Challenges and legal issues of modern sharing economy

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Growing popularity of sharing economy is a phenomenon one cannot simply ignore. Sharing services’ market has nowadays arose to enormous sizes and has become part of many people’s everyday lives. Basing on the cooperation of the consumers and service providers, being assisted by the intermediary (digital platforms), it brings together demand and supply in a low-cost model. It has proven, that such economy model is advantageous not only for the individuals receiving access to tangible and intangible assets, or, on the other hand- creating profits from underutilised goods, but also for the whole economy- creating new markets and boosting its development. As, according to numerous researches and surveys, it shall be expanding even more in the future, appropriate steps should be taken, to address issues, it is and will be creating. As sharing economy is present in almost every part of nowadays societies’ life, challenging will be all regulation matters, starting from definitional issues, through data protection, tax or labour law, to even most specific laws functioning in any country all over the world. Approaches in different countries, even within the European Union, vary- from liberal and mostly permissive, like in Poland, to strict and rigorous, or even prohibitive, as shows the example of Airbnb in Paris and Barcelona, where the municipal authorities have come up with time limitations or even bans. Although the changes, like those introduced in Sweden or Seoul, are a step in the right direction, it seems that the best solution so far would be slow evolution through soft law, instead of ground-breaking revolution. In order to achieve this goal, European Union shall take steps necessary to harmonise EU Member States’ laws, starting with legal acts such as agendas, guides and white papers. One should however bear in mind, that sharing economy owes its’ success and extraordinarily rapid development to the fact, that it arose in liberal habitat, having almost no legal boundaries. For appropriate legal regulation, that would balance matters of minimal protection of market and individuals, be adaptive and friendly for development, Member States shall play a ‘night watchman’ role, rather than be overprotective.

Keywords: sharing economy; collaborative consumption; legal regulations.

I don’t need a drill, I only need a hole in my wall’- this one sentence perfectly pictures the whole clue and aim of what is called sharing economy. According to PwC researchers’ definition, ‘sharing economy uses digital platforms to allow customers to have access to, rather than ownership of, tangible and intangible assets. This economises on scarce resources and often involves deeper social interactions than traditional market transactions.’ Sharing economy has recently been deemed by the Times Magazine to be one of the 10 best ideas of our times. This paper’s main aim will be to weigh up pros and cons of sharing economy and to deliberate on law regulations issues regarding spoken topic. According to Flash Eurobarometer on the use of the collaborative economy from 2018, 23% of European citizens have used services offered by sharing platforms, which is nearly 1/3 more than in 2016. According to the respondents most popular were accommodation followed by transport services and almost 90 % of them would recommend such services to the others. For this reason the analysis basis will be B2C and C2C platforms, more specifically cases of Airbnb and Uber, the most popular examples of sharing economy apps. The first one, founded in San Francisco in 2008 is an online community marketplace. Uber, a transport app, is deemed
by its' creators to be an 'information society service', so it doesn't fit into traditional taxi services' frames, although whether it is not one is rather disputable. The aim of the paper will be to present sharing economy in a brief, but most comprehensive way and deliberate on the regulatory issues regarding sharing economy market in European Union. It reviews the existing definitions of the phenomenon and addresses controversies arising from conceptual approaches to it, in order to comprehensively argue regulatory issues around sharing economy. This papers' main contribution is to clear some of the misconceptions regarding P2P market and propose legal resolution for the most vivid issues, such as potentially unfair competition or data protection.

