What A Wonderful New World: The Sharing Economy

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The European Commission has just issued a communication on "A European agenda for the collaborative economy" (02.06.2016). The Commission considers this term 'collaborative economy' as interchangeable with the term 'sharing economy'. It will, according to them, create fantastic new opportunities and in particular new employment opportunities. This economy is growing rapidly and therefore the Commission aims to provide legal guidance and policy orientation. It puts on the glasses of the service providers and states that the key question is whether collaborative platforms and service providers can be "subject to market access requirements". Under this logic, "absolute bans and quantitative restrictions" are not really welcomed but only as a "measure of last resort" – last resort for what is not defined.

The Commission focuses on the question of how to differentiate between professional and non-professional providers who operate on an occasional basis. The first conclusion of this description is far reaching: Member States can only impose regulatory requirements "under limited circumstances and subject to a specific procedure". This procedure considers the level of control or influence exerted by the platform as crucial. The criteria to be taken into account are a) the price – does the platform set the price? b) terms and conditions – are the terms and conditions mandatory, c) ownership of key assets – does the platform own the assets? And, only if all three criteria are met, can the Member states intervene.

The Commission generally is encouraging the development of the collaborative economy. It warns Member states against having overly restrictive rules that may hinder their potential. The Commission uses the collaborative economy to ask them to assess the adequacy of their national employment rules taking into account the 'innovative nature' of collaborative economy. As regards employment status the Commission gives a poisoned 'guidance' to member states: instead of ensuring that the workers, employees or self-employed are covered, the member states have to assess an employment relationship according to at least 3 criteria to determine whether there is 'subordination' or a condition to qualify as employment relationship. And only under this condition are national employment rules allowed to be applicable. Is that still respecting the subsidiarity principle?

At this point, one can only congratulate Uber and Airbnb for extremely efficient lobbying of the relevant Commission services: thanks to the third – totally superfluous – criterion of ownership (taxis, flats etc. owned by platform or not), the Member States are redundant and can't intervene. So, congratulations to the platforms and those quite influential civil servants in the Commission who are eager to give a helping hand to the platforms. Information asymmetries such as the user ranking which becomes quite decisive, together with the power imbalance between the platform and the workers, is not "proof of significant influence or control".

First we have to look at the bigger picture. The Commission should have tried to check whether there is a functioning market or market failure and whether there is a level playing field between the new service providers and the old ones. It is quite clear to everybody outside the Commission that there is no such thing as a level playing field. Are the markets failing? Yes, there is market failure which needs to be addressed. Instead of going in this direction, the Commission actively prevents Member States from correcting market failure. When a platform fixes prices, in the good old days it would have been seen as a cartel to be dismantled…

In the current situation, with the aftermath of the financial crisis, the collaborative economy is promising innovation, progress and welfare. What we can see is a lot of disruption but no growth. The collaborative economy does not deliver. Perhaps the rise of collaborative platforms coinciding with the steep decline of media and entertainment companies (music, film, TV, newspapers, book publishers and other creative branches) is a zero sum game? The digital economy may make a few digital companies prosper but not the entire economy and society. Most of the platforms constitute a monopoly, not as technology or IT companies but as digital infrastructure companies.

The real key question would be how to ensure fair play between the disrupters and the established companies before the latter go downhill and nobody is delivering service of the same quality as before. And a second key question would be the fair share – are a few platforms collecting the benefits or will they be redistributed to the whole of society? A third key question is about externalisation of the effects of platforms, such as pollution or precariousness. All these questions are questions about society’s future, much broader than the nitty gritty details of internal market features.