

‘UBERISATION’ DEMYSTIFIED: EXAMINING LEGAL AND REGULATORY RESPONSES WORLDWIDE

Authors: ROXANA RADU, STEPHANIE BORG PSAILA

DiploFoundation, Geneva, Switzerland

roxanar@diplomacy.edu

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Abstract

Digital platforms providing on-demand services significantly alter the way in which economic activity is organised and subsequently challenge work-related norms. Beyond the initial hype around the ‘sharing economy’, the benefits of the wide range of digital models now available need to be closely examined. Uber – an app-based transportation network and taxi company headquartered in California, USA – is a case-in-point here, as its operations worldwide have given rise to a set of controversies and regulatory responses. This paper analyses the totality of court rulings in Uber-related cases around the world, and discusses the legal and policy implications for decent work. Based on a unique dataset of national cases, this study provides important insights into labour disenfranchisement and employment rights.

Keywords: digital policy, labour law, sharing economy, uberisation

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Introduction

Uberisation is a term now applied across the board to designate the transition to a new economic model based on digital technologies enabling direct exchanges between providers of services and potential customers at low transaction costs. Derived from the name of a company, Uber¹ (which allows passengers to summon a ride through an app on their smartphones), the phenomenon is closely associated with platform intermediation for services in the transportation and hospitality industry based on dynamic pricing models. The goal of this paper is to provide a cohesive picture of the labour-related developments in the digital era, distilling myths from reality.

Also referred to as the 'gig', 'sharing', 'access', or 'collaborative' economy, uberised business models have three main features in common: a prevalence of contractual and temporary employment, a digital platform/app for (quasi) peer-to-peer transactions, and a rating system for evaluating the quality of the service provided. With their popularity continuously growing, questions related to the regulation of such services have been raised: Are these information services or rather traditional services that are simply using information technology in their work? How should they be regulated? What are the main issues related to these new business models?

Uber's enormous exposure to litigation speaks to the broader dilemmas in the regulation of the sharing economy (over 73 major cases are being tried in national courts as of 31 May 2017). The governance of work is at stake in this legal scrutiny in more than 25 markets around the world. Among these are the issue of classification (is Uber an information society service or a transportation service?), which was brought to the Court of Justice of the European Union (CJEU) for consideration; issues related to employment and labour law, which are intrinsically tied to the issue of classification; and e-commerce and trade aspects, including competition, advertising, and licensing, which are also connected to classification.

The CJEU case is significant, as it will help settle a long-standing issue that has plagued Uber for months. A potential indication of the reasoning which the Court may take can be found in the Advocate General's opinion, which, on 11 May, declared that Uber is a transportation service, rather than a digital one. If confirmed, the ruling will have wide-ranging consequences for Uber and its taxi drivers. More so, hospitality services such as Airbnb and food delivery companies such as Deliveroo will also be affected by the way in which uberised services will be defined in the legal and regulatory regime in the coming months, both in Europe and beyond.

¹ Uber Technologies Inc. is a company founded in 2009 and headquartered in San Francisco, California, USA.

This paper analyses Uber-related rulings and the legal and policy implications for decent work², and provides insights into labour disenfranchisement and employment rights. It does so in two steps: In the first part, the paper discusses the changing economic ecosystem and the governance of work, the rise of Uber and the mounting court cases, and the economic and regulatory challenges faced by the sharing economy. Against this backdrop, in the second part, the paper looks at case law from over 25 markets around the world, and focuses specifically on case law related to labour law. It then dissects this sub-branch of cases and analyses the three main issues tackled by the labour-law-related court cases and their outcomes.

Part I: Contextualising the changing landscape

Societal values and the rise of ‘sharing’

Throughout the last century, the expansion of the middle class was based on the ability to own property and objects. The more a person could buy, the higher their status. In the data economy, this is no longer the case. Ridesharing, apartment or home lending, and re-selling are all peer-to-peer alternatives to owning the good or the service. The difference lies in the use of data to provide added-value and comfort (making available via online platforms what is needed when it is desired). At the heart of this transformation is the algorithmic processing of data, making it profitable to link the demand and supply side via an easy and safe-to-use transaction.

