# Policy Responses to New Forms of Work

OECD

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# *Foreword*

Globalisation, technological progress and demographic change are having a profound impact on labour markets, affecting both the quantity and quality of jobs that are available, as well as how and by whom they are carried out. The future of work offers unparalleled opportunities, but there are also significant challenges associated with these mega-trends. It is important that policy makers strengthen the resilience and adaptability of labour markets so that workers and countries can manage the transition with the least possible disruption, while maximising the potential benefits.

Against this backdrop, the OECD Future of Work initiative looks at how demographic change, globalisation and technological progress are affecting job quantity and quality, as well as labour market inclusiveness – and what this means for labour market, skills and social policy.

This report contributes to this initiative by providing a snapshot of the policy actions being taken by countries in response to growing diversity in forms of employment, with the aim of encouraging peer learning where countries are facing similar issues. In recent years, many countries have seen the emergence of, and/or growth in, particular labour contract types that diverge from the standard employment relationship and are reflecting on whether existing policies and institutions are capable of addressing effectively the current (and future) challenges of a rapidly changing world of work.

The work on this report was carried out by Marguerita Lane in the Skills and Employability Division of the Directorate for Employment, Labour and Social Affairs, with inputs from Ann Vourc'h, under the supervision of Stijn Broecke (Future of Work Team Manager) and Mark Keese (Head of the Skills and Employability Division). The report benefitted from helpful comments provided by colleagues from the Directorate for Employment, Labour and Social Affairs: Stefano Scarpetta (Director) and the authors of the 2019 OECD Employment Outlook; and from Anna Milanez from the Centre for Tax Policy and Administration. Project assistance was provided by Katerina Kodlova.

Thanks to all survey respondents within the Ministries of Labour in the participating countries, without whose efforts, this report would not have been possible. The report was also informed by incisive contributions by participants at the workshop and conference, held at the OECD Conference Centre in Paris on 16 March 2018 and 7 November 2018, respectively.

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# *Executive summary*

Recent labour market trends have prompted countries to reflect on whether existing systems of labour legislation, lifelong learning, social protection, taxation and collective bargaining are still fit for purpose. While in some cases they are, in others policies may need to be adapted to ensure protection for vulnerable workers and to prevent abuse, and to ensure that firms that comply with the regulations are not unduly disadvantaged.

This report provides a snapshot of the policy actions being taken by countries in response to growing diversity in forms of employment, with the aim of encouraging peer learning where countries are facing similar issues. The findings are based on a survey by the OECD and the European Commission of 44 Ministries of Labour (or the ministry with responsibility for labour market policy) in OECD, EU and G20 countries, carried out primarily between June and August in 2018.

The survey shows that many countries are reflecting on whether existing policies and institutions are capable of addressing effectively the current (and future) challenges of a rapidly changing world of work. In some cases, they are. In cases where they are not, a number of countries are already taking action to ensure protection for vulnerable workers and to prevent abuse.

While each country's situation is different, the report highlights a number of areas of common concern. One key issue mentioned by many countries is that of self-employment and, in particular, the issue of *misclassification* and the challenge of classifying workers that fall in between the traditional definitions of dependent employment and self-employment. Many countries acknowledged that ensuring the correct classification is key to ensuring access to labour and social protection, as well as to *collective bargaining* and *lifelong learning* – but even beyond the issue of classification, countries have made efforts to extend rights, benefits and protections to previously unprotected workers. For some countries, reducing *differences in tax treatment* between contract types could help reduce the risk of misclassification.

Several countries also report significant media and public debate on the topic of *platform work*: how to classify these workers and how to ensure adequate working conditions. A number of countries have already taken policy action in relation to platforms in the passenger transport sector, regulating the way they operate and imposing reporting obligations in relation to taxation.

Concerns are also raised about working conditions in fixed-term contracts and in variable hours contracts, the potential excessive and/or improper use of these working arrangements, as well as the potential disproportionate impact on younger people and on new entrants to the labour market. Regulation has attempted to strike an appropriate balance, allowing flexibility while preventing firms from using these arrangements to circumvent regulations associated with standard employment.

Gaps in social protection for those in new forms of work are also high up the list of concerns, and several countries mentioned ways to improve coverage for vulnerable self-employed workers, to enhance portability for individuals moving between different

employment statuses, and to provide multiple *layers* (contributory, means-tested and universal) of social protection.

Some countries are also considering ways to extend the right to collective bargaining rights to previously excluded groups of workers.

Box 1 presents a set of policy directions to guide policy makers in consolidating, reviewing and adapting policies and institutions in response to the emergence and growth in new forms of work.

**Box 1. Policy directions**

These policy directions will feed into a broader set of future of work policy directions, which will be set out in the *OECD Employment Outlook 2019* (2019[1]).

- Ensuring the correct classification of workers (and tackling misclassification) is essential to ensure that workers have access to labour and social protection, as well as to collective bargaining and lifelong learning.
- Countries should aim to minimise incentives for firms and workers to misclassify employment relationships as self-employment just in order to avoid tax and social contribution liabilities.
- Countries may want to consider extending rights and protections to workers in the "grey zone" between dependent employment and self-employment.
- Greater efforts are needed in some countries to ensure adequate working conditions in fixed-term, casual and platform work, and tackle the excessive and/or improper use of these forms of work.
- Social protection systems should be examined and, where necessary, reformed to improve access to benefits for workers in new forms of work.
- Governments may need to adapt existing strategies for Public Employment Services and public skills programmes to improve access and participation amongst those in new forms of work.
- Policymaking should be based on evidence rather than anecdotes and where countries are facing similar issues, peer learning can contribute to better policies.

# Chapter 1. Introduction

In recent years, many countries have seen the emergence of, and/or growth in, particular labour contract types that diverge from the standard employment relationship (i.e. full-time dependent employment of indefinite duration). These include temporary and casual contracts, as well as own-account work and platform work (i.e. work mediated by a digital platform company). While they may bring advantages in terms of flexibility for both workers and employers, concerns have been voiced around job quality and the potential negative impact of excessive and/or improper use of such contracts. Several countries have also seen growth in false self-employment, where employers seek to evade tax and regulatory dues and obligations.

These changes are driving policymakers worldwide to review how policies in different areas – labour market, skills development, social protection – can best respond. How can policymakers balance the flexibility offered by a diversity of employment contracts, on the one hand, with protections for workers and businesses, on the other?

This question has led the OECD and the European Commission to undertake a study on recent and emerging policy responses to new forms of work. This report draws on the results of a survey of 44 Ministries of Labour (or the ministry with responsibility for labour market policy) in OECD, EU and G20 countries (as shown in Table 1.1), carried out primarily[1] between June and August in 2018.

**Table 1.1. Countries that responded to the survey**

| | | | |
|---|---|---|---|
| Argentina | Estonia | Korea | Romania |
| Australia | Finland | Latvia | Russian Federation |
| Austria | France | Lithuania | Saudi Arabia |
| Belgium | Germany | Luxembourg | Slovak Republic |
| Bulgaria | Greece | Malta | Slovenia |
| Canada | Hungary | Mexico | Spain |
| Chile | Iceland | Netherlands | Sweden |
| Croatia | Ireland | New Zealand | Switzerland |
| Cyprus | Israel | Norway | Turkey |
| Czech Republic | Italy | Poland | United Kingdom |
| Denmark | Japan | Portugal | United States |

Note by Turkey:
The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union:
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

The questionnaire (found in Annex A) asked countries to report any recent or emerging public policy responses to new forms of work across a range of policy areas including employment regulation, working conditions, social protection, collective bargaining and skills development. While a variety of existing systems and contexts are represented among the countries surveyed, this report focuses more on the direction travelled (i.e. highlighting recent changes as reported in the survey) than on the point of origin. The policy responses should not be read as recommendations as the specific circumstances and challenges of each country vary, and most have not yet been formally evaluated.

The report provides a snapshot of the policy actions being taken by countries in response to growing diversity in forms of employment, with the aim of encouraging peer learning where countries are facing similar issues. Chapter 2 identifies the forms of work that are currently capturing the most attention in the policy arena in each of the surveyed countries, as well as the nature of the policy debate that surrounds them.

Chapter 3 to Chapter 7 deal with matters of labour regulation. In particular, Chapter 3 discusses policy approaches to worker classification. Chapter 4 to Chapter 6 cover other forms of work currently capturing the attention of policymakers: platform work, fixed-term work and variable hours contracts. Chapter 7 covers cross-cutting issues such as occupational safety and health and compliance with labour law.

Chapter 8 to Chapter 11 cover some common themes brought up by countries in relation to new forms of work, including efforts to: ensure adequate social protection (Chapter 8); improve participation in adult learning (Chapter 9) and access to Public Employment Services (Chapter 10); and tackle obstacles to collective bargaining and social dialogue (Chapter 11).

Chapter 12 describes efforts to build better evidence on new forms of work through data collection and through collaboration with other countries and across ministries. The report concludes in Chapter 13 with some policy principles for countries wishing to adapt to recent labour market developments, based on the information collected through this study and other OECD work on the Future of Work (OECD, 2019[1]).

## Note

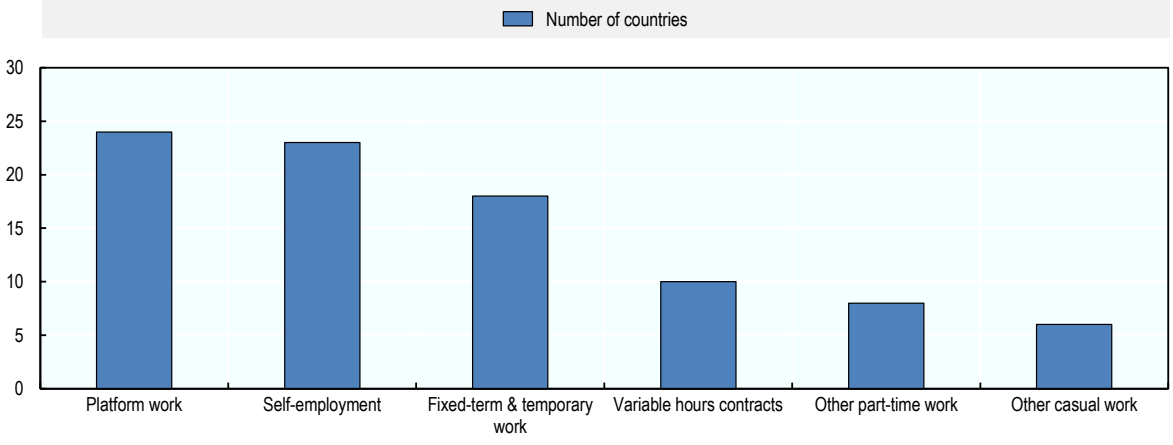
[1] 41 responses were provided by the end of August 2018, with a further 3 responses provided between September and November 2018, and further information provided through email correspondence up to February 2019.

# Chapter 2. What do countries mean by "new forms of work"?

This chapter provides an overview of the forms of employment that tend to capture most of the attention in the policy arena in the countries surveyed, as well as the nature of the policy debate that surrounds them.

Most of the policy discussion reported in the questionnaire concerned specific contract types that diverge from the "standard employment contract". The most commonly cited forms of work were self-employment and platform work, followed closely by fixed-term and temporary work. Many countries also mentioned variable hours contracts and other casual work (Figure 2.1).

**Figure 2.1. Which "new forms of work" receive the most policy attention?**




*Note*: Based on 39 responses to question (i) ("What forms of employment are being discussed in the policy arena in your country?") and question (ii) ("What topics/issues related to new forms of work capture the most attention?") Chile, Cyprus, Germany, Korea and the United Kingdom did not respond to either question.
*Source*: OECD/EC questionnaire on "Policy Responses to New Forms of Work".

The questionnaire allowed countries to discuss any forms of work currently capturing considerable policy attention in a national or subnational context. While some of these forms of work are not necessarily *new*, it is possible that they are being discussed with renewed focus in policy debates due to their prevalence among new business models, namely as platform or "sharing economy"[1] firms.

## 2.1. Self-employment, misclassification and the "grey zone"

When asked what forms of employment tend to capture the most attention in the policy arena, most countries mentioned self-employment, generally in the context of challenges related to worker classification.

The specific issue of "false" or "bogus" self-employment or employee misclassification was raised by approximately half of the countries that mentioned self-employment. This describes cases in which firms and/or workers misclassify what should otherwise be an employment relationship as a relationship between a firm[2] and an independent contractor. Such misclassification may be due to genuine error, but it may also be deliberate in order to avoid taxes and regulations. Portugal, for example, reported that there had been much public debate about bogus self-employment and that the government had taken steps to make it easier for workers to challenge their status.

Other countries referred to the challenge of classifying the status of workers that fall in between the traditional definitions of dependent employment and self-employment, particularly in the case of own-account workers (self-employed workers without employees). Countries specifically mentioned characteristics of the working relationship that might pose challenges for classification, such as economic dependence of the worker on a single client or the firm having control over how the work is performed. Workers with these characteristics are described later in this report as being in the "grey zone" between dependent employment and self-employment. Certain types of platform work (discussed in the next section) were also described as posing challenges for classification.

A number of countries mentioned the importance of ensuring the correct classification, since this can determine a worker's access to rights, benefits and protections. The Irish response noted some of the consequences of false self-employment, including a loss of tax revenue, and for the workers themselves, reduced entitlements to social protection, absence of employment protections and diminished collective bargaining rights. The Netherlands suggested that tax deductions for self-employed were a factor driving growth in dependent and false self-employment, and mentioned concerns about whether such workers were adequately protected in terms of labour law and social protection.

In addition, as discussed in later chapters, self-employed workers may face barriers to lifelong learning and other professional development services, and are typically expected to take responsibility for ensuring their own safety and health at work.

## 2.2. Platform work

Platform work also captures policy and media attention in many countries. This describes transactions mediated by an app (i.e. a specific purpose software program, often designed for use on a mobile device) or a website, which matches customers and clients, by means of an algorithm, with workers who provide services in return for money. Platform work can differ along several dimensions, including the relationship between the worker and the platform. A distinction is often made (as in a forthcoming OECD publication on measuring the platform economy (OECD[2])) between services performed digitally (i.e. micro tasks, clerical and data entry, etc.) and services performed physically or on-location (i.e. transport, delivery, housekeeping, etc.). The French response to the survey noted the great diversity in the nature of work mediated by platforms and the resulting difficulty in dealing with platform work within the traditional legal framework.

Platform work can be challenging to classify, according to many respondents – echoing the more general discussion on worker classification. In many cases, platform workers are classified as own-account workers for legal, tax and social protection purposes, even though the nature of some work performed may not be fundamentally different from traditional activities performed within an employment relationship. This can have the effect of excluding platform workers from rights, benefits and protections available to employees, as

discussed in the previous section. The Spanish questionnaire response explained that new technologies and more flexible ways of working had reduced the requirement for direct management of the work. They noted that this change in the nature of the labour relationship could increase the risk of misclassification, enabling employers to evade their responsibilities.

Many countries noted concerns about working conditions in platform work, in particular how to ensure job and income security (e.g. through a minimum wage), access to benefits, overall career development, and rights to collective bargaining (mentioned as a priority area by the Italian government).

At the same time, many countries acknowledged opportunities associated with platform work, namely: its advantages in terms of flexibility and autonomy for workers, its ability to provide an additional source of income and opportunities for self-employment, and the contribution that platforms make to economic growth. The Icelandic response said that the general attitude regarding on-demand work via apps and platforms was positive, but noted the importance of ensuring that previously earned labour market rights were not lost.

Given the diversity in the nature of work that can be mediated by platforms, some types of platform work attract more attention than others in the policy arena. A number of countries noted particular public debate in relation to platforms in the sector of passenger transport. In Portugal, it was reported that media attention was focused on the topics of income insecurity, workers controlled by algorithm rather than by an employer, excessive working hours, and the right to disconnect. Other concerns regarding passenger transport platforms did not directly relate to labour market issues. The Romanian response noted concerns about fair competition while the French response mentioned the potential for social conflict.

## 2.3. Fixed-term and temporary work

In 18 countries, fixed-term and temporary work were cited in their responses to the introductory questions on which forms of employment were receiving most policy or media attention. Economic precariousness, income security and working conditions were the issues most commonly mentioned in relation to these types of contracts.[3] Canada noted strong growth in full-time temporary employment since 1997, particularly in the health, education and service industries.

Canada and Italy both noted the potential of fixed-term and temporary work to act as a "stepping stone" to open-ended contracts, as well as their potential to act as a trap, where an individual simply moves from one low-paid temporary position to the next. Canada's questionnaire response cited a 2016 study (Busby and Muthukumaran, 2016[3]), which noted that while the share of temporary employment was relatively low, there were signs that this trend was having a greater impact on younger people and on new entrants to the labour market. The Italian response mentioned concerns about the social impact on young people, including the risk that the "trap" of successive fixed-term contracts could exclude or delay young people from certain aspects of adult life, such as accessing a mortgage.

Other challenges faced by fixed-term and temporary workers are discussed in this report, including difficulties in meeting contribution thresholds for social protection schemes, their higher risk of occupational accidents and the lower likelihood that employers invest in their training.

## 2.4. Variable hours contracts

Variable hours contracts were mentioned by 10 countries. These are typically part-time contracts that include a clause stating that hours worked can vary from one week to the next. The employer and employee may agree upon a minimum number of guaranteed hours, and in some countries, there may be no guaranteed hours (called a "zero hour contract"). Of the countries where zero hour contracts exist (Finland, Ireland, the Netherlands, New Zealand and the United Kingdom), most reported that there had been debate on this topic in recent years.

Some countries where variable hours contracts are permitted described the rationale for such contracts, i.e. enhancing flexibility within the range of available employment contracts, thereby enabling employers to meet variable labour needs. Discussion around the potential introduction of variable hours contracts was also reported in some countries without such arrangements (such as Lithuania and Saudi Arabia).

While variable hours contracts can enable firms to meet unforeseeable and temporary requirements for labour, there were some concerns about the potential excessive and/or improper use of these working arrangements. Concerns of policymakers have generally centred on the impact of unpredictability in working hours on employees' overall earnings, earnings volatility and their ability to plan ahead.

A number of countries reported discussions on part-time work more generally. Other *casual* working arrangements were also discussed, such as day labour in the agricultural sector (mentioned by Bulgaria and Romania), voucher-based work for domestic and agricultural services (Greece, Italy and Lithuania), and seasonal work (Canada, Greece and Lithuania).

Box 2.1 describes some recent trends in platform work, fixed term and temporary work and involuntary part-time work (which can include variable hours work).

**Box 2.1. New forms of work and recent labour market trends**

Chapter 2 of the *OECD Employment Outlook 2019* (2019[1]) discusses some recent labour market trends:

- Platform work is described as a "limited phenomenon", but one that throws a spotlight on the impact of technological progress on job quality. While existing evidence on the size of the platform economy is still scant and imprecise, most surveys covering a range of countries have produced estimates between 0.5% and 3% of the labour force (see Chapter 9 of the 2018 OECD Jobs Strategy (2018[4]) for a survey of the literature). One recent survey of 14 European countries indicates that less than 2% of the entire labour force, on average, mentions platform work as their primary activity (Pesole et al., 2018[5]). While the platform economy may have grown fast, there are signs that its growth may already have started to slow down.
- Between 1986 and 2016, temporary employment rose in half of OECD countries, with a very marked upward trend in some. In countries where the share has fallen, the reduction has typically not been large. Employment through temporary work agencies (TWA) has also grown in most OECD countries. The incidence of fixed-term contracts of very short duration (zero to three months), a category that often concerns policy makers, does not show a clear trend.

- The share of involuntary part-time in total part-time employment has risen in two thirds of OECD countries for which data are available, although there have been declines in some countries. While this increase in will have been partly crisis-related in some countries, in most cases one can observe a longer-term trend. In around half of OECD countries with available data, there has also been a rise in "short part-time" (i.e. individuals working 20 hours per week or less), partly driven by increases in very atypical contracts (including variable hours work).

## 2.5. Countries with little discussion on new forms of work

For countries where there was no (or negligible) discussion within the policy arena about new forms of work, another question in the questionnaire provided a space for respondents to say why this might be. A small number of countries provided a response to this question.

The Swiss response said that although there were some discussions of new forms of work (classification and taxation of platform workers, the impact of digitalisation on the labour market, and skills for the future), a recent study commissioned by the Swiss government (2017[6]) had found no increase in non-standard precarious employment relationships.

The Hungarian and Czech responses noted limited discussion on this topic so far, pointing out that employers had not been calling for new forms of work and that the traditional or standard forms of work were still dominant. The Czech response said that although there had been some analysis of the sharing economy, they were not aware of any discussion of other new forms of work. Hungary reported limited official or formalised discussion on this topic so far, potentially due to a prioritisation of other ongoing issues.

