Regulatory approaches to the sharing economy

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The sharing economy is based on reductions in transaction costs which enable exchanges that were previously not possible. Sharing economy firms facilitate a more efficient use of assets, to the benefit of both asset owners and prospective users.

Its potential positive impact on welfare has been estimated at over €1,000 per EU citizen.

There is reason to doubt that a special regulatory regime is needed for sharing economy businesses. However, the rise of new business models does underline the need to adapt employment and tax rules to the new circumstances.

EU Member States have so far taken various different approaches to the regulation of the sharing economy, as illustrated by the example of Uber. Authorities at EU level, however, are increasingly calling for "a common approach."

Given the disparities between Member States, a single rulebook appears inappropriate. Instead, the EU should only intervene where national or local regulations contradict competition and the free movement of goods and services.

If there is a common EU approach, it should aim to liberalise existing regulation and abolish those rules made redundant by innovation. An EU rulebook should also not inhibit the employment flexibility characteristic of new business models.

New technologies and entrepreneurial innovation have spurred the rise of new business models, collectively known as the sharing economy. Prominent examples of such firms include Airbnb, Blablacar and Uber. Their value proposition is the reduction in transaction costs for buyers and sellers, in a way that enables exchanges which were previously not feasible. This in turn leads to a real economic gain because the assets involved in these transactions can be used more intensively. The trend in transaction cost reductions is likely to move economies away from ownership and towards subscription and rental models which allow on-demand use of goods and services such as transport and lodging (Munger, 2015).

Sharing economy businesses have often entered markets where incumbent operators are subject to significant government regulation. The incumbents' response in many EU Member States has been to call for increased regulation of the new entrants (cf. Transport for London, 2015). At EU level, the European Commission (2015) devoted a section in its recent consultation on the regulatory environment for online platforms to the sharing economy.[i] The Commission is expected to provide further guidance in 2016 as to how existing EU legislation applies to the sharing economy (EC, 2015).

Defining the sharing economy

A report commissioned by the European Parliament defines the sharing economy as "the use of digital platforms or portals to reduce the scale for viable hiring transactions or viable participation in consumer hiring markets […] and thereby reduce the extent to which assets are under-utilised" (Lilico and Sinclair, 2016). The European Commission (2013) includes in its definition firms whose "value proposition consists of creating a match between a peer owning a certain resource and a peer in need of that resource, at the right time and against reasonable transaction costs."

The key feature of sharing economy firms is that they sell reductions in transaction costs in three main ways: by cutting the cost of searching and sorting through the various options; by enabling trust between the parties to the transaction; and by facilitating payment in a way that is predictable and transparent (Munger, 2015). They thereby make possible a more efficient use of assets, to the benefit of both owners and prospective users of those assets.[ii]

The impact of the sharing economy

The benefits and costs of the sharing economy are principally distributed among three distinct groups:

- **Consumers** of goods and services offered in the sharing economy have a broader range of options from which to choose, at cheaper prices.

- **Providers** benefit from flexible working arrangements and new ways to supplement their incomes. In particular, groups previously excluded from formal employment – migrants, single parents, older individuals, the long-term unemployed – are likely to gain from the increased opportunities for self-employment offered by the sharing economy.

- **Incumbents** in markets entered by sharing economy providers will face pressure on price, quality and customer service. Such pressures will be particularly felt in sectors where long-standing government regulation previously prevented effective competition.

The net impact of the sharing economy on the EU is expected to be overwhelmingly positive. Consultancy Europe Economics (2016) has estimated the potential welfare gain from reductions in the under-utilisation of assets and labour across the EU at €572bn, which translates to over €1,000 per EU citizen.[iii] According to their assessment, as much as half of current household consumption expenditure in the EU Member States is amenable to sharing economy business models.

The positive economic impact of the sharing economy has been estimated at €572 billion, over €1,000 per EU citizen (Europe Economics, 2016).

The challenge of regulation

It is questionable that the sharing economy qualifies as a separate economic category for regulatory purposes (Zuluaga, 2015). Sharing economy firms operate across many sectors and compete with both traditional and with other sharing economy providers. Furthermore, while providers enabled by sharing economy firms do compete with regulated providers of the same service, it is unclear why the firms themselves should be subject to those regulations. In this regard, it should be noted that the European Court of Justice is currently considering whether Uber qualifies as a transport provider or as a technology company.[iv]

