



HELSINGIN YLIOPISTO
HELSINGFORS UNIVERSITET
UNIVERSITY OF HELSINKI

**Regulating Ridesourcing Companies and the Employment Status of Drivers
in the Sharing Economy
- A Study on Uber**

University of Helsinki

Faculty of Law

Master's Thesis in European Law

March 2017

Author: Mira Karppanen

Supervisors: Emilia Korkea-Aho and Marta Cantero

Tiedekunta/Osasto Fakultet/Sektion – Faculty		Laitos/Institution – Department	
Faculty of Law			
Tekijä/Författare – Author			
Mira Karppanen			
Työn nimi / Arbetets titel – Title			
Regulating Ridesourcing Companies and the Employment Status of Drivers in the Sharing Economy - A Study on Uber			
Oppiaine /Läroämne – Subject			
European Law			
Työn laji/Arbetets art – Level	Aika/Datum – Month and year	Sivumäärä/ Sidoantal – Number of pages	
Master's Thesis	March 2017	XXII + 82	
Tiivistelmä/Referat – Abstract			
<p>Sharing Economy is a growing market and it contains many types of companies. Ridesourcing companies are platform-based companies, which provide an intermediary service connecting the drivers and the passengers. However, some scholars, governments and local taxi unions do not totally agree with this definition and claim that ridesourcing companies are de facto also providing the underlying transport service.</p> <p>The most famous ridesourcing company Uber was founded in the United States in 2009 and it expanded to Europe in 2011. Several other companies have followed in Uber's steps, but the definition of the nature of their operations has not yet been clarified on the European Union level. Many Member States have banned the operations of ridesourcing companies and there is legislation regarding them for example in France. Some Member States, however, determine ridesourcing companies as digital services and allow their operations. Due to the unclear situation, three preliminary ruling requests have been submitted to the European Court of Justice regarding the definition of Uber. The Spanish and the French request are still pending. Hopefully, the decisions will determine whether Uber is a digital or a transport service provider.</p> <p>The employment status of the drivers of ridesourcing companies is not clear either. The companies deny having an employment relationship with the drivers and instead classify them as partners or clients and as self-employed transport service providers. Many cases have emerged globally where the drivers are trying to receive the employee status and the benefits which come with it. This thesis will present a case of the UK Employment Tribunal which determines first the nature of Uber's operations and then the employment status of the drivers. That case will be compared with the two cases of Helsinki Court of Appeal where Uber drivers sentenced for providing an unlicensed taxi service. This thesis will argue that the definition of Uber was the difference which led to opposite decisions about the employment status of the drivers. Comparing the UK and the Finnish employment law and case law regarding Uber drivers show how fragmented the situation is in EU.</p>			
Avainsanat – Nyckelord – Keywords			
European Law, Employment Law, Sharing Economy, Platform, Ridesourcing company, Uber, Digital service, Transport service, Employment Status, Employee, Worker, Self-employed, Finland, United Kingdom			
Säilytyspaikka – Förvaringställe – Where deposited			
Electronic database of the Helsinki University Library			
Muita tietoja – Övriga uppgifter – Additional information			

Table of Contents

- Table of Contents II
- Abbreviations IV
- Bibliography V
- 1. Introduction 1
 - 1.1 Background 1
 - 1.2 Purpose and Scope of the Study 3
 - 1.3 Research Methods and Sources of Law 5
 - 1.4 Relation to Other Studies 7
 - 1.5 Outline of the Study 9
- 2. Main Definitions for Understanding Ridesourcing Companies 12
 - 2.1 Sharing Economy 12
 - 2.2 Renters, Swappers and Platforms 14
 - 2.3 Carsharing and Ridesourcing 15
 - 2.4 The Business Model of Uber 16
- 3. EU Regulation on Sharing Economy 18
 - 3.1 EU Principles and Competences 18
 - 3.2 EU Legislation Regarding the Ridesourcing Companies 21
 - 3.3 Issues of the Current Regulation 25
 - 3.4 Agenda for Sharing Economy 27
 - 3.5 Legal Problems of Uber 30
 - 3.5.1 Legal Problems in EU 30
 - 3.5.2 Three Preliminary Ruling Requests 31
- 4.1 How EU Labour Law Has Developed 36
- 4.2 Employment Statuses 38
 - 4.2.1 Employment Statuses in the EU Labour Law 40
 - 4.2.2 Employment Statuses in the UK Labour Law 44
 - 4.2.3 Employment Statuses in the Finnish Labour Law 46
 - 4.2.4 Differences Between EU, UK and Finnish Employment Statuses 49
- 5. Cases involving Uber drivers 51

5.1 United Kingdom Case Law on Uber drivers	51
5.1.1 Evaluation of Subordination and Independence Factors	51
5.1.2 Employer Entity and Conflict of Laws.....	59
5.2 Finnish Case Law on Uber drivers	61
5.3 Comparison of Finnish and UK Cases Concerning Uber drivers.....	63
5.3.1 The Party Providing the Transport Service	65
5.3.2 What do the Decisions Imply about the Employment Status of the Drivers	66
5.3.3. How the Nature of Uber’s Operations Impacts the Employment Status of the Drivers.....	67
6. Concluding Remarks	72
6.1 Required Actions for Regulating the Sharing Economy	72
6.2 Required Actions Regarding the Employment Status of the Drivers	77
6.3 Conclusions	79

Abbreviations

ECJ – European Court of Justice

EC – European Community, Treaty signed 2002 in Nice

ECSC – European Coal and Steel Community, ECSC Treaty signed 1951 in Paris

EEC – European Economic Community, EEC Treaty signed 1957 in Rome

ERA - Employment Rights Act 1996 (UK)

EU – European Union

GDP - Gross domestic product

MNWA – National Minimum Wage Act 1998 (UK)

TEU - Treaty on European Union, signed in 2007 in Lisbon

TFEU - Treaty on the Functioning of the European Union, signed in 2007 in Lisbon

TNC - Transportation Network Company

UK – United Kingdom

WTR – Working Time Regulations 1998 (UK)

Bibliography

Regulation

EU Treaties

Treaty establishing the European Coal and Steel Community, ECSC Treaty, Paris 1951.

Treaty establishing the European Community, EEC Treaty, Rome 1957.

Treaty of Maastricht on European Union, TEU, Maastricht 1992.

Treaty of Amsterdam amending the treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts, Amsterdam 1997.

Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts TFEU, Nice 2001.

Charter of Fundamental Rights of the European Union, 2012/C 326/02. (OJ 2000/C 364/01).

EU Secondary Law

Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time.

Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations.

Directive 98/34/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations 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').

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

Council Directive 98/76/EC of 1 October 1998 amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations.

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities.

Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.

Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

Règlement n° 3/64/CEE du Conseil, du 18 décembre 1963, portant établissement des annexes du règlement n° 36/63/CEE du Conseil concernant la sécurité sociale des travailleurs frontaliers.

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

Council Decision 2000/98/EC of 24 January 2000 establishing the Employment Committee.

Rules of Procedure of the Court of Justice of 25 September 2012.

Communication from the Commission

COM(2006) 708 final: Green Paper Modernising labour law to meet the challenges of the 21st century.

COM(2010) 373 final. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Reaffirming the free movement of workers: rights and major developments.

COM(2015) 550 final. 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) 192 final. 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.

SWD(2015) 202 final. Commission Staff Working Document, A Single Market Strategy for Europe - Analysis and Evidence, Accompanying the document Upgrading the Single Market: more opportunities for people and business.

COM(2016) 356 final. 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.

SWD(2016) 184 final. Commission Staff Working Document, Accompanying the document, 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 - supporting analysis.

Other Parliament and Commission Publications

European Commission, First-stage consultation on social partners on modernisation of work. Eurofound, 27 July 2000. Available at: <https://www.eurofound.europa.eu/observatories/eurwork/articles/commission-consults-social-partners-on-modernisation-of-work>, last visited 20.2.2017. (Commission's first-stage consultation 2000).

European Commission - Press release, A European agenda for the collaborative economy. Brussels, 2 June 2016. Available at: http://europa.eu/rapid/press-release_IP-16-2001_en.htm, last visited 17.2.2017. (Commission's Press Release, 2 June 2016).

European Commission, Results of the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy. January 2016. Available at: <https://ec.europa.eu/digital-single-market/en/news/results-public-consultation-regulatory-environment-platforms-online-intermediaries-data-and>, last visited 19.2.2017. (Commission results of public consultation 2016).

European Commission, Road, Promoting efficient, safe and green land transport. Last updated 14 March 2017. Available at: https://ec.europa.eu/transport/modes/road_en, last visited 15.3.2017. (Road, European Commission 2017).

European Commission, Transport, The European Union Explained. Luxembourg, Publications of the European Union, updated 2014. Available at: https://europa.eu/european-union/topics/transport_en, last visited 13.2.2017. (Transport, European Commission 2014).

European Economic and Social Committee, Opinion on ‘Abuse of the status of self-employed’ (own-initiative opinion). 2013/C 161/03, Official Journal of the European Union C 161, 06/06/2013. Available at: http://eur-lex.europa.eu/legal-content/FI/TXT/?uri=uriserv:OJ.C_.2013.161.01.0014.01.ENG, last visited 22.2.2017.

European Industrial Relations Observatory, EIRObserver, Economically Dependent Workers. Issue 4/02, 23 July 2002. Available at: ec.europa.eu/social/BlobServlet?docId=2508&langId=en, last visited 12.3.2017.

European Parliament, Resolution of 9 September 2015 on the implementation of the 2011 White Paper on Transport: taking stock and the way forward towards sustainable mobility (2015/2005(INI)). 9 September 2015. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0310&language=EN>, last visited 15.2.2017. (EP resolution 2015).

European Parliament Newsroom, Työntekijöiden suojele konkurssitapauksissa. April 2004. Available at: <http://www.europarl.europa.eu/highlights/fi/1102.html>, last visited 19.2.2017. (EP Newsroom 2004).

Speeches

Hololei, Henrik: Trafi 2016 Kehittyvä Liikenne seminaari, Finlandiatalo, Helsinki 14 October 2016.

Other Legislation

International Labour Organization

ILO Employment relationship, report V (1), International Labour Conference, 95th Session, 2006. Available at: www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-v-2a.pdf, last visited 22.2.2017.

Californian Legislation

California, Public Utilities Code §§5430 – 5443.

Finnish Legislation

Rikoslaki 19.12.1889/39, Finnish Criminal Code.

Työehtosopimuslaki 7.6.1946/436, Finnish Collective Bargaining Law.

Työsopimuslaki 26.1.2001/55, Finnish Employment Contracts Law.

Taksiliikennelaki, 2.3.2007/217, Finnish Taxi Service Law.

Hallituksen esitys Eduskunnalle laeiksi ennakkoperintälain ja arvonlisäverolain 1 §:n muuttamisesta, HE 126/1994 vp.

Hallituksen esitys Eduskunnalle menettämisseuraamuksia koskevan lainsäädännön muuttamisesta, HE 80/2000.

Hallituksen esitys Eduskunnalle työsopimuslaiksi ja eräiksi siihen liittyviksi laeiksi, HE 157/2000.

Hallituksen esitys taksiliikennelaiksi, HE 38/2006vp.

Hallituksen esitys liikennekaareksi ja eräiksi siihen liittyviksi laeiksi, HE 161/2016 vp.

Perustuslakivaliokunnan lausunto, PeVL 31/2006 vp.

French Legislation

Loi No. 2014-1104 du 1er octobre 2014 relative aux taxis et aux voitures de transport avec chauffeur. Available in French at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029527162&dateTexte=&categorieLien=id, last visited 13.2.2017.

Spanish Legislation

Law No. 3/1991 of January 10, 1991 on Unfair Competition. Available in Spanish at:

<http://www.wipo.int/wipolex/en/details.jsp?id=1325>, last visited 15.2.2017.

United Kingdom Legislation

Employment Rights Act (ERA) 1996.

National Minimum Wage Act (NMWA) 1998.

Working Time Regulations (WTR) 1998.

Legal Cases

EU Case Law

Case C-75/63, *Unger v Bedrijfsvereniging voor Detailhandel en Ambachten*, EU:C:1964:19.

Case C-53/81, *Levin v Staatssecretaris van Justitie*, EU:C:1982:105.

Case C-139/85, *Kempf v Staatssecretaris van Justitie*, EU:C:1986:223.

Case C-66/85, *Lawrie-Blum v Land Baden-Württemberg*, EU:C:1986:284.

Joined cases C-51/96 and C-191/97, *Deliège*, EU:C:2000:199.

Case C-268/99, *Jany and Others*, EU:C:2001:616.

C-438/05, *The International Transport Workers' Federation and The Finnish Seamen's Union*, EU:C:2007:772.

Joined cases C-22/08 and C-23/08, *Vatsouras and Koupatantze*, EU:C:2009:344.

Case C-382/08, *Neukirchinger*, EU:C:2011:27.

C-428/09, *Union syndicale Solidaires Isère*, EU:C:2010:612.

Case C-291/13, *Papasavvas*, EU:C:2014:2209.

C-229/14, *Balkaya*, EU:C:2015:455.

Joined cases C-340/14 and C-341/14, *Trijber*, EU:C:2015:641.

C-432/14, *O*, EU:C:2015:643.

Case C-434/15, *Asociación Profesional Elite Taxi*, pending. Application date 16 October 2015.

Case C-526/15, *Uber Belgium*, EU:C:2016:830.

Case C-320/16, *Uber France*, pending, Application date 29 July 2016.

National Cases

Belgium, Commercial Tribunal, Tribunal de Commerce Neerlandophone de Bruxelles

Jugement – Chambre Du President Action En Cessation: SPRL Uber Belgium v Sa Taxi Radio Bruxellois. 23 September 2015. Available in French at:

<http://www.lcii.eu/2015/10/16/uber-the-decision-of-the-brussels-commercial-tribunal/>, last visited 17.2.2017.

Finland, Helsinki Court of Appeal, Helsingin Hovioikeus: Hovioikeuden ratkaisut 21.9.2016, diaarinumerot R 16/1141 ja 1175. Newsletter available at:

<https://oikeus.fi/hovioikeudet/helsinginhovioikeus/text/fi/index/tiedotteet/2016/09/uber-kuljettajasyllistyvivatluvattomantaksiliikenteenharjoittamiseenr161141jar161175.html>, last visited 23.2.2017.

Finland, Labour Council Opinion, Työneuvosto: Lausunto nro 1428-08, Uudenmaan työsuojelupiirin työsuojelutoimisto. 17 January 2008. Available at:

<http://tem.fi/lausunnot>, last visited 23.2.2017.

France, Constitutional Council of the French Republic, Conseil constitutionnel: Decision no. 2015-468/469/472 QPC. 22 May 2015 - the company UBER France SAS and another [Chauffeured vehicles - prohibition on "electronic cruising" - charging terms - obligation to return to base]. Available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/priority-preliminary-rulings-on-the-issue-of-constitutionality-qpc-/sample-of-decisions-qpc/2015/decision-no-2015-468-469-472-qpc-of-22-may-2015.143997.html>, last visited 16.2.2017.

Spain, Barcelona Commercial Court, Juzgado Mercantil N° 3 Barcelona:

Asunto:929/2014D2. Providencia Dando Translado a las Parter del Planteamiento De Una Cuestión Prejudicial Ante El Tribunal de Justicia de la Unión Europea. 17 July 2015. Available in Spanish at: <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunales-Superiores-de-Justicia/TSJ-Cataluna/Noticias-Judiciales-TSJ->

Cataluna/El-Juzgado-Mercantil-3-de-Barcelona-plantea-cuestion-prejudicial-al-Tribunal-de-la-UE-en-relacion-al-conflicto-de-UBER, last visited 20.2.2017.

United Kingdom, Employment Tribunals: Case No. 2202550/2015 & others, Mr. Aslam, Mr. Farrar & Others vs. Uber B.V., Uber London Ltd and Uber Britannia Ltd) The judgement was sent to the parties 28th October 2016. Available at: www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf, last visited 15.2.2017.

Memorandums for EU litigation

Ministry of Foreign Affairs of Finland, Ulkoasiainministeriö: Tuomioistuinmuistio UM2015-01447, Unionin tuomioistuimelle esitetty SEUT 267 artiklan mukainen ennakkoratkaisupyyntö asiassa C-434/15, Asociación Profesional Élite Taxi. 6 November 2015.

Ministry of Foreign Affairs of Finland, Ulkoasiainministeriö: Tuomioistuinmuistio UM2016-00971, Unionin tuomioistuimelle esitetty SEUT 267 artiklan mukainen ennakkoratkaisupyyntö asiassa C-320/16, Uber France. 5 September 2016.

Literature and Articles

Azevedo, Filipa – Maciejewski, Mariusz: Social, Economic and Legal Consequences of Uber and Similar Transportation Network Companies (TNCs). European Union 2015, pages 1-7. Available at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_BRI\(2015\)563398](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_BRI(2015)563398), last visited 19.2.2017.

Barnard, Catherine: EU Employment Law. Fourth Edition, Oxford University Press 2012.

Bercusson, Brian: European Labour Law. Second Edition, Cambridge University Press 2009.

Blanpain, Roger – Engels, Chris: European Labour Law. Fourth and revised edition, Kluwer 1997.

Bruun, Niklas – Von Koskull, Anders: Työoikeuden perusteet. Second Edition, Talentum 2012.

- Cauffman, Caroline – Smits, Jan*: The Sharing Economy and The Law, Food for European Lawyers. Editorial, 23 Maastricht Journal 6 2016, pages 903-907.
- Das Acevedo, Deepa*: Regulating employment relationships in the sharing economy. 20 Employee Rights and Employment Policy Journal 2016, pages 1-35.
- El-Agraa, Ali M.*: The European Union Economics & Polices. Limited Seventh Edition, Prentice Hall Financial Times, Pearson Education 2004.
- Finger, Matthias - Holvad, Torben*: Setting the scene: background and overview of regulatory reform in the transport sector. In *Finger, Matthias - Holvad, Torben (ed.): Regulating Transport in Europe*. Edward Elgar Publishing 2013, pages 1-35.
- Hatzopoulos, Vassilis - Roma, Sofia*: Caring for sharing? The collaborative economy under EU law. 54 Common Market Law Review, Issue 1/2017, pages 81–128.
- Hirvonen, Ari*: Mitkä metodit? Opas oikeustieteen metodologiaan. Yleisen oikeustieteen julkaisuja 17, Helsinki 2011.
- Husa, Jaakko – Mutanen, Anu – Pohjolainen, Teuvo*: Kirjoitetaan Juridiikkaa. Talentum Helsinki 2008.
- Husa, Jaakko*: Oikeusvertailu, Teoria ja metodologia. Lakimiesliiton kustannus, Helsingin Kamari Oy 2013.
- Kairinen, Martti*: I Työoikeuden Perusteita, 1. Lähtökohdat, Työoikeuden käsite ja järjestelmä, Perussuhdeteoria. In *Kairinen, Martti – Koskinen, Seppo – Nieminen, Kimmo -Ullakonoja, Vesa – Valkonen Mika (ed.): Työoikeus*. WSOYPro 2004, SanomaPro Talentum Media, updated February 2006.
- Kolehmainen, Antti*: Tutkimusongelma ja metodi lainopillisessa työssä. In *Miettinen, Tarmo (ed.): Oikeustieteellinen opinnäyte – Artikkeleita oikeustieteellisten opinnäytteiden vaatimuksista, metodista ja arvostelusta*. Edilex, Edita Publishing Oy 2016, pages 106-135.
- Nielsen, Ruth*: European Labour Law. DJ ØF Publishing, Copenhagen 2000.
- Perulli, Adalberto*: Subordinate, Autonomous and Economically Dependent Work: A Comparative Analysis of Selected European Countries. In *Casale, Giuseppe (ed.):*

- Employment relationship – A Comparative Overview. International Labour office, Geneva 2011, pages 137-188.
- Rogers, Brishen*: The Social Costs of Uber. 82 The University of Chicago Law Review Dialogue 85 2015, pages 85-102.
- Sigeman, Tore*: Employment Protection in Scandinavian Law. In *Wahlgren, Perer (ed.)*: Stability and Change in the Nordic Labour Law. Stockholm Institute for Scandinavian Law, Stockholm 2002, pages 257-275.
- Stone, Katherine V.W.*: Legal Protections for Atypical Employees: Employment Law for Workers without Workplaces and Employees without Employer. Volume 20 Berkeley Journal of Employment & Labour Law, Issue 2/2006, pages 251-286.
- Tala, Jyrki*: Lakien laadinta ja vaikutukset. Edita Prima Oy, Helsinki 2005.
- The Shared-Use Mobility Center*: Shared-Use Mobility Center Reference Guide. Chicago IL, Los Angeles CA 2015, pages 1-45. Available at: <http://sharedusemobilitycenter.org/research/shared-use-mobility-reference-guide/>, last visited 10.2.2017.
- Tiitinen, Kari-Pekka – Kröger, Tarja*: Työsopimus oikeus. 6th Edition, Talentum 2012.
- Vainio, Pekka*: Vastentahtoisen yrittäjyyden oikeudellinen arviointi. In *Kautonen, Teemu (ed.)*: Vastentahtoinen yrittäjyys. Työpoliittinen tutkimus 327. Ministry of Labour, Helsinki 2007, pages 121-288.
- Van de Velde, Didier*: Long-distance coach services in Europe. In *Finger, Matthias – Holvad, Torben (ed.)*: Regulating Transport in Europe. Edward Elgar Publishing 2013, pages 115-139.
- Watson, Philippa*: EU Social and Employment Law – Policy and Practice in an Enlarged Europe. Oxford University Press 2009.
- Woskko, Debbie*: Unlocking the sharing economy - An independent review. UK government 2014, pages 1-43. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378291/bis-14-1227-unlocking-the-sharing-economy-an-independent-review.pdf, last visited 10.2.2017.

Popular Articles

Asher-Schapiro, Avi: Against Sharing. Jacobin (19 September 2014). Available at:

<https://www.jacobinmag.com/2014/09/against-sharing/>, last visited 11.2.2017.

Azhar, Azeem: On entrepreneurs and regulation. LinkedIn blog (30 October 2016). Available

at: [https://www.linkedin.com/pulse/entrepreneurs-regulation-azeem-azhar?trk=eml-](https://www.linkedin.com/pulse/entrepreneurs-regulation-azeem-azhar?trk=eml-b2_content_ecosystem_digest-hero-22-null&midToken=AQEzfAhgh3cX3g&fromEmail=fromEmail&ut=36m2I_kEa0JTA1)

[b2_content_ecosystem_digest-hero-22-](https://www.linkedin.com/pulse/entrepreneurs-regulation-azeem-azhar?trk=eml-b2_content_ecosystem_digest-hero-22-null&midToken=AQEzfAhgh3cX3g&fromEmail=fromEmail&ut=36m2I_kEa0JTA1)

[null&midToken=AQEzfAhgh3cX3g&fromEmail=fromEmail&ut=36m2I_kEa0JTA1](https://www.linkedin.com/pulse/entrepreneurs-regulation-azeem-azhar?trk=eml-b2_content_ecosystem_digest-hero-22-null&midToken=AQEzfAhgh3cX3g&fromEmail=fromEmail&ut=36m2I_kEa0JTA1),

last visited 10.2.2017.

Butler, Mark: Worker Status and Uber: understanding when a worker is a worker. Lancaster University Law School Staff blog (22 November 2016). Available at:

<http://www.lancaster.ac.uk/law/blogs/staff/worker-status-and-uber-understanding-when-a-worker-is-a-worker/>, last visited 10.2.2017.

Chee, Foo Yun: Uber in landmark E.U. court battle to escape strict rules. Reuters (25

November 2016). Available at: <http://www.reuters.com/article/uber-tech-spain-court-idUSL1N1DQ0YO>, last visited 8.3.2017.

Dupont, Renaud: European Court of Justice to rule on the type of service Uber provides.

CMS DeBacker, Lexology (29 October 2015). Available at:

<http://www.lexology.com/library/detail.aspx?g=840f9e63-3b54-43ca-a4d3-6db8418477e8>, last visited 10.2.2017.

Elliott, Sally: Class-action lawsuit against Uber threatens to force sharing platforms to

regress. Inquisitr (3 May 2016). Available at: [http://www.inquisitr.com/3057848/class-](http://www.inquisitr.com/3057848/class-action-lawsuit-against-uber-threatens-to-force-sharing-economy-platforms-to-regress/)

[action-lawsuit-against-uber-threatens-to-force-sharing-economy-platforms-to-regress/](http://www.inquisitr.com/3057848/class-action-lawsuit-against-uber-threatens-to-force-sharing-economy-platforms-to-regress/),

last visited 17.2.2017.

