Sharing Economy in Digital Single Market EU – a Phenomena with Future Potential

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Summary: The sharing economy is a rising phenomenon in the digital world and has expanded in last years to most of the industries. Article deal with the phenomena of sharing economy, tries to find its definition using different approaches. The personal data aspects of the sharing economy are also discussed as a valuable asset. The last section of the article deals with Uber as a digital platform or perhaps more? Analysing the Uberized economy with mentioning also the breach of personal data security in Uber through different countries.

Keywords: European Union, sharing economy, collaborative economy, online platforms, digital single Market, Uber

1. Introduction

European Union founds important to extend the current EU single market, which consist of free movement of goods, services, labour and capital. The single market makes the EU territory without any barriers. Currently four freedoms included in the internal market needs to reflect the development of the society and the digital era. After creating the Digital Single Market, the European Union can enjoy its full potential.[1] The creation of a Digital Single Market is definitely a priority of the Union. Data protection reform is an important part of the formation of digital single market where the goal is to make the covers the European Union without any digital barriers. The 21st century is considered as the era of digital technologies. The process of "internetization" has covered all areas of human life. The world is completely dependent on electronic

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[1] JEŽOVÁ, D. EU Digital Single Market – Are we there yet? *AD ALTA: journal of interdisciplinary research*, 2017 year 7, no. 2, pp. 100.

technologies. The most important political, economic and social projects are carried out via the internet.[2]

Nowadays sharing economy is growing and is playing an important role in the economy. The establishment of the digital single market is getting closer. In communication of the Commission[3] and its mid-term review[4] where the Commission proposes to extend the DSM strategy "to keep up to date with emerging trends and challenges such as those related to online platforms, the data economy and cybersecurity." The so-called sharing economy has flown out of its nest. Far from being seen as the novel phenomenon society and regulators used to look almost unanimously favourably upon, it has sparked many debates in terms of competition, distribution of value, taxation and labour rights, to name a few.[5]

In case we try to find out the definition of the shared economy currently we will not be able to. Author Hatzopoulos differs between the sharing economy and collaborative economy, where base on his research the collaborative economy refers to an economic model that focuses on providing access to products and services through renting, trading or sharing instead of traditional ownership. The sharing economy is subset of the collaborative economy that focuses solely on the outright sharing assets. The collaborative economy is known by different labels: the sharing economy, the gig economy, the platform economy, the on-demand economy, the peer-to-peer (P2P) economy and even Uberized economy.[6] The sharing economy indicates a system whereby the involved actors behave differently: an online platform performs the passive role of the matcher of demand and supply while a service provider and a user exploit their perspective expertise or resources, such us a car ride, baby-sitting, translation and household chores. Often the sharing economy as such does not imply an economic gain; rather, it solely ensures mutual benefit between the two parties, so much so that this notion basically refers to the ideal archetype of a consumer as well as ecological awareness developed in order to rediscover human relationships among

[2] NAPETVARIDZE, V.; CHOCIA, A. Cybersecurity in the Making – Policy and Law: a Case Study of Georgia', *International and Comparative Law Review*, 2019, vol. 19, no. 2, pp. 155.

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee And the Committee of the Regions A Digital Single Market Strategy for Europe, COM(2015) 192 final.

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Mid-Term Review on the implementation of the Digital Single Market Strategy A Connected Digital Single Market for All, COM(2017) 228 final.

[5] SMICHOWSKI, B. C. Data as a common in the sharing economy: a general policy proposal. 2016 [online]. Available at: <https://vecam.org/IMG/pdf/carballa_smichowski_bruno_2016_-_data_as_a_common_in_the_sharing_economy_a_general_policy_proposal_cepn_wp_.pdf> (14.04.2020).

[6] HATZOPOULOS, V. *The Collaborative Economy and EU Law*. Hart, Oxford, 2018.

neighbours and put in place common idle goods and capacities, including time and even professional knowledge.[7] Currently the model is changing and shared economy became the business model for the purpose to gain profit.

A definition of the term "collaborative economy" was stated by the Commission: the term "refers to business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time and/or skills — these can be private individuals offering services on an occasional basis ('peers') or service providers acting in their professional capacity ("professional services providers"); (ii) users of these; and (iii) intermediaries that connect — via an online platform — providers with users and that facilitate transactions between them ('collaborative platforms'). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit.[8]"

Sharing economy is also known as P2P services. The model came from long time ago, where people usually knowing each other where helping each other with lending thinks, money. In the digital era the model changed where online platform is established and connect people having thins to borrow with people wanting thinks, money to borrow. The advantage is that the service becomes more affordable, there is no need of people knowing each other and a wide range of service and things is available on the market. The profit became part of the economy.