In this context, ‘sharing’ may be a misnomer, since the provider of the service and the user do not know each other and the former does not share a good without making a profit. Different from a form of social exchange, ride-sharing for a fee is closer to accessing the good of other – in most cases other companies – for a limited period of time. If the company, in turn, accesses the services of another to provide you with its service, the exchange is in no way social, it is economic. Examples of companies referring to their business as part of the sharing economy abound across many sectors: entertainment (Spotify, Netflix, GameFly), transportation (Uber, Lyft, Zipcar), accommodation (Airbnb, HomeExchange), labour (Mechanical Turk, SkillShare, TaskRabbit), fashion (Fashionhire, Rent the Runaway), etc.

² Decent work is understood here as productive work of women and men in conditions of freedom, equality, security and human dignity, as defined by the International Labour Organization (ILO 1999)

Against the myth of a collaborative consumption that has social exchange at its basis, the nature of access-based consumption appears to rest on convenience, replacement of trust with surveillance methods, and low prices (Bardhi and Eckhardt, 2012). While sharing practices (within family, for example) have been there for as long as humans have existed, profit-oriented activities may need to be classified differently. Recent studies proved that ‘sharing does not equal caring’ (Hamari, 2015; Ranchordás, 2015) in the platform economy; most AirBnb clients generally prefer to rent an entire home for themselves, rather than share a flat or house with the owner. Similarly, Uber services for single passengers are preferred to Uber services for multiple passenger rides. What prevails in the sharing economy is a cost-efficient access to resources without the burden of ownership or any reciprocal obligations.

In a short time, uberised business models have led to a lowering of barriers to access services. A symbol of contemporary innovation and the poster child of Silicon Valley, Uber is now the most used taxi app around the world. While there is still confusion over the meaning of a ‘sharing economy’ (Botsman, 2013), it is clear that transactions and money exchanges are involved and that some form of employment is created in the process.

A shift in the governance of work

Uberised business models brought about, or reflected, a deeper shift in the governance of work. The debate about the regulatory regime applicable to the sharing economy is part of this. Certain issues under discussion, such as freelancing and telework, and related work guidelines on the employee-employer relationship, have been in focus for a while. As economic activity is increasingly automated and conducted via the Internet, the decline of labour-intensive industries is materialising, threatening a range of medium-skilled jobs in the transportation and retail sectors.

A 2016 World Economic Forum predicted a total loss of 7.1 million jobs due to disruptive labour market changes over the period 2015–2020. The World Development Report (World Bank 2016) predicted that drivers and transport labourers would face a high probability of being computerised in the coming years. Among the drivers of this transformations, we can count, alongside technological innovation, a shift in the societal and economic realities and environmental pressures, pushing entire communities to do more with less and use finite resources as effectively as possible (Botsman, 2010).

This is visible in the way in which flexible scheduling is combined with strict controls in contracts with on-demand platforms. Ride-share drivers can choose their own working hours, but cannot decide on assignments while at work and need to follow a set of rules, codified in the 'Uber Community Guidelines'. They are not allowed to reject rides (risking deactivation from the platform), nor are they able to negotiate their own pay rates. The non-employee designations - widespread in the sharing economy - do not recognise basic rights and do not guarantee employment protections (Cunningham-Parmeter, 2016).

Related to the shift in the governance of work are aspects concerning unions. In May 2016, following vehement opposition in New York, Uber struck a deal with a regional branch of the International Association of Machinists and Aerospace Workers to create the Independent Drivers' Guild. Representing over 50,000 ride-hail drivers in the New York City area, the guild succeeded in establishing the first dialogue in the USA between Uber and the drivers' union, as well as introducing due process for drivers that Uber barred from the platform. After the company refused to add a tipping option for drivers, the guild persuaded the city's Taxi and Limousine Commission to make it a requirement to add a tipping option on Uber's passenger app. This came with its fair share of criticism, as the guild was criticised over its lack of independence from Uber (Scheiber, 2017).

