Trade Union
Advisory Committee
to the OECD
*Commission
syndicale consultative
auprès de l'OCDE*

TUAC Statement to
the OECD Ministerial Council Meeting 2019

Going Digital? Go Inclusive!

KEY MESSAGES

The outcome of the 2019 OECD Ministerial Council Meeting (MCM) should lay out an ambitious policy roadmap for a just transition to the digitalisation of our economies. But it should also make clear commitments on the growth models that we want.

To reverse the long-term increase in inequalities and the erosion of the middle class, collective bargaining needs to be strengthened. In the short term, the OECD should urgently propose a fiscal policy package that responds to the current demand-side weakness.

Digital transformation strategies should not be designed top-down by government executives. Parliaments, other democratic institutions and civil society organisations need to be fully involved to make it a truly inclusive process.

Governments, together with social partners, need to design just transition frameworks for workers, to expand social-protection systems, to secure quality jobs and training, to ensure the same rights for all forms of work, and to take a human-centric approach to the digital transformation.

For digital change to reach everyone, policy makers need to take steps to close the north-south, the gender and the urban-rural divides through investment plans and dedicated skills and spatial policies.

Citizens, including workers, must be protected against risks arising from de-regulated cross-border data flows, but also from authoritarian government practices that may threaten their right to privacy and more broadly their citizen rights.

A more critical approach on corporate governance practices in the digital economy is required in order to secure more business transparency and accountability.

Competition rules are unfit to address corporate concentration, and the associated impact on employment.

Tax challenges are exacerbated by digitalisation. Revised tax rules should resolutely shift toward formulary apportionment.

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I. The urgency for a new model of growth

1. The focus of this year's OECD MCM is on digital transformation. The Ministerial will follow on the release of the first-phase report of the OECD's Going Digital Project in March 2019. The policy discussion on digital transformation should however be framed in the broader context of growth models that ten years after the crisis have failed to halt the rise in inequalities and of rising risks to international co-operation and to our democratic institutions.

2. The outcome of the OECD MCM should lay out an ambitious policy roadmap for digital transformation. But it should also send a clear commitment about the growth models that we want from governments and from other global fora, including the G20 and the G7. Going Digital? Go Inclusive!

Rising inequalities, weakening bargaining power.

3. Despite a decade-long recovery of the global economy, the deepening of inequalities triggered by the financial crisis in several OECD countries has not been reversed. Wealth concentration is even worse, with the top 1% holding one fifth of total wealth[i]. Productivity gains have not been broadly shared: productivity increased by 30%, real median wages by 15%. About half of productivity gains has either gone to capital or to top income earners[ii]. As evidenced by the OECD, the middle class is "under pressure": growth in incomes has lagged behind, the cost of living has become more expensive, labour market uncertainty is increasing[iii]. The current generation of middle class children has less chance of achieving the same standard of living as their parents despite being the most educated generation.

4. To address this growing source of social frustration and economic problems, policy needs to ensure not only progressive tax systems, broad access to quality public

services including education and training and generous social benefits, but also strong collective bargaining systems with broad coverage and robust minimum wages. Trade-union density declined from 30% in 1985 to 17% in 2016, collective-bargaining coverage declined from 45% in 1985 to 33% in 2013[iv]. And yet, as recognised in the revised OECD's Job Strategy, collective bargaining contributes to a broad sharing of productivity gains by promoting fairer wages and better working conditions[v].

Fixing the model of growth

5. Global growth is slowing down rapidly[vi]. Our economies are unable to escape the low growth, low inflation trap they have been in over the last decade. Meanwhile, central banks are impatient to "normalise" monetary policy through the tightening of monetary conditions. To prevent the current slowdown from turning into a full-fledged crisis, the OECD should urgently propose a fiscal-policy package that responds to the current demand-side weakness by gearing up public investment into low-carbon, more digitalised economies and less pronounced regional divides.

