
Challenges and recommendations for trade unions on the Collaborative Economy – Mitigating threats & exploiting opportunities for workers

Position – Adopted by the Presidium of CESI

Based on its main motion III “Digitalisation: Finding the balance” adopted on CESI’s 7th Congress in December 2016, and having in mind the latest communication of the European Commission on the Social Pillar, which lays out 20 rights and principles that should govern today’s world of work, the Presidium adopts the following position paper on the collaborative economy:

I. Introduction

The collaborative economy¹ is a growing sector and is expanding in an increasingly fast pace, accounting for an estimated 28 billion euros of gross revenue in 2015². It is often defined as an open marketplace for temporary use of goods or services created by platforms that facilitate activities whereby often private individuals exchange services or goods.

The collaborative economy usually involves three categories of actors: the service provider, the consumer and the intermediary that connects the aforementioned. According to Rachel Botsman³, the collaborative economy is based on “distributed power and trust within communities as opposed to centralized institutions.”

An essential aspect of this type of 21st century form of sharing economy is trust. One needs to trust the provider that offers its car, house, and service - without the traditional accountability that consumers are normally used to. And companies such as Uber and Airbnb – companies that facilitate a service but do not strictly carry it out – fall into a grey zone between service provider and platform.

¹ The collaborative economy is defined by the initiatives based on horizontal networks and community participation. Another definition used is the shared economy which is the composition of a socio-economic system focused on the sharing of physical, intellectual and human resources. A third way of categorising this phenomenon is the gig economy, which however by definition only focuses on the prevalence of short time contracts as opposed to permanent contracts. The first two categories may be used interchangeably but the third focuses solely on the nature of employment contracts.

² European Commission communication COM(2016)0356 final on “A European Agenda for the collaborative economy”, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:356:FIN>

³ http://ouishare.net/en/about/collaborative_economy

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Current court cases may pave the way to legally classify economic activities within the collaborative economy: For instance, the Court of Justice of the EU (CJEU)⁴ has yet to decide on the crucial matter whether Uber is a digital platform or a service provider, rendering it a transport company that should be held to stricter rules on licensing, insurance, and safety. In a recent ruling, the London Central Employment Tribunal⁵ classified Uber drivers as workers, as they adhere to strict Uber terms and therefore should have access to the minimum wage, sick pay and holiday entitlements⁶.

The multitudes of definitions do not make it clear whether the collaborative economy actors do indeed come within the scope of employment or not; however the reality shows a different picture where there may be a clear vicarious hierarchy and working place criteria are all present.

According to the CJEU, “the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration”⁷. According to that (broad) definition, many economic activities within the collaborative would have to be considered as employment relationships.

II. Opportunities

The increasingly digitalised work and service provision can bring opportunities for growth and jobs. It increases the economies’ innovation potential and can make cooperative work structures more efficient.

For workers, digitalisation can mean help with security-related, repetitive, complex or strenuous tasks.

New online-based work can have positive impacts on the quality of work and work-life balance as well as occupational equalities and treatment.

The new collaborative economy also allows more asset-sharing and a more efficient use of resources, paving the way towards a potential transition to a circular agenda which would contribute to a more sustainable approach.

Furthermore, occupations within the collaborative economy, may, in the short term, offer a financial compensation that is often higher than the equivalent hourly wage.

III. Threats

⁴ Court of Justice of the EU, Case C-434/15; available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=170871&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=488529>

⁵ <https://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Employment/Aslam-and-farrar-v-uber-employment-judgment-20161028.pdf>

⁶ <https://www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status>

⁷ European Commission Communication COM(2010) 373 on “Reaffirming the free movement of workers: rights and major developments”, Point I.1.1, available at: <http://eurlex.europa.eu/legal-content/EN/TXT/?qid=1453133735571&uri=CELEX%3A52010DC0373>

The blurred categorisation of actors is a reoccurring aspect for this type of economy. Consumers recognise brands such as Uber, Deliveroo, Airbnb and TaskRabbit that offer collaborative business models. But who the contractual partner is, very often remains unclear.

