



European Platform Undeclared Work

Document 2

Undeclared work within the sharing/collaborative economy: input paper for thematic discussion¹

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¹ Input paper based on the interim results of the forthcoming study 'New Developments and Trends in Undeclared Work Within the Sharing/Collaborative Economy' by Jason Heyes and Kirsty Newsome, University of Sheffield. The study includes detailed case studies of six EU countries (France, Germany, Italy, the Netherlands, Spain and the UK).

Introduction

The objective of the thematic discussion within the Platform is (i) to exchange information about the consequences of the collaborative economy for undeclared work, (ii) to generate knowledge about measures to tackle undeclared work in the collaborative economy, focusing both on detection and prevention methods, and (iii) to explore how the Platform activities can contribute to fighting undeclared work in the collaborative economy.

While the collaborative economy has the potential to offer a range of benefits, including flexible working patterns, the improved use of resources and the more effective matching of service providers and users, it also has the potential to foster undeclared work and bogus self-employment. This can result from uncertainties regarding the distinction between personal and commercial activities, the relationship between platforms and providers who rely on them for work, and the potential denial of basic employment rights and social insurance protection in cases of bogus self-employment.

The discussion will focus around four key sectors where the collaborative economy is most prominent, namely:

- Peer-to-peer passenger transportation - where digital platforms connect individuals to travelling options, including app-based short-distance ride sharing services (e.g. Uber) and car sharing networks (e.g. GetAround, Enjoy);
- Short term accommodation rental - where householders share access to their home or rent out a holiday home, such as peer-to-peer rental platforms (e.g. Airbnb), home-swapping platforms and online-only vacation rental platforms;
- Domestic services - where freelancer marketplaces enable individuals to access a range of general and specialised household services such as plumbing, electrical work and food delivery; and
- Professional services crowdworking - where digital platforms enable businesses to access a range of professional services, such as administration, consultancy, accountancy or translation tasks via the Internet.

What is the collaborative economy?

Collaborative Economy organisations 'use online platforms to connect distributed groups of individuals and enterprises and enable them to share access to their assets, resources, time and skills on a scale that was not possible before' (Vaughan and Devario 2016: 23).

The European Commission (2016a: 3) has defined the collaborative economy as referring 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: (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; and (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'.

Online platforms offer a wide variety of services and cover different business models, including consumer-to-consumer, consumer-to-business, business-to-consumer and business-to-business (Eurofound, 2016). Although the collaborative economy is currently relatively small, it is rapidly growing in significance. According to the

European Commission (2016a), gross revenue from collaborative platforms and providers in the EU amounted to EUR 28 billion in 2015 and it is anticipated that this figure will increase rapidly and substantially in the coming years. According to a recent study conducted by Price Waterhouse Coopers (Vaughan and Daverio, 2016: 8) more than 275 collaborative economy organisations now exist across the nine major European member states covered by the study. The UK and France have the largest number of collaborative economy organisations, followed by Germany, Spain and the Netherlands.

Participation in the collaborative economy

There is no doubt that participation in the collaborative economy is increasing. However, it is currently impossible to provide accurate information about the extent of participation in the EU28. The lack of a single definition of the collaborative economy impedes efforts to measure its size and compare EU Member States. Although improvements to national official statistics are being pursued, substantial knowledge gaps currently exist in relation to the size and characteristics of the collaborative economy. National studies have been conducted in some countries. These have provided varying estimates of the number of platforms, awareness of platforms and the number of users.

The European Commission's (2016b) Eurobarometer survey has shown that awareness and use of platforms is extensive with 52 percent of respondents having heard of collaborative platforms and 17 percent having used services provided via platforms. It appears that awareness and use varies substantially across the EU, being relatively high in countries such as France and Ireland and relatively low in countries such as Cyprus and Malta.

Undeclared work in the collaborative economy

The growth of the collaborative economy has generally been welcomed and encouraged by national governments. However, it is also recognised that the collaborative economy presents new policy challenges, given that it can lead to unfair competition, a growth in employment insecurity and new possibilities for undeclared work.

The collaborative economy may represent a fertile breeding ground for undeclared work for a number of reasons. The collaborative economy blurs the distinction between personal and commercial activities, as activities initially undertaken on a non-commercial basis (e.g., swapping homes for holiday purposes) can become commercial activities. This raises the potential for undeclared work and requires Member States to distinguish between these two types of activities for administrative purposes. This can lead to uncertainty over the application of rules in relation to employment rights and taxation (European Commission, 2016a). Individuals who earn relatively small amounts may be unaware of their income, or how much of it, is liable to tax. It can also be difficult for authorities to determine who is working via platforms, how much they have earned via them and whether they are operating on a commercial basis.

