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THE PROVISION OF SERVICES IN THE EU INTERNAL MARKET VIA COLLABORATIVE ECONOMY PLATFORMS AND PROTECTION OF CONSUMERS: ACTORS, OBLIGATIONS AND ENFORCEMENT

Abstract

The objective of this article is to present the EU rules regarding the protection of consumers' rights in the context of the provision of services in the EU internal market with the intermediation of collaborative economy platforms. The first approach to collaborative economy platforms entering the EU internal market focused on specific challenges posed by the triangular configuration of economic relationships of actors involved in the provision of services via such platforms (European Commission communication of 2016). This sector-specific approach of reflection shifted soon afterwards to a more general and overarching approach to all online platforms and even more general – to providers of information society services. After almost fifteen years of the presence of collaborative economy platforms in the EU internal market, it seems important to present the synthesis of this evolution of the EU approach and the resulting EU regulatory scheme. As a starting point, the article takes the challenges identified by academia and the EU institutions concerning the protection of consumers' rights in contracts concluded with the intermediary of collaborative economy platforms, including: the legal classification of the actors involved in collaborative economy platforms as 'consumers' and 'traders', terms which are crucial for the application of the EU rules on consumer protection; the

obligations of such platforms and the providers of underlying services in their relations with consumers; the division of liability between the collaborative economy platform and the provider of the underlying service in their relations with the consumer; and, last but not least, the role of collaborative economy platforms in enforcing the obligations of underlying service providers. These issues are presented with due account of the evolution of EU law since collaborative economy platforms appeared in the EU internal market. The article starts with a short presentation of collaborative economy platforms in the EU internal market and the challenges this posed for the application of EU law at the time. Then, the article investigates the EU law as it stands at present regarding the actors in the collaborative economy model from the traditional perspective in EU consumer law, distinguishing between a 'consumer' and a 'trader', and the obligations of collaborative economy platforms and providers of the underlying services in their relations with consumers. The final part scrutinises the relations between collaborative economy platforms and providers of the underlying services in terms of enforcement.

KEYWORDS

collaborative economy platforms, consumer protection, providers of information society services, providers of intermediary services, Digital Services Act

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platformy gospodarki współdzielenia, ochrona konsumentów, dostawcy usług społeczeństwa informacyjnego, dostawcy usług pośrednictwa, ustawa o usługach cyfrowych

1. INTRODUCTION

EU consumer law is based on the traditional assumption that a consumer is a party to a contract who is weaker than a supplier of goods or provider of services (normally acting within the framework of their professional activities), and that such imbalance results in structural information asymmetries between market participants, which in turn becomes an obstacle to the efficient allocation of economic resources.[1] As a result, EU consumer policy is founded on the distinction between the two parties to a contract: a 'consumer', who is acting outside their business activity, and a 'trader', who is a professional actor in the economic

[1] Rolf H Weber, 'From Disclosure to Transparency in Consumer Law', in Klaus Mathis, Avishalom Tor (eds), *Consumer Law and Economics,* Cham: Springer International Publishing 2021, 74.

interaction (contract). Even in the first EU laws aiming to protect consumers (as weaker parties in contracts with traders), the focus was on the traders' information obligations to rebalance the information asymmetry and allow consumers to make informed choices.

It proved very difficult to fit into this legal classification the phenomenon of collaborative economy platforms, which appeared on the EU internal market in 2011. At that time, the Uber enterprise (incorporated in the USA in 2008) launched its operations in Paris. This new business model featured a smartphone application/website (made available by Uber to its users) serving as an intermediatory tool between short-term/occasional drivers offering transportation and persons looking for local, occasional transport services. The second most visible example of this business model has been Airbnb (established in the USA in 2009 and registered in Ireland), which offers intermediary services between people offering short-term rental of accommodation and people searching for such type of accommodation. In both examples, providers of the underlying services (transport or accommodation) were not necessarily professionals running their own businesses, because this business model is based on a specific configuration of economic partners, where the exchange of services is facilitated by an online platform that creates an open marketplace for temporary services provided by business entities as well as private individuals. There are three categories of actors involved: providers of the underlying services, who share assets, resources, time and/or skills (these can be service providers acting in their professional capacity or private individuals offering services on an occasional basis); recipients of the underlying services; and intermediaries that connect – via an online platform – providers with users and facilitate transactions between them.[2] The most disruptive feature of this business model is that the underlying services can be offered by professional actors as well as natural persons, for whom such services are not necessarily the main field of economic activity. Due to the use of the internet as intermediatory tool, this exchange of services became feasible on a considerably larger scale than before, including cross-border contracts in the internal market. As a result, the exchange of services provided for remuneration involved business actors as well as the so-called 'peers'. The model of business-to-consumer contracts (B2C) and business-to-business contracts (B2B) has been expanded with peer-to-peer (P2P) and platform-to-business (P2B) types. This constellation of economic actors involved in the collaborative economy clearly disrupted the traditional approach based on 'bipolar' contractual relationships between a trader and a consumer, and was thus

[2] See e.g. Vassilis Haztopoulos, *The Collaborative Economy and EU Law*, Chapter 1, Oxford–Portland, Hart Publishing 2018; Marco Inglese, *Regulating the Collaborative Economy in the European Union Digital Single Market*, Chapter 2, Cham: Springer International Publishing 2019.

called a 'triangular' model.[3] The European Commission named such platforms *collaborative economy platforms*, which considered their role and functions first, in the more general context of the internal market[4] and then in more detail, in a Communication dedicated to them.[5]

For the purpose of this article, collaborative economy platforms are defined as 'internet-based tools that enable transactions between people providing and using a service'.[6] Undoubtedly, collaborative economy platforms are just one category of a more general group of online platforms (which, in turn, are part of a vast group of providers of information society services).[7] This categorisation has been confirmed in the Digital Services Act (DSA),[8] which introduced new obligations for all providers of intermediary services in the EU internal market, including

[3] Christoph Busch and others, 'The Rise of the Platform Economy: A New Challenge for EU Consumer Law?', Journal of European Consumer and Market Law 2016, No 1, 4.

