



2016/0000(INI)

22.12.2016

DRAFT REPORT

on a European Agenda on the Collaborative Economy
COM(2016)0356 – (2016/0000(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Nicola Danti

Rapporteur for the opinion (*):
Dario Tamburrano, Committee on Industry, Research and Energy

(*) Associated committee – Rule 54 of the Rules of Procedure

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	3
EXPLANATORY STATEMENT	9
ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT	14

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on a European Agenda on the Collaborative Economy (2016/0000(INI))

The European Parliament,

- having regard to its resolution of 19 January 2016 on Towards a Digital Single Market Act¹,
- having regard to its resolution of 26 May 2016 on the Single Market Strategy²,
- having regard to the Commission communication on a European agenda for the collaborative economy of 2 June 2016 (COM(2016)0356),
- having regard to the Commission communication on online platforms and the Digital Single Market opportunities and challenges for Europe of 25 May 2016 (COM(2016)0288),
- having regard to the Commission communication entitled ‘Upgrading the Single Market: more opportunities for people and business’ of 28 October 2015 (COM(2015)0550),
- having regard to the Commission communication on a Digital Single Market Strategy for Europe 2015 of 6 May 2015 (COM(2015)0192),
- having regard to the Competitiveness Council of 29 September 2016 and its outcome,
- having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (‘Services Directive’)³,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (‘Electronic Commerce Directive’)⁴,
- having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council, and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’)⁵,
- having regard to Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services, Directive

¹ Texts adopted, P8_TA(2016)0009.

² Texts adopted, P8_TA(2016)0237.

³ OJ L 376, 27.12.2006, p. 36.

⁴ OJ L 178, 17.7.2000, p. 1.

⁵ OJ L 149, 11.6.2005, p. 22.

2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws ('Consumer Rights Directive')¹,

- having regard to the Commission staff working document of 25 May 2016 on guidance on implementation of the Unfair Commercial Practices Directive (UCPD) (SWD(2016)0163),
 - having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ('General Data Protection Regulation')²,
 - having regard to the Committee of the Regions opinion of 7 December 2016 entitled 'The collaborative economy and online platforms: a shared view of cities and regions'³,
 - having regard to the European Economic and Social Committee opinion of 15 December 2016 on the collaborative economy⁴,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A8-0000/2017),
- A. whereas the collaborative economy has experienced rapid growth in recent years, in term of users, transactions and revenues, reshaping how products and services are provided and challenging incumbent firms in many economic areas;
- B. whereas these radical changes have a considerable impact on the legal landscape, by blurring established lines between consumer and provider, employee and self-employed, and the professional and non-professional provision of services, thus challenging many critical sectors of EU law;

General considerations

1. Welcomes the communication on a European Agenda for the collaborative economy, and underlines that it should represent a first step towards a more comprehensive and ambitious EU strategy on it;
2. Believes that, if developed in a responsible manner, the collaborative economy may create significant opportunities for citizens and consumers, who benefit from enhanced competition, tailored services and lower prices;
3. Agrees that the collaborative economy could also generate new entrepreneurial opportunities, jobs and growth, and could play an important role in making the

¹ OJ L 337, 18.12.2009, p. 11.

² OJ L 119, 4.5.2016, p. 1.

³ ECON-VI/016.

⁴ INT/793 EESC-2016-3545-00-00-AC-TRA.

economic system not only more efficient, but also socially and environmentally sustainable;

4. Acknowledges, at the same time, that the collaborative economy is having a profound impact on long-established business models; underlines the risk of having different legal standards for similar economic actors; is concerned about the risk of reducing consumer protection, workers' rights and tax compliance; acknowledges the effects that collaborative businesses are having on the urban environment;
5. Points to the risks of increasing regulatory grey areas, the consequent disregard of existing regulations and the fragmentation of the Single Market; is aware that, if not properly governed, these changes could result in legal uncertainty about applicable rules and constraints in exercising individual rights;
6. Considers the development of a dynamic and clear legal environment to be of paramount importance for the collaborative economy to flourish in the EU;

