Prof. dr hab. Monika Szwarc

Collaborative platforms and market access in the EU law – in search of balance between liberalisation and protection of public interests.

Abstract

The contribution analyses legal aspects of the functioning of collaborative platforms in the internal market of the European Union. The first objective is to provide for the legal classification of collaborative platforms' business activities from the perspective of the existing EU law guaranteeing the freedom to provide services. The analyses of the Treaty on the Functioning of the European Union (TFEU), applicable EU Directives and the case-law of the Court of Justice of the European Union (CJEU) have been carried out in order to establish the legal standard applicable for the services provided by collaborative platforms in the internal market. The second objective closely related to the first one is to conclude on the rights of collaborative platforms and on the obligations (prohibitions) of Member States, stemming from the EU law. The realisation of these research objectives leads to the final conclusion whether these EU general provisions on the freedom to provide services in the internal market ought to be improved to ensure market access.

I. Introduction

The collaborative economy/sharing economy (both terms are used interchangeably) is not a new phenomenon in the global economics. Although it is true to say that the terms encompass a vast catalogue of different economic and non-economic activities, the concepts are commonly associated with the rise of online platforms in general. The socio-economic background to the collaborative economy/sharing economy, its main characteristics, evolving character and effects on societies and economies have already been widely discussed[1]. At the very general level, the political and scholars'debate lacks precision. Even at the EU level there is no agreement on the terminology[2]. Therefore, in order to precisely determine the legal problem discussed in the following text, it has been assumed that in the phenomenon generally described as 'collaborative economy/sharing

1 There is a vast literature on this, see reviews of the ideas and discussion in particular in: European Parliament. (2015), Codagnone C, Martens B (2016), Codagnone C, Biagi F, Abadie F, (2016a), Goudin P (2016).

2 European Commission prefers „collaborative economy", whereas other bodies rather „sharing economy" the European Parliament, European Committee of Regions and European Economic and Social Committee.

economy' there is a particular category of economic activities carried on by 'collaborative platforms', which are market operators offering services for remuneration.

The striking examples of such business models are the companies Airbnb (established in 2008 in the USA) and Uber (also established also in the USA in 2009). Since that moment, a dynamic development of the economy based on this innovative business model has been observed. As already explained in the vast literature, the model is prediacted on a specific configuration of economic partners, where the exchange of services is facilitated by online platforms that create an open marketplace for the temporary services provided by private individuals or business and where three categories of actors are involved: service providers who share assets, resources, time and/or skills (these can be service providers acting in their professional capacity or private individuals offering services on an occasional basis); service recipients; intermediaries that connect — via an online platform — providers with users and that facilitate transactions between them[3]. It is commonly accepted that it is not the idea of sharing so innovative, but rather the use of the internet (smartphone application or PC). Thus it is also generally acknowledged that the progress in this field would not be possible without technological progress and development of the internet-based tools. This type of online platforms which in general serve as an intermediation tool is often classified as collaborative platforms and defined as „internet-based tools that enable transactions between people providing and using a service"[4]. This term is employed in the following paper in order to underline the specific subject of research, having in mind though that collaborative platforms are the adressees of the legal acts applicable to online platforms in general.

Once established in the European Union, collaborative platforms were confronted with the national laws and administrative rules adopted unilaterally by Member States to regulate the business activities on their territories with a view to protecting important common public interests such as consumers, workers, safety of road transport, etc. These national reglamentation (sometimes adopted long before collaborative platforms entered the market and in some cases designed specifically for them) of establishing and conducting business activity ranging from total bans to the requirements of prior authorisation and reporting[5]. That situation led to confrontation before national courts which in turn decided to refer to the Court of Justice questions for a preliminary ruling. The legal circumstances of such disputes concerned the conformity of the following requirements with the EU law: the provision of urban taxi services is subject to the prior grant of a licence entitling the licence holder for each vehicle intended to carry out that activity[6]; the enforcement of criminal sanctions for the organisation of an intermediation system between clients and persons who are

3 From many see V Haztopoulos (2018), Chapter 1; M Inglese (2019) Chapter 2.
4 Flash Eurobarometer 438 (2016), p. 2.
5 For examples of national approaches Vara-Arribas G (2016), p. 139-161; for case studies on Airbnb and Uber, V Haztopoulos (2018), p. 199-204.
6 C-434/15, Uber Spain, EU:C:2017:981.

neither road transport undertaking nor taxi drivers[7]; the requirement of a professional licence for persons who lend themselves or give assistance on a regular basis to any transaction affecting leasing or subleasing, seasonal or otherwise, furnished or unfurnished, of existing buildings[8]. At this point the Member States' powers to regulate business activities carried out on their territories in the 'collaborative economy' model clashed against the requirements of the EU law in terms of the internal market liberalisation.

The internal market, a core idea of the EU law and policy, is based on the full liberalisation of economic activities without internal borders (between Member States), which is ensured via free movement of goods, persons, services and capital[9]. As long as intermediation services offered by collaborative platforms are provided for remuneration[10] they fall under the EU law, in particular the freedom to provide services[11]. Without going into details discussed profoundly and comprehensively elsewhere[12], it must be noted that the essential element of the freedom for an enterprise established in one Member State (home MS) is its access to the market[13] of services in any other EU Member State (host MS), without unjustified restrictions (where the scope of restrictions is defined by EU law). The right to access the market (market access) corresponds to the obligation of the host Member State to refrain from restricting it. The provision of intermediation services offered by collaborative platforms, as long as provided for remuneration, fall within the logic of the liberalisation of services, as any other service offered in the internal market.

Against such a background, the first objective of this contribution is to provide for the legal classification of collaborative platforms' business activities from the perspective of the existing EU law guaranteeing the freedom to provide services. This article does not scrutinise the issues concerning the form of regulation (binding law, self-regulation of the business, etc.) or the question at which level it would be the best to regulate (regional, national, international, EU)[14]. Instead, the analyses of the Treaty on the Functioning of the European Union (TFEU), applicable EU Directives

7 C-320/16, Uber France, EU:C:2018:221.

8 C-390/18, Airbnb Ireland, EU:C:2019:336.

9 Article 26(2) TFEU.

10 It is an indispensable condition of any economic activity to fall under the scope of EU economic law, including freedom to provide services. In the context of collaborative economy see further M Inlese, p. 22-23.