[4] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Upgrading the Single Market: More opportunities for people and business, COM/2015/0550, 3.

[5] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A European agenda for the collaborative economy', COM (2016) 356 final. Consumer protection was also considered in the context of online platforms in general. See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Online Platforms and the Digital Single Market Opportunities and Challenges for Europe, COM/2016/0288, 11; European Parliament, Resolution of 15 June 2017 on online platforms and the digital single market, OJ C 331, 18/09/2018, 135.

[6] Flash Eurobarometer, *The Use of Collaborative Platforms*, 438 (2016), 2. See also the definition of 'collaborative economy platform' in the Impact Assessment accompanying the document Proposal for a regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC, European Commission SWD (2020) 348 final, Part 1, 2: 'an online platform ensuring an open marketplace for the temporary usage of goods or services often provided by private individuals. Examples include temporary accommodation platforms, ride-hailing or ride-sharing services'. It must be noted, however, that including in this definition the temporary usage of goods is misleading, because in such a business model the usage of a good (an apartment) is in fact a service of accommodation.

[7] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Digital Single Market Strategy for Europe', COM (2015) 192. For an analysis, see Claire Bury, Irene Roche Laguna, Tinkering or Fundamental Overhaul? The Past, the Present and the Future of the Digital Single Market, in Sacha Garben, Inge Govaere (eds), *The Internal Market 2.0*., Oxford: Hart Publishing 2020, 233–258.

[8] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27/10/2022, 1–102.

online platforms[9] (collaborative economy platforms being one type). However, the main feature that makes such platforms stand out from all the other online platforms is that they mediate in contracts between users who offer underlying services (accommodation, transport, maintenance or cleaning, translation, etc., provided in real life) and users who search for such services.

It is worth noting that the phenomenon of collaborative economy platforms was principally analysed from the perspective of their freedom to provide services in the internal market (Article 56 TFEU), which included 1) the possibility of such a platform registered in one Member State accessing the markets for services in other Member States and 2) the scope of Member States' competence to restrict such access, when justified by important reasons of public interest.[10] Other perspectives were also discussed, such as those focussing on the protection of individuals and businesses who are parties to contracts for the underlying services: 1) data protection for all persons engaged in the exchange of services; 2) protection for recipients of intermediary services in relations with a collaborative economy platform (both parties to contracts for underlying services); 3) protection for providers of the underlying services in relations with a collaborative economy platform (whether self-employed or working under the supervision of an employer); and 4) protection for recipients of an underlying service in relations with the providers of the service, with the central question being whether EU consumer protection law applies.[11] As can be seen, the legal implications of this business model appearing on the EU internal market seemed quite significant in many different aspects. This article focuses on collaborative economy platforms interfering with consumer protection in the internal market.

In its first reflection (2016) on the effects that collaborative economy platforms brought about in the legal framework of the EU internal market, the European Commission stated: 'Traditionally, EU consumer and marketing legislation has been designed to address transactions in which there is a weaker party that needs

[9] An 'online platform' is defined as 'a hosting service that, at the request of the recipient of the service, stores and disseminates information to the public, unless the activity is minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation', Article 3(i) of the DSA.

[10] See further Monika Szwarc, 'EU Law and the Member States' Competence to Regulate the Operation of Collaborative Economy Platforms – Where Do We Stand after the Digital Services Act', European Business Law Review 35, No 2 (2024).

[11] Hatzopoulos (n 2); Inglese (n 2).

to be protected (typically the consumer). However, the collaborative economy blurs the lines between consumers and businesses since there is a multisided relationship that may involve business-to-business, business-to-consumer, consumer-to-business, and consumer-to-consumer transactions. In these relationships, it is not always clear who the weaker party requiring protection may be'.[12] The EU institutions agreed that the main benefits for users (including consumers) of the collaborative economy were access to new services, a greater range of services and lower prices, while it recognised risks connected with fair trading.[13] As identified by the European Commission in 2016, the most important issues from the perspective of collaborative platform users were 1) uncertainty as to who is responsible if a problem arises while the services are being provided; 2) the trust and reliability of the service provided by peers through the platform; and 3) the fact that the services on offer do not meet consumers' expectations.[14] The main instrument to increase consumer confidence in general and trust in peer-to-peer services specifically, according to the EC, was trust-building mechanisms, such as online rating and review systems developed by the collaborative platforms themselves or by specialist third parties.[15] At that time (2016), it seemed that due to the triangular configuration of economic and legal relationships between actors involved in the provision of services in the collaborative economy model, it would deserve a sector-specific reflection and possibly – specific legal reaction at the EU level. Nonetheless, it soon became clear that the discussion within the EU institutions shifted from a specific focus on this particular category of platforms towards more general deliberations on the role of providers of information society services, of which collaborative economy platforms are just one category. The provision of services in the EU internal market with the intermediation of collaborative economy platforms nowadays

[12] COM (2016) 356 final, 9.

[13] OECD, Protecting Consumers in Peer Platform Markets: Exploring the Issues, 2016, COM (2016) 356, 2; see also European Parliament, Resolution of 15 June 2017 on a European Agenda for the collaborative economy, OJ C 331, 18/09/2018, 125, para 2; Opinion of the European Committee of the Regions – A European framework for regulatory responses to the collaborative economy, OJ C 79, 10/03/2020, 40, para 5.

[14] Commission Staff Working Document, accompanying the document 'A European agenda for the collaborative economy', SWD (2016) 184 final, 5, on the basis of the Eurobarometer survey; see also OECD, Trust in peer platform markets: Consumer survey findings, 2016.

