

Digital cooperatives as channels for digital work in the context of the collaborative economy*

Las cooperativas digitales como canales para el trabajo digital en un contexto de economía colaborativa

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Summary: 1. An approach to conceptualising the collaborative economy. 2. Identifying and characterising new forms of digital work and how they fit under the umbrella of the collaborative economy. 3. Digital cooperatives: the most suitable means to enable the new forms of digital work within the scope of the collaborative economy. 4. Conclusions. 5. Bibliography.

Sumario: 1. Una aproximación al concepto de economía colaborativa. 2. Identificación y caracterización de nuevas formas de trabajo digital y su incardinación bajo el paraguas de la economía colaborativa. 3. Las cooperativas digitales: el medio más adecuado para acoger las nuevas formas de trabajo digital en el ámbito de la economía colaborativa. 4. Conclusiones. 5. Bibliografía.

Abstract: At present different bodies, associations, platforms etc. vary greatly in their definitions of the collaborative economy. This is because there are many differences between models and platforms within the term 'collaborative economy'. Taking this diversity into account, this study will focus on the platforms dedicated to the provision of services. The first major issue will be the need to delimit and establish links between a multitude of concepts that emerge within the so-called collaborative economy, such as the *Gig economy*

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and the *On-demand economy*. The ultimate purpose is to limit the concept of collaborative economy for the purposes of the research carried out here. It was not for nothing that the European Commission recommended that legislators and courts should review professional regimes in the context of the new economy, while expressing its clear support for collaborative economy platforms in its report 'A European agenda for the collaborative economy' (2016). There is therefore a need to address the modality of platform-based work (also called digital work), with the aim of ensuring that standards are upheld regarding the working conditions and social protection of people who provide their services under this modality. This study, then, analyses the challenges, and positive and negative aspects of this new situation. The main conclusion is that cooperatives are the best means to channel the collaborative economy, under the modalities of platform-based or digital work. This will require studying and analysing the new models of cooperatives, and advocating digital cooperatives, outside the so-called cooperatives of self-employed workers, the true cooperative character of which is often doubtful. The conceptual delimitation of digital cooperatives and their differentiation from 'classic' cooperatives will also be discussed, which will involve providing some insights into the characteristic features of digital cooperatives.

This research uses the descriptive, comparative and propositional legal methods. The descriptive method is used to define the concept of collaborative economy and the sub-concepts that it includes in terms of the provision of services; and to identify new forms of platform-based or digital work, and delimit the field of action of digital cooperatives, as the most appropriate means to channel these new forms of work. The comparative method will be useful to analyse the various existing professional regimes that can accommodate the new forms of work available within the collaborative economy. Finally, the propositional method will argue that digital cooperatives are the best solution to shape work within the collaborative economy.

Keywords: Collaborative economy; cooperatives; work in platforms; digital work; labour conditions.

Resumen: En la actualidad son muchos los órganos, asociaciones, plataformas etc. que ofrecen definiciones muy diversas sobre la economía colaborativa. Precisamente, ello es así porque dentro del término economía colaborativa existen muchas diferencias entre modelos y plataformas. Así, partiendo de dicha diversidad, en el presente trabajo se centrará la atención en las plataformas dedicadas a la provisión de servicios. En concreto, se tratará como primera gran cuestión la necesidad de acotar y poner en relación una multitud de conceptos que afloran en el seno de la denominada economía colaborativa, como pueden ser la *Gig economy* y la *On demand economy*. La finalidad última en ese sentido es acotar el concepto de economía colaborativa a los efectos de la investigación aquí realizada. No en vano, la Comisión Europea, en su informe "A European agenda for the collaborative economy" (2016) recomienda que el legislador y los tribunales revisen los regímenes profesionales en el contexto de la nueva economía, al tiempo que manifiesta su claro apoyo a las platafor-

mas de economía colaborativa. Surge así la necesidad de abordar la modalidad de trabajo en plataforma o también denominado trabajo digital, con el objetivo de velar por las condiciones de trabajo y la protección social de las personas que prestan sus servicios bajo dicha modalidad. En último término, se trata de analizar los desafíos que plantea esta nueva realidad, con sus aspectos positivos y negativos. En ese contexto, la principal conclusión a la que se pretende llegar es que las cooperativas constituyen la mejor forma de encauzar la economía colaborativa, bajo las modalidades de trabajo en plataforma o digital. Y para ello se requerirá el estudio y análisis de los nuevos modelos de cooperativas, para apostar por las cooperativas digitales, al margen de las denominadas cooperativas de trabajadores autónomos, que, con frecuencia suscitan muchas dudas sobre su verdadero carácter cooperativo. Por consiguiente, se tratará también la cuestión relativa a la delimitación conceptual de las cooperativas digitales y su diferenciación con las cooperativas que pueden denominarse ya como clásicas, para lo que será necesario ahondar en los rasgos característicos de las cooperativas digitales.

