5 Facing the future of work: How to make the most of collective bargaining

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The purpose of this final chapter is to identify the role of labour relations in shaping the future of work. The chapter discusses how collective bargaining and workers' voice can be flexible tools complementing labour market regulation in fostering a more rewarding and inclusive future of work. The chapter then reviews what type of government intervention may be required to keep bargaining systems fit for purpose and to make the most of collective bargaining in a changing world of work. Finally, the chapter documents how existing institutions and social partners are adjusting to new challenges in the labour market, as well as the role of emerging actors and practices.

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.

In Brief

Key findings

Collective bargaining and workers' voice can help addressing the challenges posed by a changing world of work. As demographic and technological changes unfold, collective bargaining can allow companies to adjust wages, working time, work organisation and tasks to new needs in a flexible and pragmatic manner. It can help shaping new rights, adapting existing ones, regulating the use of new technologies, providing active support to workers transitioning to new jobs and anticipating skills needs.

Yet, the number of workers who are members of unions and covered by collective agreements have declined in many OECD countries. In addition, increases in different forms of non-standard employment in a number of countries pose a challenge to collective bargaining, as non-standard workers are under-represented by trade unions. This under-representation reflects both practical difficulties in organising non-standard workers and the historical focus of collective bargaining on standard employees, but also legal obstacles to collective bargaining for some non-standard workers such as the self-employed. Indeed, while labour law grants all *salaried* employees – whether in a standard or non-standard relationship – an undisputed legal right to collective bargaining, for workers usually classified as self-employed this right may be seen as infringing competition law. This is the case even though the International Labour Organisation (ILO) Convention on the right to organise and bargain collectively refers to *workers* in general. In this context, this chapter argues that:

- Enforcing the correct classification of workers and fighting misclassification is of particular importance in ensuring that workers benefit from the protection and rights to which they are entitled.
- However, a significant number of workers may still fall in a "grey zone" between the usual definitions of employee and self-employed, where genuine ambiguity exists about their employment status. For those workers, who share vulnerabilities with salaried employees, and for some self-employed workers in unbalanced power relationships, adapting existing regulations to extend collective bargaining rights may be necessary. For instance, several OECD countries have already sought to grant collective bargaining rights to some of these workers through tailored interventions in the labour law or explicit exemptions to the law prohibiting cartels.

While each country's history, situation and regulatory settings are different, this chapter argues that, despite the above-mentioned challenges, collective bargaining systems can still play a key role in promoting inclusive labour markets for workers and a level-playing field for all companies, including new ones. For example:

- Social partners have developed strategies to reach potential members in non-standard forms of work, first in challenging workers' status and classification, but also through lobbying on behalf of non-standard workers, adapting their bargaining practices to be more inclusive, or engaging in initiatives aimed at strengthening these workers' voice. In some OECD countries, unions have adapted their legal status to allow self-employed workers to become members, while others have created dedicated branches for non-standard workers. New independent unions have also been created.

- New vehicles for representing workers' interests have been developing in some OECD countries, such as Worker Centers or the Freelancers Union in the United States, or co-operatives of workers in some European countries. Yet, while these forms of workers' organisations can improve links and communication between non-standard workers, they cannot replace unions. In particular, they do not have the legal mandate to bargain collectively on behalf of their members or the ability to deliver on negotiated agreements. Therefore, they can complement unions rather than be a substitute for them; co-operation between traditional and new forms of workers' organisation is now emerging in some contexts.
- Employers' organisations are also being put to the test by changes to the world of work. They have an interest in ensuring a level-playing field for their members in the face of new competitors, who may circumvent existing labour regulations – for instance, digital platforms often consider themselves as matchmakers rather than employers.
- Successful examples of bargaining in the temporary work agency sector (which emerged as an innovative form of employment decades ago) or in sectors where non-standard work is common, such as the cultural and creative industries, have proven that systems are able to adjust to cover different and new forms of work.
- A few innovative collective agreements have also recently been signed in European OECD countries between unions and companies – including digital platforms, but they remain very limited. Platforms have taken some initiatives to allow workers to express their concerns and pre-empt the introduction of new legislation on the way they operate.

Introduction

The weakening of labour relations discussed in Chapter 2 poses serious challenges for workers' rights, benefits and protections. It also increasingly leaves employers and employers' organisations without a clear counterpart for discussions on sector- or firm-specific issues. This is problematic because the need for coordination mechanisms to overcome collective action problems and reach a balance between the interests of workers and employers has not gone away. Furthermore, the weakening of collective bargaining may also leave the door open to other forms of social conflict, such as boycotts or social media campaigns, and other types of regulation, as the scope for "self-organisation" among employers and workers on the ground is reduced.

While collective bargaining and workers' voice face increasing challenges in a changing world of work, they can nonetheless help address its increasing complexity and diversity. There are many examples showing that social partners and collective bargaining systems can adjust, develop new strategies and reshape existing institutions. In particular, they can contribute to addressing the realities of global markets, increased competition and fragmentation of production, and ensure that all workers and companies, including small and medium-sized enterprises, reap the benefits of technological innovation, organisational changes and globalisation as well as face – see European Commission (2018[1]) and (2019[2]).

In this context it is important to acknowledge the potential flexibility offered by collective bargaining in seeking solutions to issues of common concerns[1] and to discuss how they can complement public policies in social protection systems, life-long learning schemes and the regulation of employment relationships (ILO, 2019[3]). This chapter focuses on the role of collective bargaining as a "fundamental principle and right at work"[2] and a key labour market institution that allows reaching mutually beneficial agreements about work organisation and conditions, and provides room for interactions between social partners.

However, the precise role played by collective bargaining in shaping the future of work will depend on national institutional settings, practices and traditions (OECD, 2018[4]).

This chapter assesses the extent to which existing models remain fit for purpose, and discusses how traditional actors can adjust to the new challenges.[3] Section 5.1 illustrates how collective bargaining can complement public policies in strengthening labour market security and adaptability. Section 5.2 discusses adaptations to existing regulations that may be required to ensure that all workers in vulnerable situations get adequate worker representation and access to collective bargaining. Section 5.3 discusses the strategies developed by social partners to reach out to those in non-standard and new forms of work and business. Section 5.4 reviews other forms of labour organisation that are emerging in some OECD countries and their relations with the more traditional ones.

5.1. Collective bargaining in a changing world of work

5.1.1. Collective agreements can be flexible tools to address some of today's and tomorrow's challenges

Through collective bargaining, trade unions (simply called "unions" hereafter) play a crucial role articulating and pressing demands for higher wages, as well as representing the collective interests of workers more generally and facilitating an exchange between workers and their employers on various aspects of the working life (Freeman and Medoff, 1984[5]).

Depending on national regulatory settings as well as actual practices and traditions, unions' access to information, consultation and participation in decision making in the workplace can also enhance occupational health and safety and improve work organisation – e.g. by fostering high performance work practices, such as team work, autonomy, task discretion, mentoring, job rotation, and applying new learning – see OECD (2016[6]) and Chapter 4. Through collective agreements, in particular sectoral agreements that also allow covering small and medium-sized enterprises, collective bargaining can also help spreading best practices in terms of personnel management, training, health and safety, technology usage, insurance, or retirement packages.

When undertaken in a constructive spirit, accommodating the need for balancing inclusiveness and flexibility (OECD, 2018[7]), and within a framework that guarantees the respect of fundamental labour rights and a balance in bargaining power, collective bargaining can help companies respond to demographic and technological change. Collective bargaining allows them to adapt pay, working time, work organisation and jobs themselves, to new needs, in a more flexible and pragmatic – but yet fair – manner than that entailed by changing labour law.

Recent agreements in some OECD countries show that new issues related to work-life balance, increased flexibility around working time arrangement, or regulation of the use of new technological tools, are gaining ground in collective bargaining – see European Commission (2018[1]).

In France for instance the "right to disconnect", i.e. the right not to read and answer work-related emails and calls outside working hours, was provided in 2014 in a sectoral agreement for business consulting, followed by the wholesale trade sector in 2016. These agreements introduce "an obligation to disconnect distant communication tools". Similar provisions have been signed at firm level, for instance by the insurance company AXA, the energy company Areva and the telecommunication company Orange. The HR Director of Orange then published a very influential report on digital transformation and quality of life at work (Mettling, 2015[8]). The report was the basis for a law in 2017 which acknowledged the "right to disconnect" among the topics of mandatory annual negotiations with unions. In the absence of an agreement, employers have to draft a charter in consultation with the works council or the employee representatives.

Similar agreements including the recognition of the right to turn off company phones or to not answer work-related calls outside working hours have been signed at company level. Volkswagen was first in 2012 by preventing email exchanges on its internal servers between 6.15pm and 7am. AXA and the Spanish Trade Union Confederation of Workers' Commissions (CCOO) also concluded a similar agreement in 2017 in Spain.

There are also signs that the more general issues of work-life balance and working time flexibility are gaining prominence in collective agreements, possibly reflecting changes in workers' preferences and company recognition of the negative impact of job strain on productivity (see Chapter 3).

Finally, unions and employers are engaging in "algorithm negotiations", i.e. they are including as a subject of bargaining the use of artificial intelligence, big data and electronic performance monitoring ("people analytics") in the workplace, as well as their implications for occupational health and safety, privacy, evaluation of work performance and hiring and firing decisions (De Stefano, 2018[9]). Several collective agreements have started regulating the use of technology not only in monitoring workers but also in directing their work (Moore, Upchurch and Whittaker, 2018[10]).

5.1.2. Collective bargaining can complement public policies in enhancing labour market security and adaptability

The OECD's work on displaced workers (OECD, 2018[4]) has highlighted the significant role that collective bargaining, in particular at the sectoral level, can play in enhancing labour market security[4] and strengthening workers' labour market adaptability. As evolving demands for products and services as well as technological change are quickly affecting skills needs, social partners can provide active support to workers displaced from their existing jobs to help them back into good jobs.

The Swedish Job Security Councils (JSCs) are one of the most notable examples of this (OECD, 2015[11]). They provide support and guidance to displaced workers, even before displacement occurs, as well as access to training and reskilling opportunities in the case of plant closures and mass layoffs. JSCs allow companies and unions to trade exemptions from the "last in, first out"[5] rule for collective dismissals in exchange for a timely[6] and effective reallocation of displaced workers (Engblom, 2017[12]). JSCs are jointly owned by employers' organisations and unions (the government has no role). Their funding (which comes entirely from employers) is negotiated in collective agreements along with wage increases and unions frequently hold back on the latter to safeguard JSC funding. JSCs also illustrate the advantage of sectoral bargaining, which allows to distribute the risks and the accompanying costs of displacement over an entire sector. All workers covered by a collective agreement are covered by the JSC, including non-union members. To be eligible, workers need to have worked in their company for at least 12 months. JSCs are a complement to the Public Employment Service (PES). They can provide a top-up to unemployment benefits as well as coaching, training and upskilling services. A similar model to the Job Security Councils exists in Austria, where Outplacement Labour Foundations provide assistance, guidance, reskilling solutions and practical training to displaced workers. They also provide extended unemployment insurance, especially to those workers most in need.

Beyond supporting displaced workers, Chapter 3 has shown that social partners can also play a role in anticipating skills needs. For instance, the JSCs' upskilling services are partly based on a skills barometer which they run twice a year and which allows JSCs to anticipate skills needs. In addition to "outplacement" foundations, Austria also has Inplacement Labour Foundations which have a more forward-looking element and help companies/sectors obtain qualified personnel in case of shortage. Because Labour Foundations are owned by the social partners, skills needs can be identified swiftly. In Germany, a 2016 agreement in the metal, engineering and technology sector titled "Training and qualification for industry 4.0 – managing change successfully", committed to analysing all vocational and lifelong training programmes offered by the industry to assess their adequacy to the growing use of data exchange and automation in manufacturing. More generally, in several OECD countries, social partners are represented

on sectoral skills councils, which produce industry-specific long-term projections to ensure that current qualifications meet future demand for skills – see Chapter 4 and OECD (2019[13]).

