

Über-influential?

How the gig economy's lobbyists
undermine social and workers rights



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Text: Rachel Tansey and Kenneth Haar

Editing: Katharine Ainger

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Summary

The 'gig' or 'platform' economy – which refers to online companies such as Uber, Airbnb, Deliveroo, and TaskRabbit – is increasing its lobbying presence in Brussels. Platform companies' key concern is to maintain their special privileges as part of the so-called 'collaborative' digital economy, including freedom from many regulations that ordinary taxi, home-letting, or temp firms, say, would be subject to. Of particular concern is the way companies like Uber class their workers as self-employed, thus contributing to a growing degradation of labour rights.

Over the years, the platforms have been at the centre of heated debate in cities and member states. In response to the challenges platforms pose to eg. housing policy or labour rights, authorities have taken measures to mitigate the effect of the rapid increase in the use of the services provided by platforms.

In response, some platforms, Uber and AirBnB in particular, have launched multifaceted lobby campaigns to persuade decision-makers in the EU institutions to come to their defence. In particular, they have worked intensely for years to persuade the Commission to develop its interpretation of two existing directives that suits their interests.

The two directives are the e-Commerce Directive from 2000 and the Services Directive from 2006. Both were written in another era,

well before the gig economy became a political issue, and the texts do not provide self-evident answers to the burning questions around the gig economy. But thanks to direct involvement with the Commission, via pressure exerted from industry groupings and lobbying associations, through work with think tanks, we often see the Commission act in their favour. Lobbying efforts are rewarded: the platforms are clearly able to use the application of EU single market rules to push back against regulation adopted at national level or in cities.

The current application by the Commission of the two Directives touch on key interests of the platforms. The e-Commerce Directive makes it difficult to impose rules on the platforms due to the so-called 'country-of-origin principle'. Also, the same directive enables platforms to refuse to cooperate with local authorities when they try to acquire the necessary data to enforce protective laws. Even a simple thing as a requirement to obtain a licence can be prevented by the current reading of the e-Commerce Directive. On top of this comes specific challenges from the Services Directive – eg. the ban in the directive of 'quantitative limits', which in the case of Airbnb and similar rental platforms, can help them reject restrictions on the use of the platform.

Unfortunately the European Commission, dazzled by talk of innovation, has been all too willing to be influenced by these companies'

lobbying aims. And if the Commission does not live fully up to expectations of platform lobbyists, they can often rely on member state governments instead, as in a recent case on the definition of 'employee' which leaves many platform workers without the protection enjoyed by colleagues with similar jobs.

However, the EU institutions cannot continue to ignore the fact that platform economy appears to be an efficient model for privatising profits whilst socialising the risks. Meanwhile the social impacts, from loss of labour and consumer rights to unaffordable housing, are on the rise.



Chapter 1

Introduction

Disruptive, online 'platform economy'-based businesses, from Uber and Deliveroo, to Airbnb and TaskRabbit, are able to avoid social and labour laws because, they argue, unlike say conventional taxi or delivery services, hotels, or temp agencies, they are mere 'platforms'. Their success in presenting themselves as the future of the 'new' economy, free from historical restrictions such as complying with employment laws, is in part due to their lobbying activities in Brussels. And it is coming at the cost of workers' rights, affordable housing, and social safety nets in general.

Online 'platform' businesses range from those in the realm of 'information services', such as Facebook, Google, and Twitter, to those who organise the provision of services performed in the 'real economy'. These include companies that organise delivery and transportation, short-term rental accommodation, and various kinds of 'gig', 'task' or 'crowd' work. They usually involve creating an intermediary platform (often a smartphone app) that connects consumers wanting a service (eg takeaway food, a cleaner, a car ride, a holiday apartment, data processing, translation, etc) and connecting them to individual providers. Some of the main 'gig economy' companies are household names such as Uber and Airbnb, and increasingly, the likes of Home Away, TaskRabbit, and Amazon Mechanical Turk.

It must be said that the platform business model appears to be ideal for privatising profits whilst socialising risks. A platform company generally doesn't have to purchase assets

such as restaurants or hotels or taxis, and avoids any of the related safety, consumer, or regulatory issues; similarly since it typically classes its workers as self-employed, it avoids obligations towards them such as a minimum wage or insurance. The company will often site itself in low tax jurisdictions, and as a platform often based in another country, it can avoid responsibility for the social impacts its business model creates, such as increased labour precarity or unaffordable local housing.

Like any growing industry whose most influential players are multi-billion euro multinational companies, gig economy platforms have been turning their attention to lobbying in Brussels. They are keen to ensure EU rules work in their interests, particularly in maintaining their special treatment as 'collaborative economy innovators'. The stakes are high: with the growth of labour and short-term rental platforms, a parallel economy with the internet as its main tool is emerging, and it is having profound

effects on social rights. These include labour rights, social protection policies, consumer rights, and the right to housing. Many platform companies have managed to evade or undermine social protections and public interest laws that other companies have to respect.

Despite the platform companies bandying around words like the 'sharing' or 'collaborative' economy, even the *Financial Times* points out that "we should give up on the fantasy that

the gig economy somehow eliminates issues of power between workers and companies", noting that in fact, "algorithmic management puts dramatically more power in the hands of platform companies". The newspaper notes that Uber, for example, can not only "monitor workers 24/7, they benefit from enormous information asymmetries that allow them to suddenly deactivate drivers with low user ratings, or take a higher profit margin from riders willing to pay more for speedier service,

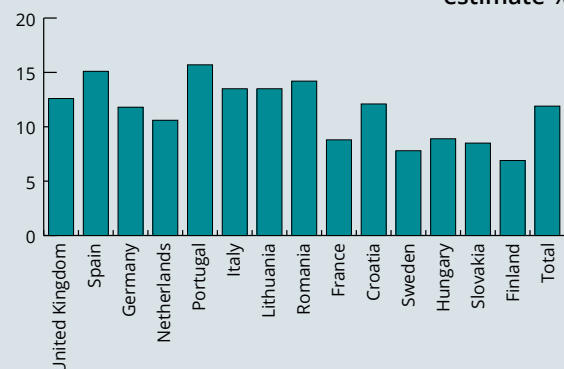
Box 1:

Platform workers in the EU

A survey for the European Commission shows an estimated 12 per cent of the adult population in the UK have at some point been platform workers. In Spain the number is 11.6 per cent; in Germany 10.4 per cent; whereas in countries such as Finland, Slovakia, Hungary, and Sweden, it is 6-7 per cent. On average in Europe it is nearly 10 per cent. Meanwhile an estimated 5.4 per cent workers spend more than ten hours per week doing platform work in the EU. An estimated 6 per cent earn more than a quarter of their income this way, and only 2.3 per cent of the adult population earn more than half their income this way.⁶

For comparison, the number of railway workers in the EU is 0.2 per cent;⁷ so although platform workers are still a small minority, they do represent a reasonable share of the labour market. Globally the number of platform workers is growing exponentially, with the trend predicted to continue.⁸ While there is no corresponding figure for the EU, platform businesses' gross revenue doubled in Europe between 2014 and 2015.⁹

Percentage of platform workers in Europe according to the 2017 COLLEEM survey, initial estimate %



Overall these developments are a challenge to trade unions. A majority of platform workers – up to 68 per cent of the total – consider themselves to be employees of the platforms,¹⁰ yet generally the responsibilities that come with an employer role are not accepted by the companies involved. For social rights to be met and upheld, a path to defend the rights of platform workers must be found.¹¹

without giving drivers a cut. This is not a properly functioning market. It is a data-driven oligopoly that will further shift power from labour to capital at a scale we have never seen before.”¹

These sentiments are echoed by trade unionists, who argue: “Advances in technology should be used to make work better, not to return to the type of working practices we thought we’d seen the back of decades ago.”² This applies to all kinds of gig, crowd, and task work, not just the likes of Uber and Deliveroo. Tech journalist Sarah Kessler has set out how, contrary to claims that the flexibility of short-term ‘gigs’ make workers happier, platform workers are in reality being ‘liberated’ from a safety net, reliable work hours, and often, from anything close to a living wage.³ Kessler argues that platform companies emphasise workers’ love of ‘flexibility’ in order to “deflect hard questions about pay and fairness”. Meanwhile the digital platform technology is “often used to create employee-like relationships with a veneer of plausible deniability”.

This gets to the core issue with platform work: the lack of rights for platform workers. Most platforms insist their workers are self-employed or independent contractors, not employees of the platform. So, explains the trade union initiative Fair Crowd Work, “most platform-based workers are not entitled to minimum wage; paid vacation, parental leave, sick leave, or overtime; employer-supported health insurance; protection from unfair dismissal; or compensation in the event of work-related illness or injury; nor are they entitled to organize and negotiate collective agreements with platform operators or clients.”⁴ As a result, many platform workers in EU countries earn less than their national minimum wage. And as the European Commission’s Joint Research Centre (JRC) concluded in a recent study, “the lack of compliance with



“This is not a properly functioning market. It is a data-driven oligopoly that will further shift power from labour to capital at a scale we have never seen before.”

– *Financial Times*

labour related, fiscal and social security duties constitutes platforms’ main competitive advantage vis-à-vis their competitors”.⁵ The JRC also recommended that policy-makers stop treating the platform companies as special cases with “digital distinctiveness” and take “actions to safeguard workers’ rights”.

Short-term rental platforms such as Airbnb, HomeAway, and onefinestay are another sector of the platform economy with growing implications for social rights and public interest law-making. Issues include access to affordable housing, local governments’ ability to respond to the concerns of their citizens, and loopholes in consumer protection for the millions of people using the platforms. Faced with a growing proportion of commercial lettings (a long way from the original ‘home-sharing’ idea) on the platforms, there are also implications for labour rights, for example, for the people employed by hosts to perform services like cleaning in a largely unregulated area of the economy. Corporate Europe Observatory’s 2018 report ‘UnfairBnB’ shows how Airbnb and its ilk have turned to Brussels, appealing to single market rules to defend their business model via a very supportive European Commission, to try to undermine cities’ abilities to regulate them. And they have had considerable success.¹²

At the European level there have been a number of initiatives that relate to work in

Box 2

Uberexploitation - platforms are struggling for the right to trample on labour rights

The growing significance of the gig economy is a challenge to trade unions and labour rights across the globe. The fact that workers are contracted from afar through a system where platforms frequently set the terms, makes it very difficult for platform workers to assert their rights, and difficult for authorities to enforce the rules. And often, platforms are even free of obligations that other companies in the first place.



not workers, and not covered by federal labour protection laws. US district judge Michael Baylson, a Trump-nominated member of the board, argued that Uber drivers had entrepreneurial freedom. And in the UK, the Uber case seems to be little but the tip of the iceberg: 700.000 platform workers receive less than the minimum wage.

Uber struggling to free itself from obligations

To Uber, its drivers are 'independent contractors', not employees. But in reality, Uber's drivers are subjected to terms similar to workers for a company: they have little influence on the price of a ride and hence their wages, they can be penalised if they don't accept rides. Despite this, Uber drivers do not enjoy the rights of employees, generally speaking. This has opened a legal battle in many countries, most prominently in the UK where workers sued the company to obtain the right to a minimum wage and holiday pay. Eventually, Uber lost the battle in court, but in other places, Uber is more successful, such as in France and in the US. In May 2019 the decision of the independent, federal National Labor Relations Board, declared Uber drivers to be 'contractors',

Delivery workers in peril

Following the death of a rider for a platform delivery company Glovo, Spanish trade union UGT has filed a complaint with the Spanish labour authorities to act against the company. According to UGT, Glovo does not ensure its employees are equipped with the "necessary safety measures" and that the company is "putting their lives in danger". According to some sources, platform delivery workers are under so much pressure to take on deliveries in order to make a decent salary, that fatal accidents are bound to happen.

In some countries, whether the company is prepared or obliged to cover health insurance is important. And that question can depend on whether the employees are actually regarded as just that. That is not the case, for instance, with US based Amazon Flex, a company which does not cover health insurance.

what the Commission calls the “collaborative economy”¹³ (in this context encompassing gig economy and crowd work digital platforms) including:¹⁴

- Principles enshrined in the 2017 European Pillar of Social Rights;
- subsequent proposals including for a Transparent and Predictable Working Conditions Directive (see Chapters 2 and 3);
- and the ruling by the European Court of Justice (ECJ) on the nature of the service provided by Uber (see Box 6).

However, there are also various single market rules which aim to build a framework for the platform economy, and which are favourable to the companies involved, such as:

- The 2000 e-Commerce directive (see Box 5);
- the 2006 Services Directive;
- and the 2015 Digital Single Market strategy.

These can be invoked by platform companies to stop national and local governments from regulating them; to do so platform companies and their lobbyists frame measures such as restricting Airbnb-style holiday letting as ‘obstacles to the single market’. The 2015 Digital Single Market strategy has further enabled platform companies to use single market rules to undermine social rights that have been won through long and hard political struggles. Unfortunately, the Commission’s 2016 Communication on the Collaborative Economy very much follows in this vein, by discouraging member states from regulating or placing restrictions on platforms like Airbnb and Uber (see Chapters 4 and 5). Issues around consumer rights must also not be forgotten, since EU consumer laws do not apply to ‘peer-to-peer’ (P2P) relations, creating a void in consumer protection.¹⁵

Given the stakes – both for social rights and for the profits of the gig economy’s big players – Corporate Europe Observatory and



“What emerges as a common objective in the lobbying of both short-term rental and labour platforms, is the attempt to avoid regulation. They seek to avoid being covered by existing public interest laws”

the Austrian Federal Chamber of Labour (AK Europa) concluded it was time to take a look at the EU-level lobbying and influence of ‘gig economy’ platform companies, and the associations, PR firms and think tanks that represent their interests. What emerges as a common objective in the lobbying of both short-term rental and labour platforms, is the attempt to avoid regulation. They seek to avoid being covered by existing public interest laws – laws which not only apply to their competitors, but which offer protections to workers, consumers, and citizens – by pushing for the EU to confirm an interpretation of single market rules that allows them to hide-behind the veneer of being “digital” platforms. Lobby budgets may still be relatively modest, but in their efforts to achieve this end, a multitude of lobbying techniques, old and new, have been deployed. To take just two examples, Uber has specialised in commissioning and co-authoring high-level academic studies to feed into ‘evidence-based’ policymaking; while Airbnb has mobilised its accommodation hosts as a grassroots echo chamber for its demands in Brussels. And, as a growing sector of the economy, we surmise this is only the beginning.

Chapter 2

Uber lobbies for low costs, little responsibility

Despite extensive rhetoric around the sharing economy – or what the Commission dubs the ‘collaborative economy’ – it is important to remember that in EU-policy circles, this is largely being equated with the ‘disruptive’ business models of large transnational corporations like Airbnb and Uber.

