



Outsourcing digital work under the law: The legal governance of a global workforce

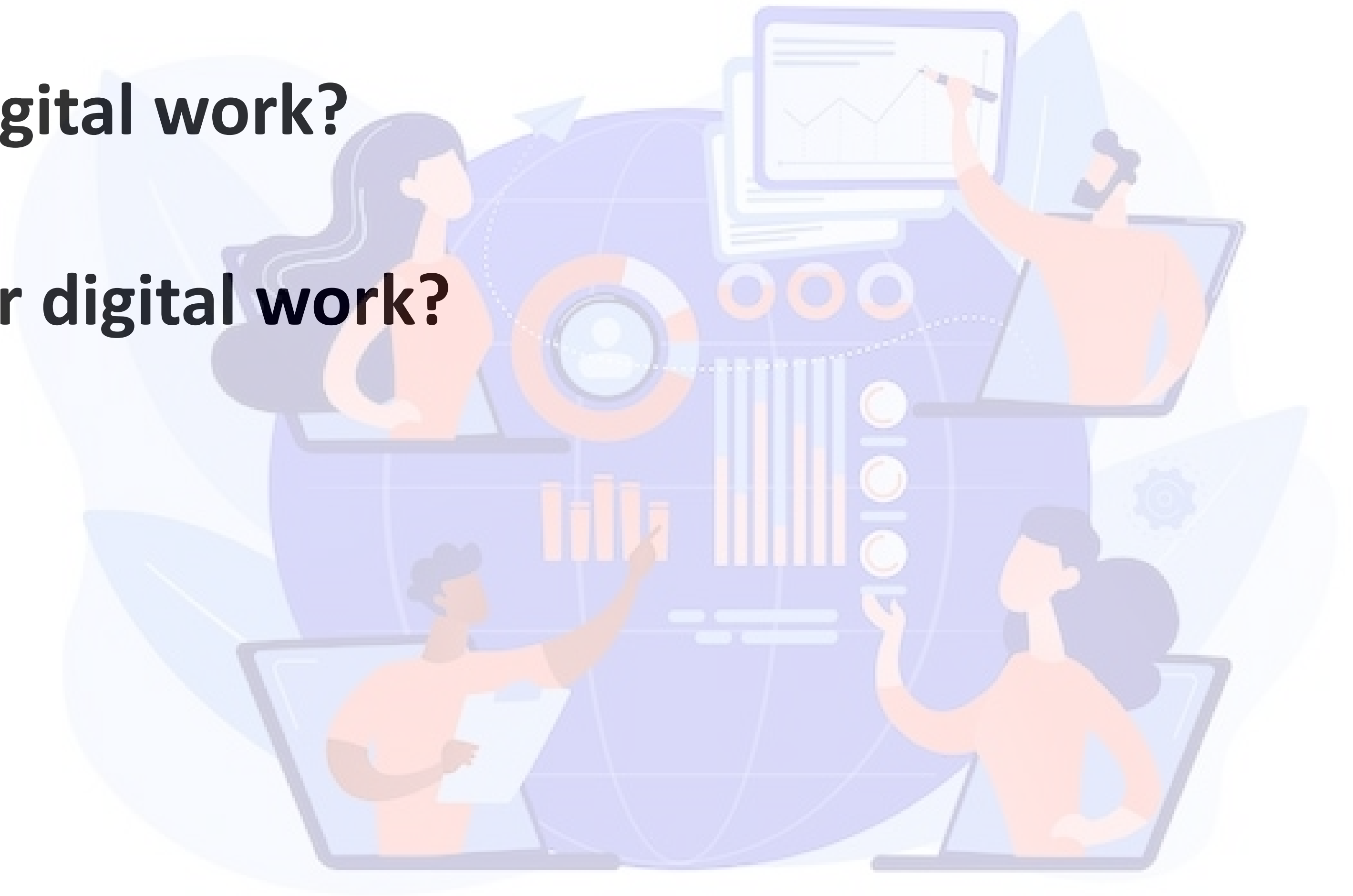
Mathias Wouters
Webinar, 5 March 2024



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Swiss Institute of Comparative Law

Overview

- **What is cross-border digital work?**
- **Changes in cross-border digital work?**
- **Future prospects**



Digital Work

Digital work is work performed with *digital tools* on *digitized work objects*.

Associated with: Flexible workplace and working hours; virtual teams; new forms of work; specific competences, agile corporate culture.

