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Key messages

Multilateralism is a precious, yet vulnerable public good. Over the past decades, the economic dimension of multilateralism, aiming at trade, investment and financial liberalisation has dominated global policy-making, while relegating social and employment issues to the domestic arena. Today, this type of multilateralism is in a crisis of confidence. It has supported a model of growth that has given rise to greater inequality, to shrinking middle class and, in return, to popular backlash against the current form of globalisation and its multilateral institutions. It has contributed to the decline of workers' bargaining power as seen in the fall in trade union density and in collective bargaining coverage and a concomitant rise in corporate power and influence.

Such **incomplete, outdated and imbalanced** framework necessitates a bold policy response to improve and expand multilateralism and bring it back to its original purpose: cooperation between nations working towards shared prosperity and for the global public good. The OECD MCM 2018 should call for **better coherence, better enforcement and better accountability** between and within multilateral institutions. For that to happen, the TUAC calls for a roadmap comprising

(i) **A new progressive trade and investment agenda**, that shifts away from the old model of the late 1990s and the preferential treatment of foreign investors towards effective policy coherence with human rights and labour, environmental and integrity standards, while preserving the right to regulate and to defend against unfair competition.

(ii) **New rules for the digital transformation of the economy**, including a "BEPS II" Action Plan on taxation, an international agreement on data protection and algorithmic transparency, legal and ethical standards on Artificial Intelligence, and international cooperation to tackle corporate concentration and ensure workers' rights are upheld in the platform economy.

(iii) **Effective economic policy coordination** for full employment and labour markets that deliver job quality, job security and fair outcomes. The revised OECD Jobs Strategy – the Organisation's blueprint for labour market reform – is a step in the right direction as far as the aspiration and broad objectives are concerned ("*Good Jobs For All*").

(iv) **Raising the standards for long term and responsible business models**, including strengthening instruments on Responsible Business Conduct and Due Diligence and on corporate governance framework to effectively tackle corporate short-termism.

All of this needs to be underpinned by democratic and transparent multilateral institutions, OECD included. **Social dialogue institutions are indispensable**, including in achieving the Sustainable Development Goals. **OECD membership** requires countries to commit to fundamental values of pluralist democracy based on the rule of law, efficient and impartial judiciary and full observance and the respect of human rights.

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Imbalanced, Incomplete and Outdated: the Multilateral Framework We Have To Live With

The TUAC welcomes the opportunity to contribute to the discussions of the 2018 OECD Ministerial Council Meeting (MCM) and its theme "*Refounding multilateralism for more responsible, effective and inclusive outcomes*". Multilateralism is built on international cooperation and agreements that bind nation states together with the dual goal of preventing disputes and nationalism and ensuring fair and equitable sharing of responsibilities on issues that require a global response. The ILO and the Declaration of Philadelphia in 1944 are the embodiment of what multilateralism aspires to be. Multilateralism is a precious, yet vulnerable public good.

Crisis of confidence. Over decades, the economic dimension of multilateralism, aiming at trade, investment and financial liberalisation dominated global policy-making, while relegating social and employment issues to the domestic arena. Today, this type of multilateralism is in a crisis of confidence. It has supported a model of growth that has given rise to greater inequality and, in return, popular backlash against the current form of globalisation and its multilateral institutions. It has not "lifted all boats", but has instead created many losers and few winners. When people and regions suffer from displacement effects of international trade and investment and when trade or investment regimes run against climate mitigation and adaptation, the effects will be long term in nature and harder to mitigate.

Decline in the bargaining power of workers. Multilateralism strayed from a cooperative exercise between nations towards a competitiveness game that pits nations and their workers against each other on a global scale – with threats of cheap import competition from low wage countries, of off-shoring and outsourcing. It has contributed to the decline of workers' bargaining power as seen with the fall in trade union density and in collective bargaining coverage and the concomitant rise in corporate power and influence. The decline of the labour income share and the gap between productivity and wage growth are manifestations thereof.

Neo-liberals vs authoritarians. These rules have not helped to strengthen democratic civil society and labour market institutions. Rather, they appear to accommodate non-democratic and authoritarian regimes and their protected business elites, who reap the benefits of globalisation. They have failed to provide convergence of growth models between nations. Instead, they have contributed to two extremes: unregulated market economies on the one hand, and authoritarian state-led economies on the other. We must not allow the policy debate to become one between neo-liberals and authoritarians.

Imbalanced by the premium to investors

The model of the late 1990s. The current multilateral system and its double standard in treatment between the economic pillar and the social and environmental pillar are in large part rooted in the model of the late 1990s. Twenty years ago, the lack of policy coherence became apparent with the failure of the WTO Ministerial Meetings in Singapore (1996) and Seattle (1999) to ensure a minimum level of coherence between the WTO and the ILO. The absurd belief that any attempt to tie in social and environmental standards is a form of "protectionism" still prevails in many intergovernmental forums. Unfair competition based on social dumping is pervasive. It fuels inequalities and undermines societal trust in global and national governance and in the private sector.