The ride-sharing company Uber is valued at somewhere between €61 billion and upwards of €100 billion (\$120 billion).¹⁶ For such a colossal company, its declaration of spending just €800,000 to €899,999 on EU lobbying in 2017 looks like peanuts.¹⁷ But dig a little deeper, and it's clear that Uber's influence in Brussels is far bigger than its lobby spending suggests. With over 50 meetings with the Juncker Commission at the highest levels, political access doesn't seem to be a problem (see page 27). Nor at the European Parliament; in 2016, for example, Uber's disgraced former Chief Executive Travis Kalanick was hosted by then-Parliamentary Vice President, EPP MEP Adina Vălean, at an event on digital entrepreneurship.¹⁸

Uber is also using some of the oldest tricks in the book to help it peddle influence, from

high profile revolving door moves, to hiring consultancies, and joining big business lobbies. But mirroring its wider approach, the firm is also using more ‘disruptive’ lobbying methods – like funding free-market think tanks, and keeping tight control of the evidence available for ‘evidence-based policy-making’. The main aim of Uber's multifarious lobbying strategies is to avoid regulation as an employer, keeping its costs and responsibilities as low as possible. But before we get on to the struggle over particular policies, and the obligations (or lack thereof) of platforms, let us first take a look at the lobbying tools and tactics Uber has used.

Revolving doors at the highest level

One of the perennial tactics companies use to influence the political agenda in Brussels is the revolving door, and Uber is no exception. When European decision-makers – such as commissioners, MEPs, officials – leave office take up lobby jobs (or vice versa), there is a serious risk of conflicts

of interest, which threatens to undermine democratic, public-interest policy-making. For example former Commissioner Neelie Kroes served first as Commissioner for Competition (2004 – 2010), then as Commissioner for the Digital Agenda, and Commission Vice President (2010 – 2014). After a decade at the top of the EU’s executive body – at the start of which she “promised to never engage in business activities” when her Commission term ended – Kroes took up a number of advisory and board positions for big business, including on Uber’s public policy advisory board, in May 2016.²⁰ She reportedly received shares in the company as payment.²¹ To the cynical eye, this might look a bit like cashing in on her extremely pro-Uber stance whilst in office.

As Digital Agenda Commissioner, Kroes was a staunch defender of the company, writing in April 2014 that she was “outraged” by the decision of a Brussels court to ban Uber, adding that she had “met the founders and investors in Uber”, and that “Uber is 100% welcome in Brussels and everywhere else”.²² She even started a #UberIsWelcome hashtag on Twitter.²³ Its not hard to see why Uber would want to recruit her in the hope that, as TechCrunch reported, Kroes’ presence and advice could help “steer away the threat of



When Neelie Kroes was still Competition Commissioner she was very supportive of Uber, including through very active tweeting, as in 2014 when she urged to protest against a decision to ban Uber temporarily in Brussels.

Box 3

Commission selling a product Uber wants to buy

Travis Kalanick, the infamous founder of Uber and from 2009-2017 its Chief Executive, paid three visits to Brussels between 2015 and 2017. Here he would throw dinner parties and organise special debates on innovation and transport for a select group. He would also meet with Commissioners. On one such occasion, Kalanick was very enthusiastic of the Commission’s vision. At a November 2016 meeting, Digital Single Market Commissioner Günther Oettinger told Kalanick that he saw the EU programme on startups as a way of finding partners for Uber, and that the ‘Smart Cities’ programme was also very relevant for the company. Kalanick was overwhelmed. He had heard “a vision that dovetails with ours”.... “I’m on board – I feel like I’ve heard a pitch for product that I want to buy,” he gushed.¹⁹

Visits to the Commission have been a regular activity for Uber lobbyists over the years. According to the EU Transparency Register, 50 such meetings took place between January 2015 to September 2018.



“I’m on board – I feel like I’ve heard a pitch for product that I want to buy.”

– Uber’s CEO Travis Kalanick’s response to a presentation by Commissioner Oettinger, November 2016.

any new European-wide moves to undermine its regulatory advantages versus traditional taxi firms” by regulating it as a transportation service rather than a digital platform (as Uber is so keen to be considered).²⁴

Uber’s use of the revolving door also operates at lower levels. For example, its lobbyist listed as having an access pass to the European Parliament, Laurin Sepoetro, actually came through the revolving door from the European Parliament, where he worked for five years as policy adviser to two MEPs covering transport and environmental policy.²⁵ According to Sepoetro’s Linked-in profile,²⁶ one of the MEPs he advised for nearly three years on transport issues was Germany’s Ismail Ertug (of the Transport Committee).²⁷ Now, as Uber’s Senior Associate on EU Public Policy, Sepoetro works on legislative files including “platform and collaborative economy regulation, social protection... and new mobility services”, working together with “EU/ national policymakers” on “embracing the Uber vision”.²⁸

In an illustration of how the revolving door can facilitate privileged access Uber recently sponsored an event hosted by the MEP that Sepoetro had previously worked for, Ismail Ertug.²⁹ In November 2018, Ertug “organised in cooperation with Uber” an event entitled ‘The Urban Challenge: Towards a Shared and Multimodal Future’, held in the heart of Brussels’ EU quarter.³⁰ With a keynote speech from the Commission’s DG MOVE (delivered in front of an Uber banner), Uber’s representative focused on the media-friendly topics of its cooperation with public transport and how Uber bikes were getting more people out of cars.³¹

Memberships as mouthpieces

Uber is a member of numerous lobby groups, think tanks and trade associations active at the EU level.³² Getting the message out from as many different mouthpieces as possible is an important lobbying strategy. Uber is a member of big business lobby groups BusinessEurope (see Chapter 3) and AmCham EU (which has had a staggering 101 highest-level meetings with the Juncker Commission).³³ In the digital sector Uber is part of the Computer and Communications Industry Association (CCIA) promoting open markets along with the likes of Ebay, Amazon, Facebook, and Google³⁴, and the European Internet Forum (EIF), a cosy club where parliamentarians, other officials and the biggest players in the digital industry – from Apple and Amazon to Facebook and Uber – meet under Chatham House Rule for some informal lobbying over croissants and orange juice. Sitting alongside MEPs and Commission officials, Uber has been a speaker at EIF breakfast, lunch and dinner debates, on issues from the future of urban mobility to the future of work.³⁵ Uber is also part of Mobility as a Service (MaaS), an interest

group representing the likes of Siemens, the European Automobile Manufacturers’ Association (ACEA), and rail company Alstom, lobbying for “a single, open market” to facilitate different forms of transport being integrated “into a single mobility service accessible on demand”.³⁶ In Uber’s words, “we know that Uber is just one part of the solution”.³⁷ Continuing this theme, Uber has more recently – as part of its new image as a constructive and progressive partner – even joined the **International Association of Public Transport (UITP)**.³⁸ That



Invite to an event in November 2018 in the European Parliament, organised by the conservative EPP group in cooperation with Uber.

it might improve not only Uber's reputation but also its access (for example, through the seven Commission expert groups that UITP sits on) probably never even crossed Uber's mind....³⁹

As well as these more traditional lobby associations, Uber is a member of several influential free-market economics think tanks, a very effective way to influence the policy milieu in Brussels. There's the Lisbon Council for Economic Competitiveness and Social Renewal, a "Brussels-based think tank and policy network" whose supporters include Apple, Google, Facebook and Uber. It is no small player in the murky world of corporate-think-tanks-as-lobby-vehicles, spending €1.4 million on EU lobbying in 2017 and has held high-level Commission meetings on the "App economy".⁴⁰ Then there is influential Brussels' think tank Bruegel whose lobby spend in 2017 was nearly €5 million, and whose corporate members range from Amazon and Google, to Shell, Pfizer, and Deutsche Bank.⁴¹ Uber joined the self-described "vibrant laboratory for economic policies", which boasts of "dynamic relationships with policymakers" at all levels, for the sum of over €33,000.⁴² In September 2014 Bruegel published what the company heralded as "a positive analysis of Uber's business model, its impact on consumer welfare and the need for regulation to adapt quickly".⁴³ The study warns that banning "Uber would massively disadvantage the consumers who are enjoying lower prices and better quality due to the increased competition in taxi services", and describes taxis' appeal to regulation as merely a way to "block Uber from market entry, and thus preserve their profits".⁴⁴ In February 2016 the think tank argued that the solution is to liberalise and "more lightly" regulate the taxi industry.⁴⁵

Around the same time Bruegel held an event on the 'The Sharing/Collaborative Economy' with Uber and Airbnb as speakers, and a

Box 4

Libertarian 'Consumer Choice Centre' fights Uber's corner

There is another think tank promoting Uber's interest, despite having no affiliation with the company: Brussels' very own libertarian think tank the **Consumer Choice Centre** (CCC), a spin-off from the US's Koch Brothers-funded Students for Liberty, has been vocal in its defence of Uber.⁵⁵ The shutting down of Uber in various European cities was cited as the "key trigger" for setting up the group, keen to fight "paternalistic regulations".⁵⁶ Although the CCC is not transparent about its "private donors" (though it does name Facebook and Japan Tobacco International as funders),⁵⁷ Uber told us that it has no affiliation with the group.⁵⁸ So despite CCC representatives speaking in the European Parliament about the wonders of "sharing economy technologies such as Uber and Airbnb",⁵⁹ it seems their rationale for this spirited defence is purely ideological. CCC's parent Students for Liberty waxes lyrical over Uber "taking power away from state enforced taxi cartels" and instead creating an "unregulated, voluntary, mutual beneficial market exchange".⁶⁰ The US group also commends the EU institutions as "a force of economic liberalization", and particularly the Commission for telling member states to "administer a light-handed regulation" on the sharing economy.⁶¹ This is reminiscent not only of the libertarian ideology (ie against government regulations, such as labour or environmental rules, which limit liberty to maximise profits in any way possible) espoused by Uber's founder Travis Kalanick,⁶² but of the increasingly neoliberal and deregulatory bent of the Commission.

session on collaborative economy business models that started from the premise that workers offering services on platforms like Uber “are independent contractors, rather than employees of the platforms”.⁴⁶ Uber spoke at another Breugel event on ‘Crowd Employment’ in October 2017, about the question of whether Uber is a tech or a transport company. This followed Breugel’s February 2017 ‘economic review of the collaborative economy’, which concluded that Europe could enjoy major economic gains “if barriers are removed and the regulatory framework is adjusted to better accommodate platforms”.⁴⁷ Socrates Schouten, Head of the Commons Lab at Waag, a Dutch institute for technology and society, critiques the approach of Breugel’s review, noting that “social ideas and incentives are hardly touched upon”.⁴⁸ He also points out that the ‘collaborative economy’ envisaged in Bruegel’s report amounts to “a highly capitalist industry, a far cry from the ‘happy sharing, friends making’ narrative so often heard in sharing economy circles”. Unfortunately this is a vision all too closely shared by the Commission.

Uber is also a member of the **Centre for Regulation in Europe (CERRE)**, whose members include internet, telecoms and energy giants like Facebook, Uber, Vodafone, and Enel.⁴⁹ Its mission is to improve the “EU process of liberalisation” of these industries, and its board of directors includes former Commissioner for Trade and former WTO Director General, Pascal Lamy.⁵⁰ CERRE says it operates “at the interface of academia, administration, politics and business”.⁵¹ Uber spoke alongside DG Competition at a March 2019 CERRE event entitled “Digital Conglomerates and EU Competition Policy”.⁵² Some of CERRE’s events are closed despite featuring multiple high-level EU officials as speakers.⁵³ Recommendations by this corporate funded think tank include, in a 2017 report ‘Towards Smarter Consumer Protection Rules for the Digital Society’, “alternative means of

regulation, such as self and co-regulation... as a means to developing future-proof solutions”.⁵⁴

Public affairs firms also play a significant role in Uber’s lobbying strategy in Brussels. According to LobbyFacts Uber has been a client of FIPRA International Limited (2017), acumen public affairs (2017), Technology Policy Advocates (2017 – with Uber as its sole client), Covington & Burling LLP (Oct 2016 – 1 Sep 2017) and law firm Gide Loyrette Nouel (2016).⁶³ Yet lack of transparency means it’s unclear which clients the consultancies are acting on behalf of when they conduct high-level lobby meetings with the Commission (for example FIPRA’s encounter on “technologies and digitalisation of Travel and Tourism” may or may not have been on Uber’s behalf).⁶⁴

Changing tack: from disruptor to partner in policy-making

Uber’s record of scandals under the leadership of Travis Kalanick (from sexism and spying to sabotage and software-to-deceive-regulators),⁶⁵ meant that the company’s new Chief Executive Dara Khosrowshahi has presided over a switch in attitude towards regulators. The tone has gone from arrogant and combative to constructive, as well as trying to pre-empt and prevent regulation the company doesn’t want by convincing law-makers that they’ll do the right thing anyway. As Khosrowshahi told Politico in 2018 that “If the shift doesn’t come from the industry, then the government will take over”.⁶⁶ The same article reported how Khosrowshahi’s new approach includes trying to building partnerships with cities and taxi associations across Europe, contributing to clean air initiatives, and strengthening its



commitment to passenger safety. In line with this strategy it has joined the public transport association UITP (somewhat ironically, since UITP – like BusinessEurope – is an employers’ organisation⁶⁷), with the humble message that whilst “our technology and approach can bring new tools to the table... we have a lot to learn”.⁶⁸

As part of this ‘voluntary responsibility’ strategy – a classic lobbying technique designed to deter government regulation – Uber announced in 2018 that it would provide insurance for its 150,000 “independent drivers and couriers” in Europe, following its loss of a case at the European Court of Justice (see Box 6). Uber’s 2018 White Paper on work and social protection (see below) similarly informs the Commission that it “oppose[s] precarious and exploitative forms of work”, that Uber “empower[s] self-employed drivers”, and that the company is constantly “improving the in-app driver experience and developing new ways to better support these drivers and couriers”, including a “greater voice” within Uber, “innovative partnerships to offer greater protections”, plus help to save, learn skills, and pay their taxes. This new, playing-nice attitude does not, however, as the White Paper makes clear, mean any significant change

in the firm’s lobbying demands. Uber’s main message is still: we are not employers and you must not regulate us as such (see below).

Control the evidence, control the policy-making

In the midst of Uber’s battles with London courts over its drivers’ employment status, it was reported in the press that “the ride-hailing firm is stepping up its public relations campaign with an academic approach”.⁶⁹ Uber co-published a ‘working paper’ with a couple of Oxford University academics based on the firm’s own anonymised data and a survey Uber had commissioned.⁷⁰ The paper concluded that most of London’s Uber drivers are happy, value flexibility, earn above the UK minimum wage, and didn’t sign up as a last resort.⁷¹ In common with other academic papers about the company’s positive impacts, two characteristics are notable about this study: its co-authors include Uber staff (in this case, including the company’s Public Policy Manager Guy Levin), and the Uber data on which it is based is not publicly available to others, thereby preventing the replication or validation of results. This has caused considerable backlash

within academic circles. Karatzogianni, Codagnone, and Matthews, for example, in their 2019 book *Platform Economics: Rhetoric and Reality in the 'Sharing Economy'*, criticise the practice whereby academic economists directly help commercial platforms “by using data made available only to them to present partial analysis about the social benefits produced”, effectively allowing the “legitimacy of a scientist” to be used “to reduce the scope of choices available for policy”, and turning “scientific work into issues’ advocacy”.⁷²

Yet this is exactly the strategy that Uber has taken, in part thanks to its own ever-expanding team of economists⁷³ – internally dubbed ‘Ubernomics’ – which reportedly “acts as an in-house think tank for Uber” producing materials “to arm the lobbyists and policy folks who fight some of Uber’s biggest battles”.⁷⁴ Uber’s first partnership with academic economists at high-profile universities was in 2015, when Uber’s Chief Economist Jonathan Hall co-authored a paper with Princeton economist Alan Krueger (who was paid by Uber to do so). The paper found that most Uber drivers liked setting their own schedules, and made good wages.⁷⁵ “That the study was dry and academic only seemed to make it more appealing”;⁷⁶ the paper gained lots of media coverage, whilst the prestige of its association with Princeton helped to confer legitimacy. Yet as Henton & Windelilde (2017) note, the bias of the paper is indicated by the way it refers to Uber drivers as ‘Uber’s driver-partners’, even whilst acknowledging that drivers’ status (ie self-employed or employee) is a central controversy.⁷⁷

Since then, Uber has continued to collaborate with academics from prestigious institutions. At the same time, academic papers that come to conclusions which differ from those of studies co-authored by Uber and based on data it won’t share, face criticisms and

rebuttals by the company via its blog ‘Uber Under the Hood’ (“Insights and updates from the Uber Comms & Policy team”).⁷⁸ The company even responded to an MIT study that found Uber drivers earned dramatically less than Uber claimed, by dubbing MIT as “Mathematically Incompetent Theories”.⁷⁹ Yet as Lawrence Mishel, labour economist at the Economic Policy Institute, notes it is “pretty clear that they’re not going to give access to the data to people who are likely to find things that are not favorable to Uber”.⁸⁰ Meanwhile journalist Alison Griswald says, “the company’s economists have deftly woven their findings into the literature”, and reports that Uber’s Global Public Policy Head has admitted that their goal is to “build a body of evidence and then build a global policy framework around that”.⁸¹ And this is where the control of evidence becomes a crucial – and effective – part of Uber’s lobbying strategy and its fight against more regulation.