Labour movements are particularly hard to organise in the context of the sharing economy due to a combination of factors. First, there is a dispersed worker population, without a direct way to connect to each other. Second, there is a high turnover in modern jobs, in particular those that do not guarantee stable employment, as in the case of Uber or Lyft. Third, the negotiation power that labour unions could have is greatly reduced by the dominant position of affluent companies in the digital economy (visible also in their huge lobbying investments, as discussed later). The asymmetries of power and information constitute an obstacle in effectively mobilising to set the terms of the working agreements. Appealing to diverse sectors, novel business models benefit from significant support from venture capitalists and thus remain strongly oriented towards short- and medium-term revenue gains.

Contrary to the myth of distributed power to individuals and communities worldwide through entrepreneurial possibilities, there is evidence to suggest the dominant position of key players around whom activities tend to be centralised. Old intermediaries were dismantled by new intermediaries with the promise of no more intermediation. However, new forms of intermediation perform a gatekeeping role. While they allow access to services that either did not exist before or

were not within reach for individuals, they do not necessarily translate into a power shift. The ability of individuals (grouping together or on their own) to set the terms of their working conditions is greatly constrained in direct interactions with affluent companies, as the following analysis shows.

The economic impact of uberised business models

The positive impact of the sharing economy on the world economy is indisputable. Other positive side effects include better use of environmental resources, higher option value and consumer surplus, and many other uncounted economic gains.

Different from collaborative consumption, which involves at least a temporary transfer of ownership, the platform economy relies exclusively on accessing goods or services belonging to others. Uberised business models rely on innovative financing in fields that yield short- and medium-term economic benefits, as opposed to public-interest-oriented sectors, such as social and environmental innovation, which appear to have much lower investment rates (Bakhshi *et al.*, 2011).

Uber is the second largest global player in the provision of ride-hailing services, with more than 40 million clients, spending on average \$50 per month on the service (Kokalitcheva, 2016). It is only lagging Didi Chuxing, the ride-sharing company serving around 400 million users across more than 400 cities in mainland China. But it was Uber that came under the spotlight as its services expanded cross-border and were deployed in places as diverse as San Francisco (where it is headquartered) and Dhaka. Currently operating in more than 570 cities worldwide, the American company had an annual revenue of US \$6.5 billion in 2016 alongside a USD\$2.8 billion net income.

The rise in litigation

Starting in 2009 as UberCab, the company switched from offering a luxury black-car service to a peer-to-peer ride-hailing service in 2012, in response to the popular services offered by its rival Lyft. Enlarging its business, Uber entered into competition with taxi services in various jurisdictions and faced public protests in cities as diverse as Rio de Janeiro and Paris. It further expanded its on-demand services to include rides in black cars, a low-cost ride programme, and a meal delivery service, among others.

Taxi associations were among the first to take Uber to court on the grounds of unfair competition. Convergence-related issues represent the majority of cases brought against Uber, in particular for clarifying questions of licensing (taxi companies, largely, arguing that Uber does not have a licence to

operate in the region), and classification (asking whether Uber should be classified as a technology company or a traditional taxi service). Unfair practices claims, including price-fixing collusion, and/or misleading practices.

So far, litigation cases against Uber have been brought in 25 countries,³ making the company as well known for its legal disputes as for its app. Lawsuits were initiated against Uber by governments, drivers, passengers, and competitors. The largest number of court proceedings are in the USA. This is not surprising considering that Uber's headquarters are in San Francisco (jurisdiction) and that the company operates in close to 600 cities, half of which are in the USA.