Israel said that discussions around new forms of employment had only recently emerged due to other priorities such as integrating target populations (such as ultra-Orthodox and Arab) into the labour market. They also reported that some policymakers were reluctant to take action on labour market trends, when these trends had not yet had a significant impact. However, they said they were planning strategically for the future, such as creating training programmes that would equip individuals to integrate into the changing labour market.

## Notes

[1] Some countries used the term "sharing economy", which can refer to the matching of assets (e.g. short-term letting of an apartment) with customers, as well as the matching of service providers and customers through online platforms.

[2] The contracting/employing entity may also be an individual, but discussions on worker classification in this report refer to a firm for simplicity.

[3] A few countries reported public discussion specific to temporary agency work (TWA), which can be complicated further by the multi-party (or triangular) nature of the employment relationships, i.e. between the firm, the employee and the agency. This particular topic is not covered in this study.

# Chapter 3. Worker classification

Worker classification fundamentally determines a worker's access to rights, benefits and protections. Employees are generally entitled to the minimum wage (either set in collective agreements or mandated at the national or regional level), overtime pay, holidays, sickness and accident insurance, unemployment benefits, protection against unfair dismissal and discrimination, as well as access to training programmes, freedom of association and the right to collective bargaining. In many countries, self-employed workers (including independent contractors) are not entitled to the same suite of benefits because of the entrepreneurial risk – i.e. in return for potentially high rewards, there is a greater element of risk that does not need to be insured against by society. However, in return, they may pay lower social security contributions, be able to claim business-related costs and benefit from tax incentives aimed at encouraging innovation and entrepreneurship.

As a result of the differences in entitlements, non-wage labour costs are often higher for standard employees than self-employed contractors from a firm's perspective. At times, this differential may be large enough to shift employer-employee preferences in favour of one employment form over another. Employers may deliberately misclassify workers in an attempt to circumvent employment regulation, fiscal obligations and worker unionisation, as well as to shift risks onto workers and/or gain a competitive advantage. Similarly, workers may choose between different employment forms in order to benefit from a better tax regime.

Such behaviour has several negative consequences. It results in workers losing employment protections and leaves firms that properly classify their workers at a competitive disadvantage. Where incentives are so strong as to lead to an "inefficiently high" level of self-employment, this could damage public finances, undermine the social protection system and have wider societal impacts (due to diminished access to healthcare, mortgages or housing, and maternity coverage). To the extent that the self-employed participate less in training, very high levels of self-employment could also act as a drag on productivity.

In most cases where individuals are falsely self-employed, courts will be able to determine this relatively easily using the applicable criteria and tests. However, there are also cases where the issue is less clear, and where genuine ambiguity may remain.

In the questionnaire, a number of countries acknowledged the potentially vulnerable position associated with workers who are in a "grey zone" between dependent employment and self-employment. Some specifically mentioned characteristics that might pose challenges for classification, such as economic dependence of the worker on a single client or the firm having control over how the work is performed. These characteristics mark certain self-employed workers out from the traditional notion of a self-employed entrepreneur, while at the same time these workers do not have access to most of the standard rights and protections afforded to employees.

The issue of worker classification and, in particular, the importance of ensuring that employees are correctly classified, were mentioned by most countries that responded to the questionnaire. While a number of countries reported discussion on this "grey zone" between dependent employment and self-employment, many of them also stated that this was not driving them to consider changes to the definitions of employee and self-employed, nor to the wider classification system.

This section notes some ways in which countries are attempting to:

- Reduce incentives for worker misclassification by reducing differences in tax treatment between employees and the self-employed;
- Ensure that existing regulations are being properly implemented and enforced;
- Extend particular employment rights to workers in the "grey zone" between dependent employment and self-employment; and
- Address the classification of platform workers.

## 3.1. The tax treatment of different employment forms and worker misclassification

This section focuses on the tax treatment of standard employment and self-employed contractors. If tax differences are large enough, they have the potential to shift the preferences of both firms and workers toward self-employment, encouraging misclassification. The section starts by reporting findings from an ongoing OECD study, which provides evidence on the size of the tax differential between self-employed workers and standard employees in a range of countries. It then discusses some policy actions, reported in the survey, to identify and address these differentials.

### *3.1.1. Comparing the tax treatment of employees and self-employed*

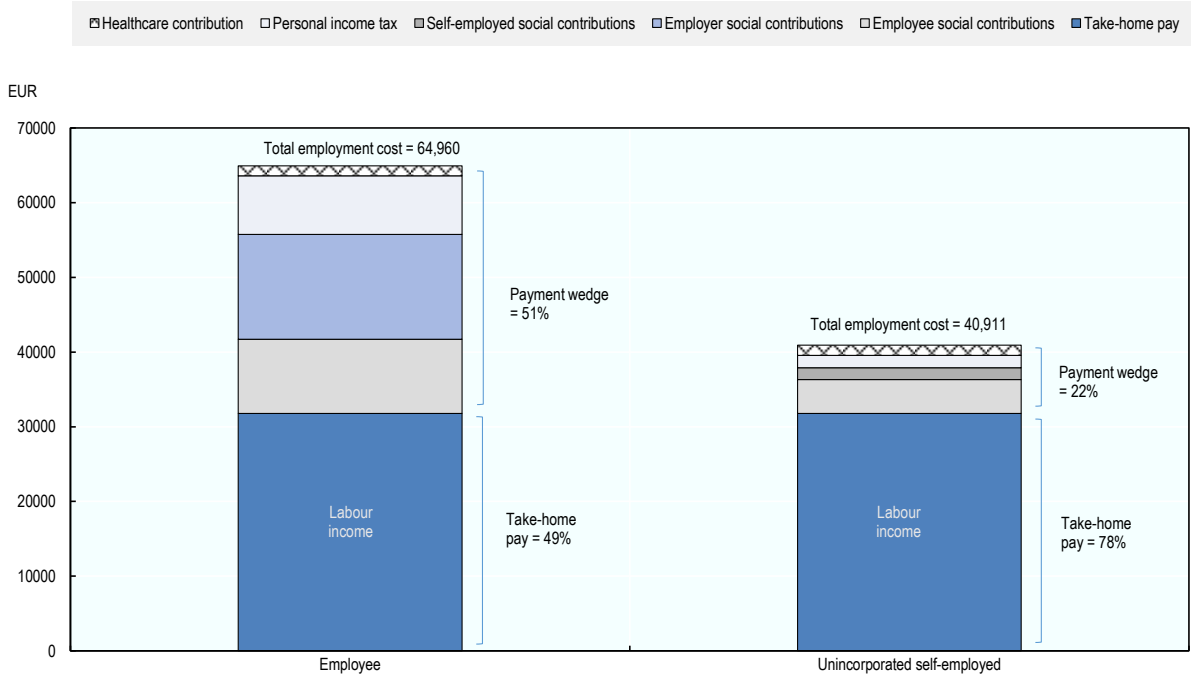
A forthcoming study by the OECD (Milanez and Bratta, forthcoming[7]) investigates the potential tax arbitrage opportunities provided by different tax systems by assessing the extent to which the taxation of self-employed workers differs from that of standard employees. The study models the labour income taxation, inclusive of social contributions, of standard employees and of self-employed workers according to 2017 tax rules. It currently covers eight countries: Argentina, Australia, Hungary, Italy, the Netherlands, Sweden, the United Kingdom and the United States.

While the tax treatment of standard employees and unincorporated self-employed contractors[1] varies between countries, there are some typical differentiating characteristics:

- While a firm that hires a standard employee typically faces labour costs consisting of the employee's gross wage and employer social security contributions, a firm that hires a self-employed worker such as an independent contractor is often not liable for social contributions on behalf of these workers.
- Whether hired as an employee or a contractor, the worker will typically be liable for personal income tax and social contributions. However, the level of social contributions may differ for employees and contractors.
- Some countries offer tax incentives for individuals who are self-employed or who operate small businesses.

For both types of worker, the analysis calculates the total labour cost to the firm and the worker's net take-home pay. The difference between these two quantities is the payment wedge, a measure of the net amount that government receives as a result of taxing labour income, inclusive of social contributions. The difference in total labour costs between each type of worker provides a measure of the incentive a firm may have to hire one type of worker as opposed to the other. Similarly, the difference in net take-home pay (held constant in this analysis) would provide a measure of the incentive workers face to be hired as a standard employee or as a contractor. As an example, Figure 3.1 shows that the tax system in the Netherlands provides an incentive for a firm to hire an unincorporated self-employed worker, as by doing so it pays a total employment cost of EUR 40 911 (with a payment wedge of 22%) instead of EUR 64 960 for a standard employee (with a payment wedge of 51%). This represents a total labour cost savings, for the firm, of 37%.[2]

**Figure 3.1. Decomposition of the total employment cost by employment type: Netherlands (individual take-home pay held constant)**




*Note*: In this exercise, the gross wage is equal to the average wage for employees. The calculations assume that the individual analysed is unmarried and without children.
*Source*: (Milanez and Bratta, forthcoming[7])

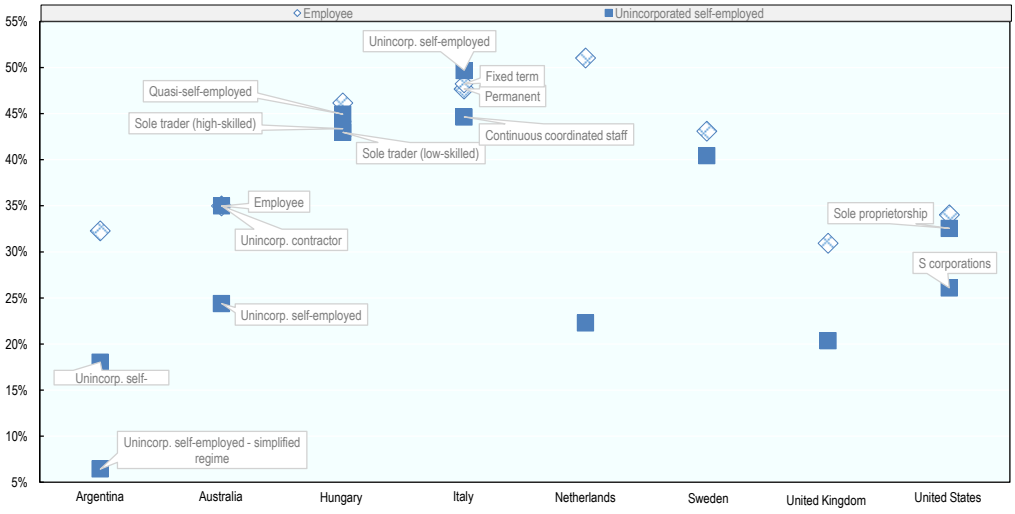
The lower employment cost for an unincorporated self-employed contractor relative to an employee in the Netherlands is attributable to two key differences in tax treatment:

- Firms that contract labour are not liable for employer social contributions on the worker's behalf and the workers themselves are not liable for the equivalent of employer social contributions.

- The unincorporated self-employed are eligible for two tax provisions that reduce the individual's personal income tax liability:
  - A private business ownership allowance (*zelfstandigenaftrek*), which allows eligible individuals to deduct a lump sum of EUR 7 280 from gross profit;
  - A profit exemption for small businesses (*MKB-winstvrijstelling*), which allows eligible individuals to deduct a 14% of profits net of the private business ownership allowance.

Figure 3.2 shows the payment wedges for all eight countries included in the analysis. As mentioned, the payment wedge is a measure of the net amount that government receives as a result of taxing labour income, inclusive of social contributions. Higher values indicate a disincentive to work, in the sense that higher payment wedges imply reduced take-home pay for workers and higher total labour costs for employers. Thus, to the extent that firms are able to select among employment forms, they will prefer to offer employment contracts with minimal payment wedges.

**Figure 3.2. Comparison of payment wedges calculated at average gross earnings by employment type, 2017**




*Note*: Some countries have multiple unincorporated self-employed or employee statuses (with different payment wedges), differentiated by labels above. The vertical axis shows the payment wedge in percent. These payment wedges were calculated using the average gross earnings in each country in 2017.
*Source*: (Milanez and Bratta, forthcoming[7])

Some countries (such as Hungary, Italy and Sweden) show little difference in payment wedges between different employment forms, suggesting low potential for tax treatment to drive preferences over work arrangements. Argentina, Australia, the Netherlands, the United Kingdom and the United States display greater differences in payment wedges, suggesting greater potential for tax arbitrage opportunities across employment forms.

It is nevertheless important to emphasise that the ultimate dynamics governing the prevalence of different working arrangements will also depend on a range of other factors such as the balance of market power between firms and workers, social protection

coverage, preferences around flexibility and control, industrial structure, age profile of the population, etc. For instance, even if there are tax incentives for self-employment, workers may still prefer an employment contract if there are large gaps in social protection for self-employed workers or they feel they can obtain higher rates of pay as members of an employee trade union than as individual contractors. Firms may still prefer to employ workers in order to monitor their work effort more closely and reap productivity gains that come with investing in their employees' skills.

Tax differentials may also reflect the particular policy priorities within a country. In some cases, the incentives may not even be deliberate, but may be consequences of trying to achieve another policy goal (e.g. tax advantages to encourage entrepreneurship, which may or may not be well targeted). As discussed in the next section, some countries have performed their own reviews of tax differentials across employment forms, the extent to which they drive preferences of firms and employees, and whether this is as intended.

### *3.1.2. National reviews of tax treatment of employees and self-employed*

In the Netherlands, Ireland and the United Kingdom, reviews of tax differentials between employees and self-employed have resulted in recommendations that they be reduced.

A 2015 report suggested that growth in self-employment in the Netherlands was above the EU average, and was being driven by tax incentives originally introduced to encourage entrepreneurship, innovation and growth, as well as by procedures for declaring employment status to the tax office (2015[8]). The report considered this undesirable from an economic perspective and presented policy options for reducing differentials between employment and self-employment, in terms of social contributions, taxation and labour law treatment. The government at the time attempted to take action to target false self-employment, as described in the next section.

In the United Kingdom, the government found an effective self-employment subsidy of GBP 5.1 billion, or GBP 1 240 per person per year (2017[9]). Initially, the tax differential aimed to promote entrepreneurship – but the policy fails to target this population effectively. Instead, it incentivises firms and workers to identify their relationship as self-employment so they can save money, without a commensurate reduction in benefits. In the United Kingdom, the difference in benefits entitlement between employees and the self-employed is very low, limited to contribution-based jobseeker's allowance or statutory maternity/paternity/adoption/shared parental pay (Adam, Miller and Pope, 2017[10]). The implication is that regular workers subsidise the self-employed since they pay higher contributions without a commensurate increase in benefits.

The independent Taylor Review of modern working practices (2017[11]) suggested that the rates of social contribution paid by employees and self-employed people be more closely aligned, while expanding social protection coverage for the self-employed (such as providing parental leave). In the government's response to the review (2018[12]), it accepted that the differences in rates were no longer justified but said that it had no plans to revisit the issue (following the reversal of a decision in the Spring 2017 budget to increase social contributions for self-employment).

A 2018 report by the Irish Department of Employment Affairs and Social Protection on the use of intermediary-type structures and self-employment arrangements (2018[13]) recommended reducing the differential in social contribution rates between the employed and self-employed:

*"Accordingly the group is of the view that there is a strong rationale for increased social insurance rates not just to reduce Exchequer revenue losses but to reduce distortive effects in the labour market, to reduce the incentive to construct disguised employment relationships that may undermine employment rights, to bring the Irish social insurance system into closer alignment with systems in other EU countries and to better reflect the increased range of benefits now available to self-employed people" – (2018[13])*

As part of a wider effort to address tax evasion and avoidance, the Swedish government has appointed a committee of inquiry to review the tax system for the self-employed. One of the objectives of the review will be to assess whether the system is being abused to circumvent employment protection legislation and occupational health and safety rules in the labour market, and leading to false self-employment. A final report is to be published in June 2019.

### *3.1.3. Reducing tax discrepancies between employees and self-employed*

The Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities reported actions since 2013 to address the tax wedge between employment and other forms of work by increasing social contributions, as part of wider efforts to include self-employed workers and those performing work under civil contracts in the social security system.

In the Netherlands, in light of the 2015 report (2015[8]) that showed that growth in self-employment was being driven by tax incentives and by procedures for declaring employment status to the tax office, the government at the time attempted to take action to target false self-employment. It reduced tax rates for employees by introducing a tax credit for low incomes, which had the effect of halving the cost difference for employers between hiring employees and self-employed at minimum wage levels.

At the time, responsibility for declaring the correct employment status fell on workers, who would sometimes be in a weak bargaining position relative to their client. Under the new Assessment of Employment Status (Deregulation) Act, liability for all insurance and tax payments would fall on the firm, where a contractor was found to be an employee. However, enforcement of this new measure was suspended until 2020 following very negative reactions from both firms and self-employed individuals.

*"People who are self-employed and have no employees have a key position on the labour market. It is important that they choose to be self-employed for the right reasons and that they are not engaged in what are actually formal employment relationships. The Assessment of Employment Status (Deregulation) Act failed to create clarity with respect to the latter; in fact, the law caused unrest and as a result too many truly independent contractors were adversely affected. False self-employment and unfair competition on employment conditions are still a problem, particularly in the lower segment of the labour market." – 2017–2021 Dutch Coalition Agreement (2017[14])*

The next government proposed some further measures in its 2017 coalition agreement (2017[14]). Tax deductions for the self-employed would be limited to the basic rate, reducing the cost difference for firms between employees and self-employed at higher income levels. Additionally, to ensure that low income self-employed would not undercut employees, self-employed with hourly earnings under 125% of the minimum wage were to be automatically classified as employees unless they worked for a firm for a short time and did not perform the firm's core activities.

In November 2018, the Dutch Ministry of Social Affairs and Employment announced that it was establishing a high-level independent commission to prepare for future labour market developments, including those pertaining to relationships between client/employer and contractor/employee.

## 3.2. Enforcing existing regulations for worker classification

In some cases, existing regulations for worker classification may be deemed adequate, but efforts might be needed to enhance awareness so that firms and workers can correctly identify employment relationships. Some countries have attempted to facilitate challenges to classification by placing the burden of proof on the employer (rather than on the employee) or by simplifying enforcement procedures. Other countries' efforts to tackle misclassification and false self-employment include offering an amnesty to encourage firms to reclassify misclassified workers and launching targeted inspection efforts.

### *3.2.1. Helping firms and workers identify employment relationships*

Most countries reported efforts to provide guidance and information to firms and workers that would enable them to classify their working relationship correctly. Almost all of these countries mentioned documentation available online (sometimes in multiple languages) that contained information about the characteristics that would point to the existence of an employment relationship. The Australian response described their online decision tool, which asks contractors 16 questions to determine what type of working relationship they are likely to have (Australian Government, 2016[15]).

Many countries reported a specialised team within the labour inspectorate or ministry for employment that could provide verbal or written advice to queries from firms or workers. Other countries (such as Ireland in 2018) have run awareness campaigns on false self-employment.

### *3.2.2. Reversing the burden of proof*

In some countries (including Greece, Hungary, Italy and Saudi Arabia), there is already a presumption of an employment relationship meaning that the burden of proof is placed on the employer (rather than the employee) in disputes about employment status. In these cases, the firm must establish that the relationship is not one of dependent employment. Reversing the burden of proof can facilitate challenges to classification for the worker.

In Belgium, there is a presumption of an employment contract (subject to certain criteria) in certain "at-risk" sectors including caretaking/security, construction, transport, cleaning, agriculture and horticulture. An ongoing review is assessing how to update the list of sectors in light of recent trends.

In an effort to discourage employers from misclassifying employees as self-employed independent contractors, the *Canada Labour Code* was amended in 2018 to explicitly prohibit employers from treating employees as if they were not employees (e.g. by misclassifying them) and to put the burden of proof on the employer. In other words, the employer must demonstrate that a person who has made a labour standards complaint against them is not their employee. This provision was not yet in force at the time of writing.

In the United Kingdom, the Taylor Review (2017[11]) included recommendations aimed at making it easier for individuals to take legal action, such as reversing the burden of proof where employment status was in dispute and allowing individuals to get an early and free determination of employment status. The review noted that wronged individuals could be discouraged from taking action due to the prospect of retaliation from the employer during a long tribunal process. In its response (2018[12]), the government explained that it

did not consider it necessary to take action on these points as the removal of employment tribunal fees in 2017 had already resolved the issue of cost.

### *3.2.3. Simplifying enforcement procedures*

Portugal and Slovenia mentioned efforts to simplify enforcement procedures in cases of suspected misclassification, making it easier for workers to challenge their employment status in the first place and/or to get redress once misclassification is discovered.

Following public concern about precariousness and growing bogus self-employment, Portugal introduced a new, simplified judicial procedure to target the growth of bogus self-employment through changes in 2013 and 2017. It provides workers with a speedier court decision recognising the existence of an employment relationship. In addition, employers may receive a pre-notification from the labour inspection authority to regularise a bogus self-employment relationship where one has been detected.

