



**Issues note: The emergence of new forms of work and their implications
for labour relations**

Organisation for Economic Co-operation and Development (OECD)

Paper presented at the 1st Meeting of the G20 Employment Working Group

20 - 21 February 2017
Buenos Aires, Argentina

Introduction

Recent years have witnessed a rise in new ways of working which has been driven by a mixture of technological advances, the emergence of new business models and management philosophies, as well as by deliberate policy decisions on the part of governments. Digital platforms are allowing businesses to find skills, and individuals to sell their services, in a global labour market. ICT allows individuals in remote areas to have access to basic services and information about the labour market, and the emerging economies are among the largest suppliers of online labour. A growing number of jobs are broken down into separate tasks (or “gigs”) which can be outsourced to individuals with specialist skills working as freelancers. Technology has brought down transaction costs to such an extent that even small and medium-sized enterprises can now engage in outsourcing through micro-transactions. The internet and modern information and communication technologies are also allowing individuals to work where and when they want, blurring the distinction between work and personal life. And the move to an “*on-demand*” economy has frequently been facilitated by the advantageous tax and regulatory treatment of on-call labour and self-employment.

These trends are putting pressure on the traditional employer-employee relationship and its suite of rights and protections which had been gradually strengthened over time in advanced but also in emerging G20 countries. While new forms of work increase choice about where and when to work, there is also a worry that they are shifting risks and responsibilities away from employers onto workers. Many gig and on-call workers are not covered by standard labour regulations and institutions (including minimum wages, health and safety, and working time regulations) and this has raised concerns about the potential negative consequences of new forms of work on job quality and inequality. In the context of emerging economies, large shares of informal employment can represent an additional challenge to labour relations, and it is unclear a priori what the effects of the platform economy on informality will be.

One of the rights and protections at risk is the freedom of association and the right to collective bargaining. The rise of the platform economy and the new forms of work associated with it are bringing new challenges for labour relations – on top of those that already existed. Indeed, the decades-long fall in unionisation and collective bargaining coverage rates has been associated with technological and organisational changes, globalisation, the decline of the manufacturing sector, the expansion of flexible forms of work and population ageing. Many gig workers, whether rightly or wrongly, are classified as self-employed and, therefore are considered businesses for the purposes of competition law. Joining unions and collectively negotiating rates would normally be seen as a breach of the cartel prohibition – i.e. an anti-competitive practice.

Yet good labour relations are critical to successfully manage the transition to the future of work. Nothing about the future is inevitable, and social partners play an important role in shaping this future, in partnership with government and other stakeholders, both through collective bargaining as well as by influencing policy directly. Social partners can jointly decide what technologies are adopted, and how. They play a role in managing transitions for displaced workers. They can help identify skills needs, develop education and training programmes, and deliver them. They can play a role in providing social protection for workers. And collective bargaining can be used as a regulatory tool to address non-standard forms of work. In emerging economies, social dialogue and collective bargaining can be part of a broader strategy to fight informality and improve job quality.

Against this background, the present note discusses recent trends in collective bargaining and in non-standard employment. It then discusses what governments and social partners can do to strengthen labour relations and rights at work – building on recent OECD work as well as the outcomes of the OECD/Netherlands workshop on “Labour Relations in the Future World of Work” held in Paris on 11 December 2017 in Paris. The key take-aways from this workshop are summarised below. While these provide interesting avenues to further explore, they should not yet be taken as the OECD’s opinions and final recommendations on the subject. For the OECD, they will provide one of the numerous inputs into its work programme on collective bargaining.

- Alternative labour movements can help strengthen the voice of workers in new forms of employment, with new technologies playing a further facilitating role.
- However, there are limits to what alternative labour movements can achieve, and there is still value in collective bargaining, both for workers and employers. This is why alternative labour movements are better seen as complements rather than as substitutes to traditional labour unions.
- Unions can and do reach out to non-standard workers, and social dialogue can help regulate new forms of work.
- But government intervention is needed to develop a favourable regulatory environment. In particular, revisions of both competition and labour law may be needed.