Cases related to labour law and employment amount to one-third of the litigation faced by Uber – as Part 2 of this paper shows. One of the main issues – described in more detail also in Part 2 – concerns the status of Uber drivers, which has been paramount in many jurisdictions. More specifically, what is under discussion is whether taxi drivers are employees, or are independent drivers, engaged with the company as contractors, or service providers. If the former, Uber would need to offer the drivers the same level of protection and social security benefits as to any regular employee.

This is a key question in the legal scrutiny in markets across the USA, Europe, and Asia. After facing serious opposition in Japan, Uber operates under a different regime there: In Tokyo, where local regulations require a special licence for drivers, Uber functions as a travel agent, connecting users to established taxi company drivers (taxi-hailing). In rural towns with aging populations and too small to support public transport, Uber is allowed to provide ride-sharing (with part-time drivers).

In China, Uber announced the merging of its business with local competitor Didi Chuxing in August 2016. Earlier this year, in February, Uber stopped its operations in Taiwan over mounting fines against unlicensed ride-sharing services (Reuters, 2017a). In Denmark, in April (Bloomberg, 2017), Uber ceased operations amid proposed regulatory changes imposing licensing requirements on cars that function like taxis and requiring seat sensors and meters. The company also suspended its UberPop service in Spain, and introduced a licensed version of its service in Madrid and Berlin last year. In the EU, where Uber has more than 7.5 million customers and 120,000 drivers (Kollewe, 2017), the final ruling of the CJEU is expected to define the limits of the sharing economy.

³ The countries are Argentina, Australia, Belgium, Brazil, Canada, Colombia, Denmark, Finland, France, Germany, Hungary, India, Italy, the Netherlands, Norway, Philippines, Poland, Portugal, South Africa, South Korea, Spain, Sweden, Thailand, the UK, and the USA.

Other considerations: Lobbying, business expansion, regulatory limbo

Uber's economic position and revenue power gives the company extra leverage when it comes to lobbying. In 2016, it tripled its lobbying efforts in the USA, focusing on pushing for the modernisation of existing laws. In California, Uber spent almost \$1 million on lobbyists – more than double that spent by Facebook and Apple – over two years from 2013 to 2015, with efforts focused on whether drivers would need commercial licences and be classified as employees (OpenSecrets, 2017).

As for business expansion, until mid-2016, individuals could sign up for a contractual relationship with Uber using their own car, but now it is possible to do so also by leasing a vehicle. Via partnerships with carmakers and rental companies, Uber's business has also expanded into offering short-term leases and financing deals to get more drivers on the road. Uber's Xchange leasing programme – launched last year – does exactly that in order to bring an additional 100,000 drivers on board (Newcomer and Zaleski, 2016). But this deal raises concerns about vehicle inspections and driver training and is under scrutiny by the California Public Utilities Commission probing whether such arrangements are compatible with the requirement that ride-share drivers use a personal vehicle.

The regulatory limbo that led to legal action against Uber is a feature of the hybrid governance characterising the digital era. A transformation of both state and non-state actors is at stake here, with an increasingly prominent role of the courts in decision-making (Chenou and Radu, 2017). Innovations in the digital economy appear to pose novel and more complex regulatory challenges, not only to the policymakers, but also to the companies themselves, struggling with models that combine profit- and socially oriented activities.

The relevance of regulations from traditional industries is also under question. In the case of hotels, restaurants, and taxi services, the rules in place regulate the relationship between professionals and consumers. For individual-to-individual transactions, what should the regulatory regime be? Who should decide on this and in what ways? Do policymakers have enough information to reach informed decisions about phenomena they are not involved in? If not, what input should be welcomed from the creators of the new services?

Up until now, we have seen limited regulation or a laissez-faire approach to the sharing economy, but that is likely to change following the numerous litigation cases brought in front of adjudicators around the world at different levels.

