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Background paper for discussion under Agenda Item 6: **Collaborative economy**.

INTRODUCTION

The collaborative economy is the result of new business models which have been facilitated by the rapid development of digital technology. Activities in the collaborative economy can potentially promote efficient resource use through increased competition and innovation. Innovation can occur through the development of new technologies, new products and services, new business models, and through entirely new sources of market supply. Sometimes markets are completely revolutionized by innovations that render existing business models outdated. This is referred to as disruptive innovation.

The collaborative economy can be defined as a socio-economic system built around the sharing of human and physical resources. It includes the shared creation, production, distribution, trade and consumption of goods and services by different people and organisations. These systems take a variety of forms, often exploiting information technology to empower individuals, corporations, non-profits and government with information that enables distribution, sharing and reuse of excess capacity in goods and services. A common premise is that when information about goods is shared, the value of those goods may increase, for the business, for individuals, and for the community.[1] The collaborative economy is sometimes referred to as the peer-to-peer economy, mesh, sharing economy, or collaborative consumption.

The European Commission has opted for the term "collaborative economy" rather than the "sharing" economy.[2] According to the Commission, the term refers to business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals.

The collaborative economy involves three categories of actors:

[1] https://en.wikipedia.org/wiki/Sharing_economy

[2] The Commission previously used the term "sharing economy". As of the 2016 Communication however, the "collaborative economy" is the term used by the Commission. http://ec.europa.eu/growth/single-market/services/collaborative-economy_en.

(i) Service providers who share assets, resources, time and/or skills — these can be private individuals offering services on an occasional basis ('peers') or service providers acting in their professional capacity ("professional services providers");

(ii) Users of these;

(iii) Intermediaries that connect — via an online platform — providers with users and that facilitate transactions between them ('collaborative platforms'). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit.

THE EUROPEAN RESPONSE

The European Commission believes that these new business models can be important drivers of growth and employment if promoted and developed in a responsible manner. The services offered through digital platforms under the heading collaborative economy is increasing rapidly and are met legally in different ways in the Member States, which is leading to uncertainty. Further, many collaborative economy companies are active in multiple countries, and the largest operate globally. This has given rise to a need for inter-country coordination to prevent companies from exploiting regulatory differences in different countries.

On 2 June 2016 the European Commission published "A European agenda for the collaborative economy" aiming at supporting consumers, businesses and public authorities to engage confidently in the collaborative economy. Supporting analysis was provided in the accompanying Commission Staff Working Paper. The Communication provides guidance on how existing EU law should be applied to this dynamic and fast evolving sector, clarifying key issues faced by market operators and public authorities alike, as follows:

- **What type of market access requirements can be imposed?** Service providers should only be obliged to obtain business authorizations or licenses where strictly necessary 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 authorizations or licenses where they only act as intermediaries between consumers and those offering the actual service (e.g. transport or accommodation service). Member States should also differentiate between individual citizens providing services on an occasional basis and providers acting in a professional capacity, for example by establishing thresholds based on the level of activity.

- **Who is liable if a problem arises?** Collaborative platforms can be exempted from being held liable for information they store on behalf of those offering a service. They should not be exempted from liability for any services they themselves offer, such as payment services. The Commission encourages collaborative platforms to continue taking voluntary action to fight illegal content online and to increase trust.

- **How does EU consumer law protect users?** Member States should ensure that consumers enjoy a high level of protection from unfair commercial practices, while not imposing disproportionate obligations on private individuals who only provide services on an occasional basis.

- **When does an employment relationship exist?** Labour law mostly falls under national competence, complemented by minimum EU social standards and jurisprudence. Member States may wish to consider criteria such as the relation of subordination to the platform, the nature of the work and remuneration when deciding whether someone can be considered as an employee of a platform. **Which tax rules apply?** Collaborative economy service providers and platforms have to pay taxes, just like other participants in the economy. 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.

The Communication invites EU Member States to review and where appropriate revise existing legislation according to this guidance. The Commission believes that an absolute prohibition should be a last resort. It will monitor the rapidly changing regulatory environment as well as economic and business developments. It will follow trends on prices and quality of services, and identify possible obstacles and problems arising from divergent national regulations or regulatory gaps.

The European Parliament (EP) expressed views on the collaborative economy in an own initiative resolution of 29 October 2015 on "New challenges and concepts for the promotion of tourism in Europe". The EP is of the opinion that the current legislation is not suited to the sharing economy and pointed to the fact that local and national governments have started to analyse such online platforms and are trying to regulate their effects, often applying disproportionate measures which are somewhat disparate within the Union. The EP therefore urged the Commission, together with the Member States, to analyse the best possible initiatives to be taken at European, national, regional and local level and recommended that consideration be given to establishing an appropriate regulatory framework within the overarching EU digital single market strategy.