The concept of sharing – in the new business era of decentralized internet production and intangible assets – may be understood as a form of micro capitalism[9]. Sharing is the foundation of a market where the surplus production capacity of personal goods can be used in different businesses in which individuals look for income generation – some scholars call this phenomenon sharing market.[10]

In a recent study using a new empirical methodology, Eljas-Taal et al. estimate annual revenues of the collaborative economy in four sectors to represent 0.17% of EU GDP. They estimate that the collaborative economy provides

[7] INGLESE, M. *Regulating the Collaborative Economy in the European Union Digital Single Market*, Springer, Switzerland, 2019.

[8] Commission Communication 'A European agenda for the collaborative economy', COM(2016)356 final, at 1.

[9] PETRIE, C. Emergent collectives Redux: the sharing economy. *IEEE Internet Computing*, 2016, 20(4), pp. 84–86, [online]. Available at: <https://ieeexplore.ieee.org/document/7529012?denied=> (12.04.2020).

[10] CÓRDOVA, R. *Sharing economy: becoming an Uber driver in a developing country*. [online]. Available at: <https://www.researchgate.net/publication/332181710_Sharing_economy_becoming_an_Uber_driver_in_a_developing_country> (12.04.2020).

work for approximately 395,000 people active across the EU, representing about 0.15% of EU employment.[11] With access to sufficiently liquid peer-to-peer rental markets, owners of durable goods can temporarily supply their non-utilized capacity to others who may prefer to rent this capacity instead of owning their own asset because their average utilization levels or income levels are too low. Correspondingly, the prospect of future rental (much like the prospect of future resale created by secondary markets) might make consumers more willing to invest in asset ownership. The introduction of peer-to-peer rental markets will thus affect the value of the associated underlying assets.[12]

2. Usage of personal data in sharing economy

Based on the Commission Digital single market strategy[13] the Digital Single Market must be built on reliable, trustworthy, high-speed, affordable networks and services that safeguard consumers' fundamental rights to privacy and personal data protection while also encouraging innovation. Based on the EU agenda for the collaborative economy[14] in any event, like any other controllers collecting and further processing personal data in the EU, collaborative platforms must comply with the applicable legal framework on the protection of personal data. Ensuring adherence to the rules for processing personal data will help increase the trust of individuals, whether providers or consumers (including peer to peer) using the collaborative economy, so they know that when it comes to their personal data they will have the protection they are due.

In platforms the data are collected from the users such us consumers and the registered providers of services. The platforms use a whole spectrum of different data such us mandatory data provided by users at the registration, that the personal data obtain via usage of the application (location data, financial data, etc.),

[11] See the study Policy Department for Economic, Scientific and Quality of Life Policies (2019): Contribution to Growth: *The European Single Market, Delivering economic benefits for citizens and businesses*. [online]. Available at: <https://www.bruegel.org/wp-content/uploads/2019/02/IPOL_STU2019631044_EN.pdf> (01.04.2020) – ELJAS-TAAL, K., KAY, N., PROSCH, L., SVATIKOVA, K. *A methodology for measuring the collaborative economy*, 2018.

[12] FRAIBERGER, S., SUNDARARAJAN, A. Peer-to-peer Rental Markets in the Sharing Economy. *NYU Stern School of Business Research Paper*, 2017. [online]. Available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2574337> (13.04.2020).

[13] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee And the Committee of the Regions A Digital Single Market Strategy for Europe, COM(2015) 192 final.

[14] Commission Communication A European agenda for the collaborative economy, COM(2016)356 final, at 1.

also passively collected data by the platform, via cookies, preferences, also the technical data ex. photos from your mobile phone and also the self-presentation data voluntarily disclosed. The analysis of the acquired data is provided by the digital platforms. Also, platforms actively collect data for marketing purposes such us Facebook's lucrative advertising model relies on data collected not only on Facebook, but also by the use of third-party websites and apps via Facebook's embedded tools. Such off-Facebook data collection is usually not predicted by Facebook users.[15]

Conceptually, the mere existence of a sharing economy brings about questions of privacy as it involves the simultaneous sharing of consumer data (in exchange for participation on sharing platforms) and consumer-owned goods, spaces, and services. For both categories of users involved, both consumers and providers, optimal privacy is achieved when they reach a solution that allows them to both take part in the sharing economy and corresponds to a desired level of exposure to peers and organizations. Additionally, when the sharing system involves a monetary exchange, different motivations and expectations can alter the privacy calculus of all the users involved. Privacy in data sharing is twofold: data exchanges take place between users and platform-organizations, and between users and peer-users.[16] In other words, the sharing data comes from more sides than just two as it is on general web pages. Data shall be shared from consumers, service provider and the digital platform. Different type of data is shared even personal and non-personal in digital platform of sharing economy.