Part II: Analysing case law

An analysis as comprehensive as the one presented here has not been pursued in the past, primarily due to the lack of data and the absence of a systematic conceptual framework that would allow for extension beyond single or small case studies. With an expanding field of governance, the challenge is twofold: on the one hand, assessing the integration of new issues into discussions as they happen is notoriously difficult, other than for very narrow reporting purposes; on the other hand, such an approach indirectly fixes the boundaries of governance to a specific moment in time. Contrary to this, this study builds a conceptual and empirical toolbox for understanding the transformation brought about by uberisation. In distilling myths from reality, it looks closely at authoritative decisions for labour conditions with a long-term impact on the digital economy, be they case law or general positions.

Constructing the dataset

An extensive data collection exercise was performed between 10 January and 10 May 2017, which was visualised through an interactive map on the Geneva Internet Platform's *Digital Watch* observatory.⁴ The sources of information included case law around the world, as well as secondary references in mainstream media (*New York Times*, *The Economist*, *Financial Times*, *The Guardian*, *Washington Post*, *BBC*, *Le Monde*, *RFI*, *China Daily*). Additional materials such as press releases, official documents of different organisations, reports, and homepages were used to supplement the information. Multiple independent sources were used to cross-validate the relevance of the selected case details. The cross-validation ensured that important cases did not fall under the radar.

The dataset comprises the following elements: date, location, status of decision, the body that was deciding on the case (not only courts, but also important administrative bodies), and official case records (where available), for every Uber-related legal proceeding. The court proceedings span from the very beginning of the expansion of Uber's business operations, approximately the last four years, between June 2013 and May 2017. They are further classified according to the issue that is central to the case.

The dataset shows that the majority of cases centre on convergence issues (i.e., licensing) and the related classification issue. The second most common cases refer to aspects of labour law (status of taxi drivers as employees vs. independent contractors). The third most common cases are those

⁴ Visit the *Mapping Uber* interactive visualisation and accompanying infographic, at <https://dig.watch/trends/uber>

related to e-commerce, including competition and unfair practices. In the fourth group are all other cases, with issues ranging from taxation and content policy, to safety standards and arbitration. Excluded from the dataset were cases dealing with criminal law (such as those related to indecent assault), and copyright cases (which are not specific to ride-sharing).

Zooming in on labour law-related proceedings

The following analysis zooms in on the second most common case category: that related to labour law and employment, including the status of taxi drivers.

Of the total of 73 cases included in the dataset, 17 pertain to labour-related issues, representing about one-third of all legal proceedings against the company around the world.

The findings

There are currently 17 major cases regarding Uber that involve labour-related disputes. Most of these cases (10 of them) are either pending or the object of appeal, whereas the disputes tried tend to rule against Uber rather than in its favour. Of the latter, 65% of cases concern the definition of Uber's drivers (i.e., independent contractors vs. actual employees) while only a few regard arbitration issues or the safety controls on Uber's vehicles.

Finally, disaggregating the data by the profile of the decisional body and the outcome of the decision, it emerges that bodies other than Courts have tended to decide mostly against Uber's arguments (i.e., that its drivers are contractors) – rather than in its favour – (75% of the time). On the other hand, the majority of the cases in the hands of Courts (70%) are still undecided, either pending or on appeal – 9 out of 13 cases. Table 1 provides an overview.

The adjudicators

Legal action against Uber comes not only from individuals and competitors, but also from governmental agencies. Among the bodies addressing Uber-related issues on labour regulations are courts (at different levels) and administrative bodies. The latter have been primarily active in the USA. For labour-specific cases recorded in our dataset, these include the following decision-making bodies: the Commissioner of the Bureau of Labor and Industries of State of Oregon, the California Unemployment Insurance Appeals Board, the Labor Commissioner of the State of California, and the Alaska Workers' Compensation Board.

