

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

Briefing #5

Businesses and Trade Unions have a common interest in promoting harmonious industrial relations, which can be achieved when they collaborate to implement the OECD Guidelines for Multinational Enterprises (“MNEs”) and respect the good offices of National Contact Points (“NCP”).

When enterprises and trade unions collaborate to implement the Guidelines, they can create best practices for inclusive workplaces, resilient business operations, and individual well-being.

With the proposed “targeted updates” for Chapter V, the Working Party on Responsible Business Conduct has given governments a framework capable of setting a course correction on industrial relations. If implemented by business and with the support of the good offices of the NCP, the proposals for Chapter V would offer the first step towards a framework for more constructive industrial relations.

Employment and Industrial Relations updates to the OECD Guidelines for Multinational Enterprises

Paris, 1 November 2022



OECD governments will be tested in the future to address transformations in work and the growing cost-of-living crisis, however long it lasts. It is crucial for governments to establish frameworks capable of withstanding potential labour market stress factors and related operational risks.

TUAC Briefing #3 considered risks associated with supply chains reliant upon unit-level bargaining systems. Briefing #2 provided evidence of how the lack of collective bargaining and dialogue mirrors an overall lack of dialogue at an NCP.

Two proposed complementary updates to the MNE Guidelines Employment and Industrial Relations Chapter (V) would improve implementation and access for millions of workers in global supply chains.

The first update would be to remove the condition of employment, which has historically prevented business implementation of the Employment and Industrial Relations standards, especially in subcontracted and outsourced forms of employment. The Proposed Update would enable all types of enterprises to take steps to promote respect for workers’ rights to form trade unions and bargain collective agreements.

A second, complementary update would elaborate the expectation for enterprises to remain neutral in the decision by workers about whether to choose trade union representation. The Proposed Update would remove overwhelming influence exerted by enterprises when management expresses opinions about union representation and collective bargaining. (Chapter V.1a and V.1b)

These updates, along with proposed updates to Chapters 1 to 11 would position the MNE Guidelines as a framework for constructive industrial relations that can withstand labour market transformations. The proposed updates would also support conclusions of the OECD 2022 Employment Outlook.

OECD Employment Outlook encourages collective bargaining

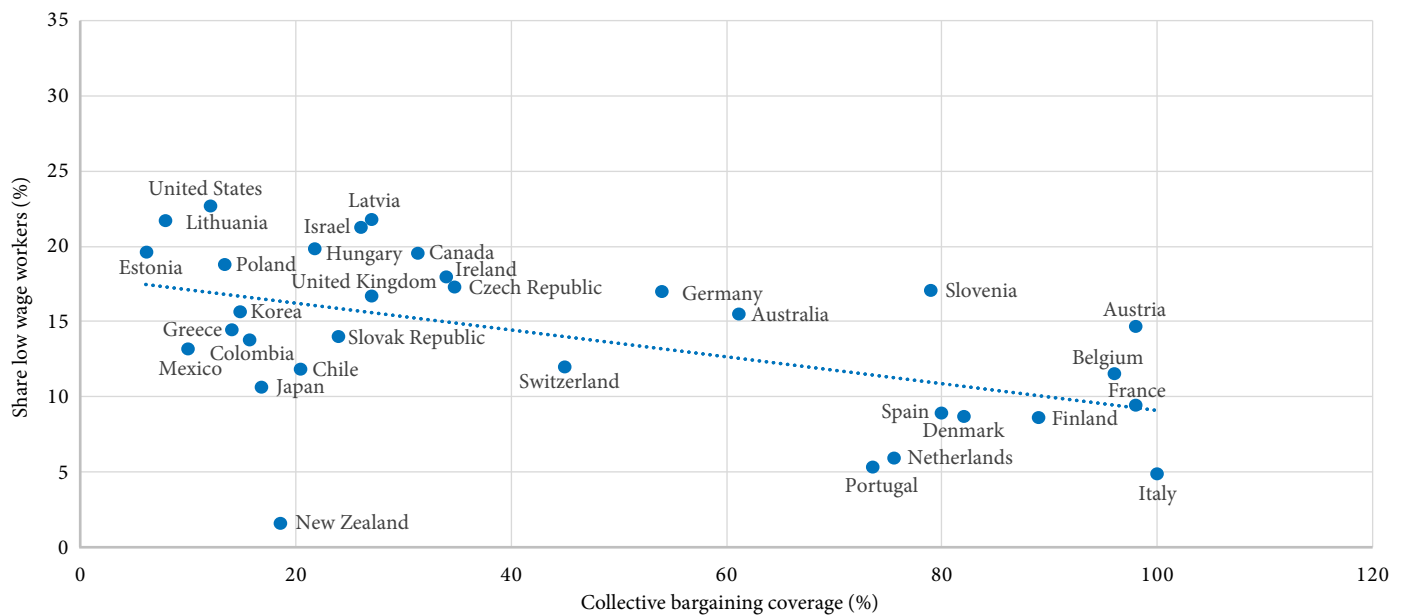
The OECD Employment Outlook¹ makes a strong case for governments to take steps that would rebalance bargaining power in favour of workers and wages. With at least one in six workers being employed in a labour market where employer concentration is high, business has the power to set wages below the value that workers are adding to the company.

To rebalance bargaining power between employers and workers, the OECD encourages a new impetus to collective bargaining and accompanying efforts by private sector trade unions and businesses to enlarge the coverage of collective agreements. Doing so would improve labour market outcomes and result in higher wages and more quality jobs.