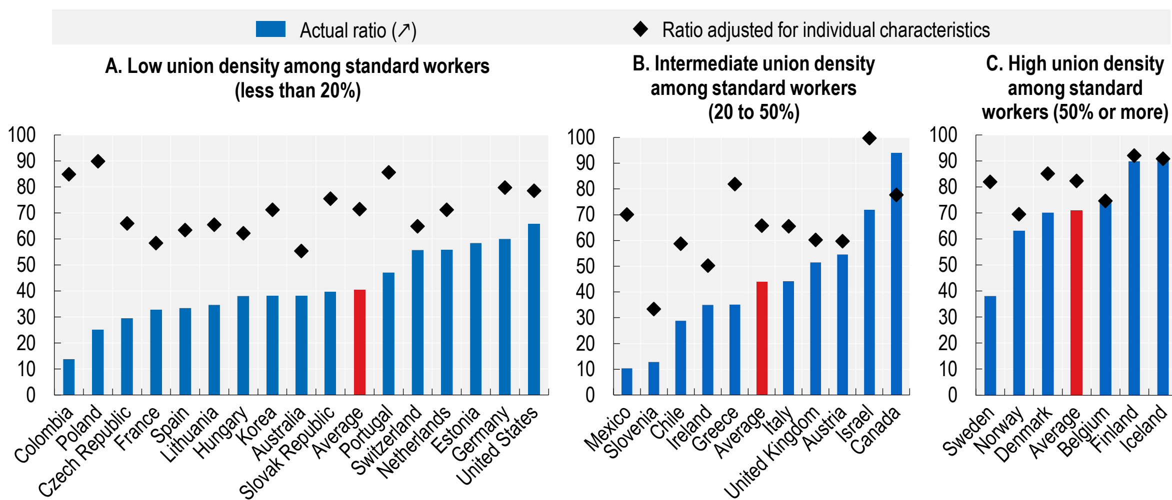
In a time of rapid change and despite the decline in membership and coverage, the role of social partners in finding tailor-made solutions, managing transitions, anticipating and filling skills needs may, therefore, be increasingly important.

5.1.3. But challenges are accumulating…

Chapter 2 has shown how, over the last three decades, collective bargaining systems have been under increasing pressure. The rise of different forms of non-standard work in a number of OECD countries poses an additional challenge to collective bargaining, as non-standard workers are less likely to be unionised than standard workers (Figure 5.1). With the exception of Israel, this is the case even when controlling for composition effects (linked to gender, age, education, industry, occupation, firm size and part-time vs. full-time employment).[7] On average, when controlling for composition effects, the ratio of trade union density among non-standard workers relative to standard workers is not significantly higher in countries where trade union density among standard workers is higher and is remarkably similar across countries in all three panels.[8] This suggests that the lower unionisation of non-standard workers does not depend on country-specific characteristics but rather reflects difficulties in organising non-standard workers that are inherent to the non-standard status itself.

Figure 5.1. Non-standard workers are underrepresented by trade unions

Actual and adjusted ratio of trade union density among non-standard workers relative to standard workers (%), latest available year



Note: Countries are grouped by degree of unionisation among standard workers. Figures refer to 2010-12 for Greece and the Slovak Republic; 2013 for France; 2015 for Germany and Hungary; 2016 for Finland; 2014-16 for Austria, Belgium, the Czech Republic, Denmark, Iceland, Israel, Italy, Lithuania, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain and Switzerland; 2017 for Canada, Chile, Colombia, Estonia, Ireland, Korea, Sweden, the United Kingdom and the United States; and 2018 for Australia and Mexico. Average is the unweighted average of countries shown in each panel (excepted Estonia in Panel A).

Non-standard workers are those without an open-ended employment contract. The precise categories of workers included in the chart differ across countries (for further details see Annex 5.A). The adjusted ratio for individual characteristics is based on the marginal effect of being in a non-standard form of work relative to being in an open-ended contract calculated from a probit regression controlling for sex, age groups, educational levels, industry, public vs private sector (except for Ireland), occupation, firm size (except for the United States) and full-time vs. part-time employment. The data necessary for this adjustment are not available for Estonia.

The correlation between the adjusted ratio and trade union density among standard workers is weak (0.39) and statistically significant at the 5% level but becomes statistically insignificant (and even weaker, 0.24) when excluding Finland and Iceland.

Source: OECD estimates based on the Labour Force Survey (LFS) for Canada, the Encuesta de Caracterización Socioeconómica Nacional (CASEN) for Chile, the Gran Encuesta Integrada de Hogares (GEIH) for Colombia, the Finnish Working Life Barometer (FWLB) for Finland, the Enquête statistique sur les ressources et conditions de vie (SRCV) for France, the German Socio-Economic Panel (SOEP) for Germany, the Quarterly National Household Survey (QNHS) for Ireland, the Encuesta Nacional de Ocupación y Empleo (ENOE) for Mexico, the Labour Force Survey (LFS) for the United Kingdom, the Current Population Survey (CPS), May Supplement for the United States and the European Social Survey (ESS) for all other European countries not listed above (excepted Estonia, Hungary and Sweden) and Israel. For Australia, Estonia (actual ratio only), Hungary, Korea and Sweden, actual ratios are based on data provided by national statistical authorities: Characteristics of Employment (COE) Survey for Australia, Labour Force Survey (LFS) for Hungary, Economically Active Population Survey (EAPS) for Korea and Labour Force Survey (LFS) for Sweden, while adjusted ratios are OECD estimates based on the Household, Income and Labour Dynamics in Australia (HILDA) for Australia, the European Social Survey (ESS) for Estonia, Hungary and Sweden and the Korean Labor and Income Panel Study (KLIPS) for Korea.

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In particular, non-standard workers face practical difficulties and legal obstacles in joining unions (see Section 5.1.4 below). Their lower unionisation rates may also be the result of unions historically focusing on standard workers' needs, rather than those of non-standard ones. However, as discussed in previous chapters, empirical evidence for insider-outsider theories arguing that unions neglect the interest of outsiders is partial and mixed. Research based on the content of collective agreements shows that the fact that unions take into account the concerns of agency workers does not depend on their membership composition (Benassi and Vlandas, 2016[14])

5.1.4. …and there are legal obstacles to overcome

Beyond individual-level barriers, the organisation and representation of some non-standard forms of employment is hindered by concrete legal obstacles. If ILO Convention 98 on the right to organise and bargain collectively refers to workers in general[9], in practice, the right to bargain for non-salaried workers is subject to legal discussion as possibly infringing the application of antitrust regulations (Aloisi, 2018[15]; Linder, 1999[16]).

As illustrated in Figure 5.2, while salaried workers face only practical difficulties in exercising their collective rights (see Section 5.3 and Section 5.4 below), workers in the "grey zone" between dependent employment and self-employment – see Chapter 4 in OECD (2019[17]) and Box 5.1 below – as well as genuine self-employed workers, who might nonetheless be in unbalanced power relationships with their employer/client, may also be barred from bargaining collectively due to laws prohibiting cartels, which tend to consider them as "undertakings" (Daskalova, 2018[18]).

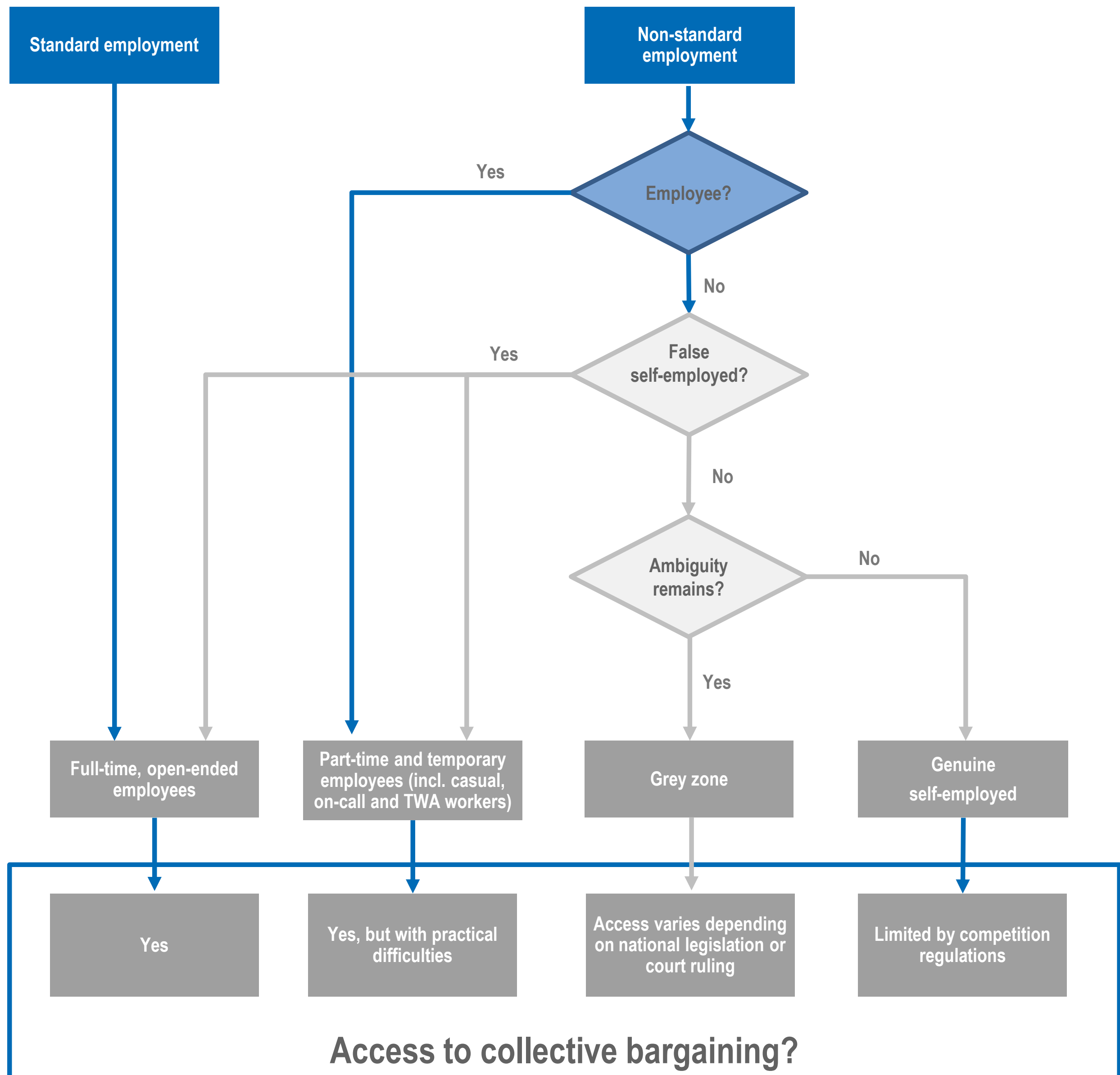
Traditionally, the primary objective of competition law has been to defend consumers from anti-competitive practices by sellers. When this objective came into contradiction with the labour law objective of protecting workers, courts and legislators have intervened to clarify legal interactions. In particular, courts have detailed the conditions under which collective bargaining could be exempt from the cartel prohibition established in competition law. For instance, the US Clayton Antitrust Act of 1914 states that "the labor of a human being is not a commodity or article of commerce". Therefore, "labor (…) organizations, instituted for the purposes of mutual help, [should not] be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws" (§7 Clayton Act, 15 U.S.C. § 18). In EU competition law, the clarification came from the Court of Justice in the so-called Albany case (C-67/96) – which arose from a dispute between a company and a pension fund regulated by a collective agreement in 1999. In this instance, the European Court of Justice also ruled that collective agreements for employees fall outside the scope of competition law.[10]

However, as forms of work become more heterogeneous and self-employment increases, especially in the context of platform-mediated services, new challenges face courts and legislators. 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 – including those in the "grey zone" and self-employed workers in an unbalanced power relationship – as a cartel.

