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TUAC Discussion Paper - "Growth & Accountability Today, Just Transitions Tomorrow"

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Growth & Accountability Today, Just Transitions Tomorrow

Round 1. Bringing our economies back on a robust growth path, ensuring corporate accountability

1. Ten years ago, the TUAC paper to the Liaison Committee Meeting stated that "*the initial trigger* [of the 2008 financial crisis] *was the unsustainable model of growth that has prevailed across OECD economies: a model that was based not on the real economy with wage increases reflecting productivity growth, but on debt financed consumption and investment and the excessive leveraging of the private sector.*"[1] The paper further raised concerns about "*widespread institutionalised regulatory arbitrage between jurisdictions*" and "*corporate short-termism and shareholder value governance undermining market integrity and stakeholders' long term interests*". Ten years later, there are reasons to believe that the very same unsustainable model is still prevailing. The wage productivity gap persists, our economies are depending on debt, be it public or private, and while corporate accountability has made progress on some aspects – notably with the OECD Responsible Business Conduct agenda – it has yet to be fully owned by policymakers under a single comprehensive framework.

1.1. What is wrong with the current "recovery" & what needs to be done

2. Post-crisis growth patterns are very modest, fragile and volatile. Average OECD growth is at +2%, almost half of the pre-crisis long-term trend. There are worrying signs that growth has already peaked and that another slowdown is on the near horizon, if not already here. In the short term, this may be partly related to "trade wars" but there are other and deeper causes.

Pre-crisis orthodoxy

3. The financial crisis pointed to the failure of the pre-crisis orthodoxy. And yet, policymakers are still operating through a *pre-crisis lens.* The reappearance of the concept of NAIRU (Non Accelerating Inflation Rate of Unemployment) in recent OECD work manifests the return to pre-crisis orthodoxy. By use of the NAIRU, policymakers run the risk of shifting their attention to inflationary pressures and away from growth and jobs objectives. There is thus the danger of withdrawing aggregate demand support too soon. Opportunities would be missed to get more workers who are still on the sidelines into the labour market, to create more jobs, to trigger a 'high-pressure' labour market boosting investment and productivity, in short to get us back to the living standards that would have been expected on the basis of pre-crisis trends. With core inflation still at overly modest levels and with wage dynamics still being surprisingly weak, the fear for an excessive upturn in inflation is misplaced. It could lead to overly ambitious monetary tightening, effectively pricking new financial bubbles, thus leading to a new crisis.

4. Despite the G20 commitment to financial reforms, financial vulnerabilities remain. Debt levels are higher and sometimes substantially higher (non-financial corporate debt, public sector debt, emerging markets debt) compared to pre-crisis levels. And, while reforms of the banking sector have been implemented, risks have not been reduced but rather shifted from official balance sheets to the shadow banking sectors, to which a number

of financial institutions with a social purpose are exposed, such as pension funds and insurance companies.

A crisis of work

5. The resurgence of a pre-crisis orthodoxy also risks leading to yet another round of structural reforms, further weakening the bargaining position of labour (dismantling job protection, decentralising bargaining). This would be inappropriate at a time of stagnating wages, declining labour shares of income, rising job insecurity and high and rising inequalities. The crisis has left us with deep scars. Living standards continue to fall short of predictions ahead of the financial crisis. Inequalities have sharpened. Over the last decade, median wages in the business sector have stagnated while households in lower income deciles have fallen behind further in at least 14 OECD countries.

6. Importantly, the jobs recovery following the crisis has been realised on the back of a proliferation of precarious work contracts, from zero hour and on-call contracts to disguised self-employment. With involuntary part-time employment rates remaining high, especially in Europe, and with labour force participation rates still below pre-crisis levels in several countries including the US, more slack remains in the labour market than suggested by headline unemployment rates. While employment rates for older workers have improved, job rates for young people across OECD economies are yet to recover. In a sense, the crisis of unemployment has become the crisis of quality jobs, once again showing that the understanding that "work is the best way out of poverty" is broken.

The risk for multilateral "disintegration"

7. The rise of unilateral forms of trade and investment protectionism is of serious concern for growth and for the very foundation of multilateralism. Unilateral protectionism however is a symptom, not a cause. Since the post-war era of the Bretton Woods institutions, multilateralism has strayed from a cooperative exercise between nations towards a competitiveness game that pits states and their workers against each other on a global scale. That model prevented the convergence of growth models between economies. Instead, it has contributed to two extremes: unregulated market economies on the one hand, and authoritarian state-led economies on the other.