Para llevar a cabo esta investigación se seguirán los métodos jurídicos descriptivo, comparativo y propositivo. Así, el método descriptivo se utilizará para definir el concepto de economía colaborativa y los subconceptos que incluye, en cuanto a la prestación de servicios; para identificar las nuevas formas de trabajo en plataforma o digital y para delimitar el campo de actuación de las cooperativas digitales, como forma más adecuada para encauzar esas nuevas formas de trabajo. Por su parte, el método comparativo valdrá para analizar los diversos regímenes profesionales existentes que pueden dar cabida a las nuevas formas de trabajo que ofrece la economía colaborativa. Y, finalmente, el método propositivo argumentará la defensa de las cooperativas digitales como la mejor solución para encauzar el trabajo en la economía colaborativa.

Palabras clave: Economía colaborativa; cooperativas; trabajo en plataformas; trabajo digital; condiciones laborales.

1. An approach to conceptualising the collaborative economy

The so-called 'collaborative economy' has important commercial, legal and institutional implications. Its dynamic nature means that it is difficult to treat it as a closed concept. The collaborative economy can be organised according to models focused on both market and social logics. From a social logic perspective, some local collaborative economy initiatives may consist in the common use or management of physical assets (for example, joint work spaces and urban public utility goods).²

Nevertheless, the European Commission has made several attempts to define the collaborative economy. Firstly, in its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 28 October 2015, 'Upgrading the Single Market: more opportunities for people and business',³ it defined the collaborative economy as 'a complex ecosystem of on-demand services and temporary use of assets based on exchanges via online platforms'. Based on this definition, the European Commission made the following declaration: 'The collaborative economy leads to greater choice and lower prices for consumers and provides growth opportunities for innovative start-ups and existing European companies, both in their home country and across borders. It also increases employment and benefits employees by allowing for more flexible schedules, from non-professional micro jobs to part-time entrepreneurship. Resources can be used more efficiently thereby increasing productivity and sustainability'.

Secondly, the European Commission, in its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 2 June 2016, 'A European agenda for the collaborative economy',⁴ provided additional details and stated that the term 'collaborative economy' refers to 'business models in which activities are facilitated through collaborative business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time and/or skills — these can be private individuals offering services on an occasional basis ("peers") or service

² Cf. Opinion of the European Committee of the Regions of 4 December 2015: The local and regional dimension of the collaborative economy (OJEU of 10 February, 2016, C-51), section 1.

³ COM (2015) 550 final.

⁴ COM (2016) 356 final.

providers acting in their professional capacity (“professional services providers”); (ii) users of these; and (iii) intermediaries that connect — via an online platform — providers with users and that facilitate transactions between them (“collaborative platforms”). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit’.

However, the Committee of the Regions was critical of this definition, by arguing that it focused on the commercial and consumer aspects of the collaborative economy, while leaving aside the non-commercial approaches based on a social logic.⁵

Therefore, the challenge is to bring the commercial aspects of the collaborative economy closer to the social aspects, so as to connect the market logic and the social logic.

The Committee of the Regions considered that ‘the Sharing Economy could give rise to a new economic identity where an individual, unwilling to act alone, would, instead of pursuing the quest to maximise their own material interests, associate their economic behaviour with a commitment to the community, act in the public — social, economic, political — arena and place themselves in relation to others in order to take care of the general, common interest’.⁶ In addition, this relates to the category of collaborative economy that it called the ‘pooling economy’, and, more specifically, to the form that the European Committee of the Regions called ‘the commoning economy’ for sharing economy initiatives that are collectively owned or managed.⁷ In this way, the focus is on sharing the value created among all the peer-to-peer collaborators that have helped generate it.⁸ From this perspective, the collaborative economy would consist in creating meeting spaces where people with common needs or interests exchange value and/or collaborate towards a common objective,⁹ with a clear differen-

⁵ Cf. Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 1.

⁶ Cf. Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 6.

⁷ Cf. Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 9.

⁸ See also PLAZA ANGULO, JJ, PATIÑO-RODRÍGUEZ, D. and GÓMEZ-ÁLVAREZ DÍAZ, R. (2018, p.41).

⁹ PATIÑO RODRÍGUEZ, D., GÓMEZ-ÁLVEZ DÍAZ, R. and PLAZA-ANGULO, JJ (2017, pp. 58-59).

tiation between the specific contribution that each of them makes to the value created and/or the common objective; a contribution without which it would be impossible to create value and achieve the common goal sought.¹⁰ The sum of each specific, distinct contributions, therefore, is what makes it possible for different people to form a shared economy venture in a broad sense. This is also consistent with the intersection between the second meaning that of the noun 'economy' and the meaning of the adjective 'collaborative' in Spanish. According to the Dictionary of the Spanish language, 'economy' means the 'set of goods and activities that make up the wealth of an individual or a group', and the adjective 'collaborative' denotes that such wealth has been 'produced on a collaborative basis', that is, it is the result of the action of 'working with another or with others'. This is in line with the notion of 'non-reciprocal prosocial behaviour' that the European Economic and Social Committee wants the European Commission to incorporate into the concept of collaborative economy, 'which clearly differentiates not-for-profit shared use and provides a space to interact for the purpose of consumption, production, financing and knowledge sharing'.¹¹ The European Economic and Social Committee understands 'non-reciprocal prosocial behaviour' as 'an act and process of distributing what is ours to others for their use as well as the act and the process of receiving something from others for our use'.¹² That is, everything seems to suggest that the idea of non-reciprocity has an impact on the common goal sought by the interacting parties, whereby their personal aims become subordinated to it, as this is the only way to create value.

