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

OECD "Investment Week"

TUAC contribution

Paris, 11 March 2019

TUAC welcomes the opportunity to participate into the OECD discussions during the OECD "investment week" on 11-13 March 2019. The labour movement has serious concerns about a free trade and investment agenda that would strengthen corporate power, whilst paying insufficient attention to qualitative impact on jobs and development. At the last OECD Ministerial Council Meeting, TUAC called for a progressive agenda, embedding the multilateral system within a wider social framework[i].

At consultations and workshops held during that week, the TUAC provided inputs on a number of on-going OECD policy work, including: the qualitative impact of foreign direct investment (FDI), international investment agreements and investor responsibilities, the implementation of the OECD Due Diligence guidance and better functioning of the OECD National Contact Points (NCPs) as well as emerging OECD discussions on "trust in financial institutions".

Investment Treaties and investor responsibilities

The labour movement is concerned about the economic and social cost of investment policies in general, and of international investment agreements in particular (IIAs). Sustainable development aspects are usually ignored, at best relegated to preambles and general considerations. IIAs are mostly about the protection of the commercial interests of foreign investors. Preferential treatment of foreign investors and the threats of ISDS have led governments to refrain from regulating, in particular in sensitive areas such as public services, social laws, environment, tax. FDI seems to be concentrating in sectors with low wages, stagnant skills, and weak collective bargaining. Combined with the liberalising effects of the trade in services agenda, we also see an overall negative impact on employment[ii].

TUAC therefore welcomes any effort to move the discussions towards a more progressive investment agenda, that shifts away from preferential treatment of foreign investors towards effective policy coherence with human rights, labour and environmental integrity standards, while preserving the right to regulate and to defend against unfair competition.

TUAC recommends that the following points are taken into full consideration for future work.

- Employment and decent work must be included in the list of investors' responsibilities. Workers' rights are a crucial item which must not be left behind.

- A pitfall to avoid in the context of a discussion on investors' responsibilities is to consider that IIAs can satisfactorily replace governments' regulatory space. Whilst IIAs should contribute to more responsible business conduct, they cannot be considered as sufficient instruments to design an appropriate legal framework. For instance, binding legislations are clearly needed to ensure that all multinationals put in place procedures to secure the respect of workers' rights, and to avoid and address any other negative impact. For the same reason, IIAs should be negotiated in the context of a wider policy framework that is conducive to more sustainable investment, including for instance on employment and industrial policy.

- Without prejudice to the need to review the wider context, TUAC agrees that the design of IIAs should fundamentally change. Key areas for reflection should at least include:

  - labour clauses that include references to key international standards;
  - remove preferential treatment for foreign investors;
  - develop alternatives to investor-state dispute settlements;
  - exclude speculative forms of investment from IIAs coverage, i.e. those which have no link with the real economy.

Trade and investment intangibles

TUAC welcomes emerging discussions on the impact of investments in intangible assets. Such policy work should assess in particular to which extent investments in intangibles are linked to the real economy of the receiving countries. A 2018 report on the determinants of foreign investment already hinted at the distortions of FDI statistics due to corporate tax strategies[iii].

FDI qualities

TUAC welcomes the on-going work on FDI qualities. In 2018, an OECD paper on the "societal and economic benefits of IIAs" found little evidence of the presumed positive impacts of IIAs[iv]. The on-going research on FDI qualities could potentially take the debate one step further by providing evidence of the mismatch between FDI as we know it today, and the sustainable development goals.

For the international labour movement, the role of foreign investment with respect to productivity and innovation is limited. MNEs typically offshore lower added-value tasks, and retain higher value added tasks such as research & development. These trends should be confirmed when looking at skills. FDI is likely to be found more in skill intensive sectors in OECD countries, whilst in developing countries MNEs hire lower shares of skilled workers.

Indicators on quality jobs will be of particular interest to the labour movement. In looking at the impact of FDI, particular attention should be paid to not only the number of employees (for which a comparison over a certain time span would be useful), but also pay, employment conditions, employment security, freedom of association and collective bargaining coverage.

Looking ahead, the results are likely to evidence the need to rethink domestic and international policies with a view to maximise the benefits of FDI. Recommendations should shift away from investment protection and refocus on how to foster spill-over effects in the local economy and upgrading in the value chain. In particular, it is necessary to put in place strong industrial policies, to facilitate the transfer of know-how, and to devise the right incentives to attract sustainable investment. More than a "toolbox", it is a fundamental rethinking of the policy framework for investment that is required.

Working Party on Responsible Conduct

TUAC appreciates the work done by the WP on Responsible Business Conduct and welcomes the OECD's Proposed Implementation Plan for the Due Diligence Guidance. TUAC would like to use the opportunity to highlight the importance a bottom-up approach in the implementation. As such, TUAC would like to urge the OECD and member states to find the right balance between a bottom up approach involving stakeholders and a top down approach to assessing implementation involving consultants/experts. In line with its 5-point Action Plan for Governments to Implement the Due Diligence Guidance, the TUAC urges governments to (i) introduce mandatory due diligence, (ii) strengthen policy coherence, (iii) monitor company compliance, and (iv) Strengthen stakeholder engagement and (v) disseminate the Guidance.

