



TRADE UNION ADVISORY COMMITTEE  
TO THE ORGANISATION FOR ECONOMIC  
COOPERATION AND DEVELOPMENT  
COMMISSION SYNDICALE CONSULTATIVE  
AUPRÈS DE L'ORGANISATION DE COOPÉRATION  
ET DE DÉVELOPPEMENT ÉCONOMIQUES

## Consultation with the OECD Working Party on State Ownership and Privatisation Practices

### **TUAC Submission**

Paris, 18 October 2010

TUAC welcomes the opportunity to comment on the documents that are for discussion at the 15<sup>th</sup> session of the OECD Working Party on State Ownership and Privatisation Practices. The TUAC would like to share the comments below with members of the Working Party. These were prepared in cooperation with the European Trade Union Institute (ETUI).

#### ***Item 5. Competitive Neutrality in the Presence of State Owned Enterprises [DAF/CA/PRIV(2010)1]***

We disagree with the assertions made in section 1.2.2 (“the corporate governance weaknesses as a source of anticompetitive behaviour”). Paragraph 13 states that trade unions are “in many OECD countries guaranteed seats on SOE boards” which they use for “non-trivial political influence” and that board-level employee representatives “sometimes” are factors that lead to management entrenchment and “coalitions between management and employee interest groups”. No literature is referenced in the text in support of these statements.

Where employee board representation exists, representatives are elected by the workforce or they are appointed according to the prevailing collective agreement. Board-level employee representation as such does not lead to management entrenchment as noted in the OECD SOE Guidelines themselves: “employee representation on SOE boards should not in itself be considered as a threat to board independence”. In fact our experience points to the opposite conclusion that it leads to increased management accountability. Substantial literature exists that points to the positive contribution of board-level employee representation because employee representation offers the best guarantee for independent non-executive directors<sup>1</sup>.

#### ***Item 6. State Owned Enterprises in the World Economy a) Toward a database documenting the economic importance of SOEs [DAF/CA/PRIV(2010)2]***

TUAC welcomes the work on developing a comprehensive data base on the significance of state-owned enterprises worldwide, their role in market economies and their impact on economic activity. Data collection and comparison is a challenging exercise because of differences in country definitions and reporting practices. It should be grounded on common set of definitions and robust, rather than on an “informed guess” (§10).

---

<sup>1</sup> For example according to a recent ECGI questionnaire-based survey: “While employee representative directors exhibit a lower baseline level of shareholder orientation, they nonetheless often side with shareholders”. Adams R., Licht A., Sagiv L. (2010) “Shareholders and Stakeholders: How do Directors Decide?”, ECGI Finance Working Paper n°276.

In assessing SOEs role in markets the paper omits to refer to public service obligations. In our view it does not make sense to break down SOE data per equity (listed or unlisted) or per sector, if a similar distinction is not made between purely commercial companies and companies with public service obligations.

***Item 6. State Owned Enterprises in the World Economy b) The corporate governance of SOEs operating abroad [DAF/CA/PRIV(2010)3]***

The paper's discussion on responsible business conduct (RBC) – §39 et al. – suffers from misconceptions. The text suggests that RBC comprises “non-commercial” objectives which accordingly could potentially run into conflict with commercial (or financial) objectives. In reality RBC essentially refers to international law and standards, including UN conventions on human rights and ILO core labour standards (freedom of association, child labour, forced labour, discrimination). These should not be regarded as “non-commercial” objectives. The conclusion drawn by the paper according to which RBC actually weakens the governance and accountability of SOEs is even more disturbing (§54) and is not supported by current or past research and literature. Also, the paper's presentation of the OECD Guidelines for Multinational Enterprises omits to refer to a key aspect of the Guidelines which is the dispute resolution mechanism through the National Contact Point procedure.

***Item 7. SOE Governance Reform b) Recent Developments in Germany - Principles of Good Corporate Governance for Indirect and Direct Holdings of the Federation, 30 June 2009 [DAF/CA/SOPP/RD(2010)3]***

There remains uncertainty as to how the code's comply or explain approach is to be implemented in stock companies (Aktiengesetz) that are not listed. Article 161 of the German Stock Corporation Act (AktG) requires disclosure of implementation of the corporate governance recommendations issued by the German Ministry of Justice. However the requirement only applies to companies listed on stock exchanges.

