

CONSUMERS INTERNATIONAL/ANEC

Position Paper

SHARING ECONOMY

Purpose

This Position paper has been prepared for the International Workshop Agreement (IWA) on the Sharing Economy.

Background

The sharing economy, often referred also as collaborative economy, can take many different names and modalities. These different types of modalities are associated to different challenges. A good classification from the consumer point of view, relies on the nature of the provider:

- **Collaborative P2P economy** where the provider or lender of the asset or service is an individual citizen
- **Collective purchases:** consumers join with other consumers to access services at a preferential rate
- **On Demand (or Gig) economy:** economy where a person provides their labour service as a worker, often on a self-employed or informal basis.
- **Access economy:** where companies offer collaborative assets and services as car sharing, rental products, online market places and auction sites, etc.

The roots of this economy came from individuals using collaborative, digital technology to enable the bartering, sharing or sale of surplus assets or resources such as goods, accommodation, transport, even personal finance. Despite the many forms it takes, at its heart remains a different way of connecting resources, services or products to consumers.

The rise of large, multinational intermediary platforms has raised the profile of participation in the collaborative economy and has

started to transform the notion of what it actually is to be a consumer at much bigger scale. Previously the relationship between a consumer and producer was clear with set roles, rights and responsibilities. The sharing economy changes the form and role that each party plays in the market, creating a lot more uncertainty.

Blurring boundaries

Boundaries are blurred because the sharing economy model means the consumer not only transacts with a company – as they are no longer the sole providers of goods or services in the marketplace – but through a company - which is now the facilitator of a ‘virtual marketplace’ linking demand to supply. At the same time, consumers can now take on the role of producers and providers (these are sometimes referred to as ‘prosumers’ or ‘peer providers’ – as with Airbnb, eBay, Blablacar, etc.).

Impact of changing boundaries on consumer protection

The blurring of boundaries between producers, consumers, prosumers and the role of platform intermediaries is significant, as the framework for consumer rights and protection rests on the understanding that, in a transaction, one party is the consumer and the other is a *professional* vendor. Protections are thus built on the basis that the consumer as the least powerful part of the transaction requires additional safeguards.

This excludes transactions carried out between two consumers, or more precisely, between a consumer and a non-professional vendor. Therefore, legally speaking, transactions between two consumers should be dealt with through civil law, as consumer legislation doesn’t apply to peer to peer transactions. This provides an opportunity for professional vendors to elude their obligations on consumer protection.

There is also a potential for prosumers or non-professional providers to inadvertently renege on their legal responsibilities, as they may not be aware of their obligations.

Redefining definitions and responsibilities

One key element to address in the analysis and regulation of the sharing economy must be, therefore, a discussion on how the current definitions of 'consumer' and 'provider' should be redefined or expanded to cover the new interactions that are occurring in the digital market. This is important because they will frame the type of relationship in which a transaction can legally speaking, be considered.¹ Questions to consider include:

- How consumers can be protected when they buy goods and services from someone that is not a professional provider?
- Should those consumers be excluded from consumer protection regulation or they should be included?
- To what extent should a consumer that is only occasionally a prosumer be considered a professional provider? Or should they only be considered a professional provider if provision is ongoing or regular?²
- Should any redefinition of 'provider' include prosumers so any transaction between a consumer and a prosumer will fall into consumer protection legislation? And, if so, is there a need to think of a different liability regime for prosumers than that for professional providers?
- Is there a need for a definition of 'platform provider' and a liability regime for them or they should be considered as providers?

In addition, other areas are challenged by the blurring of boundaries and responsibilities, for example: information, warranties and guarantees, liabilities, taxation, redress and product conformity with national or regional regulations and standards.

The situation can be made more complicated due to the fact that cross-border transactions in the sharing economy are growing bringing further complications of operating in different jurisdictions and challenges of applicable law.

¹ Regulatory requirements for prosumer hosts earning a substantial part of their income from renting out accommodation, to the employment status of suppliers such as individual taxi drivers or which rights to redress apply if something is bought from a non-professional vendor.

² For example, when a consumer is selling a used product that she or he owns through a platform like eBay or MercadoLibre only once or is selling all the stuff from her/his home because of moving, should be considered a consumer or a prosumer?

