
Legal Aspects of Sharing Economy: The Case of Games' Platforms

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Abstract:

Purpose: This article aims to show whether there are other mechanisms for dealing with customer complaints than those proposed by the platforms. Who is responsible for the content on the platforms? The aim of this article is to show that there are no rules other than private international law that allow customers to enforce their rights.

Design/Methodology/Approach: The authors use a literature review methodology consisting of a bibliographic analysis and an analysis of legal acts. The scientific argument concerns the study of the legal regulations' weaknesses based on a case study in the form of cases negotiated in international fora. The main objective of this research method was to identify the circumstances of legislative failure.

Findings: These regulatory findings could pave the way for emerging research on the role of digitalization for sharing practices.

Practical implications: The practical implications of this article are enormous. First, it should be noted that law has not always kept pace with economical solutions, and in this case, there is no opportunity for clear legal rules that allow customers to safely conduct transactions outside of the self-regulation of these online platforms.

Originality/Value: There has not yet been an examination of the law in practice - i.e., a discussion of regulatory options for international digital platforms.

Keywords: Digitalization, gaming platform, business law, sharing economy, collaborative economy.

JEL classification: C93, D12, J15, K40, O12.

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1. Introduction

The issue of sharing economy is the subject of a broad debate in the circle of politicians, lawyers and economists who see it as an opportunity for boosting economic development. Simultaneously, there have been discussions about this phenomenon's non-economic significance and its impact on other areas of social life (Zboroń, 2020). As a research subject and a social practice field, the sharing economy is now an area of interest for researchers, politicians, publicists, and social change leaders. A significant increase in the number of references — both in scientific publications and reports — to the terms associated with the sharing economy issue indicates that this concept becomes these days an essential social area. The sharing economy is spreading across a growing number of sectors. It gained popularity in the first decade of the 21st century with the emergence of several ventures to share unused resources and skills. People tend to accumulate goods that they often do not need or rarely use.

The sharing economy (SE) comprises many platforms facilitating users' access in diverse areas, such as accommodation, transportation, leisure, and food (Acquire *et al.*, 2017; Kaczmarek and Pośluszna, 2018; Kinelski, 2019; Szczepańska - Woszczyzna, 2018; Architectura *et al.*, 2015). From an organizational perspective, the notion of the SE is steeped in positive connotations, particularly as it relates to the positive aspects of sharing practices (Altinay and Taheri, 2018; Frenken and Schor, 2017). This situation has led many organizations, such as Uber and Task Rabbit, Airbnb, Home exchange, to position themselves in their marketing materials as part of the SE; however, it is increasingly apparent that many of these organizations represent the SE to varying degrees (Belk, 2014a). The Collaborative Economy is an economic model where ownership and access are shared between corporations, start-ups, and people. This results in market efficiencies that bear new products, services, and business growth. Sometimes called the sharing economy or collaborative consumption, the movement toward peer-to-peer sharing is well-documented.

2. Literature Review on Sharing Economy

The concept of sharing creates new opportunities for consumers and businesses. Changes in the preferences, behaviours and expectations of modern consumers are primarily due to the widespread access to the Internet and social media development, where people communicate with each other and make their material resources or skills available to others for a fee. Prudent consumption as emphasised by J.B. Schor gave rise to the Sharing economy process and is nowadays an original idea blending into the process of digitalisation of the economy, a business and organisational-technological innovation (Sheth *et al.*, 2011; Kinelski and Pająk, 2017; Kinelski, 2019; Kieźel, 2018; Gorynia *et al.*, 2018; Kinelski 2017; Kieźel, 2014; Mróz, 2013; Zamasz *et al.*, 2020; Szczepańska - Woszczyzna, 2018). Its condition is not the ownership of resources but only access to them. In the literature concerning Indeed, past research has highlighted many challenges (i.e., social, economic, political,

