

Policy Overview

Protection of Users in the Platform Economy: A European Perspective

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1. Introduction

This report examines the state of policy and regulations regarding the protection of platform users within the European Union with a focus on the following countries: Belgium, France, and Italy. We provide a brief overview of the institutional context as well as that of the internet infrastructures in the geographic area covered by our study.

1.1 Institutional context

The European Union was formed after World War II to promote peace in the European continent. Over time, the list of Member States extended to 28 countries (including, at the time of writing this report, the United Kingdom). One of the first aims of the EU was to promote integration, in the long run, at cultural, political, and economic levels.

Nonetheless, the relevant institutions of the EU have mainly focused on economic integration as the 'Treaty on European Union' itself points out that "the Union shall establish an internal market" (Article 3 Point 3), also known as the 'Single Market'. The background of this market is made up of four fundamental economic freedoms, each subject to specific exceptions: the free movement of goods, of capital, of services, and, of citizens.

Over time, the digital economy has become one of the top 10 priorities of the EU and economic integration has thus been extended to the digital sphere where a 'Digital Single Market' ensures "the free movement of persons, services and capital (...) and where the individuals and businesses can seamlessly access and engage in online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence"¹.

The policy framework regarding the 'Single Market' is mostly contained in soft law documents referred to as communications, guidelines, and white or green papers published by the European institutions, especially the Commission (the 'executive branch' within the EU).

The hard law of the internal market is constituted by directives and regulations enacted by the European Parliament and Council (the 'legislative branch' within the EU). These instruments can be distinguished by the leeway left to Member States. On one hand, regulations are directly applicable across all Member States and, in principle, the language in the documents leaves no space for national specifications. On the other hand, directives require implementation within the internal legislation of states and, on this occasion, national transpositions can either go beyond (in the case of "minimum harmonization" setting a common minimum standard) or provide for less stringent rules (in the case of "maximum harmonization" defining a common maximum threshold to prevent national protectionism). For the purpose of this report, matters subject to directives are also addressed through the lens of national legislations transposing them.

Amongst the Member States selected for analysis, we ought to stress that Belgium has a peculiar structure rendering policies and regulations fragmented and at first glance, difficult to grasp. The state comprises a federal level as well as federated levels (entities called regions and communities) in addition to local levels (municipalities). Each level has competences with respect to the various aspects of life affected by digitalization; this structure leads to diluted attention and policy responses.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 6 May 2015 "A Digital Single Market Strategy for Europe", COM(2015) 192 final

1.2 Infrastructure

Internet infrastructures are the prerequisite of any digitalization ambition. Although European policies tackle this point, it ought to be foremostly analyzed at a national level through the lens of concrete implementation of European goals. In this respect, our three focus countries present slightly differing scenarios.

In 2016, the Belgian internet infrastructure already covered 99.9 percent of households and in the same year, 86 percent of the population was effectively connected to the internet.² Also, in Belgium, there are no major discrepancies between urban and rural areas. Similarly, 86 percent of the French population had effectively taken advantage of the existing infrastructure to connect to the web in 2016.³ However, contrary to Belgium, an in-depth analysis of the French situation reveals divergences in infrastructure coverage and effective connectivity between urban or rural zones, as well as a discrepancy in connectivity according to population sizes of concerned areas – with urban and densely-populated areas displaying better results in this respect. In turn, the effective connectivity of Italian households to the web in the same year was at 81 percent of the population⁴, and was characterized by an even greater percentage difference between rural and urban areas.

Beyond mere infrastructure, “digital skills” or “digital competences” are to be considered, involving basic skills in ICTs such as “the use of computers to retrieve, access, store, produce, present and exchange information, and to communicate and participate in collaborative networks via the Internet”. These allow the “confident and critical use of information society technology (IST) for work, leisure, learning and communication”⁵. Indeed, it should be noted that the use of the aforementioned infrastructures may not be optimal as, in 2016, only 61 percent of Belgian residents, 58 percent of French residents, and 44 percent of Italian residents had basic or above basic overall digital skills.⁶

Further, differences between the three focus countries are better highlighted by specific indicators. Notably, the Networked Readiness Index (NRI)⁷ of 2016 ranked Belgium 23rd out of 139 countries in its general ranking, scoring above average on all 10 indicators involved in the assessment. France followed at 24th place, scoring below average solely on ‘business and innovation environment’ (yet not in terms of ‘business usage’). Italy, in contrast, landed at 45th position as it failed to meet the average score on most indicators, except in terms of ‘infrastructure and digital content’, ‘skills’ and ‘individual usage’. For comparison, in the Digital Economy and Society Index (DESI), using similar indicators to the NRI yet limiting its expanse to European Member States and already available in its 2017 version⁸, Belgium ranked sixth out of 28 countries in the general ranking and is consequently qualified as a high-performing country. It does indeed significantly exceed the European average for each indicator and even ranks the highest in categories such as the integration of digital technology by businesses. France ranks 16th and is qualified as a medium-performing country since, similarly to in the NRI ranking, it scores close to average on most indicators (above or below) except in terms of government usage (‘e-Government’) for which it outperforms the

2 Eurostat. (2017). Level of internet access – households. Retrieved from <http://ec.europa.eu/eurostat/web/products-datasets/-/tin00134>.

3 Eurostat. (2017) Individuals' level of digital skills. Retrieved from http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_sk_dskl_i&lang=en.

4 Eurostat. (2017). Level of internet access – households.

5 Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning (2006/962/EC). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ac11090>.

6 Eurostat. (2017) Individuals' level of digital skills. Retrieved from http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_sk_dskl_i&lang=en

7 Baller, S., Dutta, S., & Lanvin, B. (2016). The Global Information Technology Report 2016. Innovating in the Digital Economy. Geneva: World Economic Forum. Retrieved from http://www3.weforum.org/docs/GITR2016/GITR_2016_full%20report_final.pdf

8 European Commission. (2017). The Digital Economy and Society Index. Retrieved from <https://ec.europa.eu/digital-single-market/en/desi>; for country reports, see: European Commission. (2017). Countries' performance in digitization. Retrieved from <https://ec.europa.eu/digital-single-market/en/progress-country>.

European average. In turn, Italy ranks 25th out of 28 as no indicator reaches the average, thus doing worse than within the NRI ranking.

2. Charting the digital policy landscape

Considering the above, the European Union as well as Belgium, France, and Italy started to develop (each at their own level) a comprehensive digital policy. Their policies encompass building infrastructure and improving the digital skills of citizens, and further, they aim at ensuring the fitness of regulations in the digital age.

2.1 European Union

The European digital policy is currently mainly expressed in the ‘Digital Single Market Strategy’. Nonetheless, it is interesting to mention the approach adopted prior to the enactment of this comprehensive policy instrument as well as to highlight ancillary policies coexisting therewith.

2.1.1 Prior to the ‘Digital Single Market Strategy’

For a long time, several regulatory instruments had been in place to protect consumers, intellectual property, personal data, and freedom of expression in the EU. These, however, did not target the digital economy as such, but applied to both online and offline situations. Many of these previous instruments are still in effect and newer instruments have even been recently drafted with a similar scope.⁹

At the turn of the millennium, European institutions started to feel the need to foster online commerce and expressly support the development of the online economy through more targeted instruments such as:

- The E-commerce Directive: Adopted in 2000 by the European Parliament and the Council it offers a liability exemption blanket to online intermediaries with respect to specific activities (i.e. “mere conduit”, hosting and caching)¹⁰
- The InfoSoc Directive: It was adopted by the same institutions in 2001 to tackle online intellectual property rights infringements¹¹
- Instruments tackling the privacy issue: The so-called ‘e-privacy Directive’ (or “Cookie Law”), adopted in 2002¹² and updated in 2009¹³, broadened the protection offered by the 1995 data protection directive¹⁴ and created additional duties tailor-made for data processing in the electronic communication sector

⁹ This is the case for example for Directive 2011/83 of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, Official Journal L 304, 22.11.2011, p. 64–88.

¹⁰ 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’), Official Journal L 178, 17/07/2000 p. 1 - 16.

¹¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Official Journal L 167, 22/06/2001 p. 10 – 19.

¹² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), Official Journal L 201, 31/07/2002 p. 37 – 47.

¹³ Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, Official Journal L 337, 18/12/2009, p. 11–36.

¹⁴ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281, 23/11/1995 p. 31 – 50.

In line with this increased attention devoted to digitalization, the Commission published its ‘Digital Agenda for Europe’ in 2010¹⁵, in which it explained ‘the importance of the phenomenon as well as of the adequate policy developments necessary to fully take advantage thereof. Consequently, in 2011, the Directorate General for Internal Policies within the European Parliament published an overview of actions and results ensuing from this agenda.¹⁶

As over time, better foresight and apprehension of digitalization was gained, the aforementioned instruments soon became subjects of new discussions, and additions to the framework began to be contemplated.

A notable update concerns the framework on data protection which, over the last few years, has shown its obsolescence. An in-depth review of Directive 95/46/EC had already started in 2007¹⁷, and in 2016, led to the adoption of a new framework, ‘General Data Protection Regulation’ (GDPR)¹⁸, a directive for the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.¹⁹ The GDPR is applicable as from May 25, 2018 and harmonizes the legal framework for data protection in all 28 Member States as it is directly applicable without any form of national implementation. Consequently, its provisions automatically imply the disapplication of any conflicting national provisions. The GDPR reshapes the system of protection and remedies in light of the challenges of the digital society.²⁰ Yet, it leaves certain leeway to Member States, thus allowing national legislators to introduce further measures.²¹

It must also be noted that the ‘ePrivacy Directive’ is currently under revision. Its goal is to provide more stringent rules on some controversial issues, such as marketing, cookies, IoT devices, spam and behavioural advertising, and, to make the enforcement of data protection rules in the digital environment more effective. A proposal for a new “ePrivacy Regulation” was presented in January 2017²² by the Commission, and the Council of the European Union issued a revised draft of the text in October 2018.²³

Notable additions here include the ‘Guidelines on Freedom of Expression Online and Offline’, published by the Council of the European Union in 2014. Considering the global character of digitalization, and the fact that it transcends European activities, these guidelines create minimum expectations for the EU Member States when dealing with third states.²⁴

15 European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Agenda for Europe, COM/2010/0245 f/2 */

16 “An overview for 37th EEA JPC - Strasbourg, 26-27 October 2011”, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/deea/dv/1011_10_/1011_10_en.pdf

17 European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Safeguarding Privacy in a Connected World: A European Data Protection for the 21st Century, Communication COM (2012) 9 final[1], p.3.

