

EUROPE'S COLLABORATIVE ECONOMY

CHARTING A CONSTRUCTIVE
PATH FORWARD

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TASK FORCE REPORT
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Europe's Collaborative Economy

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CEPS Task Force Report

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Centre for European Policy Studies (CEPS)
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More than 50 participants took part in this project, representing a wide range of stakeholders and points of view from collaborative economy companies, academics, labour leaders, and traditional industries. European Commission officials from the various departments dealing with the collaborative economy also took part in the sessions.

The Task Force convened five meetings of three and a half hours each at the CEPS headquarters in Brussels and via video conference between January and June 2020. The Covid-19 crisis meant that the final three sessions were conducted via Zoom. While the pandemic raised existential challenges for the collaborative economy, it did not slow us down or diminish the need for policy innovation.

CEPS acknowledges support from [Airbnb](#), [Badi](#), [Bolt](#), [FREE NOW](#), [Uber](#) and [Zurich Insurance](#) in financing the Task Force. This report was conducted in complete independence. The authors, while attempted to show all sides, take full responsibility for its conclusions and policy recommendations.

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EXECUTIVE SUMMARY

To recover from the Covid-19 crisis, Europe needs to unlock new economic activity. This Task Force found that ride-hailing, home sharing, meal delivery and other forms of digitally empowered task-sharing can help – all new businesses that represent the collaborative economy. They create jobs and growth, yet they also raise a series of difficult policy and legal questions that has fuelled conflicts in cities and resulted in contradictory court rulings across Europe.

Should these platforms be regulated as information society digital platforms or as traditional hotel and travel services? Should their workers be considered as independent contractors, employees, or something in between? How should participants, often amateurs as well as professionals, be taxed and insured? And, perhaps most importantly, how can we allow cities to adopt regulations for local circumstances without undermining the single European market?

This Task Force report offers some potential answers and concrete recommendations. It starts with the premise that Europe's present fragmented and unclear rules governing the collaborative economy should be smoothed over. Both traditional and new digitally empowered platforms should navigate a level playing field. While allowing cities room to impose local standards, the European Union needs to provide clarity for the new business model.

We held five Task Force sessions open to the public, under the Chatham House rule. Participants represented a wide range of stakeholders and points of view, from collaborative economy companies, academics, labour leaders, and traditional industries. All worked alongside European Commission officials from the various departments dealing with the collaborative economy. While not everyone agreed on whether workers should be employees or independent contractors, and on the issue of optimal leeway for local deviations, the general outlines of a potential compromise emerged. The recommendations include:

- Strong, Europe-wide rules need to be reinforced in the upcoming Digital Services Act. Platforms should assume additional responsibilities for the activities of their workers and customers. They can be required to improve vetting and share certain types of information about their users with cities and other governments.
- Platforms should not be forced to conduct constant monitoring or assume liability for activities of which they have little knowledge, such as whether their users have paid the correct amount of tax or are respecting specific local transport or accommodation laws.

- Collaborative economy workers should receive increased social protection. Task Force members could not agree on the issue of employee status, but explored potential alternatives, including a French social charter.
- A Good Samaritan clause is needed: collaborative economy platforms should be able to provide additional services to their workers and customers without increasing their liability. If they offer insurance to hosts or drivers, for example, they should not risk seeing them reclassified as employees.
- Platforms should be able to continue to benefit from the country of origin principle that allows them to follow the laws of the country where they are established. Since it is understandable that cities are frustrated by the inefficiency of trying to enforce laws from corporations located far away, a single European regulator could help to settle disputes.
- Digital gatekeepers do not dominate the collaborative economy. It is a competitive environment. Barriers to entry are weak – the creation of a website suffices – and strong European players are challenging global US firms. Both workers and consumers enjoy choice; they can order a ride or rent short-term lodging from a different platform with a couple of keyboard clicks.
- The collaborative economy requires sector-specific reforms. Taxi reform is urgent. Estonia's reform law represents a good model, creating a level playing field between traditional taxis and new ride-hailing apps. Other services offered on collaborative economy platforms could benefit from simplifying the licences and restrictions that were designed before the age of the internet.

INTRODUCTION

In 2016, the European Commission published an ambitious [Communication](#) to spur the development of Europe's collaborative economy. It encouraged ride-hailing, home sharing, meal delivery, and other forms of digitally empowered task-sharing to create "new opportunities for consumers and entrepreneurs" that could "make an important contribution to jobs and growth in the European Union if encouraged and developed in a responsible manner" (European Commission, 2016).

Today, regulatory uncertainties undermine these ambitions. Stakeholders, including private companies, municipal authorities, workers and consumers, struggle with a patchwork of national and local regulations and legal uncertainty. Although there is friction between newcomers and incumbents, the worst tension exists between platforms and cities. Across the continent, authorities have imposed a wide range of restrictions on the use of private vehicles and homes for ride and home sharing.

The complex and often legally contradictory regulations fragment the digital single market. Whereas large, established platforms may have the resources required to overcome these hurdles, European small businesses and start-ups struggle to build coherent continent-wide businesses.

Covid-19 adds urgency to the need for reform. collaborative economy businesses are among the hardest hit by the pandemic. The incomes of hosts and drivers have shrivelled because fewer customers are renting rooms and demand for ride-hailing has plummeted. Many platforms are responding by offering partial or full refunds – and calling for the government to include their suppliers and workers in bail-out programmes.

The statistics are alarming. Estonian ride-hailing firm Bolt's sales had plummeted by [75% in mid-March](#) 2020 from the previous month. In mid-August, Uber [said](#) that its second quarter gross bookings had dropped by 80% year-on-year. Its net loss reached \$1.78 billion. The company had already announced that it had laid off 3,700 employees, or 14% of its staff. Lyft, another ride-hailing leader, let go 17% of its workforce.

Many platform economy [workers](#) continued to deliver meals and offer rides during the pandemic, however. Even though some platforms offered financial assistance, workers organised petitions, walkouts, no-shows and strikes, putting pressure on politicians and courts for platform workers to receive social and health protections, or even be registered as full-time employees. Although in November, 2020, California voters [decided](#) in a referendum that platform workers should remain independent contractors, this debate remains open in Europe.

Home sharing faced similar devastation. In May, 2020, Airbnb slashed [1,900 staff](#), about 25% of its total workforce. Sales are projected to fall by at least 50% in 2020, according to [Reuters](#).

Despite the setting up of a €220 million support fund, many Airbnb hosts, who, unlike hotels, are often sole proprietors without credit lines or much capital, will struggle.

Once the pandemic subsides, however, both ride-hailing and home sharing will rebound, and there are already signs of this. Ride-hailing companies are working with [transit agencies](#) and local government officials to provide essential workers with [rides](#). Uber pledged 10 million free rides and food deliveries to healthcare workers, seniors and people in need around the globe. Drivers were offered opportunities to deliver food and parcels. In France, a May 2020 survey of riders who depended on Uber for transport before Covid-19 revealed that two thirds expect to return to ride-hailing by the autumn. Estonia's Bolt increased investment into segments such as electric scooter rentals and food delivery. "The focus is on adjusting the business in these times when people are just not able to move," [says](#) Bolt CEO Markus Villig. In terms of adjusted net revenue, Uber Eats is now bigger than its original and core ride-hailing division, generating \$885 million in revenue in the second quarter of 2020, compared with \$795 million for ride-hailing.

Home sharing is recovering and also changing in shape. During the pandemic, travellers and holidaymakers seem to trust individual homestays rather than large hotels. Airbnb reported that, as of July 8th, guests booked more than one million nights of future stays at Airbnb listings around the world, the first time to hit that level since 3rd March. Demand moved from crowded cities to rural areas. "Why are guests returning faster to the sharing economy than traditional accommodation providers?" asked hotel consultant [Larry Mogelonsky](#). His answer: travel is becoming local, within a few hours' drive of home. Safety with secure cleaning is prioritised. Working from home can mean working from any home. Travellers demand high-speed WIFI connections and working space. Instead of bookings for two- to three-night stays, stays of a week or more are becoming common. "This is a giant experiment where people are realising they can work remote," explains Airbnb CEO and founder Brian Chesky ([Businessweek](#)). In August 2020, the company confidentially [filed papers](#) to make its initial public offering before the end of 2020.

City officials are beginning to reconsider some of their attitudes to the opposition. While they have long battled with the ride and room platforms, they will need the collaborative economy to recover from Covid-19's devastation. Barcelona, a tourist-heavy city long in conflict with Uber and Airbnb, is coming under pressure to allow ride-hailing and scooter services to transport workers who are frightened to use subways and buses. While Barcelona's hotel rooms are difficult to repurpose, it is easy to transform home-sharing apartments into long-term rentals. In August, 2020, a [new tourism decree](#) legalised home sharing for the first time, though this leaves the door open for restrictive rules at the city level and Barcelona City Council has not yet signalled how it will respond.

Amid the crisis, a new outlook, a new impetus, and above all, a consistent new pan-European approach to regulating the collaborative economy is required. How can the application of existing regulatory frameworks be strengthened and made consistent throughout the

continent? What would new legislation or policy tools look like? What measures can and should be taken to encourage the growth of the specific collaborative economy, while preserving Europe's vaunted social model, including its tax base, strong labour protection and high standards of consumer safety?

It is the right time to suggest solutions. Even before Covid-19 hit, European Court of Justice rulings offered some new, if incomplete, legal boundaries. National initiatives such as France's social charter suggest ways to extend social rights and protection to platform workers. Digital platforms have begun to report information on income earned by their users at the request of tax authorities. They are also starting to impose safety checks, purchase insurance and assume responsibilities for activities on their platforms.

A new European Commission took office in December 2019 and is reviewing its options on how to address the challenges and opportunities of the digital world. In her inaugural [political guidelines](#), European Commission President Ursula von der Leyen promised that "a new Digital Services Act will upgrade our liability and safety rules for digital platforms, services, and products".

This CEPS Task Force aims to feed into the Commission review of the collaborative economy. It seeks to update the Commission's 2016 Communication and propose how best to move forward with policy initiatives that reduce the current regulatory fragmentation and allow companies to scale services across the entire continent, while protecting workers and minimising urban disruption.