environmental) related to the SE (Guttentag, 2019; Sigala, 2017). For example, some studies have focused on destination impacts (see Stergiou and Farmaki, 2019; Kinelski, 2017; Mucha-Kuś *et al.*, 2018; Yeager *et al.*, 2019), particularly within the hotel sector (Zervas *et al.*, 2017), as well as the negative impact on local housing markets (Stergiou and Farmaki, 2019), and host communities, generally (Jordan and Moore, 2018; Molz, 2018; Mucha-Kuś *et al.*, 2021; Nieuwland and Van Melik, 2020). The concept of sharing one's tangible and intangible resources creates new opportunities for consumers and entrepreneurs. Changes in the preferences, behaviours and expectations of modern consumers are primarily due to widespread access to the Internet and the development of social media, where people communicate with each other and make their tangible resources or skills available to others for a fee (sometimes covering only part of the cost) or free of charge.

Businesses across industries are responding to changing consumer needs and adapting their business models to new market developments. New start-ups are emerging and joining the sharing economy in various forms, e.g., through professional online platforms that provide access to information on specific resources and facilitate shared consumption among interested parties. Undertakings classified as sharing economy are undertaken in more and more new sectors of the economy.

A critical reflection is also taken regarding how those issues shall be analyzed (Curtis and Leher, 2019). A particular interest is noted in economics since the sharing economy is treated as a new business model belonging to the area of the new economy — 4.0 economy (the fourth technological revolution). It is predicted that there will be a rapid development of the sharing economy — for instance, PwC (2016) foresees that in 2025 the global revenue generated by this business model will amount to USD 335 billion in financial, transport and hotel services, tourism, and staffing. Such predictions are supported by the statistical data that shows an increase in interest in the offers classified as the sharing economy phenomena (*According to PWC (2016), 40% of the adult Polish population identifies with the most common types of activities within collaborative/sharing economy*).

The increasing economic importance of innovative solutions is based mainly on customers' and consumers' positive feedback. They appreciate the widespread availability and the ease of use of the offered possibilities and open access to goods and services. While economics and its studies are optimistic about the growing importance of the sharing economy as an economic product of the infrastructure of the information society, legislation, and the structuring of the changing economy into legal norms is very difficult. Law and legal sciences clearly cannot keep up with the changing economic reality and cannot cope with encoding economic solutions into legal norm structures.

In 2015, The European Commission started the groundwork to create proper legal regulations, considering the sharing economy as a chance for boosting economic development. In 2016 instead, the appointed Commission presented a document in

which both the specific characteristics of the sharing economy phenomena and the needs for creating regulatory issues specifying the areas of responsibility of parties involved were described. It refers to the decision which legal regulations should be changed. It is worth noting that this is one of the most challenging problems that need to be solved because now, many innovative solutions under the sharing economy do not fit into the classic business models and go beyond the legal regulations. The increase in B2C and C2C online transactions worldwide has brought various benefits to consumers, coupled with increased consumer disputes. According to some estimates, between 1% and 3% of internet transactions are affected by the dispute. (Rule, 2014) Resolving such a dispute is an extremely difficult task due to the possibility of multiple jurisdictions and equal legal systems (Hantzopoulos, 2018).

In the legal literature, there are advocates of no regulation who emphasize that making final regulations is not only very costly but also impossible. According to many people with liberal attitude, reputation systems and rankings are a sufficient and even the most effective form of protection of weaker sides of sharing economy relationship. On the other hand, enthusiasts of creating a consistent regulation claim that this is the only way of amending emerging market errors that users alone are not able to overcome (Codagnone and Martens, 2016). Because of the dynamic development of cooperation economy and difficult direction of development, there appear voices are inducing to refrain from choosing the appropriate way and wait for an appropriate moment (Acevedo, 2016).

3. Research Methodology

A final common research design is a case study, which is an in-depth examination of one or more subjects of study (cases) and associated contextual conditions. George and Bennet define a case study as a "detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events" (George, 2004).

