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# The OECD Going Digital Project - Comments and Ways Forward

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## Executive summary

The interim report of the Going Digital horizontal project released for the MCM 2018 provides good insights on where the OECD stands on developing policy recommendations to address the digital transformation of our economies.

The OECD report acknowledges that digital business models are putting “conventional notions” of location, distance and jurisdiction to the test, and hence the overall regulatory treatment of value creation, business operations and organisational change. The report however remains ambiguous on how to address these challenges, suggesting a combination of self-regulation, voluntary standards, revision of some existing regulation and sharing of best practices.

The report steers away from giving an alarming message on the quantity of jobs by stating that “*there is no evidence that, to date, technological change has been associated with job losses overall*”. The newest OECD automation data estimate 14% of jobs being at high risk of automation. It endorses fair transition frameworks as a way forward and discusses the role of social dialogue. On new non-standard forms of work (NSFW), the OECD rightly points to disruptive business models that circumvent “*taxes and regulations on regular contracts*” but fails to draw the necessary conclusions how to tackle this. NSFW are also discussed as an “*important source of income and flexibility for workers*”, which is highly debatable, while the discussion on whether labour market institutions are fit for purpose remains inconclusive.

Moving forward and as the OECD project will culminate with final report and an integrated policy framework in March 2019 specific steps would need to be taken to deliver an outcome that is both comprehensive and actionable including by:

- Devising just transition frameworks for workers affected by the digital transformation
- Deepening the analysis of digitally induced labour market changes on job quantities and quality
- Highlighting sector specific dynamics and better addressing technological convergence and the role of Big Data
- Expanding on worker participation and organisational change
- Deepening analysis and make recommendations on disruptive business models
- Moving ahead with a BEPS II on digital economy tax issues
- Proposing concrete steps on tackling corporate concentration

- Engaging on standard setting and propose regulatory responses
- Going beyond National Digital Strategies.

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## **About the Going Digital Project**

1. The OECD Interim Report “Going Digital in a Multilateral World” released on the occasion of the OECD Ministerial Council Meeting 2018 offers a good opportunity to take stock of the findings and policy recommendations coming out thus far of the process. As can be seen in the Annex (III) of the report, the project spans the majority of OECD Directorates and their lead committees and will deliver several thematic reports. The final synthesis report, to be released in March 2019, will include an integrated policy framework and a set of indicators. The policy framework will become important for country reviews specifically (the first one on Sweden being published shortly).

2. The project takes on a multi-disciplinary approach, looking at the impacts on the world of work as well as on the taxation and competition related aspects of the digital economy. It also kicks off the discussion on AI and blockchain technologies and starts delving into transparency and bias challenges. Overall, it sets good foundations towards further discussions on more policy coherence and measurement.

## **The regulatory challenges identified**

3. With its "**vectors of digital transformation**" the report identifies key properties of change such as scaling without mass, the emergence of platforms and the transformation of local boundaries, which are testing *the “ conventional notions of location, distance, and jurisdiction”* (§6). The different dimensions addressed in the report are productivity effects, well-being, access, trust and jobs – yet recommendations on how policy co-operation and action on these areas might look like remain ambiguous. This is particularly true with respect to the regulatory challenges. The report however calls to *“review policy frameworks that were conceived in an analogue era in light of digitally-induced behaviours and business models”* (§40) but for now goes with an overarching, catch-all endorsement of a *“combination of self-regulation, voluntary standards and sharing of best practices, application of existing regulations, and updated policy and regulatory frameworks”* (§25). There is no direct call to develop new standards, for example on Artificial Intelligence. However, the need to harmonise regulation on cross-border data-driven operations and new technologies in view of security, data privacy and protection, ethical and responsible use is there and recognised by most.

4. Regarding **market concentration**, the report acknowledges the challenges arising from network and economics of scale effects (including mergers and acquisitions in digitally-intensive sectors, §21, §45), the result being ‘winner takes most’ dynamics and high-mark-ups (§ 69 and 70, 76) and concerns about pricing algorithms that could

function in the same way as explicit collusion (§ 77). The report suggests that *“governments may also need to enhance co-operation across national competition agencies to address competition issues that are increasingly transnational in scope or involve global firms”* (§179).

