EU coordination at G20 level, arguing that EU G20 members (France, Germany, Italy, the UK) dominate the internal coordination efforts<sup>186</sup>.

Hodson refers to the EU's coherent stance in London and Pittsburgh G20 Summits through adoption of agreed language, which facilitated obtaining concessions on tax havens<sup>187</sup>. Yet, some argue that these concessions may have favoured some countries more than others. Non G20 EU Member States such as Austria and Luxembourg were blacklisted whereas G20 Members protecting their own territories such as China in case of Hong Kong and the UK in case of Isle of Man, Guernsey and Jersey kept protecting their tax havens<sup>188</sup>.

<sup>179</sup> ECB Monthly Bulletin (2011), The External Representation of the EU and EMU, May 2011, p. 5 ([https://www.ecb.europa.eu/pub/pdf/other/art2\\_mb201105en\\_pp87-97en.pdf](https://www.ecb.europa.eu/pub/pdf/other/art2_mb201105en_pp87-97en.pdf)).

<sup>180</sup> Interview with European Commission delegate.

<sup>181</sup> Interview with former European Commission delegate.

<sup>182</sup> Herve, (2012), p.145.

<sup>183</sup> Wouters and Ramopoulos, p.45.

<sup>184</sup> CJEU (2006) C-459/03 Commission v Ireland ECR I-4635.

<sup>185</sup> Gstöhl (2008), p 24-25.

<sup>186</sup> Nasra and Debaere, p. 5-6.

<sup>187</sup> Hodson (2011), p. 21-27.

<sup>188</sup> Wouters and Meuwissen (2011), p.7.

There may be tensions with regards to the euro's place in international monetary system, where the Council may adopt a unified position (Articles 138.1 and 2 TFEU). Regarding those areas corresponding to the competence of Member States (Article 5.2) or shared competences (no provision) it is at Member States' discretion to decide how the external representation will be realised. The Euro area dimension may be relevant for discussions on global imbalances involving the ECB but the EU dimension is relevant for financial sector regulation involving the European Commission<sup>189</sup>.

Last but not least, intra-institutional tensions are likely to arise when it comes to participation in the Ministerials, which is illustrated in Table 4.

### 3.5. SWOT Analysis of the Current Situation

The EU's role in the OECD is determined by the EU's legal status, its ability to achieve effective coordination, its representation capacity and the nature of Union competences<sup>190</sup>.

The EU's quasi-member status at the OECD puts it at a disadvantage as it doesn't have voting rights and can't have an oversight on the OECD budget although it contributes largely to the voluntary parts of it. The EU's membership request was rejected by the OECD back in 1961 and the EU has been a full member in a very small number of the OECD Committees up to now. The EU would benefit from an update of its status at the OECD Convention, which defends the one country one vote principle. However, such a change would require a consensus.

While the EU's quasi-member status 'provides a useful formal legal avenue for EU participation where membership is not legal or politically possible, it often requires a sustained effort from the EU to safeguard its position in the IO.' The EU's privileged status at the OECD can be endangered by non-EU Members of the Organisation whose positions may change over time, wanting to limit the participation of the EU in order to avoid that the latter plays a prominent role. The OECD changed its Non-Member participation policy in 2004 and started to involve many emerging countries, which constitute a big threat to EU's presence at the Organisation. Another challenge is the lack of political capital and human resources at the EU level to upgrade its status in IOs<sup>191</sup>.

EU's fragmented power demonstrated by disagreement of stakeholders (institutions, member States, citizens) on how to defend the EU's economic trumps led to 'over-representation and under-effectiveness'<sup>192</sup>. With its participants from all the DGs, the EEAS as well as the ECB, the EU seems to be overrepresented in OECD Committees. Yet, it is not visible in the Committees except for a few, where it was granted full membership.

Concerning the participation of the EU in the OECD, it is disappointing to note that 'the Commission has not been able to expand its important role in trade policy to other areas'<sup>193</sup>. Hence, the Commission views at the vast range of activities of the OECD from a pure trade perspective. At the same time, in the OECD, where both Member States and the Commission speak on trade issues, the European Commission doesn't enjoy the privileges it has at the WTO, being the only spokesperson in the latter<sup>194</sup>. In addition, the EU's weakness in the OECD may be used by the US and others as illustrated during the fierce debate on where to deal with export credits negotiations. While the EU's preferred platform

<sup>189</sup> The External Representation of the EU and EMU, [www.ecb.org](http://www.ecb.org), Monthly Bulletin, ECB, May 2011.

<sup>190</sup> Verschaeve and Takacs, p.208.

<sup>191</sup> Wouters, Odermatt, Ramopoulos, p.3.

<sup>192</sup> Gstöhl, 2008, p. 6.

<sup>193</sup> Gstöhl, 2008, p. 5.

<sup>194</sup> Gstöhl P. 10.



was the WTO, the US pressed for support for the OECD's Arrangement on Guidelines for Officially Supported Export Credits<sup>195</sup>.

It is obvious that the OECD has been active in trade issues in the past and keeps working in areas such as trade liberalisation and export credits yet the Member States' efforts to shift trade and investment negotiations to the WTO where the Union has a greater say is a proof that it is not a substantial and unique trade platform<sup>196</sup>. Acknowledging that the G20 has been increasingly mandating the OECD on taxation and macro-surveillance related issues and only a minimal share of the G20's global governance tasks are related to trade policy, it would be only fair to transform this out-dated and ineffective system.

We believe that the EU coordination system has fallen short of an update as to the OECD's current agenda and standard-setting activities, which are of great relevance to the European economic governance. It is not only archaic but also impractical to group the OECD with the WTO and export credits within the European Commission's coordination system.

The EEAS is even in a bigger delusion by coupling the OECD with the UNESCO, by designating a single EU Ambassador to both Organisations, considering that culture is the only activity falling outside the scope of the OECD.

The EU Delegation to the OECD claims that special attention is given to coordination with Member States, especially when internationally agreed instruments and recommendations are elaborated. There is also a coordination effort for the peer reviews, but one cannot talk about a specific and publicly available mandate, which determines the EU positions in the OECD. Yet, the EU position regarding OECD issues such as tax havens, is determined by an official mandate in the G20, for instance.

The Commission acknowledges that 'lack of focus and continuity' in external representation undermines EU policy impact and the Council could improve 'upstream coordination' to reach consensus on issues, which are discussed in multilateral organisations and informal bodies.<sup>197</sup> The upstream coordination could be facilitated by establishing a Global/European Economic Governance Working Group within the Economic and Financial Committee of the Council, where active coordination among the G20, FSB, IMF and OECD can take place. Given its scope of activities and its role in the global economic governance, the OECD would be in lieu within this structure.

