Trade Union
Advisory Committee
to the OECD
*Commission
syndicale consultative
auprès de l'OCDE*

36th meeting of the corporate governance committee

Submission by the TUAC

Paris, 15-16 April 2019

On 15 April 2019, TUAC took part into the discussions of the OECD Committee on Corporate Governance. TUAC shared the following submission, key policy messages being:

- During a roundtable on climate-related financial disclosures, TUAC underlined the importance of taking into account exposure of workers to transition risks;

- On duties and responsibilities in company groups, TUAC encouraged the Corporate Governance Committee to collect information on how different OECD countries regulate the accountability of a parent company for activities carried by subsidiaries. There should also be a review of the various degrees in which OECD countries regulate the establishment of shell entities for the purpose of regulatory arbitrage (letterbox practices). Finally, it would be useful to collect information and transparency & reporting practices, as well as relationships with employees throughout the group;

- On workers' participation, TUAC urged the Corporate Governance Committee to undertake an in-depth review of existing regulations and practices, including an assessment of their impact on the economic performance and sustainability of companies;

- TUAC commented on a recent OECD report on corporate debt vulnerabilities. There are lessons to be learned on how current quantitative easing is delivering unconditional support to financial markets. From a corporate governance perspective, the Committee should reflect on long-term business models that ensure that corporate finance effectively transforms into long-term productive assets;

- On state ownership, TUAC highlighted the specific nature of SOEs performing essential missions of general interest and renewed its call for a full assessment of the consequences of public-private partnerships on fiscal management and human rights;

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- Finally, TUAC called on the OECD to take a more critical approach to the unaccountable corporate governance practices that prevail in digital businesses.

Climate-Related Financial Disclosures

As part of discussions on climate-related disclosures the TUAC recommended that better attention is paid to:

- **The exposure of workers to transition risks, which needs to be specifically spelt out and analysed.** Social risks should be a distinct disclosure, impact on the workforce should be added to business strategy and financial planning.

- **The definition of clear metrics to measure how companies handle "just transition" for workers to a low-carbon economy**. In particular, collective bargaining coverage and workers' participation are easily identifiable standards.

- T**he added value of binding regulation on both financial and non financial reporting**. The 2018 status report of the taskforce of the Financial Stability Board on climate-related disclosure[i] TF notes that whilst few companies are transparent about the financial impact of climate change, more companies in Europe disclose information. This regional difference is likely to be a consequence of EU regulations on this matter. There is also a need for a common reporting so that the information can be compared and contrasted.

Duties and responsibilities of Boards in Company Groups

TUAC had already expressed a considerable interest in the OECD engaging in active work on duties and responsibilities in multinationals[ii], and would welcome any further work on this topic, with the following as issues of particular concern:

- **The accountability of the parent/ holding company for activities carried by subsidiaries.** Information should be collected on every circumstance in which a parent/ holding company can be held liable for action carried at subsidiary level. A specific look at labour law, insolvency regulations and tax rules would probably be necessary to provide a complete picture.

- **The extent to which legal frameworks enable controlling companies to use empty shell entities for the purpose of regulatory arbitrage.** The establishment of artificial entities with legal personality but little connection to economic activity is regulated very diversely. Some countries consider that a company must be governed by the law of the country where effective management or control is situated (i.e. the 'real seat'). Other countries apply the full incorporation theory, whereby a company shall be governed by the law of its place of official registration, regardless of where its economic activities are taking place. In between, a whole range of countries applies varying mixed systems.

- **Transparency & reporting.** As part of the BEPS Action Plan nb 13, multinationals are requested to provide detailed information to national tax administrations about their structure, beneficial ownership, activities etc. In this peer review, it would be useful to have an idea of how – if at all – such information is shared among different administrations.

- **Relationship with employees throughout the group**. Information and consultation rights are fundamental workers' rights which exist in various forms in most OECD countries. The enforcement of such fundamental rights may vary in the context of a company group, where strategic decisions which normally give rise to an employer's obligation to hold consultations with employees are in fact taken not by the formal employer but by the parent company.