Uber and other collaborative economy lobbyists take advantage of what Karatzogianni et al (2019) describe as “the intrinsic limitations... and technocratic nature of the evidence-based policy” paradigm, a paradigm which the European Commission is committed to.⁸² Its shortcomings stem from the fact that it is not possible “to eliminate any ideological element and judgements from the formulation of policies”,⁸³ and so what increasingly occurs – and is a major part of how lobbying and influence operates in Brussels – is ‘policy-based evidence making’. In other words, it creates the opportunity for Uber and others to provide apparently objective academic studies that industry has partnered with, co-authored, used private data for, or otherwise influenced, and that unsurprisingly, as a result supports their policy goals.

It is no surprise, then, that the White Paper Uber sent to the Commission in 2018 (see be-

low) is full of references to ‘evidence’ that has been commissioned by Uber (eg Orb International 2016 poll);⁸⁴ produced in “collaboration with” Uber (eg McKinsey’s 2016 ‘Independent work’ report);⁸⁵ co-authored by academics Uber is known to have hired (eg Princeton’s Alan Kreuger);⁸⁶ or based on data that Uber gave the authors access to, but which “remains unknown to the rest of the academic communities and to the general public”⁸⁷ (eg Landier, Szomoru & Thesmar, 2016;⁸⁸ Chen, Chevalier, Rossi, & Oehlsen, 2017).⁸⁹ Evidence, concludes Karatzogianni et al, “has become the main currency of lobbying”, with commercial platforms like Uber using its control over evidence, combined with the rhetorical framing around ‘sharing’, to effectively produce a “negative policy bubble” (ie an undersupply of policy and regulatory responses to problems emerging from a largely unregulated industry).

“The driver is the client rather than the passenger”⁹⁰

Having seen the many different tools and techniques Uber is employing in its efforts to influence EU policy, let us now move on to look at Uber’s lobbying objectives – namely, to be a platform without obligations – and the different EU policies and processes it has targeted to try to ensure this. Uber set its sights on Brussels in 2015, with an objective similar to that of Airbnb (see Chapter 4): for the Commission to provide the company with some relief by telling member states that it should be exempt from rules that apply to taxi operators. By its own admission, Uber became the biggest company in the so-called ‘sharing economy’ in just a few years, hugely helped by the way it was able to circumvent rules that apply to taxi companies. These rules include insurance, liability, safety regulations, and workers’ rights. Uber entered the market



“Uber... faces different regulatory regimes across the Single Market. It’s why we have been working closely with the European Commission to discuss a modern, common sense regulatory framework that benefits passengers, drivers and cities.”

– Letter from Uber CEO Travis Kalanick to Commissioner
Bienkowska, April 2016.

in Europe in July 2012, starting with London, so its ‘ridesharing services’ were young when it first turned its eyes on Brussels. Even so, the company was already enmeshed in multiple conflicts with member state authorities, in large part due to rows with rival taxi companies. The conflicts took the company straight to courts across Europe, and here, it was not an easy ride for Uber. In Spain a judge suspended the use of Uber in December 2014;⁹¹ in France, the Government banned Uber from the start of 2015;⁹² and in Germany, Uber was banned in September 2014,⁹³ then following the lifting of the ban (annulled on procedural grounds),⁹⁴ was banned again in March 2015.⁹⁵ Uber’s flagship ‘ridesharing’ service was hanging in the balance.

Finding allies in Brussels

This and similar experiences drove Uber to start its lobbying campaign in Brussels: “There is a growing need for policymakers to develop the appropriate regulatory regimes to allow new technology-enabled services to flourish,” the company wrote in a letter to Commissioner Bienkowska in January 2015. “In order to ensure a single European market for these new services, referred to as ‘sharing economy’ or ‘on-demand services’, only the European

Box 5

Another part of the puzzle: the safe haven of the e-Commerce Directive

Digital platform companies enjoy certain privileges that companies with a more physical presence don't. It is much easier to avert intrusive regulation when you are an internet-based company, often based in another country. A recruitment agency, for instance, is a physical place with a leadership in the locality where they operate, who can be held directly accountable or liable for their actions. Platforms can sell services from afar and arrange the delivery of a service from one person to the other with no one from the company setting foot in the country in question. That creates obstacles for the authorities to intervene and define the rules of the game, whether over social rights, consumer rights, or taxation. They can't barge in and do an inspection, and there will always be tricky questions about jurisdiction when a company is based elsewhere. This puts international cooperation at the heart of the regulation of platforms.

One might think that this should prove less complicated in the EU, as platforms typically have a base in an EU member state. Yet from the start, platforms were considered innovative businesses given elbow room not enjoyed by non-platform companies, for example the e-Commerce Directive from 2001.¹⁰⁰ This was adopted to ensure they "fully benefit from the internal market" and to remove "legal obstacles" which make the "exercise of the freedom of establishment and the freedom to provide services" less attractive. It was not so much an attempt to secure effective regulation as to provide certainty and simplicity for platforms. Consumers were to be able to take 'full advantage' of the "opportunities

afforded by electronic commerce... without consideration of borders".¹⁰¹

The **e-Commerce Directive** has two elements that have since caused intense debate, including in courtrooms in the EU, which together make for a safe haven from regulation:

1. **The country-of-origin principle:** (Art.3, No. 2) **"Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State."** Put plainly, member states cannot impose rules on platforms, unless they are rules within a very narrow 'coordinated field' (concerning, for example, the behaviour/liability of the direct services provider, not the platform).¹⁰² The basic message is that a whole range of measures, such as consumer rights, social rights, taxation, and authorisation of platforms are, broadly speaking, no-go zones for all member states other than the one where a platform is based. Indeed, the country-of-origin principle led to massive protests some years later when it was (unsuccessfully) proposed that it should apply to a wide range of services covered by the Services Directive. It is the country-of-origin principle in the e-Commerce Directive that gave Uber the confidence to roll-out their services in EU countries without asking for licences or authorization.
2. **No obligation to monitor:** (Art. 15) Platforms are covered by an exemption from an obligation to systematically monitor their

websites. This provision prevents authorities from imposing a 'general obligation' to keep track of what is going on on their websites/apps. Authorities can turn to them when they suspect a specific activity is illegal, but they cannot ask websites to keep track. This aspect of the e-Commerce Directive is what made Airbnb refuse to work with authorities when asked for data on hosts, in order, for example, to keep track of whether they were abiding by local rules. To ascertain whether the maximum number of days are being exceeded, municipalities need this information. But Airbnb has so far got away with refusing to take any responsibility.

This rule spills over to taxation as well. Regular companies based in a member state will typically be asked to report to tax authorities on their employees' income, but when it comes to a platform based in another member state, this cannot be taken for granted. In a recent precedent, Airbnb has agreed to rules in Denmark to report on hosts' income (while carefully avoiding an obligation to report on number of days rented out), but to achieve this the authorities felt compelled to offer an incentive: an increase in the maximum number of days from 60 to 70 per year. On top of this, Airbnb hosts are offered a tax bonus; signs of a company in an extraordinarily privileged position.¹⁰³ What's more, it was only a voluntary agreement, which Airbnb may be in a position to refuse.

A safe haven in cyberspace. While there are other directives that can help certain platforms

hold regulation at bay (including the **Services Directive**, when it is applicable), the **e-Commerce Directive** is in a category of its own. It offers platforms a safe haven from regulation that other companies, including companies providing similar services, cannot escape. It provides for loopholes to circumvent or outright reject rules intended to protect consumers and workers, to secure proper taxation, or to hold company's liable. The only condition for enjoying these privileges is that the platforms must be regarded as "information society services providers", as per the definition in the directive on "technical regulations and of rules on Information Society services". According to this directive, the service must be provided "at a distance", "by electronic means" and at the individual request of a recipient of services' (Art. 1).¹⁰⁴ In other words, the platform must be an intermediary to be covered by the e-Commerce Directive. With the advent of platforms such as Uber, Airbnb, MTurk, UpWork, and many others, this issue has been at the core of court proceedings (see Box 6 and chapter 4).

Commission has the position of leadership that is now urgently needed.”⁹⁶ In the following months the same message was conveyed to Commission Vice President Andrus Ansip and Commissioner for the Digital Single Market, Günther Oettinger. Of the three, Commissioner Bienkowska, and her directorate DG GROW, is most important for Uber. And in the next two and a half years, Uber had 14 meetings with DG GROW, Commissioner Bienkowska, or her cabinet.⁹⁷

At these meetings Uber complained of “outdated and fragmented” regulation in Europe. In its December 2015 contribution to a consultation on the digital single market, Uber explained its vision of the “right regulatory framework for innovative services”: that the application of EU law “should lead national courts and European institutions to challenge the restrictions imposed on services such as Uber that are bad for consumers and growth, as well as being at odds with the Digital Single Market”.⁹⁸ According to Uber’s then-Chief Executive, Travis Kalanick, the company by this point considered itself to be working closely with the Commission “to discuss a modern, common sense regulatory framework that benefits passengers, drivers and cities”.⁹⁹

The power of the complaints

In its efforts to defend its right to ignore national regulation Uber has repeatedly invoked the Services Directive, and in particular, the e-Commerce Directive (see Box 5). To do this, Uber pursued several lines of action. The first was to formally complain about the three member states in which Uber was already in trouble: Germany, France, and Spain. The little known procedure Uber used is actually a powerful tool for corporations to use in the single market. In making a complaint, a company can oblige the Commission to initiate an investi-

gation into the matter and open an informal debate with the member state in question. If the Commission deems the member state has not delivered satisfactory arguments, a formal ‘infringement procedure’ will begin, which can ultimately lead to a case at the European Court of Justice (ECJ). The Commission keeps details about ongoing investigations secret, so little is known about the fate of these complaints. Yet these complaints have subsequently been used by Uber on several occasions, including in May and October 2016, to prompt the Commission to act in the face of court cases at national level.¹⁰⁵ Uber kept the Commission informed on cases in France, Spain, Germany, and Belgium, all in the hope of sparking intervention in favour of single market rules, which, Uber believed, would be squarely in its favour. At the same time, Uber highlighted ‘good’ examples of national legislation, such as a new law in Lithuania designed to accommodate Uber.

Lobbying for the rules they want

Uber has also tried to directly influence the Commission to adopt and enforce the interpretation of EU law in ways that would most favour the company. In recent years there have been two opportunities to do just that: the Digital Single Market Strategy adopted in May 2015, and the Communication on the ‘collaborative economy’ released in June 2016. Of the two, the latter attracted the most attention from Uber. To Uber, it was all about one thing: making sure the Communication would help the company acquire the rights bestowed under the e-Commerce Directive once and for all (see Box 5). To that end, the crucial question was around the definition of an ‘information society services provider’. And to Uber’s satisfaction, the Communication

Box 6

ECJ rules Uber not an intermediary with privileges – a company with obligations

If a platform is a mere intermediary, it doesn't have to apply for authorization, it can ignore consumer rights, it can broadly speaking leave liability to its 'providers', and it doesn't have to cooperate much with authorities on information about their services, making it next-to-impossible to tax them properly or have them abide by labour laws. It is not, therefore, hard to understand why Uber has presented itself as a mere go-between since it landed in Europe in 2012. Its drivers – Uber believed – didn't really have to carry a license under European law, for a start.

For a while that strategy paid off – with a rapidly expanding business – but soon the company found itself challenged by national authorities. In a counter-move, Uber went to Brussels to seek help from the Commission. The Commission, Uber believed, was in a good position to impose an understanding of EU law that would halt the wave of what the company believed were 'attacks. These included bans on Uber in Germany and France.¹⁰⁸ Not to mention the 2016 landmark London court judgment that Uber drivers are not self-employed, that it is a "fiction" that Uber operates with 30,000 independent contractors, and that any organisation "resorting in its documentation to fictions, twisted language and even brand new terminology, merits, we think, a degree of scepticism".¹⁰⁹

But Uber has also had its wins in the courts. A ban in Frankfurt was overturned on appeal after just a few weeks, and a French court had supported Uber only months before the constitutional court made its final decision. What the company needed from Brussels was an authoritative voice that would support its claim to be 'an information society services provider' – one that would enjoy the privileges awarded to platforms under the e-Commerce Directive (see Box 5). The Commission did throw Uber a couple of life lines, for

instance, with its Communication on the 'collaborative economy', which seemed to bolster Uber's claim to be a mere intermediary. Yet ultimately it is the European Court of Justice that decides how EU law should be interpreted. In December 2017 the ECJ passed a judgment that would go in a very different direction.

In October 2014 Elite Taxi in Spain complained to a local court that Uber Systems were, in their opinion, operating in breach of Spanish law, as they had no license. The court noted that the link to an international platform complicated things, and decided to refer the matter to the ECJ. Just over three years later, the final verdict was out: the highest court in the EU established that Uber, as presented in this case, is a taxi company.¹¹⁰ An intervention in favour of Uber from the Commission was not enough. The argument of the court was twofold: first, the drivers could not accept rides if it weren't for the app and riders could not take them. Second, Uber "exercises decisive influence over the conditions under which that service is provided", citing the company policy for a maximum fare and the amount received by the company.¹¹¹ Uber exercises too much control over the transaction for it to be called an intermediary.

The judgment of the ECJ has opened a new political battle over platform regulation. On the one hand, we see other platforms fight as best as they know how to convince courts they are different to Uber – as with a pending case on Airbnb at the ECJ. On the other hand, Uber is in no way giving up. For instance it is still fighting hard to avoid labour law obligations towards its drivers. And only a few months after the ECJ's decision, a French court ruled that Uber is not an employer.¹¹² Yet there is no doubt that the ECJ blew a hole in Uber's strategy – and cast doubt on many platforms' privileges.