Table 1. Breakdown of Uber cases according to adjudicating body

Areas / Body	Adjudicating Body		Total
	Courts	Other	
Pending	5	0	5
On appeal	4	1	5
Completed	4	3	7
Total	13	4	17

Of the 17 labour-related cases in our database, most (13 of them) are in the hands of courts and only 4 are under the scrutiny of different judicial bodies. In the USA, which has the largest number of cases and class actions against Uber on record, the situation is even more complex, due to procedural issues. Numerous disputes are awaiting a final decision on whether drivers can sue Uber in a court of law, or whether they need to resort to arbitration, since drivers' contracts contain an arbitration clause to which they would have agreed before joining the company as service providers. Until now, the US Supreme Court has not seen cases related to Uber; the only instance related to the company was the refusal to hear the Chicago taxi industry's appeal against Uber on competition ground, in effect validating the 2014 City Council ordinance according to which Uber and Lyft are allowed to operate in the city without taxi medallions, city-regulated fares, and other standards taxis have to follow.

In the EU, the ruling from the highest court, the CJEU, on whether Uber drivers should be classified as contractors or employees, is expected in the coming months. In anticipation of the ruling, the Advocate General's opinion – which is generally reflected in the CJEU's reasoning – is that Uber is a transportation service, and its drivers are employees.

The issues at stake in Uber's labour-related cases

Courts of various instances and administrative bodies around the world have been faced with controversies over Uber's operation, ranging from labour regulations to drivers' discrimination against blind people, physical assault of customers, or non-fulfillment of vehicle regulations applicable to transportation services.

In cases linked to labour regulations, three main areas of concern can be observed: the status of drivers, arbitration, and safety/background checks (Table 2).

Table 2. Breakdown of Uber cases by adjudicating body and issues at stake

Issues at stake	Adjudicating Body		Total
	Courts	Other	
Status of drivers	7	4	11
Arbitration	4	0	4
Safety checks	2	0	2
Total	13	4	17

1. Drivers' status

Uber may not own cars directly, but the company could not operate without drivers. As contractors, they must own their cars and obtain their own insurance. In this business model, Uber is not liable or financially responsible for accidents that occur during a ride.

The status of Uber's drivers is thus key, not only in the USA but also elsewhere. Of the total number of cases, 11 concern the definition of Uber's drivers, i.e., whether they qualify as independent contractors (as claimed by Uber) or whether they fully qualify as employees. At the time of writing, most of the cases were handled by courts (64%) and in 8 out of 11 cases (73% of them) a final decision had not yet been issued (either because the ruling is still pending or because Uber has filed appeals against the decision of the first instance).

Moreover, so far none of the decisions is in favour of Uber while 27% of them have clearly ruled against the Company (but were only issued by bodies other than courts) (Table 3).

Table 3. Breakdown of Uber cases covering the status of drivers

Cases / Outcome	Cases by Courts	Cases by Other bodies	Total
Pending	4	0	4
On Appeal	3	1	4
Completed	0	3	3
Total	7	4	11

Up until now, Uber has classified most of its drivers as independent contractors, meaning that they are not entitled to social security, paid leave, and other work-related benefits covered by the company. This distinction is very important, especially in common law systems like the USA where many companies have already tried to avoid obligations derived from employee status. US courts have, on several occasions, given some guidelines in this respect, so it is essential to see:

1. The extent to which the services are integral to the business of an employer.
2. The stability, or permanence, of the employer-employee relationship.
3. The amount of equipment invested for carrying out the work.
4. The level of control (or flexibility) over the employee.
5. The opportunity for profit or amount of risk.
6. The degree of independence by the employee.

Uber argues that in treating its drivers as self-employed, there are specific advantages for the contractors, including work schedule flexibility and autonomy. Yet the arguments put forward in recent lawsuits paint a different picture: the company decides on the price of the service, the delivery manner and timeline. While control mechanisms are in place for the work delivered, the 'independent contract' that drivers sign do not entitle them to employment protections or workplace benefits, meaning that they do not receive unemployment insurance or workers' compensation.