[15] COM (2016) 356 final, 10; supported by the European Economic and Social Committee, Opinion of the European Economic and Social Committee on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European agenda for the collaborative economy', OJ C 75, 10/03/2017, 33, para 4.3.5.

fits into the overarching legal approach addressed to all providers of information society services, which resulted in the Digital Services Act. At the preparatory stage, one of the risks identified as connected with the functioning of the Digital Single Market was illegal online activities, including 'the provision of illegal services such as non-compliant accommodation services on short-term rental platforms, illegal marketing services, services infringing consumer protection provisions, or non-respect for extended producer responsibility obligations'.[16] In addition, because collaborative economy platforms were recognised as 'traders' for the purposes of the EU rules on consumer protection, the amendments introduced after the New Deal for Consumers[17] to strengthen consumer protection in the online environment also applied to such platforms. This objective was to be attained by improving transparency in B2C contracts concluded via online marketplaces. Such modifications were supplemented with updated guidelines for the interpretation of Directive 2005/29 and Directive 2011/83. In the recent 2020 New Consumer Agenda, the European Commission recognised the Digital Services Act as a tool to protect consumers, stating that it 'will ensure that consumers are protected effectively against illegal products, content and activities on online platforms as they are offline'.[18]

The objective of this article is to present the EU rules regarding the protection of consumers' rights in the context of the provision of services in the EU internal market with the intermediation of collaborative economy platforms. As can be seen, there was an important shift of reflection from sector-specific to more general, overarching all online platforms and even more general – to providers of information society services. After almost fifteen years of the presence of collaborative economy platforms in the EU internal market, it seems important to present the synthesis of this evolution of the EU approach and resulting EU regulatory

[16] European Commission, Commission staff working document, Impact Assessment accompanying the document Proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, SWD (2020)348 final, Part 1/2, 12; European Commission, Commission staff working document, Impact Assessment Report, Annexes, accompanying the document Proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, SWD (2020)348 final, Part 2/2, 85.

[17] Outlined in European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, A new deal for consumers, COM (2018) 183.

[18] European Commission, Communication from the Commission to the European Parliament and the Council, New consumer agenda strengthening consumer resilience for sustainable recovery, COM (2020) 696, 10–11.

scheme, starting with the E-commerce Directive,[19] then modifications introduced to Directive 2005/29[20] and Directive 2011/83,[21] and finally the DSA.[22]

These considerations may be reframed as assessing who is a *trader* and who is a *consumer* – crucial for deciding whether the EU consumer law applies, the duties of such platforms and the providers of the underlying services in their relations with consumers, the division of liability between the collaborative economy platform and the provider of the underlying service[23] and, last but not least, the role of collaborative economy platforms in the context of enforcing the obligations of the underlying service providers. The article is structured so as to present answers to these issues.

2. WHO IS WHO IN COLLABORATIVE ECONOMY PLATFORMS

Firstly, let us recall that the EU rules on consumer protection apply only to any natural person who, in the context of a particular contract, 'is acting for purposes which are outside his trade, business, craft or profession'.[24] It must be a natural person.[25] The concept of a *consumer* is 'objective in nature and

[19] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market, OJ L 178, 17/07/2000, 1–16.

[20] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11/06/2005, 22–39.

[21] Article 2(1) of Council Directive 2011/83 of the European Parliament and of the Council of 25 October 2011 on consumer rights, OJ L 304, 22/11/2011, 64–88.

[22] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27/10/2022, 1–102.

[23] Busch and others (n 3) 5–7; OECD, 'Protecting consumers in peer platform markets: Exploring the issues', OECD Digital Economy Papers 2016, No 253, 23–24.

[24] Article 2(a) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11/26/005, 22–39; Article 2(1) of Council Directive 2011/83 of the European Parliament and of the Council of 25 October 2011 on consumer rights, OJ L 304, 22/11/2011, 64–88; Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21/04/1993, 29–34.

[25] Case C-541/99, *Cape Snc*, EU:C:2001:625, para 16 (on the grounds of Article 2(b) of Directive 1993/13); Case C-329/19, *Condominio di Milano*, EU:C:2020:263, para 25.

is distinct from the concrete knowledge the person in question may have, or from the information that person actually has';[26] it is also 'a functional concept, requiring determination of whether the contractual relationship is amongst the activities that a person provides in the course of their trade, business or profession'.[27] This means that under the particular circumstances of a given case, a professional in one field of economic activities may be recognised as a consumer in another capacity. In *Costea,* the CJEU recalled that in relation to the services offered by lawyers by means of contracts for legal services, there is inequality between 'client-consumers' and lawyers, particularly due to the asymmetry of information between the parties to the contracts. At the same time, the Court acknowledged that 'that consideration cannot, however, rule out a lawyer from being categorised as a "consumer" within the meaning of Article 2(b) of that directive where that lawyer is acting for purposes which are outside his trade, business or profession'. It was recognised that a lawyer signing a contract with a trader which does not relate to the activity of his law firm is not linked to the exercise of the lawyer's profession and must be recognised as holding the weaker position.[28] Thus, the concept of a consumer 'must be assessed by reference to a functional criterion, consisting in the assessment of whether the contractual relation at issue has arisen in the course of activities outside trade, business or profession'.[29] This also holds true for other professionals entering into a contract with a trader, where the contract does not directly involve a professional business.[30] The standpoint of the CJEU merely confirms what is expressly encoded in EU consumer directives.[31] Obviously, these rules also apply to contracts involving a triangular configuration, where a collaborative economy platform acts as an intermediary in the contract for the underlying service. In addition, however, collaborative economy platforms are recognised as providers of information society services in the meaning of the E-commerce Directive and the Digital Services Act. Although the legal classification of such platforms from this perspective has been discussed elsewhere, some additional obligations concerning consumer protection also stem from these legal acts and are discussed below.

[26] Case C-110/14, *Costea*, EU:C:2015:538, para 21 (on the grounds of Directive 1993/13).
[27] Case C-147/16, *de Grote*, EU:C:2018:320, para 55 and the case law referred to therein.
[28] Case C-110/14, *Costea*, EU:C:2015:538, paras 24–26 and the case law referred to therein.
[29] Case C-74/15, *Tarcău*, EU:C:2015:772, para 27; Case C-534/15, *Dumitraș*, EU:C:2016:700, para 32; Case C-535/16, *Bachman*, EU:C:2017:321, para 36.
[30] Case C-455/21, *OZ*, EU:C:2023:455, paras 48–49 and the case law referred to therein.
[31] See (n 24); European Commission, Guidance on the interpretation and application of Directive 2011/83 of the European Parliament and of the Council on consumer rights, OJ C 525, 29/12/2021, 1–85.

