

## **SOCIAL, ECONOMIC AND LEGAL CONSEQUENCES OF UBER AND SIMILAR TRANSPORTATION NETWORK COMPANIES (TNCs)**

### **1. Introduction**

Commercial success and massive uptake of services provided by companies such as Uber trigger a number of questions for regulators both in the United States and in the European Union. The main question is if such web based applications or platforms merit their success solely to innovation or if their success is due to exploitation of loopholes in regulatory requirements. Citizens and consumer organisations question if regulatory responses to these innovative services are dictated by genuine concerns over proper regulation of transportation services and consumer safety or constitute a protection of traditional incumbent transport operators.

To shed some light on these issues, the Committee on Transport and Tourism of the European Parliament (EP) has requested **an internal briefing to provide a first analysis** at the social, economic and legal aspects of Uber and similar Transportation Network Companies (TNCs). This briefing is based on desk research and literature review, and it should not be considered as being exhaustive or representative of the EP position.

### **2. Transportation Network Companies (TNCs)**

The definition of transportation network companies (TNCs) comes from the California Public Utilities Commission (CPUC). The CPUC was called to provide for a regulatory action with respect to Uber, Lyft and SideCar in 2012 and defined a TNC as "an organisation whether a corporation, partnership, sole proprietor, or other form...that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles"<sup>1</sup>.

TNCs are an innovative business model and are considered examples of what is called the "sharing economy", also referred to as "collaborative consumption". The sharing economy allows people to share goods and services by using Internet platforms and ICT applications. The sharing economy value consists in creating a match between a consumer owning a certain resource (property or skill/competence) and a consumer in need of that resource, at the right time and against reasonable transaction costs<sup>2</sup>. Improved access to information enabled through ICT platforms can quickly transform consumers, into "prosumers"<sup>3</sup> or professionals, and turn leisure property into means of provision of services. Such additional supply offers clear advantages to consumers. Nevertheless, it puts additional competitive pressure on traditional suppliers in sectors such as accommodation, transport and leisure<sup>4</sup>. It can be also difficult for regulators to establish **the moment when the transition from sharing transaction to market transaction took place**<sup>5</sup>.

<sup>1</sup> [California Public Utilities Commission](#) - Webpage on TNCs and related regulatory framework.

<sup>2</sup> Derojeda K. et al., *The Sharing Economy, Accessibility Based Business Models for Peer-to-Peer Markets*, Business Innovation Observatory, European Union 2013.

<sup>3</sup> The notion of prosumers is related to citizens who are simultaneously consumers and producers.

<sup>4</sup> European Parliament upcoming study on "Tourism sharing challenges and opportunities for the EU".

<sup>5</sup> Commercial law and tax law have instruments to carry out such a test.



There are many American TNCs and they are expanding very fast all over the world. In Europe, companies such as Blablacar, and Carpooling.com, consider themselves not "TNCs" but car-sharing companies, providing ride-sharing services where drivers choose the destination and accept money to cover their costs and not to make profits.

### 3. EU Institutions State of Play

TNCs are not covered by any specific EU secondary legislation. The Members of the **European Parliament** have asked in several parliamentary questions the European Commission's views on the regulation of transport services, on Uber and on competition issues in the taxi sector. Recently, in its resolution of 9 September 2015, the EP called on the Commission to "monitor the situation in the different Member States as regards the operation of transportation network companies that match drivers to passengers (Uber being the most prominent example), and to carry out an assessment of the legal, social, economic and environmental consequences arising from the operation of such companies, accompanied, if appropriate, by relevant measures or recommendations for developing innovative new services in Europe, taking into account the existing taxi services"<sup>6</sup>.

The **Court of Justice of the European Union** (CJEU) has been requested by a Barcelona judge to issue a preliminary ruling concerning Uber<sup>7</sup>. The CJEU decisions will certainly be determinant to classify **TNCs either as transportation services or digital platform providers/ technology companies**.

In parallel, the **European Commission** (EC) is launching two studies, one by the Directorate-General for Mobility and Transport on "passenger transport by taxi, hire car and ridesharing in the EU" and another one by the Directorate-General for Justice and Consumers on "consumer issues in the sharing economy", both expected by the 2nd quarter of 2016. On the basis of these studies, the EC will consider whether action at EU level would be necessary<sup>8</sup>.

Other EC actions include a public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy<sup>9</sup>. The collaborative economy will also be addressed in the upcoming Internal Market Strategy for goods and services<sup>10</sup>.

