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## Committee on Social Affairs, Health and Sustainable Development

### Societal Impact of the Platform Economy

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## 1. The sharing economy and its concerns

1. The Internet has made it possible to carry out large-scale direct commercial transactions between supply and demand, commonly referred to as peer-to-peer transactions, to the point of generating a so-called "sharing economy."
2. The phenomenon of electronic transport platforms is just one example of this new disruptive wave of sharing economy. The disruption occurs not only in the challenge that the new agents pose to the incumbents present in the market, but also at the level of the framing of the traditional legal solutions hitherto found.
3. The sharing economy poses new questions of legal and regulatory nature that are difficult to resolve. The peer-to-peer services are inherently involving participants in high legal uncertainty, because they do not fit neatly into the traditional legal categories applicable to the multiple dimensions of their business. Streamlined legal solutions to labour protection, taxation, consumer protection, among others, are somewhat not easy to fit into these new transactions.
4. Some contend that the services provided by this new "sharing economy" are similar to services provided by traditional services - and that the whole purpose of the sharing model is exactly to avoid the applicable regulation to the traditional model. But others argue that indeed the sharing economy disturbs existing regulatory regimes as a result of a business model that is effectively new.

## 2. The case of transport platforms

5. Most electronic transport platforms operate through an Internet portal or a mobile application ("app"), enabling the transfer, by means of a smartphone application, of information concerning the booking of a transport service between the passenger and the non-professional driver who will carry out the transportation using his or her own vehicle.
6. The platform operator, however, is not a neutral element in the provision of services. It is undeniable that in the case of electronic transport platforms, unlike other online services, the execution of the transactions does not depend exclusively on the nature of the services or the parties involved; but rather on the degree of control that the platform itself exercises over each transaction. The most relevant and distinctive feature of this business model is precisely a direct and fundamental control in all aspects of the transactions that is exercised by electronic platforms of transport: the operator of the platform is clearly the party that most decisively shapes the content and the terms of the service to be provided, rather than the very will of the other two parties involved, i.e., "passenger-user" and "driver-vendor". It is the platform operator that defines the listings of available drivers, the terms of the service to be provided, the minimum quality standards for the drivers and vehicles; consequently, it is the platform operator that imposes the price structure on the driver and the passenger, who filters the availability to provide the service, who exclusively provides for the (electronic) payment system, and, finally, that charges a fee per each transaction.
7. Moreover, it is also undeniable that it is precisely because the platform operator exercises this control, that users have recourse to it: the platform is the very reputational-distinguishing element that drives both drivers and passengers to choose between alternative services. In the sharing economy, reputation is perhaps the most valuable commodity – and in transport, the reputation of the platform is decisive.
8. The operation is therefore strictly controlled by the platform in all its minutiae, as it entirely defines the parameters of the provision of services. If it weren't for the platform, the drivers wouldn't provide the service as such and passengers would not use those services.
9. This points to the creation, on these platforms, of true tripartite relations, which hardly fit into the more conventional legal concept of bilateral relations, such as those established between provider and client, between employer and worker, among many others.

### 3. The intervention of the European Court of Justice

10. The European Court of Justice ("ECJ") ruled recently about this controversy of whether platform operator services are (or not) transport services, in a case brought to justice by "Asociación Profesional Elite Taxi", a professional taxi drivers' association in Barcelona, Spain, against Uber.<sup>1</sup>

11. The ECJ deemed Uber's services to be more than an intermediation service. It observed that the Uber app was "indispensable for both the drivers and the persons who wish to make an urban journey". The Court also pointed out that Uber exercised "decisive influence" over the conditions under which drivers provided their services. Such an intermediation service", the ECJ concluded, must be regarded as forming an integral part of an overall service, the main component of which is a transport service.

12. Consequently, in its ruling the ECJ said an "intermediation service", "the purpose of which is to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys, must be regarded as being inherently linked to a transport service and, accordingly, must be classified as 'a service in the field of transport' within the meaning of EU law."

### 4. Legal challenges to regulating transport platforms

13. The ECJ's decision paves the way for member states to regulate the legal framework for the provision of these services as transport services: since these services are classified as "a service in the field of transport", they are covered not by Article 56 TFEU on the freedom to provide services in general, but by Article 58(1) TFEU, a specific provision according to which "freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport".

14. But what is that pathway? Legislators need to address the questions of what should be subject to regulation, and how. The bearings of the legislator, in this field, must be set by the highest public interest. From a regulatory point of view the public interest chosen as most relevant should be of improved mobility, security, and user welfare services, without losing sight of the sustainability of all economic operators on the individual passenger transport market - which includes, for example, taxi services, that cannot be placed in a regulatory disadvantage situation to the detriment of new business models.

15. Also, if a transport platform operator indeed acts as more than a mere passive intermediary – if its role is decisive and interventionist –, then it should be on said provider that the greater weight of regulatory responsibility should be placed. Legislators should put on the platform operators the main burden of regulatory obligations towards the four fundamental concepts of these services: vehicle, driver, passenger and platform.