8. A new progressive trade and investment agenda is needed that shifts towards effective policy coherence and enforcement of human rights and labour, environmental and integrity standards, while preserving the right to regulate and to defend against unfair competition. Along this line of reasoning, the near-consensus statement at the last Ministerial Council Meeting calls for the OECD "*to facilitate dialogue […] on the links between trade policy and responsible business conduct, the environment, labour standards and women's economic empowerment*".

TUAC recommendations

9. The TUAC calls upon the following:

- To prevent another a global downturn, and end the overreliance on "easy money", the OECD should advocate for "income-led demand" as opposed to "debt-led demand", restore full employment as a key policy objective, and engage collective action for coordinated fiscal policy stimulus combined with targeted monetary policy measures to back it up.

- Monetary policy normalisation should be gradual and not dictated by an erroneous view on inflationary pressure. Quantitative easing should be replaced by "quantitative public investment support".
- Closing the gap between productivity gains and wages would help correct excess profitability rates and drive the recovery forward. Such recoupling is achievable by strengthening collective bargaining and increasing minimum wages.
- The OECD should engage a progressive trade and investment agenda that effectively aims at policy coherence with human rights and labour, environmental and integrity standards, while preserving the right to regulate and to defend against unfair competition.

1.2. An integrated approach to corporate accountability

10. With the current interest rate levels and low cost of capital, business investment should be booming. It is not. OECD average business investment spending in 2018-19 is projected to be around 15% below the level required to maintain annual pace compared to 1990-2007. Businesses are hoarding record returns. Instead of making productive investments, profits are going into shareholder dividends and share-buybacks, or are channelled into mergers and acquisitions. Meanwhile, global supply chains and global value chains are becoming more and more complex, making it difficult to track and enforce corporate accountability.

11. Since 2015, the TUAC has advocated for a more coherent and integrated approach to corporate accountability within the OECD, pointing the lack of coherence between OECD instruments related to responsible business conduct, corporate governance and long-term investment, which are implemented in parallel by their respective OECD divisions and committees with little coordination between them[2].

Regulatory arbitrage is becoming part of the "business plan"

12. Global Value Chains ('GVCs') and corporate group structures are becoming more and more complex. The traditional view of policymakers is that GVCs are the natural outcome of market-based corporate strategies to enter a local market, to diversify their activities and know-how or to achieve economy of scale. Yet, there is evidence that GVCs and corporate group structures are also shaped by regulatory arbitrage objectives, taking full advantage of the shortcomings in international regulatory cooperation and coherence. Playing with the rules, to escape responsibility is worryingly seen as a *business plan* in its own right.

13. Complex group structures often accommodate shell companies for the sole purpose of minimising or avoiding liability towards stakeholders and regulators as evidenced by the OECD BEPS Action Plan in the tax realm. Businesses also avoid employers' responsibilities by outsourcing to independent subsidiaries and sub-contractors in more accommodating jurisdictions. Existing corporate governance regimes and corporate laws are not equipped and adapted to deal with this changing nature of the firm and the rise of GVCs.

Strengthening the implementation of the MNE Guidelines and the Due Diligence Guidance

14. The OECD Guidelines for Multinational Enterprises (MNE Guidelines) are the OECD's flagship instrument on Responsible Business Conduct (RBC). Their effectiveness in governing the behaviour of companies depends on the strength of the National Contact Points (NCPs). The OECD has taken significant positive steps, including implementing a programme of OECD country peer reviews. Nonetheless, all too many governments have failed to establish effective NCPs. Moreover, in recent years, some NCPs have become less, not more, effective. This situation runs counter to the commitments made by OECD Ministers in 2017 to "*having fully functioning and adequately resourced National Contact Points*".

15. The OECD Due Diligence Guidance on RBC is expected to become *the* authoritative international reference on how companies should conduct due diligence to avoid and address adverse impacts in their operations, supply chains and business relationships, as called for under the MNE Guidelines, as well as the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration. Earlier this year, the OECD Council adopted a Recommendation committing adhering governments to promoting, monitoring and disseminating the OECD Guidance. Governments should take immediate steps to implement this Recommendation, given that the uptake of the Guidance by companies will ultimately depend on government action. The OECD also has a central role to play, building on its experience of implementing the sectoral due diligence guidance. Its plan for implementation should take a bottom-up approach so as to capture *qualitative* experiences on-the-ground and maintain the involvement of stakeholders.

16. Social dialogue has a key role to play at all stages of due diligence: identifying and assessing risks to the human, including labour, rights of workers; prevention and mitigation; monitoring; and providing access to effective remedy. Global Framework Agreements between companies and trade unions, for example, provide an effective way means of companies conducting due diligence, including by supporting cross-border dialogue with regard to supply chains.