Genç, Ekin: Opinion - It's time to ditch EU anti-Uber business rules. Washington D.C. (24

March 2016). Available at: <https://euobserver.com/opinion/132763>, last visited 28.1.2017.

Houlder, Vanessa: Uber faces huge UK tax liabilities if drivers not 'self-employed'. Financial

Times (3 November 2016). Available at: <https://www.ft.com/content/c7da2d92-a1c3-11e6-aa83-bcb58d1d2193>, last visited 18.2.2017.

Juncker, Jean-Claude: A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change Political Guidelines for the next European Commission. Opening Statement in the European Parliament Plenary Session. Strasbourg (15 July 2014).

Available at: https://ec.europa.eu/commission/publications/president-junckers-political-guidelines_en, last visited 15.3.2017.

Kollewe, Julia – Davies, Rob: EU backs sharing economy in boost for Uber and Airbnb. The Guardian Magazine (2 June 2016). Available at:

<https://www.theguardian.com/business/2016/jun/02/eu-commission-backs-sharing-economy-uber-airbnb>, last visited 28.1.2017.

Kroes, Neelie: Crazy court decision to ban Uber in Brussels. European Commission (15 April 2014). Available at: [http://ec.europa.eu/archives/commission_2010-](http://ec.europa.eu/archives/commission_2010-2014/kroes/en/content/crazy-court-decision-ban-uber-brussels-show-your-anger.html)

[2014/kroes/en/content/crazy-court-decision-ban-uber-brussels-show-your-anger.html](http://ec.europa.eu/archives/commission_2010-2014/kroes/en/content/crazy-court-decision-ban-uber-brussels-show-your-anger.html), last visited 11.2.2017.

Lawler, Ryan: What’s next for Uber. Gigaom Research, (12 March 2012). Available at:

<https://gigaom.com/2012/03/12/uber-more-cities-more-choice/>, last visited 17.2.2017.

MacKechnie, Christopher: The Last Mile Problem. (Updated 4 June 2016). Available at:

http://publictransport.about.com/od/Transit_Planning/a/The-Last-Mile-Problem.htm, last visited 18.2.2017.

Maciejewski, Mariusz – Pengelly, Kendra: Freedom of establishment and freedom to provide services. Factsheets of the European Union, European Parliament (12/2016). Available at:

http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_3.1.4.html, last visited 14.3.2017.

Ossi, Markus: Näin paljon auton omistaminen maksaa oikeasti. Tarkanmarkan blogi, (5 January 2016). Available at: <http://www.tarkkamarkka.com/blogi/2016/01/nain-paljon-auton-omistaminen-maksaa-oikeasti/>, last visited 29.1.2017.

Pedersini, Roberto: ‘Economically Dependent Workers’, employment law and industrial relation. EurWORK, (23 July 2002). Available at:

<https://www.eurofound.europa.eu/observatories/eurwork/comparative->

information/economically-dependent-workers-employment-law-and-industrial-relations, last visited 15.3.2017.

Rita, Mikko: Poliisi selvittää yllyttääkö Uber kuskeja rikokseen – "Tuomiot helpottavat työtämme". Helsingin Sanomat (12 April 2016). Available at: <http://yle.fi/uutiset/3-8806789>, last visited 14.2.2017.

Robinson, Duncan: Boost for Uber as Brussels considers regulation of ride sharing. Financial Times (5 April 2015). Available at: <https://www.ft.com/content/6464d39e-d932-11e4-b907-00144feab7de>, last visited 13.2.2017.

Sundararajan, Arun: What Airbnb Gets About Culture that Uber Doesn't. Harvard Business Review (27 November 2014). Available at: <https://hbr.org/2014/11/what-airbnb-gets-about-culture-that-uber-doesnt>, last visited 10.2.2017.

Tamminen, Jenni: Syyttäjän Uber-päätös ihmetyttää – ”Selkeästi laitonta toimintaa saa jatkaa”. Uusisuomi (16 August 2016). Available at: <https://www.uusisuomi.fi/kotimaa/201425-syyttajan-uber-paatos-ihmetyttaa-selkeasti-laitonta-toimintaa-saa-jatkua>, last visited 29.1.2017.

Teffer, Peter: EU court to classify Uber: taxi or information company?. EUObserver, Amsterdam, (20 July 2015). Available at: <https://euobserver.com/digital/129709>, last visited 10.2.2017.

Travis: Uber's Founding. Uber Newsrooms (22 December 2010). Available at: <https://newsroom.uber.com/ubers-founding/>, last visited 20.2.2017.

Travis: We're Going Global with Big Funding. (7 December 2011). Available at: <https://newsroom.uber.com/france/were-going-global-with-big-funding/>, last visited 5.3.2017.

Vuohipuro, Verna: Poliisi kehottaa tekemään Uber-kuskeista ilmoituksen – "Akuutissa tilanteessa soitto hätäkeskukseen". Helsingin Sanomat (9 August 2015). Available at: <http://www.hs.fi/kaupunki/art-2000002843866.html>, last visited 11.2.2017.

Articles without an Author

Liikkumisen kustannukset nousevat. Autoliitto (24 November 2016). Available at:

<https://www.autoliitto.fi/tiedote/liikkumisen-kustannukset-nousevat>, last visited 29.1.2017. (Autoliitto 2016)

Case C-434/15, Asociación Profesional Élite Taxi – Uber’s new software destroys the old order of labour, EU Law Radar (13 August 2015). Available at:

<http://eulawradar.com/case-c-43415-asociacion-profesional-elite-taxi-ubers-new-software-destroys-the-old-order-of-labour/>, last visited 10.2.2017. (Case C-434/15, EU Law Radar 2015.)

Five key sharing economy sectors could generate £9 billion of UK revenues by 2025. PwC blog (15 August 2014). Available at: http://pwc.blogs.com/press_room/2014/08/five-key-sharing-economy-sectors-could-generate-9-billion-of-uk-revenues-by-2025.html, last visited 11.2.2017. (PwC 2014.)

Yritystoiminta, Yrittäjäneläke. Available at:

<https://sites.google.com/site/yritystietoa/yrittaejaen-elaeke>, last visited 18.2.2017. (Yritystoiminta, Yrittäjäneläke).

Statistics

Eurobarometer: The use of collaborative platforms. Flash Eurobarometer 438 – TNS Political & Social. June 2016. Available at:

https://www.google.fi/search?q=eurobarometer+survey+sharing+economy&ie=utf-8&oe=utf-8&client=firefox-b-ab&gfe_rd=cr&ei=IO-pWNSFN8i67gSp1I2gBw#q=eurobarometer+survey+use+of+collaborative+, last visited 19.2.2017. (Eurobarometer 2016).

Eurostat: Motorisation rate, Cars per 1000 inhabitants. Last update 25 January 2017.

Available at: <http://ec.europa.eu/eurostat/web/products-datasets/-/tsdpc340>, last visited 29.1.2017. (Eurostat 2017).

Eurostat: Passenger transport statistics. Data from January 2016. Available at:

http://ec.europa.eu/eurostat/statistics-explained/index.php/Passenger_transport_statistics#Relative_growth_of_passenger_transport_and_the_economy, last visited 29.1.2017. (Eurostat 2016a).

- Eurostat*: Transport Statistics at Regional Level. March 2016. Available at:
http://ec.europa.eu/eurostat/statistics-explained/index.php/Transport_statistics_at_regional_level#Equipment_rates, last visited 29.1.2017. (Eurostat 2016b).
- Finnish Transport Agency, Liikennevirasto*: Henkilöliikennetutkimus 2010–2011, Suomalaisen liikkuminen. 2012. Available at
http://www.liikennevirasto.fi/tilastot/henkiloliikennetutkimus#.WKhAv3_s1Vc, last visited 18.2.2017. (Finnish Transport Agency 2012).
- Finnish Transport Agency, Liikennevirasto*: Julkisen liikenteen suoritetilasto 2013. Liikenneviraston tilastoja 2/2015 Helsinki. Available at:
http://www2.liikennevirasto.fi/julkaisut/pdf8/lti_2015-02_julkisen_liikenteen_web.pdf, last visited 29.1.2017. (Finnish Transport Agency 2015a).
- Finnish Transport Agency, Liikennevirasto*: Suomalaisen liikkumistavat, Kulkumuotojen osuus kotimaanmatkoista. Last updated 23 November 2015. Available at:
<http://liikennejarjestelma.fi/palvelutaso/liikennetyypit/matkat-hlt/>, last visited 29.1.2017. (Finnish Transport Agency 2015b).
- Morgan Stanley*: Autos & Shared Mobility, NYC Taxi and Ride-share App Monitor Research. 11 July 2016. Available at:
www.nyctaxi.com/morgan_stanley_report_7_2016.pdf, last visited 17.2.2017. (Morgan Stanley 2016).
- San Francisco Municipal Transportation Agency*: Taxis and accessible services division: Status of Taxi Industry. Transportation Agency Board Meeting 16 September 2014. Available at: <https://www.sfmta.com/sites/default/files/agendaitems/9-16-14%20Item%2011%20Presentation%20-%20Taxicab%20Industry.pdf>, last visited 18.2.2017. (San Francisco Municipal Transportation Agency 2014).
- Statistics Finland, Tilastokeskus*: Ajoneuvokanta kasvoi vuonna 2015. 23 March 2016. Available at: http://www.stat.fi/til/mkan/2015/mkan_2015_2016-03-23_tie_001_fi.html, last visited 29.1.2017. (Statistics Finland 2016).
- Statistics Finland, Tilastokeskus*: Kotimaan liikenne ja talouskehitys, Henkilöliikenteen ja bkt:n kasvu Suomessa-statistic. Last updated 23 January 2017. Available at:

<http://liikennejarjestelma.fi/toimintaymparisto/liikenteen-kysynta/kotimaan-liikenteen-kehitys/>, last visited 29.1.2017. (Statistics Finland 2017a).

Statistics Finland, Tilastokeskus: Sosioekonomisen aseman luokitus 1989. Helsinki 1989: (Käsikirjoja / Tilastokeskus, 17) Available at: http://www.tilastokeskus.fi/tk/tt/luokitukset/lk/sosioekon_asema_89_meta.html, last visited 16.2.2017. (Statistics Finland 1989).

Statistics Finland, Tilastokeskus – *Trafi Finnish Transportation Safety Agency*, Trafi Liikenteen turvallisuusvirasto: Autokannan kehitys, Autoalan tiedotuskeskus. 20 January 2017. Available at: http://www.aut.fi/tilastot/autokannan_kehitys/automaaran_kehitys, last visited 29.1.2017. (Statistics Finland – Trafi, 2017).

Statistics Finland, Tilastokeskus: Väestö, väestörakenne. Last updated 11 January 2017. Available at: http://www.tilastokeskus.fi/tup/suoluk/suoluk_vaesto.html, last visited 29.1.2017. (Statistics Finland 2017b).

Official websites

California Public Utilities Commission: Transportation licensing. Available at: <http://www.cpuc.ca.gov/transportationlicensing/>, last visited 16.2.2017.

Finnish Tax Administration, Verohallinto: Grey Economy Snapshots, last update 22.11.2016. Available at: [https://www.vero.fi/en-US/Tax_Administration/Combating_the_grey_economy/Grey_economy_snapshots\(39806\)](https://www.vero.fi/en-US/Tax_Administration/Combating_the_grey_economy/Grey_economy_snapshots(39806)), last visited 11.2.2017.

The Ministry of Transport and Communications of Finland, liikenne- ja viestintäministeriö: Hankkeet 2016, Available at: <https://www.lvm.fi/liikennekaari>, last visited 14.2.2017. (LVM hankkeet, liikennekaari 2016.)

The Ministry of Transport and Communications of Finland, liikenne- ja viestintäministeriö: Publications 20 September 2016. Available at: <https://www.lvm.fi/-/liikennekaari-etenee-ratkaisu-loytynyt>, last visited 14.2.2017. (LVM tiedote 20.9.2016).

State of California Department of Transport: High-Occupance Vehicle Lines, 2017. Available at: <http://www.dot.ca.gov/hq/paffairs/faq/faq79.htm>, last visited 17.2.2017.

United Kingdom government website: Employment Status. Available at:

<https://www.gov.uk/employment-status/>, last visited 10.2.2017.

United Kingdom government website: Income Tax. Available at:

<https://www.gov.uk/income-tax/how-you-pay-income-tax>, last visited 10.2.2017.

Commercial websites

Akavan Erityisalat:

http://www.akavanerityisalat.fi/edunvalvonta/ammattinharjoittaja_yrittaja/yritysmuodon_valinta_ja_verotus, last visited 9.2.2017.

Cabify: <https://www.cabify.com/>, last visited 28.1.2017.

Couchsurfing: <https://www.couchsurfing.com/>, last visited 28.1.2017.

Craigslist: <https://www.craigslist.org/about/sites>, last visited 28.1.2017.

eBay: <http://www.ebay.com/>, last visited 19.3.2017.

GoCatch: website <http://www.gocatch.com/>, last visited 28.1.2017.

HSL: matkakortti, <https://www.hsl.fi/ohjeita-ja-tietoja/matkakortti>, last visited 16.2.2017.

Lyft: <https://www.lyft.com/>, last visited 28.1.2017.

Milieu, Consumers in the sharing economy: <http://www.milieu.be/index.php?page=1816-15-consumers-in-the-sharing-economy>, last visited 19.3.2017.

Taksikoulu: <http://www.taksikoulu.net/kurssimaksut/>, last visited 13.2.2017.

Taksiliitto: http://www.taksiliitto.fi/koulutus/sinustako_taksinkuljettaja/, last visited 23.2.2017.

Taxify Oü: <http://taxify.eu/>, last visited 28.1.2017.

Transport of London website: <https://tfl.gov.uk/info-for/taxis-and-private-hire/licensing/apply-for-a-taxi-driver-licence>, last visited 12.2.2017.

Uber: our story, <https://www.uber.com/en-FI/our-story/>, last visited 27.1.2017.

Uber: Helsinki, <https://www.uber.com/fi/cities/helsinki/>, last visited 30.1.2017.

1. Introduction

1.1 Background

In 2013 there were almost 250 million passenger cars¹ in the 28 countries of the European Union, with 43,4 million of them in Germany and 36,9 million in Italy. The average amount of passenger cars per 1 000 inhabitants in EU was 487 at the end of 2013.² Finland is above this average. In 2014, there were 582 cars towards every 1000 inhabitants. Compared to other EU countries, only Italy, Malta and Lichtenstein topped that. The lowest rate was Romania with 246.³

In Finland, a country of about 5,5 million people⁴, there were slightly over 3 million passenger cars at the end of 2016,⁵ of which 2,6 million were in used for transport.⁶ The average number of passengers in a passenger car is only 1,7, which quite often means that there is only one person in a car, the driver.⁷ The large number of vehicles also means that the cars are most of the time not in motion, when their owner is not using them. This is not cost efficient nor environmentally friendly. Many cities face issues with traffic jams and the lack of parking space. Traditionally these issues have been tried to be fixed by taxing private cars and driving as well as by improving the public transport systems. In some locations carpooling⁸ has been made more tempting by adding lines on which one could drive only if there are multiple people in the vehicle.⁹

The amount of passenger transport has been increasing and private cars are the leading transport method in that field. In Finland, the market share of all passenger transport was 84,9 % for private cars compared to public transportation in 2013.¹⁰ Finns move on average 41 kilometers per day and this is done mostly by private cars. When comparing the use of private

¹ Passenger cars include any motorized road vehicle other than motorcycle able to carry under 10 passengers, including taxis.

² Eurostat 2016b.

³ Eurostat 2017.

⁴ Statistics Finland 2017b.

⁵ Statistics Finland 2016.

⁶ Statistics Finland – Trafi 2017.

⁷ Finnish Transport Agency 2012, page 47.

⁸ Carpooling means sharing a car for a journey so that more passengers can travel in it.

⁹ State of California Department of Transport 2017.

¹⁰ Finnish Transport Agency 2015a.

cars, public transportation and other transportation methods, such as walking and biking, the share of transport method is 58 % for private cars and only 8 % for public transportation.¹¹ However, passenger transport is not as tied to the growth in economy as the transport of goods is. After the early 90's the amount of passenger transport has been growing slower than the Finnish economy, but the current financial crisis has not influenced it that much either.¹² The same trend in passenger transport can also be seen on the EU level. Between the years 2003 and 2013 the passenger transport growth was 6,4 % slower than the growth of the Gross domestic product (GDP) of the 28 EU Member States' area.¹³ The amount of passenger transport is growing slowly but steadily.

As gas prices and taxes are rising, owning a private car is becoming increasingly expensive.¹⁴ Not to mention the other costs, such as insurance fees, repair costs and parking fees. Economist Markus Ossi has counted that owning a private car costs thousands of euros per year.¹⁵ Also, the awareness of environmental issues and new concepts of consuming and sharing are spreading. However, the demand for passenger transport services only keeps growing.

There is a rising need for more cost-friendly and environmentally friendly options and one of the possible solutions is the Sharing Economy. A recent Eurobarometer study shows that more than half of the repliers had heard of these platform companies and almost every fifth had used them.¹⁶ The rise of Sharing Economy in the field of transport has risen debates over certain aspects of regulation such as the deregulation of taxi industry. Some Member States have regulatory initiatives and proposals on the table regarding the regulation of platform companies. For example, France has published a new Transport Code in 2014¹⁷ and the Finnish Transport Code¹⁸ will come into force in 2018. The regulation of Sharing Economy is however not coherent throughout the European Union and there are many issues to be solved.

¹¹ Finnish Transport Agency 2015b, at Kulkumuotojen osuus kotimaanmatkoista.

¹² Statistics Finland 2017a.

¹³ Eurostat 2016a.

¹⁴ Autoliitto 2016.

¹⁵ Ossi 2016: Using an example of a 25 000 euro Volkswagen Golf Variant, it costed 7045 euros a year during 5,5 years to own the car including the value loss, the gasoline, the repairs, the insurance and the authority fees.

¹⁶ Eurobarometer 2016, page 5.

¹⁷ Loi No. 2014-1104 du 1er octobre 2014 relative aux taxis et aux voitures de transport avec chauffeur.

¹⁸ HE 161/2016 vp.

One well-known company of the Sharing Economy is Uber. By connecting the drivers and the passengers through their mobile phone application, Uber is providing a digital platform service. However, the customer is also purchasing a service of passenger transport and it is unclear who the provider of the transportation part of the service is. Is Uber also providing the transport service, and are the drivers its employees, or are the drivers self-employed transportation service providers?

1.2 Purpose and Scope of the Study

Sharing Economy is a growing market format which allows one to share their resources through an online intermediate. Through Sharing Economy new platform companies are emerging. This thesis will focus on a certain type of transport related companies, which will be referred as ridesourcing companies. They are platform-based intermediaries, which use mobile phone applications to connect drivers and passengers. The regulation of the ridesourcing companies and their drivers has been chosen as the topic for this thesis as new innovative businesses are emerging and their position in the regulatory field is not clear. This research aims to answer a very timely issue of how the ridesourcing companies and their drivers fit in the regulatory field and how the regulation should be developed.

This thesis will not focus on other Sharing Economy business models such as the housing rental applications or applications where someone can offer other services. The reason to choose ridesourcing companies was quite clear. First of all, there seems to be currently more large sized ridesourcing companies than other types of Sharing Economy companies. The list of well-known ridesourcing companies includes Uber¹⁹, Lyft²⁰, GoCatch²¹, Taxify²², Cabify²³ and many others, spread all over the planet and having significant and still growing market shares in the transport business. Secondly, these services have faced many legal issues in different Member States and their place in the regulatory field is not clear. This of course applies to the other services to some extent as well. For ridesourcing companies the legal issue is their definition and position in the regulatory environment. Are they only digital companies or are they also involved in the transport business? This is closely linked to

¹⁹ Uber's website.

²⁰ Lyft's website.

²¹ GoCatch's website.

²² Taxify's website.

²³ Cabify's website.

defining them as intermediaries or service providers. What is the service these companies provide? The most important differentiation between ridesourcing companies and the other types of Sharing Economy companies, however, is that there are multiple questions regarding the drivers and their employment statuses. Are the drivers employees of the ridesourcing companies or are they self-employed contractors?

This thesis will focus on one of the ridesourcing companies, Uber. Choosing Uber was obvious because it was the first and the most known of the ridesourcing companies. Uber has also faced many legal issues and it has been banned in multiple countries. Thus, there is more accessible information on Uber over its economically less relevant competitors. What happens with Uber will lead the way to its competitors. It has been a trendsetter since the beginning.

Even regarding only Uber one could have chosen various research questions and multiple points of view. Due to the limits of this study, the thesis could only focus on one issue. One could have written about consumer law related issues, taxation issues or for example focus on insurance issues. The thesis will, however, use the labour law perspective and try to answer the question, *what is the employment status of the drivers of these ridesourcing companies*. Uber has in various cases denied the drivers being in their employees. The research questions of this thesis are:

- 1) *What is the legal definition and regulatory position of ridesourcing companies: are they only digital intermediaries or are they transport service providers? These questions have been presented to the European Court of Justice in the three preliminary ruling requests, two of which are still pending.*²⁴
- 2) *How does the answer to the first question influence the relationship and the responsibilities between the company and the drivers? Does it influence the employment status of the drivers? How will the status of the drivers change depending on whether Uber is a digital or a transport service company? These questions are the main focus of this thesis, but the first question must be determined before these can be answered.*

²⁴ Case C-434/15 Asociación Profesional Elite Taxi, Case C-526/15 Uber Belgium and Case C-320/16 Uber France.

The legal definition of Uber could influence not only the employment status of the drivers, but also the customer protection rights and taxation related matters. Besides the growing number of drivers, also the number of consumers using these services and the potential tax sums are rising. What made the labour law perspective more fascinating topic, however, were the recent cases in the United Kingdom (UK) and in Finland, which demonstrate just how fragmented the situation is in the EU. Due to the above-mentioned differences, this thesis will focus on the UK, Finland and the European Union aspect regarding the definition of ridesourcing companies and the employment status of the drivers.

1.3 Research Methods and Sources of Law

There are multiple methods in legal writing and one must choose the suitable ones based on their research questions so that the method will help to research the topic and achieve conclusions.²⁵ The topic of the research must determine the methods, not the other way around. The chosen method and approach will determine the perspective from which the topic is being researched.²⁶ The methods used in this research are problem-solving legal dogmatic and comparative law. The legal dogmatic method is the most common method in legal writing. Legal dogmatic focuses on the existing legal norms, which it will aim to interpret and systematize.²⁷ One form of legal dogmatic is problem-solving, which requires one to be aware of the other methods, such as law and history, law and theory and law and sociology, and to know how to use them.²⁸ Problem-solving method suits this thesis well, as there are problems in the current situation and this thesis will try to find solutions to them. The problems are the unclear situation of the ridesourcing companies and the employment status of the drivers. To solve the employment status of the drivers, one must first determine what kind of service the ridesourcing companies are providing.

The other method used is comparative, which means comparing legislation between different countries or jurisdictions, and aiming to understand the similarities and the differences between them.²⁹ Comparative law can be used either as a supportive method to another method, or by its own.³⁰ For one to be able to compare laws, the study subjects must have an

²⁵ Kolehmainen 2016, pages 111-112.

²⁶ Husa – Mutanen – Pohjolainen 2008, page 27.

²⁷ Hirvonen 2011, page 22.

²⁸ Ibid., page 56.

²⁹ Husa 2013, page 193.

³⁰ Husa – Mutanen – Pohjolainen 2008, page 23-24.

in-common factor, *a tertium comparationis* in Latin. This does not mean that the two subjects must have an identical feature, just that they have an in-common factor, which can be compared.³¹ The use of comparative law has increased to the integration in the European Union, which has led to the harmonization of legislation and the requirement to interpret the EU legislation in the same way in every Member State.³²

This thesis will compare the legal situation between different Member States and EU regarding the issues of regulating ridesourcing companies and the employment status of the drivers. This thesis will focus on the issues on the legislation and cases of the United Kingdom and Finland, but will briefly mention what other issues Uber has had in Europe regarding its definition and existence. This thesis will look into those two countries due to the different regulatory situation in them. The recent Court Cases, in which Uber has been involved in, show that these countries have a very different way of interpreting the situation and the nature of Uber's operations. In the Case 2202550/2015 & others³³ the UK Employment Tribunal ruled over the employment status of the Uber drivers very differently than how the Helsinki Court of Appeal treated the drivers in its Cases R 16/1141 and R 16/1175³⁴. The employment statuses are the *tertium comparationis* of the comparison of this thesis.

