

EUROPEAN UNION



Committee of the Regions

ECON-VI/016

120th plenary session, 7-8 December 2016

DRAFT OPINION

Collaborative economy and online platforms: a shared view of cities and regions

Rapporteur: **Benedetta Brighenti (IT/PES)**

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Deadline for tabling amendments:

3 p.m. (Brussels time) **on Tuesday, 22 November 2016.** Amendments must be submitted using the online tool for tabling amendments (available through the Members' Portal at <http://cor.europa.eu/members>).

Number of signatures required: 32

A user guide is available at <http://toad.cor.europa.eu/CORHelp.aspx>.

Reference documents

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe
COM(2016) 288 final

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European agenda for the collaborative economy
COM(2016) 356 final

Draft opinion of the European Committee of the Regions – Collaborative economy and online platforms: a shared view of cities and regions

I. GENERAL COMMENTS

THE EUROPEAN COMMITTEE OF THE REGIONS

1. notes that in its choice of title for its 2 June 2016 communication, "A European agenda for the collaborative economy", the European Commission has reaffirmed its preference for the term "collaborative economy" as opposed to the more all-encompassing "sharing economy". In the CoR's view, if the definition supplied by the Commission is to be complete, it should convey the fact that the collaborative economy and more in general the sharing economy are of equal importance;
2. finds that the communication's reference to the "not-for-profit" aspect of the collaborative economy – "[c]ollaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit" – is not sufficient insofar as the changes and innovations that are driven by the collaborative economy go beyond the effects that stem from the interplay of service supply and demand;
3. underscores its appreciation of the openness displayed by the Commission towards the collaborative economy in this document. A common regulatory "framework", as a model and guide, is needed for the Member States and local and regional authorities;
4. given that the collaborative economy has an impact upon so many areas, reiterates the importance of a multi-level approach with close and continuous interaction and cooperation between the different institutional levels;

II. RECOMMENDATIONS

5. calls for rigorous territorial impact assessments to be carried out by the Commission on future initiatives in this field, a need highlighted by the expert seminar on urban impact assessment organised by the CoR¹; notes the strong local and regional dimension of the phenomenon, since many collaborative economy initiatives have a major impact at the level of cities in particular, and are often framed, regulated, and sometimes taxed at the local and regional level;
6. shares the European Commission's opinion on avoiding regulatory fragmentation and calls for this objective to be pursued without harming those local and regional authorities that may, in varying degrees, suffer the adverse effects of the collaborative economy; therefore also calls for the Commission to take into consideration the local and regional dimension of "overriding reasons relating to the public interest" as defined by Article 4(8) of the Services Directive;

¹ UIA, Urban Impact Assessment, *The Sharing Economy*, ECON Commission, 30.6.2016.

7. stresses the need to tackle a cross-cutting question such as the collaborative economy in the framework of the Urban Agenda for the EU, in particular in relation to the digital transition, one of the Pact of Amsterdam's priority themes;
8. considers it indispensable to adopt a holistic approach that can embrace the *economic, social and environmental assets* of existing systems for managing/sharing/exchanging goods and services, now driven by new technologies;
9. stresses that despite its complexity, early action to prevent fragmentation in the first place would still be far less difficult than ex-post harmonisation of 28 national frameworks and countless local and regional regulations;
10. notes that excessive regulatory measures may suppress innovation; highlights on the other hand that the absence of regulatory measures can create uncertainty that may inhibit investments and development of the sector;
11. points out that this issue is also important in view of the need to reduce the digital divide. A piecemeal approach to these economies could risk exacerbating the divide between rural and urban areas;
12. notes the marked prevalence of US businesses in the collaborative economy, and emphasises that introducing clear EU-level rules respecting the principles of subsidiarity and proportionality would give European start-ups the chance to grow and be more competitive on the world stage; also considers that account should be taken of the cost of non-Europe in the sharing or collaborative economy²;

Definition

1. considers that the strength of this new approach based on sharing/collaborating/participating/connecting lies not only in its use of the new technologies, but also in the values of *trust* and *responsibility* that are social and “experiential” as well as economic;
2. points out that sharing/collaborative economy business organisations with a long-term vision should play an active role in designing future policies in the field;
3. considers it a priority to identify and establish *parameters* and *values* that we want to promote and defend, to prevent the new paradigm from turning into something that “does not belong to us” and to make sure it is socially sustainable. This will be necessary in the hospitality sector, for example, where there is a risk of unfair competition between the services of the collaborative economy and traditional activity. It could also have an arbitrary and damaging influence on the property market by inflating prices, changing the use of buildings - as owners prefer easy and