TUAC recommendations

17. The TUAC calls upon the following:

- The OECD should start a horizontal discussion on the Future of the Firm and work towards a comprehensive approach to corporate accountability, linking the OECD RBC work and initiatives to work on corporate governance, aggressive tax planning & tax evasion, trade, foreign direct investment, integrity & corruption, as well as environmental policy. The objective should be to ensure corporate structures reflecting 'real economy' operations and identify by-products of regulatory arbitrage.
- On the MNE Guidelines, the OECD and member states should (i) strengthen existing NCPs, (ii) publish a list of non-functioning NCPs and (iii) ensure that new adherents to the Investment Declaration share the fundamental values of the OECD, including a commitment to pluralist democracy based on the rule of law and the respect of human rights.
- On due diligence, governments should meet the commitments of the OECD Recommendation, including legislation that makes due diligence mandatory, strengthening policy coherence, and providing capacity-building for stakeholders.

The OECD should also undertake implementation activities focused on increasing and monitoring uptake of the guidance by companies and capacity-building involving stakeholders; and require adhering governments to report annually.

Questions to the Liaison Committee:

- *Does the Liaison Committee agree on the need to restore full employment as a key policy objective, to engage in coordinated fiscal policy stimulus and to address the wage-productivity gap by strengthening collective bargaining and increasing minimum wages?*
- *Does the Liaison Committee agree on the need to start a horizontal discussion on a comprehensive approach to corporate accountability?*
- *Does the Liaison Committee agree on the importance of implementing the Council Recommendation on the OECD Due Diligence Guidance for Responsible Business Conduct and can it share examples of action taken to date?*

Round 2. Just Transitions to a more digital and green future of work

18. The OECD projects on the Future of Work (FoW) and the digital transformation are expected to gain further traction in the coming months with new data and key policy recommendations in Spring 2019 (Going Digital Summit, March 2019) and the Employment Outlook 2019 (April), culminating with the Ministerial Council Meeting. Ahead of that, the OECD has adopted a revised version of the Jobs Strategy. It is important for the OECD to get it right when it comes to creating quality jobs and sharing of benefits, and to foster regulatory cooperation towards frameworks that are adapted to digital businesses yet guarantee that the same rules apply as for traditional businesses. It is essential that the OECD not only endorses the Just Transition principles but also builds them into a guiding framework on the digital transformation in its integrated policy framework. The implementation of national 'green' just transition plans and strategies should be monitored and supported.

2.1. Devising a future of work narrative

19. The revised OECD Job Strategy offers a more nuanced approach to flexibility than its previous edition. Yet, other recommendations of the Jobs Strategy *de facto* work to undermine the OECD's stated objectives of better job quality and less inequality. Going forward, the OECD should address the new challenges for quality full employment and for quality regulation arising from the digitalisation of our economies.

The revised Jobs Strategy

20. Several policy recommendations seek to restore a more balanced worker-employer relationship: (i) the need to balance flexibility and job stability (the latter towards fostering knowledge based capital, preserving viable job matches in times of crisis, and creating 'early warning signals' for workers in the event of lay-offs); (ii) promoting collective bargaining coverage, either through high trade union and employer organisation density or through administrative extension of sectoral agreements with a view to achieving a broad sharing of productivity gains and (iii) considering using minimum wages as a tool to

increase incomes at the bottom of the ladder so all workers can benefit from growing economic prosperity.

21. Yet, other recommendations of the Jobs Strategy *de facto* undermine the OECD's stated objectives of better job quality and less inequality. The concern that minimum wages automatically price workers out of a job is out of date as empirical findings show that the overall impact of minimum wage increases on employment is either zero, or tends to be small. In the US, proponents and critics of the minimum wage now appear to agree on the fact that minimum wages do reduce long-term poverty[3].

22. Regarding collective bargaining, the OECD wants to submit administrative extensions of collective agreements to representativeness criteria, restrictive tests of public interest, exemptions and opening clauses. The risk is that such measures undermine coverage rates and thus also the capacity of a collective bargaining system to coordinate wage demands. A capacity that, according to the OECD's own research, is crucial to obtain more and better jobs for all, while keeping inequality under control. The revised Jobs Strategy does not take on board the most recent research findings on the rising power of employers to set wages (labour market monopsony), which underlines the importance of rebalancing the bargaining position of labour and capital in the labour market[4].

