Asociace pro mezinárodní otázky
Association for International Affairs

Policy Paper 4/2016

V4: Heaven or Hell for Sharing Economy?
–
June 2016

# V4: Heaven or Hell for Sharing Economy?

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**Kryštof Kruliš**

*June 2016*

The policy paper draws on the conclusions of the conference "Sharing Economy: The View from the Visegrad Group", which was held in Brussels on May 25, 2016. The event was kindly supported by the Friedrich Naumann Foundation for Freedom and the International Visegrad Fund within the project "Smooth Functioning of the Internal Market between V4 Countries".

Visegrad Fund

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# Summary of Policy Recommendations

1. Nowadays, it is hard to move forward on a trajectory of economic convergence only by following growth recipes of the 20th century. The fastest economic convergence of the V4 countries (Poland, the Czech Republic, Hungary, the Slovak Republic) with Western Europe could be achieved by fully embracing **the potential of the next wave of economic growth**. Sharing economy could be such a wave on which the Visegrad Group countries accelerate their catching up with economic performance of their western neighbours. It expands advantages of internet trading into real word and optimises transactions that involve assets, skills, labour, finances or any mixture thereof. It could be the most significant internet/digital revolution with substantial potential for the future sustainable economic development. Being prepared to surf on this wave better than others should be a new credo for the V4 countries.

2. **Development of one single horizontal definition** of sharing economy could be a way to limit ex-ante regulation of platforms in all member states of the European Union. If a platform fully meets all aspects of the definition, it could be recognized as suitable for a specific regime that would provide the platform and its users some basic degree of legal certainty. This could prevent fragmentation of the single market and make Europe an attractive space for innovation and development of new Europe-grown sharing economy platforms.

3. Due to the diverse nature of sharing economy platforms, however, one single horizontal definition with such strong and automatic implications for protection against overregulation seems unattainable.

4. For now, the appeal in **the guidelines by the European Commission** and an **indication of the best regulatory practices in individual states or cities that provide for the most balanced regulatory framework** is probably the maximum that could be achieved at the level of the whole European Union.

5. **For lack of restrictive interventions** so far, **the overall approach of the V4 countries towards sharing economy platforms is often labelled as liberal**. This is in contrast to restrictions placed in several countries and cities in Western countries of the European Union (France, Germany, Belgium, Spain). Representatives of *Uber* in the V4 region associated this situation with a constructive dialogue with stakeholders. This suggests that at least partially the lenient regulatory regime in the V4 countries is caused not only by a delay in the diffusion of the platforms, but rather represents an overall policy stance in the region.

6. The praiseworthy liberal approach, however, should not be confused with inability to enforce existing laws. Based on observations of a representative of the Slovak Tourism Association, the users of sub-letting platforms should not abuse the overall liberal approach in the V4 countries. **The platforms themselves should move forward with self-regulation and strictly request their hosts to adhere to all legislative requirements of both public and private law. This way the whole sector could avoid tightening of the regulation in the region.**

7. Various possible negative effects (e.g. uncertainty of a consumer about status of a provider, unfair competition, or fiscal and other social aspects) of the sharing economy should be discussed and addressed. Putting micro users under a strict red-tape could, however, deprive sharing economy of its attractiveness. Any new measures should reflect on that users/customers of sharing economy platforms look for a different experience than the traditional and standardized service offers. This could be acceptable provided that such a character is fully transparent to the users/customers from the beginning. At the same time, there is **a possibility of reconsidering some of the original regulatory measures and simplifying them also for traditional providers**. For instance, the existing price regulation of taxi service may no longer be necessary due to opening of the market to new providers and internet transparency of the service. **The red tape connected to the licensing process should also be made as user friendly as possible.**

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## Introduction

At the end of October 2015, the European Commission launched a new European Single Market Strategy. The Internal Market, in economic terms the greatest achievement of the European integration, remains still incomplete. There are restrictions mainly in the area of the free movement of services, which could generate additional growth and jobs. Moreover, the European Single Market has to face new challenges linked to the technological development and growing global competition. Other large economies – e.g. the United States – are not limited by multiple national restrictions in IT, innovations and research & development, and are thus more attractive for investors. The new Commission's Single Market Strategy, as well as the Digital Single Market strategy addresses these shortcomings. This particular area is extremely important for Central and Eastern Europe. CEE countries benefited from the EU's enlargement and in particular from the access to the Single Market. Further liberalization of services and better approach to innovative economy (IT start-ups, spin-off companies related to the new research infrastructure, etc.) may generate new growth, use innovative human capital and push the CEE economies away from the threat of falling into the middle income trap.

