Journal of Infrastructure, Policy and Development 2025, 9(1), 10088.
https://doi.org/10.24294/jipd10088

Article

The multidimensionality of the collaborative economy in the light of the constitutional relations between the EU and the member states

Katja Vizjak[1,*], Lazar Pavić[2]

[1] Faculty of Law, University of Maribor, 2000 Maribor, Slovenia
[2] Faculty of Logistics, University of Maribor, 3000 Celje, Slovenia
*** Corresponding author:** Katja Vizjak, katja.vizjak@gmail.com

CITATION

Vizjak K, Pavić L. (2025). The multidimensionality of the collaborative economy in the light of the constitutional relations between the EU and the member states. Journal of Infrastructure, Policy and Development. 9(1): 10088. https://doi.org/10.24294/jipd10088

ARTICLE INFO

Received: 4 November 2024
Accepted: 24 December 2024
Available online: 16 January 2025

Abstract: Some platforms in the collaborative economy offer a combination of sectoral and information society services, which characterises them as a hybrid entity. The concurrent provision of disparate types of services necessitates the determination of the predominant activity of a given platform on a case-by-case basis. This, in turn, gives rise to legal uncertainty and inconsistent case law at the national level. This paper examines the impact of the choice of institutional alternatives in the context of multilevel governance in the EU on the legal status of collaborative economy business models such as Uber and Airbnb in the EU single market. The paper employs a mixed-methods research approach to analyse pivotal jurisprudential decisions of the Court of Justice of the European Union (CJEU) and national courts. It reaches the conclusion that the Airbnb platform, in its capacity as an information society service provider, is subject to the provisions of the Electronic Commerce Directive (2000/31/EC). Conversely, Uber, by virtue of its definition as a transport undertaking, is subject to shared jurisdiction between EU institutions and Member States in the field of transport services. This paper initiates a discussion on the suitability of the extant regulatory apparatus and underscores the necessity for the establishment of an appropriate institutional framework, either centralised at the EU level or decentralised at the level of Member States, that would provide substantive rules aimed at comprehensively regulating the legal status of hybrid business models, thus allowing for more uniform conditions for their operation in the EU single market.

Keywords: collaborative economy; collaborative platform; EU single market; multilevel governance; the separation-of-powers principles
JEL Classification: K10-general

1. Introduction

The accelerated evolution of the collaborative economy has precipitated substantial shifts in the way services are delivered and consumed. These developments have prompted a re-evaluation of traditional regulatory frameworks and a re-evaluation of existing legal norms. In 2023, the collaborative economy generated revenues of approximately €3.6 billion in five key sectors (accommodation, transport, domestic services, professional services and finance), representing a further increase in comparison to previous years. It is anticipated that by 2025, the collaborative economy in the European Union (EU) will contribute an additional €160-572 billion to gross domestic product (GDP), according to experts. This paper aims to examine the nexus of multilevel governance within the EU and the legal status of hybrid business models exemplified by collaborative platforms (platforms facilitating peer-to-peer interactions or resource sharing) such as Uber and Airbnb. The objective of this study is to examine the impact of the selection of institutional alternatives on the

regulatory landscape for these platforms in the EU single market. In addition, it addresses the legal uncertainties and inconsistencies that arise from varying national approaches. The growing significance of this subject is highlighted by the increasing prevalence of collaborative platforms, which are eroding the boundaries between conventional sectors and information society services. As these platforms expand, there is an increasing need for a coherent regulatory framework that ensures fair competition, protects consumer rights and encourages innovation. Namely, the data from 2024 indicates that one in six EU citizens utilise collaborative economy services, with over 5% of this cohort already engaged in the active provision of services via such platforms. This provides compelling evidence of the accelerated growth and expansion of these business models within the EU single market.

The following research questions form the basis of this investigation: How do different national regulations affect the operation and competitiveness of collaborative platforms? What is the role of the Court of Justice of the European Union (CJEU) in shaping the legal framework for collaborative platforms? How does the chosen institutional structure impact the regulation of hybrid business models in the EU? What are the legal and practical consequences of differences in competencies between EU and national institutions in regulating the collaborative economy? This paper employs a mixed-methods research approach, combining qualitative and quantitative analyses of pivotal jurisprudential decisions from the CJEU and various national courts.

The following is the structure of the paper: it begins by examining the collaborative economy as a multifaceted system, emphasizing the necessity of understanding its diverse service offerings and the implications for regulation. The principles of separation of powers are explored as foundational to establishing a regulatory framework that balances authority between EU institutions and Member States. The article further investigates the competition for authority within a multilevel governance system, highlighting the roles of national courts, and the CJEU as arbiter in navigating the constitutional dimensions of EU regulatory law. It also addresses the exercise of competences and justification of measures at the EU level, along with the multidimensionality of the collaborative economy considering constitutional relations.

2. The collaborative economy as a complex ecosystem of on-demand services

The collaborative economy is a comprehensive term encompassing a *sui generis* economic system that incorporates various online platforms (a general term that encompasses all digital platforms facilitating transactions, interactions, or services; broader than collaborative platform) across different societal domains. Botsman and Rogers initially posited in 2010 that the collaborative economy emerged as a response to ecological and economic crises, giving rise to the concept of prioritizing the utilization of goods over their ownership (Botsman and Rogers, 2010). Empirical evidence supports this view, with studies indicating that in Q2 2024, online platforms facilitated 208 million nights in short-stay accommodations, marking a 16.2% increase from Q2 2023 (Eurostat, 2024). This growth underscores their capacity to integrate cross-border demand and supply, reshaping traditional markets and advancing the digital single market. Also, the latest research on platforms in the EU transport sector,

comprising approximately 300,000 providers, suggests a revenue of approximately €35 billion in 2023 (European Commission, 2023b). One of the later definitions was set out by the European Commission in its Communication on Upgrading the Single Market, where it defines the concept of the collaborative economy as "a complex ecosystem of on-demand services and temporary use of assets based on exchanges via online platforms" (European Commission, 2015). This approach integrates the ostensibly distinct domains of social and digital innovation and is predicated on collaborative and resource-sharing practices that inform sustainable development. Supporting this, Schor's empirical research highlights that over 60% of participants in the collaborative economy reported reduced environmental impact as a benefit of participation, particularly in transportation and accommodation sectors (Schor, 2014).

Within the collaborative economy, collaborative or participatory consumption represents an alternative approach to addressing overconsumption, wherein participants share access to products and services via the internet or mobile applications, as opposed to individual ownership (Smith, 2016). For example, car-sharing services such as BlaBlaCar claim to have saved over 6.4 million tons of CO2 emissions annually by optimizing vehicle occupancy rates (BlaBlaCar, 2023). This process is typically facilitated through online collaborative platforms. Fundamentally, two distinct business models exist within the collaborative economy. The first model involves occasional or professional service providers sharing knowledge, resources, time, or other goods with users who require these services. The second model encompasses, in addition to these two categories of participants, intermediaries (any entity that acts as a middleman, connecting two or more parties; collaborative platforms are a type of intermediary, but not all intermediaries are collaborative platforms) known as collaborative platforms, which connect providers with users through digital platforms while ensuring user security and facilitating payment transactions. For example, the latest data, as of December 2024, suggests that Uber Technologies Inc. has a market capitalisation of approximately USD 139.17 billion, which reflects a notable growth trajectory in the past year. Uber has a presence in over 70 countries and 10,000 cities across the globe (Uber, 2024). Airbnb is also an excellent case study in this model, with over eight million recorded overnight stays in more than 100,000 cities and 220 countries by 2024 (Airbnb, 2024). These examples illustrate how both models contribute to reshaping traditional industries, while empirical data underscores their economic significance and highlights the need for nuanced regulatory frameworks.