***Item 7. SOE Governance Reform c) An inventory of recent change [DAF/CA/SOPP/WD(2010)1]***

TUAC welcomes the report including the particular attention paid to accession countries, three out of four of which (i.e. Chile, Israel and Slovenia) provide for employee representation in SOEs by law or by collective agreement. Well over half of OECD countries provide employees with the right to be represented on the board of SOEs. The SOE Guidelines and the Accountability and Transparency Guide for SOEs recommend systematic reporting on SOEs relations with stakeholders, including employees. However the paper prepared by the OECD Secretariat does not includes any information on such reporting for current member states (§29). For example the paper omits to mention the proposal by the Polish Treasury (draft Law, 5<sup>th</sup> August 2010) to eliminate board-level employee representation. On that the TUAC relays the concerns expressed by Solidarność in the declaration in annex.

## ***Annex: Statement by Solidarność regarding the draft law issued in August 2008***

### **Decision of the Presidium of the National Commission no 203/10 concerning the opinion about the draft Act of the Ministry of Treasury regulating exercise of certain powers by the Ministry of Treasury dated 05.08.2010 r.**

The Presidium of the National Commission of NSZZ „Solidarność” maintains its negative opinion about the next draft Act of the Ministry of Treasury *regulating exercise of certain powers by the Ministry of Treasury dated 05.08.2010 r.*

The legislator attempts to regulate in one legal Act all the issues connected with supervision and privatization, which was previously petitioned by our union. At the same time; however, the legislator eliminates from the level of the company a valued, well-operating plan for social dialogue, which is participation of workers’ representatives in the supervisory and managing boards of the company and also the method of direct privatization.

Participation of workers’ representatives in the supervisory and managing boards is one of the elements of genuine and professional social dialogue at the level of the company. Participation of workers’ representatives in the supervisory and managing boards is an example of good practice well-established according to the regulations. Candidates chosen from among workers are obliged to take an examination, which should give a guarantee of professional performance of duties resulting from the function of supervisory board member. In addition, they are socially sensitive, which allows them to perceive the company not only from the angle of profit maximization but also contributes to toning down internal conflicts. Presented in the justification conflict of interests could find application in the 19th century model of capitalism. Contemporary management theories assume that human resources are the most important and precious potential at the disposal of the organization, and the interest of workers and interest of the organization are treated as identical. For years of functioning of supervisory boards the workers were able to reconcile the interest of the company and the interest of people by whom they were chosen. Both the legislator as well as the Economic Council at the President of the Council of Ministers are passing over the most important issue – representatives of workers are very often the only party interested in the effective functioning of the company.

The Presidium of the National Commission of NSZZ “Solidarność” does not find any justification for, on the one hand, elimination of board members originating from the workers, who according to the Act are obliged to pass an examination conducted before an Examination Committee appointed by the Ministry of Treasury, and, on the other hand, resignation from applying standard requirements for supervisory board members nominated by the State Treasury to function in supervisory boards of public companies of key importance to the State Treasury, that is resignation from the requirements of at least two-year period of employment and passing the above-mentioned examination.

The Presidium of the National Commission of NSZZ “Solidarność” finds with astonishment that the authors of the draft eliminated also the possibility of company transformation through direct privatization that lately has received many positive opinions (cf. Report of the Supreme Chamber of Control), while the work and the „Program for supporting privatization through guarantees from the Ministry of Economy for companies with participation of workers and local government units” have indicated Government’s interest in developing workers’ participation in Poland.

Also open to doubt is the proposal of establishing a Nomination Committee for special purposes of companies with key importance to the State Treasury which contrary to assurances included in the justification will be of a remarkably political character.

Contrary to assumptions included in the draft Act, ‘Polish Airports’ State Enterprise (PP Porty Lotnicze) and ‘Polish Railways’ Joint Stock Company (PKP S.A.) are not being subordinated to one governing center, but a dual supervision mechanism is created (Minister of the State Treasury and Minister of Transport) without clear division of competence between the two relevant ministries, which may result in chaos in decision-making and cause unnecessary interdepartmental competition.

The Presidium of the National Commission of NSZZ “Solidarność” would also like to draw attention to the lack of consultation of the proposed regulations with the addressees (e.g. ‘Polish Airports’ State Enterprise Works’ Council).

The draft Act is not accompanied by drafts of government orders, the lack of which is an example of serious negligence from the point of view of opinion-giving process according to article 19 of the Act on trade unions. This oversight is the more grave that the draft Act concerning the same issue from 2009 was accompanied by such government orders.

The Presidium of the National Commission of NSZZ “Solidarność” once more demands introduction of a regulation concerning social pacts guaranteeing protection of the rights of workers of privatized economic entities.

Gdańsk, 8 September 2010