6. The 2008 financial crisis was led by debt-financed consumption and excessive leveraging of the private sector. Ten years later, the same model is still prevailing. Economies are heavily depending on debt. The corporate-debt stock in particular now stands at 13 trillion dollars, double the outstanding amount of 2008 and this is making corporations and economies vulnerable. Despite falling unemployment rates, wage dynamics in many economies remain depressed, or are too modest to accelerate the recovery and turn it into a self-sustained process where household demand and investment strengthen and sustain each other and together drive productivity upwards[vii].

About democracy and multilateralism.

7. Both international co-operation and democratic mechanisms for consultation need to be at the heart of policy action. Otherwise, public distrust in the ability of policy-makers and institutions to address the concerns of working people will only grow. Despite landmark multilateral achievements such as the Paris Agreement on climate change and the Sustainable Development Goals, major risks are threatening multilateralism and might result in a fragmentation of global rules and policy solutions. More fundamentally, democratic control over governments, and even the rule of law have weakened post-crisis with the rise of authoritarian and populist regimes. The OECD should stand firm on rights, the rule of law and the judiciary. It should do so for both for its current members and for accession countries.

II. JUST TRANSITIONS AND A HUMAN-CENTRIC APPROACH TO THE DIGITAL TRANSFORMATION

8. Digitalisation offers opportunities for well-being and for social cohesion. But the downside risks are substantial. To address both opportunities and risks, the OECD endorses a multi-stakeholder and whole-of-government approach to digital change and suggests a framework for national transformation strategies. The OECD recent call for a

"*Transition Agenda for a Future that Works for All*" – and one that places "*greater focus on collective bargaining and social dialogue*" is a much welcomed one[viii]. In practice however, trade unions have not, or have barely, been involved in national digital strategies to this point. Trade unions must have a say on strategies around automation, on standard-setting for Artificial Intelligence and human-to-machine systems, on infrastructure investment-planning and industrial policy, as well as on the governance of training systems. Digital transformation strategies should not be designed top-down by a handful of government executives. Parliaments, other democratic institutions and civil society also need to be involved to make it a truly inclusive process. Trade unions should be involved in the upcoming OECD country reviews on the digital transformation.

Just Transition as a guiding framework.

9. The Just Transition framework is an internationally recognised mechanism in the climate change agreements (endorsed at the COP21, re-affirmed at the COP24[ix]). It should extend to digital change. New OECD data shows that moving workers from one job to another as a result of automation would cost 1-5% of one year GDP – considering mostly only training-related mobility measures[x]. Policy and investment frameworks should be set up with social partners and stakeholders and entail economic diversification plans and active labour-market policies including training and skills-development (11% of workers want, but cannot take up, lifelong-learning due to time- or financial constraints[xi]). In many cases, transitions are already managed by mechanisms negotiated in collective-bargaining agreements (on career guidance or training as illustrated in recent OECD work[xii]). These best practices should be promoted and replicated.

Securing quality jobs for tomorrow.

10. When rapid digitalisation combines with complex global value-chains, it results in increased outsourcing and more fissured workplaces. This is exemplified with recent increases in non-standard forms of work also generated by on-demand and crowd-work via online platforms. As argued by the OECD, excessive and abusive use of non-standard forms of work need to be addressed by strengthening and expanding labour law[xiii]. The OECD also underlines the importance of adequately defining and enforcing the statute of a dependent worker as a gateway to labour rights and protection. They acknowledge mechanisms leading to regulatory arbitrage including circumventing employment relationships and thus creating false self-employment, but also incentivising tax systems[xiv]. Measures such as employment tests and labour inspections thus need to be engaged more. It is also essential to effectively address the barriers that prevent these workers to unionise and to engage in collective bargaining and to extend rights and protection to vulnerable self-employed workers through competition-law revisions. Cross-border initiatives, such as the *Global Deal*, and instruments, such as the OECD Guidelines for Multinational Enterprises should effectively apply and be tested in the context of the platform businesses. More broadly, the OECD should endorse the principle of a Universal Labour Guarantee as called for by the ILO Commission on the Future of Work.