Cross-Border Digital Work

An 'AI' fast food drive-thru is mostly human workers in the Philippines

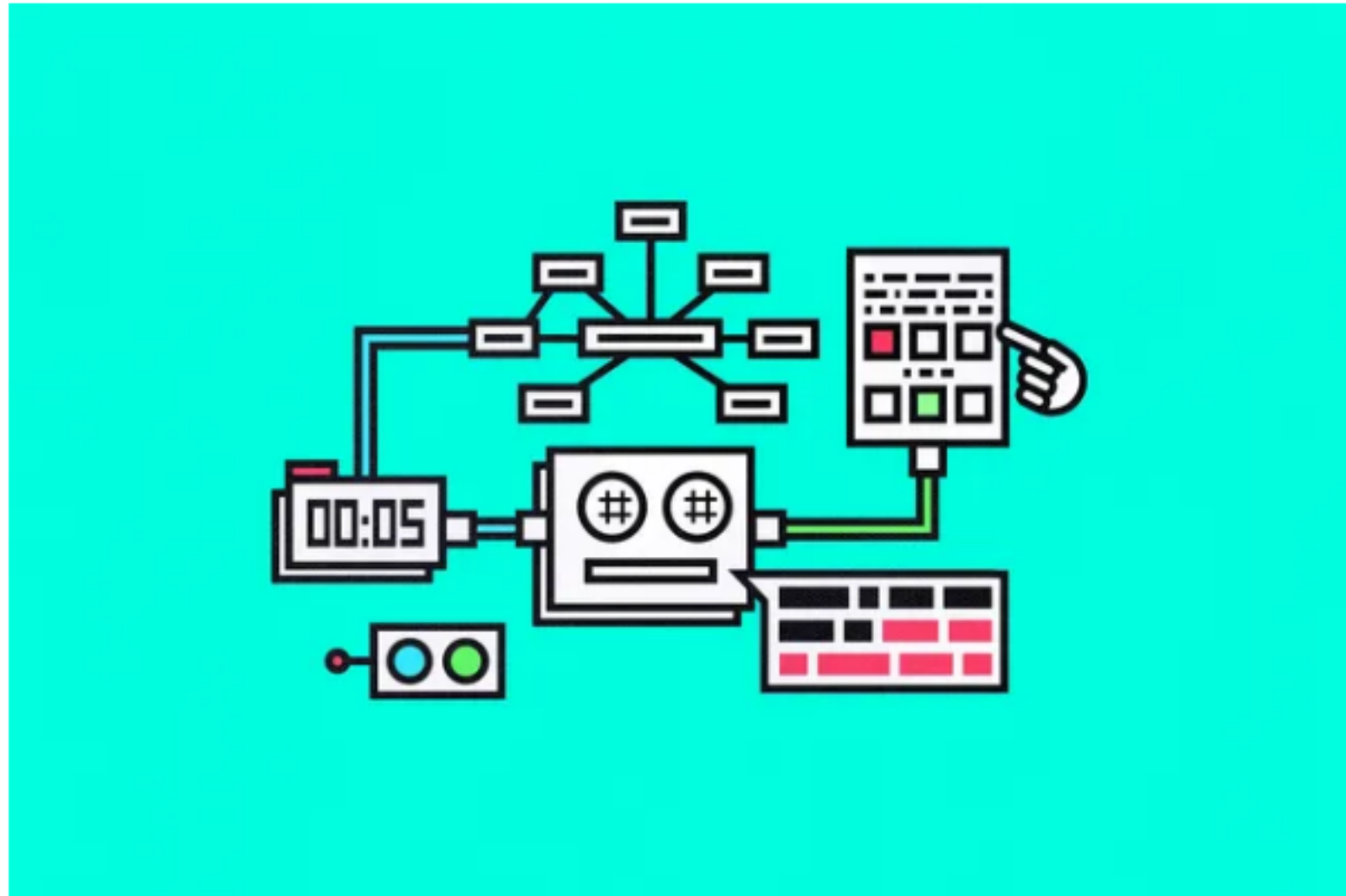


Illustration by Alex Castro / The Verge

<https://www.theverge.com/2023/12/8/23993427/artificial-intelligence-presto-automation-fast-food-drive-thru-philippines-workers>

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ENQUÊTE. DERRIÈRE L'INTELLIGENCE ARTIFICIELLE « MADE IN FRANCE », DES EXPLOITÉS À MADAGASCAR

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Sous-traitance. Derrière les promesses des services numériques, vendus à prix d'or par des start-up parisiennes, se cachent des dizaines de milliers de travailleurs malgaches, qui entraînent des algorithmes contre quelques euros par jour.

SOCIAL ET ÉCONOMIE ⌚ 8min Publié le 9.12.22 à 00:00

[Pierric Marissal](#)

<https://www.humanite.fr/social-et-economie/intelligence-artificielle/enquete-derriere-lintelligence-artificielle-made-in-france-des-exploites-a-madagascar-774148>

By [Mia Sato](#), platforms and communities reporter with five years of experience covering the companies that shape technology and the people who use their tools.
Dec 8, 2023, 4:44 PM GMT+1

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Changes in cross-border digital work?

GROWING

Figure B.3: Global exports of digitally delivered services have grown faster than exports of goods and other services

= direct cross-border trade of certain services, such as consulting, education and financial services.