There is already a Subcommittee, called the SCIMF, which is responsible for coordinating EU policy on IMF matters in the Economic and Finance Committee (EFC) in Brussels. This Committee brings together Ministries and Central Banks, Commission, ECB around 10 times per year<sup>198</sup>. Linkages could be established with SCIMF, either by extending the Subcommittee to include the G20, FSB and OECD or by establishing a similar formalised structure.

The EU Member States in the OECD are not in favour of speaking with a single voice due to the broad scope of the OECD, its non-negotiating nature focused on soft law, the dominance of EU countries and the fact that not all EU Member States are represented<sup>199</sup>.

Currently, 7 EU Member States are not represented in the Organisation. While two EU Member States, Latvia and Lithuania, are currently negotiating for OECD accession, it is not

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<sup>195</sup> Jackson, p.6.

<sup>196</sup> Farell (2013), p.235.

<sup>197</sup> European Commission (2006) Communication from the Commission to the European Council 2006 Europe in the World –Some Practical Proposals for Greater Coherence, Effectiveness and Visibility, pp 6.-8.

<sup>198</sup> Hodson, p. 13.

<sup>199</sup> Coeure and Pisani-Ferry, p.50.

certain whether all EU MS will eventually join due to Turkey's veto against the membership of Cyprus.

### **3.6. How does EU help shaping international standards in international fora? A Comparison of OECD and EU standards on Tax Matters**

Since the global financial and economic crisis, a series of tax scandals exposed by media as well as recent EU investigations on corporate taxation of Apple in Ireland, Starbucks in Belgium, Netherlands and Fiat's subsidiary company and Amazon in Luxembourg showed the need for regulation in the area. As a matter of fact, tax evasion and avoidance can result in a budgetary loss for the EU of up to EUR 1 trillion. It takes the form of illegal tax fraud, tax havens and aggressive tax planning by big businesses, which circumvent laws to minimise taxes<sup>200</sup>. At the same time, some argue that tax arrangements are legal and are 'made as a consequence of the taxpayer's pursuit of legal certainty'<sup>201</sup>. Others believe that the 'stateless income' generated by double non-taxation is 'a return on intellectual property'<sup>202</sup>.

As the EU doesn't have exclusive competences on tax matters and needs unanimity to change legislation<sup>203</sup>, controversial issues tend to be referred to other platforms and the agreement of some global actors such as the US may be needed for enhancing global governance in tax matters<sup>204</sup>, the OECD became a key platform in tax matters with a nickname of 'World Tax Organisation'. Its work on automatic exchange of tax information has been commended by the G20. Moreover, G20-OECD BEPS Programme, approved by G20 in July 2013, presented 15 Actions to fight against tax evasion, tax avoidance and aggressive tax planning<sup>205</sup>. BEPS which is expected to come into force until the end of 2015 is regarded as 'a brave step forward' but many worry about 'unexpectedly fast developments' in the exchange of tax information.

BEPS initiative proposes measures to fight against aggressive tax planning, in other words to stop companies from taking advantage of the tax systems<sup>206</sup> in order to reduce tax liabilities, which erodes the tax bases of Member States<sup>207</sup>.

The European Commission's Recommendation on Aggressive Tax Planning proposing a General Anti Abuse Rules in tax treaties and BEPS Action 6 on treaty abuse 'illustrate the same spirit and a holistic approach'<sup>208</sup>. The overlapping nature of the tax proposals of the OECD and the EU after the financial crisis were also highlighted by Bernardi, who refers to both institutions as tax reformers<sup>209</sup>.

By adopting GAAR, the EU goes in the direction of the OECD, which proposed the adoption of a principle purposes test to be included in tax treaties in BEPS Action 6 to avoid treaty abuse<sup>210</sup>. Pointing out to potential conflicts with the EU law in BEPS discussions and the OECDs ambitious timeframe, Kemmeren criticises Article 6 of BEPS Action, especially its

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<sup>200</sup> European Commission (2015) DG TAXUD.

<sup>201</sup> Van de Velde (2010), p.1.

<sup>202</sup> Davidson (2014), p. 6.

<sup>203</sup> The attempts of EU in 2011 to establish a harmonised corporate tax base is still pending in the European Council as countries such as Ireland, the UK, Lithuania, Latvia, Slovakia, Malta and Cyprus have their reservations. (Euractiv, Furore over tax evasion opens door to new EU proposal on corporate tax, 25 11 2013).

<sup>204</sup> Eccleston (2012), p.126.

<sup>205</sup> Interview with the OECD.

<sup>206</sup> Dourado (2015), p. 4.

<sup>207</sup> European Commission (2014).

<sup>208</sup> Dourado, p.42.

<sup>209</sup> Bernardi (2010), p. 15.

<sup>210</sup> Dourado (2015), p.42.

anti-abuse rules or limitation on benefits (LOB), which are similar to Article 22 of the US model Tax Convention (2006), yet the author believes that LOB provisions are not consistent with the EU law<sup>211</sup>. Furthermore, Obhof warns that countries such as China and the US may endeavour to impose their standards through such global initiatives on the EU due to their economic size.

Many argue that the OECD suggestion on the inclusion of treaty avoidance cases may bring legal uncertainty to taxpayers, which is forbidden by CJEU case law. Moreover, the OECD states that tax treaty benefits shall not be granted if obtaining that benefit was 'one of the main purposes' whereas the Tax Merger Directive upholds that the principle aim of the transaction is to obtain a tax advantage<sup>212</sup>.

The EU law is particularly sensible about taxpayer's rights to be heard but international standards do not pay the same attention to this issue. It is feared that the General Anti-Avoidance Rule (Action 6 of OECD /BEPS) based on a principle purpose test could lead to constitutional challenges and legal uncertainty in Member States<sup>213</sup>.

Action 2 of BEPS includes suggestions for solving double non-taxation arising from hybrid mismatches. The OECD recommendations would facilitate the renegotiation of tax treaties in order to exclude international transactions from the provisions of tax treaties when their objective is the avoidance of tax. This would prevent double non-taxation.

During the BEPS discussions on Action 2 at the OECD in May 2014, concerns were raised on alignment with the EU-proposed rules on hybrids, potential conflicts with the EU law and compliance issues resulting from rendering domestic rules dependent on foreign law. However, the OECD Secretariat said on its webcast update that they 'work in close cooperation' with the European Commission to solve outstanding issues including hybrids<sup>214</sup>.

The CJEU case law shows that the EU law upholds the principle of non-discrimination in the framework of fundamental freedoms over the concerns of double non-taxation. According to the ruling on Philips Electronics UK Ltd<sup>215</sup>, for instance, the fact that losses or payments are also taken into account in another Member State cannot justify discriminatory treatment in the source Member State<sup>216</sup>. Yet, the same anti-abuse measure, which is incompatible with EU law, was cited as an example of 'Hybrids' by the OECD<sup>217</sup>.