CHAPTER ONE

DEFINING THE COLLABORATIVE ECONOMY



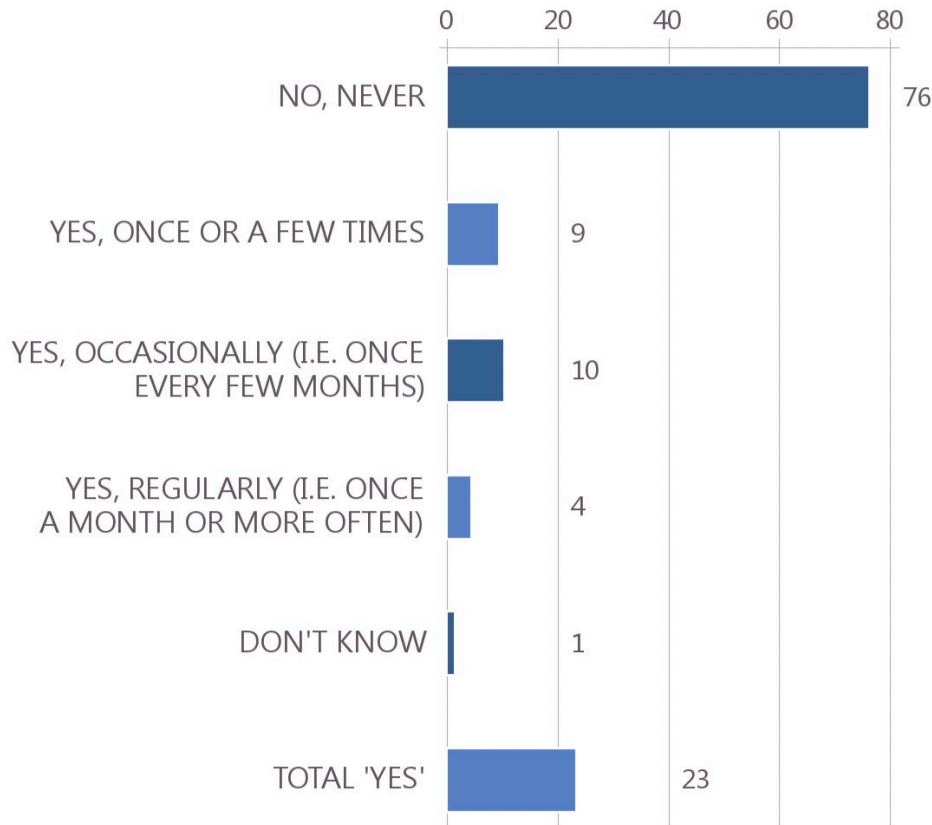
Defining the new digital platforms that allow consumers and service providers to connect is difficult. Over the past decade, a variety of expressions have been employed: ‘sharing economy’, ‘gig economy’, ‘peer economy’, and ‘collaborative economy’. Negative terms such as ‘shadow economy’ have also been used. These names would appear to be interchangeable, but a specific, useful term for this development in economic activity is required.

‘Collaborative economy’ seems to fit best. The European Commission deployed this term in its 2016 Communication, defining it as “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” (European Commission, 2016). The Commission paper describes three categories of actors within the collaborative economy: “service providers who share assets, resources, time and/or skills”; “users of these”; and “intermediaries that connect – via an online platform – providers with users and that facilitate transaction between them” (Ibid., 2016).

Some additional characteristics set the collaborative economy apart from other digital platforms and services. While a digital platform connects suppliers and consumers, the service is conducted in the physical world. Collaborative economy services are local, with a direct impact on the local economy and neighbourhoods. This local impact makes them vulnerable to regulatory fragmentation.

Figure 1. Nearly a quarter of Europeans have used collaborative platform services

D8 Have you ever used a service offered via a collaborative platform?
(% - EU)



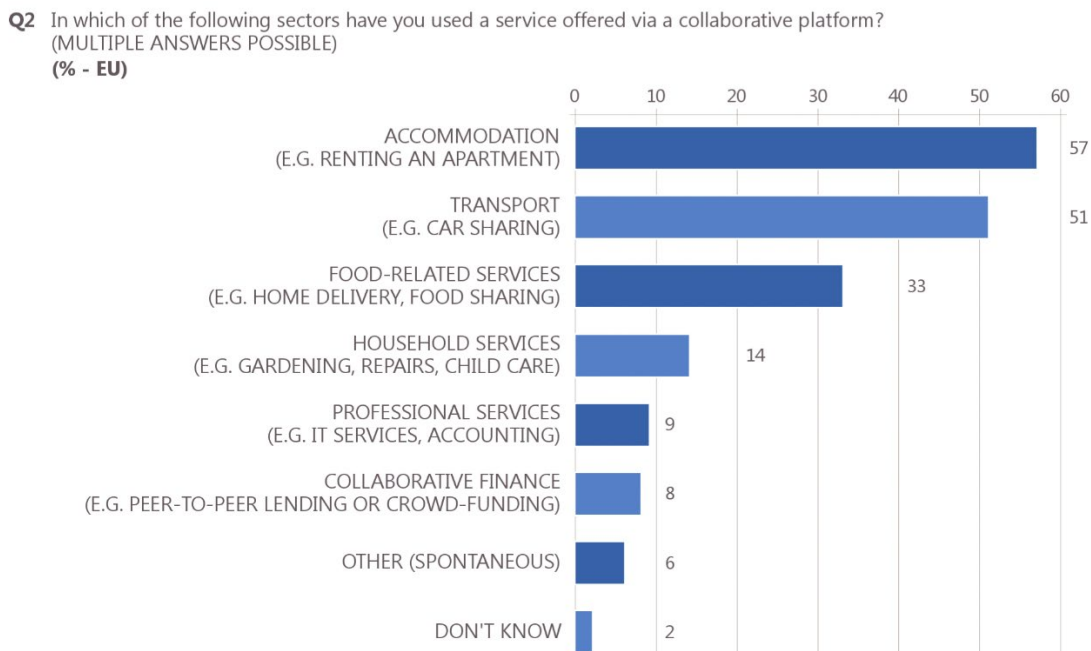
Source: Flash Eurobarometer 467, April 2018.

Task Force member Paul Belleflamme, professor of economics at the Université catholique de Louvain [UCL], led an independent, interdisciplinary five-year research project, “Platform Regulation and Operations in the Sharing Economy” (PROSEco), at UCL and the Université de Namur. It concluded that the European Commission’s definition was apt (Belleflamme, 2020). In Belleflamme’s analysis, collaborative economy transactions “generally do not involve a change of ownership and can be carried out for profit or not-for-profit.” He describes three roles within the collaborative economy that facilitate the coordination or sharing of goods and services: providers, platform, and customers.

This definition of the collaborative economy covers only a small part of overall digital economic activity. It excludes giant sectors such as e-commerce, search and social media. Our analysis concludes that Airbnb, Badi, BlaBlaCar, Uber, Bolt and FREE NOW fit the definition. Amazon and eBay do not; they involve changing ownership in most of their transactions and facilitate, for the most part, the exchange of goods, not services. Under this collaborative economy umbrella, we include sharing services such as [Share your meal](#) and delivery platforms such as [Deliveroo](#) and [Wolt](#).

One important caveat is that some companies operate hybrid business models that fall both inside and outside our definition of the collaborative economy. While Amazon's e-commerce retail marketplace stands outside, many of its other services, including its crowdsourcing '[Mechanical Turk](#)', fall inside. The Mechanical Turk, hosted on Amazon Web Services, allows businesses to locate 'crowd workers' to perform discrete on-demand tasks. Many of our Task Force members pointed out that they operate hybrid business models. Airbnb, for example, has expanded beyond its origins as a platform renting out spare rooms, and now includes primary and secondary homes, traditional vacation rentals, bed-and-breakfasts and hotels. The platform powers more than accommodation, with its 'Experiences' marketplace offering guided tours, cooking classes and other services.

Figure 2. Accommodation and transport services are those used most frequently via collaborative platforms



Source: Flash Eurobarometer 467, April 2018.

Our definition of the collaborative economy remains targeted. It explains the Task Force's decision to focus on transport, including delivery and mobility, and accommodation home sharing. These sectors dominate the modern collaborative economy.

While the European Commission aims to rewrite broad horizontal rules that underpin all digital platforms with its new Digital Services Act, it must consider how ride-hailing and home-sharing platforms operate. To what extent are they similar? Does it make sense to regulate them as one and the same, or should it consider where a sectoral approach might be appropriate? Does the platform 'control' the service provider or is it possible to work on several platforms? How might answers to these and other questions warrant different policy responses?

For much of the collaborative economy, existing regulatory frameworks treating payments, data protection and consumer protection, remain relevant. In contrast, new features of the collaborative economy concerning liability and workers' rights require new regulations.

Calculating Europe's collaborative economy

At first glance, Europe's collaborative economy remains modest in size. According to a [2018 study](#) commissioned by the European Commission, it accounts for €26.5 billion in revenues, or a mere 0.17% of Europe's GDP, and employs 394,000 people full-time, just 0.15% of total EU employment.

Yet these figures underestimate the collaborative economy's dramatic impact on European workers, consumers and cities. The collaborative economy is growing fast. Price Waterhouse [PwC] [calculated](#) that, on a global basis, it was worth €12.7 billion in 2014 and could reach €282 billion by 2025. A [study](#) conducted for the European Parliament estimated that the potential gains from removing barriers to bring underutilised assets into use could be of the order of €483 billion annually within the EU.

Large numbers of European consumers depend on collaborative services. Some "23% of Europeans used them at least once or a few times" in 2018 (Eurobarometer survey 467). They turned most to the new services in transport and accommodation – a reason for the Task Force's focus on these two sectors. Of all collaborative economy consumers, 57% rented rooms, 51% ordered rides, and 33% purchased food deliveries.

The new services are popular, particularly among young, highly educated urban consumers. Some 88% of customers recommend them, according to Eurobarometer, with most mentioning convenience. The biggest concern was a lack of clarity about who is responsible in case of disagreements: service providers or platforms. Barcelona start-up Badi offers mid-to long-term room rentals to young professionals. In 2019, Badi had 620,000 users and almost half were between 23 and 35 years old (Badi, n.d).

Young, urban, low-skilled workers depend on collaborative economy earnings, according to the Eurobarometer survey. The collaborative economy breaks barriers for workers otherwise kept out of the job market. In France, Uber, Bolt, FREE NOW and other ride-hailing platforms have become [a lifeline](#) for young, unemployed and discriminated-against immigrants living in [the northern Paris suburbs](#) (Financial Times, 2016).

The collaborative economy brings new opportunities to part-timers and non-professionals, categories which were not counted in the Commission studies. On the one hand, many collaborative economy participants are part-timers, some of whom are amateurs, participating in peer-to-peer platforms such as [BlaBlaCar](#). All of Estonian ride-hailing firm Bolt's 300,000 drivers in the European Union, on the other hand, are professionals, with licences to transport passengers for a fee.

Some collaborative economy workers drive four hours a week; others work 40 hours. This report will label them as private hire vehicle (PHV) drivers (VTC in France, Mietwagen in Germany). Both taxi and PHV drivers are able to work with ride-hailing apps and both can be booked through a dispatch centre or a private limo company by phone, fax, web-booking, or in the case of taxis, in person.

Despite its strong growth and large impact, Europe's collaborative economy is no gold mine. It is more like a gold rush, a frontier of promise and perils (Belleflamme, 2020). Barriers to entry to create mobile phone apps and platforms are low, but competition is fierce. More than a dozen ride-hailing platforms are duelling it out on Europe's streets, from Cabify in Spain to Bolt in Estonia. Even powerhouses like Airbnb and Uber are [loss making](#) (Eaglesham, Farrell, & Grind, 2020).

Covid-19 has increased this financial stress. As global travel fell into a coma, Airbnb lost €844 million through the first half of 2020 and its private market valuation plummeted, according to the [Wall Street Journal](#). The home-sharing platform was forced to take out an emergency loan at a high interest rate. Spending on rides [fell](#) by up to 80% year-on-year, all while costs rose as Airbnb refunded consumers and hosts and Uber, Bolt and other platforms compensated drivers and couriers exposed to Covid-19. At the end of 2020, however, business seems to be recovering.

Conflicts

When collaborative economy transportation and accommodation platforms began spreading across Europe, they collided with incumbents: taxi drivers and hotel owners, and later with municipal authorities and national governments.

In several member states, notably France and Spain, protesting taxi drivers clogged urban arteries. French taxi unions argued that Uber vehicles were not licensed for professional rides; a one-time taxi licence fee at the time in France cost up to [€240 000](#) (Toor, 2015). The National Union of Taxis in France reported that revenues fell by between 30% and 40% in the two years following Uber's launch in [France](#) (Rosemain, 2015).