11 According to Article 57 TFEU: „Services shall be considered to be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. 'Services' shall in particular include: (a) activities of an industrial character; (b) activities of a commercial character; (c)activities of craftsmen; (d) activities of the professions; this definition is referred to also in Directive 2006/123 on services in the internal market, see Article 4 point (1).

12 For further and comprehensive discussion of the freedom of services logic and law see Hatzopoulos V (2012).

13 Access to the market or market access became another keyword in the EU economic law, see J. Snell (2010); in the later case-law for example: C-580/15, Van der Weegen, EU:C:2017:429, para 29; C-3/17, Sporting Odds, EU:C:2018:130, para 43.

14 On the issue whether the collaborative economy shall be regulated at all and at which level (regional, national, international, EU) see further V Haztopoulos (2018). p. 217 and ff., M Finck (2018b) and M Inglese (2019), p. 149-153; general remarks on the competence of the EU to regulate collaborative economy see in particular M Inglese (2019), p. 153 and ff

and the case-law of the Court of Justice of the European Union (CJEU) have been carried out in order to establish the legal standard applicable for the services provided by collaborative platforms in the internal market. Answering the questions of which EU provisions are applicable in a particular situation, makes it possible to conclude on the rights of collaborative platforms and on the obligations (prohibitions) of Member States, stemming from the EU law. The second objective is closely related to the first one. The realisation of these research objectives shall lead to the final conclusion whether these EU general provisions on the freedom to provide services in the internal market ought to be improved to ensure market access.

This article is structured as follows: Section II presents the EU provisions on the freedom to provide services in the internal market, which may be of application to collaborative platforms (as long as they are considered service providers in general). Section III provides for the legal classification of services offered by collaborative platforms. Section IV shows what implications for collaborative platforms and for Member States, in terms of their rights and obligations, stem from the legal classification reconstructed in Section III. Finally, Section V offers conclusions on the objectives of this article.

II. European Union law on freedom to provide services by collaborative platforms

It appears to be necessary to begin with the general remark that the EU law for many years did not include any provisions which would apply specifically to collaborative platforms as service providers from a general perspective of market access. The legal situation will change only in 2022 with the entrance into force of the Digital Services Act, which was proposed by the European Commission (EC) in 2020[15] (which is discussed below). This stood in contrast with the functioning of online (including collaborative) platforms presented by the EU institutions and bodies. For the first time the European Commission considered online platforms in general in its Digital Single Market Strategy, published in May 2015[16], where the EC launched the assessment of the role of platforms, including in collaborative economy and of online intermediaries. Later in 2015 the EC presented its general approach towards online platforms taking the perspective of the internal market. The Commission stated that 'the emergence of new business models often impacts existing markets, creating tensions with existing goods and service providers' and announced the development of a European agenda for collaborative economy. When considering whether the adoption of new legal framework was necessary, the Commission underlined that regulation which was not well prepared might lead to fragmentation of the internal market and that 'a clear and balanced regulatory environment is needed that allows the development of collaborative economy

15 Digital Services Act, COM (2020) 825 final; at the time of writing of this paper the DSA has been adopted by the EP and awaits signature by the Presidents of the Council and Commission and then publication in the OJEU (10.10.2022).

16 Digital Single Market Strategy, COM/2015/0192 final.

entrepreneurship; protects workers, consumers and other public interests; and ensures that no unnecessary regulatory hurdles are imposed on either existing or new market operators, whichever business model they use'[17]. Such an approach perfectly reflects the perspective of the internal market, where the overriding reasons relating to public interest (such as consumers' protection) is balanced with the freedom to run a business. Still, that document failed to explain further how this balance was to be achieved in the digital environment where collaborative platforms operated.

Next, the EC published two communications concerning online platforms[18] and in particular collaborative platforms [19]. Whereas in the first communication the EC only considered collaborative platforms as one type of the general category of online platforms, the most important document which outlines the policy directions of the EC is 'A European agenda for the collaborative economy' published in 2016[20.] The European Parliament reacted to the above communications from the EC in two resolutions: the Resolution on a European Agenda for the collaborative economy[21] and the Resolution on online platforms and the digital single market[22], adopted on 15 June 2017. Moreover, 'A European Agenda for collaborative economy' was also commented also by the European Economic and Social Committee[23] and the European Committe of the Regions[24]. In 2020 the European Committee of Regions called the EC to take appropriate measures to regulate the collaborative economy[25].

Therefore, as the legal framework ensuring the freedom to provide services in the internal market has not been modified with the view to adjusting it to the specific needs of collaborative platforms, the legal classification of their business activities had to include the general provisions of EU law applicable to the freedom. Undoubtedly, as the notion of 'service' provided for in Article 57 TFEU is interpreted as wide as possible, intermediation services provided for remuneration by collaborative platforms in the internal market fall under the EU regime of freedom to provide and receive services. In the context of activities undertaken by Airbnb in the internal market, it has also been explicitly confirmed,, that intermediation provided for remuneration come under the notion of

17 Upgrading the Single Market: more opportunities for people and business, COM (2015) 550.
18 Online Platforms and the Digital Single Market Opportunities and Challenges for Europe, COM (2016) 288 final.
19 COM (2016) 356 final.
20 COM (2016) 356 final of 2.6.2016.
21 Resolution 2017/2003(INI), OJ 18.9.2018, C 331/125.
22 Resolution 2016/2276(INI), OJ 18.9.2018, C 331/135.
23 Opinion of the European Economic and Social Committee, 2017/C 075/06, OJ 10.3.2017, C 75/33; still the first document on collaborative economy dates back 2014 Opinion of the European Economic and Social Committee on Collaborative or participatory consumption, a sustainability model for the 21st century Brussels: European Economic and Social Committee (EESC), INT/686.
24 Opinion of the European Committee of the Regions, 2017/C 185/04, OJ 9.6.2017, C185/24, see also Opinion of the European Committee of the Regions — The Local and Regional Dimension of the Sharing Economy, OJ C 51, 10.2.2016, p. 28.
25 2020/C 79/08 of 10.3.2020.

