

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

## **Making Good Use of the OECD Guidelines for MNEs in Response to the Covid-19 Pandemic**

**Paris, 10 April 2020**

It is undoubtedly necessary for governments in the OECD and beyond to respond to the unprecedented crisis of the Covid-19 pandemic with concrete policy solutions to help people cope and to return to some form of stability for the medium and long term. This is particularly true for the world of work as the impact of the crisis is being felt across the economy.

Decisive actions must be taken to protect and secure the workplace, ensuring companies adopt the highest safety standards and observe authoritative international standards on freedom of association, social dialogue and inclusiveness. For international businesses dependent upon global supply chains, the prescient recommendations embedded within the OECD Guidelines for Multinational Enterprises offer a good starting point.

### **Key Messages**

- Workplace structures will be essential in order to have a smooth return to economic activity, but these are presently lacking in many OECD markets. As of 1 March 2020, workplace structures had limited capacity to prevent and remedy the health risks in the Covid-19 pandemic and have even less capacity today.
- The OECD Guidelines for Multinational Enterprises set the global standard to build supply chain capacity for a positive return to business.
- Governments should prioritise incorporation of the Guidelines Chapter V – Employment and Industrial Relations in order to build workplace structures that can enable positive outcomes and carry us forward.
- Policies should drive towards the widest and most inclusive workplace structures possible, as a way to mitigate risks of uncertainty leading to industrial disputes. Multi-employer bargaining at a national and/or sectoral level offers an effective model.

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### About the OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (Guidelines) are recommendations addressed by governments to multinational enterprises. Their purpose is to enable multinational enterprises (MNE) to make positive contributions through their business activities and minimise negative social and environmental impacts.

The Guidelines indeed offer the most comprehensive framework available to guide government policies. The purpose of the Guidelines will be needed more than ever to carry us forward.

The fact of government support makes the Guidelines uniquely situated to establish a common global standard for restarting the economy post-pandemic. Several provisions are particularly appropriate for carrying us through the crisis:

*Chapter V – Employment & Industrial Relations* roots responsible business conduct in ILO core conventions 87 and 98, covering freedom of association and collective bargaining. It sets out the framework for workplace structure. With the structure in place, an MNE is able to address extreme business changes, including closure and layoff. An MNE is obligated under Chapter V to provide workers and their representatives with information they need to bargain solutions and achieve mutual trust. Chapter V supports a government’s desire to improve conditions

internationally, enabling positive standards to extend to developing countries where the MNE has operations or suppliers.

*Chapter IV – Human Rights* incorporates international standards for human rights established by the United Nations (UN) and International Labour Organisation. (ILO) Chapter IV capitalises on structures established by Chapter V obligations, utilising an organised workforce to tackle negative impacts like child and forced labour across a supply chain.

*Chapter VI – Environment* was prescient in the way it addressed workplace health and safety as part of environmental health. Similar to other chapters, Chapter VI makes the connection to social structures established in Chapter V, calling for health and safety dialogue between workers and management. With social structures, the MNE is able to monitor and verify progress towards healthier work and the broader community.

*Chapter II – General Principles* consolidates obligations to implement Chapters IV, V and VI, providing a vision for a functioning organisational model to implement the Guidelines. Making positive impacts in all the other Guidelines requires effective systems for due diligence, especially in workplaces. The OECD has consistently referenced workplace structures as being the most effective process for due diligence in support of the Guidelines. Verifiable forms of due diligence must be part of any effective planning to address the present crisis and re-start productive economic activity.

### **Guidelines carry us from pandemic response to post-pandemic restart**

TUAC offers the following guidance on applying the Guidelines as a long-term policy solution to enable positive post-pandemic transitions for businesses, workers and national economies.

The Guidelines provide the only multilaterally agreed, comprehensive code for responsible business conduct. In the current economic climate, the Guidelines offer a common global standard for restarting the economy post-pandemic and achieving inclusive growth.