In Ireland, for instance, the national competition authority decided in 2004 that self-employed actors could not set tariffs and contract terms collectively.[11] In the Netherlands, in 2006 and 2007, associations representing

freelance workers in the performing arts sector and an association representing orchestras signed an agreement that included a minimum fee for self-employed musicians temporarily replacing orchestra members. Reacting to this, the Dutch competition authority issued a reflection document warning that the setting of minimum tariffs by a union representing the self-employed was a price-fixing scheme contrary to competition law.[12] Following this statement, the employer association withdrew from the agreement (Daskalova, 2018[18]). The argument that collective bargaining for self-employed workers was incompatible with competition law has also been used in the United States by Uber to challenge a 2017 ordinance by the City of Seattle that allowed drivers to unionise and bargain together.[13]

Figure 5.2. Access to collective bargaining for different forms of employment, current situation



Note: The figure maps standard and non-standard employment into the different categories of workers. Diamonds correspond to classification decisions that can be taken either by the parties (e.g. stipulated in a written contract between employers and workers) or by adjudicators (courts or enforcement agencies). Grey diamonds refer to decisions that are most often taken by adjudicators. The bottom rectangles refer to access to collective bargaining.

Box 5.1. Who are the workers in the grey zone?

In most cases where individuals are falsely classified by the parties as self-employed (e.g. in a written contract between employers and workers), courts will be able to determine this relatively easily using the criteria and tests that have been developed in statutory legislation or jurisprudence (see Figure 5.2). In establishing whether a worker is an employee, courts typically look at: financial dependence; control and subordination; the worker's integration in the organisation; who provides the tools, materials or machines; the regularity of payments; the extent to which the worker takes on financial/entrepreneurial risk; the degree of discretion over the continuation of the relationship, etc.

However, there are also cases where a genuine ambiguity remains since test criteria may point in different directions. These cases fall in a "grey zone" between self- and dependent employment. Workers in this grey zone, who are usually formally classified as self-employed, share a number of characteristics with dependent employees, usually resulting in an unbalanced power relationship with their employer/client. There is therefore a case for extending to them certain rights and protections usually granted to employees by labour law.

Countries have taken different routes to extend rights and protections to workers in the grey zone. Some countries have identified very specific occupations to which certain labour rights and protections have been extended. Other countries have focussed on the specific category of workers who are dependent on one employer/client for most of their income (the so-called "dependent" self-employed).

A handful of countries have relied on a vaguer definition of an intermediate category (or "third worker category") to which some of the rights and protections of employees have been extended. While this solution potentially covers a larger set of workers, it also increases the danger that the objective of litigation is shifted down from obtaining employee status to merely obtaining worker status, and that it could be used to downgrade the degree of protection of workers that would have otherwise been classified as employees.

Finally, another approach consists in treating everyone in the grey zone as an employee as far as certain aspects of labour law are concerned. In practice, this would be equivalent to defining a "residual category" capturing those cases where employment tests fail to come to clear conclusions about self-employment status. Although so far no country has systematically adopted this approach, it was followed in a couple of cases by the supreme courts of both California and Sweden. The latter concluded that, because the circumstances of the relationship were ambiguous and it was difficult to make a clear judgement, an employment relationship would be assumed – see Chapter 4 in OECD (2019[17]) for a more extensive discussion).

The case of the Dutch substitute musicians was brought to the European Court of Justice (ECJ) which in 2014 ruled that, while genuine self-employed should continue to be seen as "enterprises", the so-called "false self-employed" are not to be considered undertakings for the purpose of competition rules (Daskalova, 2018[18]; Aloisi, 2018[15]).[14] If, on the one hand, the ECJ left the door open to agreements signed on behalf of the false self-employed (Ankersmit, 2015[19]), it also left to legislators and lower courts the challenge of distinguishing genuine self-employment and entrepreneurship from false self-employment.

In addition, workers in the grey zone who share some of the vulnerabilities inherent to an employee status but are not false self-employed are still barred from accessing bargaining following that ruling. Moreover, the ruling also forbids collective bargaining for genuinely self-employed workers that nevertheless are in unbalanced power relationship vis-à-vis their employer/client.

As forms of work continue to diversify, the question of access to collective bargaining for new technology-induced forms of employment (i.e. platform work) and other forms of work in the “grey zone”, such as dependent self-employment – where a self-employed worker’s income is dependent on only one or a few clients – is a key contemporary challenge for labour relations (ILO, 2019[3]).

Indeed, extending the coverage of job-related benefits (minimum wages, health plans, unemployment benefits, etc.) to non-standard workers (OECD, 2019[17]) or improving their job mobility prospects is not a functional equivalent to guaranteeing access to collective bargaining. As highlighted before, collective bargaining is not only a fundamental right, but also a flexible tool that can be mobilised by workers as well as employers to address work-related challenges (including some that cannot be currently anticipated) at national, sectoral or company-level.

5.2. Adapting regulations to more diverse forms of employment

In light of the legal obstacles discussed in the previous section, legislators may have a role to play to adapt existing rules to the changing world of work and extend the legal access to collective bargaining to a larger share of workers, notably to workers in the “grey zone” as well as to some self-employed workers in unbalanced power relationship.

The European Committee of Social Rights of the Council of Europe has recently argued that in establishing collective bargaining rights “it (is) not sufficient to rely on distinctions between worker and self-employed. (…) Where providers of labour have no substantial influence on the content of contractual conditions, they must be given the possibility of improving the power imbalance through collective bargaining”.[15]

Granting bargaining rights to workers in the “grey zone” and to self-employed workers in unbalanced power relationships may not only be desirable for fairness consideration, but also for efficiency reasons. Indeed, as discussed in OECD (2019[17])(see, in particular, Annex 4.A of Chapter 4), disproportionate buyer power not compensated by sufficient bargaining power on the workers’ side (including when these workers are self-employed) may lead to suboptimal employment and wage outcomes, as well as poor working conditions (Daskalova, 2018[18]). In this context, extending the right to bargain, or lifting the prohibition to collectively bargain on a case-by-case basis could improve both equity and efficiency of the market.[16]

In practice, the main difficulty is to identify some criteria for providing access to collective bargaining to avoid giving unregulated freedom to own-account self-employed workers – that is, self-employed without employees – to form cartels (even small ones), as this could have clear negative consequences for consumer welfare. Typically, the numerous existing cases of, for example, plumbers or professional services agreeing about sharing local markets or colluding to set prices should be prevented.[17]

Adapting regulations to allow workers in the “grey zone” and certain self-employed workers in unbalanced power relationships to bargain collectively is part of a broader framework to protect workers and address concerns like that of disproportionate employer market power discussed in other chapters. Giving these workers the possibility to voluntary “exit”, i.e. to find another job (in terms of the skills they possess but also of restrictions to mobility in labour contracts) if their “voice” is not heard would also contribute to strengthen their bargaining power (see also Chapter 4).[18]

The following sections discuss some options which have been considered in OECD countries to grant bargaining rights to non-standard workers formally classified as self-employed but who share some characteristics with dependent employees and are in an unequal power relationship with their employer.

5.2.1. Enforcing the correct classification of the employment relationship

Ensuring a correct classification of workers and fighting against misclassification is critical to enforce existing regulations and provide access to collective bargaining to workers who would otherwise be unjustly

excluded. This has been a strategy frequently pursued by unions to include all non-standard forms of work into existing collective agreements (see Section 5.3) as providing a first step to access collective bargaining and a direct gateway to social and employment protection. However, even if all workers were correctly classified, there would still be an issue of bargaining rights for those workers in the grey zone, who cannot be easily classified, and for workers who are genuinely self-employed, but are in an unbalanced power relationship vis à vis certain buyers, with limited options to provide services to other buyers.

5.2.2. Tailoring labour law to grant access to bargaining to workers in the grey zone

Some OECD countries have given the right to bargain collectively to some workers in the grey zone by including them in an extended definition of who is an employee, as far as the labour relations legislation are concerned. This is the approach favoured since the mid-1960s in Canada, where the federal and many provincial labour relations legislations regarding collective bargaining explicitly includes "dependent contractors"[19] in its definition of employees, allowing for their inclusion in the same bargaining unit[20] as permanent full-time employees and usually with the same collective agreements (while it is uncommon for dependent contractors to have a separate collective agreement from permanent employees, this is legally permissible).[21]

In other OECD countries, specific categories of workers in the "grey zone", such as dependent contractors in Korea, *parasubordinati* in Italy, *Arbeitnehmerähnliche Personen* in Germany, *workers* in the United Kingdom, *TRADE* in Spain or, since January 2019, any "person working for money"[22] in Poland, are included in collective bargaining (or in the case of Spain they can sign specific "professional interests agreements", *acuerdos de interés profesional*) even if they are not formally employees.

5.2.3. Exempting specific forms of self-employment or sectors/occupations from the prohibition to bargain collectively

A complementary policy option explored by some governments consists in lifting the prohibition to bargain collectively for some workers who are genuinely self-employed, but are nonetheless in situations of power asymmetry vis-à-vis their customer/employer. This is the case when self-employed workers are facing employers/clients with a disproportionate buyer or monopsony power, while their outside options are limited (see Chapter 4 and below). Examples of such genuinely self-employed workers who might nonetheless be in unbalanced power relationships include for instance freelance musicians, actors, performing artists, or journalists – for whom the possibility of lifting the bargaining prohibition has been discussed in several countries – and granted in some.

Such objectives could be pursued either by adopting a pragmatic approach vis a vis groups of self-employed most exposed to unbalanced power relationships or by introducing explicit legal exemptions from the enforcement of the prohibition to bargain collectively.

In many cases, regulators and enforcement authorities have taken a case-by-case approach to avoid a strictly procedural analysis of cases involving those workers with little or no bargaining power and exit options. Moreover, in several countries (e.g. in France, Italy, Spain, etc.), independent unions of platform workers are de facto negotiating working conditions for their members even if they are classified as self-employed without any intervention from national antitrust authorities. The risk associated with this route is that it potentially creates uncertainty since it could be reversed without any legislative reform.

Another avenue that has been followed by a few OECD countries is to introduce explicit exemptions to the cartel prohibition for certain forms of self-employed, sectors or occupations (Daskalova, 2018[18]). In 2017, the Irish Parliament amended the Competition Act to include voice-over actors, session musicians and freelance journalists among the occupational categories that have the right to negotiate. Furthermore, it also opened the possibility to access collective bargaining for "fully dependent self-employed"[23] and not only "false

self-employed" workers (as per the ECJ 2014 ruling – see above). Under Irish law, trade unions have to apply for the exemption, prove that the workers they want to represent fall in one of these two classes, and show 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".

The 2017 Irish amendment has attracted many criticisms and is currently debated in the ILO. Irish employers as well as the International Organisation of Employers, on the one hand, expressed their concern about the lack of clarity in the criteria used to identify "fully dependent" and "false" self-employed workers. They also contested the lack of employer consultation in determining those criteria – currently the law states that the government makes the decision in consultation with a trade union only.[24] On the other hand, those in favour of extending bargaining rights to self-employed workers experiencing power imbalance find the dependency criteria too stringent (a platform worker can work for more than two platforms and still be economically dependent). The condition of "no or minimal economic effect on the market" is also seen as a potentially insurmountable practical limit for workers (De Stefano and Aloisi, 2018[20]).