Collaborative economy in the EU

7. Emphasises the need to consider the collaborative economy not only as a business model but also as a new form of integration between the economy and society which is able to embed economic relations within social ones and to create new forms of community;
8. Draws attention to the fact that the collaborative economy in Europe has a number of specific traits, as it is generally more rooted at local level, reflecting the European business structure, which consists mainly of SMEs;
9. Notes that European entrepreneurs show a strong propensity to create collaborative platforms for social purposes, and acknowledges a growing interest in cooperative governance models;
10. Underlines the importance of preventing any form of discrimination, so as to grant effective and equal access to collaborative services, especially for disadvantaged people and communities;
11. Calls on the Commission to encourage non-profit, user-governed, collaborative practices aimed at building sharing and cooperation, and a commons-oriented approach to the collaborative economy, so as to foster the scalability of a social economy and access to open knowledge;

EU regulatory framework: peers, consumers, collaborative platforms

12. Is concerned that, while a large part of the nascent collaborative economy remains unregulated, significant differences are emerging among Member States due to national, regional and local regulations, as well as case-law, posing a risk of fragmentation of the Single Market;
13. Welcomes the Commission's intent to tackle the current fragmentation, but regrets that its communication did not bring sufficient clarity about the applicability of existing EU

legislation to different collaborative economy models;

14. Agrees that market access requirements for collaborative platforms and service providers must be necessary, justified and proportionate, and that this assessment should be dependent on whether services are provided by professional or private individuals, making peer providers subject to lighter legal requirements;
15. Urges the Commission to provide further guidelines to Member States with a view to laying down effective criteria for distinguishing between peers and professionals, which is crucial for the fair development of the collaborative economy;
16. Draws attention, at the same time, to the risk that establishing thresholds may create a disparity between micro and small businesses on the one side, and peers on the other; calls therefore for the legislation applicable to professional service providers to be revised in order to level the playing field among comparable categories of service providers and to remove unnecessary regulatory burdens;
17. Believes that consumers should enjoy a high and effective level of protection, regardless of whether services are provided by professionals or peers; highlights, in particular, the importance of protecting consumers in peer-to-peer transactions; welcomes the Commission's initiative to ensure the adequacy of consumer law and preventing abuse of the collaborative economy;
18. Emphasises that, in many cases, rules for protecting consumers are still needed in the collaborative economy, especially due to persisting asymmetric information or lack of choice;
19. Calls on the Commission to clarify the collaborative platforms liability regime, which could enhance responsible behaviour and increase user confidence;
20. Calls on the Commission to further scrutinise EU legislation in order to reduce uncertainties concerning the rules applicable to collaborative business models and to assess whether new or amended rules are desirable;
21. Believes that any new regulation should leverage platforms' self-governing capacities; is convinced that collaborative platforms themselves could take an active role in such a new regulatory environment by correcting many asymmetric information and other market failures which have been traditionally addressed through regulation, especially by digital trust-building mechanisms;
22. Strongly believes, at the same time, that this self-regulating capacity does not undercut the need for regulation, especially for market failures that platforms cannot address and for other normative goals (e.g. reversing inequalities, boosting fairness, inclusiveness, and openness, etc.);
23. Points out the crucial importance of clarifying methods by which decisions based on algorithms are taken and of guaranteeing algorithm fairness; emphasises the need to verify the potential harm to privacy caused by big data, to assess the impact of data on different segments of society and to prevent discrimination; calls on the Commission to lay down effective criteria for developing algorithm accountability principles for

information-based collaborative platforms;

24. Is convinced that a common EU horizontal and harmonised regulatory framework, consisting of a combination of general principles and specific rules, needs to be developed, in addition to any sector-specific regulation that might be needed;
25. Calls on the Commission for an ambitious enforcement framework, and to support the Member States in developing a strong culture of compliance and enforcement;

Competition and tax compliance

26. Encourages the Commission to foster a level playing field for competition among collaborative platforms; stresses the importance of identifying and addressing barriers to the emergence and scaling-up of collaborative businesses, especially start-ups; underlines in this context the need for free flow of data, data portability and interoperability, which facilitate switching between platforms and prevent lock-in, and which are key factors for open and fair competition and empowering users of collaborative platforms;
27. Is concerned about the difficulties that have emerged so far in relation to tax compliance and enforcement, despite the increased traceability of economic transactions via online platforms;
28. Stresses, further, the urgent need for collaboration between the competent authorities and collaborative platforms on tax compliance and collection, and asks for the latter to play an active role;
29. Encourages the Member States to agree on a uniform set of information that businesses must disclose to tax authorities in the framework of their tax information duties;
30. Agrees that functionally similar tax obligations should be applied to businesses providing comparable services, and is convinced that taxes should be paid where profits are generated;