In order to participate in the sharing economy, both providers and consumers must disclose a certain amount of information to the platform organization in exchange for access to the platform on which the exchange takes place. The use of goods by others[17] may be an intrusion into private and personal physical spheres[18], when other people literally enter one's own home or use one's own car[19].

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[15] BOTTA, M. WIEDEMANN, K. (2018) EU Competition Law Enforcement vis-à-vis Exploitative Conducts in the Data Economy Exploring the Terra Incognita. *Max Planck Institute for Innovation and Competition Research Paper*, 18-08, pp. 64. [online]. Available from: https://ssrn.com/abstract=3184119 (14.04.2020) and also MAZÚR, J., PATAKYOVÁ, M.,T. Regulatory Approaches to Facebook and Other Social Media Platforms: Towards Platforms Design Accountability. *Masaryk Law Journal*, 2019, p. 219.

[16] RANZINI, G., ETTER, M., LUTZ, CH., VERMEULEN, I. Privacy in the Sharing Economy. *Horizon 2020*. [online]. Available at: <https://www.bi.edu/globalassets/forskning/h2020/privacy-working-paper.pdf> (12.04.2020).

[17] TEUBNER, T., FLATH, C. M. Privacy in the sharing economy. Working Paper, 2016.

[18] BIALSKI, P. Becoming intimately mobile. 2012, Frankfurt, Germany: Peter Lang also BIALSKI, P. Technologies of hospitality: How planned encounters develop between strangers. *Hospitality & Society*, 2012, 1(3), pp. 245–260.

[19] BUCHBERGER, S. Hospitality, secrecy and gossip in Morocco: Hosting Couch Surfers against great odds. *Hospitality & Society*, 2012, 1(3), pp. 299–315 also RANZINI, G., ETTER, M.,

Nowadays we share a lot of different data voluntarily on different platforms on Internet. In an era of 'self-portraiture'[20], others influence how we present our extended self and the idealized view of oneself, which might also impact the way one's past is constructed[21]. It is through photos that we post online of our "house, the kind of car we drive, and our stock portfolio"[22] that we display ourselves for the whole world to see.[23] Belk's notion of the extended self indicates a critical risk associated with sharing: besides the risk of physical damage, sharing also increases the risk of (perceived) interpersonal contamination in the form of the violation of one's personal space. The perceived risk of interpersonal contamination is more pronounced when we are less familiar with the person sharing a space or good – which is a key characteristic of online sharing services.[24] As we can see our extended selves are cars, houses we use on regular basis. Those extended self we share with others in the model of sharing economy. That personal space is shared together with personal data of users of digital platforms.

An essential characteristic of sharing economy is a remuneration for the exchange, sharing of items, services. Can personal data be considered as a remuneration? What about voluntary exchange of personal data to the subject providing services in shared economy? Definitely yes, the personal data are used as currency often in digital world. Legally the idea is used in the directive on certain aspects concerning contracts for the supply of digital content and digital services[25] in recital 24 is addressed that digital content or digital services are often supplied also where the consumer does not pay a price but provides personal data to the trader. It is clear that personal data are valuable asset and are actively used for obtaining digital content "for free" on the other hand the protection of personal data is fundamental right. The same is mentioned in article 3 para 1. Based on recital 67 of the directive where the digital content or digital

LUTZ, CH., VERMEULEN, I. Privacy in the Sharing Economy, *Horizon 2020*. [online]. Available at: <https://www.bi.edu/globalassets/forskning/h2020/privacy-working-paper.pdf> (12.04.2020).

[20] SCHWARZ, O. On friendship, boobs and the logic of the catalogue: Online self-portraits as a means for the exchange of capital. *Convergence*, 2010, 16(2), pp. 163–183.

[21] VAN DIJCK, J. Digital photography: communication, identity, memory, *Visual Communication*, 2008, 7(1), pp. 57–76.

[22] BELK, R. W. Extended self in a digital world. *Journal of Consumer Research*, 2013, 40(3), pp. 477–500.

[23] RANZINI, G., ETTER, M., LUTZ. CH., VERMEULEN, I. Privacy in the Sharing Economy, *Horizon 2020*. [online]. Available at: <https://www.bi.edu/globalassets/forskning/h2020/privacy-working-paper.pdf> (12.04.2020).