Hotel operators objected to short-term rental services, claiming that they failed to respect hotel health and safety rules. In November 2019, farm and tourism trade union European Federation of Food, Agriculture and Tourism Trade Unions [EFFAT] expressed [concern](#) about the growth of platforms and demanded that short-term rentals be registered, pay their share of local taxes, and respect health and safety rules. "The EU should take further action to limit the negative impact of the platform economy on businesses and employment," demanded Kristjan Bragason, EFFAT General Secretary.

Other conflicts and challenges emerged:

Environment

Environmental activists attacked Uber, Lyft, Bolt and others for putting more polluting cars on the road. A [study](#) of traffic levels in San Francisco between 2010 and 2016 found that traffic congestion, measured in journey times, increased by 62%, and blamed Uber and Lyft for at least half of the increase. Platforms replied that their services reduce emissions and cut traffic jams by decreasing the need for private automobiles, which sit idle for 90% of the time. Uber [reported](#) in 2017 that its service saved cities 314 million vehicle miles and 82,000 metric tons of carbon dioxide emissions. Uber and Lyft have committed to [“the Step Up Declaration”](#) which encourages the use of electric cars as one way to fight climate change. Estonia’s Bolt says its rides in Europe have been [carbon neutral](#) since 2019. Most independent studies have focused on the US, where commuting by car is common. Additional research is needed to determine the impact in Europe.

Housing

Mayors fear that short-term rentals raise housing prices and crowd out locals, particularly in tourist centres. In Barcelona, before Covid-19, 1.5 million visitors stayed at Airbnb apartments each year. Although “five times as many people book rooms in traditional hotels,” nearly half of Airbnb properties in Barcelona are entire houses or apartments and many have been bought specifically as short-term rental investments (Mead, 2019). In June, 2019, 10 European municipalities, from Amsterdam to Vienna, signed a [joint letter](#) criticising short-term rentals for their “threats and risks for the social and liveable configuration of our cities.” Platforms counter that rising tourism combined with underinvestment in affordable housing are the chief culprits. Covid-19 seems to have defused some of this conflict, with few travellers visiting cities, though it is impossible to say whether this represents a structural change or a short-term, pandemic-fuelled development.

Labour

Labour unions worry about the precarious nature of one-time gigs such as rides, babysitting or handwork, and demand that platform workers receive social protection. The issue has prompted a vigorous debate about how to legally classify collaborative economy workers. Should they be employees, independent contractors, or receive some new status? Unions see employee status as the only way to guarantee social protection. France has moved forward with an ambitious attempt, creating an [“auto-entrepreneur”](#) system, allowing independent workers who earn less than €33 000 to set up their own companies with low taxation and simplified social security requirements. Even so, disputes rage in European courts about how to classify and protect platform workers. A French court ruled in March 2020 that one ride-hailing driver should be registered as a full-time employee.

Taxation

Incumbents and governments fret about lost tax revenues from income tax, tourist tax, and corporate tax. In response, some platforms have begun collecting taxes on behalf of their hosts and drivers, and to share earnings data with authorities. Over the past four years, Airbnb collected and remitted €1.7 billion in tourist taxes to local governments on behalf of its hosts. Municipal leaders complain that these payments are voluntary and ad hoc. They demand that the tax payments become generalised and legally enforceable. A related conflict concerns the data transfers and privacy: how requests for user data on taxes can be balanced with privacy obligations under Europe's strict GDPR law. Cities often demand bank account details and other data about collaborative economy drivers or home-sharing hosts. What is the appropriate balance between protecting personal privacy and facilitating tax collection?

Illegal content

As platforms have grown, so has illegal content. For online marketplaces, the main culprits are counterfeits and unsafe products. For social media sites, the enemy is illegal hate speech. For the collaborative economy, the [danger](#) comes from fake accounts, fake listings and fake reviews – non-existent short-term rentals, rentals that break local housing codes, or unlicensed drivers. Who is responsible for policing them? As we will see later, many platforms are taking strong measures to reassure customers, but how should this responsibility be turned into legal liability, without destroying their businesses and benefits?

Insurance

Since collaborative economy activities often fall into the grey zone between private and professional, the lack of clear legal status means many drivers and hosts are ineligible or find it difficult to obtain relevant support services. An example is insurance. Fewer than 10% of Airbnb hosts are professional hoteliers (Cohen & Sundararajan, 2017). Because hosts are often not fully registered businesses, insurance companies struggle to provide them with appropriate home insurance. In the US, a large percentage of ride-hailing drivers are behind the wheel with customers for less than 15 hours a week (ibid). In Europe, all are professionals. If they choose to work less than full time, European ride-hailing drivers find it difficult and expensive to obtain the appropriate car insurance.

Cities and platforms

At our kick-off meeting, participants made it clear that the most pressing collaborative economy conflicts no longer pit platforms against incumbents. The lines between the two are blurring. Ride-hailing apps operating in Europe, including Uber, Bolt and FREE NOW, work exclusively with professionally licensed drivers. Taxis often operate on these platforms.

German-based FREE NOW actually began by offering its app-hailing services to taxi drivers and has expanded across Europe, operating with taxi drivers.

Many short-term rental platforms, including Airbnb, enable hosts to list hotel rooms. Collaborative economy offerings complement as much as compete against traditional services. Almost [three quarters](#) of Airbnb's properties are located outside main hotel districts; in France, [80%](#) are located outside Paris.

If the old battle lines of newcomers versus incumbents are fading, tensions between platforms and local authorities are rising. Collaborative economy politics are contentious. Mayors say they are responding to the legitimate concerns of their constituents about preserving public transport services and preventing residents from being priced out of their neighbourhoods. During the recent Paris mayoral campaign, major candidates vowed to [crack down](#) on room sharing. Socialist Mayor Anne Hidalgo, the eventual winner, campaigned on her "total determination" to impose a €12.5 million fine against Airbnb for failing to remove listings of hosts that let out rooms for more than the legal 120 nights per year. Her opponents took equally tough lines. Centrist Cedric Villani suggested that the limit on legal renting should be cut to a maximum of 30 nights per year and conservative Rachida Dati promised to step up enforcement.

Targeted with political invective, platforms complain about inconsistent and burdensome local requirements. In May 2019, the Madrid City Council removed restrictions banning rentals under three months, only to impose new rules that ban 95% of all tourism rentals. Brussels requires hosts to provide a personal welcome, install specific lighting in bedrooms and a wardrobe containing at least two hangers per guest. Berlin demands a (multiple) paper registration form and manual official's examination for registering short-term rentals, which are difficult to obtain. In Italy, more than 1,000 cities have introduced a tourist tax, each with a different tariff, categorisation and seasonal variations. Another Italian law requires platforms that process payments to act as withholding agents for both tourist and income tax – rules which platforms feel are near impossible to comply with since they say they cannot know the income tax regime for each host.

Traditional taxi drivers often have to pass exhaustive exams and obey numerous restrictions. On top of these obligations, many cities have imposed specific additional obstacles on ride-hailing drivers, even when the rules are outdated for the digital world. Brussels stipulates that ride-hailing cars cost more than €33 000. While taxis can pick up fares in succession, Barcelona obliges ride-hailing drivers to wait 15 minutes before leaving for a pickup. Germany forces them to return to their garage or a predefined parking space between two trips unless they have prior bookings. Romania requires ride-hailing drivers to have cash registers. While these measures may be designed to protect workers against exploitation, they often seem discriminatory. Throughout much of Europe, for example, taxis are allowed to drive on bus lines. Platform drivers cannot.

Another area of tension concerns data requests. Although Europe's privacy rules limit the sharing of personal data, platforms argue that governments often overreach. A Spanish tax decree of 2018 required home-sharing platforms to report the cadastral (property tax) number of the property and to share guests' personal data. The Spanish Supreme Court struck down the decree. Proposals in Paris and Munich, among other cities, would oblige short-term rental platforms to report data on whether hosts are complying with local restrictions on home sharing (Airbnb, 2020). Although municipal officials insist that these broad data-sharing requests are consistent with Europe's GDPR privacy rules, collaborative economy companies argue that they run against the spirit of the law, and may even be illegal. In June 2020, a Bavarian court ruled that such data requests were illegal. Platforms also fear that many data requests break the e-Commerce Directive's prohibition on imposing general monitoring. (Interviews with collaborative economy companies).

Some cities have found compromises with platforms. Short-term housing services praise a Hamburg short-term room rental scheme that allows hosts to register online, free of charge and is simple to use. Ride-hailing services praise a new Estonian taxi regulation that treats taxi and ride-hailing drivers as equals.

Overall, though, a lack of clear legal status for collaborative economy platforms fuels conflict. Several recent landmark court cases at the European Court of Justice offer some, albeit admittedly incomplete and contradictory, guidance.

Legal uncertainty

The first case concerned UberPOP, the platform used by amateur drivers. The second focused on Airbnb. Both hinged on whether the platforms were information society services, covered under Europe's e-Commerce Directive, or transport and accommodation activities subject to the strict sectoral regulations.

Europe's e-Commerce Directive, enacted at the beginning of the century, set the key horizontal rules for the internet. A key principle is its country of origin clause, which subjects information society services to the laws of the European country in which they are established. Information society service providers are not held liable for illegal content, provided they had no knowledge of the illegal activity. Only once they receive knowledge about illegal content are they required to react and remove it.

In 2014, the Spanish taxi company Asociación Profesional Élite Taxi sued Uber, claiming that UberPOP should be defined as a transport service which should have a transport licence to operate in Barcelona. Uber argued that, as an information society service, it did not need such a licence. A Barcelona court referred the case to the European Court of Justice, asking to clarify the status of UberPOP.

In December 2017, the Court [ruled](#) UberPOP to be a transport service, not covered by the e-Commerce Directive. In a judgment that concerned only UberPOP's non-professional drivers,

judges declared that Uber exercised decisive influence on the conditions under which that service is provided. Key influences of Uber include the fact that Uber received the payments from users and compensated drivers afterwards. Additionally, Uber determined a maximum fare for rides and set standards on the quality of vehicles, drivers, and their conduct.

After the ruling, Uber shut down its UberPOP service for non-professional drivers in the European Union. Today, Uber and other ride-hailing services operate in Europe with professional drivers. Yet most ride-hailing platforms continue to consider themselves as information society services covered by the e-commerce liability protection. Several European countries including Portugal, Estonia and Finland have passed legislation that permit ride-hailing under these conditions. We will examine these progressive models for ride-hailing later in this report.

The clarifications offered in the Airbnb case seemed contradictory. In 2018, the French hotel and travel association AHTOP (Association pour un Hébergement et un TOurisme Professionnels) accused the accommodation platform of violating the 1970 Hoguet Law, which required private individuals to have a government-issued real estate licence before renting out a short-term room in France.

Like UberPOP, Airbnb claimed Europe's e-Commerce Directive protected its platform activities from local real-estate laws. In contrast to UberPOP, though, European Court judges [agreed](#). In their December 2019 decision, the judges drew a distinction between Airbnb and UberPOP that was based on their platforms' control over transactions. Airbnb neither determines the rental price a host charges nor matches the host with the renter. UberPOP sets the fare for rides and assigns each passenger a driver. The Court said that Airbnb, unlike UberPOP, fails to exert a 'decisive influence' over the accommodation offered on its platform. It is a tool for presenting and finding accommodation for rent rather than a real-estate agent.

