



## OECD Focus on the Future of Work – TUAC Policy Recommendations

Paris, 25 October 2018

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To help frame the upcoming OECD “narrative” on the Future of Work (FoW) and the ongoing *Going Digital* Horizontal Project, the TUAC has developed a set of policy recommendations. They build on inputs from TUAC affiliates<sup>1</sup>, the revised OECD Jobs Strategy, core ILO standards and OECD work on corporate accountability amongst other.

### **Ensuring regulation remains fit for purpose**

From an operational point of view, digitalisation offers many opportunities to improve regulatory enforcement and implementation, and to reduce regulatory burden and regulatory gaps. Where digitalisation and new technologies enable simpler regulation while achieving the same regulatory objectives for all stakeholder (citizen, workers, businesses, consumers, tax collectors, the environment etc.), these possibilities should be explored. User-friendly regulation increases compliance and eases enforcement, and can in fact open new perspectives on the creation of new rights, new protections and standards for citizens and workers.

Yet, there is evidence that today’s digital business models have a disruptive effect on regulatory coverage and principles. These new business models need to adjust to established regulatory objectives and not the other way round. In particular, there can be no justification for giving up long established rights and principles, not least those set by the ILO. If existing regulation is difficult to apply, there should be room for revision and regulatory sandboxes, while aiming to prevent regulatory arbitrage and any abuses on existing labour standards. A de-regulation logic must be opposed, such as the “Uber scenario”: first breaking the rules to gain market power, then lobbying for eliminating the rules.

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<sup>1</sup> DGB (GER), FTF (DK), LO (DK), TUC (UK), CFDT (FR), UNIONEN (Sweden), as well as the ITUC, ITF and ETUC

International regulatory cooperation should work toward regulatory frameworks that are adapted to digital platforms and that guarantee that the same rules apply as for traditional businesses. This includes rules concerning tax obligations, pensions and social security, payments reflecting minimum or living wages, health and safety at work, fair competition and consumer protection.

New forms of non-standard work should fall under the principle “equal pay for equal work”, whereby all workers are ensured the same pay, social protection entitlements and other protections irrespective of their contract. Existing principles of labour law and collective bargaining should be extended and reinforced. This is particularly relevant for the proliferation of online and ‘platform’ jobs that are precarious, for which access to data on employment relationships and conditions when requested need to be provided to regulatory authorities. In this regard, the use of new digital tools to increase transparency and enforcement should be explored.

Policy coherence also matters between competition rules and collective bargaining. Competition law should not be an obstacle to collective bargaining. ILO Conventions 87 and 98 apply to all workers, irrespective of the specific form of contract. The burden of proof that a self-employed worker is an “undertaking” and that a collective agreement is a “cartel” that fixes a price should be reviewed by national competition authorities and for the time being highlighted as an issue by the OECD.

### **Collective bargaining and social dialogue for non-standard forms of work**

Insecure and short term labour contracts do not generate greater innovation but rather insecure and instable employment relationships that harm productivity and the accumulation of tacit knowledge. To ensure non-standard workers have access and an effective right to collective representation and bargaining, an enabling environment allowing trade unions to reach out and organise these workers, including workers engaged in the informal and the platform economy, needs to be supported by public policy. Sector-wide and multi-employer agreements are better suited for workers in non-standard forms of work and for fragmented digitalised workplaces allowing to cover an entire sector or region, irrespective of the turnover of work(ers) and size of firms.

In regard to online platforms specifically, bargaining comes at lower transaction costs and allows to redress asymmetries by raising collective voice to set standards. A first wave of collective agreements with single platforms is underway, minimum wage floors were set elsewhere. For borderless work, governments have to encourage an enabling environment for cross-border social dialogue and collective bargaining, especially in relation to global on-demand and crowd work platforms.