Introduction

Though the term 'sharing economy'\(^1\) was probably developed in 1970, it started gaining popularity in the early 2000's due to the Great Recession and new business' structures development.\(^2\) Its popularity nowadays is growing rapidly again, mostly thanks to peer-to-peer services such as Airbnb or Uber. According to PwC analysis of different industry sectors, including peer-to-peer accommodation, ear sharing etc. sharing economy market estimated revenue is projected to grow from $15 billion in 2014 to $335 billion by 2025.\(^3\) The creation of numerous internet platforms has made it easier for individuals to offer goods and services to the public, especially by enabling owners to make profit from underutilised assets. The popularity of such economy model arose from the fact, that most people don't need to buy specific items, that they only need for very few uses, so it's cheaper and economically smarter for them to rent. It is especially vivid on the example of the carsharing.\(^4\) On the other hand, it allows the ones offering services to, first of all, deprecate their costs\(^5\) (when speaking of non- professional subjects, as for example landlords at Airbnb) and moreover to gain money. It obviously affects the market through stimulation of the demand for the goods and services, and on the opposite – the supply, as the other party of the scheme is enabled to provide its' services at lowest operating costs possible.\(^6\) The labour market is also affected, as collaborative economy creates new employment opportunities, not only for full time job, but also for the freelancers and people, who only want to be employed part-time. The link between them all are agents or platforms, that benefit from bringing them together. Sharing economy has thus become not only an idea for saving money, but an alternative for professional carrier, allowing any 'Smith' to be one's own boss. As Uber offers its services at incomparably lower prices than any TAXI company, Airbnb\(^7\) (even if it doesn't win the pricing contest) offers its customers a very attractive listing and comfortable filtering option. Moreover, it is responding quickly to changing market conditions, especially when the demand for the hotel rooms is higher than professional hotels' supply.

Definitional issues

Despite numerous researches and attempts to create an appropriate definition of sharing economy it is still commonly discussed among experts and academics.\(^8\) One reason for that is the fact, that people tend to have a misconception about its modernity, as the term has only gained popularity in the 21\(^{st}\) century, even though it has been in use for about 50 years. However, people have shared since always- the working class before the French Revolution, people of colour before the Civil War, as well as a middle class – they have all, through ages, practiced sharing in order to provide themselves higher level of welfare. It was although limited to the closest circles of the family, friends or neighbours, which constitutes the main difference to the 'modern' sharing economy. Today we share everything with complete strangers. Another distinction appears in payment aspect, as nowadays sharing economy is mostly paid or at least barter. So, what exactly does this term mean? If people pay to share, is it indeed sharing?

According to Koen Frenken 'the sharing economy can be defined in a materialistic sense in that consumers share a physical artefact in its usage, granting each other temporary access to under-utilized physical assets ('idle capacity'), possibly for money.'\(^9\)

After definition from the Handbook of the Sharing economy, it may be defined as 'a social and economic system of transactions in which individuals use third- party technology platforms that match providers and users to exchange goods, services, or ideas in a manner that does not transfer ownership.'\(^8\)

It is also worth recalling, that some argue, whether sharing economy is about sharing at all. When the 'sharing' activities are being intermediated by a professional and consumers don't know each other personally, it can't be in fact seen as sharing. The consumers are becoming access to

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1. This paper uses term 'sharing economy' interchangeably with 'collaborative economy' and 'peer-to-peer economy'.
4. P. Barter, 'Cars are parked 95% of the time'. Let's check!'. https://www.reinventingparking.org/2013/02/cars-are-parked-95-of-time-lets-check.html (access: 28.05.2020).
7. European Union, as well as OECD use terms sharing economy and collaborative economy alternatively. The author realises the dispute on whether these too are essentially the same or whether they differ, however as size of this paper doesn't allow broader contemplation, for purpose of the following deliberations both terms will be used alternatively.
the resources only for payment, which constitutes an economic exchange, rather than social value. The core explanatory and definition of the sharing economy unfortunately does not exist yet, as many specialists and researchers tend to simplify the subject or exemplify groups of characteristics in disregard to many others. The author of this paper also doesn’t feel competent enough to construct such a definition, however in order to properly carry out the following contemplation, an attempt of a brief description of the sharing economy phenomenon’s main characteristics is here necessary.

Bearing in mind previously mentioned definitions, for the purpose of the following contemplation, the author proposes a following understanding of the sharing economy: Sharing economy bases on the cooperation of the consumers and service providers, assisted by the intermediary (digital platforms), that brings them together. This relies on the trust between ones involved. Enabling to benefit either from granting or becoming access to the goods, that otherwise would remain underutilised or/and unavailable for some, sharing economy’s main aim is to improve resource utilisation. One does not need to be the sole owner of the goods; the only condition is their accessibility for them. Operating on either barter or traditional markets (where price is being fixed by demand/ supply mechanisms) one can benefit from sharing at marginal operating costs, often close to zero.