In particular, these last considerations imply that, within the market logic or sphere presented by the collaborative economy, ventures can ensure a balance between the economic and the social, and, therefore, be encompassed within the concept of collaborative

¹⁰ In this sense, it has been pointed out that 'a new structure of economic relations is seemingly in the process of being created that is not based on the accumulation of possessions, but rather is supported by the specialisation and/or minimisation of the individual's assets, making them available to other users via an exchange, whether monetary or not' [NAVIO, J., SATELLA, J., PORTILLA, JA and MARTÍN, J. (2016, p.7)].

¹¹ Opinion of the Economic and Social Committee of 15 December 2016 on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A European Agenda for the collaborative economy' (OJEU of March 10, 2017, C-75), section 3.4.

¹² Opinion of 25 May, 2016, on the topic 'The sharing economy and self-regulation' (OJEU of August 19, 2016, C-303), section 1.4.

economy seemingly designed by the European Committee of the Regions. This would supersede the conceptualisation made by the European Commission around the collaborative economy, as well as other conceptualisations which, despite having been widely accepted, do not seem to meet the needs arising from the prevailing reality.¹³ Unless a broader concept of the collaborative economy is accepted, there is a double risk. On the one hand, an opportunity would be missed to identify the companies regarded to be exemplary and worth being promoted (given the positive aspects in the societies where they are located) by the European Committee of the Regions, as they fit the conceptualisation of the collaborative economy advocated by the Committee. On the other hand, and as a consequence of the above, a confusion would be perpetuated between the companies that do fit the specific conceptualisation of the collaborative economy proposed by the European Committee of the Regions, and those other companies that are removed from it, and make an inappropriate, self-interested use of the term collaborative economy.

The Committee of the Regions holds that the collaborative economy can improve the quality of life, foster growth (particularly in local economies), reduce environmental effects and generate new, good quality jobs, among other positive aspects.¹⁴ But, at the same time, it is also aware of the challenges and threats that may result from a poorly managed collaborative economy which, in reality, is hardly collaborative at all. Hence its emphasis on the conditions of employment of workers in the collaborative economy. Not in vain does it say that 'the shared economy could give birth to a new social class, the collaborative class, that needs social and economic safeguards'.¹⁵ The European Economic and Social Committee also argued along these lines

¹³ This is the case of the definition given by Botsman & Rogers, according to which the collaborative economy is 'economic system based on sharing underused assets or services, for free or for a fee, directly from individuals'. This definition was adopted by the European Economic and Social Committee in its Opinion of May 25, 2016 on the topic 'The sharing economy and self-regulation'. However, it was qualified by saying that such shared use must be carried out 'through online platforms', and it was recognised that 'a more precise analytical distinction concerning the concept of "sharing", should be established' (see section 6.4). For a more detailed definition by the aforementioned authors, see BOTSMAN R. and ROGERS, R. (2010, 279 pp.).

¹⁴ Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 13.

¹⁵ Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 17.

that it 'advocated a more in-depth analysis of those work patterns of the collaborative economy that are related to non-reciprocal pro-social behaviour'.¹⁶

The Committee of the Regions' recommendations on the concept of collaborative economy make it necessary to analyse those forms of work that operate under this umbrella term, in order to conclude whether they genuinely belong to it or whether they must be specifically excluded from it. In particular, this is the case of so-called platform-based work or digital work, since the development of information and communication technologies has meant that most of the initiatives that are considered part of the collaborative economy operate through them. In addition, it should be remembered that the European Commission expressly includes online platforms into the category of the collaborative economy, as an instrumental element to be able to carry it out. This, however, does not mean that a company can automatically be assumed to be part of the collaborative economy merely because it operates in the market through virtual platforms. It is necessary to identify and characterise the new forms of digital work in order to be able to conclude if, in fact, they fit into the concept of collaborative economy under consideration here. The following section will discuss this further.