In Slovenia, the Labour Inspection Act was updated in 2017 to address issues with the use of civil law contracts and other observed labour market trends. Where the Labour Inspectorate discovers elements of an employment relationship in a civil law contract, the inspector prohibits work under the contract and obliges the employer to provide a written employment contract to the person within three working days. Also in 2017, a Collective Actions Act was adopted which introduces the possibility of class action lawsuits in workers' rights cases.

### *3.2.4. Offering an amnesty to firms that reclassify employees*

To tackle labour informality in Argentina, the government has proposed a "Labour Whitening Law" (*Ley de Blanqueo Laboral*). This law would offer an amnesty on fines and termination of criminal proceedings for employers who report and regularise informal employment relationships.[3] At the same time, there are plans to increase the labour inspectorate's capacity to detect informal relationships.

### *3.2.5. Targeted inspection efforts*

Some countries are also targeting inspection efforts on particular sectors or geographical areas known to have a greater prevalence of false self-employment:

- Irish social welfare inspectors were said to be developing a more targeted approach to dealing with false self-employment in particular sectors of the economy, including engaging with trade unions to help identify particular sectors or geographical areas that would benefit from inspection.
- The Spanish response mentioned campaigns targeted at false self-employment and specific actions as part of the Labour and Social Security Inspection Strategic Plan 2018-2020 dedicated to platform work, including developing a dedicated operative procedure, providing specialised training to inspectors and implementing regional pilot programmes.
- Greece reported that a new inspectoral body for the agricultural sector was planned.

## 3.3. Extending rights to workers in the "grey zone"

While some workers may be misclassified, others will genuinely be difficult to classify as either self-employed or dependent employee – i.e. there is genuine ambiguity about the employment status. Many countries acknowledged the potentially vulnerable position associated with workers who sit in this "grey zone" between dependent employment and self-employment. These workers may share characteristics of the self-employed (e.g. they can choose when and where to work; they use their own equipment); but they may also share some characteristics of employees (e.g. they cannot set their own rates of pay, they may have to wear a uniform, they cannot be replaced in executing their tasks by someone else).

Because of this, it can be argued that some of the labour rights and protections given to employees should be extended to workers in the "grey zone" as well. The challenges for policymakers are to identify the workers in the "grey zone" and decide which labour laws and protections should be extended to them (and how).

Several countries have already identified "dependent" or "employee-like" self-employed as groups to whom particular employment rights should be extended. The definitions and eligibility criteria associated with these groups varies widely between countries. In countries that extend rights to "dependent self-employed" workers, the eligibility criteria generally rests on relying on a single client for a particular share of the worker's income (as in Portugal and Slovenia). Other countries extend rights based on the working relationship resembling an employment relationship in other ways (as in the United Kingdom).

The Japanese questionnaire response reported ongoing discussions on "Work Style Similar to Employment", with two government-established expert study groups (one since 2017 and the other since 2018) currently analysing whether these arrangements should be considered merely business transactions between independent businesses or instead equivalent to relationships between an employer and employee.

In most countries that extend particular employment rights to certain vulnerable self-employed workers, this is not a recent development – and the motivation varies from country to country. The following sections describe some of the more recent policy actions, where this approach has been introduced for the first time or where there have been some recent reforms to existing systems. A distinction is made between the different rights that have been extended (whether social protection, labour law protections or collective bargaining rights), although some countries extended multiple rights.

### *3.3.1. Extending social protection*

In Portugal, changes in 2012 extended unemployment protection to the economically dependent self-employed, in cases whether there was termination of professional activity. When first introduced, the eligibility criteria for dependent self-employment was that at least 80% of yearly income came from a single client. In 2018, the criteria was reduced to 50%, with the effect that more self-employed workers are covered by unemployment protection and that more client firms take responsibility for financing this protection.

In Spain, the *trabajador autónomo económicamente dependiente* (economically dependent self-employed, or "TRADE") category has enhanced access not just to social protection (health and accident insurance, pensions and unemployment benefits), but also to a wide range of rights and protections, including the right to breaks and work/life

balance, non-discrimination, and the right to be collectively represented through the Independent Work Council (*Consejo del Trabajo Autónomo*). They need to rely on a single client for at least 75% of their income.

Some recent changes to these groups' eligibility criteria and entitlements are discussed in Section 8.1.1 on social protection.

### *3.3.2. Extending labour law protections*

In January 2019, a Court in Turin ruled that the compensation paid to home-delivery platform workers (employed as a type of "semi-subordinate" worker called *collaboratori coordinate e continuative*) should be based on the compensation paid to employees in the same sector. The reasoning was based on article 2 of Legislative Decree 81 of the *2015 Jobs Act* which extended employment protection to workers who "continuatively collaborate, by providing exclusively personal work, with a main client who can organise the activity also with respect to the time and the place of work".

In 2013, new laws entered force in Slovenia to extend limited labour law protections to economically dependent self-employed persons. The definition of economic dependency rests on earning at least 80% of annual income from a single client and the rules guarantee protection against discrimination, assurance of minimum notice periods and payment for contractually agreed work, and protections against the cancellation of a contract where there are no valid reasons.

In Austria, Germany and Korea, there are also groups of dependent or employee-like workers who have been granted enhanced rights (relative to independent self-employed workers) in relation to one of more of the following labour law protections: protection against discrimination, paid leave, coverage under minimum wage or working time legislation, and protection under rules governing dismissal. These entitlements are generally not new.

### *3.3.3. Extending collective bargaining rights*

In Sweden and Canada, dependent self-employed workers have had the right to bargain collectively since the mid-1900s. In both cases, there is some evidence that the application of the dependent self-employment status is relatively limited today, potentially because such workers have obtained employee rights in other ways. In Sweden, Rönnmar (2004[16]) suggests that individuals in this group are nowadays considered employees and covered by labour law in general.

There has been discussion in Canada about extending employment rights to certain contractors whose status lies in between employee and independent contractor. The Government of Canada's 2006 Fairness at Work report (Arthurs, 2006[17]) noted that the binary approach of "employees" and "independent contractors" did not address the full continuum of employment relationships that exist, and included a recommendation to create a new category of 'autonomous worker' with limited coverage under federal labour standards. A labour market review commissioned by the Ontario Ministry of Labour (Mitchell and Murray, 2017[18]) suggested amending the definition of "employee" to include dependent contractors. Québec and Yukon already define employee within labour standards legislation as explicitly including contract workers. There is also evidence of Canadian courts acknowledging dependent contractors as existing on a continuum between employment and independent contracting, in the context of wrongful dismissal actions.

Some countries that extend labour law protections to particular groups of workers in the "grey zone" also extend collective bargaining rights to the same group. Some examples are dependent "workers" in the United Kingdom, TRADE (*trabajador autónomo económicamente dependiente*) in Spain and employee-like workers in Germany.

### *3.3.4. Deciding which workers to extend rights and protections to*

In order to extend protections to workers in the "grey zone", countries need to decide which workers to extend these protections to. Countries have taken various approaches, and each comes with its advantages and disadvantages (see OECD Employment Outlook 2019 (2019[1])). For example, many countries have singled out the financially dependent self-employed. This approach has the advantage of targeting a very specific and relatively well-defined group – however it comes at the expense of excluding many other workers in the grey zone who may not be financially dependent on one client/employer, but nonetheless deserve stronger protections because they share other characteristics with employees. Another approach is to use a vaguer definition and capture a wider group of workers – but this comes at the risk of creating two rather than just one grey zone: one between "employees" and this "third category" of workers; and one between this "third category" and the self-employed. This was a view put forward in the Belgian response. These issues, and alternative solutions, are further analysed and discussed in the OECD Employment Outlook 2019 (2019[1]). In addition to workers in the "grey zone" there may be other self-employed workers to whom countries may wish to extend rights and protections. In particular, there are self-employed workers who have little bargaining power vis-à-vis their clients/employers, so that pay rates are often set unilaterally by the latter. This is a particular problem where such workers have few or no outside options.

## 3.4. Addressing the classification of platform workers

Classification of platform workers is considered an active policy issue in many countries. Platform work is not in and of itself a form of employment, but rather refers to the means (an app or a website) through which the work is obtained, paid for and, sometimes, carried out. In practice, platform workers are often classified as own-account workers for legal, tax and social protection purposes.

However, "platform work" is heterogeneous in terms of the range of activities performed and the relationships with the platform, with workers covering the full spectrum from those resembling employees to those in the "grey zone" to those that are very clearly self-employed. The appropriate worker classification will therefore depend on the nature of the work performed through the platform.

In many countries (including Australia, Canada, Spain and the United Kingdom), there are court cases ongoing in which platform workers are challenging their employment status, particularly in the delivery and passenger transport sector.

In Portugal, new legislation came into force in November 2018 addressing employment conditions with respect to platforms operating in the passenger transport sector. The "Uber law" said that drivers must have an employment relationship with the platform, as these platforms were judged transportation operators, not just intermediation services. These platforms had previously been in a grey zone regarding digital and transport regulation. This legislation provided a legal framework for them to operate, but also imposed new restrictions, including an obligation for drivers to acquire a special road-

training certificate valid for 5 years and a 5% tax on platforms' net profit to cover administrative and regulatory costs.

The United States response noted that the regulation of relationships between workers and platforms was an active area at state level. They mentioned that several states had recently passed laws providing that workers are independent contractors, rather than employees, of platforms, if several conditions are met. Conditions include that the worker and platform enter into a written agreement specifying the independent contractor relationship; the platform does not unilaterally prescribe hours during which the worker must be available to accept service requests, and the platform does not prohibit the worker from using other platforms.

The Swiss response said that the government had committed to examining the advantages and disadvantages of an intermediary status (between employment and self-employment) for platform workers. The intention was to enhance social security for platform workers, even if it will not be as favourable as social security for employees.

The Norwegian Sharing Economy Committee (appointed by government) delivered a report in the beginning of 2017 on opportunities and challenges presented by the sharing economy, including labour market considerations. The Committee focused particularly on taxi and passenger transport services and the accommodation market. A majority of the Committee concluded that developments within the sharing economy did not challenge the term "employee" in a manner that could be dealt within the existing Working Environment Act.

The classification of platform workers was also discussed within the Danish Disruption Council. It was widely acknowledged within the Council that the existing classifications were fit for embracing new ways of working, including platform work. Whether someone should be classified as an employee or a self-employed was said to depend on the specific conditions in each particular case, among other things on the relationship between the platform, the place where the work is carried out and the person who performs the work.

## Notes

[1] The study also includes analysis of the tax treatment of incorporated self-employed workers.

[2] In this example, the worker's net take home pay is held equal across employment forms. This ensures the worker's indifference between contract types in order to analyse the firm's perspective. Results based on the inverse of this exercise (holding the firm's total labour cost equal in order to analyse the individual's perspective) are shown in (Milanez and Bratta, forthcoming[7]). The study also presents findings across the income distribution.

[3] One problem with amnesties is that they create an expectation of further amnesties and therefore can encourage future deviations, except if they are introduced simultaneously with a real change in legislation that makes the reduction of sham arrangements more durable.

# Chapter 4. Platform work

Apart from the question of how to classify platform workers, countries also mentioned challenges concerning how to ensure job and income security, access to benefits, overall career certainty and collective bargaining in platform work. The French response noted some of the broader issues associated with large international players in the platform economy, such as taxation and data protection. It also mentioned the potential for platform work to lead to social conflicts, particularly in the private hire car and taxi sector.

At the same time, many countries acknowledged opportunities associated with platform work, namely: its advantages in terms of flexibility and autonomy for workers, its ability to provide an additional source of income and greater opportunities for self-employment, and the contribution that platforms can make to economic growth. The Canadian response made the point that some of these advantages may be particularly attractive for groups currently underrepresented in the labour market (e.g. newcomers, indigenous populations, persons with disabilities), in which case the disadvantages could also disproportionately impact these groups.

This section outlines some policy responses to the emergence and growth in platform work, including:

- Specific measures to improve working conditions in platform work;
- Regulating the operations of platforms, particularly in the passenger transport sector;
- Implementing new rules on taxation and transparency; and
- Promoting the use of platforms.

## 4.1. Specific measures to improve working conditions

In France, the legislator has granted certain rights to platform workers through the August 2016 *El Khomri law* (or *loi Travail*) on labour, modernisation of social dialogue and securing of professional careers. Specifically, where the platform determines the characteristics of the service provided, it must also take responsibility for occupational liability and professional training. For example, if workers voluntarily insure themselves against the risk of occupational accident or illness, the platform must provide reimbursement. The law was also said to remind platform workers of their right to organise and strike (although this was not a new entitlement).

There is also a proposal in the draft *Mobility Law* to give platforms the option to draw up a charter outlining their methods for exercising social responsibility, including offering additional rights to workers who use their platforms. The idea is that platforms could make commitments to improve working conditions, with the understanding that this would not introduce the presumption of an employment relationship. It is important to

point out that this is merely a proposal and that, at the time of writing, the process of adaptation of the text was said to be not yet completed.

## 4.2. Regulating the operation of platforms

When asked about regulations on the operation of platforms, almost all of the examples cited by countries pertained to platforms in the passenger transport sector and generally, they did not directly relate to labour market issues. Instead, many of the measures described were intended to address concerns about unfair competition with traditional (and potentially more highly regulated) services. Canada, Romania, Switzerland and Argentina noted that the operation of passenger transport platforms had been regulated in certain regions or municipalities.

Lithuania reported that it was one of the first countries to create a legal framework for "ride-sharing type" services. The new amendments to the Road Transport Code came into force in January 2017. Individuals that wish to provide passenger transport services must register a declaration that they meet insurance, roadworthiness and tax payment requirements.

In 2018, the Latvian government approved regulations for providing passenger transport services, including via platforms. The rules require providers of these services to register for a special permit. At the time of writing, they planned to continue discussion to identify areas for future improvement. For example, while currently only professional service providers (legal persons or firms) can provide passenger transport services, including via platforms, the Ministry of Economics was considering the idea of also allowing non-professional service providers (peers) to register for the special permit and provide passenger transport services via platforms. They were also considering the idea of blocking platforms in the case of non-compliance and obligating platforms to provide transaction data to the tax authorities (as discussed in the next section).

## 4.3. Taxation and transparency

France and Estonia mentioned recent reporting obligations placed on platforms and/or platform workers, in order to tackle underreporting of income and to ensure equal tax treatment of platform workers and comparable workers selling services through traditional means.

- In Estonia, there is collaboration between platforms and tax authorities. For example, passenger transport platforms share information on the financial transactions between customers and drivers so that the tax authorities can prefill drivers' tax forms.
- In France, a 2016 amendment to the Finance Act stipulates that from 2019 all online platforms (whether based in France or abroad and regardless of area of business) would be obliged to send directly the earnings of their workers to the tax authorities.

## 4.4. Promoting the use of platforms

Belgium and Saudi Arabia mentioned measures to promote the use of platforms.

- Since 2016, in Belgium, there have been favourable tax measures (i.e. 10% income tax instead of 33%) for workers who earn under EUR 5000 annually

through officially recognised platforms. Such measures incentivise side work in the platform economy.

- The Saudi Arabian response said that they encourage platform creation in general and gave examples of platforms launched by government agencies: (i) *Maroof*, which allows individuals to set up online stores, and (ii) *Bahr*, an online market for professional services.

Section 9.2 describes some efforts within public employment services to enable jobseekers to take up opportunities in the platform economy, developing initiatives to refer jobseekers to these opportunities or developing skills programmes to help individuals to acquire the necessary digital skills.

# Chapter 5. Fixed-term contracts

A number of countries reported recent policy discussions about growth in fixed-term and temporary employment. In most OECD countries (and all EU countries), individuals in fixed-term employment contracts generally have access to similar rights (i.e. in respect to employment protection rules) and benefits as comparable employees on open-ended contracts. However, this does not rule out the possibility of practical barriers to exerting these rights and accessing benefits for temporary workers on fixed-term contracts, and that their jobs might still be more precarious and of lower quality.

Some countries noted the potential of fixed-term contracts to act as a "stepping stone" to open-ended contracts (particularly for younger workers or the long-term unemployed) while allowing firms to meet temporary labour needs. However, countries also had concerns that successive fixed-term contracts could act as a trap, where an individual simply moves from one low-paid temporary position to the next. Hungary noted the potential for fixed-term contracts to contribute to labour market segmentation. Social and economic precariousness was a major concern, according to the Italian questionnaire response, including the risk that this trap may exclude or delay young people from certain aspects of adult life, such as accessing a mortgage.

Policy responses targeting the use of fixed-term contracts include:

- Restricting the use of fixed-term contracts;
- Implementing financial disincentives for fixed-term contracts; and
- Encouraging the use of open-ended contracts by enhancing flexibility or through financial incentives.

## 5.1. Restrictions on the use of fixed-term contracts

Many countries have attempted to limit the use of fixed-term contracts by placing restrictions on when and for how long firms can use them.

Within EU member states, EU directive 1999/70/EC already establishes some general principles and minimum requirements aimed at balancing flexibility in working time and security for workers. The directive applies a principle of non-discrimination, requiring that fixed-term workers be treated in a manner no less favourable than comparable permanent workers are. It also requires member states to take measures to prevent abuse, which can include requiring objective reasons for renewal of a fixed-term contract, imposing a maximum overall duration or imposing a maximum number of renewals.[1] In implementing the EU directive, EU member states have had the freedom to choose which exact measures to take, with the result that there are significant variations across EU countries in regulations for fixed-term contracts.

A new Labour Code came into force in Lithuania in July 2017, expanding the variety of available employment contracts and introducing some changes to the regulations on fixed-term contracts.

*"The new Labour Code expanded the diversity of employment contracts to satisfy the needs of the employees and employers, more flexible regulation of working hours and adaptation of the dismissal regulation to the market conditions" – Lithuanian questionnaire response*

Changes to the regulations on fixed-term contracts included:

- Introducing the possibility to use fixed-term contracts for work of a permanent nature (as long as they do not account for more than 20 per cent of all contracts concluded by the firm);
- Doubling the rate of unemployment insurance contributions for fixed-term contracts compared to open-ended contracts;
- Decreasing the maximum overall duration for successive fixed-term contracts from five years to two years (with some exceptions); and
- Imposing a minimum notice period for work relationships of more than a year and providing for severance pay where the relationships of over two years.

In Japan, following the Action Plan for the Realization of Work Style Reform adopted in March 2017, the government said that it had amended the law, which included regulations to eliminate irrational inequalities in the working conditions of irregular workers (including fixed-term workers as well as part-time and dispatched workers) with respect to those of regular workers. In practice, this means that fixed-term workers are now entitled to equal treatment to regular workers with the same duties and same "scope of shift in duties and personnel positioning" (including opportunities for advancement/promotion). Employers are also now obliged to explain working conditions to fixed-term workers and, if they differ to those of regular workers, why this is.

A number of other countries also mentioned recent tightening of the restrictions around fixed-term contracts:

- Germany's 2018 Coalition Deal included an agreement to limit the number of fixed-term contracts concluded without an objective reason per firm, and to reduce the maximum duration from 24 to 18 months (if an objective reason is provided, the maximum is five years).
- The *Decreto Dignità* in Italy, issued in July 2018, has introduced a rule that after 12 months it is only possible to renew the fixed-term contract if the firm provides specific justification. At the same time, the maximum overall duration of successive fixed-term contracts has been reduced to 24 months (from 36) and the maximum number of renewals has been reduced from five to four.
- Recent legal decisions by the Swiss Federal Supreme Court (in 2017) and the Swiss Federal Administrative Court (in 2016) have made it more difficult for firms to use multiple extensions of fixed-term contracts to avoid dismissal protection clauses.
- In 2018, the Portuguese Government negotiated new measures with social partners with the aims of decreasing excessive use of non-permanent contracts and increasing protection for fixed-term workers. The Parliament approved the

draft law in general terms. The draft law is subject to further discussion and approval in specific terms.

By contrast, the Netherlands and Estonia have moved in the direction of loosening restrictions around the use of fixed-term contracts:

- The Dutch government's 2017 coalition agreement (2017[14]) included measures to roll back some restrictions that had been implemented in 2015, such as reverting back to three years (from two years) the period after which consecutive fixed-term contracts are automatically converted into an open-ended contract.
- Estonia reported proposals to reduce restrictions on consecutive entry into and extension of fixed-term employment contracts as part of an attempt to make employment contracts more attractive relative to contracts for provision of services, thereby strengthening social and labour protection for workers.

While French law sets a maximum total duration (18 months) and number of renewals (twice) for fixed-term contracts, legal changes in September 2017 have given precedence to the maximum duration and number of renewals set within sectoral agreements, with the consequence that a shorter duration or higher number of renewals (or equally a longer duration and lower number of renewals) could be set, according to the specific requirements within each sector.