EU Regulation 2016/679³ may provide relevant requirements also in respect to the need to redefine definitions and responsibilities. The upcoming European Union privacy legislation (a.k.a. GDPR) now also covers responsibilities of non-EU persons. The territorial scope of the Regulation 2016/679 was extended so that peer platform operators and peer providers who are not established in the European Union may also be subject to the Regulation 2016/679. (Source: EU Regulation 2016/679 Article 3(2).).

Establishing a clear framework

There are still many questions to be analysed and answered around the sharing economy in order to build a legal framework that can cover a reality that is here to stay.

As BEUC, the European Consumer Organisation pointed out: "Policy-makers face the challenge to find the most optimal public policy approach for the collaborative economy. Their objective must be to ensure that consumers buying and prosumers offering products and services are well protected and empowered when they transact via these platforms, whilst at the same time unlocking both the opportunities and the disruptive, pro-competitive effect that many of these platforms create. Sometimes this might require additional regulation, other times not."⁴

Taking account these new trends and economic models where the consumer's role and responsibilities change as they can purchase and offer services to peers at the same time⁵, the challenges that emerge require legal certainty⁶ and protection and awareness of consumer rights to be ensured.

Establishing certainty is not just a priority for consumers. The platform providers in the sharing economy are experiencing their

³ REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

⁴ BEUC, "Collaborative Economy", April 2016

⁵ ANEC position paper 'Future Consumer Policy priorities & trends'

⁶ Consumer protection in the EU - Policy overview, European Parliamentary Research Service (EPRS), Author: Jana Valant, Members' Research Service September 2015 — PE 565.904

own challenges. They are facing questions about the level of responsibility that those platforms must assume in the exchange, whether they have to respond to any challenge or problem that should arise with delivery, defective goods, lack of transparency or information among other problems.

Shaping a response in the consumer interest

As sharing economy models in all their different forms gain ever greater importance in consumers' daily lives, it is imperative, that we consider in depth the challenges and opportunities this new reality brings and its impact on consumer protection.

The challenge is to find the best way to respond to the new reality, including using well-established consumer rights and protections adapted for the new digital context.

We would like to see a situation where the consumer is at least as safe, and treated at least as fairly in the collaborative economy as they were in the traditional economy; and that they can expect their rights to be upheld whichever channel they use to access a service or product. In other words, there is parity of protection regardless of whether the transaction is online, offline, sharing economy or direct transaction.⁷

Building trust

The role of trust and confidence has gained more attention when any form of commerce is performed through digital means. Whereas previously face to face or consumer to single business entity were common place, in digital commerce transactions can occur remotely, across different cities, countries or continents without any direct physical contact. Thus, companies operating online face a major challenge to reassure consumers that providers are trustworthy, reliable, will fulfil obligations and will keep personal data secure.

⁷ The recently updated UN Guidelines for Consumer Protection (UNGCP) included a new legitimate need of consumers that is to ensure a level of protection for online transactions that is not different for other forms of commerce (UNGCP, Guideline 5 j, and Guideline 63)

In the case of the sharing economy, trust between all of the different links in the transaction is very important and to a large extent drives the success or popularity of the system. Consumer trust must be of paramount interest for all stakeholders involved in the collaborative economy: consumers, prosumers, professional providers, platforms, service providers and governments. Many platforms built trust mechanisms into the heart of their services, for instance systems to verify the identity of renters in peer to peer accommodation sites, or safe payment systems, or have integrating ratings and reviews as a way to uphold transparency and quality.

However, while these have been successful in reassuring enough trust to engage in a transaction, they may fall short of requirements for upholding core consumer rights such as: information, contracts, warranties, health and safety, non-discriminatory practice and redress. These are important as consumer protection regimes and policies have developed over many years in these target areas precisely because it is much harder for a consumer to assert these rights as an individual. Delivery of services through a sharing economy model does not and should not make the need for these protections any less necessary. In fact, the lack of clarity around role and responsibility of either participant leads to other detriments.

Potential detriments to consumers given this lack of clarity include:

- The intermediary platform can offload the traditional obligations they would have faced as a provider of a service, onto the peers involved in the transaction. This is a problem for both consumers using the service and consumers (or prosumers) providing the service. Bias and discrimination against individual consumers based on location, profile or identity can occur, in breach of equality laws, this could eventually lead to the effective withdrawal of services to some consumers.
- Consumer uncertainty about whether they are dealing with a business or individual on online market places, and lack of clarity about different legal rights in each case or how to resolve disputes and get redress.