2. Identifying and charactering new forms of digital work and how they fit under the umbrella of the collaborative economy

It should be noted from the outset that the characteristics of the new forms of digital work are not specific enough to provide a seamless, closed definition of them; however, two broad models of service provision can be identified that operate under the parameters of the so-called *gig economy* and *on-demand economy*. While the *gig economy* is based on initiatives based on sporadic jobs carried out through the digital market,¹⁷ the *on-demand economy* is a business model where the new online technologies allow virtual platforms to have

¹⁶ Opinion of the Economic and Social Committee of 15 December 2016 on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A European agenda for the collaborative economy' (OJEU of 10 March, 2017, C-75), section 4.4.5

¹⁷ ÁLVAREZ CUESTA, H. (2017, p. 171).

large groups of service providers waiting for a consumer to request a service through an app or online.¹⁸

Within the two major models of service provision that operate in this way, a differentiation needs to be made between *crowdwork* and work via mobile applications (apps).¹⁹

Crowdwork is the work carried out through online platforms that bring together an indefinite number of organisations, companies and individuals.²⁰ When the work is done via an online platform through the Internet (virtually), both customers and workers can operate from anywhere in the world, leading to offshore work worldwide. The most paradigmatic example would be Amazon Mechanical Turk, in the market of the so-called Human Intelligent Tasks (HITs). These are very simple jobs that cannot be performed by a machine because they require a certain level of human intelligence, such as for example, data processing, image description, data verification, information gathering and text translation.²¹

In contrast, app-based work involves carrying out activities related to traditional jobs, in person, in a specific place, with the peculiarity that the supply and demand of activities must be channelled through mobile applications.²² Some paradigmatic examples of this form of digital work include Uber and Lift (transport), Taskrabbit (domestic tasks) and Myfixpert (repair of electrical appliances).

Both models present a very similar structure as regards the way in which the services are provided. They have three aspects in common, which are always found. First, 'requesters' or clients, which are companies or individuals that require that a service be provided for them; second, workers who provide the services; and, third, the virtual platforms that use information technologies to connect supply and demand, which receive a percentage for each service provided.²³

In order to determine whether these new forms of digital work are included within the concept of the collaborative economy, the key issue is to analyse the legal nature of the link between the service providers and the owners of the online platforms and apps. When the online platforms or apps merely fulfil an intermediary role, limited to connecting service providers with customers, they are in a similar po-

¹⁸ CAVAS MARTÍNEZ, F. (2017, p. 43).

¹⁹ DE STEFANO, V. (2016, p.151). For more, see, ÁLVAREZ CUESTA, H. (2017, pp. 53 et seq.).

²⁰ DE STEFANO, V. (2016, p. 152).

²¹ GINÉS I FABRELLAS, A. (2016, pp. 10-11).

²² DE STEFANO, V. (2016, p. 152).

²³ TODOLÍ SIGNES, A. (2017, p. 22).

sition to private employment agencies, so such intermediation work should be free of charge for service providers, as a general rule.²⁴

Having made this qualification, when, the owners of online platforms or apps in one way or another affect the provision of services, going beyond being mere intermediaries, attention should be focused on the legal nature of the link between the service providers and the owners of the online platforms or apps. However, in practice, this is not so easy to determine. In most cases, the professional status of service providers is unclear, since their self-employed or employed worker status is disputed.²⁵ Such service providers have been considered to play an intermediary role since, on the one hand, they have some of the features of an employment relationship, but on the other, they also contain elements of self-employment, without being fully identified with either of them. This due to the specific intrinsic nature of this type of service provision, with features such as having a flexible work schedule, variable remuneration depending on the number of hours worked and the use of certain work tools or equipment provided by the workers, who assume part of the expenses associated with those tools or equipment.²⁶ In any case, regardless of the interesting debate in scholarly research, which can even rely on the abundant case law in comparative law,²⁷ the actual debate is focused on the need to adopt a position as to whether each of the professional statuses described above fits within the concept of collaborative economy advocated earlier. Whether service providers are considered to be employees, or whether they are seen to be self-employed, it must be concluded that this does not fit into the concept of collaborative economy proposed. The reason is that both work contracts, which govern work conditions for employ-

²⁴ See Article 7 of Convention 181 of the International Labour Organization (ILO) of 19 June 1997 on private employment agencies; Article 29 of the Charter of Fundamental Rights of the European Union; and Article 3.1 of the European Social Charter. This is the situation of many professional social networks that are not limited to operating as vehicles that facilitate and pass knowledge between the parties, but also manage it and put them in contact through any available means of communication, including, among others, their own websites, email, Whatsapp and text messages [AGUILAR DEL CASTILLO, MC (2018, p. 518)]. Another issue, no less important, but one that goes beyond the scope of this study, is the absence of regulation of these new forms of digital mediation, above all, due to the consequences that derive from this absence.

²⁵ For a more in-depth analysis, see GINÉS I FABRELLAS, A. and GÁLVEZ DURAN, S. (2016, pp. 1-44). Of interest is, *The Social Protection of Workers in the Platform Economy* (2017, pp. 67-98).

²⁶ CUBO MAYO, A., GIL VILLANUEVA, M., LÓPEZ ORTEGA, M.J., MONTES RIVAS, J.M. and RODRÍGUEZ ALBA, C. (2016, p. 459).

