



NÁRODNÍ KONVENT

Consumer Protection on the Digital Market

Summary and recommendations from the National Convention on the
EU round table discussion held on 3 June 2016

Recommendations prepared by the round table expert coordinator - Department of Business
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Prague.



Introduction

The roundtable on consumer protection on the digital market focused on sharing economy and online platforms. This issue encompasses a relatively vast area of service provision based on sharing, renting or bartering of property. Online platforms take many different forms and cover a number of activities. The most common form of sharing property might be renting real estate repeatedly during the periods of time when it is not needed. Generally, the aim of sharing economy is not to accomplish a change of ownership and it may or may not be motivated by profit.

The development of new business models based on the principle of sharing was allowed by the technological progress, and especially by the evolving digitalisation and smart mobile devices, which allow for the users to be connected wherever they are and at any time. Online platforms include tools or applications which allow connection and provision of services either between the consumers themselves, or between the business person and the consumer. Unlike the traditional service provision, the boundary between the consumer and the business person is often fuzzy in sharing economy.

There are three types of actors in sharing economy. First, there are service providers sharing property, resources and time or skills. They can be private persons occasionally offering services or service providers acting in the exercise of their profession. Opposing them, there are users of such services. Finally, there are intermediaries, facilitating the connection of the two groups through online platforms.

Digital platforms provide new opportunities and advantages not only for consumers, but also for business people. The advantages for consumers include, most importantly, a wider choice of new services and consequently lower prices. Online platforms are also successful because they allow the individuals to offer services and thus to acquire new sources of income through new and flexible job opportunities.

At the same time, sharing economy and new platforms raise a number of questions, first of all concerning the applicability of existing legislation or the potential need to adopt new legislation. In particular, setting the boundary between the concepts of “consumer” and “business person”, as well as between “employee” and “self-employed person” appears to be difficult.

New business models based on sharing represent an opportunity to improve competitiveness, growth and the creation of new jobs. Sharing economy is rapidly growing and gaining significant market shares in certain fields. If developed further, it appears to be capable of inducing structural changes in the global economy, which is attested in numerous studies and statistics carried out by the EU.

Round-table framework

The number of guests has hit the all-time high of ninety participants who joined the round-table discussion hosted by **Zbyněk Švarc**, the head of the Department of Business and European Law at the Faculty of International Relations of the University of Economics, Prague, as the representative of the round-table expert coordinator.

Opening speech was delivered by **Tomáš Prouza**, State Secretary for European Affairs and Czech coordinator for digital agenda, who welcomed all participants and highlighted the importance and relevance of the presented topic.

The framework of the discussion held by the National Convention on the EU was divided into two areas, each subsuming several sub-issues.

(1) Consumer protection for online platform users and in sharing economy

- I. Does using of online platforms and sharing economy entail any risks or problems as opposed to services provided by business persons in the offline world?
- II. How can the protection of the consumer's personal data be ensured when using online platforms and in sharing economy?
- III. How can the Czech Republic guarantee that users of such services could enforce their rights?

(2) The effectiveness of the regulation of online platforms and sharing economy

- I. It is necessary to regulate online platforms by law, or is it possible to regard the self-regulatory mechanism as an appropriate tool? If the legislative regulation is opted for, on which level should it be adopted – is it European, national, regional or local?
- II. Can any potential further regulation of online platforms prevent the circumvention or breaking of the law? Is it possible to include all types of online platforms under one regulatory framework, or is each of them specific?
- III. What are the limits of public law regulation in the field of online platforms in terms of its effectiveness? How to ensure that the law is enforceable?

These issues were reflected in the discussion paper presented to the participants by the representative of the expert coordinator **Jan Pastorčák**, University of Economics, Prague.

Following the presentation of the paper, **Věra Knoblochová** acquainted the participants with the position of the Ministry of Industry and Trade of the Czech Republic. In her contribution, she emphasised the difficulties associated with the definition of sharing economy and online platforms, which complicates any potential regulation. The issue in question cannot be – in her opinion – regulated across the board. Regarding the monitoring of the existing regulation, she highlighted the activities conducted by the Czech Trade Inspection Authority,

an agency dedicated to the practical aspects in this field. In her view, the transparency of bodies and ensuring safety of products and services are the two crucial problematic points.

The position of the Office of the Government of the Czech Republic was presented by **Patrik Haratyk**. He started with informing the round-table participants about the study conducted by the Office of the Government of the Czech Republic on sharing economy and digital platforms. He also pointed out the necessity to support new platforms through start-up projects. This should be aimed at transforming the economy of the Czech Republic into a modern economy based on services.

The final position was presented by **Lukáš Zelený**, representing dTest. In his speech, he mentioned among others that when concluding contracts remotely, consumers often did not know who exactly they had entered into agreement with; therefore, it is not clear whether the norms regulating consumer contracts apply to this particular legal relationship. On the other hand, providers often do not know all the rules and obligations they are required to respect while providing services. He warned against the risks of self-regulation, which is crucial for the given field, mainly the risk of false reviews. The cooperation of international inspection bodies is necessary; however, public law regulation should not hamper the development of new platforms. The self-regulation might be complemented, as he put it, by the introduction of a blacklist of bad providers.