#### *Guidelines Chapter V – Employment & Industrial Relations Builds Structure*

TUAC affiliates have consistently highlighted the Guidelines Chapter V as enabling all other chapters. Any government, industry or MNE approach to restart operations post-pandemic must start with Chapter V as a way to establish inclusive workplace structures.

ILO core conventions are central to Chapter V, enabling workers to form unions and collectively bargain. Time has run out for philosophical disagreements about union or non-union approaches. We simply have to decide whether we want a structured or an unstructured restart to our economy.

Chapter V 1 a) and 1 b) provide a pathway to cohesive workplaces. Governments and multinational enterprises are in the best position to deliver on the promise of the Guidelines in at least the following ways:

**Governments** can require cohesive workplace structures as a condition to any financial relief offered to multinational enterprises. As part of any public capital commitments, recipient multinational enterprises should be required to provide evidence that it has obtained a commitment from workers, representatives and trade unions supporting social peace. (*Guidelines V.7 and V.8*)

Governments have more reason than ever to expect multinational enterprises to protect the public's shared interest in getting back on its feet. Such an approach offers a way to protect national economies from business disruptions caused by industrial conflicts and ensures a smooth and efficient restart.

The multinational would satisfy such an obligation by engaging in consultation with workers, representatives or trade unions (*Guidelines V.3*). Through that consultation, the multinational and workers would establish agreeable standards (*Guidelines V.4*) involving the best possible wages and terms of employment in the renewed operations. The parties could also incorporate direct references to the Guidelines and its network of National Contact Points as a part of dispute resolution processes.

The government would also be in a position to affect change in developing markets affected by the pandemic where the multinational may also be restarting operations. This potentially extends positive OECD country impacts and standards to otherwise difficult developing markets. (*Guidelines V.4.b*)

Relying upon collaborative efforts between the enterprise and trade union networks, the government would put itself in a position capable of covering the supply chain, deploying multistakeholder leverage as a way to mitigate increased risks of child and forced labour in its supply chain, the need for which will only be intensified by cost-pressures in post-pandemic supply chains. (*Guidelines V.4.c and Guidelines IV*)

**A Multinational Enterprise** can provide guarantees of social peace to the government in a short form of evidence, demonstrating it has obtained affirmative commitments from workers, worker representatives and trade unions. These guarantees should extend to as much of a supply chain as possible. Global, national and/or sectoral frameworks are preferred.

Such commitments should demonstrate workers will support approaches to restart, including retention of existing workers, preserving collective agreements or agreeing an expedited process for amendment, and consensus on procedures for rehire and recall enabling the enterprise to reach full operational capacity. (*Guidelines V.2.a – c*)

**Trade Unions** are actively using their existing framework agreements with multinational enterprises to minimise disruptions in supply chains, protect wages and negotiate revisions to enable a smooth return to business activities. These union frameworks would immediately satisfy any government requirement for cohesive workplace structures, consistent with Guidelines V and IV.

*Positive outcomes for Chapter IV – Human Rights*

Once a collective structure is in place to address workplace standards, MNE is in a position to establish economic standards that support families and communities. A collective agreement represents an enterprise's policy commitment to respect human rights. (*Guidelines IV.4*) Wages and social protections, retirement and medical benefits, along with workplace health and safety, democratic grievance processes, training and promotion opportunities, as well as basic working hours and overtime provisions can all be addressed. More importantly, subjects secured through bargaining reduces the potential for industrial disagreement and conflict.

*Positive outcomes for Chapter VI - Environment*

It should be self-evident that MNEs must take additional steps to ensure occupational health and safety in their operations and throughout their supply chains. The non-union density data now confirm a sobering reality that the catastrophic impacts from COVID-19 occurred without enough health and safety workplace structures in place.