²⁷ In this regard, see OTERO GURRUCHAGA, C. (2018, pp. 61-74).

ees, and business and services agreements, which govern the terms for services provided on a self-employed basis, are based on an obligation to work in exchange for income.²⁸ There is certainly a synallagmatic relationship between the person who provides the service or executes the work and the person who receives it, so both parties, with their respective and reciprocal rights and obligations, seek to benefit from the transaction. But this benefit is based on the individual interest of each party, and the common interest and objective inherent to the collaborative economy are lacking. There is no collaboration between the parties and there is no 'non-reciprocal prosocial behaviour', since their personal aims are not subject to any common objective, nor do they tend to generate a common value which benefits both parties.

It seems advisable to seek the cooperative model, in particular taking into account the legal insecurity concerning the discussion on the legal nature of the link between service providers and owners of online platforms or apps.²⁹ Such legal insecurity³⁰ may cause the violation of service providers' rights; it often constitutes a fraudulent departure from employment law,³¹ due to the *modus operandi* of the relationship between the parties³² (in an increasingly flexible context of economic exchange³³), or to an inappropriate categorisation of the relationship between them, which is too focused on the legal term used by the parties to refer to the relationship between them. In fact, it is worth remembering that several European institutions have linked cooperatives

²⁸ BARREIRO GONZÁLEZ, G. (2004, p. 73).

²⁹ Regarding this legal uncertainty see VALLECILLO GÁMEZ, M.R. (2017, pp. 463-468).

³⁰ In this regard, the European Committee of the Regions noted that, the fact that 'many forms of work in the collaborative economy appear to lie mid-way between salaried employment and freelance work' results in 'a situation which raises important questions related to working conditions, health and safety, health care coverage, paid sick leave, unemployment benefits and retirement pensions.' This situation could give rise to a new category of workers with precarious jobs (paragraph 28). In the same way, it pointed out that 'some collaborative economy business models have produced strong negative social and employment-related externalities, in particular by abusing the concept of "self-employment", and rely on social disparities between workers depending on the national legislation that applies in the country where the service is provided'(paragraph 29), which clearly translates into social dumping [cf. Opinion of the European Committee of the Regions of 7 December 2016: Collaborative economy and online platforms: a shared view of cities and regions (OJEU of 9 June, 2017, C-185)].

³¹ In this regard, see TRIGUERO MARTÍNEZ, L.A. (2017, p. 263).

³² For a detailed description of this *modus operandi*, see MERCADER UGUINA, J.R. (2017, pp. 88-98).

³³ On the process of massive outsourcing and decentralisation with specific features that occur as a manifestation of this flexibility and its consequences, see TRILLO, F. (2017, pp. 433-434).

to the collaborative economy. Firstly, the European Economic and Social Committee, in its Opinion, of 21 January 2014, on 'Collaborative or participatory consumption, a sustainability model for the 21st century', proposed cooperativism as one of the lines of action that should form part of a strategy for the sound development of collaborative or participatory consumption (section 5.2.i). Specifically, it states that 'cooperatives can become the main ally of collaborative or participatory consumption, because they combine and share principles and values'. And it is considered that 'the cooperative movement can strengthen initiatives, proactively and reactively, also harbouring networks of collaborative or participative consumption that are symbiotic for their respective objectives in their fabric'.³⁴ Consumer cooperatives and zero kilometre cooperatives are provided as prime examples of this.³⁵ Subsequently, in its Opinion of 25 May, 2016, on the topic 'Sharing economy and self-regulation', the European Economic and Social Committee seemingly contradicted itself, by excluding cooperatives from the concept of the collaborative economy (section 6.7.a). However, this exclusion should be properly understood, because whereas one thing is considering that cooperativism and the collaborative economy have points in common in terms of principles and values, and another, simply considering all cooperatives in themselves as practices within the collaborative economy.³⁶

For its part, the European Committee of the Regions, in its opinion of 4 December, 2015, 'The local and regional dimension of the sharing economy', after establishing that a part of the collaborative economy belongs to the social economy (section 2, *in fine*), in which the cooperatives are located, 'encourages the European Commission and Member States to establish incentives for collaborative economy to support and implement the principles of the social economy (in particular with regard to the principles of solidarity, democracy and participation, and cooperation with the local community)' (section 23). In this vein, in its Opinion of 7 December, 2016, 'Collaborative economy and online platforms: a shared vision of cities and regions', it 'asks the Member States, local and regional authorities and the Commission to encourage innovative solutions to the social and employment challenges raised by the collaborative economy'; in particular, uses a cooperative as an ex-

³⁴ SALCEDO AZNAL, A. (2011, pp. 65-68).

³⁵ Zero kilometre cooperatives are cooperatives providing products or activities related to the local economy that lessen the impact caused by long-distance transport and delivery.

³⁶ In that sense, see ALFONSO SÁCHEZ, R. (2016, p. 247).

ample of an organisation that gives workers access to a wide range of social protection measures (section 30).

