

The Potential of Digital Markets Act and Digital Services Act to Provide a Meaningful Legal Framework for Collaborative Economy Platforms in the EU

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Abstract

Collaborative economy platforms (such as Uber or Airbnb) have been in the past under scrutiny by the Court of Justice of the EU under the framework of the Services Directive. With the conclusion of the rulings in Uber and Airbnb cases that their activities remain outside of the scope of this legislation. Simultaneously, the former E-Commerce Directive might not provide solutions adapted to the innovative models of peer-to-peer platforms and services. Hence, a legal vacuum might materialize in which the activity of the operators of the collaborative economy platforms on the Internal Market would remain outside the scope of the EU law. Digital Markets Act and Digital Services Act entered into force in November 2022. The new EU legislation was intended to introduce responsibility requirements for platform operators, regulate the activity of ‘gatekeepers’ and will provide the legal framework for the operation of the biggest digital platforms in the Internal Market. The question emerges – to what extent this regulation would provide a meaningful legal framework for the activity of collaborative economy platforms in the Internal Market? The ambition of the submitted contribution would be to respond to this question based on the analysis of the adopted provisions of the DSA and DMA. For this purpose, the systemic review of the existing literature on the regulating of collaborative economy platforms will be conducted. The analysis will also refer to the jurisprudence of the Court of Justice on the scope of application of the Services Directive and E-Commerce Directive in the context of the activity of

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Uber and Airbnb. Thirdly, the author will also assess the approach of the EU institutions to the collaborative economy platforms (exemplified by the above-mentioned rulings and legislation, as well as the European Commission's policy documents) in the context of regulating the activity of transnational entities. The main argument of the paper will be based on the assumption that the lack of a meaningful legal framework for the economic activity of the collaborative economy platforms might lead to the deterioration of the protection of the economic interests of the users of these platforms. The second argument of the paper, building on the main one, suggests that such an outcome would be evidence of a non-interventionist policy of the EU and a lenient approach of the EU towards collaborative economy platforms. These arguments will be critically assessed and verified with the results of the analysis of the potential of the DSA and DMA to regulate their activities in line with the other types of digital platforms and 'gatekeepers'.

Keywords

Digital Services Act, Digital Markets Act, Sharing Economy, Freedom of Services, Internal Market

1. Introduction

Legal challenges related to the activities of collaborative economy platforms have been the subject of many studies in the literature in the past¹ and more recently². It has also been a subject of increased activity of the European Commission back in 2016–2018 which resulted in the publishing of several economic studies on the collaborative economy³ and led to the adoption of the soft-law policy document – the communication 'A European agenda for the collaborative economy' (the 'Collaborative Economy Communication')⁴. One of the main challenges related to the presence of new, innovative, and disruptive business models pursued by the collaborative economy platforms was the identification of a suitable and meaningful legal framework for their

1 V Hatzopoulos, *The Collaborative Economy and EU Law* (Hart Publishing 2018) see also: N M Davidson, M Finck, JM Infranca (eds), *The Cambridge Handbook of The Law of the Sharing Economy* (CUP, 2018).

2 For comprehensive analysis see: Vida Česnuitytė and others, *The sharing economy in Europe: Developments, practices and contradictions* (Cham: Palgrave MacMillan 2022).

3 Commission, Directorate General for Internal Market, Industry, Entrepreneurship and SMEs, 'Collaborative economy studies' (2018) <https://single-market-economy.ec.europa.eu/single-market/services/collaborative-economy/collaborative-economy-studies_en> accessed 7 May 2023.

4 Commission, 'A European agenda for the collaborative economy' (Communication), COM (2016) 356 final.

operations⁵. The main two fields of research have been competition law⁶ and freedom to provide services⁷. The Commission described it in the Collaborative Economy Communication in the following manner:

The collaborative economy often raises issues with regard to the application of existing legal frameworks, blurring established lines between consumer and provider, employee and self-employed, or the professional and non-professional provision of services. This can result in uncertainty over applicable rules, especially when combined with regulatory fragmentation stemming from divergent regulatory approaches at national or local level. This hampers the development of the collaborative economy in Europe and prevents its benefits to materialise fully. At the same time, there is a risk that regulatory grey zones are exploited to circumvent rules designed to preserve the public interest.

Hence, the ambition of this contribution is to analyse whether the challenges identified by the Commission have been resolved since the adoption of Collaborative Economy Communication. For this purpose, the contribution was divided into 4 main sections. The first issue that is discussed in Section 2 was related to the struggles with the legal classification of the activities of collaborative economy platforms and the attempt to identify suitable definitions in existing and recently adopted EU legislation. The scope was limited to the *eCommerce* Directive, Services Directive, Digital Services Act (DSA), and Digital Markets Act (DMA).⁸ The legal definition allows us to determine the scope of requirements and obligations stemming from the EU law, as well as draw the line between the competencies field of the EU and Member States. For better clarity, these topics were presented in Section 3 and Section 4. Section 3 focused on the established framework and interpretation provided by the Court of Justice of the European Union in its jurisprudence. Section 4 assesses the potential obligations of DSA and DMA in the context of the scope of application of these new legal acts. Section 5 discusses the outcomes of these analyses against the background of the EU digital policy and the approach towards transnational private platforms. The impacts of the policy of the EU towards collaborative economy platforms (embodied by the applicable legislation, suitable legal framework, policy documents of the Commission, and jurisprudence

5 K Erickson and I Sørensen, 'Regulating the sharing economy', (2016) 5/2 Internet Policy Review, <<https://doi.org/10.14763/2016.2.414>> accessed 30 April 2023.

6 G Lougher and S Kalmanowicz, 'EU Competition Law in the Sharing Economy', (2016) 7/2 Journal of European Competition Law & Practice, S P King, 'Sharing Economy: What Challenges for Competition Law?', (2015) 6/10 Journal of European Competition Law & Practice. See also: MD Iacob, 'Collaborative economy - regulations at European Union level and its impact on the competitive environment', [2017] Romanian Competition Journal.

7 C Cauffman and J M Smits, (2016), 'The Sharing Economy and the Law: Food for European Lawyers', (2016) 23/6 Maastricht Journal of European and Comparative Law.

8 See *infra* respectively (n 11), (n 19), (n 20), (n 21).

of the Court) are discussed in the context of the competitiveness of the EU and the protection of the users. A summary of the main conclusion is presented in Section 6.