## 5.2. Financial disincentives for fixed-term contracts

Some countries have chosen to impose higher social contribution rates for fixed-term contracts, with the intention of making them more costly for employers relative to open-ended contracts. In this way, firms may be forced to internalise the total cost of using fixed-term contracts, including any negative externalities (e.g. in the form of more frequent unemployment benefit dependency).

Italy and Spain reported attempts to impose higher unemployment insurance contributions for fixed-term contracts. For instance, in Italy, an additional contribution of 1.2% was introduced for fixed-term contracts in 2012 to finance the universal unemployment benefit scheme for dependent workers (with the justification that workers in temporary jobs are more likely to become unemployed). The *Decreto Dignità* issued in July 2018 increases the additional contribution by 0.5% for each renewal of a fixed-term contract. In both Italy and Spain, there are also compensating rewards if the contract is converted into a permanent job.

Spain also mentioned a fight against very short-term contracts, "the use of which was said to have rocketed with the financial crisis, with contracts of under 7 days said to account for one in every four new contracts. They noted an increase in social contributions for contracts of under 5 days from 36% to 40% adopted in December 2018.

France also has penalties in terms of unemployment insurance contributions for a certain type of short-term contract in certain sectors. The *inter-professional agreement on the reform of unemployment insurance* (22 February 2018) opened a discussion about incentives to reduce short-term contracts, including employers' contributions that better reflect the cost of unemployment insurance (through an experience rating system).

Similarly, in Portugal, proposed amendments, which would increase the social security contribution rate for fixed-term employment contracts when their share exceeds a certain threshold, have been submitted to Parliament.

## 5.3. Incentives to use open-ended contracts

Some countries have also attempted to encourage employers to hire on open-ended contracts by enhancing the flexibility associated with these contracts or by offering financial incentives.

As part of the 2017 coalition agreement, the Dutch government announced a package of measures to "shrink the gap" between open-ended and fixed-term employment contracts. Some of the measures were aimed at making standard employment contracts more flexible, e.g. reducing barriers to dismissal in cases of multiple grounds for dismissal, extending probationary periods (to five months) for new employees on open-ended contracts, reducing the entitlement to paid sick leave, and reducing firms' unemployment insurance contributions for open-ended contracts.

*"The aim is to prevent workers from being trapped in a 'revolving door' of fixed-term contracts" – 2017-2021 Dutch Coalition Agreement (2017[14])*

In 2015 in Italy, a new type of open-ended contract with increased flexibility with respect to dismissal was introduced. A fiscal incentive accompanied this new contract: a three-year exemption from social security contributions for new open-ended contracts signed in 2015 (up to a maximum). The 2016 Stability Law maintained this financial incentive for 2016, but provided the exemption for two years only (and with a reduced maximum). In 2018, social contributions were halved for new open-end contracts for workers aged under 30 (35 in 2018). However, the recent *Decreto Dignità* has increased compensation for unfair dismissal in open-ended contracts and a September 2018 Constitutional Court ruling has given full discretion to judges to fix the specific amount between the minimum and the maximum fixed by the law. These two recent changes may have the effect of diminishing flexibility with respect to dismissal.

In 2017, France attempted to encourage employers to hire on open-ended contracts by facilitating dismissal procedures: an upper limit for unfair dismissal was set, the scope of fair dismissal was restricted, an easier collective dismissal procedure was created (*rupture conventionnelle collective*) and delays for dispute resolution were shortened.

Croatia and Portugal also mentioned financial incentives for employers that offer open-ended contracts to young workers and, in the case of Portugal, also to the long-term unemployed. In Croatia since 2014, a firm that that offers a young worker (under 30 years) an open-ended contract is exempted from paying part of the social contributions for that worker for a period of five years. Similarly, in Portugal, contributions are reduced for employers who sign permanent contracts with young first-time workers or long-term unemployed. The reductions were recently lowered but extended to a longer period and made portable from one employer to the next.

## Note

[1] At the same time, the Canadian response cited a report on precarious work (Busby and Muthukumaran, 2016[3]), which suggests that temporary work does act as an important stepping stone towards full-time permanent employment. The report favours a "Flexicurity" policy approach, which tries to strengthen the social safety net (e.g. through retraining programmes and improved social protection) against volatile labour market conditions, and is critical of attempts to restrict the use of these contract types.

# Chapter 6. Variable hours contracts

A number of countries reported policy action with respect to "variable hours" (or "on-call") contracts. These are typically part-time contracts that include a clause stating that hours worked can vary from one week (or day) to the next. The employer and employee may agree a minimum number of guaranteed hours, and in some countries, there may be no guaranteed hours (called a "zero hour contract"). Countries where zero hour contracts exist tended to report that these contracts have been subject to public debate in recent years. Other countries where variable hours contracts are permitted described the rationale for such contracts, i.e. enhancing flexibility within the range of available employment contracts and thereby enabling employers to meet variable labour needs.

In most OECD countries (and all EU member states[1]), individuals on part-time employment contracts – including those with a variable hours clause – have access to similar rights and benefits (e.g. regarding pay, annual leave and dismissal) as full-time employees under the principle of non-discrimination. Workers on part-time contracts and variable hours contracts alike may face difficulties where hours worked (and therefore overall earnings) are lower than desired. At the same time, part-time contracts play an important role in providing flexibility for workers that desire it, boosting labour market participation.

The main additional concern associated with variable hours contracts is in the unpredictability in working hours, and the consequences on overall earnings, earnings volatility, and the worker's ability to plan ahead. Most policy responses reported dealt with this aspect. Other policy actions (such as removing exclusivity clauses and obligations for employees to accept work) may be intended to tackle potential imbalances in bargaining power between employer and employee – and may indirectly help employees to deal with some negative consequences if they can combine multiple jobs.

The proposed *EU Directive on Transparent and Predictable Working Conditions*, which would give the right to advance notice for shifts and set restrictions on exclusivity clauses, is intended to cover all workers in all forms of work, including those on variable hours contracts and in other casual work.

The policy responses covered in this section include:

- Introducing variable hours contracts;
- Addressing unpredictability in working hours;
- "Banning" zero hour contracts; and
- Removing exclusivity clauses from zero hour contracts.

## 6.1. Introducing variable hours contracts

Some countries have considered introducing variable hours contracts for the first time. In Estonia, amendments were discussed in 2018 that would introduce on-call work contracts,

with a specified minimum and maximum number of hours. The Estonian questionnaire response stated that the intention was to allow more flexibility within the existing framework of employment contracts in order to provide employees with adequate social protection. In Lithuania, a draft version of the new Labour Code indicated that zero hour contracts would come into force from 1 January 2017. However, in both countries, the proposals were shelved following discussions with social partners. The introduction of zero hour contracts is under review in Saudi Arabia at the time of writing, with the Ministry of Labour and Social Development considering options for ensuring pension coverage.

## 6.2. Addressing unpredictability in working hours

In Finland, following public debate on the subject, new legislative amendments concerning variable hours contracts (including zero hour contracts) entered into force on 1 June 2018.

*"A key objective of the legislation on zero hours contracts and other variable hours contracts was to improve the status of affected employees and safeguard proper compliance with the regulations on protection against unjustified termination, including sick pay, pay for the notice period as compensation and unemployment security. Another objective was to allow employers to use different kinds of variable hours contracts to meet unforeseeable and temporary need for labour. However, variable hours contracts may not be used to circumvent the requirements laid down to protect employees." – Finnish questionnaire response*

As of 1 June 2018, employers can only propose variable working hours if they have a variable need for labour and the minimum number of hours cannot be lower than the employer's actual need for labour. Employers must provide in writing the key terms of the contract, describing when and to what extent the employer has need for labour. The intention is to ensure that both parties have the same expectation of the relationship. Other aspects of the Finnish amendments on variable hours contracts concern rostering, sick pay for days when the employee would have otherwise worked, and termination of the employment relationship, as described in Box 6.1.

**Box 6.1. Finnish amendments on variable hours contracts**

Finnish amendments concerning rostering, sick pay and termination of the employment relationship include the following:

- Shift rosters must be provided at least a week in advance and employees cannot consent to work unlimited additional hours on top of the minimum.
- An employee is entitled to sick pay if the illness falls on a day when the employee would have otherwise been at work at the time.
- Where a contract is terminated and the employer offers a lower number of hours in the notice period than the previous average, the employer must compensate the employee for loss of income.
- Where an employee on a zero hour contract decides to resign, having been offered fewer than 18 hours of work during the previous 12 weeks, there will no longer be a gap before the individual can receive unemployment benefits. It was already the case that an employee on a zero hour contract could already receive adjusted unemployment benefits if fewer than 18 hours were offered.

In the UK government's response to the Taylor Review (2018[12]), it accepted the recommendations regarding variable hours contracts. One recommendation was that the government ask the Low Pay Commission to consider introducing a higher rate of National Minimum Wage for hours not guaranteed as part of a contract. Another recommendation was to give those on zero hour contracts for over a year the right to request a more predictable contract. In this case, the government committed to establishing this right for all workers, including those on zero hour contracts and agency workers.

In Ireland, following public debate on the subject of variable hours and zero hour contracts, the Employment (Miscellaneous Provisions) Act 2018 was enacted and is scheduled to come into force in March 2019. The intention behind the legislation is to put stronger protections in place for employees who, not by choice, are working in less secure or variable hours arrangements and, while not prohibiting outright all flexible arrangements, to prevent the abuse of such arrangements. The Act will force employers to provide the most essential terms of employment (including what they reasonably expect the normal working day and normal working week to be) on or by the fifth day of employment or face fixed payment notices or criminal prosecution. The Act will introduce banded hours contracts for employees who habitually work more hours than their contracts state and will provide for compensation for low-paid employees called in and then sent home without work. The Act also strengthens anti-penalisation provisions to protect employees who invoke their rights under this legislation.

*"[This] is a response to the Programme for Government commitment to tackle problems caused by the increased casualisation of work and to strengthen the regulation of precarious work" – Irish questionnaire response*

In Australia, many workers with variable hours fall under the broader definition of "casual employee", which accounts for approximately 25 per cent of all employees in Australia. Most occupations and industries have a set of minimum standards that apply to casual work (as well as part-time work), including clauses on minimum engagement periods (e.g. three hours in the fast food industry), ordinary hours of work and overtime, and procedures around providing and changing rosters. In addition, in exchange for not having access to the full set of employment benefits as permanent employees (specifically, paid leave entitlements), casual employees receive a pay loading of 15-25% of the equivalent hourly permanent rate. In Australia, as a result of a 2017 decision by the independent Fair Work Commission, some eligible casual employees with 12 months of regular service have the right to request conversion to permanent employment. Employers may only refuse this request on reasonable grounds. The Government has committed to extend this right to all eligible casual employees.

In New Zealand, the Employment Relations Act 2000 contains some protections for employees with variable hours. For instance, an employer must give reasonable notice to cancel a shift or must provide compensation if the notice specified in the employment agreement is not given. An amendment to the Employment Relations Act that is set to come into force on 6 May 2019 requires that all employees are provided rest and meal breaks (with limited exceptions where employees work in essential services or are in engaged in New Zealand's national security),with the duration based on the number of hours worked.

Canada has also recently taken action to address unpredictable schedules. In 2017 and 2018, Canada made significant changes to the Canada Labour Code to address unpredictable working hours, including: requiring employers to provide written work

schedules at least 96 hours in advance; giving employees the right to refuse a shift if this notice was not observed (subject to exceptions); setting minimum rest periods between shifts; and giving employees the right to refuse overtime if they are required to deal with family responsibilities. These amendments were expected to come into force over in 2019 once necessary regulations had been drafted and outreach with employers and employees had been conducted.

The Norwegian Parliament has recently adopted a legislative amendment in the Working Environment Act (which will come into force in January 2019), which includes an obligation to provide information about working time (including when the worker is required to work) in the employment contract for workers who have a variable work schedule. The response from Norway noted the impression that "zero-hour" contracts and lack of predictability in working time is particularly extensive in the Temporary Work Agency (TWA) sector and to a lesser extent in other sectors.

## 6.3. "Bans" on zero hour contracts

New Zealand and Ireland have taken actions in relation to zero hour contracts which, in both countries, have been announced in the media as "bans" on zero hour contracts.

In New Zealand, following a large union-led campaign, a 2016 amendment to the Employment Relations Act prohibited any employment agreement that does not provide guaranteed hours but obligates employees to make themselves available for work for a certain number of hours every week. Employers and employees must record any agreed hours in the employment agreement, and if an employer wishes to require an employee to be available above those agreed hours they must provide an availability provision in the employment agreement that sets out reasonable compensation for the employee being required to be available to work. If an employment agreement does not provide guaranteed hours, the employee is free to decline any work offered and protected from any adverse treatment as a result of refusal.

In Ireland, the Employment (Miscellaneous Provisions) Act 2018 (scheduled to come into force in March 2019) prohibits zero hour contracts in most, but not all, circumstances. Zero hour contracts will still be allowed in situations of genuine casual employment and where they are essential to allow employers to provide cover in emergency situations or to cover short-term absences. "If and when" contracts[2], which describe arrangements in which an employer is under no obligation to provide guaranteed hours and the worker is under no obligation to accept any hours offered, will continue to be allowed, although employees in such arrangements will be covered by the regulations under the Employment (Miscellaneous Provisions) Act 2018.

## 6.4. Removing exclusivity clauses from zero hour contracts

In New Zealand, the 2016 amendment to the Employment Relations Act also regulated the use of secondary employment provisions (in all contracts) unless they have genuine reasons based on reasonable grounds and declared in the employment agreement.

In the Dutch government's 2017 coalition agreement, a stated intention was to prevent zero hour contract workers being subject to permanent availability requirements where the work does not warrant them. The reasoning being that this may make it difficult for workers to accept other part-time jobs. It was noted that in many sectors, good arrangements had already been made in this respect. Other proposed solutions were to

remove the requirement to respond to work calls immediately (generally, at least 4 days' notice should be given) and to introduce an entitlement to payment of wages if a shift is cancelled.

*"Employers, client organisations and workers need the labour market to offer flexibility. There are different types of flexible working arrangements that meet different needs. However, it is important to prevent organisations using these arrangements to compete unfairly on employment conditions and to avoid excesses in which employers' and clients' need for flexibility undermines workers' opportunities on the labour market" – 2017–2021 Dutch Coalition Agreement (2017[14]).*

## Notes

[1] Within EU member states, EU directive Directive 97/81/EC applies a principle of non-discrimination, requiring that part-time workers be treated in a manner no less favourable than comparable full-time workers are (unless objectively justified).

[2] A study carried out in 2015 found that such contracts were actually more common in Ireland than zero hour contracts (O'Sullivan et al., 2016[25]).

# Chapter 7. Cross-cutting issues

Previous sections have dealt with false self-employment, workers in the "grey zone" between dependent employment and self-employment, platform workers, and those on fixed-term and variable hours contracts. This section presents policy responses to issues that are not specific to any one of these groups, but may be more pertinent to non-standard workers than to standard employees.

Policy responses were reported in the cross-cutting areas of:

- Ensuring adequate Occupational Safety and Health in non-standard contracts; and
- Ensuring compliance with labour law.

The questionnaire also asked about any policy responses taken to protect non-standard workers from discrimination, i.e. by buyers of goods/services, by platforms/employers, or within platform algorithms. However, no recent public policy responses aimed at tackling this issue within new forms of work were reported. Many countries reported that existing anti-discrimination regulations were sufficient to address new forms of work.

## 7.1. Occupational Safety and Health in non-standard contracts

Countries mentioned efforts to improve Occupational Safety and Health (OSH) for contractors, platform workers, and fixed-term and temporary workers. Bulgaria and Sweden reported that safe and healthy working conditions were a concern in new forms of work. Portugal, Slovenia, Sweden and Hungary described how they were updating OSH strategies to address new forms of work. Greece stated that OSH for non-standard workers was a priority for the Hellenic OSH Labour Inspectorate.

*"[…] These workers might not have the same level of protection for their safety and health risks and also might not be trained and informed about the risks" – Greek questionnaire response*

Self-employed contractors typically take responsibility for ensuring their own safety and health. Many of the risk factors for contract work also apply to platform work, such as the lack of a regular and/or common workplace and autonomy in working hours. Characteristics of platform work which may further increase the risk of injury include potentially high levels of competition (encouraging long hours and risk-taking), the type of tasks performed (e.g. transport), and the informal and multilateral nature of working arrangements.

While fixed-term and temporary workers will have an employment contract in which the employer must comply with OSH regulations, temporary workers are consistently shown to be at higher risk of occupational accidents. Moving from one workplace to another, a lack of familiarity with the workplace increases the risk of injury, especially if employers provide less health and safety training to this group than to permanent employees.

### *7.1.1. Extending OSH protection to non-employees*

Employers in all countries must comply with occupational safety and health regulations while the self-employed typically take responsibility for ensuring their own safety and health. However, in many countries, OSH regulations for employers are broad enough to cover more than just the traditional employment relationship. In some countries, OSH protection has been decoupled from the employment relationship (Australia, Ireland, Lithuania, Malta, Turkey and the United Kingdom). In others, OSH regulation is connected to the workplace rather than to any specific contract type (as in Australia, Bulgaria, Canada and Poland), which would provide protection to contractors with access to a common workplace.

Canadian employers currently have an obligation to protect the health and safety of any "person granted access" to their workplace regardless of their status (i.e. including contractors/non-standard workers, health and safety officers, and the general public). A 2017 amendment strengthened the protection of persons granted access to the workplace and extended workplace protection to cyberbullying when the relationship between parties is work-related.

In Estonia, amendments to the Occupational Health and Safety Act are being discussed which would extend regulations to individuals contracted for provision of services and working alongside one or more employees. The amendments would place obligations on the individual and on the employer to inform the other party of their work-related hazards and of the measures for avoiding such hazards. The same regulation already applies to sole proprietors.

While the Korean Occupational Safety and Health Act does not currently provide for safety and health measures for non-regular workers, the Korean response reported a growing consensus on the need for industrial accident prevention for dependent contractors, on-demand workers who use delivery apps and other non-regular workers. In response to growth in platform work and growth in occupational accidents for platform workers, the Korean government plans to extend the Occupational Safety and Health Act so that "all working people" are protected. It has also been preparing to revise the Occupational Safety and Health Act fully to require employers to take specific health and safety measures (e.g. providing protective equipment and training) for non-regular workers, including dependent contractors and delivery workers.

### *7.1.2. Taking special measures for fixed-term and temporary workers*

Lithuania and the United Kingdom reported special measures for temporary workers.

- The UK Health and Safety Executive has published guidance targeted at temporary workers and other workers 'new to the job'.
- In Lithuania, temporary workers are only permitted to start work when they are familiar with the requirements of the safety and health legislation, risks specific to their work and how to use tools. They must be trained in safe work at the specific workstation, even if they have already received instruction from a temporary employment agency.

## 7.2. Ensuring compliance with labour law

While compliance with labour law is important for all workers, non-standard workers may be particularly vulnerable to legal breaches if they are in a weak bargaining position.

Section 3.1.2 discussed policy measures taken to ensure that existing regulations regarding worker classification are being properly implemented and enforced, including helping firms and workers to identify their employment relationships and strengthening enforcement. This section notes some policy measures taken to ensure that firms comply with labour law more generally, including:

- Ensuring workers are aware of rights, responsibilities and working conditions, e.g. obliging firms to provide written confirmation of worker status, running public information campaigns;
- Making it easier for workers to take legal action in cases of labour violations, e.g. simplifying procedure, reducing legal costs, protecting workers against retaliation;
- Strengthening penalties in order to encourage compliance, e.g. greater penalties (financial, naming and shaming or imprisonment), particularly where firms continuously breach the law; and
- Strengthening the labour inspectorate to monitor and detect breaches, e.g. increased resources and powers, restructuring of the responsible agencies, new inspection strategies, and efforts to collaborate.

### *7.2.1. Ensuring workers are aware of rights, responsibilities and working conditions*

In many countries[1] (but not all), an employment contract must be concluded in writing. In Poland, action was taken in 2016 to prevent the so-called "syndrome of the first day" which described a situation in which an employer using an illegal working arrangement could claim it was the employee's first day when the labour inspector requested the contract. Under the new rule, the contract must confirm the arrangements in writing prior to admitting an employee to work. The Japanese response reported that discussions were underway on the topic of "clear indication of contractual terms" in relation to Work Style Similar to Employment.