18 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Official Journal L 119, 4.5.2016, p. 1–88.

19 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, Official Journal L 119, 4.5.2016, p. 89–131.

20 It strengthens the rights of data subjects (especially on algorithmic transparency), increases the responsibilities of the actors involved in the processing (introducing the principle of accountability, the duty to perform the data protection impact assessment, more stringent rules on data breach notification and the cross-border flow of information), and provides higher sanctions in case of non-compliance.

21 For example, national regulations can specify the processing of sensitive data, establish conditions for the lawful processing of data, admit the validity of the consent expressed by a 13-year-old data subject, discipline the appointment of the data protection officer, etc.

22 <https://ec.europa.eu/digital-single-market/en/news/proposal-regulation-privacy-and-electronic-communications>

23 Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) - Examination of the Presidency text, ST 13256 2018 INIT.

2.1.2 The 'Digital Single Market Strategy'

Based on pre-existing instruments and new insights, and to bring about some coherence in the policy and regulatory framework being constructed for digitalization, the European Commission adopted the 'Digital Single Market' (DSM) Strategy on May 6, 2015.²⁵ The latter is still in force and contains general objectives encompassing the different areas of life affected by digitalization²⁶, and is accompanied by a list of 16 specific initiatives required thereby.²⁷ Considering the dynamic character of the phenomenon the Commission also performed a mid-term review of the DSM Strategy in 2017, so as to maintain coherence by adjusting or completing objectives and planned initiatives to the extent it appeared necessary. On this occasion, the Commission, for instance, identified two specific actions to be pursued, one regarding the problem of unfair contractual clauses and practices in the B2B sector, and the other regarding the removal of illegal online content and maintaining the balance of fundamental rights.

Instruments already existed to support most of these policy goals yet, on the occasion of adopting the DSM Strategy, the European Commission recommended a review of the existing tools and published an impressive list of amendment proposals.²⁸

Interestingly, no proposal was yet made to amend the original e-commerce Directive, despite criticism of its inability to encompass Web 2.0, i.e. the platform ecosystem.²⁹

In turn, under the DSM Strategy, the Commission has taken several actions in the field of consumer protection (such as abolishing roaming fees and geo-blocking). More recently, the Commission has proposed the enactment of a specific policy named the 'New Deal for Consumers'³⁰. The policy is accompanied by two proposals for directives: one referred to as the 'directive on better enforcement and modernisation of EU consumer protection rules'³¹, and the other as, the 'directive on representative actions for the protection of the collective interests of consumers'.³² Amongst other objectives, the deal thus intends to modernize the 'Consumer Acquis' (i.e. the set of directives constituting the core provisions with respect to consumer protection, both online and offline³³) through the following measures:

24 Council of the European Union. (2014, May 12). EU Human Rights Guidelines on Freedom of Expression Online and Offline. Retrieved from https://eeas.europa.eu/sites/eeas/files/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf

25 European Commission. (2015). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions, "A Digital Single Market Strategy for Europe", COM (2015) 192 final.

26 Objectives thereof include to (a) increase digital literacy and skills, (b) improve access for consumers to e-commerce, (c) increase business presence online, (d) foster cross-border transactions, (e) enhance trust in personal data handling by businesses, (e) prevent geo-blocking, (f) build a data economy, (g) update the copyright framework, (h) reduce the tax burdens in trans-European business dealings, (i) develop new telecommunication rules, (j) handle platform and intermediary regulation, (k) identify compulsory interoperability standards and (l) draft a framework for e-governance.

27 "Roadmap to the Digital Single Market", Appendix to COM (2015) 192.

28 An extensive list is available at ec.europa.eu/digital-single-market/en/laws/75982/73820. See also the exhaustive list of proposal between 2015 and 2017 at European Commission, Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the Digital Single Market Strategy A Connected Digital Single Market for All: Implementation of the Digital Single Market Strategy, COM(2017) 228 final, SWD(2017) 155 final.

29 Wendehorst, C. (2016). Platform Intermediary Services and Duties under the E-Commerce Directive and the Consumer Rights Directive. EUCML, 30-33.

30 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 11 April 2018 "A New Deal for Consumers" (COM(2018) 183 final).

31 Proposal of 11 April 2018 for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council regarding better enforcement and modernisation of EU consumer protection rules, (COM(2018) 185 final).

32 Proposal of 11 April 2018 for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC (COM/2018/0184 final).

33 The Consumer Acquis - understood strictly - does not encompass all European legislation touching upon consumer protection; it constitutes the following key instruments: (1) Directive 2015/2302 of 25 November 2015 on package travel and linked travel arrangements, (2) Directive 93/13/CEE of 5 April 1993 on unfair terms in consumer contracts (as amended by Directive 2011/83/UE mentioned hereafter), (3) Directive 94/47/CE of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, (4) Directive 98/6/CE of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, (5) Directive 2009/22/EC of 23 April 2009 on injunctions for the protection of consumers' interests, (6) Directive 1999/44/CE of 25

- (a) new tools in terms of individual remedies,
- (b) more transparency in online marketplaces (as it is often unclear who the provider is -- the platform or a third-party and whether the latter is a professional trader or not),
- (c) extending the protection of consumers to “free services” (i.e. those paid for -- for instance -- with personal data rather than money), and
- (d) the removal of burdens for businesses (as some protective provisions have become obsolete in light of digitalization).

In addition to the aforementioned comprehensive policy efforts aiming to support the development of the European digital market, the European Commission has started a separate inquiry into the impact of digitalization on employment. The Commission argues that education in digital skills -- and especially for those people whose jobs are directly threatened by digitalization-- is necessary. In addition, for the “welfare” states, this aspect appears necessary to guarantee social cohesion and to ensure inclusiveness over time as the digital divide generates a lot of exclusion (approximately 10 percent of citizens do not have the necessary skills).³⁴

2.2 Belgium

Firstly, when it comes to policies regarding infrastructure, it has already been pointed out that, although the Belgian infrastructure allows full internet coverage, an effective connection to the digital sphere by all citizens is not yet a reality. Two, federal policy schemes to eradicate this first aspect of the “digital fracture” have been implemented over time (first for 2005-2010 and then 2011-2015). These were additionally completed through regional-level initiatives. Current policy objectives for 2015-2020 have further shifted towards providing ultra-speed broadband coverage. Moreover, and as noted previously, only 61 percent of Belgian residents have basic or above basic overall digital skills.³⁵ Yet it was accurately underlined by the Belgian Vice Prime Minister, De Croo, that the real infrastructures are skills³⁶. Consequently, it appears necessary to address this second source of “digital fracture” besides addressing the coverage and quality of internet access itself. In this respect, an initiative called the ‘Digital Belgium Skills Fund’ was notably set up to invest in projects aiming at improving digital skills of children, young people, and socially-vulnerable people through short or medium-term training.

Secondly, when it comes to policies regarding digitalization in broad terms, several comprehensive programmes coexist in this respect. These are the result of the splintering of the Belgian state structure, as described previously. The federal policymaker published the ‘Digital Belgium Action Plan’ in 2015³⁷ while at the federated level of the three regions, respective policy bodies published the ‘Digital Wallonia Action Plan’,³⁸ the ‘Vlaanderen Radicaal Digitaal Action Plan’³⁹ and the ‘Brussels Smart City Action Plan’⁴⁰ (accompanied by a ‘Digital.Brussels’ label for initiatives implementing the said action plan).⁴¹

May 1999 on certain aspects of the sale of consumer goods and associated guarantees, (7) Directive 2005/29/CE of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, and (8) Directive 2011/83/UE of 25 October 2011 on consumer rights.

³⁴ European Commission. (2017). A concept paper on digitisation, employability and inclusiveness. DG Communications Networks, Content & Technology (Connect), European Union: Publication Office of the European Union.

³⁵ Eurostat. (2017) Individuals' level of digital skills. Retrieved from http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_sk_dskl_i&lang=en

³⁶ Belga (2017, May 8). Un fonds d'investissement pour lutter contre la fracture numérique. La libre, Retrieved from <http://www.lalibre.be/economie/digital/un-fonds-d-investissement-pour-lutter-contre-la-fracture-numerique-59105b79cd702b5f8e72de27>.

³⁷ Digital Belgium. (n.d.). Retrieved 30 March 2018, from <http://digitalbelgium.be/en/digital-belgium>.

³⁸ Digital Wallonia.be. (n.d.). Retrieved 30 March 2018, from <https://www.digitalwallonia.be>.

³⁹ Vlaanderen Radicaal Digitaal. (n.d.). Retrieved 30 March 2018, from <https://overheid.vlaanderen.be/informatie-vlaanderen/radicaal-digitaal>

⁴⁰ Smart City Strategie (n.d.). Retrieved 30 March 2018, from <https://cirb.brussels/fr/fichiers/brussels-smart-city-strategie>

⁴¹ Government of the Brussels Capital Region. (2017, 31 January). Digital.Brussels, une nouvelle stratégie numérique unifiée pour la Région bruxelloise [Press release]. Retrieved from <https://cirb.brussels/fr/quoi-de-neuf/publications/communiqués-de-presse/2017/31-01-2017-digital-brussels-une-nouvelle-strategie-numerique-unifiee-pour-la-region-bruxelloise>

Beyond these policies, the Belgian legislator has not, at either federal or federated level, at any point enacted a centralized legislative tool dealing with digitalization across several areas. It is, therefore, necessary to look into the various legislations and find therein mentions of provisions specifically drafted in the light of digitalization of practices.