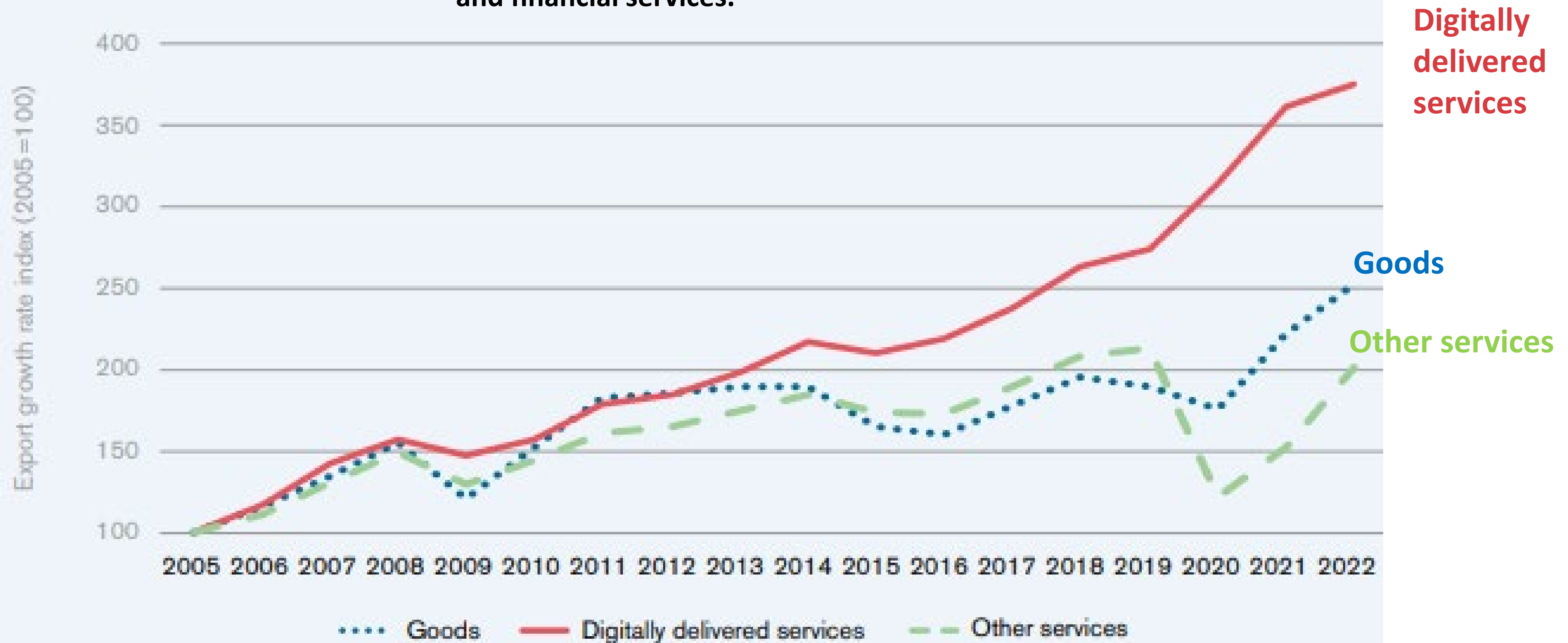
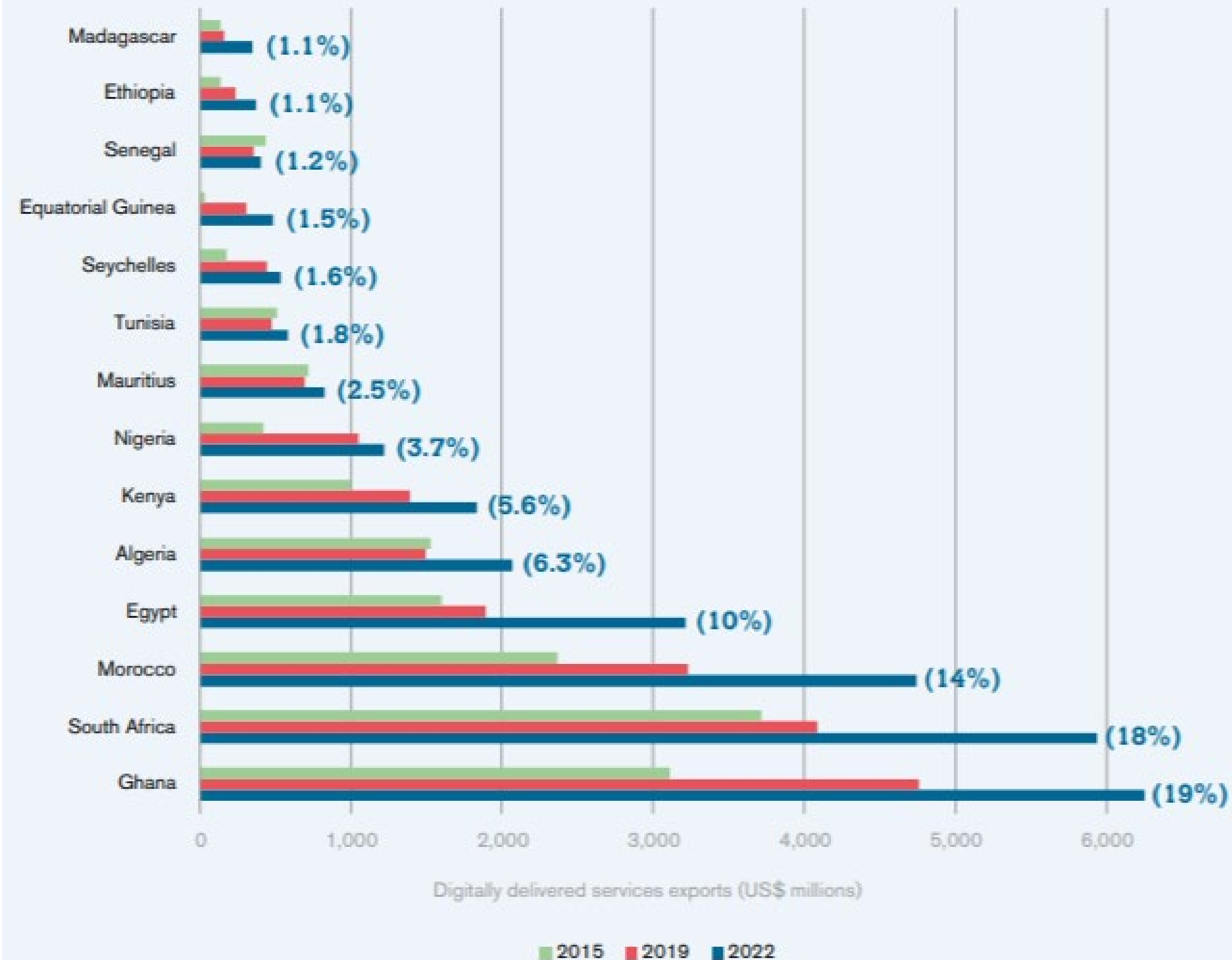