2. Definition of collaborative economy platforms

To assess the compatibility of existing legal frameworks to the activities of collaborative economy platforms in the Internal Market it is necessary to determine the definition for these kinds of entities. The definition will allow them to classify their activities and potentially apply the provisions of the EU law to many different factual situations related to their activities in different sectors of the economy. The lack of an EU-wide uniform definition applicable across different sectors and jurisdictions might lead to the fragmentation of the Internal Market⁹. Thus, to determine the existence of a union-level definition, the main policy documents published by the European Commission were analysed, as well as the 4 legal acts analysed in this contribution.

European Commission in the Collaborative Economy Communication defined the core elements of the ‘collaborative economy’ business model:

[collaborative economy] refers to business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time, and/or skills — these can be private individuals offering services on an occasional basis (‘peers’) or service providers acting in their professional capacity (‘professional services providers’); (ii) users of these; and (iii) intermediaries that connect—via an online platform—providers with users and that facilitate transactions between them (‘collaborative platforms’). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit.

Hence, the main elements of the definition used by the European Commission include a) intermediation of digital platforms, b) focus on accessibility rather than ownership, c) peer-to-peer services, and d) flexibility towards profit-orientation¹⁰. This broad definition might be useful for analytically distinguishing collaborative from non-collaborative platforms and business models, but it does not bear legal meaning. Therefore it is necessary to refer to the body of the EU secondary law to assess whether the provisions of the relevant directives

9 V Hatzopoulos and S Roma, ‘Caring for sharing? The Collaborative Economy under EU law’, [2017] *Common Market Law Review*.

10 European Parliament, ‘A European agenda for the collaborative economy’ (Briefing) PE 593.510.

and regulations formulate legal criteria for the classification of a platform as a ‘collaborative economy platform’.

Within the scope of this contribution, two more established acts of the law of the EU are scrutinized. eCommerce Directive - Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’) – is the first in chronological order.¹¹ The legal act entered into force before the business models based on the concept of the collaborative economy were widely established in the Internal Market, however, the Court of Justice of the European Union used this legal act as a point of reference for the judgements in cases related to the activities of the two most established companies – Airbnb and Uber. In the judgement of 20 December 2017 in the case, C–434/15 *Asociación Profesional Elite Taxi*¹² the Court referred to the art 2(a) and the definition of the ‘information society services’ (with the negative outcome for the business activity of Uber constituting ‘services in the field of transport’)¹³. The same provision was revoked in the judgement of 19 December 2019 in case C–390/18 *Airbnb Ireland*,¹⁴ however with a different outcome¹⁵ – the activity of Airbnb was found to meet the cumulative criteria for ‘information society services’¹⁶. Therefore the definition of ‘information society services’ could not provide a consistent framework for various models pursued by collaborative economy platforms (in the sense of the non-legal definition of the European Commission cited above). Hence the definition of the ‘information society services’ might or might not, depending on the range of circumstances (economic sector, extent of control between the platform and the conditions offered by users, existence of sectoral legislation), rather than the core business model, cover the activities of the platform¹⁷. Hence, it does not increase the level of legal certainty of the platform users and does not bring definitional clarity to

11 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 (‘Directive on electronic commerce’) [2000] OJ L 178/1, hereinafter eCommerce Directive.

12 Case C–434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain SL* [2017] ECLI:EU:C:2017:981.

13 M Finck, ‘Distinguishing internet platforms from transport services: *Elite Taxi v. Uber Spain*’, [2017] Common Market Law Review.

14 Case C–390/18 *Criminal proceedings against X with the intervention of Airbnb Ireland UC and others* [2019] (hereinafter *Airbnb Ireland*).

15 C Busch, ‘The Sharing Economy at the CJEU: Does Airbnb pass the “Uber test”?’ [2018] Journal of European Consumer and Market Law.

16 P Van Cleynenbreugel, ‘Accommodating the freedom of online platforms to provide services through the incidental direct effect back door: *Airbnb Ireland*’, [2020] Common Market Law Review.

17 A De Franceschi, ‘Uber Spain and the “Identity Crisis” of Online Platforms’, [2018] Journal of European Consumer and Market Law, 1.

the question of whether the eCommerce Directive could provide a meaningful legal framework for the activities of the ‘collaborative economy platforms’ in the Internal Market¹⁸.

Hence, it is worth analyzing the potential of the Services Directive – Directive 2006/123/EC on services in the internal market – in this respect.¹⁹ Once regarded as the horizontal and cross-sectoral legislation encompassing the freedom of movement of services in the Internal Market it was also used as a point of reference by the Court in the two fundamental cases cited above. However, in this context the consistency was also not represented by the Court – in *Elite Taxi* the Court classified the activity of Uber as ‘services in the field of transport’ within the meaning of the art 2(2)(d) of the Services Directive. In *Airbnb Ireland*, the Court assessed that the ‘activity of intermediation at issue in the main proceedings [provided by Airbnb] comes under the notion of ‘service’ within the meaning of [...] the Services Directive’. However, the definition of ‘service’ is arguably too wide and does not provide the required specification of the business models of collaborative economy platforms. At the same time, this definition is not always met in case of the activities pursued not for profit (between the users) and for the activities of the platforms themselves the more specific definition of ‘information society services’ will be simultaneously met (as in the case *Airbnb Ireland*). Hence the Services Directive also does not provide definitional clarity, nor increases level of the legal certainty regarding the activities of collaborative economy platforms in the Internal Market.

In this context, two major legal acts adopted in recent years in the domain of the EU digital law – Digital Services Act (DSA)²⁰ and Digital Markets Act (DMA)²¹ adopted and entered into force in 2022 – could provide remedies to the definitional deficiencies of the EU law towards collaborative economy platforms presented above. However, neither DSA nor DMA contains an explicit definition of a ‘collaborative economy platform’. Nevertheless, in the art 1(1) of the DSA the aim of the regulation is stipulated in the following manner:

The aim of this Regulation is to contribute to the proper functioning of the

18 C Wendehorst, ‘Platform Intermediary Services and Duties under the E-Commerce Directive and the Consumer Rights Directive’, [2016] Journal of European Consumer and Market Law, 1.

19 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [2006] OJ L 376/36 (Services Directive) [2006] OJ L 376/36.