Having this in mind, the EU recommendation on aggressive tax planning, which was adopted in parallel to BEPS discussions, had to take into account the limits imposed by the EU law (four fundamental freedoms, EU direct tax directives and rules prohibiting state aid as of Article 107 TFEU) concerning anti-abuse rules. Thus, it included a broadly defined subject to tax clause, which takes into account both intended and unintended benefits as opposed to the linking rule proposed in Action 2 of BEPS<sup>218</sup>.

Nevertheless, Dourado doubts that Member States would adopt this clause, which is only limited to the EU territories and bears a risk of investment diversion. In the absence of a

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<sup>211</sup> Kemmeren, pp. 190-191.

<sup>212</sup> Kemmeren, p.192-193.

<sup>213</sup> Dourado, p.2.

<sup>214</sup> PWC (2015) See (<http://www.pwc.com/gx/en/tax/tax-policy-administration/beps/hybrid-mismatch-arrangements.jhtml>).

<sup>215</sup> CJEU (2012) Philips Electronics UK Ltd C-18/11.

<sup>216</sup> PWC (2012), p.3.

<sup>217</sup> Option Finance (2013).

<sup>218</sup> Dourado, p.51.

globally applicable standard, the technological advancements and existing loopholes elsewhere could harm its implementation<sup>219</sup>.

A final point can be made about different approaches to standard-setting in the EU and in the OECD by looking at Dostal's findings, which compared the OECD's influence on the EU policy through his Jobs Study. His conclusion was somewhat enlightening: Whereas EU deliberations do reflect 'interest groups and pluralism', the OECD is based on 'single and closed organisational discourse' and 'epistemic claims'<sup>220</sup>. The OECD's 'relative isolation' from interest groups is advantageous for early agenda setting but when interest groups get involved, its room for manoeuvre in comparison to the European Commission is limited<sup>221</sup>.

It is yet to be seen whether the civil society could pierce into the OECD policy and have a fingerprint on its deliberations following the recent public consultations on BEPS and whether the OECD will create a sufficiently inclusive forum for such a global issue<sup>222</sup>.

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<sup>219</sup> Dourado, p.51.

<sup>220</sup> Dostal, p.452-453.

<sup>221</sup> Dostal, p.456.

<sup>222</sup> Wouters and Meuwissen (2011), p. 15.

## 4. EVALUATION OF THE ACCOUNTABILITY OF THE OECD

### KEY FINDINGS

- By tasking the OECD with several activities, the G20 has shifted the main mandate of the OECD, bypassing its formal decision-making mechanism.
- Although the OECD Convention affirms that the Council is in the driving seat, some argue that the Committees have the central gravity, while some complain about the Secretary-General's discretionary powers. The Member States' control is compromised by informal decision-making practices and a lack of dismissal mechanism of the executive branch.
- The OECD's Convention remained unaltered since 1961 and its Rules of Procedures are open to interpretation.
- The OECD is criticised for neoliberal tendencies and dominance of an Anglo-Saxon culture, while Member States such as the US are influential at setting the Organisation's agenda. Moreover, intra-institutional democracy is further undermined by the key role of G7 Member States in determining the OECD's priorities.
- The OECD's work for the G20 may undermine the interests of its Member States and play to the benefit of big non-OECD G20 Members.
- The OECD's strict disclosure policies and opaque operational model make it hard for stakeholders to pierce into its Committee work in order to influence its standard-setting activities.
- While a geographical balance is being maintained for the selection of Deputy-Secretary-Generals, some nationalities seem to be overrepresented in the OECD Secretariat.
- The OECD discloses its financial statements, which are evaluated by an external auditor. The Organisation has developed a cyclical evaluation mechanism, measuring the outcomes of the Secretariat's and the Committees' work.
- OECD agencies as well as informal networks of groups, having loose ties to the OECD, may escape effective supervision of their activities, as these agencies and networks dispose of their own bureau and chair.
- The EU's accountability regarding its activities in the OECD is being dwarfed by poor reporting practices and a lack of coordination within the Council, the European Commission, the European Parliament as well as a horizontal coordination among the EU institutions.

#### 4.1. OECD's Compliance with ILA Recommendations

The ILA criteria on the first level of accountability, which relate to the internal and external scrutiny over IOs, require good governance, participatory decision-making process, access to information, well-functioning international civil service, sound financial management as well as reporting and evaluation. Furthermore, IOs are expected to act in good faith while respecting the principles of constitutionality, institutional balance, supervision and control, stating the reasons for decisions taken, procedural regularity, objectivity and impartiality, and due diligence. The ILA separately establishes recommendations for treaty organs and

for the relationship between NGOs and IOs. We will analyse various accountability issues at the OECD in light of these rules below<sup>223</sup>.

#### 4.1.1. The Principle of Constitutionality

The OECD doesn't have a mandate to work for other international organisations but since 2009, it has been providing background studies, reports, and policy proposals while participating in the negotiation and monitoring processes within the G20 framework. For instance, the OECD produced major reports for the G20 on Taxation, Sustainable Growth, and Trade for Growth, Fossil Fuel Subsidies and Trade and Investment measures. The OECD reports back on its G20 involvement to the Council and other bodies through seminars and briefing sessions. Yet, in few cases, the OECD input was sent to the G20 without a discussion in OECD Subcommittees, which caused the fury of some of its Member States<sup>224</sup>.

By tasking the OECD with such activities, the G20 has shifted the main mandate of the OECD, bypassing its formal decision-making mechanism<sup>225</sup>. Moreover, the G20 is an informal network without a legal personality or a legal status, and it is therefore difficult to hold it accountable<sup>226</sup>. G20 is marked by a lack of formal bureaucracy and open nature of discussion without a script<sup>227</sup>. Moreover, the G20 doesn't report back to interested parties and the process of its agenda-setting is opaque<sup>228</sup>. While the EU is a leader of implementing and following up on G20 decisions and it can be argued that it has certain influence on its agenda, it is discouraging to witness that the EU-suggested items, such as financial transaction tax, were dropped from the G20 agenda<sup>229</sup>. Domestic institutions can only indirectly exert some influence on the G20 work in holding their governments accountable in national Parliaments. The notion of a concrete multilevel partnership with subnational institutions, as is the case of the multilevel European governance, is eminently absent in the functioning of the G20<sup>230</sup>. Hence, the OECD's work for the G20 leads to a double lack of accountability. Notwithstanding these accountability gaps, the OECD doesn't exclude the possibility of working for other international fora where its expertise is could be required such as APEC and Iberoamerican Summit<sup>231</sup>.