This thesis will use multiple sources. It will use both European Union legislation and national legislation, other official documents from the European Union, the European Commission, the European Parliament and the national governments. It will also demonstrate many instances of case law, both from the European Court of Justice (ECJ) as well from the national Courts of the Member States. The main legal Cases are the three preliminary ruling requests sent to the ECJ³⁵ and cases involving Uber drivers from a UK Employment Tribunal³⁶ and from the Helsinki Court of Appeal³⁷. This thesis will also utilize literature widely, including online articles and some statistics. With all these different types of sources this thesis will try to shed light on the situation and answer the research questions, especially the second question about

³¹ Husa 2013, page 186-187.

³² Husa – Mutanen – Pohjolainen 2008, page 23-24.

³³ The UK Employment Tribunal, Case 2202550/2015.

³⁴ Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

³⁵ Case C-434/15 Asociación Profesional Elite Taxi, Case C-526/15 Uber Belgium and Case C-320/16 Uber France.

³⁶ The UK Employment Tribunal, Case 2202550/2015.

³⁷ Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

how the definition of Uber impacts the employment statuses of the drivers. The purpose of the first question, what is the nature of Uber, is to enable solving the second question, which depends on the outcome of the first.

1.4 Relation to Other Studies

In the recent years, there has been many studies regarding Uber and other Sharing Economy and ridesourcing companies both in the European Union and in the United States. As the ridesourcing companies are a recent phenomenon, it is not surprising that the regulatory framework has not been established in the EU or that the topic raises many questions.

The European Commission has launched many studies regarding Sharing Economy. In 2015 The Directorate-General for Mobility and Transport launched a study on “passenger transport by taxi, hire car and ridesharing in EU”³⁸ and the Directorate-General for Justice and consumers launched one study on the “consumer issues in the Sharing Economy”³⁹. These studies are focusing on the passenger and consumer rights.⁴⁰ The European Commission also carried out a public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy from September 2015 to January 2016⁴¹ and a Eurobarometer survey on the use of collaborative platforms⁴². They include views from authorities, entrepreneurs and individuals. Some key findings include that most respondents recognized the benefits of the platform companies and that their consumer and supplier related problems could be addressed by a combination of regulatory, self-regulatory and market actions.⁴³ The Eurobarometer study focused more on the statistics of awareness and use of the existing platforms. The European Commission has also organized several workshops to discuss the Sharing Economy.⁴⁴ All these studies show that the Sharing Economy is becoming an important part of the economic environment and that there are already issues recognized especially regarding consumer protection.

³⁸ Azevedo – Maciejewsk 2015, page 2.

³⁹ Milieu, at Consumers in the Sharing Economy.

⁴⁰ Azevedo – Maciejewsk 2015, page 2.

⁴¹ Commission Results of the public consultation 2016.

⁴² Eurobarometer 2016.

⁴³ Commission Results of the public consultation 2016.

⁴⁴ Cauffman – Smits 2016, page 905.

The Committee on Transport and Tourism of the European Parliament has asked for an internal briefing to provide a first analysis at the ridesourcing companies. This research was provided under the title of “Social, Economic and Legal Consequences of Uber and Similar Transportation Network Companies (TNCs)” in 2015.⁴⁵ This paper came to the conclusions that independent analyses of TNCs mobility, labour and environmental impacts are needed as for as further research of the regulatory responses towards the TNCs.⁴⁶ This is exactly what this thesis will be looking into: the impacts on labour and the regulatory responses.

Many of the Sharing Economy businesses originate from the United States so it is no surprise that their legal research, legislation and case law are slightly ahead of Europe. Shared-Use Mobility Center is an American research center devoted to the Sharing Economy companies. It has come up with definitions to the different types of companies, which it hopes to become established in use.⁴⁷ This study will be using their terminology as it makes clear distinctions between different types of services.

A study in San Francisco suggests that the taxi usage was impacted by the ridesourcing companies such as Uber.⁴⁸ Between January 2012 and August 2014, the amount of taxi trips declined by 65 %.⁴⁹ It is obvious that the ridesourcing companies are popular among consumers and this could be one major reason for the declining usage of taxis. However, a Morgan Stanley research in New York showed the amount of taxi rides on average per day declined only by 9% from April 2015 to April 2016. In the same time the amount of Uber rides rose 129 %, ⁵⁰ appearing that Uber competes with the traditional taxi services. Different studies show different impact and, of course, there are other variables influencing how many taxi rides are taken, such as economic reasons and the availability of other transport methods.

The studies done both in the EU as well as in the U.S. indicate how major role these new types of companies have, and that the regulators are not sure how to categorize them in the current legislative environment. Some American States and European countries have regulated ridesourcing companies, but there is yet no legislative instrument on the EU level.

⁴⁵ Azevedo – Maciejewsk 2015.

⁴⁶ Ibid., page 6.

⁴⁷ The Shared-Use Mobility Center 2015.

⁴⁸ San Francisco Municipal Transportation Agency, 2014.

⁴⁹ Ibid., page 12.

⁵⁰ Morgan Stanley 2016, pages 1-2.

The European Commission has however clearly showed interest in this matter and is trying to get an over-all understanding of the possible issues related to Sharing Economy.

This thesis differs from the studies mentioned above due to its specific focus on Uber and the legal issues it has faced. Another differentiation is the focus on the employment status of the drivers and the argument that the definition of the nature of Uber's operations has an impact on the employment statuses. The European Commission and other legislators are aware of the issues of the ridesourcing companies' drivers are facing, and are trying to figure out how to solve them. This study will present the factors, which will determine how to define ridesourcing companies' nature of operations and their drivers' employment status.

1.5 Outline of the Study

This study includes five chapters all of which are subdivided into sections. The first chapter is the introduction which aims to introduce the topic, the research questions as well as the technical choices regarding the writing style. First, this thesis looks into the background of passenger transport and rising Sharing Economy. There are some statistics to demonstrate the significance of passenger transport and Sharing Economy. In chapter "Purpose and scope of the study" this thesis provides the topic and the research questions. It narrows down the scope of the study and points out other possible research areas. This is followed by a chapter about the research methods and the sources used in this study, which have been chosen based on the research topic and research questions. In chapter "Relation to other studies", this thesis provides a short introduction to other studies in similar topics and explains how it differs from them. The finishing section of the introduction is the outline of the study. This chapter presents the structure of the thesis and the contents of each chapter.

The second chapter "Main Definitions for Understanding Ridesourcing companies" explains and defines the key terms of the study beginning with Sharing Economy in general and then going deeper into its more specific forms. The focus stays in those types, which are relevant for the study, and other relevant related types are only briefly mentioned. The structure of this Chapter is like an upside-down pyramid. The first term to be defined is the widest: Sharing Economy, what it is, what it requires and what are the parties involved in it. This is followed by the definitions of the three different types of Sharing Economy company models: the renters, swappers and platforms. After this, the focus will be on one of those models, the

platform companies, and introducing two transport related platform company models. These platform company models in transport industry are car-sharing and ridesourcing. Finally, in Chapter 2.4 this thesis will provide the business model and functions of Uber, the most famous ridesourcing company in the world. The brief explanation of Uber's operations is the tip of that pyramid and will complete the understanding of how these definitions are linked to each other. All the definitions were leading towards a thorough understanding of the nature of Uber.

The third chapter provides understanding of the EU regulation on Sharing Economy. First, it briefly introduces the key principles of EU law, which determine the EU competences, and mentions some key legal fields and to which competence they belong to. Then it presents the relevant EU legislation in the field of services and especially digital services, which are called information society services. This is followed by a Chapter regarding the issues of the existing legislation in the current situation and a Chapter introducing the Sharing Economy Agenda and other opinions of the European Commission and its members. The purpose of these Chapters is to present under which jurisdiction Uber could fall under depending on the nature of its actions. Chapter 3.5 introduces the legal problems Uber has had in the EU and how those have escalated to the three preliminary ruling requests sent to the European Court of Justice (ECJ). This Chapter presents the issue of how to define Uber, whether it is a digital service or a transport service.

In the fourth Chapter, this thesis will briefly summarize the history of the European labour law to explain how it has developed into its current form and then introduce different types of employment statuses. The purpose of Chapter 4.1 is to briefly explain the historical relation of EU Labour law and the UK and Finnish Labour law. This is fascinating background information for evaluating the results of the recent cases regarding Uber drivers which will be presented in Chapter 5. Chapter 4.2 includes a legal comparison between the employment statuses of the EU, the United Kingdom and Finland. For clarity reasons, the thesis will present each jurisdiction separately and then compare them to each other in Chapter 4.2.4.

In Chapter 5 this thesis will look into some key legal Cases concerning Uber drivers. The Cases are from the United Kingdom and Finland. The reason why this thesis presents the UK first is that they have a recent decision of the drivers, which states clearly their employment

status whereas there is still a need for some interpretation in the Finnish situation regarding the employment status of the drivers. By comparing these Cases and other legislative instruments, this thesis argues that the definition of Uber as a digital or a transport service has a major influence on the employment status of the drivers.

Finally, in Chapter six, this thesis provides a conclusion of this study and presents ideas of required actions, especially for the regulators both on EU and national level, but also for the other parties involved in the situation. This thesis also presents why the lack of EU legislation on ridesourcing companies is harmful. Chapter 6.2 focuses on the employment status issues of the ridesourcing companies' drivers and the future possibilities regarding them. The last chapter "Conclusions" will summarize the key issues, their possible solutions and what the future holds for us. We are currently waiting for the solution of ECJ to solve whether Uber is an information society service or transport service provider, which would solve the question whether it belongs to the EU or to the national jurisdiction.⁵¹ This thesis finds that EU level harmonization regarding the ridesourcing companies is needed and that the outcome of the above-mentioned ECJ decision will determine how it could be implemented.

⁵¹ Case C-434/15 Asociación Profesional Elite Taxi.

2. Main Definitions for Understanding Ridesourcing Companies

2.1 *Sharing Economy*

The consumer needs are an always changing and developing area. In the recent years, there has been a remarkable rise in the need for “on demand” services, which are also called “gig economy”. The rise for these kind of services is fueled by the newly developed technologies which make the services more available to modern day users.⁵² These services can be purchased and offered through Sharing Economy.

The need for companies, which are based on Sharing Economy is rising. Sharing Economy means sharing one’s property, resources, time and skills which they already have, using an online platform. It is also known as Collaborative Economy. Sharing is not a new phenomenon, but the internet has made it possible to share goods and services with unknown people easier than ever.⁵³ The key factors of the rise of Sharing Economy are technology, online payment transfer methods and social media. The first two are technical requirements, but social media has influenced the rise by increasing the culture of sharing and connecting people. Besides these, the important factor is a change in the attitude. Instead of owning something, having an access to it could be enough. This is more environmentally friendly and it also connects people to each other.⁵⁴ Sharing Economy is not only changing the way we consume, but also how we think about consumption and the importance or status of ownership.⁵⁵ The key elements of Sharing Economy are digital platforms, accessibility instead of ownership, peer-to-peer transactions, making money from idle capacity and self-regulation.⁵⁶

Sharing Economy is currently used in accommodation, transport, workforce and tools. There could be potential in many other fields such as fashion and food.⁵⁷ PwC has calculated that Sharing Economy is currently worth 9 billion pounds and that it will be worth 230 billion

⁵² Butler 2016.

⁵³ Woskow 2014, pages 7-8, 17.

⁵⁴ Hatzopoulos – Roma 2017, pages 82-83.

⁵⁵ Das Acevedo 2016, page 5.

⁵⁶ Hatzopoulos – Roma 2017, page 85.

⁵⁷ Woskow 2014, page 14 and 35-36.

pounds by 2025. This is a massive rise and shows that the Sharing Economy is only taking its first steps.⁵⁸ Sharing Economy is not only for large companies. Especially the young people have started taking advantage of these business models and are becoming microentrepreneurs. Sharing Economy offers not only a way to save money, but also to earn money.⁵⁹

The European Commission prefers the term Collaborative Economy over the term Sharing Economy. It has defined the term in 2015 as “a complex ecosystem of on-demand services and temporary use of assets based on exchanges via online platforms”.⁶⁰ A more detailed definition was provided a year later in the European Agenda for the Collaborative Economy document. There the Collaborative Economy was defined as business models where platforms form a marketplace which facilitates activities and the goods or services are mostly provided by private individuals.

The actors of Sharing Economy can be categorized into three types. First, there is the service supplier, who is either a private individual willing to share their time and resources occasionally or a professional provider, which could be an individual or a company. Then there are the users and thirdly there are the intermediates which connect the first two parties and facilitate their transactions.⁶¹ The term service provider can either mean the supplier or the intermediating party depending on the situation. The intermediate is a provider of an information society service, but it could also be a service provider providing the underlying service, for example transport. And if the intermediate company is involved in the underlying transport service, then the drivers would be called suppliers. However, if the intermediate is only offering information society services, then the drivers are the transport service providers.

Sharing Economy requires trust. The consumers must be able to trust the intermediate as well as the people they are connecting with. Many of these services provide a rating system where the customers can give feedback on the service they received, and the new customers can read the previous reviews. For example, on Airbnb both the hosts and the visitors can leave

⁵⁸ PwC 2014.

⁵⁹ Woskow 2014, pages 12-14,

⁶⁰ COM (2015) 550 final, at 2.1.

⁶¹ COM (2016) 356 final, at 1.

reviews.⁶² Similar reviews have been used on online selling platforms such as eBay⁶³ where the consumer can choose reliable sellers. Some companies also use ID verification systems.

2.2 Renters, Swappers and Platforms

Sharing Economy companies can be divided into three categories, which are renters, swappers and platforms. Renters replicate traditional structures of an entity renting or selling a product or a service directly to their customers and they operate within the existing regulatory environment.

Unlike the renters, the swappers and the platforms are peer-to-peer forms of Sharing Economy. This means if the product or service is sold through the swapper service, it mainly facilitates the transaction and does not have control over it. The swapper company does not solve issues between the parties or vouch for the quality of the service either. Swappers are online bulletin boards, which earn little or no money at all from the transactions they facilitate.⁶⁴ Examples of swapper companies are Couchsurfing and Craigslist, which allow people to find each other on their site, communicate and agree upon the terms. Couchsurfing is used for meeting new people and staying in their homes for free⁶⁵ and Craigslist is basically an internet bulletin board for job applications, housing announcements, selling and buying announcements and even dating advertisements.⁶⁶

Like the swappers, platforms also connect individuals and facilitate their transactions. The difference is that the platforms, despite of not being a party of the transaction, have more control over the transaction and they charge a fee, or a commission, from their assistance. The platforms solve information asymmetries and provide some independent quality control to the parties.⁶⁷ The platforms themselves claim not to participate in the transactions, but some scholars claim they do, since they are intervening and not remaining purely as a matchmaker.⁶⁸ The most famous platform in the transport sector is Uber.⁶⁹ Another famous platform company is the housing service Airbnb.

⁶² Woskko 2014, page 18.

⁶³ eBay website.

⁶⁴ Das Acevedo 2016, pages 3-7.

⁶⁵ Couchsurfing website.

⁶⁶ Craigslist website.

⁶⁷ Das Acevedo 2016, pages 7-8.

⁶⁸ Ibid., pages 10-12.

Platforms have been called “almost like digital franchising”, because their suppliers seem like microentrepreneurs⁷⁰ and brand recognition is created by controlling the suppliers. The difference, however, is that the platforms have more control over the suppliers and there is more delegation of the ownership.⁷¹ Workers of the platform companies have also been compared to on-call workers.⁷² The problem with this comparison is that the on-call workers are a reserve pool for the employer to call whenever their normal staff is unavailable,⁷³ whereas the platform companies’ workers are not replacements for the normal staff.

2.3 Carsharing and Ridesourcing

The Shared-Use Mobility Center has studied how Sharing Economy influences the transport industry and they have defined terms and names for these new businesses.⁷⁴ Besides the division into renters, swappers and platforms, another way to differentiate transport related Sharing Economy companies is to divide them into car-sharing and ridesourcing companies. That means that the transport related platform company models are car-sharing and ridesourcing. Car-sharing is a service, which provides a short-term access to a motor vehicle for their members. There are three types of car-sharing. The traditional type of car-sharing is that the customer borrows a car from one location and returns it to the same place. One-way car-sharing allows the customer to leave the car to another location and peer-to-peer car-sharing allows car owners to rent their cars out due to the excess capacity of their cars.⁷⁵

Ridesourcing, on the other hand, is a newer business model. In California, ridesourcing providers are codified as Transportation Network Companies (TNCs).⁷⁶ Their definition is “an organization whether a corporation, partnership, sole proprietor, or other form...that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles”.⁷⁷ Ridesourcing providers use online platforms to connect passengers with their

⁶⁹ Butler 2016.

⁷⁰ Microentrepreneurs are people operating small-scale businesses.

⁷¹ Sundararajan 2014.

⁷² Das Acevedo 2016, page 9.

⁷³ Stone 2006, page 256.

⁷⁴ The Shared-Use Mobility Center 2015, pages 5-6.

⁷⁵ Ibid., pages 5-6.

⁷⁶ California Public Utilities Code §§5430 – 5443.

⁷⁷ California Public Utilities Commission webpage on TNCs.

drivers, who use their own personal vehicles.⁷⁸ This definition of ridesourcing companies will also be used in this thesis. From now on the focus of this thesis will be on ridesourcing companies alone.

The most famous ridesourcing company, or a TNC, is Uber, an American company founded in 2009.⁷⁹ As Uber is the first one of its kind, the history of ridesourcing companies has just begun. Multiple companies, which follow in Uber's footprints and use similar business models, have emerged. Such companies include Latin American Cabify founded in 2011⁸⁰, Australian GoCatch founded in 2011⁸¹, American Lyft founded in 2012⁸² and Estonian Taxify Oü founded in 2013⁸³. When referring to Uber in this thesis, the same information applies most of the time also to these other similar companies. However, this thesis will focus on Uber as it is the first, the biggest and the most widely spread company. Currently Uber is operating in over 540 cities worldwide.⁸⁴

2.4 The Business Model of Uber

The function of Uber, and similar ridesourcing companies, is quite simple. On one hand, there are people in the need for a transport from one place to another and on the other hand, there are people capable of providing a passenger transport service. Uber enters the situation by offering their application as a platform where these passengers and drivers can connect. Uber itself claims to be a technology firm, and it states on their website "Uber does not provide transport services".⁸⁵

The drivers are not considered to be in an employer-employee relationship with Uber, instead, they are being called "partner drivers". Uber has some requirements for the partner drivers such as a driving license, certain conditions of the vehicle and a valid insurance. Becoming a partner driver entitles one to use the Uber's driver application and to get a short training provided by Uber. These drivers download the Uber's driver application to their smartphones

⁷⁸ The Shared-Use Mobility Center 2015, pages 7-8.

⁷⁹ Uber's website at our story: The idea for Uber was born in 2008 on a snowy evening in Paris when the founders had trouble getting a taxi.

⁸⁰ Cabify website.

⁸¹ GoCatch website.

⁸² Lyft website.

⁸³ Taxify Oü website.

⁸⁴ Uber's website, our story.

⁸⁵ On Uber's Finnish website at Helsinki it states: "Uber ei ole kuljetusten tarjoaja".

and sign up to it, after which they start receiving requests from the nearby customers who are using a similar Uber's phone application meant for passengers to order a ride from a certain location to another. Uber works as a matchmaker and pairs the customer with a suitable driver in the area. After receiving a ride request, the driver either accepts or declines the gig. If the driver accepts, he will pick up the customer and deliver them to their destination while the customer makes a payment through the application. The payment goes to Uber who forwards it to the driver after reducing their commission from it. The drivers get 80 % of the payment, which means Uber's commission is 20 %.⁸⁶ In London, the commission is 25 % nowadays.⁸⁷

This all means the driver's first contact with the customer happens when the customer is picked up and that Uber does not expressly obligate itself to offer any work to the drivers or the driver to accept the offered work. Therefore, there is a lack of mutual obligations, which is often considered as a part of an employer-employee relationship.⁸⁸ The drivers must pay the taxes from their earnings themselves.⁸⁹

Nowadays there are more features in Uber besides the earlier mentioned regular service. A passenger may also choose which kind of a car they want, a regular, a van or perhaps a greener option. Another recent service is the carpooling, which means one will share the car with other passengers heading to the same direction. This will bring savings in the costs and is good for the environment.⁹⁰

⁸⁶ Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

⁸⁷ The UK Employment Tribunal, Case 2202550/2015, paragraph 21.

⁸⁸ Butler 2016.

⁸⁹ Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

⁹⁰ Uber's website, at ride.

3. EU Regulation on Sharing Economy

3.1 EU Principles and Competences

Regarding the European Union law, one must always first think about the competences. Is a certain issue in the field of which the Union can regulate? Or does it belong to the competence of the Member States or perhaps it is shared, and to what extent? The usual supremacy rules get slightly more complex, when considering the Union law. The main principle is that the Union law is above the national legislation and the judgements of the European Court of Justice (ECJ) are superior interpretations of the Union law. Despite of this supremacy principle there are limits to the power of the EU. Some of these limits to the competence of EU have been set in the Article 5 of the Treaty on the Functioning of European Union (TFEU).

“1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

*The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.*⁹¹

This Article contains three key principles: conferral, subsidiarity and proportionality. The Union can only act within the limits of the power conferred to it by the Member States.⁹² The powers are Union's exclusive competence, shared competence or supporting competence. The exclusive competence means the EU alone can legislate and adopt binding acts. Such areas include customs Union and monetary Union.⁹³ In areas of shared competence both the Union and the Member States have the competence to legislate. The Member States can exercise their competence in areas where the Union does not use its own. This is called pre-emption principle, which means that once the Union has regulated something, it is no longer in the competence of the Member States to regulate on.⁹⁴ These fields include for example the internal market and transport. Also, EU's social policy falls under the shared competence, but only as defined in the treaties. Consumer protection and areas of research and technological development fall into the shared competence too.⁹⁵ Article 5 (3) TFEU says if something does not fall into the Unions exclusive competence, the Union shall only act if the objectives cannot be achieved by the Member States and Article 5 (4) limits that the actions shall not exceed what is necessary to achieve the objectives.⁹⁶

Labour law, also known as employment law, is one of the fields, which falls under the shared competence. Most labour law falls under the Member States' competence, but EU has set some minimum standards in some fields of social and employment policy. This means that the Member States can set higher standards.⁹⁷ The EU Labour Law aims for promoting social progress and improving the living and working conditions of the European people,⁹⁸ and the

⁹¹ Article 5 TFEU.

⁹² See Tala 2006, pages 65-66.

⁹³ Article 3 TFEU.

⁹⁴ Tala 2006, pages 68-69.

⁹⁵ Article 4 TFEU.

⁹⁶ Article 5 TFEU.

⁹⁷ COM (2016) 356 final, at 2.4.

⁹⁸ Preamble of the TFEU.

two main areas are working conditions and informing and consulting workers.⁹⁹ Regarding employment law, the Union has both specific and general law-making powers.¹⁰⁰ In the Article 153 TFEU, the Union has been given certain specific law-making powers in supporting and complementing the activities of the Member States. These include worker's health and safety, working conditions and many other worker protection related matters.¹⁰¹ The Union also has some general law-making powers provided by Articles 115 TFEU (94 EC) and 356 TFEU (308 EC).¹⁰² This thesis will return to the employment policy in Chapter 4.1.

The passenger road transport policy has been also left to a large extent to the individual Member States,¹⁰³ despite of the fact that road transport is the leading transport method in both passenger and freight transport.¹⁰⁴ The EU regulation in road passenger transport mainly regards long-distance coach services.¹⁰⁵ One of the biggest EU influences in this field was the adoption of catalytic converters of motor vehicles to reduce environment effects. Despite of the efforts to create a common policy for easier cross-border coach and bus operations already in the 1970s, developing a common public transport policy has taken a lot of time.¹⁰⁶

On the other hand, one field where the EU has recently become quite active is digitalization. In 2014 the European Commission lead by President Juncker has taken an agenda on developing a Digital Single Market.¹⁰⁷ The definition of a Digital Single Market means that the free movement of the EU's four freedoms (goods, persons, services and capital) is easily accessible by online activities. The Digital Single Market must follow the conditions of fair competition, and provide adequate consumer and personal data protection.¹⁰⁸ Digitalization has increased the amount of services available as the rise of Sharing Economy companies shows. Supporting innovative businesses is also an aim of the European Parliament¹⁰⁹ and the European Commission.¹¹⁰

⁹⁹ Article 153 TFEU.