11. Another challenge to quality employment is the rise of labour-market monopsonies. Strengthening of labour-market institutions in this area also is all the more

urgent in the light of recent research confirming that labour markets are far from being "competitive", as increased concentration of firms gives employers the opportunity to set wages lower than workers' productivity. Even in the absence of employer concentration, labour markets tilt in favour of the employer because of far lower labour mobility than proclaimed by economists and, more generally, because workers have fairly restricted access to capital (both financial and physical). Minimum wages, collective bargaining and trade unions thus constitute an indispensable force to counteract the power of business and rebalance bargaining positions, both in terms of wages, productivity and labour market outcomes.

Eliminating the gender gap

12. The digital transformation for now is based on a pronounced gender divide: only 15% of women are involved in software design in G20 countries and female entrepreneurs receive up to 23% less funding[xv]. Globally, women on average still earn about 24% less. This pay gap is closely intertwined with "occupational segregation" by crowding of women into low quality jobs and the polarisation by gender of economic sectors. Even within similar job categories, women are not only consistently paid less but are more affected by dismissals due to lax or weak employment-protection legislation. Care responsibilities still penalise women. Only 25% of managers with children under six years of age are women. Minimum wages and collective bargaining are effective mechanisms for closing gender pay-gaps, particularly at the low and middle part of the wage distribution. Countries with higher collective-bargaining coverage tend to have less inequality in general. Moreover, collective agreements can also be used as an explicit tool by, amongst others, focussing on reconciliation of work and family life, increased openness of company pay differentials, higher pay for female-dominated occupations and gender-neutral evaluations in job classification and pay- systems.

Expanding coverage of social-protection schemes

13. If job losses and changes become more frequent, our economies will need more, not less, social protection, in order to cope with structural change in a secure and productive way. Policies need to reduce coverage gaps and address problems of failing or inadequate social provisions for more volatile career and non-standard work patterns. Formal and mandatory coverage of social-protection benefits should be extended to all workers, irrespective of their employment relationship, including to the self-employed. Rules governing contributions and entitlements should be tailored to non-standard workers to facilitate their access to social benefits. Coverage should be adequate to uphold living standards, provide appropriate income replacement and prevent poverty, as well as ensuring portability[xvi]. Extending access to social protection to all workers will improve welfare and security of households, increase and stabilise domestic demand and thus strengthen the economy especially in times of crisis.

Sharing of productivity gains

14. The Going Digital synthesis report confirms that aggregate productivity has slowed down and the wage-productivity gap persists[xvii]. It also shows that acquiring higher skills is not resulting in wage premiums as it used to – leading to an over-

qualification problem. The benefits from the optimisation of processes are not trickling down to workers – unless collective bargaining was to correct it. To reverse these trends, new thinking around more conducive working time is needed to take account of optimised digital processes and to allow for more flexible arrangements to take up care responsibilities or training. Ensuring connectivity and more competitive markets would also help lift aggregate productivity. Social and economic councils and sector councils with social partners are effective institutions to reach out to broader economy, including SMEs.

Work place organisational change

15. The digital technology ecosystem, based on high data-volume flows and more sophisticated human-machine systems, has a transformative effect on the world of work. Data is collected from applications, fingerprints, wearables and sensors in real-time indicating the employee's location and work pace – often leading to enhanced control, stress and strain. Making better use of social dialogue and firm-level information and consultation rights (such as works' councils) is crucial to prepare for and manage new processes. Unfortunately, such organisational changes take a backseat in both OECD analysis and policy debates. They should not. Technological agreements can avoid intensification and "enhanced surveillance" at work. Instead, they can achieve more autonomy, more sophisticated tasks, less hazardous work and better work-life balances (including through well-managed mobile work). This has to be underpinned by impact-assessments on the invasive effects of technology in the workplace, as well as responsible data-governance (the rights to disconnect, to be forgotten, to portability of one's data and/or ratings and to information on collection and processing).