Regulatory issues

Despite all the advantages and facilitations collaborative economy has created and despite being openly embraced by society, the rise of platforms such as Uber and Airbnb, allowing non-professionals to offer their services, has given rise to some legal and social issues. In many European cities taxi drivers have engaged in various protests against Uber, arguing its legality. The reason for that is obviously internet companies, that only exist online and are subject to one set of regulations, while transportation companies like taxis are subject to other, much more demanding laws. The essential issue of Uber was whether its drivers were registered taxi drivers or independent contractors, as the last ones are able to offer in fact taxi services without meeting all the strict law requirements, that professionals are expected to put up with. Moreover, the hotel sector complains too, about Airbnb’s bad impact on the market. Private entities offering their services on the spoken platform are not obliged to respect same rules applicable to hotels, which leads to unfair (in opinion of hotel industry) pricing standards and enables individuals to maintain

takers with accommodations at incomparably lower prices. Hence, the governments may not remain indifferent on all the issues collaborative consumption has developed. In Europe since the very beginning of the sharing apps’ functioning, the policies for Uber and Airbnb have been vigorously discussed and been subject to various rulings of the EU Justice Tribunal, as well as states’ courts. The first regulations tended however to create “caps” for P2P activities, as for example limiting Airbnb’s total rental time to 120 days per year in Paris or only 30 in Amsterdam. It is undisputable, that argumentation for such limitation is solid, and comprehend with the definition, pointing out the aspect of better use of underutilised resources. Those are however only half-way solutions, that may not remain unchanged. There is no doubt that these platforms provide very similar services, but thanks to the private core they could neatly bypass most of the laws that professionals are to obey. An important question for governments is how sharing economy will change the tourism industry, especially as it has been taking over the role of low-end hotels. On the other hand, Airbnb might actually benefit the entire tourism industry, as visitors choosing Airbnb accommodations spend more time in spoken locations, also spending incomparably more money in restaurants- according to the information from Airbnb’s site in 2019 the sums were estimated to reach 30 billion dollars in 2019.

Another problems collaborative economy businesses and its clients are facing are the lack of clarity, on who’s responsible for eventual accidents, misleading reviews from other users or misuse of personal data, as the Europeans have pointed out in in Eurobarometer.

Problematic aspects of data protection

Another important issue is data protection, as privacy is one of the fundamental human rights. Short-term relationships between suppliers and customers require trust to function properly and effective. Such trust shall be granted by the intermediary. To do so, agents are collecting personal data of the suppliers and customers. As sharing economy requires simultaneous exchange of the data, the optimal situation is at the point, where the minimum level of exposure to intermediary guarantees maximum security of the transaction for both sides. The consumers disclose their data to the intermediaries to be able to use the sharing platform as well as to the suppliers, in order to access services or goods offered. On the other side, providers

18 Report from the EU H2020 Research Project Ps2Share: Participation, Privacy, and Power in the Sharing Economy - Privacy
Such data spread carries among a specific threat of data mishandling\(^\text{20}\), so the sharing economy businesses need to put up with new requirements. Firstly, they will need to be pro-active, monitoring and responding to potential threats, training employees, who handle personal data to minimise data mishandling threat.

This problem is particularly vivid since 2018, when the General Data Protection Regulation (GDPR) was introduced in European Union. Sharing economy platforms, that are collecting and processing personal data, are now obliged to put up with new, specific requirements regarding data handling. One of these duties is to ask users for an unambiguous consent, defined as a ‘clear affirmative act’, before collecting and storing their data, as well as to assure transparent privacy policies. Moreover, such consent clauses’ complexity level will need to be exoeconomically high in order to cover all necessary, potential activities engaging data. Sharing economy platforms will now need to create new clauses and become new consent from their users, whenever they want to use collected data in a way, even minimally different than previously accepted by the individual. Another essential right protected in GDPR, which is also crucial for sharing economy apps, is the right to be forgotten, which allows customers to require immediate deletion of their data from company’s database. Every entity working with people’s data is moreover obliged to appoint a data protection officer, which generates additional costs. Size of this paper does not allow even a compendious study of this regulation in the light of B2C or C2C market, however the whole world was closing down in order to reduce contagion, people stayed in their own houses and drove their own cars, which resulted in shock of the fundamental incomes of the sharing economy businesses. Coworking companies and spaces were naturally also affected as the new work-from-home model took over. Though, even in current situation entrepreneurs found a solution and came up with new ideas for ‘economy of isolation’. However odd it may sound, sharing economy brings also new opportunities in such situation as pandemic, so the skills of medics or services of the suppliers can be used at levels as close as possible to their full capacity. Airbnb hosts have partnered with international health organisations in order to provide housing to the healthcare workers, so they don’t expose their families to COVID 19 infection.\(^\text{21}\) Uber, similarly, has donated 10 million free rides and deliveries of food for frontline healthcare workers, seniors, and people in need around the world.\(^\text{22}\) The social aspect of collaborative economy in these hard times is especially important. Despite these, in fact also perfect PR moves, nearly 26\% of sharing economy services users are planning to use it less after the Covid-19, according to Ipsos.\(^\text{23}\)