“The Government must close the loopholes that are currently allowing “bogus” self-employment practices, which are potentially creating an extra burden on the welfare state while simultaneously reducing the tax contributions that sustain it.”

– *The House of Common's Work and Pensions Committee (UK),*
April 2017.

(presented to them two weeks before its release) was satisfactory. In Uber's eyes, the broad criteria that was proposed identifying what kind of company would be considered a 'collaborative platform', and hence an 'information society services provider', let the company off the hook. Uber encouraged the Commission to enforce these principles as soon as the Communication was adopted.¹⁰⁶

European Court of Justice scuppers Uber's plans

In October 2015 a Spanish court had referred one of three cases involving Uber to the ECJ. A taxi drivers' association in Barcelona had sued Uber, and the case touched on issues relating to EU law that were unclear, including whether Uber was an 'information society services provider' or simply a taxi company. While evading a clear stance on the situation in Barcelona, the Commission presented all possible legal arguments in favour of Uber, including the Commission's own lax criteria for what constitutes an intermediary (an 'information society services provider' (FOOTNOTE)). The first sign things would not go Uber's way came with the Opinion of the Advocate General in May 2017. The definition that had been included in the Commission's Communication

on the collaborative economy, so favoured by Uber, had made little impression on the Advocate General who considered it could not be used “to mark out a sufficiently differentiated type of activity which would warrant specific legal treatment”.¹⁰⁷ In other words, Uber is not merely an intermediary and cannot expect to enjoy the privileges in EU law. For instance, as Uber is not so different from a normal taxi company, it can be called upon to seek a licence before it starts operating in a Member State. In December 2017 the court ruled that Uber cannot be considered an 'information society services provider', and so cannot enjoy the benefits of the e-Commerce Directive (see Box 5).

The new Working Conditions directive

Finally, another line of action for Uber has involved targeting a new piece of legislation that may extend rights to platform workers (also see Chapter 3). In December 2017 the Commission presented a proposal for a Directive on Transparent and Predictable Working Conditions, part of its follow-up to November 2017's European Pillar of Social Rights. The directive is intended to set **new rights for all workers**, and address the insufficient protection for workers in precarious jobs, “while limiting burdens on employers and maintaining labour market adaptability”.¹¹³ The most active lobby group on this dossier was BusinessEurope, of which Uber is a member (see below), but the company also tried its own hand at influencing the proposed law. In January 2018 Uber met with Employment Commissioner Marianne Thyssen's Head of Cabinet Inge Bernaerts (who is responsible for “Overall strategic coordination and policy formation and supervision”)¹¹⁴ to discuss the directive.¹¹⁵ In February 2018 Uber followed

this up by sending Thyssens' head of cabinet its freshly minted 'White Paper on Work and Social Protection in Europe'.¹¹⁶ This paper explains that Uber doesn't believe the solution to the challenges of "more people choosing to work independently" is to push "them into traditional modes of work", and that it wants to "engage in constructive discussions" on how Uber "can contribute to a better future of work for all". That's why, says Uber, it is sharing its "ideas for reforms", including "more portable systems of benefits, removing undue occupational licensing barriers, updating employment law, and investing in lifelong learning".¹¹⁷

Tone changes but message stays the same

The tone of Uber's White Paper is very constructive, even conciliatory, focusing on cooperation between stakeholders and emphasising how Uber is "eager to continue its engagement". This charm offensive is very different to the cavalier and combative approach the company had previously taken towards regulators¹¹⁸ which had created a significant backlash. But while their tone might have changed, their core demands haven't: "Uber is not an employer of the drivers and couriers who use our app", and it must not be regulated as one. The paper, clearly directed toward the Commission, came less than three months after the ECJ ruling with implications to the contrary (see Box 6), and describes Uber's drivers and couriers as "customers", "partners", and "independent workers". It berates much of Europe for "a perverse incentive in employment law which means that the more a platform does to protect those using its app to find clients and work, the more likely it is that they are seen as an employee of that app". This, says Uber, "puts at risk the very flexibility and independ-

ence" it provides and that "many drivers and couriers say is the reason they choose to partner with Uber". This roughly translates to: if you didn't threaten to class us as employers, then we'd do so much more for our workers! Not a very compelling argument. Yet Uber tells the Commission that employment law needs to "remove the disincentives for apps to provide more support" either by codifying "safe harbours" in law (so that even if Uber provides any benefits or training it cannot be classed as an employer), or to "more clearly" define the criteria for self-employment (in such a way that means Uber's drivers/couriers are by definition self-employed).

We'll keep the profits, you cover the costs

The other main message of Uber's White Paper is that although it refuses the responsibility (or cost) of being an employer, the company of course believes its drivers/couriers should have all the same rights as other workers... its just that they should come from publicly funded social protection. Uber argues that the problem is "independent workers" suffering from gaps in the social safety net (and nothing to do with Uber not providing them with labour rights); instead, says Uber, benefits and social protections "should accrue to individuals" and be portable across jobs (however many a person has). As a result "employment status itself would come to matter less, as all workers would be better able to work in the way that they choose, while still having access to protections". In other words, they want all the profits arising from their precarious workers' labour (who they call "customers"), but they want the state to bear the cost of protecting these workers. At the same time, they are eroding the tax base that funds social protection by not paying enough corporate tax,¹¹⁹ as

The Guardian has reported, by sheltering its international revenues via the Netherlands.¹²⁰ The UK's Commons Select Committee concluded that the "bogus" self-employment practices" of platform companies may be "creating an extra burden on the welfare state while simultaneously reducing the tax contributions that sustain it".¹²¹

Uber, the disruptor, apparently wants to disrupt the social contract that if you make money from people's labour, you must provide them certain rights and protections, as well as pay a share into the public purse as tax. Thus it explains to the Commission with respect to "business economics and allocation of responsibility", that there will ultimately "need to be a balance between individuals, platforms, and government itself". A balance which, to the cynical eye, leans too close to 'we keep all the profits, governments/individuals bear all of the costs'. Uber even goes so far as to demand "incentives for companies to pursue product solutions and partnerships to address the more immediate areas of need in relation to worker sickness or retirement"!

The portability of benefits is something that Uber has also lobbied for in the US context (ie that wage insurance, health insurance, disability and injuries insurance etc should not be

tied to specific employers).¹²² However, without prejudice to the need for reform of social security systems in Europe, and as pointed out by Karatzogianni et al, whilst the portability of benefits might improve some conditions for workers in digital labour markets, "they are blatantly not sufficient". It would not change the fundamental problems outlined by Karatzogianni et al: "earnings are at times too low in the absence of any minimum wage rules, the flow of work is unstable and no employment benefits exist, there are clear information and power asymmetries, no protection against privacy violations, and various forms of information- or reputation-based ethnic and gender discriminatory mechanisms occur unregulated".¹²³ It should be noted that in March 2018, the Commission issued a proposal for a Council recommendation on access to social protection for workers and the self-employed,¹²⁴ inspired by this idea of portability. The proposal was welcomed by the European Trade Union Confederation (ETUC) who rightly recognised that "social protection is a universal human right".¹²⁵ The right to social protection, however, does not nullify (and should not be used as a way to circumnavigate) the obligation of employers to ensure worker's labour rights are met (which is, of course, why Uber does not want to be seen as an employer).



Box 7

Commission flouts transparency rules for Deliveroo

Deliveroo, the app-based bicycle food delivery service set up by an investment banker in 2013 and now valued at \$2billion,¹²⁶ has been beleaguered by protests and court cases for denying its 'self-employed' riders rights like minimum wage and paid holiday.¹²⁷ Despite having a Brussels office Deliveroo declares spending of less than €9,999 on EU lobbying for the period April 2017 to March 2018.¹²⁸ Yet the company is also listed as a 2017 client of lobby consultancy EUROS / AGENCY for €50,000 to €99,999. It is also listed as a client of another consultancy, UTOPIA, for both 2016 and 2017, suggesting that it was involved in EU lobbying for at least two years before it bothered joining the EU lobby register.¹²⁹ The company only joined the register (without which, Commission rules say, lobbyists can't meet top-level Commission officials)¹³⁰ in April 2018.

One week later it met with DG Employment to discuss the working conditions directive.¹³¹ Documents released through freedom of information rules reveal that this lobby meeting followed earlier correspondence with DG EMPL in December 2017.¹³² According to the Commission's declaration of meetings, Deliveroo met cabinet members of Commissioner Thyssen on 27 October 2017, on the subject of the 'Written statement Directive and Social Protection'.¹³³ Despite the rule that Commissioners' cabinet members cannot meet lobbyists who are not in the Transparency Register, this meeting took place nearly six months before Deliveroo signed up. This meeting is not listed in Deliveroo's entry in the Transparency Register (which generates a list of each entrant's high-level Commission meetings).

So what was it that Deliveroo had to say, and the Commissioner's cabinet wanted to hear, that was important enough to break transparency rules over? Based on the "extensive material" Deliveroo sent DG EMPL in December 2017, their message was familiar enough: that "Deliveroo is a platform, not a traditional employer", and that its riders are "their own boss". It would be "inappropriate" to broaden the scope of the Written Statement Directive to include **"all types of workers"**, including independent / self-employed working with online platforms", which is a "very different" relationship that of employer-employee. Interestingly, Deliveroo refers to courts in the UK and France affirming that "people working with platforms/on-demand businesses such as Deliveroo do not fall under the definition of traditional 'workers' or employees, as they are self-employed", yet fails to mention the ECJ Uber ruling that had come out just days before (see Box 6).

Deliveroo also lists the "detrimental impact" on their riders, restaurant partners, and customers in the EU should the Commission defy them, arguing instead that offering more security to its riders must be done "in a way that is compatible with the most popular feature of this new, on-demand way of working, which is flexibility and freedom". In a response to a Commission consultation around the same time, Deliveroo elaborated on what it means by this: "Should EU policy aim to enable platform workers to have access to more social protections, Deliveroo believes that voluntary schemes accompanied with better information and reduced administrative burden could work well".¹³⁴ It is, Deliveroo added, vital that the "on-demand economy is not curtailed"... by, for example, giving platform workers the rights of workers.

Chapter 3

BusinessEurope: Never far from the driving seat

The Social Pillar is an important project for the Commission. After waves of protests against the EU's austerity policies in the wake of the eurocrisis, the Social Pillar is an attempt to regain lost legitimacy for the EU institutions. The aspect of this with the potential to touch platform workers' rights is the Directive on Transparent and Predictable Working Conditions. The explicit intention of this directive, according to the Commission, is to expand workers' rights – and not least to expand the group of workers covered by the already existing Written Statement Directive: "The proposal has a broad personal scope of application. It aims to ensure that these rights cover all workers in all forms of work, including those in the most flexible non-standard and new forms of work such as zero-hour contracts, casual work, domestic work, voucher-based work or platform work."¹³⁵

BusinessEurope opposes EU definition of 'worker'

For platform workers, the crucial question has been whether they would be in or out of the

scope of the Directive on Transparent and Predictable Working Conditions, and whether they would come to be in a better position to claim their rights with the platforms. At first, things looked potentially promising. The Commission had opted for the easy solution, to insert the most commonly used definition of the ECJ on what is an 'employee' or 'worker'. This has the downside that a worker has to perform his or her work 'under the direction' of an employer which fits poorly with platforms that perform mainly, though not exclusively, an intermediary function. It may not, for instance, fit a driver for Uber and it may not fit a crowd worker doing data work via UpWork. Does it even fit a courier doing deliveries for Deliveroo?

The Commission had to provide an answer, and it came in the form of a suggestion in a recital to update "the personal scope" of the Directive, ie. the kind of working people covered.¹³⁶ The Commission produced a proposal that would not cover all platform workers, but with an allusion to a course of action that could fix the problem at a later stage. This did not go down well with the powerful association of employers BusinessEurope. At a meeting of BusinessEurope's Committee on Social Affairs

Frequent visitors

Lobby meetings with Commissioners, their Cabinets or with Director-Generals

DigitalEurope:

119

meetings

(Dec 2014-Feb. 2019)

BusinessEurope:

204

meetings

(Dec 2014-July 2019)

Uber:

51

meetings

(Dec 2014-Sept 2018)

AirBnB:

14

meetings

(Dec 2014-Sept 2018)

Source: The Transparency Register

in February 2018, the participants decided unanimously to go against awarding new rights to workers, and not least to oppose “the harmonisation of the definition of worker”.¹³⁷ While the big business group rarely invokes the subsidiarity principle cases such as this are clearly an exception. BusinessEurope pursued this agenda with a clear priority: to remove the risk that new groups of workers would be covered by EU social legislation.¹³⁸ But the employers’ organisation would not win this battle via its outspoken mouthpiece in Brussels. It would win it at the national level.

BusinessEurope’s national member associations turn the tide

In the early months of 2018, BusinessEurope’s national member organisations would raise the issue with their governments, aiming to get them on board with the idea that the definition of worker should be a national matter – while respecting the jurisprudence of the ECJ. This strategy was successful. In the Netherlands, VNO-NCW won over the Dutch Government,¹³⁹ and in France – while the Government supported the Directive as such – it was made explicit that some issues around the definition of ‘work-

er’ ought to be adjusted. In Sweden, thanks to particularities of the Nordic model of collective bargaining, employers’ organisation Svenskt Näringsliv and trade union Swedish LO joined forces to reject the proposal, citing the need to reserve decisions on working conditions for collective bargaining.¹⁴⁰ Though Denmark’s collective bargaining system resembles Sweden’s, trade union Danish LO went a different way and recommended the Commission’s proposal,¹⁴¹ but to no avail: the Government went along with the employers’ organisation demands.¹⁴² Curiously, though in the midst of a dramatic and sometimes chaotic political tug-of-war over Brexit, the UK was among the most outspoken critics of the Commission’s attempt to define ‘worker’, and to open the door to a future expansion of the concept so as to include platform workers. This may, in no small part, be seen as the result of the UK Government “engaging with a broad range of stakeholders on this file, which includes businesses that have large numbers of non-employee workers”.¹⁴³

But perhaps the most outspoken and aggressive of all BusinessEurope’s national members was the German BDA, which called the Commission’s proposal ‘explosive’, claimed it was in violation of EU law and that it should be immediately withdrawn by the Commission. “If the Commission’s proposal is implemented, it means that if someone buys a service from

someone, he or she suddenly unexpectedly finds himself as the employer of a service provider, who in turn automatically mutates into a worker by providing the service,” claimed the BDA.¹⁴⁴ The German Federal Council, the Bundesrat, soon followed in the BDA’s footsteps, warning that the Commission’s proposal, in its opinion, went against the subsidiarity principle.¹⁴⁵ Inside the European Council, meanwhile, the German Government – along with many others – started to argue against even including a definition of ‘worker’ or ‘employer’. This issue came to take centre stage in the Council working group, and it soon became clear that a majority wanted any definition of ‘worker’ removed.

Meanwhile in the European Parliament MEPs had opted for a version of the proposal that would include platform workers – a step up from the Commission’s less clear approach. But once the three institutions started negotiating, the Council gave no ground on the question of definition of ‘worker’. In the end, all reference to a definition has been deleted, and left up to member states.

