

COUNCIL

Meeting of the Council at Ministerial Level, 5-6 October 2021

TUAC Statement to the OECD Ministerial Council Meeting

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Introduction

“If the future is not going to be grim, both economically and politically, change in the workplace, within industries, nationwide, must be bargained, and bargained collectively.”

Richard Trumka, TUAC-OECD Liaison Committee Meeting, December 2017

1. The TUAC welcomes the opportunity to contribute to the OECD Ministerial Council Meeting (MCM) on 5-6 October 2021, entitled “Shared Values: Building a Green and Inclusive Future”. The MCM offers the opportunity for the OECD to deliver comprehensive policy responses to the crisis, guidance for recovery and to agree on a new vision statement on the occasion of the 60th anniversary of the Organisation.
2. The MCM’s theme and framing suggest a number of questions: what kind of green future and inclusive future do we want and can we expect? What would that future mean to ensure, inter alia, resilient labour markets, closing the digital divide, ensuring green and sustainable finance, and promoting green jobs in the economic recovery? What policy measures would be needed to ensure that free trade and investment work for all?

A health crisis combining with climate and inequality crises

3. Many of the key challenges that we are facing today pre-date the COVID-19 emergency: slow economic and employment growth; widening inequalities of opportunities and outcomes; serious climate and environmental emergencies; disruptions brought by digitalisation and demographic ageing.
4. In face of the COVID-19 emergency, governments proved that public policy intervention is pivotal in limiting the negative impact on growth and jobs, and in preserving businesses’ and households’ incomes and confidence. The evolution of the virus remains uncertain and governments have to be ready to keep support where needed. In guiding the recovery, public intervention will be crucial in sustaining demand and jobs, and in encouraging private investment. The COVID-19 pandemic should be a wake-up call regarding the importance of well-functioning public health systems, the care economy and of adequate social protection – including addressing poor working conditions, low-salaries in the public health sector disproportionately affecting women, unemployment protection, paid sick leave and universal access to healthcare.
5. The urgent need to address climate change and environmental degradation remains. While the world continues to face a devastating biodiversity loss, the window of opportunity for addressing climate change and reaching the ambition of containing global temperature rise to 1.5 degrees Celsius is closing fast. The latest Intergovernmental Panel on Climate Change report just issued another warning. It is self-

evident therefore that the recovery should facilitate a green and just transition with far greater ambition building on multilateral cooperation not least via the COP and the ILO.

6. The principle of redistributive justice should be at the heart of the policy response to the crisis, one in which the design of growth models incorporates a fair distribution of risk and rewards, and a redistribution towards social cohesion. The crisis piles on mounting global inequalities. Today, the top 1% of the global income distribution seizes 20% of global GDP. The top 1% captured 27% of total income growth between 1980 and 2016. Social injustice and the economic consequences of rising inequalities are documented by several OECD flagship reports since 2008: “Growing Unequal” (2008), “Divided we stand” (2011), “In It Together: Why Less Inequality Benefits All” (2015), “A Broken Social Elevator? How to Promote Social Mobility” (2018), “Under Pressure: The Squeezed Middle Class” (2019).

Resilient labour market institutions

7. The employment recovery must be a quality jobs recovery. Workers in OECD countries have been left financially insecure, because they often find their employment position to be precarious – which, in many cases, it truly is. According the OECD report Pensions at a Glance 2019, non-standard employment, including self-employment, accounts for more than one in three jobs in OECD countries. It is imperative to respond to this challenge, starting with a reversal of labour policy reforms that led to dual labour markets, including by strengthening employment protection and labour market institutions. Workers have to be at the centre of the policy agenda, rather than being considered a replaceable production input.

8. This is why support to job retention and targeted policies addressing structural inequalities should not be phased out before recovery is effectively on track. The OECD’s Employment Outlook 2021 shows that short-time work schemes may have saved up to 21 million jobs and in some countries covered up to 35% of the workforce at the peak of the pandemic. Countries will take up to 2024 to go back to initial employment levels. Low-paying jobs are at 7-10% below pre-crisis levels. OECD members have to commit to maintaining support where needed and to start addressing labour market polarisation.