¹⁰⁰ Watson 2009, pages 18-26.

¹⁰¹ Article 153 TFEU.

¹⁰² Watson 2009, pages 18-26.

¹⁰³ Finger- Holvad 2013, page 14.

¹⁰⁴ Transport, European Commission 2014, page 13.

¹⁰⁵ See more: Van de Velde 2013, pages 115-139.

¹⁰⁶ El-Agraa 2004, pages 256-264.

¹⁰⁷ Juncker 2014, at 2.

¹⁰⁸ COM (2015) 192 final.

¹⁰⁹ EP Resolution 2015.

¹¹⁰ COM (2016) 356 final.

3.2 EU Legislation Regarding the Ridesourcing Companies

The ridesourcing companies offer services. They are platform companies and therefore could be categorized as information society service providers, but perhaps also as transport service providers. As different Directives provide protection to service providers, it is crucial to determine their nature to determine under which Directives' scope they fall.

This thesis will present the relevant EU legislative instruments. First of all, there is the Treaty on the Functioning of the European Union (TFEU). The Treaty regulates the free movement of services.¹¹¹ Article 57 TFEU defines the meaning of services under the treaty. This definition includes remuneration and the fact that the service is not regulated under the other three freedoms of movement in the European single market: goods, capital or persons.¹¹² Almost all Sharing Economy platform providers fulfill this definition and fall into the category of services.¹¹³ Even a free online newspaper, which was paid by advertisements, has been considered as an information society service.¹¹⁴ Falling under the category means that they would be subject to the treaty rules.¹¹⁵

Another freedom provided by the TFEU is the right to establishment.¹¹⁶ Self-employed persons and legal persons, in the meaning of Article 54 TFEU, can carry on an economic activity in another Member State¹¹⁷ or provide their services in other Member States temporarily while remaining in their country of origin¹¹⁸, if they are legally operating in one Member State.

Besides the TFEU, there are three main Directives, which could be relevant for the ridesourcing companies. They are the Information Society Service Directive 2015/1535/EU (previously 98/34/EC), the E-Commerce Directive 2000/31/EC and the Service Directive 2006/123/EC. The Service Directive is *lex generalis*, the more wide and general law, compared to the two others. The Information Society Service Directive has some technical

¹¹¹ Articles 56-62 TFEU.

¹¹² Article 57 TFEU.

¹¹³ Hatzopoulos – Roma 2017, page 95.

¹¹⁴ Case C-291/13 Passavas.

¹¹⁵ Hatzopoulos – Roma 2017, page 95.

¹¹⁶ Articles 49-55 TFEU.

¹¹⁷ Article 49 TFEU.

¹¹⁸ Article 56 TFEU.

standards and regulations and the E-Commerce Directive focuses on certain legal aspects of information society services, particularly in electronic commerce. As E-Commerce Directive only applies to certain information society services, it makes it *lex specialis*. As the common legal principle “*lex specialis derogat legi generali*” states, more specific law is superior to the more general law.

The E-Commerce Directive contributes to the internal market by ensuring the freedom of movement of information society services in the EU.¹¹⁹ The information society services are defined in E-Commerce Directive to have the same definition as in the amended Information Society Service Directive.¹²⁰ This meaning is to provide a service for remuneration at a distance by electronic means at the individual request of a recipient.¹²¹

Both the Services Directive and the E-Commerce Directive state that cross-border services are supposed to work without obstacles, unless legislation determines otherwise. An information society service provider should be able to offer their business services in the Member States without being subject to prior authorization, declaration or other restriction.¹²² However, exceptions to this have been determined in the legislation. The Host State, where the company is established, may deviate from the internal market clause¹²³ when the public policy, health, security or consumer protection are at stake.¹²⁴ The measures imposed by Article 3 of the E-Commerce Directive can only be imposed on the “imported” services, therefore not in the host state of the service.¹²⁵ The exceptions are similar to the Service Directive.¹²⁶ The E-Commerce Directive includes also a duty for the Host State to ensure the companies providing information society services established in their territory comply with national provisions.¹²⁷ It does, however, not give them the possibility to restrict the freedom to provide these services from another Member State.¹²⁸

¹¹⁹ Directive 2000/31/EC, Article 1(1).

¹²⁰ Directive 2000/31/EC, Article 2(a).

¹²¹ Directive 98/34/EC, Article 1(2).

¹²² Hatzopoulos – Roma 2017, pages 98-99.

¹²³ Directive 2000/31/EC, Article 3(4).

¹²⁴ Article 3(4) of Directive 2000/31/EC.

¹²⁵ Article 3(4) of Directive 2000/31/EC.

¹²⁶ Article 16 of Directive 2006/123/EC: Consumer protection has been replaced by environment protection.

¹²⁷ Recital 22 of Directive 2000/31/EC.

¹²⁸ Article 3 of Directive 2000/31/EC.

If the ridesourcing companies are qualified as information society services, they will be covered and protected by the E-Commerce and the Service Directives. However, if they are also involved in the underlying service, the transport service, they would not fall under the E-Commerce Directive for that part. What about the Service Directive?

Service Directive has quite a broad scope of services. It qualifies any natural or legal person who offers any kind of self-employed economic activity as a service provider.¹²⁹ The ECJ has even considered amateur athletes and retired university professors as service providers.¹³⁰ As the Court has taken such a wide approach, any economic activity will qualify as a service, even if provided only on one-off basis by a non-professional. The European Commission has proposed the following criteria when determining whether the activity is likely to qualify as professional service providing. These criteria are the frequency of the service, the profit-seeking motive and the level of turnover from the activity and whether it is higher or lower than the turnover obtained from another activity.¹³¹

The Service Directive allows the same market access rights for the service provider as for the platform companies. However, if the provider is a non-professional, there are three differences. Provider, who is only occasionally providing the service, should not be required to provide any authorization or if they were, the authorization requirements should be lower than those of a professional service provider, in order to follow the principle of proportionality.¹³² These non-professional service providers should neither be required such an extensive information obligation nor the professional liability insurance which are required in the Service Directive.¹³³ However, if the service is in a field of regulated professions, these professional qualifications should not be ignored and these professions should remain regulated no matter how often the service is provided.¹³⁴

The Service Directive defines a service to be any self-employed economic activity which is often provided for a remuneration.¹³⁵ This definition is quite broad, but it has some limitations. Certain types of services have been excluded from the scope of the directive.

¹²⁹ Article 4(2) of Directive 2006/123/EC.

¹³⁰ See Joined Cases C-51/96 & 191/97, *Deliège*.

¹³¹ COM (2016)365 final, at 2.1.

¹³² SWD (2015)202 final, at 2.3.1.

¹³³ Articles 22 and 23 of Directive 2006/123/EC.

¹³⁴ Hatzopoulos – Roma 2017, page 116.

¹³⁵ Directive 2006/123/EC, Article 4(1).

These excluded categories should be interpreted narrowly, except for the transport services. The Court of Justice has been interpreting it very widely and counting even hot air balloon rides¹³⁶ and short cruises on the canals of Amsterdam¹³⁷ as transport services. Transport services have clearly been excluded from the scope of the Services Directive.¹³⁸ The scope of the Service Directive 2006/123/EC is defined in Article 2:

“1. This Directive shall apply to services supplied by providers established in a Member State.

*2. This Directive shall not apply to the following activities:
...(b) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC;*

(c) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC;

(d) services in the field of transport, including port services, falling within the scope of Title V of the Treaty;

...“139.

The Recital 21 of the Directive states even more clearly that *“Transport services, including urban transport, taxis and ambulances as well as port services, should be excluded from the scope of this Directive.”*¹⁴⁰ If ridesourcing companies are considered to provide transport services, they will be excluded from the Directive’s scope.

These are the key directives determining the fate of the ridesourcing companies. If ridesourcing companies are considered only as information society services, the EU law

¹³⁶ Case C-382/08, Neukirchinger.

¹³⁷ Joined Cases C-340 & 341/14, *Trijber and Harmsen v College van burgemeester en wethouders van Amsterdam*.

¹³⁸ Article 2(2)(d) and Recital 21 of Directive 2006/123/EC.

¹³⁹ Article 2 of Directive 2006/123/EC,

¹⁴⁰ Recital 21 of Directive 2006/123/EC.

provisions designed to ensure the free movement of services in the European Union will protect them. However, if ridesourcing companies are considered to be involved in transport services, they do not fall into the scope of Service Directive nor the E-Commerce Directive. Which EU legislation would cover them then?

The EU Road Transport Strategy aims to promote efficient, safe, secure and environmentally friendly mobility.¹⁴¹ However, the regulation is mostly focused on freight transport or general rules, such as qualification and training periods of drivers¹⁴² and the admission to the occupation and mutual recognition of diplomas¹⁴³. Working time is regulated in the Working Time Directive also for people working in urban passenger transport,¹⁴⁴ but the mobile workers and self-employed drivers of passenger transport have their own working time directive.¹⁴⁵ Regarding passenger transport on road, the EU has regulation mainly concerning international long-distance coach and bus services.¹⁴⁶ This means that the ridesourcing companies could mainly be regulated by the TFEU. However, the TFEU contains some special provisions regarding the freedom to provide transport services: they are regulated separately in another part of the treaty.¹⁴⁷

3.3 Issues of the Current Regulation

The current legislation was not prepared for such a phenomenon as the Sharing Economy and especially the platform companies. Regulating these companies or even defining them is hard with the current legislation. For that reason, the European Commission has developed a test for determining whether a platform company is providing an information society on their platform or whether it is involved in the underlying service. This can only be solved on a case-by-case basis. There are three primary criteria used in the determination. Firstly, does the platform impose the price instead of setting it. Secondly, does the platform decide on the other key contractual terms and conditions, and thirdly, does the platform own the key assets which are used to provide the underlying service. If the answers to these questions are yes, it would indicate quite strongly that the platform is also providing the underlying service. On

¹⁴¹ Road, European Commission 2017.

¹⁴² Directive 2003/59/EC.

¹⁴³ Council Directive 98/76/EC.

¹⁴⁴ Directive 2003/88/EC.

¹⁴⁵ Directive 2002/15/EC.

¹⁴⁶ See more: Van de Velde 2013, pages 115-139.

¹⁴⁷ Article 58 TFEU says they will be governed by the provisions under the title Transport.

top of these primary criteria, the European Commission also developed secondary criteria. These criteria are does the platform incur costs and assume all the risks of the service and is there an employment relationship between the person providing the service and the platform.¹⁴⁸ Just assisting on the performance of the supporting tasks does not mean the platform has significant control over the service as a whole.¹⁴⁹

The definition of whether Uber is a transport or a digital company may seem artificial as Uber seems to be a combination of both types of services. However, legally it has a significant meaning. If the platform is considered to be participating in the underlying service, it must follow the sector-specific regulations on the national and the EU level, such as national taxi permits or licenses. On the other hand, if the platform is considered to only be offering the service as an information society provider, it should be able to offer their business services in the Member States without being subject to prior authorization, declaration or other restrictions.¹⁵⁰ As a digital service, more favorable rules of the EU's digital market would apply.

In many cases, the issue is that the current regulatory framework does not pay attention to the innovative aspects and therefore places Sharing Economy companies in complicated situations.¹⁵¹ There are currently “outdated” rules, such as minimum waiting time, which are an issue to innovations and creating jobs. These types of legislation are valid, even though they might not be very suitable for these kinds of situations. The European Commission has shared this view describing the EU market as insufficiently innovation friendly but it does not point out which rules would be standing in the way of new innovations.¹⁵²

It seems that the biggest issue of the “outdated” regulations is occupational licensing. In many professions, a special license is needed to be allowed to carry out the job. A license is a government mandated permission to work in a certain field, which creates entry barriers to new workers. Occupational licensing aims to protect the consumers and to increase public safety. In many countries, taxi drivers are required to obtain occupational licenses.¹⁵³

¹⁴⁸ COM (2016) 356 final, at 2.1.

¹⁴⁹ Hatzopoulos – Roma 2017, pages 96-99.

¹⁵⁰ Ibid., pages 98-99.

¹⁵¹ Genç 2016.

¹⁵² Ibid.

¹⁵³ Ibid.

To become a black-cab driver in London, one must participate in training and pass the Knowledge of London test which includes over 25 000 streets, 20 000 landmarks and 320 basic routes. This test costs £900.¹⁵⁴ To become a taxi driver in Finland requires one to complete a taxi driver course, a taxi driver test and a test for the city knowledge. This costs approximately 600 euros.¹⁵⁵ Compared to becoming an Uber driver, getting the training and license of a taxi driver seems quite expensive and time-consuming. Uber's recruitment uses a very low-barrier method. The taxi drivers accuse Uber of unfair competition. If the EJC will consider Uber as a digital service, it will be able to avoid these occupational license requirements.¹⁵⁶

3.4 Agenda for Sharing Economy

The ridesourcing companies are not covered by any specific Union secondary legislation.¹⁵⁷ The European Parliament has asked in parliamentary questions the European Commission about its views on how to regulate these companies. In a Parliament resolution in September 2015, European Parliament requested the European Commission to monitor the situation of Member States regarding the ridesourcing companies and to assess the consequences arising from those companies and to propose relevant measures or recommendations to develop innovative services while paying attention to the existing taxi services.¹⁵⁸

To face the above-mentioned problems among others, the European Commission has published non-binding guidelines regarding these Sharing Economy companies on 2nd June 2016.¹⁵⁹ The guidelines determine how to regulate these companies, and they state that service providers should only be required to obtain licenses when it is strictly necessary to meet the relevant public interests. The guidelines also recommend the Member States to distinguish individuals providing the services occasionally from those acting in a professional

¹⁵⁴ Transport for London website, at Apply for taxi driver license.

¹⁵⁵ Taksikoulu-website, at kurssimaksut.

¹⁵⁶ Genç 2016.

¹⁵⁷ Azevedo – Maciejewsk 2015, page 2.

¹⁵⁸ EP Resolution 2015.

¹⁵⁹ COM (2016)356 final, at 1.

capacity.¹⁶⁰ The European Commission recommends the Member States should ban the Sharing Economy companies only as a last resort.¹⁶¹

The guidelines answer the question whether the Sharing Economy companies should be subject to the market access requirements such as business authorization, licenses and minimum quality standard requirements.¹⁶² The Service Directive demands that the national authorities must review the national legislation and make sure that the market access requirements are justified by a legitimate objective, and are necessary and proportionate.¹⁶³ When considering whether the requirements are justified, necessary and proportionate, one could make a distinction between professional service providers and those who only offer them occasionally.¹⁶⁴ The criteria for defining professional and occasional service providers differ in the Member States. Some Member States separate those two based on whether the remuneration brings profit or if it only covers costs of the activity whereas other Member States use thresholds. These thresholds depend on the level of profit made or on the regularity of the activities. If the activity is provided under these thresholds, there could be fewer requirements.¹⁶⁵ What about the platform companies? This depends on the nature of their activities. If they only provide information society services, they cannot be subjected to any specific requirements which are targeted to the underlying services, such as the prior authorization and licensing requirements of the transport industry.¹⁶⁶ However, if they also are involved in providing the underlying services, they would also be subjected to the relevant regulation regarding the service.¹⁶⁷

Along with the release of the European Agenda for Collaborative Economy, the European Commission gave a press release. In the press release, European Commission's vice president Jyrki Katainen, who is responsible for jobs, growth, investment and competitiveness, said that strict restrictions could cost Europe. Katainen said the EU needs innovations and should be open to the new collaborative business models, yet addressing the negative effects simultaneously. Katainen made it clear these companies should not become a parallel

¹⁶⁰ Kollwe – Davies 2016.

¹⁶¹ COM (2016) 356 final, at 2.1.

¹⁶² *Ibid.*, at 2.1.

¹⁶³ Article 15 of Directive 2006/123/EC.

¹⁶⁴ COM (2016) 356 final, at 2.1.

¹⁶⁵ *Ibid.*, at 2.1.

¹⁶⁶ Article 4 of Directive 2000/31/EC.

¹⁶⁷ COM (2016) 356 final, at 2.1.

informal economy which operates free of the rules. The Collaborative Economy should not become a way to take advantage of the consumers, the labour force or to avoid taxes.¹⁶⁸ Also EU commissioner Elżbieta Bieńkowska, who is responsible for internal market, industry, entrepreneurship and small and medium enterprises, considers these companies an opportunity, not a threat.¹⁶⁹

Another comment regarding the Sharing Economy companies has come from the Director-General of DG MOVE¹⁷⁰ Henrik Hololei in October 2016. He said in a seminar regarding developing transport that the reason why so many digital Sharing Economy companies originate from the U.S. is the ideological difference. In the U.S., they try out new ideas and then find out whether they should be regulated or not. We should also change our way of thinking, instead of keeping the new comers as challenges, we should find them as opportunities.¹⁷¹

Also, the EU Commissioner Violeta Bulc, who is responsible for transport matters, has written a letter to the Financial Times stating that the European Commission wants to support new mobile services. She wrote that the EU Member States should follow the basic principles of the Union, such as non-discrimination and proportionality principles. Bulc pointed out that the taxi services are currently regulated on a national level which has led to the rise of prices, variable service and inconstant regulation.¹⁷²

To summarize, the current EU competences both regarding passenger transport and employment belong to the area of shared competence, but have been mostly left to the Member States. The Directive on services does not even cover the transport services.¹⁷³ However, there are multiple Directives covering information society services. The question facing the new platform based Sharing Economy companies such as Uber, is how to define them: are they only information society services or are they also involved in the transport business? The nature of their operations determines whether they fall under the scope of these Directives or not. The situation is unclear. Currently, the legislation is fragmented in the

¹⁶⁸ Commission's press release, 2 June 2016.

¹⁶⁹ Ibid.

¹⁷⁰ The Directorate-General for Mobility and Transport of the European Commission is responsible for transport matters within the Union.

¹⁷¹ Hololei, Trafi 2016-seminar at Helsinki October 2016.

¹⁷² Robinson 2015.

¹⁷³ Directive 2006/123/EC, Article 2.

Member States and the EU law needs to be updated for us to be able to fit these new types of companies in the regulatory environment. The European Commission seems to have a positive attitude towards the Sharing Economy and its companies, seeing them as a possibility, not a threat. This might imply the willingness to allow their operations either through regulation or by self-regulation.

3.5 Legal Problems of Uber

Uber was founded in the United States of America in 2009 and its smartphone application was released the following year.¹⁷⁴ The company started offering their services in some major American cities first without any approval. Nowadays it is becoming legal in many American cities, such as Chicago, Seattle, Washington D.C., Dallas and Nashville, and the number of cities keeps growing. However, the legal issues of Uber are not over even in their country of origin. For example, in California, it is illegal to charge for the rides on individual basis. In September 2014, the California Public Utilities Commission sent letters to the operators saying the shared rides are not allowed. Despite of this, these services remain in operation. The regulation relating to TNCs is becoming more detailed. For example, in the Washington D.C., if a customer reports they suspect the driver was on drugs or under the influence of alcohol, the service must suspend the driver.¹⁷⁵

3.5.1 Legal Problems in EU

Uber's international expansion started in December 2011 to Paris.¹⁷⁶ After Paris, it has spread to multiple other European cities and from the very beginning, local taxi drivers have considered Uber as a threat. Due to its business model, it also has had trouble fitting into the current legislation. The recent years have been tough on Uber in Europe. It has faced problems with local and national authorities. Different Member States have banned its applications and sent the leaders to trials. Many Member States have banned the Uber App saying it is a taxi service and that the customers deserve the same safety guarantees as for when using a taxi.¹⁷⁷

¹⁷⁴ Travis 2010.

¹⁷⁵ The Shared-Use Mobility Center 2015, pages 26-27.

¹⁷⁶ Travis 2011.

¹⁷⁷ Teffer 2015.

Uber services have been restricted in countries such as Spain, Belgium, France, Germany and Italy. In some countries, Uber has been considered as a transport company which is breaking the local regulations. France even adopted a new section to their transport law in 2014, which included a ban on Uber services.¹⁷⁸ Uber tried to claim the law was unconstitutional, unfairly broad and limiting the competition. However, this claim was rejected in May 2015 by the French Constitutional Council Court.¹⁷⁹ In September 2015 the Brussels Commercial Tribunal ordered a ban on Uber services,¹⁸⁰ which included a timeframe of 21 days to close off all operations in Brussels before getting fined for 10 000 euros per ride.¹⁸¹ This decision was characterized as “crazy” by the Vice President of European Commission, Mrs. Neelie Kroes. She wrote that the Brussels authorities should rather try to help Uber to find a way to comply with the standards, not to ban it. She claims the ban is stopping innovation and is made to protect the local taxi cartels, not the customers.¹⁸²

3.5.2 Three Preliminary Ruling Requests

The Court of Justice of the European Union has jurisdiction to give preliminary rulings regarding the interpretation of the Treaties and acts of the institutions, bodies, offices or agencies of the Union.¹⁸³ So far there have been three preliminary ruling requests to the European Court of Justice (ECJ) regarding Uber. The first one originated from Spain. Among others, Spain had banned the UberPop¹⁸⁴ app. This was challenged in Court in 2015 and a Spanish judge asked the European Court of Justice what kind of a company Uber is and whether Spain was indeed allowed to ban the app. In Case *C-434/15 Asociación Profesional Elite Taxi*, the ECJ is to define what kind of a service Uber is providing: a transport service, an information society service or an electronic intermediation.¹⁸⁵ The main parties in this case are the Applicant, Asociación Profesional Élite Taxi, and the Defendant, Uber Systems Spain, S.L. A European ruling to Uber’s favor could be the end of their local issues in Europe. Even if the EJC defines Uber as a transport service, Uber might still benefit from the rulings related

¹⁷⁸ Loi No. 2014-1104 du 1er octobre 2014 relative aux taxis et aux voitures de transport avec chauffeur.

¹⁷⁹ French Constitutional Council, Decision no. 2015-468/469/472.

¹⁸⁰ Brussels Commercial Tribunal, SPRL Uber Belgium v Sa Radio Taxi Bruxellois 2015.

¹⁸¹ Dupont 2015.

¹⁸² Kroes 2014.

¹⁸³ Article 169 TFEU.

¹⁸⁴ Uberpop is the cheaper Uber service, compared to for example Uber black.

¹⁸⁵ Case C-434/15 Asociación Profesional Elite Taxi.

to unfair and disproportionate limits on companies based in other EU countries, which is something Uber has been struggling with in the Netherlands.¹⁸⁶

Uber tried to enter the Spanish markets in 2014, and in the city of Barcelona the licensed taxi driver union was against it. Asociación Profesional Élite Taxi -association claimed that Uber and its systems were violating the Spanish competition law.¹⁸⁷ The Judge Fernández Seijo at the Barcelona Commercial Court faced a complicated problem of how to interpret the EU law. Uber denied to be selling a transport service, instead, they claimed only to be offering a user interface for smartphone users, which means it would be merely a computer program.¹⁸⁸ Uber claimed to be providing an e-commerce, information society service, which is mentioned in the EU's E-Commerce Directive 98/34/EC. The Article 1(2) defined what an information society service is.¹⁸⁹ Providing an information society service is protected by the principle of freedom of establishment in EU and therefore needs no authorization for the business.¹⁹⁰ The taxi driver association naturally disagreed and claimed that Uber is de facto a transport service.¹⁹¹

The judge Seijo faced another issue of interpreting the EU law. How would a company be defined as a transport company, which is excluded from EU Service Directive 2006/123/EC regarding the services in the internal market under Article 2(d)?¹⁹² The Directive does not comply with financial services, electronic communications services nor transport services. The same is also cited in recital 21.¹⁹³ This is quite clear and means that if Uber is considered providing urban transport for a commercial purpose, the Directive does not apply.¹⁹⁴

As a result, the judge made a preliminary reference request to the ECJ asking for the correct interpretation of the 'transport service' exception in Article 2(2)(d) of the Service Directive and whether it would apply to a company which was facilitating urban transport with the aid of information technology.¹⁹⁵ Secondly, he wanted to know if the answer to this question

¹⁸⁶ Teffer 2015.

¹⁸⁷ Juzgado Mercantil Nº 3 Barcelona, Asunto:929/2014D2.

¹⁸⁸ Ibid., at 9.2.