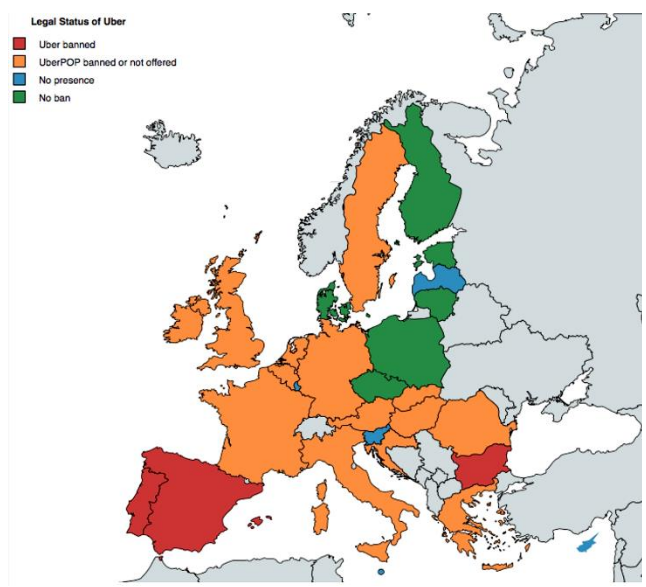
As with other new and innovative industries, regulators face the risk that their actions might do more harm than good (cf. Easterbrook, 1984; Manne and Wright, 2010). Premature intervention in pursuit of a “level playing field” could well result in reduced competition, barriers to entry by new providers and a negative overall impact on consumer welfare. This point was recently brought home by the UK Competition and Markets Authority in its response to Transport for London’s consultation on new regulations for private hire vehicles (CMA, 2015; TfL, 2015).[v]

Reports suggest as many as 20,000 French drivers used the Uber app in 2015. Many of them came from disadvantaged groups.

Nevertheless, the rise of the sharing economy underscores the need for existing state regulation to be reconsidered, to take account of technological innovation and changing employment patterns. Notably, because sharing economy business models often have features that promote trust and consumer protection embedded within them, updating regulation might involve considerable liberalisation. Furthermore, sector-specific rules such as taxi licensing, employment-related welfare and pension contributions, and tax collection will all have to adapt to the new opportunities available to individuals for flexible self-employment. A number of reform options, from the creation of a new official employment status for sharing economy providers, to the replacement of employment-related welfare by a universal income, have been proposed.[vi] It is important to recognise that regulation should change with the economy, rather than trying to adapt innovative business models to existing rules. Otherwise European economies will not fully capture the large potential benefits offered by sharing economy business models.

Regulatory approaches: the case of Uber

Uber is a popular ride-sharing app and one of the most successful firms to date in the sharing economy. The firm, whose main business activity is to connect drivers with passengers, launched its app in San Francisco in 2011. Its first European market was Paris from late 2011, and it has spread across the EU since then. Uber is currently active in 52 EU cities across 22 of the 28 Member States.[vii] Uber’s impact on EU labour markets has been significant, with reports that the app was used by 20,000 French drivers – many of them from minorities and other groups often excluded from the mainstream labour market – before the courts placed restrictions on its service last year.[viii]



The app’s legal status varies considerably across the Union. The firm has been subject to court injunctions ordering it to suspend its operations in several countries, including Spain, Portugal and Bulgaria.[ix] The regulatory environments in the Member States can broadly be divided into three categories, as shown on the map. The countries in green are those where Uber faces no restrictions, while those in red are the ones where the app is currently illegal, pending court rulings.

A majority of Member States allow Uber to operate, but its drivers have to meet licensing and other requirements. Significantly, this means that UberPOP, the app’s most basic offering aimed at non-professional drivers, is either banned or unavailable in these countries (shown in orange). UberPOP’s value proposition arguably makes it the most peer-to-peer of the app’s various categories, so restrictions on its operations constitute a perceptible barrier to the growth of cheap ride-sharing options.

It is important to note that the regulatory environment around ride-sharing is rapidly evolving in most Member States. Transport for London, the UK capital's regulator, recently proposed significant changes to the regulation of private hire vehicles which were later cancelled. Reports suggest disagreement within the French government as to how to regulate the app. In Spain, the national competition authority in January called on the Ministry of Transport to lift restrictions on private hire licences.[x] Meanwhile, several of the countries in northern and eastern Europe which until now have taken a laissez-faire approach, including Denmark and Poland, are considering new regulation.[xi]

The problems with a 'single rulebook' for the sharing economy

The political controversy around the sharing economy, not least Uber, has spurred calls from EU policymakers, including Single Market Commissioner Elżbieta Bieńkowska, for "a common approach."[xii] While the motivations behind such public statements – to ensure that the EU embraces the opportunities offered by innovation – are laudable, applying a single rulebook to such a broad category of rapidly evolving business models would be inappropriate and premature.

Firstly, while the term 'sharing economy' has been commonplace for some time, it is still poorly understood and its economic implications are only gradually becoming apparent. At this stage, it is difficult to place clear boundaries between those businesses which qualify as part of the sharing economy and those which do not, and the goalposts are constantly shifting.

Secondly, the regulations which will need to change in response to the sharing economy – tax and employment legislation, welfare policy, professional licensing – are mostly national and local competences. As a result, there is great variation in the requirements currently placed on employers, employees and the self-employed. The Fraser Institute's 2015 Economic Freedom of the World Report, which provides detailed analysis of labour-market regulations, underlines the disparity between the EU Member States, with the UK and Poland comparably free in 17th and 34th place worldwide, compared to laggards Spain and France, which rank 118th and 124th, respectively (Gwartney et al., 2015).