The OECD supports collective bargaining in order to improve working conditions and labour market performance at large. The OECD recalls its 2019 report, *Negotiating Our Way Up*, in which collective bargaining was understood as a way to reduce unemployment and economic inequality. TUAC expanded analysis of OECD data found higher collective bargaining coverage is associated with a smaller portion of low wage work. (Figure 1)

Countries where bargaining takes place at the company level are less resilient, having limited capacity for tailored labour market solutions. These countries would benefit more from the text of the MNE Guidelines as it can help ensure that enterprises implement resilient industrial relations frameworks.

Figure 1: Higher collective bargaining coverage associates with lower share of low wage work



¹ OECD (2022), OECD Employment Outlook 2022: Building Back More Inclusive Labour Markets, OECD Publishing, Paris, <https://doi.org/10.1787/1bb305a6-en>.

The Challenge of firm-level bargaining in the United States

In least resilient countries with mostly firm-level bargaining, establishing representation must occur before any negotiations of a first collective bargaining agreement. This practically deters rather than enables collective bargaining. Take the US operations of Starbucks, for example. In order for workers to have bargaining power involves more than 9,000 store-by-store representational elections using an anachronistic process with origins dating back to the 1940s.

In this process, the time between the date a union makes the request and the date of an election is around six weeks. If elections were to take place sequentially, unit by unit, obtaining representation at just half of Starbucks US stores would involve 4,500 elections taking 6 weeks each which comes to 518 years.

The New York Times reported more than 200 stores had voted for representation as of September 2022. Continuing this pace, it would only take 22 years for workers to have representation at 50% of Starbucks-owned cafes. Workers must negotiate a collective bargaining agreement within one year or the process starts all over again.

Unless Starbucks voluntarily agrees to implement the MNE Guidelines Chapter V, particularly Chapter 1a and 1b, it would take somewhere between 22 and 518 years to have countervailing bargaining power described in the OECD Employment Outlook.

<https://www.nytimes.com/2022/09/13/business/starbucks-reinvention-strategy-employees.html>



Future MNE Guidelines and NCP Implementation can help

The OECD proposed updates reflect TUAC priorities for the Employment and Industrial Relations chapter capable of progress in bargaining coverage, particularly in the least resilient, firm-level bargaining countries. The OECD targeted updates provide a way forward for workers in fragmented supply chains.

The MNE Guidelines proposed updates would support frameworks beyond the existence of an employment relationship. This would benefit significant segments of OECD labour markets:

- Subcontracted work performed for a primary contractor.
- Sold, transferred, merged or acquired operations of a multinational enterprise can convey standards in the instruments of the transaction.
- Procured work can convey provisions in the procurement and resulting contracting instruments.
- Subsidiary operations and joint ventures.
- Franchised operations can convey expectations as part of the brand standards.

The Updates enable any enterprise to address issues with industrial relations based on where they are situated (cause, contribute, linked) in the supply chain. By removing the historic requirement of an employment relationship, the OECD would open the door for access to collective bargaining for workers in significant industrial supply chains.

- Work performed for digital enterprises when combined with Chapter IX and Chapter II updates for meaningful due diligence.
- Hotel and hospitality work supported by steps available to both the property owner and franchisor.
- Food and restaurant work can be supported by an MNE franchisor, having potential benefits for SME franchisees.
- Airline and airport contracted service work supported by airport operators, airline tenants and the service provider.
- Infrastructure construction project supported by Project Sponsor, investor and/or Project Owner.
- Agricultural work can be covered with steps available for the large MNE to individual or collective farm workers.

Enterprise Implementation Examples

Several global corporations have already implemented practices that are consistent with the OECD proposed updates. Similar approaches are practiced by more than 200 companies with global framework agreements with a respective global trade union federations in transportation, retail, manufacturing, infrastructure, construction, hospitality and leisure.





OECD proposals for the NCP Procedural Guide would weaken and not improve NCP effectiveness

A complementary set of updates is still needed. Unfortunately, the Draft Updates for the MNE Guidelines Part II, Implementation Procedures would undo any improvements made in Chapters 1 to 11, reducing implementation in complex supply chains.

The Draft Updates to specific instance procedures overwhelmingly misplace NCP decisions towards filing parties that should be directed towards businesses.

The Draft Updates introduce confidentiality as the central effectiveness criteria. This must be understood as a serious deterrent for trade unions who are already fatigued with the amount of resources required but with so little possibility of remedy.

TUAC cannot stress enough the importance of substantial updates to the MNE Guidelines Part II, the Implementation Procedures and Procedural Guidance for specific instances, in order for them to retain any relevance to workers.

The Trade Union Advisory Committee to the OECD

The TUAC is informed by real-time experiences by national and global trade unions with combined representation of 300 million workers taking steps to implement the Guidelines every day.

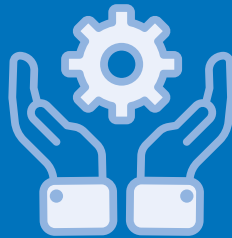
Under the OECD Guidelines, governments are expected to establish national contact points to promote and defend responsible business. Companies are expected to undertake due diligence in order to identify, prevent, mitigate and account for how they address actual and potential adverse impact in their own operations, as well as in their global supply chains and other business relationships.

The Guidelines implementation is not optional for businesses in order to:

- Support and not oppose core labour rights;
- Increase bargaining coverage;
- Extend responsible business practices through supply chains;
- Secure jobs with retention and reemployment.

What we want

TUAC encourages the OECD Investment Committee, Working Party on Responsible Business Conduct to:

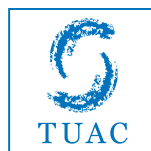


Support the MNE Guidelines updates that are capable of extending access to workers in supply chains

Endorse the targeted updates to the Employment and Industrial Relations Chapter (V) for Council adoption



Reconsider and redevelop proposed Updates to the NCP Procedural Guide to protect usefulness for workers and trade unions



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