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Liaison Committee with International Non-Governmental Organisations

TUAC Discussion Paper - “The Future of Work, the Future of the Firm”

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Background

1. The Liaison Committee Meeting (LCM) is an opportunity for the TUAC to exchange views with the OECD Council and the Secretariat on key policy issues and OECD initiatives. For the LCM 2017 the TUAC proposes to centre the discussion on today's and tomorrow's employment challenges – the Future of Work – and the broader implications for the regulation of the private sector to help support and sustain better labour outcomes – the Future of the Firm. The discussion of the LCM is organised in two rounds:

- the Future of Work: the on-going review of the OECD Jobs Strategy and the longer term Just Transition for workers and their families to low-carbon and increasingly digitalised economies; and
- the Future of the Firm: Long-term responsible business models that can support better labour market outcomes.

Round 1: The Future of Work - The OECD Jobs Strategy and a Just Transition for tomorrow's labour markets

2. After ten years, employment has barely recovered to pre-crisis levels in many sectors and countries. Where new jobs have been created, workers have been bearing more risks including more job insecurity and lower salaries combined with a general rise in precarious work. The decoupling of wage and productivity growth is holding back the recovery and aggregate demand, further amplified by a decade-long combined trend of flat productivity growth and rising income inequalities. Workers are not getting their fair share of the wealth they create. The OECD has an important project to deliver in 2018: the review of the Jobs Strategy, the Organisation's blueprint for labour market reform. It is essential that the outcome of the review offers a balanced approach to reforms with a better balance between flexibility, stability and security.

3. Policy thinking on the Future of Work requires a profound shift in facing the double challenge of promoting low-carbon production and consumption models, while managing the fast-paced digital transformation and potential challenges from automation. The Paris Climate Agreement explicitly recognises the need for a Just Transition[1] for workers and their families. Just Transition principles should also apply to digitalisation and automation processes[2]. The OECD has taken a leadership role on both aspects. It is essential that Just Transition principles are harnessed in its policy recommendations and analysis starting with its Horizontal Project on digitalisation and well-being.

Labour markets that deliver fair outcomes

4. Reducing employment protection legislation (EPL) for regular workers, liberalising non-standard forms of work and decentralising collective bargaining systems have been front and centre of "structural reforms" advocated by the OECD in the recent past. The underlying assumption has been that labour markets function as fully competitive markets where employers have no power to set wages and where wage increases always match productivity. In reality, real wages are lagging behind productivity growth across most OECD economies, while the share of labour in national income is falling[3] and the Phillips curve is flattening. These trends point to a severe erosion of the bargaining power of labour over management and capital.

5. The structural reform recommendations have systematically strengthened the managerial prerogative and increased the bargaining power of capital and business over labour and trade unions in negotiating wages and working conditions. They have shifted the burden of managing market volatility and risks from employers to workers, leaving them in more insecure employment. And they have weakened the very same labour market institutions that are at the forefront of pushing for investment in lifelong learning, vocational training, and redistribution of social benefits through progressive taxation systems and universal social protection coverage.

6. The underlying flexibility model is based on two dimensions. Firstly, it pushes the "insider versus outsider" argument which indirectly blames job protection for the rise in precarious work. If enacted, it instead leads to a vicious circle where deregulating job protection would result in many more workers being locked into insecure and non-standard forms of work. Evidence[4] and research[5] show that easing job protection does not fundamentally change firm behaviour and business models that are based on the use of precarious labour contracts to obtain a cost competitiveness advantage. Secondly, it leads to one company after the other (as well as across integrated economies) squeezing wages in attempts to preserve jobs triggering a backlash on aggregate demand and putting more, not less, jobs at risk. This is especially problematic in situations where inflation and interest rates are already close to zero, thus constraining monetary policy.

7. In 2016, Labour and Employment Ministers requested the OECD to undertake a review of its Jobs Strategy aiming at four objectives: (i) increase the quantity of jobs, (ii) improve the quality of jobs, (iii) build labour markets that are more adaptable and resilient against shocks, and (iv) promote a fairer distribution of outcomes. This review represents an opportunity to decisively improve the 'Strategy' by recognising that labour market flexibility has "all too often gone too far" and call on for policies to correct this by setting clear limits.

8. For TUAC, the review should advocate for a rebalancing of the worker-employer relationship after decades-long weakening of the bargaining position of labour by:

- Stressing the key role that coordination of collective bargaining plays in bringing wage dynamics in line with macro-economic objectives such as achieving more resilience, avoiding a price stability conflict with central banks and triggering a wage-led recovery (rather than pushing for more wage flexibility and company level bargaining);
- Recognising robust minimum wages and collective bargaining as means towards lowering inequalities and push for business investments in productive workplaces;
- Adopting a more integrated approach regarding the design of job protection systems that aim at increased employment security[6];
- Acknowledging that flexibility of labour contracts does not support but harms innovation; and
- Strengthening the case for countercyclical macro-economic policy and flexible rules in fiscal policy making, and hence applying a dynamic reading of the concept of "available fiscal space" to smooth demand and mitigate the impact of economic downturns on employment.