The discussion focuses on OECD G20 countries primarily, but several of the issues are relevant to non-OECD G20 countries as well, and those are highlighted where appropriate. In addition, however, there is likely to be a complex relationship between new forms of employment and informality, which is beyond the scope of this note, but which will be relevant for emerging economies in particular.

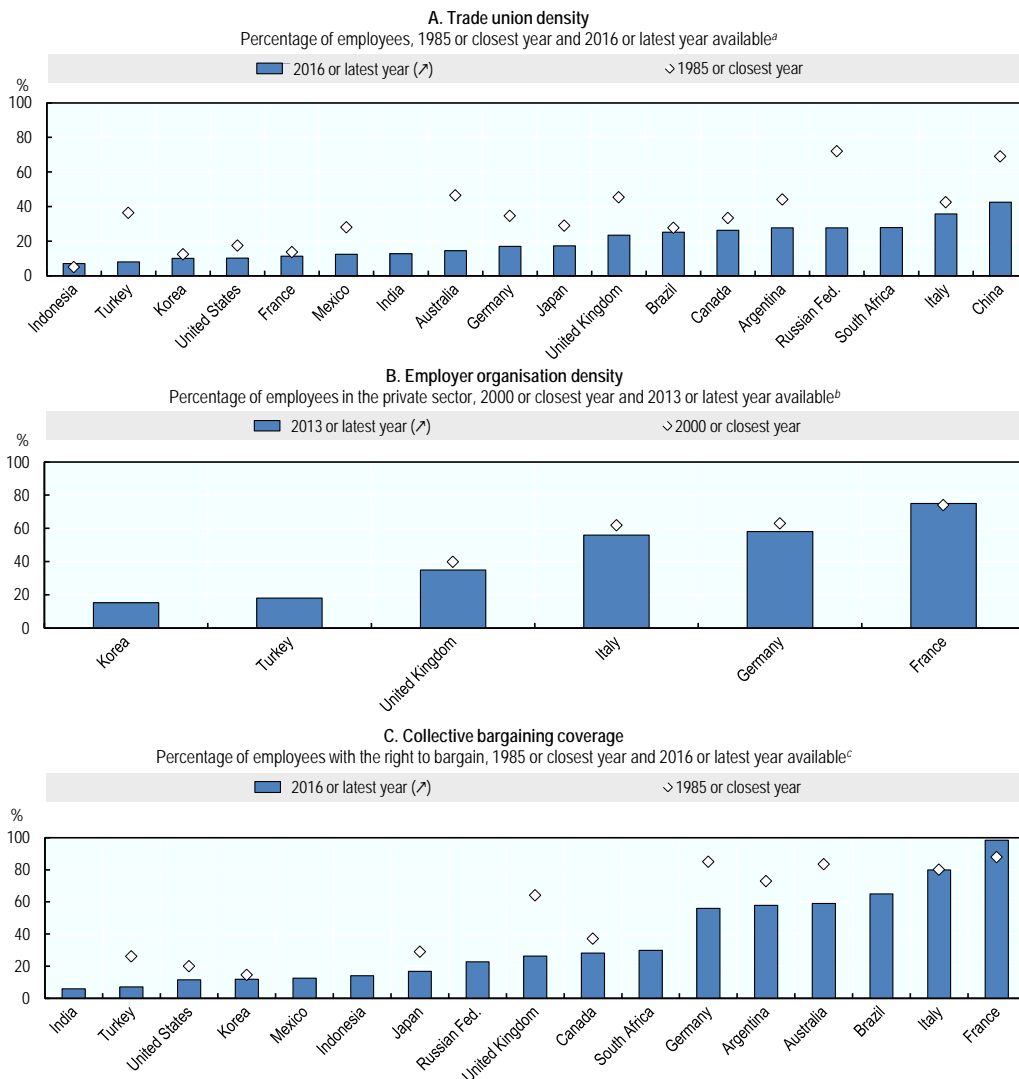
Section 1: Trends in collective bargaining

Trade unions and business and employer organisations are key pillars of social dialogue in most G20 countries. However, their reach has declined over recent decades in many countries.

