

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

**TUAC Comments on the OECD Draft Policy Framework for Investment: Preamble,
Foreword, Checklists and Annotations (DAF/INV/TF(2005)12REV1)**

9 December 2005

Introduction

This paper sets out some initial comments on the above mentioned document. Further comments will be given during the meeting of the Task Force on a Policy Framework for Investment on 13-14 December 2005.

It should be noted, however, that TUAC is concerned about the overall balance of the Policy Framework. The rights and needs of investors are emphasised throughout the document, while the policy space required for host governments to meet societal and domestic development needs other than attracting investment appears to be largely ignored.

Annotations to chapter 2. Investment promotion and facilitation

Question 2.3

Although this section has been modified and is more balanced than before, TUAC does not believe that the Policy Framework should stipulate that Investment Promotion Agencies (IPAs) should enjoy “high level political support” and “be adequately funded so as to attract and retain qualified and motivated staff”. TUAC would assume that all public agencies try to recruit qualified and motivated staff. Moreover, IPAs should not be treated differently from other public agencies, which is the impression given in the Policy Framework. Other parts of the document refer to competition agencies and trade policy agencies but without any recommendations on recruitment or attracting political support.

Question 2.6

TUAC agrees that competition for FDI may lead to public resources being detracted from more productive uses. However, this competition must be attributed to governments and not to IPAs.

Annotations to chapter 5. Tax policy

Question 5.3

This section discusses the level of tax burden that would be consistent with the government’s investment attraction strategy. TUAC would however suggest that the Policy Framework recommends governments to first set the level of tax burden necessary to provide public services before considering the tax level preferred by investors.

Question 5.6

TUAC proposes to delete the last sentence of this section:

“In short, policy makers are encouraged to give recognition to the reasonable expectations of businesses when designing or reforming the tax system.”

Are businesses’ expectations more reasonable than others? Should not workers and other civil society groups be involved in the design of the tax system? Who define what is reasonable expectations? What about workers’ expectations that the tax system should be designed to provide public services such as water, electricity, health care, education, transports etc?

Annotations to chapter 6. Corporate governance

TUAC welcomes the attempt to make the questions in this section more concise, as was recommended in our previous comments. However, this section remains imbalanced, partial and misrepresents the crucial issue of corporate governance for development. It is excessively focused on the protection of shareholders (3 questions out of 8) while insufficient consideration is given to other core governance mechanisms, such as the functioning and accountability of the board. In particular, the very fact that other stakeholders than shareholders do have claims over the company passes completely unnoticed in the checklist.

Question 6.1

TUAC supports the inclusion of this new question, its emphasis on effective enforcement of regulation and reference to the boarder public governance framework that we recommended in our previous comments. However, the annotations still do not propose a clear direction as regard the appropriate regulatory mix between self-regulation and binding regulation. Given the development angle of the Policy Framework it is important here to stress the primacy of robust and enforceable regulation over self-regulation and other non-regulatory market instruments.

Question 6.3

This question is indicative of the lack of consideration of the checklist for anything else than the rights of shareholders. It rightly addresses a key feature of corporate malfeasance, namely that a company’s resources can be diverted by corporate insiders. However, the text limits prevention insiders’ abuse to the potential impact on shareholders. When an insider extracts private benefit from a company, it usually comes at a cost for the company as whole, not just for owners of shares of the capital. Other stakeholders can be equally, if not more, affected by that form of governance failures, including workers, local (and often poor) communities, the environment, creditors, etc. Question 6.3 should be rephrased to focus on preventing resource diversion and other forms of fraud from corporate insiders, whichever corporate party may be affected by the consequences.

Annotations to chapter 8. Human resource development

Question 8.7

The role of trade unions and collective bargaining should be stressed in this section.

The following paragraph that treated trade unions, appears to have been deleted from the background paper on Human Resource Development Policy (DAF/INV/TF(2005)11/REV1) and must be re-instated in the background paper as well as the Policy Framework:

“Trade unions play an important role in representing the interests and preferences of workers. Their impact on investment depends on having a healthy dialogue between freely elected associations of workers and employers.”

Question 8.10

The following paragraph should be added to this section:

“In addition, OECD policy analysis¹ has shown that dismissals have a cost for society, not just the individual. The social value of a job may be higher than its private value, reflecting the fact that the government uses payroll or income taxes to finance unemployment benefits as well as public goods such as education or healthcare. A job may thus be unproductive for an employer, while still generating value for society. As a result, left to their own devices, market forces may lead to more layoffs than are desirable from the point of view of collective welfare. Taxing dismissals could thus increase overall economic efficiency.”

For further comments on human resource development, please see the separate TUAC paper with comments on DAF/INV/TF(2005)11/REV1.

Annotations to chapter 9. Infrastructure and financial services

Question 9.7

TUAC reiterates its opposition to the inclusion in the question of public-private partnerships (PPPs) in its current form. The Policy Framework should call for efficient and reliable financing investment frameworks for water management and access. PPPs are one among many solutions to ensure that. Furthermore, PPP experiences in developing countries have shown to be quite controversial, notably in Sub-Saharan Africa. TUAC recommends therefore removing the reference to PPPs in its current form.

Annotations to chapter 10. Public governance

Question 10.3

TUAC would suggest that the following paragraph is added to this section:

“Such assessments of the economic and social impact of regulations should give due weight to the multiple benefits that can derive from the effective application of regulation to

¹ OECD POLICY BRIEF, Employment Protection: The Costs and Benefits of Greater Job Security, September 2004

economic activity that is currently undertaken on an informal basis. The extension of regulation, by means of its proper enforcement, can be beneficial for governments (by providing higher fiscal revenues), for investors (by providing greater predictability and stability in their operations, and by avoiding competition with "free-riders" that fail to comply with regulations) and for workers (by enabling them to have legal recourse for the protection of their rights)."

Question 10.4

Trade unions should be included in the list of stakeholders:

"Are the consultation mechanisms open to all concerned stakeholders, including **trade unions**, non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?"

Question 10.7

TUAC welcomes the emphasis on whistleblowing as a key element of good governance. However, the paragraph must also stress the need for protection of whistleblowers. Without proper protection, whistleblowers will not be able to come forward to reveal corrupt practices.