Ensuring a Just Transition to a digitalised and green economy

9. Major employment and business model disruptions are taking place in key sectors (manufacturing, transport, health, hospitality, finances and education). According to the OECD, 9 percent of jobs are at high risk of being displaced as over 70 percent of the tasks they involve can be automated[7]. Another 25 percent of jobs would be transformed since only half of the tasks can be automated. This study took a task content – not an occupation based approach – that provides more in-depth insights

towards formulating transitional frameworks and work-based training. At the same time, differentiating between technologies, and the convergence thereof, and between sectors will help identify employment, wage and skills effects better.

10. Digitalisation impacts the workplace, including consultation rights on organisational change (also regarding occupational health and safety and employee data protection) and the employer-employee relationship. New technologies indeed foster the fragmentation of production processes, servicification[8], outsourcing of labour and off-shoring of production. Regulatory arbitrage by platform businesses leads to the dismantling of the traditional employment relationship by circumventing employer responsibility[9] and accountability. This creates new forms of non-standard jobs and gives rise to dependent self-employed workers. However, recent legal cases against some platform businesses confirmed the employment status of their workers[10]. Yet, the issues persist for most platform workers. If such practices are not addressed, the social outcomes would be detrimental with workers in non-standard forms of work facing wage penalties of up to 30 per cent compared to employees in standard employment[11] with younger and lower-income workers, as well as women, being more affected.

11. In 2015, governments committed to take action to contain the increase in global warming to less than 2°C, and make efforts to limit it to 1.5°C in order to avoid devastating effects for all of humanity. Millions of workers and families still depend on a fossil-fuel-based economy for their jobs and livelihoods. The way forward is not unilateralism and pulling out of the Paris Agreement, but to address the concerns of the people affected by coordinated and socially responsible climate mitigation and adaption. In the same year, governments adopted the Sustainable Development Goals (SDGs) and set out an ambitious fifteen year agenda to achieve full and productive employment and Decent Work for All. As a universal agenda, the SDGs concern developing and developed countries alike. A transition to low carbon employment should ensure workers' rights are observed globally and including adequate social protection.

12. For TUAC, the trajectory to low-carbon and digitalised economies should be firmly based on Just Transition principles to ensure that workers are not paying the cost of adjustment by:

- Elevating social dialogue as a mechanism for addressing the parallel transformations towards low-carbon and digitalised economies, specifically on the introduction of new digital and green technologies;
- Ensuring fundamental labour rights, social protection, decent wages and data privacy across the digital economy, and specifically in the platform economy;
- Enabling the labour market participation of women, youth, migrants and rural communities with targeted active labour market policies and universal social protection and equal pay;
- Introducing a lifelong learning guarantee for all categories of workers (including paid leave, short-term work-based learning and recognition systems) and promote quality apprenticeships and dual VET systems; and
- Supporting the creation of Just Transition Funds in order to achieve more ambitious climate targets and efforts on energy efficiency, renewable energy, and regulation of environmentally-sensitive industrial processes.

Does the Liaison Committee agree on the need to change structural policy recommendations to strengthen labour market institutions including collective bargaining and to endorse a more balanced approach to flexibility in the revised Jobs Strategy?

Does the Liaison Committee agree that Just Transition principles should underpin the transition to a low-carbon and more digitalised economy?

Round 2: The Future of the Firm – Toward long term and responsible business models

13. The private sector is an essential engine for growth and wealth creation. However, it needs to be governed appropriately and held to account for its impact on and contribution to economic prosperity. In order to achieve better labour market outcomes and distribution of productivity gains, regulation is needed to ensure that business models are conducive to quality job creation, innovation through the upgrading of workers' skills and well-being, as well as to long term investment in productive capital.

14. The pursuit of long-term and responsible business models is challenged by shifting "boundaries" of the firm in a context of trade, investment and financial liberalisation and the many opportunities for regulatory arbitrage created in the cross-border, data-driven digital economy. Yet, business responsibilities extend throughout their supply chains and irrespective of the nature of its assets. Increasingly complex business models are forcing a rethinking of the role of regulation and the Firm's "social licence" to operate.