[24] LUTZ, Ch., HOFFMANN, Ch., BUCHER, E., FIESELER, Ch. The role of privacy concerns in the sharing economy, *Information Communication and Society*, 2018.

[25] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, L 136/1.

service is not supplied in exchange for a price but personal data are provided by the consumer, the consumer should be entitled to terminate the contract also in cases where the lack of conformity is minor, since the remedy of price reduction is not available to the consumer. Voluntary transmission of personal data can be definitely used as remuneration in digital environment. Personal data became economically valuable asset with the ability to obtain services or goods on Internet. The World economic Forum 2010 study highlighted the relevance of personal data as an economic asset that could be perceived as the new 'oil'[26]. The metaphor of personal data as oil is an interesting one. It covers both the use of personal data as a product in itself and as being a substance that is basic to a large number of economic activities. A general feature of data is that it can be sold repeatedly without loss of its intrinsic value. The copy is just as good as the original, enabling multiple offers without loss of price or value. A single item of personal data thus will hardly have a commercial value.[27] The case of Shawn Buckles is an interesting illustration. Shawn Buckles[28], set up an auction in April 2014 to sell his personal data to the highest bidding organization. The firm that offered the highest price for his personal data would acquire a subscription of a year to data that were collected on Shawn Buckles. These data encompassed his personal profile, his location track records, his train track records, his personal calendar, his email conversations, his online conversations, his consumer preferences, his browsing history, and his thoughts. The highest bidder for this data set was The Next Web which offered 350,- € for the full data set. Shawn Buckles used the auction to raise awareness for the commercialization of personal data and the consequences for privacy.[29] This is a clear example where a person not even got "free" item on platform but transformed his data to money.

The discussion was also lead about the ownership of the data[30] where the distinction between a raw data in which the data subject clearly retains a strong and enduring interest and demographically aggregated information which is the corporation´s work product through the processes and algorithms used to create demographics but in which the data subject still has an affected interest. Article 7 of GDPR put uses the interest of data rather than ownership.

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[26] World Economic Forum. Personal Data: the emergence of a new asset class. *World Economic Forum,* 2010. [online]. Available at:

[27] VAN LIESHOUT, M. The Value of Personal Data. *IFIP Advances in Information and Communication Technology*, 2015, doi: 10.1007/978-3-319-18621-4_3.

[28] <http://shawnbuckles.nl/dataforsale/> (13.04.2020).

[29] VAN LIESHOUT, M. The Value of Personal Data. *IFIP Advances in Information and Communication Technology*, 2015, doi: 10.1007/978-3-319-18621-4_3.

[30] SHREIR, D., L. Beyond GDPR. *Trusted data: A New Framework for Identity and Data Sharing*, Massachusets Institute of Technology, 2019, pp. 218.

2.1. The right to data portability and online platforms

The right of data transfer was new right included in GDPR and includes the right to receive personal data in a structured, commonly used and machine-readable format, and the right to transmit this data to another operator without hindrance from the operator to which the personal data have been provided. The right includes the right to transfer data directly from one operator to another. This means that data controllers who externally process data or process data together with other controllers must have clear contractual terms for assigning each party's responsibility in responding to data portability requests and implementing specific procedures in that regard. Under the wording of Article 20 there is only the word 'technically feasible'. The explanation of the Article 29 WG lies rather in the fact that no obligation is imposed on the data controller, which would only require them not to create obstacles in the transfer. In practice, this could lead to blocking the real use of the right with the indication of the operator that the transfer is not technically feasible.[31] The right to a direct transmission of personal data between controllers shall simplify the sometimes-complex switch between service providers. It was the legislator´s intention to allow individuals to move their online profiles from one platform to another with just in one click. This gives rise to the question in which cases such direct transmission is technically feasible, such as where providers of rather different services are involved.[32] Feasibility depends on level of investment in technology that has been made.

The data portability is fundamental not only for privacy, but also for the growth of the Digital Single Market. It is obvious that the right to data portability will improve the power of the data subject on his data. The right to data portability can be used together with the right to erase data. If a user can take a copy of the data, from the digital platform and after he obtains them ask to delete the data ask, he has more contractual power in the platform relationship.

What about shared economy? How do we find balance between the sharing data and the rights of data subjects? The GDPR does not solve the question but it underlines that the right to data portability "shall not adversely affect the rights and freedoms of others". The Article 29 Working Group try to extend the application of the right to data portability also to the data which involve more than one data subject. In particular, they said that when a data controller process "information that contains the personal data of several data subjects", he "should

[31] JEŽOVÁ, D. Data Protection Reform in the EU as a Part of the Forming Digital Single Market. *European Studies, The Review of European Law, Economics and Politics*, Wolkers Kluwer, 2018, vol. 5, pp. 299–300.

