

*Policy framework for digital platforms. Moving from openness
to inclusion.*

*Protection of users in the platform economy: a European
perspective*

IDRC project number 108339-009

UCLouvain
Belgium

Cynthia Delronge, Université Saint-Louis - Bruxelles; Rossana Ducato, Université Saint-Louis –
Bruxelles and UCLouvain; Anne-Grace Kleczewski, UCLouvain; Enguerrand Marique, UCLouvain;
Alain Strowel, Université Saint-Louis – Bruxelles, UCLouvain, KULeuven, Munich IP Law Centre;
Céline Wattecamps, UCLouvain

Final Technical Report

3 February 2019

© 2019 Cynthia Delronge, Rossana Ducato, Anne-Grace Kleczewski, Enguerrand Marique, Alain
Strowel, Céline Wattecamps

Executive summary

Our research focused on the study of the current gaps of protection affecting the participants in the platform economy. It addressed such legal and social problem by investigating the power relationships between the platform and its users (both professional and not) and exposing the information asymmetries and economic imbalance via an empirical analysis of the platforms Terms and Privacy policies, in correlation with their business models. The research particularly focused on the inequalities (understood as information asymmetries affecting the weak party) and unfair practices experienced by end-users (consumers) and suppliers (workers) of online platforms. The study took into consideration the European consumer protection and labour law relevant aspects through an examination of ride-sharing, gig work and accommodation platforms in Belgium, France and Italy.

The main outcomes of our project consisted of two major report: 1) the policy overview; 2) the research report.

The policy overview offered a comprehensive overview of the legal framework applicable to the phenomenon of digital platforms in the European Union. The study, in particular, offered a more detailed comparison of three countries: Belgium, France and Italy. After outlining the digital policy landscape the document presented the relevant normative data that comes into play in the regulation of digital platforms, identifying the gaps in protection. A particular focus was reserved on the aspects of consumer protection, intermediary liability, data protection, labour law, and taxation. The report contained also an overview of the relevant provisions applicable to the sectors object of the two case studies: non-collective transport of individuals and home-sharing.

Building on the outcomes of the policy overview, the research report investigated the gaps in protection suffered by users of the platform economy in Europe and proposed some legal and extra-legal solutions. The study is composed of 2 parts. The first one is dedicated to the understanding of the legal issues involved in the demand side, i.e. the relationship between the platform and its end-users. To this end the study presents the results of an online survey performed during the summer of 2018 (July-September) and selected interviews with users based in Belgium, France and Italy. The goal of the empirical approach was to understand the major problems faced by platform users in their daily life activities. Such issues were critically examined and discussed in light of the current European consumer protection framework, paying attention also to the policy interventions recently proposed. These results were then discussed and crossed with an analysis of the digital and governance structures of a representative set of platforms operating in the sectors of accommodation and transportation. The goal was to verify whether there were convergences or divergences in the protection ensured to the consumer, depending on the governance structure of the platform.

The second part of the study explored the supply side, i.e. the relationship between the platform and workers operating online (on-demand and crowd-work). The research showed the results of interviews conducted with Belgian representatives of a trade union organization, a

self-employed organization, the Smart, the World Employment Confederation, and inspection services. The study identified the most controversial labour law issues, as the legal classification of platform workers as employees and the precarity of their employment status in general.

The research report allowed the formulation of policy recommendations for solving the initial research questions, by offering some proposals both in the short and the long-term period.

The research problems

The basic rationale of the project was to tackle the legal challenges of platformization. The objective of the study was indeed to analyse “the risk of new forms of social exclusions that online platforms of the collaborative economy can bring despite their potential to foster innovation, growth and new job opportunities”. To this end, the research report “offers a comparative analysis of concrete problems suffered by platform users in their daily-life transactions, namely practices and threats that are exclusionary or unfair under the applicable legal framework, as well as underlying gaps in protection, concrete needs and practicable solutions”.