Figure B.8: Digitally delivered services in some African economies have expanded significantly in recent years



Cross-Border Digital Work

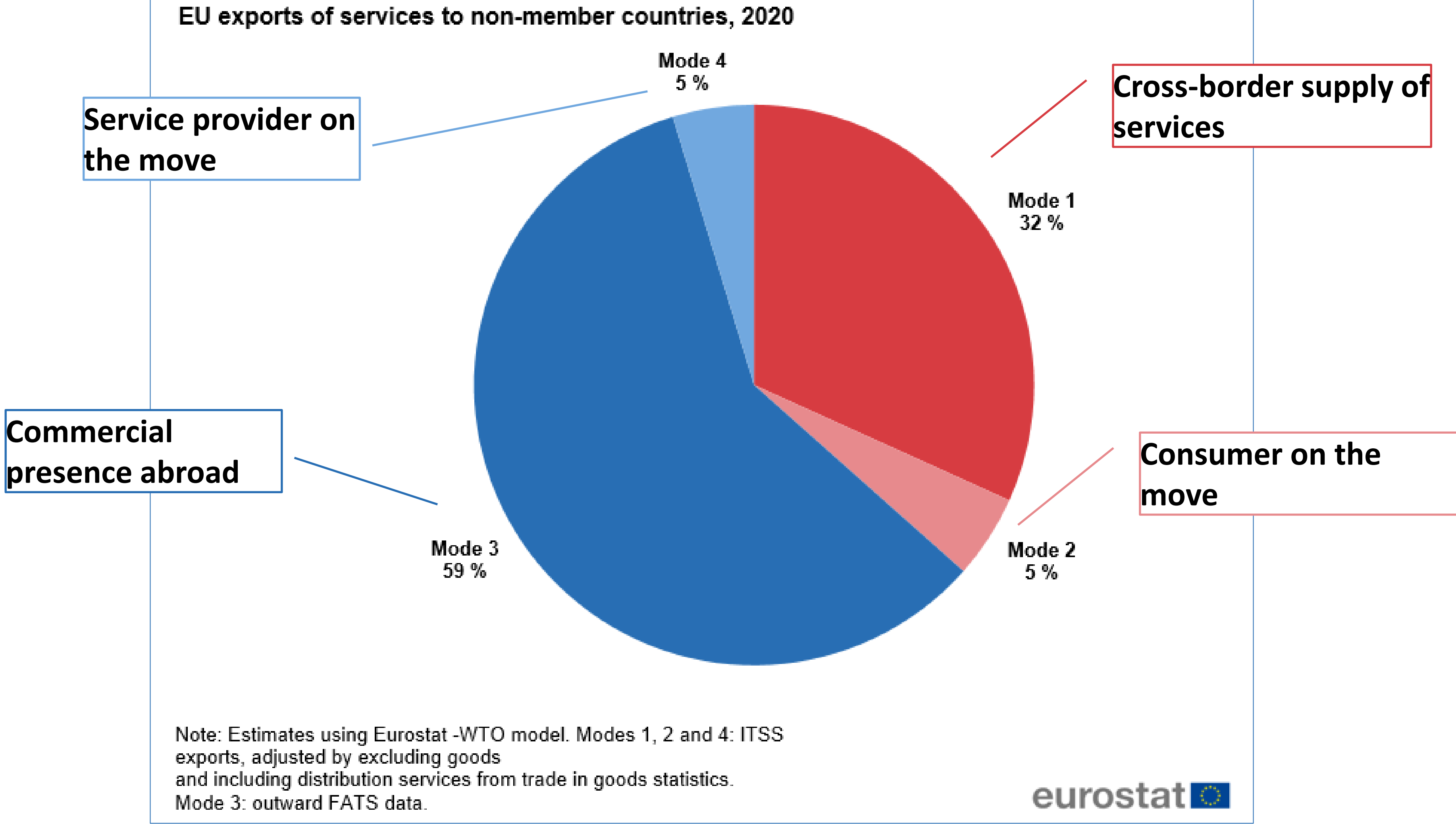
- It is growing
- There are new participants
- The types of cross-border digital work change
 - ❑ Digital economy expands, hence new forms of digital jobs, such as AI training
 - ❑ **A transition from local services to (cross-border) digital work**
- How cross-border digital work is performed changes