Notably, with regard to consumer protection, Belgium has over time transposed European directives constituting the 'Consumer Acquis' into various national instruments, subsequently merged by a law dated February 28, 2013 into the so-called 'Code of Economic Law' ('Code de droit économique')⁴². Successive amendments dictated by digitalization of commercial practices are therefore to be found in the said code. On this occasion, beyond transpositions of European provisions, no major national peculiarities are to be highlighted. The same scenario can be observed in relation to data protection.

The law regarding protection of privacy in the processing of personal data dated December 8, 1992 was, for a long time, the fundamental instrument at the Belgian level. It was similarly a transposition of the initial directive dated 1995 and was amended over time to remain coherent with the European framework. Recently, it has been replaced by a law dated July 30, 2018 ("Loi relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel"), which was enacted on September 5, 2018 and brings the national privacy framework in line with GDPR standards. Guidance and monitoring regarding compliance was hitherto the role of the Commission for the Protection of Privacy. However, as of May 2018, this is the task of the newly-created Data Protection Authority,⁴³ a body also designed in compliance with the GDPR.

2.3 France

As previously mentioned, and similarly to Belgium, French infrastructures are already satisfactory with regard to internet connectivity. With an aim to improve them further, in 2015, the French Digital Agency launched the 'Very High-Speed Broadband Plan', which means to provide high-speed internet to 100 percent of the territory.⁴⁴ The same agency also handles the 'Digital Society Programme', whose objective is to empower citizens to seize opportunities brought forth by the digital revolution (as only 58 percent of them have basic or above basic overall digital skills⁴⁵) and to support the digital transition of the local authorities.⁴⁶

Beyond infrastructures, until 2011, national policies regarding digitalization of practices did not provide satisfactory solutions. Such was, for instance, the case of the copyright policy framework, which resulted in the adoption of a law penalizing peer-to-peer file sharing violating copyrights.⁴⁷ For other domains, and unlike in Belgium, in 2004 the French legislator opted for a centralized legislative tool, ("Loi pour la confiance dans l'économie numérique"⁴⁸) which addresses various issues ranging from infrastructure to e-commerce⁴⁹ and modifies provisions of several existing laws. Notably, it modified the 'Law on Freedom of Communications' ("Loi relative à la liberté de communication" or "Loi Léotard")⁵⁰. Similar to Belgium.

42 Code de droit économique, 28 February 2013, (M.B. 29-03-2013). Retrieved from http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2013022819.

43 Loi portant création de l'Autorité de protection des données, 3 December 2017, (M.B. 10-01-2017). Retrieved from http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2017120311.

44 Agence du Numérique. (2017). The French Very High-Speed Broadband Plan. Retrieved 30 March 2018 from <https://agencedunumerique.gouv.fr/en/the-french-high-speed-broadband-plan/>

45 Eurostat. (2017) Individuals' level of digital skills. Retrieved from http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_sk_dskl_i&lang=en

46 <https://agencedunumerique.gouv.fr/en/program-digital-society/>

47 Law no. 2009-669 fostering the diffusion and protection of creations on the internet, the so-called "Hadopi law" of 12 June 2009.

48 Law no 2004-575 aiming at creating trust in the digital economy of 21 June 2004.

49 Transposing 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, and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

50 Law no 86-1067 of 30 September 1986.

However, most provisions thereof are transpositions of European directives and thus reflect European policy as formulated preceding the DSM Strategy.

In November 2011, the French Ministry of Economic Affairs released a report setting a comprehensive national agenda to reinvigorate the digitalization of the country.⁵¹ This agenda thus preceded the European comprehensive policy, which was formulated only in 2016. As a consequence thereof, updating legislation to better take into account the digital economy became a specific topic of attention under President François Hollande (2012-2017). This yet again resulted in the adoption of a centralized legislative tool in 2017, namely the ‘Law for a Digital Republic’⁵², a mishmash of diverse legislative updates whose sole common denominator was shifting France towards the digital era. Notably, regarding consumer protection, the aforementioned law inserted article L111-7 in the ‘French Code of Consumer Protection’. The latter deserves attention, notably in light of the collaborative economy issue, as it expressly applies to intermediation platforms and specifies information duties they have in relation to their own intermediation services as well as to the services provided thanks to their intervention. The above-mentioned article requires the platform to specify the professional or non-professional quality of the individual providers listing their offers on the platform (point II.3°). Interestingly, such an information requirement is precisely what is now considered at the European level under the ‘New Consumer Deal’. Compliance with provisions regarding gt protection, including this one, is monitored by the General Directorate for Competition, Consumption and Repression of Fraud.⁵³

Otherwise, most provisions, in the aforementioned instrument as well as in other laws regarding digitalization, remain mere transpositions of policies and legislations as defined at ‘[the European level. With respect to privacy, for instance, the French authorities followed up on the enactment of the GDPR and the accompanying directive by updating the existing legislative framework on data protection. The law tackling this topic so far⁵⁴ was accordingly replaced by a new instrument to address the protection of personal data on June 20, 2018⁵⁵. Under this new development, professionals can now contact the ‘National Commission of Informatics and Freedoms’ (CNIL) should they need guidance on how to comply with existing provisions (especially as these were recently modified) and the CNIL can in turn monitor their practice and sanction events of non-compliance.⁵⁶

Considering this top-down approach, in 2017 France also unveiled its international digital strategy clarifying the French vision for the future of digital policy at the European level.⁵⁷

2.4 Italy

The Italian digital policy has been driven by the development of actions undertaken at the European level (see above), notably the European Digital Agenda, based on which Italy developed its own Italian Digital Agenda for the development of technologies, innovation and digital economy.⁵⁸ Within the framework of the Italian Digital Agenda, Italy has launched its strategy for digital growth in 2014-2020⁵⁹ (aiming at fostering digitalization as a way to encourage economic and also social changes by promoting a structured

51 French Prime Minister. (2012). « France numérique 2012-2020. Bilan et perspectives ». Retrieved from https://www.entreprises.gouv.fr/files/files/directions_services/secteurs-professionnels/etudes/

52 Law no. 2016-1321 of 7 October 2016.

53 Direction générale de la concurrence, de la consommation et de la répression des fraudes. (n.d.). Sanctions. Retrieved 30 March 2018, from <https://www.economie.gouv.fr/dgccrf/sanctions-protection-economique-des-consommateurs>

54 Law on Information technologies, Data files and Civil liberties, n° 78-17 of 6 January 1978

55 Law regarding the protection of personal data (“Loi relative à la protection des données personnelles”) n° 2018-493, of 20 June 2018

56 <https://www.cnil.fr/fr/les-missions>

57 French Government, (2017). Stratégie internationale de la France pour le numérique. Retrieved 30 March 2018 from

https://www.diplomatie.gouv.fr/IMG/pdf/strategie_numerique_a4_02_interactif_cle445a6a.pdf

58 Agenzia per l’Italia Digitale. (2016). Agenda Digitale Italiana. Retrieved from <http://www.agid.gov.it/agenda-digitale/agenda-digitale-italiana>

59 Strategia per la crescita digitale 2014-2020, Retrieved from https://www.agid.gov.it/sites/default/files/repository_files/documentazione/strategia_crescita_digitale_ver_def_21062016.pdf

set of actions)⁶⁰ and for high-speed broadband.⁶¹ The strategy means to improve this by guaranteeing the broadest access possible to the internet. Concretely, this implies building infrastructures that are able to provide 85 percent of the population with a minimum of 100 Mbps connectivity and 100 percent with at least 30 Mbps, thus ensuring full connectivity of the national territory, although at variable speed. The plan further promotes measures for administrative simplification, the reduction of installation costs, and fiscal incentives.

Legislation resulting from these policy developments, as with provisions enacted in Belgium and France, exemplifies that digitalization is an aspect largely tackled through the European lens without further major national initiatives. Italy has indeed transposed the relevant provisions of Directive 2000/31/EC on e-commerce with legislative decree 70/2003, while, with reference to consumer protection, in the 'Italian Consumer Code' ("Codice del Consumo"), as amended over time, the national legislator has implemented principles set out in the Unfair Terms Directive (Directive 93/13/EEC), Unfair Commercial Practices (Directive 2005/29/CE), the Consumer Rights Directive (Directive 2011/83/EC), and the Directive on Alternative Dispute Resolution (Directive 2013/11/UE).

The same applies to privacy and data protection, subject to legislative decree 101/2018, an instrument revisiting previously existing provisions in light of the GDPR⁶².

Nonetheless, specifically regarding online expression, the Chamber of Deputies of the Parliament set up a committee, also known as the 'Jo Cox Committee', named after the English politician murdered during the Brexit campaign, to tackle issues of intolerance, xenophobia, racism, and hate speech. Adding to European policies concerning this specific issue, the Committee has so far formulated 56 recommendations to prevent the spread of hate speech.⁶³

3. Mapping platformization in policy and praxis

As outlined in the previous section, while addressing digitalization, policy makers have paid attention to the innovative potential and opportunities embedded in the phenomenon. However, they have also considered the disruptive impact digitalization has had on traditional markets and existing practices, as well as on the ensuing emergence of possible new threats, such as, new kinds of information asymmetries, forms of discrimination, and imbalances of power.