Our societies need flexibility, yet keeping government regulators at distance, puts at risk not only the provider of a service but also the consumer.

Furthermore, the lack of regulations also comes at a risk for traditional economic activities with traditional forms of employment that offer the same type of services.

The financial risks of being self-employed are high. One only needs to look at freelancers that are able to work flexible hours but cannot expect a steady pace of work coming their way. The collaborative economy offers working arrangements based on individual tasks that tend to be offered on an ad hoc basis without a predefined time-frame or occurrence.

Workers in a traditional work relationship come under pressure when new unregulated employment forms are considered a way forward. Not only are persons working outside labour law and workplace-bound social security, but society as a whole also loses out if taxes are not paid.

As a result of not being defined as a worker, a person runs the risks of not benefitting from the fundamental social protections that is owed to a worker. No forms of social security, health and safety regulations or other rights or protection will apply that will assist the service provider. The most obvious examples would be the Uber driver that drives full-time but cannot reclaim minimum wage, paid holiday and social security services that make up the safety net and social protection package for the average worker. It also has a negative effect on health and safety at the work place as the employer responsibility for a safe work place and employer liability in case of work related accidents, are essentially non-existent.

In the frame of the collaborative economy, the risk of creating new fictitious self-employment relationships is very high.

IV. Challenges for trade unions

Trade unions find their strength in collective protection. There has been a rise of potentially precarious forms of employments to which the standard definition of worker cannot be applied, and it will affect the number of trade union affiliations. In turn this will cause severe difficulties to the worker and the *raison d'être* of the trade union and the fight for better working conditions.

Current employment standards that usually apply to a traditional worker such as social security, working time, working location, worker participation and employment protection no longer apply. In a situation where de facto employees provide a service but find themselves outside the protective realm of traditional form of employment, it becomes problematic.

It is crucial to stress that freedom of association must apply in the context of new forms of employment. All those active in new employment forms must be able to fully benefit from a representation that defends (collectively) their professional interests.

With the dilution of traditional employment, trade unions will have to add another layer to their growing concerns of a decreasing number of members. It begs the question whether trade unions can carry on the collective protection when this category of workers finds itself outside the definition of worker. This will further contribute to the weakening of trade union powers as their remit of power is closely linked to the individual worker. When workers are no longer defined as such, they are no longer under the protection and the trade unions lose their representativity.

V. Recommendations to tackle the needs in the future

In light of the above mentioned challenges that pose problems for different categories of actors, whether they be individual, collective, public or private, CESI calls for various actions and suggests the following:

1. There is a need for a thorough assessment and the gathering of information regarding the impact which new emerging forms of the economy will have on the number and types of jobs available.
2. Trade unions must embrace emerging forms of the digitalised economy as an inevitable reality. If they do not want digitalisation to bypass them – which would turn against their traditional members’ and thus against their own interests sooner or later – they need to help shape digitalisation in their favour.
3. A clear definition of “worker” and “self-employed” at EU or international level, taking into account new forms of employment, is imperative. On the one hand, this would contribute to fight against fictitious self-employment, on the other hand the aim would consist in making social and labour rights applicable to as many persons as possible, both to the bogus self-employed and to those active in new forms of employment. Added to this comes the interest of the society as a whole to collect (income) taxes which are to be paid by as many economically active persons as possible.
4. A minimum level of social protection for all that guarantees the same social rights for all citizens and access to basic public services that takes into account personal activity, needs to be established.
5. Authorities and employers need to engage with trade unions, in order to put in place structures that systematically monitor and analyse new technologies at work.
6. A new EU-level expert group should include all recognised European social partners and facilitate the dissemination of research about the impacts of digitalisation on employment and new forms of economy in order to recommend ways to tackle existing and newly identified challenges.
7. Creativity is needed in finding solutions that rely on the same new technologies that allow new forms of employment, such as platforms for fair work. Such “platforms” must aim at representing the professional interests of those working in the field of the collaborative economy.