'service' within the meaning of the TFEU provisions and Directive 2006/123[26].

Whereas Articles 56 and 57 TFEU are of general application and they obligate the Member States to refrain from introducing restrictions in the free transnational provision (and reception) of services, there are two Directives which address this specific issue: Directive 2000/31 on electronic commerce[27] (hereinafter: the 'E-commerce Directive') and Directive 2006/123 on services in the internal market[28] (hereinafter: the 'Services Directive'). Both Directives aim to liberalise cross-border provision of services between the Member States, but only one of them may be applied to a service provided in particular situation. Whilst the latter one is of more general application, the former applies only to 'information society services', the provision of which should be liberalised in the internal market to the widest possible extent. Such legal classification is of utmost importance for a collaborative platform as the 'E-commerce Directive' is aimed to liberalise services provided on-line with the effect that Member States are not allowed to introduce restrictions to such activities (with strict exceptions listed in thesaid Directive, see section IV). Service providers who cannot claim the status of 'information society service' providers fall under the 'Services Directive', or – in the event of explicite exclusion from the scope of the Directive – under the general provisions of the TFEU.

Clearly, there are several possibilities at issue: 1) a service provided by a collaborative platform is recognised as an 'information society service' and, therefore, advantages envisaged in the 'E-commerce Directive' apply; 2) a service provided by a collaborative platform is not recognised as an 'information society service' and its activities are governed by the 'Services Directive' ; 3) such a service is excluded from the scope of application of the 'Services Directive' and then general regime of TFEU provisions applies. Each of the aforementioned alternatives result in different scope of rights for a given collaborative platform and of obligations for a host Member State, from which the most important is disctinction between the first and the second point.

Before moving further to the legal classification issues, it is necessary to add that in 2022 two important legal acts will enter into force: the Digital Services Act[29] and the Digital Markets Act[30]. Firstly, the Digital Services Act brings some changes to the 'E-commerce Directive', which will be discussed in Section IV, but in general does not affect the applicability of the said Directive

26 C-390/18, Airbnb Ireland, para 40; see also supra 2.

27 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, p. 1-16.

28 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36-68.

29 COM (2020) 825 final; at the time of writing of this paper the DSA has been adopted by the EP and awaits signature by the Presidents of the Council and Commission and then publication in the OJEU (10.10.2022).

30 COM (2020) 842 final; Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1–66.

(and in consequence the considerations in this paper remain relevant). Secondly, any of these Acts affect the applicability of the 'Services Directive'. Last, but not least, the Digital Services Act introduces additional set of EU provisions applicable to 'online platforms' which ought to be treated as additional legal framework to the one applicable today.

3. The legal classification of services provided by collaborative platforms

3.1. An 'information society service' provider under the 'E-commerce Directive'

In order to determine which of the two Directives applies to the services provided by a collaborative platform it is first and foremost to remember that Directive 2006/123 does not apply in situations when its provisions conflict with a provision of another EU act governing specific aspects of access to, or the exercise of, a service activity in specific services or for specific professions[31]. Therefore, as already confirmed by the CJEU, when one wishes to determine whether a service provided by a collaborative platform falls under Directive 2006/123, or under Directive 2000/31 it is necessary to determine whether such a service must be qualified as an 'information society service' within the meaning of Article 2(a) of Directive 2000/31[32].

Firstly, in order to establish, whether a collaborative platform provides information society services it is essential to verify whether it meets cumulative conditions enshrined in the EU law. An 'information society service' is defined as 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services', whereas at the distance 'means that the service is provided without the parties being simultaneously present'; by electronic means 'means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means' and at the individual request of a recipient of services 'means that the service is provided through the transmission of data on individual request'[33].

Therefore, having expended activities into the European Union the collaborative platforms claimed that they met all the above criteria and that they should be treated as 'information society service' providers. This would result in the Member States' obligation to refrain from the application of national legislation, which would be contrary to the 'E-commerce Directive' provisions (unjustified restrictions). This in turn would lead to granting wide freedom for collaborative

31 Article 3(1) of the 'Services Directive'.

32 C-390/18, Airbnb Ireland, para 42.

33 Article 1(1)(b) of Directive Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (Text with EEA relevance), OJ L 241, 17.9.2015, p. 1, to which art. 2 (a) of Directive 2000/31 refers.

platforms and very limited margin of the legitimate regulation for Member States.

On the one hand, such a standpoint could be supported when account is taken of the case-law of the Court of Justice interpreting provisions of the 'E-commerce Directive' on electronic commerce. In particular, the Court has confirmed that the operation of an online marketplace can bring into play all the elements necessary to recognise a particular economic activity as an 'information society service' and that an internet service consisting in facilitating relations between sellers and buyers of goods is, in principle, a service for the purposes of the 'E-commerce Directive' [34]. It is also clear that for a service to be recognised as an 'information society service' it is not indispensable that a remuneration is paid directly by service recipient, hence, it is sufficient that such a remuneration is paid by a third party[35]. On the other hand, the CJEU has also decided on composite services, which combine both a service provided online and a service not provided that way. In general, only the first service is covered by the freedom to provide services under regime dedicated to 'information society service'. Such a division of online and offline services for the purposes of the application of the 'E-commerce Directive' was confirmed in *Ker-Optika*, when the Court of Justice decided that the online offer and the conclusion of the contract by electronic means fell under the Directive, whereas the national rules which related to the conditions under which goods sold via the Internet might be supplied within the territory of a Member State fell outside its scope[36].