20 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) [2022] OJ L 277, hereinafter DSA.

21 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L 265, hereinafter DMA.

internal market for intermediary services by setting out harmonised rules for a safe, predictable, and trusted online environment that facilitates innovation and in which fundamental rights enshrined in the Charter, including the principle of consumer protection, are effectively protected.

The term ‘intermediary services’ is not however defined in the art 3 named ‘Definitions’, therefore according to recital n 1 it should be interpreted as one of the ‘information society services’ used in the eCommerce Directive.

DMA in the art 2(5) defines ‘online intermediation services’ through reference to the so-called ‘P2B Regulation’²². The P2B Regulation defines 3 cumulative criteria for the definition of ‘online intermediation services’ – 1) they have to constitute ‘information society services’ in the meaning of the eCommerce Directive, 2) they facilitate the offering of goods and services by businesses to the end consumers irrespective of where those transactions are ultimately concluded, 3) the services are provided based on contractual relationships between business users and providers of services. Intriguingly recital n 11 of the P2B Regulation indicates examples of the ‘online intermediation services’ that could include online e-commerce market places, including collaborative ones on which business users are active, online software applications services, such as application stores, and online social media services, irrespective of the technology used to provide such services’.

Thus it seems that the collaborative economy platforms could be covered by both P2B Regulation and DMA as the platform providing ‘online intermediation services’²³. A similar conclusion could be drawn to the ‘intermediary services’ covered by DSA. However, none of these legal acts (neither DSA nor DMA) differentiates between the collaborative economy platform and other online platforms. Hence, no specific definition for the collaborative economy platforms in the analysed EU legislation could be determined. It has its impacts on the possibility to determine applicable legal framework to their activities and requirements that are imposed on them by the provisions of the EU law. These matters are presented in the following section of this paper.

3. Failed attempts to find a suitable legal framework in the EU law – eCommerce Directive and Services Directive

Firstly, it needs to be assessed to what extent the eCommerce Directive and Services Directive has established suitable legal frameworks for the operations

²² 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 [2019] OJ L 186/57.

²³ C T Flesner, ‘The EU’s Proposals for Regulating B2B Relationships on online platforms – Transparency, Fairness and Beyond’, [2018] Journal of European Consumer and Market Law.

of the collaborative economy platforms in the EU. In this context, these legal acts have shown some shortcomings in capturing the specificities of the collaborative economy platforms. The issue of the applicability of the EU legal regime deserved some attention from scholars in the context of the scope of application of the Services Directive. The possibility to use its framework for specific and new emerging business models was discussed before, however, the conclusions from these analyses are inconsistent²⁴. This is also reflected in the fragmentation of national approaches towards various business models associated with collaborative economy platforms²⁵. As the practice shows, correct classification of the activity and applicable EU law is of fundamental importance for the conformity of new legal regimes introduced by the Member States for collaborative business models with EU law.

Two possibilities to classify the activity of most practice-relevant platforms were presented in the literature and were also present in the Court examination in cases related to the activity of collaborative economy platforms in the Internal Market. The first approach was based on the premise that collaborative economy platforms provide only the services of digital intermediation between the provider and recipient of the final service. The second approach assumes that the collaborative economy platforms provide final services through the offering of digital means and take responsibility for the provider of the downstream service to the end user. In this context, it is worth noting that the Court had to balance the free flow of services in this very particular field (with all the reasoning related to the innovativeness of the digital economy and benefits for the consumers) with other reasons of public interest²⁶. As the analysis shows, the Court paid also due attention to maintaining flexibility and equilibrium between the need to establish a coherent framework for providers of services (enabling roll-out and scale-up of collaborative economy platforms on the Internal Market) with the Member States competence to define the desired level of regulation in the fields of shared competencies.

The Court scrutinized business models of collaborative economy platforms in two sectors: transport and accommodation. The fundamental ruling for the first group was issued in 2017 in the case *Asociación Profesional Élite Taxi*. In this judgement, the Court remarkably declared services provided by the Uber

24 See *inter alia* M Inglese, 'The Collaborative Economy Legal Conundrum: A Way Forward Through Harmonization', [2018] *Legal Issues of Economic Integration*; M J Sorensen, 'Private Law Perspectives on Platform Services. Uber – a business model in search of a new contractual legal frame?', [2016] *Journal of European Consumer and Market Law*.

25 Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, M Naumanen, and others, *Study to monitor the business and regulatory environment affecting the collaborative economy in the EU : final report* (Publications Office of the European Union 2018).

26 S Ganapati, C G Reddick, *Prospects and challenges of sharing economy for the public sector*, (2018) 35 *Government Information Quarterly*.

company as having the nature of services in the field of transport and not ‘information society service’²⁷. The Court laid out the precise conditions under which it is possible to determine whether a collaborative economy platform ‘exercises decisive influence over the conditions under which the service is provided’ – i.a. setting prices, and automated choice of the available drivers and routes²⁸. The result of this examination led the Court to the conclusion that such a situation is confirmed in the case of the services provided by Uber users and thus the activity of Uber is inherently linked to these services. Hence, the collaborative economy platform provides services in the field of transport which are excluded from the scope of application of the Services Directive²⁹. These remarks were repeated and further confirmed by the Court in the *Uber France* case³⁰. This approach was also applied by the Court in the more recent case *Star Taxi App* where the Court assessed whether the activity of the platform provider includes exerting a decisive influence on the conditions of the service. The result of this analysis was negative in this case (as suggested by the national court presenting the preliminary question) because the platform limited its activity to pure intermediary services, without directly interfering with the conditions of the downstream service (pricing, choosing providers, or processing payments)³¹. Thus, the applicable regime had to be decided between the regime of the Services Directive and the eCommerce Directive.

This analysis, also presented by the Court in the case *Airbnb Ireland*, enabled insight into the Court’s argumentation on delimitation between the legal regimes of the Services Directive and the eCommerce Directive. In both cases, *Airbnb Ireland* and *Star Taxi App* the Court indicated the general derogation of the art 3 of the Services Directive as a general collision clause³². Further, the Court declared the intermediary activity between hosts and accommodation seekers as constituting an ‘information society service’ because the platform of Airbnb did not exercise ‘decisive influence over the conditions under which the service is provided’ and provided services ‘distinct from the subsequent service to which it relates’³³ – hence in the case of services offered by Uber the user is provided with one unitary service of transport and in the case of services offered by Airbnb these are two separate services – intermediation in finding short-term accommodation provided by Airbnb and final service of

27 Schaub M.Y., ‘Why Uber is an information society service’, [2018] Journal of European Consumer and Market Law, 109.

28 See *Asociación Profesional Elite Taxi* (n 12), para 39.

29 *ibid* paras 40–43.