Employees hired in collaborative economy sectors are also struggling, as they are mostly contractors, who lack basic benefits such as paid sick leave or health/unemployment insurance. When the pandemic started, the employers from sharing economy sectors had laid off thousands of people. Some of them managed to find job in accompanying services, as for ex. Uber drivers have switched to Uber eats. There is no doubt that ‘traditional’ picture of sharing economy will meaningfully change after COVID-19.

**Sharing economy under Covid-19**

The spread of coronavirus in the first half of 2020 has posed new challenges for the whole economy, especially threatful for sharing economy. The global health crisis has rocked such giants as Uber or Airbnb. At the end of April, the transport company has informed about probable layoffs of 5.000 workers, constituting 20\% of its employees. Airbnb was forced to introduce strict cleaning protocols or safety restrictions such as minimum 24 hours pause between different clients.\(^\text{21}\) As the whole world was closing down in order to reduce contagion, people stayed in their own houses and drove their own cars, which resulted in shock of the fundamental incomes of the sharing economy businesses. Coworking companies and spaces were naturally also affected as the new work-from-home model took over. Though, even in current situation entrepreneurs found a solution and came up with new ideas for ‘economy of isolation’. However odd it may sound, sharing economy brings also new opportunities in such situation as pandemic, so the skills of medics or services of the suppliers can be used at levels as close as possible to their full capacity. Airbnb hosts have partnered with international health organisations in order to provide housing to the healthcare workers, so they don’t expose their families to COVID 19 infection.\(^\text{21}\) Uber, similarly, has donated 10 million free rides and deliveries of food for frontline healthcare workers, seniors, and people in need around the world.\(^\text{22}\) The social aspect of collaborative economy in these hard times is especially important. Despite these, in fact also perfect PR moves, nearly 26\% of sharing economy services users are planning to use it less after the Covid-19, according to Ipsos.\(^\text{23}\)

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but also workers. There are already services answering new needs of the pandemic reality, as i.a. Uber’s food delivery app. Uber Eats or a Spanish start-up founded in 2015- Glovo, that allows people to order food or shopping, shall be delivered in short time, in a contactless manner. Airbnb hosts are switching to long-term rentals. This ability of quick responsiveness to completely new reality we owe to flexibility of the sharing economy.

To sum up, in order to survive the pandemic crisis, the entrepreneurs need to adapt new safety standards, protecting both, clients and workers, as well as to come up with ideas for new services, responsive to the pandemic-related needs. Another difficult challenge after the virus will be to deal with people’s psychological barriers, keeping them from using shared services. All the above mentioned will definitely require increased creativity level from the entrepreneurs, putting collaborative economy in front of ‘evolve or die’ challenge.

Possible legal resolutions

As proved in previous parts of the paper, the main issue of the sharing apps’ is that they may be bypassing requirements made for professional market members. For years governments around the world have mostly viewed the sharing economy with scepticism, however this has been changing lately. There is a growing acknowledgment among governments that instead of fighting, it is way more profitable to support collaborative economy.

The first city to legally approve and regulate the sharing economy was Seoul. In 2012 its mayor has launched the project called ‘Sharing City Seoul’, which encouraged the Seoul Metropolitan Government to provide administrative support and financial aid to Seoul’s rising sharing economy. It was designed to ‘create new economic opportunities, to restore reliable relationships, and to reduce the wasting of resources with a view to resolving urban economic, social, and environmental problems all together’.