Collectively bargained workplace structures are capable of putting more people into climate action than any enterprise can do on its own. Workplace health and safety committees build inclusive, comprehensive approaches to support healthy and safe business activities. (*Guidelines V 4.C*) Having a negotiated structure in place would increase capacity of any multinational to respect, prevent and remedy impacts addressed in Guidelines Chapter VI:

- Regular monitoring of impacts and practices that have impacts. – *Guidelines VI 1.C*
- Cost effective forms of measurable, timely and verifiable information on potential health impacts. – *VI 2.A and B.*
- Shop floor communications capacity for contingency response. – *Guidelines VI 5.*
- Training on up to date health issues and workplace practices. – *Guidelines VI 7.*
- Multinational enterprises would have a valuable partner to enhance awareness in real time as circumstances unfold. – *Guidelines VI 8.*

### *Verifiable RBC due diligence Chapter II – General Policies*

It is the view of TUAC that management-controlled programs or multi-stakeholder initiatives are not credible industrial relations structures and cannot perform effective industrial relations due diligence and remediation. The OECD guidance for performing due diligence offers comprehensive support for trade union structures in effective due diligence, consistent with Chapter II:

- *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*: “Social dialogue which includes the recognition of Trade Unions and collective bargaining is the preferred and most important form of stakeholder engagement where an employment relationship exists. Alternative forms of engagement for employees must not adversely impact the internationally recognised right to form or join a trade union and to bargain collectively.” (Approved by the OECD Working Party for Responsible Business Conduct on 4 December 2015, adopted by Council on 13 July 2016)
- *The OECD-FAO Guidance for Responsible Agricultural Supply Chains*: “Industry-driven programmes are most credible when they involve not only business but also civil society organisations, Trade Unions, and relevant experts and allow building consensus among them.” Consultations and final drafting of the OECD-FAO recommendations had concluded by the time the Trade Unions filed the Respondent specific instance. (Developed over the period from October 2013 to September 2015, adopted by Council on 13 July 2016)
- *The Due Diligence Guidance for Responsible Business Conduct*: Worker representatives and trade union representatives are listed as “relevant to implementation of due diligence . . . on employment and industrial relations, occupational health and safety, human rights and recruitment.” (A.1 Table 5) Among practical actions enterprises can use for identifying and assessing RBC impacts, “consult and engage impacted and potentially impacted rights-holders, including workers, workers’ representatives and Trade Unions, to gather information on adverse impacts and risks.” (2.2h) (Adopted by Council on 30 May 2018)

### **Frontline workers and the sectors at-risk**

According to a new study published by the ILO, “1.25 billion workers are employed in the sectors identified as being at high risk of ‘drastic and devastating’ increases in layoffs and reductions in wages and working hours.”<sup>i</sup> Lower wage sectors at risk include accommodation, food services, retail and manufacturing.

### *Less protective labour market institutions*

Trade union density and collective bargaining coverage measure the structural capacity for social cohesion.<sup>ii</sup> (Figures 1 & 2) Policies that lead to both workplace structures and bargaining will be essential components in the forthcoming restart following national closures enacted to prevent further contagion.