30 Case C–320/16 *Uber France SAS* [2018] ECLI:EU:C:2018:221 paras 22–25.

31 Case C–62/19 *Star Taxi App SRL v Unitatea Administrativ Teritorială Municipiul București prin Primar General and Consiliul General al Municipiului București* [2020] ECLI:EU:C:2020:980, paras 39–40 and paras 51–55.

32 *Airbnb Ireland* (n 14) para 41 and *Star Taxi App* (n 31) para 78.

33 *Airbnb Ireland* (n 14) paras 42–68.

accommodation provided by another user of the platform. The Court confirmed that services of renting accommodation were clearly within the scope of the application of the Services Directive, but since the conditions laid out in the directive on ‘information society services’ have been cumulatively fulfilled, the activity of Airbnb has been expelled from the scope of the Services Directive and analyzed in the light of (more liberal) provisions of the eCommerce Directive.

The analysis of the Court presented in the *Airbnb Ireland* ruling was very detailed and delivered mainly in the context of the arguments of the parties on the similarities of services of Airbnb and Uber and therefore focused on the conditions from the *Asociación Profesional Élite Taxi* and ‘the exercise of decisive influence’ to determine whether the ‘intermediation service [can] be separated from the property transaction itself’ and forms ‘an integral part of an overall service whose main component is a service coming under another legal classification’³⁴. These remarks were invoked in the *Star Taxi App* and referred to as ‘established case law’³⁵ – as such it might be regarded as the general approach to identifying a suitable legal framework for the services of the collaborative economy platforms. The character of the ‘information society service’ has been also attributed to the activity of the *Star Taxi App*³⁶, however, the Court did not automatically exclude it from the scope of the Services Directive. It concluded that for the exclusion provided by art 3(1), it has to be determined whether the collision between the Services Directive and other legal acts regulating providing of services in different economic sectors truly occurs³⁷. In this context the Court observed that it is the case only when the restrictions (preliminary authorization) imposed by the Member States are aimed specifically at the ‘information society services’ and if they have more general character (ie refer to all methods of intermediating between providers and consumers including radio), they should be interpreted solely in the context of conformity with the provisions of the Services Directive³⁸.

This approach towards platforms itself was contrasted with the ruling of the Court in *Cali Apartments*, where not the activities of the platforms but of the providers using them to offer their services (accommodation) were scrutinized. The Court in the straightforward interpretation of the definition of ‘service’ provided by the art 4(1) of the Services Directive applied its provisions to the

34 See *Airbnb Ireland* (n 32) paras 50–68.

35 See *Star Taxi App* (n 31) para 49.

36 See *Star Taxi App* (n 31) paras 41–48.

37 See *Star Taxi App* (n 31) para 79.

38 See *Star Taxi App* (n 31) paras 80–84; see also W Lewandowski, ‘Removing Barriers to Trade in Services in the Single Market with the Help of the Services Directive – Assessment of the Recent Case Law of the Court of Justice’ (2022) 18/1 *Utrecht Law Review*, 57–75 <<https://doi.org/10.36633/ulr.718>> accessed 30 May 2024.

‘repeated short-term letting, for remuneration, whether on a professional or non-professional basis, of furnished accommodation to a transient clientele which does not take up [permanent] residence’³⁹. The Court found that the restrictions provided for such activity by national legislation fall within the scope of the Services Directive when they are intended to regulate access to, and the exercise of, these services provided by private individuals⁴⁰ which might impact the activities of the collaborative economy platforms. Many of such restrictions adopted by the national and local authorities resulted from the rise in popularity of the business models of the collaborative economy platforms and enabled new avenues for offering the services to their users⁴¹. The Court denied by this occasion arguments brought by intervening Member States on the ‘hidden’ purpose of the legislation limiting such possibility to specified periods potentially excluding it from the scope of application of the Services Directive⁴². The Court reiterated that even if the national legislation is aimed at regulating some activities falling outside the scope of application of the Services Directive, this ‘mere fact’ is not enough to exclude this legislation altogether from the scope of application of the Services Directive when it covers also services not explicitly excluded from the Services Directive. Therefore the prevailing character has to be given to the effectiveness of the Services Directive without calling into question the objective thereof - ‘establishing an area without internal frontiers in which the free movement of a wide variety of services is ensured’⁴³.

However, the Court showed some degree of awareness of the impacts that the preference for the Services Directive over the national legislation might result in. While applying the provisions of the Services Directive the Court tried to carefully assess all the circumstances to determine the applicable legal regime, allow for reaching the main objectives of the Services Directive but also balance it against other legitimate interests pursued by the legislation of Member States. The application of the Services Directive to the activity of collaborative economy platforms (and its users) serves as the best example of how unintuitive this task is when these contrasting interests are on display. The Court formulated specific guidelines for the analysis of whether the activity of the platform falls within the scope of the Services Directive or gets excluded

39 Case C-724/18 *Cali Apartments SCI and HX v Procureur général près la cour d’appel de Paris and Ville de Paris* [2020] paras 31–36.

40 See *Cali Apartments* (n 39) paras 44–45.

41 V Mak, ‘Private Law Perspectives on Platform Services. Airbnb: Home Rentals between AYOR and NIMBY’, [2016] *Journal of European Consumer and Market Law*.

42 See *Cali Apartments* paras 37–42. Intervening Member States indicated at the ‘hidden’ purposes in form of ‘the change of use of residential premises (...) for the purpose of accommodating homeless persons or refugees’ (non-economic service of general interest covered by the art 2(2)), ‘rules concerning the development or use of land [and] town and country planning’ (exclusion of spatial planning covered by the recital n 9).