²

European Parliamentary Research Service, January 2016: The Cost of Non-Europe in the Sharing Economy
http://www.europarl.europa.eu/RegData/etudes/STUD/2016/558777/EPRS_STU%282016%29558777_EN.pdf

substantial profits to normal rent - and also creating new and complex dynamics in the local area;

4. in order to ensure that rights are protected, considers it indispensable to adopt wherever possible similar concepts and definitions, as this will guarantee uniformity and certainty at European level. Considers that the EU should define "employers" and "workers" more clearly, and find a solution to problems in consumer-to-consumer and trader-to-trader relations on online platforms, in order to establish which rights and laws should prevail;
5. as already stated in its previous opinion, "[c]onsiders however that regulation of pre-existing markets should be subject to regular review in order to verify its ability to allow for continued innovation processes. The debate on the circular economy and the Digital Single Market could be some of the areas where the SE [sharing economy] should be taken into consideration"³;
6. regrets, however, the fact that there is no reference to the aim of involving local and regional authorities in future assessments and that far too much discretion has been left to the Member States, running the risk of fragmentation, something to be avoided;
7. finds that the Commission's communication provides elements and criteria for assessment without giving a full response, which will inevitably result in differences in interpretation and further fragmentation of the single market; therefore calls on the Commission to come up with a clear legal framework that ensures that fair competition principles are upheld; regrets, here, that the European legislator will only be called on to endorse a certain number of judicial decisions⁴, including on the question of what exactly is covered by the exclusion of "transport" from the scope of Article 2 of Directive 2006/123 on services;
8. takes a positive view of the Commission's approach which, thanks partly to the data collected in the staff working document, conveys the economic potential of the collaborative economy. At the same time, however, would recommend assessing and recognising not only the economic gain in monetary terms, but also the gains and savings that collaborative initiatives generate in environmental and social terms. The CoR would therefore suggest finding an optimum way of studying and monitoring the "assets" generated by sharing so that they can come to be recognised as an integral and active part of the circular economy;
9. notes that setting up one-stop-shops for sharing/collaborative economy entrepreneurs that would bring together all business support services could help the wider spread of sharing/collaborative economy activities;

Market access requirements

10. questions whether the Services Directive's definition of "service provider" is still appropriate, since its current wording captures any economic activity, including the many highly infrequent and non-professional activities provided by peers;

³

Opinion on *The local and regional dimension of the sharing economy*, COR-2015-02698-00-00-AC-TRA, December 2015.

⁴

See in particular cases C-434/15 Asociación Profesional Élite and C-526/15 Uber Belgium.

11. believes it would be particularly useful to identify "thresholds" for access, both "qualitative" and "quantitative", to determine who would be subject to market access requirements but also to avoid the spread of activities which may use the cloak of the collaborative economy to circumvent laws and regulations;

Protection of users

12. considers that the Commission's guidance regarding the definition of the term "trader" should be clarified, that a non-profit motive should exclude a provider from being classified as a trader, and that EU-level thresholds on the basis of the frequency of the service should be used;
13. notes that reviews and ratings can be a major factor, together with legal requirements, in ensuring consumer trust and protection, and emphasises that platforms should do more to tackle fake reviews;

Employment and social issues

14. notes, however, that many forms of work in the collaborative economy appear to lie mid-way between salaried employment and freelance work, a situation which raises important questions related to working conditions, health and safety, health care coverage, paid sick leave, unemployment benefits and retirement pensions; points out that this could give rise to a new category of precarious workers;
15. points out that some collaborative economy business models have produced strong negative social and employment-related externalities, in particular by abusing the concept of "self-employment", and rely on social disparities between workers depending on the national legislation that applies in the country where the service is provided; asks the Commission to provide a more specific framework to ensure coordination between Member States;
16. calls on Member States, local and regional authorities and the Commission to encourage innovative solutions to the social and employment challenges raised by the collaborative economy, such as cooperative or mutual organisations providing a salaried status to individuals who would otherwise be forced into a self-employed status not of their choosing, thereby giving them access to a wide range of social protection measures;

Taxation

17. highlights, on the other hand, that any activity conducted via the intermediary of an online platform is fully traceable and that, with the right policy measures, the collaborative economy can actually be a tool for both increased tax compliance and reduced administrative burdens;
18. calls on collaborative economy platforms to require all active providers to comply with applicable fiscal rules, and to cooperate with national, regional and local authorities in setting up the information transfer mechanisms to enforce these obligations; points out that examples of such systems already exist and should be widely deployed;