Figure 1: Trade union density vs. Bargaining Coverage in OECD Countries

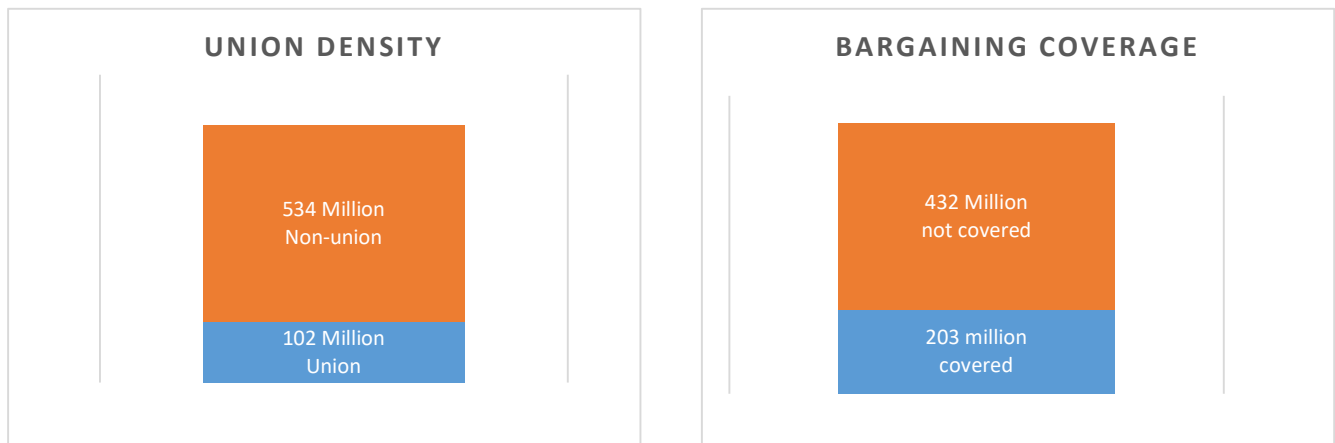
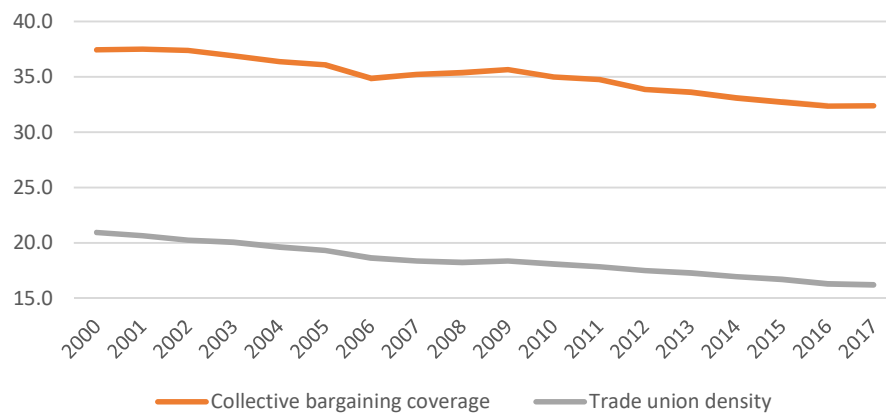


Figure 2: OECD average collective bargaining coverage compared with trade union density (% of employees with right to bargain)