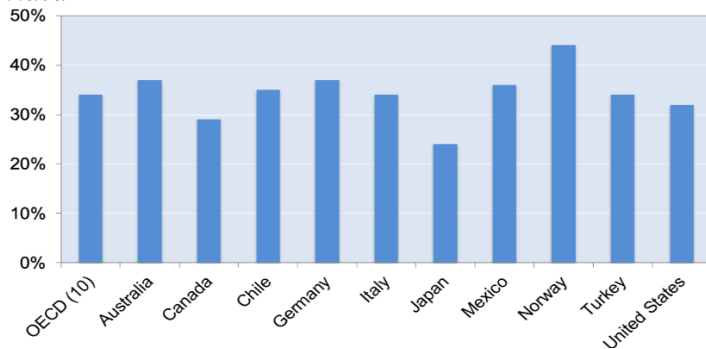
It could be defined as "an investigation of a contemporary phenomenon within its real-life context when the boundaries between phenomenon and context are not clearly evident". Comparing legal regulations, it is hard to show statistical analysis of data from a large sample.

4. Research Results - The Regulation of Collaborative Economy

Complicated legal matters, detailed regulations and struggles of users to assume responsibility with platforms require effective mechanisms of settling disputes that will provide an effective method of protection for injured persons and that will also enable further development of sharing economy in a responsible manner in the aspect of pursuing warranty claims.

Firstly, between the partners, there may arise disputes concerning rendering the basic service which the transaction involves. Secondly, there may arise disputes concerning the reputation system connected with participation. Thirdly, there may arise conflicts between the partners considering the service of the platform being an informational service (The directive 2000/31/WE Directive in the matter of electronic commerce) that is an insufficient check of the past or repugnant to the law data processing. Fourthly, there may occur disputes concerning the responsibility of the platform for a basic service. An EU-wide survey shows that more than half of consumers face problems in contractual disputes (EC, 2017 Consumers' attitudes towards cross-border trade and consumer protection 2016). A consumer survey was carried out in ten OECD countries 9 in 2017; it shows that around one-third of platform users experienced problems (OECD, 2017). "Trust in peer platform markets: Consumer survey findings", *OECD Digital Economy Papers*, No. 263, OECD Publishing, Paris (presented by Figure 1)

Figure 1. Map of the path of increasing customer satisfaction with the educational services provided



Source: Own study based on: (*The International Code of Ethics*, 2019, p. 6).

Many examples of disputes that may arise can be given. Disputes can be settled through traditional court trials, alternative manners and internet mechanisms prepared for that. However, sharing economy creates serious difficulties connected with the Internet in the field of cross-border contracts associated with private international law and conflict-of-law rules. Distribution economy services are key enablers of entrepreneurship and new business models, trade, and innovation, which can also contribute to improving consumer welfare if they are related to ensuring fair, predictable, sustainable, and reliable effective redress. The questionable issue of online services is the jurisdiction that can be the jurisdiction of the place of shipping the good or sending the service, the place of downloading all the closest common connector.

In practice, the emerging disputes over the collaborative economy led to a situation in which many conflicts remained unsolved. For example, online platforms offering online game usage and accessories create a market for connecting users who wish to buy and sell various digital content in particular game activation codes, as well as

physical products offered by retailers on the platform's website. Platform users allow users to download video games or computer programs. While the digital keys provided on the platforms are brand new, i.e., they have been obtained directly from the game publisher by distributors, sellers and have not been previously used by users, they do not infringe the rights of the creator and have been introduced to the market in accordance with the will of programmers and publishers, there is no problem with using acquired games. If the key has been activated and then sold, game publishers block its access, which prevents the use of the purchased game. The question arises how the purchaser can exercise his rights under the contract and from whom he can request redress, if possible. Currently, legal models speak of two extreme attitudes - strict regulation and total lack of it.

5. Self-Regulation

Most cooperation platforms support and develop regulations in the form of self-regulation. A cooperation economy basing on trust offers services that earlier were offered only to the closest relatives, neighbours, friends - to strangers.