The rating system used to distinguish trustworthy drivers and the fact that a ride is accepted by the platform independent of the driver's wishes as long as they are logged in, reveals a limited autonomy. Instead of observing situations in which people leverage their personal resources and use the 'excess capacity' of many goods and services (Benkler, 2014), the uberised business models are profit-driven and thus incentivise drivers to work many hours a day to make ends meet. Peer reviews

and ratings, derived from exchanges in the private sphere among friends, have become a form of control in commercial activities. One study found that these may result in employment discrimination against drivers, as they do not prevent consumer bias, ultimately translating into lower pay or loss of employment for those affected (Rosenblat *et al.*, 2016).

Equally important, when Uber decides to stop its operations in a city, its drivers generally lose their source of income overnight. In a situation of this type in Austin, Texas, the drivers started a class action when the company decided to cease operations after losing a vote that would have required stricter background checks for drivers, including fingerprinting. For the time being, halting services does not amount to specific obligations towards drivers, such as advance notice, mandatory under labour regulations. More than 10,000 drivers were affected by the withdrawal from Austin (Kelly 2016), a sudden suspension of services that was not required by the city authorities, which gave Uber 10 months to meet the new requirements.

Although the majority of cases regarding classification are pending, some of the courts have already taken a stance on this. In the UK and Brazil, some courts have classified Uber drivers as employees. However, there are numerous cases worldwide on which a final decision is pending. At the end of 2016, a London tribunal decided Uber's licensed drivers should be classed as workers entitled to the national minimum wage, sick pay, and paid holidays. In the Minas Gerais state in Brazil, a labour court ruled in mid-February 2017 that an Uber driver was an employee, and thus entitled to work benefits, including a compensation of around \$10,000 for overtime, holidays, and job-related expenses (Reuters, 2017b). But the situation is far from being fully clarified, as both the UK and the Brazilian case are under appeal.

In Europe, where Uber has been expanding its business over the last five years, legal challenges have been taken to the highest level. Ahead of the CJEU judgement, the Advocate General opined that Uber drivers 'do not pursue an autonomous activity that is independent of the platform. On the contrary, that activity exists solely because of the platform, without which it would have no sense.' In his opinion, the service 'amounts to the organisation and management of a comprehensive system for on-demand urban transport'. The final ruling of the CJEU – which generally follows the opinion of the Advocate General – might pose a systemic challenge to Uber's classification of drivers as contractors. The response of the company will set a precedent for the future of work in the digital era.

2. Arbitration

Of the total number of cases regarding labour law, four concern the enforceability of the arbitration clause in Uber drivers' contract, i.e., disputes arising between the company and its employees will not be solved in court if arbitration was chosen at the moment of signing the contract (Table 4). Such cases have been exclusively discussed by courts.

Table 4. Breakdown of Uber-related arbitration cases

Cases / Outcome	Cases by Courts	Total
On Appeal	1	1
Pending	1	1
Completed	2	2
Total	4	4

In California and Massachusetts, over 385,000 current and former Uber drivers have initiated a class action to make the arbitration agreement unenforceable. Comparatively, only 8,000 drivers rejected the individual arbitration clause when signing up for Uber's roster.

By accepting arbitration, drivers can only bring individual claims and deal with the company one-on-one. In New York, in June 2016, a complaint was filed with the National Labor Relations Board claiming that the arbitration agreements Uber drivers signed illegally forbid them from bringing class action claims (no mass litigation). In September 2016, the US Court of Appeals in San Francisco agreed with Uber, but introduced an exception to certain claims that are not covered by arbitration.

The arbitration agreements signed by Uber drivers require an arbiter to decide 'all matters' Uber seeks to bar drivers from joining class-action lawsuits unless they opt out of the standard contract, which few do.