Since the beginning, the research questions have been set as follows:

1. What are the concrete problems faced by users in the platform economy? In particular, what exclusions and unfair practices are they experiencing in their daily life online transactions?
2. What is the state of the art of user protection? In particular, what policies are aimed at the platform economy and what regulations are applicable thereto?
3. How is this state of the art challenged by the platform economy and what type of amendments may be desirable to take platformization into account, while promoting equality and accordingly contributing to social inclusion?
4. Whether and how platformization itself, through the introduction of technology in transactions, may support legal and social goals, notably by enhancing collective awareness and effective user participation.

Regarding these questions, we noted only a few small adjustments of terminology. The word "exclusions" replaced those of "discriminatory practices", to better reflect the extent of problems faced by online platforms users, which goes beyond a legally defined notion especially at the European level. We also used the term "users" more clearly to refer to both the demand side (end-users) and the supply side (service providers). Finally, we opted for the concept of "platform economy" and worked with the notion of "platformization", in order to frame the phenomenon in the context of the Research Framework proposed by the coordinators of the network. These small changes in terminology actually reflect the better understanding of the issues at stake as gained on our part.

From a scientific, developmental and policy perspective, this research is an attempt to address the issue of the added value of digital platforms.

When investigating gaps in the protection of users involved in these platforms, the research performs a normative analysis of the relationships between the platform and its users, on both the demand side (end-users) and the supply side (service providers) (under the network of actors layer). Digital platforms can indeed fill the trust gap between users who do not know each other through identification and reputational feedbacks (Botsman, 2017). Moreover, the research also investigates the social and public values created by platform ecosystems as embedded in the governance structure adopted thereby.

Consequently, the present research examined how regulation can support this trust amongst strangers and what practices hamper the social capital built by the mixing of market resources with platform frameworks (Diekhöner, 2017).

In this respect, the analysis covers several regulatory approaches as each legal discipline targets different purposes. Contract law establishes the private regulatory framework while labour and consumer laws have protection objectives. Other fields of economic law can also seek simplification or standardization of economic relationships. All in all, the present research undertakes to understand how legal disciplines impact social cohesion and inclusion by allocating the management of trust as a core underlying value to private entities (corporations, individuals) or to public entities (by recognizing it as public value).

Progress towards milestones

Project milestones were different for each of the two project parts, i.e. the one regarding users active on the demand side and those active on the supply side.

Regarding the demand side, the planned literature and policy review resulted in the *Policy Overview*. The online survey was published and the link thereto was disseminated as of 12 July 2018 until 17 September 2018. In order to get enough responses, it was thus open longer than initially foreseen (about two months instead of one). Results thereof were immediately available for analysis. Among the respondents, we contacted few participants for an interview. The latter were conducted in person or over the phone/Skype over a period of about two weeks.

Regarding the supply side, the planned literature and policy review were included in the aforementioned *Policy Overview*. Then, the consultation phase started. We have consulted representatives of a trade union organization, a self-employed organization, the Smart, the World Employment Confederation, and inspection services. We have gathered their positions through interviews, materials provided by them, and presentations that they made during a conference organised by our team at UCLouvain in April 2018: “What labour and social security law for platform workers? First diagnostics and legislative reforms”.

Through the achievement of these milestones, the project aimed at clarifying several points.

Firstly, it aimed at identifying the concrete issues faced by users, with particular reference to discrimination practices, information asymmetries, enforceability of their rights, unfair terms and unfair commercial practices, etc. Beyond issues pointed in the analysed policies and literature, the research intended to specify results through field work. At this occasion, it focused on issues faced by platform users in the field of mobility sharing and shared accommodation when travelling. These sectors are indeed among those which raised the most controversies and concerns.