5. **Digital security risk and data management** are also discussed at length. The report acknowledges the need to *“strike the right balance between the social and economic benefits of enhanced reuse and sharing of data and analytics, and individuals’ and organisations’ concerns about such openness, including the protection of privacy and intellectual property rights”* (§20). It also references data collected on the job, hence the privacy parameters needed to be developed on employee data (§19/20/ 67), which is not necessarily the case for other reports on similar topics and thus is very welcome.

6. For TUAC, international **regulatory cooperation** leading to an overall regulatory coverage and tightening is warranted. The [TUAC statement to the OECD Ministerial Council Meeting 2018](#) amongst other calls for: *“new rules for the digital transformation of the economy, including a “BEPS II” Action Plan on taxation, an international agreement on data protection and algorithmic transparency, legal and ethical standards on Artificial Intelligence, and international cooperation to tackle corporate concentration and ensure workers’ rights are upheld in the platform economy.”* (TUAC, 2018).

## **National strategies and social dialogue**

7. The report provides a useful overview on the composition (level of government, involvement of stakeholders) and goals of existing **national digital strategies** (NDS). According to a TUAC member survey, trade unions are only marginally involved in these (e.g. through public or ad-hoc consultations) or are not involved at all. They are however integrated more into industry 4.0, economic planning and future of work discussions. Given the whole-of-government vision of ‘Going Digital’, it would be important to highlight these government programmes, their links (or lack thereof) to NDSs and stakeholder involvement therein in the final report. What the interim report and TUAC’s assessment both show is that there is still too much inconsistency in terms of policy and investment decisions between ministries.

8. The report endorses a multi-stakeholder approach to policy making (§25) and social dialogue on job related aspects. As such, it calls for *“more co-ordination when making decisions and implementing policy measures across ministries and levels of government as well as more active involvement of all key stakeholders, including the business community, trade unions, civil society and Internet technical community, in the policy making process as well as implementation and monitoring”* (§ 75). Some OECD countries (such as Germany, Austria, Nordic countries, Italy etc.) have indeed engaged trade unions in related policy discussions. Others, such as the UK Artificial Intelligence council are being established with no trade union representation as are most purely digital strategies.

## **Impacts on jobs and labour markets**

9. The sub-sections discussing the future of work and *“harnessing the digital transformation for firms”* are important for various reasons: they are the outcome of dedicated work strands bringing together multiple directorates and thus, deliver a more comprehensive outlook. Yet, the coherence between the different project pillars and with existing OECD frameworks needs to increase going forward.

10. The report steers away from giving an alarming message stating that *“there is no evidence that, to date, technological change has been associated with job losses overall”* (§81) and for the most part sets out the right challenges and strikes a prudent tone. However, this is not the case where the report discusses the role of labour market institutions.

11. The newest OECD automation data estimate 14% of jobs being at high risk of automation. Yet, there is a gap between what can be automated from a technical point of view, and what is currently being automated by firms. However, when the changes occur, job profiles might be entirely altered. As advocated by the TUAC, the report calls for *“a **smooth and fair transition** for all workers requiring a comprehensive package of co-ordinated policies, including facilitating worker redeployment, investing in skills, providing social protection and adequate employment protection to all forms of work, strengthening social protection, forward-looking labour market regulation, fostering social dialogue, and prioritising resources that can support the transition process”* (§170). What is important for the labour movement is that such transition is into a job of the same or better quality and/ or that training measures are enabled to keep a worker in his firm. As discussed in suggested steps going forward more detailed analysis would be needed to identify financing and governance needs for such transitions.

12. As has been the case with past OECD reports, the **skills** dimension to resolving labour market challenges remains strong. It will be up to the revision of the OECD Skills Strategy and data collection on adult learning and VET systems to deliver insights on what needs to be improved in terms of the governance of lifelong learning.

13. On **new non-standard forms of work** (NSFW), the report takes a step forward by pointing to disruptive business models that circumvent *“taxes and regulations on regular contracts”* (§86). It identifies job and income insecurity and the overstepping of labour standards as resulting issues and the risk of *“fiscal responsibilities [being transferred] from employers onto government and individuals”* (§85). It is precisely this individualisation of responsibilities onto the worker that needs to be limited. What is more important here is to identify why platform work seems more prone to lower pay, job insecurity and lack of social protection, as well as how fast this segment of workers is growing, where and in which occupations.