Although the Court concluded that national European governments may, under certain circumstances, restrict the freedom to provide information society services, they must notify the European Commission in advance. France failed to ask the Commission whether its restrictive [Hoguet law](#) was compatible with European law. By siding with Airbnb, the court reinforced the right of European authorities to review whether restrictions placed on the collaborative economy violate the e-Commerce Directive.

The judgments left many unanswered questions. What level of 'control' pushes businesses over the tipping point to become a transport or real-estate company rather than an 'information society service'? Is determining the price of the service sufficient? If so, would freeing up the price be constructive, or just launch a race to the bottom, with drivers slashing tariffs to attract riders? Is it possible for all the varied types of collaborative economy platforms to be regulated as one and the same?

Another ride-sharing case is set to offer some guidance. On September 10, 2020 Polish Advocate General Maciej Szpunar concluded that Romania's Star Taxi acts as an information service, not a taxi company. In his decision, Advocate General Szpunar [said](#) that the crucial

factor was the degree of control a platform exerts over the transaction. Does it facilitate reservations, or does it carry out the entire transaction? Unlike UberPOP, Star Taxi doesn't set the price of a ride; it just connects people seeking rides with licensed drivers. Although the Advocate General's opinion is non-binding, the court's judges almost always follow it. In 2017, Szpunar [provided an opinion](#) that [UberPOP was a transport company](#). If upheld, the Star Taxi case will show that, despite the UberPOP ruling, ride-hailing apps can be information society platforms benefiting from the e-Commerce directive instead of from 27 national tax rules.

Courts are also being asked to determine conflicts on the platforms' relationships with their workers. A French court [ruled](#) in March, 2020 that Uber drivers were employees. Although in his UberPOP opinion, Advocate General Szpunar avoided this employee issue, he [said](#) in a recent interview that it is only a matter of time before Europe's highest Court will have to decide on the employment issue. A key factor, he says, will be whether workers are punished for accepting gigs from a competitor and whether the platform tries to control when and for how long workers work.

Lower courts are struggling to interpret the responsibilities of information platforms for their participants. In June 2020, a French court [ruled](#) Airbnb jointly liable for the illegal subletting of apartments. The court ordered Airbnb to reimburse a landlord more than €58 000, money received by a tenant who had sublet their apartment through the platform without permission from their landlord. More importantly, perhaps, the court found that Airbnb must check that the listings on its site are compliant with local laws and delete any that break the law. Airbnb has appealed, arguing that as an online platform, not a real-estate company, the tenant and landlord should settle the dispute.

Another important recent case before the European Court of Justice addressed the extent to which cities should be empowered to regulate collaborative economy services. Rather than focus on the e-Commerce Directive, this case centred on the Services Directive, which establishes a single market for services across the European Union. Paris authorities fined two apartment owners €15 000 for letting out their secondary homes for short-term rentals without obtaining official authorisation. The owners, Cali Apartments, appealed. In a preliminary opinion, Advocate General Michal Bobek [backed](#) the city authorities. "A shortage of long-term housing constitutes an overriding reason of public interest capable of justifying a national measure," Bobek said. At the same time, Bobek acknowledged that the Services Directive covered short-term tourist rentals and set out strict conditions for cities seeking exemptions.

On 22nd September, 2020, the full court followed this reasoning, ruling that Paris authorities enjoy the power to impose an authorisation scheme for renting out secondary apartments and houses. Paris Mayor Anne Hidalgo described the decision in a tweet as a "victory" that "marks a turning point for the supervision of seasonal rentals and constitutes a step forward for the right to housing for all".

Individual court rulings, even when clear, leave regulatory gaps. The legal status of platforms remains contested. Many regulations date from the pre-internet bricks and mortar era. In

Italy and France, Barcelona's Badi fears being labelled as a 'real-estate intermediary', even though it only connects roommates and has no power or control over rental arrangements. Italy also insists that Badi registers as a 'permanent establishment', with the heavy registration and reporting obligation this implies, even though the company has no office or employees in the country.

European authorities must reform the overarching liability rules for all digital platforms. While maintaining the ability of governments to regulate collaborative economy services at local, regional and national levels, European-level regulation can help protect consumers and ensure fair competition and tax compliance. In Brussels, officials are taking on the task, reviewing the e-Commerce Directive central to the Uber, Airbnb and Star cases. By the end of 2020, they plan to propose a new Digital Services Act.

CHAPTER TWO

FORGING A NEW DIGITAL SERVICES ACT



In 2000, just as the internet was going mainstream, Europe enacted the e-Commerce Directive, setting clear limits on liability for digital platforms. Platforms were not to be held responsible for illegal material uploaded to their sites; only for taking it down when informed.

The e-Commerce Directive is arguably one of the most successful pieces of European regulation. Without this legal safe harbour, many of the internet's success stories would never have got off the ground. Imagine if YouTube was held responsible for every upload, Blogger for every blogpost and TripAdvisor for each restaurant or hotel review. Such user-generated content would have been too dangerous to publish.

Despite its proven benefits, the much-admired e-Commerce Directive now finds itself under attack. Collaborative economy platforms have become large and successful, attracting millions of users around the globe. Hosts on Airbnb and other home-sharing services offer more rooms than any one hotel chain. Ride-hailing companies form partnerships with more drivers and transport companies. This innovation and growth brings further regulatory scrutiny and the need to take on additional responsibilities.

Over the past decade, the European Commission has pushed platforms into signing up to a variety of ‘voluntary’ codes of conduct. Online marketplaces have agreed to monitor the presence of counterfeits and to block the sale of unsafe products. Social media firms have signed up to a charter to block hate speech. These codes respect the e-Commerce Directive against monitoring, only reinforcing the second section which requires quick take-downs once notified.

In response to mounting political, regulatory and business pressure, many collaborative economy platforms have begun to take voluntary measures of their own, including helping to collect taxes on behalf of their users and providing their business partners and workers with insurance protection. These include:

Paying Taxes

Since digital platforms sell their services remotely, they do not need to have employees on the ground. While the figures are disputed, critics charge that they pay corporate tax in their home jurisdictions and little where they operate. Talks on a global corporate tax reform are underway at the Organisation for Economic Co-operation and Development [OECD] in Paris, which would allow countries to collect some taxes where digital platform sales are made. Most collaborative economy platforms [support](#) such a reform.

Local taxes, however, are more of a challenge for the collaborative economy than corporate tax. As independent contractors, ride-hailing drivers are responsible for paying their own income, sales and VAT taxes. Platforms often offer their drivers guidance to ease these tax payments. In many cities, home-sharing platforms collect local taxes from guests and hosts and remit the revenue to cities. Airbnb [says](#) it has collected more than €1.7 billion (\$2 billion) to date in hotel- and tourist-related taxes. In December 2018, Estonia’s Tax and Customs Board began [allowing](#) hosts to automatically report their earnings on a voluntary basis to tax authorities. In Denmark, the Danish government passed new home-sharing [rules](#) that legalise generous hosting limits, but only if they use platforms that share typical information to ensure their tax compliance. The European Commission proposed a tax [data sharing directive](#) in July 2020. This requires platforms to report income earned by their hosts and drivers to national tax authorities.

Enforcing Safety Measures

Ride-hailing services have introduced a series of measures to increase passenger confidence and respect local transport regulations. They verify identities of both the passenger and the driver, vet drivers, check vehicles, and provide a panic button that alerts the app or local authorities when a passenger feels in danger. Uber, for example, has introduced [Real-Time ID Check \(RTID\)](#), a face-verification solution that allows riders to compare the picture provided by drivers during initial background checks against their ID document.

House-sharing platforms are taking similar measures. Airbnb outlines safety, security and reliability [standards](#). It allows guests to rebook or get a refund if they find upon check-in that a listing does not meet the platform's standards. It bans party houses and is piloting noise-detector devices. A [24/7 Neighbourhood hotline](#) allows neighbours to contact the platform if guests are breaking the rules. The platform also fights discrimination, banning 1.3 million users who declined to agree to its non-discrimination policy.

Covid-19 has prompted platforms to take additional safety measures. Airbnb adopted a new [Cleaning Protocol](#) for hosts, with guidance from the former US Surgeon General Dr Vivek Murthy. Uber began [shipping](#) disinfectant sprays to drivers and distributing millions of ear-loop face masks. Drivers are required to complete ride-hailing Covid-19 safety videos and the company updated its app to notify drivers when to replace their masks. FREE NOW and Bolt subsidised the purchase of isolation screens to separate the driver from passengers and limit the risk of contamination.

Building registration regimes

Home-sharing platforms have worked with countries and cities to build online [registration schemes](#) developed in cities. Cities receive the information they need to be placed on providers of short-term rentals. Airbnb and city representatives in Hamburg have hosted information events on the new system.

Ride-hailing platforms follow local regulations and verify drivers before authorising them to join their platforms. The verifications are often annual. In most European countries, drivers must obtain a taxi or PHV licence that requires an exam and registration.

Sharing data

Authorities are obliging Collective Economy platforms to report data on their drivers and hosts. Tax authorities in France and Austria force platforms to share income earned on their merchants and hosts. In France, the authorities demand that ride-hailing platforms report driver revenues.

Outside of tax collection, Airbnb, Booking.com, Expedia Group and TripAdvisor have [agreed](#) with the European Commission to share with its Eurostat statistics agency a wide range of data including the number of nights booked by travellers and the number of guests. Out of privacy concerns, the data will not allow individual citizens or property owners to be identified. The first statistics are scheduled to be released in the second half of 2020, allowing public authorities to support evidence-based policies.

Many of these ‘best practices’ are by and large voluntary. Unions, consumer representatives, rights’ holders and other interest groups are pressing for binding legal solutions with strong enforcement mechanisms. In their view, platforms must be obliged to be ‘transparent’ about their rankings and actions and to institute redress mechanisms for their users and customers.

What is the right level of legal responsibility? Who should enforce any new rules? Should there be a Good Samaritan rule to encourage platforms to take proactive actions that go beyond what is legally required? Should all platforms, large as well as small, be subject to the same protection and rules? Or should small ones receive less restrictive rules because of their size?

The European Commission’s upcoming Digital Services Act represents a major attempt to answer these pressing questions. In her inaugural [political guidelines](#), European Commission President Ursula von der Leyen promised “A new Digital Services Act will upgrade our liability and safety rules for digital platforms, services and products” (Von der Leyen, 2019, p. 13). After the groundbreaking GDPR privacy legislation, the Digital Services Act could set a new global standard on regulating the internet. Despite a potential delay due to Covid-19, the legislation remains a Commission priority and a proposal is scheduled to be released by the end of 2020.

If collaborative economy platforms lose all liability protection and are loaded with unworkable requirements, they could shrivel and disappear. Yet platforms know that inaction is inappropriate. Without a careful revision of liability rules, they risk seeing the e-Commerce liability protections chipped away in an unstructured way. Europe’s new copyright legislation requires user-generated platforms to proactively police their platforms for copyrighted materials. Its new audiovisual legislation violates the e-Commerce country of origin principle by making video streaming services respect national content quota and financing rules.

Another risk is clear: without an update to the e-Commerce Directive, platforms’ voluntary efforts could backfire, increasing rather than decreasing their liability. Many platforms say they are reluctant to ‘actively’ police their content out of fear of losing protection under the e-Commerce Directive. Task force participants agreed that clarification is required to avoid the trap that additional action means additional liability.