Secondly, there should be no doubt that collaborative economy platforms are recognised as traders for the purposes of applying EU rules on consumer protection.[32] Let us recall here that the rights derived from EU law by a consumer are to be enforced only in relations with a trader. A trader is defined as 'any natural or legal person who […] is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader'[33] or as 'any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession'.[34]

Thirdly, the most problematic issue is whether a provider of an underlying service is to be recognised as a trader in the above meaning. As was explained in the introduction, such a provider may be a natural person acting for purposes relating to their business or a natural person acting outside any business activity (even if it is a paid service). As a result, whether such a provider is a trader (in terms of EU consumer law) is an important distinction for the rights of the recipient of the service, who may be a consumer (a natural person acting outside their trade, business, craft or profession) or a peer. In its Communication from 2016, in order to decide who is a trader, the European Commission proposed taking into account the frequency of the services, the profit-seeking motive and the turnover.[35]

The issue of how to interpret the notion of a trader in online trade was considered by the CJEU in *Kamenova*.[36] The primary question addressed by the national court adjudicating in the main proceedings was whether a natural person who simultaneously published a number of advertisements offering new and second-hand goods for sale on a website might be classified as a trader within the meaning of Article 2(b) of Directive 2005/29. Secondly, the court asked whether such an activity constituted a 'commercial practice' within the meaning of the same provision. The Court of Justice explained that given the almost identical definitions of a trader in Directives 2005/29 and 2011/83 and the fact that both directives pursue the same objectives (to contribute to the proper functioning of the internal market

[32] See for example explanation in the context of Directive 2005/29 – Bram Duivenwoorde, 'The Liability of Online Marketplaces under the Unfair Commercial Practices Directive, the E-commerce Directive and the Digital Services Act', European Journal of Consumer and Market Law 2022, No 2, 47.

[33] Article 2(b) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11/06/2005, 22–39.

[34] Article 2(2) of Directive 2011/83 of the European Parliament and of the Council of 25 October 2011 on consumer rights, OJ L 304, 22/11/2011, 64–88.

[35] COM (2016) 356, 9–10.

[36] Case C-105/17, *Kamenova*, EU:C:2018:808.

and to ensure a high level of consumer protection in the legislative, regulatory and administrative framework which they cover), this concept must be interpreted uniformly in both directives.[37] Furthermore, the Court ruled that 'classification as a "trader" requires a "case-by-case approach"', taking into account several circumstances and facts: 'whether the sale on the online platform was carried out in an organised manner, whether that sale was intended to generate profit, whether the seller had technical information and expertise relating to the products which she offered for sale which the consumer did not necessarily have, with the result that she was placed in a more advantageous position than the consumer, whether the seller had a legal status which enabled her to engage in commercial activities and to what extent the online sale was connected to the seller's commercial or professional activity, whether the seller was subject to VAT, whether the seller, acting on behalf of a particular trader or on her own behalf or through another person acting in her name and on her behalf, received remuneration or an incentive; whether the seller purchased new or second-hand goods in order to resell them, thus making that a regular, frequent and/or simultaneous activity in comparison with her usual commercial or business activity, whether the goods for sale were all of the same type or of the same value, and, in particular, whether the offer was concentrated on a small number of goods'.[38]

Neither the criteria proposed by the Commission nor those proposed by the Court of Justice are to be treated as exhaustive or exclusive.[39] This leads to the conclusion that the decision about the character of the provider of an underlying service in the context of a collaborative economy platform must also be taken on a case-by-case basis. The obligations of traders, as will be seen in the following section, include a duty to self-declare. Needless to say, such a declaration – in disputable cases – will be assessed by a national court on an *ad hoc* basis.

3. OBLIGATIONS IN RELATIONS WITH CONSUMERS

3.1. OBLIGATIONS OF COLLABORATIVE ECONOMY PLATFORMS

Firstly, let us recall that ensuring legal certainty and consumer confidence was already an objective of the E-commerce Directive,[40] according to which seve-

[37] Case C-105/17, *Kamenova*, EU:C:2018:808, paras 27–29.
[38] Case C-105/17, *Kamenova*, EU:C:2018:808, paras 37–38.
[39] Case C-105/17, *Kamenova*, EU:C:2018:808, para 39.
[40] Recitals (7) and (10) of the E-commerce Directive.

ral obligations for providers of 'information society services' were imposed in relation to the recipients of such information. These obligations apply to collaborative economy platforms, because they were recognised as providers of hosting services (one of the categories within the definition of providers of information society services) in the E-commerce Directive.[41] The other party to a contract for providing an information society service is a recipient of an information society service, defined as 'any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for purposes of seeking information or making it accessible'.[42] The obligations of providers of information society services relate to a broad range of recipients of such services, consumers being only one category.[43] According to the E-commerce Directive, a provider of information society services is under the obligation to 'render easily, directly and permanently accessible' certain information, such as the name, the geographical address and electronic e-mail address.[44] In addition, when an information society service refers to prices, these are to be 'indicated clearly and unambiguously and, in particular, must indicate whether they are inclusive of tax and delivery costs'.[45] Secondly, detailed requirements for commercial communications have been set.[46] Thirdly, specific obligations rest on the providers of information society services when concluding a contract, including the requirement to provide specific information to the recipient of the service[47] and to respect rules concerning order placement.[48] It is worth mentioning that in both instances, these requirements are obligatory in relation to a recipient of a service who is recognised as a consumer. Modifications are allowed only under contracts between a service provider and a service recipient who is not recognised as a consumer.

[41] See the discussion and the literature referred to in Szwarc (n 10) 183–206.