From technical facilitators to active service providers: The evolving role of the collaborative platforms

Acquier et al. (2019) have identified the most recent typology of four business models of the collaborative economy. The authors differentiate between those who provide shared infrastructure, targeted platforms, online communities of individuals, and intermediaries, based on the way value is generated, the varying scalability potential, and the social impact (Acquier et al., 2019). These are commercial platforms that facilitate the formation of networks of individuals engaged in "peer-to-peer" transactions of goods or services in the physical world. Initially, platforms identify a

dispersed, underutilised resource with high potential for sharing. Rather than owning the resources required to perform the services, they leverage the proprietary resources of their users as intermediaries (Evans and Schmalensee, 2016). In some instances, they also assume the role of a third party in a tripartite contractual relationship, functioning as both the intermediary and the service provider. It is therefore crucial to ascertain whether a platform is merely functioning as a passive intermediary within the market or whether it is exerting sufficient control to warrant responsibility for the provision of services. Nevertheless, when a cooperation contract is concluded through an intermediary platform, a kind of triangular relationship is ultimately established, as certain legal links are created between the platform and the service provider and between the platform and the service user. In cases where the intermediary platform exerts minimal control over the services in question or provides mere assistance and intermediation in the provision of a sectoral service, we are dealing with information society services or electronic intermediation. Conversely, the more active the platform is in organising and managing a portion of the non-ICS services, the more evident it becomes that the platform is also providing these sectoral services.

In the view of the European Commission, an intermediary platform exerts considerable influence over the provider of the service in question if three criteria are met. These are that the platform sets (rather than merely recommends) the final price of the service, that it sets certain other key contractual terms and that it owns the underlying or key assets (European Commission, 2016). In its judgments, the CJEU has introduced slight modifications to these criteria, emphasising that a platform is only considered an intermediary service provider where its conduct is purely technical, automatic and passive, and where it does not play an active role in providing knowledge, control or awareness of illegal information ("Google France et al.", 2010; "L'Oréal SA v. eBay International AG", 2011). It is evident that the more active the platform is in organising and managing the non-IT services aspect of the service (or in the material control of the underlying contractual relationship), the more it is providing these sectoral services itself. This consequently provides further justification for the introduction of its performance responsibility.

Some pioneering business models, such as Uber and Airbnb, also offer information society services in addition to their core activities (sectoral services). This concurrent provision and interdependence of multiple services is a defining feature of the hybrid business models of the collaborative economy. In the absence of clear delineation and assessment of the relative importance of these services, the primary activity of such a platform must be determined on a case-by-case basis.

3. Separation of powers: A foundation for regulating the collaborative economy

3.1. The competition for authority within a multilevel governance system

The EU is a highly intricate and distinctive entity, exemplifying an integrated legal system where legal entities operate in a manner that effectively dissolves the conventional boundaries between disparate levels and actors (Rosas and Armati, 2018). The EU is therefore regarded as a system of multilevel governance, characterised by

the existence of multiple levels of power. In the EU, while initially only the institutions of Member States acted as regulators of their respective national territories (at the national level), today the EU institutions act as a second and central regulator (at the supranational level). This dual system of authority gives rise to a conflict between the demands for diversity on the one hand and the drive for complete uniformity of legal rules on the other. The selection of an institutional alternative is contingent upon several factors. Primarily, the vertical level of society at which the decision will be made must be identified. Secondly, the type of institution (legislative or judicial) that will be entrusted with the decision-making process must be determined. Thirdly, the rule that the chosen institution will be bound by must be established (Trachtman, 1998).

The establishment of the EU has resulted in a limitation of the legislative powers of Member States, leading to the creation of an autonomous legal order that is binding on them, their citizens, and the decisions of national courts. The autonomy and independence of the EU acquis is a consequence of the delegation of the exercise of sovereign rights to EU bodies. This is reflected in the EU's original legislative competence and the fact that its validity can only be judged based on its own principles. Furthermore, it cannot be changed by the rules of Member States' legal systems. It follows that only an autonomous system can give precedence over national rules (in accordance with the principle of primacy). Furthermore, it does not require any intermediate acts to convert its rules into an internal legal order; rather, it creates rights and obligations that have direct effect. In accordance with the principle of direct applicability, it can be concluded that the principle of autonomy provides the foundation for the implementation of the principles of primacy and direct applicability (Grilc et al., 2001).

The question of which rule of law should be applied when there is a conflict between a rule of EU law and a rule of national law of the Member States is answered by the principle of supremacy. The CJEU explicitly stated as early as 1964 in the case of "Costa v Enel" that it is for EU law itself, and not for the national legal orders of the Member States, to decide how EU law operates in the national law of the Member States. This gave EU law supremacy over the national law of the Member States. It is not the case that EU law is supreme over national law. The supremacy of EU law over national law is a fundamental tenet of European legal order. Subsequently, the CJEU held that a Member State could not invoke any national provision, regardless of its status, to justify a breach of EU law. The CJEU then extended this interpretation in "Simmenthal" by prohibiting the application of a national provision that is contrary to directly applicable provisions of EU law. However, in "IN.CO.GE", the CJEU narrowed this again somewhat, holding that a non-conforming national provision is not considered to be non-existent, but remains in force until it is repealed by the competent national authority. In the national legal systems of the Member States, the principle of the primacy of EU law is reflected in two main ways. Firstly, legislation contrary to EU law is prohibited. Secondly, a particular provision of national law that is contrary to EU law is prohibited from being applied. This is known as the duty to disapply.

In accordance with the principle of direct applicability, the provisions of EU legal acts are typically directly applicable in the Member States, without the necessity of transposition into national law. The doctrine of direct effect, which permits EU citizens

to invoke EU law directly before national courts, was first established by the CJEU in the "Van Gend en Loos" judgment of 1963 ("Van Gend en Loos", 1963). The case law that has developed in the wake of this decision has established criteria for identifying the direct applicability and direct effect of provisions set forth in the founding Treaties and other acts, based on which an individual may invoke a specific provision. Consequently, the provision must comprise a transparent obligation on the part of the Member State, there must be no necessity for further normative action on the part of the authority, it must be unconditional, and the Member States must be deprived of any discretion as to the enforcement of the obligation under such a provision.

3.2. Theoretical insights into the constitutional dimensions of the EU regulatory law

The transfer of competencies to the supranational level has given rise to a variety of theoretical responses to the question of how the modalities of the transfer of competencies should be coordinated. Neofunctionalism, an early and influential ideology of European integration, emphasised the role of non-governmental actors in regional organisation and further integration. The role of Member States is limited to establishing the terms of the founding agreement, without determining the direction and extent of subsequent change. As citizens increasingly direct their expectations to the centre, an escalation of economic integration into political integration is required, which in turn weakens states. Liberal intergovernmentalism, in contrast to neofunctionalism, posits that the supranational institutional architecture is the consequence of a rational decision by the states that integrate. It delineates a distinction between domestic and international politics, with supranational organisations being primarily a means to increase the influence of Member States.