Certainly, the legal classification of services provided by collaborative platforms as 'information society services' was not so clear-cut, as the above case-law of the CJEU could not give appropriate guidance on that issue. The 'traditional business' operating in the Member States and MS governments claimed in response that the services provided by collaborative platforms were not merely intermediation between service providers and service recipients, but rather – overall services of urban transport or accomodation to which relevant national legislation should apply. This is the genesis of the judicial disputes initiated by traditional taxi corporations (and their drivers) against European branches of American Uber before national courts of some Member States. A dispute between a 'traditional' taxi company (Elite Taxi, providing urban transport services on a commercial basis) against Uber Spain was commenced before the Spanish court. The former argue that Uber Spain (and its drivers) had infringed national legal requirements of a licence to carry out activities of urban taxi services and claimed that actions constituted misleading practices and acts of unfair competition[37]. Another example concerns the French court which was called upon

34 C-324/09, L'Oréal SA v. eBay, EU:C:2011:474, para 109.

35 This can be income generated by advertisements posted on a website, as confirmed in C-291/13 Sotiris Papasavvas, EU:C:2014:2209, para 30.

36 C-108/09, Ker-Optika, EU:C:2010:725, para 28 and 30; see also M Y Schaub (2018), arguing that Uber is an information society service on the basis of the analysis of the provisions of Directive 2000/31 and relevant case-law.

37 C-434/15, Uber Spain, EU:C:2017:981; more about the context of the case see Finck M (2018); Hatzopoulos V

to resolve a dispute of a private prosecution and civil action in relation to (i) misleading commercial practices, (ii) the aiding and abetting of the unlawful exercise of the profession of taxi driver and (iii) the unlawful organisation of a system for putting customers in contact with persons carrying passengers by road for remuneration using vehicles with fewer than 10 seats – that one was prohibited by national law and punishable by a two-year imprisonment and a fine of 300 000 EUR[38]. Doubts raised by national courts referring to the CJEU questions for preliminary rulings concentrated on the legal classification of services in question from the perspective of EU law. That in turn would imply the conformity or non-conformity of national legislation with it.

Soon afterwards, legal disputes before national courts were instigated as to the nature of services offered by Airbnb in the accommodation and hospitality sector. When Airbnb Ireland (the company established in Dublin under Irish law and owned by Airbnb Inc. Established in the USA) started operating in the other Member States, again doubts rose as to whether the company should comply with the national legislation concerning management of buildings and hospitality services. In the case *Airbnb Ireland (C-390/18),* the dispute before the French court was lodged by the French association for professional tourism and accomodation against the said collaborative platform operating inter alia in France in activities requiring a professional licence (which was required under national legislation)[39]. Lately, the Court of Justice was requested to determine whether particular tax provisions applicable to Airbnb Ireland were compatible with EU law in Belgium[40] and Italy[41].

The rulings of the CJEU in the aforementioned cases established a legal standard for the classification of services provided by collaborative platforms in the internal market. First of all, the CJEU did not exclude that in the case of composite services, it is could be possible to treat the service of intermediation (which is provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services) and the underlying service (of urban transport or accommodation) independently[42]. In such a case, each service should be considered separately and two different sets of provisions must be applied, according to the ruling in *Ker-Optika*. Therefore, having considered the intermediation services offered by Uber or Airbnb, the Court of Justice concluded that in principle they met, the criteria for classification as an 'information society service'[43].

However, as far as urban transport services provided by Uber were concerned, the CJEU

(2018); M Inglese (2019), p. 28.

38 C-320/16, Uber France, EU:C:2018:221

39 C-390/18, Airbnb Ireland, EU:C:2019:1112.

40 C-674/20, Airbnb Ireland.

41 C-83/21 Airbnb Ireland, still pending.

42 C-434/15, Elite Taxi, para 34; C-390/18 Airbnb Ireland, para 50

43 C-434/15 Uber Spain, para 34-35; confirmed in C-320/16 Uber France, para 19; C-390/18 Airbnb Ireland, para 45-49.

ruled that an intermediation service formed an integral part of an overall service (whose main component in the case was an urban transport service) and as a result it must be classified as a service in the field of the underlying services (in this case – transport)[44]. In order to determine whether an intermediation service formed such an integral part, the CJEU took into consideration three circumstances reading as follows: 1) a platform selects providers of the underlying service (non-professional drivers using their own vehicles); 2) there would not be any demand and supply for these services without 'a market place' created by the platform in question and 3) the platform exercises 'decisive influence' over provision of a service[45]. However, in the subsequent judgment in *Uber France*, the CJEU narrowed this assessment to two components, i.e.: 1) a platform provided an application without which service providers and service recipients could not meet, and 2) a platform exercised 'decisive control' over conditions under which services were provided[46]. Both judgments imply that in order to establish whether a collaborative platform falls outside the scope of application of the 'E-commerce Directive' it is indispensable to verify whether the platform creates the market place and exercises decisive influence over the provision of services.

The approach of the Court strikes as being less generous for collaborative platforms in comparison with the approach of the European Commission presented in its European agenda for the collaborative economy of 2016. The EC stated in the Agenda that in general when the relevant criteria were met a collaborative platform should be recognised as providing an 'information society service', but admitted at the same time that in particular circumstances such a collaborative platform might also be considered also as offering services other than intermediation. The EC proposed that in order to determine whether a collaborative platform provided such an 'underlying service' it was indispensable to take into account the following components: setting the final price to be paid by the recipient; setting other contractual terms other than the price (in particular an obligation to provide the service) and the ownership of key assets[47]. In this context, it was contended that hardly any collaborative platform owned the key assets such as cars or apartments and in addition, owning them could run counter to the very idea of collaborative economy and two-sided markets[48]. Such an approach would be a very beneficial solution for collaborative platforms, as such criteria would make all of them fall under the 'E-commerce Directive'. The Court of Justice followed different reasoning, departing from the criterion of ownership of key assets. That enabled the Court to recognise Uber as the provider of an overall service of urban transportation, which means the exclusion from the scope of the 'E-commerce Directive'

The basic criticism of such an approach is that when an intermediation service is treated as

44 C-434/15 Uber Spain, para 40.
45 C-434/15 Uber Spain, para 39.
46 C-320/16 Uber France, para 21.
47 European Commission, A European agenda for the collaborative economy, COM (2016) 356, p. 6.
48 V Haztopoulos (2018), p. 28; M Finck 2018, p. 1630.

part of an overall service, it will fall under the scope of application of EU provisions relevant for a particular field of services (i.e. transportation) and not under the scope of liberalisation of 'information society services" within the meaning of the 'E-commerce Directive'. As was indicated in this context, it means granting Member States wide autonomy 'in relation to the regulation of innovative technology-driven business models'[49] which in turn provoked questions 'what is left of the Digital Single Market enterprise if there is no common supranational approach to a techno-economic shift of this nature and scale'[50]. It is also contended that such an approach leads to the fragmentation of the EU internal market and in particular the Digital Single Market[51] because it allows for Uber services to be legal in some Member States and prohibited in others.