  It would be useful to have more information on the current practices. Such an overview will be of considerable help to the labour movement who is facing increasing corporate fragmentation.

Chapter IV-C of the G20/ OECD Principles on Corporate Governance

Chapter IV-C of the G20/ OECD Principles on Corporate Governance acknowledges the importance of workers' participation, which is defined as employee representation on board and work councils. Information, consultation and negotiation rights are also underlined, with reference to international conventions and national norms.

TUAC recommends that the OECD undertakes an in-depth review of the application of this chapter. In such review, particular attention should also be paid to the impact of employee participation on the economic performance and sustainability of the company. As an illustration, according to a recent ETUI study on 'democracy at work' in EU countries a positive correlation can be established between workers' participation and productivity and innovation. Companies with workers' participation also score better across six different sustainability domains[iii].

Developments in the corporate bond market

The OECD published in February 2019 a report on corporate debt vulnerabilities, exposing the dangers of unconditional monetary support and the need to take action for long-term business models and wage-led growth. TUAC very much welcomed the report and shared public comments at the time of the release[iv]).

The report underlines that the increased reliance on corporate bonds is exposing corporations and economies to multiple vulnerabilities. Corporate debt will need to be repaid, the quality of corporate debt has suffered and the use of special clauses protecting bondholders has gone down markedly. This erosion in quality is partly attributed to the considerable large volume of "leveraged loans" reached in the recent years: loans for private equity leverage buy out and balance sheet restructuring. For TUAC there are key takeaways for monetary policy makers who should seriously reflect on how current quantitative easing is delivering unconditional support to financial markets and the rise of low quality securities.

There are also policy lessons to be drawn on corporate governance. A key area of concern is whether the rise of corporate bonds is transmitting into the economy into "real investments". Previous OECD reports suggest that there is no such take up. By contrast, business expenditures in share buy-backs and in dividends have been booming. Rather than investing in the real economy, business are taking advantage of the ultra-low bond yields to borrow heavily, "take the cash" and transferring it shareholders via buybacks.

The committee should reflect on that, and on the corporate governance aspects to long-term business models that ensure that corporate finance effectively transforms into long-term productive assets – and does not end into feeding speculative shareholder's remuneration.

State-owned enterprises

In a global context of increasing market power of state owned enterprises, particularly in emerging economies, the OECD is stressing the importance of "competitive neutrality" principle between fully commercial businesses.

While competitive neutrality is a legitimate concern, some SOEs are performing essential missions of general interest and hence are not carrying purely commercial activities. Performance and efficiency measurements cannot respond to the same standards. 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.

As far as public-private partnerships are concerned, TUAC renews its call for a full assessment of the consequences of public-private partnerships on fiscal management and human rights.[v]

Digitalisation

At the upcoming 2019 Ministerial Council Meeting (22-23 May), the TUAC will be calling on the OECD to "take a more critical approach" to the corporate governance practices that prevail in the digital business.

Worrying tendencies, such as the decreasing number of listed companies, are exacerbated in the digital sector. This has a non negligible impact on transparency and accountability. In addition, access to share ownership is most often restricted to a few private equity funds and rich family offices, hence fuelling further wealth concentration.

As far as listed companies are concerned, digital businesses are characterised by dual class voting structures, boards of directors that are more entrenched, with executive managers holding three times more shares than the average in large listed companies.

Developing 21st Century technology based on 19th Century governance practices is not the right policy roadmap that we need.

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[i] https://www.fsb-tcfd.org/

[ii] *TUAC calls for enhancing the corporate governance agenda at the OECD*, (November 2018) https://tuac.org/news/tuac-calls-for-enhancing-the-corporate-governance-agenda-at-the-oecd/

[iii] ETUI (2019), *Democracy at work* in *Benchmarking Working Europe 2019*

[iv] https://tuac.org/news/oecd-report-on-corporate-debt-vulnerabilities-exposes-the-dangers-of-unconditional-monetary-support-and-the-need-to-take-action-for-long-term-business-models-and-wage-led-growth/

[v] TUAC comments on integrity in state-owned enterprises and privatisations (November 2018)