3. Safety and background checks

Competing against one of the most regulated industries, that of taxi transportation, Uber provides both innovations and limitations. On the one hand, its prices are not regulated, but differ according to the demand at a certain hour/time or on specific days. On the other hand, driver screening (they

do not have a criminal record, special health conditions, or substance abuse, etc.) to ensure their driving skills are not affected is not required by the Uber service. The latter has constituted grounds for legal action in two court cases so far (Table 5).

Table 5. Breakdown of Uber cases by safety and background checks requirements

Cases / Outcome	Cases by Courts	Total
Pending	0	0
On Appeal	0	0
Completed	2	2
Total	2	2

In both cases, the verdict ruled against Uber. Similarly to arbitration cases, background checks have only been discussed by Courts and not by other bodies. While the safety concern appear in multiple court cases, this is not only a question of unfair competition, as taxi associations claim, but also one of consumer interest.

Given the lack of safety checks and driver records, there have been several cases where a passenger's life were endangered, with cases still pending over who is liable for physical assault and even the death of certain passengers. There is also an issue of consumer protection and misleading advertising with respect to the marketing of Uber services and price. Even though consumer protection legislation should be applied horizontally, irrespective of the type of service, because of the blurred regulatory regime of Uber, it is still not that much on the radar of consumer protection authorities.

Background checks are a major issue, as the protection afforded by the company to potential clients is minimal. The current screening procedure for selecting Uber drivers consists of name and social security number. No fingerprinting is required, which critics argue could lead to missing known criminals. But this procedure could also have a discriminatory effect, dismissing applications from drivers who were charged, but not convicted of crimes. It might also provide a lower incentive for drivers to sign up for Uber as opposed to competitors (Kelly, 2016).

All in all, the numerous litigation cases involving Uber reflect growing tensions over self-employed workforces and digital platforms deciding on working conditions. Surfacing in courtrooms around the

world in the past four years, the non-employee designations appear incompatible with the strict definition of working conditions that companies impose on workers. Concerns related to the sharing economy stem from multiple sources and also touch the rules of engagement in arbitration and the safety and background checks, though currently limited to a few jurisdictions only.

Conclusion

The introduction of sharing-economy business models created a disruption in the sector. Threatened by the innovative models of doing business, and the increasing share of the market that such models were able to acquire in a short time-frame, the protests that resulted from the introduction of services like Uber are not surprising.

The main arguments brought forward by taxi associations are that Uber drivers can operate without the necessity of obtaining a licence, without the requirements for safety and background checks, and without the need of fulfilling the same criteria (such as the type of vehicle) imposed on taxi drivers. In addition to the unequal treatment, this translates into an additional financial burden for taxi companies which Uber drivers are exempt from. Due to significantly lower costs, Uber is able to offer competitive prices to its customers, putting taxi drivers at a disadvantage.

At the same time, innovative models have been able to capitalise on their resourcefulness of combining novel e-commerce ideas with digital platforms. The popularity of the service led to rapid expansion in tens of countries worldwide, in a very short time span. Suddenly, digital platforms were able to influence working conditions. Expansion also led to case-law on different issues, in several markets.

This paper provided a comprehensive picture of the complex landscape restructuring the governance of work. Based on a unique dataset of main Uber litigation cases, this paper surveyed and provided a detailed analysis of three main categories of cases related to labour: classification of drivers as independent contractors or employees, arbitration, and safety and background checks.

The implications of the case law analysed are straightforward: if Uber is a transportation company, then it would need to obey the rules for this kind of business, including labour rules. If the Advocate General's opinion is followed by the CJEU (in ongoing case C-434/15), Uber will be most likely obliged to offer its drivers the same conditions as employees, including the social benefits that come with employment.

The implications go beyond employment rules, as they are likely to impact the sharing economy as a whole. The regulation of innovation in the digital era is highly complex, due to its hybrid character, its evolving nature, and the difficulty in establishing how far the standards should go. For uberised business models emerging at the time of economic crisis, deciding on whether to enact specific regulations or apply existing ones is particularly challenging.

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