An open approach towards the so-called sharing economy could be one of the most significant cornerstones of the CEE strategy for the future growth. The digital era has opened brand new possibilities in direct and instant matching of supply and demand in a way that had not been possible in the past. It has also helped to scale down the information asymmetry and allowed any user to provide a potentially visible feedback on anything of his/her interest. Sharing economy platforms brought these advantages of digitalisation beyond the e-domain into the real everyday life. They allow these features to influence the use and availability of virtually any skills, labour, capital and assets. Sharing economy platforms may thus change our economy in a far more profound way than it has been achieved by any of the previous internet revolutions. The CEE countries cannot afford to neglect the growth and innovative potential of sharing economy. On the contrary, quick approximation to the average economic output of the European Union can be hardly achieved only by growth strategies of the 20th century. What the CEE countries need for their improved economic convergence with Western Europe is to present themselves as the most attractive part of the European Union to innovations. The sharing economy and its potential should not stand aside.

This policy paper brings forward policy recommendations concerning the approach of the V4 countries (Poland, the Czech Republic, the Slovak Republic and Hungary) to the sharing economy and the regulatory field in which it develops. It explores possibilities of finding a common horizontal definition of the sharing economy and discusses how such a definition could be used in the regulatory environment. The paper further briefly contrasts the regulatory approach in the V4 countries with the other member states of the European Union.

The subsequent parts deal with possible future regulatory approaches to the sharing economy and tax issues concerning sharing economy platforms and their users.

This policy paper summarizes outcomes of the international conference "*Sharing Economy: The View from the Visegrad Group*" held in the European Parliament on May 25, 2016.[1] It further draws on interviews with representatives of sharing economy platforms and their users and other available public sources.

# V4: Heaven or Hell for Sharing Economy?

The representatives of sharing economy platforms, including *Uber*, often contrast the difference in regulatory approaches in Western and Eastern member states of the European Union.[2] The Western continental approach is more dominated by the imposition of limitations on sharing economy platforms. For instance, *Uber* faced full or partial restrictions in Germany, France, the Netherlands and Belgium.

A different situation is in the accommodation sector. The regulatory environment that Airbnb and other home-letting platforms face varies from city to city and tighter regulations or at least more cautious practice have been adopted also in some cities in the USA, e.g. in Santa Monica, partly in New York or San Francisco. In the European Union, it has been Paris and Barcelona on the more restrictive side, while Amsterdam or London have so far entered in a more cooperative dialogue with the platforms which resulted in improvements of self-regulation. The primary concerns are related to free-riding on the tourism tax, illegal subletting without agreement of the property owner or subletting without prescribed registration. The requirement that the host is resident at the premises during the time of the guest stay is often introduced both in the USA and the European Union. In Berlin, hosts renting out apartments as a whole for temporary accommodation can face fines up to 100.000 EUR.[3]

On the other hand, regulators in the V4 countries have been significantly less eager to intervene in sharing economy platforms. The exception being response to *Uber* in Hungary which has been scrutinized since the mass protests of taxi-drivers at the beginning of 2016. From the perspective of the platforms themselves, this non-intervention response could be considered a more convenient approach, leaving free space for their activity. Representatives of *Uber*

[1] For the list of participants please see the attachment.
[2] The United Kingdom being left aside from the "Western" group for keeping liberal regulatory approach posting it outside of the group, see for instance Duncan, Robinson. Brussels urges more caring for sharing economy. *Financial Times* May 30, 2016. Available at: https://next.ft.com/content/4c19a666-267f-11e6-8ba3-cdd781d02d89 [01/06/2016].
[3] Duncan, Robinson. Brussels urges more caring for sharing economy. *Financial Times* May 30, 2016. Available at: https://next.ft.com/content/4c19a666-267f-11e6-8ba3-cdd781d02d89 [01/06/2016].

in the region associated this overall stance with the constructive dialogue with stakeholders and praised massive user adoption of *Uber* in Prague, Budapest and in Polish cities. This suggests that the benevolent regulatory approach in the V4 countries is at least partially caused not only by the delay in diffusion of the platforms, but rather by an overall policy stance in the region (with the said exception).