14. The report also discusses NSFW as an *“important source of income and flexibility for workers”*. However, in most cases such jobs bear substantial wage penalties. In the light of experiences with platform work, where workers have to invest substantial time in obtaining paid assignments, working time flexibility seems overrated. If self-employment or gigs as a source of additional income (although often a sign for insufficient regular income) are a choice, platforms certainly open up opportunities. If this is not the case and workers take on jobs out of economic necessity and then end up in precarious work, cannot organise and are dependent on the platform, it is a social risk. The claim that digitally enabled NSFW facilitate labour market integration also is questionable since temporary work contracts often work as a “bad job trap” with many workers remaining stuck in a chain of insecure contracts (see OECD 2015 report “In it together”).

15. Inconsistencies come in the discussion on “redemption” (§86), in which ‘allocative efficiency’ is put above ‘productive stability’ or ‘tacit knowledge’ going back to advocating flexibility of contracts. It is in line with the standard OECD emphasis on exit strategies for low productive businesses (as discussed in chapter 4.2) and the role of

EPL. The OECD Jobs Strategy revision just provided another assessment. The interim report says that enhanced mobility would allow sufficient scope to adjust wages to business conditions at the firm level – for which evidence is lacking. If workers should be encouraged to move between sectors, wage differentials usually are not enough to overcome these financial obstacles to training that is needed for effective mobility. Wage differentials also have the opposite effect of trying to save companies that are inefficient, thus rewarding management that does NOT innovate. What is needed is further analysis that strikes the **balance between the right level of flexibility and protection**. As the report suggests, there needs to be “*some form of employment protection to all forms of work*” (§168).

16. When it comes to assessing whether **existing labour market regulation and standards** are “fit for purpose”, the report is way too quick in calling for a re-assessment – not enough evidence is provided as to why. While the report sets out the goals for policy makers to “foster social dialogue” – which is very welcome – it remains blurry as to whether the emphasis on union density and bargaining decline is being made to encourage a revival of both or whether they are put into question. Both trends undoubtedly take place but are not technology induced, whereas disruptive business models in the digital economy contributing to precarious work are at least digitally enabled. Labour market regulations and institutions ensure that risks are fairly shared between workers, firms, and government. So the question should not only be if existing labour market regulations should be updated or adjusted but more so how they can be better enforced in the face of disruptive business models, and what complementary legal and regulatory measures can help.

17. The report also addresses **digital divides** (globally and amongst social groups) – which is a step forward for the OECD and should be explored further. It endorses that connectivity needs to be expanded globally with affordable access. It further delivers first data on gender gaps including facts such as that “*women account for only 20% of tertiary graduates in ICT fields; are 20% less likely to hold a senior leadership position in the mobile industry, make up only 8% of investing partners in the top 100 venture capital firms and only 17% of the scientists earning more than USD 105 000*” (§33). It would be important to carry the gender dimension further and provide an overview of the different dimensions of gender inequalities that are partly due to digitalisation

## Going forward

18. Towards the drafting of the synthesis report and the policy framework, more precision, better coherence and more in-depth recommendation would be needed on the following:

- **Devise just transition frameworks for workers affected by the digital transformation:** the report rightly points out that “*more data are needed to enable the development of more effective policy approaches*” and looks into innovative approaches for worker transitions. The reference to the case study on the Swedish Job Security Councils should be followed by other examples on transition funds, insurance schemes and collectively bargained working time and training provisions. The specificity of the Swedish Councils is that these bodies are formally embedded in sector collective bargaining agreements with clear guidelines on employer financing and economic justification criteria for lay-offs – with placement rates of 80 per cent on average within one year. Some of them

also work towards training workers, who remain in the same job – which should be a goal in transitional approaches overall. Also, the next reiteration of the report should reflect on the benefits of macro-economic policies such as investments in infrastructure and care that create more aggregate demand and can lead to job creation.