GATS different modes of services supply

The General Agreement on Trade in Services, four modes of supply:

- 1. Cross-border supply of services from a supplier in one country to the territory of another;
- 2. Consumption abroad;
- 3. Commercial presence abroad by establishing a presence;
- 4. Service providers from one country enter the territory of another.

Mode 3 traditionally important

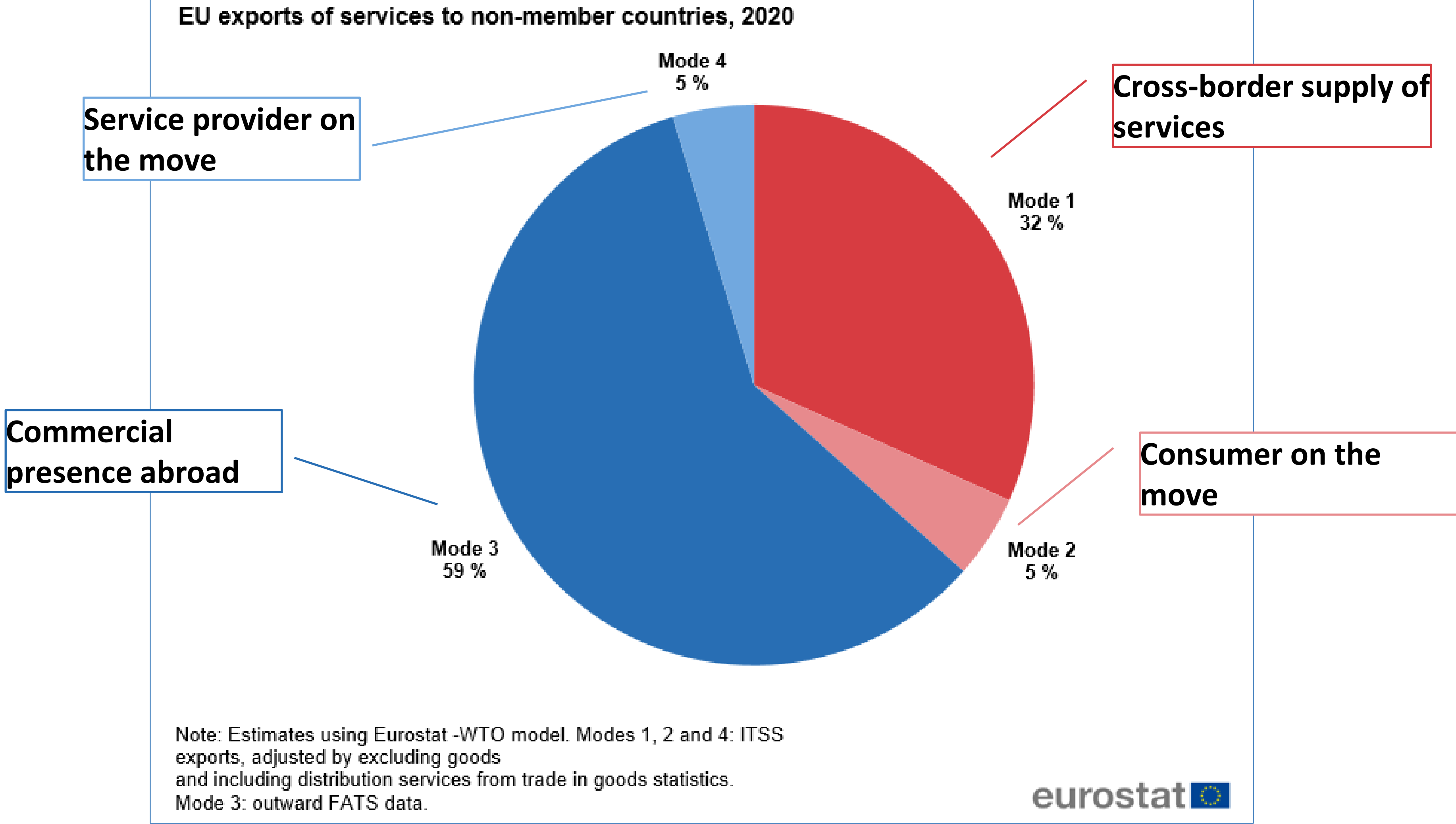


Transition towards Mode 1?