On 21 January 2014, the **European Economic and Social Committee** endorsed an own-initiative opinion on "collaborative or participatory consumption" calling for further action "to regulate the practices carried out within these forms of consumption, in order to establish the rights and responsibilities of all stakeholders involved"<sup>11</sup>.

### 4. Social and Economic Consequences of Uber and similar TNCs

Uber and other TNCs are triggering broad political, economic and ideological debates all over Europe. Arguments in favour of Uber and other TNCs deal mainly with attractive prices and additional transportation choices for consumers, which could in turn lead to reductions in car ownership and the creation of new jobs. More detailed reasons for efficiency gains realised by TNCs, and potentially benefiting both consumers and drivers, are the following:

- **reduction of search costs:** consumers looking for a transport service were traditionally confronted with search costs for uncertain outcomes; consumers who hail taxis on the street are uncertain about the

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<sup>6</sup> EP Resolution on [Implementation of the 2011 White paper on transport](#), P8\_TA(2015)0310, 9 September 2015.

<sup>7</sup> [Judge refers Spanish Uber case to European Court of Justice](#), FT, 20 July 2015.

<sup>8</sup> EP Question to the Commission, [E-010930/2015](#), Answer provided on 17 September 2015.

<sup>9</sup> EC Public consultation on [the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy](#), open on 24 September 2015.

<sup>10</sup> European Commission [Work Programme 2015](#), COM(2014) 910 final, 16 December 2014.

<sup>11</sup> EESC Opinion on [Collaborative or participatory consumption, a sustainability model for the 21st century](#), 21 January 2014.

waiting time until the next taxi<sup>12</sup>. Importantly, TNCs do not directly render services either in the street-hail market or in the taxi rank market. Even in the pre-booked market, TNCs' offer differs from dispatch centres' offer: consumers, rather than calling a dispatcher and waiting, or standing on the street, can demand a car from indoors and watch its progress toward their location<sup>13</sup>. TNCs can also advise drivers on when to enter and exit the market - for example, by encouraging part-time drivers to work a few hours on weekend nights<sup>14</sup>;

- **a better overview of quality and prices:** the drivers are rated by consumers and may be removed from the system if their rating falls below a certain threshold. Prices of the rides are estimated beforehand and can be easily compared across several applications, introducing greater transparency – something that taxi regulation attempted for years by requiring taxis to publish their price lists inside and outside of the vehicle<sup>15</sup>;
- **TNCs provide ICT services assisting drivers** that otherwise would not engage in transport services due to restrictions on entry to the taxi industry. These restrictions limit competition, albeit for possibly justified reasons, and may be considered to lead to "large transfers from consumers to producers, economic distortions and associated deadweight losses"<sup>16</sup>. Where taxi licences are tradable<sup>17</sup>, high and rising prices are commonplace - for example in 2007, a Paris taxi licence had a value between EUR 100,000 and EUR 125,000, licences in Sydney and Melbourne were valued A\$300,000 (around EUR 189,000) and A\$500,000 (around EUR 313,000) respectively while a New York taxi licence had a value as much as US\$600,000 (around EUR 535,000). In most of these cities, licence prices were rising substantially. These high licence values reflect the substantial monopoly rents that can be accrued from the exploitation of scarce taxi licences;
- by facilitating access to information TNCs services may **allow for better utilisation of assets**<sup>18</sup> and skills<sup>19</sup>; improved utilisation of assets may result in positive outcomes for consumer welfare and efficiency gains in transport services.

However, there are also a number of allegations that TNCs derive their competitive advantage from **exploiting loopholes in regulatory requirements and lower standards of consumer safety/privacy**. Some of these arguments are listed below:

- TNCs could unfairly compete with taxi drivers by entering their market without following regulations or fare schedules;
- TNCs could aspire to become monopolies;
- TNCs' cars or drivers could be unsafe or underinsured;
- TNCs could invade customers' privacy;
- TNCs could enable discrimination by drivers and passengers;
- TNCs could undermine working standards for taxi drivers and offer drivers poor compensating<sup>20</sup>; and
- TNCs could present challenges related to taxation.

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<sup>12</sup> OECD, [Taxi Services: Competition and Regulation](#), OECD Competition Policy Roundtables, 2007 and re-published in 2015, p. 7.

<sup>13</sup> In some countries taxi operators are developing smartphone applications to help them respond competitively to Uber (e.g. UK)

<sup>14</sup> Rogers B., [The Social Costs of Uber](#), The University of Chicago Law Review, 2015.

<sup>15</sup> Golovin S., [The Economics of Uber](#), Bruegel, 2014.