[32] VOIGT, P., VON DEM BUSSCHE, A., *The EU General Data Protection Regulation (GDPR): A Practical Guide*. Springer, Berlin, 2017, p. 175.

not take an overly restrictive interpretation of the sentence "personal data concerning the data subject". In this case the data controller should response to the data portability request because the data are also concerning the data subject, but if such data are then transmitted to a new data controller, the new data controller "should not process them for any purpose which would adversely affect the rights and freedom of the third-parties"[33] The Article 29 WP in Guidelines proposed "foster opportunities for innovation by means of sharing of personal data between data controllers in a secure manner under the constant control of the data subject". Practically the issue of data transfer in the sharing economy is not closed as far in sharing economy the data of other subject which are connected with your data are important. Not being able to use on other platform the data all together (the data of the data subject and of others) as a package the options of the consumer to change the platform will be again limited. The consumer might than chose rather to stay on the platform than not being able to use the data as whole.

The already mentioned Digital Content Directive[34] (article 13 and 16) provides with the right to indirect portability after contract termination by the consumer, enabling retrieval of all content provided by the consumer and any other data consumer produced or generated through the digital content´s use. The second is the Regulation on the Free Flow of Non-Personal Data[35], which applies to the storage or other processing of electronic non-personal data.[36] Based on recital 31 "in order to be effective and to make switching between service providers and data porting easier" the EU leaves regulation to the codes of conduct which should be comprehensive and should cover at least the key aspects that are important during the process of porting data. The new term porting data is used in this regard.

Article 20 GDPR refers to "data concerning him or her, which he or she has provided to a controller". "Data provided" can be interpreted in two different ways: restrictively and extensively. According to the restrictive interpretation, "data provided" means only personal data that the subject has explicitly provided in a written or anyway explicit form, e.g., filling a registration form, answering to questions, etc. On the other hand, according to the extensive interpretation, "data provided" means all personal data that data controllers have collected upon

[33] MARTINELLI, S. Sharing data and privacy in the platform economy: the right to data portability and "porting rights". *Entrepreneurship Ecosystem in the Middle East and North Africa* (MENA), 2019.

[34] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, L 136/1.

[35] Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union, L 303/59.

[36] See also ELFERING, S. Unlocking the Right to Data Portability: An Analysis of the Interface with the Sui Generis *MIPLC Studies*, 2019, p. 32.

consent or according to a contract, e.g., through GPS (location data), cookies, preferences, etc.[37]

Data in shared economy which are valuable for consumers and also for the providers of services are references. References of other users of the digital platform are the value based on which other considering using the services provided are helping with the decision. Shall references also be subject to the right to data portability? References include also the name of the person giving them. In case the references as a reputation will not be portable the power of the platform will be still higher than the data subjects (registered consumers and registered service providers) and the goal of the data portability right was not met.

3. Uber as an online platform in sharing economy. Or perhaps more?

One of the used terms for the shared economy is the Uberized economy, which come from Uber. Therefore, I choose to explain that phenomena in this article too.

Nowadays, car sharing has been impacted majorly due to new internet technologies that enabled the entrance of individuals that do not take into consideration the responsible consumption necessary to collaborate with the urban mobility or reduce car ownership costs. Rather than sharing a car, ridesharing includes common origins, destinations and routes; differently, Uber is a ride sourcing service.[38]

Uber is an electronic platform available via smart phone application. The application a consumer can order a ride from a specific place to another specific place for a fee by a non-professional driver. The idea behind is a P2P service where once a consumer has a ride to work with several places free in the car, he/she gives a ride to a third person having the same direction. On the other side the practice developed the initial idea to a business where several individuals are driving whole day based on the consumers demand very similar to taxi service.

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[37] DE HERT, P., PAPAKONSTANTINOU, V., MALGIERI, G., BESLAY, L., IGNACIO, S. The right to data portability in the GDPR: Towards user-centric interoperability of digital services. *Computer Law & Security Review*, 2018, vol 34, issue 2, pp. 193–203.

[38] SHAHEEN, S. A., CHAN, N. D., GAYNOR, T. Casual carpooling in the San Francisco bay area: understanding user characteristics, behaviors, and motivations. *Transport Policy*, 2016, 51, pp. 1–9. [online]. Available at: <https://www.researchgate.net/publication/292208482_Casual_Carpooling_in_The_San_Francisco_Bay_Area_Understanding_User_Characteristics_Behaviors_and_Motivations> (12.04.2020).

and also CÓRDOVA, R. Sharing economy: becoming an Uber driver in a developing country.

