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SGH

# Which EU institutions matter for the race of the sharing economy?

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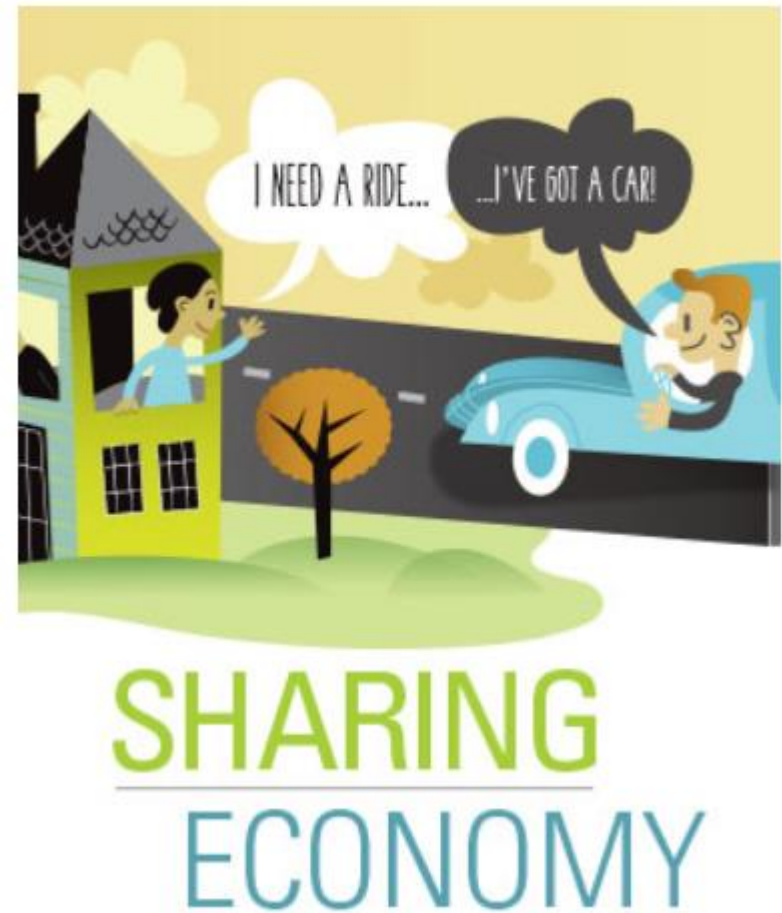
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# AGENDA