[42] Article 2(d) of the E-commerce Directive.

[43] Please note that the definition of 'consumer' is coherent with the one used in the consumer protection Directives – Article 2(e) of the E-commerce Directive.

[44] Article 5(1) of the E-commerce Directive. As interpreted by the Court of Justice, a service provider is required to supply recipients of the service – in addition to its email address – with 'other information which allows the service provider to be contacted rapidly and communicated with in a direct and effective manner. That information does not necessarily have to be a telephone number. That information may be in the form of an electronic enquiry template through which the recipients of the service can contact the service provider via the internet, to whom the service provider replies by electronic mail except in situations where a recipient of the service, who, after contacting the service provider electronically, finds himself without access to the electronic network, requests the latter to provide access to another, non-electronic means of communication', Case C-298/07, *Deutsche Internet Versicherung AG*, EU:C:2008:572, para 40.

[45] Article 5(2) of the E-commerce Directive.

[46] Article 6 of the E-commerce Directive.

[47] Article 10 of the E-commerce Directive.

[48] Article 11 of the E-commerce Directive.

It is interesting to see that obligations of service providers are duplicated in the Services Directive,[49] which provokes questions about mutual relations between these two EU acts. This is because, in general, each information society service is to be recognised simultaneously as 'a service' under Article 57 of the TFEU and the Services Directive.[50] Therefore, it may happen that a provider of an information society service pursuant to the E-commerce Directive is a provider of service pursuant to Article 57 of the TFEU and the Services Directive. The general conflict rule is to be found in the Services Directive, according to which '[i]f the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions'.[51] This means that in this particular context, it might be necessary to consider whether a given service is an information society service under Article 2(a) of the E-commerce Directive. Only if it does not, would the Services Directive apply. In this context, it is also important to note that in the context of a collaborative economy platform, the Court of Justice confirmed that the E-commerce Directive applies,[52] and thus the obligations from the Services Directive do not.

Secondly, the obligations for collaborative economy platforms, as traders, stem from Directive 2005/29 and Directive 2011/83 as modified by Directive 2019/2161 (called the Omnibus Directive). Regarding the obligations under Directive 2011/83, traders are under specific duties to inform consumers of the following before

[49] Article 22 of the Services Directive; the scope of information that is to be provided to a recipient of a service is wider here than in the E-commerce Directive.

[50] Confirmed by the Court of Justice in Case C-390/18, *Airbnb*, EU:C:2019:1112, para 40; Busch, 'The sharing economy at the CJEU: Does Airbnb pass the 'Uber test'? Some observations on the pending case *C-390/18 – Airbnb Ireland*', Journal of Consumer and Market Law 2018, 7(4), 172–174; Liesbet Van Acker, 'C-390/18 – The CJEU Finally Clears the Air(bnb) Regarding Information Society Services: Case Note to CJEU, *C-390/18 Airbnb Ireland*', Journal of European Consumer and Market Law 2020, 9(2), 77–80; Van Francesch P, 'Accommodating the freedom of online platforms to provide services through the incidental direct effect back door: Airbnb Ireland', Common Market Law Review 2020, 37(4), 1201–1228.

[51] Article 3(1) of the Services Directive.

[52] Case C-390/18, *Airbnb*, EU:C:2019:1112, para 69. Please note that in Case C-62/19, *Star Taxi App*, EU:C:2020:980, the Court classified an intermediation service via smartphone application as a 'service' in terms of the Services Directive, because the national rule applied to such an intermediation could not be treated as a rule creating a new prior authorisation scheme specifically and exclusively targeted at information society services (paras 82–84); therefore, such a national rule was to be scrutinised in the light of relevant articles of the Services Directive. For more, see Caterina Gardiner, 'Star Taxi App is an "Information Society Service": But is the Meter Still Running for the Classification of Platform Services? Case Note to CJEU, C-62/19 Star Taxi App SRL', Journal of European Consumer and Market Law 2021, No 2, 67–71.

concluding a contract – particularly with respect to distance and off-premises contracts: the trader,[53] the transaction,[54] the right of withdrawal,[55] codes of conduct and alternatives for dispute resolution.[56] All traders are also bound by provisions concerning formal requirements for distance contracts,[57] obliging them to enable a consumer to withdraw from the contract,[58] as well as those concerning other consumer rights.[59] The above obligations are addressed to all traders, including collaborative economy platforms.[60]

In addition, specific obligations are addressed to 'online marketplaces', which are 'a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers'.[61] Collaborative economy platforms, being such online marketplaces, are obligated to provide consumers with information about the main parameters determining the ranking;[62] whether the third party offering the goods, services or digital content is a trader (based on the third party's declaration);[63] when the third party is not a trader the fact that the consumer rights stemming from EU consumer protection law do not apply to the contract;[64] and how the obligations related to the contract are shared between the third party and the provider of the online marketplace.[65]

Secondly, specific obligations for online marketplaces were included in the logic of Directive 2005/29 (as amended by the Omnibus Directive) with the introduction of additional misleading actions (that may lead to a commercial practice being assessed as unfair) and the addition of one commercial practice that is always treated as unfair (blacklisted). Collaborative economy platforms are under a general obligation to refrain from unfair commercial practices. In particular, in the

[53] Article 6(1)(b)–(d) of Directive 2011/83.
[54] Article 6(1)(a), (e), (ea), (g), (m) and (o)–(q) of Directive 2011/83.
[55] Article 6(1)(h)–(k) of Directive 2011/83.
[56] Article 6(1)(n) and (t) of Directive 2011/83. For a comprehensive analysis, see Christiana Markou, 'Directive 2011/83 of the European Parliament and of the Council of 25 October 2011 on consumer rights', in Arno Lodder, Andrew Murray, *EU Regulation of E-commerce: A Commentary*, Cheltenham–Northampton: Edward Elgar Publishing Limited 2022, 151–221.
[57] Article 8 of Directive 2011/83.
[58] Articles 9–16 of Directive 2011/83.
[59] Articles 18–22 of Directive 2011/83.
[60] Damjan Možina, 'Retail Business, Platform Services and Information Duties', Journal of European Consumer and Market Law 2016, No 1, 25–30.
[61] Article 2(17) of Directive 2011/83, introduced by Directive 2019/2161.
[62] Article 6a(1)(a) of Directive 2011/83.
[63] Article 6a(1)(b) of Directive 2011/83.
[64] Article 6a(1)(c) of Directive 2011/83.
[65] Article 6a(1)(d) of Directive 2011/83.