- Misinformation or lack of clarity about taxes and duties consumers must face in contracting a service or buying goods.
- Uncertainty on whether a good complies with national or regional standards that make it able to be used in the country where the consumer lives.
- Reliance on reputational models as opposed to independent regulatory standards to regulate both user and producer behaviour, whose operation is not always transparent and which may not cover all aspects of consumer rights.^[1] The mediation systems often integrated on the platforms, can be efficient for a dispute resolution but not always fair for consumer interests. Through the acceptance of terms and conditions, some platforms become an agent with super powers to decide on disputes among the peers, in a sometimes abusive, non-neutral and not legitimated way: even retaining money from the consumers and putting the last word on conflict resolution possibilities among the parties.
- Digital privacy should be addressed in a protective, transparent and consumer-friendly manner, as much personal information including pictures and personal data are collected and shared to build a personal profile. The dilemma privacy-trust is far from being resolved. Also, aggregated data are sold by some platforms and may be an issue for consumer interests.
- Ethical issues in the on-demand or Gig economy, where consumers can easily become exploiters of other citizens. It refers to microtasks platforms where the other party is always a professional provider, but most of the times in an “informal way” without social protection nor labour contract from the platform (Task Rabbit, Amazon Turk, Deliveroo, Uber...). In this modality, the main challenge for the society is precariousness of the provider, and the lack of decent working terms and conditions. From the consumer point of view, two specific risks come up in the on-demand economy: the ethical risk to become exploiters of other citizens, and the practical risk to lose our consumer

^[1] For example, a reputation mechanism would not show if equality or health and safety regulations were being upheld

protection rights if the other party nor the platform, take up their responsibilities.

- Green claims about sustainability made from the platforms should be reviewed carefully, as fight against hyperconsumption is a value that can be easily perverted to cheap hyperconsumption. The true value of collaborative economy to become a sustainable channel of social exchanges, democracy and solidarity among peers is present in some platforms (especially cooperative platforms), so it's important to avoid over-sustainable claims from platforms, to help consumers made an informed choice.

A background report for the 2016 OECD Ministerial Meeting on the Digital Economy, "Protecting Consumers in Peer Platform Markets. Exploring the issues", expresses that "...consumer detriment can arise when market outcomes fall short of their potential resulting in losses to consumer welfare" And adds: "...In considering possible detriments, it is helpful to recognise that consumer detriment can take many forms. It may be structural in nature (i.e., affecting all consumers) and have broader societal and macroeconomic effects, or personal in nature with narrower effects. Detriment can be financial or non-financial. Consumer detriment may be apparent to consumers immediately, may take time to emerge, or remain hidden (OECD, 2014). In assessing consumer detriment in peer platform markets, it might be useful to compare any possible or actual detriment with the alternatives...".⁸

According to the report, financial detriment for consumers include:

1. Inflated prices
2. Cost of flawed products (e.g. insurance policies that, because of misleading information or misleading omissions, fail to deliver expected coverage)
3. Cost of repairing or replacing product
4. Administrative and travel costs incurred resolving the problem (e.g. telephone costs, petrol)

⁸ Protecting consumers in Peer Platforms (OECD, 2016)
http://www.oecd-ilibrary.org/science-and-technology/protecting-consumers-in-peer-platform-markets_5j1wvz39m1zw-en

5. Reduction in value of asset (e.g. poor house repairs reducing value of house)
6. Cost of expert advice or assistance (e.g. legal costs)
7. Lost earnings (e.g. due to loss of time or injury)
8. Damage to other property (e.g. electrical fault causing house fire)

And non-financial detriment for consumers include:

1. Restricted choice (which can also have financial implications)
2. Psychological detriment (e.g. stress, anger, embarrassment)
3. Compromise of personal information or privacy
4. Time required to address problems
5. Inconvenience
6. Injury or adverse effect on health

The role of standards

We now draw attention to existing standards and guidelines that can be helpful in the development of the IWA on sharing economy.

Standards are voluntary and complement legislation or industry codes. They are developed and written by consensus in technical committees with relevant stakeholders. Standards can also increase the assurance of compliance with regulatory requirements.