#### 4.1.2. The Principle of Institutional Balance

Although the OECD Convention affirms that the Council is in the driving seat, some argue that the Committees have the central gravity<sup>232</sup>, while some complain about the Secretary-General's discretionary powers<sup>233</sup>. Not all Member States have a large Permanent Delegation to exercise effective control through the CPR. Even one of the bigger Member States' representation to the OECD (i.e. France) is constituted of 16 agents, 8 of them being diplomats<sup>234</sup>.

The Committees enjoy wide discretion, while showing signs of weak monitoring and lack of institutional checks and balances. This can be exemplified by the case of the Committee on

<sup>223</sup> See ILA Report on <http://www.ila-hq.org/download.cfm/docid/6B708C25-4D6D-42E2-8385DADA752815E8>.

<sup>224</sup> Interview with with the Deputy Ambassador of the European Union Delegation to the OECD.

<sup>225</sup> Wouters and Ramopoulos, p.767.

<sup>226</sup> Bradlow (2013), 981-982.

<sup>227</sup> Beeson and Bell (2009), p.77.

<sup>228</sup> Bradlow p. 999.

<sup>229</sup> Bassot and Szczepański (2015), p. 9.

<sup>230</sup> Wouters and Ramopoulos, p.767.

<sup>231</sup> See <http://www.oecd.org/about/secretary-general/MCM-2014-Strategic-Orientations-SG.pdf>.

<sup>232</sup> Verschaeve and Takacs (2013), p.191.

<sup>233</sup> Interview with former OECD employee.

<sup>234</sup> Marland (2014), p.176.

Capital Movements and Invisible Transactions, which was eager to liberalise capital flows despite the fact that many of its Members didn't support its policies<sup>235</sup>.

The Committee structure of the OECD is unique and complex. The 40.000 delegates participating in the Committees may risk exposure to national lobbying at home and peer pressure from Non-Members as well as other international organisations in the Committees. Moreover, they may not have the capacity to exercise control over the Secretariat due to a possible informational disadvantage, as national Ministries tend to depend on international organisations, which are more 'specialised' and have 'a long-term planning capability'<sup>236</sup>.

In addition, OECD the Secretariat enjoys a high level of autonomy and discretion from other international organisations and the OECD Member States<sup>237</sup>. First, the Secretariat prepares a draft agenda for the Ministerial, which the Council adopts with simple majority voting. According to Rule 12, the Secretary-General shall communicate the provisional agenda of the Council as early as possible and at least seven days in advance in both official languages of the Organisation. Insiders say that these provisions don't give countries enough time to Member States to have a coordinated approach and to add items to the agenda as the Secretary-General usually sends the agenda rather late.

Moreover, the Secretary-General controls the recruitment of most senior staff<sup>238</sup>, such as the OECD Sherpa, who is responsible for the preparations of the G20 meetings and represents the OECD at the G20's Sherpa's Track, where political aspects of the G20 work are discussed<sup>239</sup>. The current OECD Sherpa, also serving as the Secretary-General's Chief of Staff, was nominated directly by the Secretary-General without Member States' control, which caused a big scandal upon his arrival<sup>240</sup>.

Finally, the Secretary-Generals can exercise control over the final products of the Organisation. For instance, former Secretary-General Emile Van Lennep had a conflict with the staff preparing the OECD's Economic Outlook, which is published twice a year. As Van Lennep feared that pessimistic growth predictions would have self-fulfilling effects, he gave the text an optimistic tone<sup>241</sup>.

The Member's control is rather weak, as they can't activate a dismissal process of the personnel in the executive branch<sup>242</sup>.

#### 4.1.3. The Principle of Good Governance

The OECD's simplistic and undetailed Convention remained unaltered since 1961. Its Rules of Procedures are vague regarding the division of competences and interactions between main decision bodies. Non-Members are vaguely defined as key partners, associates, participants and invitees. Almost all meetings are closed and there is no public vote in the Council or in the Committees.

This bottleneck was partially addressed by the 2006 Resolution of the Council on a New Governance Structure for the Organisation prior to OECD's enlargement.

<sup>235</sup> Clifton and Diaz-Fuentes, p.566.

<sup>236</sup> Dostal (2007), p. 445.

<sup>237</sup> Wolfe (2008), p.38.

<sup>238</sup> Balint and Knill (2007), p. 121.

<sup>239</sup> Interview with former OECD employee.

<sup>240</sup> The Economist, An Angel Flies into some Flak, 19 April 2007, (<http://www.economist.com/node/9045394>).

<sup>241</sup> Reinalda, p.426.

<sup>242</sup> Blagescu and Lloyd (2006).



The Council admitted that the OECD was facing an organisational crisis in 2006 and designed an engagement plan for key economic actors, through an organisational reform aimed at rendering the OECD more 'inclusive and heterogeneous'<sup>243</sup>.

As to the decision-making process, French Ambassador Marland sheds light to the backstage decision-making practices among Ambassadors and the Secretary-General. He says that this type of informal and secret arrangements play a considerable role in establishing final positions<sup>244</sup>.

Some scholars believe that 'G20 helps the United States and the G8 dominate a wider order and legitimise a G7 generated view of the world'<sup>245</sup>. According to Marland decisions informally taken at G7 have a spill-over effect on the positions in the OECD Council<sup>246</sup>. As G7 Member States are only a small subset of the OECD Member States, this can dissatisfy Members, which are excluded from the decision-making mechanism while harming the smooth functioning of the Organisation. Furthermore, not every OECD Member State is a Member of the G20.

#### 4.1.4. The Principle of Stating the Reasons for Decisions Taken

Jackson affirms that 'the United States plays a leading but not a commanding role within the OECD', carrying 'a larger than average portion of the burden for determining the agenda of the OECD and in helping to direct the course of policy developments'<sup>247</sup>. This can be illustrated by having a thorough look at the OECD's attempts to define tax havens.

The OECD started a clampdown on tax havens well ahead of the G20 in the 1980s. In 1998, G7 suggested that the OECD lead the campaign on tax havens but its harmful tax competition programme met resistance from OECD Member States, such as Switzerland and Luxembourg. Moreover, financial sectors benefiting most from tax havens campaigned against the OECD.<sup>248</sup> This was exacerbated when the Bush administration threatened to cut US funding in 2001<sup>249</sup>. Similarly, the U.S resistance regarding legislation on Intellectual Property Rights has hampered the OECD's work in this area<sup>250</sup>.

The OECD's tax standards were adopted by the G20 in 2004, coinciding with the same year the OECD criticised Bush administration's fiscal policy in its survey<sup>251</sup>.

The OECD's criticism may seem contradictory to the fact that the Organisation is at the same time accountable to its Member States<sup>252</sup>. Some argue that Member States may tolerate criticism when they are looking for support to their reforms. For instance, Eccleston demonstrates that Australia used successive OECD surveys to promote consumption tax reform<sup>253</sup>.