With regard to sector-specific regulations, and to take the example of transport, taxi licences in France are reported to fetch up to €180,000 on the secondary market, compared to around €1,000 to apply for a taxi licence in London.[xiii] Similarly, private hire licensing is restricted in Spain, but more liberal in France and the UK. A similar variance in national regulations can be observed for lodging app Airbnb.

Restrained but pro-competitive: the role of the EU

Given the disparities between Member States, it cannot be expected that a single set of rules will improve conditions in all countries. Instead, each Member State should be allowed to enact the regulatory changes needed in its particular context, provided that reform does not violate the principles of open competition and the free movement of goods and services within the internal market. The relevant EU functions in this regard are the prevention of illegal state aid (as per Art. 107 of TFEU) and anti-competitive practices by national governments (Art. 102 of TFEU).

With the elimination of geographical barriers characteristic of new technologies, it may be found that regulatory restrictions which previously only affected local markets now have implications for cross-border trade. However, it is crucial to recognise that many sharing economy applications involve non-tradeable services or, at least, services which cannot be traded across a wide geographical area. In these instances, regulation at EU level is not warranted and should be left to lower-level authorities in line with the principle of subsidiarity.

What to avoid at all costs, and what to aim for

If the European Commission decides to proceed with a common set of rules, there are a number of pitfalls it should avoid:

New regulations must not limit the options available to consumers and providers in the sharing economy. The sharing economy is already well-established in many Member States. EU regulation should not roll back the progress already made.

Rules should reinforce the strengths of the sharing economy – flexibility, cost reductions, greater business employment and self-employment of workers otherwise excluded from labour markets – rather than undermine them. Onerous employment rules are likely to reduce employment opportunities and consumer welfare.

The sharing economy shows the need for liberalisation of existing rules. The sharing economy has not only put competitive pressure on incumbents, but it has also rendered price controls and regulations aiming to promote customer safety redundant.

An EU rulebook should emulate best practice across the EU. There are successful models of open and flexible labour markets, such as the UK, Poland and Denmark, with low unemployment and high levels of labour force participation. These models are better placed to take advantage of the benefits offered by the sharing economy.

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[i] It is important to note that some intermediary businesses in the sharing economy do not meet the strict economic definition of a platform. However, the Commission in its consultation uses a broader definition. See Zuluaga (2015).

[ii] It should be noted that 'assets' here refers both to physical goods such as cars and housing, and human resources such as labour's time and skill.
[iii] Europe Economics' report for the European Parliamentary Research Service (2016) contains a detailed discussion of the variables and methodology used to arrive at this figure.
[iv] Murad Ahmed, "Judge refers Spanish Uber case to European Court of Justice," *Financial Times*, 20 July 2015, https://next.ft.com/content/02e83fde-2ee6-11e5-8873-775ba7c2ea3d.
[v] TfL has subsequently dropped plans to subject private hire firms, including Uber, to stricter regulation amid allegations that the proposed measures would benefit the regulated taxi industry at the expense of passengers.
[vi] A detailed discussion of the alternatives is beyond the scope of this paper. See, for instance, Lilico and Sinclair (2016) and de Basquiat (2014).
[vii] As listed on the Uber website: https://www.uber.com/cities.
[viii] Nicolas Vinocur, "Sacrebleu! Uber conquers France," *Politico*, 30 September 2015, http://www.politico.eu/article/uber-conquers-france-airbnb-sharing-economy-unions-hollande-socialists-clash/.
[ix] Uber continues to operate in Portugal and Bulgaria, according to its website and independent news accounts. See here (for Portugal) and here (for Bulgaria).
[x] CNMC press release, 21 January 2016. http://cnmc.es/CNMC/Prensa/TabId/254/ArtMID/6629/ArticleID/1616/La-CNMC-requiere-al-Ministerio-de-Fomento-que-elimine-las-restricciones-en-materia-de-transporte-de-pasajeros-mediante-veh237culos-de-alquiler-con-conductor.aspx.
[xi] Wojciech Rylukowski, "Poland to change regulation for Uber," *wbj*, 2 July 2015, http://wbj.pl/poland-to-change-regulation-for-uber/.
[xii] Jorge Valero, "Spanish competition regulator pushes for sharing economy – despite court cases," *EurActiv*, 7 December 2015, http://www.euractiv.com/sections/digital/spanish-competition-regulator-pushes-sharing-economy-despite-court-cases-320147.
[xiii] Romain Dillet, "Following anti-Uber protest, French government announces yet another law," *TechCrunch*, 26 January 2016 (http://techcrunch.com/2016/01/26/following-anti-uber-protest-french-government-announces-yet-another-law/); Transport for London, "Apply for a taxi driver licence," https://tfl.gov.uk/info-for/taxis-and-private-hire/licensing/apply-for-a-taxi-driver-licence.

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