The collaborative economy can also introduce ambiguity into the employment status of those who provide on-demand labour services through digital platforms. There are concerns that the 'gig-economy' is leading to a substantial increase in the casualisation of work and bogus self-employment (Eurofound, 2016; Heyes and Hastings, 2017). If workers do not receive instructions from the platform, are able to set their own prices and can determine their own hours of work, they are likely to be genuinely self-employed. However, the standards of service to be provided or the price of the service are in some cases determined by the platform, which would indicate a dependent relationship and, therefore, that workers are not genuinely independently self-employed.

Workers in the collaborative economy may also have inadequate social insurance protection. Where workers are in bogus self-employment the employer will not be making social insurance contributions on their behalf and workers themselves may fail to pay social insurance contributions. The latter issue can be a problem even if workers are genuinely self-employed.

There is also some evidence that the collaborative economy can lead to a deterioration in the terms and condition of professionals offering services through the platform. For example, in Spain the Adtriboo platform has been criticized for setting prices below the prevailing average, which has been seen as encouraging a race to the bottom. Potentially unfair competition can also occur in other sectors, for example short-term accommodation.

A lack of access to training is a further problem that may affect workers in the collaborative economy. While little information about this issue is available, workers who are deemed to be self-employed will probably be denied rights to training that are enjoyed by employees. Recognition of this problem has recently led France to grant self-employed platform workers with a right to request training support from platforms.

Some problems related to undeclared work in the collaborative economy affect particular sectors. They include businesses posing as private individuals on short-term accommodation platforms, the low visibility of domestic work performed in private homes, and the cross-border nature of some crowdworking activities.

Legislative frameworks relating to the collaborative economy

Regulation should not unduly restrict the growth potential of the legitimate collaborative economy by imposing unnecessary bureaucracy. However, when the collaborative economy results in illegitimate activity and unfair competition for formal businesses, there is a strong case for intervention. National governments have therefore begun to introduce new legislation to regulate the collaborative economy and tackle illegitimate activity and sources of unfair competition in this realm.

Countries differ in the extent to which they have introduced legislation and most measures are relatively new. The peer-to-peer transportation and the short-term accommodation sectors have attracted most attention. Concerns relating to unfair competition and, in the accommodation sector, the availability of housing have led national and regional authorities to impose limits on the collaborative economy by, for example, limiting the number of days for which flats can be rented or (as in Spain) restricting the number of licences that can be issued to companies such as Uber.

Countries have also taken steps to clarify the difference between commercial and non-commercial activities. In France, Germany and the UK, income thresholds are used to distinguish between taxable and non-taxable activity. In the Netherlands, tax must be paid when the fee is higher than expenses and when the product or service is delivered frequently.

Questions for discussion in plenary/workshops

1. What policies are in place to tackle undeclared work in the collaborative economy?
2. What country experiences and innovative practices, including legislative changes, can inform efforts to tackle undeclared work in the collaborative economy?

Protecting workers in the collaborative economy

The rise of the collaborative economy has led to concerns being expressed about the ambiguous status of platform workers. Although platforms may see their role as connecting independently self-employed service providers with people who wish to consume their services, workers can become economically dependent on platforms. The business models of some platforms (e.g. Uber) substantially limit the autonomy of those who work for them and this has led to the self-employed status of these workers being challenged.

Trade unions have been active in this regard. For example, a legal challenge by the GMB trade union in the UK has led to Uber drivers winning the right to be classed as workers rather than self-employed and thus entitled to receive the National Minimum Wage and paid holidays. Trade unions in the other five case study countries have also been active in supporting platform workers.

Legislation recently adopted in France has enabled self-employed workers who earn at least a minimum amount through a platform are able to request that the platform provides them with accident insurance and support for training and development. Legislation that is due to be introduced in Italy will introduce a presumption in favour of the user where instances of possible economic dependence occur (especially in cases where a platform forces a user to refuse to offer customers proposals for the supply of goods or services on more favourable terms than those provided by the platform itself without just cause).

Question for discussion in plenary/workshops

3. What are the potential risks for workers who operate in the collaborative economy (e.g. in relation to employment status, social protection)?

Strategies to tackle undeclared work in the collaborative economy

Member States, including their labour inspectorates and tax authorities, as well as social partners, have an important role to play in tackling undeclared work in the collaborative economy. Enforcement agencies are typically able to pursue either a strategy of deterrence or a strategy based on incentives to comply, including advising and persuading. Agencies might choose to emphasise only one of these or pursue both in combination.

Deterrence measures increases the costs of non-compliance through increased sanctions, and/or raising the perceived or actual likelihood of detection. Deterrence-oriented activities include proactive and reactive inspections.