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<sup>243</sup> Clifton and Diaz-Fuentes, p.554.

<sup>244</sup> Marland, p.175.

<sup>245</sup> Beeson and Bell (2009), p.71.

<sup>246</sup> Marland, p. 246.

<sup>247</sup> Jackson, p.5.

<sup>248</sup> Sharman (2006), pp. 48-59.

<sup>249</sup> Woodward 2008, p.88.

<sup>250</sup> Interview with the OECD Secretariat.

<sup>251</sup> Eccleston, p.249.

<sup>252</sup> Porter and Webb (2008), pp. 43-59.

<sup>253</sup> Eccleston, p. 248.



#### 4.1.5. The Principle of Good Faith and Procedural Regularity

We will re-examine the OECD's recent work on tax havens to see whether or not the principle of good faith and procedural regularity with regard to minorities and individual Member States was in place.

The OECD's blacklisting of its own Member States such as Switzerland, Austria and Luxembourg among tax havens while sparing G20 members back in 2009 may have undermined its credibility<sup>254</sup>.

The targeted Member States argued that they don't represent tax havens on the grounds that taxation is not zero or low and their banking secrecy can be lifted in the event of tax offences. They accused the US (Delaware) and the UK (Guernsey, Jersey and the Isle of Man) of closing their eyes to the tax havens on their own territories<sup>255</sup>. In effect, 2013 Financial Secrecy Index of the Tax Justice Network had a much larger list on tax havens including Switzerland, Luxembourg, Hong Kong, British overseas territories, Singapore and the US<sup>256</sup>.

Sharman (2009) discusses the effects of tax haven blacklisting in transforming government's fiscal policies eventhough this would work against their national interests<sup>257</sup>. Austria and Luxembourg eventually took necessary steps to remove themselves from the OECD's grey list<sup>258</sup>. However, there is no evidence that other Member States followed suit. Moreover, countries such as China, a non-OECD Member State valued as a Key Partner and a G20 Member State, successfully avoided being listed as tax haven.

Another worrying example is that the OECD turned a blind eye to the money laundering practices in India documented by a journalist as its FATF was accused of being more interested in 'shuffling papers than in cracking down money laundering'<sup>259</sup>.

#### 4.1.6. Well-functioning International Service

There is an implicit agreement to strike a geographical balance when it comes to the appointments of the Secretary-General and Deputy Secretary-Generals of the OECD<sup>260</sup>. Although the current Secretary-General is comes from a non-EU Member State, his two Deputies are EU nationals. Previously, EU nationals, in particular French, served often as Secretary-Generals. Each mandate, there were up to 3 Deputy Secretary-Generals emanating from EU Member States. At the same time, US nationals have systematically held a Deputy Secretary-General position. When it comes to recruitments of the secretarial staff, it is believed to be occurring on a merit base notwithstanding that some Ambassadors may exercise pressure for hiring their nationals.

On the other hand, some nationalities seem to be overrepresented in the OECD Secretariat. According to Clifton and Diaz-Fuentes, French, British and US nationals constituted 58 % of all officials and occupied 45 % of the professional posts in 2010<sup>261</sup>.

In 2000, the OECD improved its relatively weak code of conduct dating from 1976 in terms of substance and procedures. Reforms focused on resource allocation and performance evaluation. Some scholars point out to informal recruitment processes, which may be

<sup>254</sup> Gravelle (2015), p. 5-6.

<sup>255</sup> Nasra and Debaere (2012), p. 16.

<sup>256</sup> See Tax Justice Network's index at <http://www.financialsecrecyindex.com>.

<sup>257</sup> Clifton and Diaz-Fuentes, p.565.

<sup>258</sup> Hodson (2011), p. 10.

<sup>259</sup> International Consortium of Investigative Journalists (2013).

<sup>260</sup> Interview with the Deputy Ambassador of the EU Delegation to the OECD.

<sup>261</sup> Clifton and Diaz Fuentes, (2011) p.560.

conducted in the absence of a job advertisement for certain project staff, while highlighting that working arrangements are being increasingly based on short-term and flexible contracts. In addition, sources underline the existence of hiring practices based on endorsements and pressures from national Permanent Delegations. Last but not least, it is worthwhile to note that there is no independent internal complaint mechanism<sup>262</sup>.

#### 4.1.7. The Principle of Objectivity and Impartiality

The OECD is often slammed for its 'Anglo-Saxon inspired approach' to economic policy making<sup>263</sup>. Similarly, the OECD is accused of being dominated by neoliberal economists while being marked by an exclusion of interest groups, as was the case when the OECD attempted to frame EU welfare and market policies<sup>264</sup>. Woodward argues further that the Secretary-General follows a pattern of 'selective interactions with conservative social forces'<sup>265</sup>.

#### 4.1.8. The Principle of Supervision and Control

OECD agencies as well as some informal networks of groups, having loose ties to the OECD, may escape Member State control as they dispose of their own bureau and chair<sup>266</sup>.

More interestingly, there exists an ad hoc Group to implement the OECD-BEPS project, which is funded by some 62 Members. The Group is not a formal or informal OECD body and the participation of non-OECD Members does not create and cannot be interpreted as a precedent in the context of OECD procedures for the participation of Non-Members in OECD activities. The Group has a main decision-making body, a bureau and a chair. It is convened under the aegis of the OECD and the G20 and governed by OECD Rules of Procedures. The Group, which is supported by the OECD Secretariat, provides periodic updates to the OECD's Committee on Fiscal Affairs<sup>267</sup>.

#### 4.1.9. Reporting and Evaluation

The Secretary-General summarises OECD's activities at the OECD Ministerial in an annual Secretary-General's Report to Ministers. The Organisation's priorities as well as strategic and budget orientations are subject to the unanimous approval by the Council.

The set-up of the Integrated Management Cycle (IMC) aims at ensuring strategic planning and priority setting, defining the working programme, and monitoring as well as evaluating the Organisation. Two major evaluative mechanisms were developed within the IMC: Program implementation report and in depth evaluation of the Committees<sup>268</sup>.

The former checks whether and how the expected outcomes were achieved for the year while the latter measures the relevance, effectiveness and efficiency of the OECD Committees. Moreover, Medium Term Orientation Surveys are used for planning up priorities for the next term. However, these evaluations are not made publicly available<sup>269</sup>.

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<sup>262</sup> Blagescu and Lloyd (2006), p.3.

<sup>263</sup> Clifton and Diaz-Fuentes (2011), p.566.

<sup>264</sup> Dostal (2004), p. 440.

<sup>265</sup> Woodward, (2008), p.94.