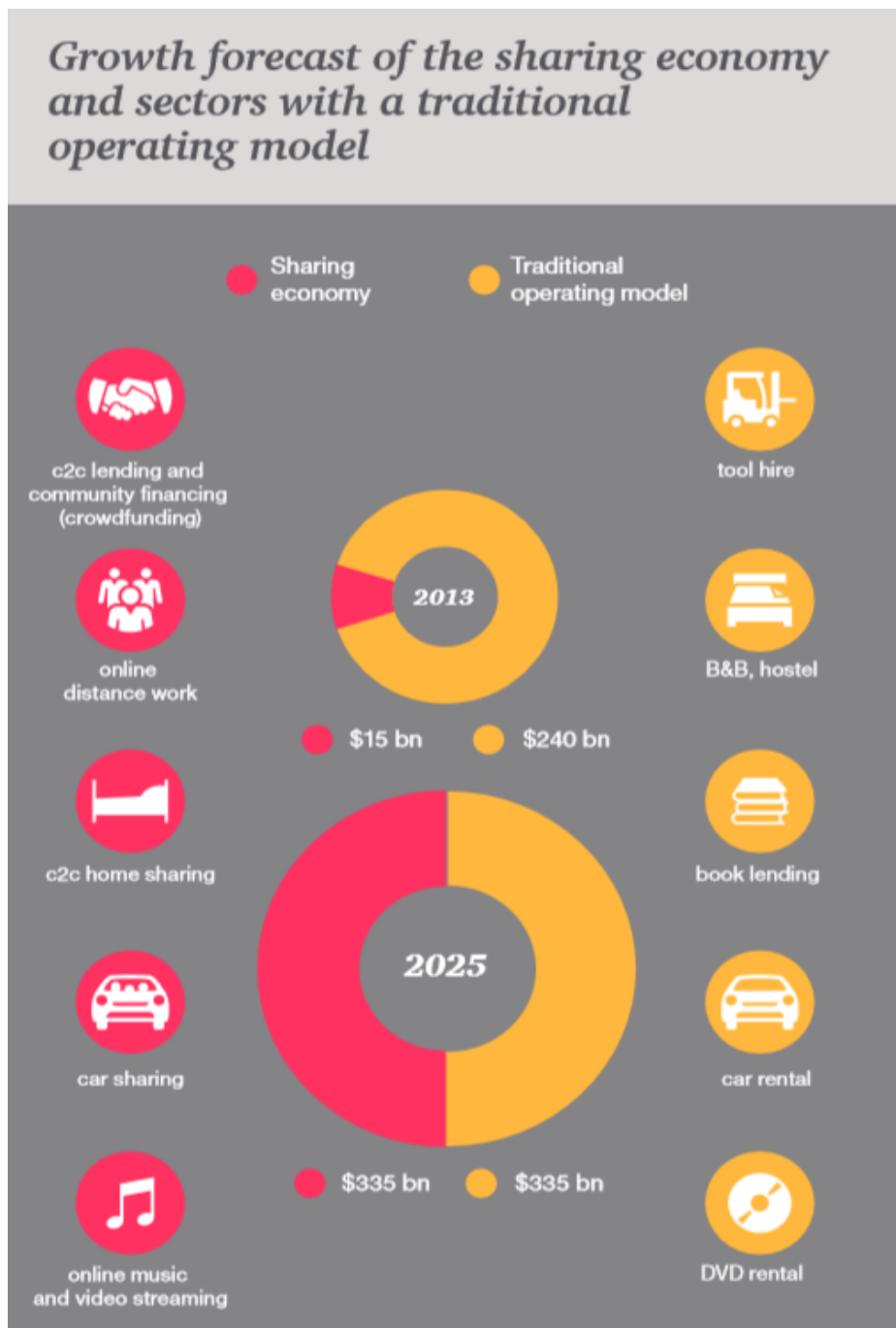
1. Motivation
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# Motivation