As European citizens embrace digitalization, they have increasingly become active users of the platform economy. While, a number of online platforms have been established in Europe (Spotify, Blablacar, etc.)⁶⁴ the "old continent" is not a leading actor in platformization. A study from 2016 reveals that only 15 percent of worldwide major platforms have been created in Europe (precisely, in 10 Member States), representing a total of 4 percent of the market value.⁶⁵

60 Actions include a) a public system of broad-band access, b) enhancing the cybersecurity of public administration, c) the rationalization of ICT available infrastructures and applications, the enhancement of data centre and the use of cloud computing, d) the development of a national system of electronic identification (SPID), e) the creation of a central population registry, f) the creation of an electronic system payments ("Pago PA") that will allow citizens and entrepreneurs to make online payments for public administration services, g) the launching of a strategy to promote open data on public sector information, h) a series of interventions to continue the development of e-health, i) the promotion of the digitalization of the educational sector, and l) support for the digitalization of justice.

61 Presidenza del Consiglio dei Ministri. (2015). Strategia Italiana per la Banda Ultralarga. Retrieved from https://d110erj175o600.cloudfront.net/upload/images/03_2015/150304103218.pdf

62 Decreto legislativo, 10 agosto 2018, n. 101, recante "Disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2016/679 del Parlamento europeo e del Consiglio, del 27 aprile 2016, relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati e che abroga la direttiva 95/46/CE (regolamento generale sulla protezione dei dati)" (in G.U. 4 settembre 2018 n.205)

63 Alpa, G. (2018). Autonomia privata, diritti fondamentali e "linguaggio dell'odio". *Contratto e Impr.*, pp. 45-80.

64 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Online Platforms and the Digital Single Market - Opportunities and Challenges for Europe", COM/2016/0288.

65 Ibidem.

Platforms are a critical feature of digitalization due to their major role in shaping the digital economy at a broad level and, in this sense, they contribute to the identified threats and specific policy and regulatory challenges related thereto. Consequently, policies and ensuing regulations ought to take platforms into account.

3.1 European Union

Over the past three years, online platforms have become a focal point in the European policymakers' and legislators' agendas, aiming at unleashing their potential while, at the same time, addressing the emerging shortcomings and risks for European citizens. Both have, however, avoided the temptation of a "one-size-fits-all" approach aimed at online platforms, preferring to address arising challenges through a "problem-driven" approach instead. Even if there is thus no specific European regulation for online platforms, the platforms are not left in a legislative vacuum but fall within the scope of several instruments aimed at specific problems triggered by digitalization.

In the Digital Single Market (DSM) Strategy, the importance of setting a regulatory environment for platforms and intermediaries is expressly outlined as a necessary step towards the elimination of barriers impeding the flourishing of digital networks and innovative services. In the strategy, the European Commission sets out plans to investigate how platformization impacts the adequacy and efficiency of the existing framework. It consequently announces the launch of a comprehensive assessment of the following issues:

- “(i) transparency (e.g. in search results)
- (ii) platforms' usage of the information they collect,
- (iii) relations between platforms and suppliers,
- (iv) constraints on the ability of individuals and businesses to move from one platform to another and,
- (v) how best to tackle illegal content on the Internet”.⁶⁶

In light of this launch, from September 24, 2015 to January 6, 2016, a first public consultation was held concerning the regulatory environment for platforms, online intermediaries, data and cloud computing, and the collaborative economy.⁶⁷ It covered most of the afore-listed topics (transparency regarding terms of use, ratings and reviews, the relationship between platforms and their suppliers, and the ways to tackle illegal content on the internet) as well as the social and economic role of online platforms in general.⁶⁸ The results showed a general understanding of the platforms' benefits but they also stressed concerns about the lack of both transparency⁶⁹ and information about data processing in the platforms' terms of service.⁷⁰ With regard to the liability of the intermediary, respondents were divided into those supporting the existing regime under the e-commerce directive and those arguing for clarification of its implementation or for an

66 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “A Digital Single Market Strategy for Europe”, COM/2015/0192 final, p. 12; documents resulting from this task can be found at <https://ec.europa.eu/digital-single-market/en/news/comprehensive-assessment-online-platforms>

67 European Commission. (2015). Public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy. Retrieved 30 March 2018 from <https://ec.europa.eu/digital-single-market/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud>

68 Results thereof are to be found in the “Synopsis Report on the public consultation on the regulatory environment for platforms, online intermediaries and the collaborative economy” (2016), available at <https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-regulatory-environment-platforms-online-intermediaries>; these general insights were further processed on the occasion of a qualitative study regarding the regulatory environment for platforms, a study performed for the European Commission by Prof. Annabelle Gawer, “Online Platforms: Contrasting perceptions of European stakeholders - A qualitative analysis of the European Commission’s Public Consultation on the Regulatory Environment for Platforms” (2016), available at <https://ec.europa.eu/digital-single-market/en/news/study-online-platforms-contrasting-perceptions-european-stakeholders-qualitative-analysis>.

69 Notably, with reference to search results, the identity of the service provider, review mechanisms.

70 European Commission. (2016). Synopsis report on the public consultation on the regulatory environment for platforms, online intermediaries and the collaborative economy. Retrieved from http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=15877.

amendment that would take into consideration new forms of intermediaries.⁷¹ Regarding online illegal content, it appeared that two-thirds of respondents were in favor of a granular approach regarding notice-and-action procedures depending on the category of illegal content. Finally, with regard to the collaborative economy, the consultation showed that respondents believed that the uncertain legal framework applicable to this phenomenon was one of the major barriers to the development thereof.⁷²

Policy guidelines formulated out of these initial insights were published in a communication on May 25, 2016 as “Online platforms and the Digital Single Market - Opportunities and Challenges for Europe”⁷³. Therein the Commission stated the importance of providing a homogeneous legal framework for online platforms within the EU, clarifying that this new economic movement has to be compliant with the pre-existing rules on consumer protection, data protection, competition and ‘Single Market’ freedoms. Moreover, in order to promote the trust between economic operators and citizens, it was pointed out that ensuring effective enforcement of such rules is crucial. The Commission has confirmed its cautious approach to the platform economy in general -- instead of promoting a kind of ‘Platform Economy Act’ it has encouraged a ‘problem-driven approach’. The EU institution has indeed recognised the heterogeneity of platforms and the diversity of problems they pose. Therefore, regulatory intervention is deemed necessary only in specific sectors where the applicable legal framework might be inadequate.

In addition, the Commission formulated four general guiding principles to support the elaboration of policy measures with reference to platforms:

- (a) a level playing field for comparable digital services,
- (b) responsible behaviour by online platforms to protect core values,
- (c) transparency and fairness to maintain user trust and safeguard innovation, and
- (d) open and non-discriminatory markets in a data-driven economy.

Finally, the communication elaborated more specifically on insights gained regarding consumer protection.

The Commission has indeed:

- a) presented a legislative proposal revising the ‘Regulation on Consumer Protection Cooperation’ in order to promote more efficient enforcement of consumer rights in Europe,
- b) reviewed the guidance on the ‘Unfair Commercial Practices Directive’,
- c) verified the need to provide new specific consumer protection rules in the context of the platform economy platforms as part of the regulatory fitness check of EU consumer and marketing law in 2017,
- d) encouraged interoperability actions, especially in the field of electronic identification systems, and
- e) promoted dialogue among stakeholders to address the issue of discriminatory practices in the online environment (fake or misleading reviews and ratings).

Subsequently, particular issues were investigated in depth.

Held between December 7, 2016 and January 31, 2017, a second public consultation focused exclusively on contractual relationships between online platforms and their professional users. Based on its results⁷⁴, the Commission drafted the proposal of April 26, 2018 for regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services.⁷⁵ The proposal covers fundamental topics affecting traders in daily operations that are performed through

71 Ibidem

72 Ibidem

73 Communication of 25 May 2016 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Online platforms and the Digital Single Market - Opportunities and challenges for Europe”, COM(2016) 288 final; accompanied by Commission Staff Working Document “Online Platforms”, SWD(2016) 172.

74 “Contractual relationships between online platforms and their professional users” (2018), Final Report by EY for the European Commission, available online at <https://ec.europa.eu/digital-single-market/en/news/study-contractual-relations-between-online-platforms-and-their-professional-users>.

75 Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services, 26 April 2018, COM(2018) 238 final.

platforms such as suspension and termination of account, ranking procedures, restrictions on offers outside the platform, and the handling of complaints.

Further, concerning the fight against illegal content online, the Commission issued a specific communication in September 2017⁷⁶ and a recommendation in March 2018.⁷⁷ These highlight that “due account should be taken of the particularities of tackling different types of illegal content online and the specific responses that might be required”. They further emphasise the active role platforms should play to help detect and remove illegal online content. In this respect, specific consideration is given to content displaying terrorist activity. For the rest, these policy instruments provide general guidance with respect to proactive measures platforms may want to take and problems related to notices regarding content to be removed.

In addition, beyond the first consultation, which tackled the issue of collaborative economy platforms, the Commission elaborated on the topic in its communication dated June 2016 and titled, ‘A European agenda for the collaborative economy’.⁷⁸ On this occasion, it intended to provide more clarity to the legal framework applicable specifically to collaborative economy initiatives by publishing non-binding guidance for operators, public authorities, and citizens.

In particular, the communication focuses on the following aspects: (a) market access requirements, (b) liability regimes, (c) the protection of users, (d) the self-employed and workers in the collaborative economy, and (e) taxation. It is interesting to note that the communication provides a quite extensive definition of the phenomenon, classifying the collaborative economy as: “business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals”⁷⁹.

This policy document was further completed by the European Parliament resolution on June 15, 2017 on a European Agenda for the collaborative economy.⁸⁰ The latter includes an additional section devoted to the impact on labour market and workers’ rights, which although falling outside the scope of the DSM Strategy objectives, is an important aspect. According to the EU Parliament, the Commission should examine to what extent existing Union rules are applicable to the digital labour market and should ensure their adequate implementation and enforcement. Meanwhile, the Member States, in collaboration with social partners and other relevant stakeholders, should assess in a proactive and anticipative way the need to update legislation (including social security systems) so as to stay abreast of technological developments while ensuring workers’ protection. In particular, workers’ rights in the collaborative services – including the right to organise, collectively bargain and act, in line with national law and practice – must be safeguarded and all workers in the collaborative economy, either employed or self-employed, must be classified accordingly based on the primacy of facts. The Member States and the Commission, in their respective areas of competence, should ensure fair working conditions and adequate legal and social protection for all workers in the collaborative economy, regardless of their status.⁸¹

76 Communication of 28 September 2017 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “Tackling Illegal Content Online - Towards an enhanced responsibility of online platforms”, COM(2017) 555 final.