Trade union density has declined

On average, for those G20 countries for which data are available, less than one in five workers is a member of a trade union – down from one in three in the late 80s (Panel A of Figure 1). These averages mask huge variations across countries – only 7% of workers are unionised in Indonesia and 8% in Turkey, while 35% are union members in Italy and 42% in China. Technological and organisational changes, the decline of the manufacturing and public sectors, but also the increasing spread of flexible forms of contracts and policy reforms in several countries are among the main drivers behind this marked decline in trade union density.

Figure 1. Trade unions, business and employer organisation and collective bargaining coverage in G20 countries



a) No statistics available for Saudi Arabia. For Turkey, official statistics on trade union density published by the Ministry of Labour and Social Security refer to the number of workers covered by the social security institution and set it at 11.21% in 2015. 1985 refers to 1986 for Indonesia; 1988 for Brazil; 1989 for Argentina; and 1990 for the Russian Federation. 2016 refers to 2011 for Brazil; 2012 for India and Indonesia; 2013 for China, France and the Russian Federation; 2014 for Argentina; and 2015 for Italy, Korea and Turkey.

b) 2000 refers to 2002 for France, Germany and the United Kingdom; and 2013 refers to 2009 for Korea and the United Kingdom; 2011 for Germany; and 2012 for France and Italy.

c) No statistics available for China and Saudi Arabia. 1985 refers to 1986 for Turkey; and 1994 for Brazil; 2016 refers to 2012 for India, Indonesia and Mexico; 2013 for Brazil and the Russian Federation; 2014 for Argentina, France and Italy; and 2015 for Korea.

Source: OECD/ICTWSS Database and J. Visser, ICTWSS database (Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts), <http://www.uva-aias.net/en/ictwss>.

Employer organisation density has remained stable, but varies a lot across countries

Employers, business and employer organisations are the other key actors of collective bargaining, but much less is known about their membership and representativeness. In several European G20 countries, business and employer organisations have a direct role in social dialogue, both at the national and at the sector level. In most non-European G20 countries, however, employer associations represent the interests of business but do not negotiate collective agreements. In those countries, most, if not all, bargaining takes place at the firm level. Official and up-to-date statistics on the number of workers covered by employer organisations (employer organisation density) are limited and partial, and they are often based on self-reported data. An additional complication is that firms may belong to several employer associations at once. Based on the available information, around 50% of employees in the private sector work in firms affiliated to an employer organisation – but with considerable variation across countries (Panel B of Figure 1). Employer organisation density has been quite stable over the last few decades. This stability sharply contrasts with the fall observed in trade union density.

Membership rates are not the only elements to gauge the influence of unions and employer organisations. These rates are closely interlinked with the labour relations system itself and often reflect long historical patterns. However, they are good proxies to measure the ability of unions and employers to represent a broad base of workers and firms or merely a narrow segment of them.

Collective bargaining coverage has declined

The share of employees covered by collective agreements at national, sectoral or company-level has also declined. On average across G20 countries for which data are available, 38% of workers are covered by a collective agreement, down from 55% in 1985 (Panel C of Figure 1). This indicator is key for comparing the relative strength of collective bargaining across countries since it captures the extent to which workers' employment conditions are actually influenced by collective negotiation. All in all, collective bargaining coverage is high and stable only in countries where multi-employer agreements (mainly sectoral or national) are negotiated. A second key element which matters for bargaining coverage is the relative strength and willingness to negotiate of employer organisations. Indeed in countries where employer organisation density is high, coverage is also relatively broad, and vice versa. On the contrary, the relationship between collective bargaining coverage and trade union density is weaker. Collective bargaining coverage tends to be significantly higher than trade union density as agreements often apply also to non-union members.