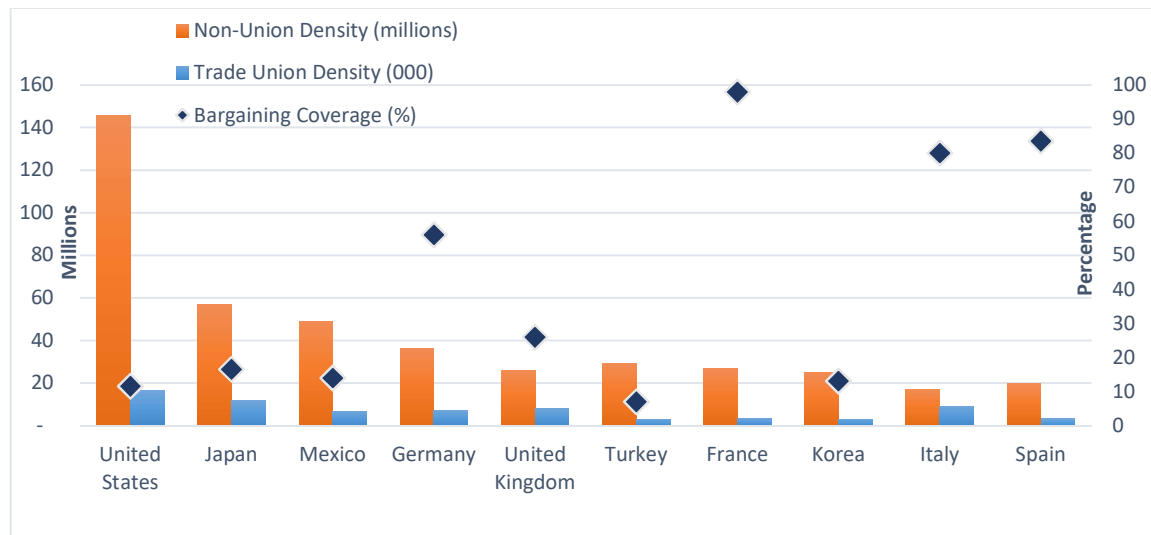
Source: OECD stats

### *Trade union density and collective bargaining coverage provide structure*

Non-union workplaces dominate the OECD, where 534 million people work without membership in a trade union. Nearly 150 million non-union workers without collective bargaining coverage are in the United States, the largest OECD country.

Ten OECD countries comprise 80% of all OECD workers. Multi-employer bargaining at the sector or national level extends collective bargaining coverage to a higher percentage of workers in several OECD markets with low trade union membership density. (Figure 3)

Figure 3: Union density and collective bargaining coverage



Source: OECD stats

Workplace structures as measured by trade union density cover an average of 16% of workers in OECD member states. However, 32% of workers in the OECD are covered by collective bargaining agreements. French workers are nearly all (98%) covered by collective bargaining despite having low trade union membership density. The US has both low trade union density (11%) and few workers covered by collective bargaining. Countries with both low union density and low collective bargaining coverage mean businesses have a limited ability to collaborate, let alone find consensus and build trust.

As economic activities resume, a great deal of uncertainty can be expected. Industrial disagreements would impede recovery of the *supply* side whilst lack of decent work triggered by record-high unemployment rates will keep *demand* compressed. The combined effect limits consumer and business confidence, hence investment. The latest EU business and consumer surveys for March 2020 already show a dramatic fall in economic sentiment and employment expectations.<sup>iii</sup> The same holds for the US Consumer Confidence Index, which plummeted in the same period.<sup>iv</sup>

Three practices inform a more structured approach practiced in many OECD countries:

- 1) Social protections are legislated, including paid sick leave and requirements for consultation.
- 2) Ratification of international labour standards. All but four OECD countries<sup>1</sup> have ratified ILO core conventions 87, covering freedom of association, and 98, covering collective bargaining.
- 3) Obligations for works councils provide structure for industrial bargaining.

<sup>1</sup> OECD member states US, Jordan, Morocco and Korea have not ratified ILO conventions 87 and 98.

4) Sectoral bargaining structures cover all workers throughout an industry, regardless of individual union affiliation.

### **Conclusion**

Workers can no longer wait for pathways to inclusion. Workplaces have become matters of life or death. The TUAC remains vigilant and hopeful that the structures enabled by Chapter V will be implemented with urgency across the OECD member states, so that the Guidelines become the standard for businesses returning to economic activities.