9. Beyond the immediate response to the crisis, fairness and resilience have to be restored through labour market institutions – collective bargaining and living wages. This means reversing past structural reforms that have individualised and transferred risks from employers to workers in an unjust and ultimately unsustainable way. The revised 2018 OECD Jobs Strategy calls for balance between negotiated flexibility, job security and stability, flexible fiscal policy and short-time work schemes for labour market resilience, and it recognises the benefits of sector-level bargaining and the need to promote collective bargaining coverage. Recommendations to create ‘Good jobs for all’ are needed, together with tackling income and wealth inequalities. Job protection rules and labour rights should apply in both the private and public sectors and must provide sufficient levels of job security, ensure minimum living wages and have social partners negotiate pay levels up. These challenges should be thoroughly discussed at the OECD’s Labour and Employment Ministerial (15 December), whilst the Jobs Strategy itself should be horizontally addressed across the OECD in its recommendations on policy reform.

10. This will benefit all workers, including “vulnerable groups” – women, migrants and refugees, as well as youth – alongside targeted and well-resourced active labour market policies and stronger anti-discrimination legislation, including via better enforcement and transparency regulations. Governments must address racial injustice and discrimination based on race and ethnicity by ensuring better measures to monitor racial and ethnic disparities in the workplace. Gender inequality needs to be systematically addressed, including pay and pension gaps, unpaid work and women’s segregation and exclusion from the labour market. Challenges faced by youth need to take centre stage as well through additional training and job creation programmes and much better protections and income support against financial insecurity (see TUAC Statement on Youth in Annex).

Hands-on technology regulations and policies against digital divides

11. Building back better should also mean addressing the significant gaps in regulation and policy action when it comes to the digital transformation. Non-binding principles and lukewarm legislation will not achieve desirable goals. Evidence-based policy recommendations on how to adapt regulations are not being put forward. OECD countries have the chance to set themselves apart from other regimes by acting against misinformation online, safeguarding privacy and human rights. Legal and ethical standards (not just principles or toolkits) on data access and sharing, algorithmic transparency and frontier technologies are needed. The OECD must take workplace issues more seriously in its on-going initiatives related to digitalisation. If left aside, the repercussions will be vast on job quality, well-being and productivity.

12. To achieve more competition in the digital economy, it will be crucial to put in place adequate enforcement that takes account of data value and network effects and to review and use industrial policies. In the aftermath of the 2008 financial crisis, policymakers were concerned about Systemically Important Financial Institutions. Now is the time for a similar process for “systemically important digital institutions”. Closing the digital divides and deploying industrial policies can contribute to market diversification and quality jobs creation, in line with social and green objectives. Further to this, the OECD and members should work to ensure that platform companies meet their fiscal and social security obligations.

13. Regarding workers’ rights issues in the platform economy, a handful of legislative initiatives and court decisions have aimed at restoring basic protections and, at times, the employment status. These initiatives need to be scaled up, including an initial presumption of employment via a legal base as confirmed by G20 Employment Ministers in June, a legal right to predictable pay and algorithmic transparency, the right to organise and form a union – also by revising existing competition law, and basic social protection coverage and occupational health standards. Bogus self-employment is a driver of increasing precarity and must be deterred. No intermediary or new status should be created for the platform economy. Instead, OECD members should guarantee equal treatment by ensuring that existing legislation is applied and that the same rights apply for all categories of workers.

Making trade and foreign investment work for all

14. Trade and investment liberalisation creates market opportunities for businesses, but it also comes as an external competitive shock and a major source of uncertainty for workers and smaller enterprises. Unless there are countervailing forces at the domestic level and in-built mechanisms in trade and investment agreements, it leads to downwards pressure on wages, job and social security, and workers’ rights. Unfair competition based on social dumping is pervasive. It fuels inequalities and undermines societal trust in global and national governance and in the private sector.

15. A first line of defence is the establishment of resilient and protective labour market frameworks in order to prevent a global race to the bottom in terms of labour costs and standards. A second line of defence lies with respect for human rights and labour standards, which should become a pre-condition for any trade and investment agreement in a manner that makes them enforceable. Monitoring, complaint and sanction mechanisms involving social partners should become part of trade and investment agreements. The OECD Guidelines for Multinational Enterprises offer a leading framework. Beyond the inclusion of enforceable social clauses, trade and investment agreements should respect the right of governments to regulate, including setting minimum floors and social protection while maintaining high environmental protection standards that fulfil the objectives of the Paris Climate Agreement and the Sustainable Development Goals.