43 See *Cali Apartments* (n 39) para 39.

– which are followed by the national courts with good measure⁴⁴. Hence, it can be observed that the Court tried to apply the existent EU law provisions to the innovative business models of the collaborative economy platforms. It did so by presenting clear criteria whether the platform ‘exercise decisive influence on the conditions of the service’, whether providing ‘intermediation service [can] be separated from the [service] itself’, and whether the activity of collaborative economy platform forms ‘an integral part of an overall service’ which are crucial to determine whether the platform provides entire (upstream and downstream) service to the consumer (which could be excluded or not excluded from the scope of the Services Directive depending on the economic sector). Or whether the platform provides an intermediary ‘information society service’ covered by the regime of the eCommerce Directive. The Court went also into detail to analyze whether the real collision between the regimes of the Services Directive and the eCommerce Directive occurs to preserve preferential treatment of digital platforms to other, more conventional, forms of intermediating and thus avoided the ‘digital first’ approach. It follows, from the analysis that the Court was capable of flexibly adapting the argumentation and choosing applicable legal regimes to ensure the maximum level of liberalisation without undermining the minimum level of protection of other competing reasons of general interest. The Court had to be creative to some degree to fill the legislation void and *legal vacuum* and lack of a dedicated legal regime in the EU law which could provide a regulatory response to the dilemmas above. Therefore it is worth presenting whether the adoption of the landmark legislation for the EU digital policy – DSA and DMA – provided remedies to the situation cured previously by the Court with the creative criteria for applying Services Directive and eCommerce Directive.

4. DSA & DMA and regulating the activities of the collaborative economy platforms

In Section 2 it was determined that neither DMA nor DSA define collaborative economy platforms. Hence, they don’t directly refer to the business models of collaborative economy platforms. However, DSA includes reference to ‘intermediary services’, and DMA to ‘intermediation services’, therefore these kinds of activities remain within the scope of either of this legislation. Knowing that the application of the right regime of the EU law to the collaborative economy platform depends on the degree of strictness (‘exercising decisive influence’) in ‘intermediating’ between service providers and recipients it could be possible to determine whether DSA and DMA could establish a suitable legal

44 As the analysis of Romanian court in the *Star Taxi App* on the character of the service provided by the platform in the main proceedings got endorsed by the Court.

framework for ‘intermediary services’ and ‘intermediation services’ provided by the collaborative economy platforms.

Art 1 of DSA determines in this context the aim of the regulation to ‘contribute to the proper functioning of the internal market for intermediary services’ through the adoption of harmonised rules for safety, predictability, and trust in the online environment, facilitation of innovation and effective protection of the EU fundamental rights enshrined in the Charter. Specifically, the harmonisation of DSA should consist of the establishment of a) framework for the liability of providers of intermediary services, b) specific due diligence obligations for specific categories of providers, and c) implementation and enforcement rules. *Prima facie* these obligations and frameworks do not address the specificity of business models of the collaborative economy platforms. The obligations provided by DSA refer to the transmission of information (‘mere conduit’), storage (‘caching’ and ‘hosting’), monitoring, combating illegal content, and reporting on moderating of the information. Certain specific obligations for ‘providers of online platforms allowing consumers to conclude distance contracts with traders’ and ‘providers of very large online platforms and of very large online search engines’ are also determined, however, they do not tackle activities of collaborative economy platforms defined in the Commission communication (intermediation between peer-to-peer service providers and recipients). It is also evidenced by the lack of collaborative economy platforms in the list of very large online platforms and very large online search engines published in April 2023 by the European Commission⁴⁵. This is not to say that the collaborative economy platforms are excluded from the scope of application of DSA, however, their business model is not the subject of obligations and/or reporting requirements – for example, they might be faced with the consequences for not addressing abusive or discriminatory content in the information transmitted by the users through the platform⁴⁶. Nevertheless, the users of the collaborative economy platforms will not be able to determine the provisions directly addressing the substance of the business models pursued by them.

The objective of DMA is in turn described as a contribution to the proper functioning of the internal market by ensuring ‘for all businesses’ contestability and fairness in the markets in the digital sector across the Union, especially in the markets with the presence of gatekeepers – ‘to the benefit of business users and end users’. The scope of application is determined on the premise of ‘core platform services provided or offered by gatekeepers’ to businesses and

45 Commission, ‘Digital Services Act: Commission designates first set of Very Large Online Platforms and Search Engines’ (*European Commission* 2023), <https://ec.europa.eu/commission/presscorner/detail/en/IP_23_2413> accessed 30 May 2024.

46 S Navas Navarro, ‘Discrimination and Online Platforms in the Collaborative Economy’, [2019] *Journal of European Consumer and Market Law*.

consumers located in the EU. To this end, ‘online intermediation services’ were defined as one of the core platform services, and through the reference to the definition of ‘online intermediation services’ included in the P2B Regulation, it could extend to the collaborative economy business models. Consequently, the activity of collaborative economy platforms might be directly covered by DMA provisions if they are designated as gatekeepers (ie meet the criteria set out in the art 3 of DMA – turnover, number of users, and permanent presence in the Internal Market⁴⁷). This designation is not without practical problems, but given the high threshold set in the final wording of the DMA, it can be expected that only the biggest platforms, such as Uber or Airbnb could be considered as gatekeepers⁴⁸. However, bearing in mind that Uber was previously classified as a provider of services in the field of transport due to its ‘decisive influence’ on the conditions of the service provided, it might further limit the list. What kind of obligations might then be imposed on the collaborative economy platforms by DMA?

DMA stipulates obligations for data access and usage, distribution, bundling, and interoperability of digital services, non-discriminatory treatment and preventing self-preferencing, granting access to search engine data and effective access to key core platform services, enabling interoperability of messaging services, as well as compliance and reporting obligations. DMA to a large extent codifies existing case law of the Court and the Commission in the field of competition law application toward digital companies⁴⁹ and it is evident that the main objective is to ensure wide access to markets created or maintained by the platform operators and fair competing conditions thereon⁵⁰ – this is very relevant objective to the activity of collaborative economy platforms who intermediate between service providers and recipients and thus create markets for the exchange of these services. Therefore DMA could become a relevant framework for the activities of the biggest collaborative economy platforms⁵¹, but the conditions set out for gatekeepers leave the majority of these entities outside of its scope.

47 M Eifert and others, ‘Taming the Giants: The DMA/DSA package’, [2021] Common Market Law Review, 987–1028.

48 M Mariniello, C Martins, ‘Which platforms will be caught by the Digital Markets Act? The “gatekeeper” dilemma’ (*Bruegel* 14 December 2021) <<https://www.bruegel.org/blog-post/which-platforms-will-be-caught-digital-markets-act-gatekeeper-dilemma>> accessed 30 April 2023.