The theory of the multilevel governance system, which was developed in response to and in opposition to the integration theory mentioned above, was developed in the early 1990s by the political scientists Hooghe, Marks and Blank. They pointed to the fact that integration is the process of establishing a form of governance in which decision-making powers are shared among actors at several levels, while at the same time denying the possibility, denied from the outset, of the domination of national institutions. The meaning of multilevel governance lies in the independent influence of supranational institutions on policymaking because the state no longer monopolises policymaking at the European level (Marks et al., 1996). The proponents of multilevel governance support the theory with a three-stage argument. The initial argument posits that supranational institutions, including the European Commission, the European Parliament and the CJEU, exert an independent influence on policy-making that does not derive from their role as agents of national power. The second argument asserts that individual Member States lose control in a system of joint decision-making. Finally, the separation of domestic and international politics, as espoused by the theory of intergovernmental bargaining, is rejected. The theory of multilevel governance posits that decision-making powers are shared between actors at different levels, namely EU institutions, Member States, regional and local authorities. This is reflected in the respect for competences, the sharing of responsibilities and cooperation between the different levels of governance, namely

between EU institutions, Member States and regional and local authorities (Committee of the Regions, 2009).

3.3. Exercise of competences and justification of measures at the EU level

The transfer of competencies from the national to the supranational level has been a central issue in the process of European integration since the inception of the EU. The transfer of competencies to the supranational level has intensified in recent decades because of the inability of Member States to act adequately on their own in certain areas and to address certain issues. Prior to the implementation of the Lisbon Treaty, there was no discernible delineation between the competencies of EU law and those of the Member States. The Treaty on the European Union (TEU) subsequently introduced a non-binding method of referencing competences, which was subsequently incorporated into the Lisbon Treaty. The document enumerates exclusive EU competences in an exhaustive list, while the other two categories (shared competences between the EU and the Member States and supporting or complementary EU competences) are presented as illustrative examples. The regulation and enforcement of the latter are governed by specific fundamental principles that are already enshrined in the TEU. These principles include the principle of conferral of powers, the principle of subsidiarity, and the principle of proportionality. In accordance with the principle of conferral of powers, the EU's action is limited to the exercise of competences to the extent and with the objectives permitted by the Member States and conferred on it by the TEU and the TFEU. The exercise of EU competences is subject to supervision in accordance with the principles of subsidiarity and proportionality, which underpin the principle of the presumption in favour of the Member States. The principle of subsidiarity was incorporated into the TEU with the objective of enhancing the flexibility of government and limiting centralism in the exercise of EU competences. The principle operates in two distinct ways. Firstly, if the objectives of the action can be achieved at the lower level, namely the Member State level, national law can be applied. Secondly, if the objectives cannot be achieved at the national level, EU law can be applied. Conversely, the principal acts as a double-edged sword, preventing both the higher and the lower levels from acting in areas that fall solely within the competence of one or the other. In contrast to the subsidiarity principle, the proportionality principle also applies in areas of exclusive competence of the EU institutions. Furthermore, it binds Member States to comply with EU law in the opposite direction. In numerous instances, the CJEU has explicitly emphasised the necessity for legal acts of the EU institutions or of the Member States operating within the domain of EU law to be proportionate in order to fulfil the legitimate objectives pursued by the regulation in question, without exceeding the extent necessary to achieve those objectives (as evidenced in the case of "Deutscher Naturschutzring - Dachverband der deutschen Natur- und Umweltschutzverbände e.V. v. Bundesrepublik Deutschland"). The decision-making process should entail the selection of the most appropriate measure, with the least restrictive option being implemented. The inconvenience caused by this choice should not exceed the level of the objectives pursued.

The horizontal relationship and functioning of the three most important political institutions (the European Commission, the European Parliament and the Council of

the EU) is based on the principle of institutional balance. In legal terms, this signifies that each of these institutions is obliged to act in accordance with the powers conferred upon it by the founding Treaties, in accordance with the principle of the separation of powers. The principle is derived from the "Meroni" judgment of the CJEU. Concurrently with the vertical relationship of institutional competition between the national and supranational levels, the horizontal division of competences between the Member States is emphasised by the principles of mutual recognition and the country of origin. These principles acknowledge greater legislative autonomy for the Member States, thereby offering an alternative to a centralist understanding of the internal market. In the context of competing legal orders, the terms 'decentralised regulation' and 'deregulation' are used to describe two distinct approaches to governance. Decentralised regulation involves the decentralisation of regulatory authority, whereby centralised institutions maintain borders open, control externalities and ensure minimum social standards. In contrast, deregulation involves reducing the role of government in regulating market relations (Hojnik, 2007). The practical consequence of the aforementioned competition between legal orders is, for instance, the expansion of Uber's business scope in those Member States with lower standards for passenger transport or higher vehicle taxes (and vice versa). In accordance with the country-of-origin principle, an economic operator is required to qualify in one Member State, from which it can subsequently operate across the entire internal market. Consequently, the operator will select the legal order that, from an economic perspective, offers the most advantageous conditions. Uber has a subsidiary in the Netherlands, for example. While the tenets of mutual recognition and country of origin permit competition between disparate national legal systems, practical challenges may arise in harmonising and implementing these principles within the cooperative economy sector. Indeed, the principles of mutual recognition and country of origin afford some flexibility and an advantage over centralised harmonisation. However, hybrid business models may complicate the determination of which legal system should apply, which may diminish the impact of these principles. Therefore, it can be concluded that the hybrid nature of business models does not inherently result in competition between legal regimes. Nevertheless, the necessity for harmonisation and minimum standards is paramount for the effective functioning of the EU internal market and the protection of the interests of all stakeholders. The harmonisation of national laws could contribute to enhanced stability and confidence in the collaborative economy.

4. Constitutional and legal implications of collaborative economy regulation

4.1. Various regulatory approaches: The EU and member states

It is imperative that the legal regulations enacted by Member States to oversee the operation of online platforms for information society services do not result in an unjustified limitation on the free movement of services and the freedom of establishment, in accordance with EU legislation. Any restriction imposed on these freedoms must be justified based on legitimate objectives, necessary and proportionate (Articles 49 and 56 TFEU). The fundamental principle of the free movement of

services is the prohibition of any restrictions on such movement within the Member States. This is characterised by the temporary nature of the service in question and the cross-border element inherent in it. The latter is interpreted in a broad manner by the CJEU, which deems that the potential impact on the capacity of a provider established in another Member State to provide services is sufficient. Consequently, provisions of national law that apply to both domestic and foreign providers and users may be deemed a restriction on the freedom to provide services in the context of exchanges between Member States ("Berlington Hungary and Others v. Hungarian State").

It is also important to note that contracts are complemented by secondary legislation, which serves to give effect to fundamental principles such as the Services Directive and the E-Commerce Directive. The former seeks to guarantee the freedom of establishment of providers and the freedom to provide services between Member States. The legislation is applicable to several services provided in the context of the collaborative economy. Chapters III and IV provide for the prohibition of requirements for business authorisations, licences and related operating restrictions at the national level, except where they are non-discriminatory, necessary to achieve an objective and objectively justified by an overriding reason relating to the public interest. Article 5 calls for the streamlining of administrative procedures at the level of individual Member States. It requires that Member States assess and simplify the procedures and formalities they use to regulate access to services. In the absence of any distinction in EU law between individual and professional providers, the protection offered by the Directive applies to all service providers.