A thought-through liberal approach, however, should not be confused with the inability to enforce existing laws. The representative of the Slovak Tourism Association mentioned that in Bratislava, there were hundreds of private accommodation offers available on the Internet, while only 13 providers could be found officially registered for this purpose. Such a situation could, in a long term, give support to requests for increased restrictions. The HOTREC 10 steps chart towards a sustainable and responsible "sharing" economy in tourist accommodation[4] has been mentioned as a basic program that includes measures addressing unfair competition, protection and safety of customers and other fiscal, social and legal aspects of sharing economy in tourism.[5] Various "externalities" of the sharing economy in tourism could be addressed in this way.

At the same time, **putting micro users under a strict red-tape could deprive sharing economy of its attractiveness**. The measures should reflect that users/customers in sharing economy platforms look for a different experience than the one offered by traditional and standardized service providers. This could be acceptable provided that such a feature is fully visible to the users/customers from the beginning.

At the same time, there **a possibility of reconsidering some of the original regulatory measures and simplifying them also for traditional providers**. For instance, the existing price regulation of taxi service may not be necessary for the future due to opening of the market to new providers and internet transparency of the service.

**The red tape connected to the licensing process should be also made as user friendly as possible.** The registration process and other administrative tasks requested from the service providers within the sharing economy should be made as easy and simple as registering at the platform itself.

**The sub-letting platforms and their users should not abuse the overall liberal approach in the V4 countries and move forward in self-regulation. Endeavour of the platforms to**

[4] HOTREC is an umbrella association of that gathers together 42 national associations representing the tourism sector (hotels, restaurants and cafes) in 28 different European countries.
[5] The "10 steps chart" has been adopted by the General Assembly of HOTREC on 5 November 2015. Available at: http://www.hotrec.eu/Documents/Document/20151105145524-HotrecPolicy_chart.pdf [02/06/2016].

**strictly request their hosts to adhere to all legislative requirements is one of the essentials that may prevent further tightening of the regulation in the region.**

# What Are the Tax Risks Involved: Transparency or Free-Riding?

The spread of sharing economy platforms has also fiscal aspects. A micro entrepreneur is a typical person who provides services in sharing economy. A mass adoption of the sharing economy patterns could compel reforms of the current systems of taxation and social security. **So far, the providers remain dominantly part-timers, operating within the platforms for additional income.** This could be connected with the discussion to what extent providers operating in the sharing economy fulfil definition of independent entrepreneurs and to what degree they should be rather considered employees of the platforms.[6]

The time when most of the employees would quit their jobs for operating within the sharing economy platforms seems still too remote, at least in the V4 region. There are, however, other legitimate concerns that have to be discussed. Most of the speakers at the conference stressed that for such a discussion it is necessary to get our facts right. Some accusations of free-riding in sharing economy platforms are not valid. For instance, platforms like *Uber* allow only cashless payments. This means that all transactions have a proper electronic footprint and are easily detectable by tax authorities. **The new methods championed by sharing economy platforms thus also yield higher transparency and in fact reduce shadow economy, which may be a fiscally positive trend.**

Additional tax issue may occur in connection with corporate tax paid by sharing economy platforms. The concern of tax authorities may be triggered especially when a corporation owning a software of the platform is registered in a tax haven. The commission which the platform receives from any transaction is thus not taxed within the jurisdiction of the service provider and receiver, but in a third country. This could be considered as a legal tax planning provided that the corporate structure is not using transfer pricing between affiliated corporations to reduce income of the entity or permanent establishment in the country where the service was in fact provided. The supporting entity that provides marketing, training, recruitment and other support at the place of provision of the service (e.g. in Hungary, Poland or the Czech Republic) should be paid a proper market price for its services. As a result, the relevant part of the profit in this way should be taxed within the jurisdiction where the service was provided. Without constant support of this entity, the whole platform could hardly "sell" its software and receive commission from the foreign transactions. The affiliated relationship

[6] For details on this aspect please see the arguments below.

within the corporate structure of the platform may be tempting to move the profit towards the jurisdiction with the lowest tax burden and this posts a constant challenge for tax authorities.

# V4 and Suggestions on How to Move Forward

The conference included several inspiring suggestions on how to move forward with the legislative environment for sharing economy. The speakers from the represented platforms, *Uber* and *Airbnb*, supported the idea that the European Commission should identify best practices of member states or cities and suggest them as those which could be followed by others.