49 N Nicoli, P Iosifidis, ‘EU digital economy competition policy: From ex-post to ex-ante. The case of Alphabet, Amazon, Apple, and Meta’ (2023) 8 *Global Media and China*, 24–38.

50 Recitals 1–7 DMA.

51 M Cian, ‘Online Platforms as Gatekeepers to the Digital World – A Preliminary Issue on Business Freedom, Competition and the Need for a Special Market Regulation’, [2018] *Journal of European Consumer and Market Law*.

Therefore, to assess whether DSA and DMA would constitute a suitable legal framework for the activity of collaborative economy platforms it is necessary to refer to the wider objectives of the digital policy of the EU towards collaborative economy platforms. In this context, it is worth interpreting the obligations on collaborative economy platforms by DSA and DMA in light of the objectives laid out in the Collaborative Economy Communication of the Commission from 2016. The Commission back then determined several issues that should be resolved to reach two main policy objectives – supporting consumers, businesses, and public authorities to engage confidently in the collaborative economy and enabling consistent application of the EU law across the Internal Market. These issues were most notably market access, liability regimes, protection of users, taxation, and status of self-employed and workers in the collaborative economy.

Against this background, it should be noted that the framework provided by DMA and DSA is partially relevant. DSA and DMA are both regulations, hence are effective directly and impose uniform EU-wide standards. Thereby they create common requirements for market access for (foreign) collaborative economy platforms. However, uncertainty remains whether this approach will not be differentiated by criteria of the economic sector (different regime of the services in the field of transport vs. intermediating in finding short-term accommodation), possibility to adopt national regulations under different EU legislation regimes (Services Directive, DSA, DMA, eCommerce Directive) and/or fragmentation of the framework for activities of the largest ‘gatekeepers’ (Uber, Airbnb) and platforms of smaller size (Bolt, Slowhop or other regional providers). It will have also an impact on the liability regimes that could be adopted at the EU level or national depending on various circumstances, including the ‘exercise of influence over the conditions of the services’ that the platforms adopt for their business models. However, this is the area in which DSA could provide the most significant response to the issues described by the Commission in the Collaborative Economy Communication. DSA constitutes also a positive development in the sphere of the protection of users (as well as P2B Regulation that remains outside of the scope of this contribution), however not necessarily in the context that was meant in the Collaborative Economy Communication (consumer law protection, marketing rules, online rating, and review systems, quality of services, transparency requirements and data protection)⁵². The status of workers and self-employed⁵³, as well as taxation, remain outside the scope of DSA and DMA and thus will not be elaborated further in this contribution.

52 C Busch and others, ‘The Rise of the Platform Economy: A New Challenge for EU Consumer Law?’, [2016] *Journal of European Consumer and Market Law*.

53 S Nerinckx, ‘The “Uberization” of the labour market: some thoughts from an employment law perspective on the collaborative economy’, (2016) 17 *ERA Forum*.

For all the above presented reasons it seems that the policy objectives of ensuring confidence and increased legal certainty, as well as avoidance of fragmentation, were not fully met with the adoption of DSA and DMA. Several important questions related to the applicable legal regime and relevant EU legal framework for the operations of collaborative economy platforms remain unresolved. Among them, the most important is the question about responsibility for the quality of the service provided. It remains a *case-by-case* issue that is differently approached among various national legal orders (for example the obligation for the licensing of Uber drivers) and hence leads to the fragmentation of the Internal Market and level of protection of users in different Member States. At the same time, the application of the obligations from DMA, the initiative that might be of the biggest practical relevance, will be limited to two-three major collaborative economy platforms, but will not result in the trickling-down of regulatory standards and the emergence of spill-over effects is not a given. Hence, the potential of DSA and DMA to fill the legal *vacuum* identified before concerning the suitable framework for activities of the collaborative economy platforms in the Internal Market will not be fulfilled entirely⁵⁴. The question remains with what impacts it could result on the users of these platforms and the implementation of the digital policy of the EU.

5. Transnational collaborative economy platforms and the EU digital policy

The collaborative economy constitutes an interesting example of an unfulfilled promise. Back in 2016, it was described by the Commission in the language of hope and anticipation of wider use of business models pursued by platforms in the EU:

The collaborative economy creates new opportunities for consumers and entrepreneurs. The Commission considers that it can therefore make an important contribution to jobs and growth in the European Union if encouraged and developed in a responsible manner. Driven by innovation, new business models have a significant potential to contribute to competitiveness and growth. The success of collaborative platforms are at times challenging for existing market operators and practices, but by enabling individual citizens to offer services, they also promote new employment opportunities, flexible working arrangements and new sources of income. For consumers, the collaborative economy can provide benefits through new services, an extended supply, and lower prices. It can also encourage more asset-sharing and more efficient use of resources, which can contribute to

54 J Laux, S Wachter, B Mittelstadt, 'Taming the few: Platform regulation, independent audits, and the risks of capture created by the DMA and DSA', (2021) 43 *Computer Law & Security Review* 105613.

the EU's sustainability agenda and to the transition to the circular economy.

However, after 7 years it could be difficult to argue that this hope materialised. In the literature it was observed that the collaborative economy *'leads to a paradox, since for some researchers it is regarded as a response to the capitalist economy, viewed as an alternative to that, and on the other hand, other researchers regard it as part of the same system'*⁵⁵. This context of the role that collaborative economy and collaborative economy platforms could exercise in the Internal Market has been present to a limited extent in Collaborative Economy Communication⁵⁶. However, the disruptive potential of innovation brought by the business models based on sharing and using rather than owning has been indeed regarded as one of the most promising aspects of the activity of collaborative economy platforms⁵⁷. Unfortunately, the uncontrolled rise in popularity, dumping of quality and safety of services, negative impacts on the environment, and the need to protect justified public interest against the risk of exploitation increased the regulatory activity at the Member States and local level⁵⁸. Therefore platforms have been very active and using various lobbying and 'stalling' strategies to prevent or influence the adoption of such regulations⁵⁹.