77 Commission Recommendation of 1 March 2018 on measures to effectively tackle illegal content online, C(2018) 1177 final.

78 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.

79 The full definition further specifies the following: “The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time and/or skills —these can be private individuals offering services on an occasional basis (‘peers’) or service providers acting in their professional capacity (‘professional services providers’); (ii) users of these; and (iii) intermediaries that connect —via an online platform — providers with users and that facilitate transactions between them (‘collaborative platforms’). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit”.

80 European Parliament resolution of 15 June 2017 on online platforms and the digital single market (2016/2276(INI)).

81 European Parliament resolution of 15 June 2017 on a European Agenda for the collaborative economy, 2017/2003(INI).

Finally, the opportunities embedded in the pivotal role played by platforms in the field of taxation were taken into consideration. Taxation is harmonized at the European level, exclusively on the question of customs and VAT. In this respect, the Commission pushed for VAT collection by platforms importing goods from non-EU states, whereas the companies were then evading tax collection.⁸²

All in all, as these moves suggest, the European Union is currently evaluating the most preferable approach (among regulation, co-regulation, self-regulation) to untangle the legal and social challenges posed by platforms. The chosen “problem-driven” (rather than “one-size-fits-all”) approach can be supported in so far as the sectors, actors, and business models are so diverse that regulating them under the same regime would likely produce distortive effects and substantial inequalities. In this instance, the decision of the Commission to not update the liability regime of intermediaries set out in the e-commerce Directive is highly controversial, as demonstrated by the recent Uber case in Spain.⁸³ In the transportation sector, some platforms do indeed exercise invasive control over service providers, thus raising several questions about their classification as “mere intermediaries”.

In this respect, and among the independent studies conducted at the European level, it is worth mentioning the project on ‘Model Rules for Online Platforms’⁸⁴, launched by the European Law Institute. This scientific proposal aims to provide a clearer legal framework for the activity of platforms, particularly by allocating obligations and responsibilities to different actors. The proposal is expected to be presented in the winter of 2019 and is intended to be a frame of reference for European policy makers.

3.2 Belgium

3.2.1 The platform policy landscape in Belgium

There is no clear definition of a platform in Belgian law or of a policy regarding digitalization. What can be found, however, is the concept of a “plateforme agréée” in tax law, i.e. a platform having received a licence from the government (cf. *infra*). The concept exclusively encompasses digital platforms and further relies on a set of conditions to be met in order to receive such a licence. These conditions, however, focus on the corporate structure of the entity operating the platform as well as on administrative requirements, rather than on the scope of activities as is, for instance, the case in France.

The Belgian platform ecosystem is widely influenced by two factors. On the one hand, the regulatory environment is constrained by the European initiatives and by the federal structure of the Belgian state. On the other hand, platforms active in Belgium are either small-scale platforms working locally or super-large foreign platforms for whom Belgium constitutes a rather small market.

3.2.2 Ownership structure

Belgian entities operating a platform have a choice between incorporating as a for-profit (a company, including the specific form of cooperatives where members are directly involved in the structure), a non-profit (association) entity in accordance with the ‘Belgian Companies Code’, or remaining an informal entity without a legal personality.

82 See <http://www.consilium.europa.eu/en/meetings/ecofin/2017/12/05>.

83 Judgment of the Court (Grand Chamber) of 20 December 2017, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*, ECLI:EU:C:2017:981. For a preliminary comment, see Ducato, R., Marique, E. (2018, February 28). ECJ, Case C-434/15, *Asociación Profesional Elite Taxi*: preliminary notes. Retrieved 30 March 2018 from <http://www.rosels.eu/ecj-case-c-434-15-asociacion-profesional-elite-taxi-preliminary-notes/>.

84 European Law Institute. (2016). Draft Model Rules on Online Intermediary Platforms. Retrieved 30 March 2018, from <https://www.europeanlawinstitute.eu/projects-publications/current-projects-feasibility-studies-and-other-activities/current-projects/platforms/>

Foreign entities having a legal personality in their country of origin whose services are open to Belgian users, similarly, have a choice between incorporating a subsidiary with its own legal personality (as, for instance, Uber and Deliveroo did) or establishing a branch without a distinct legal personality. It should, however, be noted that the business model of many foreign platforms renders the creation of any formal presence in Belgium useless. Such is usually the case for platforms without any offline local activities related to the intermediation service. Mere registration at the Crossroads Bank for Enterprises suffices and is required for identification purposes. BlaBlaCar has, for instance, opted for this scenario⁸⁵.

3.2.3 Labor/workers' protection

People working through digital platforms are deemed to be self-employed from the platforms' point of view. As a rule, self-employed persons do not benefit from the protective provisions of labour law. They are also subject to the social security requirements for self-employed persons as derived from the Royal Decree No 38 of 27 July 1967 "organising the social status of self-employed persons", and its implementing decrees. The current government also suggests that it considers these workers to be self-employed, although it provides for a derogatory regime. The 'Programme Act of 1 July 2016' has indeed introduced in this Royal Decree a new article, '5ter', applicable to people engaging in an activity which generates income within the collaborative economy. Provided that certain conditions are fulfilled, and this income does not exceed the amount of 5,100 euros (approx. \$6300, and for 2017, to be adapted each year according to the consumer price index), they are not subject to the social security scheme for the self-employed. This means, no social security contributions are due on this income and they are not required to register their activity as a principal or secondary self-employed activity.

Despite this, the social status of people working through digital platforms remains unclear. Indeed, a so-called self-employed relationship can always be reclassified into an employment contract when, in fact, the way in which the work is performed shows the existence of a legal subordination. In Belgium, the 'Programme Act of 27 December 2006' provides a legal framework for ascertaining the nature of the employment relationship. The general criteria are the will of the parties, the freedom or the lack thereof to organize working time, the freedom or the lack thereof to organize the work to be performed, and the possibility of exercising hierarchical control or the lack thereof. However, there is, for now, no national case law regarding the classification of digital platform workers.

Considered as self-employed, people working through digital platforms find themselves in a problematic situation. However, some initiatives have been carried out to denounce this situation and extend them protection. For instance, Deliveroo workers have carried out collective actions in Belgium. Trade unions have also been mobilized so that these workers can benefit from rights usually recognized as belonging to employed workers. An original initiative was also proposed by the cooperative SMart. SMart entered into work-to-task employment contracts with Deliveroo workers, offering them partial social security coverage like that offered to employed workers and partial labour law protection. This required concluding a service agreement with the Deliveroo platform. The initiative was aborted after several months because of Deliveroo's decision to end its collaboration with Smart.

3.2.4 Taxation

The Belgian federal government passed an act in July 2018 addressing the taxation of "collaborative economy" platforms and aiming at fostering participation in pro-social collaborative platforms. As a consequence of this act, revenues generated by interactions between non-professional peer users can benefit from tax exemption for up to 6000 euros (approx. \$7400) if it involves a platform having received a

⁸⁵ <https://kbopub.economie.fgov.be/kbopub/toonondernemings.html?ondernemingsnummer=644636363>

government licence. Information regarding revenues is, to this end, automatically transmitted by the platform to the tax authorities, allowing clear identification of revenues exceeding the said threshold.

3.2.5 Sector-specific regulation: non-collective transport of individuals

Transport of individuals being organized by private entities (non-collective transport) rather than by public authorities (collective transport) is subject to specific regulations. Besides basic traffic regulations applicable to any vehicle transporting individuals (containing specification regarding safety belts, the number of passengers and the available space as well as the transportation of children and disabled people), additional provisions apply depending on the frequency (occasional or not) and the scale of the transport (passenger capacity of the vehicle).

Regarding the scale, a European regulation exists for buses and coaches operating at distances exceeding 250 km.⁸⁶ The said regulation applies -- with the exception of a few articles⁸⁷ -- to both occasional and regular carriers, the latter being defined as “a natural or legal person, other than a tour operator, travel agent or ticket vendor, offering transport by regular or occasional services to the general public” (article 3 point (e)). Such a definition can in theory encompass the private owner of a bus for sporting purposes deciding to share its utilization with another sporting club. The latter would, in such a case, be subject to requirements such as organizing training regarding disability-related procedures and, even more strikingly, conforming with the cancellation policy outlined in the regulation. This in turn may appear disproportionate considering that the transport may have been initially organized as a friendly gesture, although remunerated.

Regarding remunerated transportation on a smaller scale, this matter is regulated at the federated level of regions.⁸⁸ It constitutes services that are most frequently intermediated by platforms, especially collaborative economy platforms, and which fall under the broad category of “rental services of vehicles with drivers”. The latter are defined as “remunerated services involving transportation of individuals by car and not being taxi services”. The regular or occasional nature of the service is not specified. Most drivers, thus, automatically fall under this definition unless they drive people for free, not even asking for a lump sum contribution to their fuel consumption.⁸⁹ Consequently, in theory these may not operate on the territory of the region without prior authorization. This is subject to a set of conditions amongst which is, for instance, is listed high-class standard of the vehicle.⁹⁰ Such a requirement illustrates the inadequacy of the framework regarding pro-social sharing activities promoted by some platforms. It indeed prevents regular car owners from occasionally sharing rides without violating the law by notably dissimulating that some kind of remuneration was collected and thus a licence should have been requested.

3.2.6 Sector specific regulation: home-sharing

The regulation of the home-sharing sector in Belgium is segmented based on the following categories:

(i) Rental of immovable properties in general

⁸⁶ Regulation (EU) 2011/181 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, Official Journal L 55, 28.2.2011, pp. 1-12.

