European Economic and Social Committee

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Collaborative economy

OPINION

European Economic and Social Committee

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]

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1. **Conclusions and recommendations**

1.1 The emergence of a decentralised digital economy suggests that a significant proportion of new economic peer-to-peer exchange will be intertwined with social relations and embedded in communities, which will lead to a transformation of what it means to set up a business or have a job, in terms of "democratising how we produce, consume, govern, and solve social problems". At the same time, it is necessary to ensure that this is not accompanied by job insecurity and tax avoidance, and that the value added does not massively shift away from industrial players towards the owners of proprietary digital platforms.

1.2 Faced with this new paradigm, the EESC encourages the Commission to develop a more detailed and inclusive conceptual approach to the collaborative economy, in order to avoid any bias that equates it with the digital economy. The collaborative economy, which embraces a democratic and participatory dynamic similar to that of the social economy, therefore has the following features:

   a) it does not always take place in a digital environment, but also in local areas, meaning that interpersonal relations can be emphasised (for example, the exchange of goods);

   b) it is often not-for-profit, in many cases drawing on principles of cooperation and solidarity (for example, certain kinds of crowdfunding such as donation-based crowdfunding);

   c) it does not always take place on a global or transnational scale; its ecosystem can also often be found in smaller and more localised areas (for example, groups producing for their own consumption);

   d) it is not limited exclusively to economic aspects, but also touches upon environmental and social issues (for example, sustainable mobility);

   e) it is not just a new way of providing on-demand services where the shared good is work capacity, but also highlights ways of accessing these services (for example, sharing goods);

   f) it is not restricted to tangible goods that have a high economic value, but can be applied to any type of product or service (e.g. time banks).

1.3 Ultimately, the collaborative economy encompasses a range of methods with specific contributions and challenges. The "access economy", for example, brings underused properties to the market, creating greater supply for consumers and more efficient use of resources, but entails the risk of stimulating overall production through the rebound effect. In the "low demand economy", the workforce is fragmented, creating more flexibility, but increasing the risk of employment insecurity. And the "gift economy", in which goods and services are shared on an altruistic basis, helps build stronger communities, but often remains invisible to administrations.

1.4 For their part, digital platforms, in particular those that support gainful activity, deserve the full attention of the European Commission, in order to regulate and harmonise their activity and ensure a level playing field on the basis of transparency, information, full access, non-discrimination and appropriate use of data. In particular, it is essential to redefine the concept of legal subordination with regard to the economic dependence of workers, and guarantee labour rights regardless of the type of activity.

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1.5 The challenge, therefore, consists in drawing a line between the different forms that this economy can take and proposing differentiated regulatory approaches\(^2\), giving priority to those digital initiatives that are founded on democratic, solidarity-based and inclusive governance, in harmony with social innovation, which results in the need to inform consumers about their identity-giving values and their organisation and management arrangements. In this regard, the EESC recommends carrying out qualitative research into the network of relationships established by its agents in the collaborative economy environment itself.

1.6 As a result, the EESC calls for the development of a specific methodology for regulating and measuring a new economy with different standards. From this perspective, the value of trust – from the point of view of information symmetry – plays a central role. The criteria for transparency, honesty and objectivity in assessing the product or service should also be strengthened, rather than simply resorting to algorithms automatically.

1.7 The EESC likewise recommends that an independent European rating agency for digital platforms be created, with harmonised competences in all Member States, which can assess the governance of these platforms with regard to competition, employment and taxation.

1.8 Moreover, the Communication’s approach to the collaborative economy ignores fundamental issues such as those related to virtual and social currencies as operational instruments of that economy, as well as knowledge, information and energy as objects of its practice, or the role that co-creation and technological innovation, among others, play in the collaborative economy.

1.9 With regard to the complex approach of the collaborative economy in the current context, the EESC recommends ensuring balanced coexistence between models that guarantees its full development without causing negative externalities in the market, especially when it comes to protecting competition, taxation and high-quality employment. To this end an appropriate framework for following-up and monitoring the new parameters of the collaborative economy should be designed in cooperation with stakeholders (business organisations, trade unions, consumer associations, etc.).

1.10 Finally, in order to tackle the transition to a new economy with significant systemic consequences, it is recommended that the EESC create a permanent horizontal structure to analyse these emerging phenomena, interweaving its efforts with those of the European Commission, the Committee of the Regions and the European Parliament.