The representative of the Polish Ministry of Economic Development suggested the following categorization of sharing economy platforms and possible regulatory reactions:

| | **None** | **Basic** | **Advanced** |
|---|---|---|---|
| **Scale** | Local | Nationwide | Cross-border |
| **Competition distortion** | No | Yes | Yes |
| **Substantial risk** | No | No | Yes |

Source: Presentation by Mr. Janusz Cieszyński, Advisor, Political Cabinet, Ministry of Economic Development of Poland.

The table suggests that platforms operating only on the local level (e.g. sharing of tools between neighbours) pose neither threat of distorted competition, nor any substantial risks that should be of concern for regulators. Platforms operating nationwide, such as some car-sharing platforms, may lead to competition distortion, especially in case of only one dominant platform in a country and this may require regulation at the platform level. Finally, substantial cross-border risks may be caused by sharing economy platforms in the financial sector and regulation may be necessary at the level of the European Union.

A representative of the Czech Ministry of Trade and Industry presented a position based on the following principles:

1) The priority should be given to the approach at the level of the European Union in order to prevent market fragmentation. However, the level of individual operators is subjected to diverse licensing and regulatory schemes at the national or even local level, and the harmonized approach thus may not be achieved.

2) Any introduction of new regulation should be data-driven and based on a proper analysis with a clear outcome that the regulation is necessary to mitigate an existing and proven market failure.

3) The overall goal should be to create a predictive legislative environment that would provide legal certainty to the platforms, their providers as well as to customers.

4) Any ex-ante regulation of sharing economy platforms may be a threat to innovation and should be avoided if possible.

# Regulation: One Approach Cannot Fit All?

The European Commission is expected (by early June 2016) to provide guidelines for member states on how to apply existing rules to the sharing economy. This may help to remove some uncertainty over the rights and obligations of clients and providers that use these platforms and make the internal market a more even playing field for all. However, one of the biggest challenges for any legislator in provision of rules for sharing economy is to find a **common horizontal definition** that would include all sectors where its various and diverse platforms operate. The advantage of one horizontal definition could be to limit ex-ante regulation of platforms in all member states of the European Union if they fully satisfy the definition. This could make Europe an attractive space for innovation and development of new Europe-grown sharing economy platforms.

The sharing economy phenomenon has expanded from e-commerce into off-line world and thus spreads across **various sectors**, e.g. transportation, accommodation, financing, fulfilment of tasks and many others. Individual sectors are subjected to specific sets of regulatory and licensing provisions in which the platforms and their users have to operate. There are also different regulatory bodies with competencies over each specific sector and they have their own specific approach to the regulation of the sharing economy. Without the protective shield of the horizontal sharing economy definition, the scope of liberal v. precautionary approach to sharing economy may differ sector from sector even within one single state. Most of the participants at the conference agreed that such a horizontal all-embracing definition is currently unattainable.

Firstly, sharing economy is marked as a digital revolution that allows immediate matching of supply and demand of all possible resources (skills, labour, capital and assets). The **combination of used resources** is quite specific for each individual sharing economy platform. Car-sharing platforms are based primarily on innovative availability of asset (cars that could be rented/shared in the street nearby your home using a special access card). Platforms like *Uber* combine provision of an asset (a car) as well as labour (work of a diver) and, for instance, platforms offering small house repairs like *TaskRabbit* or *yuVe* combine skills, labour and partly also usage of assets (necessary tools). The character of used resources is one of the key features determining possible regulatory and, in particular, tax approach.

Each sharing economy platform also uses a different mixture of **peer-to-peer (p-to-p) / professional-to-consumer transactions.** Most of the platforms that work as online-markets for assets or skills do not differentiate between "peers" and professional providers and the customer is sometimes uninformed about the status of the other side until he/she comes into direct contact with the provider.[7] It is then difficult to decide where is the threshold after which someone steps outside the box reserved for "peers" and should become a licensed professional. This threshold may vary sector from sector and is also influenced by combination of the involved resources. The status of a service provider is, however, the key to consumer protection, the legal character of the transaction and related responsibilities.

Sharing economy platforms and transactions they provide also vary in the extent to which and how they concern **usage of otherwise idle capacity (labour, asset)**. This makes the feature of effective use of resources just an additional aspect that often appears but in varying quality and quantity. For instance, *Blablacar* with its offers of shared intercity car journeys fulfils the definition of idle capacity to the full. Users may join a driver who defines destination and time of the journey. In contrast, an *Uber* driver selects final destination of the ride based on the request of the user. The idle capacity could be found more in the use of free time/labour of the driver and the use of a car that would otherwise idly park in the street. *Uber* also tries to use its data to develop and encourage joint orders of an Uber ride.