- **Deepen the analysis of digitally induced labour market changes on job quantities and quality:** In the discussion on job changes, there are other factors to account for: sector dynamics and the impact of technological diffusion (e.g. increasing servicification). The same applies to outsourcing and offshoring dynamics that for now are only mentioned tied to platform work but should be discussed further as a potential result of growing, more complex value chains and the re-allocation of production and service delivery due to digitalisation. On automation, the new OECD numbers being considerably high would benefit from further explanation including on sector specific dynamics, wage distribution and task content and a) explain the change in the numbers compared to the 2016 OECD results; b) if these predictions are to be taken seriously, these are massive quantitative impacts, therefore the analysis should reflect more on job creation (new task content per sector); c) the assumption made in the text that jobs will be created since digitalisation will enhance productivity needs to be backed up with measurements as for now there are no significant productivity increases across the OECD despite ongoing technological diffusion (as confirmed in §87/88). Discussions on job quality should also concern the intensification of work (as reflected in the well-being section), heightened control (sensors, data) and competition for tasks (crowd-work). All of the above would benefit from further reflection on how to better shape the current dynamics through choices, on why there is a rise in NSFW in the first place and how it can be halted.
- **Highlight sector-specific dynamics:** The report rightfully points to cross-border and cross-sector interdependencies (§175) and addresses diffusion dynamics (albeit mostly only from the frontier firms perspective). Sector dynamics are not sufficiently explored for now (with upcoming reports in the pipeline). While data on the IT sector should be highlighted, it does not deliver a good benchmark vis-à-vis other sectors. As the report notes, the telecom and IT sector do not carry significant economic weight – they are also obvious front runners when it comes to adoption. Conversely, more precision is needed when agriculture, real estate, education or health services are singled out as ‘lagging sectors’ – there are several examples on all of them that display sophisticated digital applications (e.g. robot use in surgical procedures). As a baseline, not all sectors have to have high digital content, but especially “health services and education” do not have to adapt fast for ethical and prudence reasons. On education, the well-being section gives a more balanced account on the pro and contra of digitalisation, which deserves a careful, gradual examination. An in-depth discussion on the service and manufacturing sectors and the link to effects on jobs (automation, use of platforms, servicification, etc.) would be important. The section on trade (section 4.3 & #115-139) specifically should address the employment impact in the retail and service sectors – so should the upcoming report on e-commerce.
- **Better explain technological convergence and the role of Big Data:** As pointed out before, the project has already delivered a concise overview on lead technologies and the vectors behind the acceleration of digitalisation. It would

benefit from a clearer regrouping of said technologies by level of development and diffusion, and elaborate on the effects of their convergence. The OECD's report on the Next Production Revolution has provided a good assessment on this, which could be included in abbreviated form. For example, it is important for policy makers and stakeholders to consider that big data collection, processing and repurposing is already ongoing and scaling up exponentially driving the deployment of other technologies, the emergence of new ecosystems and market structures – this is confirmed by the report itself: *“Data are a foundational driver of digital transformation as well as an enabler. Data analytics, data-driven innovation, and other data-intensive activities, including machine learning and artificial intelligence (AI), benefit from open and interconnected information systems and networks that enable efficient, flexible and cheap data flows among potentially unlimited actors”* (§7). It is important to address how data ownership, control and liability in use and processing could be governed in its various applications, from platforms to IoT.