2. **Introduction and background**

2.1 Social culture, consumption patterns and the ways of meeting consumers’ needs are undergoing a period of profound change. Consumption is being overhauled and rationalised from a more inclusive perspective; issues of pricing are interwoven with the environmental and social footprint of products and services, all of which is influenced still further by the disruptive effect of the internet and social networks.

\(^2\) OJ C 51, 10.2.2016, p. 28.
2.2 The possession of goods for personal use, hard currency and on-site, fixed and salaried jobs, will give way to virtual exchanges, shared access, digital money and greater flexibility of the workforce.

2.3 In the transition towards new forms of production and consumption, certain sectors of economic activity have been swept up in a powerful tsunami resulting from the incursion of new actors. Some of these actors are motivated by cooperation and a sense of commitment to their community, while others are simply driven by the opportunity to do business (and do not always respect the idea of a level playing field).

2.4 As many voices have called for a new planning framework\(^3\) for collaborative consumption (that encourages the use of digital technology to tap into decentralised excess capacity, rather than creating new monopolistic centralised systems), the European Commission has decided to launch *A European agenda for the collaborative economy* having observed that the EU’s national and local authorities have been addressing the situation via a patchwork of different regulatory measures. This is because collaborative consumption comes in different forms depending on the sector in question.

2.5 The disjointed approach of these new business models generates insecurity (economic, regulatory, workforce-related) and uncertainty (regarding questions of trust, new digital tools such as blockchains, security networks and privacy) between incumbent operators, new service providers and consumers, restricting innovation, job creation and growth.

2.6 As a result, the Commission has published the following guidance for market operators and public authorities of the various Member States:

- **Market access requirements**: service providers should only be obliged to obtain business authorisations or licences in order to meet relevant public interest objectives. Absolute bans of an activity should only be a measure of last resort. Platforms should not be subject to authorisations or licences where they only act as intermediaries between consumers and those offering the actual service (e.g. transport or accommodation services). Member States should also differentiate between private individuals providing services on an occasional basis and providers acting in a professional capacity, for example by establishing thresholds based on the level of activity.

- **Liability regimes**: collaborative platforms can be exempted from liability for information they store on behalf of those offering a service. However, they should not be exempted from liability for any services they themselves offer, such as payment services.

- **Protection of users**: Member States should ensure that consumers enjoy maximum protection from unfair commercial practices, while not imposing disproportionate obligations on private individuals who provide services occasionally.

- **Employment relations (employed and self-employed)**: Labour law mostly falls under national competence, supplemented by minimum EU social standards and jurisprudence.

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\(^3\) One of the first was that of the EESC, *OJ C 177, 11.06.2014, p.1.*
Member States may consider criteria such as the degree of subordination to the platform, the nature of the work or the salary received when deciding whether a person can be considered as an employee of a platform.

- **Taxation:** Collaborative economy service providers have to pay taxes. Relevant taxes include tax on personal income, corporate income and Value Added Tax. Member States are encouraged to continue simplifying and clarifying the application of tax rules to the collaborative economy. Collaborative economy platforms should fully cooperate with national authorities to record economic activity and facilitate tax collection.

3. **General comments on the Commission’s proposal**

3.1 The Commission is causing confusion by placing digital platforms and the sharing economy in the same basket, without taking on board the idea that the collaborative economy and the common interest may be linked, based on a recognition of its positive externalities with regard to putting values such as cooperation and solidarity into practice.

3.2 In its Communication, the Commission misses what should be its main objective, failing to respond to the legitimate expectations of relevant stakeholders - defining a model and parameters within a clear and transparent legal framework in which the multiple forms of the collaborative economy can develop and operate in the European area, be supported and implemented and gain credibility and trust.

3.3 For its part, the digital economy model presents four specific characteristics: relocation of activities, the central role of digital platforms, the importance of networks and the mass exploitation of data. Despite belonging to a different sphere, it intersects with the collaborative economy as they often operate in similar spheres: crowd-based networks; blurring lines between private and working life, stable and casual labour, self-employment and employment; etc.

3.4 In order to make it easier to establish these conceptual limits, the EESC recommends that the European Commission incorporate the notion of the "non-reciprocal prosocial behaviour" of the collaborative economy, which clearly differentiates not-for-profit shared use and provides a space to interact for the purpose of consumption, production, financing and knowledge sharing.

3.5 In short, the collaborative economy model implies not only economic but also social and environmental change. The Communication indicates this by referring to sustainability and the transition to a circular economy, or when describing social markets as a niche of the collaborative economy.