Canada, Portugal and Slovenia mentioned activities they were undertaking to inform workers of their rights:

- According to the Canadian response, the Canadian Labour Program is attempting to improve its internet presence and use of social media tools to reach workers employed in traditional and non-traditional workplaces. They mentioned that inspectors are also engaging in outreach efforts, targeting specific sectors to provide information on employees' rights and employers' responsibilities.
- Portugal mentioned awareness campaigns carried out with the social partners in relation to undeclared work (in 2014/2015) and temporary work (anticipated).
- The Slovenian Ministry of Labour, Family, Social Security and Equal Opportunities reported multiple activities to inform all parties within the labour market of the existing legal framework, and their rights and obligations, including forthcoming campaigns on the topic of health and safety in the workplace.

### *7.2.2. Making it easier for workers to take legal action*

Australia, Estonia and Saudi Arabia reported efforts to simplify procedures for workers wishing to take legal action:

- In 2016, the Australian Fair Work Ombudsman launched an online anonymous tip-off tool.
- Although not directly driven by labour market trends, in Estonia, a new Labour Dispute Resolution Act entered into force in in January 2018, with the aim of simplifying out-of-court settlement of disputes before the labour dispute committee.
- The Ministry of Justice started to run labour courts in Saudi Arabia in 2018, facilitating the online filing of cases and imposing a time limit on court decisions.

Some countries (including Bulgaria, Lithuania, Romania and Saudi Arabia) mentioned that workers were already exempt from costs in labour dispute procedures.

Canada described an upcoming policy change to address the issue of retaliation. Once in force, amendments to the Canada Labour Code passed in 2017 will permit employees to make a written complaint to the Canada Industrial Relations Board in case of retaliation against them for trying to exercise a labour standards right. If the employer fails to prove that the action was not a prohibited reprisal, the Board will have the power to order that the employee be reinstated and/or compensated for lost wages.

### *7.2.3. Strengthening penalties to encourage compliance*

In the UK government's response to the Taylor Review (2018[12]), it accepted a number of recommendations aimed at strengthening penalties for employers who break the law, including: quadrupling the maximum penalty for aggravated breach of employment law; introducing uplifts in compensation for repeated breaches in similar cases; and introducing a scheme to name and shame employers who fail to pay employment tribunal awards and simplifying the enforcement process for individuals in this situation.

Although not specifically targeted at new forms of work, the Canada Labour Code is being amended to strengthen compliance and enforcement measures. Key measures include public naming of violators in the case of repeat or serious offences and prohibiting serious violators from being awarded federal contracts.

In Australia, the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 introduces higher penalties for deliberate and systematic underpayments, increased penalties for record keeping and payslip failures, and new penalties for deliberately hindering or obstructing inspectors. As a response to the work of the Australian Black Economy Taskforce, the Australian government is consulting with stakeholders on amending the Fair Work Act to increase penalties for sham contracting.

*"The Australian Government is strongly committed to workers receiving the fair and proper entitlements and reinforces that all businesses, including those in the platform-based economy that treat workers as independent contractors must ensure that they have categorised workers correctly" – Australian questionnaire response*

In Austria, laws brought in through the Wage and Social Dumping Control Act (since 2011) have strengthened penalties for underpayment, not just in respect of the national minimum wage but also in respect of collective agreements. There are now increased penalties for refusal to provide wage documentation, which underpaying firms had previously exploited.

Other countries (Lithuania, Hungary, the Slovak Republic and Poland) also reported higher sanctions for repeat violations. In Poland, if such violations are considered

continuous and repeated, it may be assessed whether they meet the criteria of crime. If so, and if such violations are malicious or persistent, the punishment could be imprisonment. In Saudi Arabia, the Ministry of Labour can suspend services for employers who repeatedly break the law. Cyprus and Romania reported recent increases in financial penalties for undeclared work.

### *7.2.4. Strengthening the labour inspectorate*

Many countries reported recent efforts to strengthen the labour inspectorate in light of anticipated labour market developments. Sweden referred to new challenges for the labour inspectorate:

*"Distance work and sharing economy can lead to the blurring of the role and responsibilities of the employer in relation to the employee. Combined with mobile work the physical work site is disappearing […]. This poses two major questions to the labour inspectorate: whom and what to inspect, and how to encourage better primary prevention at the work site" – Swedish questionnaire response*

The Swedish response called for combining OSH enforcement with enforcement of conditions of employment and better cooperation with social partners. They mentioned areas of potential collaboration between labour inspectorates in different countries, such as joint inspection and information campaigns (as is being done within an ongoing Nordic project on undeclared work) or the creation of a Nordic liaison network for the exchange of information, methods and personnel (particularly to deal with undeclared work).

In Latvia, within the framework of the project of the European Social Fund "Improvement of the Practical Implementation and Monitoring of Labour Safety Regulations", the government is planning a study on "New forms of employment and their application in practice". The aim of the study is to improve understanding of the application of new forms of employment in practice and, based on the analysis, to obtain proposals for more successful use of the new employment forms. Latvia also reported discussions on new forms of employment in meetings of labour inspectors between the Baltic States in 2016 and 2017.

In July 2018, the Spanish government put in place a "Strategic Plan for Decent Work 2018-2020", to tackle bogus self-employment and abuses in temporary and part-time work among other issues. Two immediate action plans were launched to fight against fraud in temporary and part-time contracts. They also announced organisational measures to strengthen the labour inspectorate and increases in sanctions.

Many countries reported recent efforts to increase the capacity of the labour inspectorate, including:

- Enhancing training for inspectors, including in some cases training specific to false self-employment and other new forms of work (Argentina, Greece, Hungary, Ireland, Portugal, the Slovak Republic, Spain, Sweden and Turkey);
- Modernising systems and using new technological tools (Argentina, Canada, Chile, Finland, Hungary, Latvia, Malta, Mexico, Portugal, Saudi Arabia and the Slovak Republic);
- Increasing the number of labour inspectors (Germany, Israel, Lithuania, Malta, the Netherlands, New Zealand, Portugal, the Slovak Republic and Saudi Arabia); and
- Providing additional funding (Australia, Canada and New Zealand).

Italy and the United Kingdom mentioned initiatives to restructure the agencies responsible for labour inspection.

- In 2015, a new labour inspectorate agency was established in Italy, merging previously separated bodies within the Ministry of Labour, the National Security Institute and the National Health and Safety Insurance Institute. The goal was to strengthen labour market intelligence and increase efficiency of inspections.
- In 2016, the UK government created a new statutory role of Director of Labour Market Enforcement, with responsibility for providing strategic direction to labour market enforcement bodies to ensure effective coordination and targeting of enforcement efforts. This step was welcomed in the Taylor Review (2017[11]), which also recommended that HMRC take responsibility for enforcing core pay rights (minimum wage, sick pay and holiday pay) for the lowest paid workers. The UK government accepted this recommendation.

Poland, Hungary and Australia described new powers granted to labour inspectorate authorities.

- In Poland, the powers of the Chief Labour Inspectorate were increased in 2017 so that it has responsibility for inspecting whether minimum hourly rates are observed within specific civil law contracts.
- In an effort to improve efficiency, powers of inspection were given to district offices in Hungary in 2018, in cases considered simple to assess.
- In Australia, the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 gives the Fair Work Ombudsman the ability to compel a business or person to attend an interview or give evidence, subject to tribunal oversight.

Chile, Mexico and Turkey mentioned new strategies for labour inspection.

- In Chile, a draft law (at the time of writing) aims to improving efficiency and effectiveness in labour inspections, by establishing clear division between different functions, and reforming management processes.
- In Mexico, the regulatory framework for labour inspection was reformed in 2014, with the aim of increasing coordination between labour inspection authorities, promoting voluntary compliance through provision of guidance, and increasing transparency in inspections.
- In light of recent work trends and seeking a more sustainable, efficient and effective approach, the Turkish Labour Inspection Board said that it was moving towards a more prevention-oriented and "risk-based" sectoral approach. Scheduled inspections of temporary employment relationships have started to be implemented in private employment offices. Inspections have also started to be implemented in sectors and areas where flexible work is prevalent, such as construction, IT and national chain market establishments and small scale local market establishments. In addition, in-service training on flexible work and the rights and obligations of flexible workers was provided to inspectors.

## Note

[1] For instance, this is a key part of the *EU Written Statement Directive (91/533/EEC)*.

# Chapter 8. Strengthening social protection

Social protection systems have often been designed with full-time, permanent, dependent employees in mind, leaving other workers at a potential disadvantage.

As detailed in the *OECD Employment Outlook 2019* (2019[1]), in many countries, self-employed workers are not entitled to the same suite of benefits as employees. For instance, in many countries, self-employed workers are not entitled to unemployment insurance as the potential loss of income is seen as entrepreneurial risk, to be borne by the individual and not by society (although a basic level of social assistance may be available). Even where they have access, self-employed workers may face difficulties in meeting eligibility criteria or contribution thresholds of the schemes that they can access. They will typically also face a higher administrative burden than employees to report their income, pay social protection contributions and access benefits.

In most countries, worker classification determines access to social protection. In the Dutch response to the questionnaire, they stated their intention to enhance social protection for those in new forms of work by first tackling issues surrounding worker classification.

In cases where employees are misclassified as independent contractors, this will generally have the effect of reducing their access to social protection. Workers who sit in the "grey zone" between dependent employment and self-employment are at risk of being similarly disadvantaged, even though their working arrangements may have some of the characteristics of a typical employment relationship. Some countries will see this as rationale for enhancing social protection for workers in the "grey zone".

Generally, part-time and fixed-term employees will have the same access to social protection as employees on full-time, open-ended contracts. However, they may have lower (or no) entitlement to benefits depending on their pay or hours worked. In other words, they may have "statutory" access to certain benefits, but have lower "effective" access to the same benefits compared to standard employees.

The following policy responses are discussed in this chapter:

- Extending benefits to workers in the "grey zone" between dependent employment and self-employment;
- Extending benefits (including unemployment insurance) to the self-employed more broadly;
- Simplifying administrative procedures for the self-employed;
- Improving effective access to benefits for fixed-term and part-time employees;
- Increasing the role of tax-financed benefits, including means-tested benefits and universal benefits; and
- Reviewing social protection systems in the context of new forms of work.

## 8.1. Extending benefits to workers in the "grey zone"

Some countries have identified certain groups of workers in the "grey zone" between dependent employment and self-employment to whom they think social protection rights should be extended. Some countries have implemented special measures for "dependent" or "employee-like" self-employed workers while others have targeted specific sectors or occupations.

### *8.1.1. Special measures for dependent or "employee-like" self-employed workers*

Chapter 3 discussed how in some countries (including Italy, Portugal and Spain), groups of "dependent" or "employee-like" self-employed workers have been granted enhanced social protection coverage. Some recent changes are discussed here.

Italy's "*collaboratori*" category was created with the purpose of improving access to social protection for those in between independent contractor and employee status. Unemployment benefit for *collaboratori* was established in 2017, along with new protections (for both *collaboratori* and freelance professionals) in case of maternity, illness or accident, including the possibility to postpone/suspend or find a suitable replacement for an activity for a client, subject to agreement with them.

In Portugal, changes in 2012 extended unemployment protection to economically dependent self-employed, in cases whether there is termination of professional activity. In 2018, the eligibility criteria for economic dependency were relaxed with the effect of extending unemployment protection to more self-employed workers. In 2019, the requirements regarding qualifying periods for access to benefits in case of cessation of activity were reduced from 720 days of contributions in the previous 48 months to 360 days of contributions in the previous 24 months.

The Korean response to the questionnaire reported that the government plans to improve the employment insurance system, allowing workers who fall into the grey area between the employed and the self-employed to enroll in employment insurance, specifically those directed and supervised by and strongly dependent on their employers. It also mentioned that the government has been considering the adoption of employment insurance for "artists", as one of these dependent worker groups.

The Japanese response mentioned social protection as one of the topics included in one of their studies on Work Style Similar to Employment, previously mentioned in Section 3.3. At the time of writing, the discussion was said to be continuing in the study group (since October 2018).

Box 8.1 notes some steps taken to provide occupational accident insurance for platform workers (some, but not all, of whom may be in the "grey zone") and for dependent self-employed workers.

**Box 8.1. Expanding access to occupational accident insurance**

Self-employed individuals will generally be expected to insure themselves against occupational accidents. However, some countries have taken measures to improve protection in this regard for platform workers and for dependent self-employed workers.

**Occupational accident insurance for platform workers**[1]

Specific characteristics of platform work may increase the risk of injury, including potentially high levels of competition (encouraging long hours and risk-taking), the type of tasks performed (e.g. delivery and passenger transport) and the informal and multilateral nature of working arrangements.

In France, the legislator has granted certain rights to platform workers through the August 2016 *El Khomri law* (or *loi Travail*), including special provisions for accident insurance. If workers earning more than EUR 5 100 per year from platform work voluntarily insure themselves against the risk of occupational accident or illness, the platform must provide reimbursement.

**Occupational accident insurance for other self-employed workers**

Dependent contractors in Korea and Spain are entitled to occupational accident insurance. The Australian Government reported that it was closely monitoring the issue of occupational accident insurance in relation to new forms of work. Estonia mentioned on-going discussions on occupational accident insurance for the self-employed more broadly.

### *8.1.2. Special measures for certain sectors/occupations*

Some countries also have special entitlements for self-employed workers in artistic and cultural sectors. Such schemes exist in Germany for artists and writers. In Austria, there are special entitlements for "new self-employed", i.e. holders of a 'contract for work' without a trade licence and freelance workers in some liberal professions (artists and writers, lecturers, psychologists and other professions).

In Turkey, taxi drivers and other public transport drivers, domestic workers, and some groups of artists specified by the Ministry of Culture and Tourism have the opportunity to pay for missing days, and social welfare entitlements and general health insurance similar to employees.

In France, since the 1960s, self-employed authors and artists (including writers, screenwriters, photographers, composers, choreographers, painters and sculptors) have benefitted from a social protection scheme adapted to specific characteristics of these professions. In 2018, the ministers of Culture and of Solidarity and Health together underlined the importance of this population continuing to benefit from quality social coverage and announced that they would examine the scope of application of the scheme. Other reforms introduced at the start of 2019 were expected to improve the speed and reliability of processes and give these authors and artists the ability to acquire rights in return.

## 8.2. Extending benefits to the self-employed more broadly

A number of countries reported movements in their social protection systems towards broader access to benefits among the self-employed more broadly. Some countries have introduced unemployment benefits for the self-employed for the first time while others have extended access to benefits such as healthcare and paternity benefits. While such measures are not targeted specifically towards workers in new forms of work, they may have the effect of increasing the level of social protection for workers in the "grey zone" between employment and self-employment.

### *8.2.1. Introducing unemployment insurance for the self-employed*

In Spain, a reform adopted in December 2018 will extend social protection and social security contribution to almost all self-employed, aligning their social security scheme more closely to that of employees. It increases the social contributions for the self-employed. In return, they will get access to "a true right to unemployment" (in the form of improved access, flexible conditions and longer duration), as well as coverage for occupational risks (benefits relating to accidents at work or occupational diseases), enhanced benefits for temporary disability due to sickness, improved work-life balance and maternity protection (reduction in social security contributions for self-employed women returning to work after maternity, and a right to lifelong learning. Previously, the self-employed had had access to voluntary unemployment insurance (since 2010).

Ireland reported its intentions to extend contributory unemployment benefits to the self-employed by the end of 2019. This follows a trend of extending the benefits available to the self-employed, who had access to 80% of all benefits at the time of writing, including access to means-tested unemployment benefits.

In Lithuania, changes since 2017 have provided additional social protection to the self-employed, extending unemployment insurance, maternity benefit and sickness insurance to owners of sole proprietorships and members of business partnerships.

A number of countries mentioned that they had introduced voluntary unemployment insurance for the self-employed: Austria in 2009 and Romania in 2002 (for those earning between the minimum wage and five times the gross average wage). One potential limitation of this approach is that voluntary insurance schemes risk adverse selection of members, so that it is those with the highest risk that have the biggest incentive to join. The OECD's 2018 report on the Future of Social Protection (OECD, 2018[19]) notes that if the scheme is entirely self-funded, a "vicious circle" of contribution increases and loss of low-risk members could result.

Israel reported that a few years ago there had been discussions about providing unemployment insurance to self-employed, but no new such policy had materialised.

### *8.2.2. Extending other benefits to the self-employed*

Portugal and Slovenia mentioned that recent changes had brought benefits for self-employed workers closer to the benefits of employed workers, in terms of sickness, unemployment and childcare insurance in Portugal (in 2018); and healthcare and pension insurance in Slovenia (since 2013).

A recent United States regulation, which took effect in August 2018, enables qualifying workers in non-standard forms of employment (referred to as working owners, including qualifying sole proprietors and other self-employed individuals) to participate in Association Health Plans (AHPs). In effect, the new rule clarifies the definition of "employer" allowing small entities and working owners without other "employees" to join together and participate in these health plans. A proposal under consideration now includes similar reforms for retirement savings plans, referred to as Association Retirement Plans (ARPs).

Chile reported that the lower house of congress had approved a bill that would provide mandatory health and pension coverage for contract workers and the self-employed earning more than roughly twice the average national wage. Prior to the law, these workers contributed to the system only through voluntary contributions. Contributions are

expected increase gradually until 2027, at which point they will equal the rate currently applied to "regular" employees (17% of the gross salary).

Germany mentioned the introduction of a pension obligation for self-employed in this legislative period.

## 8.3. Enhancing portability across different forms of employment

Significant reforms to the social protection system in Denmark and France should boost portability of entitlements for individuals moving between (or even combining) employee status and self-employment.

In 2018, Denmark brought in a new unemployment benefit system which treats all income sources equivalently, with the aims of: (i) increasing access to unemployment insurance for self-employed, non-standard workers and on-demand employees; (ii) making it easier to combine self-employment and employment income; and (iii) making it simpler for self-employed individuals to prove discontinuation of operations. Before the reform, self-employed applicants had to produce documentation not only on earnings, but also on revenue and tax declarations, proof of orders etc. Under the new rules, eligibility will be based on reaching the minimum income threshold. It also aims to simplify the administrative process of proving that a company has in fact closed down, removing the requirement for proof of sale of all of the company's assets. An evaluation of the new system is expected by 2021.

In France, a major reform to social protection is being implemented between 2018 and 2020. It brings coverage of the self-employed under the general social protection scheme, limiting the administrative changes required if a person moves between employment and self-employment. One of the main aims is to ensure continued social security coverage throughout peoples' careers, which the questionnaire stated were less linear today than before. Other efforts to simplify payment and filing procedures were also announced, such as unifying social and tax declarations for the self-employed from 2020.

## 8.4. Simplifying administrative procedures for the self-employed

Many countries mentioned efforts to simplify administrative procedures within the social protection system for workers and/or firms through increased use of online tools, the development of centralised systems, or enhanced data sharing between various ministries and agencies. Some policies aimed at simplifying administrative procedures for the self-employed in particular are described here. While these policies are not targeted specifically towards workers in new forms of work, they are likely to increase effective access to social protection for workers in the "grey zone" between employment and self-employment.

### *8.4.1. Providing consolidated accounts*

To reduce the administrative burden faced by self-employed individuals, Estonia has developed the entrepreneurial income account. This is an account to which a person can transfer their entrepreneurial income, to be taxed with a lower tax rate (20% if annual earnings do not exceed EUR 25 000 and 40% above this). The payment is then divided between social tax (pension and health insurance) and income tax. This removes the obligations to submit tax declarations, register as an entrepreneur and keep records of expenses.

### *8.4.2. Simplifying access to benefits*

In Belgium, since 2017, certain benefits for self-employed workers can be granted without the worker having to make an application. For example, after the birth of a child, the social insurance fund will contact the mother regarding maternity benefit and exemption from contributions while the mother is away from work. They also mentioned that the 2014 "Only Once" regulation, which prohibits federal public services from asking citizens of businesses for information that they already have or that they have access to by other means, also simplifies procedures in the social security system.

### *8.4.3. Changing the way contributions are calculated*

In France, testing was done in 2018 on a new system that would give the self-employed more opportunity to adjust the amount of social contributions in response to the level of income actually received, thereby avoiding big shortfalls in low-activity periods. In the new system, the self-employed will be able to adjust the level of their contribution instalments every month or quarter (rather than once a year). If successful, the system will be rolled out more widely in 2019. Another related change introduced in 2017 allowed the self-employed to give advance warning that they would need a staggered payment of contributions in case of difficulty (previously this could only be done on the due date).

In Portugal, changes to the calculation of contributions for self-employed workers came into force in January 2019, basing them on more recent income information and changing the period over which they are calculated.

In the Slovak Republic, as of 2015, the responsibility rests with the Social Security Agency to notify self-employed individuals about their contributory obligations. According to the questionnaire response, this has radically simplified the administrative burden on the self-employed.

In Sweden, the government is currently conducting inquiries into how to base entitlements for self-employed individuals to unemployment insurance on income rather than working hours; how to ensure that a larger number of people can be covered; and how to improve social security for people who move in and out of entrepreneurship.