<sup>16</sup> OECD, [Taxi Services: Competition and Regulation](#), OECD Competition Policy Roundtables, 2007 and re-published in 2015, p. 7.

<sup>17</sup> In Europe, the taxi industry has developed in different ways. In some countries there are rules governing the maximum number of taxis allowed and licences can be traded (e.g. France). Other countries apply standards on operators and drivers. For more detailed information see: [ECMT Round Tables \(De\)Regulation of the Taxi Industry](#), by OECD, European Conference of Ministers of Transport, 2007.

<sup>18</sup> Martin E., [The Impact of Carsharing on Household Vehicle Holdings: Results from a North American Shared-use Vehicle Survey](#), 2011.

<sup>19</sup> Hall J.V. Krueger A.B., [An Analysis of the Labor Market for Uber's Driver-Partners in the United States](#), Working Papers 2015, Princeton University, Industrial Relations Section; 587.

<sup>20</sup> Rogers B., [The Social Costs of Uber](#), The University of Chicago Law Review, 2015.

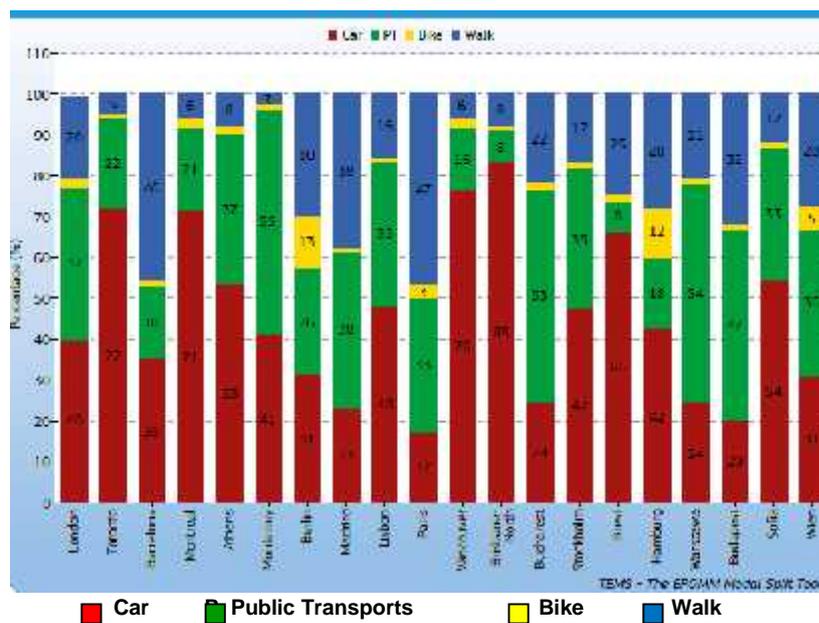
Understanding if the above concerns have merit would depend on detailed analysis of national provisions of each EU Member State to consider how regulatory requirements correspond to TNCs business model and contractual frame.

In terms of **mobility**, recent studies<sup>21</sup> confirm that the urban population still depends heavily on the use of private cars and that there are important economic impacts directly linked to congestion. Examples of modal split in cities show that city residents use cars, public transports, walk or use bicycles (See Figure 1). Cars are being used in different ways, e.g. there are private cars, taxis, traditional private hire vehicles<sup>22</sup> and more recent phenomena such as car-sharing<sup>23</sup>, car-pooling and peer-to-peer transport services for which there are no common definitions. TNCs, and Uber in particular, emerge in this context as a recent trend aiming to be a complementary addition to other mobility solutions.

American studies indicate that TNCs are considered to meet the demand for fast, flexible and convenient mobility in urban areas and TNCs users tend to be younger, well-educated and more likely not to have a car. TNCs tend to be used for leisure and social purposes and for slightly shorter distances than taxi trips and having also higher vehicle occupancies<sup>24</sup>.

A study commissioned by Uber claimed that peer-to-peer transport services in Stockholm could reduce by 3% daily car journeys and reduce by 5% the total of active cars in the city<sup>25</sup>. However, other arguments indicate that TNCs might "induce travel" and have a negative impact on other **urban transportation modes**, leaving the **environmental** and **traffic volume** questions open for further research<sup>26</sup>.

**Figure 1: Modal Split in cities with more than 500 000 inhabitants**



Source: [Innovation in urban mobility Policy making and planning](#), EC, 2013

<sup>21</sup> [Towards New Urban Mobility: The case of London and Berlin](#), LSE, 2015. TRT, [Mobility Management](#), European Parliament, 2010

<sup>22</sup> Private Hire vehicles can have several names according to the cities; in London, Dublin and Berlin, for example, they are authorised and they are called minicabs, hackneys and Mietwagen, respectively. In London they are "constructed and adapted to seat fewer than nine passenger seats".