Section 2: Trends in non-standard and informal work

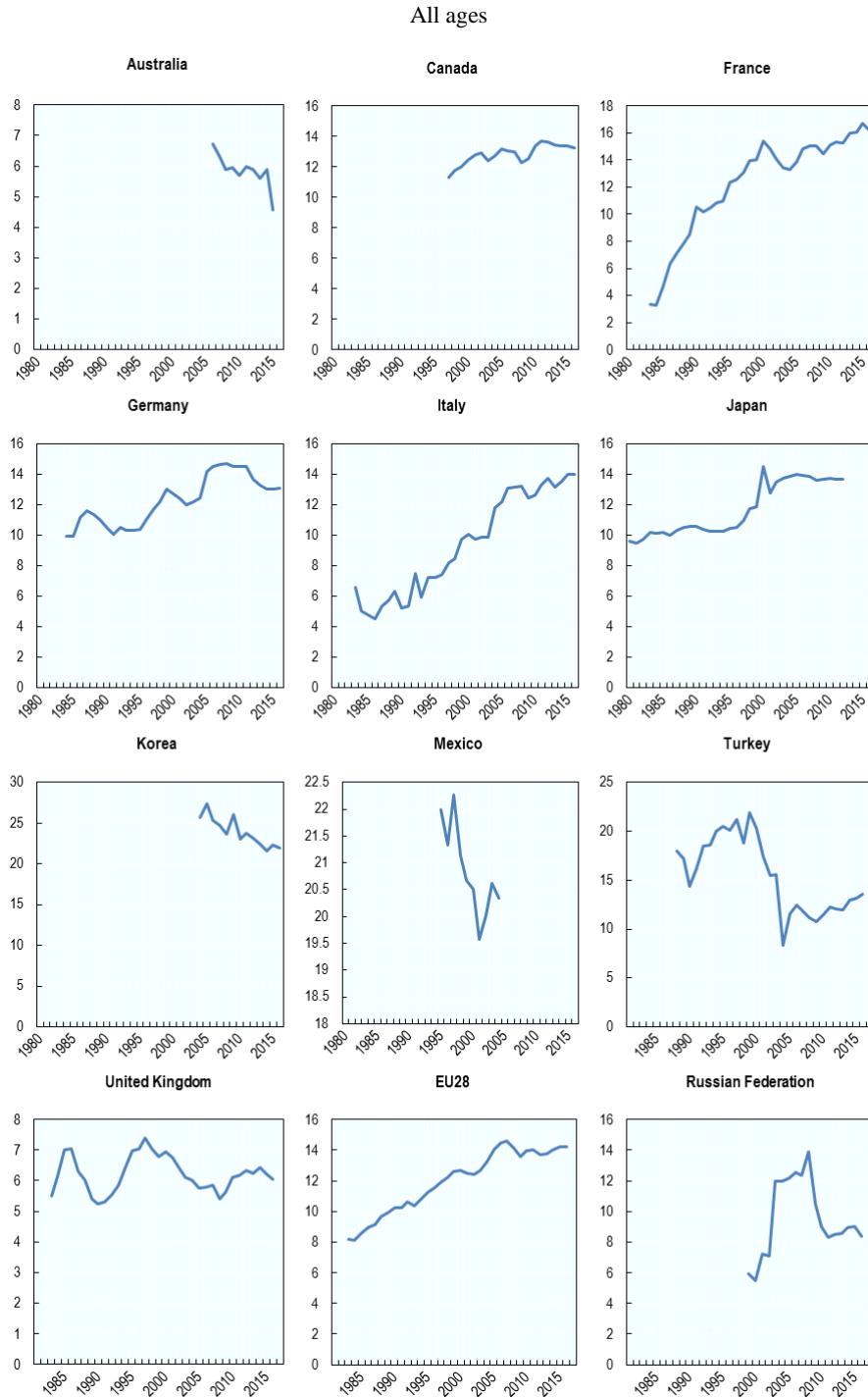
Recent trends in non-standard employment, notably temporary and dependant self-employment, have brought new challenges for social partners.

