



Consultation with the Bureau of the OECD Public Governance Committee Paris, 11 April 2012

The TUAC welcomes the opportunity to consult with the Bureau of the Public Governance Committee (PGC) on 11 April 2012 ahead of the 45th plenary session of the PGC on 12-13 April. We would like to share the following observations on some of the items that are on the agenda of the plenary session.

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Item 3. Strengthening the evidence base on public governance

The paper for discussion (GOV/PGC(2012)1) does not sufficiently address the need for independent and representative social partners and civil society organisations (CSOs). Because of that there is a risk for an exclusive top-down approach to reform. The OECD should stress the importance of participative processes and of reform design and implementation to be negotiated with key stakeholders, and not just “communicated”. That is particularly true where the paper suggests “supporting countries in their steps towards fiscal consolidation”. In the same vein, promoting E-government for the purpose of greater government transparency is desirable only if it leads to effective empowerment of citizens and their CSOs. ICT as such is a means to an end, not an end itself.

The key topics that are to be addressed – risk management policy, fiscal rules and budget transparency for fiscal consolidation, public sector “value for money”, innovation and efficiency, transparency and integrity of government administration, standardisation of data on civil service, and e-government tools – should be firmly based on measuring and sustaining access and quality of public services. The overarching OECD concept of “agile government” also needs to be clarified.

Item 5. Rule of law and good governance

As we wrote in previous comments (in December 2010¹ & December 2011²) the OECD approach to the concept of “rule of law” (GOV/PGC(2012)2) does not correspond to the

¹ http://www.tuac.org/en/public/e-docs/00/00/07/FA/document_doc.phtml

² http://www.tuac.org/en/public/e-docs/00/00/0A/45/document_doc.phtml

generally accepted definition which is centred around both human rights and proper administration of justice – while the OECD approach is focussed on the administration of justice alone. The paper ignores the standard definition by the UN³ as well as the important body of work undertaken by UN agencies (such as the UNDP⁴, the UNEP⁵) and the OSCE⁶. By contrast the paper seems to give priority to improving “business climate”. And it makes several references to the World Bank “Doing Business” methodology which is well known for its one-size-fits-all bias in favour of “small government” and the elimination of employment protection legislation.

This OECD project either should be narrowed down to administration of justice (as suggested by the partnership with the European CEPEJ) or it should be enhanced considerably if indeed the ambition is to address the promotion of rule of law. In the latter case, partnerships should go beyond the American Bar Association (as foreseen in the paper) to include internationally recognized initiatives and forums, including the above mentioned UN agencies and the ILO.

Item 7. Programme of work and budget for 2013-14

Regarding to programme of work (GOV/PGC(2012)3) we welcome the creation of an “Observatory” on public sector innovation and efficiency (which is mentioned in work stream n°2 “Comparative evidence on public governance and public expenditure” and n°4 “cutting-edge innovation and management practices”). The organisation of the Observatory should allow for public sector trade unions to make their voice heard.

We also note that no less than five new OECD official guidance tools are programmed in the coming two years (work stream n°3 “Guidelines and standards for public governance”). As a general policy the TUAC believes that the effective observance of existing recommendations should be prioritised over the development of new ones.

With regard to outreach activities (work stream n°6 “Governance for development”, also discussed under item 9 and document) and as commented below under item 9, we call on the MENA-OECD Governance Programme to include the observance of ILO core labour standards.

Item 9. Committee Activities

We would like to bring attention to the following PGC work.

Mainstreaming development

We welcome the revised proposal of work on public governance in a developing and emerging economy perspective (GOV/PGC(2012)4) including the on-going MENA programme and the organisation of a “Global Forum” on 20 November 2012. If anything, the Arab Spring has shown the need for independent, accountable and representative CSOs and

³ “Rule of Law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” UN Doc. S/2004/616 (2004), para. 6 <http://www.un.org/Docs/sc/sgrep04.html> & <http://daccess-ods.un.org/TMP/7118663.7878418.html>

⁴ 2010 Annual Report on UNDP’s Rule of Law Global Programme http://www.undp.org/cpr/documents/UNDP%20Rule%20of%20Law_web_FINAL_PRINT.pdf

⁵ <http://www.unep.org/dec/worldcongress/index1.asp>

⁶ <http://www.osce.org/what/human-rights>

trade unions. The upholding of human rights, including rights at work as defined by the ILO, should be recognised in the OECD framework.

OECD draft Recommendation for Public Governance of Public-Private Partnerships

The TUAC appreciates the opportunity to participate in the annual OECD experts meetings on PPPs under the SBO network. We call for a greater involvement of the supreme audit institutions and of relevant specialised NGOs in future meetings.