The role of the platform consists of mediating between the parties to the transaction and calling forth the feeling of trust in them. Trust has become a valued good. A user who has a negative experience of participating in the platform will not only not use its services in the future, will warn other potential customers by whom the platform will lose its good name, but also the behaviour may provoke a reaction from the authorities due to the lack of a sense of security of the parties. Platforms not only have an incentive to introduce self-regulatory mechanisms but also resources for such activities. They have tools at their disposal to reduce asymmetries between users (European Parliament resolution of 15 June 2017). Platforms building their trust mechanisms create rating rankings specifying criteria for their reputation, verifiable by the identity of persons.

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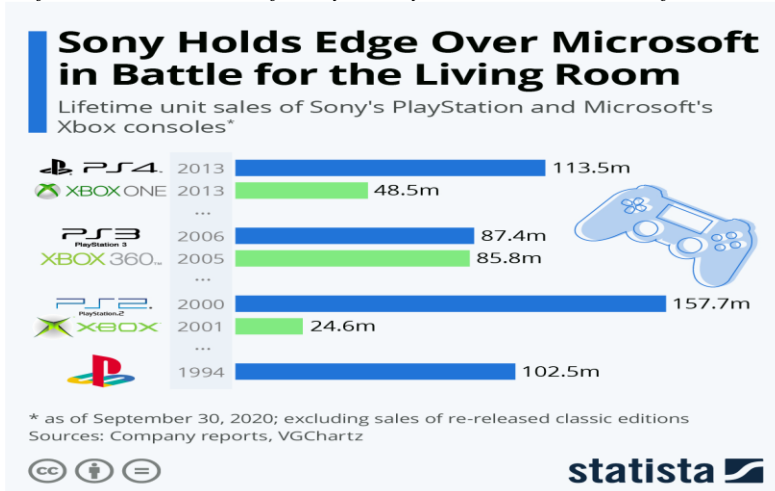
Many platforms use standardization to increase their users' trust. This standardization is evinced in setting quality standards that must be met as a condition of participation in providing services by the agency of the platform, e.g., Uber imposes conditions as

to the types of cars or amenities that should be offered during the ride (a bottle of water, Wi-Fi). In the early years of peer-to-peer transactions, anonymity was a common practice; nowadays, anonymity or uncertainty as to the identity of the user is suspicious, if not dangerous, e.g., Airbnb provides their hosts with the opportunity of renting their property only to verified users. What is more, cooperation platforms often assume the responsibility of assigning the payment directly to the provider, functioning as a guard of the transaction. Reputation is the brand of sharing economy, and the existence of asymmetry in the flow of information can result in a lack of confidence in the cooperating participant, that is why platforms are interested in caring about the reputation, which is the equivalent of the brand in the traditional economy (Hantzopoulos, 2018).

There are two types of reputation mechanisms: the first is a system of quality assessment in which the recipient writes a review of a product or a service, the other one is a system of numerical evaluation where the recipient evaluates a service or a product in a numerical scale. Airbnb introduced a system according to which providers getting low rating are sanctioned collectively, which can determine the access to the platform (Therier, 2016). Reputation mechanisms constitute an ex-post rating and are not always able to prevent bad scenarios.

Additionally, reputation systems based on ratings cause difficulties while starting cooperation because of the barrier of convincing potential clients while lacking a history of ratings. The result, in many cases, is calculated based on transactions made within the latest six months. Uber, while assessing the introduced internal supervision over the platform with opinions considering reputation as Regulation going beyond regulations in the field of user safety protection above acquiring a license necessary in case of providing taxi services (Acevedo, 2016), presented by Figure 2.

Figure 2. Lifetime units' sales of Sony's PlayStation and Microsoft's Xbox consoles



Source: Own study based on Statista, 2020, p. 6.