Temporary employment has increased in many, though not all, countries

Temporary employment is an important form of non-standard employment in OECD countries. It includes standard fixed-term contracts (that is contracts with a precisely defined end date), seasonal work, on-call contracts of limited duration, project contracts, training contracts and TWA contracts between the worker and the agency if of limited duration. Over the last few decades, temporary employment has increased primarily in the EU28 (including in France, Germany and Italy) but also somewhat in Canada and in Japan (Figure 2). In the other G20 countries with available data, the trend is mixed. Australia experienced a fall in temporary work

(but this excludes workers on casual contracts), as did Korea and Mexico. In Turkey, despite a long-term decline, there has been a recent uptick in the share of temporary employment.

Figure 2. Temporary employment as a share of total employment

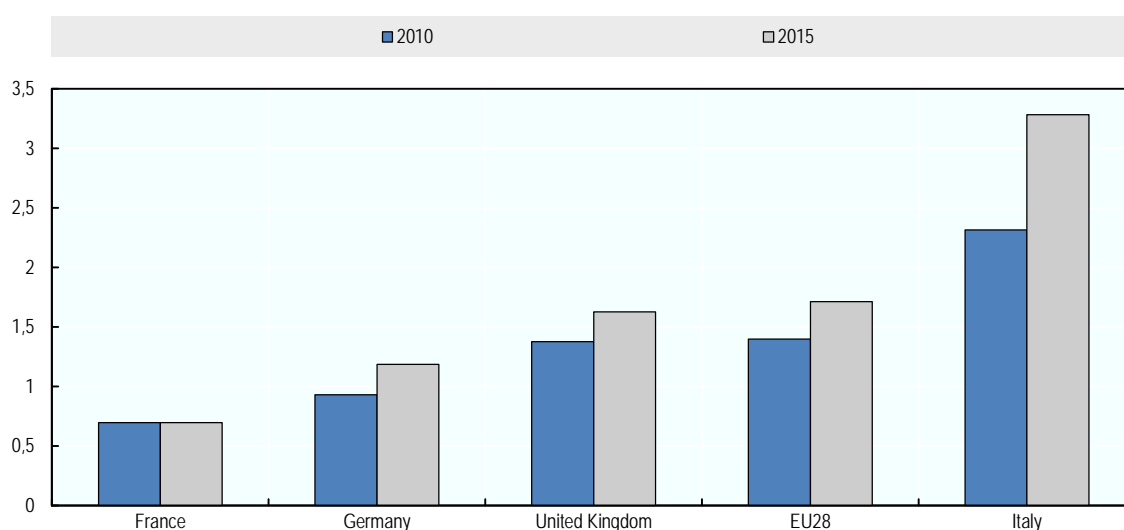


Source: OECD Labour Force Statistics Database.

Dependent self-employment has increased

Another type of non-standard employment includes dependent self-employed workers – i.e. own-account self-employed whose conditions of work are similar to those of employees, in the sense that they work mainly or exclusively for a specific client-firm with limited autonomy and often closely integrated into its organisational structure. Even though their degree of subordination is similar to that of an employee, they are usually not protected by employment protection rules because these rules do not apply to commercial contracts. In addition, they typically have the same fiscal and social protection regimes as for the other self-employed, which is typically less burdensome for their employers. As a consequence, this type of contracts represents another flexible and often low-cost alternative to regular, open-ended employment contracts. When there is a high degree of worker subordination, the use of such contracts for services is, in principle, unlawful in many countries and a key issue for policy is to identify and redress abuses. In practice, such workers are not easily identified in standard labour force statistics. Figure 3 presents cross-country comparable estimates of the size of the group of dependent self-employed workers as a percentage of total dependent workers, calculated using the European Working Conditions Survey. The share of dependent self-employed workers ranges from 0.7% of the dependent workforce in France to 3.4% in Italy. In all G20 countries with available data, this share has increased between 2010 and 2015.