## 8.5. Improving effective access to benefits for fixed-term and part-time employees

Generally, part-time and fixed-term employees will have equal access to social protection as employees on full-time, open-ended contracts. However, they may struggle to meet minimum requirements based on contributions or contribution periods, and may simply have lower entitlements than standard employees due to working fewer hours. Some countries reported action to improve these employees' effective access to benefits.

### *8.5.1. Improving effective access for fixed-term workers*

In Italy, the eligibility conditions for the new universal unemployment benefit scheme introduced with Decree Law 22/2015, lowering the contributions thresholds, thereby increasing (statutory and effective) access for fixed-term and temporary workers.

In the Slovak Republic, since 1 January 2018 the durations of unemployment benefits for permanent and temporary employees have been aligned to six months (originally temporary employees had only the right to four months). In addition, the eligibility criteria have been slightly unified and relaxed to two years of contributions from the last

four years (originally the condition for permanent employees was two years of contributions from the last three years).

Some countries also have special, more generous schemes for artists and other creatives who often are employed on a short-term basis, have unstable employment patterns and, and may thus struggle to meet requirements based on contribution periods. Such schemes exist in France and Luxembourg for artists and technicians, though these are not recent developments in response to new forms of work. In Luxembourg, a change to this scheme in 2014 made it possible in particular to make up for an income below the minimum wage or an interruption of activity.

### *8.5.2. Improving effective access for part-time workers*

The Korean response reported that the government was revising the law to ease the requirements for unemployment benefits for "short-time" workers who work less than 15 hours a week. The employment period requirement will be changed from 180 working days over an 18-month period to 180 working days over a 24-month period before the termination of employment.

## 8.6. Increasing the role of tax-financed benefits

Some countries mentioned changes to the social protection system that would increase the role of tax-financed benefits, complementing (or potentially replacing) benefits linked to employment status and/or the level of contributions (conditions which may limit access for non-standard workers as discussed previously). Such measures may not necessarily be targeted towards workers in new forms of work, but may increase the effective coverage of the social safety net for self-employed, part-time and fixed-term workers, by providing multiple *layers* (contributory, means-tested and universal) of social protection.

### *8.6.1. Increasing the role of tax-financed, means-tested benefits*

Tax-financed, means-tested benefits could enhance access for non-standard workers since they are not linked to employment status and/or the level of contributions. Italy and Korea reported attempts to increase the role of tax-financed, means-tested benefits, implementing a minimum level of assistance or boosting the existing level.

- The Korean questionnaire response reported that the Korean government was considering the introduction of "Korean-style unemployment assistance", a means-tested (based on income and asset levels) unemployment benefit that would cover those that do not meet the contribution threshold.
- In Italy, in October 2017, an inclusion income (*Reddito di Inclusione*) was introduced to tackle poverty, combining means-tested income support with activation measures and reinforced services. The Italian Government has also proposed a minimum income support (*Reddito di Cittadinanza*) aimed towards poor and at-risk-of-poverty households.

### *8.6.2. Increasing the role of universal benefits*

France and Estonia mentioned efforts to provide healthcare (already universal in a number of OECD countries) on a universal basis, rather than linking it to employment status and/or contributions.

The French questionnaire response reported a general trend in France since the 1980s towards more universal cover (and a movement since the 1990s away from using labour contributions to finance this). As one example, in 2016, universal healthcare (covering sickness and maternity coverage) replaced a previous scheme conditional on hours worked and contributions paid.

While social protection in Estonia is generally contributions-based (with the exception of family and invalidity benefits), the Ministry of Social Affairs and Ministry of Finance were said to be (at the time of writing) analysing together the possibility of establishing universal health insurance.

### *8.6.3. Basic income trials*

As an experiment, Finland started paying randomly selected long-term unemployment benefit recipients a basic income in January 2017. Payments were not conditional on work and participants are not required to seek employment. The pilot ended in 2018, and first results of the experiment will be published in late 2019 to early 2020. The Finnish government has recently rejected the proposal to expand the experiment to a sample of employees (2018[20]). Drawing on this experiment, an ongoing inter-administrative project (TOIMI-hanke) aims to scope options for reforming the basic social security system with the aim of increasing employment and activity and decreasing inequality in the long run (while addressing new forms of work also).

## 8.7. Reviewing social protection systems in the context of new forms of work

The Spanish government said that it had prioritised analysis on how to address the challenges and opportunities offered by new forms of work, mainly linked to digitalisation and platform economy. Within the Parliamentary Committee on Social Security, a round-table was established to develop consensus on social security and digitalised economy at the national level and to identify possible innovative mechanisms for financing social security (i.e. beyond "traditional" social contributions). The round-table also seeks to address issues of worker classification, and reverse potential negative effects of new forms of atypical work (and in particular, the platform economy) on contribution levels and overall social protection of the workers.

The Swiss government has commissioned a study (due by the end of 2019) by the Department for Home Affairs to assess the potential effects of digitalisation in the labour market on social security; and whether these effects can be addressed by increased flexibility within the social protection system, and how to reduce the administrative burden.

The EU Member States reached a "political agreement" on the proposal for a Council Recommendation on *Access to social protection for workers and the self-employed*, adhering to the objectives of improving formal coverage, effective coverage, adequacy and transparency of social protection systems. The EC has also published a booklet highlighting best practice examples from Member States (European Commission, 2018[21]).

## Note

[1] Apart from policies in relation to accident insurance, there was little discussion in the questionnaire responses of social protection policies specific to this group. This is likely because the treatment of platform workers in the social protection system will typically depend on whether these workers are classified as employees or self-employed. Further, the social protection needs of self-employed individuals who offer services via platforms may not be obviously different from those of self-employed operating in traditional markets.

# Chapter 9. Skills and lifelong learning

Those in new forms of work may face multiple barriers to lifelong learning. While employers can play a significant role in providing training opportunities, they may see a greater return on investment for training on employees on full-time, open-ended contracts compared to workers on fixed-term, part-time or casual contracts. The same workers, as well as self-employed own-account workers, may have reduced access to publicly funded training programmes, often designed with standard employees or the unemployed in mind.

A number of countries reported that they were taking action to encourage participation in lifelong learning among workers in new forms of work. The following policy approaches are discussed in this chapter:

- Addressing barriers to access for fixed-term contract workers;
- Addressing barriers to access for platform workers;
- Providing financial support for training to self-employed workers, in order to increase participation; and
- Increasing inclusiveness within the skills system more generally, including enhancing flexibility and accessibility in training provision, expanding access to public funding for training, and boosting the portability of skills and training rights (including the development of Individual Learning Accounts).

Many respondents said that, although recent policies and programmes were not specifically targeting workers in new forms of work, they were working to prepare workers and skills providers more generally for the future of work. Many countries described how their skills strategies were evolving to anticipate future needs, with a greater focus on:

- Forecasting future skills needs to align supply and demand of skills;
- Training programmes focused on digital skills; and
- Support for existing employees to reskill, including programmes targeted towards industries or occupations with greater risk of automation.

The changing world of work, skills and the readiness of adult learning systems to respond to these challenges are examined in detail in the OECD report on "Getting Skills Right: Future-Ready Adult Learnings Systems" (OECD, 2019[22]). This chapter focuses specifically on measures targeted towards those in new forms of work. Many of these measures may become increasingly relevant if future labour market trends shift responsibility away from employers and towards the workers themselves for lifelong learning.

## 9.1. Addressing barriers to access for fixed-term workers

In many OECD and EU countries, employees on fixed-term contracts have equal training rights as employees on open-ended contracts due to non-discrimination rules. In practice, however, fixed-term workers may have fewer training opportunities than standard employees. Employers may see less reason to pay for training for fixed-term employees, as they anticipate a lower return on investment. Where training entitlements are based on tenure, this may also exclude workers on short contracts. Training programmes provided by Public Employment Services may prioritise dismissed workers over fixed-term workers whose contract has not been renewed.

This survey has found little evidence across the OECD of adult learning measures specifically targeted towards workers on fixed-term contracts. However, equal entitlements for workers on fixed-term and on open-ended contracts may not be sufficient given the challenges described above. Fixed-term workers may also have specific training needs. For example, workers moving regularly from employer to employer will have particular need for portability of training rights and recognition of their skills. Fixed-term workers may benefit particularly from upskilling or reskilling if it enables them to access open-ended employment opportunities. In this context, the *OECD Employment Outlook 2019* (2019[1]) points to the need to target adult learning measures more towards temporary workers.

## 9.2. Addressing barriers to access for platform workers

Platforms and platform workers themselves may be discouraged from investing in training if there is little scope for career development using the platform. Platform workers' access to training programmes will also depend to some extent on whether these workers are classified as employees or self-employed.

In France, the 2016 *El Khomri law* (or *loi Travail*) requires platforms to pay employers contributions' for training, cover expenses for the recognition of prior learning, and provide a training indemnity for all platform workers earning above a certain revenue.

## 9.3. Providing financial support for training to self-employed workers

Self-employed workers may be discouraged from upskilling by the higher costs they will generally face to access training. Self-employed workers may have reduced or no access to public subsidies for lifelong learning for training, if they have been designed for standard employees or the unemployed. They will not have the option of employer-financed training either. On top of financing their own training, self-employed workers must also face the opportunity cost of not working in order to undertake training.

In Austria, certain self-employed can access regional funding schemes for training based on their social security contributions. In Vienna, the *Waff Training Account* provides training grants to the "new self-employed" provided they are insured under the Commercial Social Security Act. "New self-employed" describes holders of a 'contract for work' without a trade licence and freelance workers in some liberal professions (artists and writers, lecturers, psychologists and other professions). These workers will be undertaking a certain, well-defined task rather than performing an ongoing service. In Tirol, self-employed entrepreneurs with no more than nine employees can access funding through *Bildungsgeld Tirol*.

In many countries, training costs can be considered business costs and therefore tax deductible. In 2017, Italy introduced a *Jobs Act for Autonomous Workers*, which allows the self-employed to deduct certain training (e.g. post-graduate studies, professional training, conferences and seminars) and skills certification expenditures from their taxes (for a maximum of EUR 10 000 and EUR 5 000 respectively per year).

Some countries provide additional income support to self-employed workers to compensate for paid working opportunities that were foregone in order to undertake training. The *OECD Employment Outlook 2019* (2019[1]) notes that in Luxembourg, wage compensation for education and training leave, established in 2007, is available not only to employees but also to the self-employed (provided they have been registered with social security for at least two years). It covers training leave up to a maximum length of 20 days over a period of 2 years or a maximum of 80 days over an individual's professional career. The amount of compensation is based on the incomes of the previous tax year and is capped at four times the social minimum wage for unskilled workers (EUR 7 691.84 per month as from 1 August 2016).

## 9.4. Increasing inclusiveness within the skills system

### *9.4.1. Enhancing flexibility and accessibility in training provision*

Many countries (including Australia, Denmark, Ireland, Lithuania and the United Kingdom) noted efforts to boost participation in lifelong learning to enable individuals to adapt to changes in the labour market. As part of this effort, many countries were implementing more accessible and flexible training arrangements in order to remove barriers that might be more limiting for those in non-standard forms of work.

As part of an effort to explore 'ambitious new approaches' to lifelong learning, the UK government has allocated GBP 11.7 million to the Flexible Learning Fund, which will develop and test flexible and accessible training delivery methods to see which approaches overcome barriers to access. Other pilots involve working with local colleges and training providers to test ways to reach working adults and encourage them to train.

In Flanders (Belgium), the Flemish agency for Entrepreneurial Training *(Syntra Flanders)* is developing 'innovative entrepreneurship programmes', which provide flexible training options, including evening or weekend courses.

The Hungarian responses noted a growing emphasis within education and training policy since 2010 on flexible, part-time learning opportunities for adults. In 2017, responding to the rapid changes within the labour market and the development of the digital economy, the Hungarian Government implemented a more flexible approach towards short courses (under 30 hours), removing restrictions on the type of course that could be provided in such a manner.

Many countries mentioned efforts to expand online and distance learning:

- In Wallonia (Belgium), the training agency Le Forem organises distance training and facilitates access to Massive Open Online Courses (MOOC) offered by partners.
- The Swedish questionnaire response mentioned that they have provided a legislative framework to facilitate MOOCs.
- The Israeli Ministry of Labour said that it was developing online courses and examining pilot programs for distance training.

- In Portugal, the NAU Project launched in October 2017 aims to design a platform for the provision of contents for distance education and training, using MOOCs.
- In Mexico, the Secretariat of Labor and Social Welfare (STPS) runs the Remote Training Program for Workers (PROCADIST), which provides free online courses for workers across the country. Since 2015, the virtual training environment can be accessed via mobile devices in addition to computer.
- The United States Department of Labour noted that it had helped community colleges to develop and expand online, accelerated learning strategies for adults.

### *9.4.2. Boosting the portability of training rights and skills*

In the survey, a number of countries acknowledged the need to put in place systems of lifelong learning that could deal with increasingly non-linear career paths and support individuals as they move between jobs, careers, training and other absences from the labour market throughout their lives. One important element of this is portability of training rights and the portability of skills themselves.

Individual learning accounts (ILAs) are schemes that provide individuals with resources they can use to take up further training on their own initiative. One feature of such an approach is that they link training rights to individuals rather than to specific jobs, with the intention that they be used throughout individuals' entire careers. Depending on the set-up of the ILA, they may also be used to expand access to public funding for training to a wider group of individuals. A forthcoming OECD report *Individual Learning Accounts: Panacea or Pandora's box?* (OECD, forthcoming[23]) sheds light on the experiences that countries have had with ILAs and similar initiatives, through case studies.

The French Individualised Learning Account (*Compte Personnel de Formation* – CPF), set up in January 2015, is such an initiative. As of January 2018, the CPF covers the self-employed. It now allows any active person, from first entry into the labour market until retirement, to acquire training rights that can be mobilised throughout their professional life. Importantly, training rights are maintained across different forms of employment, through periods of non-employment (such as unemployment, parental leave or long absence due to illness) and are transferrable between employers. According to the French Ministry of Labour, the CPF is central to the law "For the freedom to choose one's professional future" ("*Pour la liberté de choisir son avenir professionnel"*) adopted in September 2018, and will act as the main tool for accessing training.

In the Dutch government's 2017 coalition agreement, the government announced its intention to replace the tax deduction for training costs with a personal learning account for all citizens with a basic qualification, which will draw together all the strands of the government's lifelong learning policy.

Other measures have attempted to simply enhance individuals' ability to track and evidence their training record:

- In Portugal, an online tool called the *Passaporte Qualifica* was created in 2017. It records education and training already attained, and provides guidance to further possible education and training pathways throughout an individual's career.
- The Spanish questionnaire response noted plans to establish an account to track all training received throughout an individual's career (as well as a separate

funding system of training vouchers). However, at the time of writing, no action had been taken to develop this further.

Many countries mentioned existing systems for testing and accrediting skills learnt on the job, so that workers without formal qualifications can demonstrate their skills more easily when trying to access work and educational opportunities.

# Chapter 10. Public employment services

Public employment services (and the provision of these services through private providers in some countries) play an important role in matching jobseekers to new labour market opportunities but existing services may not cover those currently in new forms of work nor those seeking opportunities in new forms of work. In many cases, this will be a deliberate policy choice. For instance, public employment services with a mandate to tackle unemployment will prioritise unemployed jobseekers over those in new forms of work seeking other employment opportunities. A consequence of this is that those currently working in new forms of work may have limited opportunities for professional development.

The same services may be more likely to guide jobseekers towards open-ended employment contracts or other employment forms considered "sustainable", than to opportunities in the platform economy. Developments in the labour market may lead governments to question whether existing public employment services strike a balance between standard and non-standard employment that is in line with policy objectives regarding job quantity and quality.

This chapter will discuss some actions taken by countries to respond to developments in the labour market by:

- Ensuring that those in new forms of work can access public employment services, including career guidance and job referral services;
- Matching jobseekers with opportunities in new forms of work, particularly in the platform economy;
- Innovating in public employment service delivery.

## 10.1. Ensuring that those in new forms of work can access public employment services

Those working already in new forms of work could have difficulty accessing job referral or career guidance services, where employment services are primarily targeted towards the unemployed or inactive, and where new forms of work (such as zero-hour contracts) blur the distinction between in-work and out-of-work categories. There was little evidence of countries actively targeting employment services at those in new forms of work. However, countries that target low-paid or low-skilled workers may be successful at reaching vulnerable workers in new forms of work.

One example of public employment services actively targeted towards those in new forms of work is in Bulgaria. The Bulgarian response described information campaigns and activation services targeted at those working outside the regulated labour market and those in dependent or false self-employment, often found in regions characterised by chronic unemployment. Efforts are made to integrate into employment individuals who have not been employed in the formal labour market for a long time.

A number of countries also stated that public employment services were open to all, including those in new forms of work. One example of a country moving towards a more inclusive approach to career guidance is Germany, where the Federal Employment Agency recently enhanced the range of counselling services available for all adults (including the self-employed), going beyond the traditional focus given to the unemployed population.

## 10.2. Matching jobseekers with opportunities in new forms of work

The questionnaire asked whether public employment services were using new forms of work to tackle unemployment or for worker activation more generally, including providing information on what vacancies exist in new forms of work. In many countries, although there was not a special effort to guide jobseekers to job opportunities in new forms of work, some opportunities in new forms of work would already be covered within the regular remit of public employment services. For instance, depending on the country, public employment services may be able to match jobseekers to: any legal job offer; any form of paid work; any job opportunities linked to payment of social contributions, regardless of the actual form of work; any employment or self-employment opportunities; etc. Under such systems, one could imagine a jobseeker being matched to casual or fixed-term work opportunities, provided that the match was considered suitable.

There was some evidence of employment services enabling jobseekers to access opportunities in the platform economy.

### *10.2.1. Matching jobseekers with opportunities in platform work*

Finland and Sweden reported initiatives to offer opportunities in the platform economy to jobseekers.

Between 2017 and 2018, the Finnish Public Employment Service ran a pilot called "New Forms of Work and Entrepreneurship", which used their digital job-market platform (*Työmarkkinatori*) to offer opportunities in new forms of work and entrepreneurship to jobseekers, by linking them to invoicing companies and digital job mediation platforms. According to the response, an advantage of the pilot was also that it gave those working in the Public Employment Service experience in these new forms of work. The pilot has since been integrated into *Työmarkkinatori*, and was still under development at the time of writing.

*"From the perspective of employment and business services, it is critical that emerging entrepreneurial activities related to the sharing and platform economies can be supported, and that this kind of activity can be identified as a new form of entrepreneurship and employment" – Finnish questionnaire response*

The Swedish Public Employment Service has started an initiative called *Jobstore*, intended to be "an open, neutral and common platform for all actors offering digital services such as matching, recruitment and education". As there are so many different platforms, the PES says, *Jobstore* aims to make it easier for jobseekers to find jobs and for platforms to find workers. It is also an effort to contribute to the "digital ecosystem" by offering a common platform that encourages all actors (including the Public Employment Service) to share data, maximising the efficiency of matching and stimulating the creation of more digital services.

### *10.2.2. Training jobseekers for opportunities in platform work*

Israel reported that it was offering training in the digital skills necessary to take advantage of opportunities in the platform economy. The Israeli Ministry of Labour and Social Affairs operates a few small pilot programmes targeted at workers in new forms of work. One of these offers training to particular groups (people with disabilities, Arab women, ultra-Orthodox) on using online trading platforms and making a living on the global online market.

A number of countries also mentioned that programmes aimed more broadly at encouraging entrepreneurship and self-employment could lead participants to the platform economy. For example, the Argentinian response mentioned that the Independent Employment Programme, which helps participants to develop and implement a business plan according to their interest and economic possibilities, could lead them to platform work or other new forms of work.

## 10.3. Innovating in public employment service delivery

Providing employment services to those in new forms of work or those seeking opportunities in new forms of work may require adjustments to service delivery and to toolkits. Many countries described how their methods were evolving to reflect current labour market trends and expectations about the future of work, including:

- Digitalising advisory and job referral services and/or teaching jobseekers skills that they would need to use online job search tools; and
- Closely following developments in the labour market and in recruitment practices and updating matching services in response.

# Chapter 11. Collective bargaining and social dialogue

A number of countries raised the question of how to extend collective bargaining rights to certain workers in new forms of work. Their concerns were mostly focused on those workers in the "grey zone" between the traditional definitions of dependent employment and self-employment.

Since the very foundation of modern labour law, all workers in a formally subordinate employment relationship (e.g. salaried employees) whether in a standard or non-standard one, have been granted undisputed legal access to collective bargaining. If the ILO Convention on the right to organise and bargain collectively refers to *workers* in general, in practice, it is subject to legal discussion as possibly infringing the application of antitrust regulations for workers usually classified as self-employed. The standard approach in antitrust enforcement has often been to consider all self-employed workers as undertakings and therefore any collective agreement reached by self-employed workers as a cartel.