The E-Commerce Directive establishes a legal framework for online services in the Digital Single Market and applies to certain platforms that qualify as intermediary service providers. If a platform for cooperation provides information society services, it is not subject to prior authorisation requirements or any equivalent requirements that are explicitly and exclusively targeted at the services concerned. The Directive generally prohibits restrictions on the freedom to provide information society services from another Member State. However, it allows for derogations from this provision where the protection of public policy, public health, public security and consumer protection is at stake (Article 3). Furthermore, Article 4 stipulates that information society activities shall not be subject to prior authorisation or any requirement having equivalent effect, unless the authorisation schemes are specifically and exclusively aimed at information society services or relate to licences in the field of telecommunications services.

The distinction between the two Directives is of significant consequence, as limitations on service providers are evaluated in accordance with the Services Directive in the internal market, whereas constraints on the operation of intermediary platforms are assessed under the Directive on electronic commerce. In the event of a conflict between the two Directives, the latter, serving as the "lex specialis", takes precedence over the former (Article 3 of the Services Directive) regarding the assessment of restrictions on intermediary services provided by platforms. Consequently, it is essential to emphasise that intermediary services in areas not covered by the Services Directive may nevertheless be subject to evaluation in accordance with the provisions of the E-Commerce Directive.

The theoretical framework for understanding the question of the constitutional dimension of the EU internal market was first introduced by Coase over eighty years ago. He elucidated that these are institutional alternatives represented by primary regulators core state institutions such as the legislative, executive, and judicial branches of government on the one hand, and supranational EU institutions as regulators of the internal market on the other (Coase, 1960). It is in these alternatives that the answer to the question of who is competent to regulate a cooperative economy must be sought. In this respect, the European Commission initially adopted a wait-and-see approach, placing the responsibility on national courts and Member State legislators. Subsequently, it conducted a comprehensive assessment of the role of online platforms in the context of the adopted Digital Single Market Strategy for Europe, identifying areas where it considered that there was a need for further action by the EU institutions. In February 2019, the EU institutions reached an agreement on the initial set of rules designed to foster a fair and transparent business environment for users of online platforms. This was followed in July 2019 by the adoption of the Regulation on promoting fairness and transparency for business users of online intermediary services. This Regulation obligates platforms to provide transparent information about their business operations and allows for more efficient dispute resolution. In 2020 and 2022, the Digital Markets Act (DMA) and the Digital Services Act (DSA) were adopted with the objective of ensuring fair and competitive conditions in digital markets and enhancing the accountability of digital platforms, including those operating in the collaborative economy (Szwarc, 2024). The DSA requires greater transparency and accountability of digital platforms in terms of the content and services they provide, while the DMA prevents monopolistic actions by large platforms. In 2024, the European Parliament adopted new regulations pertaining to short-term rentals with the objective of enhancing the oversight and transparency of service providers in this domain. It is evident that the enactment of a series of legislative instruments has effectively supplanted the initially passive role of the European Commission. Initially, the responsibility for regulating the business models of the collaborative economy was delegated to national legislators. These acts may contribute to the creation of a fairer and more transparent business environment in digital markets, yet the necessity for comprehensive regulation in this domain remains unresolved.

It is noteworthy that a proposal for a Directive on Online Intermediary Platforms was adopted in 2015. This would have constituted an important milestone in the trend towards stricter liability for intermediaries. It would either have constituted a lex specialis, replacing the provisions of the Services Directive on services in the internal market and the E-Commerce Directive, or simply have added a new set of rules to them. This Directive is designed to establish criteria for differentiating between online platforms that solely function as intermediaries in legal transactions and those that additionally serve as service providers. It would have provided greater clarity on the duties and tasks of online platform operators, thereby also determining the potential liability of the operator for the non-performance or improper performance of the service provided by the service provider (Maultzsch, 2018). Ultimately, the adoption of this Directive was not realised. While the subsequent DMA and DSA facilitated

enhanced transparency of intermediary platforms' operations, they did not constitute a comprehensive replacement for the Services Directive or E-Commerce Directive.

It is also pertinent to highlight the Regulation on promoting fairness and transparency for business users of online intermediary services. This covers the regulation of the entire collaborative economy, which encompasses approximately 7000 online platforms operating in the EU market. It also applies to any platform offering online intermediation services to business users of the platform, provided that the latter are established or resident in the EU. It can be concluded from the aforementioned information that the transport services provided by Uber, despite comprising (in part) online intermediation activities, do not qualify as an information society service under EU law. As the Regulation only applies to those information society services defined by the EU, Uber's intermediary activities fall outside the scope of this instrument.

4.2. The CJEU as an arbiter between the supranational and national levels of government

As one of the actors in the system of institutional alternatives and the supreme interpreter of EU law, the CJEU effectively relegates the existence of institutional alternatives to the background. It resolves individual cases as if the question of the relevant institutions did not arise, yet its decisions inevitably entail a certain institutional choice. Despite lacking formal legislative competence, the CJEU's interpretation of the scope of the founding Treaties' provisions can exert considerable influence on the adoption and content of EU law. Although it may not be as free as the other EU institutions in the use of law as a political instrument, and therefore cannot be fully equated with them, this does not mean that it does not exercise any active political choices. As one of the key actors, it undoubtedly plays an important role in the interaction of the individual EU institutions, and in this respect, it is imperative that it is itself committed to the principle of subsidiarity (Toth, 1992).

The first case before the CJEU to address the collaborative economy and the question of the weight to be given to coordination via a platform reached a conclusion with the "Uber Spain" case (2017). In this case, the CJEU ruled that the Uber service must be considered as inherently linked to a transport service and therefore qualify as a transport service within the meaning of Article 58(1) of the TFEU. Consequently, such a service is excluded from the scope of Article 56 TFEU (Freedom to provide services in the EU internal market), the Services Directive and the E-Commerce Directive. From an economic perspective, Uber is therefore not merely an intermediary but primarily provides a transport service, with the service of connecting users via an online platform only secondarily. In accordance with Article 91(1) TFEU, the EU is obliged to enact secondary legislation with the objective of guaranteeing the seamless operation of private transport services. In the absence of EU secondary legislation in this area, Member States were at liberty to regulate as they saw fit. In the subsequent "Uber France" case (2018), the CJEU made it clear that Member States may prohibit and penalise the unlawful provision of transport services without prior notification to Brussels in accordance with the provisions of the Directive laying down

a Procedure for the Provision of Information in the Field of Technical Regulations and Rules on Information Society Services, as the latter only applies to digital services.

The two CJEU judgments have thus rendered it exceedingly challenging to establish a uniform regulatory framework for the operation of the Uber platform within the EU. This is a consequence of the observation that, in its role as a transport company, Uber is situated within a shared competence framework between the EU institutions and the Member States in the field of transport services. The CJEU's decision thus signifies that Member States will continue to exercise substantial regulatory autonomy in establishing the rules and conditions governing the provision of transport services.