Promoting green jobs in the economic recovery

16. The pandemic shows the need for system readiness to further crises, which might very well be climate induced. This summer has displayed the urgency for action with environmental catastrophes across the globe. The OECD and all its members should fully embrace and commit to net zero emissions no later than 2050 and to halve their collective emissions by 2030. In doing so, they should set up Just Transition plans and measures in order to reach these reductions in a fair and equitable way. Such measures are a crucial condition for both, the implementation of ambitious climate policies and the transition of workers into new quality jobs or roles. Recent OECD work on the “inequalities-environment nexus” demonstrates the importance of bringing environmental and social policies together and taking into account policy impacts on workers, their families and communities when designing environmental policies.

17. Without robust social conditions (involving public investments into infrastructure, support and training systems, social dialogue, and universal social protection), there will be no social justice and hence dwindling support in society for the structural reform of our economies needed to protect the climate and environment. The Just Transition principles are making inroads at the OECD, and should guide recovery plans with respect to climate change and environmental degradation. Taking into account profound regional, sectoral, digital and social divides, the need to have a multi-dimensional Just Transition lens becomes glaring. Recovery and stimulus packages present an important opportunity to implement Just Transition plans and measures. Measures that reduce GHG emissions whilst creating decent jobs, enhancing social justice and addressing energy poverty.

18. Just Transition measures must be based on tripartite negotiations with business and workers organisations and other stakeholders as defined in the ILO Just Transition Guidelines. This entails socially-determined public investments and industrial policies for transition-funding with mandates ensuring that green jobs be decent jobs. For that to happen there must be guarantees of labour rights. Companies and governments must come to the table and recognize workers’ right to a voice and negotiating collective agreements.

Tax reforms for redistributive justice

19. It is essential to ensure progressivity and fairness in tax systems in the face of mounting levels of inequality, especially at the top of the income and wealth distribution. It would uphold the redistributive justice principle and provide the right incentives to invest in the real economy, into low carbon and sustainable projects. After the 2008-2010 financial crisis, the OECD actively promoted regressive tax reforms in the name of growth: the formula consisted of reductions in corporate and personal income tax rates, and an increase in consumption taxation. Since then, the OECD embarked on a gradual shift towards a more balanced tax policy mix in order to decrease inequality levels, while improving the efficiency of personal income taxation. For its part, the IMF has also been calling for increasing wealth taxation in response to rising wealth inequality, as well as the need, in general, to consider tax policy in the context of inclusive growth after COVID-19.

20. Tax fairness is also about curbing aggressive tax planning and the undertaxation of new business models. The OECD-hosted and G20-mandated “Inclusive Framework” on Base erosion and profit shifting (BEPS) adopted a historic roadmap for a substantial reform of corporate tax rules, to address the undertaxation of large businesses and curb the global tax competition race to the bottom. “Pillar 1” of the roadmap is set to reallocate parts of the profits of MNEs to consumer’s jurisdictions – 20-30% of profits above 10% profitability – to account for the digitalisation of the economy. “Pillar 2” is set to secure the right for government to “tax back” overseas profits based on a minimum tax rate. While the broad direction is welcome, further efforts are required for it to become an actionable agreement, and much needs to be done to raise its scale and ambition. The priority should be a robust and ambitious agreement on a Pillar

2 global minimum tax floor. A 15% effective tax rate is too low to reverse the tax race to the bottom. For trade unions, a global minimum tax rate should be set at 25%. The OECD should also take action to transform the 2015 BEPS agreement on country-by-country reporting into a public reporting requirement.

Mobilising finance for the SDGs and for the Paris climate agreement

21. The scale of the current crisis needs to be matched with an unprecedented ambition in terms of finance mobilised for ensuring the achievement of the UN Sustainable Development Goals (SDGs) as well as a Just Transition to a low-carbon economy. OECD Governments and development partners have a special responsibility to support developing countries and avoid increasing poverty. Members of the Development Assistance Committee must uphold international commitments to reach 0.7% of their GNI in development cooperation budgets as well as start delivering on the 10-year-old commitment on climate finance that was also included in the Paris Climate Agreement. The OECD should contribute to a review of the policies of conditionalities set by multilateral organisations in order to avoid the errors of the past where the resilience of labour markets and healthcare systems across the globe have been weakened. Further to this, the OECD should also contribute to the development of a set of criteria to engage the private sector when considering green finance, which ensures an aligning of the financial system with sustainable development, public control and ownership and involvement of the social partners and stakeholders.