context of misleading omissions by online marketplaces, particular information is to be recognised as material. Namely, when an online marketplace allows consumers to search for goods or services offered by different traders using a query in the form of a keyword, phrase or other input, then it must provide consumers with material information consisting of 'general information […] on the main parameters determining the ranking of products presented to the consumer as a result of the search query and the relative importance of those parameters'.[66] As a result, failure to provide consumers with the above information is to be treated as a misleading action. This definition of information that is material for the consumer corresponds closely with one category of commercial practices which are considered unfair (blacklisted) in all circumstances: 'providing search results in response to a consumer's online search query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of products within the search results'.[67]

In addition, because it is important for a consumer to know whether they will be protected under consumer protection rules at all when goods, services, digital services or digital content are offered on online marketplaces, it is considered to be material to inform the consumer whether the third party offering them is a trader, according to the third party's declaration to the provider of the online marketplace.[68]

Thirdly, under Directive 2005/29 and Directive 2011/83, online marketplaces – including collaborative economy platforms – are obligated to inform consumers about the status of third-party suppliers of goods or providers of services. However, an online marketplace relies in this regard on declarations from the provider of the underlying service, which could support the conclusion that it was not obligated to verify such information. This conclusion would also be coherent with the general prohibition established by the E-commerce Directive against imposing on the providers of information society services a general obligation to monitor the content supplied by third parties.

The DSA does not introduce revolutionary changes in terms of the scope of information that is to be provided to consumers. The exclusion of intermediaries' liability and the prohibition of a general obligation to monitor third-party content

[66] Article 7(4a) of Directive 2005/29. For the definition of 'ranking', see Article 2(m) of Directive 2005/29 and recitals 19, 22 and 23 of the preamble to Directive 2019/2161.
[67] Point 11a of Annex I to Directive 2005/29, see further Madalena Narciso, 'The Unfair Commercial Practices Directive – Fit for Digital Challenges? An Analysis of the European Commission's Guidance (C/2021/9320)', European Journal of Consumer and Market Law 2022, No 4, 147–153.
[68] Article 7(4)(f) of Directive 2005/29.

are continued.[69] However, the DSA introduced specific obligations for providers of online platforms which allow consumers to conclude distance contracts with traders, and collaborative economy platforms are in this category. To start with, such providers are obligated to ensure that they have certain information about the traders who use their platforms to promote messages or to offer products or services to consumers located in the EU. Before a trader uses an online platform, the online platform provider is obligated to obtain from them a name, address, telephone number and email address, a copy of the identification document, the payment account details of the trader, the trade register (if the trader is registered) and 'a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law'.[70] Providers of online platforms are also obligated to make the above information accessible to the recipients of the service (thus consumers) 'in a clear, easily accessible and comprehensible manner' and 'at least on the online platform's online interface where the information on the product or service is presented'.[71]

To some extent, the scope of information required from a trader duplicates both obligations which are stemming for a trader under Directive 2005/29 and Directive 2011/83 and the obligations arising for a provider of intermediary services under Directive 2005/29 and Directive 2011/83, which raises questions about the internal coherence of EU law.[72] What really makes the difference is that under both Directives, online platforms are obligated 'to provide the consumers with information' about the capacity in which the third party offers goods or services (trader or not). Under the DSA, the platform is responsible for obtaining such information from traders. This conclusion is confirmed by the wording of Article 30(2) of the DSA, stating that

> upon receiving the information referred to in paragraph 1 and prior to allowing the trader concerned to use its services, the provider of the online platform allowing consumers to conclude distance contracts with traders shall, through the use of any freely accessible official online database or online interface made available by a Member State or the Union or through requests to the trader to provide supporting documents

[69] For more, see Sara Tommasi, 'The Liability of Internet Service Providers in the Proposed Digital Services Act', European Review of Private Law 2021, No 6, 925–944. For the first reflection on the DSA proposal, see also Christoph Busch, Vanessa Mak, 'Putting the Digital Services Act in Context: Bridging the Gap between EU Consumer Law and Platform Regulation', Journal of European Consumer and Market Law 2021, No 3, 109–115.

[70] Article 30(1)(a)–(e) of the DSA.

[71] Article 30(7) of the DSA.

[72] Caroline Cauffman, Catalina Goanta, 'A New Order: The Digital Services Act and Consumer Protection', European Journal of Risk Regulation, 12(2021), 760–763; Ece B Suzel, 'Responsibility of Online Platforms Towards Consumers. A Comparative Analysis between EU Law and Turkish Law', European Journal of Consumer and Market Law 2023, No 6, 226–232.

> from reliable sources, make best efforts to assess whether the information referred to in paragraph 1 point (a) to (e), is reliable and complete. For the purposes of this Regulation, traders shall be liable for the accuracy of the information provided.[73]

In addition, the DSA contains rules on how an online platform has to complete or correct the information about a given trader.[74] Moreover, under the DSA, providers of online platforms allowing consumers to conclude distance contracts with traders must design and organise their online interfaces in such a way that they meet the requirements from Article 31 of the DSA. The point is to design an online interface that enables traders to comply with obligations regarding pre-contractual information and compliance (Article 31(1)), including information about the trader (Article 31(2)) and information necessary for the clear, unambiguous identification of the services offered to consumers (Article 31(2)(a)).

