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TUAC Comments on Integrity in State-Owned Enterprises and Privatisations

Paris, 20 November 2018

At a recent meeting of the OECD Working Party on State Ownership and Privatisation Practices (14 November 2018), the TUAC submitted written comments on on-going OECD work on anti-corruption and integrity for state-owned enterprises and on privatisation. The key messages and recommendations are outlined in the following.

Anti-corruption and integrity in state-owned enterprises

The TUAC supports the OECD work on anti-corruption and public integrity. We believe that the following key aspects should be included in the upcoming guidelines:

Whistleblowers' protection. Anti corruption and integrity enforcement are often only possible when individual workers are courageous and disclose wrongdoing to their employers or governments. Disclosing corruption is the right choice and yet too many workers face life altering reprisal for doing so. Consequently, whistleblowers' protection is essential to ensure that workers and workers' representatives who disclose wrongdoing are both protected from reprisal and rewarded for doing what is fair and just.

The 2017 OECD Recommendation on Public Integrity already makes references to the need to have clear rules and procedures for reporting of suspected violations of integrity standards.¹ However, this aspect can be strengthened further, including through specific references to workers' protection. We believe that it would make sense to develop further OECD Guidance on whistleblowing protection for workers, spelling out that:

- whistleblowers should be financially supported;
- whistleblowers should benefit from work reassignment options (so those who disclose are able to contribute in another area of the workplace that is not being investigated for corruption);
- there should be reversal of the burden of proof for retaliation complaints.

A related element is the **employee's confidence in the workplace environment**. Fair pay scales, collective agreements and employment stability are key deterrent against corruption.

¹ <http://www.oecd.org/gov/ethics/recommendation-public-integrity/>

Due diligence. Risk management systems should explicitly cover human rights, environmental, health and safety, and labour issues as well as due diligence in the global value chain. Government and regulators have a crucial role to play in laying down the appropriate mechanisms for mandatory due diligence (as opposed to mere “encouragements” to enterprises).. As far as SOE enterprise behaviour is concerned, it must be recalled that, according to the OECD Guidelines for MNEs, “companies should respect workers’ human rights and avoid and address other negative impacts on the matters covered by the OECD guidelines”².

Workers’ participation. The active involvement of the workforce is a key element to guarantee transparency and integrity in all companies, including in state owned enterprises. Well functioning information, consultation and board level participation mechanisms are of considerable added value. Such reference already exists in the G20/OECD Principles of Corporate Governance.

Responsibilities of the board. Board accountability is essential and should be driven and measured by the long-term interest of the company.

Tools for privatisation practices

The TUAC has important reservations about ongoing work around privatisation best practices and guidance. Any such work should include a critical and complete perspective built on an empirical analysis of past privatisation experience and stress the importance of closely involving all key stakeholders, including workers. The objective should be to fully equip policy-makers with the evidence necessary to make a long-term assessment of privatisation. It should take the following elements on board:

- past inadequacies need to be acknowledged ;
- the long-term effects of privatisation need to be assessed, having regard in particular to possible higher costs and reduced efficiency;
- universal and affordable access to essential services needs to be a central element;
- employees need to be meaningfully involved at every stage of the procedure.

Assessing the long-term impact of privatisation

Policymakers should identify and articulate policy objectives before considering undertaking a privatisation process. Sufficient guidance must be offered on how this should be done, other than to simply make a good business case, having regard to value for money considerations. A too simplified synthesis will lead policymakers into incomplete, even erroneous assessment of the impact of privatisation processes. The

² <http://mneguidelines.oecd.org/guidelines/>

OECD should take stock of the empirical analysis that is now available after more than thirty years experience of privatisation.

Where a privatisation process involves a public-private partnership, full assessment should be made of the consequences for fiscal management. For instance, the International Monetary Fund has been ringing the alarm bell on the risks of a process where the state faces calls on guarantees but gives up the right to collect fees from the project's user.³ According to a study of 12 public-private partnerships conducted by the European Court of Auditors of the EU, such partnerships are characterised by widespread shortcomings and limited benefits.⁴

The same cautionary approach should apply to competition analysis that is required from policymakers. Badly designed privatisations have led to monopsonies, i.e. where only one buyer substantially controls the market as the main or only purchaser offered by many would-be sellers. This can lead to adverse consequences in terms of productivity and rentier behaviour.

As far as efficiency is concerned, policy-makers should carry a thorough assessment based on available evidence⁵. According to a study conducted by the National Audit Office of the United Kingdom, the private finance initiative model has proved to be more expensive and less efficient in providing hospitals, schools and other public infrastructure than public financing.⁶

Protecting, promoting public services

Particular attention should be paid to the protection and promotion of public services. Small state-owned business and companies running public services cannot be put on the same footing. Some services are too vital, both socially and economically, to rely on corporate (self-)regulation. Competition laws usually recognise that public services which require universal and affordable access cannot be assimilated to any other private services.⁷

³ *How to control the fiscal costs of public-private partnerships, IMF 18/04.*

The 2005 privatisation of French highways provides an illustration of this. Following the privatisation, private companies have been perceiving the profits generated by road tolls. The State continues to guarantee the maintenance and safety of the roads. It is reported that whilst the initial privatisation of the highways has led to an immediate cash influx of EUR 14 Billion, by 2032 the dividends could have reached EUR 35 to 40 Billion. In parallel, the price for tolls have increased twice more than the inflation, aggrieving the drivers. <https://www.franceinter.fr/societe/la-tres-rentable-privatisation-des-societes-d-autoroutes>

⁴ *Public-private Partnerships in the EU*, European Court of Auditors

⁵ See for instance *public and private sector efficiency*, David Hall May 2014 <http://www.psir.org/sites/default/files/2014-07-EWGHT-efficiency.pdf>

⁶ *PF1 and PF2, report by the Comptroller and Auditor General*, UK National Audit Office, London 2018

⁷ See for instance Articles 14 and 106.2 of the Treaty on the Functioning of the EU, which require that services of general economic interest should operate on the basis of principles and conditions which enable them to fulfil their mission. See also the "Altmark criteria" on specific EU assessment of financing rules for public services.

A recent report by the UN Special Rapporteur on extreme poverty and human rights describes how those living in poverty or on low incomes are negatively affected by privatisation. The UN Rapporteur deplors that “truckloads of guidelines have already been adopted, and most ignore human rights in any comprehensive sense and pay scant regard to the negative outcomes that privatisation can have in terms of poverty and inequality”.⁸

The OECD should guide policymakers on how to include universability and affordability of public services into their cost/ benefit analysis of privatisation processes.

Workers’ rights

Workers are directly impacted by privatisation processes, as the company will face major restructuring and the questioning of collective agreements. It is therefore vital that they are able to anticipate and accompany the changes. The importance of meaningful information and consultation procedures should be emphasised for every step of a privatisation process, and in particular at the very first stage. When identifying and articulating policy objectives, policy-makers should already involve employees’ representatives. Workers are the greatest asset of a company and the best placed experts to advise on the state of the market and the missions of their company.

⁸ Report of the Special rapporteur on extreme poverty and human rights, 26 September 2018