Long term business models for shared productivity growth

15. Productivity growth has been following a long-term downward trend. Despite loose monetary conditions and historically low interest rates, there has been no increase in corporate investments in productive capital. The OECD response to this "productivity puzzle" has focussed on a perceived productivity gap between a handful of champions (the "frontier firms") and the majority of losers (the "laggards" and the "zombies"). The main policy prescriptions coming out of it follows a creative destruction vision of the firm: governments and regulators need to drive the "zombies" out of the market at the lowest transaction costs possible and accelerate the reallocation of capital and of workers by facilitating (at all costs?) bankruptcy and restructuring, and within that increasing further labour market flexibility.

16. This approach, however, turns a blind eye to the role of management practices and corporate governance models. It fails to take account of the fact that the productivity slowdown has been more pronounced in countries that, precisely, have been championing the creative destruction model. It also fails to take account of the financialisation of the economy in terms of how it has affected the wage share and to which extent it has hit the productive potential of firms[12]. At firm level, short-termism in corporate decisions leads to value extraction through dividends and share buybacks as opposed to long-term investments in productive assets[13]. And, it leads to unsustainable labour cost saving strategies combined with insufficient investment in innovation and employee training. Recent ILO findings[14] suggest that certain companies would systematically resort to precarious contracts and low paid work – irrespective of the level of protection of regular jobs (thereby questioning the OECD's "insider-outsider" paradigm). These are the real root causes for productivity gaps.

17. The pursuit of long-term business models would require better recognition in the OECD work on productivity regarding the role of workers' firm-specific, tacit knowledge and its positive impact on productivity and knowledge-based capital[15]. Such acknowledgement also has implications for the governance of firms, including the empowerment of workers and their rights to information and to consultation within management decision-making processes. More broadly, it calls for corporate governance models that are better designed to support and promote long term business decision making and for tougher criteria on executive and shareholder remuneration – a major driver of corporate short-termism. Finally, it would call for further reflection on the impact of financialisation on firm behaviour and decisions to invest.

18. For TUAC, long term business models for shared productivity growth should aim at:

- Business strategies that acknowledge and value workers' firm-specific knowledge and contribution to productivity;
- Governance models that are designed to effectively curb short termism, be it in the board room, at shareholders meetings or within corporate management; and
- Addressing the role of finance as a steward of the firm, as a provider of capital and of pricing of risks that reflect the real economy's needs.

The new boundaries of the firm's responsibilities

19. Under the combined effects of trade, investment and financial liberalisations coupled with new opportunities created by digitalisation, businesses are becoming ever more internationalised, but also more fragmented across jurisdictions. The new "boundaries" of the firm – to whom is it accountable, where are the profits located and how is corporate wealth distributed – are less clearly defined for governments and regulators. This is most apparent in the context of global supply chains. As shown in recent discussions on due diligence, multinational enterprises (MNEs) have labour and human right responsibilities that extend beyond their home base and beyond companies that they control directly. The mismatch between legal corporate ownership and employer and human rights responsibilities poses a risk for creating a double standard: a MNE that within its perimeter meets decent work and responsible business conduct standards but not in its supply chain. The situation is perhaps most critical for SMEs that are at a disadvantage in their bargaining position with MNEs and hence are more exposed to low wage and precarious work models.

20. The boundaries of the firm are also being challenged in the context of the digital economy and data-driven innovation. Profits and value are created across borders and are increasingly relying on big data, algorithms and distributed ledger technologies with considerable network effects. This poses questions on ownership and value creation of intangible assets and eco-systems. Data-driven profits not only lead to changing business models, they also generate enormous market and wealth concentration. Within the top 100 largest corporate capitalisations, the eight most valued technology companies account for 30 per cent of the combined market capitalisation of the other 92 companies. As most of their operations are virtual, global digital intermediaries are able to extract abnormal levels of profits, attract abnormal level of wealth and exert abnormal influence over the rest of the economy with yet, very small if not zero economic and employment footprint – business models scaling without mass.

21. The OECD response to the changing nature of the firm and the rise of new business models has been multifaceted. It has offered a promising response with its standard-setting on the responsibility of businesses to conduct due diligence, including in their global supply chains, and the strengthening of the implementation of its flagship instrument, the OECD Guidelines for Multinational Enterprises. The OECD has also taken positive steps to address the tax accountability of corporations as part of the implementation of the BEPS Action Plan. On the regulatory challenges posed by the changing nature of the firm, the OECD response has been mixed. The digitalisation and internationalisation of businesses would call for a rethinking of the balance between multilateral agreements and domestic regulations, and for far more policy scrutiny over regulatory gaps. The OECD work on regulatory quality would suggest room for improvement in this respect, with current policy recommendations giving implicit unconditional priority to "cutting red tape" and reducing the regulatory "burden" for private businesses.