Governing Artificial Intelligence

16. Implementation and use of Artificial Intelligence (AI) need to be governed by democratic principles and human rights. The MCM is set to agree on the first OECD Recommendation on AI. This is an important step towards setting common standards for the inter-operability and deployment of trustworthy AI-systems. It will be important to build an evidence-base around AI and its lifecycle but also on its impact on economic growth, the labour market and societies. For now, the global AI market is geographically concentrated (the US leading, followed by China) and fuelled by private equity, which is not raising confidence that long-term impacts are taking precedence over fast development and short-term goals[xviii]. Another challenge is to avoid bias with AI-design often being opaque. AI should be governed by strong rules on safeguarding human agency, determination, dignity, autonomy and privacy (protection through anonymisation and encryption). Trust in AI would grow if regulation ensures robust and safe protections (through obligatory simulation and validation systems and ex-post through clearly set liability rules and audit mechanisms) and if know-how is more broadly shared and can be used to achieve broader public benefits.

17. AI will deploy across all sectors and will affect all workers at all skill levels. According to recent research, AI might displace 7 million jobs in the UK and has the potential to create more jobs (7.2m)[xix]. Irrespective of a potentially neutral net employment effect, sector shifts will be very pronounced. Innovation processes should

help anticipate the impact of AI on employment and employability prospects and set industry standards to ensure safe and productive workplaces. One only has to look at explicit and implicit bias and discrimination arising from algorithmic-based management decisions. To give a concrete example, an ad for higher-paid executives was displayed 1,816 times to men and just 311 times to women[xx]. Workers are entitled to a "right to explanation" from their management on AI mechanisms affecting them.

Bridging the digital divide

18. Limited digital infrastructure and significant skills gaps remain key obstacles to bridging the digital divide in developing countries, particularly affecting women and girls and rural areas. Development co-operation can help share costs and build capacities. Developing countries might also benefit from spill-overs in technology and leapfrog industrial stages – but to do so effectively, they need to take part and apply the same technological standards and likely will necessitate a global digital-transition fund. Financing needs to be effectively aligned and scrutinised against the goals and targets contained in the Agenda 2030 on social justice, connectivity (e.g. affordability of broadband connections) and environmental sustainability. This is key when addressing the role and accountability of the private sector in development co-operation. Governments need to take the lead and: (i) channel public investment to close infrastructural gaps, (ii) ensure internet affordability through lowering of prices and (iii) help develop broad skills-sets and digital literacy.

19. While regional disparities within the OECD area have started to come down, they remain unsustainably high. Income and job opportunities remain concentrated in large cities and certain regions. The digital transformation exacerbates this further. Regions with a larger share of workers with tertiary education, a larger proportion of jobs in services or those that are highly urbanised will be better off (e.g. most start-up creation and R&D investments are to be found in bigger cities)[xxi]. This clearly highlights the need to ensure that the digital transition is also a Just Transition with inclusive growth measures dealing with inequalities across all spatial scales. This can build on the benefits from new technologies. For example, digital tools can help energy efficiency and extend coverage, or allow for distance-learning, etc. For that to happen, investment decisions on green and digital growth need to be made jointly. The set-up of regional innovation clusters can also help.

III. New rules for the digital economy

20. New digital economy business models prove to be far more challenging to address for regulators and governments. Their cross-border nature, scaling without mass and relying on hard-to–measure, hard-to-price intangibles create multiple complications for existing regulatory frameworks. Data-driven business models have disruptive effects on data governance; the accountability of and within companies; and competition and taxation.

Democratic control over data

21. Citizens must be protected against risks arising from de-regulated cross-border data-flows and storage but also from authoritarian government practices that may threaten their right to privacy and more broadly their citizen rights. Data-use and -storage should be governed by democratic processes, including parliamentary control. Citizens' data need to be specifically protected from digital risks, anonymised and encrypted accordingly. They need to be informed on the data that are being collected from them (e.g. from public sensors).

22. Recent initiatives are offering greater protections to citizens and their right to privacy and data protection. The interoperability of such new regulatory standards across jurisdictions needs to be secured, in parallel to enforcing privacy by design. New mechanisms for mandatory disclosure, for redress and remedy are warranted on the collection and re-purposing of personal or sensitive data. Safeguards against bias and discrimination online also need to be developed. Moving ahead, the OECD should continue the work of the Global Forum on Digital Security and Prosperity, advance the formulation of an overarching recommendation on data governance, and build further understanding on data types and AI-systems – thereby involving workers' perspectives.