BusinessEurope chimes with Uber’s bell

Uber is a member of Business Europe’s Corporate Advisory and Support Group (ASGroup).¹⁴⁶ According to BusinessEurope this gives “influence on BusinessEurope positions which strongly effects EU policy-making” (through membership in all its working groups), as well as high-level contacts with the EU institutions. BusinessEurope is not only the most influential big business lobby group in Brussels, it is also an employers’ organisation, with an official role in EU social dialogue between employers’ and workers’ organisations. This makes it a particularly vivid irony that Uber, despite fighting tooth

and claw not be considered as an employer, even referring to its workers as ‘customers’ in the White Paper it sent to the Commission, has joined the EU’s most prominent employers’ organisation to help promote its interests at EU level, including around the working conditions directive. An access to documents request to DG Employment, the Commission directorate responsible for this directive, confirmed that BusinessEurope was by far the most active lobby on the dossier. Between January 2017 and mid-December 2018, BusinessEurope had eight lobby meetings alone with DG EMPL, plus another three with other groups, concerning the directive – far outnumbering any other actor.¹⁴⁷

In both meetings and correspondence, BusinessEurope’s messages were that any Commission proposal must remove red tape and lower costs for business, and that introducing minimum rights would go beyond this scope (and nothing should “place unnecessary administrative burdens on companies”).¹⁴⁸ As described above, BusinessEurope also argued against the directive widening the scope to include platform workers (via the development of an EU definition of worker), arguing that the term ‘platform worker’ is unclear and misleading, since people “providing services with the help of online platforms” are often self-employed. So, argued the employer’s organisation, national criteria must be used to determine individuals’ employee/ self-employed status, on a case-by-case basis, as any reference to ‘platform workers’ in the directive “would risk reclassifying genuinely self-employed as employees”. Instead, and with a message that clearly chimes with Uber’s, BusinessEurope said the focus should be on “well-functioning employment services, safety nets and well-performing labour markets, rather than ‘job security’”. Although many of BusinessEurope and Uber’s wishes were granted by member states in the Council, it is notable that Commis-

BOX 8

DigitalEurope – a helping hand from the tech industry

When it comes to lobbying on the EU approach to the digital sphere, there is no way around DigitalEurope. DigitalEurope is a business lobbying coalition for high tech industry, including giant US players such as Amazon, Google, Apple, Facebook and Microsoft, flanked by other key global players like LG, Sony, and Mitsubishi, the main European companies, including Nokia, Philips, and Siemens, and finally 40 trade associations from across Europe. DigitalEurope regards itself an important partner of the institutions: “We connect major corporate players to high-level policy-makers, thought leaders and legislators across the EU. With our network of national trade associations, we are a bridge between Brussels and all European capitals,” the association states on its website. “DIGITAL-EUROPE is recognised as a strong partner and a collaborative interlocutor to the European institutions”.

In four and a half years from December 2014 till June 2019, the association had 119 meetings – about two meetings per month – with the Commission or its cabinets, an indication of a lobby heavyweight with clout.

For DigitalEurope the EU strategy that relates most directly to its interests is the Digital Single Market strategy, and that creates an overlap between the gig-economy services companies and the tech industry. The services platforms can enjoy the unbridled support for its positions from Digital Europe. For instance on the e-Commerce Directive, DigitalEurope believes: “intermediaries should be protected for liability from third party content”. In other words, what hosts may be responsible for, should be of little concern to the likes of Airbnb.

sioner Thyssen, at least, defended DG EMPL’s proposal against many of BusinessEurope’s complaints.¹⁴⁹

It is not only the working conditions directive, however, that has seen BusinessEurope acting in the interests of gig economy platforms like Uber. In response to a January 2017 European Parliament resolution calling for better protection of digital platform workers,¹⁵⁰ Markus Beyrer, BusinessEurope’s Director General, hit out at the Parliament, asserting that Europe’s “persistent social problems” are due “to a lack of global competitiveness”, and that tightening “labor and social security laws would have the opposite effect”.¹⁵¹ Not that this, of course, can

all be put down to Uber’s membership of the group. Large corporate platform companies share a general interest (in as few regulatory restraints as possible to interfere with their profit-making) with many of BusinessEurope’s other ASGroup members (which include Exxon-Mobil, Phillip Morris, Volkswagen, and Bayer). The interests of other big platform economy companies are, however, also represented in BusinessEurope through **the Asociación Española de la Economía Digital (Adigital)**, whose members include Uber, Airbnb, Deliveroo, Amazon, HomeAway, etc¹⁵²) and whose Director General José Luis Zimmermann is Vice Chair of BusinessEurope’s Internal Market Committee.¹⁵³ (See Box 9.)

Box 9

Adigital: BusinessEurope's Spanish gig-economy association

José Luis Zimmermann is an example of a national level industry representative playing a role in BusinessEurope to promote the interests of gig economy companies. He chairs Spanish Asociación Digital de España, or Adigital, whose members includes major Spanish players such as the big bank BBVA and retail chain El Corte Inglés, as well as a plethora of platforms – Airbnb, Deliveroo, Facebook, Glovo, Google, HomeAway, Uber, and many more.¹⁵⁴ Adigital spent up to € 200,000 lobbying the EU in 2016, and met with the cabinet of Digital Economy and Society Commissioner, Mariya Gabriel to discuss the digital single market in October 2018.¹⁵⁵

Zimmermann – the Director of a company, Confianza Online, that offers a ‘trust mark’ to online businesses as a display of “ethical commitment to good internet and e-commerce practices”¹⁵⁶ – is a passionate defender of gig economy firms, including two of its giants, Uber and Airbnb. Zimmermann has come to both companies defence when things were looking difficult for them in Spain. In the case of Uber, for instance, he accused left wing party Podemos of having specific contacts in the taxi business.¹⁵⁷ As for Airbnb, he spearheaded a campaign in early 2018 against the cities that had adopted rules to restrict the expansion of Airbnb-style letting. At the behest of Adigital members such as Airbnb, HomeAway, and Rentalia, he urged Spain’s national commission on competition (CNMC) to intervene to stop what he perceived as violations of EU law.¹⁵⁸ He was successful: in



August 2018, the CNMC issued a report that was highly critical of Madrid, Barcelona, and other cities’ measures.¹⁵⁹

Zimmermann also serves as spokesperson for Sharing España, a lobby group for platforms, including Airbnb, Uber, Deliveroo, and StockCrowd.¹⁶⁰ (Other EU countries have similar national lobby groups, such as Sharing Economy Ireland, Sharing Economy UK, and Sharing Economy Denmark, with significant cross-over in membership¹⁶¹). In Brussels Zimmermann is an active player inside BusinessEurope, where he serves as Vice Chair of the important Internal Market Committee, which has responsibility for coordinating the activities of its ‘Digital economy task force’.¹⁶² Adigital also attended the Commission’s 2018 ‘Collaborative Economy: Opportunities, Challenges, Policies’ conference.¹⁶³

Chapter 4

Artful lobbying and 'grassroots' chorus boost short-term rental platforms

Since Corporate Europe Observatory published its 'UnFairbnb' report in May 2018, Airbnb's declared lobby spending has gone up by half.¹⁶⁴ From just €100,000- €199,000 in 2015, in 2018 Airbnb declares spending of between €600,000 to €699,999 on EU lobbying. But this is still small fry for a company valued at over €27 billion¹⁶⁵ and when compared to the huge lobby budgets of major players in industries like finance and pharmaceuticals.

So just how influential can companies like Airbnb and competitor HomeAway really be? Taking a closer look at the tactics and strategies used by these platforms reveals the methods they use to help them punch above their weight in terms of influence in Brussels in order to stay as free from regulation as possible. From the perspective of platform lobbyists

that does not mean the EU should do nothing. It means the EU institutions should help the platforms prevent national governments from taking any steps that would inhibit the operations of the platforms or put any burden on them.

UnFairbnb: Lobbying the EU to undermine cities' ability to regulate

Corporate Europe Observatory's 2018 report 'UnFairbnb' examined how online rental platforms turned to EU institutions and laws to try to defeat cities' affordable housing measures.¹⁶⁶ Airbnb entered Brussels' lobbying

scene in early 2015 with a clear agenda. Across Europe, cities began to respond to a sharp increase in renting-out to tourists via the platform, which had raised two problems. The influx of tourist accommodation into particular neighbourhoods was altering the local environment and culture, whilst the availability of affordable housing for locals was coming under major strain as landlords turned to a more profitable business than long term rentals. Feeling under pressure at the local level, Airbnb turned to Brussels for allies. It found one in the Commission as Airbnb and other tourist-rental platforms became regular guests of Commissioners and high-ranking officials.

In its 2015 strategy for the Digital Single Market the Commission had announced that “the sharing economy offers opportunities for increased efficiency, growth, and jobs, through improved consumer choice, but also potentially raises new regulatory questions”. Airbnb wanted its own answers to these regulatory questions to be heard, so the company started building alliances. The tourist rental platforms joined forces in the previously insignificant European Holiday Home Association (EHHA) and developed a two-pronged strategy. One, to ensure the Commission would adopt and consolidate an interpretation of existing EU legislation that favoured their interests; they saw no interest in promoting new rules, so long as the old ones were understood in a particular way. Two, to use the Commission to attack member states over alleged breaches of existing EU law, if necessary by opening a case against them at the European Court of Justice (ECJ).

Airbnb and other groups were broadly satisfied with the Commission’s first important move. In its communication on the ‘collaborative economy’, the Commission spelled out its interpretation of the two most relevant exist-

ing EU laws, the e-Commerce Directive from 2000 (see Box 5) and the Services Directive from 2006. The e-Commerce Directive stipulates that ‘information society services providers’ need no authorization, that in general only regulation in their country of origin can be applied, and that platforms cannot be asked to systematically monitor their websites in search of illegal activity. In other words, obligations to work with authorities to police listings that violate local rules are very limited. The Services Directive, which covers ‘accommodation’, makes it difficult to impose ‘quantitative restrictions’, such as limits to the number of days landlords can rent out to tourists, or bans or caps in particular areas of a city.

The Commission’s application of these two directives to the ‘collaborative economy’ to a large extent mirrored the wishes of the tourist rental platforms, and following the communication’s release in June 2016, the platforms did not hesitate. In September 2016 the EHHA submitted four formal complaints against Spain, Germany, Belgium, and France, over what it considered to be excessive regulation in Barcelona, Berlin, Brussels, and Paris. The Commission accepted the complaints and initiated an informal dialogue with each country in order to assess whether an ‘infringement procedure’ was required to bring local rules into line with the Commission’s understanding of EU law. The specifics of the subsequent talks remain secret, but there have been signs in Germany, Spain, and Belgium that governments have been under pressure from the Commission. And one case has been taken to the next stage: in January 2019, the Commission initiated a procedure against Belgium that could ultimately end up in the ECJ.¹⁶⁷

A charter for success

In February 2017 came the Commission's next initiative: a series of workshops in Brussels, with the participation of cities, governments, industry, and consumers in order to establish discussion between industry and member states on 'best practices'. To the satisfaction of the platform lobbyists, however, they soon turned into another exercise over the interpretation of existing EU law, with Commission representatives repeatedly making statements about what they perceived as the maximum level of regulation. Despite this, 2018 brought a new wave of regulation adopted at city-level. In Frankfurt, Palma de Mallorca, Vienna, and many other cities, further restrictions were imposed on the short-term rental business. Both Airbnb and the EHHA urged the Commission to go public with 'the Charter', a document outlining the outcome of the 2017 workshops, written by the Commission. EHHA and the European Technology & Travel Services Association (ETTSA) wrote to the Commission urging them to "swiftly publish the Charter" in order to ensure "a certain regulatory consistency across the EU in compliance with the European rules, the Services and the e-Commerce Directives", essential for the "integrity of the Single Market".¹⁶⁸

When the 'Charter' was launched at the Commission's high-level conference on the 'collaborative economy' in October 2018, it was immediately clear why the platform lobbyists had been impatient to have it published. It goes into greater detail around the Commission's caution against use of 'quantitative restrictions', eg. a maximum number of host permits or maximum number of apartments in a city or particular neighbourhoods, "should constitute a measure of last resort and be used only when other measures, such as setting a maximum for the number of nights" has failed to address the shortage in availability and af-

fordability of local housing. The charter is not a formal document from the Commission, rather an informal agreement between industry and representatives of member states. Interestingly, the member states in question do not include some of those with whom Airbnb has had the most problems, such as Germany and France. The Charter increased pressure on cities like Barcelona, which is pursuing a policy of capping the number of authorisations. With respect to the e-Commerce Directive, the 'Charter' more explicitly stresses, in a manner not seen in the 2016 Communication, that platforms are "subject only to the rules and regulations of the Member State in which they are established", including consumer legislation.

In other words, years of working with the Commission to consolidate an interpretation of existing EU law that plays into their hands has been broadly successful. But for the platforms there is still work to do on two fronts.

The first front is the European Court of Justice. The biggest guarantee for the platforms is not the support of the Commission, but the approval of the ECJ. Specifically, the key question now is whether Airbnb and similar platforms can be considered 'information society services providers' (ie mere intermediaries), or if they are simply companies that have a very direct influence on the transactions they earn their money on. The question about whether authorities can demand a licence from the companies, and if authorities can ask the platforms to put their data on its transactions at the disposal of authorities, hinges on that question. The ECJ's December 2017 ruling on Uber sent shivers down the spines of the platform industry in the EU (see Box 6). Uber's exclusion from the special privileges bestowed by the e-Commerce Directive raised the question of whether Airbnb might suffer the same fate, or, if the ECJ might settle the question in

the company's favour, giving it the upper hand in future court cases.

It was in June 2018 that a local court referred this question to the ECJ. Ahtop, an association of French hotels had complained that Airbnb did not abide by the Hogue Law, which requires an authorization, a financial guarantee, and liability insurance from real estate brokers. In court Airbnb argued it was not covered by the law due to the protection of the e-Commerce Directive. Much is at stake for Airbnb in Case 390/18 and as on other occasions, the company has turned to the Commission for help. At a meeting in September 2018, Airbnb and Flint Global, a consultancy working for the firm, discussed the case with DG GROW, presenting its opinion presumably in the hope the Commission would come to its defence. According to sources in DG GROW, this is exactly what the Commission will do. During the proceedings, the court will hear the Commission argue that Airbnb is not like Uber, and should be considered a different case.

The first signs from the court are already looking favourable to Airbnb. In April 2019 the ECJ's Advocate General sided with Airbnb. According to his opinion, the operations of Airbnb "constitutes an information society service". It follows that obligations that are imposed on regular companies in the field, including hotels, cannot be imposed on Airbnb. The safe haven provided by the e-Commerce Directive seems – for the moment – to be working.¹⁶⁹

The second front is the leeway cities have to impose limits to secure access to affordable housing. This question is about how the Services Directives ban on 'quantitative limits' is understood. So far, the Commission has argued that 'quantitative limits' should only be the last resort, and that eg adopting a maximum number of days per year is preferable to a cap on the number of houses or apartments

that can be used for renting out to tourists. But it has remained unclear where the legal limits are. While the Commission has tried to accommodate the platforms on this point as well, the main players attack any kind of limit – be it on a maximum number of houses or a maximum number of days - in big cities and the EHHA has been asking for legal clarification on this point for years. Now the moment of clarity could come. In the conclusions of a Council meeting the Commission is encouraged "to provide more clarity regarding the rules applicable to new business models, including with respect to short-term accommodation rental services in the EU",¹⁷⁰ a decision welcomed by the EHHA.¹⁷¹

The two separate developments mean that the battle over regulation of short-term rental accommodation platforms are about to reach a climax. And the first signs are not promising for those who struggle for the right to affordable housing.

