

## Discussion paper of CESI Youth

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### Collaborative Economy

#### Introduction

The collaborative economy is a growing sector and it is expanding in an increasingly fast pace, accounting for an estimated 28 billion euros of gross revenue in 2015<sup>1</sup>. It is often defined as an open marketplace for temporary use of goods or services created by platforms that facilitate the activities, whereby oftentimes 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 Botsman<sup>2</sup>, the collaborative economy is based on "distributed power and trust within communities as opposed to centralized institutions".

An essential aspect of this type of 21<sup>st</sup> 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 the grey zone between service provider and platform.

Some interesting court cases are currently trying to further legally classify economic activities within the collaborative economy: The European Court of Justice<sup>3</sup> 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 Tribunal<sup>4</sup> 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 entitlements<sup>5</sup>.

The traditional definition of worker by Court of Justice additionally poses a problem. According to the ECJ "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"<sup>6</sup>.

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<sup>1</sup> Commission communication on "A European Agenda for the collaborative economy"

<sup>2</sup> <[http://ouishare.net/en/about/collaborative\\_economy](http://ouishare.net/en/about/collaborative_economy)>

<sup>3</sup> Case C-434/15:

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

<sup>4</sup> <https://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Employment/Aslam-and-farrar-v-uber-employment-judgment-20161028.pdf>

<sup>5</sup> <<https://www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status>>

<sup>6</sup> COM(2010) 373 Reaffirming the free movement of workers: rights and major developments. Point I.1.1 <<http://eurlex.europa.eu/legal-content/EN/TXT/?qid=1453133735571&uri=CELEX%3A52010DC0373>>.

According to that (broad) definition, most economic activities within the collaborative economy remain dubious.

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 employment hierarchy and working place criterions are all present.

### **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. It also allows more asset sharing and efficient use of resources, paving the way towards a potential transition to a circular agenda which would contribute to a more sustainable approach.

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

### **Threats**

The blurring of categories is a reoccurring aspect for this type of economy. Consumers recognise brands such as Uber, Deliveroo, Airbnb and TaskRabbit that offer these 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.

In the frame of the collaborative economy, fictitious self-employment is much more likely, when workers carry out the functions linked to employment but do not define as employees. A worker could then be categorised as self-employed by this new emerging form, essentially shutting them out of the remit of collective protection by trade unions and undermining the power of trade unions to be the guardians of workers' rights.

Workers in a traditional work relationship come under pressure when new unregulated employment forms are considered a way forward. Not only are persons are working outside labour law and workplace-bound social security, but society also loses out if taxes are not paid properly. As a result of not contributing with taxes and most importantly, by 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.

## **1. Challenges for trade unions**

Trade unions find their strength in the collective protection. We see the 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 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 and must be fully used in the context of new forms of employment.

With the dilution of traditional employment, trade unions will have to add another layer to their growing concerns of the decreasing number of new member recruits. It begs the question whether how 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.

## **2. Challenges for young persons**

Young people are faced with a more precarious labour market today, with high unemployment, and this offers creative opportunities to younger entrepreneurial people. On the one hand it is true that the collective economy will act as a positive catalyst by re-introducing underused assets and expanding the pool of economic opportunities. On the other hand, young people need to be introduced to a regulated labour market where they are aware of their rights and obligations *vis-à-vis* their employer. This undermines the work against labour exploitation that trade unions and various other organisations are involved with.

As the collective economy sector expands, more and more young people will also make up the consumer population. The problem is not only high unemployment rates amongst young people, pushing them into alternative forms of employment. It is also an issue of consumer protection. EU consumer and marketing legislation protects the weaker party, however when the lines are blurred, it is no longer certain who is the weaker party.

## **3. Need for clear guidelines**

The issue of health and safety at the work place may be understated at the moment but it will become abundantly clear that this sector (which is expanding) will not have satisfying answers to safety aspects. What would then happen when an individual is involved in a work related accident with regards to employer liability?

There are no forms of social security, health and safety regulations etc. 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.

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

#### **4. Recommendations to tackle the needs in the future**

- Need for a thorough assessment of the impact which emerging forms of the economy will have on the number and types of jobs available and gather information.
- Further work on definitions of “worker” and “self-employed” at EU or international level, taking into account new forms of employment, is desirable. 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 sham self-employed and to those active in new forms of employment. It is about establishing a minimum level of protection and social protection for all that guarantees the same social rights for all citizens, as well as access to basic public services and that takes into account personal activity.
- 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.
- Authorities and employers need to engage with trade unions, in order to put in structures that systematically monitor and analyse new technologies at work.
- 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’ interests sooner or later –, they need to help shape digitalisation in their favour. This is the absolute key message to my mind.
- Need for an EU-level expert group which 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.
- Use of creativity in finding solutions that rely on the same methods facilitated by technology, such as platforms for fair work like the example provided by IG Metall in Germany.<sup>7</sup>

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<sup>7</sup> <http://www.faircrowdwork.org/en>