Incentive measures are intended to encourage voluntary cooperation and compliance, focusing on awareness-raising and persuasion rather than detection and punishment. Incentive measures can be both preventative and curative.

Activities related to deterrence and compliance are undertaken in all of the countries studied. The primary focus of activity has been in relation to tax compliance and enforcement. Many of the measures are relatively new and few evaluations have taken place. The effectiveness of the various measures is therefore uncertain.

Deterrence measures have involved efforts to detect undeclared work in the collaborative economy. Germany and Italy have used software to identify commercial activities on the internet that are not declared to the tax authority. In addition, Italy has required that the accommodation sector disclose information about all contracts concluded through platforms.

Some countries, notably France and the UK, have recently taken steps to strengthen the powers of their tax authorities in relation to the collaborative economy, granting them the ability to request information from platforms about their users, which can be combined with other information held by the authorities to enable targeted enforcement activities. For example, the French tax administration is able to require platforms to provide information about any individual who has earned more than €8,000 with a platform. This is the threshold beyond which service provision (e.g. renting out a room) is treated as a 'professional' activity

Also in France, additional obligations have been placed upon platforms in relation to the information that they must provide to users concerning, for example, their tax obligations.

Incentive measures have involved the provision of additional advice and guidance by the tax authorities. In some countries platform users have been contacted directly by the tax authorities. The Tax Agency in Spain, for example, informs all persons identified as having operated through accommodation platforms that they need to declare the income received. Incentive measures have also included moves to simplify tax registration processes.

It is likely that a combination of deterrence and incentive measures will be most effective in tackling undeclared work in the collaborative economy and it is therefore important that Member States should not rely on a single approach. However, more needs to be discovered about the effectiveness of different measures, both separately and in combination with others.

Questions for discussion in plenary/workshops

4. What tools/activities/strategies can enforcement agencies employ in tackling undeclared work in the collaborative economy?
5. What capacities and powers do enforcement agencies need in order to tackle undeclared work in the collaborative economy?
6. What good examples already exist? What do they involve? What have been their effects?

Approaches to preventing the proliferation of undeclared work in different sectors

Although some strategies to tackle undeclared work are cross-sector (e.g. tax authority access to platforms' record), others have focused on particular sectors.

To date, it is the accommodation and transport sectors that have received the greatest amount of attention. Concerns relating to unfair competition and bogus self-employment have led to punitive action being taken against transport platforms, notably Uber.

In the accommodation sector, countries have taken steps to limit the duration of rentals. Requirements for short-term rental providers to register with an authority are widespread and are particularly apparent in large cities that are popular with tourists. Failures to respect regulations can result in financial sanctions being applied.

Some authorities have developed a relationship with Airbnb in which the platform takes on some administrative/regulatory functions such as ensuring that limits on the duration of lets are respected. In Italy and France, Airbnb collects taxes on behalf of the authorities. The Italian regulations require that Airbnb withhold part of users' rental income, which is then forwarded to the Tax Agency. The measure is intended to

reduce the advantage that private rentals have over traditional accommodation providers (e.g. hotels).

Question for discussion in plenary/workshops

7. What enforcement measures should be taken in the four identified sectors of the collaborative economy?

Role of the social partners

Beyond the role of trade unions in supporting platform workers, the role played by social partners in the development of strategies to tackle undeclared work in the collaborative economy appears to have been relatively small to date. However, the social partners in Italy and Germany have been involved in policy discussions related to the collaborative economy.

Question for discussion in plenary/workshops

8. What roles can social partners play in tackling undeclared work in the collaborative economy?

Cross-border practices

It appears that very little cross-border regulatory activity is occurring. Some tax authorities are seeking to work with their counterparts in other EU member states but it is not clear that these activities are regular or strongly institutionalised.

Two case studies (Spain and UK) mentioned that enforcement authorities work with their counterparts in other EU countries, particularly in relation to tax. The UK has recently adopted a law that enables the tax authority (HMRC) to request information from platforms. Where those platforms are located in a country other than the UK, HMRC will nevertheless send the platform a notice and then work with counterparts in that country where treaties exist and the tax authority has similar data gathering powers to HMRC.

Trade unions are beginning to develop cross-border initiatives in relation to the collaborative economy. Notably, in 2016 union organisations from Austria, Denmark and Germany helped to launch the Frankfurt Declaration on Platform-Based Work, a call for 'transnational cooperation between workers, worker organizations, platform clients, platform operators, and regulators to ensure fair working conditions and worker participation in governance in the growing world of digital labour platforms such as Clickworker, Amazon Mechanical Turk, Jovoto, and Uber'.

Question for discussion in plenary/workshops

9. What sorts of cross-border cooperation might be required if undeclared work in the collaborative economy is to be tackled?