- **Expand on worker participation and organisational change:** When discussing organisational change – workers and their contributions should not be hidden behind the KBC label. Effective social dialogue and worker representation at the sector and firm level are essential in both, innovation processes and the actual deployment of new systems. In a recent survey among the members of the Danish trade union FTF, it was found that new technologies are more likely to function and scale as intended if employees have been involved in the implementation and if they received proper training. Employees are much more likely to embrace change and have the motivation and confidence to adapt to changing requirements if they have been involved in discussions on how change is to be implemented. A 2009 study by Alex Bryson et al using nationally representative data for the private sector across the UK found managerial innovations are associated with lower worker well-being and job satisfaction, except when workers are covered by a collective bargaining agreement. There are recent best practice examples on social dialogue and collective agreements on different aspects of digital diffusion at the firm level (Orange/ France, ASOS/ global, Siemens/ Germany & Italy, VW/ Germany etc.). The report acknowledges that *“firm-level practices related to workers, including their participation in training and consultations, or their flexibility in working hours, are also important in this context”* (§101). However, then only limits itself to discussing high performance work practices (HPWP).
- **Deepen analysis and make recommendations on disruptive business models:** The report rightfully addresses new NSFW, yet would benefit from a typology of platform work as well as from identifying as to why certain business models contribute to the rise of precarious work. In regard to the role of trade unions in supporting atypical workers, several examples of best practices but also barriers to freedom of association and to organising could be included. As an example, the text claims that *“digital business models will likely to continue to disrupt most industries, enabling new forms of value creation”* (§42) – we are not sufficiently told how and why. This applies to the need to give more context as to why platform jobs mostly are not regular (regulatory arbitrage, circumvention of the employment relationships etc.). In its measurement pillar, the report highlights that *“data on new services and business models in the sharing economy*

[...] *not yet captured by official statistics*" (p. 52). The TUAC position since the OECD Cancun Ministerial has been that to install data sharing and transparency, where appropriate, as the key means to trace value creation for taxation purposes, estimate the contribution of the digital economy to productivity, re-establish employer responsibility (if applicable) and labour rights by disclosing hours and the nature of work. Going forward, it would be valuable to have data on the market shares and characteristics of platform businesses such as in the upcoming thematic report on online platforms. It would also be important to address the corporate governance and transparency challenges. So-called "unicorns", digital businesses valued over +USD1bn that stay private, often do not match minimum OECD standards of corporate governance.

- **Move ahead with a BEPS II on digital economy tax issues:** The report comes with a good description in the mapping part of the paper (3.1 framework policies, and box 3.1), acknowledging that BEPS 2015 was unfinished work and the challenge ahead of us is finding an OECD consensus on the rules for allocation profits, but at the same time leaving no space for discussion in Ch. 4. Particular in section on international cooperation on trade (#133-139) which dwells on WTO and trade openness. The fundamental issue is that transfer pricing rules, as they exist and are defended and promoted by the OECD and BEPS 2015, are simply not valid and relevant anymore for data driven, cross-border business models. The only way out is with a shift from arms-length principle to formulary apportionment. In this regard, the synthesis report should provide more analysis.
- **Propose concrete steps on tackling corporate concentration:** On competition, while delivering a good analytical foundation, it is not clear in the text whether concentration in the digital economy is *"necessarily a concern as they (mark-ups and mergers and acquisitions) may be inherent to the nature of digital transformation"* (§103). In the end, the text remains vague on policy with reference such as *"policy makers will need to continue monitoring these developments to ensure sound competition"*. This is an insufficient outcome given the apparent network effects of multi-faceted business models and the aforementioned use of algorithms for anti-competitive practices. On the use of data (§12), the document acknowledges that most collection takes place in digital ecosystems led by online platforms. Yet, there should be reflection about this potentially preventing wider diffusion and form uptake given the extensive data capture and control (as described in Box 2.2). Moreover, increased concentration should not be treated as a product market issue only as 'labour market monopsony' might likely be an additional outcome. Mark-ups and increased profit margins may have as much to do with too high price setting as with too low wages. This actually means that labour market regulation that protects and enhances the bargaining position of workers is far from being redundant.
- **Engage on standard setting and propose regulatory responses:** The interim report, at least largely, refrains from a discussion on the need for new standards or from providing more concrete examples on the adaptation or enforcement of existing regulations. As such, the employment dimension regarding AI and considerations to develop standards on it are missing (only implicitly discussed in Box 4.1). A further reflection is needed on the enforcement of labour standards in the platform economy, on addressing corporate concentration, on applying



corporate governance principles in the digital economy and finally, on the potential for an overarching OECD recommendation on data.

- **Go beyond National Digital Strategies:** As the Going Digital Project is horizontal, a value added would be if it delivered a typology and overview of policy processes beyond NDSs. In this regard and in line with the multi-stakeholder approach taken by this report, it would also be useful to see an analysis of different consultation and governance frameworks to showcase best practices for stakeholder involvement and therein social dialogue.