The Australian Competition and Consumer Act also allows businesses to collectively negotiate with suppliers or customers if the Australian Competition and Consumer Commission considers that collective bargaining would result in overall public benefits. The Australian Competition and Consumer Commission is 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.

Legal exemptions for specific categories of self-employed also exist in other OECD countries. In 1996, the US Department of Justice and Federal Trade Commission jointly ruled that physician networks which "collectively agree on prices or price-related terms and jointly market their services" do not infringe anti-cartel regulation provided that "they constitute 20% or less of the physicians in each physician specialty in the relevant geographic market" – 30% if they are part of non-exclusive network[25] – see DOJ/FTC (1996[21]).

In practical terms, targeted exemptions by sector or occupation are not always easy to define and apply; the list may need frequent updating, and the potential reversal of exemptions is a source of legal uncertainty for workers and businesses alike.[26]

In addition, as outlined before, small cartels can induce suboptimal outcomes for consumers. For that reason any exemptions aimed at granting bargaining rights to self-employed in situations of power imbalance should be based on a comprehensive costs-benefits analysis. One way to focus on workers in real need of access to collective bargaining would be to prioritise exemptions to those groups of self-employed workers that are likely to have few outside options.

Overall, granting some exemptions from the prohibitions to bargain to some self-employed in particular sectors or occupations is an option worth exploring and evaluating further.[27]

5.3. How can social partners enhance collective bargaining and workers' voice in non-standard and new forms of work?

Beyond legal obstacles, trade unions in most countries face a series of practical difficulties to organise and negotiate collective agreements on behalf of non-standard workers. These difficulties are partly linked to some of the intrinsic characteristics of non-standard work, such as frequent turnover and a limited attachment to a single workplace, and to the negative implications of these characteristics, e.g. reluctance to organise for fear of future retaliation, or a limited awareness of bargaining rights. Both the ILO Committee on Freedom of Association (CFA) and Committee of Experts on the application of Conventions and recommendations (CEACR) examined various cases and circumstances in which non-standard workers were restricted in the exercise of the right to freedom of association and the right to collective bargaining (ILO, 2016[22]).

In addition, in the past, some unions may have tended to focus primarily on standard employees.[28] Yet, there are now examples of unions which are making efforts in several OECD countries to reach out to new potential members, in particular non-standard and young workers, by adapting their strategies and changing their structure – see Benassi and Dorigatti (2014[23]) or Durazzi, Fleckenstein and Lee (2018[24]).

More generally, worker's voice arrangements and collective bargaining systems have demonstrated their ability to adjust to cover different and new types of employment relationships in a number of cases. The development of collective bargaining in the temporary work agency sector, for instance, illustrates how social partners have addressed challenging issues such as the regulation of triangular working relations – see Box 5.3 below and WEC and Uni Global (2018[25]). Instances of collective bargaining and workers' voice initiatives in the cultural and creative industry provide examples of how labour relations can develop in sectors with a high share of non-standard workers (Box 5.2). Both cases can provide inspiration for enhancing collective bargaining for workers in new forms of employment such as platform work, or for workers in the "grey zone" more generally.

5.3.1. Unions are diversifying their strategies to reach potential members

Trade unions are pursuing several strategies to extend their reach to non-standard forms of employment, and notably the most vulnerable ones. In most OECD countries, unions' main approach to reach new members has been to focus on challenging workers' status (i.e. reclassifying them as discussed before). For several decades, unions have been trying to bring non-standard workers under the umbrella of a standard contract through judicial reclassification – see Linder (1999[16]) for examples of reclassifications in the United States of grocery baggers, adult entertainment workers, drug testing subjects, "lessee" taxicab drivers, fruit pickers, and truck drivers.

More recently, the issue of classification has taken a new prominence with digital platforms. In the United Kingdom, for instance, the union GMB representing private hire drivers took the case of Uber drivers to an Employment Tribunal, which reclassified self-employed Uber drivers into workers covered by minimum wage legislation, and legal provisions for holiday pay and breaks.[29] Tribunals in Italy[30], France[31] and the Netherlands[32] recently took similar decisions. Moreover, even before these recent rulings, the risk of re-classification had led platforms in France and Italy to accept to open discussions or negotiations with recognised unions or workers' representatives (see Section 5.4.2).

Another strategy has been to lobby for public policy interventions restricting the use of non-standard forms of employment or enhancing the quality of these jobs at either national or local level. In Korea, for instance, trade unions and civil society organisations created the "Alliance for Nonstandard Workers" in 2000, which in 2006 succeeded in pushing the government to limit the use of fixed-term contracts and outlaw discrimination based on employment status[33] (Fleckenstein and Lee, 2018[26]).

Unions in some cases have also changed bargaining practices to ensure better outcomes for non-standard workers. For instance, the Korean Confederation of Trade Unions launched its "solidarity wage" initiative in 2013, which promoted lump-sum pay increases rather than percentage increases with the explicit aim of "closing the wage gap between standard and nonstandard workers" (Durazzi, Fleckenstein and Lee, 2018[24]).

Finally, unions are also exploring other ways to strengthen workers' voice, either by putting pressure on employers – as in the United States through "corporate campaigns" to gain recognition or conclude an agreement (McCartin, 2014[27]), or by designing new means of organisation and information-sharing for non-standard workers. For instance, the German metal-worker union *IG Metall*, the Austrian union confederation, together with the Austrian Chamber of Labour, and the Swedish trade union *Unionen*, launched one of the first cross-border union initiatives to support platform work with the website *faircrowd.work* which provides information and advice to platform workers and in particular ratings of working conditions on different online platforms based on surveys of workers (see Section 5.4.3 for a discussion on the use of new technologies to strengthen workers' rights).

Box 5.2. Collective bargaining in the creative sector

In the creative sector, where the incidence of freelance work is high, issues related to collective association and right to bargain are far from new. In the 1920s and 1930s, the status of writers in Hollywood production studios was being argued over. Studios initially favoured hiring writers as employees, who could not claim intellectual property rights under the Copyright Act of 1909 (Fisk, 2018[28]). But after the 1935 National Labour Relations Act had granted employees the right to organise, studios attempted to contest writers' unionisation right in courts. This led the National Labour Relations Board to confirm in 1937 that freelance writers, like writers under contract, had the right to bargain (Fisk, 2018, p. 186[28]). Over time, and with frequent detours through the courts, other crafts emulated the writers' example in forming their "guilds" and the phenomenon expanded beyond the film industry to radio, television and theatre. The current system is characterised by high union density and a bargaining culture akin to that of some corporatist European countries. Each guild engages in multi-employer bargaining in a way that resembles pattern bargaining – the Writers' Guild usually sets the mark for others (Kleingartner, 2001[29]). Studios now recognize unions as useful negotiating partners (Frommer, 2003[30]).

In other cases, access to collective bargaining for creative workers depended on the introduction of special statuses. A 1920 law allowed Austrian freelance journalists to collectively negotiate their fees (Fulton, 2018[31]). Changes to French labour law in the 1970s granted journalists and performing artists the status of employees for matters of collective bargaining. In Germany, the Collective Bargaining Act of 1949 was amended in 1974 to cover "employee-like" persons; criteria defining access to this status are relaxed for writers and journalists. In Denmark, since 2002, unions can bargain on behalf of journalists, scenographers, and graphic designers classified as "freelance wage earners".

Moreover, in 1980, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Recommendation concerning the Status of the Artist, which "recognises the right of artists to be organised in trade unions or professional organisations that can represent and defend the interests of their members" (UNESCO, 1980[32]). In response to this recommendation, Canada passed in 1995 the *Status of the Artist Act*, which allows self-employed artists to be recognised and certified by the Canadian Industrial Relations Board (CIRB) as an artists' association with the exclusive right to negotiate collective agreements with producers.

When freelance creatives cannot access collective bargaining, trade unions and professional associations often offer advisory recommended minimum fees or rates lists (ILO, 2014[33]). For instance, the Dutch professional association of graphic designers (BNO) developed guidelines for minimum fees, and its Italian counterpart (AIAP) set up a fee guide. Guidelines also cover subjects such as work organisation and working hours. Collecting societies have been set up to handle the payment of royalties to writers, photographers, musicians or actors flowing from copyrights legislation (Gherardini, 2017[34]). Unions have set up lists to warn freelance workers about bad payers, e.g. the "ask-first" list set up by the British media and entertainment union BECTU in the film industry (Charhon and Murphy, 2016[35]).

Finally, co-operatives have emerged to provide solutions to some of the challenges faced by precarious freelance artists. Typically, these structures will formally hire artists, who thereby gain access to social security programmes – including unemployment insurance. Pooling resources, cooperatives also guarantee a regular pay to freelance artists, smoothing out the payment delays they frequently face. Workers are still entirely independent in finding and managing their projects. They pay a fee equivalent to a percentage of their earnings and can access a range of business services. Some of these cooperatives were set up by unions (in Denmark, the Danish association of professional technicians, *Teknisk Landsforbund*, created the Danish Technology and Design Freelance Bureau in 1992), while others emerged from private initiatives – such as the Brussels-based SMart created in 1998, see Section 5.4 (Gherardini, 2017[34]).

5.3.2. Unions are adapting their own organisation and structure

In several OECD countries, unions have opened their membership to non-standard workers, including the self-employed, and have started campaigning for the rights of platform workers. In Sweden, *Unionen*, a white-collar union, has been open to the self-employed since 1998. In Germany, *IG Metall*, the largest trade union amended its statutes in 2015 to allow the self-employed to join.

In other countries, unions have established separate branches specifically for the self-employed. According to a survey by the European Trade Union Confederation (Fulton, 2018[31]), the *Unión General de Trabajadores* (UGT) in Spain, the *Confederazione Italiana Sindacati Lavoratori* (CISL) in Italy and the *Federatie Nederlandse Vakbeweging* (FNV) in the Netherlands – where self-employment has experienced a very significant increase (Baker et al., 2018[36]) – are the most notable examples.

Furthermore, some unions have also set up specific branches or union-affiliated guilds for non-standard forms of work in general. Since 1998, the largest Italian union, *Confederazione Generale Italiana del Lavoro* (CGIL), has a specific branch *Nuove Identità di Lavoro* (NiDIL) devoted to non-standard workers. In the United States, the National Taxi Workers Alliance is the first member of the AFL-CIO, the US federation of trade unions, representing independent contractors. In Slovenia, *Sindikat prekarcev*, which is part of the main union confederation (ZSSS – Association of Free Trade Unions of Slovenia), has sought to represent "non-classical workers" since 2016.

Finally, some independent unions have been created, especially in the private hire or food delivery sectors. The most notable case is the one of the Independent Worker Union of Great Britain (IWGB), which is not affiliated to the Trade Union Confederation but has scored a series of significant victories in tribunals and negotiations with platforms. In Italy, food couriers have set up their own associations, which are not affiliated to any established union but are recognised as the counterparts to food-delivery platforms. In France, private hire drivers have set up an independent union. Similar developments have been observed in Belgium, Germany, the Netherlands and Spain (Vandaele, 2018[37]).

5.3.3. Employers' organisations are slowly adjusting

Employers, business and employers' organisations are the other key actors of collective bargaining. Chapter 2 has shown that membership to employer organisations (at least in those countries for which time series are available) shows a remarkable stability which sharply contrasts with the fall observed in trade union density.

Yet, according to the International Organisation of Employers (IOE, 2017, p. 46[38]), "employers and business organisations will be affected too [by ageing, globalisation and technological development] as the concept of dependent employment comes under discussion" and their role has to evolve from one of support to one of provider of advice, representation and concrete solutions.

