



**European Committee
of the Regions**

ECON-VI/048

137th plenary session, 4-5 December 2019

OPINION

A European framework for regulatory responses to the collaborative economy

THE EUROPEAN COMMITTEE OF THE REGIONS

- recalls that in its 2016 opinion on the topic, the Committee found that the Commission's Communication on "A European Agenda for the Collaborative Economy" did not provide comprehensive answers to some of the crucial questions raised by the collaborative economy; believes that this inaction has resulted in leaving highly political decisions up to the courts rather than the European and regional legislators;
- considers that the existing EU regulatory framework – introduced before the age of collaborative economy platforms – is effectively outdated and cannot respond to the challenges posed by the collaborative economy without a thorough update;
- calls on the European Commission to put forward proposals to this end in the course of 2020, in the broader context of the "Digital Services Act" that is on the agenda of the Commission President-elect, especially as the main technical conveniences (e.g. smartphones) and platforms appeared a long time after the e-Commerce Directive of 2000;
- notes the strong local and regional dimension of the collaborative economy, which influences everyday life, since many of the sectors in which these platforms are active, from accommodation, urban transport or delivery services to the use of public spaces, are regulated or taxed at the local and regional level;
- points out that access to data is a crucial issue for public authorities, in particular at local and regional level; ensuring proper enforcement of applicable local rules and safeguarding supervisory mechanisms is impossible without access to the relevant data from platforms operating in a given territory;
- asks the European Commission to produce studies into the possible environmental impact of the collaborative economy by the second half of 2020, as such in-depth studies are lacking.

Rapporteur

Peter Florianschütz (AT/PES), Member of the Vienna Regional Parliament and member of Vienna City Council

Reference document(s)

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Opinion of the European Committee of the Regions – A European framework for regulatory responses to the collaborative economy

THE EUROPEAN COMMITTEE OF THE REGIONS

General remarks

1. calls on the European Parliament, the Council and the Commission to put the collaborative economy at the forefront of their priorities for the 2019-2024 term of office;
2. notes that the collaborative economy is based on a triangular relationship between three categories of participants – customer, supplier and platform/intermediary – which differs significantly from the traditional "chain" model and bilateral customer-supplier relations on which the existing EU regulatory framework is based;
3. considers therefore that the concrete application of EU law to these new business models is far from comprehensive and often difficult to establish, as indicated by the intense controversy and recourse to justice that they have triggered;
4. recalls that in its 2016 opinion¹, the Committee found that the Commission's Communication "A European Agenda for the Collaborative Economy"² did not provide comprehensive answers to some of the crucial questions raised by the collaborative economy; believes that this inaction has resulted in leaving highly political decisions up to the courts rather than the European and regional legislators;
5. highlights the benefits the collaborative economy can provide when operated in a fair and regulated level playing field, such as stronger competition in many sectors with disruptive effects on incumbents resulting in a wider choice for consumers and lower costs, better employment opportunities and the positive environmental impacts stemming from a more efficient use of assets and resources;
6. points out nevertheless that besides advantages, the collaborative economy also has negative impacts on traditional businesses and local communities; emphasises that an undermining of labour and consumer rights and environmental protection standards is not acceptable in the single market and points out that the Committee is drafting a separate opinion on employment and social aspects of platform work³;
7. considers that online and offline economic activities should be treated equally on a level playing field in the single market. The collaborative economy offers greater choice to consumers and new opportunities to entrepreneurs, but citizens and businesses must be aware of applicable

¹ COR-2016-04163. Available online: <https://webapi2016.cor.europa.eu/v1/documents/cor-2016-04163-00-01-ac-tra-en.docx/content>.

² COM(2016)356 final. Available online: http://webapi.cor.europa.eu/documentsanonymous/com356-2016_part1_ext_en.docx.