At the same Task Force meeting, European Commission officials outlined their goal: “a fair balance between draconian regulation and laissez-faire freedom”. The new “upgraded legal framework should establish the responsibilities we expect online platforms to abide by when they enter the European Single Market,” an official said.

By empowering platforms to behave ‘responsibly’, the European Commission official explained that they must “ensure European citizens’ safety online when they buy online products or share information on online platforms and preserve their fundamental rights.”

This means “setting ground rules for a truly competitive single market for digital services, with ‘legal clarity’ and effective supervision of digital services” across the entire continent.

In concrete terms, the Commission promised that the new Digital Services Act should maintain the e-Commerce Directive’s broad horizontal framework. Platforms will *not* be required to conduct general monitoring and will *not* be liable for everything posted or business conducted without their knowledge, the official insisted. The e-Commerce Directive’s country of origin principle will be maintained, even though the present patchwork of often conflicting local regulations was acknowledged.

For cities, the new European-wide regulatory framework should ensure that platforms respect “[consumer protection, working conditions, safety, hygiene, quality and environmental standards](#)”. They demand “an EU-wide threshold for the level of economic activity subject to market regulation” and “a certification system applying to particular sectors, business models or practices to help consumers make informed choices” (Eurocities, 2017, pp. 3).

Other key demands are outlined in the Committee of the Region’s “European framework for regulatory responses to the collaborative economy” (Florianschütz, 2019).

Data: European cities and municipalities must be given access to relevant platform data to collect taxes and enforce building and driving regulations.

Restriction of country of origin: European cities want legal disputes to be settled locally, not in foreign jurisdictions.

Proactive monitoring: online platforms do not act as mere ‘noticeboards’; the services offered include ratings and market development, and should be required to monitor what is posted on their platforms.

Although, if taken in their entirety, these proposals would gut the e-Commerce Directive, eliminating the key country of origin and prohibition of general monitoring clauses, some elements could be incorporated into a potential reform. Common pan-European criteria could be established on Collective Economy platform responsibilities. Clear European-wide guidelines around data-sharing could ease tensions. A single European regulator could rule on disputes – considering some local conditions – and responding to the understandable frustration that cities feel when forced to fight legal battles in far-off countries. “How does a small village enforce a law when they must go to Dublin to get a response?” asked Klemens Himpele, the head of Vienna’s Office of Economy, Labour and Statistics, referring to the Irish headquarters of many tech platforms (Interview).

The European Digital Media Association [EDiMA] envisages a new [Online Responsibility Framework](#) that would enable and incentivise platforms to do more to protect consumers from illegal content. These new obligations, it says, require a Good Samaritan clause. “Such a system can only work if online service providers know they won’t be punished for taking additional measures, so limited liability must be reaffirmed as part of any new framework.”

The “new framework of responsibility” suggests that platforms take “systemic steps, processes and procedures which a service provider can put in place to address illegal content or activity more proactively”. Such a horizontal framework could be accompanied by sectoral and content-specific rules, making it possible to address the specific concerns of specific industries.

These positions seem compatible with the demands of rights’ holders. Under its [proposal](#), the European Brands Association (AIM), platforms would become responsible for ‘knowing their customer’. If the ‘customer’ – business or consumer – is found to be uploading illegal material, be it fake T-shirts or false driver or lodging information, platforms would take measures to make sure that this illegal material stays off the site, for example by preventing the reappearance of banned host bank accounts. Many platforms already work to keep fake accounts from popping up under new fake aliases. A bank account used to sell counterfeits cannot reappear under a new name. In European [countries](#) such as France, national laws oblige platforms to share financial information.

An important issue is scope: should the rules be different and less invasive for ‘small’ rather than ‘large’ platforms? Should they be valid for some online services and not for others? The Commission has voiced support for imposing extra obligations and restrictions on what it calls ‘digital gatekeepers’. Under this analysis, dominant digital platforms enjoy significant network effects. Among other advantages, they can lock in both service providers and consumers, thanks to their digital identity services and their data gathering.

Yet it remains unclear how such gatekeepers should be defined and what obligations should be imposed on them. Many Task Force members found the whole idea of digital gatekeeping problematic. The collaborative economy landscape remains competitive, characterised as it is by low entry costs (a website), low switching costs (a simple click), and numerous competitors. More than a dozen ride-hailing and home-sharing apps are fighting it out in Europe. European consumers enjoy additional choices through offline channels, including travel agencies and tour operators. No one is wedded to a single option for short-term rentals or rides.

Most Task Force participants suggested that the scope of the new law should be broad and avoid giving a free ride to small players. All sizes of platforms should be included in order to keep a level playing field and avoid providing an incentive to stay small or move activities onto less regulated platforms. Participants also thought a distinction should be considered for the collaborative economy platforms, which, unlike purely ‘digital’ players, have a physical side to their business, in housing and transport.

What type of content should be included in the Digital Services Act? In its proposals, EDiMA is careful to distinguish illegal content from harmful content: “Illegal content is more clearly defined under national law than harmful content – this allows for speedy action on illegal content under this framework. Harmful content, on the other hand, is more complex and needs much broader consideration” (EDiMA, n.d.).

This seems to make sense for the collaborative economy. If a ride-hailing driver works without a driver's licence on the road, it is illegal. If he is unfriendly, it may be harmful. If a home-sharing host posts an apartment for rent which breaks local regulations, it is illegal. If the apartment description is inaccurate, it may be harmful but it is not illegal.

A potential gradation of content risks should also be considered. Selling counterfeit T-shirts does not pose the same danger as preaching violence on Facebook. If the health and safety of consumers is threatened, platforms should face greater penalties than for failing to report registration details.

A consensus emerged at the Task Force that *all* types of illegal content should be included in the new Digital Services Act. A slice and dice approach that included some types of illegal content while excluding others would soon be out of date, many feared.

Most Task Force members emphasised the need to maintain the country of origin principle, which makes platforms subject to the jurisdiction of a single member state and provides legal certainty. This sets up a conflict with cities, who demand proactive monitoring and the settling of legal disputes in their own jurisdictions, not in the platform's home European base.

A potential solution favoured by platforms is to create a single European enforcement body. Airbnb came out in [support](#) this year, saying this new position would “help ensure a stable, predictable and consistent approach to regulations across the EU, and could help mediate talks between government and industry stakeholders when the right path forward on developing clear rules and regulations is unclear or disputed”. Such a body could assess the proportionality of local regulation (including potential derogations from the country of origin principle). A new European-wide enforcement network could help resolve conflicts before recourse to lengthy court proceedings. When member states now notify the European Commission of new laws impacting the collaborative economy, the new enforcement network could apply its expertise to assess their proportionality and legality.

EDiMA elaborated this proposal, saying that this new European-wide enforcement body should “honour the spirit of the e-Commerce Directive's single market focus” and deliver “legal certainty and consistency” (EDiMA, n.d.). It also stated that the “oversight body's work should be restricted to the broad measures which service providers are taking – it should not have the power to assess the legality of individual pieces of content and it should not be empowered to issue take-down notices, which is the remit of the courts.”

Despite the desire to keep the new Digital Services Act broad, EDiMA and its platform members acknowledge that the legislation could “incorporate or be complemented by sector or content specific rules” (ibid). Strip away the jargon and this should leave cities and traditional industries with the ability to adopt, within reason, specific regulations tailored to fit their local markets.

Our next chapter examines how to align the underlying regulations in both the taxi and hotel markets with collaborative economy innovations.

CHAPTER THREE

FILLING REGULATORY GAPS



Even a successful new Digital Services Act will fail to fill many of the regulatory holes plaguing Europe's short-term rental and ride-hailing markets. Most new Collective Economy activities require specific registration, or in the case of ride-hailing, licences. They often fall in-between existing legislation designed for established businesses. Where effective enforcement of existing rules fails, new pan-European rules for ride and room sharing are required.

During our first two sessions, the Task Force identified particular tension surrounding tax collection and insurance protection. Our third meeting in March 2020 probed solutions for meeting these challenges. We looked at potential new ride-hailing and home-sharing agreements and legislation that could serve as examples for European-wide solutions.

Tax

Tax administrations around the globe share a common concern of how to collect revenues from the collaborative economy.

Two separate issues are at stake. The first is whether the digital platforms pay their fair share of corporate tax. The second is whether drivers, hosts and other collaborative economy

suppliers providing ride and room sharing are paying their VAT and income taxes. For authorities, the corporate tax challenge is about taxing platforms that operate in markets without a physical presence. The second issue about taxing platform users is local, dealing with local transactions, and quite different from whether multinational giants book their profits back in Silicon Valley. While this corporate tax issue extends to most digital platforms, the Task Force focused on the second specific local collaborative economy challenge.

Both platforms and governments agree that all parties must pay their fair share of tax. The collaborative economy expands the overall tax base, allowing citizens to earn money from previously underused private cars and private apartments. As ride- and home-sharing activities move online, tax authorities are able for the first time to track and tax them. Yet authorities understandably fear the collaborative economy's independent work arrangements could facilitate tax evasion. "This is because the development of the gig economy entails shift from traditional work relations under employment contracts to the provision of services by individuals on an independent basis, which is not typically subject to third-party reporting," says the Paris-based OECD (OECD, 2020, p. 3).

The question is how to divvy up responsibilities and make sure that the correct tax is collected. How is it possible to make sure that hosts and drivers declare their income and pay tax on it and cover their VAT obligations?

The overwhelming preference for solving this issue is to require platforms to report user data. For this approach to be successful, it is crucial that everyone uses a single standardised model. Platforms fear being subject to a maze of different national and local data requests. Since their drivers and hosts often use multiple platforms, tax authorities also need standardisation to ensure that they have full visibility over users' activities. Both the OECD and the European Commission are moving forward with proposals to report tax information in a single standardised model.

In July 2020, the OECD proposed a [model data reporting](#) framework. At our third Task Force meeting, presenters outlined how the OECD proposal would balance the need for reporting information while managing the administrative burden of platforms, many of which operate in hundreds of countries around the globe. Under the OECD proposal, platforms would report earnings to a single 'home' country. An Irish company, for example, would report data for its global operations to the Irish Revenue, which would in turn send the relevant data to tax administrations around the globe (Kerfs, 2020).

Success requires a formula that protects privacy. Under the OECD proposal, platforms would be obliged to report some combination of the name and address of sellers, tax ID numbers, and amount paid to them. Platforms would not be required to report additional personal information such as telephone number, email address and passport details. Each information item requested must be justified. (Kerfs, 2020).

Another challenge is how to connect the various tax administrations. Collaborative economy participants generate sales, tourist, income and VAT obligations. Typically, different national and municipal administrations cover each of these taxes. Administrations need to be reformed so that platforms are handing over information a single time to a single point of contact, not four different officials.

Another open question is which platforms should be excluded and which should fall under this new system. This debate mirrors the larger question about all collaborative economy activities: are they carried out by professionals or amateurs, and at which point does someone driving their own car or renting out rooms in their own apartment become a professional?

The OECD proposal only includes platforms with sales of more than €1 million. All services conducted via a platform, from driving to translation, house cleaning or tile installation, are within the scope and need to be reported. A home-sharing operation becomes a traditional hotel operator when it offers more than 2,000 rooms. This level keeps major hotel chains out of scope.