Figure 3. Share of dependent self-employed as a percentage of dependent workers, 2010 and 2015



Note: Dependent self-employed workers are identified as own-account self-employed for whom at least two of the following conditions hold: i) do not have the authority to hire or dismiss workers; ii) generally do not have more than one client; and iii) cannot choose or change any 2 of the 3 following: their order of tasks, their methods of work, and their speed or rate of work. Dependent workers are the sum of employees and dependent self-employed. Excludes the agricultural and public sectors.

Source: OECD calculations based on Eurofound (2010), “5th European Working Conditions Survey (EWCS)” and Eurofound (2015), “6th European Working Conditions Survey (EWCS)”.

Platforms have further fuelled the growth in non-standard employment

In recent years, a small but growing share of workers has provided services through online intermediaries, or platforms. There is great variation in the employment status of these workers, reflecting the heterogeneity of the platform economy itself (ranging from selling labour, either virtual or physical, to providing temporary access to underutilised assets). Many work as

freelancers, earning good wages. Others are more likely to be classified as dependent self-employed and, in some cases, wrongly so as, to all intents and purposes, they are employees of the platforms through which they work. Finally, there are likely to be some workers who work through platforms informally (i.e. without registering their activity with the tax authorities). The platform economy is likely to have fuelled further growth in the share non-standard employment. Yet relatively little is known about the size and nature of the platform economy because standard data collection exercises currently fail to capture such activity. Several new data collection exercises have nonetheless emerged which suggest that between 0.5% and 3% of adults in countries like the United Kingdom, the United States and Germany have earned income through online intermediaries, and there are some suggestions that it is growing fast. Analysis of the five largest online freelancer platforms (Freelancer.com, Guru.com, Mturk.com, peopleperhour.com, upwork.com) suggests that emerging economies are among the largest suppliers of online labour, with India, Bangladesh, Pakistan and the Philippines accounting for more than half of the supply of online labour (Online Labour Index).

Informal employment has declined, but remains significant

Informal employment is still a concern in many G20 economies, representing a serious challenge for trade-unions and social dialogue. The *OECD Employment Outlook 2015* has shown that the share of informal employment is highest in Indonesia and India (above 70%) and lowest in Chile, urban China and Russia (around or less than 15%). Argentina, South Africa, Colombia, Costa Rica and Brazil have similar levels of informality (between 35% and 40%), moderately below Mexico and Turkey (between 40% and 50%). In countries where time-series data are available, informality appears to have fallen in recent years (the only exception being Mexico). Some of the most significant reductions have been recorded in Brazil, thanks to effective policy measures to induce formalisation. Informal jobs have lower job quality, they rarely lead to better employment opportunities and are hardest to escape for the most disadvantaged members of the workforce (e.g. low-skilled workers), who are most likely to be trapped in a vicious cycle between informal jobs, temporary contracts and joblessness.

Section 3: Initiatives to strengthen worker representation

Non-standard forms of employment provide more flexibility to employers, and certain workers may also seek such flexibility, but labour market outcomes vary significantly across non-standard workers. On average, the large differences in employment protection by type of contract trigger differences in job security and generate persistent divides between non-standard and standard workers.

There is no evidence that non-standard workers are compensated for their lower job security through higher wages. On the contrary, the majority of them experience worse conditions in terms of both job security and wages, even though the situation differs across countries and contracts. Given that certain population groups are over-represented in non-standard forms of work (typically women, youth, the least-skilled and workers in small firms as well as migrants), such forms of work risk generating a source of inequality in access to good jobs (with some groups confined to less attractive types of work) resulting in labour market segmentation.