Furthermore, the CJEU's rulings on the status of Airbnb represent a pivotal moment in the regulation of digital platforms and their influence on the market for services. The inaugural case in which the CJEU adjudicated on Airbnb's role as a mediation platform was the "Airbnb Ireland" case (2019). In his concluding observations following an examination of the criteria for mixed services, Advocate General Szpunar highlighted that the absence of the element of the exercise of decisive influence by the provider on the provision of the service in the present case meant that it was a purely remote service, provided electronically. This was in contrast to the decisions in "Uber Spain" and "Uber France", in which the services were linked to the physical service element (accommodation). The CJEU adopted the Advocate General's recommendations and ruled that the services provided by Airbnb Ireland fall within the scope of the E-Commerce Directive, which promotes the freedom to provide services online in Member States. This categorises Airbnb as an information society service provider. The CJEU emphasised the necessity for a precise definition of the services provided through electronic platforms. Regarding the question of whether the integration of a platform into the rental process constitutes a new service or merely facilitates an existing service, the answer was that Airbnb should be regarded as a mere intermediary and not as a provider of real estate services. In another case, the "Cour de Cassation" referred two questions to the CJEU for a preliminary ruling on the application of the provisions of the Directive on services in the internal market to the repeated and short-term letting of immovable property for consideration. The CJEU subsequently ruled, in joined cases C-724/18 and C-727/18, that national legislation making the multiple and short-term letting of dwellings subject to the obtaining of a licence does not contravene the provisions of the Services Directive. It was highlighted that a Member State may implement a licensing system for short-term lettings of immovable property where this is justified by overriding reasons of public interest, such as addressing the shortage of affordable rental housing. In this manner, it became evident that limitations are permissible if they are justified and proportionate. Furthermore, the regulation must comply with the provisions of Article 10 of the Directive, which requires that the conditions for the granting of permits be based on clear, objective and unambiguous criteria laid down by law and by decisions of the municipal authorities. Considering these criteria, a national regulation may be deemed valid even if it impinges upon the freedom of establishment and the cross-border provision of services. However, such restrictions must be justified and proportionate in relation to the objectives pursued ("Cali Apartments and HX", 2020).

The CJEU decisions dictate that Airbnb is not to be regarded as a direct provider of real estate services; rather, its role can be characterised as that of an intermediary.

Consequently, the services it offers are also subject to the provisions of the E-Commerce Directive, and it can be classified as an information society service provider.

4.3. The impact of the principles of the separation of powers on the EU institutions' approach to the collaborative economy

As previously stated, the European institutions initially attempted to incorporate intermediary platforms into existing legislation, which proved incompatible due to their adaptation to traditional service providers. In December 2013, the European Economic and Social Committee published an opinion on collaborative or participatory consumption, in which it called for the regulation of such models. Following the consultation on a comprehensive market analysis, the European Commission published its Digital Single Market Strategy in May 2015. This strategy includes a comprehensive analysis of the role of online platforms and an examination of the links between platforms and service providers. In addition to identifying the key issues and findings regarding online platforms, the report presented proposals for addressing their regulation and delineating the applicable regulations. Subsequently, the European Commission has put forward several legislative proposals aimed at delivering the Digital Single Market. Additionally, it has published communications explaining its approach to regulating online platforms. Subsequently, measures were introduced with the objective of addressing legal gaps in the consumer protection acquis at the EU level with respect to specific unregulated aspects of contracts. This included the proposal for a directive on certain aspects of contracts for the supply of digital content and a proposal for a directive on certain aspects of contracts for the online and other distance marketing of goods. In October 2015, the European Parliament's Committee on Transport and Tourism published guidance which provided an initial analysis of the social, economic and legal aspects of the business of Uber and its transport counterparts. The Committee also published guidance on the social, economic and legal aspects of the business of Uber and related transport companies. In November 2015, the then Commissioner Bieńkowska advocated for a flexible regulatory approach in the form of clear guidance on the application of existing legislation to new business models. This implicitly excluded EU-level legislation from regulation. Subsequently, in the Digital Single Market Communication, the European Commission further expressed the need for an appropriate regulatory framework for platforms and committed to issue guidance on the application of existing legislation in relation to the collaborative economy. It is important to note that, despite the urgency of this issue, the European Commission opted to issue a non-legally binding act. A more detailed analysis of the applicable legislation, or potential avenues for its application, to collaborative platforms within the collaborative economy was presented in 2016 with the release of the European Agenda for the Collaborative Economy. The objective of the guidelines was to establish criteria for the application of existing EU law rules to the economic activities of platforms on five key issues: market access requirements, liability regime, user protection, classification of workers and taxation. A total ban on the activity was deemed an extreme measure, and it was argued that online platforms should not be

obliged to obtain permits or licences if they act merely as intermediaries between users and service providers. Nevertheless, Member States should differentiate between individuals who provide services on an occasional basis and professional service providers. This can be achieved by introducing thresholds based on the volume of activity, which would distinguish between the two categories. Consequently, although the European Commission has issued guidelines on the application of the applicable EU legislation to collaborative business models, it has not regulated the area in a uniform manner at EU level. In response to the European Commission's actions, the European Parliament, in its Resolution of 2017, called for the introduction of additional criteria for the differentiation of services, among other things. The lack of clarity regarding the application of EU rules has the potential to result in further fragmentation of the single market. In the absence of specific legislation from the European Commission on the collaborative economy, the responsibility for regulating the various outstanding issues in this respect has fallen on the Member States. In its 2017 Communication on the mid-term review of the implementation of the Digital Single Market Strategy, the European Commission further emphasised the necessity of guaranteeing a fair business environment. It also drew attention to perceived instances of discrimination between different suppliers or sellers, which occur when a platform prioritises its own products or does not provide sufficient transparency in the ranking of search results.

Following the closure or limitation of Uber's operations in multiple Member States, recent years have witnessed a shift in focus towards short-term property rental intermediary platforms. In June 2018, the Consumer Protection Cooperation Network presented a unified stance on Airbnb's business practices in the context of the Norwegian Consumer Authority's (Forbrukertilsynet) coordination. This prompted the European Commission to issue a separate press release. The body urged Airbnb to align its terms and conditions with the tenets of EU consumer law and to guarantee transparency regarding the pricing of accommodations. In July 2019, Airbnb implemented a series of modifications to the way its offerings were presented, thereby aligning them with the guidance and bringing them into compliance with EU consumer law. While searching for accommodation with selected dates, users are now able to view the final price on the search results page. This includes all mandatory costs and fees, such as the service charge, cleaning costs and local taxes. On 7 November 2022, the European Commission introduced a proposal for a regulation concerning the collection and sharing of data related to short-term accommodation rental services (European Commission, 2023a). The proposed regulation aims to streamline the registration process for hosts and their rental properties while addressing discrepancies in data-sharing practices across online platforms. This initiative seeks to enhance transparency and ensure a more harmonized approach within the internal market. The regulation is set to take effect on 20 May 2026, marking a significant step toward the standardization of data practices in the collaborative economy (COM 2022/571, 7. 11. 2022).