The OECD report praises Denmark's digital solution, which is integrated into websites. Users click a button authorising the platform to pass reports on their earnings to the tax authority. In Estonia, the tax authorities are [experimenting](#) with Uber and Airbnb to allow hosts to automatically report their earnings at the click of a button, and the digital tax returns calculate how much tax is owed.

Some tough issues remain unresolved. Platforms struggle to convince their users to opt in to voluntary tax reporting. After the information on hosts and drivers is sent to central national tax authorities, how should it be shared with social security and local officials? Although platforms could 'populate' national tax returns for its sellers, this is a tricky IT task, given the nature of collaborative economy transactions. Platforms, for example, don't know about the costs incurred by their ride- or home-sharing sellers or know the amortisation of a privately-owned car or the mortgage on a property.

Despite these challenges, the OECD hopes to complete implementation guidelines by the end of the year (Kerfs, 2020). This proposed system of cross-border reporting builds on the previous success within Europe and the OECD of countries cross-reporting capital gains and other taxes.

At almost the same time as the OECD released its report, the European Commission published its own proposal in July 2020 for the [Directive on Administrative Cooperation, or DAC7](#). Its plan mirrors the OECD recommendations, with platforms required to file a declaration to tax authorities in one EU country, which can then be shared with other tax administrations. Finance ministers are expected to approve the plan before the end of 2020, although many details remain to be worked out before a scheduled 2023 implementation.

Insurance

Collaborative economy participants often fall between definitions of traditional business and purely private activity, leaving them in a dangerous no man's land. A key example concerns insurance. Private individuals carrying out a business activity pose a challenge. Do they remain a private individual or should they be required to become a commercial entity? Insurance providers struggle to cover individuals without a clear legal status. If those private individuals were attributed a legal status, insurers would be able to provide appropriate coverage.

Amid the present uncertainty, it remains unclear as to who should be responsible for providing the insurance. Is it the platform, the service provider or the customer? In most cases, the platform is not an insurer and is not required by law to cover the risks offered by the service provider. What is the contractual relationship detailing the obligations between platform providers and service providers? These questions need answers.

As an illustration of the problem, consider hosts operating on an accommodation platform. The activity is a hybrid of professional and amateur. The platform is a commercial entity, but non-professionals use it to rent out rooms and apartments.

For insurers, this type of coverage provides new challenges. Insurers may need to write policies that covers both the 'hosts' (consumers) as well as the accommodation platform (commercial/entity cover). This type of hybrid policy necessitates that the platform's policy summary, frequently asked questions and claims process are not only easy to navigate and find, but that it is also clear in its intent and application for consumers, simultaneously protecting both their rights and interests without any ambiguity on accommodation platforms. Regulators must come up with new rules to cover these important hybrid professional and consumer-use cases so that insurers can provide the right protection whilst adhering to territory-specific regulations.

Independent workers similarly struggle to obtain uniform and cost-efficient insurance. In Estonia and Ireland, for example, professional taxi insurance costs three to five times personal car insurance. If someone wants to drive for only a few hours per month, the cost of insurance becomes a giant barrier to entry.

Another problem is the lack of a true continent-wide insurance market. Each European country requires local entities to issue car and home insurance. Insurers now need to create unique solutions country by country. This is a costly, time-consuming task for both insurers and platforms. And yet, the collaborative economy sector is attractive to insurers. It represents a growth market. It insures traditional products, cars, homes or personal property. Digital technology provides detailed risk insights which have not traditionally been available to insurers, allowing accurate pricing and tailored levels of coverage.

Many platforms are voluntarily stepping in and offering insurance to their drivers and hosts. Airbnb offers liability [insurance](#) to its hosts, providing them with up to €844 000 in the event of claims of bodily injury or property damage. Ride-hailing platforms have teamed up with

established insurers to protect their drivers. Uber's [AXA Partner Protection](#) covers drivers and delivery couriers for sickness, injury and maternity payments. Bolt offers a similar AXA coverage for French drivers unable to work after an accident.

Admirable as these solutions may be, they leave insurance gaps. Airbnb warns that its [guarantee](#) “doesn’t replace your homeowner’s or renter’s insurance”, urging that hosts “consider independent insurance to cover valuable items like jewellery, artwork, or collectibles. Ride-hailing drivers must cover themselves when the app is turned off”.

Many platforms find it difficult to locate insurance partners. It took more than a year for Wolt, the Finnish food-delivery platform, to locate insurance partners to cover its couriers (Wolt interview). In addition, platforms are concerned about related legal risk. If Wolt and other platforms provide insurance for their couriers, it might increase the risk that couriers could be reclassified as employees.

Part of the problem could be solved through the new Digital Services Act and a potential Good Samaritan Act, which would protect platforms from unexpected legal exposure from doing the right thing, which in this case is providing insurance. But the Digital Services Act is not the correct vehicle to determine platform workers’ rights, given the deep national differences in Europe about labour rights. Nor is it the right vehicle to set regulation for ride-hailing and home sharing. New national insurance regulation will be required.

The example of Estonia

The Baltic country is showing a way forward. As elsewhere in Europe, Estonia’s taxis protested the arrival of ride-hailing firms. In 2014, some 1,500 drivers blocked streets in the capital Tallinn. A government investigation found that restrictive regulations had created a taxi shortage. Taxi drivers found it difficult to obtain licences and it was taking up to an hour to get a taxi during rush hour in Tallinn.

In 2016, Estonia became the first European country to regulate and legalise ride and home sharing. The new rules put private hire drivers and taxis on common legal ground, with similar licensing and vetting quality. Estonian taxi drivers no longer need take a long exam. They need only to fill out an online application, pay €38, and wait a week for their licence (Ketelsen & Ball, 2019). Private drivers still cannot pick up passengers who hail them in the street, but they do not have to carry taxi signs or invest in a taxi meter.

Results have been positive, for the industry, the government and consumers. At our third Task Force meeting, Estonian participants reported that the new rules have increased tax receipts, with ride-hailing drivers registered and reporting incomes for the first time. Waits for rides in Tallinn have vanished. Estonian ride-hailing platform Bolt (a Task Force member) has become a European unicorn: launched in 2013 by a 19-year-old high school student, it now operates in 150 cities across more than 35 countries, including 16 EU member countries, with more than a million drivers and 30 million clients. Other EU countries are taking note:

Latvia, Lithuania, Poland, Croatia, the Czech Republic, Romania and Finland have passed similar ride-hailing laws.

One challenge for any taxi reform is how to insure coverage of rural regions. Without government-supported taxi services mandated by law, would residents of remote regions be able to find taxis? Yet rural areas have benefited since Estonia's taxi reform. Ride-hailing is available in towns that count a mere 5,000 inhabitants. Without the ride-hailing, Estonian analysts say that these places would not be served.

Having many government-subsidised taxis seems the wrong road to take. In Finland, taxi companies receive €10 million a year to ensure that rural citizens are able to get free rides to hospitals. This subsidy enriches traditional taxi companies. Instead, the task force participants advised government to give the funds to the customers in the form of vouchers, redeemable with either conventional taxis or ride-hailing companies.

Another big lesson from Estonia is that reform helps both the platforms and traditional taxi companies. Together, they have 'grown the pie'. The main competitor is private car ownership. More than 60% of Estonian couples in Tallinn own two cars and are considering selling one of them.

Concerns about labour exploitation seem unwarranted, too. Like taxi drivers, Estonian ride-hailing drivers must follow labour regulations and limit their time behind the wheel to 50 hours a week. Most Estonian taxi drivers are already private entrepreneurs, working as independents or franchisees, not full-time employees.

Many Estonian ride-hailing drivers do work more than they would like to, not because of the new regulation, but because their professional car insurance remains expensive. A start-up called [Cachet](#) is attempting to provide insurance to platform drivers. It calculates insurance on the amount of professional driving they do, rather than at a fixed, high rate. The more one drives, the more one pays, and the less one drives, the less one pays.

About half of Estonian ride-hailing drivers operate on multiple platforms. They need insurance that covers them across these different apps. Drivers must give all the platforms they use – Bolt, Uber and Yandex – apps to automatically log their driving activity. For coverage, Cachet uses business travel accident insurance offered by insurance companies. Drivers on average save 50% on their car insurance.

Although taxi regulations are often national and even local, the European Commission could help by proposing a continent-wide law which sets common guidelines. Commission officials have expressed interest. But Covid-19 seems to have slowed down progress, as the department dealing with transportation has been preoccupied with keeping goods moving across the continent during the crisis.

When the officials in Brussels return to the task of devising new European-wide taxi rules, their proposals will not solve the challenge of how to treat platform workers: as professionals, independents, or employees. Our fourth Task Force session debated this and considered possible solutions.

CHAPTER FOUR

CONSTRUCTING A NEW SOCIAL CONTRACT



The definition used to be clear and straightforward: if one worked full-time for a single company, he or she was an employee. If a worker served different clients, they were an independent contractor. If one did an odd job or two, they remained an amateur. Almost all serious work fell under the umbrella of professional activity. The collaborative economy has transcended these binary definitions and created conflicts over how to define and protect legions of part-time, on-demand workers. Some are entrepreneurs running their own businesses. Others are amateurs doing an occasional ‘gig’. Many are working part- or full-time for one or multiple platforms.

Covid-19 has added urgency to this simmering battle. Workers whose primary income came from ride-hailing struggled to replace lost income. Both traditional taxi and platform drivers, and couriers, took health risks driving in the otherwise empty streets of Paris, Milan and other European cities.

Although platforms responded with leave and hardship funds for sick and quarantined workers, the measures remained voluntary, and platform workers were left in limbo, often unable to claim the unemployment and sick benefits granted to full-timers. Covid-19 has

strained the finances of both platforms and workers, slowing progress towards devising a solution.

Policymakers seem undecided about how to act. Although the European Commission asked questions about platform workers in its public consultation for the upcoming Digital Services Act, the new set of European-wide liability rules does not seem to be the right place to tackle labour issues. The Commission's platform work summit, organised for September 2020 by Jobs & Social Rights European Commissioner Nicolas Schmit, has been postponed. At our Task Force meeting, Commission officials acknowledged that the issue of platform work has fallen from the top of their agenda.

Policymakers must balance a desire to protect workers and public finances without stifling job creation and innovation. Should a broad universal or a sector-specific approach be taken? Both approaches have pros and cons. Specific tailor-made solutions risk becoming outdated as the collaborative economy evolves and expands. Yet a broad horizontal approach must encompass different types of work. The Commission has not yet made up its mind about how to proceed.

At our Task Force session on platform work, employers and unions faced off with seemingly unbridgeable responses. For employers, employers were adamant that "current self-employment work rules suffice". Collaborative economy workers are classified as independent contractors and self-employed. New collaborative economy platforms offer increased opportunities to find work, boosting labour participation and reducing undeclared work. As independent workers, they benefit from social protection offered to other independents. There is no need for a third category of workers.

For the employers, a sensitive issue concerns training. If platforms offer their participants additional training or services, they risk seeing courts reclassify them as employees. The upcoming Digital Services Act should allow the platforms to offer training without assuming additional liabilities.

Regulation of temp work offers some guidance. Under the present European Union directive, temporary agency workers in Europe receive the same benefits as full-time workers. In several European countries, including France, the Netherlands, Italy, Belgium and Spain, temp workers enjoy union protection. Throughout the EU, temporary work agencies are free to offer job training, and they often do.