Impact on labour market and workers' rights

31. Emphasises that the digital revolution is having a profound impact on the labour market and that emerging trends in the collaborative economy are part of a broader tendency;
32. Underlines the paramount importance of safeguarding workers' rights in collaborative services, of avoiding social dumping, and of guaranteeing fair working conditions and adequate social protection;
33. Is concerned about the risk that on-demand workers might not enjoy genuine legal protection, and that collaborative platforms might pass on their risks to workers with no entrepreneurial responsibilities;

Local dimension of the collaborative economy

34. Observes that local governments are already active in regulating and promoting the collaborative economy, focusing on collaborative practices both as the subject of their

policies and as an organising principle of new forms of collaborative governance;

35. Believes that there is ample room for manoeuvre for national, regional and local authorities to adopt context-specific regulations in order to address clearly identified public interest objectives with proportionate measures fully in line with EU legislation; calls on the Commission therefore to support the Member States in their policy-making and in adopting rules consistent with EU law;
36. Notes that first movers have been cities, where urban conditions such as population density and physical proximity favour the adoption of collaborative practices; is also convinced that the collaborative economy can offer significant opportunities to inner peripheries and rural areas, too;

Promotion of the collaborative economy

37. Points out the importance of adequate competences and skills, in order to enable as many individuals as possible to play an active role in the collaborative economy; is of the opinion that the potential of the collaborative economy will be fully unleashed only through effective policies of social inclusion at EU level, starting with confident and critical use of ICT as a key competence for lifelong learning strategies;
38. Draws attention to the difficulties faced by European collaborative platforms in gaining access to risk capital and in their scaling-up strategy, accentuated by the small size and fragmentation of domestic markets and by a critical shortage of cross-border investments;
39. Emphasises that collaborative financing systems – such as crowd-funding – are successful only when integrated with traditional funding channels into an effective financing ecosystem;
40. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

1. Collaborative economy: general overview

The concept of a ‘Collaborative economy’ encompasses a wide range of activities, which stem from a variety of collaborative business models, including non-profit driven ones; the business models range from collaborative platforms which enable the exchange of goods or services all over the world to small collaborative SMEs which provide services for the local communities.

In the last years, the collaborative economy experienced a rapid growth in terms of users, transactions and revenues, ultimately reshaping how products and services are provided in many fields. In early 2014, six areas of activities were mainly affected (goods/retail, services, space/accommodation, food, transportation and money). By 2016, the number of areas had almost tripled: expanding into new sectors (i.e. health, learning, logistics, municipalities, space, utilities such as energy, etc.) or creating new type of activities (i.e. makers’ movement within goods sector).

A number of terms are being used for describing this fast growing phenomenon, often interchangeably: sharing economy, peer economy, on demand economy, peer platform markets, gig economy, collaborative consumption, crowd-based capitalism, (etc.). These definitions reflect the dynamics of the phenomenon itself as well as the scale and intensity of the ongoing political and academic debate about it.

So far, several *definitions* for collaborative economy already exist. The Oxford dictionary defines the collaborative economy as: ‘*an economic system in which assets or services are shared between private individuals, either free or for a fee, typically by means of internet*’.¹ In its Communication, the Commission refers to it as ‘*business models where activities are facilitated by online platforms that create an open market place for the temporary user of goods or services often provided by private individuals*’, while specifying that collaborative economy transactions frequently do not involve a change of ownership and can be carried out for profit or non- profit.

Within the collaborative economy and its business models, three main types of actors have generally been identified:

- (i) service providers - private individuals offering services (assets, skills, time for a fee or for free) on an occasional basis (*peers*) or professionals;
- (ii) users of these services, and
- (iii) collaborative platforms which connect supply and demand in real-time and facilitate transactions.

2. Commission’s response

In June 2016, the Commission published a Communication entitled *European Agenda for the Collaborative Economy* with the aim to address concerns over uncertainty about rights and obligations of different actors taking part in the collaborative economy and in order to provide

¹ See: https://en.oxforddictionaries.com/definition/sharing_economy

answers from an EU perspective. The Communication aims to provide a non-binding guidance on how the existing EU legislation applies to collaborative economy business models. It examines issues faced by market operators and public authorities alike clustered within five key areas: 1.) Market access requirements; 2.) Liability regimes; 3.) Protection of users; 4.) Self-employed and workers in the collaborative economy; 5.) Taxation.