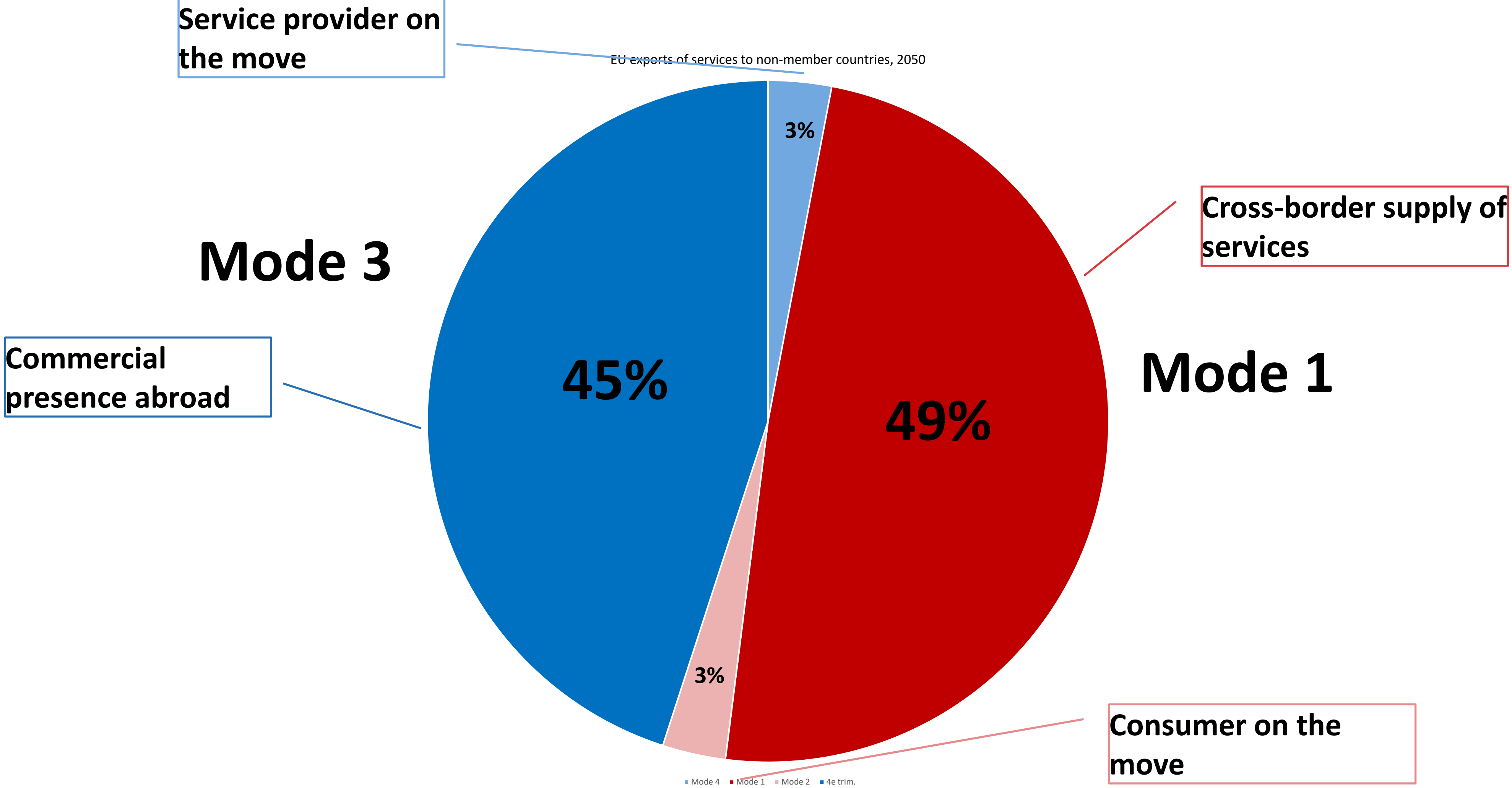
Table 2. Examples of services trade changed by digitalization

Digital technology & tools (In addition to ICT technology)	Example	Shifts between Modes of Supply
Digital (e-commerce) platforms: e-commerce platform, data processing tools, blockchain, virtual assistants	Amazon, Alibaba, Booking, Airbnb Virtual assistants for customer service, AI integration in automotive industry	From Mode 3 to Mode 1 = Less need for commercial presence abroad
Video Coding and streaming: video conferencing, online education, market information	Massive Open Online Courses (MOOC) Online agricultural extension and market information services	From Mode 2/Mode 3 to Mode 1 = Less need to perform in person
Artificial intelligence, robotics: telemedicine	AI Robotics in medical services	From Mode 2/Mode 4 to Mode 1 = Less need to perform in person