Preferential treatment of foreign investors. The proliferation of investment treaties has raised serious concerns about their societal impact, including the privileged treatment of foreign investors' rights against those of other stakeholders. Much of today's trade and investment negotiations are about eliminating behind-the-border barriers under the veil of "investment facilitation" and "regulatory convergence". Within democratic societies this brings the risk of significant intrusion into domestic policy-making, challenging the right of democratically elected policy-makers to enforce environmental, health and labour standards.

Incomplete to account for financialisation and regulatory arbitrage

Financialisation. The 2016 OECD MCM defined financialisation as "*the increasing weight of financial activities and institutions in our economies*" and as a potential cause of rising inequalities and slow productivity growth. It is also a cause for increased financial instability generating volatile capital and exchange rate movements, lower private sector investments (short termism) and policy capture. Recent research shows that capital account liberalisation makes economies more crisis-prone. Financial globalisation, by offering capital an 'outside' option, is further strengthening the bargaining position of capital, thus leading to a decline in the labour share and the concentration of wealth.

An incomplete regulatory response since 2008. The resurgence of tax and financial international regulatory cooperation following the great financial crisis in 2008 has been too little too late. Ten years later, the G20 package on prudential regulatory reforms for banks has, at last, been completed. A lot of unknowns remain with respect to their efficiency to reduce systemic risks. Debt levels relative to global GDP remain above the 2008 levels. The so-called "deleveraging" never happened post-crisis. Rather, financial risks have shifted from banks to the credit markets. While banks may have cleaned up their balance sheets, bond markets and the shadow banking system expanded fast. Multilateralism has made progress in strengthening international cooperation to curb tax arbitrage and tax evasion, respectively through the Base Erosion and Profit Shifting (BEPS) Action Plan and the OECD Standard for Automatic Exchange of Financial Account Information. However, impact through implementation has yet to see the day. Effective tax rates paid by global business remain abnormally low and the OECD acknowledges that the taxation of the digital economy remains an unresolved issue.

Outdated by digitalisation and the "new boundaries" of the firm

Disruptive digital business models. Digitalised 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? how is corporate wealth distributed? – are less clearly defined for governments and regulators. Corporate profits and wealth are increasingly generated by Big Data and proprietary algorithms and technologies with a small or non-existent physical footprint. Existing regulation based on notions such as national boundaries and "country-of-origin" is challenged. Policy attention on large digital businesses has to increase. For now, these digital giants are able to extract abnormal levels of profits, attract abnormal levels of wealth and exert abnormal influence over the rest of the economy. Within the top 100 largest corporate capitalisations, the eight most highly valued technology companies account for 30 per cent of the combined market capitalisation of the other 92 companies.

Regulatory gaps in the online platform economy. Platform businesses – from e-market places to on-demand and crowd platforms – define themselves as digital intermediaries. By doing so, they are able to circumvent regulatory obligations in a number of areas – tax and competition legislation but also legislation on employment and working conditions. They contribute to the vast number of outsourced, self-employed and non-standard workers. Unchallenged, those platforms are creating a precedent that undermines the foundation and very principles of workers' rights to decent work, to social protection and to training.

Better Coherence, Better Enforcement, Better Accountability

The incomplete, outdated and imbalanced multilateral framework that we live in, necessitates a bold policy response towards improving and expanding multilateralism and bringing it back to its original purpose: cooperation between nations working towards shared prosperity and for the global public good. The OECD MCM 2018 should call for better coherence, better enforcement and better accountability between and within multilateral institutions. For that to happen the TUAC calls for a roadmap consisting of (i) a progressive trade and investment agenda, (ii) new rules for the digital transformation of the economy, (iii) policy coordination for full employment, good jobs and inclusive growth and (iv) long term business models and responsible business conduct. All of this needs to be underpinned by democratic and transparent multilateral institutions, OECD included.

A progressive trade and investment agenda

Respect for basic human rights, including the right to freedom association, is intrinsically international in scope and should be treated as such within the multilateral system. Trade and investment agreements in particular need a rebalancing of the rights and obligations between stakeholders through enforceable treaty provisions on social, environmental and integrity standards. They should no longer be able to either ignore or over-rule these societal concerns. There is no economic justification for granting foreign investors privileged treatment through Investment State Dispute Settlement (ISDS). As documented by the OECD itself, several studies and business surveys have shown that for the great majority of multinational enterprises, the existence of an investment treaty and the privileged protection of foreign investors only play a marginal role in the decision to invest.