ILO ACT EMP and IOE (2019[39]) also highlight the need for employers' organisations to improve their representativeness, reaching out to underrepresented or emerging economic actors, and in particular giving "a seat at the table" to small and medium enterprises. Accordingly, some existing employers' organisations are currently trying to expand their reach to new members. For instance, the Iberico American Federation of Young Entrepreneurs (FIJE), which covers 150 000 young entrepreneurs in 20 countries, aims to foster youth membership in employers' organisations through networking, training, and representation activity.

Moreover, employers' organisations face the rapid emergence of new sectors and industries based on new business models. The development of new businesses outside of the coordinated and organised framework of traditional employers' organisations creates a challenge for the latter, who have an interest in ensuring a level playing field for their members against new competitors who may circumvent existing labour regulations. In addition, as these new industries emerge, traditional organisations are challenged

by the fact that companies can choose to associate through more informal arrangements, based on temporary projects or issues, to represent their interests, particularly in highly local labour markets. Efforts to reach out to underrepresented companies by employers' organisations include the development of new services and tailored solutions for companies whose business models does not (yet) fall under a clear-cut regulatory framework (IOE, 2017[38]; ILO ACT EMP and IOE, 2019[39]).

Reaching a balance between the needs of their historical members and those of the new digital platform companies, however, may in some cases not be an easy challenge for traditional employers' organisations (Johnston and Land-Kazlauskas, 2018[40]). For instance, platforms often see themselves as a matchmaker, not as an employer.[34] This makes identifying the bargaining counterpart more challenging.

Yet, the experience with temporary work agencies (see the discussion in Box 5.3) shows that this is not an insurmountable obstacle if there is a will to negotiate or a threat of public intervention in the absence of an agreement. In Italy, for instance, a group of major food delivery companies announced in July 2018 the creation of a new employers association to represent their business and negotiate with the government and the couriers associations. In Slovakia, Uber has become a member of the National Union of Employers and the professional association of information technology (IT) companies (ITAS).

Beyond the difficulty of organising new entrants on the employers' side, traditional employers' organisations are also threatened by the weakening of workers' representation. In the Netherlands, AWVN, an employers' association, released a report in 2018 where it expressed its concerns about the sustainability of the Dutch bargaining model in the absence of strong workers' involvement (AWVN, 2018[41]). AWVN proposed two options to strengthen the direct representation of employees. The first option is to let employees elect their representatives in the bargaining process at company or sectoral level (currently unions represent workers without a formal election). For each vote, the union would receive a small fee, e.g. EUR 10, as a compensation for the costs of bargaining. The second option is to offer newly hired employees a trial union membership for a period of one year for free or for a sharply reduced contribution. Employers would encourage this by providing extensive information when hiring people and unions would offer a reduced membership rate. To determine which option works better, AWVN has proposed to trial them in a number of companies.

Box 5.3. Collective bargaining and temporary agency work

Including non-standard workers and platform workers in particular in collective bargaining requires some degree of organisation among workers but also a clear identification of the employer. In the case of a triangular relationship such as the one between a contractor, a platform and a customer, it may be difficult to identify the real employer, and consequently, the bargaining counterpart. While platforms are a recent development and, so far, limited in scope, triangular employment relationships are not new. Temporary work agency (TWA) workers are hired by an agency and assigned for work into a user firm (OECD, 2013[42]). However, a key difference between TWAs and platforms is that agency workers have an employment contract, while most platform workers are (rightly or wrongly) classified as self-employed (WEC and Uni Global, 2018[25]).

In the early stages of their development, TWA were considered as disruptive as the platforms of today and were highly contested or even banned in a number of countries. Governments intervened to regulate the sector and collective agreements now represent an important means of regulation of this industry in many OECD countries (Eurofound, 2008[43]) despite very low levels of unionisation. Today collective agreements covering TWA workers are negotiated in several OECD countries (see Table 5.1). In some countries, agency work is simply included in the reference sectoral (or firm-level) collective agreement applicable to the user firm (for instance, in Finland or Spain). In other countries, specific agreements are signed directly with temporary work agencies (for instance, in Australia or Italy), either at the industry level or within agencies.

In Europe, the European directive on temporary agency work regulating TWAs introduced the principle of equal treatment with workers in the user company in order to establish a level-playing field. As the directive opened the possibility for collective agreements to diverge from a blanket equal treatment approach, provided certain quality conditions are respected such as the right to an adequate level of protection, TWAs felt encouraged by the law to engage in collective bargaining (IDEA Consult, 2015[44]). Hence, in several European countries, collective agreements are now used as a tool to co-define the regulation of the sector. Notably, in Germany labour law allows to derogate from the principle of equal pay when agency workers are on an open-ended contract with the agency and paid fully in-between assignments. However, until 2008 the responsibility for regulating agency work laid with works councils and not unions or collective agreements. Therefore, the German metal-worker union IG Metall launched a campaign to recruit agency workers and, at the same time, set a common bargaining floor across companies. This campaign led to an industry-wide agreement on equal pay for agency workers in the steel sector in 2010 followed by a collective agreement for the metal and electronics industry in 2012 (Benassi, 2016[45]). Collective agreements covering TWA work are also used to establish specific funds for training, pensions and sickness leave (as in Belgium, France, Italy and the Netherlands), which are often more generous than those offered to employees with a fixed-term contract. Finally, collective agreements in the TWA industry have been used to set up specific bodies to protect health and safety at work for workers in the agency sector such as the Dutch "*Stichting Arbo Flexbranche*" (STAF).

Table 5.1. Collective agreements for temporary work agency workers

	Country					
None or very rare	Canada	Czech Rep.	Japan	Latvia	Mexico	United States
Covered by an agreement if applicable to user firm	Colombia Estonia Finland	Greece Hungary Iceland	Ireland Korea Lithuania	New Zealand Poland Portugal	Slovenia Spain Slovak Rep.	United Kingdom
Covered by an agreement with temporary work agency	Australia Austria[1] Belgium	Chile Denmark France	Germany Israel Italy	Luxembourg Netherlands	Norway Sweden	Switzerland Turkey

1. In Austria, the specific agreement for temporary agency workers applies only if the provisions in the agreement covering the user firm are less favourable for workers.
Source: OECD Policy Questionnaires on Collective Bargaining.

5.3.4. A few innovative agreements have been signed in Europe

Unions' engagement with platforms on behalf of non-standard workers has paid off in some cases, with the signature of a few collective agreements in Europe. In Sweden, for instance, the transportation start-up Bzzt has signed an agreement with the Swedish Transport Workers union (Johnston and Land-Kazlauskas, 2018[40]). In Denmark Hilfr.dk, a platform for private home cleaning services, signed a collective agreement in April 2018 with the trade union 3F. The agreement grants platform workers sick pay, holiday allowance and a contribution to their pension.

In Austria, the transport and services union *vida* announced in April 2017 the creation of a work council (*Betriebsrat*) for the couriers of Foodora, which would be able to negotiate a collective agreement on working conditions. In April 2018, an agreement establishing a European Work Council at Delivery Hero, a publicly listed online food-delivery service based in Berlin (Foodora is owned by Delivery Hero), was signed. It includes a provision to have employee representatives on the supervisory board.

5.4. Increased pressure and new challenges have led to the emergence of non-traditional initiatives

The erosion of union membership and collective bargaining coverage, as well as the insufficient representation of some types of workers and businesses have led to the emergence of other initiatives by new actors such as platforms as well as non-traditional forms of labour organisations aimed at defending workers' interests. In some respects, new forms of labour movements can be considered as functional equivalents to "traditional" unions by helping to reduce information asymmetries, collectively mobilising workers and potentially increasing bargaining power as well as supporting litigations and class actions (Silberman and Irani, 2016[46]). However, a closer look reveals that they also serve different, non-bargaining related purposes and have different organisational structures.

5.4.1. A new mutualism

Notable examples of non-traditional organisations to represent workers' collective interests may be found in the United States with the development of Worker Centers[35] (representing low-wage, and mainly immigrant workers) or the Freelancers Union (representing high skilled independent contractors).[36] Similar developments have been observed in Canada with the Freelance Union representing self-employed media and communications workers or the Workers' Action Centre, which advocates on behalf of workers in non-standard forms of employment, in Ontario as well as in Europe, where worker co-operatives have developed. These initiatives echo in some respects the spirit of mutual organisations that in the 19th century represented the first form of work organisation and provided workers with basic insurances and mutual help.[37]

These organisations are legally distinct from traditional unions but there may be a formal or informal connection (Manheim, 2017[47]). Worker Centers in the United States tend to have both different cultures and fewer legal restrictions on their activities than traditional unions and thus are viewed by some as "organising laboratories" where innovative strategies can be formed and tested (Fine, 2006[48]). While the traditional union movement has had mixed views about these non-union worker organisations, it has increasingly embraced them and has invited some to join the AFL-CIO, the US federation of trade unions (Gaus, 2011[49]).

One strategy Worker Centers have used to organise workers has been creating and/or enforcing legal workplace standards.[38] Worker Centers have also engaged in direct action against employers, often through strikes.[39] In addition, Worker Centers have used consumer pressure throughout the supply chain to change employer behaviour.[40] Service delivery, from language classes for recent immigrants to low-cost

portable benefits provided for independent contractors by the Freelancers Union, are another way Worker Centers and similar non-union workers' organisations respond to workers' needs.

These organisations have also used their political resources to push several pieces of legislation, leading many companies to raise wages and standards (Fine, 2005[50]). However, for the most part, this model has struggled to achieve scale and sustainable funding (Strom, 2016[51]).

Another type of actor has emerged in a number of countries: co-operatives organising self-employed workers and providing them with a range of services. One of the most established is SMart, which was founded in Belgium in 1998 as an association of creative and cultural freelance workers and then transformed itself into a non-profit co-operative (Graceffa, 2016[52]). SMart is currently present in nine European countries and has extended to other sectors beyond creative work. In exchange for a fee, it provides self-employed workers with a wide range of services, including help with invoicing and the declaration of income; getting paid as an employee (and therefore gaining access to social protection); debt collection; salary advancement (through a mutual guarantee fund); and access to training and co-working spaces.

SMart is based on a participatory process: all members are invited to participate in the general assembly, and all profits are reinvested. SMart, and other similar workers cooperatives, do not usually[41] bargain on behalf of their members. Occasionally they publicly voice the concerns of freelancers and advocate on their behalf, but this is not their primary goal. The model proposed by SMart is not uncontroversial and has been criticised by some unions as it "legitimises grey zones" instead of fighting them (Xhauflair, Huybrechts and Pichault, 2017[53]).

Setting aside their non-profit nature, this type of co-operative is akin to for-profit umbrella companies which process invoices and pool risks among freelancers, offering them sick, maternity and holiday pay as well as legal counselling. Such for-profit umbrella companies exist in several countries and notably in Belgium, France ("*portage salarial*"), the Netherlands ("payroll company"), Norway (*"Egenanstillingsförrettning"*), Sweden ("*Egenanställningsföretag"*), the United Kingdom and the United States (Arvas, 2011[54]) and they cover a wide range of individual professionals in many sectors.

5.4.2. Platforms are also taking some action

In addition to worker-led initiatives, some platforms have also started taking action to address platform workers' limited access to voice and collective bargaining. As highlighted before, the risk of re-classification as well as government initiatives have led some platforms to enter into negotiations with worker representatives in several countries.[42] In Italy, following a government threat of worker reclassification by decree in summer of 2018, food delivery platforms have agreed to start negotiating with rider associations over working conditions. Although these negotiations have not yet led to concrete results, the example mentioned above of the Danish platform Hilfr.dk shows that such negotiations can sometimes lead to agreements.

Beyond formal bargaining, platforms have taken initiatives aimed at giving workers the possibility to express their concerns. Uber, for example, embraced the creation of the New York City Independent Drivers' Guild (IDG).[43] The IDG cannot negotiate on behalf of drivers, but it allows channelling their concerns through monthly meetings with the company's management.