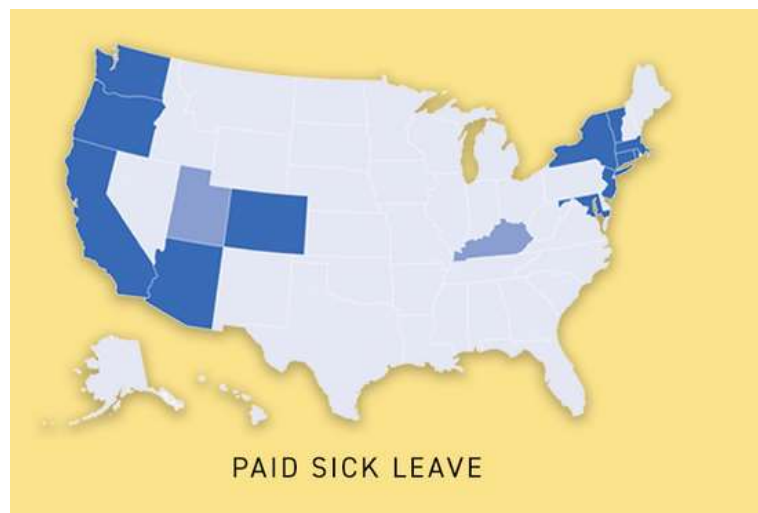
## ***Annex 1***

### *USA Example: Weak support for freedom of association, worker inclusion*

With nearly 150 million people lacking the workplace structures provided in union contracts, the United States is left open to industrial disagreements. Within the first few weeks following state and municipal closures, the Covid-19 pandemic led to industrial disputes at essential workplaces such as grocery stores, delivery and warehousing, and food service providers at hospitals.

- Top down approaches to workplace safety has sparked reports of gross violations of the OECD Guidelines and industrial disputes at large MNEs.
- Warehouse workers at Amazon’s Staten Island warehouse walked off the job over workplace health concerns. At least one worker was fired prompting the New York Attorney General to call for an investigation.
- “Gig Workers” at grocery deliverer, Instacart, reportedly stopped work over their concerns over being denied basic protections like hazard pay, hand sanitizer and paid leave for those with pre-existing health conditions. The company appears to have chosen to take advantage of the new market potential for home food delivery caused by the pandemic. As of 23 March 2020, the company reported 175,000 workers but suggested “hiring” as many as 300,000 in response to the pandemic.<sup>v</sup>
- Trader Joe’s grocery chain, management was reported as unsure whether wearing a mask and gloves violate its store policies.<sup>vi</sup>

The lack of worker protections and trade union structures creates unprecedented social and economic risks for Americans. In one week early in the crisis, 3 million Americans filed for unemployment. Only fourteen US states mandate paid sick leave.<sup>vii</sup>



Source: Politico.com

## **Annex 2**

### *OECD Europe: Support for structure despite low union density*

Thirteen Western European countries of the OECD<sup>viii</sup> combine for 154 million non-union workers, nearly as many non-union workers as the US. Three practices inform the approach taken in European OECD countries that are not practiced in the US:

- 1) Social protections are legislated, including paid sick leave and requirements for consultation.
- 2) All thirteen countries have ratified ILO core conventions 87, covering freedom of association, and 98, covering collective bargaining.
- 3) Works councils provide structure for industrial bargaining at every level, EU, national and sectoral.

These three elements incorporate the principles of the Guidelines Chapter V to form industrial relations structures for all MNEs and sectors in Europe. Worker-driven solutions are already being established, regardless of the individual's union status.

This means wages, health and safety and industrial processes involve consensus. It also means a more systematic communication network is possible. We can predict the prevalence of bargained structures consistent with ILO conventions creates more opportunity for bargaining across wide swaths of businesses, creating the space for industrial cohesion, rather than industrial disagreements.

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<sup>i</sup> ILO Monitor 2nd edition: COVID-19 and the world of work

<sup>ii</sup> OECD Trade Union and Collective Bargaining Statistics database, <https://stats.oecd.org/#>

<sup>iii</sup> European Commission: [https://ec.europa.eu/info/business-economy-euro/indicators-statistics/economic-databases/business-and-consumer-surveys/latest-business-and-consumer-surveys\\_en](https://ec.europa.eu/info/business-economy-euro/indicators-statistics/economic-databases/business-and-consumer-surveys/latest-business-and-consumer-surveys_en).

<sup>iv</sup> <https://www.conference-board.org/data/consumerconfidence.cfm>

<sup>v</sup> <https://edition.cnn.com/2020/03/23/tech/instacart-hiring/index.html>

<sup>vi</sup> <https://www.theatlantic.com/health/archive/2020/03/can-you-get-coronavirus-grocery-store/608659/>

<sup>vii</sup> <https://www.politico.com/news/2020/03/24/coronavirus-state-response-maps-146144>

<sup>viii</sup> Western OECD Countries: Austria, Belgium, Czech Republic, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Switzerland and United Kingdom.