So, that the service would have a technical and passive character (The verdict in cases C-236/08 doC -238/08 Google France/Lna) cooperation platforms in order to improve the quality of the services made moves complementing efforts of regulating institutions through tools of self-regulation, that is why self-regulation mechanisms should complete the efforts of regulating institutions and be perceived as an essential complementary tool. The Commission turned to the possibility of using self-regulation and co-regulation as instruments contributing to better shaping of the legal environment (The statement of Commission Internet platforms and single internal digital market), which was accepted by the European Parliament (European Economic and Social Committee (EESC), 'Opinion on Self-regulation and co-regulation in the Community legislative framework). In this document, the Commission gives directions regarding the way self-regulation should support the mandatory legal provisions. Cooperation of public institutions with cooperating entities can lead to effective enforcement of jurisdictional policies. The European Social Committee stated that self-regulation should be considered an important complementary element of hard law and not an alternative (European Economic and Social Committee (EESC), 'Opinion on Self-regulation and co-regulation in the Community legislative framework).

6. European Regulations

Regulations concerning statutory responsibility collaborative economy constitute a severe challenge to Union institution since until now regulations corresponding to the needs of each sector were established by member countries in the national law, and on the other hand, the diversity of the phenomenon does not allow to foresee and regulate the essential matters without limiting the entrepreneurship within the sharing economy. According to the law of the European Union, online platforms as information society service providers that are only agents are exempt from responsibility for the data stored by themselves (The directive on electronic commerce, 2000/31/WE).

Depending on legal aspects of the activity of the cooperation platform and whether the activity can be qualified as a hosting service (The verdict in cases connected with C-236/08, to C-238/08 Google France/Luise Vuitton), exemption from responsibility takes places when the cooperation platform does not play an active role that would give it the knowledge about illegally stored information, awareness of it or control over it. The above exemption does not include another type of activity or services provided by a platform functioning on the principles of sharing economy. The exemption does not exclude responsibility of the platform resulting from binding regulations on personal data protection within the scope in which these regulations concern the activity of the platform. The extent to which a cooperation platform can be subject to requirements regulating the access to the market depends on the character of the activities.

Cooperation platforms also provide other services - except for information society services - they can mediate between basic service providers and users, they can also be basic service providers, and then they can be subject to sector regulations, including requirements of permits, licenses. Whether a cooperation platform provides basic services can be determined based on a few factual and legal criteria. The degree of control can be determined based on such criteria as to whether the cooperation platform sets a final price, whether the cooperation platform sets others apart from the price conditions determining the contractual relationship between the basic service provider and the user, whether the platform is the owner of key resources used to provide the basic service. When meeting the criteria for which the platform is an entity providing a basic service or if the cooperation platform and the person providing the basic service are connected by employment relationship all the more is responsible for services. Generally, the bigger the input of the cooperation platform in deciding about the choice and organization of basic service providers and the manner of providing these services - for example through direct verification of services and quality management - the more the platform will qualify to be considered a platform providing also a basic service.

As it was already mentioned, disputes between partners are often regulated through the choice of law and jurisdictions included in conditions or agreement of the platform with its users. In this regards, provisions of the Regulation on jurisdiction (Resolution of the European Parliament and the EU Council no. 1215/2101 from 12 December 2012) and the Regulation Rome I (Resolution of the European Parliament and the EU Council no. 593/2008 from 17 June 2008 on the governing law for contractual obligations Rome I) ensure an effectively protective solution. So far, the Union legislation concerning consumers and marketing has been designed with respect to transactions in which one of the parties is weaker and requires protection. The party which qualifies as a consumer will be entitled to more favourable regulations of the jurisdiction and the legislation in force. A cooperation economy blurs the borders between consumers and entrepreneurs since it includes a multilateral relationship between entrepreneurs, between entrepreneurs and consumers, consumers, and entrepreneurs, as well as transactions between consumers. Within these relationships, it is not always clear who the weaker party is. This is a disputable matter in online services since there are three possible jurisdictions: the place of sending, the place of downloading and the quickest connector. The place where services are rendered is the place of downloading - the place where the recipient of the services resides. It is especially onerous for the providers that can be sued in the member state where the consumer resides.