22. For TUAC, a more comprehensive approach is needed:

- On global supply chains, an improved global due diligence framework consisting of, at the international level, the promotion and implementation of the OECD Due Diligence Guidance and at domestic level, legislation on making corporate human rights due diligence that covers global supply chains mandatory;
- On the OECD MNE Guidelines, improvements by (i) adhering countries meeting their obligation to have adequately resourced and effective National Contact Points and by strengthening policy coherence and (ii) a change in the rules on handling specific instances so that the home NCP is always involved so as to safeguard the relevance of NCP system in the context of widening adherence; and
- A comprehensive approach to the regulatory treatment of businesses that account for the increasingly complexity and the digitalisation of their operations, and the need for rebalancing between international and domestic rules.

Does the Liaison Committee agree on the need for long term business models that account for workers' firm-specific long term contribution to productivity?

Does the Liaison Committee agree on the need for strengthening international regulatory cooperation to account for new business models in the digital economy and the responsibilities of businesses in global supply chains?

[1] ILO (2015), Guidelines for a just transition towards environmentally sustainable economies and societies for all, Geneva http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf ITUC/TUAC (2017), L7 statement to the G7 Labour Summit: Just Transition principles must underpin the Future of Work, Brussels/ Paris, https://www.ituc-csi.org/g7-labour-summit-just-transition

ITUC (2017), Just Transition: A Report for the OECD, Brussels, https://www.oecd.org/environment/cc/g20-climate/collapsecontents/Just-Transition-Centre-report-just-transition.pdf

[2] TUAC (2017), Digitalisation and the Digital Economy: Trade Union Key Messages, Paris, http://www.tuac.org/en/public/e-docs/00/00/13/2A/document_news.phtml

[3] Guschanski, A. & O. Onaran (2017). The political economy of income distribution: industry level evidence from 14 OECD countries, Greenwich papers in political economy & Schwellnus, Kapppeler and Pionnier (2017), Decoupling of wages from productivity: Macro-level facts. ECO working paper 1373

[4] Consider for example the UK where job protection is at a minimum but where precarious work practice in all sorts of forms has exploded.

[5] Berg and Aleksynska (2016), Firm's demand for temporary labour in developing countries: Necessity or Strategy? ILO Conditions of work and employment series

[6] See for example the advance notification system and sectoral Job Security Councils in Sweden: Engblom, S. (2012), Bilateral bodies in Sweden. TCO, mimeo

[7] Arntz, M., T. Gregory and U. Zierahn (2016), "The Risk of Automation for Jobs in OECD countries: A Comparative Analysis", OECD Social, Employment and Migration Working Papers, No. 189

OECD Publishing, Paris, http://dx.doi.org/10.1787/5jlz9h56dvq7-en

[8] OECD (2017), The Next Production Revolution: Implications for Governments and Business, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264271036-en

[9] Online crowd and on-demand platforms use the triangular relationship between them, the client, and the worker to position themselves as intermediaries, see Aloisi (2016), Berg (2016), de Stefano (2016), Prassl (2017).

[10] https://www.theguardian.com/technology/2017/nov/10/uber-loses-appeal-employment-rights-workers

[11] Non-standard employment around the world: Understanding challenges, shaping prospects

International Labour Office – Geneva: ILO. 2016 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_534326.pdf

[12] EPSTEIN 2015 "Financialization: There's Something Happening Here" Gerald Epstein, Political Economy Research Institute (PERI), University of Massachusetts Amherst, August, 2015

https://www.peri.umass.edu/publication/item/684-financialization-there-s-something-happening-here

[13] There is evidence that these factors play their part in slowing productivity and corporate innovation, as seen in the case of the British economy. See "Productivity puzzles", Speech given by Andrew G Haldane, Chief Economist, Bank of England London School of Economics, 20 March 2017 http://www.bankofengland.co.uk/publications/Documents/speeches/2017/speech968.pdf & "Are firms underinvesting – and if so why?" Speech given by Sir Jon Cunliffe, Deputy Governor Financial Stability, Member of the Monetary Policy Committee, Member of the Financial Policy Committee and Member of the Prudential Regulatory Authority Board, Greater Birmingham Chamber of Commerce, Wednesday 8 February 2017 http://www.bis.org/review/r170210c.htm

[14] Berg and Aleksynska (2016), Op. cit.

[15] Kleinknecht Alfred (2015) 'How structural reforms of labour markets harm innovation' WSI number 6 July 2015 https://www.socialeurope.eu/wp-content/uploads/2015/07/RE6-Kleinknecht.pdf Lazonick, W. & Mazzucato, M. (November 2012), *The Risk-Reward Nexus*, Innovation, Finance and Inclusive Growth Policy network paper, http://www.policy-network.net/uploads/media/154/8167.pdf