

Preliminar legal analysis of Country reports on cases of collaborative economy



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Our approach: extract relevant (legal) information of Country reports (as they are on 23-5-2018) and draft a legal cartography of CE in Europe.
Work can be developed as long as the project evolves

Justification for legal analysis of collaborative economy

1. Considerable **expansion** of collaborative economy (CE) across the continent (not as much in MK, SK or LT)
2. Usually, **lack of complete legislative framework** (EL, ES, IL, MK, MT). Though see slide “Existing national legislation”.
3. Relevant **jurisprudence** emerging
 - Über judgments across Europe (ES, etc.)
 - Interpretations by tax regulator in PL, ES

Regulatory framework depending on...

Bottom up (AT, BE, IT - decentralized type organized with no commercial purpose, organised by self-organized groups) or **top-down** (commercial)

Transversal aspects

1. Legal definitions of collaborative economy

Plurality of informal definitions and **general absence of legal definition**, which is indeed the case of PL, PO, UK, ES, NL et al. BE (Flemish government) has legal definition.

2. Non-profit / for-profit status of the actors

a) All countries have **experiences in non-profit and profit fields**. We expect that the regulation of both might be different. Donation rules (for NGOs) are an example

b) National initiatives are usually run by non-profit sectors (except IL: Waze, Fiverr, etc.). In professional platforms, the global players (Airbnb, Uber etc.) are represented in nearly all reported countries.

1. Labour law and social rights (pensions, healthcare, etc.)

- In general: legal **uncertainty** on workers' status and **workers' rights**. Eg. In ES and UK with Deliveroo. Eg. AT
- Professional qualifications, training, licensing, etc.

2. Tax law

- In general: **Doubtful application of general rules** (e.g. VAT, income tax) to product/service providers (HU). New Act 2018 EE: simplified rules for taxation.
- Important issues of tax evasion (in EL: yearly loss of 350 million euros in tax revenues and 15,000 lost jobs due to uncontrolled CE; a total of 1,5 billion euros).

3. Consumer protection, insurance and torts

- DE: new insurance models
- Implication of insurance law when municipal car sharing involved (e.g. CH) vs private cars rental services involved (e.g. SI)
- Services provided by private persons (e.g. TakeTask, Freelancer.com in PL)
- Issues relating quality, affordability, inclusivity, accessibility of particular services (NL)

4. Antidiscrimination law

- Need for regulation addressing «unfriendly behaviors» (e.g. in conjunction with collaborative tourism practices in ES; as reported in surveys in SE)
- Contractual law and human rights

5. Intellectual property law

- transfer of ownership of intellectual property rights
- co-creation/peer production
- Peer to peer sharing music, videos,...(BG). That is, digital secondary market

6. Contract law

- Contracting and (abusive) clauses; new forms of contracting (eg. smart contracts) (ES)
- Type of contract: pro bono (donation) or in exchange of something (things, spaces or food, then barter; if services, expertise or knowledge, then a consultancy or a services contract) (IE, NL).

7. Property law

- “Access” (legal nature?) to goods vs “owning goods”
- Limited rights and uses over goods (eg. tokenization in blockchain mentioned by ES)

8. Housing law

- New forms of access to housing (cooperatives, co-housing, room-sharing; squatting?); concept of “collaborative housing” (ES, IT)
- Negative externalities caused by CE in housing, condominiums, neighborhoods, cities (tourists invasion, usurpation of public space by services providers), rural areas (tourist accommodation, co-working spaces) (ES, NL, IT)
- Administrative regulation of permits (PT, ES, DE)

9. Company law

- Form of legal entity behind CE: corporation (eg. Airbnb), collective living (Kibutz, IL), cooperative (EL: Social Cooperative Enterprise expresses the best goals and values of the Commons; IS; IT), association/NGO/charities (HU: Sharing Economy Association; IE), informal (eg. Facebook or other social network groups like in MK)
- Discussion whether CE moves towards private enterprises for profit (those involved get revenues for that; more EU definition approach; IE: entrepreneurs, start-ups, incubators and accelerators) or to social responsibility (more Ouishare definition approach) (IS, IE, IT, MK: more caring approach)—>this may define the legal form.

10. Financial law implications

- Co-financing practices and loans from individual persons (e.g. PolakPotrafi.pl, Kokos.pl, Pomagam.pl in PL; social entrepreneurship cases in PT)
- Crowdfunding
- Fintech

11. Data protection law / GDPR

- How to ensure that the collection and management of personal data by all players is compliant with EU rules? Are they all subject to GDPR?
- BE mentioned problem of privacy

12. Unfair competition

- Judicial decisions in several countries. Eg. ES (Über, BlablaCar, Cabify), HU (Über)
- Cases of abuse of dominant position of the aggregator (big players)

13. Procedural law and dispute settlement

- Collective claims options?
- Specific for foreign businesses?
- Alternative/consumer dispute resolution (ADR)

Existing national legislations/policies

AT – 2016- the City of Vienna published a position paper formulating rules in the CE, especially in the area of accommodation and transport.

BE - regulated by the State, taxed

EE - digital government is implemented in the cloud through their own platform (x-Road), actively researching the possibilities of taxation. January 2018: a new act that enables simplified taxation for occasional services provided from a private person to another private or legal person. Essentially a special “entrepreneur” account in the bank where taxes are automatically withheld and transferred to the Tax Board, has simplified tax rates, no book-keeping or tax declaration necessary.

FR - The finances Act for 2015 opened the possibility for housing platforms to collect the tourist tax, 2016 - finances Act expects collaborative platforms to inform their members of the amount they have to declare to the tax authorities.

DE - 2017 law allowing users of car-sharing vehicles to park free of charge on certain assigned areas. Insurance companies also increasingly offer solutions that are tailored to the new requirements of the sharing economy and which are designed to reduce the uncertainty of the individual.

NL- Local governments support (eg. Amsterdam).

LT- 2015. Consumer credit law additions to peer lending platforms, limiting amount up to 5,000 euros.

SE and EE - Government survey

SI-Sustainability-driven proactivity by the Ministry of Public Administration and two governmental working groups

Scotland-proactive engagement by the Scottish Government and some municipalities



Airbnb case - legal implications

- Rental and contractual law
- Tax law
- Insurance law
- Antidiscrimination law
- Property law
- Professional/non- profesional - licences

Thank you

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