4.4. The activist role of national courts in creating and guiding legal frameworks in the context of the collaborative economy

National courts have taken an activist role in shaping legal frameworks for the collaborative economy, particularly for platforms like Airbnb and Uber. While Airbnb's EU-level regulation is largely established, Uber's classification as a transport service continues to generate divergent national court rulings, exposing the fragmented regulatory landscape within EU. The latter has initially advanced the argument that it does not offer transport services, but only information society services. Furthermore, the company has asserted that national laws are incompatible with EU law, particularly the provisions of the E-Commerce Directive and the Services Directive. In the first EU litigation in 2015, "Transport for London v. Uber", the UK government transport organisation sought a judicial review of Uber's operations. This was done to determine whether, as an intermediary platform for passenger transport, Uber could be considered a transport service provider. Alternatively, it was considered whether a smartphone app could be considered a taximeter, which is otherwise prohibited in private vehicles carrying passengers. In its judgement, the British court ruled that the mobile phone with the Uber application did not qualify as a taximeter, and therefore that Uber's business remained within the realm of information services only.

In Belgium, a lawsuit was brought against Uber by Taxi Radio Bruxellois for unfair commercial practices in providing a taxi service, except that Uber's drivers did not have the required passenger transport licences. The Brussels Commercial Court ruled that the service was an unlicensed for-hire taxi service and fined Uber and prohibited it from providing the UberPOP service. However, it referred to the ECJ for a preliminary ruling the question of the compatibility of the provisions of the decree with the provisions of the EU Charter of Fundamental Rights, the TEU (Article 5) and the TFEU (Articles 28 and 52). The litigation in Belgium has led to a process of adapting the existing legislation to alternative providers of bus and coach services in order to prevent unfair competition and social dumping. Similarly, after several years of Uber's presence on the market, the French government banned the use of taxi stickers for all vehicles except official taxi operators, tightened conditions and requirements for drivers and introduced sanctions for illegal services. The French "Assemblée nationale" enacted a law (Loi Thévenoud) in September 2014 that further impeded Uber's operations. The legislation included a ban on providing passenger transportation services to unlicensed drivers and a mandatory 15-minute waiting period between the time a vehicle is booked and the actual commencement of the journey. A comparable situation transpired in the Netherlands, where a court determined that Uber could only be classified as a taxi service provider. In Germany, in August 2014, a preliminary injunction was issued by the Frankfurt am Main District Court, prohibiting certain services due to non-compliance with the stipulations of the national legislation governing passenger transportation. In September 2014, the courts in Hamburg and Berlin upheld the decision of the Frankfurt court and banned the services in their respective jurisdictions on the grounds that Uber does not merely act as an intermediary between drivers and users, but also contracts with users and arranges payments, while also contracting with drivers by setting fares and

coordinating assignments through the app. Furthermore, Uber has been prohibited from offering specific services in, Bulgaria (2015), Croatia (2018) and Italy (2015).

4.5. Member states' efforts to modernise national legislation

The latest Eurobarometer survey (2023) on the utilisation of collaborative platforms within the EU demonstrates that the prevalence of these platforms varies among Member States. At the EU level, approximately 35% of citizens utilize collaborative platforms, such as transport services or short-term property rentals. The use of collaborative platforms is more prevalent in countries such as the Netherlands, Finland and Sweden, whereas it is less common in countries such as Bulgaria and Romania. These discrepancies can be attributed to varying degrees of digital literacy and the availability of services in each country. The survey findings indicate that the majority of users engage with transport services (approximately 25% of European citizens) and short-term real estate rentals (21%) (European Commission, 2023). In the initial stages, national legislators demonstrated a lack of enthusiasm for the introduction of a new legislative framework tailored to the requirements of modern business models. In lieu of regulatory action, they have more often resorted to a non-regulatory approach, attempting to apply existing rules that were designed for similar but not always compatible models or services to collaborative platforms (Katz, 2016). The most significant impediment to the advancement of the collaborative economy is the continued presence of outmoded national regulations. It is imperative to address the issue of regulatory uncertainty, as the lack of coherence in Member States' regulatory frameworks hinders market access for collaborative platforms and limits their investment opportunities. Most of the Member States regulate sectoral services at the national level, within the scope of pre-existing regulatory frameworks. However, these frameworks are largely unsuitable for the collaborative economy and lack the necessary adaptations to accommodate the distinctive characteristics of the collaborative economy. Furthermore, they fail to define the platform, distinguish between private and professional service providers, and do not encompass the concepts that are prevalent in the collaborative economy. Despite the fragmented nature of the regulatory framework governing the collaborative economy, only a limited number of Member States have adopted specific legislative measures aimed at regulating this sector. To date, only Slovenia and Italy have enacted comprehensive legislation to regulate this sector. Slovenia has introduced a law to regulate short-term rental services and to require platforms to share information on rentals with local authorities. Italy has also adopted a specific legislative measure in relation to short-term rental platforms and transport services. In addition to these two countries, some other European countries such as Spain, France and Portugal have also introduced regulatory frameworks, but not in the form of comprehensive legislation.

There is an emerging trend among national governments to adapt their existing legislation to accommodate the advent of new forms of passenger transport. In the Member States, taxi services are subject to regulation at the national level, resulting in significant variations between countries. This legislation encompasses the controlled entry of local authorities into the market, limiting the number of vehicles to prevent an oversupply and congestion on the roads. It also includes licensing for the operation

of the service and performance requirements for both drivers and taxi companies. In order to meet the plethora of safety regulations applicable to drivers and vehicles, financial responsibility standards such as compulsory insurance, vehicle inspections and medical examinations are set, and maximum fares are established.

In its rulings in the cases of "Uber Spain" and "Uber France", the CJEU determined that Uber is to be classified as a transport company. This classification has the consequence that internet transport companies are to be subject to the same rules as taxi operators. It thus follows that the regulatory framework must be adapted to the extent that platforms such as Uber are able to operate in accordance with the national laws of the Member States and compete with established taxi undertakings. It is thus incumbent upon Member States to remove the administrative barriers that impede the smooth operation of all taxi service providers on equal terms, while duly considering the specificities of both existing and new providers. Thus far, a range of regulatory frameworks have been observed, from an unregulated market in Ireland to quotas and price controls in France. However, the situation in the US is not significantly different. In cities, the number of taxi drivers is limited by the requirement to hold a licence to operate a taxi. Since these licences are rarely issued, entry into the market often requires purchasing the licence from the previous owner at a high price. In 2020, Italy introduced new legislation governing the regulation of taxi services. This legislation permits the operation of platforms such as Uber under more flexible conditions, while simultaneously maintaining certain regulatory standards that safeguard the interests of traditional taxi services. Croatia has enacted a reform to relax transport legislation, enabling drivers to utilise either a taximeter or a digital app. In contrast, a more rigorous approach was adopted in Spain and Germany, where drivers operating through collaborative platforms were required to comply with additional regulations pertaining to for-hire services and driving licences. Estonia and Finland have demonstrated the most effective utilisation of the opportunities afforded by digital transport. Estonia has been a pioneer in the field of digitisation, whereas Finland has adopted an even more progressive approach, with its ministry having enacted a highly progressive law that facilitates innovation and is regarded as a benchmark not only within the EU but also globally. The aforementioned examples illustrate that Uber and other collaborative platforms that provide transport services are now operational in the majority of Member States. However, their operations are subject to varying conditions, contingent upon the degree of restrictiveness of the national legislation in question.