⁸⁷ “With the exception of Articles 9 to 16, Article 17(3), and Chapters IV, V and VI, this Regulation shall apply to passengers travelling with occasional services where the initial boarding point or the final alighting point of the passenger is situated in the territory of a Member State” (article 2 point 3 of the Regulation).

⁸⁸ For the Brussels Region, for instance, the regional ordinance of 27 April 1995 regarding taxi services and rental services of cars with drivers and its implementation decree of 29 March 2007.

⁸⁹ As solely strict compensation of expenses is not considered as remuneration. Lump sums may potentially exceed the actual expenses and are thus considered as remuneration.

⁹⁰ Article 17 and 19 of the aforementioned ordinance.

These fall under the suppletive regime set out in the Belgian Civil Code or the mandatory regime of the Belgian Civil Code should the property be used as the principal residence of the tenant. Under the latter, regime differentiations are further made according to the duration of the rental (short term rental, i.e. below three years, standard, i.e. nine years, or long term, i.e. more than nine years). Once the rental duration has been agreed upon, rentals cannot end anticipatively unless such an option has been expressly foreseen or both parties have subsequently agreed thereon. The same applies to short term rentals being used as principal residences. For the remaining details, one should refer to provisions at the federated level of regions.

For home-sharing activities, such a framework may appear too stringent. This is especially since sub-renting (as a solution to a lease we no longer need for ourselves) can always be prohibited by landlords or be subject to prior approval.

(ii) Rental of tourist accommodation

A better-suited alternative is therefore a specific form of tourist accommodation rentals, which are in turn divided into subcategories. First are guest houses, involving the necessary presence of the owner personally hosting and servicing guests. Second are furnished holiday properties, left to the exclusive use of the guest and deprived of facilities allowing guests to cook for themselves. Third is a tourist accommodation, which differs from the previous category in that it includes facilities allowing guests to cook. Further categories are, for instance, hotels and aparthotels distinct from the above, as additional services are necessarily included in the offer. The regulation applicable thereto specifies all the requirements for tourist accommodation in general and per category.⁹¹ Airbnb hosts usually fall under the scope of one of these categories and therefore ought to comply with more or less stringent requirements depending on their offer (as the number of rooms, services, etc. influences the categorization). Municipalities perform compliance controls. As a consequence, some hosts have been fined and have argued that the requirements applicable to them were unclear and excessive.⁹² Nonetheless, all of the requirements were in principle drafted so as to be adapted to the peculiarities of each subcategory and to avoid creating undue burdens. They thus may appear excessive only for hosts exceptionally (understood as less than occasionally) renting out their full accommodation during their absence, and yet being classified as ‘touristic accommodation.’ Especially, such hosts are also subject to a specific regional tax specified by an ordinance dated December 23, 2016. This amounts to 0.0892 euros per rented unit, to be multiplied by the number of nights effectively occupied by tourists (article 3), which may not be much, but nonetheless generates additional administrative formalities.

Finally, it ought to be stressed that accommodation may not be considered rented for touristic purposes if the rental duration exceeds 90 days.⁹³

3.3 France

3.3.1 Platform policy landscape in France

Article L. 111-7 of the Code of Consumer Law (included the Law for a Digital Republic) provides a definition of a “platform operator” as follows: “ any physical or legal person offering professionally and against remuneration or for free, a service allowing online communication to the public based upon: 1° Ranking and referencing by means of algorithms, of content, goods or services offered online by third parties; 2° Intermediation of several parties aiming at the conclusion of a sale of goods, provision of services or

91 For the Brussels Region, for instance, the regional ordinance of 8 May 2014 and its implementation decree of 24 March 2016, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2016032416&table_name=wet

92 Biourge, C. (2017, July 26). Airbnb: les nouvelles règles à Bruxelles découragent-elles les propriétaires?. Rtbef.be. Retrieved from https://www.rtbef.be/info/regions/detail_airbnb-les-nouvelles-regles-a-bruxelles-decouragent-elles-les-proprietaires?id=9669296

93 See ordinance referred to under footnote 90, article 3 point 1°.

exchange or sharing of content, goods or services". This wording is broad enough to include platforms operating for free, some of which are widely used throughout Europe, such as, for instance, Couchsurfing. Also, the French legislator prefers referring to operators rather than merely platforms, consequently highlighting that it is indeed the business entity operating the online platform that is subject to obligations as any market actor would be, and not solely because a digital platform is involved.

3.3.2 Ownership structure

The French platform ecosystem is -- like the Belgian one -- composed of small-scale national platforms and big American or foreign platforms. Therefore, the remarks formulated above with respect to Belgium also apply to France.

3.3.3 Labor/workers' protection

Similarly to Belgium, in France, people working through digital platforms are deemed to be self-employed from the platforms' point of view. Consequently, they are subject to the social security rights and obligations of self-employed persons as stated in the 'Social Security Code' (art. L131-6 ff.; L611-1 ff.) and do not benefit from protective provisions of the labor law.

Among the different categories of self-employed persons in France, the status of "micro-entrepreneur" in articles L133-6-8 ff provides for adjusted tax and social obligations. Public authorities and platforms thus encourage people working through digital platforms to endorse this micro-social scheme.

With the aim of providing specific protection to all digital economy workers, even if they refrain from officially endorsing a self-employed status, the 'Act of 8 August 2016 on work, modernisation of social dialogue and securing of career paths' has introduced articles L7342-1 ff and sub. in the 'Labour Code'. These articles impose a so-called "social responsibility" upon collaborative platforms, which includes responsibility with respect to insurance for work accidents, continued professional training, and workers' collective rights (notably, the right to constitute a trade union, to be a member of a union and to have a union that represents their interests and to take collective action).

Despite this clarification, and similar to Belgium, the social status of people working through digital platforms remains unclear. Indeed, a so-called self-employed relationship can always be reclassified into an employment contract when in fact the way in which the work is performed shows the existence of subordination. In France, subordination has not received any definition in the legislation. The judges ascertain the existence of subordination by analysing the employment relationship in context.⁹⁴ Very little case law is available regarding the status of digital platform workers. In most decisions, the Courts of Prud'hommes reject workers' requests for reclassification as employed workers (for instance, on Take Eat Easy, Deliveroo, Uber). Only one decision of the Court of Appeal of Paris granted such a status to a worker on December 13, 2017, the worker being, in this precise case, a so called "VTC" worker (see infra) providing transportation services.

Considered as self-employed (or 'micro-entrepreneurs') people working through digital platforms find themselves in a problematic situation and initiatives are multiplying to counterbalance this. Like in Belgium, Deliveroo workers have carried out collective actions and mobilized trade unions so that these workers can benefit from rights usually recognized to employed workers. A solution, amongst others, may be found in the CAEs ("coopératives d'activités et d'emploi") that already exist and are used in France. These

⁹⁴ This classical contextual approach to the notion of subordination was consolidated in a case decided on 16 November 1996 by the Court of Cassation that defined subordination as "the execution of work under the authority of an employer who has the power to give orders and directives, to control their execution, and to sanction the breaches of his subordinated".

cooperative institutions allow self-employed persons to be converted into salaried workers through participating in a mutualist organization, enhancing their access to employment rights and social protection.

3.3.4 Taxation

A report and amendment proposals regarding taxation of revenues generated through “collaborative economy” platforms were published by a working group within the Ministry of Finance on March 29, 2017.⁹⁵ Among the proposals, the creation of a lump-sum allowance system for revenues earned through a collaborative platform (the latter being, however, not clearly defined in the report) is foreseen. Such a system is aimed at rendering the tax system friendlier for citizens, these being for now in theory immediately liable to pay taxes on their earnings regardless of their amount and frequency. The new system would involve

- (i) a 3000 euro threshold below which revenues would fully avoid taxation.
- (ii), a transition range (from 3000 euros to another amount ranging from 4225 and up to 8824 euros according to the type of activity) in which one would benefit from a regressive tax benefit (the more earnings resemble professional earnings, the smaller the benefit) and finally,
- (iii) above the transition range all income would be confirmed as falling under the standard category of professional revenues.

Such a system is supposed to prevent distortion of competition as the more one earns and the closer one’s activity thus resembles a commercial one the more it is taxed. Further, and as in Belgium, this system involves automatic transmission of information regarding revenues by the platform to the tax authorities. Yet, the provider is free to refuse the said transmission of tax information. In the case of such a refusal, providers are however excluded from the aforementioned specific tax system (i.e. all his/her revenues are taxed regardless of amount) and thus in a disadvantaged position, unless they manage to dissimulate their revenues (should, for instance, no payments be handled by the platform and consequently no centralized control be possible).

3.3.5 Sector-specific regulation: non-collective transport of individuals

We have presented an analysis of large-scale transportation at the European level . We will now depict the regulatory framework applicable to small-scale transport of individuals. Similar to Belgium there exists specific regulation applicable in the French context for this.⁹⁶

The said regulation creates several categories amongst which the main one is the so called VTC’ category, which stands for “voiture de transport avec chauffeur”, referring to “transportation vehicles with drivers”. Such drivers can either create their own company or operate as independent workers (in 2016, 90 percent of them opted for the latter solution).⁹⁷ In both cases they have to apply for a specific licence. Chaos spread as some platforms were hiring people who fell under the VTC status yet had not requested the necessary licence and were thus not complying with the extensive set of conditions related thereto. The chaos was solved by means of a clarification law applicable as of January 1, 2018.⁹⁸ Provisions thereof set a clear prohibition against any company hiring drivers lacking the licence necessary for VTCs. Thus, occasional remunerated services provided by non-professional drivers are no longer possible under this legislation, just as is the case in Belgium. Once again, this may appear excessive in so far as remuneration is understood in

95 French Senat. (2018, March 6). Adapter la fiscalité à l'économie collaborative. Retrieved March 30, 2018 from

http://www.senat.fr/espace_presse/actualites/201509/fiscalite_du_numerique_vers_un_prelevement_plus_efficace.html

96 Decree n°85-891 of 16 August 1985 regarding urban transportation of individuals and non-urban road transportation of individuals since then replaced by several recent decrees as listed therein.