3. Main issues linked to the collaborative economy

3.1. Opportunities and benefits

The collaborative economy may create significant opportunities for consumers, entrepreneurs and citizens, and as well as generate new jobs, growth and sources of income.

It is estimated that collaborative platforms operating in five key sectors of the collaborative economy generated revenues of EUR 3.6 billion in 2015 in the EU.¹ The potential of the collaborative economy is significant, with annual growth exceeding 25 %² and, theoretically, the estimate of the economic gain linked with a better use of capacities as a result of the collaborative economy could reach up to EUR 572 billion.³ These figures should nevertheless be considered with a certain caution, as despite the growing economic importance, measuring the value of the collaborative economy remains difficult. This is also due to the lack of an agreed methodology on how to measure the multiple impacts of the collaborative economy on economy, society and environment, as well as the lack of collected data.

Several surveys reveal rather considerable consumer support and interest in the collaborative economy.⁴ A number of reasons and motives incites peers to take part in this new business model, such as financial benefits, quality and experience benefits, as well as positive social or societal impact. According to Eurobarometer, 42 % of consumers find collaborative economy services more convenient and 33 % appreciate the fact that it is cheaper or even free.⁵

3.2. Main challenges and risks

At the same time, it is also important to notice the considerable effects the collaborative economy business models are having on many traditional businesses and their long established models of production and consumption. In recent years, the rapid and unregulated growth of this phenomenon has generated a number of challenges and potential risks which should be considered and reflected upon.

First of all, numerous questions have arisen about consumer rights and consumer protection regime on sensitive issues which concern data privacy, transparency and reliability of information provided to the consumers, liability regimes of the collaborative platforms, algorithm fairness and possible forms of discrimination. There is a potential risk of lowering minimum standards, especially in peer-to-peer (P2P) transactions, when confronted with existing standards applied on similar services provided by professionals. Moreover, the rapid diffusion of collaborative platforms in some sectors has created a risk of unfair competition,

¹ The Sharing Economy, Case Study 12, Sept 2013 by PWC.

² *Ibidem* (PWC(2013)).

³ EPRS, The Cost of Non-Europe in the sharing economy, 2016.

⁴ According to the BEUC survey from July 2015, 70 % of consumers participated at least once and between 60-80 % of respondents are very satisfied with their experience, 32 % of them participating as 'prosumers'.

⁵ Flash Eurobarometer 438, June 2016, EC.

with the creation of new monopolies and lock-in mechanism. This has also created serious difficulties in relation to tax compliance and enforcement, despite the increased traceability of economic transactions.

Last but not least, the collaborative business models created within the ongoing digital revolution, are having a profound impact on the labour market as well as on the employment relations between collaborative platforms and workers, with the concrete risk of undermining fair working conditions, minimum legal standards and adequate social protection.

3.3. Regulatory framework

Two main questions arise with regard to the regulatory framework: 1.) which provisions of the *acquis communautaire* may be applied to the collaborative economy; 2.) whether existing EU rules are fit for purpose to provide the needed clarity, empowerment and protection for different actors within the collaborative economy.

Collaborative business models are more complex and varied, featuring a different degree of decentralisation, de-professionalisation and the participation of new economic agents, peers/prosumers. Moreover, so far clear lines of distinction between professional service provider/trader and consumer have been blurred due to multisided relationships -involving consumer as service provider either in a consumer-to-consumer transaction (P2P) or in a consumer-to-business transaction.

As the existing EU legal framework was designed to regulate conventional businesses and to protect rights of consumers as the vulnerable party in a business transaction, difficulties come up. Questions about the rights and obligations of different actors within the collaborative economy arise and create an environment of uncertainty. This uncertainty relates to a number of aspects - the applicable EU regulatory framework, regulatory obligations for different actors within the collaborative economy, consumer rights, liability regime, status of workers, and tax regime - to name the key ones.