Finally, a marking difference could be found also in **the extent to which each platform is involved in standardization of the provided services**. Many platforms have their business plan based only on matching supply and demand and the transaction is fully in between the contracting party (e.g. *yuVe*). Some of the platforms have only minimum standards for the provided "service". For instance, *Blablacars* have a range within which the driver could suggest the price of a shared ride. Conversely, the most developed platforms may have high level of involvement into the character and price of the service. *Uber* has a fixed price and offers also specific standards of some of its services (e.g. dress code of driver of *Uber Black*). The involvement of the platforms usually goes hand in hand with how big the commission that the platform takes from each transaction is (e.g. 25 % in case of *Uber*). This in general constitutes a feature that influences how regulators may treat the platforms and their relations to the users.

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[7] The situation is clearer in some sectors or for some platforms. For instance, crowdfunding platforms are per definition p-to-p and some even apply an investment limit one single investor can invest into one project. A bigger group of investors thus must gather in order to successfully finance any project. In contrast to this, *Uber* requires all its drivers to have a trade license for transportation, albeit not necessarily as taxi drivers, if there is such a possibility in the targeted country.

In some countries, there may also occur **questions whether the service providers should be considered employees of the platform.** This has great consequences in the area of tax and social contributions. Various above mentioned aspects, including the combination of used resources, should be taken into consideration. For instance, if *Uber* drivers use their own cars at their own expenses and risk, it may be questionable to regard them employees.

The above described diverse nature of the sharing economy in individual platforms is demonstrated in the following table on four platforms:

| | **Uber** | **Airbnb** | **Blablacar** | **yuVe** |
|---|---|---|---|---|
| **Sector** | transportation | accommodation | transportation | craftsmanship |
| **Used resources** | labour, assets | assets (labour – maintenance) | labour, assets | labour (assets) |
| **P-to-P or B-to-C** | B-to-C | P-to-P (B-to-C) | P-to-P | P-to-P or B-to-C |
| **Idle capacity offered** | Partially | Mostly | Fully | Partially |
| **Service standardized by platform** | Mostly | Partially | Minimally | Minimally |

Source: own categorization.

**One horizontal definition of sharing economy platforms could be beneficial to the development of genuinely European sharing economy platforms and could provide legal certainty for new ideas. This is, however, limited by the diverse nature of sharing economy platforms. It seems that the guidelines to be issued by the European Commission and an indication of the best regulatory practices in individual states or cities that provide for a balanced regulatory framework are the maximum achievable level in the European Union for now.**

## Conference "Sharing Economy: The View from the Visegrad Group"

**PANEL I: Sharing Economy and the Internal Market**

Questions:

Why, how and to what extent should the segment of sharing economy be regulated, and at what level (EU, state, local)? Do we need a common definition of sharing economy in the EU? Is such a definition needed for users of the sharing economy platforms to have basic legal certainty?

**Speakers:**

***Dita Charanzová***, MEP (ALDE), European Parliament
***Róbert Chovanculiak***, Analyst, INESS
***Janusz Cieszyński***, Advisor, Political Cabinet, Ministry of Economic Development of Poland
***Neil Kay***, Senior Policy Officer, DG GROW, E3 – Digitalisation of the Single Market, European Commission
***Jan Poruba***, Policy Officer, Department of European Affairs and Internal Market, Ministry of Industry and Trade of the Czech Republic

Chair: ***Kryštof Kruliš,*** Research Fellow, Association for International Affairs (AMO)

**PANEL II: Sharing Economy and Tourism in the V4 region**

Questions:

How can sharing economy change tourism in the V4 region? What are the benefits and/or risks for providers and for users? How do the sharing economy platforms influence traditional services in tourism?

**Speakers:**

***Mihály Bajnóczi***, Second Secretary, Competitiveness Unit, Permanent Representation of Hungary to the EU
***Marek Harbuľák***, President, Slovak Tourism Association
***Rob Khazzam,*** General Manager, Uber Central Europe
***Ana-Claudia Tapardel***, MEP (S&D), European Parliament

Chair: ***Ivana Jemelková***, Senior Director, FTI Consulting

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## ASSOCIATION FOR INTERNATIONAL AFFAIRS (AMO)

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