Excessive use of non-standard employment not only harms equity, but also efficiency. Firms invest less in non-standard workers, which in turn may depress productivity growth. In addition, higher turnover combined with lower tax revenues and lower social protection mean that, in the end, society ends up footing the bill (including firms, through increased tax rates).

Dealing with job quality issues associated with non-standard employment will require a strengthening (and possibly a modernising) of labour relations, in addition to interventions in the areas of employment regulation, social protection and skills. A recent OECD/Netherlands workshop organised in Paris explored the challenges facing labour relations in the future world of work, and possible responses on the part of unions, employers, governments, as well as other stakeholders. The key take-aways from that workshop were as follows:

Alternative labour movements exist, but they have their limitations and there is still value in collective bargaining

The erosion of union and collective bargaining coverage has led to the emergence of alternative labour movements to defend workers' interests – including in emerging economies, where informal workers self-organise in unions, cooperatives or associations.

One of these is the **worker centers** in the **United States**, a country which has experienced a steep decline in union density and workers' voice. Worker centers provide support to low-wage (primarily immigrant) workers. They are set up as non-profit organisations, and not as unions, because this: allows them to keep more freedom to engage in collective action and boycotts; reduces the amount of bureaucracy they are subject to; and opens opportunities to alternative sources of funding (foundations, governments). Worker centers aim to improve conditions through policy change rather than through bargaining. They are community-based organisations which deliver services (e.g. legal representation) to their members; they engage in advocacy and organise workers so they can act together for economic and political change. The number of worker centers rose in the United States from just five in the 1990s to 240 today – a rise partly linked to the increase in migrant workers in the United States.

Another model which has emerged in a number of countries is **co-operatives** to organise self-employed workers and to provide a range of services to them. One example of this is SMart, a **Belgian** co-operative originally set up to support artists, but since then extended to other atypical workers as well as to more countries (SMart now operates in nine European countries). SMart is a company which provides the self-employed with a wide range of services, including: help with invoicing and the declaration of income; getting paid as an employee (and therefore gaining access to social protection); debt collection; salary advancement (through a mutual guarantee fund); the provision of training and co-working spaces. The organisation is based on a participatory process, with all its members invited to participate in the general assembly. Like the worker centers in the United States, SMart has grown rapidly as an organisation, indicating that there is strong demand for the type of services it provides.

While such new forms of work organisation are welcome in the sense that they help improve working conditions of a greater number of workers, and particularly those left behind by more traditional institutions, they frequently face challenges which mean that they cannot completely substitute for labour unions. In particular, such institutions do not have the ability to bargain collectively on behalf of their members. This is why alternative labour movements or workers' cooperatives are better seen as complements rather than as substitutes to traditional labour unions. Indeed, in the United States, unions are more and more supportive of worker centers. Similarly, SMart have reached out to unions and employers to try and improve the working conditions of atypical workers.

New technologies can help in voicing workers' concerns but do not necessarily promote trust and co-operation

Modern ICT and social media can help workers come together and express their voice, empowering them through peer-to-peer exchange. They use the internet to build online communities to share experiences and labour market information (including about bad platform

practices and/or poor clients), to support and help another, and even to improve pay and working conditions through informal norms. However, given that online communities are often scattered across different geographies, occupations and platforms, such actions are likely to have only limited impact. Similarly, the absence of unions is likely to restrict what they can achieve in practice. Distinctive features of social partner organisations are: *i)* the possibility to sign an agreement and *ii)* the ability to deliver an agreement. Boycotts, petitions, and non-union workers' organisations strengthen workers' voice but do not necessarily lead to an agreement improving working conditions to the satisfaction of both parties.