³ COR opinion "Platform work – local and regional regulatory challenges", rapporteur: Dimitrios BIRMPAS. Dossier SEDEC-VI/051.

local rules and obligations, no matter what kind of platform business (e.g. sharing houses, car journeys, various domestic services, with profit or non-profit motives etc.) they have chosen;

8. also deeply regrets the crowding out of local residents that is taking place in several major cities due to rising real estate prices linked to large numbers of accommodation units being dedicated to short term tourist rentals via online platforms;
9. nonetheless shares the Commission's desire, expressed in its 2016 "Agenda for the Collaborative Economy", to balance the two policy objectives of addressing current problems – and providing legal certainty – through regulation on the one hand, and encouraging innovation, new businesses and the further development of the collaborative economy on the other;
10. is of the opinion that the rule of law implies the creation and also the efficient enforcement of laws and there should not be any impediment to local and regional authorities in applying and enforcing European, national or regional laws;
11. welcomes the voluntary action by platforms across Europe but underlines that it is no substitute for framework rules for a truly common market;

A European framework with a territorial dimension

12. considers, in the light of these concerns, that the existing EU regulatory framework – introduced before the age of collaborative economy platforms – is effectively outdated and cannot respond to the challenges posed by the collaborative economy without a thorough update;
13. calls on the European Commission to put forward proposals to this end in the course of 2020, in the broader context of the "Digital Services Act" that is on the agenda of the Commission President-elect⁴, especially as the main technical conveniences (e.g. smartphones) and platforms arose a long time after the e-Commerce Directive of 2000;
14. notes the strong local and regional dimension of the collaborative economy, which influences everyday life, since many of the sectors in which these platforms are active, from accommodation, urban transport, delivery services to the use of public spaces, are regulated or taxed at the local and regional level;
15. calls on the Commission and the Member States to create an incentivising regulatory environment, which will enable small-scale European platforms to better profit from the Single Market and scale up to successfully challenge dominant global players;
16. calls for the future European framework to recognise this territorial dimension and to strengthen the capacity of public authorities to take action to regulate the collaborative economy according to their national, regional or local situation, in full respect of the principle of subsidiarity. Enforcing valid court decisions against short term rental platforms in the country of residence is

⁴ "A Union that strives for more: My agenda for Europe". Available online: https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.

a huge effort for local authorities due to lack of resources and capacity to litigate in another EU Member State;

17. emphasises that the country of origin principle in the e-Commerce Directive causes problems for cities and regions. The stronger the country of origin principle is, the clearer and more effective the rules to enforce the law must be; is of the opinion that there is a risk of cherry-picking when entering the single market which in the end leads to legal uncertainties and to a loss of administrative control for public authorities in the destination country;
18. believes nonetheless that local or national level action alone would not be able to tackle some of the key concerns surrounding the collaborative economy, and that in this light a clear European framework is necessary in addition to national and regional laws;
19. recommends that Territorial Impact Assessments are carried out of the critical elements of the Digital Services Act and of the European framework for the collaborative economy;
20. suggests furthermore, given the dynamic nature of the collaborative economy, that a mechanism is put in place to monitor the implementation of the Digital Services Act and the European framework for the collaborative economy;
21. asks the European Commission to regularly monitor the development of collaborative platforms with regard to compliance with competition rules, as a high level of market dominance by just a few platforms can be seen at regional and local level;

Fragmentation of the internal market

22. stresses that fragmentation of the internal market is already underway as, despite the relative newness of the phenomenon, there has been a proliferation of rules for the collaborative economy in many Member States, cities and regions, with existing or planned legal and policy initiatives in around two thirds of Member States already as of 2017, for instance in the area of taxation, housing and building rules, transport and delivery services or regarding public spaces⁵;
23. underlines the fact that these numerous initiatives show the need for clear EU regulation within the single market; the fragmentation resulting without this can deter both users and providers from taking advantage of the opportunities offered by the collaborative economy;
24. emphasises that stopping market fragmentation through harmonised rules across the EU is also crucial in order to promote the growth of smaller collaborative economy businesses, since existing large, multinational platforms are better able to adapt to regulatory complexity and changes thanks to their large scale;
25. is convinced that introducing a clear EU-level framework would give European start-ups the chance to grow and be more competitive on the world stage. Non-European collaborative

⁵ EC Legal Analysis Report, DG JUST, 2017. p.92-101 Available online: https://ec.europa.eu/info/sites/info/files/annex5_task5_reportmay2017.pdf.

platforms deserve particular attention, as enforcement of rules in third countries is in most cases almost impossible;