It is also noteworthy that the CJEU seems to adopt the reasoning that on the whole an intermediation service provided by a collaborative platform is to be recognised as 'an information society service' provider, unless other circumstances justify a different conclusion. Such a reasoning and application of criteria for a decision that a given intermediation service is an integral part of the overall service was confirmed in first *Airbnb Ireland* case (C-390/18). In the first place, the CJEU analysed whether the service provided by Airbnb Ireland met the four cumulative conditions of 'information society services'[52]. Once the CJEU concluded that the conditions were met, it embarked on the analysis whether that kind of intermediation service constituted a service distinct from the subsequent service to which it related and that it was not a situation where an intermediation service formed an integral part of an overall service whose main component is a service falling under another legal classification[53]. In fact, the CJEU focused on the reasoning leading to the conclusion that an intermediation service was distinct from the underlying service. Firstly, the CJEU noticed that the essential feature of the electronic platform managed by Airbnb was the creation of a structured list of the accomodation places (which provided a tool to facilitate the conclusion of contracts in the future). Such a service, which consists of the compiling of offers using a harmonised format, coupled with tools for searching for, locating and comparing those offers, could not be regarded as merely ancillary to an overall service coming under a different legal classification (provision of an accommodation service in this case)[54]. Secondly, a service of an intermediation provided by Airbnb was not indispensable to the provision of accommodation services, as the guests and hosts had other channels of contact at their disposal[55]. Finally, the CJEU took into account that Airbnb Ireland did not set or cap the number of the rests charged by the hosts

49 M. Finck, 2018, p. 1634.
50 M. Finck, 2018, p. 1634.
51 M Inglese 2019, p. 32.
52 C-320/16 Uber France, paras 45-49.
53 C-320/16, para 49-50.
54 C-390/18, para 53-54.
55 C-390/18, para 55.

using that platform and that in general imposed responsibility for setting the rent on the hosts[56]. Taken all these features into consideration, the CJEU concluded that an intermediation service provided by Airbnb Ireland could not be regarded as forming an integral part of an overall service, the main component of which was the provision of accomodation[57].

Both criteria applied by the CJEU, in order to assess whether a collaborative platform provided an intermediation service which was an integral part of the overall service, are general clauses which may be difficult to apply in practice. In both Uber rulings, when assessing the requirement of a decisive influence, the CJEU took into consideration that 'Uber determines at least the maximum fare by means of the eponymous application, that the company receives that amount from the client before paying part of it to the non-professional driver of the vehicle, and that it exercises a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion"[58]. In *Airbnb Ireland* (C-390/18) the CJEU rather analysed whether an intermediation service is 'distinct from the subsequent service to which it relates', which may provoke questions what is the relation between the two.In addition, in that ruling the Court narrowed the criteria for the assessment of 'decisive control' to determination, directly or indirectly the rental price charged and selection of the hosts or the accommodation put up for rent on its platform[59].

As regards the criterion of the market creation it is acknoledged that it may be difficult to apply without reliance on outside empirical expertise[60] and arguments were presented in order to argue that Airbnb also has power to create the market[61], which also reflects difficulties to apply the criteria set by the CJEU in practice.

Yet, it appears to be true that the CJEU is determined to follow this line of reasoning which is confirmed in *Star Taxi*. Firstly, it assessed whether an intermediation service met conditions of recognising it as an information society service; secondly -whether such a service was distinct from the subsequent service or formed an integral part of an overall service. In the case at stake, the activities of the Star Taxi were described as: 'an intermediation service which consists in putting persons wishing to make urban journeys in touch, by means of a smartphone application and in exchange for remuneration, with authorised taxi drivers, for those drivers, in consideration of the payment of a monthly subscription fee, but does not forward the bookings to them, does not determine the fare or the journey or collect it from the passengers who pay it directly to the taxi driver, and exercises no control over the quality of the vehicles and their drivers, or over the

56 C-390/18, para 56.
57 C-390/18, para 57.
58 C-434/15 Uber Spain, para 39 final sencence; C-320/16 Uber Spain, para 21 final sencence.
59 C-320/16, para 68.
60 M. Finck (2018a) p. 1631.
61 L Van Acker (2020), p. 79.

conduct of the drivers'. The CJEU quite smoothly concluded that son the whole such an intermediation service constituted an 'information society service'. Next, the Court embarked on the analysis of the second part and followed it by turning back to the Uber case-law, distinguishing the activities of Star Taxi from the activities of Uber. It was contended that the intermediation service at issue was confined to putting persons wishing to make urban journeys in touch solely with authorised taxi drivers (and not with non-professional drivers previously absent from the market), and thus the intermediation service via smartphone application was only another method of acquiring customers, in addition to other already available methods[62]. In other words, the owner of this smartphone application could not be considered as a creator of a new marketplace. Secondly, the CJEU noticed that 'such an intermediation service cannot be regarded as organising the general operation of the urban transport service subsequently provided, since the service provider does not select the taxi drivers, or determine or receive the fare for the journey, or exercise control over the quality of the vehicles and their drivers or the drivers' conduct'[63]. By emphasising that, the CJEU upheld that the owner of the smartphone application does not exercises a decisive influence over the provision of the service of urban transport in the meaning of the Uber case-law. Such reasoning resulted in a conclusion that the intermediation service provided by Star Taxi constituted an 'information society service' in the meaning of the 'E-commerce Directive'.