The OECD’s analysis on “associations representing workers” that can negotiate working conditions should be treated with caution, not least if underlying principles of the ILO are disregarded (including convention 98). The reasons as to why those associations come about (e.g. mostly as a result of regulatory gaps used by digital businesses and the inability for trade unions to step in either on grounds of competition law or due to company practices inhibiting the freedom of association and right to negotiation of

workers) should be outlined as well as the limitations of such associations (e.g. inability to bargain collectively, to sit on company boards, etc.). The primacy of trade unions in any social dialogue model should be upheld. Governments should be guided towards fulfilling their obligation to create an enabling environment for trade unions to organise workers across all sectors regardless of the nature of business models, including the informal and platform economies.

The issue of employee status misclassification needs to be explicitly addressed so that misclassified workers enjoy labour and social rights. Going down the path of creating new employment categories does not only create administrative burdens. Introducing an intermediate category might allow companies to pick and choose between arrangements and would not achieve full labour protection – especially when real employment relationships are disguised. Legislating for the platform economy specifically would disregard the fact that platform workers share many similarities with those in other non-standard forms of employment. Indeed, on-demand and crowd work often is a mere continuation of the trend towards casualization at the expense of workers' rights.

### **Collective bargaining and social dialogue for a just transition**

It is true that, historically, technology has created more jobs than it has displaced, in aggregate terms, but those new jobs often require very different skills and measures to support mobility. A meaningful industrial policy should help bringing new jobs to those that have lost out from sector changes and the spread of newer technologies. Beyond that, autonomous social dialogue – based on the the ILO Principles on Just Transition and the COP21 agreement – should be endorsed as a key mechanism towards a Just Transition and the creation/ safeguarding of quality jobs for workers that need to be re-trained, would be laid-off or fall victim of automation or climate change/ the shift to the green economy. The OECD should highlight existing examples of how collective agreements can play a decisive role in securing a smooth and fair transition to a more digital and green economy.

All mechanisms for social dialogue should be supported: at national level (trade union inputs into digitalisation and future of work related government platforms / councils, into investment plans, etc.), sector-wide (collective agreement provisions for common wages and working standards that apply to all workers in the sector, on OHS and data related aspects stemming from digitalisation, on reduced working time, and financing of and access to training) and company level (collective bargaining and worker participation). In particular, the OECD should bring a renewed policy focus on sector-wide and multi-employer agreements. The benefits of multi-employer bargaining should be highlighted when setting up transition schemes, introducing new technologies and agreeing on new standards on remuneration and working time, as well as training funds. These agreements should have broad coverage and employers should not be able to deviate from these.

Training provision should be connected to compensation for the tacit knowledge that workers provide to employers, also in regard to possible human-to-machine work.

Collective bargaining is an effective means of securing workers access to skills. This is an important reason to further social dialogue and collective bargaining in its own right. Regarding social protection, the primary OECD response should be to ensure universal social security coverage, and for that matter reaffirming the ILO Convention (102) on minimum social security standards and also Recommendation 202 on Social Protection Floors. For instance, portable benefits are only necessary if social security is not universal or if businesses avoid paying their dues.

### **Worker-centred approach to innovation and digital diffusion**

Innovation and digitalisation policies should take labour market and work related aspects into account. The OECD has taken a horizontal approach on the digital transformation and should reflect the above in its integrated policy framework as well as in upcoming principle settings on Artificial Intelligence (AI). Not only employment quantity but quality could be altered significantly in innovation cycles. It is pivotal to work towards sharing of benefits as well as to optimise production and service processes under a human centered prism, social dialogue should become a core element of the policy process. This concerns the framing of new standards, agreements on the introduction of new digital or green processes regarding pay, occupational health and safety and working time, and investments towards bridging of digital divides in-between regions and in view of vulnerable groups.

When setting parameters on safety, accountability, transparency and risk for new technologies, including AI, issues on employee monitoring/surveillance technology, physical safety, bias leading to hiring and firing decisions, worker's data privacy, protection and right to explanation, as well as the right to disconnect need to be evaluated. Algorithmic discrimination needs to be addressed by social partners who should have a real say in the design of app algorithms and the implementation of converged systems.