The individuals driving the car using Uber application do not hold any licence. However, in some countries most of the counties of the European Union the taxi service is subject to licence procedure. That is also in Spain where the Elite taxi case[39] has its roots. Is Uber an information society service or a transport service?

Uber has created a smartphone application that allows it to provide a range of services. One of the services was so-called UberPOP, which Uber refers to as a "peer-to-peer rideshare service" which enables a rider to "share" the use of a vehicle with the driver and owner of that vehicle (which Uber refers to as "partner-drivers") against the payment of a fee. This service was subject to a case Elite taxi. Spanish taxi drivers did not like the idea that Uber drivers are "taking their job" and do not have to fulfil the licence requirements and regulations. Therefore, the association of the taxi drivers in Barcelona filled an action against Uber in Spain where a preliminary reference was initiated to Court of Justice of EU. The court held that "must be regarded as being inherently linked to a transport service and, accordingly, must be classified as 'a service in the field of transport". Consequently, such a service must be excluded from the scope of the freedom to provide services in general as well as the directive on services in the internal market and the directive on electronic commerce. It follows that, as EU law currently stands, it is for the Member States to regulate the conditions under which such services are to be provided[40]. The case was discussed where also digital application has to follow "traditional" licence system in Member states. In a concise albeit sharp reasoning, the Court of Justice acknowledged the opinion expressed by Advocate General and denied Uber the qualification of information society service. The Court recognize the nature of the Uber service: 'an intermediation service consisting of connecting a nonprofessional driver using his or her own vehicle with a person who wishes to make an urban journey is, in principle, a separate service from a transport service consisting of the physical act of moving persons or goods from one place to another by means of a vehicle […] and each of those services, taken separately, can be linked to different directives or provisions of the TFEU Treaty on the freedom to provide services"[41] However, the Court then only apodictically states that this overall service "must be qualified not as "an information society service"", but as a transportation service. There are two possible doctrinal explanations for the incompatibility of the control element with an information society service. First, one might argue that the legal consequences of qualifying a composite service simultaneously as a transportation and as an information society service are incompatible. This

[39] Judgment of 20 December 2017, C-434/15 Asociación Profesional Elite Taxi v Uber Systems Spain SL, EU:C:2017:981.

[40] Press release no. 136/17 of the Court of Justice of the EU dated 20 December 2017.

[41] Case C-434/15, para 34.

may be what attorney general Szpunar has in mind when he states that the classification of UberPop as an information society service "would not permit the attainment of the objectives of liberalisation underpinning Directive 2000/31".[42] This is due to the specific regulatory framework surrounding transportation: the freedom to provide services does not apply, neither through Article 56 TFEU nor through the Services Directive. […] However, the Court seems to base its conclusion not to qualify the platform service as an information society service on the unitary qualification of the overall service as a transportation service. This suggests a better doctrinal explanation that follows the reasoning of the Advocate General in his opinion: the control element transforms the digital intermediation service into an overall service that, at least primarily, is not delivered electronically and at a distance, but physically and on the ground directly between the involved parties.[43]

It is likely that the model of collaborative economy will grow as various activities historically carried out by humans (such as, for instance, taxi dispatchers or booking agents) can now be performed by software applications.[44] Already Airbnb has become a powerful player in the hospitality industry drawing criticism from hotels it is largely free from the regulatory burden they are subject to. The broad question is how to reach the dual objective of ensuring that online intermediation platforms are allowed to provide their (usually efficient and attractive) services, while ensuring that they comply with the regulatory requirements needed to correct clearly identified market failures. While Uber's services have been subject to challenges in many countries inside and outside the European Union, Geradin strongly believes that the right approach for regulatory authorities is to adopt regulatory regimes that achieve the dual objective identified above.[45]

Uber´s key technologies are artificial intelligence, machine learning and autonomous vehicles. Its core services, which use these technologies are disrupting public transportation, as well as taxi and limousine services. However,

[42] SZPUNAR, A. G. Opinion of 11 May 2017 in case C-434/15 Asociación Profesional Elite Taxi, EU:C:2017:364.

[43] HACKER, Ph. UberPop, UberBlack, and the Regulation of Digital Platforms after the Asociación Profesional Elite Taxi Judgment of the CJEU. *European Review of Contract Law*. [online]. Available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3116143> (11.04.2020).

[44] MARC, A. Why Software Is Eating the World. *The Wall Street Journal*, 20 August 2011, [online]. Available at:
<www.wsj.com/articles/SB10001424053111903480904576512250915629460> (11.04.2020).