3.6 Ignoring these circumstances means addressing the current significance of collaborative initiatives in a partial way. The same applies if the analysis is limited to the exchange of services or to collaborative platforms, without taking into account aspects such as recirculation and exchange of goods, optimisation of the use of assets, or networking.

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Regarding issues related to uncertainty in applying legal frameworks for regulating collaborative economy initiatives, although the difficulties that the Communication raises are genuine, so is the intention to "normalise" and "adjust" a new economic model to "traditional assessment criteria". This may require an effort to establish new criteria and standards in its legal, labour and tax treatment, especially regarding transition towards a new production and consumption model and redefining the actors involved.

Likewise, a new, more inclusive economy that generates social cohesion is only possible if every person is provided with the digital and financial skills to access and make use of it. Furthermore, public policies should ensure full access for the people that are most vulnerable to digital exclusion, particularly those with disabilities.

Finally, the EESC cannot overlook the following elements that were not covered in the Commission’s Communication:

- Operational instruments of common action such as digital, virtual and social currencies need to be addressed in the debate on the collaborative economy. Due to the blockchain factor, the second generation of internet users, entrepreneurs and incumbents alike, are devising new ways of performing the eight core functions of financial intermediaries via a global distributed ledger, technology, and bitcoin.
- If we consider that the two main pillars of collaborative change are the energy-information combination, no analysis of the collaborative economy should overlook the transfer of intellectual property from shared knowledge and open access sources, nor should it ignore the energy sector.
- The effects on the labour market, such as the trend towards an excessively flexible labour market, the erosion of the powers of collective bargaining for workers in the collaborative economy, the risk of individualisation in the labour market, lack of training, and any (adverse) effects of rating systems, and the treatment of algorithms need to be addressed in greater depth.

4. Specific comments on the Commission’s proposal: key issues

4.1 Market access requirements, economies of scale and local "network effects"

4.1.1 The EESC understands that under existing EU legislation, particularly the Services Directive and the e-Commerce Directive, Member States need to boost access to collaborative markets (as a more varied range of products stimulates consumption), establishing – where necessary – constraints that are exclusively motivated by public interest, which would need to be duly justified. A conflict of laws can be expected because a sharing economy creates new ways of providing familiar services that have traditionally been highly regulated.

4.1.2 It is worth noting that because the collaborative economy is a melting pot of initiatives unrestricted by place or time, they should be subjected to open and delocalised treatment. This means that any limitation based on restrictive territorial criteria can result in tax and social competition that distorts their positive effects.
4.1.3 Therefore, far more than simply making a transnational case for market access, the collaborative economy must be seen as an expression of empowerment for citizens (human capital gains) that should be paralleled by two basic issues: firstly, a principle of harmonisation that may avoid disparities in treatment which could generate new market asymmetries; and secondly, the need to make progress with shared regulatory practices\(^5\) (models: peer regulation, self-regulatory organisations, and delegated regulation through data).

4.1.4 Like the Commission, the EESC supports more flexible service and market regulation (new definitions of sharing economy labour) and therefore calls for an assessment in each Member State of justifications for the applicable legislation with regard to the collaborative economy and proportionality, in accordance with \textit{public interest} objectives (regulation aimed at addressing market failure, facilitating the fostering of trust), taking into consideration the specific characteristics of different business models and access to quality and security of instruments.

4.1.5 Likewise, the EESC highlights the fact that while the specificities of the model generate tools assessing the rating and reputation of suppliers that satisfy the public interest objective of reducing risk to consumers associated with information asymmetries, they can also lead to "adverse selection" and "moral hazard". In this respect, public authorities and digital platform managers must ensure the quality and reliability of information, assessments and collaborative platform ratings, making use of independent monitoring authorities.

4.1.6 The EESC is of the view that the establishment of thresholds for distinguishing, sector by sector, the provision of professional services from that of non-professional services, could lead to the development of a useful methodology for overcoming the fragmentation of EU markets. However, this may not be as effective as anticipated when it comes to integrating non-professional activities between peers.

4.2 Liability and insurance regimes

4.2.1 The EESC understands that maintaining the current intermediaries liability regime\(^6\) is fundamental to the development of the European Union’s digital economy.

4.2.2 With a view to reinforcing credibility and confidence, which is crucial to the development of the collaborative economy, the EESC joins the Commission's communication in calling for the adoption of restrictive voluntary measures to combat illegal on-line content, by means of related or underlying activities, without relinquishing the benefits of exemption from liability.