<sup>266</sup> Dostal (2007), p. 446.

<sup>267</sup> OECD Secretary-General's Report to G20 Finance Ministers, Istanbul, February 2015, p. 23.

<sup>268</sup> OECD Document C/WPP (2009) The Integrated Management Cycle, Priority Setting, Resource Reallocation and Performance Reevaluation at the OECD, Working Party on Priorities, 20 February 2009.

<sup>269</sup> OECD (2014) Evaluation of OECD Committees to Support Organisational Performance and Learning, Presentation to the EIB Operations Evaluation Division.

The supervision of this internal evaluation is ensured by few Member States in the Evaluation Sub-Group, which are nominated by the OECD Council. Moreover, an Evaluation Coordinator is in charge of conducting independent evaluations<sup>270</sup>.

#### 4.1.10. Access to Information

Some refer to the OECD as a black box<sup>271</sup> probably because its meetings are mostly held privately and its archives were only opened in 1990. The OECD ranked fourth among 10 IOs in the 2006 Global Accountability Report in the area transparency, collecting 56 points out of 100<sup>272</sup>. A recent declassification process<sup>273</sup>, triggered by public pressure<sup>274</sup>, envisages public access to historical archives after a period of ten years, yet commentators complain about its 'disappointing speed'<sup>275</sup>. According to OECD's Rules of Procedures, 'confidential' documents can be classified as 'for official use' only after 3 years and the latter can be downgraded as 'unclassified' after an additional 3-year period. Practically, confidential documents are made available after 6 years. Yet, declassification 'does not in itself require in any way the dissemination of the material to a wide public'<sup>276</sup>.

Together with other IOs, the OECD is subject to public criticism for granting 'considerable implicit power' to 'non-elected technocrats' in 'international organisations as undemocratic and unaccountable to domestic constituencies'<sup>277</sup> yet little is done to bridge this accountability gap within the OECD. Whereas peer reviews are never made publicly available<sup>278</sup>, documents related to international negotiations, relations with Non-Members and market-sensitive issues are not being disclosed. In spite of these limitations, the OECD's database of unclassified official documents may be consulted at the Organisation's website and includes meeting documents, agendas, list of participants, technical studies.

Most of the information circulates in the OECD's internal online information service, OLIS. Some NGOs such as the OECD Watch managed to reach an agreement with the Investment Committee on sharing all classified Committee documents as soon as they were posted on OLIS<sup>279</sup>.

Until 1997, the OECD's communications activities were limited to 'OECD visits program, parliamentary liaisons, OECD centres and OECD Observer Magazine'. An overhauled communications strategy entailed an increased access to documents, especially country-specific information, multilingual publications and webpages.' The OECD's Public Affairs and Communications Directorate (PAC) was inaugurated to deal with media relations, reputational management, liaison with national representatives and publishing<sup>280</sup>.

Furthermore, an effective communications and dissemination strategy was developed in 2009 to increase the OECDs visibility in social media by making the OECD available on

<sup>270</sup> Blagescu and Lloyd (2006), p. 3.

<sup>271</sup> Trondal, Marcussen, Larsson and Veggeland (2010).

<sup>272</sup> Blagescu and Lloyd (2006).

<sup>273</sup> See Council Resolution on the Classification and Declassification of Information and Statement on Information Disclosure.

<sup>274</sup> Burall and Neligan (2005), p. 15.

<sup>275</sup> Blagescu and Lloyd 2006.

<sup>276</sup> OECD Resolution of the Council on the Historical Archives of the Organisation C91 132 Final.

<sup>277</sup> Riles (2013), p. 87.

<sup>278</sup> Woodward 2008, p.88.

<sup>279</sup> Carroll and Kellow (2011), p. 188.

<sup>280</sup> Woodward 2008, p. 88.

Facebook, Twitter and YouTube. As part of this strategy, the OECD iLibrary was launched in collaboration with the European Parliament and the OECD website was overhauled<sup>281</sup>.

#### 4.1.11. Privileges and Dispute Settlement

The OECD has immunity from legal process; its properties, premises and archives are inviolable; and it is exempt from taxes and duties. The Organisation enjoys privileges in respect of communication while the Representatives of Member States and Observers, the OECD Secretary-General, Deputy and Assistant Secretary-Generals as well as officials and experts benefit from immunities.

France has more responsibilities as hosting country of the OECD and facilitates problem solving between the OECD and the French administration regarding taxation etc<sup>282</sup>.

There is a dispute settlement mechanism in the OECD, which provides for arbitration when the negotiations fail. The arbitral tribunal is composed of three arbitrators chosen by the Government, the Organisation and jointly.

In parallel, it is seen as problematic that the Secretary-General can waive the immunities of officials and experts, 'where, in his opinion, the immunity will impede the administration of justice'<sup>283</sup>.

## 4.2. Ensuring accountability for the EU and for the OECD

### 4.2.1. The Council's Accountability

Current arrangements make it hard to evaluate the degree of behind-the-scenes cooperation of Member States in the Council of the European Union and to determine why a position was chosen over the other<sup>284</sup>. Although the Council takes its legitimacy from elections, this doesn't preclude it from being transparent and open about its deliberations.

One should keep in mind that there is no parliamentary oversight in the Council Committees. The EFC President maintains relations with the European Parliament according to Article 11 of the EFC Statute, but we couldn't detect any cooperation as such in the TPC Statute. To ensure that the responsible Committee for the OECD can provide a fully accountable and unified position of the EU externally, a regular contact for exchange of information purposes shall be established with the European Parliament<sup>285</sup>.

There is also a need to strengthen interactions with COREPER on global governance issues. For instance, the EU's Sherpa is regularly briefing Member States' representatives in COREPER. The same briefings could be held in the European Parliament.

### 4.2.2. The European Commission's Accountability

With the entry of the Lisbon Treaty into force, the obligation for coordination is not only required for exclusive EU competences but also for the shared ones. While the EU's presence in the OECD should extend beyond the Union's exclusive competences, the coordination efforts should be also handled in a more holistic way. Past attempts to replace the inter-service coordinator DG Trade by the EEAS proved unfruitful due to the strong resistance of the former<sup>286</sup>. Nevertheless, we believe that DG ECFIN should be given a key

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<sup>281</sup> Secretary-General's Strategic Orientations for 2011 and beyond, Meeting of the OECD Council at Ministerial Level, Paris, 25-26 2011).

<sup>282</sup> Marland, p.176.

<sup>283</sup> See OECD, 2015 (<http://www.oecd.org/legal/41384374.pdf>).

<sup>284</sup> Hodson, p.9.

<sup>285</sup> Giovannini et. al. (2012), p.8.

<sup>286</sup> Interview with former EEAS delegate.

role in inter-service coordination. In addition, other DG's such as DG FISMA and DG TAXUD should be involved.