¹⁸⁹ Article 1(2) of Directive 98/34/EC.

¹⁹⁰ Article 56 TFEU.

¹⁹¹ Juzgado Mercantil Nº 3 Barcelona, Asunto:929/2014D2, at 8.

¹⁹² Article 2 of Directive 2006/123/EC.

¹⁹³ Recital 21 of Directive 2006/123/EC.

¹⁹⁴ Case C-434/15, EU Law Radar 2015.

¹⁹⁵ Article 2(2)(d) of Directive 2006/123/EC.

would be negative, would Uber's alleged breach of Spanish competition law¹⁹⁶ be against the Article 9 of the Service Directive¹⁹⁷ governing the authorization schemes and freedom of establishment.¹⁹⁸ Finally, he asked regarding the freedom to provide information society services¹⁹⁹, would the current restrictions Spain was posing on Uber be allowed, if Uber was considered as an information society service provider.²⁰⁰

The Case has drawn interest from other Member States as well. Four Member States and the European Free Trade Association have submitted written observations which support Uber's claim. These Member States are Finland, Greece, Poland and the Netherlands, where Uber's European headquarter is located. Three other Member States, however, have a completely opposite opinion. France, Ireland and Spain claim that Uber is a transport service in their submissions.²⁰¹ The Finnish memorandum was prepared by several Finnish Ministries including the Ministry of Foreign Affairs and the Ministry of Transport and Communications.²⁰² The submission states clearly that Finland considers Uber to be an electronic passenger transport brokerage service, which eases the communication between the drivers and the passengers. These kind of electronic brokerage services should be considered as an information society service to which the Service Directive, the E-Commerce Directive and Article 56 TFEU would apply.²⁰³ The Finnish submission also states that supporting economic possibilities in digital service companies is important for the development of the European Digital Single Market²⁰⁴ and is in the interest of Finland.²⁰⁵ The Case *C-434/15 Asociación Profesional Elite Taxi* is still pending.²⁰⁶

Another preliminary reference involving Uber was made by a Belgian court *Rechtbank van Koophandel Brussel* in October 2015. In this Case *C-526/15 Uber Belgium*, the Applicant was Uber Belgium BVBA and the Defendant a local taxi union *Taxi Radio Bruxellois NV*. The question here was whether the principle of proportionality is interpreted so that the term "taxi

¹⁹⁶ Spanish Law on Unfair competition 3/1991, Article 15.

¹⁹⁷ Article 9 of Directive 2006/123/EC.

¹⁹⁸ *Juzgado Mercantil Nº 3 Barcelona*, Asunto:929/2014D2, at 10.1 and 10.2.

¹⁹⁹ Directive 2000/31/EC, Article 3.

²⁰⁰ Dupont 2015.

²⁰¹ Chee 2016.

²⁰² Ministry of Foreign Affairs of Finland 2015, pages 4-5.

²⁰³ *Ibid.*, pages 1-4.

²⁰⁴ See, COM (2015) 192 final.

²⁰⁵ Ministry of Foreign Affairs of Finland 2015, page 2.

²⁰⁶ Case C-434/15 *Asociación Profesional Elite Taxi*.

services” also applies to unpaid individual carriers involved in ride sharing by accepting request offered by a software application of a company established in another Member State. Besides Article 5 TFEU²⁰⁷, the proportionality principle is also presented in the Article 52(1) of the Charter.²⁰⁸ The other key statuses, in this Case, were Articles 15-17 of the Charter of Fundamental Rights: Freedom to choose an occupation and right to engage in work, Freedom to conduct a business and Right to property, as well as Articles 28 and 56 TFEU on the free movement of goods and services.²⁰⁹ However, a preliminary ruling request has certain requirements regarding its content and these requirements are explicitly laid down in the Rules of Procedure.²¹⁰ The requirements include a summary of the subject-matter, a tenor of any national provisions applicable and a statement of the reasons why the referring court is inquiring about the interpretation or validity of certain EU law provisions.²¹¹ In Case *Uber Belgium*, the ECJ found that the reference for a preliminary ruling did not meet those requirements.²¹² Therefore the Court found this request inadmissible and did not answer the questions.²¹³

A third preliminary reference has been made in June 2016 by the French Court Tribunal de grande instance de Lille. Case *C-320/16 Uber France* is related to the new French taxi and private hire vehicle law, Code des transports, inserted by Law No 2014-1104 of 1 October 2014.²¹⁴ The questions were whether Article L.3124-13 of this Code was constituting a new technical regulation, which is not implicit and relates to one or more information society services as defined in the Directive 98/34/EC, and if France should have notified the European Commission in advance before drafting this law as required in the Article 8 of Directive 98/34/EC.²¹⁵ Or would it fall within the scope of Service Directive, which has an Article to exclude transport services?²¹⁶ The Court also asked if the former was correct, would the failure to notify the European Commission mean that the Article would be unenforceable against individuals.²¹⁷ Again, some Member States have submitted their written opinions. The

²⁰⁷ Article 5 TFEU.

²⁰⁸ Charter of Fundamental Rights, Article 52(1).

²⁰⁹ Articles 28 and 56 TFEU.

²¹⁰ Article 94 of the Rules of Procedure of the Court of Justice.

²¹¹ *Ibid.*

²¹² Case C-526/15 *Uber Belgium*, at 24.

²¹³ *Ibid.*, at 32.

²¹⁴ Case C-320/16 *Uber France*.

²¹⁵ Article 8 of Directive 98/34/EC, Replaced now by Article 5 of Directive 2015/1535/EU.

²¹⁶ Article 2(d) of Directive 2006/123/EC.

²¹⁷ Case C-320/16 *Uber France*.

Finnish submission stated, quite similarly as their previous submission, that the service in question is electronic brokerage service. The submission argued that the French law did include a technical requirement which would have required notifying the European Commission and therefore it would be unenforceable against individuals.²¹⁸ This Case has not been solved either, which means there are two pending preliminary ruling requests related to Uber in the ECJ.

The definition of whether Uber is a digital company or a transport company can be phrased more detailed by acknowledging that Uber is a platform company and asking whether it is also participating in the underlying transport services or not. This will impact the definition of the relationship between Uber and its drivers. As shown above, the situation in the EU and its Member States is not clear.

These three preliminary ruling requests are focusing on the quintessential issues of Uber. The first and most fundamental one is the Spanish request. The questions how to define the nature of Uber's operations and find the relevant Directives are crucial for the future of Uber. If ECJ will determine the answers to these questions, it will declare whether ridesourcing companies will fall under the scope of EU jurisdiction or national legislation. The Belgian request over how to interpret the principle of proportionality and the term taxi services was unfortunately considered as inadmissible. It would have brought an EU aspect to the definition of Uber. The third request is regarding certain parts of the 2014 French transport code and if they are related to information society services or the service Directive and should France have notified the EU about this part of their legislation. The questions also include would this Article be unenforceable against individuals, if France had a failure to notify. If the ECJ answers these questions, it will determine if national legislators are allowed to regulate the ridesourcing companies without consulting the European Commission. The decisions of ECJ will also influence the definition and the employment status of the drivers of ridesourcing companies.

²¹⁸ Ministry of Foreign Affairs of Finland 2016, pages 1-5.

4. Labour Law in the European Union

4.1 How EU Labour Law Has Developed

Originally in 1951, the European Coal and Steel Community (ECSC) was founded to be an economic union to maintain peace. After the world wars, the aim was to get the states cooperating in key areas such as coal and steel. This cooperation broadened later into the European Union and other political aims such as human rights, environmental issues, employment rights and many others. Economic interests inspired also the beginning of EU's labour law. Already in the ECSC Treaty of 1951 social matters appeared as Articles 2 and 3 aimed for the growth of employment.²¹⁹ The objectives of improved working conditions and rising standard of living were, however, subordinate compared to the economic development. Even the freedom of movement of workers²²⁰ was only a way to improve the economy.²²¹

The ECSC Treaty²²² had sectorial employment and social policy in the areas of coal mining and steel. The first European sectorial provisions on employment and social policy in transport appeared in the 1957 EEC Treaty.²²³ It says the Council has the power with a unanimous vote to give provisions regarding “the principles governing transport and the application of which might seriously affect the standard of living and the level of employment in certain regions”.²²⁴

The United Kingdom joined the European Community in 1973 and for the first twenty-eight years they had the most consistent and effective opposition to the extension of the rights of the workers and trade unions in EU law. This had impacts on both the EC law as well as the UK law.²²⁵ During 1974-1979 some major Directives in the field of labour law were approved by the Council of Ministers, such as equality Directives and protections of workers in insolvency. However, the UK government became more conservative during the 1980s and the EC labour legislative activity was mostly focused on health and safety of work, since

²¹⁹ Articles 2 and 3 of the ECSC Treaty.

²²⁰ Article 45 TFEU.

²²¹ Blanpain - Engels 1997, page 88-89.

²²² It expired as planned after 50 years on 23 July 2002.

²²³ Articles 74-84 of the EEC Treaty, nowadays modified into Articles 90-100 TFEU.

²²⁴ Article 75 of the EEC Treaty, nowadays modified into Article 91 TFEU.

²²⁵ Bercusson 2009, pages 42-57.

other proposals were likely to be rejected by the UK and therefore fail to receive the unanimous approval of the Council of Ministers.²²⁶ In 1989 the Community Charter of Fundamental Social Rights of Workers was signed by all other Member States, but the UK decided not to sign it. The UK also decided to opt-out from the Social Chapter of the Treaty on European Union²²⁷ in Maastricht in 1992.²²⁸

The attitude in the UK changed when the newly elected Blair government decided in May 1997 to withdraw this opting-out of the Maastricht treaty and accept the Directives adopted under it. By the Treaty of Amsterdam in June 1997, the UK rejoined the mainstream of the European labour law.²²⁹ The UK was still not open to give up on the structures of the UK labour law, and soon they came up with a more efficient way to meddle with the EU law than the previous veto tactic. By allying with center-right governments, the UK could push a different approach to labour law in the EU; “burdens on business” labour law had a method of policy implementation through soft law²³⁰, not the binding Directives representing the hard law.²³¹

Unlike the UK, Finland did not resist the European labour law despite of it having a significant influence on the Finnish employment law. Finnish collective bargaining²³² unions are active in EU collaboration and much of the employment legislation in Finland originates to the Directives. Finland has been keen to harmonize its employment law towards the EU law especially at the beginning of becoming a Member State in 1995.²³³ Finland is a welfare state, where employee rights are highly valued. For example, in some countries, like the UK, the rights of an employee begin only after a certain period of time, whereas in Finland, the employee rights start on the first day of employment.²³⁴

²²⁶ This veto right allowed the UK government to promote unrestrained competition on labour standards even though most other member states were interested in some supranational minimum regulation for labour standards under which the conditions could not descend.

²²⁷ Treaty on European Union, Maastricht 1992.

²²⁸ Bercusson 2009, pages 42-57.

²²⁹ Treaty of Amsterdam, 1997.

²³⁰ See Tala 2005, pages 9-10.

²³¹ Bercusson 2009, pages 42-57.

²³² See more on collective bargaining: Barnard 2012, pages 709-717.

²³³ Bruun – Von Koskull 2012, page 19.

²³⁴ Sigeman 2002, page 261.

The situation in the European Union is quite different nowadays as there are multiple Directives regarding labour law²³⁵ and the EU Charter of Fundamental Rights²³⁶, which was proclaimed at the Nice Summit in 2000.²³⁷ However, the employment policy was left mostly to the exclusive competence of the Member States until the end of the 2000s when the Union took more responsibility in the economic, monetary and the employment policies. Through the Treaty of Amsterdam, the Community and the Member States committed to developing a coordinated strategy for employment.²³⁸ This approach led towards a European employment policy and an Employment Committee was founded.²³⁹ The European Employment Strategy, initiated in 1997, was a beginning for “open method co-ordination” based on key principles of subsidiarity, converge, management by objectives, country surveillance and an integrated approach. Since the European Commission has developed Employment guidelines and revised the different policies regarding employment and economics.²⁴⁰

Comprehending the history of EU Labour law is important for understanding how it currently functions. The actions of the UK government caused a delay in the development of EU Labour law in some areas and one can only speculate whether it would be more advanced nowadays without this delay. Also, in the light of this background information one could have assumed the decisions of the UK Employment Tribunal²⁴¹ and the Helsinki Court of Appeal²⁴² regarding Uber drivers would be totally opposite ones. Perhaps the reasons behind the UK decision are some other than Labour law -related interests, such as the protectionism of the taxi industry. These cases will be presented in detail in Chapter 5.

4.2 Employment Statuses

The suppliers of the platform economy are quite often referred to as self-employed freelancers rather than employees. Especially the ridesourcing companies claim not to be the employers

²³⁵ Including Directives such as the Wage Guarantee Directive 80/987/EEC and the working time Directive 93/104/EC.

²³⁶ Including protection of personal data (Article 8), freedom of assembly and of association (Article 12), freedom to choose an occupation and right to engage in work (Article 15), non-discrimination (Article 21), equality between men and women (Article 23), fair and just working conditions (Article 31) and protections of child labour and young people at work (Article 32).

²³⁷ The Charter of Fundamental Rights is currently binding.

²³⁸ Watson 2009, pages 135-136.

²³⁹ Formally established by Council Decision 2000/98.

²⁴⁰ Watson 2009, pages 138-147.

²⁴¹ Case 2202550/2015 & others.

²⁴² Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

of the drivers. There are, however, other opinions on this, and the situation is unclear. It is important to define what the drivers legally are and what is the relevant law to determine this. What makes the suppliers of platform economy companies uniquely vulnerable is that the labour standards have changed in the Sharing Economy companies. There is a new allocation of risk and reward between the platform and the suppliers.²⁴³ Some Uber drivers in the United States are feeling exploited and even referring to Uber as “a pimp”. They complain about low salaries, long working hours and the lack of communication channel with Uber, not to mention the feeling of not being respected.²⁴⁴ They also lack union-based bargaining²⁴⁵ power.²⁴⁶ Uber drivers also lack the communal ties which help labour force to organize. As they do not have a work place where they could meet and as many of them work only part-time, it is unlikely for them to get to know each other.²⁴⁷

Uber has been denying that the drivers are their employees and it has been facing class-action lawsuits all over the United States by thousands of Uber drivers. Their main objective is to gain the employee status rather than being called contractors. So far Uber has settled with thousands of drivers by acknowledging their rights to sick leave, overtime, social security, health insurance, minimum wage and that Uber cannot fire them whenever it wants. However, until now Uber has avoided classifying them as employees.²⁴⁸

The differentiation between a dependent employee and a self-employed independent contractor is crucial regarding the legislative protection the worker receives. The Employment law is meant to protect the weaker party, the employee, by legislation.²⁴⁹ It tends to present the distinction between dependent and independent work as a clear dichotomy. Employment law is not traditionally used to protect independent contractors who are regulated based on general rules of the civil law or sometimes even commercial law.²⁵⁰ Nowadays, however, the differentiation between an employee and an independent contractor has become more obscure.

²⁴³ Rogers 2015, pages 95-98.

²⁴⁴ Asher-Schapiro 2014.

²⁴⁵ See more on Collective bargaining: Nielsen 2000, pages 77-95.

²⁴⁶ Das Acevedo 2016, page 12.

²⁴⁷ Rogers 2015, page 100.

²⁴⁸ Elliott 2016.

²⁴⁹ Bruun – Von Koskull 2012, page 12.

²⁵⁰ Perulli 2011, pages 137-138.

As there is shared competence in the field of employment, the Member States are responsible for determining what is the criteria to define someone as a worker under their national regulation.²⁵¹ But besides these national definitions, there is a European definition for workers. This was set out already in 1964 when the ECJ stated the concept of “wage-earner or assimilated worker”²⁵² concerning social security for migrant workers has a community meaning.²⁵³ The choice of relevant law between the national and the EU definition depends on the situation.²⁵⁴ When the question is regarding the freedom of movement²⁵⁵, the EU law definitions will be used.²⁵⁶ The ECJ has confirmed that the EU definition of a worker shall also be used when applying certain EU Directives, such as Directives on working time²⁵⁷, collective redundancies²⁵⁸ or employment equality²⁵⁹. The Commission has stated in the European agenda for the Collaborative Economy, that if evaluating the existence of an employment relationship is linked to the applicability of some EU law instruments, such as a specific Directive, the national definitions are irrelevant.²⁶⁰ So, the essential question determining whether the EU or the national terminology will be used, is evaluating the existence of the employment relationship and its connection to the applicability of certain EU law instruments.

4.2.1 Employment Statuses in the EU Labour Law

The EU law guarantees rights to workers, such as the freedom of movement.²⁶¹ Yet the Treaties do not have an explicit definition for the term worker.²⁶² The term worker is used in several Directives,²⁶³ but some Directives²⁶⁴ use the term “employee”, even though this makes a reference to the national legislation.²⁶⁵ The concept of a worker in EU law has been defined by the European Court of Justice.²⁶⁶ The concept has been primarily developed related to the

²⁵¹ COM (2016) 356 final, at 2.4.

²⁵² Under the regulation number 3/64 of the Council of the EEC (Règlement n. 3/64/CEE du Conseil).

²⁵³ Case C-75/63 Unger v Bedrijfsvereniging voor Detailhandel en Ambachten.

²⁵⁴ COM (2016) 356 final, at 2.4.

²⁵⁵ Article 45 TFEU.

²⁵⁶ Case C-75/63 Unger v Bedrijfsvereniging voor Detailhandel en Ambachten.

²⁵⁷ C-428/09 Union syndicale Solidaires Isère.

²⁵⁸ C-229/14 Balkaya.

²⁵⁹ C-432/14 O.

²⁶⁰ COM (2016) 356 final, at 2.4.

²⁶¹ Article 45 TFEU.

²⁶² Barnard 2012, page 144.

²⁶³ Such as the Working Time Directive 2003/88 and the Pregnant Workers Directive 92/85.

²⁶⁴ Such as the Article 2(1)(d) of Directive 2001/23.

²⁶⁵ Barnard 2012, page 144.

²⁶⁶ Nielsen 2000, pages 251-255.

framework of freedom of movement of workers.²⁶⁷ Member States remain free to extend the definition and have a wider approach to determining who is a worker, but as stated above, the national definitions might be irrelevant if the existence of an employment relationship is linked to the applicability of EU instruments.²⁶⁸ The term worker in EU law “covers any person who undertakes genuine and effective work for which he is paid under the direction of someone else.”²⁶⁹ The requirements for genuine and effective work, remuneration and subordination come from ECJ’s case law.²⁷⁰

The ECJ has also stated that “the essential feature of an employment relationship is, that for a certain period a person performs services for and under the direction of another person in return for which he receives remuneration.”²⁷¹ In other words, the criteria for work are nature of work, subordination and remuneration. The nature of the work defines whether the work is genuine, active and performed for an economic purpose.²⁷² It separates genuine work from marginal and accessory work.²⁷³ Also part-time workers are considered as workers if the work is genuine and effective economic activity.²⁷⁴

The subordination criterion is fulfilled when the supplier is providing the service under the direction of the platform and the platform determines the activity, the remuneration and the conditions of working. The subordination distinguishes workers and self-employed persons.²⁷⁵ Some scholars are skeptical whether many Courts would even categorize Uber drivers as employees because of the lack of control over work, which is a key characteristic of an employment relationship. Compared to delivery company workers, there are many ways of control under which the Uber drivers are not. The delivery workers wear company uniforms, drive a company car, show up at their facilities at a certain time and deliver packages daily. Uber drivers, on the other hand, do not use a uniform, drive their own car, do not have a working station and are free to work when they want.²⁷⁶

²⁶⁷ COM (2016) 356 final, at 2.4

²⁶⁸ *Ibid.*, at 2.4.

²⁶⁹ COM (2010) 373 final, part I.

²⁷⁰ See Cases C-66/85 - *Lawrie-Blum v Land Baden-Württemberg*, C-53/81 - *Levin v Staatssecretaris van Justitie* and C-139/85 - *Kempf v Staatssecretaris van Justitie*.

²⁷¹ See Joined Cases C-22/08 - *Vatsouras and Koupatantze*.

²⁷² COM (2016) 356 final, at 2.4.

²⁷³ *Hatzopoulos – Roma 2017*, page 118.

²⁷⁴ See Case 53/81 - *Levin v Staatssecretaris van Justitie*.

²⁷⁵ COM (2010) 373 final, part I.

²⁷⁶ *Rogers 2015*, pages 98-99.

The third criterion, remuneration, is to separate the real work from volunteering work. If the service supplier does not receive any remuneration or only receives enough to compensate their costs of the action, it does not count as work.²⁷⁷ Currently, in the United Kingdom, one can share a car in carpooling only if the main purpose of the ride was not to pick up paying customers. They are allowed to charge the other passengers their share of the gasoline and other costs, but are not allowed to make a profit with ridesharing. Once someone does it for profit, it becomes an illegal taxi service if the driver does not have the necessary licenses. There is a clear difference between someone who is providing a taxi service and someone who would have taken the ride anyway and is just filling their empty seats.²⁷⁸

Besides the workers, another EU employment status is self-employment. The Article 49 TFEU gives rights to free movement and establishment.²⁷⁹ The treaties do not define the term self-employed either, but the ECJ has some case law giving it a definition. The Court has stated that unlike workers, the self-employed work outside of the subordination relationship, bear the risk of the business and are paid directly and in full.²⁸⁰ However, all the case law is related to the freedom of movement and outside of that context, there is no case law on the term self-employed.²⁸¹

Traditionally the employees sell their labour services while the self-employed sell a product, which can be a result of their services. In terminology, this differentiation has been in the “contract of service” for an employee and “contract for services” for a self-employed person. A classic illustration is the difference between a chauffeur and a taxi driver.²⁸² However, the new atypical contracts, such as zero hour contracts or internships, are dispersing the traditional dichotomy between the employee and the self-employed. There is not much

²⁷⁷ COM (2016) 356 final, at 2.4.

²⁷⁸ Woskow 2014, pages 32-33.

²⁷⁹ Article 49 TFEU.

²⁸⁰ Case C-268/99 Jany and others.

²⁸¹ Barnard 2012, page 151.

²⁸² *Ibid.*, pages 144-146.

legislation on the atypical workers in EU²⁸³ but the European Parliament has been keen to raise the issue of these workers.²⁸⁴

The European Commission is aware that the traditional distinction between employees and independent contractors is no longer accurate.²⁸⁵ Sometimes the term self-employed is even being intentionally used to conceal the real employment status. This false self-employment is a situation where an actual employment relationship is being disguised into some other legal form despite of the fact that the working conditions are those of an employment relationship.²⁸⁶ There is no unambiguous definition to separate the actual self-employment and the false self-employment at the EU level.²⁸⁷ Some of the characteristics of false self-employment are that the decision to become an independent contractor comes from the employer, that the work is the kind normally done under an employment contract and that the buyer of those services is trying to avoid the employer status and obligations coming with it.²⁸⁸ Reasons to disguise the true employment status can be avoiding the taxes and social security contributions, which is illegal.²⁸⁹

Legal literature also implies there could be a yet another category of workers in the EU. These “economically dependent workers” would not be the typical employee according to EU law as they do not have an employment contract, yet they are economically dependent on one company for their income.²⁹⁰ An example of an economically dependent worker could be a lawyer with only one main client.²⁹¹ According to an EIRObserver study, the likely sectors for economically dependent workers are media, construction, road transport and ICT in most Member States.²⁹² These situations fall in the grey area between dependent employment and independent self-employment.²⁹³ Formally they categorize as self-employed but this type of

²⁸³ For example, when amending the Directive 80/987 regarding employee protection under employer insolvency in with the Directive 2002/74/EC, the European Parliament proposed it to have the definition of a worker. The Parliament also suggested the meaning would become wider and improve the status of those working unusual jobs, such as freelancing. However, the Member States were against these suggestions and the Directive did not include them in its final form.

²⁸⁴ EP Newsroom 2004.

²⁸⁵ COM (2006) 708 final, at 4b.

²⁸⁶ ILO report 2006, pages 12-13.

²⁸⁷ European Economic and Social Committee Opinion 2013, at 1.1.

²⁸⁸ Vainio 2007, pages.140-141.

²⁸⁹ COM (2006) 708 final, at 4b.

²⁹⁰ See Barnard 2012, page 147-148.

²⁹¹ European Industrial Relations Observatory 2002, page 3.

²⁹² Pedersini 2002, table 6.