Yet some self-employed workers share characteristics (and thus vulnerabilities) with employees, and there is an argument for extending collective bargaining rights to these workers. Moreover, some self-employed workers have little or no bargaining power (so that rates of pay are set unilaterally by their employers/clients) and they cannot easily switch to work for other employers/clients. The *OECD Employment Outlook 2019* (2019[1]) includes a more detailed discussion on this topic.

Enforcing the correct classification of workers and fighting misclassification is of particular importance to ensure that workers benefit from the protection and rights to which they are entitled. Policy responses to tackle misclassification and to strengthen enforcement in this area are discussed in detail in Chapter 3.

While the questionnaire referred to a broad range of measures that could be taken to strengthen social dialogue and workers' voice in new forms of work, most of the policies described were attempts to extend collective bargaining rights to certain groups of self-employed workers. Among the policy responses described in this chapter are:

- Clarifying the application of competition law;
- Introducing exemptions from the prohibition to bargain collectively;
- Providing a special status for workers in the "grey zone" which permits them to bargain collectively, whether applied in labour law or limited to labour relations law;
- Extending rights to collective representation and collective bargaining to self-employed workers, to platform workers or to certain sectors/occupations;
- Engaging with social partners, supporting their efforts to conclude collective agreements or establishing forums for dialogue.

## 11.1. Clarifying the application of competition law

The Norwegian Sharing Economy Committee, appointed in 2016 by the government to evaluate opportunities and challenges presented by the sharing economy (focusing particularly on passenger transport services and the accommodation market), recommended that competition authorities draft and publish a guide on the issue of collective bargaining and the application of competition law. Most committee members expressed the opinion that independent workers in the platform economy, who do not have the power to set prices, should be allowed to bargain collectively with the platform – although no further actions were reported in this regard.

## 11.2. Introducing exemptions from the prohibition to bargain collectively

In Australia, the Competition and Consumer Act 2010 generally requires businesses to act independently of competitors. However, the Act allows businesses to collectively negotiate with suppliers or customers, where such action is assessed as being in the public benefit. Business are able to obtain exemption from the Act if the Australian Competition and Consumer Commission is satisfied the collective bargaining would result in overall public benefits. The Australian Competition and Consumer Commission is also currently undertaking a public consultation process regarding the creation of a class exemption for collective bargaining by small businesses (including independent contractors). A class exemption for collective bargaining would effectively provide a 'safe harbour', so businesses that met eligibility criteria could engage in collective bargaining without breaching the competition law and without seeking approval from the Australian Competition and Consumer Commission.

*"The collective negotiation provisions of the Act recognise that smaller businesses can face challenges when negotiating with larger businesses and that the outcomes from these negotiations may not be the most efficient or optimal. By acting together, small businesses may have a better opportunity to have input into negotiations than if they act independently." – Australian questionnaire response*

In 2017, the Irish Parliament adopted the Competition Amendment Act, which introduced exemptions from competition law for three professions, namely voice-over actors, session musicians and freelance journalists, allowing them to bargain collectively. These three professions had been the centre of campaigning and legal challenges by sector unions following a 2004 decision by the (then) Competition Authority to consider negotiations within these professions as price fixing.

The Act also opened the possibility of collective bargaining to the "fully dependent self-employed" and not only to "false self-employed" workers. Under Irish law, trade unions have to apply for the exemption and prove that the workers they want to represent fall in one of the two classes and that their request will have "no or minimal economic effect on the market in which the class of self-employed worker concerned operates", nor "lead to or result in significant costs to the State". At the time of writing, no applications had been submitted.

## 11.3. Providing a special status for workers in the "grey zone"

In countries that have an intermediate category in labour law for workers in the "grey zone" between dependent employment and self-employment, this status may also be associated with the right to bargain. This is the case with *arbeitnehmerähnliche Personen* in Germany, *workers* in the United Kingdom, and *TRADE* in Spain.

Canada does not have an intermediate worker category in labour law. However, the definition of "employee" under Part I of the *Canada Labour Code,* which applies to collective bargaining in the federally-regulated private sector, includes "dependent contractors". The origins of this approach were in arguments by a law professor in the 1960s (Arthurs, 1965[24]) – many Canadian jurisdictions adopted the definition of dependent contractor in the following decade – that collective bargaining is a way of addressing a power imbalance and, due to similarities between dependent contractors and employees, they should be eligible for unionisation. This allows for their inclusion in the same bargaining unit as other unionized employees, whether full-time, part-time or casual, to which the same collective agreement would apply. A separate collective agreement for dependent contractors is also legally permissible. The conditions for dependence are that the contractor must be dependent on a person or individual enterprise (rather than on an industry for example) and that the relationship more closely resemble an employment relationship than that of an independent contractor. Although this status has not been widely applied in practice (and is not a recent reform), the rationale that underpinned this approach has relevance for discussions today.

## 11.4. Extending rights to certain groups of self-employed workers

A number of countries reported efforts to extend rights to collective representation and collective bargaining to self-employed workers, to platform workers or to certain sectors/occupations.

On top of competition law barriers, in some countries, the self-employed are prohibited by law from joining trade unions. This changed recently in Poland. From 1 January 2019, amendments to the Act on Trade Unions come into force, which granted the right to establish and join trade unions and to conclude collective agreement to workers engaged under civil law contracts and self-employed. The amendments were a consequence of a 2015 Constitutional Tribunal ruling that restricting trade union access to employees only was unconstitutional. They were also reported to be motivated by the issue of bogus self-employment in Poland. As a result of the amendments, collective bargaining rights are extended to all workers, as long as they do not employ others to perform the work and have rights and interests that can be represented and defended by a trade union.

Where platform workers are classified as self-employed, the same restrictions to collective bargaining will apply. In France, there have been particular efforts to extend collective bargaining rights to those working on platforms. The 2016 *El Khomri law* (or *loi Travail*) in France introduced a measure allowing platform workers to form a trade union organisation, to join it and to assert their collective interests through it. An interministerial circular has also stated that platform workers have the right to refuse to provide their services in order to defend their professional demands.

In the creative sector, where much of the work is done on a freelance basis, the discussion around access to collective bargaining rights is not new. In some countries, creative workers have had collective bargaining rights for years, enabled by specific exemptions and special statuses. For instance, freelance journalists in Austria have long had the ability to bargain collectively.

In Canada, the *Status of the Artist Act* governs professional (labour) relations between artists and producers (broadcasting undertakings) operating in the federal jurisdiction and protects their freedom of association. The Act covers independent contractors who work in virtually all artistic mediums as authors, performers, or other professionals who

contribute to the creation of a production (e.g. camera operators, set designers, audiovisual technicians). Under the Act, a group of self-employed artists working for the federally regulated "producers" can be recognized and certified by the Canadian Industrial Relations Board (CIRB) as an artists' association with the exclusive right to negotiate with producers for the purpose of entering into or amending scale agreements, i.e. written agreements that can include provisions related to hours of work, scheduling, collective bargaining procedures, provisions unique to the particular artistic craft and ones related to licensing fees, royalties, or copyright. The Act came into force in 1995 (with an amendment in 2012) in response to the UNESCO *Recommendation concerning the Status of the Artist*, adopted in 1980, which recognised the right of artists to be organised in trade unions or professional organisations that can represent and defend the interests of their members.

In New Zealand, the Film Industry Working Group (FIWG) was set up by the Workplace Relations and Safety Minister in 2018 with the aim of finding a way to restore collective bargaining rights to film production workers. These workers currently cannot bargain collectively because of changes to New Zealand's Employment Relations Act in 2010 (known as the *Hobbit Law*), which excluded film production workers from employee status unless they are party to a written employment agreement. By contrast, the employment status of other workers in New Zealand is generally based on the real nature of the relationship between them and those who engage them. The FIWG reported to the Minister in October 2018 and has recommended a bespoke collective bargaining regime for contractors doing screen production work. The FIWG also recommended that existing barriers and restrictions on contractors bargaining collectively, such as in competition law, be removed. The New Zealand government is currently considering its response to the FIWG's recommendations, and policy decisions are expected to be made in the first half of 2019.

The government in the Netherlands said that it was, at the timing of writing, working with the cultural and creative sector to strengthen freedom of association for existing organisations of workers, employers and employees. They anticipated that this might serve as a pilot for other sectors, although they acknowledged restrictions within EU competition law and the specific characteristics of the cultural and creative sector.

## 11.5. Engaging with social partners

While the focus of the survey was on *public* policy responses (and therefore did not capture initiatives by trade unions and by businesses to promote collective bargaining and social dialogue), a number of countries mentioned their attempts to engage with the social partners. The Italian Minister of Labour was said to be in discussion with employers and workers' representatives to define basic principles and labour standards for platform workers.

Canada, Ireland, Portugal and Poland described recent efforts to establish dialogue between government and social partners:

- In Ireland, the Labour Employer Economic Forum was established in 2016 to bring together employer and trade union representatives and government ministers to discuss economic and employment issues. The Employment Legislation and Regulation sub-group will consider the issues of precarious employment and false self-employment.

- A forum for tripartite dialogue at national level was established by the Polish President in 2015. The Social Dialogue Council (SDC) aims to improve social and economic development conditions, the competitiveness of the Polish economy and social cohesion.
- Canada described a new commitment to engage with organisations representing employers and employees, official language groups and under-represented groups as part of its annual planning and priority setting process.
- Portugal mentioned a 2019 study on Digital Economy and Collective Bargaining undertaken by the Centre for Labour Relations, a tripartite body with technical functions established in 2012 by the government and the social partners.

# Chapter 12. Data collection and coordination

This chapter describes efforts to build better evidence on new forms of work through data collection and through coordination with other countries and across ministries. Policymaking should be based on evidence rather than anecdotes, and where countries are facing similar issues, peer learning can contribute to better policies.

## 12.1. Improving data collection

A lack of information about the prevalence of new forms of work and the characteristics of the individuals engaged in it could hinder the development of adequate policy. While existing labour force surveys and household surveys already capture information on self-employment, fixed-term and part-time work, they may struggle to identify platform workers, flexible working arrangements (such as variable hours contracts), and the dependent self-employed.

The Finnish response to the questionnaire mentioned various efforts by the Working Life Unit of Statistics Finland to capture emerging forms of employment within their labour force survey. They reported that qualitative interviews among workers in different employment situations had proven to be particularly informative and beneficial for finding the correct measurement approach for new, not yet well-defined phenomena in the labour market (e.g. zero hours contracts; "combo-employment" in which work as employee and as self-employed is combined; platform work). They mentioned a need for more detail on how many individuals receive income from multiple sources.

Austria, Estonia and Belgium noted that they would implement the Eurostat Integrated European Social Statistics (IESS) Framework Regulation, adding questions (on topics such as multiple jobs, the number of clients of the self-employed and the determination of working time) into their core labour force surveys.

### *12.1.1. Platform work*

Many countries reported initiatives to improve data collection in relation to platform work, through labour force and household surveys, as well as directly from platforms themselves.

The Canadian response mentioned that Statistics Canada had added questions to the labour force survey in 2016 as a one-time initiative to gather data on Canadians' use of platforms offering accommodation and transportation services, and the share of Canadians who provided these services. Switzerland reported that a module of questions on platform work would be added to the Labour Force Survey in 2019.

In the United States, a special supplemental survey on contingent and alternative employment arrangements was conducted in May 2017 as part of the household Current Population Survey. This supplement provided updated information on these employment arrangements that were last collected in 2005. In addition, the supplement asked four new

questions on electronically mediated employment, generally defined as short jobs or tasks that workers find through mobile apps that both connect them with customers and arrange payment for the tasks.

The French response said that the latest Family Budget Survey (2016-2017) included new questions on the sharing economy. It noted that the questions, which capture the purchase and sale of goods and services between individuals, would not allow direct measurement of the number of platform workers but could indicate trends in the use of platforms. Estonia and Sweden reported that questions about the use of sharing economy websites or apps for paid work had been added to ICT household surveys.

Some countries noted efforts to get data directly from platforms. The French Inspectorate General of Social Affairs (IGAS) indicated that they had requested access to data from platforms, but had been denied. France, Estonia and Belgium noted that transaction records submitted by platforms to tax authorities could be a useful data source, even if this was not their primary purpose.

### *12.1.2. Self-employment*

A number of countries reported efforts to extract more detail on the nature of the working relationship between self-employed individuals and their clients.

Austria, Belgium, France, Portugal and Ireland mentioned that they had conducted the Eurostat Labour Force Survey module on self-employment in 2017, which included questions to capture the proportion of self-employed persons in situations of economic dependence according to several criteria (such as dependence on a main client, existence of a relationship with a third party, presence of an intermediary).

The Danish response mentioned that they had added different questions to the LFS in 2018 in order to capture dependent contractors. They then linked the data to administrative data to evaluate the effectiveness of the questions. They mentioned that they had also made an application to Eurostat for a grant to perform a similar exercise to capture the platform economy in the Survey on Income and Living Conditions (SILC).

France reported that a new question had been added to the Working Conditions Survey to indicate economic dependence of the self-employed, based on whether the worker decides on their rates or prices.

### *12.1.3. Flexible working and multi-jobbing*

Belgium, Estonia, France and Ireland mentioned various attempts to better capture flexible working arrangements and multi-jobbing.

- Belgium reported some modifications to tax and social security data files including new codes to identify flexi-jobs, a type of secondary job with favourable tax treatment.
- Ireland and Estonia said that their 2019 labour force surveys would include the module on Work Organisation and Working Time Arrangements, which would look at issues like worker autonomy, worker flexibility and variable hours contracts.
- The French response noted the addition of questions on multi-jobbing to the Working Conditions Survey.

## 12.2. Encouraging coordination

Addressing the challenges associated with new forms of work often requires coordinated policy intervention across different areas. In some countries, there have been efforts to bring different parties together to discuss the potential issues and opportunities, and the best policy response. A number of countries mentioned their involvement in international policy discussions and research streams on new forms of work (as well as topics such as skills, digitalisation, the platform economy, job quality, the future of social dialogue, and the future of work) via the OECD and ILO. Many countries cited ongoing engagement with social partners via employment relations and social dialogue councils as being particularly important in relation to new forms of work, although few new initiatives were reported.

In 2017, the Danish government launched the Danish Disruption Council to seize opportunities, address challenges and adapt to new conditions linked to new technology and digitalisation. The council is chaired by the Danish Prime Minister and the council includes 8 ministers and 30 members representing businesses, social partners and experts. One of the themes addressed by the council has been the Danish flexicurity model in a contemporary context, and one of the main questions in this regard has been how to integrate platform workers into the labour market in terms of securing working conditions and proper classification. The Danish government was due to conclude on the work carried out by the Disruption Council and present a final report on the 7th of February 2019, summing up the initiatives presented up to that date and presenting new policy.

In October 2017, the Danish government launched a strategy for the platform economy, and in May 2018, the government entered into a political agreement on better conditions for growth in the platform economy. The agreement includes establishing a council with the social partners and the industry, which will advise the Minister of Business on developments in the sharing and platform economy.

The Netherlands and Norway also described specialist committees or working groups set up to assess changes in the labour market linked to technology, including the emergence and growth of the platform economy.

- In 2018, the Dutch government set up an independent commission to review labour market regulation, in light of globalisation and technological changes. The main question for the commission will be whether expected developments in the labour market and in labour relations require changes in labour law, tax law and social protection.
- In Norway, the Sharing Economy Committee was appointed in 2016 by the government to evaluate opportunities and challenges presented by the sharing economy, with social partners.

The Korean and Japanese governments established expert working groups on the topic of workers in between employment and self-employment:

- The Korean government set up a taskforce composed of labour experts to design more concrete policies for non-regular workers, including dependent contractors.
- The Japanese government established an expert study group to analyse “Work Style Similar to Employment” in October 2017, and whether these arrangements should be considered merely business transactions between independent businesses or instead equivalent to relationships between an employer and

employee. At the time of writing, the discussion was said to be continuing in the study group (since October 2018).

Ireland reported that the Department of Business, Enterprise and Innovation, had established an ILO Interdepartmental Group and that issues around new forms of work were regularly discussed by that group. Australia and Canada also mentioned that they had formed cross-government working groups to better coordinate policy relating to the future of work (including new forms of work).

# Chapter 13. Policy directions

In recent years, many countries have seen the emergence of, and growth in, particular contract types that diverge from the standard employment relationship (i.e. full-time dependent employment of indefinite duration). While the use of such employment arrangements may bring advantages in terms of flexibility for both workers and employers, concerns have been voiced around job quality and the potential negative impact of excessive and/or improper use of such contracts on equality, productivity and growth, fair competition among firms, and the sustainability of social protection systems.

These trends have prompted countries to reflect on whether existing systems of labour legislation, lifelong learning, social protection, taxation and collective bargaining are capable of addressing effectively the current (and future) challenges of a rapidly changing world of work. While in some cases they are, in others policies and institutions may need to be adapted to ensure protection for vulnerable workers and to prevent abuse, and to ensure that firms that comply with the regulations are not unduly disadvantaged. In all cases, the reflection should be encouraged and where countries are facing similar issues, peer learning can be helpful.

This final section presents a set of policy directions to guide policy makers in consolidating, reviewing and adapting policies and institutions in response to the emergence and growth in new forms of work. These policy directions will feed into a broader set of future of work policy directions, which will be set out in the *OECD Employment Outlook 2019* (2019[1]).

The policy directions are illustrated by country examples reported in the OECD/EC survey on "Policy responses to new forms of work". These country examples should not be read as recommendations as the specific circumstances and challenges of each country vary, and most of these country examples have not been formally evaluated.

## 13.1. First things first: Getting employment status right

Employment status acts as a gateway to various worker rights and protections. **Ensuring the correct classification of workers (and tackling misclassification) is therefore essential to ensure that workers have access to labour and social protection, as well as to collective bargaining and lifelong learning.** In recent years, countries have strengthened compliance with existing regulations by:

- *Strengthening the capacity of labour inspectorates to monitor and detect breaches of labour regulations.* For example, Spain is developing dedicated operative procedures and specialised training as part of inspection campaigns targeted at false self-employment and platform work.
- *Making it easier/less costly for workers to challenge their employment status.* To do this, some countries place the burden of proof on the firm (rather than the employee) in disputes about employment status. This is the case for certain

sectors judged to be "at-risk" (including caretaking/security, construction, transport, cleaning, agriculture and horticulture) in Belgium.

- *Strengthening penalties for firms that misclassify employees.* The Canadian Labour Code is being amended to include new penalties such as public naming of violators and exclusion from the awarding of federal contracts in the case of repeat or serious offences.

## 13.2. Reducing incentives for misclassification

**Countries should aim to minimise incentives for firms and workers to misclassify employment relationships as self-employment just in order to avoid tax and social contribution liabilities**. Large discrepancies in taxes and social contributions between employment and self-employment (particularly where these are not compensated by similar differences in benefit entitlements), create tax arbitrage opportunities for firms and workers in their selection of contractual arrangement, and can therefore encourage employment misclassification. Some countries have already taken steps to address this concern by:

- *Assessing tax incentives and reducing large discrepancies in tax treatment where they exist.* In the Netherlands, studies have shown significant discrepancies in tax treatment between employment forms, but attempts at reforming the system have proved politically complicated.
- *Bringing work in the platform economy into the tax system.* Estonia has introduced obligations for platforms to share financial transaction data with the tax authority so that drivers' tax forms can be prefilled.

## 13.3. Extending rights and protections to workers in the grey zone between dependent employment and self-employment

Despite efforts to ensure correct classification, there might be still some ambiguity about employment status for some workers who share some characteristics of self-employed (e.g. autonomy over how they carry out their work) and some characteristics of dependent employees (e.g. economic dependence on a single client). **Countries may want to consider extending rights and protections to these workers in the "grey zone" between dependent employment and self-employment.** The following examples demonstrate different approaches countries have taken to extend coverage of labour law and social protection:

- *Extending rights and protections to specific occupations.* For example, in Germany and Austria, artists and writers have special social protection entitlements.
- *Extending rights and protections to the economically dependent self-employed.* For example, in Portugal, self-employed workers who depend on a single client for 50% of their income are considered economically dependent and are entitled to enhanced social protection.

Regardless of the approach taken, the driving principle should be to extend rights and protections to vulnerable workers left in the "grey zone" between employee and self-employed status, while being careful not to create opportunities to take them away from workers who previously had them.

## 13.4. Improving working conditions in, and preventing abuse of, fixed-term, casual and platform working arrangements

**Greater efforts are needed in some countries to ensure adequate working conditions in fixed-term, casual and platform work, and tackle the excessive and/or improper use of these forms of work.** While some firms and workers will require additional flexibility beyond that offered within a standard employment relationship, growth in new forms of work should not be driven by firms' attempts to cut costs by circumventing labour market regulations. Some recent measures taken to prevent abuse of, and improve working conditions in, new forms of work include:

- *Regulating the use of fixed-term and casual contracts.* For example, in Finland, new legislation means that employers can only propose variable working hours if they have a variable need for labour. It also includes provisions for eventualities such as the worker falling sick or the employment relationship being terminated.
- *Promoting better working conditions in the platform economy, at the national and international level.* In France, where a platform determines the characteristics of the service provided, it must also take responsibility for occupational liability and professional training.