3.2. A service provider under the 'Services Directive'

The 'Services Directive' contains 'general provisions facilitating the exercise of the fredom of establishment for service providers and the free movement of services, while maintaing a high quality of services'[64]. In order to obtain this objective the Directive imposes certain obligations on Member States, in particular to refrain from introducing restrictions on the exercise of freedom to provide services[65] Before the discussion on its provisions (see Section IV) it is indispensable to verify whether collaborative platforms benefit from its scope. A collaborative platform providing services for remuneration meets all the criteria from the definition of service provider enshrined in Article 4 p 1) and 2) of the 'Services Directive'[66]. Thus, in case where an intermediation service provided by a collaborative platform cannot be recognised as falling under the scope of the 'E-commerce Directive', it will fall under the 'Services Directive'.

62 C-62/19 Star Taxi App, para 52.
63 C-62/19 Star Taxi App, para 53.
64 Article 1(1) of the 'Services Directive'.
65 For comprehensive analysis of the 'Services Directive' see in particular V. Hatzopoulos (2007); C Barnard (2008), M. Wiberg (2012).
66 Where 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty and 'provider' means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service.

Nevertheless, there is quite a long list of exceptions and the said Directive does not apply to a variety of categories of services[67]. It could be observed in the Uber cases, that – after having excluded the services provided by Uber from the scope of application of the 'E-commerce Directive' – the Court of Justice ruled that the said services were also excluded from the scope of the 'Services Directive'. The reason for this was that the services provided by Uber were classified as services 'in the field of transport', which were exluded from the scope of the 'Services Directive' under its Article 2(2)(d)[68].

The CJEU confirmed that services in field of transport are explicitely excluded. In contrast in case Airbnb Ireland, the CJEU decided that Directive on services was of application.

3.3. A 'service provider' under the provisions of TFEU

The exlusion of a service provided by a collaborative platform from the scope of Directives aiming at liberalisation of the provision of services in the internal market, results in the necessity to undertake further analysis of the applicable provisions. Quite obviously, the provisions of the TFEU on freedom of services will be of application[69]. This logic has already been confirmed in the first Uber case. The situation of taxi services was specific, however, as they fall exacly under the scope of 'services in the field of transport. The Court confirmed that provision of transport services „is covered not by Article 56 TFEU on the freedom to provide services in general but by Article 58(1), 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"[70].

67 Article 2(2), excluded from the scope of Directive are: a) non-economic services of general interest; (b) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC; (c) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC; (d) services in the field of transport, including port services, falling within the scope of Title V of the Treaty; (e) services of temporary work agencies; (f) healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private; (g) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting; (h) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions; (i) activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty; (j) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State; (k) private security services; (l) services provided by notaries and bailiffs, who are appointed by an official act of government.

68 C-434/15, Uber Spain, para 43; C-320/16, Uber France, para 23.

69 With the long-standing case-law of the CJEU.

70 C-434/15 Uber France, para 44

IV. Implications of the legal classification

IV.1. A service provided by a collaborative platform falls under the scope of the 'E-commerce Directive'.

Despite the rulings in both Uber cases, which introduced a novel additional criteria in the assessment who is an 'information society service provider', it seems that most of collaborative platforms will fall under the scope of Directive on electronic commerce, as usually services provided by them meet the criteria of an 'information society service'. Still, the scope of application of Directive on electronic commerce is limited due to the fact that it does not apply to certain fields of regulation, as explicitely stated in its Article 1(5). This has been confirmed recently by the Court of Justice, that this Directive does not apply to any legal rules "in the field of taxation". Therefore Airbnb Ireland could not rely on provisions of Directive on electronic commerce in order to claim illegality of national (municipal) rules of District of Brussels, requiring intermediaries to provide regional tax authorities with the information concerning the operator and the details of the tourist accomodation[71].

Such service providers benefit in the internal market from the following rules: 1) the home state control principle, according to which each Member State shall ensure „that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field"[72]; 2) principle of freedom to provide 'information society services', which means that „ Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State"[73] and 3) Member States shall not restrict this freedom by making the taking up and pursuit of the activity of an information society service provider subject to prior authorisation or any other requirement having equivalent effect[74].

The scope of the aforementioned rules is limited, however, by the fact that eight fields of activities are explicitely excluded[75] and that Member States are allowed to derogate from the freedom to provide information society services, when several substantive and procedural requirements are met. According to Article 3(4) of the Directive 2000/31, such national rules which restrict the freedom to provided information society services are legitimate only when: 1) necessary for explicitely listed general interests[76], 2) undertaken against a given information society service

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71 C-674/20, Airbnb Ireland, EU:C:2022:303, para 34; in similar vein AG Szpunar in case C-83/21, Airbnb, opinion EU:C:2022:545, pending.

72 Article 3(1) of Directive 2000/31.

73 Article 3(2) of Directive 2000/31.

74 Article 4(1) of Directive 2000/31, but without prejudice to authorisation schemes not specifically or exclusively targeted at information society services – Article 4(2) thereof.

75 Annex to Directive 2000/31.

76 Which are: a) public policy, in particular the prevention, investigation, detection and prosecution of criminal

which prejudices the objectives referred to in point (1) or which presents a serious and grave risk of prejudice to those objectives and 3) proportionate to the objectives listed in point (1). As to the procedural conditions, the measures may be recognised as conform with the Directive 2000/31 when a host Member State asked the home Member State to take adequate measures to protect a given objective and the latter did not take such measures, or they were inadequate, and when a host Member State notified the Commission and the home Member State of its intention to take such measures[77]. Only in strictly described situations may an interested Member States derogate from this procedure[78]. After notification of such intention, the European Commission shall examin the compatibility of the notified measures with Union law „ in the shortest possible time" and shal ask the Member State in question „to refrain from taking any proposed measures or urgently to put an end to the measures in question" when it concludes that these measures are incompatible with Union law[79].