The design and implementation of research and development programmes should also benefit from worker participation. Workers' experience can play an important role in developing new solutions for existing problems. R&D has to take into account not only technological innovations but also social innovations, the development of work organisation, working conditions and the need for training and skills.

### **Strengthen the gender dimension**

Across the globe, women still earn today on average 77 cents on every dollar earned by men for each hour worked. Women's lower pay – combined with their greater concentration in part-time, informal and precarious work – leads to women's lower social security entitlements and higher risk of poverty. Lack of work-family reconciliation measures, including quality care services, is exacerbating gender gaps in employment.

Gender pay and employment gaps, gender discrimination and harassment have to be mainstreamed in OECD analysis. The focus on gender should go beyond STEM skills and

women in leadership and touch upon the financing of public care services and measures towards pay equality (including quotas, transparency provisions and measures to tackle sectoral segregation). Legislation and enforcement of equal pay needs to become a goal in itself. Therefore, the OECD should elaborate further on effective policies to reduce these gaps, by tying data with what “works well” (e.g. quotas, equal pay provisions) and what does not (e.g. lack of financing of care facilities, gender bias in hiring, pay and regarding paid parental leave, etc.).

### **Linking the Future of Work to the Future of the Firm**

At this stage, there is no link between the OECD work respectively on the Future of Work and on Responsible Business Conduct (RBC), despite the common issues being dealt with – employee-employer relationship and business models that are fragmented, leading towards outsourcing and offshoring of tasks and production. It is therefore important to capitalise on past policy recommendation of the OECD on RBC and global supply chains, including the most recent Due Diligence Guidance, in the upcoming OECD discussions on on FoW. Under the authoritative international instruments governing the conduct of business, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the ILO Declaration, companies indeed have a responsibility to “avoid” negative impacts on any of their workers, including platform workers, and address any negative impacts that arise. Under these instruments, companies have a responsibility to undertake due diligence, including by engaging with workers and trade unions, in order to identify and address any violations of human rights or other negative impacts on platform and other workers.

However, a broader conversation on the impact of digitalisation on the “purpose of the firm” and the governance of corporations may be warranted. MNEs increasingly are shaped by complex group structures including empty shell companies set up for the sole purpose of artificially shifting employer responsibilities under the law of the most accommodating – but economically and socially irrelevant – jurisdictions. Complex business structure for the purpose of “regulatory arbitrage” is not a new phenomenon. Yet digitalisation offers greater opportunities for corporate fragmentation and complexity as data-driven business models give employers even greater possibilities to monitor operations at arm’s length and for outsourcing. Digital companies can indeed operate in a country without properly registering a national office. New business models allow for a mismatch between the economic relationship and the contractual relationship that bind the worker to the employer.

In 2017, the OECD Ministerial Council Meeting called for “a stronger corporate accountability framework, including the possibility of providing companies with a social license to operate”. At the following LCM consultation, the TUAC called for the OECD to engage in a dual track policy discussion on “the Future of Work and the Future of the Firm”, the latter aiming long-term business models to shift away from corporate short-termism. Moving ahead FoW policy frameworks should strive for stronger corporate accountability frameworks, where digitalisation offers greater opportunities for complex group structures, outsourcing and supply chain (parent company’s responsibility in

overseeing subsidiaries, comprehensive transparency and reporting requirements in line with the OECD BEPS action plan nb 13 on country-by-country reporting framework).

The original mandate of the 2013 OECD BEPS Action Plan was to “ensure that profits are taxed where economic activities take place and value is created”. That should serve as a guiding principle for upcoming OECD analysis and policy recommendations: “ensure that digitalised business responsibilities (including employment, tax, competition, data privacy, etc) are upheld where economic activities take place and value is created”.