23. Open Data is about giving citizens, civil-society organisation and businesses access to information. E-public services and data-driven government administration help make more informed decisions. They have a much-needed purpose amidst growing concerns around private data-monopolies and barriers to access to information on the ground of business confidentiality.

Upgrading corporate governance and competition rules

24. The TUAC has raised concern about the "shifting boundaries" of the firm in a context of trade, investment and financial liberalisation and the many opportunities for regulatory arbitrage created in the cross-border, data-driven digital economy[xxii]. As the OECD embarks in the second phase of its *Going Digital* Initiative, it is essential that discussions focus on the "Future of the Firm". Data-driven businesses are indeed able to accumulate abnormal levels of market power and wealth and yet they are able to escape traditional corporate transparency and accountability principles.

25. The OECD should in particular adopt a far more critical approach on the corporate governance practices that prevail in the digital sector. The number of "Unicorn" businesses (ie. former start-ups that have grown to reach over USD1bn in valuation but remain privately run), have grown from 39 in 2013 to 376 in 2018[xxiii]. This has a significant impact on transparency, as unlisted companies face significantly less reporting and accountability requirements than listed companies. Dual-class voting structures benefiting insiders without corresponding economic ownership are common in the digital sector. Boards of directors are also more entrenched, with executive managers holding three times more shares than the average in large listed companies. As a result, long-term and responsible use of shareholders' engagement in highly digitalised companies is substantially lower than in other businesses. Ownership is most often restricted to a few private equity funds and rich family offices, hence fuelling further wealth concentration.

26. Competition rules also need to change to adapt to digital challenges. Digitalisation further exacerbate the risks of the already "imbalanced, incomplete and outdated" international trade and investment system that TUAC highlighted at the MCM last year[xxiv]. Online platforms enjoy bigger scale returns than ordinary businesses as a result of network effects, while smaller digital companies tend to be squeezed out partly due to an aggressive mergers and acquisitions strategy by larger rivals, partly because of their difficulty to find sufficient financing for development. The creation of oligopolistic markets is a concern not only for consumer protection. It is also a concern for workers when they generate labour-market monopsonies as discussed above. When analysing planned mergers and acquisitions, competition authorities apply outdated tests, failing to assess the impact on the level and quality of employment. Competition authorities also pay little attention to the decisive role that labour law and collective bargaining could play in addressing excessive corporate power.

The tax challenge

27. The OECD has tabled several proposals to address the tax challenges of the digital economy and the rise intangibles and data in generating profits. They would shift parts of the taxing rights from residence jurisdictions (where the HQ of the MNE is located) to market jurisdictions (where consumers and users are located). They could also improve international transfer-pricing rules for MNEs by shifting from the failed "arm's length" principle towards greater use of MNE-wide formulary apportionment / unitary taxation methods. The OECD is also tabling a "global anti-base erosion" tax proposal, which is very welcome, as it seeks to introduce a floor in tax competition.

28. Considering the current trade imbalances, they would impact the distribution of taxing rights between trade-surplus and -deficit countries, as well as between countries depending on their integration in global value chains. What is at stake however is not just "profit allocation" (how to "share the pie" between jurisdictions). It is also about redressing the under-taxation of digital business and how to "increase the pie". According to European Commission estimates, digitalised businesses' effective tax rate is only 9.5%, whereas for traditional business models the effective tax rate is 23.2%.

29. Moving ahead, revised tax rules should resolutely shift toward formulary apportionment methods and away from the arm's length principle. This is needed to address under-taxation, but also to prevent multiple forms of regulatory arbitrage that lead to complex group structures weakening not only tax accountability but also broader business responsibility and accountability to workers and other stakeholders. Importantly, the proposals for digital taxation should aim at simplicity. The proposition to distinguish between types of intangibles and between "routine" and "non-routine" profits might lead to unpredictability and accounting manipulation.

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[xv] http://www.oecd.org/going-digital/bridging-the-digital-gender-divide-key-messages.pdf
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