Cashing in on contacts: revolving door lobbyists

One of the ways that short term rental platforms like Airbnb and **Homeaway** have amplified their influence in Brussels is by recruiting their lobbyists straight through the revolving door from the EU institutions. **Expedia**, owner of Airbnb's main competitor Homeaway, declares spending up to half a million euros on EU lobbying in 2017,¹⁷² but what is really striking from its Transparency Register entry is the person listed as in charge of EU relations, Jean-Philippe Monod de Froideville. This is the former personal adviser to Competition Commissioner Neelie Kroes, now Expedia's Vice President of Government Affairs.¹⁷³ When Monod de Froideville left his role with Commissioner Kroes (who would herself later go on to

become an advisor to Uber – see Chapter 2) in 2009, he set up his own lobby and PR consultancy, then joined European Affairs firm Interel (which welcomed his “strong network within the EU institutions” as “a tremendous asset to our clients”). Interel’s recurring clients include Expedia, who has paid the lobby consultancy an annual €50,000-€99,999 since 2011, according to LobbyFacts.¹⁷⁴ Monod de Froidville started working as Expedia’s head EU lobbyist in March 2012.¹⁷⁵ He is also Treasurer for the **European Technology and Travel Services Association (ET TSA)**, which Expedia is a member of, through which he is accredited to the European Parliament.¹⁷⁶ Yet Expedia’s own lobby register entry shows only one parliamentary accredited lobbyist – herself a former employee of the European Commission’s digital directorate DG CONNECT.¹⁷⁷ Airbnb’s parliamentary accredited lobbyist, meanwhile, used to be a political advisor in the European Parliament.¹⁷⁸ It would seem that for the big short-term rental platforms, the first place to invest your money dedicated to Brussels lobbying is in hiring former insiders.

Airbnb and the art of ‘grassroots lobbying’

Another technique deployed by Airbnb to great success has been so-called ‘grassroots lobbying’: encouraging its users to lobby policy-makers on the company’s behalf (see Box 11). In November 2018 two of Airbnb’s lobbyists spoke at the launch event of the European branch of the **Grassroots Professional Network**. GPN Europe is “an industry organization, dedicated to sharing knowledge in the intersections between Grassroots organizing, Public Affairs and Technology in Europe.”¹⁷⁹ The event – a networking lunch hosted by lobby firm **Fleishman Hillard** in their Square de Meeûs

office – was entitled ‘Grassroots Lobbying: How to do it in Europe’.¹⁸⁰

The speakers, Airbnb EU Policy Manager, Georgina Browes, and Airbnb Head of Public Policy for Spain & Portugal, Sergio Vinay, were described by Fleishman Hillard as “absolute trailblazers” in “a uniquely European brand of grassroots lobbying”.¹⁸¹ According to Airbnb, this is about more than just asking “your user base” to sign a petition “when you have a regulatory problem”, but about building “an actual community” on and offline. In a promo video about the event, a Fleishman Hillard spokesperson explained Airbnb is an example of a company putting in the work to engage people, so that “they will work with you to reach your common objectives”. Vinay elaborated that “grassroots engagement” is a long term strategy, requiring real effort – including offline strategies like meet-ups with users, to ‘co-create’ demands and tactics – but that ultimately it can lead to “success in the policy field”.¹⁸² This should be seen in relation to Airbnb’s over 200 “Home Sharing Clubs” to “help hosts come together to advocate for fair home sharing laws in their communities”.¹⁸³ As Holburn & Raiha (2017) note, this company-sponsored club provides “an opportunity for Airbnb to educate hosts about regulatory and political challenges, and to facilitate meetings with politicians, letter-writing campaigns, media interviews, and public rallies”.¹⁸⁴

As further evidence of Airbnb’s status as ‘grassroots lobbying’ expert, Vinay is also “presenting a module” at a Summer School in July 2019 on ‘European Policy Communications in the Digital Era 2019’. Alongside speakers from FleishmanHillard and **Politico** (political editor Ryan Heath, who also happens to be Neelie Kroes’ former spokesperson¹⁸⁵ – see Chapter 2), Airbnb will teach an audience of “Advocacy or communications officers, policy researchers, analysts, other employees of think tanks or

Box 10

EU officials attending US tech trade fairs

The Consumer Technology Association (CTA) is not a Brussels lobby group.¹⁹¹ It is a US trade organisation representing tech companies including Airbnb, Uber, Lyft, Expedia, and Amazon.¹⁹² CTA says “innovative online platforms are threatened by overreaching mandates and outdated rules”, and aims to “educate policymakers to ensure the innovation economy is protected from laws and regulations which delay, restrict or ban the development of technologies”.¹⁹³ In the US it spent nearly five million US dollars “educating” policy-makers in Washington, and hired seven lobby firms to help it do so.¹⁹⁴

CTA waxes lyrical over how “platforms such as Airbnb, HomeAway, Lyft and Uber” are “making our lives easier” and enabling people to earn extra income, whilst decrying US state governments that have “enacted burdensome and unnecessary regulations on the sharing economy that are stifling innovation and limiting consumer choice”. CTA also runs e-petitions for citizens to object to local regulators putting short-term rental platforms “under attack”.¹⁹⁵ It is no surprise then, that CTA’s policy communications specialist sits on the advisory board of the Grassroots Professional Network,¹⁹⁶ which hosted Airbnb in Brussels to explain the art, and effectiveness, of ‘grassroots lobbying’.

CTA extends its ‘sharing economy’ criticisms to Europe; with its ‘International Innovation Scorecard’, CTA ranks countries according to, in their view, “whether they are stifling progress or fueling the fires of innovation and improving our lives”.¹⁹⁷ In other words, how welcoming they are to disruptive technologies, including

whether “ridesharing” and short-term rentals are free from “burdensome” regulations.¹⁹⁸ The EU was downgraded to a D for “ridesharing” in 2019 in response to “ridesharing” apps being “considered transportation companies” plus the “generally restrictive” policies of many of its members.¹⁹⁹ Various EU countries were given a C for short-term rentals, including Belgium, Spain, Sweden, and Ireland, marked down for reasons like requiring permission from housing associations, strict city-level rules, or for registration and insurance requirements.²⁰⁰

Despite this, the EU sees fit to have an official presence at this tech lobby group’s trade fairs in the US. For example the trade head of the EU Delegation to the US (a former DG Trade official and TTIP adviser) spoke on a panel entitled “Tech-xit: Is the EU too Tough on Tech?” at a CTA event in March 2019.²⁰¹ The panel focused on how “European regulators have targeted leading U.S. tech innovators”, and whether they are “too focused on promoting state-owned and/or subsidized legacy companies at the expense of market disruptors”.²⁰² The European Commission also had an “official booth” at CTA’s massive trade fair CES 2018.²⁰³ There is no doubt that the tech lobby – including so-called ‘sharing economy’ giants like Uber and Airbnb – is a powerful player on the global stage; trade fairs and events such as these run by CTA, and the official presence of the EU at them, demonstrates just how entrenched the narrative of ‘doing-what’s-best-for-tech’, which needs a ‘safe-haven from regulation’, is.

research institutes, politicians and political assistants” about designing “advocacy tactics that actively involve Airbnb host community in making the case for progressive home sharing rules.”¹⁸⁶ Of course, whether rules are seen as progressive or regressive can depend on whether you benefit or lose from them. Airbnb shareholders or commercial letters with multiple properties might see things differently to locals priced out from the rental market, neighbours fed up with noise, or tourists feeling safer thanks to compulsory fire safety checks. Yet Airbnb prefers to keep its message simple: in a January 2019 press release welcoming the European Commission’s investigation into Brussels’ home sharing rules, Airbnb proclaims the news “will be welcomed by hosts and small accommodation providers in Brussels, who have spoken out against excessive and burdensome rules in the region.”¹⁸⁷

Airbnb has been using this strategy of mobilising users to become ‘grassroots lobbyists’ all around the world.¹⁸⁸ Back in 2015 Airbnb’s (former) head of global public policy described its users’ contact with lawmakers as “incredibly crucial” to its regulatory successes; voters telling decision-makers they need Airbnb in order to pay the bills has a lot more impact than a company telling them what it wants.¹⁸⁹ But Veena Dubal, Associate Professor of Law at UC Hastings, has warned of the risks of an apparent “consumer movement that’s in opposition to consumer interests”, pushing governments to “give these companies carte blanche and essentially deregulate them... not thinking about long-term impacts or the traditional role of the consumers rights’ movement to hold companies to certain standards.”¹⁹⁰

Multiplying the messengers

Airbnb has hired various consultancies to assist in its lobbying efforts, including public

affairs firm **Political Intelligence** (which it paid €25,000 to €49,999 in 2016, and which in early 2015 helped introduce Airbnb to key figures in the Commission²⁰⁴), and **Flint Europe SPRL** (which it paid €100,000–€199,999 in 2018.²⁰⁵). Homeaway’s parent company Expedia has hired lobby firms **Interel** and **Communication Matters Kollmann & Partner Public Relations**.²⁰⁶ Homeaway – which is not currently in the Transparency Register itself²⁰⁷ – is listed as a client of **Inline Policy**.

A PR firm specialising in “regulation of the tech sector”, Inline’s sole clients for 2017 are Homeaway and Skyscanner, with Homeaway by far the biggest, paying the lobby firm €100,000 to €199,999.²⁰⁸ Inline had nine top level Commission meetings in 2015 and 2016, many of which appear directly related to Homeaway’s interests, covering subjects like the “High-growth” sharing economy, online platforms, and the short term rental industry.²⁰⁹ In November 2016, for example, Inline wrote to the cabinet of Commissioner Ansip on behalf of Homeaway, explaining that “Supportive regulatory frameworks are critical to HomeAway and the company is actively contributing to the various strands of EU activity that relate to online platforms, vacation rentals and the collaborative economy”.²¹⁰ Inline requested a meeting “to discuss the Commission’s collaborative economy guidelines” and to give HomeAway’s “perspective” on market access requirements, consumer protection and “appropriate distinctions between professional and non-professional provision of services”.

Inline markets itself as specialising in platform economy players; a case study on its website boasts of orchestrating a “change in UK law to legalise short-term letting in London without the need for planning permission” on behalf of luxury short-term rental platform **onfinestay**. It claims to have achieved this by developing the company’s “optimal policy framework”,

winning support of various MPs, then lobbying throughout “the passage of the legislation to ensure it was passed without amendments that would have undermined the benefits” to its client.²¹¹ Onefinestay has also been active lobbying at EU level, including meeting with Commissioner Ansip’s cabinet in 2016 to discuss consumers and online platforms in the digital single market.²¹² It also held a lobby meeting together with Inline, informing DG Grow, which was then preparing the collaborative economy communication, that it “would not want to see the Commission supporting regulatory approaches that limit properties rentals based on maximum number of days, or primary and secondary residences”, as it would not be “proportionate”.²¹³ This message was clearly reflected in the communication DG Grow was shortly to produce. Onefinestay and Inline highlighted to DG Grow the “various single market barriers the company is experiencing” and give its “insights” on the Commission’s upcoming “guidance”.

Inline also runs a paid service of news on the sharing economy covering “major regulatory, commercial and policy developments around the globe”, which it claims “industry leaders” Airbnb (and Uber) subscribe to.²¹⁴ (Its website

also features a recommendation from Deliveroo, which said the PR firm “provided astute strategic advice on political and regulatory challenges across all of our global markets”.)

A good example of how hiring lobby consultancies and PR firms like Inline – as well as being members of trade associations - can help create a lobbying echo chamber to spread your voice in Brussels policy circles is provided by the attendees of the European Commission’s Collaborative Economy conference in October 2018. HomeAway/Expedia was represented by, or affiliated with (as a member, sponsor or client) twelve participants, from eight different organisations, whilst Airbnb was represented by eight participants from five organisations.²¹⁵



Box 11

'Airbnb Citizen': from friendly PR face to links with lobby groups

Airbnb has a website called Airbnb Citizen which says it is a "a powerful network of hosts and guests acting together to create fair, responsible home sharing laws and bring the benefits of home sharing to neighborhoods and communities around the world". However this 'grassroots lobbying' tool appears to be a very slick piece of corporate PR. It features stories about Airbnb introducing a 'Living Wage Pledge', with a badge hosts can add to their listings to show they pay their cleaners a living wage – because Airbnb is about "empowering people" and "actively democratizing capitalism!"²¹⁶ It also includes stories of how Airbnb "fights mass tourism",²¹⁷ with an "Airbnb Office of Healthy Tourism";²¹⁸ as well as an "Airbnb Policy Tool Chest" as a "resource for governments to consider as they draft or amend rules for home sharing".²¹⁹ By showcasing these voluntary measures Airbnb Citizen is sending a message to regulators that they should keep their 'hands off' Airbnb's business model, since it already has every issue – labour rights, environmental issues, the problems of 'mass tourism' – covered.

Yet Airbnb's strategies to avoid regulation aren't always so friendly. From suing New York's Government over short-term rental regulation,²²⁰ to Airbnb – and Expedia – making financial donations to US libertarian 'property rights' think tanks that challenge local regulations limiting short-term rentals, Airbnb's tactics can be tough.²²¹ Asked if Airbnb has made donations to any think tanks or other groups active at the EU

policy level, Airbnb's Head of Public Policy EMEA, Patrick Robinson, told us "We've made no other donations or contributions to any other think tanks, policy organisations or consumer groups" than those organisations then listed in its lobby register entry (ie EHHA, EdIMA, and EUCoLab). Asked if he was aware that the **Center for Democracy & Technology (CDT)**, a public policy organisation listed in the lobby register names Airbnb as a financial supporter,²²² Robinson replied that CDT is probably acknowledging its global sources of funding, rather than EU-specific donors, adding that "We are members and supporters of a range of organisations in the US who have some representatives in Europe – including CDT – but I haven't funded them directly in the EU."

When asked for access to a list of US organisations Airbnb is a member or supporter of, Robinson told us he did not have one.²²³ However, it seems Airbnb is a sponsor or member of at least two other other advocacy organisations active on this topic in Brussels – Adigital (Spain) and Vacation Rental Management Association (US) – as well as US tech lobby CTA that runs trade fairs attended by the Commission (see Box 10). As to the funding of libertarian think tanks, let us hope that its US activities are not a warning of things to come.

Chapter 5

How has 'sharing' come to mean big business?

When it comes to the Commission's approach to what it calls the 'collaborative economy', the impact of traditional lobbying has been multiplied by the successful control of the terminology and narrative. The co-optation of terms such as the 'sharing' and 'collaborative' economy by large for-profit multinational corporations such as Uber and Airbnb as a lobbying strategy is a case in point.²²⁵ They have effectively used rhetoric and 'evidence' to frame the policy debate at EU level, to the extent that the business model of these and similar large corporations has become synonymous with what the EU sees as the sharing – or 'collaborative' – economy.

