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From: Presidency
To: Permanent Representatives Committee/Council

Subject: Preparation of the Competitiveness Council 29 September 2016
- Collaborative economy: Presentation by the European Commission and
policy debate

In view of the meeting of the Competitiveness Council on 29 September 2016 delegations will find below a discussion paper by the Presidency on the collaborative economy.

Competitiveness Council, 29 September 2016:

I. INTRODUCTION

While the sharing of assets, resources and skills among private citizens and businesses has always existed, the development of digital platforms has recently enabled the rapid growth of the collaborative economy. Collaborative platforms create an open and efficient marketplace for services providers and users. Their effective intermediation offers new opportunities for citizens and entrepreneurs - including traditional services providers - to offer services occasionally or professionally. Consumers have shown to highly appreciate the benefits coming from a wider choice of services, more flexibility and potentially lower prices. The gross revenue from collaborative services in the EU was estimated at €28bn in 2015 and is forecast to grow exponentially in the coming years.

In response to operators' complaints over regulatory and policy fragmentation in the single market and uncertainty on the applicable rules, the European Commission adopted on 2 June 2016 the Communication 'A European agenda for the collaborative economy', including legal guidance and policy recommendations for the balanced development of the collaborative economy in Europe. The Communication aims to support public authorities, entrepreneurs and consumers engaging in the collaborative economy and covers key issues such as market access regulation, liability regimes, consumer protection rules, labour law and tax obligations.

II. POLICY ISSUES

Market Access Requirements

Under EU law, any national regulation restricting market access (e.g. business authorisation and licensing requirements) must be necessary, justified and proportionate to meet legitimate public interest objectives. Absolute bans of an economic activity can be imposed only where no less intrusive policy means exist. The Commission's Communication refers to them as a 'measure of last resort'.

The Commission Communication points out that the emergence of the collaborative economy constitutes an opportunity for Member States to review the justification and proportionality of their market access regulations and to reduce red tape and regulatory burden for all business operators, including traditionally operating services providers.. The Commission Communication also recalls that no business model should be favoured over another and that it is for consumers, not for regulators, to choose which business model they prefer. A balanced approach in policymaking is necessary to enable the growth potential of the collaborative economy and, at the same time, to protect consumers' freedom of choice and the public interest.

When assessing the justification and proportionality of market access restrictions, the specific features of collaborative economy business models should be taken into account. While many professional services providers are participating in the digital economy and boundaries between traditional and digital businesses are blurring, a specific feature of the collaborative economy is that services are often provided by private citizens on an occasional basis (**'peer-to-peer services'**) – rather than by services providers acting in a professional capacity. The Commission Communication notes that market access requirements that are justified and proportionate for services providers acting in a professional capacity may not automatically be justified and proportionate for peer-to-peer services. Therefore, the Communication recommends, when applying sector-specific regulation, to differentiate between professional services providers and private citizens providing services on an occasional and non-professional basis. The Commission also notes that establishing thresholds may be a suitable way of doing so. Where services providers are legitimately required to comply with registration or authorisation requirements, the relevant administrative procedures must be clear, transparent and not unduly complicated without imposing disproportionate administrative costs.

As regards **collaborative platforms**, the Communication recalls that under EU law they cannot be subject to market access requirements if their activity is limited to the electronic intermediation of independent services providers and users. Where, however, the activity of platforms goes beyond electronic intermediation and they effectively control the underlying services provision, collaborative platforms may be subject to justified and proportionate market access requirements applying to the underlying services offered (e.g. urban transport services or tourist accommodation services).

Liability Regimes

The Communication also recalls that under EU law collaborative platforms cannot be held liable for the information they host when they have no knowledge of or control over the information provided by third parties. Member States cannot impose on collaborative platforms providing hosting services a general obligation to monitor or investigate information provided by services providers or users. However, it is first and foremost in the interest of collaborative platforms themselves to ensure a good quality of the services provided via their online interface, thus platforms should be encouraged to do so. On the other hand, where a platform carries out other activities than hosting activities (e.g. facilitation of payments) it may be held liable for these activities, according to the applicable national or EU legislation.

Consumer Protection

Trust is a key commodity for the collaborative economy to function: citizens providing and using collaborative services must trust each other. The same is true for businesses. Collaborative platforms use rating and review mechanisms to improve the quality of services offered through their platforms and increase consumer trust. These tools can provide for an effective mechanism to establish trust provided they are independent and reliable. However, the Commission Communication notes that in any event consumer laws always applies and should be properly enforced when there is an interaction between professional traders and consumers. Individuals providing services on an occasional basis may not qualify as traders, depending on the frequency of the services provided, profit-seeking motive and the level of turnover.

Labour Law

The collaborative economy offers new employment opportunities, flexible working arrangements and additional sources of income. It leads to increased entrepreneurship and the creation of new jobs. The Commission Communication notes, however, that the collaborative economy is part of the more general trend of increasingly blurred lines between employees and self-employed. It is primarily in the competence of EU Member States to establish who is to be considered an employee, while certain indications are provided in EU law. Generally speaking, whether a person providing services through a collaborative platform is to be considered an employee of such platform can only be established case-by-case. The criteria for this assessment are provided by established case law, including the subordination criterion, based on elements such as the platform determining the choice of activity, remuneration and working conditions.

Tax Obligations

The Commission Communication recalls the basic principle that all market operators, whether individuals or established companies, have to comply with taxation rules in force. These include personal income, corporate income and value added tax rules. Ensuring tax compliance and enforcement is an important priority for national administrations and concerns existing operators, new collaborative ones and platforms alike. To ensure a level playing field as regards tax obligation, transparency and awareness of applicable tax rules as well as compliance guidelines can play an important role. Additionally, the traceability of economic activity via the collaborative platforms offers new opportunities for tax authorities to improve tax compliance. Some Member States have already entered into agreements with platforms to facilitate tax collection and reduce administrative burden for tax payers.

III. QUESTIONS FOR DEBATE

In light of the overall context described above, the Presidency invites the Ministers to give their view on the following questions:

- 1. What is the policy approach you advocate to facilitate the balanced development of the collaborative economy?*
 - 2. With the collaborative economy enabling new ways for private citizens to offer occasional services to share assets or generate additional income, how can a difference best be made between private and occasional peer-to-peer services and professional services?*
 - 3. Following the Commission Communication on the collaborative economy: How can the balanced development of the collaborative economy best be promoted at EU-level?*
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