Annex A. TUAC Statement on Youth

22. Youth unemployment rose in all OECD countries during the crisis. Many existing challenges faced by young people are being exacerbated during this time including: Education quality and costs – including student debt; Lack of income to cover housing and food costs becoming dependent on food banks and other solidarity measures to survive; Social safety net cracks putting social justice and inter-generational solidarity into question; Ever-growing qualification requirements in the face of worse employment and wage prospects; and pre-existing precariousness marked by a substantial lack of quality jobs.

23. Young people want certainty and security when starting their professional education and entering labour markets. There should be no exemptions to established rights: the equality in treatment is the basis to prevent any cases of discrimination on the ground of age – pertinent for wages, social protection and working conditions. Policies need to combat social exclusion and promote youth well-being beyond economic outcomes. To this end, policies cannot go back to normal and need to be more targeted with a youth lens to recovery plans. The TUAC and its Youth Network outline the following priorities for OECD policy makers:

More social dialogue and young voices in policy-making

24. Young people want to have a voice in policymaking, including in the workplace. After years of slashing union density and collective bargaining coverage in favour of labour market reforms and supply-led growth, it is time to expand freedom of association and collective bargaining coverage to all forms of work (by reviewing employment relationships and competition law) and enshrine collective bargaining obligations in laws and policies on training including apprenticeships, jobs, wages and equality matters, as well as working conditions. Other means to this end are making social dialogue a condition for public procurement, tax incentives and other forms of business support alongside environmental, social and labour standards and objectives (including quality job creation and retention).

Review criteria for income support and address running cost issues

25. Young people face enormous financial instability. Access to income support for anyone outside of school systems needs to be guaranteed for an expanded age bracket (e.g. 18-30). Eligibility criteria should be tied to individual situations and the context. It is essential to introduce a right to decent housing and policies capping rents and limiting property market speculation. Rents have to be reviewed against income levels and local contexts to enable more sustainable and secure housing. To make digital learning accessible to all, support needs to go towards equipment and broadband costs for young people with lower incomes, whilst public investments should go into digital infrastructure and connectivity. Regional and urban policy makers need to consider improving public transportation networks to increase mobility.

Accessibility to health services, universal social protection and to pension rights

26. Social protection should be accessible to all, irrespective of the employment situation or age under the principle of equality of treatment. Universal health insurance should be available and affordable for all.

There should also be parity between physical and mental health coverage. Policies need to redress long-term negative consequences on pensions levels, rights and inter-generational solidarity coming from regressive reforms that diminished pension rights, youth un- and under-employment, precarious and informal work, and significantly lower wages and employer contributions compared to previous generations.

A new approach to and financing of higher education and vocational education training

27. Young people tend to drop out of secondary and further education if they do not have enough guidance, choice or face financial constraints. Child and youth guarantees could help redressing that. It is time for adequate support systems rather based on grants, not loans – contingent on individual situations, not parents' incomes. In some OECD countries, there should be a thorough revision of study fee levels both in public and private education, and student debt forgiveness should be considered if levels become disproportionate to income.

Opportunities to get and transition into quality jobs

28. The structure of labour markets needs to change. Unpaid internships, student jobs and entry jobs below living wage levels should be constrained. Youth employed in entry-level jobs have to be protected and have guaranteed their fundamental rights at work. There need to be adequate minimum wages in all sectors and across all employment types. There should be a floor that can be set by law or by collective agreement. Future labour market reforms have to increase standards on employment security and curtail precarious work through stricter regulation (specifically to avoid high turn-over, unpaid over-time, false self- and informal employment). Career guidance should be free via expanded and accessible public employment services to all – not only unemployed and at-risk populations. These services need sufficient funding to help young people in transition to the world of work during the COVID-19 pandemic in order to prevent longer exclusion from the labour market.

29. Young workers should have access to training and career development opportunities within their workplaces and profit from fair job mobility, also across borders. Public investments should always consider quality job creation and retention as a target including via just transition frameworks for the green and digital transformations. Governments and local authorities should adopt youth employment policies for green jobs in line with the industrial strategy outlined in Nationally Determined Contributions (NDCs).