RELEVANCE FOR THE EFTA STATES

As the EEA EFTA States are part of the Single Market through the EEA Agreement, the Commission's initiatives concerning the collaborative economy will also likely have consequences for them.

The EEA Joint Parliamentary Committee (EEA JPC) adopted a resolution and report on the Collaborative Economy in May 2016. The EEA JPC points out that new business models in the collaborative economy can contribute to a better and more sustainable distribution and utilisation of goods and services, improved choice and lower prices for the consumer and new employment opportunities for a more digitally tunes labour force. The EEA JPC notes at the same time the societal and regulatory challenges arising from the collaborative economy, and that an efficient and proportional regulatory regime is needed in order to realise its full and long-term potential.

IMPLICATIONS FOR LOCAL AND REGIONAL AUTHORITIES

Regulation of the new business models covered by the term collaborative economy is mainly the competence of national authorities. However, in some sectors local and regional authorities are responsible for the monitoring and management of the regulatory measures. They issue business authorizations and licenses for e.g. passenger transport and letting of buildings as well as carrying out control and supervision.

Many collaborative economy initiatives have a major impact on cities, in particular, such as Uber in the passenger transport sector and Airbnb in the housing/hotel sector. These have in many cases influenced prices and working conditions in the transport services and impacted the property market by increasing prices and limited supply of housing as buildings are converted to Airbnb use. There is also a risk of unfair competition between the services of the collaborative economy and the traditional activity.

This has e.g. resulted in taxi associations challenging Uber in many cities, e.g. in Brussels and the Barcelona taxi association's case against Uber has been referred to the Court of Justice of the European Union (ECJ). In his opinion of 11 May 2017, the Advocate General suggests the Uber electronic platform be considered primarily a passenger transport company and not an information society service. If the ECJ follows the opinion of the Advocated General, Uber can thus be required to obtain the necessary licenses and authorisations under national law.

The housing shortages associated with the growth of Airbnb has led many cities, e.g. London, Amsterdam and Reykjavik, to require Airbnb to impose limits on the number of nights a year (90 nights) that hosts can rent out their homes. New York recently banned rentals shorter than 30 days on Airbnb. Last year in Berlin, the courts upheld a ban which prevents Airbnb hosts letting out their properties for more than 50 percent of the year — or risk facing a €100,000 fine. In the French capital (along with 17 other cities in the country), Airbnb has agreed to collect local tourist taxes. In Paris, hosts must now register with their local authorities, a move designed to make it harder for residents to surpass the 120 day limit.

The European Committee of the Regions (COR) adopted an opinion on the "Collaborative economy and online platforms: a shared view of cities and regions" on 7 December 2016. The CoR calls on the European Commission to come up with a clear legal framework that ensures that fair competition principles are upheld. The CoR stresses that despite its complexity, early action to prevent fragmentation in the first place would still be far less difficult than ex-post harmonization of 28 national frameworks and countless local and regional authorities. Further, the CoR supports the establishment of a "forum of collaborative economy cities" to share experience and exchange good practice.

SITUATION IN NORWAY, ICELAND AND SWITZERLAND

NORWAY

On 6 February 2017, an Official Norwegian Report, NOU 2017:4, "The sharing economy – opportunities and challenges", was presented.

The Committee drafting the report takes the view that the sharing/collaborative economy offers positive opportunities for the Norwegian economy. Via their platforms, sharing/collaborative economy companies can promote more efficient utilization of existing resources and thereby release resources for other socially beneficial purposes. When greater use is made of objects and property, total production may be lower. This can potentially have positive environmental effects. Further, the sharing/collaborative economy promotes efficient resource use through increased competition in markets and, potentially, lower prices, improved product and service choices, and innovation.

The Committee also underlines that the sharing/collaborative economy presents a number of challenges. Digital solutions facilitate increased direct trading between private individuals on an unprecedented scale. Regulations in various areas do not reflect this development. The design of consumer protection rules reflects the traditional model under which professional businesses sell to consumers with little negotiation strength. Tax rules are generally based on the assumption that taxpayers engage in economic activity continuously and for a prolonged period of time, whereas in some sectors of the sharing/collaborative economy market participants receive small incomes from different sources and enter into short-term engagements. Labour market regulations are generally designed for firms with employees, where the current business models of the sharing/collaborative economy companies assume that service providers who use their application are independent contractors.