<sup>23</sup> The concept of car-sharing hasn't been standardised but normally includes a vehicle driven by the end user; it might have several variations: round-tip car-sharing; peer-to-peer car-sharing or be used as synonym of car-pooling where several people share a car or each owner in turn drives; car-sharing can also operate inside a company, where vehicles are shared among the staff.

<sup>24</sup> [App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco](#), University of California, August 2014.

<sup>25</sup> [Economic benefits of peer-to-peer transport services](#), Copenhagen Economics, study commissioned by Uber, August 2015.

<sup>26</sup> [Can Google, Uber, BlaBlaCar and Zipcar make mobility cleaner?](#), EurActiv, 4 June 2015.

Entry into European markets of TNCs has triggered **substantial protests** from the taxi industry, which in Europe employs more than one million people, representing 8 % of employment in the European transport sector<sup>27</sup>. The motivation of the taxi industry to undertake action comes from anticipation of TNCs' economic pressure as well as frustration with restrictive regulatory standards to which taxi drivers are subjected.

Recent analyses suggest that TNCs have an **impact on the taxi usage**. In San Francisco, for example, between January 2012 and August 2014 the trips declined 65 %<sup>28</sup> and this had consequences on taxis' profits and on their investments in licences. It is clear that the TNC model is popular with consumers, judged by their demand for fair services. Investors also show confidence in the viability of the model (e.g. Uber became one of the fastest start-ups in the world with an estimated value of EUR 13 billion in 2014<sup>29</sup>).

## 5. Legal Consequences of Uber and similar TNCs

Uber provides different services under different brands. The service that has been challenging directly the taxi market in the Member States is UberPop, which depends on private drivers. A number of regulators in Member States took **actions** based on existing legal frameworks that resulted in **administrative and/or criminal charges** against Uber drivers and management (e.g. Netherlands, Portugal, France, Spain and Germany). As a response Uber submitted complaints to the European Commission against Spanish, German and French national court bans for violation of Art. 49 (right of establishment) and Art. 56 (freedom to provide services) of the Treaty on the Functioning of the EU<sup>30</sup>. In other countries legal decisions are still pending (e.g. Denmark)<sup>31</sup>.

All in all, the situation remains unclear and Uber's business model is triggering **different types of legal questions** that are not addressed by existing European legislation or legal systems in Member States.

The first novelty brought by TNCs into the legal landscape is that they have a clear **European dimension** in an area where Member States were traditionally strongly opposed to European legislation. TNCs, as providers of information and communication technology services, are covered by European provisions on free movement of services and freedom of establishment, and their services are a part of the Digital Single Market. The European Commission's Digital Single Market Strategy points out that new platforms in mobility services, tourism, music, audio-visual, education, finance, accommodation and recruitment have rapidly and profoundly challenged traditional business models and have grown exponentially. The rise of the sharing economy also offers opportunities for increased efficiency, growth and jobs, and improved consumer choice, but also potentially raises new regulatory questions<sup>32</sup>.

The European dimension could also be derived from the close interaction between ICT services and transport services in the case of TNCs. TNCs services could also be seen as providing information on multi-modal transport services or as a complement to such services.

Therefore, European institutions have the competence to bring together the fragmented response to TNCs which is happening at the national level<sup>33</sup>. This could be done through legislation, regulatory actions or the judiciary<sup>34</sup>.

Secondly, TNCs are **difficult to fit into pre-existing national legislation** that was mainly regulating taxis with a set of regulatory requirements of their own. There is an ongoing discussion in Member States concerning

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<sup>27</sup> [International Road Transport Association](#), Accessed on 28 September 2015.

<sup>28</sup> [The economics of Uber](#), Bruegel, September 2014; [Taxis and accessible services division: Status of Taxi Industry](#), San Francisco Municipal Transportation Agency, 2014.

<sup>29</sup> [Carsharing: evolution, challenges and opportunities](#), ACEA by the Centre for Transport Studies, Imperial College London, September 2014.

<sup>30</sup> [Uber and Europe is definitely a conversation worth having](#), EurActiv, April 2015.

<sup>31</sup> Uber in Denmark, Marie Jull Sørensen, Journal of European Consumer and Market Law, August 2015.

<sup>32</sup> EC, [A Digital Single Market Strategy for Europe](#), COM(2015) 192 final, 6 May 2015.

