TUAC trade union advisory committee to the
OECD organisation for economic cooperation and development
■ CSC commission syndicale consultative auprès de
OCDE l'organisation de coopération et de développement économiques

The Negotiations of the OECD Guidelines for the Corporate Governance of State Owned Assets

Overview of comments by the TUAC Secretariat

Paris, 7 June 2004

The interface of public and corporate governance

The TUAC is following closely the initiative of the OECD to negotiate new Guidelines for the Corporate Governance of State Owned Assets. Governance issues are now central priorities in national and international debates as governments seek to create an effective framework to manage globalisation. The OECD has now revised its Principles of Corporate Governance. Debates around public governance of state owned assets are equally as important as those of private corporations. They are both central pillars of the sustainable development paradigm, the promotion of social justice, long term equitable growth and poverty reduction, and corporate accountability. The OECD has been active in this field notably with the OECD Anti-Bribery Convention, its Guidelines for Multinational Enterprises, and the work of the Public Management & Governance programme. The governance of state owned assets stands at the cross road of corporate governance and public governance. It addresses governance and accountability mechanisms for the government as an "owner" of productive assets, including the delivery of public services. At the same time, core issues of corporate governance are also addressed, including the organisation of the board of directors, the responsibilities of the government as a shareholder, and the participation of stakeholders, especially employees within state owned enterprises. One of the key challenges facing the negotiators is to find a balanced approach between public and corporate governance approaches.

Recognising the diversity of state owned enterprises

State owned enterprises cover a diverse range of legal statuses – from listed joint stock companies to government arms length agencies – and different economic forms – from competitive commercial delivery to monopolistic public service delivery. How the Guidelines define the scope of SOEs in therefore crucial. There is clearly no "one size fits all" in this respect, and the Working Group should not promote one model (the joint stock company in particular), to the detriment of others. The governance structure should be tailored to account for differing SOEs and those non-market based obligations they may be required to fulfil.

The wider responsibilities of governments and State Owned Assets

For the Guidelines to be accepted and owned by all stakeholders, the text must not pre-judge, nor confine wider sovereign government responsibilities, including industrial and restructuring policies and public ownership programmes. They must not promote nor be viewed as leading to privatisation. There are numerous scenarios where governments legitimately ensure close coordination between the ownership policy and industrial policies. Governments may pursue interventionist policies to reach specific objectives such as independent domestic research and development capacities, the preservation of national, regional and/or community cultures, media pluralism, territorial development, etc. As long as the government is committed to relevant regional and international agreements (in the fields of trade, investment, competition, public procurement, etc.), those policies have no impact on the governance aspects of SOEs. Furthermore the respective responsibilities of the government, the ownership entity (as proposed in the Guidelines) and the SOE themselves must also be clarified. The Guidelines should make clear that the ultimate owners of SOEs are the citizens themselves and that parliaments, not government alone, should have a responsibility to hold SOEs to account and to ensure ad hoc evaluation of their performances.

Stakeholder representation mechanisms and their application to specific SOE governance structures

Worker representation on board of directors is a widespread practice for SOEs across the OECD and in many developing and transition countries. Sixteen out of thirty OECD member states have provisions for employee representation in state owned enterprises (see appendix). That right may cover generalised rights for all corporations and enterprises (privately owned or state owned) – including Austria, the Czech Republic, Denmark, Finland, Germany, Hungary, Luxembourg, Netherlands, Norway, Slovakia and Sweden – or it may be a specific requirement for SOEs – including France, Greece, Ireland, Poland and Spain. In some countries, worker representatives form up to half of the SOE boards. The draft text covering the relations with the stakeholders and on the organisation of the board must be improved to inform on governance practices that are appropriate for those existing and future representation mechanisms.

Integrating an OECD and non-OECD country perspective

As noted in the preamble of the draft Guidelines "SOEs may still represent up to 20 % of the value added, around 10 % of the employment, and as much as 40% of market capitalisation in some OECD countries". Outside of the OECD, SOEs may represent even larger shares of the economy, such as in China. That non-OECD perspective should be accounted for in the negotiation process. The World Bank and the IMF use the OECD Principles of Corporate Governance for the institutional dialogue they have with their client states (the Principles are part of the Reports on Standards and Codes exercise). Likewise, the new Guidelines may become a governance benchmark for the Bretton Woods Institutions and for other donors and development aid organisations. As regards negotiating the Guidelines, the Working Group should consider both the OECD and the developing world context. That is why TUAC strongly supports the participation of non-OECD based governments in the negotiation and consultation process as announced by the OECD Secretariat, including South Africa, India & Brazil.

Comments and proposals have been prepared by the TUAC Secretariat, and forwarded for consideration to the OECD Working Group on Privatisation and State Owned Assets. They represent the TUACs first response to the May 2004 draft Guidelines for the Corporate Governance of State Owned Assets, prepared by the OECD Secretariat.

The May 2004 draft Guidelines includes the following chapters:

- Preamble
- I – Organisation of the ownership function
- II – The government as an owner
- III – Relationship with other shareholders
- IV – Relationship with stakeholders
- V – Transparency and disclosure
- VI – The nomination and role of the SOE boards
- Annexe A: Different Types of State-Owned Companies

TUAC affiliates and other interested trade unions wishing to know more, or become involved in the TUAC campaign should contact Roy Jones (jones@tuac.org) & Pierre Habbard (habbard@tuac.org) at the TUAC Secretariat.