



THE DIGITAL SINGLE EUROPEAN RAILWAY AREA: HOW DO WE GET THERE?

**What are the regulatory challenges posed by the
digitalization of the railway sector?**

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The challenge of online platforms

- New players are disrupting the transport industry: online platforms such as Uber (urban transport) or Blablacar (intercity transport).
- Commission consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.

“an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups.” Examples: Uber, Blablacar, AirBnB, eBay, but also Google, Facebook, Tripadvisor...

- “Spontaneous liberalization”?

Legal status under debate

- Preliminary ruling, Case C-434/15, Élite Taxi/Uber, pending before CJEU.

“Inasmuch as Article 2(2)(d) of Directive 2006/123/EC [...] on services in the internal market excludes transport activities from the scope of that directive, must the activity carried out for profit by the defendant, consisting of acting as an **intermediary between the owner of a vehicle and a person who needs to make a journey** within a city, by managing the IT resources — in the words of the defendant, ‘intelligent telephone and technological platform’ interface and software application — which enable them to connect with one another, be **considered to be merely a transport service or must it be considered to be an electronic intermediary service or an information society service**, as defined by Article 1(2) of Directive 98/34/EC (2)[...].?”

- What is the borderline between transport and information society services?

If it is merely a transport service...

- Freedom to provide services in Art. 56 TFEU and the Service Directive would not apply.
- Recipient MS could impose restrictions on online platforms established in other Member States.
- MS (Courts/Administration) might ban the provision of services, for instance on the ground of unfair competition.

If it is a IS service...

- Freedom to provide services would apply (Art. 56 TFEU, Service Directive and E-Commerce Directive).
- Art. 3(4) of E-Commerce Directive has an exhaustive list of reasons for restrictions imposed by recipient MS:
 - (i) public policy (criminal offences); (ii) protection of public health; (iii) public security, including the safeguarding of national security and defence; (iv) the protection of consumers.
- No disproportionate restriction allowed.

Definitions

- There is a legal definition of Information Society service (Directive 2000/31/EC):
 - (1) normally provided for remuneration,
 - (2) at a distance,
 - (3) by electronic means; and
 - (4) at the individual request of a recipient of services.
- There is no EU legal definition of transport, but CJEU just ruled on a wide interpretation of the “services in the field of transport” exception, to be applied to roadworthiness test services (Itevelesa).

The debate is open...