4.2.3 However, the EESC reiterates the desirability of addressing collaborative activity in-depth, independently of the central value that is attributed to digital platforms, in order not to distance it too far from the citizen-based spirit that inspires it.

4.3 Consumer protection

\(^5\) \textit{OJ C 303, 19.8.2016, p. 36.}
\(^6\) In accordance with the Directive on eCommerce.
4.3.1 In a new context in which lines between producer and consumer are blurred (“empowered people makers, co-creators, crowd funders, peers, customers”), the EESC calls for a system guaranteeing consumers’ rights. However, given the collaborative economy’s specific characteristics, the range of initiatives on offer should not be restricted.

4.3.2 Therefore, the multilateral relations formed as a result should incorporate those arising from the emergence of prosumers (the most important economic inputs of the collaborative economy, which must be protected, secured and focused), which are set to play a highly significant role in the collaborative economy, as are processes to create shared value, especially from the perspective of the circular economy and functionality.

4.3.3 The EESC has always advocated a level playing field. In accordance with the principles guiding unfair trading practices, the factors that must be taken into account with a view to identifying consumers and traders in a non-restrictive way are: frequency of services, profit-making, and volume of business.

4.3.4 The EESC endorses this approach, but warns that it will be necessary to revise its view as well as the timeliness of other factors when applying criteria for an appropriate categorisation. It does not however seek to be exhaustive, given the complexity and variability with which the collaborative economy can express itself and the difficulty involved in outlining its future (a model that should be independent, portable, universal, and supportive of innovation).

4.3.5 The EESC reiterates that the most useful way of improving consumer confidence is to increase peer-to-peer service credibility and confidence (a "safe harbour" for specific collaborative economy platforms allowing benefits, training, insurance and other forms of protection) by means of appropriate on-line assessment services, external certificates (quality labelling) and a new system of "civil arbitration". This argument is closely related to the confidence and reputation of the collaborative economy's harmonious development in a new economic, social and environmental system of coordinates.

4.4 Workers and the self-employed in the collaborative economy

4.4.1 In the context of the European Pillar of Social Rights, the EESC unequivocally endorses the revision of the legal acquis in order to ensure fair working conditions and adequate social protection, based on the – cumulative – criteria of subordination of the person offering the service, the nature of the work, and the salary.

4.4.2 More specifically, with due regard for national competences, a legal framework should be established for workers that precisely specifies the relevant employment statuses: a decent wage and the right to take part in collective negotiations, protection against arbitrariness, the right to log out in order to keep digital working time within the bounds of decency, etc.

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7 As the Commission points out, none of these would be sufficient in and of itself for a provider to be regarded as a trader.
8 They should be made subject to close supervision and monitoring.
Moreover, the EESC advocates a more in-depth analysis of those work patterns of the collaborative economy that are related to non-reciprocal pro-social behaviour.

The collaborative economy's unique nature as a catalyst for job creation should be addressed in a similar way in all Member States so that the policies enacted do not undermine collaborative practice and are more entrepreneurial in incubation, independence, and infrastructure.

### Taxation

4.5.1 The EESC, conscious of the risks of aggressive tax planning and financial secrecy in the digital economy field, advocates strengthening a system for monitoring trade flows via digital platforms, because these can trace the product or service and facilitate tax income. The example of carpooling platforms in Estonia constitutes an example that could be replicated in the other Member States.

4.5.2 The adjustment of taxes, in particular VAT, to collaborative economy models will entail significant revisions. Likewise digital platforms — whose profits are largely linked to the sale of individuals’ data to businesses — must be fully liable for corporation tax in the location in which their business takes place, in order to avoid tax competition between Member States.

4.5.3 The EESC, aware of the importance of good tax governance, advocates the creation of ad hoc instruments (one-stop shops and on-line information exchanges) as well as measures aimed at administrative simplification, harmonisation, transparency and cooperation between tax administrations.

### Monitoring

4.6.1 The monitoring activities proposed in the Communication are appropriate to the objective being pursued. In particular, the EESC calls for dialogue to be strengthened between stakeholders (trade unions, business organisations, consumer associations, etc.) in order to identify best practices and develop self-regulatory and co-regulatory initiatives that address the collaborative economy’s new parameters at European level (e.g. in the accommodation, transportation, commercial real estate, health care provision and energy distribution sectors).

Brussels, 15 December 2016

Georges Dassis
President of the European Economic and Social Committee

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