Accordingly, through the online survey addressed to end-users, it was unveiled that 42.24% of respondents had never experienced problems. Among the issues pointed out by the remaining 57.76% who reported having had issues with the platform at least once, the five most recurrent issues were the following: (1) technical problems of the platform, (2) absence of or unsatisfactory customer support by the platform, (3) hidden charges, (4) unclear privacy policy, (5) unsatisfactory service by the provider of the platform (e.g., the ride, the accommodation or the meal). Four out of five issues are thus linked to the relationship between the end-user and the platform while the last one refers to the contractual relationship between the end-user and the third-party service provider. The latter relationship is nonetheless mediated by the online platform which may have a role to play at this occasion. Subsequently, the interviews performed with a sample of end-users (3 people per focus country) show the lack of information as a major factor preventing people from testing sharing economy platforms. Moreover, respondents who use these platforms only in some sectors point out at the existence of a perceived sanitary risk or unclear rules and burdensome systems as factors preventing them from using them in the remaining sectors. The role to be played by policies and regulations is thus clearly crucial. Finally, respondents who experienced problems complain mainly about technical problems and consequently, react by simply waiting through the technical issue or should it last longer, may contact the service provider directly to circumvent the technical problem. There is thus no dramatic situation where end-users appear to face all of the identified five major issues on a regular basis along with the risk of suffering a major damage.

Secondly, the project aimed at performing an overview of the state of the art of consumers and workers protection as well as available remedies.

It was indeed pointed out that a European framework applicable to platformization supersedes national initiatives in this respect but it leaves sufficient leeway to Member States as to draft complementary innovative policies and specific national regulations. Consequently, there exist discrepancies regarding existing protections but also, definitions used to delimit the scope of the said protections. Notably, there is no consensus definition of a platform, and definitions used in existing policy and regulatory initiatives mostly focus on specific types of platforms (France being however a notable exception to that). Despite these discrepancies amongst policies throughout the EU, the performed analysis unveiled there is a general trend towards ensuring comprehensiveness and coherence: both European and national policies aim at ensuring digitalization is apprehended in a systemic way.

Moreover, European institutions focus on regulations applicable to the intermediation activity of platforms. At this occasion, they adapt a “problem-based” approach which involves clarifying the exact role of platforms and their contribution to identified threats triggered by digitalization

at broad. As a result, there is no specific regulation aimed at platformization as such. Instead, platformization falls within the scope of several instruments aimed at specific problems. Therefore, some solutions are for now provided solely by national instruments and consequently, differ throughout the Union. Besides, national institutions focus foremostly on regulations applicable to providers active on platforms rather than platforms themselves. Platforms are nonetheless taken into account considering their pivotal role and is debated the opportunity of imposing them obligations such as the one of directly collecting tax on mediated transactions.

Thirdly and finally, the project articulated results obtained through field work and the state of art overview in order to formulate policy recommendations. The latter constitute adjustments (a) made necessary by challenges created by the platform economy and desirable in order to promote equality and social inclusion, and/or (b) taking advantage of technology in order to support social and legal goals. In total, seven recommendations were made:

- (1) Keep platforms as tools for building social interactions; do not consider them as a management objective.
- (2) Use technology as a complementary tool. Technology is not just an object that the law has to regulate.
- (3) Do not apply a one-size-fits-all-approach when allocating liability.
- (4) Implement platform transparency by design
- (5) Regulate crowd and on-demand work platforms at the EU level
- (6) There is no need to create new rules to protect online workers.
- (7) Taxation must not be the only focus for future regulation of platform work

Methodology

First of all, our research was mainly based on legal methodology. This meant our team examined the meaning and the scope of rules applicable to the platforms economy, and how these fostered or reduced the inclusion of users in the digital platforms.

A first problem that arose was that our team was the only team that dealt with **legal and regulatory questions** as a starting point rather than a consequence of the policy recommendations. This methodology was unique in the research group and thus we could not receive much feedback on the methodology itself.

A second issue that arose was that the legal methodology is based on text analysis and **argumentation**. This means that every rule needs to be explicit, explained and then examined. Traditional standards of legal analysis usually exclude to impose strict limits on the word counts for research reports.