Status of collaborative economy platforms

26. regrets that the crucial question of the status of collaborative economy platforms – and therefore the question of which rules govern their operations – has so far been largely left to the courts, although it is a highly political matter with far-reaching implications to which pre-existing regulation on its own cannot provide a full answer;
27. stresses that the e-Commerce Directive⁶ and the freedom to provide cross-border information society services that it provides for appear particularly in need of a review and update in the light of the controversies and court cases currently surrounding it⁷;
28. highlights the fact that the definition of an information society service⁸ itself may need to be further clarified to distinguish between different types of activities, and in particular in relation to the emergence of so-called "composite services", as defined by Court of Justice of the European Union (CJEU) Advocate General Szpunar, including both an information society service and, inseparably, the underlying service not provided by electronic means⁹;
29. considers that the European framework should define the status of collaborative economy platforms according to the precise degree of control exercised by the platform, and that criteria to define "decisive influence" – the concept referred to by the CJEU – must therefore be explicitly outlined in EU law;
30. believes on the other hand that the "market maker" criteria, also referred to by the Advocate General, could apply to some extent to most collaborative economy platforms and is therefore much less relevant in defining their status and the rules applicable to their operations;
31. is of the opinion that collaborative platforms must be held liable for illegal actions or dissemination of illegal content (e.g. social housing offers on short term rental platforms) and believes that discriminatory decisions of platforms can be made only according to local laws or court decisions;

Status of collaborative economy platform users and consumer protection

32. highlights the fact that a distinguishing feature of the collaborative economy is that it blurs the line between personal and professional actors, i.e. between traders and peers;

⁶ Directive 2000/31/EC ('Directive on electronic commerce'). Available online: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031>.

⁷ See in particular the CJEU cases C-434/15, C-320-16 related to Uber and the ongoing case C390-18 related to Airbnb.

⁸ The definition is found in Directive (EU) 2015/1535 Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L1535>.

⁹ CJEU, Advocate General's Opinion in Case C-434/15 Available online: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170050en.pdf>.

33. considers in this respect that the Services Directive's¹⁰ definition of "service provider" should be reviewed, since its current wording could be interpreted to cover any economic activity; believes that this situation could potentially act as a strong deterrent by placing disproportionate burdens on people wishing to occasionally act as non-professional suppliers ("peers") of services through a collaborative economy platform;
34. recommends therefore that the situation be clarified through EU-wide thresholds developed for the level of economic activity beyond which a user shall be considered a professional and be subject to market regulation; considers that these thresholds should be time-based rather than monetary to ensure a level playing field across the EU;

Access to data

35. points out that access to data is a crucial issue for public authorities, in particular at local and regional level; ensuring proper enforcement of applicable local rules and safeguarding supervisory mechanisms is impossible without access to the relevant data from platforms operating in a given territory;
36. believes therefore that the European framework must require platforms to provide public authorities with the data necessary to enforce the rules applicable to the platform and/or its sector of activity on a legal basis¹¹. However, public authorities must give due regard to platforms' data and know-how, such as search and ranking algorithms, when accessing such information. Public authorities should not have to rely on the willingness of platforms to share data with them, as experience gathered in several European cities shows that where platforms claimed they were willing to cooperate, "in practice they don't, or only do so on a voluntary basis"¹²;
37. acknowledges that some platforms have taken steps to enforce certain rules themselves, but while these efforts are laudable, voluntary self-regulation can easily be circumvented by platform users (one accommodation unit can be posted on several platforms or even several times on the same platform); is therefore convinced that access to data for public authorities is the best solution;
38. declares that large digital platforms are gatekeepers in the digital economy, they can attain a dominant position in the market, and benefit greatly from positive network effects. For market-dominating platforms a tightening up of the already existing obligation in the data protection law to ensure data portability (e.g. via open interfaces) will be unavoidable;

¹⁰ Directive 2006/123/EC Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0123>.

¹¹ General Data Protection Regulation, Art. 6(1)(e).

¹² The Guardian June 2019; Available online: <https://www.theguardian.com/cities/2019/jun/20/ten-cities-ask-eu-for-help-to-fight-airbnb-expansion>.