Secondly, in the case of entering a consumer contract and lacking the choice of the legislation in force and jurisdiction, special protective regulations of consumer contracts apply. If conditions of a consumer contract are met, the consumer is protected by special regulations: the disputes will be settled by the legislation of the place of consumer's residence, and the consumer will be able to initiate proceedings before courts of the member country in which the provider resides, or before courts of

the member country in which the consumer resides, even if the provider is not a resident of the European Union. On the other hand, the provider can take legal action against the consumer only before the courts of the member country in which the consumer resides. Special protection is offered only to the consumers in a dispute with the entrepreneur. In the event when both sides belong to the same category, special regulations concerning protection are absent⁶. In the verdict in the case Gruber the Court of Justice of the European Union ruled that special protection of the Regulation cannot include persons that enter a contract with the aims partially connected to their professional or economic activity (Hantzopoulos, 2018).

The Union legislation concerning consumers and marketing has been designed with respect to transactions in which one of the parties is weaker and requires protection. Transactions made between peers and unprofessional providers cannot use the scope of consumer protection. Trying to establish the legal framework in case of cooperation economy, the main stimulus of the Commission activities is preventing market fragmentation (COM 2018). Because of that, there appeared an idea of harmonizing regulations concerning sharing economy, which is reflected in the Regulation on Promoting Fairness and Transparency for Business Users of Online Intermediation Services of 20 June 2019. (Regulation (EU) 2019 /1150 of the European Parliament and of the Council). That is why it is important to establish clear and effective delictual regulations which would split the responsibility to the parties involved.

This Regulation applies to online intermediation services established or a resident in the Union that offer goods or services to consumers in the Union through online intermediation, irrespective of the place of establishment or residence of the providers of those services and notwithstanding any other applicable law. The Regulation should apply to service providers, regardless of whether they are established in a Member State or outside the Union, provided that two cumulative conditions are met. First, the business users or business users of the website should be established in the Union. Second, business users or website users for business purposes should, when providing those services, offer their goods or services to consumers located in the Union for at least part of the transaction. The requirements set out in this Regulation on the establishment of internal complaint – handling systems are intended to minimize administrative and judicial overburden and to facilitate the resolution of disputes concerning the provision of online intermediation services in the Union through mediation.

The Commission, in close cooperation with the Member States, encourages the creation of specialized mediation organizations, which are currently lacking. Member States should be required to ensure the enforcement of this Regulation through existing structures, including through the courts. Information should be provided to the Commission identifying the organizations, associations, and entities that the Member States consider should be entitled to bring cases under this Regulation.

Therefore, providers of online intermediation services should identify at least two public or private mediators with whom they are willing to engage.

Therefore, the new Regulation combines two temporal approaches to the legal Regulation of sharing economy issues, developing a third - by-law ordering platforms to create their own legal regulations allowing for the amicable settlement of disputes.

7. Market Access Under WTO Law and Free Trade Agreements

Access to the market is the basis of every project of economic integration. Access to the market based on the EU regulations is beneficial only to these service providers who reside in or are in some other way connected with one member state. Providers who do not have any connection with the EU cannot benefit from regulations concerning free flow just because they provide their basic services through a platform that "resides" in the EU. Providers that are not connected with the EU at all will have to wait for TTIP (Transatlantic Trade and Investment Partnership apply for the access to the market within the framework of WTO GATS) or any other bilateral or regional agreement binding the EU and the country in which the platform is based, e.g., on CETA (Comprehensive Economic and Trade Agreement, CETA) or an agreement on free trade between the EU and Singapore. Platforms and providers falling under territorial application of the EU legislation can apply for access to the market based on general regulations of the Treaty, the directive on professional qualifications, the service directive, and the directive on electronic trade. Since the US has a clear advantage over the EU in the development sharing economy, most platforms operate in this country. Many people decide to establish a registered office or another form of running business activity in the EU while others, usually smaller, operate directly with the US and have to face a serious maze of the GATS legislation Transatlantic Trade and Investment Partnership apply for the access to the market within the framework of WTO GATS (Transatlantic Trade and Investment Partnership apply for the access to the market within the framework of WTO GATS Under GATS) there are four modes of providing services (Table 1).