97 Errard, G. (2016, February 2). LOTI, VTC, AMT... Ce qui se cache derrière ces sigles. Le Figaro. Retrieved from <http://www.lefigaro.fr/economie/le-scan-eco/decryptage/2016/02/05/29002-20160205ARTFIG00030-pourquoi-les-vtc-sont-divises.php>

98 Law no. 2016-1920 of 29 December 2016 regarding the regulation, responsibilities and simplification of the sector of public particular transportation of individuals (so called Law “Grandguillaume”).

an extensive way including lump sums supposed to simply contribute to drivers' expenses. As a consequence, people willing to perform pro-social occasional transportation must either conform with the burdensome set of conditions in order to obtain a licence or operate illegally under the threat of possible sanctions. Interestingly this issue may be solved by a new regulation. A legislative proposal is being contemplated that would notably clarify the concept of "split expenses", distinguishing it from the concept of remuneration it is currently associated with, and thus potentially allowing for shared mobility solutions subject to a more reasoned set of conditions⁹⁹.

3.3.6 Sector-specific regulation: home-sharing

Platforms such as Airbnb and HomeAway are extremely popular in France. In many touristic cities (especially in Paris) they not only compete with hotels and guest houses, consequently raising complaints from actors operating in the tourist sector, but they further contribute to the housing crisis as more and more properties are primarily devoted to short-term rentals.

In order to regulate this issue, the aforementioned 'Law for a Digital Republic' has introduced in the 'French Code of Tourism' a specific regime for home-sharing activities, having in mind those operated through the intermediary of digital platforms. Contained in article 51 thereof, this regime was further specified by the Décret n° 2017-678 (the so-called Décret Airbnb).¹⁰⁰

Accordingly, and since home-sharing in theory implies sharing a main residence, such activities are limited to a maximum of 120 days per year so as to maintain the occupation level necessary to qualify as the main residence of the sharer. Although this system applies to any short-term rental of furnished accommodation its full enforceability clearly rests upon the intervention of platforms. The latter are obligated to block any offerings, once the 120 days limit is exceeded. Further, the decree provides for a necessary declaration of rental to be made to the municipal authorities in order to obtain an identification number. This number is to be indicated on any offering, failing which the offering is deemed illegal. For municipalities of more than 200,000 inhabitants this identification may further be accompanied by a more detailed registration procedure.

Nonetheless, this regime is for now, largely disregarded as many owners continue to post offerings involving non-registered apartments and platforms do not necessarily block these.¹⁰¹ As a consequence, the French government is considering the introduction of new measures and, in particular, higher sanctions.

3.4 Italy

3.4.1 Platform policy landscape in Italy

In Italy, the latest debate about platformization is inextricably linked to one concerning the collaborative or sharing economy. According to a survey by Collaboriamo.org¹⁰², in 2016 there were 138 collaborative platforms in Italy, which is 17 percent more than those recorded in 2015. The sectors with the most platforms were transportation (25), the exchange/sell/rental of goods (18), and tourism (17). Both women (52 percent) and men (48 percent) are particularly active as users of the collaborative economy, although

99 Projet de Loi d'orientation des mobilités, already presented a first time on 29 August 2018 and to be presented for further discussion on 29 October 2018, text available at https://www.anateep.fr/images/stories/articles/actu/2018/Texte_LOM_transmis_au_CE.pdf

100 Décret n° 2017-678 du 28 avril 2017 relatif à la déclaration prévue au II de l'article L. 324-1-1 du code du tourisme et modifiant les articles D. 324-1 et D. 324-1-1 du même code.

101 <https://phys.org/news/2018-03-france-undeclared-airbnb.html>

102 Mainieri, M., Pais, I. (2016). Sharing economy: la mappatura delle piattaforme italiane 2016. Retrieved from http://sharitaly.com/la-sharing-economy-in-italia_la-mappatura-delle-piattaforme-collaborative-e-di-crowdfunding/

their involvement in it is quite different depending on the sector.¹⁰³ In addition, the majority of users are between the ages of 18 to 44 (75 percent of users). These platforms display various business models: although most of the platforms get their revenues from a percentage levied on transactions (49 percent), many further rely on subscription systems (17 percent), sponsors (7 percent), advertising on the platform (5 percent), as well as agreements with famous brands (3 percent).¹⁰⁴

From a policy perspective, the Italian legislator has not actively intervened so far. Two proposals have, however, been presented at the Italian Parliament aiming at these online actors.

On one hand, a general proposal presented in 2016 contains a law aimed at digital platforms for the sharing of goods and services and providing rules for the sharing economy.¹⁰⁵ It is thus aimed at the “grey area” of platformization, i.e. platforms acting as intermediaries between non-professionals. Indeed, the draft explicitly excludes from its scope those platforms used by persons included in the register of business kept by the Chambers of Commerce. It mostly introduces some specific provisions to tackle the issues of transparency, protection of consumers, fairness in taxation, and competition. Notably, the proposal provides an obligation for platforms to register in the ‘Electronic National Register of Sharing Economy Platforms’. It further recognizes a power of supervision, control, and sanction over the activity of the platforms to the Italian Antitrust Authority (“Autorità garante della Concorrenza e del Mercato”).

The Authority, in particular, can oblige platforms to require from users a subscription to specific insurance to cover the typical risks of the sharing economy (Article 3). Platforms have to maintain and keep an updated business policy document (“Documento di politica aziendale”) to be approved by the Authority (Article 4) and outlining contractual obligations between the platform and its users. Among these conditions, some specific provisions are prohibited as they are deemed unfair.¹⁰⁶

With reference to taxation, the proposal foresees that incomes generated by sharing economic activity up to the amount of 10,000 euros benefit from a reduced tax rate of 10 percent and, in this case, the platform operates as a withholding agent thereof (Article 5).

Finally, it is recalled therein that the processing performed by the platform must comply with the relevant data protection provisions (in particular, with the Italian Data Protection Code). The platform has to guarantee, in any case, an online tool to allow users to access, verify, rectify, delete personal information, as well as the possibility of permanently deleting, with a single request, all personal data from the user’s profile. Finally, unless explicitly requested by the user, the platform cannot automatically analyse any document or user’s personal data (Article 7).

On the other hand, a more specific proposal concerns an amendment of regulations applicable to taxi services and the hiring of cars with drivers.¹⁰⁷ It aims to tackle the phenomenon of car-sharing, which has been highly contested by taxi drivers. Expressly directed only at remunerated services, the proposal clarifies that digital platforms can act as intermediaries between professional drivers, who have obtained the necessary licence, and passengers.

103 Women are more involved in platforms related to fashion (80%), food (64%) and culture (60%); while men are involved in transportation (59%), sport (73%) and business services (58%).

104 Ibidem.

105 Proposal for Law no. 3564 “Disciplina delle piattaforme digitali per la condivisione di beni e servizi e disposizioni per la promozione dell’economia della condivisione”.

106 Such as provisions imposing the following obligations: any form of exclusivity or preferential treatment to the benefit of the platform, any control over the performance of the service provided by the user, the fixing of fares and prices, the exclusion from or penalization of users without due cause, the irrevocable licensing of users’ intellectual property rights, the prohibition of the use of platform information not protected by technological protection measures, the duty of the user to promote platform services, the prohibition of critical comments toward the platform, the sharing of information and comments with other users, the obligation to consent to the sharing of user information.

107 Proposal no. 4398 of 2017 for amendment of Law no. 21/1992 on the transportation sector.

Moreover, the proposal admits the possibility of an intermediation service directed at non-professional drivers, i.e. those without a licence, as long as these operate on an occasional basis. The occasional character is assumed if the activity does not exceed 15 hours per week. In the latter, case platforms have to stipulate specific insurance to cover eventual damage suffered by the passenger (in addition to the mandatory insurance), establish the amount of the fare in a clear and transparent manner, verify the efficiency of the vehicle and the requisites of the driver (e.g. the validity of the driver's licence), and guarantee the lawfulness of the data processing.

These two proposals are first examples of legislation aiming to regulate the digital landscape of platforms in Italy, proposal no. 3564 having a broader scope than no. 4398. Both try to introduce a controlled regime for markets created by these platforms by establishing, on the one hand, a threshold for activities exercised by providers operating via a platform and, on the other hand, several obligations and control duties for platforms themselves. However, none of these proposals tackle the issue of the legal status of providers as independent or employed workers, nor do they provide any insights into their social protection.

3.4.2 Ownership structure

The Italian platform ecosystem is -- like the Belgian and the French ones -- composed of small-scale national platforms (84 percent) and super-large American or foreign platforms (16 percent).¹⁰⁸ Therefore, remarks concerning governance structure formulated above for Belgium and France also apply to Italy.

3.4.3 Labor/workers' protection

As in the other focus countries, in Italy as well, people working through digital platforms are deemed to be self-employed from the platforms' point of view. Self-employed workers providing services enter into a so-called "contratto d'opera" with users, this being defined in article 2222 of the Italian Civil Code as a contract carried out by a person "who engages himself to perform a piece of work or render a service for compensation, primarily by his own effort and without a relation of subordination with respect to the principal". Moreover, multiple legislative acts formalize the social security rights and obligations of self-employed persons ("lavoratori autonomi"). Notably, concerning the social protection of self-employed persons, the recent Act No. 81/2017 has to be mentioned. The Act targets self-employed workers who qualify as professionals and those performing activities coordinated by the client, which means that small employers are excluded. The act introduces a number of protections in terms of (limited) labor rights and social protection. Despite this, it seems that people working through digital platforms still find themselves in a problematic situation. Due to the atypical nature of their employment relationship they, in practice, remain unprotected under this new legislation. Digital platform workers and unions have denounced this problematic situation.