19. underlines in particular the case of tourist taxes, which are a key concern for many local and regional authorities, since in many locations where such a tax applies, it is not collected on stays reserved through collaborative economy platforms; adds that this breach of regulation cannot be tolerated, that it creates unfair competition vis-à-vis traditional accommodation providers, and furthermore deprives local and regional authorities of revenue;

Platforms

20. highlights the fact that the social responsibilities of platforms in all their various permutations need to be more precisely defined, in particular in relation to occupational health and safety, as well as training; Stresses that the workers' right to information and consultation within the undertaking as well as the right of collective bargaining and action, as enshrined respectively in articles 27 and 28 of the Charter of Fundamental Rights are to be guaranteed independently from the business model;
21. considers the role of online platforms extremely important as a tool with a multiplier effect for the economic paradigm in question, and expects them to shoulder responsibility for guaranteeing respect of the rights of users, the community and the local area to ensure that the model does not automatically become a hindrance or obstacle;
22. welcomes the Commission's statement that its "free flow of data" initiative will facilitate switching and portability of data among the various online platforms, since this is a key factor in ensuring fair competition and user protection in the single market;
23. calls on the Commission to study the need for, and feasibility of, creating a legal requirement for platforms to provide simple, user-friendly summaries of their general terms and conditions in addition to the standard documents, since the length and complexity of the latter deters the majority of users from reading them, creating a highly asymmetric relationship;
24. welcomes the Commission's commitment to cooperate with major online platforms in introducing a code of conduct to combat online hate speech;
25. calls on the Commission to adopt, as soon as possible, a *holistic approach* to the issue to avoid blocking the spread and impact of the sharing economy in the near future;
26. underlines the need to find the right regulatory balance: policy-makers must not smother innovation and regulate the collaborative economy to death, and yet at the same time they must be sufficiently precise to avoid fragmentation and manage socio-economic challenges;
27. would ask the Commission to inform and involve all levels in order to publicise the "pilot project" that it has approved, acting on the proposal of the European Parliament, comprising research, monitoring and training programmes on the collaborative economy;
28. calls for the definition of EU-wide thresholds below which a provider shall remain a non-trader and a "peer", and thus not be subject to any market access requirements;

29. considers that these thresholds should be relative and time-based (e.g. number of nights for accommodation, number of days/hours worked for other areas) rather than absolute and monetary, so as to ensure a level playing field for everyone; they should also be low, in order to prevent abuse and ensure the genuinely occasional and non-professional nature of the activity;
30. requests that collaborative economy platforms in the accommodation sector require their providers to comply with the rules related to tourist taxes, and that it be mandatory to collect such taxes on all reservations which they facilitate in the cities and regions concerned, in order to remit them to the appropriate authorities; points out that several examples of such cooperation between authorities and platforms already exist;
31. supports the establishment of a "forum of collaborative economy cities" to share experience and exchange good practice, with the Committee as a key interested party; highlights that such a forum would be a key asset and partner in relation to the necessary territorial impact assessments in this field;
32. urges all political levels to work on the current situation without losing sight of the fact that the real political challenge is to design the sharing economy of tomorrow.

Brussels,

III. PROCEDURE

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| Title | Collaborative economy and online platforms: a shared view of cities and regions |
| Reference | COM(2016) 288 final and COM(2016) 356 final |
| Legal basis | Article 307 TFEU |
| Procedural basis | Rule 41(b)(i) RP |
| Date of Council/EP referral/Date of Commission letter | – |
| Date of President's decision | 7 June 2016 |
| Commission responsible | Commission for Economic Policy |
| Rapporteur | Benedetta Brighenti (IT/PES), deputy mayor of the municipality of Castelnuovo Rangone, Province of Modena |
| Analysis | 20 July 2016 |
| Discussed in commission | 28 September 2016 |
| Date adopted by commission | 28 September 2016 |
| Result of vote in commission (majority, unanimity) | Unanimously |
| Date adopted in plenary | Scheduled for 7-8 December 2016 |
| Previous Committee opinion | Opinion of the Committee of the Regions of 4 December 2015 on <i>The local and regional dimension of the Sharing Economy</i> , rapporteur: Benedetta Brighenti (IT/PES) (CoR 2698/2015) |