Policy coherence with human rights and labour standards. Respect for human rights and labour standards should become a pre-condition for any trade negotiation and be included in multilateral and bilateral trade agreements in a manner that makes them enforceable: the ILO Core Conventions, the United Nations Guiding Principles on Business and Human Rights (UNGPs), the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises and the OECD due diligence guidance. Monitoring, complaint and sanction mechanisms involving social partners should become part and parcel of all trade agreements.

Right to regulate and to defend against unfair competition. Beyond the inclusion of enforceable social clauses, trade and investment agreements should respect the right of government to regulate, including: setting living minimum wages, ensuring adequate social protection; introducing, preserving and expanding universal quality public services, maintaining high environmental protection standards and fulfilling the objectives of the Paris Climate Agreement and the Sustainable Development Goals (SDGs). Trade defence instruments can protect economies and jobs from unfair competition and prevent exploitation. Governments should reach a multilateral understanding on safeguard mechanisms for protection against import surges, over-subsidised production leading to overcapacity in some sectors, and social dumping while recognising the special needs of small and developing economies.

New rules for the digital transformation of business models

The digitalisation and internationalisation of businesses call for greater scrutiny of risks for regulatory gaps. Businesses increasingly scale without mass across borders and generate profits on intangibles. New forms of trade in goods and services that are not accounted for in the current trading system arise since businesses either no longer need physical presence in a country to offer services or far less commercial presence. The

OECD has recognised some of these challenges in the taxation realm and has to deliver more on the digital economy. It should deliver a more comprehensive view on the governance of algorithms and Big Data, competition and new business models.

A "BEPS II" Action Plan. The OECD Action Plan on Base Erosion and Profit Shifting (BEPS) was a positive step toward international tax cooperation. However, it left unaddressed the taxation of the digital economy. The most recent OECD interim report on the taxation of the digital economy offers different options to help redress for the non-taxation of digital businesses. The proposed measures amount to a patch, not a cure for the disease: adapting treaties to account for digital presence and reform transfer pricing guidelines. The tax challenges of data-driven cross border business operations remain. A new "BEPS II" Action plan is warranted, one that effectively reforms transfer pricing guidelines and shifts to the formulary apportionment method.

Data protection and algorithmic transparency. In the name of IPR and trade secrets, current regimes allow digital businesses to store, process and repurpose data almost unhindered. The same applies to the design and use of algorithms. There are little or no data protection and privacy standards – with most progress made at the European level. Governments tend to seek solutions in restricting cross-border transfers of data, or in requiring that data be stored locally. These measures are crucial but need to be carefully balanced against the premises of interoperability and net neutrality. Governments should always be in the position to require transparency on and if needed local storage of sensitive and personal data and its anonymisation. The quality of datasets to prevent bias and security risks, clearer data ownership guidelines against the current opacity of data processing and repurposing, and liability guidelines need to be promoted. The OECD is well placed to look into the immediate impact of algorithms and artificial intelligence (AI) on wealth creation and competition. Operational, legal and ethical standards on AI and data use need to be developed in a multi-stakeholder setting to avoid a fragmentation of rules.

Tackling corporate concentration and ensuring employer responsibilities. While digitalisation can increase capacities to innovate and access to markets for SMEs, it can also be used by firms to enhance market power and engage in exclusionary practices. The collection of Big Data and the pricing of algorithms coupled with strong network effects in the digital economy lead to corporate concentration and labour market monopsony. Liberalising data flows further and promoting industry-led voluntary standard setting would only exacerbate the market reach of digital giants. Cross-jurisdictional cooperation and sharing of information between national competition authorities are warranted. The very same competition laws in many OECD countries prevent non-standard workers in the platform economy to join a trade union and hence ensure employer responsibilities are met. Policy thus needs to close the loopholes and end the ambiguity in regulation that allows the platform businesses to deny these workers the rights that regular workers are entitled to. More broadly, international cooperation is warranted to ensure platform workers' rights collective bargaining are upheld, better enforcement of existing regulation (tackling misclassification for example) and/or by updating and extending labour protection.

Policy coordination for full employment, good jobs and inclusive growth

For far too long, economic multilateral institutions, the OECD included, have disregarded the objectives of full employment and of decent jobs, advocating for reforms on the basis that "any job is better than no job" instead. It has led to beggar-thy-neighbour policies with economies attempting to poach jobs and growth from each other, despite the fact that multilateralism is supposed to strengthen coordination for sustained growth.

Macroeconomic policy coordination for full-employment. Economic policy coordination and cooperation is essential to prevent imbalances leading to crisis and/or trade and currency wars. The G7 and the G20 were initially designed to ensure economic policy coordination for long term growth and shared prosperity. Decisive policy coordination is needed for full-employment. A joint relaunch of demand would have a positive impact on productivity and jobs. To support this, fiscal policy making should be flexible enough to allow for a robust response when the economy is facing weak or insufficient demand conditions, irrespective of whether the latter is due to a serious downturn, the rise of "technological unemployment" or a trade shock. The role of monetary policy is to support expansionary fiscal policy, either in the form of low interest rates and/or in providing finance for public investment and productive spending.