[45] GERADIN, D. Uber and the Rule of Law: Should Spontaneous Liberalization be Applauded or Criticized?, *Competition Policy International*, 2015, [online]. Available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2693683> (11.04.2020). also GERADIN, D. Online Intermediation Platforms and Free Trade Principles – Some Reflections on the Uber Preliminary Ruling Case. [online]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2759379> (11.04.2020).

its technologies and expertise are sought after by different types of organizations in multiple industries. Uber is a disruptor innovator, which utilizes applications to provide its users with more convenient services. Uber´s core strength is its technology platform expertise, and it has sought to integrate its service with that of other providers, ex.: in accommodation industry, hotels. Uber also integrated its services with Amazon Echo and users have had the option of ordering an Uber by speaking to Alexa, the virtual assistant behind Amazon Echo.[46]

The ethical dilemmas[47] associated with the Uber service sets the stage for a broader critique of the platform/gig economies and their lack of regard for the social good. It is particularly challenging because a service such as Uber enjoys widespread popularity while also being immensely problematic for those with the least power and mobility. The ethical challenges here largely touch upon the predator/prey dichotomy that has been symptomatic of the broader culture in which Uber has been developed. The cases surrounding gender-based violence for riders, and Uber's developers; racist practices by drivers; systemic sexism and racism in the company still coming to light; and privacy issues arising from unethical treatment of user data[48] all speak to the profoundly troubling social issues that continue to plague the company.

As mentioned above the Uber is as a digital platform using combination of different personal data. Any personal data can be used to provide benefits for the user or potentially misused to provide benefits for third parties. The example of battery life tracking capacity can be used. Normally, most people would think about this information as useless. On the other side based on the research made by Uber, customers with smartphones on low battery are willing to pay even ten times more for a car ride than usual.[49] The Uber´s economy research states that Uber has found that those with a low battery tend to accept the surge price regardless because they need a ride home that minute, instead of waiting an extra 15 for the surge to possibly go down.[50]

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46 PERERA, Y., ALBINSSON, P. *Uber*, ABC-CLIO, LLC, California, USA, 2020, pp. 74–76.

47 CHEE, F. An Uber ethical dilemma? Examining the social issues at stake. *Journal of Information, Communication and Ethics in Society*, vol. 16, no. 3, 2018, pp. 261–274.

48 HILL, K. "God view": Uber allegedly stalked users for party-goers' viewing pleasure (updated), *Forbes*, 2014, 3 October. [online]. Available at: <www.forbes.com>, CHEE, F. An Uber ethical dilemma? Examining the social issues at stake, *Journal of Information, Communication and Ethics in Society*, vol. 16, no. 3, 2018, pp. 261–274.

49 ZEZULKA, O. The digital footprint and principles of personality protection in the European Union. *Prague Law working paper series*, Charles University Law Faculty, 2016/III/2, pp. 3.

50 CARSON, B. You're more likely to order a pricey Uber ride if your phone is about to die. *Business Insider*, 12 September 2016. [online]. Available at <http://www.businessinsider.com/people-with-low-phone-batteries-more-likely-to-accept-uber-surge-pricing-2016-5> (12.04.2020).

Information and empowerment of data subjects is key for the effective protection of their personal data. Platform users are already more active than the average consumer. It is only fit that they actively choose how their data will be processed once 'trained' to become more mindful about their control over their data. In line with the self-regulation culture enshrined in the collaborative economy, platforms could give data subjects the option of data processing every step of the way, through pop-up boxes and comprehensible questions, instead of lengthy, all-inclusive Terms and Conditions.[51]

Uber as one of the biggest digital platforms also faces challenges and data breaches. Uber drivers in the UK filled a lawsuit against the company over allegations the firm has continuously broken European data protection laws. The drivers claimed it had breached the regulations by repeatedly failing to provide them with information, such as the duration of time they spent logged onto the platform, their individual GPS data, and trip ratings in 2017.[52]

In November 2018, Uber was fined £385,000 for paying off hackers who had stolen the personal details of 2.7 million UK customers. Uber hadn't informed its customers about the breach. Using credential stuffing (injecting usernames and password pairs into sites until they found a match), the hackers accessed Uber's cloud-based storage system and downloaded names, phone numbers and emails of customers, as well as 82,000 driver records. Following this, Uber paid the attackers a $100,000 ransom so that they would destroy the data, but it took the company more than a year to tell the affected customers and drivers. Due to the size of the breach, the sensitivity of the data stolen and the length of time it took Uber to notify those who were affected, it was fined £385,000.