#### a) Harmonized regulation

16. The main hindrance to the activity of transport platforms is the increase of transaction costs caused by un-harmonized regulatory frameworks across the international field.

17. Regulatory approaches vary from country to country. In some countries, such as the United States and the United Kingdom, the regulatory framework is localised and specialised, almost city-by-city. It is difficult to manage a nationwide operation as such. In other countries solutions also vary frequently. Some countries are favourable to the operation of transport platforms and establish specific legal frameworks for the licensing of the operation; others however, simply do not accept transport platforms as a new business model *per se*, enforcing the application of the standard legal frameworks already in force to for-hire and taxi transport services.

18. This forces transport platforms operators to deal with different requirements set out by different governments and agencies, to accommodate differentiated approaches and to implement different and increasingly complex compliance procedures.

19. On the other hand, a heterogeneous legal landscape that shifts from jurisdiction to jurisdiction does not provide a solid benchmark base on which legislators may rely upon to conduct regulatory impact assessments of their policies.

20. Legislators should look after reduction of transaction costs, namely through reduction of the legal burden, aligning national solutions with the solutions set out in neighbouring jurisdictions.

#### b) New rules for a new service

21. If transport platforms indeed provide a new transport service that is different than those provided by taxi and limousine services, then a new legal category should be created. Straightforward application of the legal frameworks of other for-hire vehicles to transport platforms would produce an unbalanced result.

22. Legislators should look into the specificity of transport platforms operations and set out unique and proper rules for them. Rules should apply mainly to operators whenever they are the preeminent party of the tripartite relationship. They are the party in control of the operation; hence they are the sole entity in position to ensure the compliance with insurance requirements, vehicle requirements and inspections, performance limitations and indicators, driver background checks, as well as limitations on surge pricing.

23. Finally, supervision of the activity should preferably be carried out ex post, leaving the full responsibility to the platform operator during the exercise of the activity. Prior administrative control should be avoided whenever possible, to the extent that it does not burden private and public entities with bureaucratic tasks that are ineffective in adding guarantees to users or the market.

#### c) Workers' rights

24. As the ECJ has ruled that transport platforms must be treated as transport services and not as digital services, legislation should ponder if its drivers are not conventional workers, rather than accepting the current qualification of "drivers-suppliers." Notwithstanding the particular characteristics of this tripartite relationship, drivers are indeed bound to comply with the platforms' instructions and their liberty is very limited. There are several cases pending before the courts regarding the employment status of Uber drivers that should be decided in 2018. Legislators should take heed of the decisions of those courts prior to enforcing definitive solutions.

25. Regardless of the qualification, there are strong arguments in favour of the introduction of compulsory limits that would benefit drivers.

26. The fact of the matter is that drivers' working conditions – such as duration and amount of pay – are occasionally below national legal thresholds. This poses a major concern as to the working conditions of the drivers per se, but also as to the market conditions in general. Unrestrained exploitation of drivers' work is a way of unbalancing the playing field with other transport services. If transport platforms are relieved of complying with any working conditions when it comes to their drivers, or even if those conditions are substantially different – and lighter – than those applicable to taxis, it validates the argument that it constitutes a mere escape from the existing regulation for the taxi market, and therefore it is just not justified.

27. Ultimately, a limitation on the duration of the drivers' working hours is also imposed by concerns over the safety of both drivers and passengers. As drivers may work with different transport platforms simultaneously, cross controls across platforms must be enforced.

#### d) Taxation

28. Two major concerns arise when dealing with taxation of transport platforms. The first is the issue of whether the revenue from the activity is actually an income for the driver or for the platform. This question is directly related to the precedent issue, so as to ascertain if the driver is (or not) an employee of said transport platform.

29. The second arises from the fact that transport platforms are usually not based in the country where the services are rendered. This poses difficulties concerning income taxation that must be dealt with in the proper legal international framework.

### **Taxing ride-sharing businesses**

The commonplace solution regarding taxation of ridesharing businesses relies on imposing ordinary sales taxes. The *nomem juris* fluctuates, as legislators opt between sales tax, regulation tax, surcharge, fee, etc.

In the United States, state-level Maryland, Massachusetts, Nevada, Pennsylvania and South Carolina have subjected ride-hailing services to existing sales taxes or imposed extra taxes or fees on them. For instance, Pennsylvania charges a 1,4% tax on all rides. The State of New York has recently approved a bill by which it now collects a fee on ride-hailing services, worth 4% on the transportation network companies as part of an overall regulatory scheme. Revenues are earmarked for mass transit.

At city level the usage of taxes is more widespread. Chicago City Council, as other cities, charges a 67-cent fee for every ride-sharing trip.

In Europe, platforms are accused of adopting tax structures that circumvent their obligations, by not paying value added tax. In the case of Uber, the issue remains that the services are provided in the UK or other EU-member states, however by a company seeded in the Netherlands.