Undoubtedly, Article 3(4) confirms a mechanism that is well-known in the EU economic law, that is balancing internal market interests with national requirements of public interests. Still, this is only with the appearance of Airbnb intermediation services that these derogatory provisions of Directive 2000/31 came to the fore. The isssue before a national court arose, whether the regulatory system for provision of intermediation services in accomodation sector, which was in place in the host Member State (France) should have been notified and what are the consequences of lack of such a notification. In Airbnb Ireland, the national court asked the CJEU whether „the legislation at issue in the main proceedings is enforceable" against this collaborative platform. Interestingly, the Court of Justice did not proceed with the analysis of the substantive aspect of admissibility of such a derogation (whether it was legitimately justified and proportionate), but focused on the procedural aspect. It ruled that „regardless of whether that law satisfies the other conditions laid down in that provision", due to the fact that the national rules had not been notified according to the procedure envisaged in Article 3(4) of Directive 2000/31 they cannot be enforced against individuals. According to the Court of Justice „a Member State's failure to fulfill its obligation to give notification of a measure restricting the freedom to provide an information society service provided by an operator established on the territory of another Member State (…) renders the measure unenforceable against individuals"[80]. In its reasoning the Court draw the analogy between the effect of the lack of notification of proposed technical regulations under

offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons, b) the protection of public health, c) public security, including the safeguarding of national security and defence, d) the protection of consumers, including investors; Article 4(1)(a) of Directive 2000/31.

77 Article 4(1)(b) of Directive 2000/31.

78 Article 4(5) of Directive 2000/31.

79 Article 4(6) of Directive 2000/31.

80 C-390/18, Airbnb Ireland, para 96.

Directive 2015/1535, established ealier in case CIA Security[81], which is exactly the obligation of the national court to disapply such national rules[82]. Such an unenforceable provision may be relied in criminal proceedings and in a dispute between individuals[83].

This decision of the Court of Justice may be a powerful tool for collaborative platforms operating in the internal market, in particular in cases when non-conformity of national rules with the EU law is invoked in proceedings between individuals. As is commonly acknowledged, and recently also confirmed by the Court of Justice, whereas a directly effective provision of a directive can be relied upon in proceedings between an individual and a Member State (or its emanation), it is excluded in a dispute between two private parties. Still, as the CJEU confirmed in Airbnb Ireland (C-390/18), the infringement of the notification obligation stemming for all Member States from Article 3(4) of Directive 2000/31 is sufficient to claim non-application in domestic proceedings of such unnotified national provision both in criminal/administrative proceedings (where an individual invokes such infringement against the Member State) and in private proceedings (where an individual invokes such infringement against another individual)[84].

The rules discussed in this subsection will not be modified by the new regulation Digital Services Act, which will affect uniquely the provisions of the 'E-commerce Directive' on liability of service providers[85].

IV. 2 A service provided by a collaborative platform falls under the scope of the 'Services Directive'.

The core of the 'Services Directive' are the provisions concerning the freedom for providers of services (Chapter III) and the free movement of services (Chapter IV), prohibiting the Member States to introduce national rules restricting these freedoms. As already confirmed by the CJEU, whereas Chapter IV contains provisions which apply to services supplied in a Member State other than that in which the service provider is established[86], provisions of Chapter III apply to purely domestic situations – those where all relevant elements are conficed to a single Member State[87.]

That distinction and difference in the scope of application has important implications. An online platform, which is established in one Member State and provides services in the other

81 C-194/94, EU:C:1996:172, para 54; the ruling was delivered on the ground of Directive 83/189, which is now replaced by Directive 2015/1535.
82 See C-390/18 Airbnb Ireland, para 90-95.
83 C-390/18 Airbnb, para 97, also by analogy to the case-law on Directive 2015/1535.
84 See further on this topic P. Van Cleynenbreugel (2020), p. 1225 and ff.
85 Articles 12-15 of the 'E-commerce Directive' will be replaced by new Articles 3-5 and 7 of the DSA.
86 C-62/19, Star Taxi, EU:C:2020:980, para 73.
87 C-360/15 and C-31/16, X and Visser, EU:C:2018:44, para 110; confirmed also in C-724/18 and C-727/18, Cali Apartments SCI and HX, EU:C:2020:743, para 56.

Member States can rely on provisions on the free movement of services, in particular Article 16 of the 'Services Directive'[88]. The Member States are obligated in this context to respect the right of providers to provide services in a Member State other than that in which they are established and to ensure free access to and free exercise of a service activity within its territory[89].

It may be argued however, that the provisions of Chapter III on establishment of service providers may prove to be more relevant for the operation of collaborative platforms and providers of underlying services (who cooperate with a given platform. That is so because when national rules restrict the possibility of offering the underlying services (for example accomodation) in the territory of the given Member State, this results in restriction of offering the intermediation services offered by a platform (as the second one becomes purposeless). Such national rules fall under the those provisions of the 'Services Directive', which establish requirements for authorisation schemes[90] (Articles 9 and 10), prohibit certain requirements (Article 14) or make such requirements conditional upon certain additional criteria (Article 15)[91].

The Court of Justice has already interpreted these provisions of the 'Services Directive' in case *Cali Apartments*[92] in the context of French legislation requiring prior authorisation for the exercise of activities consisting in the repeated short-term letting, for remuneration, of furnished accomodation to a transient clientele which does not take up residence there. The Court of Justice firstly decided that the 'Service Directive' applies to the national rules in question[93], then confirmed that such legislation is to be recognised as an 'authorisation scheme'[94]. Further, the national legislation was assessed from the perspective of conformity with Articles 9 and 10 of the 'Services Directive'. The Court of Justice ruled that national rules are compatible with these Articles which has been critised in the literature. The same scheme of reasoning has been applied by the Court of Justice in Star Taxi[95].

The provisions of the 'Service Directive' with regard to requirements to be met by authorisation schemes in the Member States reflect – again – the logic of counterbalancing between

88 With the reservation that this provision does not apply to services excluded from its scope under Article 17 of the 'Services Directive'.

89 Article 16(1) of the 'Services Directive; the provisions of the Directive envisage also catalogue of requirements which are prohibited and those which may be legitimate.

90 Which are understood as any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof, Article 4 (6) of the 'Services Directive'.

91 For a comprehensive analysis of those provisions of the 'Services Directive' and relevant case-law of the CJEU see W. Lewandowski (2022).