In principle, cooperatives seem to meet the criteria to be included within the umbrella term of collaborative economy that has been advocated here, based on the considerations of the European Committee of the Regions. In particular, cooperatives are a suitable instrument for the creation of meeting spaces where people with common needs or interests exchange value and/or collaborate to achieve a common goal. This is also consistent with the 'non-reciprocal prosocial behaviour' mentioned by the European Economic and Social Committee, in the sense that cooperatives have a common objective, sought by the members, which subordinates their individual goals to it. Ultimately, cooperatives share in the idea of the partnership contract, in which there is an associational purpose, in contrast to the work contract, executed merely on an exchange basis and service agreements, which lacks *afectio societatis*.³⁷ This associational nature or purpose means that member contributions are directed to a common goal. As a consequence of this associational purpose, there is a partnership in terms of management and risks, both positive and negative.³⁸ The synallagmatic relationship occurs between the members and the cooperative, and therefore there is reciprocity of rights and obligations between the cooperative and each of the members.

There are a number of prerequisites in order for digital forms of work to take the form of cooperatives, and for them also to be part of the collaborative economy. These will be discussed in the last section of this study.

3. Digital cooperatives: the most suitable means to enable the new forms of digital work within the scope of the collaborative economy

The different forms of digital work can be channelled through digital cooperatives; but it is necessary to define the meaning and scope of the concept of the 'digital cooperative'. Digital cooperatives are entities that carry out their economic activity legally and solely online, and they operate according to the principles and values of the social economy; that is, they lack physical headquarters to conduct their day-to-day ac-

³⁷ See MARTÍN BLANCO, J. (1957, pp. 77-91).

³⁸ BARREIRO GONZÁLEZ, G. (2004, p. 73).

tivity, and instead they have an online meeting point where members and customers interact.³⁹ As a general rule, these cooperatives do not have a physical space to interact with their members and clients. But if the activity they carry out partly requires a physical venue (for example, for the distribution of fruit and vegetables), this activity does not cease to be virtual. In order for it to be fully carried out, the activity requires these two aspects, that is, one conducted online and one that takes place physically.⁴⁰

However, taking into account the definition provided, special attention should be paid to compliance with the principles and values of the social economy by digital cooperatives. Regardless of the generic legal term used ('cooperative') and of the legal form under which the parties operate in the market, their principles and values (both regarding the internal rules and the daily operation of the cooperative) must be in compliance with the applicable laws.⁴¹ These principles and values include the cooperative principles established in the Manchester Congress of 1995, through the Declaration of the International Cooperative Alliance on Co-operative Identity.⁴² In fact, this is a concern among cooperatives; while the business pluralism in the cooperative system (as opposed to cooperativist fundamentalism) has meant that it has been enhanced and universalised, there is also a danger of it being subsumed by the capitalist system and engaging in practices that have little or nothing to do with cooperativism.⁴³ Therefore, not all types of digital cooperatives should not be allowed to call themselves cooperatives, or even to be established according to the legal requirements set forth by cooperative laws if, in reality, such cooperatives fail to incorporate into their business concept all the values and principles that inform the cooperative movement. This is the case of the so-called billing cooperatives, which are *de facto* configured as online cooperatives.

³⁹ GUTIÉRREZ BENGOCHEA, M. and SÁNCHEZ-ARCHIDONA HIDALGO, G. (2016, pp. 34-35). In the specific case of Spain, the principles and values of the Social Economy are provided for in Law 5/2011, of 29 March, on the Social Economy (Official Gazette, (hereafter BOE, for its initials in Spanish) of 30 March, 2011, No. 76). The standard to which the activities carried out by digital cooperatives must submit is Law 32/2002, of 11 July, on services of the information society and electronic commerce (BOE of 12 July, 2002, No. 166).

⁴⁰ GUTIÉRREZ BENGOCHEA, M. and SÁNCHEZ-ARCHIDONA HIDALGO, G. (2016, pp. 34-35).

⁴¹ ARRIETA IDIAKEZ, F.J. (2014, p. 40).

⁴² MACPHERSON, I. (1995, 69 pp.).

⁴³ In this sense, it should always be based on the maxim 'to adapt intelligently to circumstances is not to conform to them' [DIVAR GARTEIZ-AURRECOA, J. (2011, p.131)].

They seek to attract all kinds of professionals in order to 'sell' them a tax scheme for billing services, and particularly, a form of Social Security affiliation that may be beneficial to them.⁴⁴ Hence, these cooperatives are considered to 'operate as mere commission agents'.⁴⁵ This type of cooperatives do not meet the criteria of work cooperatives, due to the following 'impurities':⁴⁶ they do not provide their members with jobs, through their personal and direct effort and through the organisation of the common production of goods or services for third parties; the supposed member/worker mainly receives remuneration from their own individual clients, and not through monthly partnership advance payments (payments on account of surplus) or revenue from cooperative activity; the intermittent and transient contacts between the apparent worker/member and the cooperative (which occur only when said worker/member provides a service and bills the customer) are not aligned with true democratic control by its members. As a result, since they act in contravention of the law, these cooperatives should be disqualified, and therefore, dissolved, as happened in Spain, with Cooperativa Fidelis Factu, S. Coop. (Valencia), owner of the Factoo brand⁴⁷.