To a large extent successfully – as the recent scandal showed, the collaborative economy platforms have been very efficient in lobbying among top policymakers and could favorably influence decision-making processes⁶⁰. This might partially explain the lack of consistency in regulating the activity of collaborative economy platforms at the national level among Member States. To better understand this effect it might be also useful to refer to the concept of 'transnational organisations' – organisations that are of private origin, have an international scope of activities and economic power allowing them to engage at the political level on equal (or even sometimes prevailing) terms with the

55 T Daglis, 'Sharing economy', (2022) 2 Encyclopedia 1322–1332 <<https://doi.org/10.3390/encyclopedia2030088>> accessed 30 May 2024.

56 C Cauffman, *The Commission's European Agenda for the Collaborative Economy – (Too) Platform and Service Provider Friendly?*, [2016] *Journal of European Consumer and Market Law*.

57 K Gruszka, 'Framing the collaborative economy – Voices of contestation', (2017) 23 *Environmental Innovation and Societal Transitions*. See also: C J Martin, P Upham and R Klapper, 'Democratising platform governance in the sharing economy: An analytical framework and initial empirical insights', (2017) *Journal of Cleaner Production*, 165.

58 J Kociubiński, 'Regulating Sharing Economy – Interplay Between Private Law and Public Law', [2018] *Gdańskie Studia Prawnicze*.

59 J Mazur, M Serafin, 'Stalling the State: How Digital Platforms Contribute to and Profit From Delays in the Enforcement and Adoption of Regulations' (2023) 56/1 *Comparative Political Studies* 101–130.

60 The uber files: Rob Davies, 'How the leak prompted outrage across the world' *The Guardian*, (London, 15 July 2022) <<https://www.theguardian.com/news/2022/jul/15/the-uber-files-how-the-leak-prompted-outrage-across-the-world>> accessed 30 April 2023.

national states⁶¹. The EU in this context is envisaged as a public organisation of sufficient size and market power to provide effective remedies to the imbalance of powers between private and public and ensure a legal framework for the operations of such ‘transnational’ companies in the Internal Market⁶². The EU might in this respect use the leverage of market access to impose certain obligations and requirements and thus grant a higher level of protection for the rights of individuals than national states – this process leads also to closer integration within the EU itself⁶³. The EU is also well positioned to increase accountability and transparency of operations of transnational private entities by imposing commitments to the EU standards, mandatory requirements, and legislation. It is a matter of policy and political choices regarding how vigilant the EU will be in exercising these capabilities and what would be the resulting political economy outcome.

This counter-balancing power of the EU, combined with its market and regulatory power called the ‘Brussels Effect’⁶⁴, is, in particular, relevant for the digital policy⁶⁵, in which the EU has established international standards for the protection of private data, Artificial Intelligence and recently intervened with the adoption of DSA and DMA to increase accountability of the operators of large online platforms⁶⁶. Therefore the lack of an analogous proactive regulatory approach of the EU in the context of the collaborative economy platforms is meaningful and translates into a reduced level of protection of individuals concerning the collaborative economy platforms. It is simultaneously observed, that the EU adopted a more interventionist model towards digital policy in recent years⁶⁷ which has also repercussions for the geopolitical ambitions of

61 J W Cioffi, M F Kenney, J Zysman, ‘Platform Power and Regulatory Politics: Polanyi for the twenty-first century’, (2022) 27/5 *New Political Economy* 820–836.

62 A Menon, S Weatherill, ‘Transnational legitimacy in a globalising world: How the European Union rescues its states’, (2008) 31/3 *West European Politics* 397–416.

63 A Bendiek, ‘The Impact of the Digital Service Act (DSA) and Digital Markets Act (DMA) on European Integration Policy’, (2021) *Stiftung Wissenschaft und Politik Working Paper Research Division EU/Europe 2021*, 2, <https://www.swp-berlin.org/en/publication/the-impact-of-the-digital-service-act-dsa-and-digital-markets-act-dma-on-european-integration-po> accessed 7 May 2023.

64 A Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2021).

65 A Bendiek, I Stuerzer, ‘The Brussels effect, European regulatory power and political capital: Evidence for mutually reinforcing internal and external dimensions of the Brussels effect from the European digital policy debate - digital society’, [2023] *Digital Society* <<https://doi.org/10.1007/s44206-022-00031-1>> accessed 30 April 2023.

66 P Alexiadis and A De Streel, ‘Designing an EU intervention standard for digital platforms’, (2020) *European University Institute Working Paper EUI RSCAS, 2020/14* <<https://cadmus.eui.eu/handle/1814/66307;jsessionid=8FBF4C41079B8927A88B9EEEC600F33C>> accessed 30: May 2024.

67 S Heidebrecht, ‘From market liberalism to public intervention: Digital Sovereignty and changing European Union Digital Single Market Governance’ [2023] *Journal of Common Market Studies* (JCMS).

the EU and the context of EU-US strategic partnership and ‘cooperation’⁶⁸. Therefore, the observed, fragmented, approach towards regulating the collaborative economy platforms is rather an exception than the rule in the context of the digital policy of the EU⁶⁹.

This exception causes several issues of policy and political economy nature. Firstly, as observed above, the lack of a suitable legal framework for the collaborative economy platforms at the EU level leads to the fragmentation of the level of protection and effective transfer of the regulation competencies at the national level. It follows mostly from the judgements of the Court in the cases of *Association Elite Taxi* and *Airbnb Ireland*. In the case of Uber activity and the ‘services in the field of transport,’ Member States maintain competencies to regulate access to the market, licensing, and other issues related to the business models of personal transport providers. In the case of accommodation services and the business model of Airbnb, the intermediation services of the platform have been classified as ‘information society service’ and thus subject to EU harmonisation by the eCommerce Directive. However, in *Calvi Apartments* the Court indicated that the Member States can introduce certain limitations and obligations concerning the downstream services (accommodating), albeit in conformity with the Services Directive. Hence, the Member States (and local authorities) could introduce regulations⁷⁰ affecting the business conditions for the collaborative economy platform (availability of assets, rotation of providers of services, authorisation requirements)⁷¹. Other collaborative economy platforms remained under the radar of the EU law. Arguably because of the more national or local scale of functioning of these platforms⁷².

68 D Broeders, F Cristiano, M Kaminska, ‘In search of digital sovereignty and strategic autonomy: Normative Power Europe to the test of its geopolitical ambitions’, (2023) 61 *Journal of Common Market Studies* (JCMS).