Taxation concerns

39. welcomes nonetheless the cooperative practices that some platforms have implemented in order to enforce rules such as the collection of tourist taxes on behalf of municipalities;
40. considers however that requiring all platforms to do so in all local and regional authorities could represent a large administrative burden, while data sharing is far less burdensome;
41. stresses that some cities and regions have failed to conclude agreements with platforms on tax issues, as some collaborative platforms have shown no intention of accepting national or regional tax laws or the oversight powers of local supervisory bodies (e.g. Courts of Audit) or any local control mechanisms for proper taxation;
42. highlights the fact that income received by collaborative economy suppliers, potentially working through several platforms based in different countries, can fall into grey zones and is hard for tax authorities to track: some recipients are legitimately uncertain what taxes should apply, while others might knowingly attempt to avoid paying taxes by taking advantage of the lack of clarity; stresses that data sharing between platforms and all competent public authorities would put an end to this and ensure that the appropriate taxes are paid;
43. highlights the fact that the taxation of platforms themselves is another crucial point; online platforms need to pay their fair share of taxes; refers to its opinion on "Taxation of the Digital Economy"¹³ in which the Committee considers that the existing tax systems are no longer suited to the current economic context of globalisation, mobility, digital technologies, new business models and complex business structures, and welcomes the Commission's proposals in this regard¹⁴;

Environmental Impact

44. considers the collaborative economy to be an additional way to contribute to various measures taken by the EU to reach the climate goals of the 2015 Paris Agreement;
45. asks the European Commission to produce studies into the possible environmental impact of the collaborative economy by the second half of 2020, as such in-depth studies are lacking;

Housing

46. believes that the public sector's scope for action must be safeguarded in order to ensure that the free movement of goods and services by electronic means is secured but does not restrict competition and the functioning of local markets. The criteria of general interest must therefore be specified and extended in the e-Commerce Directive. Affordable housing is of utmost

¹³ Ref: COR-2018-02748. Available online: <https://webapi2016.COR.europa.eu/v1/documents/cor-2018-02748-00-00-ac-tra-en.docx/content>.

¹⁴ Ref: COM(2018) 147 final; and Ref: COM(2018) 148 final.

importance for European citizens in all member countries; short term rentals via platforms can strengthen negative tendencies in the housing market;

Final remarks

47. highlights the fact that many regions and cities find themselves confronted with the emergence of platform activities on their territories without prior notice; several European cities signed the "Sharing cities Declaration"¹⁵ in 2018;
48. therefore calls on the Commission to propose a European framework to make prior notice to the competent authorities mandatory and to encourage collaboration between authorities and platforms in order to ensure that the latter operate in accordance with the applicable rules and in a manner appropriate to the local situation;
49. looks forward to working with the European Commission, the European Parliament and the Council in shaping the European framework for regulatory responses to the collaborative economy.

Brussels, 5 December 2019

The President
of the European Committee of the Regions

Karl-Heinz Lambertz

The Secretary- General ad interim
of the European Committee of the Regions

Pedro Cervilla

¹⁵ Available online: <http://www.sharingcitiesaction.net/declaration/>.

I. PROCEDURE

Title	A European framework for regulatory responses to the collaborative economy
Reference(s)	/
Legal basis	Article 307(4) TFEU
Procedural basis	Rule 41(b)(ii) of the RoP
Date of Council/EP referral/Date of Commission letter	N/A
Date of Bureau decision	25 June 2019
Commission responsible	Commission for Economic Policy (ECON)
Rapporteur	Peter Florianschütz (AT/PES)
Analysis	4 June 2019
Discussed in commission	9 July 2019
Date adopted by commission	22 October 2019
Result of the vote in commission (majority, unanimity)	Unanimity
Date adopted in plenary	Adopted unanimously on 5 December 2019
Previous Committee opinions	<ul style="list-style-type: none">• Opinion: <i>The Local and Regional Dimension of the Sharing Economy</i> – ECON-VI-005, December 2015. Rapporteur: Benedetta Brighenti (IT/PES)• Opinion: <i>Collaborative economy and online platforms: a shared view of cities and regions</i> – ECON-VI-016, December 2016. Rapporteur: Benedetta Brighenti (IT/PES)
Date of subsidiarity monitoring consultation	N/A