These entities are different from those cooperatives that do have a specific regulation, and that could be valid means for digital work. This is the case of French activity and employment cooperatives⁴⁸ and of cooperatives for entrepreneurship and business development and of entrepreneurs' cooperatives, regulated in some Spanish autonomous regions (Andalusia⁴⁹, Cantabria⁵⁰ and Catalonia⁵¹), obviously setting aside the differences between them. In French activity and employment cooperatives, members are provided with entrepreneur/employee status under a permanent contract,⁵² which gives members

⁴⁴ For further information, see ALTÉS TÁRREGA, JA (2018, pp. 45-50); HERNÁNDEZ BEJARANO, M. (2017, pp. 173-181); LÓPEZ GANDÍA, J. (2017, p.33).

⁴⁵ LOZANO LOZANO, A. (2017, p. 719).

⁴⁶ LACOMBA PÉREZ, FR (2017, pp. 282-284).

⁴⁷ The Spanish Ministry of Employment and Social Security decided to disqualify it on 17 August, 2017. See <http://prensa.empleo.gob.es/WebPrensa/noticias/laboral/detalle/3111>.

⁴⁸ Cf. Articles 47 and 48 of French LOI no. 2014-856 of 31 July, 2014 on the Economic and Social Economy (French Official Gazette of 1 August, 2014, No. 0176).

⁴⁹ See Article 93 of Law 14/2011, of 23 December, on Andalusian Cooperative Societies (BOE of 20 January, 2012, No. 17).

⁵⁰ Cf. Article 130 of Law 6/2013, of 6 November, on Cooperatives of Cantabria (BOE of 27 November, 2013, No. 284).

⁵¹ Cf. Third Additional Provision of Law 12/2015, of 9 July, on cooperatives, of Catalonia (BOE of 14 August, 2015, No. 194).

⁵² AUVERGNON, P. (2016, p.12).

employment stability and complies with cooperative principles, in particular, with the principle of democratic management by members. In contrast, cooperatives for entrepreneurship and business development and entrepreneurs' cooperatives are more difficult to characterise. In essence, these cooperatives have a double corporate purpose. On the one hand, its activity must focus on promoting entrepreneurship, by offering help, advice, training and mentoring to entrepreneurs. On the other hand, its activity must provide a mutualised instrumental structure that allows them to engage in a professional practice. However, the main activity should be the former. Precisely for this reason, it seems that the link between the members and this type of cooperatives should have a fixed term, since the *raison d'être* of these cooperatives means that once the business activity or project is established, the member should become independent from the cooperative and operate in the market autonomously, or create another cooperative⁵³ together with other partners. If only the second corporate purpose is fulfilled, the risk would be that such cooperatives might become closer to billing cooperatives.⁵⁴ Therefore, to avoid any doubt about compliance with cooperative principles, this type of cooperatives must operate as a meeting point between workers who share needs, where they not only pursue economic and instrumental objectives, but also generate projects, support activities and provide material and means of production, acting in accordance with the principle of mutuality.⁵⁵ They must also comply with the principle of democratic management, whereby the political power in the cooperative should be shared among the members of the structure and the user members, in order to balance the interests of both groups of members.⁵⁶

Having made these qualifications as to how digital cooperatives fit within the concept of the collaborative economy, it is clear that a true cooperative enables its members to obtain value additional to the individual conduct of the activity by each of the members. But if it is accepted that platforms and apps are essential in digital work, because the workers need them to provide their services, the cooperative option serves a twofold purpose: on the one hand, providing a service to the members, consisting in managing the platforms and apps; on the other hand, providing stable and quality employment to the members who

⁵³ ALTÉS TÁRREGA, JA (2018, pp.51-52 and 58).

⁵⁴ ALTÉS TÁRREGA, JA (2018, p. 59).

⁵⁵ LOZANO LOZANO, A. (2017, p. 719).

⁵⁶ LOZANO LOZANO, A. (2017, pp. 725-726).

carry out their work thanks to the platforms and apps.⁵⁷ This alternative is particularly attractive taking into account that work is a scarce commodity.⁵⁸ The hybrid nature of digital cooperatives, which places them half-way between service cooperatives and worker cooperatives, is what makes possible to include them as part of the collaborative economy.⁵⁹ In fact, it is that combination that allows the creation of a value shared by all members as a common goal. In other words, the combination of the service-value and work-value seeks a higher value, namely to generate common good to the benefit of all its members.

4. Conclusions

1. The dynamic and diffuse nature of the concept of collaborative economy, which is not legally regulated at present, makes it possible to develop a broad concept that incorporates a new economic identity within the market logic or aspect presented by the collaborative economy, according to the considerations made by the European Committee of the Regions. Those undertakings that ensure the balance between the economic and the social can be included within the umbrella term of collaborative economy. To do so, these companies need to create meeting spaces where people with a common interest contribute to the creation of common value, from which they all benefit. Ultimately, it is a question of bringing into effect what the European Economic and Social Committee has called 'non-reciprocal prosocial behaviour', namely subjecting personal goals to the common objective sought by all parties involved in the undertaking, to the extent only by doing so can the desired common value be created.