In August 2017 Sweden has launched its own Sharing Cities project, with a 12-million-euro budget over 4 years. Sweden’s main aim nevertheless slightly differs from Chinese. It is targeted at lowering impacts of consumption on the environment and encouraging socialization, mostly in the refugees’ case. The objectives of the projects are utilization of spaces (such as premises, housing or shared public space) and utilization of goods and services (i.a. tools, clothing, or handicrafts). Transport and mobility are also included to a certain extent.

Lately, China has set up a government-backed commission to explore growth opportunities for the sector, as they have predicted the economic potential of this industry to contribute 20 per cent of the China’s GDP by 2025, according to the state council.

However, troubles around creation of policies for sharing economy vary. Regulatory intervention should consider protection of clients, ensuring public safety or fighting tax evasion in first place, as those are the fields, where the lack of regulation is especially common and threatening. At this point one should deliberate on the danger, the legal gaps are carrying. This specifically refers to the cases, when there are such new and unprecedented sharing economy models, that no law rules are applicable. The other problem, visible on the case of Airbnb, is when strict policies are being created for extremely specific, innovative businesses, which might lead to considerations, that the regime was designed for the specific addresssee. More libertarian approaches argue, that legal interventions are inexpedient, as the regulations are mostly failed and produce costs often higher, than the market problems they are willing do address. What is undisputable is that inappropriately suited laws may lead to reduction of sharing economy’s strengths and advantages, arising from the highest possible flexibility and broader scope of activity granted to the innovative entrepreneurs.

The scope of regulation should moreover concern nuisances on the third parties, such as pedestrians not using Uber, or the neighbours of Airbnb hosts, ensuring that they are under right protection and answering the need for the higher transparency of the intermediary companies.

However it shall take time before the governments start to treat sharing economy businesses as fair and stop setting up unnecessary restrictions, as it has proven in Paris or Brussels, where the town authorities have consequently put new bans and strict regulations to Uber or Airbnb to put up with. The best solution for now, would in the author’s opinion be soft law. There are many controversies, whether such law model is effective, bearing in mind it’s non-binding characteristics. Though, if we backed standards and best practices by mechanisms that enforce compliance, even though they would not have been promulgated in traditional law-making processes, soft laws could have been a functional alternative for hard law.

Nevertheless, as soft law could’ve proved insufficient in a long-distance run, European Union and its’ member states shall come up with basic regulations for sharing economy in order to prevent market abuse and protect consumers when necessary. They should although only seek to set up restrictions there, where absolutely necessary and weigh up,
where the strict regulations are indispensable: where consumers need stronger protection from unfair business practices, the restrictions may and shall be stronger, and when there is little need for protection, weaker requirements shall be sufficient, leaving the entrepreneurs broader scope for development.

**Sharing economy in European Union**

Until now, European Commission has come up with some promising ideas and took up actions on making sharing economy more common among authorities. In 2015 and 2016 European Commission has arranged consultations and Eurobarometer (survey with citizens) on the question of regulatory environment for platforms, online intermediaries, and data and cloud computing and the collaborative economy. The survey received responses from individuals (407); business associations (179) and businesses (116), "others" including right-holders (147). Most answered that the best solution for the legal problems would be a combination of regulatory and self regulatory measures. Key issue in all replies relates to platforms' responsibility and liability, which has confirmed in the barometer performed in 2018. To address these issues EU Commission has in 2016 promulgated an Agenda for the collaborative economy, where it has advised i.a. to monitor regulatory and economic environment of P2P economy, that would enable following pricing trends as well as to identify obstacles, especially arising from various national regulations. The Commission pointed out following main tools:

1. **Periodic surveys of consumers and businesses on the use of the collaborative economy.**
2. **Ongoing mapping of regulatory developments in Member States.**
3. **Stakeholder dialogue in the framework of the Single Market Forum, with twice yearly forums to assess sector development on the ground and to identify good practices.**
4. **The results of the monitoring of the collaborative economy will be summarised in the Single Market Scoreboard.**

Another essential issue Commission has highlighted is taxation of sharing economy activities. There is no doubt that the activities taken up through intermediaries remain VAT taxable transactions, as they constitute goods or service supply. Problems arise though, whether and who is a taxable person here. In this particular issue the partnership between authorities and platforms is especially important. Addressing the above mentioned, the EU Commission encouraged member states to "facilitate and improve tax collection by using the possibilities provided by collaborative platforms, as these already record economic activity".

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**Notes**


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