This tendency is clear in the Commission's June 2016 Communication on the Collaborative Economy, with policy-makers equating the 'collaborative economy' with the business model of large platform corporations, and so seeking to protect their interests. Thus the communication warns EU member states off "absolute bans and quantitative restrictions" of 'collaborative platforms', and against overly restrictive rules (including employment rules) that might hinder the 'innovative nature' of the

collaborative economy. And here's the rub: the Commission sets out three criteria for member states to determine if they can intervene/ an employment relationship exists:

- a) the price – does the platform set the price?
- b) terms and conditions – are the terms and conditions mandatory?
- c) ownership of key assets – does the platform own the assets?

Only if all three criteria are met can member states act. Wolfgang Kowalsky of the European Trade Union Confederation describes this as "poisoned 'guidance'", since "thanks to the third – totally superfluous – criterion of ownership (taxis, flats etc owned by platform or not), the Member States are redundant and can't intervene".²²⁶ Kowalsky adds that "one can only congratulate Uber and Airbnb for extremely efficient lobbying of the relevant Commission services", adding congratulations to "those quite influential civil servants in the Commission who are eager to give a helping hand to the platforms".²²⁷ There certainly was a lot of lobbying from big platforms and their lobby groups in the preparatory stages of this Communication.

It was in the cards from the start, that the collaborative economy communication, intended to provide legal guidance to member states on the regulation of platforms, would be a boost to the platform businesses. Not only was this an explicit intention of the Commission, but the preparatory process resembled a remarkably thorough search for detailed input from business groups (as opposed to affected sectors). In the months before its publication several high-level meetings took place between the Commission and, for example, the short-term rental accommodation platforms, spearheaded by Airbnb, as well as Uber and many more. In parallel the Digital Tourism Network, comprising both these big-name platforms, the hotel industry, and other business groups provided specific input on the sector.²²⁸ In addition a consultation on platform regulation and the ‘collaborative economy’²²⁹ provided space for 116 companies and 179 business associations to have an exchange with the Commission on the coverage of the e-Commerce Directive, and gave them the opportunity to push for further clarification on what constitutes a platform of the ‘intermediary’ kind, thus providing exemptions from liability.²³⁰ On top of this, both public authorities and businesses pointed to the “need to establish when collaborative economy providers are self-employed or employed by the platform”, and to identify mechanisms that ensure social security, tax, pensions, health, and safety. As the Commission rather vaguely sums up, respondents “who had a clear view on providers’ employment status viewed them as self-employed”, and heralded the benefits of flexible work.²³¹ This, as we have seen, has very much been the position of big gig economy platforms like Uber and Deliveroo.

Preparations were not limited to the public consultation and lobby meetings behind closed doors in Brussels, however. In November 2015 the first of eight Commission-organised workshops, in seven national capitals, on the

collaborative economy was held. The first four – in Stockholm, Berlin, Bucharest, and Barcelona – took place before the Communication was published. On all four occasions the audience was mainly platforms, both big and small: yet another channel of influence for platform companies, at the agenda-setting stage.²³²

EUCoLab: set up to shape the agenda

Major players Airbnb and Uber, together with a handful of smaller players, set up a lobby group with the specific aim of shaping the Commission’s agenda and influencing its approach; and once the ‘European Collaborative Economy Forum’ (EUCoLab) had successfully completed its mission, the lobby group was shut down.²³³ EUCoLab was set up in 2015 (the year before the Commission’s Communication) to (in its own words) provide “a neutral place for industry and policy makers to come together” to explore the “policy and regulatory landscape of the collaborative economy”. It was “funded by a collection of like minded companies”,²³⁴ most prominently Uber and Airbnb, but also firms like Seats2Meet, VentureLab, and SnappCar.²³⁵

Starting in October 2015, (nine months before the Commission published its communication), EUCoLab began to hold “Roundtables” bringing “senior policymakers” together with executives and senior experts “in the European collaborative economy industry”. In their first three months EUCoLab held three roundtables, heralded as “neutral spaces” for discussions on issues like “barriers” to participation, “options for policymakers to open up the collaborative economy”, and “how to ensure that platforms scale up” to create “a competitive business environment”.²³⁶ After one such EUCoLab roundtable in September 2016, Airbnb report-



"More and more opinion leaders are mistaking a few big corporate platforms for the collaborative economy.... As firms and governments have great influence on economic life, the angle they take on the sharing economy determines its future direction. That turns out to be ill-fated: the old economy is mapped onto, and smothers, the true potential of the collaborative economy."

– Socrates Schouten, *Waag Commons Lab* 224

ed that the Commission had "reconfirmed its support for the collaborative economy and removing barriers to its success".²³⁷

In February 2015 (four months before the Commission's communication), EUCoLab's Luc Delany coordinated an open letter to the Dutch Presidency of the European Council urging them to "support the Commission's efforts to seek and remove obstacles" in the services market and to "ensure that local and national laws do not unnecessarily limit the development of the collaborate economy to the detriment of Europeans".²³⁸ The letter was signed by Uber, Airbnb, and 45 other 'commercial' sharing platforms, and was also sent to the Commission's DG Grow and DG Connect.²³⁹

Delany described EUCoLab's role as including "educating" policymakers over "some common misconceptions" about the collaborative economy: "These guys are accused of being in the Wild West and flouting laws and regulations". At the same time, Delany criticised "some local laws" as "protectionist" and creating "unnatural barriers" to the market, whilst the collaborative economy offers a "solution for many people who are underworked, out of work". What's more, EUCoLab's Chief Executive described how he had seen EU policymakers becoming less "mistrusting" and more "welcoming and

optimistic" towards the sharing economy;²⁴⁰ which certainly seems to be backed up by Vice-President of the European Commission, Jyrki Katainen, who commented prior to attending a EUCoLab roundtable:

"The collaborative economy is becoming a driving force in our endeavour to create jobs and growth in Europe. To reap the benefits of this new global trend, the close cooperation with interested parties and EU platforms, including EUCoLab, are indispensable. In this respect, EUCoLab provides a very useful forum that helps both shaping and monitoring the policy and addressing key regulatory issues."²⁴¹

This is a crystal clear admission both that the Commission sees its job as co-writing regulation with the very industry it is supposed to be regulating, and that Uber and Airbnb's platform lobby group EUCoLab helped shape policy and regulation. This comment came just three months after the Commission had published its communication, and prior to a roundtable that would discuss it alongside EUCoLab's "own cross-industry survey" of 20 collaborative platforms, which found that "inhibitors to platform growth" included "outdated laws" and "complex and heavy administrative burdens".²⁴² EUCoLab's survey respondents, moreover, wanted the Commission to "clamp-down on members states taking action" using "disproportionate and anti-competitive" laws, and asked for a "reduction in red tape" and for "policymakers to refrain from imposing new consumer protection obligations on intermediaries"!²⁴³ They also took on the mantle of the "consumer perspective" to insist that consumers not be denied access to platforms' services "due to outdated and protectionist regulation". Not so "neutral" then....

In June 2017 EUCoLab followed up with a 'Best Practice Directory', a reference tool for "policymakers, academics, and businesses"

giving national or local examples of “regulatory best practice” as per the recommendations of the Commission’s communication from the year before.²⁴⁴ The fact that its activities wound down after 2017 give the impression that it was set up purely to influence the direction of the Commission’s collaborative economy communication, and the follow-up to it. Once EUCoLab had achieved its agenda-setting goals, this lobby tool for the big platform economy players, it seems, has been set aside.



Chapter 6

Crowdwork platform lobbying: a hidden chess player?

There are plenty of gig economy players lobbying in Brussels, from short-term rental platforms (like Airbnb, HomeAway, and onefinestay) to driving and delivery crowd-work platforms (like Uber, Deliveroo, Heetch, and Glovo²⁴⁵) that involve place-based, in-person work. But there is far less sign of the various other kinds of labour platforms which offer (often precarious and low paid) work.

For example, from purely digital on-demand labour, like microtasking platforms Clickworker and CrowdFlower, freelance platforms like Freelancer.com and Upwork, and contest-based platforms like 99designs and Jovoto, to other kinds of in-person gig work, like domestic work platforms TaskRabbit and Helpling.²⁴⁶ Nearly 30 crowdwork platforms of various types that we searched for in the EU's Transparency Register came up with no results (ie showing they are not registered, or listed as a client of a lobby firm).²⁴⁷ Nor does there appear to be any specific labour-platform

lobby organisation active in Brussels²⁴⁸ (though trade associations are emerging elsewhere, for example in Germany,²⁴⁹ or in other 'crowd economy' areas, such as crowdfunding).²⁵⁰

The absence is notable, with various possible explanations. Perhaps labour platforms such as these are yet to feel threatened by the EU's role in regulation that might effect them, or perhaps the industry is still too new and diffuse to have organised into specific labour platform trade associations. For some, the nature of their global digital workforce might make the EU's role seem superfluous. Others may feel secure due to the way they are "designed to obscure the reality behind their business model" with T&Cs that characterise them "as matchmakers and workers as independents entrepreneurs, beyond the reach of legal regulation" as Associate Professor of Law at Oxford University Jeremias Prassl puts it.²⁵¹ After all, beyond the challenges faced in courts by the likes of Uber and Airbnb, the status of

purely digital-crowdworkers is still relatively unchallenged. But it is also possible that some may have a lobbying presence that is harder to detect – the Transparency Register remains voluntary, after all – or that their interests are represented through other, less obvious, organisations or think tanks. In some cases, online labour platforms have been bought up by bigger corporations who represent their interests; Twago, for example, which claims to be Europe’s largest freelance marketplace, was bought by global HR giant Randstad in 2016.²⁵² Randstad does lobby in Brussels, spending up to €100,000 in 2018, with five full-time equivalent lobbyists, listing the Transparent and Predictable Working Conditions Directive, labour law and the future of work, among the EU policy areas it lobbies on.²⁵³ Randstad is also a member of BusinessEurope’s corporate advisory group (see Chapter 3).²⁵⁴

Amazon, its own Mechanical Turk?

The biggest possible exception to this lack of (declared) lobby presence of crowdwork platforms is also the largest player in the world of microtasking platforms: Amazon Mechanical Turk, a subsidiary of Amazon.com. Microtask platforms crowdsource information processing tasks that it is still quicker or more effective for a human to do than for a computer, such as photo tagging (often to create datasets used to train image recognition algorithms), product categorisation, filling in surveys, etc. Work that can be done by anyone, anywhere, as Red Pepper magazine put it, in a “frictionless world of online labour markets, free from regulation and the grips of national governments... causing workers across the globe to undersell themselves and undercut each other”.²⁵⁵ From the employers point of view, as the Chief Executive of micro-



“Before the internet it would be really difficult to find someone, sit them down for ten minutes and get them to work for you, and then fire them after those ten minutes... [Now] you can actually find them, pay them the tiny amount of money, and then get rid of them when you don’t need them anymore”

– Lucas Biewald, CEO for Crowdfunder

tasking platform Crowdfunder put it, “Before the internet it would be really difficult to find someone, sit them down for ten minutes and get them to work for you, and then fire them after those ten minutes... [Now] you can actually find them, pay them the tiny amount of money, and then get rid of them when you don’t need them anymore.”²⁵⁶ But from the workers’ point of view, such online labour platforms “treat labour as a commodity to be bought and sold”, which is contrary to the fundamental International Labour Organisation (ILO) principle that “labour is not a commodity” (1944).²⁵⁷

Amazon Mechanical Turk (MTurk or AMT) pioneered this kind of microtasking online labour platform. Named after an 18th-century chess-playing ‘automaton’ (that in reality concealed a human chess player), MTurk similarly conceals the humans behind the machines of today, performing tasks that computers are not (yet) suited to. It is an online platform that connects employers to workers who complete short ‘Human Intelligence Tasks (HITs)’ for a (often tiny) fee. When Amazon launched MTurk in 2005 Amazon’s Chief Executive Jeff Bezos proclaimed that “You’ve heard of software as a service, now you have human as a service”.²⁵⁸ But as Jeremias Prassl says, “put yourselves in the shoes of the worker whose labour has become a service, to be bought and traded

like any other commodity. Employers can dip into the crowd to meet their constantly changing staffing needs; workers are left without security or protection.”²⁵⁹ MTurk quickly gained notoriety as millions of workers around the world are “slowly being hidden from supply chains and access to basic rights like the minimum wage”.²⁶⁰ Michel Bauwens from the P2P Foundation believes MTurk may be the “most unregulated labor marketplace” ever to exist, with “an overabundance of labor, extreme competition among workers, monotonous and repetitive work, exceedingly low pay and a great deal of scamming”, a virtual world where “the disparities of power in employment relationships are magnified many times over”.²⁶¹ Experiences of the platform’s workers – ‘MTurkers’ – have been described as “akin to an online factory, characterized by menial and repetitive work” with wages averaging around two US dollars an hour, and workers plagued by clients refusing payment.²⁶²

With so many issues that the European policy level has a bearing on – from labour law to competition policy – it would be surprising if Amazon was not lobbying for MTurk’s interests in Brussels. Amazon’s entry in the Transparency Register is under the name Amazon Europe

Core SARL, which like Amazon Mechanical Turk (MTurk), is a subsidiary of Amazon.com Inc.²⁶³ In the lobby register Amazon refers to “any subsidiary or affiliate of the Company directly or indirectly controlled by the Amazon group” and the Company providing services including but not limited to “listing services for related party and third-party merchants; third-party business offerings; and administrative services”. Thus, it does not appear to exclude the scope of MTurk. Nonetheless, we wrote to the Amazon EU Public Policy office in Brussels asking for clarification regarding the remit of Amazon Europe Core SARL’s lobbying, and whether they represent the interests of MTurk towards the EU institutions, and if not, who does. Amazon declined to answer our questions.²⁶⁴

Amazon’s lobbying clout and tech lobby groups

Amazon is no small player in the Brussels lobbying field; according to its lobby register entry, it had an EU lobby spend approaching €2 million in 2018, has ten lobbyists with Parliamentary access passes (two of whom



came through the revolving door from the Parliament²⁶⁵), has been privileged to hold no less than 59 top level meetings with the Juncker Commission, as well as sitting in a Commission expert group (on VAT), and is a member of 12 lobby groups, trade associations and think tanks.²⁶⁶ Amazon also hired lobby consultancies FIPRA International and FTI Consulting in 2017, paying the latter a not insignificant €200,000 to €299,999;²⁶⁷ both of these consultancies sent representatives to the Commission's October 2018 Collaborative Economy conference.²⁶⁸

Amazon, like Uber and Expedia, is a member of the MEP-industry forum EIF (European Internet Forum).²⁶⁹ At an EIF breakfast debate about online platforms in the European Parliament in November 2018, Amazon's Director of EU Public Policy James Waterworth, spoke alongside Expedia's Jean-Philippe Monod de Froideville, as well as DG Connect's online platforms head of unit and S&D MEP Eva Kaili.²⁷⁰ The discussion – under Chatham House Rule – revolved around “self-regulation” and creating a “cohesive European digital platform approach” rather than different national approaches. Amazon's policy blog reveals another of its lobbying vehicles, the so-called ‘Amazon Academy’, which brings “Amazon leaders, business owners, and politicians” together in Brussels “to discuss innovation and entrepreneurship in Europe”.²⁷¹ In other words, it provides a melting pot for informal lobbying of MEPs, European Commission officials (and even Commissioners) as well as member state attaches, all gathering to discuss issues of commercial interest to Amazon.²⁷² Another group that Amazon shares membership with numerous other ‘sharing economy’ players, including Uber, Airbnb and Deliveroo, is Adigital. As we have seen, the latter has strong links with BusinessEurope including in the leadership of its Internal Market committee (see Chapter 3 and Box 9).