EU exports of services in 2020



EU exports of services in the future

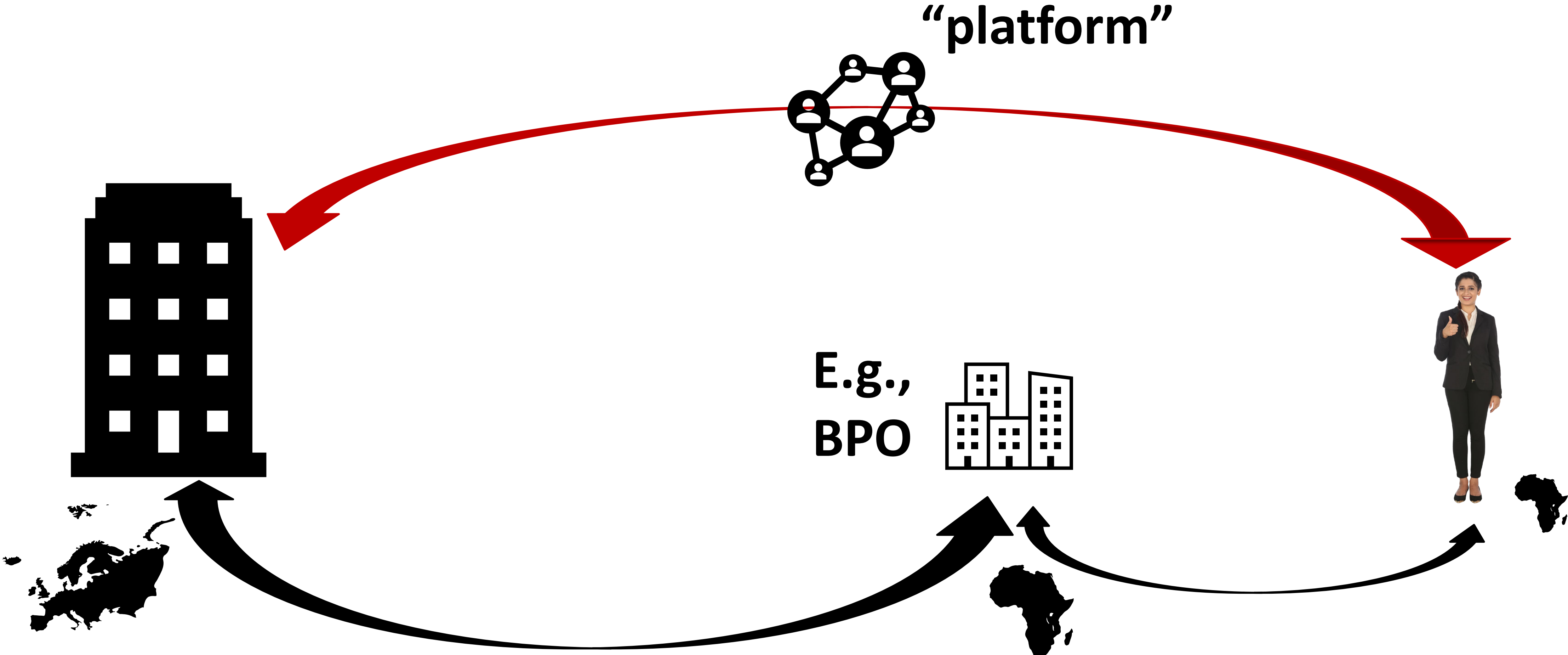


Entirely random and speculative, merely to illustrate the idea

Cross-Border Digital Work

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 - ❑ Digital economy expands, hence new forms of digital jobs, such as AI training
 - ❑ A transition from local services to (cross-border) digital work
- How cross-border digital work is performed changes (within Mode 1)

Cross-Border Digital Work: How – Changes



Future prospects: ...

- **Various factors impact the (transnational) digital services sector, including:**
 - (i) Human capital;
 - (ii) Digital connectivity;
 - (iii) Investment in ICT technology;
 - (iv) Policies and regulatory environment.**