Rising challenges for quality full employment

23. Going forward, the OECD needs to focus on policy solutions towards job quality. Several challenges need to be tackled: the rise of non-standard forms of work, job replacement effects due to automation and the overall individualisation of responsibilities, increased occupational, wage and skills segmentations. In that context, the on-going OECD Future of Work (FoW) Initiative is a key priority for the TUAC.

24. The OECD has delivered valuable projections on the quantitative impact of digitalisation. A more granular analysis needs to be done on substitution effects across sectors and demographic groups as well as an analysis on job creation potential. Here, quality concerns regarding work in the service and care sector deserve closer attention. In operational terms, strong Employment Protection Legislation (EPL) would ensure that firms invest in their workforce and plan re-structuring with them. At the same time, dynamics resulting from increasing outsourcing and offshoring of tasks across more complex GVCs need to be scrutinised further.

25. Any FoW discussion needs a strong gender dimension. Women's lower pay – combined with their greater concentration in part-time, informal and precarious work – leads to lower social security entitlements and higher risk of poverty. Lack of work-family reconciliation measures, including quality care services, is exacerbating gender gaps in employment. Pay and employment gaps, discrimination and harassment have to be mainstreamed in OECD work. Two aspects are essential: the financing of public care services and parental, maternity and paternity leave and measures towards pay equality (including quotas, transparency provisions and measures to tackle occupational segregation). Legislation and enforcement of equal pay needs to become a goal in itself.

26. Regarding non-standard forms of work (NSFW), it is important to have a typology of atypical work (also by outlining which forms are truly new) and show its spread. Their incidence cannot be put down to excessive regular job protection. The bottom line is that where this work is based on regulatory arbitrage (misqualifications, tax exemptions), public support (meal vouchers, in-work benefits, income tax credits) and unfair competition (including tendencies of monopsonies and the fact that, in some countries, competition law

impedes collective bargaining for these workers) – it is neither an engine of job creation nor a full-time equivalent for regular work. False self-employment is often a result of new business models, in particular via labour platforms (on-demand and crowd work). Such forms of work entail serious wage penalties, social security and taxation gaps and have a high share of female, youth and migrant workers. If not regulated, they might exacerbate inequalities in the long-run. Instead, all forms of employment should fall under the "equal pay for equal work principle" and be subjected to employment tests (especially since data on work arrangements is abundant).

Education and skills

27. Skills and education gaps are real, including the low take-up of occupational training with increasing age (see latest *Education at a Glance* findings). Public education systems remain underfunded and teachers and academic professionals do not have enough time for their own professional development. Barriers to access training remain a serious concern (high tuition fees, absence of paid leave or rights to continuous training, employer reluctance or inability to provide on-the-job training). Yet, education and skills policies are not sufficient on their own to address tomorrow's FoW challenges. Higher skills and upskilling do not automatically translate in higher wages or a secure employment anymore as on-going OECD evidence on the shrinking middle class is suggesting.

TUAC recommendations

28. The TUAC calls upon the following:

- OECD governments should implement the revised Jobs Strategy with the overarching goal of rebalancing flexibility with workers' rights and not slide back into the old and traditional 'flexibility' narrative. This is all the more crucial given new evidence on the rise of labour market monopsony.
- To help frame the OECD FoW Initiative and the ongoing *Going Digital* Horizontal Project, the TUAC has developed a set of policy recommendations including (i) ensuring regulation remains fit for purpose, (ii) promoting collective bargaining and social dialogue for non-standard forms of work and for a Just Transition, (iii) adapting a worker-centred approach to innovation and digital diffusion, (iv) strengthening the gender dimension, and (v) linking the Future of Work to the Future of the Firm [5].

2.2. The just transitions & the regulatory challenges

29. Digital tools can enable simpler and more transparent processes to ensure regulatory enforcement and implementation, and to reduce regulatory burden and gaps. However, the cross-border nature of digital business, their capacity to "scale without mass" and decisive market power through network effects and mark-ups create serious complications for regulators. Data-driven business models have disruptive effects on taxation and competition; data security, privacy and protection; and labour rights and employment relationships. International regulatory cooperation should work towards frameworks that are adapted to digital firms yet guarantee that the same rules apply as for traditional businesses.

Managing transitions towards low-carbon & digitalised economies

30. As economies are moving towards greener and digitalised processes, the OECD should recognise Just Transition as a guiding framework towards policy frameworks and investment plans and the central role of social partners therein. Best practices show how collective agreements at all levels can play a decisive role in securing a fair transition. Autonomous social dialogue – based on the ILO Principles on Just Transition and the COP21 agreement – needs to be supported and the implementation of national green re-structuring plans monitored, also against employment objectives.