A third issue that arose comes from the fact that legal methodology is usually **informed by qualitative rather than quantitative analysis**. For instance, we performed an empirical legal study looking at the contracts, privacy policies, community guidelines as part of the fields experience. However, for the, survey and interviews we had to integrate a new member (with an economics background) in our team to ensure the best standard of examination in our research. This new approach for our team was certainly a merit of the project, as it opened us on different perspectives, although it constituted at the same time a very important challenge for our team.

For the rest, once the legal methodology was correctly framed, the research did not create any specific issues. The scope of this study is defined in a manner taking into account framework diversity. As different sectors digitalize platforms display different characteristics, being either sector-specific or trans-sector peculiarities. Considering platformization percolated in a wide range of sectors, the present research may not comprehensively consider both types of peculiarities. It therefore focuses on sectors where platformization has become the most embedded; namely, mobility, accommodation and work (on-demand and crowd-work).

The research considers the differences arising regarding the nature of provided services as well as the governance and business model of platform operators, i.e. entities *de facto* operating a platform understood as a digital tool. Accordingly, it explicitly encompasses platforms (i) operating as intermediaries along with those providing the underlying service, (ii) governed through a profit-oriented legal structure and through alternative structures, such as cooperatives and not-for-profit entities, and (iii) generating interactions that are business to consumer and business to business as well as consumer to consumer.

Unveiling whether a subset of platforms displays greater potential with respect to legal and social goals aims to contribute to existing research in the field of platformization. Indeed, the extent to which platforms contribute to or remedy certain issues may vary based on these features.

Moreover, platforms evolve in a specific ecosystem which may be depicted as formed out of three layers: (i) the network of its actors, (ii) the structures that constitute its norms, rules and practices, and (iii) its value (see *Research Framework*). The present research is clearly embedded in the first and second layers, while attempting to consider spill-over effects on the third layer. When investigating gaps in the protection of users involved in these platforms the research performs a normative analysis (under the *structures* layer) of the relationships between the platform and its users, on both the demand side (end-users) and the supply side (service providers) (under the *network of actors* layer). It also investigates the social and public values created by platform ecosystems as embedded in the governance structure adopted by platform operators (under the *value* layer).

Project Outputs

The project outcomes consisted of two major publications, one blog article and two main events organised by our University.

Project deliverables:

- Policy Overview. Protection of users in the platform economy: a European perspective (2018)
- Research report. Protection of users in the platform economy: a European perspective (2018)

Blog article:

- Ducato R., Marique E. (2018), Transport or information society service? That is the question. ECJ, Case C-434/15, Asociación Profesional Elite Taxi: preliminary notes, <http://www.rosels.eu/ecj-case-c-434-15-asociacion-profesional-elite-taxi-preliminary-notes/>

Events organised by UCLouvain:

- 18.04.2018 Conference “Quel droit social pour les travailleurs de plateformes? Premiers diagnostics et actualités législatives”, Bruxelles, <http://www.rosels.eu/wp-content/uploads/Quel-droit-social-pour-les-travailleurs-de-plateformes-colloque-18-04.pdf>
- 01.03.2019 Journée d'études “La régulation des plateformes digitales”, Bruxelles, <https://uclouvain.be/fr/instituts-recherche/juri/crides/evenements/journee-d-etudes-la-regulation-des-plateformes-digitales-1-3-19.html>

The material organization of these events was directly funded by the project (rental of the rooms, copies of the supporting material for the participants, etc)

Other dissemination activities by individual members of the team:

- Ducato, Rossana ; Strowel, Alain. *Limitations to Text and Data Mining and Consumer Empowerment Making the Case for a Right to “Machine Legibility”*. CRIDES Working Paper Series (2018), International Review of Intellectual Property and Competition Law, forthcoming 2019 (paper presented at 8th International Conference on Information Law and Ethics ICIL, Antwerp, 14 December 2018)
- Ducato R., Kullman M., Rocca M., *Customer Ratings as a Vector for Discrimination in Employment Relations? Pathways and Pitfalls for Legal Remedies*, in T. Addabbo, E. Ales, Y. Curzi, T. Fabbri, O. Rymkevich, I. Senatori (eds.), *Performance Appraisal in Modern Employment Relations. An Interdisciplinary Approach*, Palgrave Macmillan, forthcoming 2019