The Committee identifies the need for regulatory adaption, clarification by the government as well as information and guidelines. It proposes, e.g. that:

- It should be mandatory for the sharing/collaborative companies to report revenues from the assignments communicated through the digital platforms;
- The Tax Agency should develop guidance that clarifies the regulations on taxes and fees for actors in the sharing economy;
- Platform companies in the sharing economy should share statistics with Statistics Norway (SSB).

The Norwegian Association of Local and Regional Authorities (KS) participated in the official consultation process on the report. KS stresses the need for a holistic evaluation and assessment of the taxi sector. Further, KS supports the proposal by the Committee to establish an information portal where consumers, platforms and service providers may find information on rights and duties concerning the sharing/collaborative economy. As regards the labour market, KS is of the opinion that for the time being there is no need to address the term "employee" as it adequately defined in the health and safety law.

ICELAND

The collaborative economy entails both opportunities and challenges for the Icelandic economy. Via their platforms, collaborative economy businesses can promote more efficient use of resources e.g. through second-hand sites such as Bland.is or car- or ridesharing sites such as Cario and Samferda.net. When objects and property are used more efficiently, total production is less which has positive environmental impacts. The collaborative economy may also increase competition in markets and, potentially, lower prices for consumers, foster innovation and improve products and services, e.g. Meniga and Ghostlamp.

On the downside, the collaborative economy presents a number of challenges. Digital solutions facilitate increased direct trading between private individuals which has implications in a number of sectors and can in some cases foster the black-economy. Legislation in a number of areas still lags behind, in particular tax rules which are generally based on the assumption that taxpayers engage in economic activity continuously and for a prolonged period of time, whereas in some sectors of collaborative economy people receive small incomes from different sources and enter into short-term engagements. Furthermore, health and safety and social protection may be undermined where relationships are more fluid than the traditional consumer/seller, employer/employee setup.

Currently the strongest impact of the collaborative economy is felt in Reykjavik, where there are indications that Airbnb is adding to the pressure on the city's already stressed property market. Surging prices are causing concern among residents, who also fear the impact of home-sharing sites on local supply (for sale and rent) and living conditions in the city centre. In January, 2.662 flats and rooms were registered on Airbnb in Reykjavík; 5% of the total number, the majority in the city centre.

To respond to housing shortages, legislation passed in January requires those renting their homes and summerhouses (two properties in total) on the site for longer than 90 days — or gaining more than ISK 2 million (approx. EUR 18000) per year through rentals — to obtain a special business license. The city also plans to make an agreement with Airbnb that it charge a special tourist tax. Breaches are subject to fines but it is a shortcoming that it is the local sheriff that is charged with monitoring and implanting the legislations whilst local authorities are of the view that they should be the ones carrying out this responsibility — like the case is in several other cities. A bill clarifying how income from Airbnb rentals should be taxed is being discussed in Parliament.

Some rural communities have also limited short-term rentals. An example is Vík, which had 1300 rentals available but 540 inhabitants. The local authority still allows the short-term rental of rooms but not whole flats as the community was suffering from a severe housing shortage and non-residents were buying up flats to rent to tourists.

SWITZERLAND

The consumption of collaborative economy is growing rapidly in Switzerland. According to a survey by consultancy group Deloitte, approximately one in five people has used the services of a collaborative company. And, within one year, one out of two would be ready to connect online to rent or propose goods or services. Nevertheless, the sharing economy does not yet cover all sectors: transports and housing are pioneers.

In a report published on 11 January 2017, the Swiss Government considers that the collaborative economy offers great opportunities. It should be looked at as a chance as it provides for a more efficient use of resources and promotes competition.

Although several motions have been introduced in Parliament asking for new regulation in order to promote fair competition between actors, the Federal Government considers that for the time being there is no need to legislate. “The economic potential is easier to exploit when the private sector is free to seize the opportunities available to it, the government’s report says. Therefore the digital economy should not be hampered by hasty and ill-conceived regulations”.

It is recognised however that some existing standards might have to be adapted for the potential of the collaborative economy to be fully exploited. This could be the case for example for the tenancy law in relation to hosting services or for road traffic law in regard with mobility services. Mandate was given by the government to the administration to look at it.

Some initiatives are taken at cantonal level also. In the Canton of Vaud for example, the Government has recently proposed a draft law regulating mobility services. Its objective is to create a level playing field between professional taxi drivers and so-called transport vehicles with chauffeur. Platforms like Uber offering this kind of service would need to have a headquarter in Switzerland, and a professional license for passenger transport would be required from their drivers, according to the draft law which has to be approved by cantonal parliament.