31. Digitally induced transitional needs resulting could necessitate up to 1% of yearly GDP on average across OECD countries. For now, digital transition policies are too narrowly defined: beyond training policies, activation measures (e.g. transition funds, investments into career guidance et al) and bargaining adjusting working times and wages (sharing of productivity increases, recompensation upon taking up more skilled tasks) play a central role. Furthermore, universal social protection systems should cushion workers in transition. The set-up or strengthening of bodies such as Sector and Industry Councils can help the delivery – especially at the local level to reach the SME workforce and close digital divides in regions and for vulnerable groups who are falling behind.

A worker-centred approach to digital innovation

32. Restructuring needs, the rise of monitoring at work and loss of workers' autonomy and limited resources for education/ training systems can be addressed through tripartite standard setting and governance. It is therefore important not to question if labour market institutions are 'fit for purpose' or whether trade unions are 'representative enough' but to discuss how to create an environment that is conducive for social partners to organise and act.

33. In the advent of Big Data, the Internet of Things (IoT) and AI, governments and social partners should work towards a worker-centered approach to digital development, deployment and use. New technologies create opportunities but also significant risks for workers regarding employee monitoring/surveillance, physical safety, AI bias leading to hiring and firing, worker's data privacy, protection and right to explanation, as well as the right to disconnect. Labour issues should thus be included in the OECD's principles on AI.

34. Trade unions should have a say in the design of algorithms and the implementation of converged systems. R&D has to take into account not only technological innovations but also social innovations such as the development of work organisation and working conditions and hence, would benefit from workers' participation.

Corporate concentration of digital companies

35. A few large digital companies are operating in an oligopolistic market. The lack of effective competition enables digital giants to behave like classic monopsonies, i.e. to take advantage of a situation where they are the main provider of services to governments and consumers, and of jobs to employees. Encouraged by their market power, they withdraw themselves from a vast bulk of rules on corporate governance, including in particular the rules governing transparency and accountability towards investors.

36. Yet, policy-makers fail to take action to tackle the anti-competitive behaviour of digital businesses. Few competition policies are specifically designed to target platform companies. Trade policies persist in assimilating all digital services to traditional services – despite specificities inherent to e-commerce, advocating for free data flows, whilst local

competitors struggle to enter the market and provide credible alternatives. In other policy dimensions, interoperability and transparency of data flows are being addressed more. Lastly, transparency obligations continue to govern almost exclusively listed companies, enabling the so-called Unicorns to operate outside any form of oversight. As far as tax obligations are concerned, major challenges relating to the valuation and taxation of intangible assets remain untackled.

TUAC Recommendations

37. The TUAC calls upon the following:

- Just Transition frameworks and the role of social dialogue and collective bargaining in their governance need to be recognised for both, the green and the digital transformation. Broad transition plans ranging from strengthening labour market institutions to investment channels into infrastructure and training programmes need to be prepared in anticipation of climate- and automation induced economic shifts.
- The optimisation of production and service processes needs to be under a human centered prism with standards on digital diffusion in place. Restructuring needs, new organisational frameworks and resources for public education, VET and adult training systems can be channelled through tripartite standard setting and governance, as well as through sector-wide and multi-employer agreements.
- Regulation should be adapted where it concerns new challenges such as working conditions and market concentration in the digital economy.

Questions to the Liaison Committee:

- *Does the Liaison Committee agree on the TUAC recommendations on the Future of Work?*
- *Does the Liaison Committee agree on the need to tackle disruptive data-driven business models through regulation and focus on people-centered innovation and Just Transitions?*
- *Does the Liaison Committee agree that the corporate concentration of digital companies needs increased oversight? Are current competition rules (aiming at facilitating market entry) sufficient in that regard?*

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[1] "Beyond the financial crisis, re-regulation and governance of the global economy: what role for the OECD?" TUAC Discussion document, LCM, Friday 12 December 2008 OECD/NGO(2008)4 document also posted here https://members.tuac.org/fr/public/e-docs/00/00/03/91/document_doc.phtml

[2] Long Term Investment & Accountability of the Investment Chain: What the OECD should Do - TUAC, 21 may 2015 https://tuac.org/wp-content/uploads/2017/12/1505t_lti-1.pdf

[3] See Arindrajit Dube & David Neumark

[4] See https://www.epi.org/publication/its-not-just-monopoly-and-monopsony-how-market-power-has-affected-american-wages/

[5] https://tuac.org/news/oecd-focus-on-the-future-of-work-tuac-recommendations/