Furthermore, common positions should be rendered public or should at least be sent to the relevant Committees in the European Parliament. Current mission reports of the delegates indicating how they defended the Union position should also be made publicly available.

DG Trade or its substitute shall establish a specific section on OECD/Global Economic Governance coordination with details on what was achieved in this standard-setting Organisation.

EU Delegates to the OECD Committees could participate in an exchange of view in the European Parliament Committees focusing on key instruments, which are being developed at the OECD.

A special attention shall be given to peer reviews. European Commission and ECB delegates participating in the OECD's peer reviews may be invited to the ECON Committee's Economic Dialogues before and possibly after the peer review.

It should not be forgotten that social accountability is an important legitimising factor and the civil society can be involved in the accountability mechanisms and enhance decision-making via public platforms<sup>287</sup>.

#### 4.2.3. The Member States' Accountability

Member States are accountable to their electorates. Nevertheless, Member States, which are requesting specific advice on their economic situation from the OECD, or Member States participating in peer reviews, shall be also invited to the European Parliament's Economic Dialogues and may be accompanied by high-level OECD representatives. Yet, this would be a challenging task for the European Parliament as some Member States are already refusing to attend the G20 special sessions in the ECON Committee.

#### 4.2.4. The EU Permanent Delegation's Accountability

The Permanent Delegation is accountable to the EEAS but it has an important role in the coordination of positions and could counterbalance DG Trade's actions in the OECD. Ambassadors or Deputy Ambassadors may be invited to provide information about the EU's positions and role in various OECD Council decisions and its standard-setting activities.

#### 4.2.5. The ECB's Accountability

The ECB is an independent institution, which shall not seek or take instructions from national governments or Union institutions according to the Article 130 TFEU. Yet, it has to engage with them, including the European Parliament. In accordance with Article 127.4 TFEU it 'may submit opinions to the appropriate Union institutions'. There is a Monetary Dialogue between the European Parliament and the ECB. The ECB reports to the ECON Committee on a quarterly basis. The Vice President of the ECB presents the ECB Annual Report to the European Parliament. Members of the European Parliament also speak on relevant issues before the European Parliament. This relationship could be further strengthened. For instance, the ECB could join parliamentary question time type sessions in the European Parliament. Its input should be especially useful with regards to peer reviews and developments in the OECD's Working Party 3.

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<sup>287</sup> Kohler-Koch (2010), p.1136.

#### 4.2.6. The OECD's Accountability to the EU

Hessami underlines that EU citizen's trust in an international organisation tends to grow when people are more informed about the IO, when they believe that the EU is well represented in it and when they are convinced that it is a democratic institution<sup>288</sup>.

The Council of Europe holds an annual debate on the activities of the OECD involving non-OECD national parliaments and the European Parliament. The OECD Secretary-General presents an annual report, attends a Questions and Answers session with the parliamentarians, which is followed by a Council of Europe resolution. Apart from both of them being in France, these two organisations have few things in common. The former has an authority in economic policy while the latter's main scope of activity involves human rights and democracy. The OECD's traditional involvement with the Council of Europe and NATO could be explained by their being contemporaries and by the post-war conditions, in which they were created, but many things have changed since then. Moreover, the Council of Europe includes most of the former Soviet Republics, which do not necessarily have a big stake at the OECD's work.

Given the OECD's mainly European character and origins, the European Parliament would be a suitable venue for such a formalised and regular cooperation. Even the Interparliamentary Union could be involved to complement for the non-European OECD Member States, as was the case with the Parliamentary Network on the WTO.

Separately, the European Parliament attends parliamentary days at the OECD. The feedback of the participating MEPs would be a valuable source of information for their colleagues in the European Parliament.

Unfortunately, Parliaments mostly lack the capacity and established mechanisms that would enable them to conduct effective oversight of government action and to evaluate progress on the G20 work programme<sup>289</sup>. The same is valid for the OECD.

To close the legitimacy gap and to render global economic governance more democratic, the involvement of national parliaments and the European Parliament is key. 'Without formal consent of domestic parliaments and the responsibility of diplomats and negotiators there is no formal link between decisions at the global level and the articulation of the will of the people at the domestic level'<sup>290</sup>.

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<sup>288</sup> Hessami (2011), p.27.

<sup>289</sup> Slaughter (2013), p. 89.

<sup>290</sup> Krajewski (2010), p. 111.

## 5. CONCLUDING REMARKS AND RECOMMENDATIONS

### KEY FINDINGS

- The EU holds a phantom-like status in the OECD Committees. The EU is not cited as a participant due to its special status, except for the handful of Committees where it is a full member, in spite of the substantial EU voluntary contributions to the OECD budget.
- The EU shall seek full membership in the OECD similar to its WTO, FAO and EBRD membership. This would require the modification of the OECD Convention as its Article 16 states that only states can be members. Otherwise, the EU's special status at the OECD risks to be undermined by newcomers, which are being granted similar privileges without being an OECD Member.
- The OECD's large scope of activities cover 99 % of the EU's shared and exclusive competences. However, the EU is not upholding a unified position on issues related to its exclusive competences in the OECD due to the Organisation's informal structure, consensus-decision-making and soft regulatory approach.
- The EU position shall be established in a relevant Working Group in the Council of the European Union. Three options could improve the current situation: a) to establish a Working Group on the OECD b) to establish a Working Group on Global Economic Governance focusing on EU coordination in the OECD, G20, IMF, FSB and other relevant international organisations c) Extending the scope of SCIMF to include OECD and possibly other key actors.
- The horizontal coordination in the Commission shall be operated under the aegis of DG ECFIN. Other DGs can be involved given the OECD's increasing involvement in the G20 work. An appropriate and open reporting mechanism shall be developed.
- EU Member States seeking OECD's economic policy advice shall be held under scrutiny in the Economic Dialogues. The ECON Committee shall particularly focus on EU-wide and Eurozone Economic Surveys and establish a permanent mechanism to be able to feed into deliberations and to be updated in a timely manner.
- There should be a high level inter-parliamentary dialogue through the OECD's Global Parliamentary Forum, the OECD's Annual Council of Europe debate or an alternative session of similar nature in the European Parliament.

The OECD's large scope of activities cover 99 % of the EU's exclusive and shared competences. Yet, the Union is not even upholding a unified position on issues related to its exclusive competences in the OECD due to the Organisation's informal structure, consensus-decision making and soft regulatory approach.

Gstöhl underlines that the EU's external representation is weak 'the more national or (shared competence) in an issue area, the stricter an international institutions' rules of participation and the weaker the EUs coordination mechanisms, the more heterogeneous the member states' preferences and the weaker their collective identity'<sup>291</sup>.