Common principles for inclusive labour markets. Much more can be done to promote inclusive labour markets within a multilateral setting by way of commonly agreed principles on job quality, job security, fair outcomes and for a "just transition" to digitalised and low-carbon economies. The revised OECD Jobs Strategy – the organisation's blueprint for labour market reform – is a step in the right direction as far as the aspiration and broad objectives are concerned ("*Good Jobs For All*"). The text acknowledges that there are no trade-offs between the quantity and the quality of jobs and that economies that put flexibility at the centre of their labour market policy perform worse than those that do not. It underlines the benefits of job protection systems and of minimum wages as tools to raise wages at the bottom and the promotion of "inclusive" collective bargaining systems with high coverage. Yet, the Jobs Strategy clings on to the same old ideas around flexibility, inter alia: minimum wages that "price out" of a job, an implicit bias in favour of company-level bargaining, non-standard (i.e. precarious) forms of work that are seen as innovative. Moreover, it fails to link the decline in labour income share to the decline in collective bargaining and lack or insufficient minimum wages.

A Framework for Inclusive Growth. The Inclusive Growth Framework, which the OECD is now developing as an overarching set of principles for policy reform, provides an opportunity to insist on the message that trade unions and collective bargaining are crucial to stop the decline in labour shares and to ensure that wages do not systematically fall behind productivity so that workers broadly share the fruits of economic progress. To enable implementation of inclusive economic and labour market policies, the OECD Framework and its indicators need to take account of (i) the coverage of collective bargaining, (ii) the minimum wage as a ratio of the median wage and (iii) replacement rates and coverage rates of unemployment benefit systems.

Long term and responsible business models

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. Business responsibilities extend throughout their supply chains and irrespective of the nature of their assets. Increasingly, complex business models are forcing a rethinking of the role of regulation and the Firm's "social licence" to operate.

Strengthening responsible business conduct and due diligence. Beyond trade and investment agreements per se, governments should introduce national legislation on corporate human rights due diligence and build capacity, including for trade unions. At the UN, governments should support the negotiation process on a UN Treaty on Business and Human Rights. Governments should fully implement the OECD Council Recommendations on due diligence, including by monitoring company implementation of due diligence and ensure policy coherence with other policy areas such as public procurement and development finance. Governments should improve the functioning of the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises, and strengthen the NCP Coordination Unit at the OECD.

Tackling corporate short-termism. At the MCM 2016, the OECD for the first time acknowledged the consequences of financialisation of the economy, its negative impact on inequality and on long term growth and the need to restrain global finance. It has yet to address fully the impact on firm behaviour and on productivity. In particular, the OECD framework on corporate governance never integrated the notion that companies could be subject to short termism. The revised 2015 Principles of corporate governance stick to a shareholder value model of governance. Yet, corporate governance models matter for the productive potential of firms and for reducing inequalities. Excessive CEO and shareholder remuneration can come at a heavy cost on both aspects. In 2017, S&P 500 companies spent some USD1.2tr in shareholder dividends and share buybacks – more than what they spent in investments and in R&D.

Democratic and transparent multilateral institutions

Social dialogue institutions are indispensable. A strong labour movement is indispensable to make "globalisation work for all" – the aspiration of last year's OECD MCM. Robust labour market institutions, wide collective bargaining coverage and higher unionisation rates increase overall accountability in the economic system, reduce inequality and work for long term productivity. Social dialogue and tripartite negotiation frameworks are required to fulfil six of the seventeen Sustainable Development Goals. The Global Deal Initiative – launched by Sweden and benefiting from an OECD-ILO partnership – is much welcome in that context and should be further supported by governments and both social partners.

OECD membership. OECD membership requires countries to commit to fundamental values of pluralist democracy based on the rule of law – efficient and impartial judiciary and full observance of human rights – adherence to open and transparent market economy principles and a shared goal of sustainable development. Civil liberties such as freedom of assembly, freedom of expression, and fundamental workers' rights are essential elements of a pluralistic democracy. As the MCM is to address membership issues, it is essential to reaffirm and to make it imperative for all Member and candidate countries to adhere to and to observe in practice civil and political rights.

Other TUAC documents presented on the occasion of the MCM 2018

- TUAC Assessment of the Revised OECD Jobs Strategy
- TUAC Assessment of the OECD Going Digital Interim Report and Deliverables
- TUAC Comment on Implementing the OECD Due Diligence Guidance
- TUAC Paper on rule of law and human rights in an OECD context