The classification of transport services within the scope of the internal market remains ambiguous. Nevertheless, Member States have consistently expressed a preference for retaining regulatory authority over the transport sector at the national level. On the other hand, the EU and the single market tend to favour the free movement of services. Article 58 TFEU provides that transport is not subject to the general provisions on the free movement of services (Articles 56−62 TFEU), but to the specific provisions of the common transport policy (Articles 90−100 TFEU). This means that the transport sector is not fully regulated by the general rules on the freedom to provide services, but by separate, specific rules developed in the framework of the EU common transport policy. Transport is part of the internal market based on the free movement of goods, persons, services and capital (Article 26 TFEU).

In practice, however, transport services are not fully liberalised at EU level, as they face specific restrictions and regulatory gaps. This results from Article 58 TFEU, which derogates from the general rule of freedom to provide services and requires alignment with specific transport policy rules. Although the EU's objective is to establish a free market also for transport services, this objective has not yet been fully achieved, leading to a lack of uniformity in regulation. The EU's common transport policy is based on Article 90 TFEU, which states that the EU shall develop a policy aimed at ensuring the free movement and efficient operation of transport services. However, the implementation of this policy depends on concrete legislative measures taken by the EU institutions and on inter-state cooperation. Article 58 TFEU, which refers to the application of specific provisions of the common transport policy, does not sufficiently regulate the freedom to provide transport services at EU level and is not in line with the EU's overall transport policy. Transport is supposed to be part of the internal market, but the Member States want to retain competence in such a way that the EU has a purely supportive role. In the absence of common rules or other measures for the provision of transport services, which the European Parliament and the Council are competent to adopt in accordance with Article 91 TFEU, competence in this area remains the exclusive preserve of the Member States.

On the other hand, there is also inconsistent practice at national level in the area of property rental. It is imperative that the legal issues surrounding the definition of short-term rentals be addressed in all Member States, particularly in urban areas where mass tourism is on the rise. It is typical for specific regulations to be established at the local or regional government level. In most Member States, providers of short-term property rental services are required to obtain permits, licences and registrations, or to fulfil other related requirements. Such requirements are either specifically targeted at accommodation providers in the collaborative economy or stem from tourism and accommodation regulations and cover certain participating providers in the collaborative economy, such as professional operators. Airbnb has been accused of non-compliance with these requirements and of breaching the rules on the regulation of short-stay accommodation throughout Europe. In response, European national legislators have either imposed legal restrictions and regulations on Airbnb or have fined both the platform and accommodation providers for operating in breach of existing legislation.

The initial objective of the Airbnb collaborative platform was to facilitate the rental of properties on a short-term basis during the temporary unavailability of the owners (hosts) to address occupancy issues. However, a turning point soon emerged when the proprietors of several properties in which they had not resided for an extended period began to offer their services. This resulted in unfair competition with traditional providers (hotels, tourist apartments, hostels), who were offering property rental services as a business, due to the lack of uniformity in legislation and the lack of clarity surrounding the new forms of business models. Indeed, in contrast to traditional providers, landlords of property through Airbnb were not liable for property rental tax. The adoption of uniform legislation at the European level has resolved this issue.

5. Final findings

The selection of the most appropriate institutional alternative in the context of multilevel governance in the EU has a considerable impact on the legal position of collaborative economy business models within the EU Single Market. The legal framework established by the various levels of government determines the way collaborative economy business models, such as Uber and Airbnb, are regulated. This, in turn, has an impact on their operational activities, access to markets and the conditions of competition. These hybrid business models of the collaborative economy are distinctive due to the interrelationship between digital and sectoral services. This implies that the principal activity in question must be re-defined on each occasion. Complications arise when a particular service requires regulation at the EU law level, the national level, or when the regulation of certain services may also be subject to shared competence between EU and national institutions. At the latter level, collaborative platforms are primarily regulated by provisions of primary EU law, particularly in the context of the free movement of services and establishment, as set forth in the Treaty on the Functioning of the European Union (TFEU) in Articles 49 and 56. The aforementioned Articles guarantee that companies and individuals from Member States are able to offer services or establish businesses in any other Member State through collaborative platforms, without encountering unjustified obstacles. Furthermore, platforms, in their capacity as service providers, are included within the framework of the free movement of services within the internal market. This permits the cross-border provision of services without discriminatory restrictions. The principle of subsidiarity is also a primary tenet of EU law. It stipulates that the EU should only intervene in matters that fall below the level of competence of the Member States. This principle plays a pivotal role in the regulation of the collaborative economy, as it ensures a harmonious balance between the competencies of the EU and those of the Member States. Furthermore, in regulating these platforms, primary law refers to general principles of EU law, such as the principles of proportionality and non-discrimination. These prevent excessive restrictions on platforms in providing services in the EU and ensure a level playing field for all service providers in the single market.

All hybrid business models share a common digital component, namely the provision of information society services. The latter are subject to supranational regulation. Regarding the sectoral or real services aspect, the regulatory framework differs. In the case of Uber, an assessment of the criteria by the CJEU revealed that the company was not only a broker but also a provider of transport services. Conversely, the CJEU classified Airbnb as a mere intermediary for real estate services, thereby bringing its services within the scope of the E-Commerce Directive. Indeed, in instances where a platform functions as an online intermediary, it is providing an information society service, as defined in Article 2(a) of the E-Commerce Directive. Such entities are not subject to prior authorisation requirements for market access or any other requirements of a similar nature. However, Member States may, at their discretion, impose regulatory requirements that result in a derogation from the country-of-origin principle, provided that the circumstances are legally prescribed. These circumstances include, but are not limited to, instances where there are serious

threats to public policy, public health, consumer protection, public security and national security and defence.

The European institutions have approached the regulation of collaborative platforms through a combination of policy guidelines, legislative initiatives and court rulings. In several policy documents, the European Commission has advocated for a coordinated approach among Member States to stimulate innovation while safeguarding consumers and ensuring a level playing field. The European Parliament has endorsed legislative proposals that establish more transparent regulations governing these platforms. In contrast, the Council of the EU has prioritised maintaining a balance between EU-level regulation and respect for subsidiarity, thereby enabling Member States to adapt legislation to align with their respective national specifics. The overarching goal of these institutions is to unify the regulatory framework for platforms, considering the heterogeneity of the collaborative economy across the Member States.

The legal frameworks governing the operations of ride-hailing platforms such as Uber and short-term rental services like Airbnb have been subject to significant variation across Europe, as evidenced by the disparate rulings of national courts in different jurisdictions. In the case of Uber, the courts have frequently addressed the question of whether it can be classified as a transport service or an information society service. In several countries, such as Spain and France, this has resulted in bans or significant restrictions being imposed on breaches of local transport regulations. In 2017, the CJEU classified Uber as a transport company in case “Uber Spain”, thereby confirming the shared competence of the European institutions and Member States to regulate it.