3.2. OBLIGATIONS FOR PROVIDERS OF UNDERLYING SERVICES AS TRADERS

Providers of underlying services in the collaborative economy triangular model who are recognised as traders are under the obligation stemming from Directive 2011/83 to inform consumers before the conclusion of a contract – particularly with respect to distance and off-premises contracts – about the identity of the trader,[75] the transaction,[76] the right of withdrawal,[77] codes of conduct and alternatives for dispute resolution.[78] All traders are also bound by provisions concerning formal requirements for distance contracts,[79] obliging them to enable a consumer to withdraw from the contract,[80] and those concerning other consumer rights.[81] It is true that, as long as both a collaborative economy platform and a provider of the underlying service are recognised as traders, both will be obligated in the relation with a consumer, as the recipient of the intermediary service provided by the platform and of the underlying service. It is then the question of dividing liability between the two providers of services (see below).

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[73] Please note the transition regulation in Article 30(2).
[74] Article 30(3)–(6) of the DSA.
[75] Article 6(1)(b)–(d) of Directive 2011/83.
[76] Article 6(1)(a), (e), (ea), (g), (m) and (o)–(q) of Directive 2011/83.
[77] Article 6(1) (h)–(k) of Directive 2011/83.
[78] Article 6(1)(n) and (t) of Directive 2011/83; for a comprehensive analysis, see Markou (n 56) 151–221.
[79] Article 8 of Directive 2011/83.
[80] Articles 9–16 of Directive 2011/83.
[81] Articles 18–22 of Directive 2011/83.

In the context of Directive 2005/29, it is also important to recall that providers of underlying services are obligated to declare their status relying on facts. Otherwise, their omission is to be treated as unfair commercial practice: 'falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer'.[82] In case of doubt as to whether such a provider is a trader, the rules established in Regulation 2019/1150[83] may be helpful. The platform-to-business regulation applies to online intermediation services and online search engines provided or offered to business users and corporate website users, where a business user is 'any private individual acting in a commercial or professional capacity who, or any legal person which, through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession'.[84] As a result, when the provider of an underlying service declares the status of a business user for the purposes of this Regulation, then they are not able to hold 'non-trader' status in relation to the recipient of the underlying service they offer. In such situations, in order to be protected as the weaker party in their relations with the platform, the provider of the underlying service cannot escape their obligations towards consumers with whom they sign a contract.

4. RELATIONS BETWEEN COLLABORATIVE ECONOMY PLATFORMS AND PROVIDERS OF UNDERLYING SERVICES

In this context, there are two important issues for a consumer who concludes a contract for an underlying service via a collaborative economy platform. The first is the delimitation of liability between the platform and the provider of the service, which is crucial for the consumer in case the contract is not executed (for example, the accommodation is not of the standard that was promised/advertised before the contract was signed). In order to be able to effectively claim liability, the consumer must know to whom such claims should be addressed: the collaborative economy platform or the trader providing the underlying service. The second issue is the growing role of collaborative economy platforms as 'enforcement agents', thus enforcing trader's obligations under EU consumer law from providers of underlying services.

[82] Point 22 of Annex I to Directive 2005/29.

[83] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186, 11/07/2019, 57–79.

[84] Article 2(1) of Regulation 2019/1150.

4.1. DIVISION OF LIABILITY TOWARDS CONSUMERS BETWEEN TRADERS

To begin with, one of the most important features of the EU law regulating the obligations of providers of hosting services (collaborative economy platforms falling under the category of providers of 'information society services') is the exclusion of their liability for information stored at the request of a recipient of the service, 'on condition that the provider: a) does not have actual knowledge of illegal activity or illegal content, and as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content'.[85] Thus, the exclusion of liability of the provider of hosting services (such as collaborative economy platforms) is the principle, and the obligation of the provider to act in particular instances is the exception.

The DSA introduced another exception to the general exclusion of liability for online platforms that allow consumers to conclude distance contracts with traders (compared to what stemmed from the E-commerce Directive). Such an online platform will be held liable for the information it presents if a specific piece of information is presented in a way that leads an average consumer to believe that the information or service that is the object of the transaction is provided either by the online platform itself or by a recipient of the service acting under its authority or control.[86] As a result, a collaborative economy platform has a general obligation of due diligence to clearly, precisely inform consumers about who is the genuine provider of the underlying service. Failure to provide such information results in the platform's liability in relations with consumers.

Simultaneously, the EU legislature assumed that the liability of an online platform might arise in particular situations. This issue has been addressed under a more general obligation of transparency as regards relations between consumers and traders. For collaborative economy platforms (as providers of online marketplaces pursuant to Directive 2011/83), this means the obligation to inform consumers whether a provider of an underlying service is a trader and, if so, 'how the obligations related to the contract are shared between the third party offering the goods, services or digital content and the provider of the online marketplace, such information being without prejudice to any responsibility that the provider of the online marketplace or the third-party trader has in relation to the contract under other Union or national law'. [87]

[85] Article 6(1) of the DSA.
[86] Article 6(3) of the DSA.
[87] Article 6a (1) (d) of Directive 2011/83.

As a result, EU law does not intervene in the contractual obligations between a platform and the provider of an underlying service, which means that the contract between them as well as the national law applicable to that contract, is decisive in this regard. Such a conclusion is supported by the preamble to Directive 2019/2161, which states that '[t]he information to be provided about the responsibility for ensuring consumer rights depends on the contractual arrangements between the providers of online marketplaces and the relevant third-party traders. The provider of the online marketplace could indicate that a third-party trader is solely responsible for ensuring consumer rights, or describe its own specific responsibilities where that provider assumes responsibility for certain aspects of the contract, for example, delivery or the exercise of the right of withdrawal'.

Therefore, one of the initial concerns about the uncertainties connected with the collaborative economy model was not addressed at the EU level. It is still the national private law that rules the division of liability between platforms and traders, which does not give consumers more legal security whatsoever in case the contract is not executed.

4.2. COLLABORATIVE ECONOMY PLATFORMS AS ENFORCEMENT AGENTS

Let us start with a general remark that because collaborative economy platforms are recognised as online platforms allowing consumers to conclude distance contracts with traders according to the DSA, they also have particular obligations towards providers of the underlying services (acting as traders).