There is a substantial interest on the trade union side in the implementation of the due diligence guidance and the role of the company-trade union agreements. As such, TUAC has had requests from the global trade unions International Transport Workers' Federation (ITF) and Building and Woodworkers International (BWI) to develop case studies for the transport and construction sectors respectively. TUAC would therefore encourage the OECD to launch pilot studies involving stakeholders as priorities for the implementation plan in order to build on the current momentum of the Due Diligence Guidance.

Non-functioning National Contact Points – publication of an OECD list

NCPs are tasked with the important role of promoting the Guidelines, handling inquiries, and helping resolve issues that can arise if the Guidelines are not observed. Some NCPs are meeting expectations and find themselves with enough resources and a well-functioning organisation. Others are not. The differences in the workings of the NCPs can damage the overall trust in the NCP system itself. The TUAC has for been calling for the OECD to publish a list of non-functioning NCPs. Such a list has precedence at the OECD in the area of tax transparency. Such a list would furthermore help create incentives for governments to meet their binding commitments to create effective NCPs. It is also essential for NCPs to have this information so that they can cooperate/coordinate effectively in the handling of specific instances.

Deepening the OECD analysis of responsible investment practices

How financial institutions can contribute to better environmental, social and governance performance (ESG) is gaining better traction within the OECD, which is very welcome. Such work should o make strong references to the social dimension of ESG. Quality jobs is a core element of sustainable development. including the respect of employment rights, freedom of association and the promotion of collective bargaining.

The chapter could make useful references to the decisive role that pension funds can play in ensuring that workers' money is not used against the interest of workers. In 2016, private pension assets in OECD countries reached $38 trillion. This represents an average asset-to-GDP ratio of 49.6 percent in OECD countries[v]. The size and increasingly international nature of this capital means that pension funds have the potential to use their leverage to influence investee companies worldwide to help prevent or address adverse impact on employment, human rights or the environment.

Merely suggesting that policy-makers consider ESG factors in their governance framework would not be of much added-value. For instance, the OECD issued in 2013 the G20-OECD High-level Principles of Long-term Investment.[vi] In 2015, the TUAC made proposals to deepen the OECD work on long-term investment (and its three-pillar approach to "patient, engaged and productive capital") by ensuring better coherence between relevant OECD instruments and initiatives[vii]. Policy-makers should move beyond the voluntary approach to address the relevance of legally binding obligations on responsible business conduct. Taking as illustrations the emergence of new legislations in France and Switzerland requesting companies to carry out due diligence, the OECD should clearly articulate the need for policy-makers to introduce mandatory due diligence in their legislations.

A similar recommendation can be made in order to improve disclosure. The lack of quality data is often found to be a central challenge by financial institutions. Social reporting is raised as a particular obstacle because of an alleged lack of standardised social benchmarks. Such analysis should be strongly nuanced. Key performance indicators are easily available such as collective bargaining coverage, and the presence of workers' representation instances (e.g.: works council, health & safety committees). Furthermore, there are several methodologies that have been developed in this area[viii].

The issue with social reporting is not the lack of indicators but rather that none of them have been made mandatory. TUAC therefore suggests that the OECD recommends more clearly the introduction of legally binding norms on social reporting.

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[i] https://tuac.org/news/oecd-week-2018-trade-unions-call-for-a-bold-policy-response-to-improve-multilateralism/

[ii] See for instance Martin Myant (2017), *the impact of trade and investment agreements on decent work and sustainable development,* ETUI

[iii] DAF/INV/WD (2018)16, box 3 at page 29

[iv] Pohl (2018), *Societal benefits and costs of International Investment Agreements: a critical review of aspects and available empirical evidence,* OECD Working papers on International Investment, 2018/1. See also related TUAC analysis at: https://tuac.org/wp-content/uploads/2018/02/TUAC-note-on-IIAs-final-pdf-1.pdf

[v] https://www.workerscapital.org/about-us-1

[vi]

[vii] https://tuac.org/wp-content/uploads/2017/12/1505t_lti-1.pdf

[viii] The Global Unions' Committee on Workers' Capital's Guidelines for the Evaluation of Workers' Human Rights and Labour Standards has produced a comprehensive set of key performance indicators (KPIs) for investors to evaluate companies' social performance. The Guidelines were developed in response to concerns that investors are not equipped with tools to adequately scrutinize social issues such as labour relations in their environmental, social and governance (ESG) analysis. The Guidelines are inspired by key international norms, standards and frameworks including the UN Guiding Principles for Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the ILO Fundamental Conventions. https://www.workerscapital.org/cwc-guidelines-for-the-evaluation-of-workers-human-rights-and-labour-standards