## 13.5. Ensuring that more workers are adequately covered by social protection

**Social protection systems should be examined and, where necessary, reformed to improve access to benefits for workers in new forms of work.** Fixed-term, casual and self-employed workers may face difficulties in meeting contribution thresholds for social protection schemes. In addition, within many social protection systems, self-employed workers are simply not entitled to the same suite of benefits as employees. While countries may choose different approaches (given that social protection systems have different starting points and experiences with accommodating new forms of work), here are a few ways countries might attempt to fill these gaps:

- *Reviewing entitlement criteria for social protection and identifying any gaps in provision for those in new forms of work.* For example, the Swedish government is currently conducting inquiries into how to improve the unemployment insurance system for self-employed individuals. The Swiss government is undertaking a study on the potential effects of digitalisation of the labour market on social security and whether the system requires increased flexibility.
- *Boosting the portability of entitlements and consolidating existing programmes to extend their reach to new forms of work*. For example, Denmark has introduced a new unemployment benefit system which treats all income sources equivalently, with the aims of: (i) increasing access for self-employed, non-standard workers and on-demand employees; (ii) making it easier to combine self-employment and employment income; and (iii) making it simpler for self-employed individuals to prove discontinuation of operations.
- *Increasing the role of tax-financed social protection elements to help address gaps in existing provisions*, i.e. use universal and means-tested benefits to complement benefits linked to employment status and/or the level of contributions. For example, the Korean government is considering the

introduction of a means-tested unemployment benefit that would cover those that do not meet the contribution threshold.

## 13.6. Extending collective bargaining rights

**Countries may want to consider adaptations to existing regulations to allow collective bargaining for: *i)* workers in the grey zone, where genuine ambiguity exists about their employment status; and/or ii) those with little/no bargaining power and few/no outside options.** The right to organise and bargain collectively is usually restricted to employees. The self-employed tend to be excluded because of potential conflicts with competition law. Yet some self-employed workers share characteristics (and thus vulnerabilities) with employees, and there is an argument for extending collective bargaining rights to these workers. Moreover, some self-employed workers have little or no bargaining power (so that rates of pay are set unilaterally by their employers/clients) and they cannot easily switch to work for other employers/clients. Some approaches described in this report addressing these groups of workers include:

- *Extending collective bargaining rights to dependent self-employed workers*. For instance, federal legislation for labour relations in Canada uses a definition of "employee" which explicitly includes dependent contractors, ensuring that they cannot be excluded from collective bargaining.
- *Extending collective bargaining rights to specific occupations or sectors.* In some countries, creative workers have had collective bargaining rights for years, enabled by specific exemptions and special statuses. For instance, freelance journalists in Austria have long had the ability to bargain collectively.

## 13.7. Supporting those in new forms of work to develop professionally

**Governments may need to adapt existing strategies for Public Employment Services and public skills programmes to improve access and participation amongst those in new forms of work.** Some countries are attempting to enable all workers to harness the benefits of a changing world of work, by:

- *Ensuring broad-based access to public employment services*. In light of new challenges in the labour market, Germany's Federal Employment Agency has enhanced the range of counselling services available for adults looking for reorientation in working life, regardless of employment status.
- *Training jobseekers for opportunities in platform work.* For instance, the Israeli Ministry of Labour and Social Affairs operates a few small pilot programmes offering training in the digital skills necessary to take advantage of opportunities in the platform economy.
- *Ensuring broad-based participation in adult learning.* For example, the French Individualised Learning Account allows any active person to acquire training rights that can be mobilised throughout their entire professional life, through employment, self-employment and non-employment.

## 13.8. Enhancing data collection and coordination

**Policymaking should be based on evidence rather than anecdotes and where countries are facing similar issues, peer learning can contribute to better policies.** Some approaches described in this report include:

- *Using data collection to build better evidence on new forms of work.* For instance, Statistics Finland found that qualitative interviews among workers in different employment situations were particularly informative for finding the correct measurement approach for new, not yet well-defined phenomena in the labour market, such as zero hours contracts and platform work).
- *Addressing challenges through a comprehensive approach:* Given the complexity around new forms of work, policy responses should be based on a comprehensive approach with the involvement of different stakeholders (various government agencies, social partners, other stakeholders). A case in point is the Danish effort to tackle challenges of future of work through the Disruption Council.

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# Annex A. Questionnaire


## Survey of policy responses to new forms of work: questionnaire

**What is the objective of this survey?** With your help, we want to capture the most up-to-date evidence on recent and emerging policy responses to new forms of work. We will use this evidence to draw out trends, good practice, and case studies of practical relevance for policymakers, in an international conference in Paris on 7th Nov 2018 and a subsequent report (to be shared with respondents in early 2019). This presents a major opportunity for policymakers to access information on what other countries are doing to address emerging – and often, shared – challenges associated with new forms of work.

**What do we mean by *new forms of work*?** Many countries have seen recent growth in technology-facilitated forms of work, such as crowd work and on-demand work via apps and platforms; but there has also been growth in other new forms of work, like casual work (on-call, voucher-based and zero-hour contracts, as well as mini/flexi-jobs). While the use of these contracts may bring advantages, including flexibility for both employers and employees, concerns are being voiced around job quality and the potential negative impact of excessive and/or improper use (in cases where workers are misclassified) of such contracts on equality, productivity and growth, and the fairness of competition among firms. Several countries have also seen growth in dependent and false self-employment[1], which raise similar concerns.

**What do we mean by *policy responses*?** We aim to capture recent and emerging *public* policy across: employment regulation (e.g. how should these workers be classified?), social protection (e.g. how do we ensure adequate coverage?), working conditions (e.g. how do we ensure fair and safe working conditions?), collective bargaining (e.g. how can workers in these new forms of work be given collective voice?) and skills (e.g. how to promote lifelong learning among those in new forms of work?). While the focus of this survey is on policies developed in response to the emergence of new forms of work, we also encourage you to note policies that, although not specifically targeted towards those in new forms of work, are likely to have a significant impact on these workers.

**How should you answer this questionnaire?** Please use the spaces provided to describe each policy/intervention, its underlying objectives and its effectiveness (if evidence exists), as well as the type of contract it applies to. If you wish to refer to legislation (or revisions to such), please cite the number/identifier and the year in which it was passed (or revised). For any additional information, we encourage you to share contact details of

the individual most familiar with the policy, to link to external sources of information and/or to attach documents to your email.

**Who should answer this questionnaire?** We have sent this questionnaire to Ministries of Labour, and in some cases, to specialised teams with responsibility for the future of work. For certain questions, it may be necessary to coordinate responses within the Ministry or with *another government department* at the national or sub-national level. In these cases, we encourage you to share this questionnaire more widely. We can offer assistance in compiling the responses.

As the success of this project will depend on the information you provide, we would like to express in advance our gratitude for your cooperation and the time taken to complete this questionnaire.

### *Background questions*

i. While many countries have experienced recent growth in the forms of employment underlined in the text above, the exact contract types, trends and challenges vary across countries. Please use the space below to describe what *forms of employment* are being discussed in the policy arena in your country.

ii. Thinking again about discussions within the policy arena, what *topics/issues* related to new forms of work would you say capture the most attention (i.e. in government, the legislature, the media)? This might include both *opportunities* and *challenges* (e.g. classification, social protection, tax) associated with new forms of work.

iii. If there is no (or negligible) discussion within the policy arena in your country about new forms of work, please give your own opinion on why this might be.

### *1. Addressing worker classification*

New forms of work have often developed at the fringes of existing labour market regulation and many countries are struggling with how such workers should be classified: are they employees, are they self-employed, or do they lie somewhere in between? Is existing labour market regulation still fit for purpose?

Please describe any recent or forthcoming public policy developed in your country with the aim of addressing worker classification issues, such as:

1. *Clarifying/revising/updating definitions of employment relationships, e.g. what it means to be an employee, self-employed, or even an employer (e.g. in tripartite employment relationships, cases involving an intermediary); harmonising definitions across legal/policy areas (e.g. labour, tax, social protection)…*

2. *Creating new employment categories. Several countries have a worker category in between "employee" and "self-employed" which gives access to some, though not all, rights and protections enjoyed by employees, e.g. "workers" in the United Kingdom, TRADE in Spain, CoCoCo and CoCoPro in Italy.*

   *Does such a category exist in your country already or is there talk of introducing one? If so, for what purpose (for labour law, tax law, social protection, ensuring collective bargaining rights etc.)?*

3. *Helping firms and workers identify employment relationships, e.g. by providing better guidance and information on contractual status, online tools/tests…*

4. *Making it easier for workers to challenge their employment status, e.g. the presumption of an employment relationship and placing the burden of proof on the employer (rather than the employee), reducing court fees, reducing risks to workers, protecting workers against retaliation…*
5. *Strengthening penalties to encourage compliance, e.g. greater penalties if firms continue to breach the law in repeated, comparable cases; retroactive payment of taxes and social security contributions; blanket application of tribunal judgements to an entire workforce…*
6. *Strengthening the labour inspectorate's capacity to monitor and detect breaches, e.g. increased responsibilities and resources, innovative methods to inspect those working from home/on platforms…*
7. *Any other policies with the aim of tackling misclassification of workers*

### *2. Addressing incentives to use new forms of work*

In some countries, tax and/or employment regulation have created incentives for employers and/or individuals to replace standard forms of employment with non-standard ones (e.g. large differences in tax burdens between employees and the self-employed, incentivising misclassification and false self-employment). Some countries have attempted to address these incentives.

Please describe any recent or forthcoming public policy developed in your country with this aim, such as:

1. *Reducing discrepancies between different forms of employment in terms of pay, tax, social protection, working conditions…*
2. *Introducing measures to encourage hiring on standard contracts by making them more attractive relative to non-standard contracts, e.g. easing of obligations associated with standard contracts for employers, making non-standard contracts more costly for employers (e.g. higher social security contributions)…*
3. *Any other policies with the aim of addressing incentives to use new forms of work*

### *3. Regulating the use of new forms of work*

One potential policy response to new forms of work is to attempt to regulate their use which could restrict or even prohibit their use**.** For example, most countries have regulated the use of temporary contracts, agency work and zero-hour contracts. Some platforms are permitted to operate in some countries, but not in others.

Please describe any recent or forthcoming public policy developed in your country with this aim, such as:

1. *Regulating the operation of platforms (including limiting or prohibiting their operation)*
2. *Regulating the use of non-standard employment contracts, e.g. restricting the total period or the number of renewals; prohibiting their use for permanent needs or core activities of the firm…*
3. *Regulating the use of clauses in employment contracts, e.g. arbitration agreements under which workers may waive rights to litigation, exclusivity clauses…*

4. *Any other policies with the aim of regulating the use of new forms of work*

### *4. Improving working conditions*

Concerns have been raised in some countries about working conditions in new forms of work. Please describe any recent or forthcoming public policy developed in your country with the aim of ensuring fair and safe working conditions for those in new forms of work, such as:

1. *Ensuring workers are aware of their rights, responsibilities, working conditions and employer liability, e.g. public information campaigns, requiring firms to provide written confirmation of worker status, clarification in tripartite employment relationships…*
2. *Addressing working time and promoting predictability/stability in work schedules, e.g. guaranteed minimum working hours; enabling workers to plan ahead and take time off when needed; ensuring schedules are clear ahead of time and do not change with minimal notice; measures to improve work-life balance…*
3. *Encouraging fair pay, e.g. extension of minimum wage legislation to non-standard forms of employment (e.g. independent/own-account workers), ensuring equal pay for non-standard workers who do substantially the same work as standard workers for the same company, price regulation, requiring higher pay for non-standard workers to cover lower levels of social protection, compensating workers for hours in which they make themselves available for work…*
4. *Addressing occupational safety and health (OSH), e.g. ensuring that firms inform non-standard workers of hazards and safety procedures, measures to guarantee the same safe and healthy working conditions for non-standard workers as for standard workers, making platforms responsible for workers' OSH…*
5. *Protecting non-standard workers from discrimination, e.g. by buyers of the goods/services, by platforms/employers, within algorithms…*
6. *Requiring platforms/employers to cover employer liability, e.g. in case of workplace accident …*
7. *Strengthening the labour inspectorate's capacity to monitor working conditions and ensure compliance in new forms of work, e.g. increased responsibilities and resources, innovative methods to inspect those working from home/on platforms…*
8. *Making it easier for workers to take legal action over working conditions, e.g. reducing court costs, protecting workers against retaliation; greater penalties if firms continue to breach the law in repeated, comparable cases; permitting class-action lawsuits…*
9. *Any other policies with the aim of improving working conditions*

### *5. Strengthening social protection*[2]

Social protection systems have often been designed with full-time, permanent, dependent employees in mind, leaving other workers at a potential disadvantage – either because they are formally excluded from a scheme/programme (statutory access) or because they have difficulties in meeting eligibility criteria or contribution thresholds (effective access). Some countries have taken steps to update and revise their social protection system in order to ensure adequate social protection for those in new forms of work.

Please describe any recent or forthcoming public policy developed in your country with this aim, such as:

1. *Extending statutory access to existing social protection schemes/programmes for those in new forms of work*
2. *Improving effective access to social protection schemes/programmes, e.g. by adjusting rules and thresholds of existing schemes/programmes (e.g. earnings/hours/minimum contribution thresholds) so that eligibility conditions are more easily met; changing how self-employment earnings are assessed, subsidising contributions of non-standard workers…*
3. *Creating specially designed schemes/programmes to address particular characteristics/challenges of new forms of work (and potentially certain occupations/industries, e.g. similar to the social protection scheme for artists in Germany).*
4. *Decoupling social protection from contributions and/or employment status and increasing reliance on tax-financed/universal benefits (e.g. state pensions, social assistance, universal health care, basic income)*
5. *Enhancing the portability of benefits so that entitlements are not lost when individuals move jobs, e.g. by linking them to individuals rather than to the employer/job, creation of a digital worker identity…*
6. *Simplifying administrative procedures for registering and/or contributing, e.g. by improving information provision, removing administrative burdens, assigning responsibility for social protection to one administrative body…*
7. *Improving the monitoring of work activity for assessing entitlement of platform workers and other non-standard workers to unemployment benefits*
8. *Any other policies with the aim of ensuring adequate social protection*

### *6. Strengthening workers' voice*

Those in new forms of work may face specific barriers to collective representation, resulting in an asymmetry in bargaining power between workers and employers with potential negative consequences for job quality. Competition law may prohibit self-employed contractors from unionising and negotiating collectively. In the platform economy, workers on the same platform might not necessarily have any contact with one another if they are working alone and separated by different geographies, or even languages and legal contexts.

Please describe any recent or forthcoming public policy developed in your country with the aim of strengthening workers' voice in new forms of work, such as:

1. *Ensuring the right to freedom of association*
2. *Extending existing collective bargaining agreements (or signing new ones) to cover workers in new forms of work (e.g. platform workers)*
3. *Allowing independent/own-account workers to bargain collectively without violating competition/anti-trust law, e.g. revising the law, adding statutory exemptions to the law…*

4. *Promoting alternative arrangements for worker representation and discourse, e.g. supporting the setting up of worker centres or professional associations specific to new forms of work, promoting online models of worker voice (e.g. information-sharing forums/tools, platforms that enable workers to review employers), models for worker-employer relations (e.g. conferences, roundtables, workplace councils)…*
5. *Any other policies with the aim of strengthening workers' voice*

### *7. Public Employment Services (PES) responses to new forms of work*

New forms of employment offer opportunities for PES (e.g. new opportunities for job placement) but also bring new challenges (how to ensure sustainable job outcomes, reach out to employers, adjust training, etc.).

Please describe any recent or forthcoming public policy developed in your country linking PES and new forms of work, such as:

1. *Using new forms of work to tackle unemployment or for worker activation more generally, e.g. considering it "gainful employment"*
2. *Providing/adjusting guidance, training and support for those considering platform work or other new forms of work*
3. *Engaging with employers, including collecting information on what jobs/vacancies exist in new forms of work, understanding their needs, providing services to employers…*
4. *Targeting PES services to those in new forms of work, i.e. helping them to attain more sustainable employment*
5. *Any other policies linking PES and new forms of work*

### *8. Investing in skills*

Workers in non-standard forms of employment tend to participate less in lifelong learning. Employers may see less reason to invest in training for those in new forms of work – particularly where working relationships are short-lived, or if individuals work for several employers at once. At the same time, workers may have less access to public subsidies for lifelong learning if they have been designed for standard, full-time employees on open-ended contracts. New forms of work may therefore require new approaches to lifelong learning.

Please describe any recent or forthcoming public policy developed in your country with the aim of developing and recognising the skills of those in new forms of work, such as:

1. *Designing skills policies and programmes targeted specifically at those in new forms of work, e.g. vouchers, tax incentives, subsidies, loans, provision of training, guidance…*
2. *Adapting existing policies or programmes to make lifelong learning more accessible/attractive to those in new forms of work, e.g. subsidies, vouchers, tax incentives, loans or privileged access for those on non-standard contracts; facilitating shorter/different pathways to training (e.g. blended learning, distance provision, Massive Open Online Courses (MOOCs), Stackable/Modular and Micro-Credentials); adjusting the content of training…*

3. *Changing how training in new forms of work is financed, e.g. by an employer levy, by tax, by the individual…*
4. *Enhancing the portability of training rights by linking training to the individual rather than to the employer/job, e.g. individual learning accounts…*
5. *Facilitating the recognition of skills, e.g. offering validation of acquired experience to non-standard workers; enabling platform workers to share approval ratings with third parties and/or promoting the portability of such ratings from one platform to another…*
6. *Any other policies with the aim of developing and recognising skills*

### *9. Improving data collection*

Existing data sources like household surveys and tax records may not allow the identification of individuals working in new forms of work. This lack of information about the prevalence of new forms of work and the characteristics of the individuals engaged in them hinders the development of an adequate policy response.

Please describe any recent or forthcoming public policy developed in your country with the aim of improving data collection on those in new forms of work, such as:

1. *Updating/augmenting existing data sources, like adding new questions and/or changing definitions in national statistics, household surveys, etc.*
2. *Better use of existing data, including tax and social security data, linking of administrative data with survey data, etc.*
3. *Accessing/using private data sources, like platform/employer data*
4. *Developing new data collection exercises like ad hoc surveys of non-standard workers*
5. *Any other policies with the aim of improving data collection*

### *10. Improving coordination*

Addressing the challenges associated with new forms of work often requires coordinated policy intervention across different areas. In some countries, there have been efforts to bring different parties together to discuss the potential issues and opportunities, and the best policy response.

Please describe any efforts in your country to encourage coordination between government, social partners, industry and workers on new forms of work, e.g. setting up of dedicated working groups, forums, participating in international activities…

### *11. Other*

Please use this space to describe **any other recent or forthcoming public policy** developed in your country related to new forms of work, or to leave **any other comment** you deem relevant for this project.

**Thank you for taking the time to reply to this questionnaire.**

Please provide your own contact details (and the contact details of any others that have contributed to filling this questionnaire) in case we have any queries concerning the information provided.

## Notes

[1] In the case of (economically) dependent self-employed, the individual will be genuinely self-employed but dependent for the majority of their income on one single client. In order for the relationship to be considered false (or bogus) self-employment, there needs to be a deliberate attempt at hiding a genuine employment relationship in order to avoid labour regulations and/or tax obligations (either on the part of the employer, the worker, or both).

[2] Social protection may include benefits such as healthcare and sickness benefits, maternity/paternity benefits, old age and survivor's pensions, unemployment benefits and social assistance, long-term care benefits, invalidity, accidents at work and occupational injury benefits, family benefits etc.

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# Policy Responses to New Forms of Work

This report provides a snapshot of the policy actions being taken by OECD, EU and G20 countries in response to growing diversity in forms of employment, with the aim of encouraging peer learning where countries are facing similar issues. It shows that many countries are reflecting on whether existing policies and institutions are capable of addressing effectively the current (and future) challenges of a rapidly changing world of work. In recent years, many countries have seen the emergence of, and/or growth in, particular labour contract types that diverge from the standard employment relationship (i.e. full-time dependent employment of indefinite duration). These include temporary and casual contracts, as well as own-account work and platform work. Several countries have also seen growth in false self-employment, where employers seek to evade tax and regulatory dues and obligations. These changes are driving policy makers worldwide to review how policies in different areas – labour market, skills development, social protection – can best respond. How can policymakers balance the flexibility offered by a diversity of employment contracts, on the one hand, with protection for workers and businesses, on the other?

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