Portugal meanwhile has taken inspiration from the US example and recently approved a law imposing a regulation tax on these ride-sharing platforms, as a part of a new overall regulatory framework. A 5% tax on all rides will thus be charged.

#### e) Antitrust, consumer protection & big data

30. Three final concerns relate to protecting the market and the threats posed by the nature of the platform operators. First of all, legislators need to approve compulsory measures imposing on operators the conditions that the platforms need to observe in order to develop their activity, while regulating mobility services in accordance with the objectives of public policies within the country. It is also on these.

31. Second, operators that the obligations relating to drivers and vehicles used in the service must be fulfilled. Drivers must have a unique identification number from the first registration on any platform or with any operator, allowing a control of the driver's identity as well as duration of activity across various platforms. Drivers must be scrutinised through background checks and driving history, and they should be provided with training for road safety and high levels of customer service quality. Vehicles must be safe and fully adequate to perform the service.

32. It should also be mandatory to have mechanisms of fast, transparent monitoring, aimed at ensuring the user's continuous protection. Rules should be enforced with the aim of monitoring user and vendor account information, activities and the creation of "reputation systems".

33. A second line of concern regards the use and protection of "big data" – in this case, the services user's data.

34. Transport platforms receive and amass a colossal amount of personal and sensitive information on both passengers and drivers. Through their accounts on the platforms, passengers and drivers provide financial information, inform of personal transactions and enable constant indication of their geographical localisation. Strict rules should be applied to the collection and treatment of individual and aggregate information provided by users– including stringent safeguards on their behalf.

## 5. The case of home-sharing platforms

35. Finally, the sharing economy extends to the domain of the housing market. The same criticism noted above about transport platforms applies to these “home-sharing” platforms, as so many of the issues mentioned above are also valid in this context. However, three points specific to this activity need to be underlined.

36. First, the platforms argue that they merely aggregate informal demand and supply information: the suppliers are often individuals that provide their excess capacity that would otherwise go unutilised. However, critics point out that this is a fringe reality: the immense majority of transactions are supplied by commercial providers of short-term rentals that take advantage of not having to comply with urban, tax, and administrative regulations that are applicable to conventional businesses. Hence, the success of these platforms comes from bypassing regulations. This is the first issue to be tackled by legislators and regulators: ensuring that these platforms are indeed used only as a mechanism of “shared economy”, and not just as an instrument of unfair competition, introducing full consumer safety concerns including security, health, and fire safety.

37. The second point goes a bit further than the previous one, and relates to the fact that there are unequivocal social costs caused by the activity generated by these platforms, and these are left to be paid by third parties and by society in general, and neither by the landlords nor the tourists.

38. Namely, there is widespread evidence (and acceptance of the fact) that with the increase of activity of these platforms comes an increased cost of living for local dwellers. There is a proliferation of noise complaints and other nuisances in areas that were previously exclusively for housing. In some cases, house prices increased significantly, pushing locals out of buildings, neighbourhoods, and communities as a whole (a phenomenon usually described as “gentrification”).

39. The intensive utilisation of housing for this purpose puts increased pressure on utilities that were not designed to be used in such capacity, such as water, sewage, waste, and parking. These utilities suffer in terms of reliability and quality, and they require more investment in repair and reinforcement of capacity, to avoid increasing degradation. The problem is that those investments come without the proper compensation from those who take an obvious commercial benefit from it, and are the actual cause of the need for further investment – they conduct a business, while paying taxes and fees as common dwellers.

### **Regulating and taxing home-sharing activities**

Authorities worldwide have taken very different approaches towards regulating home-sharing platforms, such as Airbnb.

Some cities have taken a stand in simply opposing these services as strongly as possible, while others welcome them with almost unrestrained acceptance.

The first regulation response usually comes in the form of taxation – an answer to the contention that these platforms are “free riders” – in the form of accommodation taxes. These taxes are usually covered by the guests, pricing being per night; but they face the criticism that they are paid only by legalized accommodations, thus working as an economic incentive for proliferating illegal accommodation, which covers a significant part of the current offer on the market. More recently, home-sharing businesses are shifting taxation options in other directions. Property taxes are being modelled to face gentrification concerns, increasing the rates for short-term rental hosts or by reclassifying properties from housing to commercial.

Recently, in Amsterdam as well as other locations, quantitative limitations are becoming the choice of legislators to immediately correct the distortion caused by the growth of tourism. These limitations may assume the form of quotas – a limit on the amount of offer available per district or city –, as well as property limitations to short- and long-term rentals.

40. Third and lastly, housing platforms have an evident capacity to foster racial discrimination. In the United States, a field experiment (Edelman, 2017) has verified that Airbnb’s guests with distinctively African American names are to some extent less likely to be accepted relative to identical guests with distinctively white names. The problem, however, is how to blend non-discrimination safeguards while still insuring that

detailed information is acquired. The success of sharing platforms relies precisely on the facilitation of transactions, which in turn is based on the minimising the asymmetry of information. The introduction of “blind costumers” policies may have an effective result against discrimination, but it may also harm the very existence of these platforms.



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