Unions agree that platforms should be able to offer additional training. The World Employment Confederation-Europe and the union UNI Europa, the European services workers union, undertook a [joint project](#) which agreed on some general principles such as "establishing a level playing field by ensuring the same treatment for adequately similar services and forms of work" and stating that "national and European regulation on the different forms of work should be correctly applied and enforced to ensure a level-playing field".

Dig a little deeper though, and employers and unions disagree on the big question about how to classify platform workers. At our third Task Force meeting, union representatives argued that platforms set the rules for the work. They can change wages and rules without notice and kick them off the apps, with no recourse. From the union's perspective, most platform workers should be classified as employees. The only reason to keep platform workers classified as contractors is to save the platforms money on payroll taxes, travel reimbursement and severance pay.

A key part of the debate concerns pay. In Europe, some studies suggest that platform drivers enjoy good earnings. A University of Oxford study, [Uber Happy? Work and Wellbeing in the Gig Economy](#), concluded that drivers in London earn £11 per hour when logged into the Uber app, after paying their costs and Uber's service fee. In France, Uber says its drivers earn €200 per month after costs more than taxi drivers, provided they average 45 hours a week of work. Bolt says its European drivers earn two to three times the national minimal wage.

Platforms also argue that they empower workers more than traditional employment. Drivers control how much they drive and they appreciate this freedom and flexibility. In the Oxford study, 81% of drivers responded that they would prefer to remain independent contractors rather than be classified as employees and lose their flexibility. "Unlike traditional jobs, drivers have total freedom to choose when and how they drive, so they can fit their work around their life, not the other way around, Uber CEO Dara Khosrowshahi [wrote](#) in the New York Times in August 2020: "Anyone who's been fired after having to miss a shift, or who's been forced to choose between school and work, will tell you that this type of freedom has real value and simply does not exist with most traditional jobs."

At the Task Force meeting, platforms pointed to their low barriers to entry as opportunities to those who were previously unemployed: 25% of drivers using Uber in France were out of a job before they started driving. Anybody can sign up to drive, provided they hold a PHV licence. There is no *numerus clausus*, no recruitment process, no exclusivity. No résumés are checked. The only requirement is a driver's licence. When, in [September 2020](#), a series of Swiss court judgments forced couriers working on Uber Eats to become traditional, scheduled employees of a delivery company, 77% of couriers, or 1,000 people, were put out of work. Before September, around 1,300 couriers worked on Uber Eats in Geneva. Under the new operating model, in which couriers needed to formally apply for a position with the delivery company, only 300 of them were hired.

Is there a middle ground to the employee-independent contractor debate? Task force member Charles de Froment is one of the authors of the ground-breaking French 'charter' on platform workers. The French labour market has long been sclerotic: for most of the past two decades, unemployment has remained fixed at over 10%, more than double the rate of Germany or the UK. Almost a quarter of young French workers have no job, with low-skilled immigrants living in drab and dangerous suburbs the worst affected. The culprit, economists say, is a 35-hour working week limit and the difficulty of laying off workers with full-time contracts.

The Collaborative economy has provided a key shot of adrenalin to the French labour market. In 2008, France counted 2.3 million independent workers. The next year, it created a new 'auto-entrepreneur' status, allowing individuals to sign up via the internet. Social contributions were simplified to a flat 25% fee with no VAT exemption or possibility of deducting costs. The system looked like a great success. By 2018, independents numbered more than 3.2 million, including about 1.4 million auto-entrepreneurs. One in four jobs created in the first half of 2016 in the Paris region was thanks to Uber and its rivals, according to a study by the Boston Consulting Group (Van Nieuwenhuizen, 2016).

Before the collaborative economy, regulatory rationing of tax licences created artificial shortages. In 2016, around about six traditional taxi drivers served 1000 Parisians, compared to 12 per 1000 Londoners and 17 per 1000 New Yorkers. Boston Consulting Group said almost 60,000 extra jobs could be created in Paris alone by 2022 if supply came close to matching the London or New York levels (Rose, 2017).

During his 2016 presidential campaign, Emmanuel Macron [told](#) a television interviewer: "Go to a poor neighbourhood and explain to the young people, who are Uber drivers, that it would be better for them to just do nothing or to deal in the streets. Go explain it to them!" Later, in a radio interview, he denounced a French social model that cared more about protecting 'insiders' on iron-clad permanent contracts than opening up to 'outsiders'. "Let's end this French preference for unemployment," he said (Rose, 2017).

A French Senate [report](#) in May 2020 offered additional support, arguing that most platform work complements other occupations and is covered under the French social security system. "Platform work is not synonymous with precarity", the report says. During the Covid-19 crisis, the senators lamented that platform workers were often unable to benefit from government aid offered to most other independent workers. While recommending that platforms take increased responsibility for their workers – for example, covering accident insurance – the report concludes that no new labour status is required.

Despite this support, platform work has gained an ugly reputation in France. "The Empire Strikes Back," is how de Froment describes the backlash. Trade unions attacked platforms for being able, with a click, to 'fire' workers. Critics claimed that the algorithm distributing rides was an evil black box, manipulating workers without any transparency.

Court cases have proliferated, with workers demanding to be reclassified as full-timers. In November 2018, the French Civil Supreme Court reclassified a delivery driver working for the platform Take Eat Easy as an employee. Judges ruled that Take Eat Easy controlled the worker because its geolocation system allowed it to track the position of the rider and because it operated a bonus system that allowed it a power of sanction.

In January 2019, a Paris judge ordered ride-hailing driver Maxime Petrovic to be reclassified as an employee. Uber had deactivated his account after riders expressed safety concerns about him. The judge ruled that the platform determined the conditions for providing the

transport service and the price of rides and required the driver to follow the route given by its GPS instructions, and to wait 10 minutes for the rider to arrive. For these reasons Petrovic was classified as an employee by the judge. In March 2020, the French Supreme Court [upheld](#) the ruling.

But other French courts have reached opposing decisions. A Commercial Chamber of the Court of Appeal of Paris has ruled that drivers are independent. In June 2020, a Paris Labour Tribunal rejected efforts by seven drivers to become Uber employees. Of the 30,000 ride-hailing drivers in France, Uber claims that only a small fraction wants to be reclassified as employees.

The status of ride-hailing drivers remains unclear. Uber officials are considering two paths to compliance: offering drivers even more freedom and the independence to choose their rides; and urging the French government to support an approach that allows platforms to provide additional protections for independent service providers. Allowing drivers to censor reviews or set their own price, however, is not under consideration. Such changes, Uber insists, would trigger a race to the bottom, with drivers competing with each other by lowering fares, leading to deteriorating rather than improving service.

In response to the opposing judgments, the Macron government proposed a compromise by establishing a 'charter' system which would combine the collaborative economy's freedom and flexibility with the protection offered by the vaunted French welfare state. Platforms must offer workers a charter outlining working conditions and benefits. They must publish indicators related to working time and earned income based on the previous calendar year's data. Before each ride, platforms need to tell drivers what distance they will cover and the fee they will receive after commission. Drivers are allowed to refuse pickups, choose their own schedule and disconnect during their working time without penalty (Edwards et. al., 2019). Providing authorities approve the deal, the charter would ban judges from using these benefits as criteria to reclassify workers as employees.

Unfortunately, the courts intervened. The French Constitutional Council ruled the charter's key element – its ability to protect against reclassification – illegal. Only judges have the right to decide what falls into the scope of an employment relationship, the Council insisted. As a result, the French legal framework for French platform workers remains a treacherous battleground.

Elsewhere in Europe, the status of platform workers is just as fluid and uncertain (Edwards et. al., 2019). In Germany, a company can apply to German tax authorities to confirm whether it should be withholding wage and social security tax. If it gets it wrong, and a platform worker files suit, the platform's managers face potential criminal charges.

In the Netherlands, the Dutch government promised legislation to clarify whether a platform worker is an employee or a contractor, but has delayed issuing a proposal. The Dutch Finance Ministry has promised not to enforce any fines on platforms while the debate continues.

In Spain, some courts have ruled platform drivers as employees, while others have judged them to be independents. The Socialist-led government has tightened labour inspections of platforms.

In the UK, platform workers may be classified as employees, workers or self-employed, depending on the nature of their engagement. A number of court rulings have reclassified the self-employed as employees.

The debate is not limited to Europe, either. California passed a landmark law effective from 1st January 2020, that classifies almost all platforms workers as employees, entitled to a minimum wage, overtime pay, unemployment insurance, workers' compensation insurance, and paid family leave.

Rather than clarify, the new California law has created confusion. At least one million contractors, everyone from nail salon workers to janitors and construction workers, live in the state. Religious groups have complained that their congregations will struggle to pay for full employment benefits if their workers are no longer independent contractors (Conger & Scheiber, 2019). Just before the law went into effect, Vox Media [eliminated](#) 200 freelance positions in California, citing the legislation. Under the law, any photojournalist, editor or writer who contributed to a publication more than 35 times a year would have to be made an employee.

When Uber and Lyft continued to refuse to reclassify their drivers as employees, California's attorney general and a coalition of city attorneys in the state [sued](#) them. A judge ruled against the ride-hailing companies in August. Uber, Lyft and other ride-hailing and delivery platforms committed \$90 million to finance the Proposition 22 referendum on the law. If forced to hire only full-timers, Uber CEO Dara Khosrowshahi [argued](#) that the company would only be able to employ "[a small fraction of our current drivers and only be able to operate in many fewer cities](#) than today." Rides would be more expensive, which would significantly reduce the number of rides people could take and, in turn, the number of drivers needed to provide those trips" (Khosrowshahi, 2020). In November's U.S. elections, 58% of California voters agreed with him and voted to keep the independent contractor status.

European Commission officials say they are watching the California and French experiences. Although labour law is largely a national competency in the European Union, Brussels does have the power to set some continent-wide rules and has in the past set a maximum set of working hours per week. At our Task Force meeting, Commission representatives seemed to have ruled out writing sector-specific laws, which could soon be out of date, in favour of broader principles ensuring collective bargaining rights and social protection for platform workers. The collaborative economy would benefit from clear guidance.

CHAPTER FIVE

POLICY RECOMMENDATIONS

The final June 2020 Task Force session occurred, virtually, in the middle of the Covid-19 pandemic, with participants dialling in from across the continent. All agreed how difficult it was to gauge the full impact of the crisis. Some speculated that the short-term rental market would evaporate and be replaced by long-term rentals. Others suggested that platform delivery services would soon become more important than ride-hailing. We heard predictions that ride-hailing could be revitalised as office workers shunned public transport. Bike sharing could rise – or fall – depending on the city. Home sharing could evolve as ‘work from home’ becomes ‘work from any home’.

The Covid-19 crisis has eased some of the conflicts outlined in this report. As tourism slowed, pressure on transport systems and housing stock has decreased. Barcelona has long been on the front lines of collaborative economy battles, banning ride-hailing and battling Airbnb rentals/ said in the final Task Force session that he saw the pandemic being the means to overcome resistance to the new services. The need for ride-hailing would increase as an alternative to public transport, he explained. Short-term vacation rentals could be repurposed as long-term rentals.

After hinting at a Covid-19-induced delay, the European Commission accelerated its work and plans to publish its proposal for a Digital Services Act in December 2020. As Big Tech flourishes in the wake of the pandemic, the drive for digital gatekeepers to reign in digital superpowers has intensified. Consultation for the Digital Services Act includes a discussion on platform workers and attempts to determine whether they should be given collective bargaining rights. For collaborative economy platforms, the months ahead will be crucial in determining how a new European regulatory regime regulates illegal content across the continent.