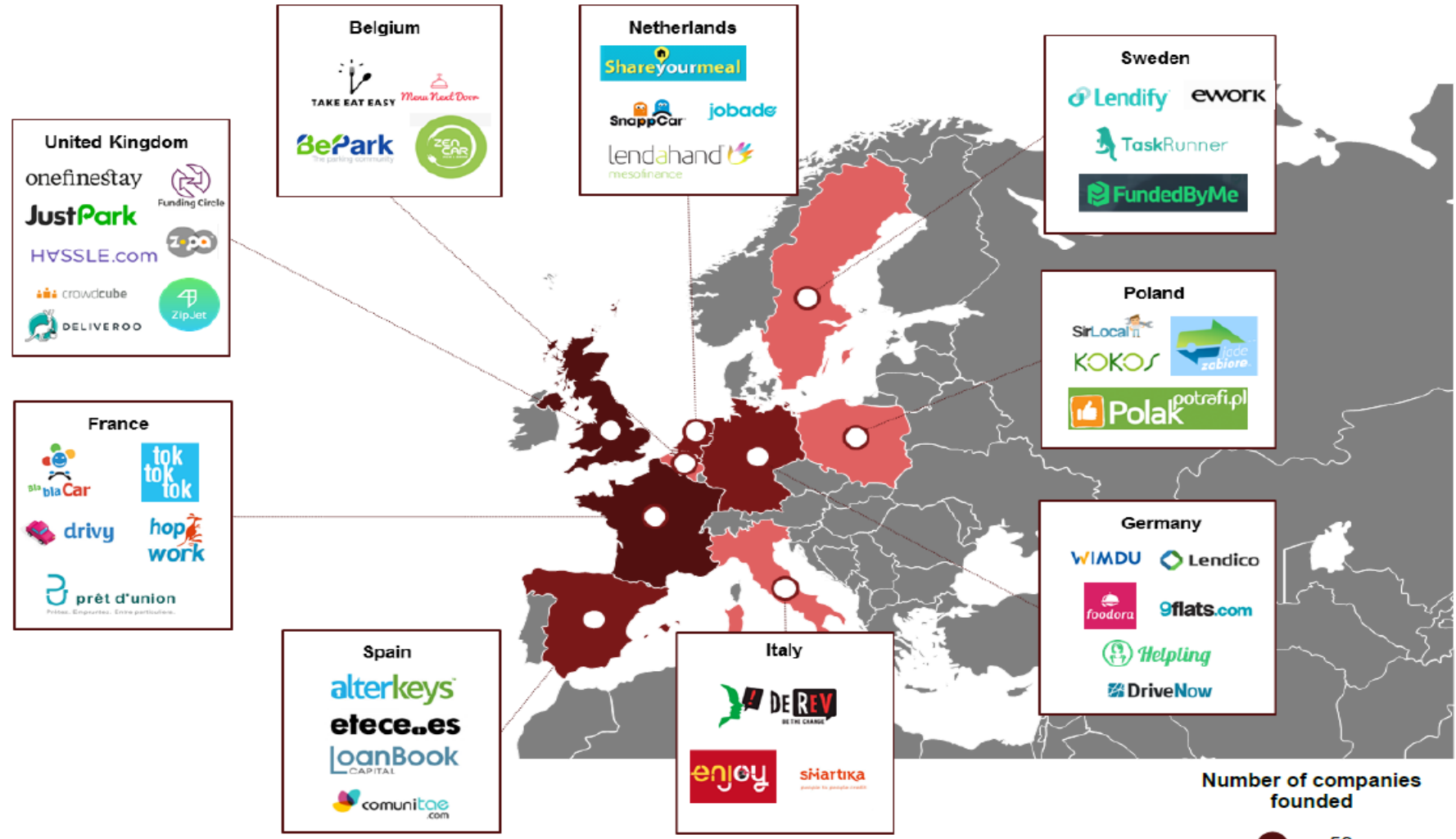
Source: <https://www.ma-amsterdam.nl/sharing-economy-platforms-the-future-of-travel/>



Source: PwC 2015 „Sharing or paring? Growth of the sharing economy”

# Motivation

Figure 4: Number of collaborative economy companies by country of origin



Source: PwC analysis of multiple sources

## Main objective

*The aim of this paper was to investigate which EU institutions matter for the race of the sharing economy online platforms like Uber or Airbnb. Particular focus was put at ascertaining whether the EU legal institutions would protect contractors, as well as undistorted competition, in the support of the development of sharing economy.*

# Theoretical background

- **Institutions matter for reduction of transaction costs** (Coase 1937, 1960; Williamson 1971, 1985; Posner 1972; North 1990, 1991, 1994) and **for creative destruction à la Schumpeter** (Mokyr 2007);
- **The sharing economy often has a destructive impact on many sectors** which are located at local and regional level (The European Committee of the Regions 2016);
- **Legal institutions matter** because “*the legal system is a very expensive social institution*” (Shavell 1999) and **litigation should be avoided at any reasonable cost** (Gross and Syverud 1996);
- **The legal institutions of the EU have the crucial importance for the implementation of the sharing economy concept** into the European Single Market (European Parliament 2016).