The OECD remained a closed 'rich man's club' for many years without massive enlargements but since the end of the Cold War, it played a role in the transition of Eastern

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<sup>291</sup> Gstöhl, p. 26



Europe and opened up to emerging countries due to the decreasing economic power of its Member States. This constitutes a challenge to the EU's role in the OECD as the APEC bloc is starting to assert itself. The EU's privileged status is also being endangered by the OECD's new Global Relations Strategy, which aims at involving Key Partners such as Brazil, India, Indonesia, China and South Africa in the OECD work. Without being a member, these countries can obtain full membership in OECD Committees and contribute to the final products of the OECD such as communiqués.

The EU's quasi-member status is therefore being banalised with an increasing number of newcomers enjoying similar privileges. However, any attempt to upgrade the EU's status has to be finely tuned as it has political, legal and institutional implications<sup>292</sup>. For example, the EU has upgraded its status in the United Nation's General Assembly in 2011 but since then there was no attempt to repeat this effort as the Union became aware of the political sensitivities of third states<sup>293</sup>. At the same time, the EU cannot turn a blind eye to its identity being undermined in the OECD, which operates on a more than 50 year-old-fashioned Convention with a reference to the European Communities and, which often recognises the Commission as its only interlocutor-albeit without voting rights and budgetary oversight. The EU shall seek full membership in the OECD similar to its WTO, FAO and EBRD membership. Yet, this would require the modification of the OECD Convention as its Article 16 states that only states can become members<sup>294</sup>.

The phantom-like status of the EU in the OECD Committees, not necessarily being cited as a participant due to its special status except for the handful of Committees where it is a full member, is in odds with the huge voluntary contributions of the EU (larger than the Part I contribution of the United States) in addition to what its Member States pay.

As for the Parisian holiday attitude of the EU delegates participating in OECD activities, a wake-up call shall be made reminding them of the importance of its standard-setting activities within the global economic architecture. Within the European Commission, the open method of coordination is used on labour and economic issues to promote new economic ideas. The Commission has access to a number of international organisations, which could be used as a source of information. After their meetings at the OECD, EU participants could brief a specialised body under the Commission, which in turn could relate it to the EU Delegation<sup>295</sup>.

Nor shall the Member States forget that they should act jointly in the interest of the Union in IOs independently of the division of competences between the EU and its Member States. The EU should stop counting on its big Member States, which are part of the G20 or G7 for its coordination and shall adopt a serious, formalised and inclusive approach. If it fails to do so, it can encounter constitutional challenges with the tax standards developed at the OECD, for instance. The EU shall have a greater role in the EU-OECD 'idea boomerang'<sup>296</sup> and engage more with the OECD, by bringing a written mandate. If it doesn't bring a formal mandate, it has to adopt a congruent position. The dominant approach that there is no need for coordination' if the position of relevant states doesn't interfere with coordinated EU positions or policies, or if the relevant states do not bind the EU in any way with their respective positions<sup>297</sup> shall be abandoned.

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<sup>292</sup> Emerson and Kaczynski (2010), p. 3.

<sup>293</sup> Emerson and Kaczynski, p.10.

<sup>294</sup> Nawparwar (2009), p. 39.

<sup>295</sup> Obhof (2009), p.408.

<sup>296</sup> Noaksson and Jacobsson, p.57.

<sup>297</sup> Fischer (2001), pp.129-130.



The EU position shall be established in a relevant Working Group in the Council of the European Union. Three options could improve the current situation: a) to establish a Working Group on the OECD b) to establish a Working Group on Global Economic Governance focusing on EU coordination in the OECD, G20, IMF, FSB and other relevant international organisations c) Extending the scope of SCIMF to include OECD and possibly other key actors.

As for the inter-coordination service, DG ECFIN, DG FISMA and other DGs shall be given a key role in accordance with the OECD's increasing involvement in the G20 driven work.

EU Member States seeking the OECD's economic policy advice shall be held under scrutiny in the Economic Dialogues<sup>298</sup>. The ECON Committee shall particularly focus on EU-wide and Eurozone Economic Surveys and establish a permanent mechanism to be able to feed into deliberations and to be updated in a timely manner. Member States who participate in the peer review, together with the European Commission and the ECB representatives, shall report back to the European Parliament.

The ECON Committee could ask for an access to the draft text, oversee the selection of the reviewers, contribute to the coordination of EU participants' position. Interinstitutional communication shall be increased with the ECB and the Eurogroup, encouraging formalised mutual briefings.

Moreover, the European Stability Mechanism, which bundles the fiscal authorities of the euro area, shall be tied to the OECD activities, as OECD decisions have financial and fiscal consequences contrary to the belief that it is an insignificant soft law Organisation.

The EU doesn't have legal powers on taxation, but there is new special Committee on Taxation, which is closely linked to the ECON Committee. A regular exchange of information shall be created between this Subcommittee and the OECD's BEPS Initiative as well as the OECD's Global Forum on AEOI.

Moreover, closer relations between Eurostat and the OECD shall continue developing common standards. For instance, the OECD uses IMF standards to assess IPA for EU enlargement countries whereas there exists a different system of accounting at the EU level.

Last but not least, Organisations, which perform technical activities or serve as a forum for consultation and coordination, are usually not mentioned in the discussions about democratic legitimacy. However, it is exactly these Organisations, which necessitate the highest possible democratic scrutiny as their decisions, which may be binding on all Member States and beyond, create obligations directly affecting citizens<sup>299</sup>. There should be a high level interparliamentary dialogue through the OECD's Global Parliamentary Forum, the OECD's Annual Council of Europe debate or an alternative session of similar nature in the European Parliament.

The European Parliament could initiate a similar forum to the European Parliamentary Financial Services Forum in order to support the EU's negotiations on taxation in the OECD<sup>300</sup>.

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<sup>298</sup> European Parliament Briefing Economic Dialogues and Exchanges of Views with the Member States under the European Semester Cycles See [http://www.europarl.europa.eu/ReqData/etudes/BRIE/2015/528782/IPOL\\_BRI\(2015\)528782\\_EN.pdf](http://www.europarl.europa.eu/ReqData/etudes/BRIE/2015/528782/IPOL_BRI(2015)528782_EN.pdf).

<sup>299</sup> Krajewski, P. 14.

<sup>300</sup> Bieling (2006), p. 429.

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We would like to thank our interviewees who preferred to keep their anonymity. We interviewed the Permanent Delegation of the EU to the OECD, two senior officials in the OECD Secretariat and one staffer in the IEA, three former OECD employees, one national delegate to the OECD, one employee from the European Parliament, one former EEAS delegate, one former ECFIN delegate. We also initiated email correspondence with the ECB and DG FISMA.

# NOTES









DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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