92 C-724/18 and C-727/18, Cali Apartments SCI and HX, EU:C:2020:743.

93 C-724/18 and C-727/18, Cali Apartments SCI and HX, EU:C:2020:743, para 28-45, the doubts were raised as to whether national rules fall under the exceptions defined in Article 2 of that Directive, in particular Article 2(2)(j) concerning social housing and Article 2(3) concerning taxation.

94 C-724/18 and C-727/18, Cali Apartments SCI and HX, EU:C:2020:743, para 47-52.

95 C-62/19, Star Taxi, EU:C:2020:980, paras 84-92, still the result was different – the Court did not conclude on the incompatibility of the national rules, leaving the court to ascertain whether the principle of proportionality has been complied with.

the freedom to carry out business activities (internal market) and overriding reasons related to the public interests. Any authorisation scheme (to which the 'Services Directive' applies), established in the domestic law must remain non-discriminatory, justified by an 'overriding reason relating to the public interest' and proportionate.

IV.3. A service provided by a collaborative platform falls under the scope of free movement of services

From what has been disscussed so far, the 'E-commerce Directive' does not apply to regulations which fall under the fields directly excluded from its application. In addition, an economic operator who cannot be considered as an 'information society service' provider will not benefit from the rules established in this legal act. As far as the 'Services Directive' is concerned, its provisions do not apply to regulations which fall under the fields directly excluded from its application. In such cases still the directly applicable provisions of TFEU will be beneficial for collaborative platforms.

V CONCLUSIONS

The main objective of this paper was discussion of the legal classification of services provided by collaborative platforms in the internal market and its legal implications for the Member States on the one hand and collaborative platforms on the other. Whereas a collaborative platform providing crossborder services for remuneration must be recognised as a service provider in the internal market, the determination of the applicable set of EU provisions quite a difficult task and depends on the specific features of a given business model (adopted by a given collaborative platform). Therefore it must be effectuated on ad hoc basis. The considerations in the present paper confirm the assumption that it is not that important how collaborative economy is defined in general, but rather – reconstruction of the criteria to determine which EU legal act applies.

Generally, characteristics inherent in the business model of collaborative platforms (offering services online, on demand and at the distance) shall result their recognition as 'information society service' providers. It appears to be true that most of them will fall under the scope of application of the 'E-commerce Directive', unless one of the exception from its scope will come into play. In consequence, collaborative platforms to which the 'E-commerce Directive' applies may rely on the general rules stemming from it, that is: the home state control principle, the principle of freedom to provide 'information society services' and the obligation of Member States to refrain from restricting this freedom by prior authorisation requirements. Such an approach of full liberalisation

means beneficial approach for collaborative platforms and restriction of regulatory autonomy of Member States to unilateraly set conditions for running a business on their territory. Nevertheless, as was presented in the contribution, the Member States are entitled to restrict these principles, when several conditions are met, and that such restrictions may be legitimate in the light of EU law in the perspective of balancing internal market freedom with overriding reasons related to the public interests (defined at national level). The fact that restrictions to the freedom to provide 'information society services' may still be recognised as legitimate from the perspective of the EU law, the most powerful tool at disposal of collaborative platforms at present appears to be the obligation of Member States to notify any proposed national provision restricting the aforementioned rules, on which the logic of the 'E-commerce Directive' is based. As the Court of Justice ruled in case *Airbnb Ireland* (C-390/18), the infringement of this obligation makes such a national provision impossible to be applied (enforced).

There may be cases however, when an intermediation service provided by a collaborative platform should be recognised as integral part of the overall service. There are two factors which shall be considered in order to verify this: a platform creates a market place (has the market power to create demand and supply) and a platform exercises decisive control over provision of the underlying service. This test must be assessed on ad hoc basis. When these conditions are met, then a collaborative platform in question cannot be recognised anymore as an 'information society service' provider falling under the 'E-commerce Directive', but rather as a 'classic' service provider in the meaning of Article 57 TFEU and falling under the scope of other EU provisions relevant for the service in question. Generally, it will be the 'Services Directive' or – in case when a certain category of services is excluded from its scope of application – TFEU provisions regulating the freedom of services. On the one hand, the 'Services Directive' limits the autonomy of the Member States to regulate the provision of services, in particular in terms of autorisation schemes, but on the other both of the 'Services Directive' and of the TFEU (Article 56) entitle the Member States to restrict the internal market freedoms, when they must be counterbalanced with the necessity to protect public interests.

Finally, it is time to conclude on the research question whether the EU general provisions on the freedom to provide services in the internal market ought to be improved to ensure market access. It appears to be true that the scheme of counterbalancing of the economic freedoms with the national interests of non-economic character (overriding reasons related to the public interest) is so inherently rooted in the internal market that it cannot be eradicated completely. Therefore, the general provisions discussed in this contribution do not require improvement in general.

It is indispensable however to analyse those overriding reasons invoked by the Member States with the view to verifying whether they shall not be adressed at the EU level, as unilateral actions of

Member States will unevitably lead to fragmentation of the market. From many public interests that are invoked in order to justify restrictions to the operation of collaborative platforms there are several mentioned most often: labour law requirement (the status of the providers of the underlying service in relation to the given collaborative platform), consumer protection (including the liability of the collaborative platforms before service recipients and division of this liability between a collaborative platform and the provider of underlying service) protection of data and tax law obligations[96]. The European Union as a whole stands before a choice what should prevail: freedom of collaborative platforms (support for collaborative economy to the widest extent), with possibly negative consequences for consumers, service recipients, employees, etc. or social public interests which consist in protection of these groups of people who in general benefit from the intermediation via smartphone applications owned by collaborative platforms. It seems that after many years of discussion one witness finally the decisions being made. The Digital Services Act and the Digital Markets Act are about to enter into force and a proposal for a Directive on improving working conditions in platform work[97]. These acts will have an important impact on the functioning of collaborative platforms, which fall under the definitions of 'online platform' in the DSA and 'platform work' in the proposal for a Directive.

96 V Haztopoulos (2018), p. 225-227.
97 COM (2021) 762 final.

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