- Ducato R., *Transparency by Legal Design. Rethinking information duties in the platform economy*. Paper presented at Private Law Consortium, Harvard Law School, 15 May 2018 and Younger Scholars Forum in Comparative Law XX International Congress 2018, Fukuoka
- Ducato, Rossana (2018) House of Terms: Fixing the Information Paradigm with Legal Design. Poster presentation at BILETA Conference 2018 “Digital Futures: places and people, technology and data”, University of Aberdeen, 10-11 April 2018. *Winner of the BILETA Poster Prize
- Marique, E. (2018) “Uber and deceptive data collection”, *Big data, algorithm and democracy*, Global College of Law seminar, Université catholique de Louvain, Belgium, 9 March.
- Marique, E. (2018) “*The desirability of regulating digital platforms*”, lecture given at the Vrije Universiteit Brussel, Belgium, 20 Decembre.

All our publications comply with the standards of the Open Access Decree set out by the French-speaking Community of Belgium.

Problems and Challenges

During this project, the research has mainly faced three unexpected challenges, beyond what has already been flagged in the present report. We classified them here in decreasing order of the burden they represented for the team.

- **First of all, the initial communication with the consortium was an important hurdle.**

On the one hand, the **interaction, and therefore the overall coordination of the different groups, was not easy at the beginning**. The coordinators organized “general meetings” on the videoconference platform “Zoom” with all partners. However, it seemed that the connexion was bad for everyone (probably because too many people were connected at the same time), hence reducing the efficiency of the communication as it took long to make sure that everyone had gotten the message. The coordinators however took the initiative of organizing a meeting with all partners in Mumbai, which was a wonderful opportunity for knowing each other’s work. This event however took place either too late (to better understand what everyone was doing and get to know each other) or too early (to present interim results). As a suggestion, we would recommend to organise the kick-off meeting in person, so everyone can have a clear picture of the overall network, the different projects, the possible overlapping and the peculiarities of each research.

Apart from that, the members of the consortium and the coordinators were always very available to discuss by mail.

On the other hand, there were some **language and conceptual obstacles**. Since the consortium was formed by people with different background, by a same word not everyone had the same understanding of its meaning.

In addition, after our project proposal was submitted, a research framework was released by the coordinators of the consortium. The focus of that document, its concepts and goals, did not perfectly fit with the legal methodology and/or with our initial proposal. This created a discrepancy between our initial research goals and the expected outcome set up in the Research framework. With this in mind, we later adjusted our outcomes as to fit in the new structure, although the word count was very difficult to comply with. Therefore, such adjustments required an additional amount of work than initially planned.

- **Secondly, the project starting date was delayed, impacting the timeline of the research.**

When our team initially applied for the funding, the project was meant to start in October 2017 and end thirteen months later. However, in practice, the project only started in January 2018, delaying the project by three months. Our survey thus took place during the summer, at a period where people are less likely to answer due to holidays, instead of mid-spring. This delay had mainly two effects. Firstly, such a delay created additional burdens within our team during the summer, at time where our team members had other commitments to participate in other projects. Secondly, this potentially decreased the number of participants to the survey and some of the analysis had to be foregone in order to keep the quality standard expected of university research.

- **Third, one of our team members became pregnant and could not be suitably replaced.**

One unexpected event was the pregnancy of one of our team member. We delayed her participation on the project, and she fulfilled her analysis after her maternity leave instead of spreading the work over a longer period of time.

No ethical problems were raised in this research process.

Administrative Reflections and Recommendations

No particular recommendations to address to IDRC.