Online reviews

In 2014, Afnor, the French standardisation organisation proposed the development at international level of an ISO standard on online reviews based on the French standard NF Z74-501 that accounted as the first guidelines in the area, in light of developments on consumer reliance on online reviews in different areas, particularly in the tourism area.

ISO created TC 290 Online Reputation. Within this WG 1 was to focus on the development of a new standard for Online Reviews.

ANEC and Consumers International welcomed this development and recommended that the area of online reviews would benefit from regulation or standardisation of some kind, as research shows that consumers are increasingly using online reviews to inform their purchasing decisions⁹, yet there have been numerous reports of false reviews that may undermine consumer trust, and lead to detriment, in this area. As a result, ANEC and CI joined TC 290 'Online reputation', and have participated in WG 1 on Online Reviews.

The ISO standard (DIS 20488) *Online consumer reviews -- Principles and requirements for their collection, moderation and publication* currently under development aims to establish codes of practice in the area of online reviews that enhance the transparency and trust for all stakeholders involved. The document provides a set of principles regarding collection of reviews, moderation of review websites and display of consumer reviews. The standardisation work will help establishing principles and requirements while collecting online consumer reviews based on the consumer experience. The standard is being developed for common terminology and best practices of customer relationships, giving guidance on management of online reputation for organizations and best practices for collection of online consumer reviews.

With a view to achieve reliable review websites, ANEC/CI has successfully worked to ensure the standard tackles issues such as: clear and transparent information; structure of reviews; verification of reviews; complaints and abuse. The DIS consultation of this draft will take place from 17th April 2017 for a period of 12 weeks, during which comments are welcomed from interested parties.

Redress and complaints handling

Consumers' dissatisfaction with complaints handling could be addressed by raising awareness to businesses of the benefits of good complaint resolution. An international standard already

⁹ As also observed in ANEC 2014 and 2015 services technical studies <http://www.anec.eu/technical-studies/recent-technical-reports>

exists 'ISO 10002: 2004 - Customer Satisfaction: Complaints Handling' and consumer organisations promote its use.

Privacy protection

Along with the potential benefits to consumers from exchanging information on their experiences with given providers, come also the benefits of businesses to collect data on consumer preferences and behaviour. Although that can help service providers to improve their service, privacy protection and the possibility of anonymisation of the reviewers should be guaranteed. ANEC Digital Society Working Group developed guidance material¹⁰ to assist consumer representatives in standardisation committees to properly address personal data protection and use of consumer data.

E-Commerce

Electronic commerce is a matter of attention for ISO, and the ISO 10008:2013 Quality management - Customer satisfaction - Guidelines for business-to consumer electronic commerce transactions is published and several other initiatives are being under discussion on customer satisfaction and complaints handling at the ISO/TC 176.

Conclusion and how standards can help the sharing economy

This paper aims to show different aspects of the sharing economy that need to be addressed from the consumer protection perspective, in order to cope with the challenges that it poses.

The potential detriments to consumer protection and the need to find new ways of defining the relationships between consumers, prosumers, providers and platforms show that the issues related to the sharing economy require to be adequately addressed by both regulations and standards.

¹⁰ Available on ANEC website: [#](http://www.anec.eu/anec.asp?p=digital-society&ref=01-01.02-01&ID=5)

The development of a standard on the sharing economy could help to frame the discussions, as well as bringing a unique opportunity to find tools to answer the questions and solve the challenges of the sharing economy. We think this is a good initiative that focuses on the momentum that the sharing economy is currently facing.

Consumers International and ANEC welcome the objectives set in the International Workshop Agreement and commit to bringing the consumer perspective in its development. This initiative has ambitiously embraced the momentum that the sharing economy is currently facing.

About Consumers International

Consumers International brings together over 200 member organisations in more than 100 countries to empower and champion the rights of consumers everywhere. We are their voice in international policy-making forums and the global marketplace to ensure they are treated safely, fairly and honestly.

CI is a not-for-profit company limited by guarantee and registered in the UK (company no. 04337865). We are also a registered UK charity (no. 1122155).

24 Highbury Crescent
London N5 1RX
United Kingdom
E-Mail: consint@consint.org
www.consumersinternational.org
@consumers_int
www.facebook.com/consumersinternational

About ANEC

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment, as well as related legislation and public policies.

ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.

E-mail: anec@anec.eu

EC Register of Interest Representatives:
Identification number 507800799-30

www.anec.eu
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