Following government's engagement with platforms to address some of the issues related to platform work, the latter have taken some initiatives. In France, a legal provision encouraging platforms to publish "social responsibility charters" online and as appendixes to workers' contract is currently being discussed. Such charters would state the platforms' policy on a variety of issues including the prevention of occupational risks, professional development, measures to guarantee a "decent income" to workers, as well as rules framing the communication of changes to working conditions. Along the same lines, but

based on the initiative of a crowdworking platform, a code of conduct has been established in Germany and signed in 2017 by eight Germany-based platforms.

Platforms' initiatives have thus tended to develop outside of the realm of traditional collective bargaining institutions rather than within them. For instance while the representation of platforms in traditional employer organisations is still limited, dedicated associations have emerged in some countries such as the *Deutscher Crowdsourcing Verband* in Germany. Rather than engaging in bargaining with platform workers, some platforms have focused on offering solutions to emerging issues (around e.g. occupational insurance) while preventing the risks of re-classification. This has taken various forms, from setting up partnerships with professional associations (as Uber has done with the Association of Independent Professionals and the Self-Employed in the United Kingdom) offering workers preferential deals on various goods and services, to providing free or discounted occupational insurance covers.

This approach, exchanging benefit provision for protection against reclassification is advocated by Uber which suggests the creation of legislative "safe harbours", "to ensure that the provision of benefits or training could not be used as a factor in employment classification claims" (Uber, 2018[55]). In other words, platform-led initiatives tend to revolve around direct benefit provision driven by the risk of reclassification. However, this approach raises the question of co-ordination between different platforms and the portability of workers' protection, as these initiatives are taken at the level of individual platforms. They also raise the question of the unilateral nature, since they are not the result of dialogue between different stakeholders (including workers).

5.4.3. New technologies can also strengthen workers' voice

The digital technology used by platforms can also be mobilised to organise workers and improve job quality. A good example of this is Turkopticon, an all-volunteer website that started as a class project by two computer scientists turned labour organisers (Silberman and Irani, 2016[46]). For the past 10 years, Turkopticon has allowed workers on Amazon Mechanical Turk, a platform where online workers are hired for small tasks, to review the "requesters" (individuals or companies posting tasks to be executed by workers). It helps workers to identify "bad" requesters, who tend to pay late or never, and to find good ones.[44] Other websites facilitating the organisation of workers include Coworker.org, which helps workers to create company-specific networks to collect data and to aggregate their demands into coherent campaigns.

Instant messaging applications, social media groups, online fora as well as online polls play a very important role for workers who do not share a common physical workplace and lack the ability to discuss work issues face-to-face with each other. These technologies allow them to exchange information about clients and tasks, warn each other about scams, discuss best practices and set informal price norms, and to co-ordinate actions. It also provides community support. Such online communities of remote gig workers sometimes become linked to institutionalised unions, but they also exist in contexts lacking an institutionalised labour movement – see e.g. Wood, Lehdonvirta and Graham (2018[56]) on online communities of micro-workers and online freelance workers in Nigeria, South Africa, Kenya, the Philippines, Malaysia and Vietnam.

Technological innovations also open up new possibilities to protect the relatively weaker party in an employment/contractual relationship. For instance, the platform Bitwage uses Blockchain technology[45] to make international payments of remote contractors faster and more trustworthy.

Finally, the same algorithms, big data and basic AI tools which are used by large companies to manage human resources could also be used by unions to mine information about their members and guide their actions. In many OECD countries, business registry data are also used by trade unionists to gauge how companies are performing when deciding whether to ask for wage increases or for the negotiation of a

new collective agreement. New data and statistical tools would allow unions to use information on the state of business faster and more efficiently.[46]

In other words, some technological innovations represent an opportunity to facilitate collective organisation among non-standard workers. One way in which governments could help social partners to seize this opportunity would be through the setting up of common knowledge platforms to share practices and experiences among actors.

5.4.4. Non-traditional actors can complement but not substitute for social partners

While non-traditional workers' organisations can help improve working conditions for a greater number of non-standard workers, they cannot completely substitute for labour unions. Differences in new actors' prerogatives compared to those of traditional unions include: i) the legal ability to bargain collectively on behalf of their members and to sign an agreement; ii) the ability to guarantee the enforcement of this agreement; and iii) the benefit (in some countries) of information and consultation rights that reduce information asymmetries vis-à-vis employers, and play and instrumental role in the definition and strengthening of unions' bargaining position. Non-traditional organisations can engage in actions such as boycotts, petitions, and thus strengthen workers' voice; but this might not lead to an agreement.

Further, in some cases, non-traditional actors are not even interested in doing so. These organisations are often professional associations, which are created to provide services, to coalesce individuals around a common identity and to help with networking, but not necessarily to negotiate nor sign formal collective agreements.

However, they might help bridge some of the perceived mismatch between the professional identity of independent workers and traditional unions (King, 2014[57]). Saundry, Stuart and Antcliff (2012[58]) have shown how freelance networks in the British audio-visual industry were more successful than unions in creating a sense of identity and community among freelance workers, but lacked the resources to achieve industrial relations successes and the legal framework to sign and guarantee the validity and binding nature of collective agreements. By "linking networks to reservoir of expertise and influence" (Saundry, Stuart and Antcliff, 2012, p. 282[58]), unions were able to build on them to secure progress for these workers. More generally, new forms of workers' organisations can coalesce non-standard workers whom traditional unions have a harder time reaching out to, for practical and historical reasons. In that sense, these new initiatives can complement rather than substitute for traditional actors. The combination of efforts from both traditional and new actors is necessary to fully address the challenges posed by the evolving world of work, and should be encouraged.

Conclusions

While the practice of collective bargaining reflects cultural and social norms as well as institutional variation and therefore differs considerably across OECD countries, this chapter argues that it can play an important role in addressing some of the labour market challenges driven by technological and demographic changes and increased global competition.

When social partners work co-operatively and anticipate new challenges, collective bargaining can support and usefully complement public policies. This is particularly the case for the regulation of new forms of work, the anticipation and meeting of skills needs, and the design of measures to help workers with the transition to new jobs. Collective bargaining, at both sectoral and firm level can also help companies to adapt, through tailor-made agreements and adjustments in the organisation of work to meet their specific needs. Finally, social dialogue can help workers to make their voice heard in the design of national, sectoral or company-specific strategies and ensure a fair sharing of the benefits brought by new technologies and more globalised markets.

The contribution of collective bargaining to shaping the future of work crucially depends on workers and firms being able and willing to associate and negotiate mutually satisfying binding agreements. However, since the 1980s bargaining coverage and membership of trade unions have declined sharply in most countries. The rise of different forms of non-standard work in a number of OECD countries discussed in OECD (2019[17]) poses an additional challenge to collective bargaining, as non-standard workers are less likely to be unionised than standard workers.

Unions are trying to expand their membership to workers in non-standard forms of employment and develop new strategies to negotiate with employers. Meanwhile, new forms of collective organisation are emerging, although they tend to serve different purposes and have different organisational structures. Employers' organisations are also having to deal with the development of new forms of business and the weakening of their traditional counterparts. The examples of successful collective agreements in the temporary work agency sector and in the cultural and creative industries, even in countries where unions have generally low membership, show that collective bargaining can adjust to different and new types of employment relationships.

Legislation may also need to change to take account of the development of a wider variety of forms of employment and business, which are very different to those of 50 years ago when many of the current OECD bargaining systems took form. It is therefore important to address the issue of worker classification to ensure that employment contracts match the real nature of the employment relationship. In addition, regulators and enforcement authorities need to reflect on how workers in the grey area between dependent and self-employment and those self-employed in situations of strong power imbalance vis-à-vis their client/employer can be empowered to negotiate and organise collectively.

This chapter has presented several national policies and initiatives taken by employers, unions and new forms of workers' organisation to adapt to the challenges arising from the outlook for the future of work. Even though, for most of them, rigorous evaluation is lacking, these initiatives can still provide useful inspiration in other contexts.

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Annex 5.A. Union density and forms of employment: Sources and additional material

In Figure 5.1, standard and non-standard workers correspond, as closely as possible, to the categories displayed in Figure 5.2 with the notable exception of part-time jobs: in general, standard employment refers to wage and salary workers (both full-time and part-time) with an open-ended contract; non-standard employment includes, as far as possible, casual or occasional work, job provided by a temporary work agency or through a prime contractor enterprise (which subcontract their employees to a third part), independent contractors, interns or apprentices, self-employed without autonomy and, for some emerging economies, informal employment.

However, given the heterogeneity of the data sources used (see Annex Table 5.A.1), the scope of questions available relating to the contractual forms of employment, the nature of the job and of union affiliation (generally restricted only to workers identified as employees), non-standard forms of employment do not necessary cover all these categories.

In four countries (Canada, Estonia, Hungary and Korea), the data available do not allow to go beyond the simple distinction between permanent and temporary employment as defined in the OECD Employment Database (for further details see specific definitions in Table 3 of the sources, coverage and definitions of Labour Force Statistics in OECD countries)[47] and do not include dependent self-employed.

Temporary work agency workers (in addition to fixed-term contracts or project workers and sometimes interns and apprentices) are clearly identifiable for seven countries (Chile, Finland, France, Germany, Ireland, Sweden and the United Kingdom) and provide a better definition of the open-ended contract category, which in this case excludes all potential temporary work agency workers working under an open-ended contract.

The United States is a particular case due to the use of an alternative definition of temporary jobs based on the third definition of the contingent workers (as defined by the BLS). Contingent workers include wage and salary workers not expecting their jobs to last and the incorporated self-employed (without paid employees) if they expect their employment to last for an additional year or less. In addition to this criterion, alternative employment arrangements (temporary work agency workers, fixed-term contracts, project contracts and independent contractors) are included as such irrespective of the excepted duration of their contract.

The informal employment, in addition to the listed categories above, constitute an independent category for some emerging economies. In the case of Colombia, this category covers all workers without a written contract and, for Mexico, all workers classified as in an informal job (based on the official definition TIL1 provided by the INEGI).

The European Social Survey (ESS) allows identifying the self-employed without autonomy as those without full control on the organisation of the work to be done or the decisions about the activities of the organisation.

The Australian survey Characteristics of Employment (COE) allows identifying the self-employed without autonomy as independent contractors who are not able to have more than one active contract, to subcontract their own work and are under the authority of somebody else on how to do their work.

Annex Table 5.A.1. Non-standard forms of employment included in Figure 5.1.

Country	Source	Contract of limited duration	FTC	Project contracts	TWA	Occasional workers	Independent contractors	Informal workers	Self-employed without autonomy
Australia	COE[2]		●	●	●	●			●
	HILDA		●		●	●			●
European countries[1]	ESS	●							●
Canada	LFS	●							
Chile	CASEN		●		●				
Colombia	GEIH		●		●			●	
Estonia	LFS[2]	●							
Finland	FWLB		●		●				
France[3]	SRCV		●		●				
Germany[3]	SOEP		●		●				
Hungary	LFS[2]	●							
Ireland[3]	QHNS		●		●				
Korea	EAPS[2]	●							
	KLIPS		●	●	●	●	●		
Mexico	ENOE		●	●				●	
Sweden[3]	LFS[2]		●	●	●				
United Kingdom[3]	LFS		●		●				
United States	CPS		●	●	●	●	●		

TWA: temporary work agency workers; CASEN: Encuesta de Caracterización Socioeconómica Nacional; COE: Characteristics of Employment Survey ; CPS: Current Population Survey, May Supplement ; EAPS: Economically Active Population Survey; ENOE: Encuesta Nacional de Ocupación y Empleo; ESS: European Social Survey; FWLB: Finnish Working Life Barometer; GEIH: Gran Encuesta Integrada de Hogares; HILDA: Household, Income and Labour Dynamics in Australia; KLIPS: Korean Labor and Income Panel Study; LFS: Labour Force Survey; QHNS: Quarterly National Household Survey; SOEP: German Socio-Economic Panel; SRCV: Enquête statistique sur les ressources et conditions de vie.