In the case of Airbnb, national courts, for example in France and Belgium, have identified issues pertaining to local housing policies and taxation. In 2019, the CJEU ruled in case “Airbnb Ireland” that Airbnb should be subject to the provisions of the E-Commerce Directive, thereby limiting the scope of national restrictions. A distinctive feature of these cases is the distinction drawn by the courts between physical services (such as those provided by Uber) and digital intermediary services (such as those provided by Airbnb). This distinction has significant implications for the legal consequences of these services, particularly at the national level. In principle, Member States are striving to harmonise national legislation on sectoral services, particularly in the context of the free movement of services within the EU Single Market. Nevertheless, advancement is constrained by the preservation of national competencies and the heterogeneity of local legislation, particularly in the context of services pertaining to specific sectors such as transportation and real estate. Despite the implementation of certain harmonisation measures, the requisite progress has not been attained to achieve a fully unified legal framework. National interests and subsidiarity continue to impede comprehensive harmonisation, particularly in countries with robust local regulatory traditions, such as France and Germany, which impose more stringent sectoral regulations. As a particular stipulation within the broader framework of the TFEU (specifically, provisions pertaining to the common transport policy), Article 58 TFEU is inadequate in regulating this domain at the EU level and is incongruent with the EU’s overarching transport policy. In the absence of common rules or other measures on the provision of transport services, which the

European Parliament and the Council are competent to adopt in accordance with Article 91 TFEU, competence in this area remains the exclusive preserve of the Member States. As previously stated, Uber is subject to shared competence between the EU and the Member States in the field of local transport, given its status as a transport undertaking. While the judgments provide clarity on the definition of Uber services, they also highlight the challenges of establishing a single regulatory framework across EU countries. The existence of disparate national regulations may result in the formation of a fragmented market, which could potentially undermine the fundamental principles of the internal market. In order to address this issue, it is essential to strike a delicate balance between the EU's role in promoting innovation and competition within the collaborative economy, while also ensuring the protection of consumers and compliance with local transport regulations. To achieve this, it will be necessary for EU institutions and Member States to engage in a collaborative effort to develop comprehensive regulations that can adapt to the evolving landscape of the digital economy.

Author contributions: Conceptualization, KV and LP; methodology, KV; software, LP; validation, KV and LP; formal analysis, KV; investigation, KV; resources, LP; data curation, LP; writing—original draft preparation, KV; writing—review and editing, KV; visualization, LP; supervision, LP; project administration, LP; funding acquisition, KV. All authors have read and agreed to the published version of the manuscript.

Conflict of interest: The authors declare no conflict of interest.

References

Acquier, A., Carbone, V., and Massé, D. (2019). How to create value(s) in the sharing economy: Business models, scalability, and sustainability. Technology Innovation Management Review, 9(2), 11.

Airbnb Newsroom. (2024). https://press.airbnb.com/fast-facts/.

BlaBlaCar. (2023). Zero Empty Seats. https://blog.blablacar.com/newsroom/news-list/zeroemptyseats.

Botsman, R., Rogers R. (2010). What's mine is yours: how collaborative consumption is changing the way we live (Revised and updated ed.). HarperCollins.

Case C 9-56. (1958). Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community (Meroni). ECLI:EU:C:1958:7.

Case C 26/62. (1963). NV Algemene Transport- en Expeditie Onderneming van Gend & Loos proti Netherlands Inland Revenue Administration (Van Gend en Loos). ECLI:EU:C:1963:1.

Coase, R. H. (1960). The problem of social cost. Journal of Law and Economics, 3(1), The University of Chicago Press. 1–44.

Committee of the Regions. (2009). White Paper on multi-level governance. Official Journal of the European Union, C211/1. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52009DC0468

Court of Justice of the European Union. (2020). Joined Cases C-724/18 and C-727/18, Cali Apartments and HX v. Procureur général près la cour d'appel de Paris (Cali Apartments and HX). ECLI:EU:C:2020:743.

Court of Justice of the European Union. (2019). Airbnb Ireland, C-390/18. ECLI:EU:C:2019:1112.

Court of Justice of the European Union. (2018). Uber France SAS v. Nabil Bensalem (Uber France). C320/16, ECLI:EU:C:2018:221.

Court of Justice of the European Union. (2018). C-683/16, Deutscher Naturschutzring, Dachverband der deutschen Natur- und Umweltschutzverbände e.V. v. Bundesrepublik Deutschland, ECLI:EU:C:2018:433.

Court of Justice of the European Union. (2017). C-434/15, Asociación Profesional Élite Taxi v. Uber Systems Spain SL (Uber Spain), ECLI:EU:C:2017:981.

Court of Justice of the European Union. (2015). C-98/14, Berlington Hungary and Others v. Hungarian State, ECLI:EU:C:2015:386.

Court of Justice of the European Union. (2011). L'Oréal SA v. eBay International AG, C-324/09, ECLI:EU:C:2011:474.

Court of Justice of the European Union. (2010). Google France et al., C-236/08–C-238/08, ECLI:EU:C:2010:159.

Court of Justice of the European Union. (1998). Joined Cases C-10/97 to C-22/97, Ministero delle Finanze v. IN.CO.GE.'90 et al. (IN.CO.GE), ECLI:EU:C:1998:498.

European Commission. (2023a). EU-wide short-term rental rules. https://single-market-economy.ec.europa.eu (1. 9. 2024).

European Commission. (2023b). Statistical Pocketbook 2023: Mobility and Transport. European Commission. https://transport.ec.europa.eu.

European Commission. (2016). European agenda for the collaborative economy. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0356.

European Commission. (2015). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Upgrading the single market: More opportunities for people and business (COM/2015/0550 final). https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0550.

Eurostat. (2024). Short-stay accommodation offered via online collaborative economy platforms - monthly data. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Short-stay_accommodation_offered_via_online_collaborative_economy_platforms_-_monthly_data.

Evans, D., and Schmalensee, R. (2016). Matchmakers: The new economics of multisided platforms. Harvard Business Review Press.

Grilc, P., Ilešič, T., and Knez, R. (2001). Pravo evropske unije. Cankarjeva založba.

Hojnik, J. (2007). Evropska unija kot sistem večstopenjskega vladanja. Lex localis, 5(2), 41. 199−207.

Katz, V. Regulating the sharing economy. Berkeley Technology Law Journal. 30 (4), 2016.

Marks, G., Hooghe, L., and Blank, K. (1996). European integration from the 1980s: State-centric vs. multi-level governance. Journal of Common Market Studies, 34(3), 341−378.

Maultzsch, F. (2018). Contractual liability of online platform operators: European proposals and established principles. European Review of Contract Law, 14(3), 250-270.

Proposal for a regulation of the European Parliament and of the Council on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724. COM/2022/571 final. Brussels. 7. 11. 2022.

Rosas, A., and Armati, L. (2018). EU constitutional law: An introduction. Hart Publishing.

Schor, J. (2014). Debating the sharing economy. Great Transition Initiative. http://www.greattransition.org/publication/debating-the-sharing-economy

Smith, J. W. (2016). The Uber-All economy of the future. The Independent Review, 20(3), 385.

Szwarc, M. (2024). EU Law and the Member States' Competence to Regulate the Operation of Collaborative Economy Platforms – Where Do We Stand after the Digital Services Act. European Business Law Review. https://doi.org/10.54648/eulr2024015.

Toth, A. G. (1992). The principle of subsidiarity in the Maastricht Treaty. Common Market Law Review, 29(6), 1101.

Trachtman, J. P. (1998). Trade and ... Problems, cost-benefit analysis and subsidiarity. European Journal of International Law, 9, 35.

Uber. (2024). Stock Analysis. https://stockanalysis.com/stocks/uber/statistics/.