<sup>33</sup> Taxi services were considered to be local and outside the competence of the European Union while TNCs clearly fall under the freedom to provide services provisions (ICT services) and could fall under the transport provisions of the Treaty if TNCs are found to provide transportation services.

<sup>34</sup> The Court of Justice of the European Union has been requested by requests for preliminary rulings concerning TNCs. However, the rulings will only refer to specific questions and take considerable time to be issued.

benefits of regulation and deregulation in this area<sup>35</sup>. National legal provisions could, with some difficulty, be applied to the TNCs<sup>36</sup> (the first national judgements have taken place) but national legislation was not written with international ICT companies in mind. The closest to TNCs until now were telephone-based taxi dispatching centres but even those operate in a significantly different way, with less of a European dimension. New legislation emanating from Member States will result in possibly 28 different outcomes after long legislative processes and substantial social costs of legal litigation, fragmentation and uncertainty. Such legislation would, however, reflect possibly diverse national views on TNCs and their benefits which may not be reconcilable at the European level.

Legal qualification of TNCs services is a complex task. The notion and definition of TNCs was applied by the California Public Utilities Commission<sup>37</sup> when it provided for a regulatory action with respect to Uber, Lyft and SideCar in 2012. The action was taken under assumption that the Federal Communication Act of 1996 limits the State's ability to regulate IP-enabled services, but does not prevent the State from regulating passenger transportation over public roadways.

It is challenging to adapt a **definition** that was worked out under different jurisdiction (and at State level). Services like Uber, Lyft or SideCar may be qualified differently by the European Court of Justice or any national courts in the Member States. This will depend on actual contractual provisions applied by these companies in Europe and on the particular set of regulations on contracts, economic activity, provision of transportation services and labour law in place. Ultimately, taking into account the clear European dimension of TNCs services, a definition may need to come from the European legislator.

It seems uncontroversial that Uber and similar services could be defined as online-enabled applications (apps) or platforms connecting passengers with drivers using their personal vehicles. However, some other issues in the definition may turn out to be controversial in the EU, e.g. if TNCs provide ICT services or/and transport services, under what legal framework services are provided<sup>38</sup>; if services provided should be qualified as taxi services or specific transport services; if the EU or Member States should provide a specific legal framework for TNCs services to limit potential market failure, with a major issue at this stage being the question of whether to regulate TNCs at the European level.

## 6. General Conclusions

- Need for independent analyses of TNCs mobility, labour and environmental impacts;
- Need for further research in terms of regulatory responses to TNCs (e.g. in California and Colorado<sup>39</sup> a distinct set of rules<sup>40</sup> applying to TNCs was created);
- Need for detailed analysis of national provisions of each EU Member State to consider how regulatory requirements correspond to TNCs business model and contractual frame;
- New mobility solutions like car-pooling, car-sharing might help to address problems of traffic congestion in European cities but they should be addressed together with other policy changes and initiatives;<sup>41</sup>
- In the transport sector, shared economy companies pose a challenge to governments in multiple ways and responses should deal with employment issues, internal market regulations, environment, taxation, consumer protection, etc.

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<sup>35</sup> [Reforming the Law of Taxi and Private Hire Services: A Consultation Paper](#), The Great Britain Law Commission, 2012.

<sup>36</sup> Member States can use general provisions on information and communication services as well as provision on transport services, economic activity, taxation and labour law that were applicable to taxis with different legal qualifications of TNCs activities. TNCs could be qualified as ICT service providers or transport service providers if a functional link is determined between these ICT and transport services (with resulting permits or concessions applicable to transport services). Drivers may be considered as taxi drivers and/or independent economic operators of transport services (with resulting permits, local concessions/medallions, regulation applicable to taxi industry) or even employees (depending on the factual legal relationship between TNCs and drivers and the possibility for labour law to override contract provisions).

<sup>37</sup> See Footnote 1.

<sup>38</sup> Rogers K., [Uber drivers' suit given class-action status](#), CNBC, 2 September 2015.

<sup>39</sup> [When Apps Pollute: Regulating Transportation Network Companies to Maximize Environmental Benefits](#), K. Casey Strong, University of Colorado, 2015.

<sup>40</sup> [Should Uber be allowed to compete in Europe? And if so How?](#) Damien Geradin, CPI, June 2015.

<sup>41</sup> [The Future economic and environmental costs of gridlock in 2030: An assessment of the direct and indirect economic and environmental costs of idling in road traffic congestion to households in the UK, France, Germany and the USA](#), Report for INRIX, Cebr, July 2014.

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