1. Austria, Belgium, the Czech Republic, Denmark, Greece, Hungary, Iceland, Israel, Italy, Lithuania, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden and Switzerland.

2. Data kindly provided by the national statistical office.

3. Interns/apprentices are available for this country as a separate form of employment (not shown in this table).

Note: For Australia, Hungary, Korea and Sweden, the actual ratio refers to the national estimates provided by the national statistical authorities while the adjusted ratio is an estimate based on alternative microdata available (HILDA, ESS, KLIPS and ESS, respectively).

Contract of limited duration: contracts for which both employer and employee agree that its end is decided by objective rules (usually written down in a work contract of limited life). These rules can be a specific date, the end of a task, or the return of another employee who has been temporarily replaced. Typical cases are: employees in seasonal employment; employees engaged first by an agency or employment exchange and then hired to a third party to do a specific task (unless there is a written work contract of unlimited life); employees with specific training contracts.

Fixed-term contracts (FTC): A fixed-term contract is a contractual relationship between an employee and an employer that lasts for a specified period.

Project contracts: fixed-term contracts where the end date is defined by the completion of a particular project or task.

Temporary work agency (TWA) workers: an employee with a contract (of limited or unlimited duration) under which the employer (i.e. the agency) places that employee at the disposal of a third party (i.e. the user firm) in order to engage in work under supervision and direction of that user firm through an agreement for the provision of services between the user firm and the agency.

Occasional workers: Employees who worked on an irregular basis over the year. This may include on-call workers, seasonal workers, casual workers.

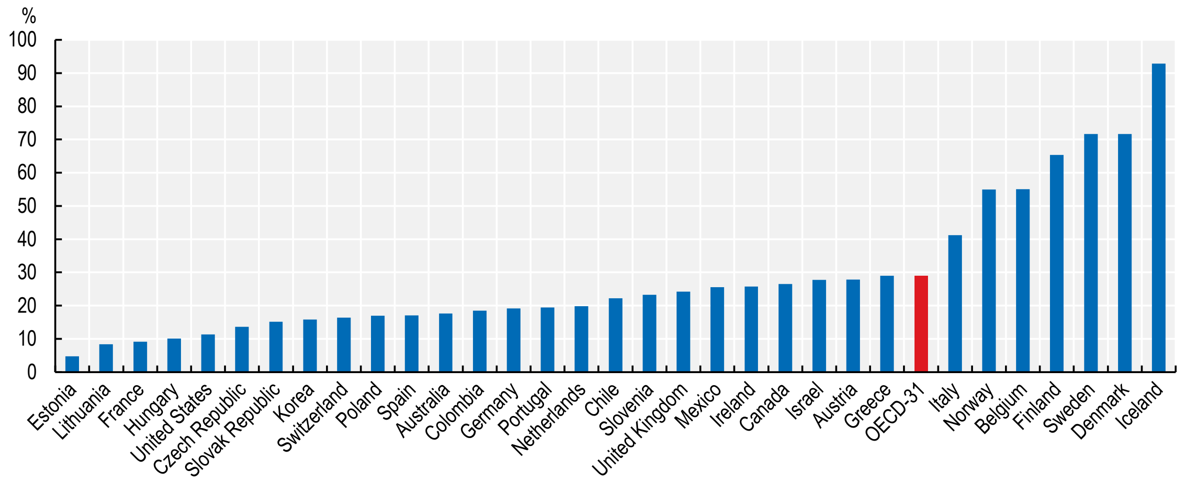
Interns/apprentices: contracts with a period of work experience offered by an organisation for a limited period of time.

Informal workers: Employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits. For Colombia, this category includes all workers with no written contract of no contract at all and in the case of Mexico, this refers to the national definition of informal employment (the so-called TIL1 measure).

Self-employed without autonomy: own-account self-employed who typically work for one (or more) client-firm(s) with limited autonomy.

Annex Figure 5.A.1. Estimated trade union density for standard workers

Percentage of standard employment, latest available year

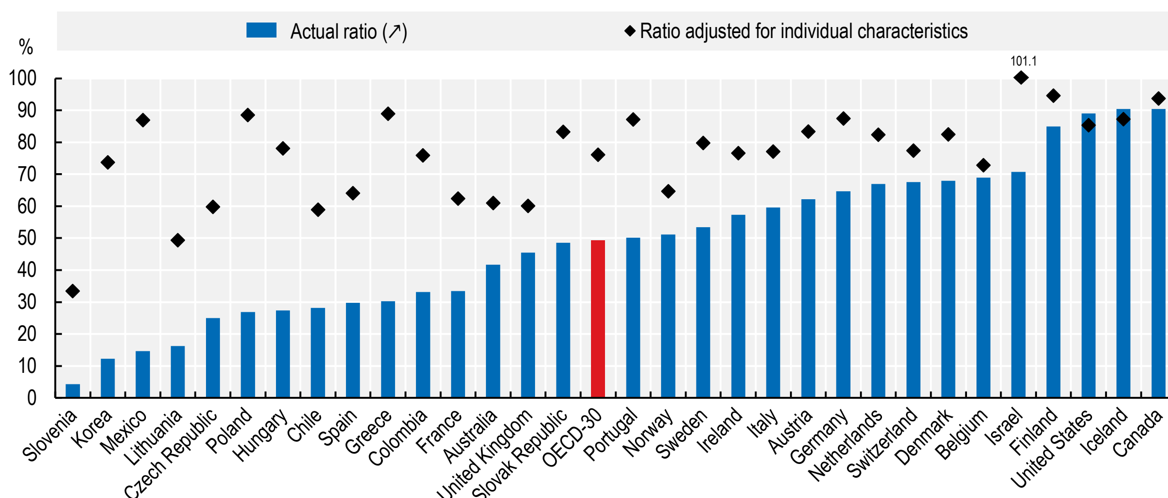


Note: Standard employment: Employees with an open-ended contract. Trade union density of standard form of employment have been adjusted for the overall trade union density by using the share of standard workers in total union membership and total number of employees. Estimates refer to 2010-12 for Greece and the Slovak Republic; 2013 for France; 2015 for Germany and Hungary; 2016 for Finland; 2014-16 for Austria, Belgium, the Czech Republic, Denmark, Iceland, Israel, Italy, Lithuania, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain and Switzerland; 2017 for Canada, Chile, Colombia, Estonia, Ireland, Korea, Sweden, the United Kingdom and the United States; and 2018 for Australia and Mexico. OECD-31 is the unweighted average of OECD countries shown (not including Colombia, Japan, Latvia, Luxembourg, New Zealand and Turkey).
Source: OECD estimates based on results from the Characteristics of Employment (COE) Survey provided by the Australian Bureau of Statistics for Australia, the Labour Force Survey (LFS) for Canada, the Encuesta de Caracterización Socioeconómica Nacional (CASEN) for Chile, the Gran Encuesta Integrada de Hogares (GEIH) for Colombia, results from the Labour Force Survey (LFS) provided by Statistics Estonia for Estonia, the Finnish Working Life Barometer (FWLB) for Finland, the Enquête statistique sur les ressources et conditions de vie (SRCV) for France, the German Socio-Economic Panel (SOEP) for Germany, results from the Labour Force Survey (LFS) provided by the Hungarian Central Statistical Office for Hungary, the Quarterly National Household Survey (QNHS) for Ireland, results from the Economically Active Population Survey (EAPS) provided by Statistics Korea for Korea, the Encuesta Nacional de Ocupación y Empleo (ENOE) for Mexico, results from the Labour Force Survey (LFS) provided by Statistics Sweden for Sweden, the Labour Force Survey (LFS) for the United Kingdom, the Current Population Survey (CPS), May Supplement for the United States and the European Social Survey (ESS) for all other European countries and Israel.

StatLink http://dx.doi.org/10.1787/888934027950

Annex Figure 5.A.2. Non-standard workers in the private sector are also underrepresented by trade unions

Actual and adjusted ratio of trade union density among non-standard workers relative to standard workers in the private sector (%), latest available year



Note: 2010-12 for Greece and the Slovak Republic; 2013 for France and Korea; 2015 for Germany; 2016 for Australia and Finland; 2014-16 for Austria, Belgium, the Czech Republic, Denmark, Hungary, Iceland, Ireland, Israel, Italy, Lithuania, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden and Switzerland; 2017 for Canada, Chile, Colombia, the United Kingdom and the United States; and 2018 for Mexico. OECD-30 is the unweighted average of OECD countries shown (not including Colombia, Estonia, Japan, Latvia, Luxembourg, New Zealand and Turkey).

Non-standard workers are those without an open-ended employment contract. The adjusted ratio for individual characteristics is based on the marginal effect of being in a non-standard form of work relative to being in an open-ended contract calculated from a probit regression controlling for sex, age groups, educational levels, industry, occupation, firm size (except for the United States) and full-time vs. part-time employment.

Source: OECD estimates based on the Household, Income and Labour Dynamics in Australia (HILDA) for Australia, the Labour Force Survey (LFS) for Canada, Encuesta de Caracterización Socioeconómica Nacional (CASEN) for Chile, the Gran Encuesta Integrada de Hogares (GEIH) for Colombia, the Finnish Working Life Barometer (FWLB) for Finland, the Enquête statistique sur les ressources et conditions de vie (SRCV) for France, the German Socio-Economic Panel (SOEP) for Germany, the Korean Labor and Income Panel Study (KLIPS) for Korea, the Encuesta Nacional de Ocupación y Empleo (ENOE) for Mexico, the Labour Force Survey (LFS) for the United Kingdom, the Current Population Survey (CPS), May Supplement for the United States and the European Social Survey (ESS) for all other European countries and Israel.

StatLink http://dx.doi.org/10.1787/888934027969

Notes

[1] Collective bargaining and social dialogue are two distinct forms of action in which social partners engage. Social dialogue includes all kind of negotiation, consultation or, simply, exchange of information at any level between employers and workers. Social dialogue is often voluntary and can be formal (such as "works councils" in Germany) or informal (such as informal exchanges in the workplace or declarations of intent at national level). Collective bargaining is a formal process which is in most cases based on a (national) legal framework defining the rights and obligations of the bargaining parties and which, following a period of negotiation, generally leads to legally binding collective agreements.

[2] As set, together with the "right to organise", by the ILO Convention No. 98.

[3] The analysis in this chapter builds on the answers to the OECD Policy Questionnaires on Collective Bargaining (Chapter 2) updated in late 2018 to reflect the latest changes as well as on a number of interviews and exchanges with academics, policy makers, trade unionists and representatives of employer organisations. The last section also builds on the responses to the Questionnaire on Policy Responses to New Forms of Work (OECD, 2019[60]).

[4] For instance, in some OECD countries, the so-called "Ghent system" countries, the social partners play a key role in directly managing the unemployment insurance system.

[5] "Last in, first out" is a policy used to prioritise layoffs by seniority.

[6] Workers at risk of layoff are supported well before the layoff actually occurs.

[7] The patterns presented in the figure are not affected when focusing on private sector employees only (see Annex Figure 5.A.2).

[8] The correlation between the adjusted ratio of trade union density among non-standard workers relative to standard workers and trade union density among standard workers is weak (0.39) and not strongly significant; it becomes insignificant (and even weaker, 0.24) when excluding the Finnish and Icelandic cases.