In contrast, work on new labour, ride-hailing and other sector-specific proposals seems to have stalled. Covid-19 logistics issues dominate the agenda of the European Commission department responsible for transportation. Restrictions on in-person meetings and conferences forced the cancellation of a major European Commission conference on labour issues scheduled for September 2020. Participants at the final Task Force meeting were near unanimous that sectoral labour reform is required to help the continent recover from the pandemic.

While new digital platforms continue to spar with cities and traditional industries, both sides recognise the need for clarity and consistency across the single market. Regulatory fragmentation must be addressed. Broad EU-wide frameworks under the e-Commerce and Services Directive need to be erected. In this context, some recommendations designed to bring stakeholders together around a constructive agenda emerged from Task Force sessions.

Liability

The key foundation stone must be laid in the upcoming Digital Services Act. It should include limited liability protections and freedom from permanent monitoring obligations. Without these assurances, collaborative economy platforms would be hobbled just when Europe needs them to help power a post-Covid-19 economic recovery.

At the same time, Task Force participants agreed that platforms should take on increased responsibilities, while preserving liability protection. They should do more vetting when onboarding hosts and drivers, and they should do more to keep them off the platform if they are identified as being engaged in illegal activities. Platforms, traditional industries and cities concurred that increased information sharing, for example, on taxes, is warranted.

Scope

The Commission should clarify the definition of an information society service, taking recent court rulings into consideration. Platforms which connect service providers and customers, but which do not set the price or the nature of that service, should be considered information society services. Platforms that set prices, but which do not exercise control over the service providers' working hours, should also be included.

No fundamental distinction should be made between small and large platforms offering collaborative economy services, because this would artificially alter competition. While big platforms have big resources, an exemption for small platforms would risk pushing other illegal content off to small players. In addition, competition would suffer and small platforms would be encouraged to stay small. Instead, they should be encouraged to grow and become big.

Digital gatekeeper

Alongside the questions of size and scope, the Commission seems set on pursuing the idea of special obligations for certain 'key' platforms deemed digital gatekeepers. Our examination of the collaborative economy reveals low barriers to entry for most services – a simple website often suffices. Competition is fierce: our Task Force alone consists of nearly half a dozen ride-sharing companies that are battling it out across Europe. Home-sharing platforms range from those specialising in apartments to those renting out hotel rooms. In both cases, traditional taxis and hotels are building their own platforms or using the platforms to reach customers.

It is difficult to see how even collaborative economy giants are gatekeepers, at least in the sense of digital giants in areas such as mobile app stores, search and social media. Many drivers and landlords use several platforms. Consumers have a wide variety of choice. They do not seem wedded to a single option, online or offline. Platforms even encourage cross-listing. A [EuroCab study](#) published in November 2019 estimated that 50% of platform drivers work on multiple platforms. They make it easy to list and manage inventory across multiple platforms from a single interface through an application programming interface [API] connection. A crackdown on digital gatekeepers is bound to increase market fragmentation – just when Europe wants to encourage the growth of continent-wide platforms.

Any new gatekeeper rules need to be flexible to appreciate the different roles that platforms play in different markets. They should avoid a one-size-fits-all approach, which would create barriers to the collaborative economy.

Know your customer

Even if the horizontal liability protection and freedom from permanent monitoring are maintained, certain obligations for platforms could be imposed. These ‘know your customer’ types of obligations could resemble anti-money laundering rules imposed on financial institutions.

The know your customer reforms should help to ensure user safety. Verification should be done against public databases. It must be privacy friendly. In order to keep data collection and verification requirements feasible and proportionate, it should allow a risk-based approach. Professional users should be screened during initial onboarding; ‘high-risk’ users could be rescreened on the basis of certain criteria such as the amount of earnings or category of services.

While these know your customer requirements should avoid making platforms liable if they make a reasonable effort to ensure accuracy, they need to be robust enough to satisfy concerns by cities of illegal renting of public or subsidised apartments. A general monitoring obligation should be avoided.

Notice and take-down

The Task Force identified problems for both cities and platforms in communicating about potential illegal content. Cities complained that they found it difficult to get responses from platforms that often lack local offices. Platforms protested that they received notifications with insufficient information and legal authority to prompt action.

Who should be able to, and how would they, send notices to platforms about illegal activities? How should this notice process work? In the context of the collaborative economy, most of the illegal activities under discussion take place offline rather than online. Often, platforms hold no knowledge of the crime. Alleged violations of mobility

or accommodation laws – violations of housing and zoning or taxi laws – are not apparent in online activity on platforms. It is hard for home-sharing platforms to check tenancy agreements, local housing or zoning laws by themselves. New notice and action rules need to increase responsibilities for all actors and require local authorities to investigate and share knowledge of illegal activity. Platforms should be responsible only if they have ‘actual knowledge’ of illegal activity.

The Commission could help clarify responsibilities. One idea would be to set up a pan-European notification form. The EU already runs a pan-European product safety recall site called RAPEX, on which national regulators post product safety notices. The Commission could build a similar notification system for illegal conduct on collaborative economy platforms. In addition, EUIPO, the EU's Intellectual Property office, is building such a tool for rights' holders to send notifications to online marketplaces about potential counterfeits. A similar initiative might help cities improve their notifications to collaborative economy platforms.

The upcoming Digital Services Act should at the least provide minimum notice requirements, including the types of required information, and should be limited to situations when a platform can be deemed to have ‘actual knowledge’ of an illegal activity. Such requirements would help clarify take-down processes for authorities and platforms alike, and also help avoid further fragmentation of the digital single market.

Stay-down

Alongside a know your customer requirement, platforms should commit to measures preventing suspended service providers from coming back online. This should include a robust mechanism to ban infringing bank accounts. The ‘follow the money’ strategy has proved successful in fighting illegal content, particularly copyright violations. It can be useful in the context of the collaborative economy since it is difficult for offending users to change bank accounts. At the same time, this stay-down requirement should avoid introducing general monitoring obligations.

Good Samaritan

Cities and traditional industries want platforms to police their sites. Platforms want to keep their sites clean, but fear increasing their liability if they take proactive action. The solution could be a Good Samaritan clause.

This idea faces criticism. Some say that such a clause represents an excuse for taking half-hearted actions. Others worry that it will erode the e-Commerce protections, disadvantaging small European platforms which lack the resources to take proactive actions. Even so, it is hard to see why attempts to go beyond mere passive actions should increase legal liability. Positive initiatives to clean up collaborative economy platforms

should be encouraged. If the phrase Good Samaritan is considered too American or too Christian, it could be renamed as a ‘responsibility clause’.

Illegal content

A fundamental difference exists between illegal activity and legal but undesirable or harmful activity. Hosts should not be able to break local laws on short-term rentals. Drivers must have legal, verified driver’s licences and auto insurance. At the same time, driver and apartment reviews should not be censored if their targets consider them distasteful, or even harmful.

Yet detecting ‘illegal activity’ is often difficult. Brands and online marketplaces continue to struggle to verify whether products are genuine or counterfeit. In the collaborative economy context, the multitude of different national and local laws about, for example, the legality of renting out social housing, adds complexity. It would be almost impossible to determine what is legal but harmful, since the notion is subjective, and culturally and geographically diverse.

Country of origin

A foundation of the digital single market is that companies should be regulated under the EU member state laws where they are established. Without this country of origin principle, it will be more difficult than ever for digital platforms to establish a pan-European presence. But the Task Force showed that national and local governments are concerned that they cannot get action if they must lodge all complaints under a single far-off jurisdiction. As our city representative said, “we cannot go to Dublin every time to get an answer.”

The best way forward is to maintain the country of origin principle, while clarifying the coordination and cooperation between member states. New methods need to be developed to ease the ability to share complaints. This could be a simple European Commission complaints website where local regulators could post their complaints.

A potential European enforcement agency could help mediate disputes. Because the collaborative economy is so local in its impact, the need for a one-stop shop to resolve disputes about proportionality and compliance with EU rules is acute. The new European enforcement agency could help avoid long court battles over housing and driving rules, increasing communication and confidence for both platforms and cities.

Data sharing

Platforms and authorities should be able to agree on GDPR-compliant frameworks for data sharing. Under GDPR, it is illegal for authorities to request data which is not normally collected by platforms as part of their usual business, or to share this data with other authorities for objectives unless stipulated in the original data request. For

example, municipalities should not collect host earnings data to check taxes, and then use it to check compliance with local registration.

Even so, authorities need to get data to collect tax. The OECD's tax plan looks like a good formula to ensure authorities get the needed data, while easing compliance for platforms by handing them over to the platform's home country and then passing them on to the member state requesting them. In addition, the OECD provides a workable formula for the type of data that is needed to facilitate tax collection, and avoids demanding unnecessary or over-invasive information.

Enforcement

Platforms cannot and should not deal with a myriad of different national enforcement strategies. Cities need improved enforcement of platforms located outside of their jurisdiction. This slicing and dicing runs counter to the fundamentals of the single market, hampers innovation and harms consumers. A single European standard and a European regulatory authority would help ease these legitimate concerns.

Sectoral laws

While the above recommendations represent a broad horizontal framework designed to smooth out continent-wide boundaries of platform activities, the collaborative economy requires sector-specific rules. Taxi reform is urgent. Estonia's new law represents a good model. It creates a level playing field between traditional taxis and new ride-hailing apps. Other services offered on collaborative economy platforms could benefit from a simplification of licences and restrictions created before the invention of the internet.

Where we did find agreement, however, was that platform workers need improved social protection. Platforms are ready to provide many of these protections, provided that they do not run the risk of seeing workers reclassified as employees. As Europe struggles with high unemployment precipitated by rigid labour markets and Covid-19 layoffs, this seems a viable compromise, at least for the time being.

A successful, prosperous Europe needs a successful, growing collaborative economy. This new form of app-driven digital economic activity offers great promise in providing opportunities to the continent's jobless and to supplement existing income. Consumers receive improved service with the click of a smartphone. Today's fragmented collaborative economy regulation, however, represents a giant obstacle. European Union institutions can help overcome it and unleash the benefits of new digital economic activity with new pan-European regulation.

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ANNEX I. LIST OF SPEAKERS AT FIVE TASK FORCE SESSIONS*

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PRINCIPLES AND GUIDELINES FOR CEPS TASK FORCES

CEPS Task Forces are structured dialogues among experts, namely policymakers, diplomats, industry representatives, NGOs, scholars, politicians (current and former), and other specialists who come together for a number of meetings to discuss a topic of policy relevance. The aim is to consider the issue from a multidisciplinary perspective and propose policy recommendations based on the discussions, which generally take place under the [Chatham House rule](#).

Members and participants

- The Task Force chair is an expert who steers the dialogue and advises CEPS as to the general conduct and progress of activities.
- Members/participants provide input as independent experts.
- Rapporteurs are CEPS researchers who take care of organisational matters, conduct independent research and draft the final report.
- Observers are any stakeholders who may be invited to attend the meetings and provide oral and/or written input.

Objectives of the report

- Task Force reports should contribute to the policy debate by presenting a **balanced set of arguments**, based on available data, literature and views.
- Reports should provide readers with a constructive basis for discussion. They do not seek to advance a single position or misrepresent the complexity of any subject.
- Task Force reports have an educational purpose and should be drafted in a clear, accessible style without jargon, and with all technical terminology fully defined.
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