Alongside this, 174,000 people in the Netherlands were also affected, leading the DPA (Dutch Data Protection Authority) to impose a separate £532,000 for the same reason.[53] The Uber concern is fined because it did not report the data breach to the Dutch DPA and the data subjects within 72 hours after the discovery of the breach. In USA the Uber also faced a data protection breach allegation which was ended with the settlement of 168 million Eur for data breach in 50 US countries. In USA the state of Washington filled Complaint against Uber in the matter of

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[51] HATZOPOULOS, V. The role of personal data in the collaborative economy: data as a currency. [online]. Available at: <https://blogdroiteuropeen.com/2018/04/09/data-protection-in-the-collaborative-economy-by-vassilis-hatzopoulos/#_ftn5> (12.04.2020).

[52] CHLOE, T. *Uber faces fresh legal challenge over driver data.* [online]. Available at: <https://www.cnbc.com/2019/03/22/uber-faces-fresh-legal-challenge-over-driver-data.html> (11.04.2020).

[53] See: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/11/ico-fines-uber-385-000-over-data-protection-failings/> also <https://medium.com/golden-data/case-study-uber-technologies-inc-data-breach-7261484d6471> also <https://www.bankinfosecurity.com/uber-fined-12-million-by-eu-for-breach-disclosure-delay-a-11730> (14.04.2020).

security breach[54] also Federal Trade Commission dealt the case of Uber regarding the breach of privacy and data security[55], the state procedure against Uber data breach was also held in the state of California[56] and Pennsylvania[57] and other states.

Uber was "lucky" as far the 2016 breaches were dealt in the countries under the previous legislation before the GDPR came into force. Otherwise the sanctions might be higher based on the rules of GDPR where the sanctions might be calculated based on the annual global revenue.

4. Discussion and conclusion

Sharing economy is not a new phenomenon. Currently is rising and obtaining a great potential. Legally there is not one common definition of shared economy, while scholars differ between the collaborative economy and the shared economy arguing with different meanings. From the word sharing comes that the main objective of the economy, which is to share. Share services, goods, digital content and data. It is no doubt that data became already a currency in digital word and a consumer can buy digital products based on exchange of its personal data. Personal data not compering to any other data losing its value in case it is used repeatedly. This approach was supported by new directive on certain aspects concerning contracts for the supply of digital content and digital services.

Sharing economy has more than two subjects involved in the transaction. It so called "prosumers" where consumers and providers of services are connected via digital platform. Also, different categories of data are collected by the digital platforms personal and non-personal too. Some data might not have any value at the first sight for consumer but later discovering the data help the platforms to adjust the price for consumers needs (even taking advantage of the discomfort of the consumer such as low battery on mobile phones).

Right to data portability has a special value in the digital world with its main aim to make the position of the platform and the consumer as balanced as possible, mostly when used together with the right to erase data. Practical usage of the "power" of that right is questionable in shared economy, mostly when the

[54] Complaint available at: <https://buckleyfirm.com/sites/default/files/Buckley%20Sandler%20InfoBytes%20Washington%20State%20v.%20Uber%20Technologies%20-%20Complaint%2020 17.11.28.pdf> (14.04.2020).

[55] Case documents available at: <https://medium.com/golden-data/case-study-uber-technologies-inc-data-breach-7261484d6471> (14.04.2020).

[56] Documents to the case available at: <https://oag.ca.gov/system/files/attachments/press-docs/uber-final-judgmentscanned_0.pdf> (14.04.2020).

[57] Documents available at: <https://news.justia.com/wp-content/uploads/2018/03/2018-03-05-Uber.pdf> (14.04.2020).

references and reputation of the consumer (user of the data platform) is valuable even more than data added or created by him. With the extensive interpretation of the right that includes also the data controllers have collected upon consent or according to a contract. In case those data would not be transferable practically (being able to proceed also be the new platform) the effect and the power of the right to data portability would be in question.

Uber as a giant game player in the field of shared economy was put into a question whether the platform is considered as an information society service or a transport service, where the Court of Justice provided clear reply in the famous case Elite taxi discussed in this article. Both elements of the platform shall be considered, and the legal requirements shall be met by the digital platform too. A chain reaction on the data protection breach in more countries was discusses in the article where Uber faced legal actions in different stated for a one chain of data breaches.

It might be predicted that the shared economy will raise more due to its popularity among consumers, service providers, platforms. The role of the legislators is to focus and think about this type of economy which shall not be left behind any new legislative measures taken. The position of digital platforms as players in the shared economy might be misused in case if not regulated and supervised properly.

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