Equal treatment in any type of job

30. Regulation has to curtail non-standard forms of work including by enhancing oversight on informal work and online platforms gigs that leave young workers with insecure income, inadequate protections and no possibility to organise, join or form a union. A presumption of employment is key and should be applied and reinforced via existing labour law including against bogus self-employment, so are higher obligations on firms including contributions to social protection and fiscal systems. There is no need for third workers categories. Racial, ethnic and gender justice have to take centre stage in policy responses. Migrant labour rights have to be enforced better and unaccompanied minors have to enjoy greater protections and support. Regulations and mechanisms such as labour inspectorates and involving trade unions have to be put in place to fight discrimination and bias in the world of work in both human-led and algorithmic management.

Annex B. TUAC Statement on the OECD Guidelines for Multinational Enterprises

31. Ten years after the last revision of the text, the OECD Guidelines for MNEs is undergoing a “stock taking” exercise with a possible review process in 2022. Together with the General Guidance on Due Diligence, the MNE Guidelines constitute the OECD’s flagship instrument to hold business to account for its impact and responsibilities within their operations and in their global supply chains.

Ensuring effective implementation

32. The OECD should ensure rigorous and systematic monitoring of Member countries’ implementation of the OECD Guidelines for Multinational Enterprises, including regular reporting on steps taken. However, much could be done to improve the functioning of the National Contact Points who are in charge of the implementation of the Guidelines as a priority. The NCP Procedural Guidance, in particular, needs comprehensive attention to address stakeholders’ fatigue with the NCP mechanism. This can be done with the following improvements:

- Introducing consequences for businesses that do not participate in good faith at each stage of the NCP complaint process would incentivise participation.
- Determinations about the allegations of issues with enterprise conduct should appear in final reports, especially when the enterprise refuses to participate in mediation.
- Ensure mechanisms for convergence and progress towards uniformity among all NCPs, and enable the NCP as an independent authority over RBC to address the deficit in support when government priority is placed on trade and investment objectives over sustainability objectives.
- Equipping NCPs with the necessary skills and expertise in labour-management mediation is a serious gap needing special attention. NCPs lack expertise for conducting effective labour-management mediation. Such expertise is available and necessary for assisting parties resolve labour management issues.
- Consider adding an arbitration step to resolve any remaining issues after NCP mediation. Arbitration is a missing step in the NCP process that has otherwise proven to be effective in labour-management dispute resolution.
- Consider consequences and sanctions for companies that refuse to participate in a NCP process or ignore recommendations by an NCP.

Guidelines’ expectations that are fit for purpose

33. On substance, Chapter V of the Guidelines already cover key expectations on employment and industrial relations, which are the central stakeholder relationship with the most potential for impact in the Guidelines. However, Chapter V can do more to encourage enterprises to implement a fair process to recognise trade unions and worker representatives for collective bargaining. As part of this, Chapter V should also mainstream the concept of “good faith bargaining” as it is practiced and understood within the

context of industrial relations. Trade unions need to be involved at all relevant levels and at every stage of the due diligence process. Both the Human Rights (IV) and Industrial relations (V) Chapters would benefit from the inclusion of the post-2011 OECD instruments on due diligence, including the general due diligence guide and the Investment Committee clarification about meaningful due diligence involving trade unions published in 2021.

34. But other aspects of the Guidelines could be improved. A non-exhaustive list would include issues related to climate change, digitalisation and corporate transparency. The Environment Chapter, for example, lacks modern reference to the Paris Agreement and to the Just Transition principles developed since 2011, which would require meaningful due diligence and trade union dialogue as essential for achieving climate objectives, securing quality jobs and social protections. The Guidelines should also be considered in light of the regulatory challenges created by disruptive forms of business models in the digital economy. Regulatory gaps and exemptions have heightened workplace uncertainty and aggravated worker misclassification, particularly in the platform economy. In the same vein Chapter III on Disclosure requirements could better support industrial relations implementation – including comparable data on collective bargaining coverage, on trade union or worker representation – as well as on tax and on climate impact.

What government can do, and can do better

35. The proposal to devise a new OECD Recommendation on RBC is welcome, particularly if it asserts the role of government in promoting responsible business conduct in response to the Guidelines' shortcomings. Such Recommendation would serve as a reference manual for increasing implementation of the OECD Guidelines and respect for the NCP authority over RBC policymaking. Adhering to and implementing the Guidelines should become a prerequisite for adhering to this new OECD Recommendation. This would include positioning the NCP as a central authority for promoting RBC policies across government agencies. Beyond the OECD's own instruments, governments should take steps to introduce national legislation on corporate human rights due diligence as a way to build overall capacity, including for trade unions.