²⁹³ COM (2006) 708 final, at 4b.

workers have not been regulated in the EU.²⁹⁴ However, some Member States have started regulating this new legal status to protect the vulnerable workers.²⁹⁵ The existence of such arrangement has been acknowledged by the European Commission.²⁹⁶

4.2.2 Employment Statutes in the UK Labour Law

The UK labour law has multiple statuses for individuals providing work services. The employment status reflects on the rights and obligations of the worker. The main types of employment are employee, worker, self-employed or contractor, director and office holder.

Company directors manage limited companies on behalf of the shareholders.²⁹⁷ An office holder is an individual who is appointed to a position such as a director, a board member, trustee or other trusted position in the company or organization, but who does not have a contract nor receive regular payment.²⁹⁸ This thesis will not be looking into these two types of employment. A self-employed person and a contractor, on the other hand, are running their own businesses and taking responsibility for their possible failures. They are not paid through the UK Pay as you Earn (PAYE) system²⁹⁹ and do not have the same employment rights and responsibilities as workers and employees.

The two more common types, the worker and the employee, are also more dependent on the employer. The biggest difference between them is the amount of rights and protection they receive. The worker's employment rights include minimum wage, protection against unlawful deductions from wages, paid holiday, minimum length of rest breaks, maximum 48 hours on average weekly working hours, protection against unlawful discrimination, protection for "whistleblowing"³⁰⁰ and the right not to be treated less favorably if working part-time.³⁰¹ The employee has all the rights of a worker and on top of that others rights such as sick pay, maternity and paternity leave, minimum notice periods if their employment will be ending,

²⁹⁴ Pedersini 2002.

²⁹⁵ COM (2006) 708 final, at 4b.

²⁹⁶ Commission's first-stage consultation 2000.

²⁹⁷ UK government website, Employment Status, Director.

²⁹⁸ Ibid., Office-holder.

²⁹⁹ UK government website, Income Tax.

³⁰⁰ Whistleblowing means reporting the wrongdoing and illegal activities of the workplace.

³⁰¹ UK government website, Employment Status, Worker.

protection against unfair dismissal, right to request flexible working, time off for emergencies and redundancy pay.³⁰²

The question then is how to define an employee and a worker under the UK law. The core definition is in Employment Regulations Act (ERA) 1996, section 230:

“(1)In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2)In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3)In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a)a contract of employment, or

(b)any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker’s contract shall be construed accordingly.

...”³⁰³.

This contract section 230(3)(b) is also known as the limb “(b) contract”.³⁰⁴ The same definitions apply under the National Minimum Wage Act (NMWA) and Working Time

³⁰² UK government website, Employment Status, Employee.

³⁰³ ERA, Section 230.

³⁰⁴ ERA, s230(3)(b).

Regulations (WTR). NMWA Section 34 includes a definition for an agency worker, who would not otherwise be considered a worker due to the absence of a worker's contract. These agency workers are supplied by an agent to work for a third party under a contract or other arrangements, which are made between the agent and the third party, without the agency worker being a party of it. The section states that if an individual fulfills the criteria, the other provisions of the NMWA will have effect as if there was a worker's contract between the agency worker and either the agent or the third party, depending on which one pays for the work.³⁰⁵

ERA Section 43K Extension of meaning of "worker" etc. for Part IVA includes yet another definition for a worker for the purposes of part IVA. This definition is an individual who is not defined to be a worker under the section 230(3), but works for a person to whom they were introduced by a third person, and the terms were substantially not determined by them, but by the person they work for or by the introducing party.³⁰⁶ This resembles the agency worker defined in NMWA.

These statuses have made the differentiation quite clear. An employee is someone who works under an employment contract. A worker on the other hand, can be working under some other kind of contract or to be categorized as a worker based on the work they are doing to someone, if they do not have the possibility to determine how they do the work, and are under the control or management of someone else. The agency worker is yet another possible status who will be treated as a worker, which means it basically just widens the scope of the term worker. Not all European legal systems have the term "worker" in their national legislation, some only have "employees". The division between these two could make it possible to include also the atypical workers into the worker category. The economically dependent workers might also fit under the worker status if not under the employee status.³⁰⁷

4.2.3 Employment Statuses in the Finnish Labour Law

In Finland, there are three kinds of employment statuses in the private sector. There are employees (työntekijä), officers (toimihenkilö) and high-level officers (ylempi

³⁰⁵ NMWA, Section 34.

³⁰⁶ ERA Section 43K Extension of meaning of "worker" etc. for Part IVA.

³⁰⁷ Barnard 2012, page 147-148.

toimihenkilö).³⁰⁸ All of them have an employment contract with the company and are treated the same according to the law.³⁰⁹ The only difference between these three types of employees is the use of a different collective labour bargaining agreement (työehtosopimus), which is negotiated between the worker associations and the employer associations.³¹⁰ The officers and high-level officers are more often highly educated and in a manager position than the employees, and they belong to different worker unions³¹¹. The differences between the three above-mentioned categories do not matter for the purpose of this study. Uber drivers could be defined as employees of Uber, but not as officers nor high-level officers, as they do not belong to the right worker unions nor do they have a manager position. Unlike in the UK, Finland does not have legal differences between “a worker” and “an employee”.

Besides the above-mentioned employees, there are self-employed people. They are running their own businesses without having a legal entity such as a limited company. They are categorized either as independent contractors (itsenäinen ammatinharjoittaja) or independent traders (itsenäinen liikkeenharjoittaja). The former is working in a field of their training, often offering their services, for example as a freelancer. The latter often owns a location for their business operations. The taxation is more simple for the former.³¹² As Uber drivers do not own a venue, but they do offer their services, they could be categorized as independent contractors, but not as independent traders.

How to differentiate employees from independent contractors? An employment relationship is defined by certain criteria, which are also written in the law.³¹³ An employment relationship means a legal relationship, where an employee works for the employer based on a contract and under his guidance and supervision for a remuneration.³¹⁴ The employment relationship has two parties: the employee and the employer. Based on the criteria one can differentiate the two parties from one another: the employee is the one providing the work for the employer.³¹⁵

³⁰⁸ Statistics Finland 1989.

³⁰⁹ This means among others that the employer must pay social fees for them and withhold a part of their salary for the pre-taxation.

³¹⁰ This deal includes more detailed terms for minimum salary, working hours, holiday rights and other benefits. It cannot give worse conditions than the law, in fact it is often way better for the worker. These deals are negotiated for each union and after the old deal is about to expire, the negotiations for the new one will begin. See Työehtosopimuslaki.

³¹¹ Such as the union for academically educated AKAVA or the engineer union Insinööriliitto.

³¹² Akavan erityisalajat, at yritysmuodon valinta ja verotus.

³¹³ See Työsopimuslaki, Article 1.

³¹⁴ Kairinen 2006 at 1. Lähtökohdat, Työoikeuden käsite ja järjestelmä, Perussuhdeteoria.

³¹⁵ Ibid.

These four criterion points can be called contract criterion, work criterion, compensation criterion and direction criterion. According to the Finnish law,³¹⁶ a legal relationship is an employment relationship only if all the criteria are met.³¹⁷ The employment law is mandatory legislation: If an employment relationship exists, the parties cannot agree not to apply the law.³¹⁸

The Finnish law does not have an unambiguous and comprehensive definition for independent contractors. This is why the distinction between an employee and an independent contractor will be done based on the evaluation of the employee status criteria.³¹⁹ As the independent contractor is also likely to have a contract, provide the work and receive compensation, the direction criteria might be the one distinguishing these two statuses. The right to direct is being evaluated based on those facts which prove the independence or the dependence of the worker. The terms upon which the parties can agree on are the definition of the working relationship, the method of work, the location and time of the work, the position of the worker in the employer organization, personal goals set to the worker, the remuneration and the right and obligations of the parties.³²⁰ By including terms which imply whether there is the right for the employer to direct and supervise the work, they can define the nature of the working relationship.³²¹

If the legal nature of the relationship is still unclear, one must evaluate the situation as a whole. In this evaluation being an independent contractor has been implicated by the profit-seeking purpose, carrying the economic risk of the business, the size of the operations, the publicity of the operations and independence.³²² Yet, if the other criteria of an employment relationship are adequately fulfilled, the direction criterion can be fulfilled by only having the right to direct. This right does not have to be used.³²³ Evaluating if the right to direct is fulfilled is based on the true working conditions and the contract terms.³²⁴ If only the terms

³¹⁶ Työsopimuslaki.

³¹⁷ Tiitinen – Kröger 2012, page 9.

³¹⁸ HE 157/2000, page 55.

³¹⁹ Tiitinen – Kröger 2012, page 29.

³²⁰ HE 157/2000, pages 56-57.

³²¹ Tiitinen- Kröger 2012, pages 18-21.

³²² HE 126/1994 vp, page 2.

³²³ HE 157/2000, page 57.

³²⁴ Ibid., page 57.

of the contract would be considered bypassing the true circumstances, one could circumvent the law.³²⁵

4.2.4 Differences Between EU, UK and Finnish Employment Statuses

The definition of a worker depends on jurisdiction. The employment statuses have different criteria under the Union law, the UK law and the Finnish law. The EU law is superior to the national laws and if the employment relationship is related to freedom of movement of workers or some specific EU law instrument, the definition will come from the EU law. However, some Directives use the term employee, which is not an EU law term, but refers to the definitions of the Member States.

The EU law term worker is not as broad as one might think. The UK law, on the other hand, has a term employee and on top of that the less privileged, but more open category of workers and even agency workers, which only makes the worker-category wider. Finnish employment law only recognizes the term employee and there is no middle-ground, an employment status called a worker. Their definitions vary. In Finland, an employee is defined based on an existing employment relationship which has four criteria. Three of these are the same as for the EU law term worker, but on top of that, there is the criterion of contract. Also, the UK employees work under a working contract whereas the workers work under some other form of contract. It would seem that in Finland the contract of employment has a greater meaning for the definition of an employee.

The definition of a self-employed independent contractor is quite similar in all three jurisdictions despite it not being determined in the legislation. The major difference between a worker or an employee and the self-employed is subordination. There are also atypical workers, economically dependent workers and false self-employed, which are deficiencies of the current legislation. The answer to the question what the Uber drivers are is not evident. Out of the three jurisdictions, the UK legislation has most options for an employment status. Besides an employee or self-employed, there is the wide category of workers. Under the EU law or the Finnish law, the options are more limited.

³²⁵ Tiitinen – Kröger 2012, page 26.

Having two types of employment statuses can have both pros and cons. On the positive note, the multiple employment statuses allow the economically dependent workers to be categorized into the less privileged category and gain at least some minimum rights. However, the risk of two categories is that some of those who might now be categorized as employees, might lose some of their rights if recategorized into workers. Some employers might even use this situation to their advantage by only hiring workers who do not receive all the rights of an employee.

An EIRObserver study has found three possible options for clarifying the broadening of definitions and forms of employment.³²⁶ The first option is extending the provisions regarding dependent employment to new forms of employment, such as the economically dependent workers, who are not categorized as self-employed. This option gains support from many labour unions, but it might lead to the reduction of the differences between employment statuses and not suit the European employment strategy, which aims for adaptability and supporting entrepreneurship. The second option is to define a third status in between the dependent worker and the autonomous self-employed. The workers with this status would receive intermediate level of protection, but the issue is identifying the characteristics for this status. The third option would be establishing a common set of basic rights and protections, which would apply to all workers, no matter what their employment relationship would formally be. This option is implicitly supported in the UK due to the use of term worker instead of employee in labour rights legislation. The difficulty of this option would be determining which set of rights should be extended to all workers.³²⁷ The protection of the rights of workers and supporting entrepreneurship are partly opposite objectives and making labour legislation is always about finding a balance between these two.

³²⁶ Pedersen 2002, at commentary.

³²⁷ Ibid.

5. Cases involving Uber drivers

5.1 United Kingdom Case Law on Uber drivers

Due to the variation of treatment in different Member States, there have been multiple cases involving Uber and its drivers. A landmark decision regarding the nature of Uber's operations and the employment status of the drivers was made in 2016 by the UK Employment Tribunal, a Court for employment related cases.³²⁸ The parties in case 2202550/2015 & others were the Claimants, Mr. Aslam, Mr. Farrar & Others, and the Respondents, Uber B.V., Uber London Ltd and Uber Britannia Ltd. The judgement was sent to the parties 28th October 2016.³²⁹ The Claimants were former drivers of Uber in London area. The Respondents were three Uber companies, the first being the headquarter company in the Netherlands, which owns the rights to the Uber app, and is the parent company for the two latter. In the judgement, they were all referred as Uber unless otherwise necessary to define which entity of the organization was at hand.

The Claimants brought claims for failure to pay the minimum wage under the Employment Rights Act 1996 (ERA)³³⁰, read with the National Minimum Wage Act 1998 (NMWA)³³¹ and associated Regulations, and for failure to provide paid leave under the Working Time Regulations 1998 (WTR)³³². Two of the Claimants also complained about the detrimental treatment on whistle-blowing under ERA.³³³ The Respondents denied the Claimants were ever workers entitled for the worker protection legislation.³³⁴

5.1.1 Evaluation of Subordination and Independence Factors

In the case 2202250/2015 Aslam & Farrar, the product range was presented and it was stated that Uber markets multiple different types of products.³³⁵ These services include UberX, UberCl, UberEXEC, UberTAXI and UberWAV which vary in the cost, the size of the vehicle

³²⁸ Butler 2016.

³²⁹ Case 2202550/2015 Aslam & Farrar vs. Uber B.V., Uber London Ltd & Uber Britannia Ltd.

³³⁰ Employment Rights Act 1996, Part II.

³³¹ National Minimum Wage Act 1998.

³³² Working Time Regulations 1998.

³³³ Employment Rights Act 1996, Part IVA and V.

³³⁴ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 7-8.

³³⁵ Case 2202550/2015 Aslam & Farrar vs. Uber B.V., Uber London Ltd & Uber Britannia Ltd.

and the number of passengers.³³⁶ The operation of Uber App was also presented. The application allows passengers request to a ride and the closest driver has 10 seconds to accept the ride on his smartphone before it will be offered to another driver. The driver will only see the passenger's first name and no other contact information, and the driver is not supposed to ask the passenger about the destination until they are seated in the vehicle.³³⁷ The driver is not allowed to negotiate a higher price than the one set by the app either. However, the driver can charge less.³³⁸ The App will also tell the drivers the most cost efficient driving route which they are recommended to follow.³³⁹ If the driver does not follow it and take longer routes, the passenger might be charged more or experience a delay, due to which they might be able to receive a partial refund which the company will charge from the driver. The refunds are handled by the Uber London Ltd, sometimes even without telling the driver.³⁴⁰

The terms between Uber and the passenger were quite different of those between Uber and the drivers. In the passenger terms, "rider terms" it states in Part 1 Booking Services Terms paragraph 3 that:

*"Uber UK does not itself provide transportation services and is not a Transportation Provider. You acknowledge and agree that the provision to you of transportation services by the Transportations Provider is pursuant to the Transportation Contract and that Uber UK accepts your booking as agent for the Transportation Provider, but is not a party to that contract."*³⁴¹

In part 2 paragraph 2 it states:

"The Services constitute a technology platform that enables users ... to pre-book and schedule transportation, logistics, delivery and/or vendors services with independent third-party providers ... You acknowledge that Uber does not provide transportation, logistics, delivery or vendors services or function as a transportation provider or carrier and that all such transportation, logistics,

³³⁶ Ibid., at 14.

³³⁷ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 15-16.

³³⁸ Ibid., at 19.

³³⁹ Ibid., at 16.

³⁴⁰ Ibid., at 23.

³⁴¹ Ibid., at 28.

*delivery and vendors services are provided by independent third party contractors who are not employed by Uber or any of its affiliates.”*³⁴²

For the terms between Uber and the driver the terminology changes. In “Partner Terms” (1.7.2013) under “Scope” Paragraph 2.1.1 it states that:

*“The Partner acknowledges and agrees that Uber does not provide any transportation services and that Uber is not a transportation or passenger carrier. Uber offers information and a toll to connect Customers seeking Driving Services to Drivers who can provide the Driving Service, and it does not and does not intend to provide transportation or act in any way as a transportation or passenger carrier. Uber has no responsibility or liability for any driving or transportation services provided by the Partners or the Drivers...”*³⁴³

Uber is trying to deny that they would be involved with transportation or passenger carrying services. They claim to only offer a platform, an app, for the drivers to connect with the riders. The terminology of passengers, riders and customers has the same meaning. For the drivers, Uber uses terminology such as third party drivers or partners. They clearly state that the drivers are not their employees.

Under the Partner terms, the drivers’ performance is personal, and their right to use the App is non-transferable and sharing accounts is not permitted. The interested can sign up to become Uber drivers. They must attend a meeting in a specific location, provide certain documents, such as their driving license, to Uber in person as well as undergo a form of induction. Uber calls this process “onboarding”. They claim there is no interview process, however, the drivers had to show up in person and had even received emails says “book an interview slot now”³⁴⁴. The applicants were also required to watch a video presenting the use of the App and Uber procedures.³⁴⁵

³⁴² UK Employment Tribunal: Aslam & Farrar vs. Uber, at 29.

³⁴³ Ibid., at 33.

³⁴⁴ An email sent from an Uber email address to an applicant on 15 March 2015.

³⁴⁵ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 39-42.

The Claimants claimed that the company was instructing, managing and controlling the drivers in different ways. The Respondents denied this and quoted the published forms. The drivers received a “Welcome Packet” which included materials such as a leaflet called “What riders like” and “What Uber looks for”. These included instructions how the drivers should provide the service, such as earn good reviews by providing good service, having low cancellation rates and high acceptance rates. The driver should sign off the App if they were not willing to take requests.³⁴⁶ The App has been programmed to sign the driver automatically off for 10 minutes if they declined three trips in a row. This penalty was denied by Uber representative, but one of the forms indeed included the expression of “penalty box warning”.³⁴⁷ Uber also requires its drivers to have a good rating. The passengers could rate every trip on a 0-5 scoring system and drivers with an average score below 4.4. should improve their service or get “removed from the platform” and have their accounts “deactivated”. Uber has also given numerous messages to their drivers labeled as recommendations, advice, tips or feedback.³⁴⁸

The drivers are free to choose which products they offer and treat themselves as self-employed for tax purposes. There is no uniform and displaying Uber branding is discouraged in London.³⁴⁹ However, there are many incidences in language, when Uber’s name has been expressed incompatible with the central case. For example, references to “Uber drivers”, “our drivers” and “Ubers” has been seen. Uber UK’s Twitter posts lead this way too. Uber claims they offer the drivers “business opportunities” while denying having jobs in the organization even though Uber London Ltd mentioned providing job opportunities in a submission to the GLA Transport Scrutiny Committee. In the Partner Terms, the Uber fares are called Commission or Service Fee. However, in October 2014 a written evidence to the GLA Transport Scrutiny Committee stated that “Uber drivers are commission-based... Drivers are paid a commission of 80 % for every journey they undertake.” The representative of Uber tried to claim this was a typographical error.³⁵⁰

The definition of a worker is written in Employment Rights Act (ERA) in paragraph 4.2.1 UK Labour Law and Employment Statutes. It defines an employee as an individual who works

³⁴⁶ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 47-48.

³⁴⁷ Ibid., at 52.

³⁴⁸ Ibid., at 55-57.

³⁴⁹ Ibid., at 64-66.

³⁵⁰ Ibid., at 68-69.

under a contract of employment, and a worker as someone who works either under a contract of employment or any other contract where working is either expressed or implied.³⁵¹ The definition of a worker who works under this other form of contract was in ERA section 230(3)(b), the so-called limb (b) contract.³⁵² The same definitions apply under National Minimum Wage Act (NMWA) and Working Time Regulations (WTR).³⁵³ NMWA Section 34 defines “agency workers” as individuals who are supplied by a person, “the agent”, to do work for another third party under a contract or other arrangements made between the agent and the third party but there is no working contract.³⁵⁴ However, the regulation of the Act does still apply as if there were a contract.³⁵⁵ ERA Section 43K Extension of meaning of “worker” etc. for Part IVA includes individuals who are not defined as workers by section 230 (3), but who work in circumstances they were introduced or supplied to by a third person and where the terms of the work are substantially not determined by them but by the person they work for or by the third person.³⁵⁶

The Claimants claimed that the contracts were not representing the relationship between them and Uber correctly, in fact, they were meant to misrepresent it. The Claimants were claiming to be working for Uber, not the other way around. They claimed to be under the definition of “worker” mentioned in ERA s230(3)(b) at least when the App was switched on.³⁵⁷ Uber’s claims were, that since the drivers were never obliged to take any ride assignments, this freedom meant the lack of any form of employment or any contract under which the Claimants were to provide any service to Uber. The Court found that when the App was switched off, there was no contractual obligation to provide services. However, while the App was switched on, the drivers were in the territory where they were authorized to work, and were able and willing to accept assignments, they were working for Uber under a “worker contract” and a contract within each of the extended definitions.³⁵⁸

³⁵¹ ERA Section 230.

³⁵² ERA section 230 (3) (b).

³⁵³ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 70-71.

³⁵⁴ NMWA Section 34.

³⁵⁵ NMWA Section 34 (2).

³⁵⁶ ERA Section 43K Extension.

³⁵⁷ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 83-84.

³⁵⁸ Ibid., at 85-86.

The Court was amazed by how much effort Uber has put into compelling agreements with its description of itself and with its analysis of the relationships between the two parties, the drivers and the passengers. The Court stated:

“Any organization (a) running an enterprise at the heart of which is the function of carrying people in motor cars from where they are to where they want to be and (b) operating in part through a company discharging the regulated responsibilities of a PHV operator, but (c) requiring drivers and passengers to agree, as a matter of contract, that it does not provide transportation services (through UBV or ULL), and (d) resorting in its documentation to dictions, twisted language and even brand new terminology, merits, we think, a degree of skepticism.”³⁵⁹.

The Court also paid attention to the multiple things said and written in Uber’s name in unguarded moments, when Uber’s representatives did not follow the terminology of the contracts, which were reinforcing the Claimant’s case that Uber organization runs a transportation business and employs the drivers. The Court did not believe the claims Uber’s representatives made claiming these were just typographical errors and sloppiness of language.³⁶⁰

The Court continued that they found it unreal to deny Uber being in business as a provider of transportation services since common sense argues to the contrary. This was made even more clear due to the “product range” Uber was marketing on its website. These were clearly Uber’s products, not the products of individual drivers, who could not offer such a range. This was performed by marketing Uber’s name and selling its transportation services. The Court stated:

“Uber does not simply sell software; it sells rides. Uber is no more a “technology company” than Yellow Cab is a “technology company” because it uses CB radios to dispatch taxi cabs.”³⁶¹.

³⁵⁹ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 87.

³⁶⁰ Ibid., at 88.

³⁶¹ Ibid., at 89.

The Court found that the notion of Uber being a mosaic of 30 000 small businesses linked by a common platform in London was ridiculous. Uber's representative had said Uber assisted the drivers to "grow" their businesses, but the Court found that no driver was in a position to do anything like that, unless it meant spending more hours behind the wheel. The Court also claimed that Uber's position could not be supplying drivers with "leads" as this would suggest the drivers were put in contact with the possible passengers and having the opportunity to negotiate and strike a bargain. This was however not the case as the drivers could only agree on the fare set by Uber or agree on a reduction from it.³⁶² The Court also found Uber's logic quite complex. As Uber was claiming not to have any transportation service contract with the drivers, instead it being between the driver and the passenger, this would mean Uber expects the driver to make a contract with a passenger whom they have never met and whose identity they shall never know, and who will never know the driver's identity. This binding agreement between the driver and the rider would also include not knowing the destination beforehand, a route planned by someone else from which they are not allowed to depart, at least without a risk, and a fee set by someone else, not known by the passenger and paid to the stranger. Uber's case has it that if Uber became insolvent, the drivers would have enforceable rights directly against the passengers and the passengers would be exposed to potential liability as the drivers' employer under numerous regulation, such as the NMWA. The Court found that this contract between the driver and the passenger was pure fiction and did not represent the true relationships between the parties.³⁶³

The Court did not agree that Uber is working for the drivers, instead they found the only sensible interpretation to be that the relationship is the other way around, and that Uber is running a transportation business. The drivers provided their skilled labour and the organization delivered its services though that while earning profits. The Court gave thirteen primary reasons against Uber:

- (1) *The contradiction in the Rider Terms between the fact that ULL purports to be the drivers' agent and its assertion of "sole and absolute discretion" to accept or decline bookings.*
- (2) *The fact that Uber interviews and recruits drivers.*

³⁶² UK Employment Tribunal: Aslam & Farrar vs. Uber, at 90.