As previously stated, it is the provider of the underlying service (acting as a trader) that is responsible for the accuracy of the information supplied to the online platform. However, the online platform must undertake specific actions in order to make sure that the information thus supplied is correct, accurate and complete, including addressing a request to that trader 'to remedy that situation without delay or within the period set by Union and national law' and even suspending 'the provision of intermediary service to that trader in relation to the offering of products or services to consumers located in the Union, until the request has been fully complied with'.[88]

In addition, online platforms are under the obligation to 'make reasonable efforts to randomly check in any official, freely accessible and machine-readable online

[88] Article 30(3) of the DSA.

database or online interface whether the services offered have been identified as illegal'. Last but not least, Article 32 of the DSA requires an online platform to take action when it becomes aware 'that an illegal product or service has been offered by a trader to consumers located in the Union through its services, that provider shall inform, insofar as it has their contact details, consumers who purchased the illegal product or service through its services of the following: the fact that the product or service is illegal; identity of the trader; and any relevant means of redress'.

It is clear that these obligations are no longer in line with the general exemption from liability for providers of hosting services. The responsibilities of online platforms allowing traders to conclude contracts with consumers, including collaborative economy platforms, also extend beyond EU consumer law. While in EU consumer law, the intermediary is responsible for providing information about traders to consumers (and it is this trader that is responsible for the correctness of the information), the DSA introduces obligations to act proactively in order to ensure that the information provided by traders is up-to-date and correct.

In this regard, it seems that the DSA has introduced a new model for enforcing the obligations of traders that provide underlying services in relations with consumers. As explained above, these obligations consist of requesting information from the traders that offer goods or services via their online interfaces and – additionally – verifying whether this information is correct. These new obligations for collaborative economy platforms seem to be in line with the wider tendency of involving private actors in the enforcement of law in the online environment.

5. CONCLUSIONS

These reflections on actors, obligations and enforcement in the context of protecting consumers' rights in the collaborative economy model lead to the following conclusions. Firstly, it raises no doubt that collaborative economy platforms shall be recognised as traders for the purposes of EU consumer protection law, provided that the other party to a contract for intermediatory service is a consumer. It is also a provider of an 'information society service' according to the E-commerce Directive, a provider of an 'intermediary service' and – even more specifically – a provider of hosting services under the DSA (for all recipients of such services, including consumers). The only exception from such classification (so far) has been Uber, which the Court of Justice recognised as a provider of transport services and not of information society services.[89]

[89] See the explanation in Szwarc (n 10) 183–206.

Secondly, the legal classification of providers of underlying services as traders for the purposes of EU consumer protection law relies on *ad hoc* analysis, which is an inherent part of applying consumer law. The general definitions of a *trader* and a *consumer* in the EU Directives on consumer protection allow for a flexible application of EU law depending on the dynamic social and economic circumstances, including contracts for providing underlying services via collaborative economy platforms. It seems that the most useful provision, from a practical perspective for natural persons concluding contracts for the provision of underlying services (via collaborative economy platforms), is the obligation of such a provider to declare whether they are acting in a professional capacity – as a trader. This clearly informs the natural person whether the contract will be governed by the EU consumer protection rules (implying a higher level of protection) or will be a contract between peers, governed by classic private (civil) law.

Thirdly, the obligations of collaborative economy platforms in relations with consumers are to be found in EU consumer law: in particular, Directive 2011/83 and Directive 2005/29, as amended by Directive 2019/2161 (Omnibus Directive), the E-commerce Directive and the DSA. That makes the legal picture quite a complicated puzzle of obligations. The legal picture is even more complicated when considering that providers of the underlying services are also obligated under EU consumer law (although not under the DSA) in their relations with consumers (as long as they are recognised as traders). This means that both collaborative platforms and traders providing underlying services are under specific obligations in their relations with consumers, including the duties to inform (Directive 2011/83) and the prohibition of unfair commercial practices (Directive 2005/29).

This takes us to the next point, which is the division of liability between a collaborative economy platform and a trader providing an underlying service. EU law – as it stands today – does not interfere with the rules governing this issue. It is left to the contractual commitment between a collaborative economy platform and a trader, as well as the relevant national private law. The most significant lack of progress in legal developments can be observed at the EU level, which results in legal fragmentation and considerable problems for consumers entering into contractual relationships in the EU internal market.

Last but not least, the role of collaborative platforms is growing in importance in the context of law enforcement. The obligations of online platforms under the DSA mean that they are designed to play an active role in enforcing the obligations of traders (providers of underlying services) in relations with consumers as far as the duty to inform are concerned. This is evidently the new paradigm of enforcement in the internal market, where public law competences are conferred onto private actors.

To conclude, it seems that the EU law in general has not addressed the interests of consumers in the particular context of the collaborative economy (as explained by the European Commission in 2016). Instead, collaborative economy platforms and their role in the digital single market have been addressed as only one narrow category of a general group of online platforms. Therefore, the discussion about consumers' rights in the collaborative economy is not the central point in the academic discourse. Instead, it should be seen from the perspective of the discussion on the shift of paradigm of consumer protection. The legislative changes introduced recently and discussed in this article are based on the general approach of 'disclosure' – providing consumers with information. The future of this paradigm and possible shift from disclosure to transparency is under discussion, and any results in this domain will affect all consumers, not only those who use collaborative economy platforms to conclude contracts with traders offering the underlying services.

It is also worth underscoring that the legislative changes concerning these online platforms do not have much impact on the most important element of the collaborative economy, at least in its early stages: activating the resources of private parties (peers). Apart from the question of who is a consumer and who is a trader in the collaborative economy (to be assessed on an *ad hoc* basis), a remaining question is about the rights of the two parties to a contract when they are peers. In such situations, these are contracts between peers, thus outside the paradigm of EU law and the distinction between traders and consumers. This is likely an unfulfilled promise from the past that has been forgotten forever.

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