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Does the ECJ Uber ruling stand alone, or will it have an impact over the employment relationships of the so-called *gig-economy?*

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On 20 December 2017, the European Court of Justice ("ECJ") issued a landmark decision which clarified the legal classification of the services provided by Uber.
Uber has long maintained that it should not be considered a transportation company, but a technology company that connects drivers and clients, as such not subject to the licensing requirements that apply to the transportation sector. On this very basis, Uber developed "UberPop", an application that allows even non-professional drivers to sign up and satisfy clients' trip requests. However, this view was not accepted by the professional taxi drivers' associations of different European and non-European countries, which brought legal actions against Uber for unfair competition. In particular, the decision of the ECJ under examination originated from a lawsuit between a Spanish taxi drivers' association and Uber System Spain, a Spanish company related to Uber.
This decision, by qualifying UberPop as a transportation service, rather than an information service company, put an end to the fight between the company and the taxi drivers' associations. However, this ruling has other important implications in the wider context of the *gig-economy*, not only from a regulatory and competition point of view but also from an employment law perspective.

The principle of law expressed by the European Court of Justice in Case C-434/15

According to the ECJ, UberPop "*is more than an intermediation service consisting of connecting, by means of a smartphone application, a non-professional driver using his or her own vehicle with a person who wishes to make an urban journey*". In fact, "*the provider of that intermediation service simultaneously offers urban transport services"* which would not be possible without the smartphone application that it makes available. Moreover, Uber "*exercises decisive influence over the conditions under which the service is provided by its drivers*" as well as "*a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion*". In the light of these considerations, the Court concluded that this "*intermediation service must thus be regarded as forming an integral part of an overall service whose main component is a transport service […]*".
Although this decision concerns the smartphone application known as UberPop (which has already been considered illegal by the national courts of several countries), the conclusion of the ECJ addresses a more general issue: the Court has essentially recognised that Uber **directly** provides a transportation service.
In other words, a transportation contract is not concluded between Uber's drivers and the clients, but between Uber itself and the clients who are, therefore, direct customers of the company.
This conclusion clearly applies not only to UberPop, but also to all the smartphone applications still made available by the company and could have major implications for other businesses operated in the European *gig economy*. In particular, the reasoning of the Court rises questions over the contractual relationship between Uber and its drivers, namely over their qualification as employees or self-employed workers.

The *gig-economy* and the doubtful qualification of its workers

The word *gig-economy* indicates those services and activities, which are channeled or performed through technological platforms (such as smartphone applications).
The main feature of these types of work is the essential role played by the technological platforms. Indeed, these platforms represent the core of the businesses operating in this field as they match the supply and demand of the services at issue. Based on this assumption, most workers of the *gig-economy* are qualified as self-employed workers: in fact, according to this interpretation, the provider of the platform is just an intermediary helping the workers to develop their own business. This trend has also been strengthened by the common view that these services represent an occasional work that people do to supplement their incomes. However, statistics show that an increasing number of people consider these services as their main source of profit and probably this explains the recent strikes of Foodora and Deliveroo's errand boys asking for a decent labour and social protection.
Apart from social issues, the qualification of the *gig-economy* workers is a hot topic as from a legal standpoint too: as the ruling of the ECJ clearly pointed out, the technological platforms have other important functions that are comparable to the organizational and disciplinary powers exercised by the employers in the context of an employment relationship. In particular, these platforms:

- fix the minimum standards that must be satisfied by the workers; and
- supervise the fulfilment of these standards via automated rating and review mechanisms that collect the feedbacks of clients and customers.

It is exactly in the light of these functions that the ECJ considered Uber not only as mere intermediary but also as a direct transportation service provider, and this conclusion may be safely extended to other companies of the *gig-economy*. Consequently, the exercise of these functions may also lead to the conclusion that the activities performed by the *gig-economy* workers are in some way "organized" by the provider of the platform. In Italy under Sect. 2, Para. 1, of Legislative Decree no. 81/2015 "*as from 1 January 2016, the rules on employment relationships apply also to those relationships consisting in exclusively personal and continuative activities which are organised by the principal also with reference to the working time and the place of work*". Thus, the activities performed by the *gig-economy* workers would fall within the scope of an employment relationship, rather than of a self-employment one.
Thus far there is not a clear-cut answer to the question of the qualification of the *gig-economy* workers as employees or as self-employed workers and a case-by-case analysis is required. However, one thing is clear: despite Uber spokesperson's affirmation that the ruling of the ECJ "*will not change things in most EU countries*", such ruling actually imposes an analysis in greater depth of the entire phenomenon of the *gig-economy* which might well change in the future, mostly as to the organisation and discipline of its workforce.