³⁶³ Ibid., at 91.

- (3) *The fact that Uber controls the key information (in particular the passenger's surname, contact details and intended destination) and excludes the driver from it.*
- (4) *The fact that Uber requires drivers to accept trips and/or not to cancel trips, and enforces the requirement by logging off drivers who breach those requirements.*
- (5) *The fact that Uber sets the (default) route and the driver departs from it at his peril.*
- (6) *The fact that UBV fixes the fare and the driver cannot agree to a higher sum with the passenger. (The supposed freedom to agree a lower fare is obviously nugatory.)*
- (7) *The fact that Uber imposes numerous conditions on drivers (such as the limited choice of acceptable vehicles), instructs drivers as to how to do their work and, in numerous ways, controls them in the performance of their duties.*
- (8) *The fact that Uber subjects drivers through the rating system to what amount to a performance management/disciplinary procedure.*
- (9) *The fact that Uber determines issues about rebates, sometimes without even involving the driver whose remuneration is liable to be affected.*
- (10) *The guaranteed earnings schemes (albeit now discontinued).*
- (11) *The fact that Uber accepts the risk of loss which, if the drivers were genuinely in business on their own account, would fall upon them.*
- (12) *The fact that Uber handles complaints by passengers, including complaints about the driver.*
- (13) *The fact that Uber reserves the power to amend the drivers' terms unilaterally.*³⁶⁴

The Court found that the drivers fall within the terms of the ERA s230(3)(b).³⁶⁵ As there is no contract with the passengers, the driver must inevitably have a contract with Uber. This was also shown by the fact that Uber is recruiting the drivers. For a reward, the drivers make themselves available for Uber. It is also self-evident that in the contract, Uber is not a client or a customer of a business carried by the driver. It is also obvious that it is not a contract between two independent business undertakings.³⁶⁶ The Court states that the Respondents could have devised a business model, which does not involve them employing drivers, but the current model they are using fails to achieve that aim.³⁶⁷

³⁶⁴ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 92.

³⁶⁵ ERA, s230(3)(b).

³⁶⁶ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 93-94.

³⁶⁷ Ibid., at 97.

The Employment Tribunal ruled two major decisions in this case. First of all, Uber is indeed a transportation company regardless of what they try to claim to be. Second, the Uber drivers are Uber's workers, not self-employed, and should be given certain employment rights such as minimum wage and holiday pay, which are nowadays not granted for the self-employed. The worker status, however, includes fewer rights than that of an employee.³⁶⁸ Their status as a worker was decided based on thorough consideration of the true circumstances and the given contractual terms as a whole. Especially the subordination and autonomy of the drivers was carefully examined and it pointed that Uber does indeed direct and guide their drivers.

5.1.2 Employer Entity and Conflict of Laws

The Claimants claimed the Uber London Ltd was their employer, but in case the Court found otherwise, that their employer was the Dutch Uber company (UBV), the choice of Dutch law would not be effective as it would not provide the protections enacted in Rome I. The Respondents claimed the terms of the contracts were valid and that the drivers were not Uber's workers. However, if the Court found the drivers to be Uber's workers, they would be working for the Dutch paternal company as there were no agreements with the Uber London Ltd. They also claimed that the Rome I choice of law clause between the Dutch Uber company and the drivers would be effective to defeat the claims under ERA and NMWA, even if it would not be effective to defeat the claims under WTR, which implements the Community law.³⁶⁹ This would have meant that the drivers would have had rights relating to their working time due to its EU law background, but not towards minimum wage or other national legislative rights.

The Court found that the UBV is a company for the central functions, protecting the rights associated with the App and processing the passengers' payments. UBV does not have a daily or a weekly contact with the drivers and there is no reason to characterize it as the employer. The Uber London Ltd is the obvious candidate for the employing entity, as it is a UK based company and the contact for the drivers: it recruits, instructs, controls, disciplines and dismisses the drivers.³⁷⁰ The Court also disagreed that the driver would only be under the limb(b) contract³⁷¹ when performing the function for which the contract exists, therefore

³⁶⁸ Azhar 2016.

³⁶⁹ Article 3(4) of Rome I.

³⁷⁰ UK Employment Tribunal: Aslam & Farrar vs. Uber, at 98.

³⁷¹ ERA, s230(3)(b).

while carrying a passenger. The Court found that Uber needs a network, a pool of available drivers.³⁷²

The Court found that the conflict of laws did not exist due to the employer being a UK company. However, they decided to analyze how the conflict of laws would have been considered if the drivers were employed by the Dutch UBV.³⁷³ The Article 3 of Rome I gives the parties the right to choose the governing law by expressing their will at the contract terms or in the circumstances of the case.³⁷⁴

The Partner Terms specify that the agreements are to be governed by the Dutch laws, but the Court's hypothesis on which they are proceeding with is that a separate agreement must be inferred, under which the Dutch UBV employs the drivers as limb (b) workers³⁷⁵. The Respondents tried to claim that "this Agreement" also included the inferred working contract, but the Court found that since both terms denied any form of an employment relationship, it could not imply further terms which say the very opposite. The Court concluded the inferred worker contract must have a separate existence from "this Agreement" on which the choice of law clause could have been used. There would be no basis for holding that any inferred worker contract between the drivers and the UBV would be governed by the Dutch law, so according to the Rome I principles, the applicable law would be inevitably the UK law; the law of England and Wales. The Court went even further and considered how the case should have to be solved, if the UBV was to be the right entity as an employer and if the choice of law clause would "bite", but this thesis will not look into that.³⁷⁶

The UK Employment Tribunal found the Uber UK company to be the employer of the drivers due to the true circumstances and subordination factors, despite of the lack of a written contract between this entity and the drivers. If Uber was considered as a digital service, not a transport service, how this question would have been solved? Would the employer entity have been the Dutch company, which owns the rights to the app and processes the payments? Or would the UK company have still been considered as the employer? Or, would any Uber company have been considered to have an employment relationship with the drivers? One can

³⁷² UK Employment Tribunal: *Aslam & Farrar vs. Uber*, at 100.

³⁷³ *Ibid.*, at 103.

³⁷⁴ Article 3 of Rome I.

³⁷⁵ ERA, s230(3)(b).

³⁷⁶ UK Employment Tribunal: *Aslam & Farrar vs. Uber*, at 105-106.

only speculate the answers regarding the first two questions, but this thesis will return to the third question in Chapter 5.3 Comparison of Finnish and UK Cases concerning Uber drivers.

5.2 Finnish Case Law on Uber drivers

Uber has been available in the Helsinki region since autumn 2014. As in the other Member States, also in Finland a local taxi driver association has done a request for investigation to the police. Helsingin Taksiautoilijat ry association claimed that the Uber application and Uber Finland are providing illegal transport services.³⁷⁷ This was investigated by the police under the criminal title of incitement to pursue unauthorized taxi services.³⁷⁸ The police were investigating whether Uber is inciting the drivers by providing the App through which the drivers could offer their services.³⁷⁹ However, the District Prosecutor Kaisa Ahla suspended the preliminary investigation regarding Uber Finland's business. She explained this was done due to the unbalanced cost of the investigation compared to the meaning of this matter and the possible consequences. The preliminary investigation found out that the responsible people of Uber are citizens of the U.S., France and the Netherlands, and this kind of investigation would require international cooperation.³⁸⁰

Under the Finnish taxi service law (Taksiliikennelaki) a taxi company needs a license to provide professional passenger transport.³⁸¹ It states that the law covers passenger transport on road with passenger cars. It defines professional passenger transport as transporting passengers in the purpose of operating their business or earning profit by gaining compensation, either full time or aside other business operations. Passenger transport for compensation counts as professional transport also, if it is offered to the public in a public space.³⁸² Providing a professional taxi service without the license, is illegal and the one breaking the law shall be sentenced to a fine or jailed for a maximum of 6 months.³⁸³

³⁷⁷ Tamminen 2016.

³⁷⁸ Taksiliikennelaki 2.3.2007/217, paragraph 28 and Rikoslaki 19.12.1889/39 chapter 5 paragraph 5.

³⁷⁹ Rita 2016.

³⁸⁰ Tamminen 2016.

³⁸¹ Taksiliikennelaki 2.3.2007/217, paragraph 4.

³⁸² Ibid., paragraph 3.

³⁸³ Ibid., paragraph 28.

In Finland, some Uber drivers have been sentenced for breaking this law. Two of these cases have made it to the Helsinki Court of Appeal; cases R 16/1141 and R 16/1175.³⁸⁴ The Judgements in these cases were given on 21st September 2016. During summer 2015 one driver, Munyoro, had earned 2 800 euros in one month and another driver, Adhamov, 12 250 euros in 3,5 months from driving Uber. They were sentenced in the first instance Court, the Helsinki District Court. Both drivers complained to the Helsinki Court of Appeal and the Court had to solve whether these drivers had been driving in the professional purpose and whether being an Uber driver required a taxi license.³⁸⁵

Adhamov and Munyoro claimed their driving of Uber was not professional in nature and should be parallel to neighbor help or other occasional ride help, such as the ones offered online in carpooling websites. As the police had not interfered with these carpool services even though money transferred there as well, driving Uber should not be considered breaking the taxi service law either. The Court of Appeal paid attention to the fact that the drivers had picked up strangers and anyone could have requested a ride using the app. These rides were offered online, in a public space. Waiting for the rides and offering them to anyone points towards professionalism. There were multiple rides and the earnings were high on a monthly basis.³⁸⁶ On the government proposal for the Taxi Service Law, it says that the professionalism of the operations should be interpreted widely, as the purpose of this law is to protect consumers and public safety.³⁸⁷

The Court of Appeal agreed with the Helsinki District Court that this was professional passenger transport, which requires a taxi license. The possibility that individual payments might have been low or that the payments went first to Uber company and that the company transferred the drivers their share, was not influencing on the professionalism of the driving.³⁸⁸ Both drivers were sentenced for providing illegal taxi service.³⁸⁹ The Court also paid attention to a statement from the Constitutional Law Committee, which stated that the need for the license and its requirements were no threat towards the free economy.³⁹⁰

³⁸⁴ Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

³⁸⁵ Ibid.

³⁸⁶ Ibid.

³⁸⁷ Hallituksen esitys taksiliikennelaiksi, HE 38/2006vp, pages 19 and 35.

³⁸⁸ Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

³⁸⁹ Taksiliikennelaki 2.3.2017/217, paragraph 28.

³⁹⁰ Perustuslakivaliokunnan lausunto, PeVL 31/2006 vp.

The prosecutor demanded that the profit earned from the rides to be condemned to the state and the drivers demanded they could at least reduce the cost of car, gasoline and maintenance.³⁹¹ According to the Finnish criminal law, the profit made from illegal criminal activities can be condemned to the state³⁹² and it is not possible to reduce the costs which came from preparing for this illegal criminal activity³⁹³. Besides losing their profits, they both were sentenced to pay some fines.³⁹⁴

It is interesting that only the Uber drivers were sentenced but not Uber. This case was not about determining whether Uber drivers are employees or self-employed but the fact that they were punished, instead of the platform company, implies them being considered as self-employed.

5.3 Comparison of Finnish and UK Cases Concerning Uber drivers

The approach of the UK and the Finnish Authorities and Courts differ distinctly from each other, and the decisions were quite surprising in the light of the history of the UK and the Finnish Employment Law. One could have assumed that especially in Finland the rights of an employee would have been valued higher, as presented above in Chapter 4.1. There are political aims, besides the juridical factors, which impact the evaluation on determining the nature of Uber's operations and the employment status of the drivers. In Finland, the innovative digital services are seemingly valued higher than the employment status of the drivers. In the UK, on the other hand, the decision of the Tribunal was surprisingly positive towards the drivers' employment status. The political interests behind the decision could have been the protectionism of the taxi industry and other regulated fields, as defining Uber impacts the way other Sharing Economy company models, such as Airbnb, would be defined in the future.

Perhaps this shows the difference of the whole political atmosphere. Just like the European Commission, the Finnish government seems to be eager to promote new innovative Sharing Economy businesses. The political aims have been turned into regulation in the new Transport

³⁹¹ Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

³⁹² Rikoslaki, chapter 10, paragraph 2, hyödyn menettäminen.

³⁹³ Hallituksen esitys Eduskunnalle menettämisseuraamuksia koskevan lainsäädännön muuttamisesta, HE 80/2000, chapter 10, paragraph 2.

³⁹⁴ Helsinki Court of Appeal Judgements, R16/1141 and R16/1175, given on 21.9.2016.

Code (liikennekaari) by the Finnish Ministry of Transport and Communications.³⁹⁵ The new Transport Code will combine the existing substance laws³⁹⁶ regarding the transport market and services.³⁹⁷ The bill was given to the parliament on 22nd September 2016³⁹⁸ and the new Transport Code will take effect in July 2018. This transition period will give the current market operators enough time to do the necessary adjustments.³⁹⁹ The Act will lower the barriers to entry to the taxi markets and increases the freedom of the taxi service providers to develop their businesses. The aim is to open the market to more variable business models and services, increase employment levels and offer more services, especially in the countryside.⁴⁰⁰

One major change to the current situation is the removal of the taxi quotas, which means that anyone fulfilling the requirements could get a taxi permit and provide taxi services. The permit would be company based and the drivers would be required to have driving permits.⁴⁰¹ The main station location requirement remained, which is reported along with their main service hours. However, the new law also allows the taxis to wait for passengers from outside of their main location and offer their services in other cities too. Another major change is that the new law will not include price regulation and the prices will be determined based on the market needs.⁴⁰² However, the political atmosphere is not as open to the Sharing Economy companies as it might seem. The Ministry of Transport and Communications was also preparing the possibility of a threshold of 10 000 euros' annual earnings. Any driver could have earned under that limit without the need of a taxi permit. However, this part of the proposal was removed after the consultation round.⁴⁰³ Also in Finland, other political aims than the promotion of innovative digital services, impact the legislation making. The protectionism of the taxi industry could be the reason behind the removal of the planned threshold proposal.

³⁹⁵ HE 161/2016 vp.

³⁹⁶ The laws to be combined under the new Transport Code include public transport law (joukkoliikennelaki), taxi service law (taksiliikennelaki) and some other laws.

³⁹⁷ HE 161/2016 vp, page 2.

³⁹⁸ LVM hankkeet, liikennekaari 2016.

³⁹⁹ HE 161/2016 vp, page 216.

⁴⁰⁰ LVM tiedote 20.9.2016.

⁴⁰¹ HE 161/2016 vp, page 2.

⁴⁰² Ibid., page 80: The Finnish Transport Safety Agency Trafi could set some maximum prices if necessary. Trafi would also be responsible to monitor the effects of the new regulation.

⁴⁰³ LVM tiedote 20.9.2016.

5.3.1 The Party Providing the Transport Service

The district prosecutor decided not to further investigate Uber in Finland and even the title of the criminal offense in question was odd: incitement to pursue unauthorized taxi services. Did the police not find evidence that Uber itself would be providing unauthorized taxi services or why was the charge only about inciting? Compared to the solution of the UK Employment Tribunal this is totally the opposite approach. Many other Member States have banned Uber, but not Finland. In Finland, only the unlicensed drivers have been punished. Where the UK Tribunal solved the case of Uber by defining it to be providing the transport service as well, in Finland this was not even investigated further.

Why was the question not about whether Uber is breaking the Finnish “Taxi Service Law”, which means being involved in the transportation services and offering rides without necessary permissions? This would have been the same question the UK Tribunal solved as the first part of their case. The second part was to solve the employment status of the drivers. The reason to stop the investigation in Finland was the high costs and the need for international cooperation due to the owners being foreigners. This did not stop the UK Tribunal from solving the case concerning the relationship between Uber London and the drivers. Why did the Finnish authorities not investigate this? This thesis argues the reason was the title of the offence; the police were considering to press charges on inciting. As the App is property of the Dutch parent company, this might be why Uber Finland was not investigated for this crime. But why did the police not find evidence and why did the prosecutor not press charges on Uber itself for pursuing an unauthorized taxi service?

This thesis finds that in Finland the police and the prosecutor did not consider it to obvious that Uber is indeed providing the taxi service. Uber itself claims to be purely a technology firm with a digital service and not be involved in the transportation services. Finnish authorities agree with this as can be seen from the submission of Finland regarding the Case C-434/15 Asociación Profesional Elite Taxi, which states that Uber is just a platform company, a mediator, and not involved in the underlying service.⁴⁰⁴ The police and the prosecutor must have agreed with the submission as it was prepared within several ministries and therefore represents the current position of Finland in the matter.

⁴⁰⁴ Ministry of Foreign Affairs of Finland 2015, pages 1-5.

5.3.2 What do the Decisions Imply about the Employment Status of the Drivers

The criteria to receive a taxi license in Finland includes that the applicant has passed a taxi service entrepreneur course and has at least six months of experience from being a taxi driver.⁴⁰⁵ The Finnish taxi union website states that taxi drivers can become taxi entrepreneurs. According to them, there are 9000 taxi entrepreneurs and 5000 full-time drivers in Finland.⁴⁰⁶ This means that the taxi license is given to the taxi company, the entrepreneur, who can hire other drivers who do not need their own licenses, just the necessary taxi driver training and a driving license. In the Cases of Helsinki Court of Appeal, the Uber drivers were sentenced for driving without the necessary taxi license, which is only required from taxi entrepreneurs. If the drivers would be only employees of a company which is providing taxi services, the company would be required to have the taxi license instead of the drivers. Thus, this thesis argues that the fact that the Uber drivers have been sentenced for breaking the Taxi Service Law, by offering unauthorized taxi services, implies that in Finland the drivers are considered to be independent contractors, who are running their own micro businesses.

But why are the decisions so different between the United Kingdom and Finland? This is an interesting matter from the aspect of employment law as well. The authorities in Finland did not even consider whether the drivers are Uber's employees, whereas in the UK they were considered as workers. These Finnish Uber drivers were sentenced for not having the necessary permit, a permit only given to entrepreneurs. Their employment status was not evaluated, but it seems to be presumed to be self-employment. What would have made them employees instead?

There is a case about a taxi driver in Finland who had his own trade name. His company and a taxi company, which had the taxi permit, made a contract that he would be driving a taxi for the taxi company, while using their vehicle.⁴⁰⁷ The taxi company paid his company for the work, including the value-added tax. The formal signs, like the billing method, his company being registered and the way he covered his own work-related fees, would implicate that he was a self-employed contractor. However, the facts that his salary was similar to one of an

⁴⁰⁵ Taksiliikennelaki 6 § 4 and 5 mom.

⁴⁰⁶ Taksiliitto at koulutus at sinustako kuljettaja.

⁴⁰⁷ Työneuvoston lausunto 1428/08, page 1.

employee, that he did not take the risk of operations, and that his business was not public and that he did not perform services for other companies would imply that he was actually their employee. This was supported by him using a valuable tool of the taxi company, the car, and that the hours and shifts were given by the taxi company as well.⁴⁰⁸

The Finnish Labour Council⁴⁰⁹ found him to be an employee of the taxi company.⁴¹⁰ The only differences here seem to be that in this case there was a taxi company which admitted it was providing the transport services, whereas Uber is denying it, and that the taxi driver used a taxi car owned by the company, not his own personal vehicle, and that the taxi company decided his working hours. However, regarding Uber, there are many signs, which prove the right to direct is used, as was seen in the UK case. The use of the employers' tools and the working hours are only parts of the consideration as a whole. The crucial difference between these cases is that the taxi company is providing taxi services and Uber claims not to be.

5.3.3. How the Nature of Uber's Operations Impacts the Employment Status of the Drivers

This thesis argues that the definition of the nature of Uber's operations could impact the employment status of the drivers in two ways. First, when using Uber, the service purchased by the passenger includes also passenger transportation from one location to another and therefore the party providing the transport service must be determined. The transportation part of the service purchased by the customer is too relevant to be considered as a by-product of the main service for two reasons. First, the customer would not purchase the Uber service without receiving the transportation service. Second, passenger transport is a heavily regulated field with occupational licenses and other permits, which cannot be avoided by circumventing the law and looking for loopholes.

The definition of the transport service provider will determine who is the company or the entrepreneur, and therefore determines whether the other party involved could be an employee. If Uber only provides a digital service, the only logical party to be providing the

⁴⁰⁸ Työneuvoston lausunto 1428/08, pages 1-4.

⁴⁰⁹ The Finnish Labour Council is a special authority under the Ministry of Economic Affairs and Employment to give opinions on labour related issues.

⁴¹⁰ Työneuvoston lausunto 1428/08, page 4.

transport service would be the drivers, which would make them entrepreneurs, independent contractors. If Uber, however, is providing the transport service, the drivers would not be providing it. This would mean that the drivers could be classified either as Uber's workers or employees, depending on the national employment status terminology, or as independent contractors depending on the evaluation of the employment criteria. This is the first way of how the definition of Uber would also determine whether the drivers are independent contractors or whether they could be workers of Uber. This means that the European Court of Justice's decision on Uber's definition would impact the national employment status evaluation.

The correct transport service provider needs to be determined as many national jurisdictions require occupational licenses. The difference between the UK and the Finland Cases is the determination of the nature of Uber's operations. The UK Employment Tribunal found Uber to be providing the transport service and therefore the drivers could be determined as Uber's workers. In Finland, on the other hand, Uber is considered to be a digital service, a taxi charter brokerage service, which does not require the taxi license.⁴¹¹ This leaves only the possibility, that the drivers are self-employed transport service providers, which are required to have the taxi license.

This thesis also argues that there is another way for the definition of Uber to have an impact on the employment status of the drivers. The above-mentioned way of impact is influencing the national definitions. The second option goes even further and presents the possibility that instead of national employment status definitions, the EU employment statuses would be used. As presented in Chapter 4.2 Employment Statuses, the EU definition of a worker will be used in cases, when the question is about the freedom of movement of workers⁴¹², but that the ECJ has expanded the use also to other situations where certain EU law instruments apply.

If there is no specific EU legislation, the relevant national definitions shall apply. But if there is specific EU legislation, the national definitions of employment status might be irrelevant.⁴¹³ The EU law's autonomic definition of a worker shall be used if evaluating the existence of an

⁴¹¹ Ministry of Foreign Affairs of Finland 2015, page 3.

⁴¹² Article 45 TFEU, Case C-75/63 Unger v Bedrijfsvereniging voor Detailhandel en Ambachten.

⁴¹³ COM (2016) 356 final, at 2.4.

employment relationship is linked to the applicability of some specific EU law instruments.⁴¹⁴ Based on the ECJ case-law, these instruments include at least Directives on working time⁴¹⁵, collective redundancies⁴¹⁶ and employment equality⁴¹⁷. Evaluating the existence of the employment relationship, and its connection to the applicability of certain EU law instruments, will determine whether the EU law term worker shall be used.

As this thesis has presented, the ECJ has expanded the use of EU definition of workers in cases beyond freedom of movement.⁴¹⁸ In Case *Balkaya*, a German company was unsuccessful and dismissed several workers through collective redundancies.⁴¹⁹ According to the German national law, members of the board of directors and those working under a traineeship would not be counted in the number of workers employed.⁴²⁰ The Directive 98/59/EC on collective redundancies only applies when a certain number of workers employed gets dismissed,⁴²¹ but according to the settled case-law of the ECJ, the national law definitions on the nature of employment relationships do not have any effect regarding whether a person is considered as a worker for the purposes of EU law.⁴²² In Case *Union Syndicale Solidaires Isère*, regarding casual and seasonal staff at holiday and leisure centers, the Court stated that the concept of a worker has an autonomous meaning specific to EU law, even though the Working Time Directive 2003/88⁴²³ did not refer to another Directive for the definition of a worker.⁴²⁴ So instead of deriving the definition of a worker from the national legislation, the ECJ decided that the EU definition would apply.

The EU definition of a worker shall be used when specific EU legal instruments, like the above-mentioned Directives, apply.⁴²⁵ Regarding Uber drivers this would mean at least that if they would try to claim the rights provided under the Directives on working time or collective redundancies, the EU definition of workers would apply, bearing in mind that the mobile workers and self-employed drivers of passenger transport have their own working time

⁴¹⁴ Ibid., at 2.4.

⁴¹⁵ C-428/09 *Union syndicale Solidaires Isère*.

⁴¹⁶ C-229/14 *Balkaya*.

⁴¹⁷ C-432/14 O.

⁴¹⁸ COM (2016) 356 final, at 2.4.

⁴¹⁹ C-229/14 *Balkaya*.