Amazon is also a member of the EU's online platforms trade association EDiMA, alongside the likes of Airbnb, Expedia, and OLX Group (which owns ‘gig economy’ platform brand Fixly).²⁷³ EDiMA has had 22 top-level meetings with the Juncker Commission, and declares spending €300,000 - €399,999 on EU lobbying from mid-2016 to mid-2017.²⁷⁴ Yet it is also listed as a 2017 client of lobby firms Instinctif Partners, Red Flag, and SJF Consulting.²⁷⁵ In total, it paid the three consultancies at least €500,000, and up to €800,000 in 2017, suggesting it is either spending more on lobbying than it declares, or that its spending increased dramatically in the second half of 2017. In a response to a 2015 Commission consultation on platform regulation and the collaborative economy, EDiMA said that the EU should be “vigorously challenging member states to remove burdensome and unjustified restrictions on European citizens’ ability to participate in peer-to-peer marketplaces”.²⁷⁶ EDiMA also argued that “collaborative platforms provide more efficient marketplaces for existing forms of self-employment”, and that in “most respects, the platforms powering the collaborative economy are identical to existing e-commerce and internet businesses” and so “existing laws applies relatively comfortably to the things that they do”. They urged the Services Directive to “be more rigorously policed by the EU, to ensure that unnecessary and disproportionate regulation – especially that which restricts cross-border provision of services – is challenged”.

Another potential avenue of influence for Amazon is the Information Technology and Innovation Foundation (ITIF). Although Amazon does not declare membership of ITIF in its own lobby register entry, Amazon's Director of Public Policy actually sits on ITIF's board (alongside the likes of Google, Apple, and Microsoft).²⁷⁷ Although it is a US-based think tank, ITIF is involved in EU lobbying, declaring

a lobby spend of up to €100,000, and has held nine top-level meetings with the Juncker Commission.²⁷⁸ ITIF promised to provide policy-makers lacking in specialised knowledge with the answers to how to “capitalize on new opportunities, overcome challenges, and avoid potential pitfalls” as “technological innovation transforms the global economy and society”. In practice, the tech industry-funded think tank²⁷⁹ berates Europe for being one of the “worst innovation killers”, nominating the continent for its 2015 “Luddite Award” over regulation of “sharing platforms” such as Uber.²⁸⁰ It has also claimed that “European regulators have generally taken a more hostile attitude toward Internet platforms, partially because the majority of dominant companies are American” and that critics’ allegations that “platforms are unfairly denying their workers the protection of labor laws by forcing them to operate as independent contractors rather than employees” are “not grounded in fact”.²⁸¹ ITIF has written reports explaining to EU policy-makers that “multisided Internet platforms such as eBay, Uber, TaskRabbit, and Airbnb” do “not need their own, special regulations to address potential competition, privacy, or employment concerns”.²⁸² They have also published articles in Euractiv telling Brussels ‘Don’t Regulate Internet Platforms, Embrace Them’, and that “regulators should be siding with consumers, not small businesses”;²⁸³ they also hosted an “expert panel discussion” in Brussels on the role and influence of multisided Internet market platforms such as Uber.²⁸⁴

A UK tech trade association called TechUK also lobbied DG Connect in the preparation phase of the collaborative economy communication. With messages about outdated regulation, and obstacles for platforms expanding across borders, such as different property and consumer laws, and describing how “authorities can stay away and create space for innovation to take place”, TechUK recommended that the

Commission should “strike the right balance” and “avoid Member States going in different directions”. Two Amazon subsidiaries are members of TechUK (as well as Expedia, and dozens of other tech and defence companies).²⁸⁵

TechUK is also a board member and national member association of DigitalEurope, Brussels’ major digital industry lobby group.²⁸⁶ Amazon – alongside the likes of Apple, Facebook, Google, and Microsoft – is a corporate member of DigitalEurope, which spent over one million euros lobbying Brussels in 2018, sits on a staggering 13 Commission expert groups, and has had nearly 120 top-level meetings with the Juncker Commission (ie Commissioners, their cabinets, or director generals)!²⁸⁷

DigitalEurope (see Box 8) is a prominent interlocutor in Brussels for keeping the digital industry as free from regulation as possible, a position which it extends to gig-economy platforms. For example DigitalEurope refers to the “self-regulating nature of platforms” including “peer-to-peer consumer platforms” and “online-travel booking pages such as... Airbnb”, and warns against “[o]ver-prescriptive requirements”.²⁸⁸ It also warmly describes the Commission’s commitment to creating an “environment that will help platforms to flourish” by sticking to “its two ‘mantras’: a strong belief in the merits of self- or co-regulation; a determination to lift legacy regulatory burdens that are no longer warranted”.²⁸⁹ Aside from Amazon, other gig-economy/crowd-work platforms are not directly represented as corporate members (though they may be represented through national association members, as, for example, HomeAway’s owner Expedia is a member of TechUK). Yet Uber has been a speaker at DigitalEurope events (eg on the transition to “tech-driven” transportation),²⁹⁰ and DigitalEurope’s office was the venue for ITIF’s event on ‘multisided Internet market platforms’ such as Uber (as noted above). Furthermore, in a submission to the Commis-

sion on how Artificial Intelligence (AI), Machine Learning and Robotics can “can benefit society and drive innovation”, DigitalEurope describes how digital platforms such as TaskRabbit, and Amazon MTurk “provide access to a wide range of opportunities with varying skills”, and that their data can be used to “construct analyses” into the supply of skills and demands and how this varies over time and place.²⁹¹ (See Box 8).

Box 12

Artificial Intelligence: the ghost in the machine of platform lobbying?

There is no doubt that AI is an issue that will be of growing concern to labour unions in the years to come. DigitalEurope’s reference to MTurk, in the context of AI, serves as a pointed reminder that a lot of ‘microtasking’ work on platforms like it (for example tagging photos of traffic signs), is aimed at improving machine learning and AI (essentially, those doing the job are training the machines so a human doing the job – or another job, like driving - will no longer be necessary).

It is not only DigitalEurope that lobbies Brussels for policy frameworks conducive to the development of AI. Uber’s PR includes considerable efforts to promote the development of self-driving cars (which microtasks like the tagging of traffic signs are helping to train) and regulatory environments that facilitate their spread.²⁹² ITIF of which Amazon is a member, is a vocal advocate of AI’s development, and an even more vocal detractor of the EU for its “softball” approach to AI, which makes the mistake of prioritising “values and ethics”. ITIF even lists

ten ways that the precautionary principle – by which technologies can be restricted if they are not proved safe, a core value enshrined in the EU treaties – undermines AI’s progress, and recommends policy-makers follow their business-friendly ‘innovation principle’ instead!²⁹³ The MEP-industry forum EIF – of which Uber, Amazon, and Expedia are members – has run several events in the European Parliament, on AI and ‘e-mobility’, featuring Uber as a speaker.²⁹⁴ US tech lobby CTA (see Box 10) – of which Uber, Expedia, Airbnb and Amazon are all members – has a working group dedicated to the advancement of AI through “advocacy for pro-innovation policy”.²⁹⁵

Quite evidently, there is significant cross-over between tech and ‘gig economy’ companies, and pro-AI lobbying is a thread that joins them further. What these big digital players and their lobby groups are pushing for in Europe merits closer attention, as do the implications for labour and consumer rights.

Chapter 7

Conclusion and recommendations

This is just the beginnings of ‘gig economy’ lobbying, with many players apparently yet to enter the Brussels influence scene. However what we have already seen is the moment the business model of one of the big players in the ‘gig economy’ – such as Airbnb or Uber – is called into question at the national level, these platform giants are ready and able to mount multifaceted lobbying campaigns in the EU capital. Both Uber and Airbnb have been able to mobilise the might of the Commission to their advantage, even without employing the army of lobbyists normal for incumbent industries like finance or pharmaceuticals. Their strength seems to lie in the way the Commission – and the Council – see these platforms bathed in the halo of ‘growth and innovation’ and thus seem determined to provide these platforms with the safe haven they want.

For the platform industry in general, and Airbnb and Uber in particular, their first objective has been to secure the legal interpretations of EU law they desire. To that end they can count on the direct support of other powerful corporate lobby groups, not least the employers’ association BusinessEurope. For

more than a decade, the Digital Single Market has been a top priority for BusinessEurope and other powerful business groups. Even if ‘gig economy’ platforms themselves were entirely absent in Brussels, they could count on the favourable interventions of business groups such as these.

Despite the many and varied lobbying and PR tactics and tools of the big players in the ‘gig economy’ – like Uber, Airbnb, Deliveroo, and Expedia – their efforts have shared an overarching aim: to secure the backing of the Commission for a legal interpretation of EU single market rules that enables them to avoid regulation and responsibility. In this context it is striking that despite radical changes resulting from the world of digital labour and short-term rental platforms, and the gig economy’s onslaught on long-established labour rights and social and consumer protections, very little has happened in terms of EU legislation. The EU laws most relevant to the gig economy – the Services Directive and the e-Commerce Directive – were written in another era. Initiatives to explain their application to the ‘gig economy’, like the Commission’s collaborative

economy communication, have (thanks to their lobbying efforts) come out firmly on the side of big platform companies’.

Neither the Commission nor the platforms have any appetite for a fresh approach. These old Directives (depending on their interpretation) award the companies a series of privileges that allow them to escape or fight regulation. Uber, Airbnb and their ilk don’t want to see new rules; they would rather convince the Commission to discipline member states that don’t follow the interpretation of EU rules that they favour. This strategy has been working almost seamlessly for a number of years. On numerous occasions, we have seen the Commission come to the defence of these platforms under the banner of innovation and growth, even at the expense of well-established social rights.

They are trying to achieve three objectives. They want to secure their status as ‘information society providers’ which will give them the right to refuse working with authorities that want to monitor their activities in a systematic manner, and which will enable them to operate without a licence. They want to ringfence the ability of authorities to impose a limit on their activities, as in the case of Airbnb and local rules that seek to secure affordable housing. And they want to avoid being covered by regulations for the public interest, such as with the ongoing debates over what makes a company an ‘employer’.

From their perspective it is going rather well.

Airbnb, for example, in its ongoing case at the ECJ, can count on the Commission’s support. And so far, the Commission has been very helpful to Airbnb and similar platforms in putting pressure on cities to go easy on the platforms, even when the issue is access to affordable housing.

Uber meanwhile lost a battle when the ECJ decided the company is not to be considered an ‘information society services provider’, but simply a taxi company. But neither Uber, nor similar platforms in the danger zone, are simply going to roll over and accept this new status, as the White Paper it sent to the Commission demonstrates. The company continues to fight in courts against being classed as an employer and recent developments in the EU – with the nebulous definition of ‘employee’ – give impetus to the company’s campaign to avoid the status of employer, and could relinquish it from its obligations to its workers in many member states.

The trend today of platforms lobbying to be exempt from rules designed to protect the public interest – including labour, consumer, and social rights – by arguing that the digital domain is different and must remain ‘unfettered’ by burdensome government regulation, is by no means unique. It sits squarely within a political history that has seen, many times, and in many places, businesses try to shift liabilities and responsibilities onto workers.²⁹⁶ Calls for decreased regulation – or for being exempt from it – are not unique to the ‘gig economy’, nor is the attempt to ‘shrink’ the business-labour bargain. This bargain is summed by ETUC thus: in “return for the economic benefits of control over their workforce, employment regulation imposes a number of protective obligations”.²⁹⁷ Digital platform labour may have been sold as an opportunity to live a flexible, fulfilling, independent life as a ‘micro-entrepreneurs’, as Trebor Scholz argues in his book *Uberworked and Underpaid*, but it often camouflages the slow disappearance of fair labour practices and an increase in economic inequalities. “Platform capitalists”, he says, are “exploiting the overabundance of vulnerable workers” and the way that the internet enables unethical work practices.²⁹⁸

And so we come to the issue of employers and workers. “[D]espite much talk of gigs, tasks, rides, or even HITs (‘Human Intelligence Tasks’),” concludes Oxford Professor Jonathan Prassl, “the vast majority of labour bought and sold in the platform economy is work: work, in the sense of the legally widely opposite of entrepreneurship, attracting the full suite of legal protective rights, from wage and hour laws through to anti-discrimination protection.”²⁹⁹ It is, he says, therefore “crucial not to fall into the trap of technological exceptionalism” – or “the impulse to digital distinctiveness”, as the Commission’s JRC cautions against (see Chapter 1). For though the technology powering the platform economy may be novel and exciting, “the underlying business model is not”.

As far as the regulation of ‘gig economy’ and crowdwork platforms goes, a system in which companies get the benefits, whilst workers take on the risks and the state is expected to pick up the tab of social protection (with little contribution from the companies involved), is not one that the EU institutions should be enabling or promoting. It is, therefore, perhaps time to recognise that if current EU rules bring labour or consumer rights into question, or if they prevent or complicate measures needed to secure affordable housing, then those rules need revamping in a manner that is firmly oriented toward the general public interest, not the narrow (profit-making) interests of large, multinational platform companies.

For that, there is a need for a concerted effort from municipalities, trade unions, and social movements, for instance those that work on housing rights, and politicians at national level and European level to agree and work for a different approach to the platform economy. Among the steps needed, we argue the following are all highly necessary:

1. Change the e-Commerce Directive and associated EU laws so as not to impede actions to protect access to affordable housing or the protection of workers. Specifically the rules on monitoring of activities on the websites must be amended so as to oblige the platforms to work with authorities to enforce rules adopted in the public interest.
2. Ensure that the Services Directive does not pose any threat to the efforts of municipalities to secure access to affordable housing. It is likely this debate will re-ignite soon as the Council has now asked the Commission to clarify the limits the Services Directive put to regulation by municipalities.
3. In the event that there is no action at the European level to adjust existing laws or their interpretation, this must be challenged at the local or national level. The challenge could unfold as a demand that the subsidiarity principle – the EU principle that is supposed to ensure decisions are taken at the level where it makes the most sense – is applied in the case of actions to defend housing rights.
4. There is a need for a specific initiative to address the plight of platform workers. As it stands, the Directive on Transparent and Predictable Working Conditions will not deal adequately with the risks that the emergence of platform work represents. Precarious working conditions could be further increased if platforms are largely allowed to avoid having employer status. There is also a need to reform the Commission’s approach to these topics, specifically the way it seems the platforms have been allowed to set the agenda.
5. The complaint procedure that has allowed platform companies to set the agenda for the work of the Commission must be

reviewed. The total lack of transparency enables companies to set a discussion between the Commission and member state governments in motion without any transparency whatsoever. This secrecy must be brought to an end.

6. The partnership between the Commission and the platforms that has developed over the years makes the European body appear biased and one-sided. There is a need for new rules to ensure that the Commission's approach to consultation facilitates the participation of all interested parties to secure pluralistic advice.

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- 264 Email from Rachel Tansey to Amazon EU public policy office (to the email address provided by Amazon upon ringing their Brussels office) on 13/02/19, with follow up email sent on 25/02/19 asking for a response by 04/03/19. No reply was received by that date, or as of 05/07/19.
- 265 Constantin GISSLER, who was previously a Parliamentary Assistant to ALDE MEP Jürgen

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