3.4. Risk of fragmentation of the Single Market

The collaborative economy has triggered various regulatory responses not only from Member States, but also regional and local authorities and their jurisdictions, as well as the European Court of Justice.¹ Responses and reactions differ largely and reflect different MSs approaches to tackle the challenges of the collaborative economy business model, even within the same country.

Some Member States are developing specific measures and establishing criteria which subject peers to lighter legal requirements; in some cases, they distinguish between professional and non-professional provision of service by establishing thresholds for collaborative economy income for peers and applying lower tax rates.² In some other countries, national authorities are

¹ ECJ Case C-434/15, ECJ Case C-526/15.

² BE tackles the issue of peers occasionally providing services by applying a special tax rate of only 10% for miscellaneous income up to 5,000€, IT is considering whether to establish a threshold of 10,000€ for non-professional collaborative economy income, while the UK has recently announced a £2,000 tax allowance for property and trading income.

considering whether to introduce stricter information obligations for collaborative platforms.¹

It has to be noted that cities have been among the first to react to the collaborative economy, as urban conditions such as population density and physical proximity have favoured a more rapid diffusion of the adoption of collaborative practices, especially in some sectors such as the accommodation and transport.² Some positive cases of collaboration between competent local authorities and collaborative platforms have generated good practises, such as the provision of professional training for prosumers, insurance schemes or the provision of increasing awareness for users about possible fiscal and legal obligations.³

These and other examples of action undertaken either by some MSs, regional authorities and cities, sometimes with the active cooperation of collaborative platforms themselves, showcase a number of best practices that could be applied across the EU. Nevertheless, such unilateral fragmented actions are generating numerous limitations and creating barriers for EU collaborative businesses that wish to scale up and expand, as well as for consumers, thereby ultimately undermining some of the benefits of the collaborative economy and threatening to fragment the Single Market.

3. Key priorities of the Rapporteur

The Rapporteur recognises the important opportunities and benefits of the collaborative economy for the society and economy; at the same time, he is attentive to the potential challenges - underlined above – and is especially concerned by the possible risk of fragmentation of the Single Market while large part of the collaborative economy remains unregulated.

Therefore, in his view, first and foremost, there is a need for a horizontal European framework consisting of a combination of general principles and specific rules which would pave the way for a homogenous and dynamic EU level playing field and would prevent possible negative effects on workers, risk of unfair competition between traditional sectors and collaborative platforms, and tax avoidance.

Equally important is the need to define characteristics and responsibilities for the key actors of the collaborative economy, in particular with regards to:

- clear distinction between peers and professionals;
- nature, duties and responsibilities of collaborative platforms;
- high level of consumer protection, also in the P2P dimension/transactions.

The Rapporteur, finally, encourages further promotion of an EU collaborative economy model, through financial instruments and investment in training. He believes that a fair and well-regulated development of the collaborative economy could offer significant opportunities for

¹ FR: Loi n° 2016-1321 du 7 octobre 2016 pour une République numérique.

² For example, DE and BE: while Berlin and Brussels impose strict registration requirements for the accommodation platforms, Hamburg and the Flemish region respectively have established a divergent approach, characterized by lower registration requirements.

³ EE local authorities are carrying out a pilot project in collaboration with a car-sharing platform, establishing a more convenient tax filing application for various e-solution based business models.

all sectors of society and could favour a more inclusive and sustainable economic development in the EU.

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the Rapporteur. The list is not exhaustive. The Rapporteur and/ or his office has received input from the following entities in the preparation of the draft report:

Entity
AHTOP - Association française pour un hébergement et un tourisme professionnel
Airbnb
Altroconsumo
BEUC - The European Consumer Organisation
Blablacar
Bruegel Institute
CCRE - Council of European Municipalities and Regions
Charlie 24
CNA - Confederazione Nazionale dell'artigianato e della Piccola Impresa
Collaboriamo
Committee of the Regions
Confcommercio
Cooperatives Europe
Danish Confederation of Trade Unions
EFCI - European Federation of Cleaning Industries
Enterprise Holdings
Enterprise Rent-A-Car
Estonian Permanent Representative to the EU
ETUC - European Trade Union Confederation
Eurocities
European Business Service Alliance (EBSA)
Flintglobal
Heetch
HomeAway
Hotrec
Italian Permanent Representative to the EU
Ouishare
Slovakian Permanent Representative to the EU
Uber
Uni Global Union
Unionen
Volta