⁴²⁰ Ibid., at 7-13.

⁴²¹ Article 1 of the Directive 98/59/EC.

⁴²² C-229/14 *Balkaya*, at 35.

⁴²³ Directive 2003/88.

⁴²⁴ C-428/09 *Union syndicale Solidaires Isère*.

⁴²⁵ COM (2016) 356 final, at 2.4.

directive.⁴²⁶ This, however, raises the question, why did the UK Employment Tribunal use their national employment statuses, when one of the aspects in question was regarding the working time. The UK Working Time Regulation (WTR)⁴²⁷ is implemented EU law from the Working Time Directive⁴²⁸. In case Uber is considered to be a transport service provider, like the UK Employment Tribunal did, the EU definition of a worker should have applied when the question was regarding the working time. It would have been interesting how the Tribunal or the ECJ, to which the Case could have been referred to for a preliminary ruling request regarding the interpretation of EU law, would have solved the case using the EU definition of a worker, as the UK law has both an employee and a worker, whereas the EU labour law only has the term worker, which seems to be more relatable to the employee status. It is not clear if Uber drivers would fulfill the criteria of the EU worker term, despite of fulfilling the criteria of the UK definition.

Another question is how far does the use of EU employment status definitions expand? Are only the Directives from the employment and social field enough to qualify as the specific EU law instruments, which will determine that the EU definitions on employment status shall be used? Or could some other Directives which are linked to the assessment of the existence of the employment relationship qualify? This thesis will not speculate more on this matter.

Other situations, where the EU law employment status definitions could be used, are regarding the fundamental freedoms: freedom of movement⁴²⁹ and freedom of establishment⁴³⁰. These fundamental rights provided in the TFEU could be reasons to use the EU employment status definitions, if there is no secondary law. Most of ECJ case-law regarding the EU law worker term is indeed concerning the freedom of movement.⁴³¹ If a driver would work in another Member State, his employment status would be evaluated based on the EU law term worker. The requirement for this is that there would be an employment relationship and that the driver would be considered as a worker. Another situation where the EU employment status definitions would apply, could be when the question is regarding the

⁴²⁶ Directive 2002/15/EC.

⁴²⁷ WTR 1998.

⁴²⁸ Directive 2003/88.

⁴²⁹ Article 45 TFEU.

⁴³⁰ Article 49 TFEU.

⁴³¹ Article 45 TFEU.

freedom of establishment.⁴³² In this case the EU definition would be regarding self-employment. The freedom to provide services and freedom of establishment as presented in TFEU and reinforced in the ECJ case law, aim to guarantee the mobility of businesses and professionals in EU.⁴³³ If the drivers are providing transport services, the bans some Member States have placed upon Uber are not only against the right of establishment of Uber, but also against the right of establishment of the drivers.

There are however some derogations to the right of establishment. These exceptions exclude the activities connected with the exercise of official authority,⁴³⁴ and allow the Member States to retain rules for non-nationals to protect public policy, public security or public health.⁴³⁵ One could speculate to what extent the reasons used to ban Uber's services in particular countries have relevance in justifying the derogation of freedom of establishment. One could evaluate whether those reasons are well founded or do they include some other political interests, such as the protectionism of the taxi industry. In Case *Viking*, the ECJ decided that a collective action initiated by a trade union against an undertaking in order to pressure the undertaking into a collective labour agreement, which is limiting its freedom of establishment, is not excluded from the scope of Article 43 EC Treaty,⁴³⁶ which is replaced by the Article 49 TFEU.⁴³⁷ If the fundamental right of employee protection was not considered as a derogation for freedom of establishment, the reasons qualifying the derogation must be very cogent. This thesis will not speculate on this topic and only raises the question for future researchers.

⁴³² Article 49 TFEU.

⁴³³ Maciejewski – Pengelly 2016.

⁴³⁴ Article 51 TFEU.

⁴³⁵ Article 52 (1) TFEU.

⁴³⁶ Article 43 EC Treaty, replaced by Article 49 TFEU.

⁴³⁷ C-438/05 *The International Transport Workers' Federation and The Finnish Seamen's Union*.

6. Concluding Remarks

6.1 Required Actions for Regulating the Sharing Economy

Initially, the ridesourcing companies were less regulated than the taxi and limo services, which they are competing with. This has caused a lot of controversies and the services have been banned in some countries.⁴³⁸ How should the regulators react to these new businesses? As the renters are working under the current regulation, the regulation should focus more on swappers and platforms. And as swappers do not participate in the transactions or have similar issues regarding employment as platforms, it seems that the platforms are the most difficult, but also the most important part of the Sharing Economy to be regulated.

The regulators should pay attention to the fact that the platforms, as well as their suppliers, have both common and sector specific issues. There are some challenges for the suppliers across the platform economy industry and some more sector specific issues, for example, the ones that are only related to passenger transport.⁴³⁹ Some of the issues which cover most platform company suppliers, regardless of the industry, are liability for mishaps and the feedback standards. Not all platforms offer their suppliers insurance packages and it can be both complicated and expensive for the suppliers to get those themselves. The feedback standards are set by the platform and the supplier has no legal protection, financial security or union bargaining power to support them.⁴⁴⁰

There are three possible approaches to regulating the Sharing Economy companies: regulate it out of existence, self-regulation or to just wait and see how the situation develops.⁴⁴¹ The first option does not look very tempting as it would create obstacles to market access, slow down innovation and stop creating new jobs. Self-regulation, which means the legislator would not regulate it at all, would give the innovative companies lots of possibilities, however, there might be risks for public safety, consumer protection or taxation.

⁴³⁸ The Shared-Use Mobility Center 2015, page 7.

⁴³⁹ Das Acevedo 2016, pages 13-15.

⁴⁴⁰ Ibid., pages 27-28.

⁴⁴¹ Ibid., page 15.

The self-regulation - approach counts on that the companies would want to increase the amount of transactions and therefore offer attractive terms. Suppliers can take gigs from competing platforms such as Uber or Taxifyi, which would also make the platforms want to provide reasonable conditions for their drivers. However, one side of this approach is that the barriers to entry have been reduced significantly: the drivers do not need special education, capital expenditure, incorporation paperwork, set working hours or a certain working place. This would leave the pool of possible drivers quite large and therefore eliminate the claim that the platforms must provide tempting terms for their drivers.⁴⁴² Self-regulation approach trusts that the companies also know what is the best way to regulate themselves and how to fix issues. The problem with this claim is that companies aim to make profit and are often only willing to protect other values only as long as its profitable for them.⁴⁴³

The third approach, “wait and see”, is favored by most scholars.⁴⁴⁴ The assumptions this approach raises are, that currently, we do not know enough to regulate the matter well, but that there will be a time when we do and that we will recognize when this time comes and it will not be too late at that time.⁴⁴⁵ The European Commission could harmonize or otherwise override national disparities and create an internal market for the Sharing Economy but the downside is that it would add to the already complicated EU legislation in the fields of e-commerce and consumer protection and that it could slow down the innovations in a fast developing field and that it could also be resisted by the Member States due to subsidiarity principle. So far, the European Commission has followed the “wait and see” approach.⁴⁴⁶

One could also claim that it is not too early to regulate. Some of the Sharing Economy companies launched at the late 2000s and have existed almost ten years already and the scholars and legislators can define the core elements of platform companies. Secondly, some issues have been raised by the suppliers, such as the Uber drivers, and some platforms have engaged in limited responses to those problems. In the United States, there are legislation and insurance policies concerning the ridesourcing companies, and Uber has settled several cases

⁴⁴² Das Acevedo 2016, pages 16-18.

⁴⁴³ Ibid., pages 19-22.

⁴⁴⁴ Hatzopoulos – Roma 2017, page 94.

⁴⁴⁵ Das Acevedo 2016, pages 23-25.

⁴⁴⁶ Hatzopoulos – Roma 2017, page 94.

by granting the drivers some rights.⁴⁴⁷ Lastly, as platforms are growing, so is their lobbying power.⁴⁴⁸

This thesis supports the opinion that it is not too early to regulate. As all the three possible options have issues, option number four could be to regulate it now. This thesis argues the biggest reason why the “wait-and-see” approach is failing, is that the Member States and even cities are regulating the platforms themselves and this leads to inconsistent and incoherent legislation. The platform companies have been treated in various ways in the Member States. Some states or even cities or regions have banned Uber, set some regulatory limits to its operations or punished its drivers. The current situation is unclear to everyone. This thesis will categorize the parties whom the current unclear situation is harming into four categories: the ridesourcing companies, the suppliers, the consumers and the states themselves.

Uber and other ridesourcing companies cannot operate as freely as they would like, despite the EU having freedom to offer services cross-border. If the regulation varies between the countries, it takes a lot of effort for the companies to be able to operate truly in more than one Member State. Secondly, the suppliers are not clear whether they are allowed to drive passengers using the Uber application. They might face even criminal penalties depending on the Member State. This also creates barriers to the freedom of movement of workers, as someone could not become an Uber driver in another Member State as easily, or to the freedom of establishment, as the drivers could not provide transportation services through Uber in countries which have banned it. To which freedom the barriers are created, depends on the nature of Uber’s operations as this thesis has presented in Chapter 5.3.3. Third, the consumers are also confused, whether Uber is legal or not. Finland even had a newspaper campaign saying citizens should report to the police if they come across an Uber driver.⁴⁴⁹ One would assume fining Uber drivers is not the top priority of the law enforcement. And finally, the states themselves are also missing opportunities. First, they are losing possible tax income as the drivers might not be willing to pay the taxes if in doubt whether their actions are legal. This creates “grey economy”⁴⁵⁰. If Uber is considered as a transport company, it might have to pay taxes like a transport company to the local Member States. In the UK, due

⁴⁴⁷ See more: Das Acevedo 2016, pages 25-26.

⁴⁴⁸ Das Acevedo 2016, pages 25-26.

⁴⁴⁹ Vuohipuro 2015.

⁴⁵⁰ See Finnish Tax Administration 2016.

to the Employment Tribunal solution, Uber might be facing a tax legal case as well and consequently end up paying enormous taxes.⁴⁵¹ The unnecessary law suits also add stress to the Court system and require countless hours of work. This is why we need a common European solution to this problem. The decisions of ECJ on the two preliminary ruling requests will hopefully determine the nature of Uber's operations. After this, regulating ridesourcing companies will be possible. If they are considered as digital services, the EU has already the necessary competence and may regulate in a simpler way, than if they are considered as transport service providers. Regulating digital services might be implemented through amending the current E-Commerce Directive, but to regulate passenger transport services, the EU would have to expand its legislation on that field. So far, the regulation of road passenger transport has been left mostly to the Member States. This thesis argues, that EU legislation on ridesourcing companies is needed no matter how the ECJ defines their nature of operations. If they are considered as digital services, the regulation should not be as difficult to implement than if they are considered to be transport services. Either way, some Member States might oppose regulating of ridesourcing companies due to the national interests, such as the protectionism of the taxi industry.

For the regulator, there will be challenges when trying to treat the Sharing Economy companies and the traditional operators fairly. The consumer protection cannot be endangered and the online transactions must be made more trustworthy. However, being cautious should not be on the way to embrace these innovative new business models, which offer more efficient and flexible ways to operate businesses. To follow the option number four "to regulate now" and start legislating the platform companies on a Union level requires a lot of preparation, but yet it seems to be the best option. There is regulation on ridesourcing companies in the United States already, but the issue of adapting their legislation into ours lies in the differences in the legal systems, and besides most of the regulation is only on a state-level.⁴⁵² Despite of this, this thesis argues the Union could use the Californian and other American legislation as inspiration and create legislation fitting to the Union. It should be left open enough to fit other future companies without creating market access barriers or otherwise discouraging innovation.

⁴⁵¹ Houlder 2016.

⁴⁵² Such as the California Public Utilities Code §§5430 – 5443.

To embrace the platform companies, the identity verification systems used by the governments should be opened to the private sector services and criminal record checks should be digitalized so they would be quicker, cheaper and integrated into the third-party services. The tax authorities should prepare a taxation guide of how the Sharing Economy businesses should be taxed.⁴⁵³ The regulator should create regulation for the new services which protect the population while still supporting innovations. They should also require the providers to share their data so that they could include them into their transportation plan.⁴⁵⁴

There could be cooperation with the Sharing Economy companies and traditional operators. The government and local transport authorities could operate together with the Sharing Economy companies, such as the local car clubs⁴⁵⁵, and join them in their transport network. For example, in London, the car clubs could be joined into the Oyster card public transport ticket system.⁴⁵⁶ Or in Helsinki, the local transport company HSL's travel card could allow you to purchase also these kind of ride services. This thesis argues also that Uber and other ridesourcing companies could be linked to it. They could sell combination deals which include different types of services, similar to the current phone company deals; with a certain price per month one gets x amount of calls, x amount of text messages and x amount of internet. With another price per month, one gets unlimited calls, texts and internet. Maybe something like this could be used with transport as well. Already the HSL card has two options, to upload cash on the card and use it per ride or to purchase a time period during which one can travel as much in a certain area as they wish.⁴⁵⁷

Linked to the public transportation and cities, the Shared-Use Mobility Center has researched where different types of Sharing Economy companies work. The measurements include a minimum level of population, household density, a mix of uses, a percentage of transit commuters and walkability. They found out that ridesourcing companies work best in walkable neighborhoods in high or moderately high densely populated areas in large or middle-sized cities.⁴⁵⁸ According to Uber, the company works best in cities with a large number of potential drivers and riders. Uber's App collects the customer data which tells

⁴⁵³ Woskow 2014, pages 7-9.

⁴⁵⁴ The Shared-Use Mobility Center 2015, pages 19-21.

⁴⁵⁵ Car Club means people sharing an access to a car without owning one themselves.

⁴⁵⁶ Woskow 2014, pages 10-11.

⁴⁵⁷ HSL, matkakortti.

⁴⁵⁸ The Shared-Use Mobility Center 2015, pages 41-43.

which neighborhoods are most likely to have high demand.⁴⁵⁹ This makes it great in big cities, which already have public transport. By combining with the ridesourcing companies, the public transport companies could also increase their volumes. Currently many people will drive their own car because of the conveyance of going from door to door. By combining Uber and the train or subway, Uber could be the “last mile”⁴⁶⁰ transport method which would eliminate the need of walking when taking the public transport stops or transit stations.

6.2 Required Actions Regarding the Employment Status of the Drivers

The question how to define the relationship between the platforms and the suppliers is linked to the definition of the nature of the ridesourcing companies. Defining whether Uber is a digital or a transport company has a major influence on the employment status of the drivers as we have seen regarding the cases from the UK Employment Tribunal and the Helsinki Court of Appeal. As we are still waiting for the European solution from the Court of Justice, the situation is unclear.

According to scholar Das Acevedo, the drivers are in an employment relationship, but it is not easy to determine where on the spectrum from “nothing” to an “employee-employer” relationship the relationship would be placed at. There are multiple reasons to believe the suppliers are like independent contractors, but also multiple reasons to find them as employees.⁴⁶¹ Another claim is that the suppliers do not even consider themselves as traditional employees, and therefore do not have the expectation to be treated as such.⁴⁶² This thesis does not support this statement. Different Member States have different definitions for employees and the difference can, for example, be seen in the differences between the UK and Finnish legislation: The United Kingdom has an employment status of a worker which is lacking from the Finnish legislation. In countries like Finland where the only suitable definitions could be an employee or an independent contractor, it could be too harsh to categorize the suppliers as independent contractors and self-employed. It would not be fair for one Member State to treat the Uber drivers worse than the other. Also, if there is a term like a worker, which has fewer rights compared to the employee, the risk is that more and more employees would be categorized as workers due to some technical arrangements. This could

⁴⁵⁹ Lawler 2012.

⁴⁶⁰ See MacKechnie 2016.

⁴⁶¹ Das Acevedo 2016, page 29.

⁴⁶² Ibid., page 33.

lower the degree of employee protection in general. If, however, the drivers are considered as self-employed contractors, they would need more information and assistance on understanding their situation, insurance needs and taxation. For example, an independent contractor needs to purchase their own retirement insurance in Finland.⁴⁶³

Some scholars also find that the minimum earning and other employment benefits would not suit the platform economy.⁴⁶⁴ First, there is the question of whether the suppliers are indeed employees or not. Second, different sectors of platform industry might require different regulatory rules how to determine minimum wage for example. It would also be too hard to implement the employment benefits as different platforms use different pricing methods. For Uber, the platform decides the pricing, as for Airbnb the supplier does.⁴⁶⁵ One theory is also that the market would fix the issues itself.⁴⁶⁶ Either the platforms would have to implement suitable terms or the suppliers would stop offering their services.

An open question here is, how wide of an effect Uber and other Sharing Economy companies will have on the labour standards.⁴⁶⁷ If they continue to grow, more and more people will be working without the employment benefits and other conditions offered to employees. The regulator should make sure the suppliers of Sharing Economy will be secured. If the EU will create a new legal category for atypical or dependent workers, they should have the same rights as the workers. Otherwise, there might be a risk that those who are currently workers could be recategorized and start gaining a lower level of protection.

If the suppliers would be categorized as independent contractors, there would still be something the platforms could do for them, which might also improve their own imago. The platforms could offer insurance packages to their drivers. Or to be required to offer them. The pricing of the insurance might be either passed on to the passenger or on to the suppliers in the form of lower profit margins. This might still be in the favor of the suppliers struggling to get their own insurance to cover the damages of their business activities.⁴⁶⁸

⁴⁶³ Yritystoiminta, Yrittäjän Eläke.

⁴⁶⁴ Das Acevedo 2016, page 32.

⁴⁶⁵ Ibid., page 33.

⁴⁶⁶ Ibid., page 33.

⁴⁶⁷ Rogers 2015, page 100.

⁴⁶⁸ Das Acevedo 2016, page 31.

For prospects, some scholars have been wondering how long the suppliers will continue providing their services under lousy conditions. One said that if Uber is worried their suppliers might leave to another competing company, they could use a non-compete clause in their driver contracts.⁴⁶⁹ It seems unlikely that this would be necessary provided how many potential suppliers there are. Another possible way for Uber to tackle drivers leaving them, could be the possibility to shift into driverless cars.⁴⁷⁰ This, on the other hand, could change the nature of their business, as Uber still claims to be only an online platform, which has nothing to do with transport services. The new definition of Uber's nature would depend on the fact would Uber also own the self-driving cars, or allow individuals to use their self-driving cars in the Uber app.

Another possible action needed is collective unions. As this thesis has presented before, especially the suppliers are lacking the power of collective bargaining. The platform companies, on the other hand, keep growing bigger and so does their lobbying power. The Sharing Economy companies and suppliers should unite and create associations which would represent them, lobby for them and for example negotiate insurance contracts for them. This association should be voluntary to join in and operate with membership fees.⁴⁷¹

6.3 Conclusions

We are currently waiting for the decisions of the ECJ for the Spanish preliminary ruling request. The difference between a digital service and a transport service is crucial for the future of Uber and its competitors. If the Court finds Uber's operations to also cover the underlying transport service, the Member States would have the competence to continue ruling on the legality of Uber, as road passenger transport is mostly regulated by the national laws of the Member States, unless if the EU gives new legislation regarding the ridesourcing companies. Whereas if ECJ finds Uber to be a digital service provider, it would fall under current EU Directives and it would become difficult for the national regulators to restrict its operations. Many of the current bans based on national transportation laws could become invalid. And as the EU has competence to legislate digital services under the 2006 Service

⁴⁶⁹ Rogers 2015, page 100.

⁴⁷⁰ Ibid., page 100.

⁴⁷¹ Woskow 2014, pages 9-10.

Directive⁴⁷² and the E-Commerce Directive⁴⁷³, the EU would have jurisdiction to regulate Uber and other ridesourcing companies in Europe. On the other hand, neither one of those Directives covers transport services.⁴⁷⁴

This thesis will not speculate whether ridesourcing companies should be considered as digital or transport services. There is various case law and legislation around the Union, and the question is so complex, that it has been sent to the ECJ to be answered in three preliminary ruling request. This thesis only argues, that we need the ECJ decision to solve this issue, and that we need EU legislation on ridesourcing companies. If Uber is considered as a digital service and falls under the scope of the jurisdiction of EU, the EU should set out binding rules or legislation regarding these kinds of services, and forbid the Member States from banning Uber. By acknowledging that Uber is a digital service and that it falls under the scope of E-Commerce and Service Directives, the Member States would have to argue why a derogation to the freedom to provide services should occur in their countries. Qualifying reasons for a derogation could be the protection of public policy, health, security, consumer protection or protection of the environment.⁴⁷⁵ As shown in Case *Viking*, the requirements for a derogation are high, at least concerning the fundamental freedoms.⁴⁷⁶ It is unclear whether protecting the taxi industry could qualify through the protection of the consumers and public security. Currently, the European Commission's Agenda for Sharing Economy only includes non-binding guidelines and it advises to use a ban only as a last resort.⁴⁷⁷ However, if Uber is considered also to be operating as a transport service, the EU should still get involved in harmonizing the legislation, as the current fragmented situation is just perplexing.

Another unclear situation is whether the EU or the national definitions will determine the employment status of the drivers. However, there are strong indications that defining the nature of Uber's operations has a significant influence on the nature of the employment relationship between the company and the drivers. The definition of Uber's nature can impact the evaluation of the employment statuses in two ways: 1) If Uber is a digital service, the drivers would have to be self-employed transport service providers, and if Uber is a transport

⁴⁷² Directive 2006/123/EC.

⁴⁷³ Directive 2000/31/EC.

⁴⁷⁴ Article 2 of Directive 2006/123/EC.

⁴⁷⁵ Article 3(4) of Directive 2000/31/EC and Article 16 of Directive 2006/123/EC

⁴⁷⁶ C-438/05 The International Transport Workers' Federation and The Finnish Seamen's Union.

⁴⁷⁷ COM (2016) 356 final, at 2.1.

service, then the national jurisdictions would determine the worker statuses, which can vary in the Member States. 2) In some situations, the employment status definitions could come from the EU law. The EU definitions would apply if there is specific EU legislation applied or if the situation is concerning the free movement of workers or freedom of establishment.

Currently, the UK and the Finnish Courts have given two opposite solutions on nature of Uber's operations and the employment status of the drivers. In the UK, the Tribunal found Uber to be involved in the transportation services and to be an employer of the drivers,⁴⁷⁸ whereas in Finland Uber is considered as a digital service and the Courts have sentenced the drivers as if they were independent contractors⁴⁷⁹. Only the UK tribunal considered the employment relationship questions whereas for Finland it was implied by the fact that they gave sentences on the drivers for something, which would have categorized them as entrepreneurs. If Uber drivers were considered as employees, the employer company should have had the necessary license. And as the Uber drivers and the taxi driver in the opinion of the Labour Council⁴⁸⁰ have so much in common, the only possible distinguishing feature could be that they do not consider Uber as a transport service provider. Of course, all cases determining between an employee and a self-employed person happen on a case-by-case analysis of the circumstances and the terms as a whole.

Another EU labour law question is that of the atypical and dependent workers. Should they have their own employment status similar to the UK system, which has both employees and workers? If so, the regulators should be careful not to encourage the employers to categorize their workers to the category with fewer rights and benefits. The drivers of ridesourcing companies could fall into this possible worker category if it existed. However, currently under EU law, the only possible terms are workers or self-employed.

This thesis has shown that sometimes two interests collide, which requires thorough consideration on the values of those aspects. In case defining Uber, the colliding interests are the aim to promote digitalization and new innovate businesses, and the protection of employees and their rights. Both interests are important, but unfortunately, we cannot grant Uber the freedom to operate merely on the rules of an information service provider and to

⁴⁷⁸ The UK Employment Tribunal, Case 2202550/2015.

⁴⁷⁹ Helsinki Court of Appeal Judgements R 16/1141 and R 16/1175, given on 21.9.2016.

⁴⁸⁰ Työneuvoston lausunto 1428/08.

give the drivers the status of an employee. So far, some Member States, like Finland, have chosen to promote digitalization, whereas some Member States, like the UK, seem to have valued the employment rights more.

The decisions from the ECJ on the Spanish and French preliminary rulings have not come yet. These decisions could determine the future for Uber and all the other ridesourcing companies, and their drivers. It remains to be seen if the Court agrees with the UK Employment Tribunal and many other national Court decisions, or whether it will make way for a brighter future for the Sharing Economy. Either way, the legal position of the ridesourcing companies as well as the employment statuses of the drivers and other atypical workers requires clearance throughout the Union.