# Results

**The Treaty on the functioning of the European Union (TFEU)** is one of the most crucial legal institution of the EU, because:

- TFEU establishes **the free movement of services within the EU** (TFEU, Art. 56). That is why the online platforms of sharing economy may compete with each other and with rivals from the traditional economy;
- TFEU **guarantees the right of establishment** (TFEU, Art. 49). The restrictions on the freedom of establishment “of nationals of a Member State in the territory of another Member State” should be prohibited (TFEU, Art. 49).
- **EU** according to the TFEU is **responsible for launching the competition rules** in the EU Single Market (TFEU, Art. 3);
- TFEU **guarantees the fair competition** in the EU Single Market (TFEU, Preamble).

# Results

## The free movement of services within the EU - CoJEU, C-434/15 or C-320/16

Article 1.1 point b of **Directive 2015/1535 on Information Society services** says that service, like **intermediary services of the real-world exchanges provided to peers by the online platforms of sharing economy** are defined as *“any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”*. However in practice, services deliver to peers by Uber were excluded *“from the scope of the freedom to provide services in general as well as the directive on services in the internal market and the directive on electronic commerce”* (CoJEU, C-434/15 or C-320/16).

**Uber services were classified as a transport services not as an information society services.** This allowed the EU Member States to regulate the conditions under which such services may be provided in conformity with the general rules of the TFEU.



# Results

## The free movement of services within the EU - CoJEU, C-390/18

Furthermore, a service provider, like the online platforms of sharing economy, who provides an information society services in a Member State of origin, like Airbnb Ireland may rely on **the free movement of services** guaranteed by **Directive 2000/31 on electronic commerce**.

However, in practice, the legality of Airbnb Ireland services according to French national legislation is questioned (**CoJEU, C-390/18**). French national legislation lay down restrictive rules for the exercise of the profession of **real estate agent**. Nevertheless, Opinion of Advocate General Szpunar delivered on 30 April 2019 highlight that “*Member State other than that in whose territory a provider of an information society service is established*” cannot restrict the free movement of those services “*by relying on its own initiative and without an examination of the substantive conditions being necessary*”.

# Results

## **The legal institutions of the EU like:**

- Consumer Protection Cooperation (CPC) Regulation (2006/2004/EC);
- Consumer Right Directive,
- Unfair Commercial Practices Directive;
- Unfair Contract Terms Directive;
- Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

**protect consumers, contractors and undistorted competitions** from unfair practices of online platforms like Airbnb Ireland who was presenting prices without their mandatory service fee and without local taxes or by showing the search results without distinction which accommodations are offered by private individuals and which by professional providers (CPC Network Authorities 2018).

# Results

**The Treaty on European Union (ToEU)** is one of the most crucial legal institutions of the EU because:

- ToEU highlights that the EU should **implement a highly competitive social market economy**, aiming at **full employment and social progress** (ToEU, Art. 3). However, the online platforms of sharing economy may lead to a **new form of precariat** due to the growing army of self-employed contractors who provides a service for customers of online platforms like Uber or Airbnb.
- ToEU should **“promote scientific and technological advance”** of the EU Member States (ToEU, Art. 3). Never less, till now the EU do not have any legal institutions which could regulate, in a proper manner, the civil and criminal liability of the robotics and artificial intelligence-based products. In the EU the artificial intelligence per se can not be sued. Only manufacturer, importer, retailer or distributor of artificial intelligence-based products may be sued due to strict liability based on **Defective Products Directive**.

# Conclusions

- The outcome suggests that **legal institutions have the crucial importance for the protection of consumers, contractors and undistorted competition** against the risks connected with the economic activities of the sharing economy online platforms;
- **The European framework is not prepared to address the legal issues that will arise when sharing economy will use on a large-scale artificial intelligence-based services like self-driving cars or drones;**
- **A common regulation for AI technology-based services or products at the EU level should be implemented**, in order to avoid distortion of free movement of services or freedom of establishment.

THANK YOU VERY MUCH  
FOR YOUR ATTENTION

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