For the rest, the question of the social status of digital platform workers arises differently from in France and in Belgium. Indeed, the Italian legislation contains an intermediary category, in-between salaried and self-employed workers, the "lavoratori parasubordinati". The existence of such a third category further complicates the classification of persons working through digital platforms. This intermediary category was first introduced in 1973, but has been modified several times since then. In terms of scope and the protections attached thereto it was at first gradually extended then, since the so-called Jobs Act N. 81 of 15 June 2017, it has been drastically reduced without being abolished. The aim is to move as many employment contracts as possible from the area of para-subordination to the more clear-cut area of salaried employment ("lavoratori dipendenti").

¹⁰⁸ Ibidem.

3.4.4 Taxation

The current legal framework does not provide a specific tax regime for sharing economy incomes. Therefore, at the moment, all earnings must be declared to the tax authorities according to the existing rules. If they do not exceed 5000 euros over the year, the activity which generated them is, however, considered as self-employed occasional work and, accordingly, the amount is subject to a withholding tax of 20 percent. On the contrary, if the money received in exchange of the performance is mere a reimbursement of expenses (e.g. for sharing the costs relating to the ride), it does not need to be declared.

In the case of home-sharing, a specific fiscal regime has been recently expressly recognised by Legislative Decree 50/2017.¹⁰⁹ For short term rentals (less than 30 days) offered by non-professional individuals, directly or through offline or online intermediaries such as platforms, it is possible to benefit from the so-called “cedolare secca”, a flat tax rate of 21 percent. To this end, the intermediary must comply with a set of duties:

- 1) it has to communicate to the competent tax authority all the information related to every contract concluded via its services,
- 2) if the platform handles payments it must directly withhold the 21 percent and transfer the amount to the Revenue Agency¹¹⁰.

However, the introduction of such a measure has raised some controversies: Airbnb asked the Administrative Tribunal of Lazio to suspend the effects of the Revenue Agency provision no. 132395/2017 (the technical norm implementing art. 4, Legislative Decree 50/2017, on short-terms rentals). After the tribunal rejected the claim¹¹¹, Airbnb appealed the decision to the Italian State Council, which ordered¹¹² the tribunal to re-examine the original request of Airbnb. Concerns about the duties related the new tax regime have been raised also by the Italian Competition Authority¹¹³, which highlighted how the ratio of the new provisions could be pursued with more effective tools, which do not give rise to potential distortion of competition.

3.4.5 Sector-specific regulation: non-collective transport of individual

As mentioned, except from a tax standpoint, Italy has no specific regulation regarding non-collective transport of individuals organised by an online platform. Therefore, the applicable legal framework is constituted by:

- 1) the provisions of the Italian Civil Code that regulate the contract of transport (art. 1678) and the responsibility of the carrier (art. 1681 and 1682),
- 2) the rules of Law 21/1992, which encompass taxi services and VTCs,
- 3) the “Codice della Strada” (Road Traffic Code), and 4) specific regional and local norms.

Uber’s activities have raised several concerns and protests: taxi drivers have strongly opposed the services offered by Uber (like UberPoP and UberX), arguing that such activities are acts of unfair competition because Uber drivers operate without complying with Law 21/1992, notably regarding the compulsory

109 Legislative Decree 24 april 2017, n. 50, Disposizioni urgenti in materia finanziaria, iniziative a favore degli enti territoriali, ulteriori interventi per le zone colpite da eventi sismici e misure per lo sviluppo, Official Journal 24 april 2017, n. 95, S.O. See, Beretta, Giorgio, Il regime fiscale delle locazioni brevi, in Dir. e Prat. Trib., 2018, 3, p. 1011.

110 https://www.agenziaentrate.gov.it/wps/portal/english/revenue_agency.

111 Cf TAR Lazio, sez. II – ter, ordinance 17 - 18 October, no. 5442.

112 See State Council, sez. IV, ordinance 13 December 2017, no. 5403.

113 <https://www.ilsole24ore.com/art/notizie/2017-11-27/tassa-airbnb-allarme-antitrust-rischia-danneggiare-utenti-155449.shtml?uuid=AE2XqzID>

licence. The relevant case law has confirmed their thesis, banning the UberPoP service where the drivers are not professionals¹¹⁴. The European Court of Justice has recently ruled in the same direction.¹¹⁵

3.4.6 Sector-specific regulation: home-sharing

With the exception of the provision introduced by the above mentioned Legislative Decree 50/2017, there are no specific rules applying to platforms that allow the matching of offers and demands for accommodation.

We must therefore rely on the existing legal framework that regulates the house rental sector. In particular, the case of sharing economy platforms, where the contract is concluded between peers, falls under the ‘touristic rental’ regulation. Touristic rental refers to accommodation rented only for touristic purposes and which, according to Art. 53 of the Italian Code of Tourism, is merely governed by the provisions of the Italian Civil Code on leasing, i.e. by articles 1571 ff.

Such rentals ought to be distinguished from guest contracts: in the case of rentals the object of the contract lies in the use of the accommodation, while in the guest contract there is not only the use of the good but also other additional services, like room cleaning, breakfast, garage use and other activities. However, the boundaries between the two forms of contract are blurring in the platform economy. Considering the growing ‘professionalization’ in this sector, besides non-professional offerings the latter often include listings by professional hosts, such as ‘bed & breakfasts’ and hotels (providing ancillary services). If this is the case the discipline applicable to the contract concluded between the provider of the service and the end user shall be found in the guest contracts’ provisions.

4. Conclusion

As digitalization spreads, thanks to extensive internet infrastructures and the improvement of digital skills, platformization has become a corollary phenomenon that European Member States have quickly taken into account at both European Union and national level.

From the preceding overview, it appears that the responses provided are not perfectly uniform throughout the Union, despite the existence of a European framework superseding national initiatives. Indeed, most national policies setting plans and agendas with respect to digitalization are greatly inspired by the European initiatives described in the present report. Nonetheless, as pointed out, concrete implementations of these initiatives harmonize several points yet leave Member States sufficient leeway to draft complementary innovative policies and specific national regulations.

Moreover, there exist discrepancies with respect to such fundamental points as definitions, and notably the very notion of a platform. There is not necessarily such a definition, even at European level, and should there be one it would rather focus on specific types of platforms (notably the *plateforme agréée* in Belgium or collaborative economy platforms under EU policies). France seems to do best in this respect as the provided definition of a “platform operator” seems broad enough to encompass the platformization phenomenon without undue exclusions from its scope (notably including both platforms operating against remuneration or for free).

114 Tribunale di Milano Sez. spec. in materia di imprese Ordinanza, 25/05/2015, Soc. coop. Taxiblu e altri c. Uber International BV e altri, in *Corriere Giur.*, 2016, 3, p. 356; Tribunale di Milano Sez. spec. in materia di imprese Ordinanza, 09/07/2015, Uber International BV e altri c. Soc. coop. Taxiblu e altri, in *Corriere Giur.*, 2016, 3, p. 361; Tribunale di Torino Sez. spec. in materia di imprese, 01/03/2017, Uber Italy s.r.l. e altri c. Società Cooperativa Pronto Taxi S.C. a r.l. e altri, in *Quotidiano giuridico*, 2017; Tribunale di Roma, sez. IX civile Ordinanza, 07/04/2017, AppTaxi s.r.l. e altri c. Uber BV e altri, in *Dir. Industriale*, 2018, 1, p. 26.

115 Judgment of the Court (Grand Chamber) of 20 December 2017, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*, ECLI:EU:C:2017:981.

Within the digitalization debate, European institutions have pointed out the importance of determining adequate regulations to be applied to the intermediation activity of platforms (for instance liability, unfair terms and practices towards users, the working relationship between the platform and providers). Accordingly, actions have been undertaken towards gaining better understanding and foresight through various public consultations and research regarding this major piece of the puzzle.

These efforts contribute to formulating new policies through a 'problem-based' approach by clarifying the exact role of platforms and their contribution to identified threats triggered by digitalization in general. As a result, there is no specific regulation aimed at platformization as such, although some initiatives clearly primarily target platforms, such as, for instance, measures to further improve the effectiveness of the fight against illegal online content, the latter devoting major attention to providing guidance regarding proactive measures by platforms. Instead, platformization falls within the scope of several instruments aimed at specific problems.

The same can be noticed at national level, where policymakers and legislators have primarily devoted their efforts to the issue of regulations applicable to providers active on platforms rather than to platforms themselves. The debate has indeed focused on the collaborative economy and the ensuing opportunity to extend the scope of sectoral obligations applicable to professional services, such as VTCs and 'bed & breakfasts', to providers seemingly "only sharing" on a non-professional basis. This debate also includes the topic of taxation and the opportunity to subject revenues generated by such "mere sharing" to taxes. Interestingly, thresholds seem the favored solution for the purpose of distinguishing between professionals and non-professionals in this area. In addition, platforms are taken into account considering their pivotal role, and they have an obligation to directly collect the tax should they handle payments (both at European level with respect to VAT and at national levels with respect to direct taxation).

Despite discrepancies amongst policies throughout the EU, there is a general trend towards ensuring comprehensiveness and coherence within each policy level. Indeed, both European and national policies aim at ensuring that digitalization is apprehended in a systemic way.

Platforms benefit therefrom in so far as, for instance, the DSM Strategy contains general objectives encompassing the different areas of life affected by digitalization, and it may therefore be expected for platforms to be acknowledged in these different areas – both being of utmost relevance to public opinion (consumer protection and tax collection) and to platforms themselves (possibilities for proactive monitoring of content and the use of data).

Altogether, policymakers and legislators across the European Union have put effort into taking digitalization and platforms into consideration, thoughtfully and without inconsistencies, acknowledging their constant development, in order to benefit from these evolving phenomena while managing the risks generated thereby. However, beyond its promising articulation, the approach is at this stage still experimental regarding specific threats, and responses differ as perfect solutions have not yet been identified.

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