[9] According to the ILO Committee of Experts on the Applications of Conventions and Recommendations (CEACR), "the entitlement to these right should not be based on the existence of an employment relationship, which is often non-existent". The recent report of the ILO Global Commission on the Future of Work also states that "all workers must enjoy (…) the right to collective bargaining" (ILO, 2019, p. 12[3]).

[10] While economists have discussed how insider companies, i.e. companies already operating in the market, can use the extensions of collective agreements to raise outsider rivals' costs or increase entry barriers – see e.g. Haucap et al. (2001[62]), – such anticompetitive behaviours result from deliberate *employers'* strategy, not from unions' bargaining power. As such, they do not contradict legal arguments exempting labour organisations from antitrust regulations, which consider collective bargaining from the perspective of *workers*. In fact, Haucap et al. (2001[62]) argue that, in some cases, a strong labour union can serve as an efficiency enhancing countervailing power to employers' associations.

[11] Decision No E/04/002 (Case COM/14/03) Agreements between Irish Actors' Equity SIPTU and the Institute of Advertising Practitioners in Ireland concerning the terms and conditions under which advertising agencies will hire actors

[12] Dutch Competition Authority (*Nederlandse Mededingingsautoriteit*), *Cao-tariefbepalingen voor zelfstandigen en de Mededingingswet: visiedocument* (Collective labour agreements determining fees for self-employed and the competition law: a reflection document), 2007.

[13] United States Court of Appeals for the Ninth Circuit, No. 17-35640.

[14] This case is often referred to as the FNV Kunsten case (Case C-413/13). The case was also brought to the ILO Committee of Experts on the application of Conventions and recommendations (CEACR) which reiterated that Convention No. 98 "establishes the principle of free and voluntary collective bargaining and the autonomy of bargaining parties" (ILO, 2016[22]).

[15] Collective Complaint No. 123/2016 ICTU v. Ireland, decision adopted on 12 September 2018, paragraph 38.

[16] In addition, as discussed in OECD (2019[17]), a current debate in the field of competition law revolves around whether worker welfare should be included in the definition of "consumer welfare", which guides the action of antitrust authorities, and whether the latter's analyses should consider welfare losses beyond those affecting the final consumer.

[17] For instance, U.S. v. Joseph P. Cuddigan, et al., U.S. District Court D.R.I., Civil Action N.3843, 15 June 1970.

[18] Although when the pool of available workers is extremely large (e.g. in the case of crowdsourcing platform workers such as Amazon Mechanical Turk), increasing exit options through competition might not be enough. Indeed these workers have an extremely low residual labour supply elasticity – as low as 0.1 according to Dube et al (forthcoming[63]). When taking into account the supply response of all their competitors and the fact that the pool of available workers stretches worldwide, they have little choice but to accept evolving prices.

[19] A dependent contractor is defined as follows: a) a person, whether or not employed under a contract of employment; b) and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by the dependent contractor; c) who performs work or services for another person for compensation or reward; d) on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person; e) more closely resembling the relationship of an employee than that of an independent contractor (Section 1 Labour Relations Act Ontario).

[20] Employers can dispute the composition of the bargaining unit (i.e. the group of employees that the union/bargaining agent is certified to represent in collective bargaining). Such disputes will be settled by the Canada Industrial Relations Board (CIRB) during the certification process and before collective bargaining begins. During the certification process, the employer or union may contest the inclusion or exclusion of any job classification or position from the bargaining unit. The CIRB will review the evidence and determine the group of employees/bargaining unit that is appropriate for collective bargaining. In making such a determination, the CIRB has significant discretion, and will look beyond job titles/classifications and examines the actual duties of the persons concerned. If a collective agreement covers dependent contractors and a dispute arises concerning whether an individual is a dependent or independent contractor, the CIRB will also examine the evidence by looking beyond the job

title/classification and make a decision. The CIRB's decision is subject to judicial review, initially by the Federal Court of Canada.

[21] The origins of this approach were in arguments by a law professor in the 1960s (Arthurs, 1965[66]) 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. Many Canadian jurisdictions adopted the definition of dependent contractor in the following decade.

[22] A person who works for money is either an employee or a person providing work for remuneration on a different basis that the employment relationship as long as he/she does not employ any other persons to perform this type of work, irrespective of the legal basis of employment, and has such rights and interests related to performing the work which may be represented and defended by a trade union.

[23] The Irish law defines precisely the two cases: A "*false self-employed worker*" is an individual who: a) performs for a person the same activity or service as an employee of the other person; b) has a relationship of subordination; c) is required to follow the instructions of the other person regarding the time, place and content of his or her work; d) does not share in the other person's commercial risk; e) has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned; and f) for the duration of the contractual relationship, forms an integral part of the other person's undertaking. A "*fully dependent self-employed worker*" is an individual: a) who performs services for another person (whether or not the person for whom the service is being performed is also an employer of employees) under a contract (whether express or implied, and if express, whether orally or in writing); and b) whose main income in respect of the performance of such services under contract is derived from not more than two persons (Competition (Amendment) Act 2017).

[24] Collective complaint procedure, Council of Europe, Irish Congress of Trade Unions v. Ireland Complaint No 123/2016; IOE submission, https://rm.coe.int/123casedoc4-en-observations-by-the-ioe/16808b127f.

[25] Physicians or hospitals in a non-exclusive provider network are allowed to offer medical services outside of the network itself.

[26] For instance, in 2010 in New Zealand, following an industrial dispute in the film industry, the government passed an amendment to the Employment Relations Act effectively preventing all workers in the film industry (considered independent contractors) to enter into collective bargaining. The current government has declared its intention to restore the right to engage in collective bargaining for film industry workers.

[27] A more radical approach to ensure that all self-employed workers experiencing power imbalance have the right to negotiate their own terms of employment – with no precedent in OECD countries and in conflict with most existing regulations – is discussed in the academic literature (Creighton and McCrystal, 2016[68]; De Stefano and Aloisi, 2018[20]) and among trade unions (Fulton, 2018[31]). This consists in reversing the current presumption that self-employed workers do not only provide labour but also services by means of an independent business organisation that they actually own and manage – which justifies their exclusion from collective bargaining. In this approach, the burden of proof would be shifted onto those who propose the restriction, in particular regulation enforcement authorities. The main argument used in support of this approach is that "the right to bargain applies to all workers with the sole possible exception of those explicitly excluded by the text of ILO Convention No. 87 and No. 98" (notably, armed forces and the police) and "self-employed workers are not among those excluded and, therefore, the Conventions are deemed as fully applicable to them" (De Stefano and Aloisi, 2018, pp. 14-15[20]). A reversal of the burden of the proof would however conflict with most existing antitrust regulations and it would likely increase the burden for antitrust authorities that would have to check ex post the validity of a large number of agreements. Moreover, while aimed at ensuring that all workers in unbalanced power relationship are covered, the

reversal of the burden of the proof may be exploited more effectively by relatively stronger and more organised groups of workers.

[28] For instance, in September 2004, the Hyundai Heavy Industry company union was expelled from the Korean Metal Workers' Union (a member of the Korean Confederation of Trade Unions, KCTU) precisely because of their discriminatory stance toward nonstandard workers (Durazzi, Fleckenstein and Lee, 2018[24]).

[29] Aslam & Ors v Uber BV & Ors [2016] EW Misc B68 (ET) (28 October 2016).

[30] Ruling 26/2019, *Corte d'Appello di Torino*, R.G.L. 468/2018. In the first instance, the judges rejected the request of re-classification. The *Corte di Cassazione* will take the final decision.

[31] Ruling of 10 January 2019, *Cour d'Appel de Paris,* RG 17/04674. Also in this case, the *Cour de Cassation* will take the final decision.

[32] Ruling of 15 January 2019, *Rechtbank Amsterdam*, case nb. 7044576 CV EXPL 18-14762 and 7044576 CV EXPL 18-14763.

[33] While outlawing discrimination clearly benefits "outsiders", strategies aimed at limiting the use of non-standard forms of employment might backfire against "outsiders" by reducing their job opportunities (OECD, 2014[67]).

[34] The issue of the status of platforms has been the subject of a series of recent court cases throughout OECD countries. In 2017, the European Court of Justice (case 434/15) found that Uber acts as a transportation service provider rather than a mere technological intermediary between customers and independent service providers and that "it exercises a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion". In 2018, the French *Cour de Cassation* (Cass. soc., 28 *novembre* 2018, n° 17-20.079) concluded that the power to apply sanction and to monitor rides constituted a bond of subordination linking the platform TakeEatEasy and the drivers working for it, which justified considering the platform as an employer.

[35] Between 1990 and 2017, the number of worker centers in the United States increased from 5 to 240, though membership is hard to estimate.

[36] The discussion on the United States in this section owes much to David Madland whose inputs are gratefully acknowledged.

[37] The founder of the Freelancers Union explicitly referred to a "new mutualism" (Horowitz, 2013[61]).

[38] For example, the campaign in New York by Domestic Workers United to extend basic legal protections such as overtime pay to domestic workers; the Restaurant Opportunities Center's efforts to end subminimum wage work for tipped employees and their suits against lawbreaking employers; and the "Freelance isn't Free" legislation pushed by the Freelancers Union.

[39] For example, strikes at Walmart were organised by the worker center Organization United for Respect at Walmart.

[40] One of the most successful examples of this is the Coalition of Immokalee Workers' effort to improve working conditions for farmworkers picking tomatoes sold by prominent retailers.

[41] Although an interesting example is the commercial negotiation conducted in 2016 by SMart in Belgium. Namely, SMart negotiated as an *employer*, on behalf of those of its employees who were also food-delivery riders on the side. SMart signed a convention with the platforms Deliveroo and TakeEatEasy in which they committed to guarantee riders shifts of three hours minimum and to be paid by the hour and not by the delivery. In addition, riders were given a formal *employment* contract. However, this example also highlights the limits to this type of negotiation: it had led to a non-binding commercial convention, but Deliveroo unilaterally decided to revert to payment by the delivery with self-employed riders in 2017 (Drahokoupil and Piasna, 2019[64]).

[42] However, Prassl (2018[59]) argues that platforms remain resistant to collective bargaining in many cases. For instance, in the United Kingdom, Deliveroo successfully fought the union recognition request from the Independent Workers Union of Great Britain (IWGB), on the basis that workers were independent contractors who could not collectively bargain.

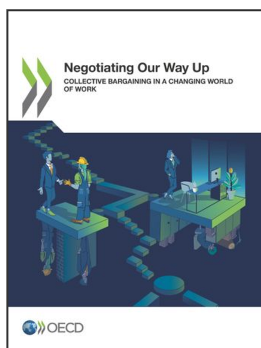
[43] In 2016, Uber agreed to the formation of a workers' organisation in New York City, organised by a local branch of the International Association of Machinists and Aerospace Workers – while drivers are classified as independent contractors and thus outside of the provisions of the US National Labor Relations Act.

[44] Other websites, such as TurkerView and TurkerHub, offer similar possibilities and are run by Amazon Mechanical Turk workers themselves.

[45] Blockchain technology is a form of distributed ledger technology that acts as an open and trusted record (i.e. a list) of transactions from one party to another (or multiple parties) that is not stored by a central authority. Instead, a copy is stored by each user running Blockchain software and connected to a Blockchain network, also known as a node. Therefore, nobody can tamper with the ledger and everyone can inspect it (Berryhill, Bourgery and Hanson, 2018[65]).

[46] The Swedish white-collar union *Unionen* is, for instance, exploring how to use data to reduce members churn and keep a high membership. *Unionen* is also testing how data on workers requests of support can be used to "nowcast" (i.e. predict the very near future or near past) the state of a company or a region (the intuition being that when the business goes well, the number of requests of support tends to be lower and vice-versa). This would allow them to better target their efforts.

[47] http://www.oecd.org/els/emp/LFS Definitions - Tables.pdf.



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