Unions can and do reach out to non-standard workers, and social dialogue can help regulate new forms of work

One of the current challenges for trade unions is how to include the newer forms of work, such as those in the platform economy. A number of promising initiatives have emerged recently. In **Germany**, the metalworkers' union IG Metall realised that crowd work potentially affects every aspect of the value chain and could therefore have an enormous impact on "traditional" forms of employment and employees. This is why IG Metall reached out to platform workers by: *i)* setting up the website faircrowd.work, which allows platform workers to connect to one another, rate platforms, and to join trade unions; *ii)* allowing the self-employed to become members of IG Metall; *iii)* developing a code of conduct for platforms; and *iv)* establishing an ombudsman office to settle disputes among crowd workers, clients and platforms by mutual out-of-court agreement. Many of the priorities of platform workers are the same as those of ordinary workers, and IG Metall works with them, as well as with platforms and international networks, to achieve better working conditions. The next step would be to try and reach collective agreements for platforms.

Indeed, social dialogue and collective bargaining can contribute to regulate new forms of work in a more flexible way than the law. In the past, that proved to be the case for new forms of work that were perceived as disruptive as the platforms of today. For example, agency work was originally highly contested and even banned in a number of countries. However, through social dialogue, they became accepted and, when agencies were recognised as employers and the principle of equal pay for equal work was accepted, it became possible to enter into collective bargaining on working conditions and supplementary benefits. It forced to develop some measures to develop a transitional labour market which have led now to the possibility of offering permanent contracts to TWA workers. Similarly, while non-standard forms of employment have contributed to the erosion of the Polder Model in the Netherlands, fixed-term and temporary agency work tend to be covered by collective agreements, as a result of successful efforts by unions. In France, collective agreements have been reached for independent workers (insurance agents and small shop keepers).

In emerging economies, some global unions – especially those covering sectors where informal work is common – encourage their affiliates to organise informal workers. In India, several unions cover informal workers and support their demands for basic workers' rights. By joining forces, informal workers can have a stronger voice to participate in relevant policy or bargaining processes. Evidence is showing that in India, being part of a union considerably reduces the probability of low pay for both salaried and casual workers (Rani and Belser, 2011). Unfortunately, the overall coverage in India remains relatively limited and union density very low. More generally, evidence in specific cases in some countries shows that dialogue and negotiations can help in solving immediate disputes with governments, local communities and employers. However, even when an agreement is reached, the non-regular nature of employment makes it easy to ignore it or undermine it.

But government intervention may be needed to put in place a favourable regulatory environment

In the case of platform workers, but also of independent workers more generally, a key challenge in defending their interests is that bargaining collectively (particularly on wages) would be against competition rules which tend to consider them as “undertakings”. Traditionally, competition law has been primarily concerned with defending consumers from anti-competitive practices by sellers. Collective bargaining by the self-employed to fix fees or wages would therefore be in breach of the cartel prohibition. However, a less commonly applied (but equally important) objective of competition law is to prevent the abuse of monopsony power – which would clearly be of relevance to those cases where powerful platforms impose unfair prices or terms on their suppliers. A challenge to overcome in this area is that there is little agreement on the methodology for testing exploitative abuse claims, and authorities are obviously wary of unmeritorious claims. Moreover, antitrust authorities tend to consider that buyer power is less problematic since buyers’ gains are passed on to consumers if the final market is sufficiently competitive. Another promising avenue for strengthening the bargaining power of platform workers would be to seek exceptions to the cartel prohibition for certain markets. Yet, to avoid a war of lobbies, general rather than specific exceptions should be preferred.

Properly applying and/or revising competition law may be one issue, but another is labour law. Indeed, some workers may be excluded from collective bargaining because they are incorrectly classified as independent workers, whereas they should be considered employees. Such cases arise partly because of lack of enforcement of existing regulation, but also because many of the new forms of work have emerged at the fringes of labour market regulation, exploiting loopholes and ambiguities in existing regulation. Governments should therefore review existing labour market regulation to clarify and possibly update the definitions of ‘worker’ and ‘employer’, their respective rights and obligations, including the freedom to organise and collectively bargain.