Table 1. *Four modes of providing services*

Description	
MODE 1	concerns transborder service provision where only the service crosses the border
MODE 2	is intended for consumption abroad where only the receiver is relocating
MODE 3	concerns forming offshore companies and their subsidiary companies
MODE 4	concerns the temporary delegation of service providers

Source: Own study.

For each of these four modes, the GATS signatories have planned obligations based on specific service classification inspired by Central Product Classification (CPC)

developed under UN auspices. This classification includes 12 main categories, more than 60 subcategories and a couple of hundred service subcategories. In each of these signatory countries, there were proposed different levels of obligations concerning access to the market (GATS, art. XVI) and national treatment (GATS, art. XVII). Since countries offered different commissions for different modes and different categories and subcategories of services, a cooperation platform for each of the services that it offers can be subject to three different modes, that is, three respective grades of access to the market:

1. if according to the criteria, it offers exclusively electronic services, then it is subject only to the obligations within the mode 1;
2. if it also participates in a base service, but the base service is offered by providers of the receiving country the platform can apply for access to the market in accord with the obligations offered in mode 2;
3. if at last the platform also participates in a base service, but the base service is offered by providers that temporarily cross borders, it can apply for access to the market in mode 3.

These three options that contain multiplied by the number of categories of services and the uncertainty connected with obligation scheduling within GATS cause access to the market for offshore cooperation platform to be the least certain.

Cooperation platforms established in Canada or in other countries with which the UE concluded modern preferential agreements such as CETA (Comprehensive Economic and Trade Agreement, CETA) could be in a better situation. The access to the market within CETA, similarly to GATS, is based on positive lists of schedules (that is, Only the positions mentioned and/or areas are subject to liberalization), but it is more favourable for the traders in a couple of manners (Table 2).

Table 2. List of applicable practices and principles towards counterparties in modern international agreements.

Description		
FIVE STEPS	First	after a reception in the receiving country, service providers use international treatment based on negative lists of schedules (that is, national treatment includes all sectors/activities except these explicitly excluded)
	Second	regulations regarding transparency and internal regulations are much stronger than GATS regulations
	Third	there are common disciplines in many specific areas (such as, e.g., transport, financial services, electronic trade, intellectual property that could facilitate certain services
	Fourth	a mechanism facilitating mutual recognition and creating common standards and regulations has been introduced and
	Fifth	there is a mechanism of settling disputes between investors and the country

Source: Own study.

It may happen that sharing economy platforms created in Canada, Singapore or other third countries that concluded a complex trade agreement with the EU has bigger chances for accessing the market in the EU than those that were created in the US. The access to the market of cooperation platforms under the EU legislation is much easier by the directive on electronic trade, the directive on services and primary legislation considering free flow and sometimes based on sector regulations (Hatzopoulos, 2018).

8. Conclusions

To sum up, it should be emphasized that the considerations are undertaken (presented) in the article based on the analysis of the jurisprudence have shown that the application of the sharing economy in economic practice and, in particular the Regulation of the assertion of rights is not so simple. It should be emphasized that the application of the sharing economy within the framework of one country's solutions (jurisprudence) is possible. The legal cases presented have shown that there should be rules for the sharing economy within the framework of EU structures, for example, or other networks or even situations where companies providing services across borders should have codes of good practice, procedures, or instructions. This is necessary to guarantee redress in cross-border disputes in a way that provides a legally predictable system of protection.

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