⁵⁷ On how cooperatives may incorporate new elements of the collaborative economy without neglecting the principles and values inherent to them, see COMO, E, MATIS, A, TOGNETTI, M. and RAPISARDI, A. (2016, 35 pp).

⁵⁸ This alternative is starting to be successful in Spain. As an example, some former distributors from Deliveroo, Glovo, Stuart, Uber Eats and Shargo have come together under the Ridersxderechos platform, with the aim of creating a cooperative called Mensakas. They plan to launch a mobile application for online shopping and home delivery to promote decent work and responsible consumption and closeness to restaurants and shops in Barcelona. In this regard see: <http://m.deia.eus/2018/05/20/economia/exrepartidores-de-deliveroo-y-glovo-crean-una-cooperativa>; and <https://www.goteo.org/project/mensakas--app-de-menjar-a-domicil-responsable>.

⁵⁹ On the value of digital cooperatives, emphasising their collective ownership and their virtues in terms of the rights of members in terms of social protection, see SCHOLZ, T. (2016, pp. 18-21).

2. A broad concept of the collaborative economy is more in line with reality. This makes it possible to identify those companies that are worthy of being considered as models due to the positive aspects they bring to the societies in which they are located, in line with the conceptualisation of the collaborative economy outlined by the European Committee of the Regions. In addition, these companies can be differentiated from those that currently make an inappropriate, self-interested use of the term collaborative economy, with devastating consequences in terms of workers' labour and employment conditions.

3. The collaborative economy manifests itself mainly through different forms of digital work that generally operate under the parameters of the gig economy and the on-demand economy. The two major models of service provision under such parameters, namely *crowd-work* and work via apps, should not be considered as part of the collaborative economy. Such inclusion is prevented by the legal nature of the link between service providers and owners of online platforms and apps, regardless of whether that link is based on a work contract or a business and services agreement. Both professional statuses are based on an exchange whereby the benefit obtained by each party is in their individual interest. Thus, the interest and the common objective inherent to the collaborative economy are lacking.

4. The legal uncertainty produced by the discussion on the legal nature of the link between service providers and owners of online platforms and apps, and its disastrous consequences for service providers, make it advisable to choose the cooperative model, especially taking into account that various European institutions have linked cooperatives and the collaborative economy.

5. Cooperatives as such comply with the criteria of the collaborative economy based on the European Committee of the Regions' recommendations. In particular, cooperatives are a suitable instrument for the creation of meeting spaces where people with common needs or interests engage in an exchange of value and/or collaborate to achieve a common goal. They are also consistent with the 'non-reciprocal prosocial behaviour' mentioned by the European Economic and Social Committee, in the sense that cooperatives have a common objective, sought by their members, which subordinates their individual aims to the common goal. The associational purpose inherent to the partnership contracts that govern cooperatives ultimately means that the contributions of the members are directed to achieve a common objective.

6. Digital cooperatives are those entities that carry out their economic activity legally and only or mainly, online, under the principles and values of the social economy. Consequently, all types of digital cooperatives should not be allowed to call themselves, or even be legally established as cooperatives under the legal requirements set forth by the cooperative laws. On the contrary, digital cooperatives must also incorporate all the values and principles that inform the cooperative movement into their business concept, thus implementing the values and principles of the social economy.

7. Billing cooperatives should not be allowed to channel digital work because they do not fulfil the criteria of work cooperatives by which they are formally inspired and protected. Quite the contrary, they must be disqualified and dissolved.

8. French activity and employment cooperatives provide their members with an entrepreneur/employee statute under a permanent contract, which provides employment stability for the members and compliance with cooperative principles, in particular, with the principle of democratic management by members.

9. The operation of entrepreneurship and business promotion cooperatives and entrepreneurs' cooperatives, which have been regulated in Spain, is limited to the first stage of their members' venture, in which they try to start up their business project. The main purpose of these cooperatives lies in promoting entrepreneurship, by giving help, advice, training and mentoring to their entrepreneurial members. Provided that this purpose is fulfilled, it is indifferent whether these cooperatives also act as an instrumental structure that allows their members to carry out their professional activity, in the style of billing cooperatives. Ultimately, in order to abide by cooperative essential principles, this type of cooperatives must operate as a meeting point between workers who share needs, by generating projects, supporting activities and lending material and means of production. Likewise, the democratic principle must be complied with, so that the political power in the cooperative can be exercised both by the structural members and by the user members.

10. Digital cooperatives, as long as they are true cooperatives (by implementing cooperative principles and values), fit into the concept of collaborative economy. This results from the combination of a service-value (through the management of digital platforms and apps) and a work-value (realised through stable and quality employment enjoyed by members) that is generated to seek a higher value: generating common good to the benefit of all its members.

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