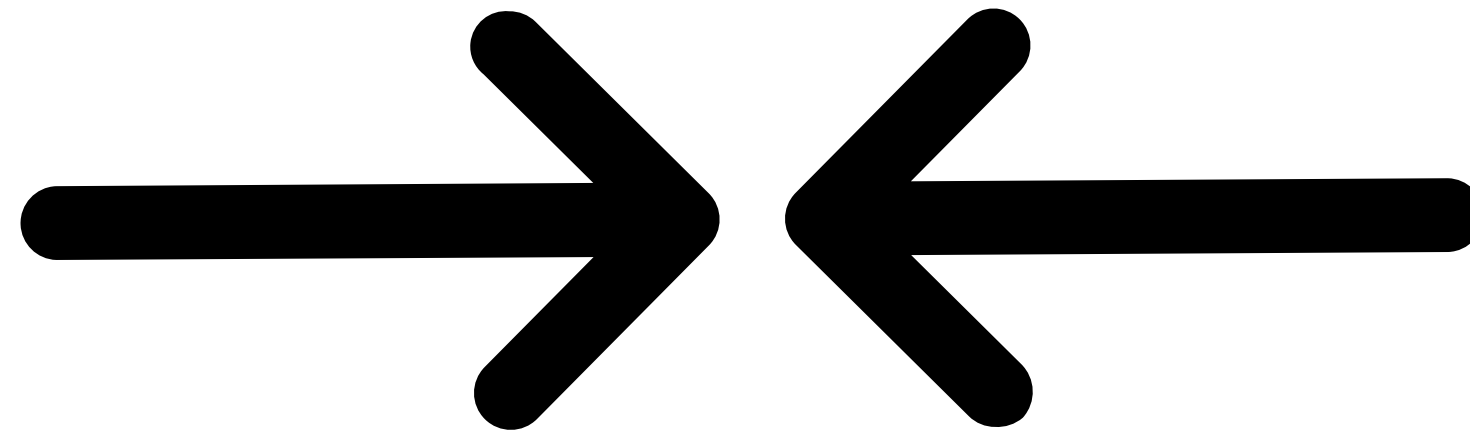
Future prospects: ...

- Skills and technology are changing the landscape, **but so are regulations:**

*“**Reforms to make regulations less restrictive** can bring significant payoffs. Estimates suggest that [an important domestic regulatory reform, such as moving from a more to a less restrictive approach to data transfers,] is associated with an increase in total exports of 145%. **The effect is highest for digitally-deliverable services with increases in export of 277%** and ‘other services’ exports (206%).”*

Future prospects: Different areas of law meet again.

Labour is not a commodity.



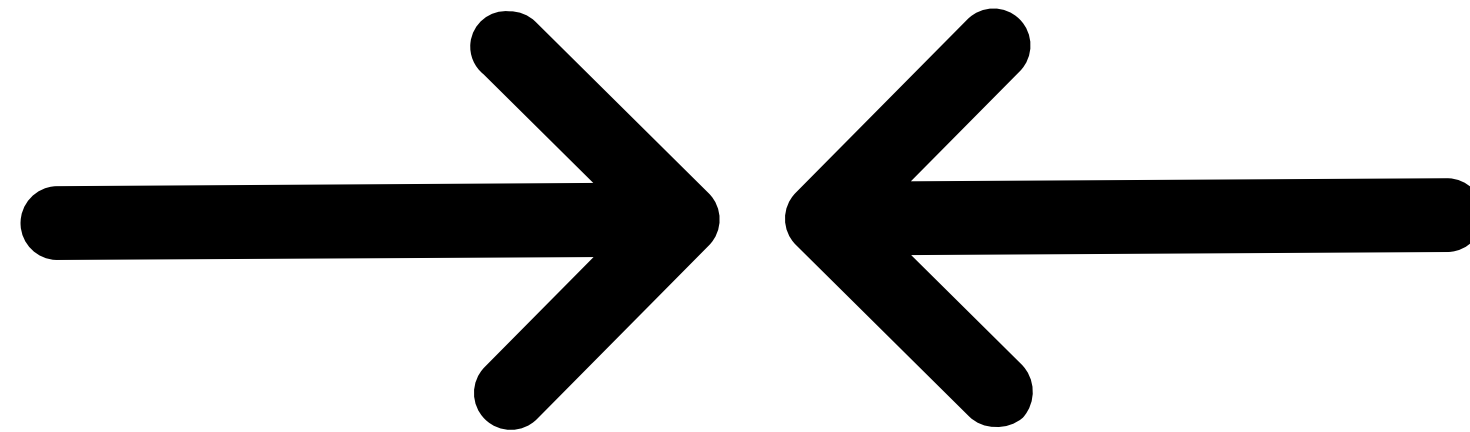
Arbitrage.

“On average, a Colombian worker earns \$US2.2 per hour working on occupations that are ‘teleworkable’ while the average wage for such an occupation in the US is \$US25 (Baldwin et al., 2021). **The fact that US wages are, on average, more than 11 times higher suggests that there are plenty of arbitrage opportunities.**”

“Globalization will not end until international arbitrage is no longer profitable.”

Future prospects: Different areas of law meet again.

Labour is not a commodity.



Arbitrage.

“Another **possible source of legal barriers that might restrict the exports of telemigration services** is the **legislation projects that are circulating in Congress, concerning digital platforms.** [...] Not less important is the risk of **considering freelancers as dependent workers**, which would lead to much higher inflexibility and social security contributions. Eventually, this **could end any telemigration exports initiatives.**”

What regulations, which interests, what goals?



Overview of speakers: Different regulatory dimensions

- **Mira Burri and Kholofelo Kugler**

Digital Work under Global Trade Law

- **Funda Ustek Spilda**

Regulating Platform Work: Conversation Stoppers and Deepeners?

- **Shelley Marshall**

Ensuring outsourced digital work is decent work: the Draft EU Directive on Corporate Sustainability Due Diligence and the alternatives