Ensuing discussion was dedicated mainly to reactions to the stated discussion areas and also to reactions to previous speakers. Following participants entered into the discussion: **Eduard Hulicius** (representative of the cabinet of Věra Jourová, the Commissioner for Justice, Consumers and Gender Equality), **Tereza Šamanová** (Confederation of Industry of the Czech Republic), **Jiří Šebesta** (Association of Entrepreneurs and Self-Employed of the Czech Republic), **Hynek Brom** (the vice-president of the Office for the Protection of Competition), **Olga Sehnalová** (Member of the European Parliament), **Kateřina Hrubešová** (Association for Internet Development), **Dagmar Gavlasová** (Czech-Moravian Confederation of Trade Unions), **Václav Mach** (Microsoft, member of the managing board of ICT Unie), **Libor Manda** (Seznam), **Libor Dupal** (Czech Consumer Association), **Matěj Vácha** and **Barbora Polachová** (UBER), **Ondřej Krátký** (Liftago), **Dagmar Bartels** (Allegro Group), **Milena Jabůrková** (Confederation of Industry of the Czech Republic), **Marta Nováková** (Czech Confederation of Commerce and Tourism) and **Pavel Hlinka** (Czech Confederation of Commerce and Tourism).

Following points were mentioned during the discussion:

- The participants all agreed that it is difficult to give a general definition of sharing economy and online platforms and to determine who the actor is, or who and how engages with the platform. Furthermore, it is often problematic to establish what the ownership structure of the online platform is. This fact complicates any potential regulation.
- More often than not, new platforms come to existence as a result of a market gap and they complement existing traditional providers, while not competing with them directly in most cases. Sharing the property and means leads to a more effective use of resources.
- The discussing participants agreed that the issue of sharing economy and online platforms is regulated sufficiently with the existing legislation. In relation to this idea, it

was explained that the European Commission published a Communication on A European agenda for collaborative economy, where there are instructions given concerning how to apply existing EU legislation in this dynamic and fast evolving field of activities.

- The participants also discussed under what conditions the regulatory system should be complemented with self-regulatory mechanisms, such as user evaluation, price comparison websites, etc.
- During the discussion an appeal was raised to harmonise conditions for all providers. The existing regulation of certain areas includes a number of requirements for traditional providers, generating higher costs.
- The participants agreed that as far as the debated issue is concerned, it is necessary to adjust the technical and control mechanisms and the speed with which the control authorities take decisions. First of all, it is necessary to establish operational mechanisms to find out whether an infringement of the existing legislation takes place.
- How to ensure law enforceability for providers residing outside EU is yet another issue.

Recommendations

The conclusions of the round-table discussions of the National Convention can be summarised into following recommendations:

First, it is necessary to support the development of sharing economy and online platforms. The purpose of the support is to create conditions to modernise Czech economy and to create a favourable environment for establishment of, or the existence of new forms of entrepreneurship. The public law regulation should not hamper the development of such new platforms. It should not be ignored that every platform has its own specifics and no regulation across the board seems effective.

Regarding regulation, it is enough to lean on the existing legislation. However, at the same time it is important to conduct an analysis of the existing legislation and based on such analysis to identify areas where further regulation is needed, including the extent of any such regulation. It is also necessary to ensure its consistent application and enforceability. Legislation should allow for the self-regulation of online platforms while clearly defining self-regulatory rules. However, self-regulatory mechanisms should be subject to control by a supervising authority.

The actors involved in online platforms performing activities in a business-like manner and traditional service providers should be guaranteed a level playing field. A pre-requirement for ensuring a level playing field is to establish boundary between an activity to be considered a business activity as defined by the existing legislation, and any other activity.

The existing legislation imposes numerous obligations to business persons to provide information to their consumers or customers. It is therefore appropriate to consider whether the obligations to inform should be extended also to intermediaries within sharing economy. This obligation to inform should be complemented by a system of national

awareness-raising campaigns, the purpose of which is to raise literacy and awareness of online platform users in terms of their rights.

In order to enforce rights more effectively, alternative methods of dispute resolutions, especially the legal instrument of ODR, could be employed more frequently. It is also crucial to adopt measure to ensure the highest possible law enforceability as well as the control of not only those bodies residing (having a place of business) in the EU. The effectiveness of public law control by the national authorities is crucial and consequently it is necessary for the national administration to be equipped with high-quality technologies and staffed with experts.

The dynamics of the evolution and the relevance of the topic of new business models based on the principle of sharing, as well as non-uniform opinions of the social and economic partners and the public administration show that the discussion needs to continue, further development in this area must be monitored and that it should be carefully considered whether State interventions in the legal environment are necessary.

Recommendations of the National Convention on the EU

1. To support the development of sharing economy and online platforms and to maintain the public debate on the actual functioning and development in this area.
2. To exploit the existing legislation in terms of regulation, namely general provisions of the relevant legislation, while constantly analysing the legislation and defining areas where regulation beyond the existing legislation is required.
3. To ensure the level playing field for actors involved in online platforms performing activities in a business-like manner and for traditional service providers. To consider extending the obligations to inform set by the existing legislation also to intermediaries of sharing economy.
4. To allow for the self-regulation of sharing economy and online platforms while clearly defining self-regulatory rules
5. To increase the efficiency of public law control in sharing economy by providing high-quality technology and expertise for relevant national administration authorities.
6. To exploit more of the alternative methods of dispute resolution, namely the legal instrument of ODR, and to create a mechanism to ensure enforceability, especially in case of bodies residing outside the EU.

This text does not constitute the minutes of the individual contributions presented in the discussion. Therefore, it does not contain everything that was said and does not express the opinions of all the participants on all the discussed topics. It is a summary of the most important points and the formulation of recommendations on the basis of the discussion.

The National Convention on the EU is a discussion platform which is a permanent venue for debate on European issues in the Czech Republic.

Coordinated at the Office of the Government of the Czech Republic, the project brings together representatives of the Government, both chambers of the Parliament of the Czech Republic as well as the European Parliament, the community of experts, non-profit sector and social partners and other interested actors.

More information on the National Convention can be found at www.narodnikonvent.eu and on Twitter: [@KonventEU](https://twitter.com/KonventEU).