69 J W Cioffi, *Beyond competition: The regulatory turn & the emerging era of intervention in platform firms & markets*, (Jacques Delors Centre, 2021) <<https://www.delorscentre.eu/en/publications/detail/publication/beyond-competition-the-regulatory-turn-the-emerging-era-of-intervention-in-platform-firms-markets>> accessed 7 May 2023.

70 K Nemeth, M Scharmer, ‘Regulating Airbnb in Austria’, [2018] *Journal of European Consumer and Market Law*; C Busch, ‘Regulating Airbnb in Germany – status quo and future trends’, *ibid*; J M Carvalho and P Policarpo, ‘Regulating Airbnb in Portugal’, *ibid*; R Koolhoven, ‘Regulating Airbnb in the Netherlands’, *ibid*.; A I Martínez Nadal, *Regulating Airbnb in Spain*, *ibid*. See also: I Kull I. ‘The Adequacy of Existing Estonian Laws for the Platform Economy’, [2016] *Journal of European Consumer and Market Law*; A De Franceschi, ‘*The Adequacy of Italian Law for the Platform Economy*’, *ibid*; J Pisuliński, ‘Internet platforms under Polish law’, *ibid*; E Terry, ‘The sharing economy in Belgium – a case for regulation?’, *ibid*.

71 D Kramer and M Schaub, ‘EU Law and the Public Regulation of the Platform Economy: The Case of the Short-Term Rental Market’, (2022) 59 *Common Market Law Review*.

72 A Light and C Miskelly, ‘Platforms, Scales and networks: Meshing a local sustainable sharing economy’, (2019) 28 *Computer Supported Cooperative Work (CSCW)*, 591–626 <<https://doi.org/10.1007/s10606-019-09352-1>> accessed 30 May 2024.

This scaling-up potential of local, EU-based providers, is in particular interesting from the perspective of the EU policy. As laid out in the Collaborative Economy Communication, the economic benefits related to the development of these innovative business models should contribute to the competitiveness and growth of the EU. Hence, the fragmentation of the EU legislative frameworks might have dual implications for the potential of increasing the competitiveness of EU companies in the digital economy (and of double adversity). Firstly, it allows the market leaders of transnational scale and US origin – most notably Airbnb and Uber – to negotiate favorable conditions for their operations in the Member States of the EU and reap the benefits of the presence in the national markets and exploit any regulatory grey zones and lack of pre-existing framework for their disruptive innovations. On the other hand, local emerging platforms from the EU have more difficulties to scale-up their activities due to 27 different regulatory regimes that apply to their operations and making it more difficult to build a presence in the whole Internal Market and develop a strong consumer base allowing to compete with the US- and China-based providers of digital solutions. Different levels of protection of consumers, diverging quality standards, and different approaches to the employment status of collaborative services providers add to the negative consequences of maintaining uniform EU standards. Legal certainty is also negatively affected in these circumstances⁷³. Hence, the rationale for legislation intervention at the EU level pertains⁷⁴, to the effectiveness of the Internal Market for the services provided by the collaborative economy platforms is currently not ensured. This is therefore surprising to observe that the EU missed the opportunity while adopting DSA and DMA to improve this situation and remained reluctant to impose more tangible and tailored obligations towards collaborative economy platforms that would enable the EU to fulfill its policy objectives. General obligations resulting from DSA and DMA for the collaborative economy platforms might be not enough to make a substantial difference in respect of the achievement of these objectives and implementing suitable legal framework, fitted for uniform regulation of their activities in the Internal Market. Therefore, the regulation model of the EU towards collaborative economy platforms might be described as ‘non-interventionist’. And thus even might strengthen the deterioration of the distribution of economic power between the users and the biggest platforms that is described as ‘neoliberalism on steroids’⁷⁵.

73 D Adamski, ‘Lost on the Digital Platform: Europe’s Legal Travails with the Digital Single Market’, [2018] *Common Market Law Review*.

74 Research group on the Law of Digital Services, ‘Discussion Draft of a Directive on Online Intermediary Platforms’, [2016] *Journal of European Consumer and Market Law*.

75 D Murillo, H Buckland, E Val, ‘When the sharing economy becomes neoliberalism on steroids: Unravelling the controversies,’ (2017) 125 *Technological Forecasting & Social Change*, <<http://dx.doi.org/10.1016/j.techfore.2017.05.024>> accessed 30 May 2024.

6. Conclusions

As presented in the introduction to this contribution, the Commission accurately diagnosed back in 2016 in the Collaborative Economy Communication the challenges related to the ambiguity and uncertainty related to the identification of applicable legal framework to the activities of the collaborative economy platforms. By doing so it awakened the hope to tackle these challenges with adequate policy and legal responses. However, as presented in Section 2, the challenges have been as basic, as identifying suitable legal definitions for the innovative and disruptive business models pursued in the Internal Market by collaborative economy platforms. In this context, DSA and DMA, two of the most recent legislation interventions in the sphere of digital policy did not provide sufficient clarity and direct criteria for the classification of activity of collaborative economy platforms as ‘intermediary services’ or ‘online intermediation services’. Nevertheless, as outlined in Section 3, the Court while applying EU law provisions (definitions from the Services Directive and eCommerce Directive) to the activities of the two most recognized collaborative economy platforms – Uber and Airbnb – adopted a proactive approach to mitigate the negative effects resulting from the lack of clarity in this respect. A legal framework could be established recently by including relevant obligations for collaborative economy platforms in DSA and DMA, however, they were neither singled out as the specific category for obligations, nor the essence of their business model has been the subject of new requirements or obligations resulting from these legal acts. Hence, the adverse impacts on the fragmentation of the Internal Market and insufficient level of safeguards for users interacting with transnational private organisations are provided. It might have negative consequences for the level of protection of users and differentiation between sectors, national borders, or the size of the platform. At the same time, it might impede the emergence of scaling-up opportunities for platforms developing in the EU. Hence, the rationale for legislation intervention has been reinforced and the result of the analysis conducted in this contribution indicates that the approach of the EU remains non-interventionist. The end result also shows that the original challenges and main issues mentioned in the Collaborative Economy Communication have not been effectively addressed by the EU legislation and therefore the policy objectives of the EU – strengthening the confidence of users, enabling a higher level of legal certainty and avoiding fragmentation in the Internal Market – remain unfulfilled.