As the Draft Recommendation is to be officially endorsed by the OECD ahead or on occasion of the OECD Ministerial in May 2012, we would like to highlight the importance of the following Principles:

- Principles A.1 “*Popular understanding of PPPs requires active consultation and engagement with stakeholders as well as involving end-users in defining the project and subsequently in monitoring service quality*” – and its annotations referring to the role of trade unions and of CSOs⁷ – and A.2 “*Procuring authorities, the Supreme Audit Institution and sector regulators have to be entrusted with clear mandates with regards to PPPs*”;
- Principles B.5 “*There should be no institutional, procedural or accounting bias either in favour of or against PPPs*”, B.7 “*Risk should be defined, identified and measured and carried by the party for whom it costs the least to prevent the risk from realising or for whom realised risk cost the least*”, and B.9 “*Value for money requires sufficient competition*” and;
- Principle C.11 “*The project should be treated transparently in the budget process. The budget documentation must disclose all costs and contingent liabilities*”.

The PGC should also ensure that the Recommendation is owned by other OECD bodies that directly or indirectly address PPPs – *inter alia* the Investment Committee, the Corporate Governance Committee and its Working Group on Privatisation, and the Working Party on Private Pensions – as well as by the OECD horizontal project on “green growth”.

The OECD review of public administration restructuring policy in France

In a written submission⁸ to the OECD, the TUAC rejects the findings and recommendations contained in the OECD peer review of French government’s public administration restructuring policy⁹ – known by its French acronym ‘RGPP’. The TUAC calls upon the PGC to ensure transparent peer review processes that effectively allow trade unions and other relevant CSOs to share their experience.

⁷ “*Labour unions consequently represent a key stakeholder group that can be substantially affected by the usage of PPPs. For PPPs to work and to be legitimate, labour needs to be actively involved and their views taken into account. The same can be said for NGOs and other civil society groups which often have concerns that PPPs may have social and environmental consequences and impact the rights of minority groups. Active involvement of NGOs can create transparency about problematic issues that might otherwise be overlooked and become serious problems if not tackled at an early stage. [...] involving end-users in design and monitoring increases the likelihood of the effort being perceived as legitimate, fair and understandable. Independent public oversight of PPP implementation can also promote public sector innovation and better outcomes for the society as a whole through greater accountability and social control*”.

⁸ The OECD review of public administration restructuring policy in France needs to be reassessed - 16 March 2012 http://www.tuac.org/en/public/e-docs/00/00/0A/98/document_news.phtml

⁹ Revue de l'OCDE sur la gouvernance publique - France : Une perspective internationale sur la révision générale des politiques publiques, Février 2012

http://www.oecd.org/document/38/0,3746,fr_2649_37405_49723942_1_1_1_37405,00.html

Other topics not addressed by the meeting agenda

The OECD Principles for Transparency and Integrity in Lobbying

The scope of application of the Principles¹⁰ may need to be clarified. The government of the Republic of Ireland and the ‘Troika’ (EC, ECB & IMF) assisting the fiscal consolidation under way reportedly are having a broad understanding of the coverage which would include trade union advocacy activities. A careful reading of the Principles however suggests that consultation of social partners should precisely be excluded. Annotations (#9) to Principle I.4 states that “established consultation mechanisms” are not to be included¹¹ while the introductory comments to the Principles define these consultation mechanisms as “*tripartite social dialogue between government, employers and trade unions, and public hearings*” (#10).

OECD work on competitive neutrality

The OECD Competition Committee and the OECD Working Party on Privatisations – both of which fall under the Directorate for Financial and Enterprise Affairs (DAF) – are finalizing a set of guidelines on “competitive neutrality” (DAF/CA/SOPP(2012)2). The TUAC has made known its opposition to this project because of its potential implications on the governance of public sector administrations¹². Among others the TUAC believes that the concept of “competitive neutrality” is ill-defined by the OECD, that it is subject to diverse interpretations depending on context and that in fact it is not owned by the vast majority of OECD member governments. The current draft further adopts an un-critical stance towards private sector corporate governance and in effect is calling for the corporatisation of government business activities, including imposing “market-consistent commercial rates of return”.

¹⁰ <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=256&InstrumentPID=250&Lang=en&Book=False> & <http://www.oecd.org/dataoecd/42/35/49051351.pdf>

¹¹ “9. Definitions should also clearly specify the type of communications with public officials that are not considered ‘lobbying’ under the rules and guidelines. These include, for example, communication that is already on public record - such as formal presentations to legislative committees, public hearings and established consultation mechanisms.”

¹² Trade Union Comments on OECD draft Guidance on Competitive Neutrality, 17 February 2012
http://www.tuac.org/en/public/e-docs/00/00/0A/83/document_doc.phtml