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**MULTISIDED PLATFORMS AT THE
CROSSROADS BETWEEN CORPORATE LAW
AND LABOR LAW**

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TABEL OF CONTENTS

<i>ABREVIATION LIST</i>	5
<i>INTRODUCTION</i>	7
<i>PART I MULTISIDED PLATFORMS - A NEW ARCHITECTURE FOR THE MULTINATIONAL ENTERPRISE?</i>	14
CHAPTER I. FROM GENUS TO SPECIES - PRELIMINARY ASPECTS REGARDING MULTINATIONAL ENTERPRISES	15
1. Introduction	15
2. Defining multinational enterprises	16
3. The activity of the multinational enterprise and the “ <i>OLI paradigme</i> ”	25
4. The historical evolution of the multinational enterprise	28
5. Intermediary conclusions.....	35
CHAPTER II. ORGANIZATIONAL FORMS OF THE MULTINATIONAL ENTERPRISE	36
1. Introduction	36
2. Societal forms of organization. Theories of control.....	38
2.1. Vertical vs. horizontal models of intergration	38
2.2. The particularities of the societal form of organization. The application of the vertical and horizontal model.....	45
2.3 The theory of control in European Competition law. The single economic entity.....	50
2.3.1. <i>The notion of undertaking in Competition Law</i>	52
2.3.2. <i>The interpretations of control in the case of anticompetitive agreements and abuse of a dominant position</i>	55
2.3.3. <i>The interpretations of control in the case of economic concentrations</i>	57
2.3.4. <i>The undertaking in Competition Law, an unstable concept?</i>	62
3. Contractual forms of organization.....	67
3.1 Distribution networks.....	70
3.2 Production networks	73
4. Comparative observations. Interpretations of control: societal vs. contractual	77
5. Hibrid structures. <i>Joint ventures</i>	80
6. Intermediary conclusions	84
CHAPTER III. MULTISIDED PLATFORMS - PRELIMINARY ASPECTS	86
1. Introduction	86
2. The platform – market, technology or enterprise.....	87
3. Classifications of multisided platforms.....	93
4. The historical evolution of multisided platforms	106

5. Intermediary conclusions	116
CHAPTER IV. THE DISTINCTIVE FEATURES OF THE MULTISIDED PLATFORM.....	119
1. Introduction	119
2. Network effects – what differentiates the platform ecosystem?	120
3. The efficiency of platforms regarding the natures of value and nature of the assets – Limited assets, increased efficiency	127
4. The corporate structure of multisided platforms	140
5. The corporate governance of multisided platforms	149
5.1 The challenges presented by the platform governance	153
5.2 Can we truly speak of a new form of corporate governance	159
6. The sharing economy. Where does <i>gig-economy</i> fit in?	161
7. Intermediary conclusions.....	168
PART II. PLATFORM USERS - CARRIERS OF THE CORPORATE STRUCTURE, OR EMPLOYEES OF MULTISIDED PLATFORMS?	172
CHAPTER V. ON DEMAND WORK - WHO ARE THE GIG-WORKERS?	173
1. Introduction	173
2. Identifying <i>gig workers</i> . Doctrinary benchmarks and classifications	174
3. Mobile app workers – jurisprudential benchmarks	179
3.1 European court rulings and administrative decisions stating employee status	180
3.1.1 <i>Belgium</i>	181
3.1.2 <i>Switzerland</i>	182
3.1.3 <i>France</i>	183
3.1.4 <i>Spain</i>	184
3.1.5 <i>The United Kingdom</i>	185
3.1.6 <i>The Netherlands</i>	187
3.2 Non-European jurisprudence stating employee status: The United States and the „ABC” test	188
3.3 European court rulings and administrative decisions not stating employee status....	193
3.3.1 <i>ECJ, Yodel case</i>	194
3.3.2 <i>Denmark</i>	195
3.3.3 <i>Italy</i>	196
3.4 Non-European court rulings jurisprudence not stating employee status	198
3.4.1 <i>Australia</i>	198
3.4.2 <i>United States</i>	200
4. Platform workers – legislative benchmarks.....	201
4.1 France – „ <i>El Khomri</i> ” Law Franța – Legea „ <i>El Khomri</i> ”	202
4.2 Italy – „ <i>Riders’ Decree</i> ”	202
4.3 Spain – <i>La „Ley Rider</i> ”	204

4.4 Proposal for a Directive on improving working conditions in platform work	205
5. Platform workers – <i>soft law</i> benchmarks	209
5.1 Germany - Paid Crowdsourcing for the better	209
5.2 Italy – The Bologna Charter of fundamental rights of digital labour in the urban context.....	211
5.3 Spain – <i>SHES (SharingEspaña)</i> Code of Conduct	211
6. Intermediary conclusions.....	212
CHAPTER VI. <i>RIDE-SHARING</i> IN ROMANIA. THE LEGAL FRAMEWORK PROVIDED BY G.E.O. NO. 49/2019.....	215
1. Introduction	215
2. The evolution of <i>ride-sharing</i> in Romania and the need to regulate.....	216
3. The legal framework provided by G.E.O. No. 49/2019 – is the platform a mere intermediary?.....	221
4. Analysis of contractual terms and conditions. The test established by the proposal for a directive	230
5. Intermediary conclusions.....	246
CHAPTER VII. EMPIRICAL STUDY. ANALYZING THE QUESTIONNAIRE REGARDING <i>RIDE-SHARING</i>	248
1. Introduction	248
2. Describing the questionnaire and its objectives	249
3. Describing and interpreting the results	251
4. Intermediary conclusions.....	259
<i>CLOSING REMARKS</i>	261
<i>BIBLIOGRAPHICAL REFERENCES</i>	268

Key-words: multinational enterprise; multisided platforms; network effects; sharing economy; gig-work; gig-worker; ride-sharing.

SUMMARY

The topic of this PhD thesis proposes a comprehensive analysis of multi-stakeholder platforms, which represent a manifestation of digitization in the business environment, while marking the disruptive effect that these new types of enterprises generate. Certainly, the areas of incidence are numerous, our choice being to present the implications in terms of company law and labor law. Although we note the contrasting nature of our exposition, we believe that this aspect is what captures the originality of our approach and gives cohesion to our research. Moreover, our desire to discuss two facets of the same concept is essentially similar to the mechanism of multilateral platforms, which bring together participants from two or more different categories, representing different sides of the managed ecosystem.

From a company law point of view, digital platforms are extremely fast-moving entities, with a very short path from emergence to dominance of the main economic sectors of activity. Hence, they have also caused a transition within the traditional multinational company, which has had to adapt in order to remain relevant. The transition is primarily about digitization, as the contemporary consumer can now be addressed predominantly online.

As a result, products and services have had to be redesigned to serve beneficiaries who express a constant need for innovation. Innovation can be achieved in an internalized development process, but it raises significant issues in terms of cost and time to improve existing procedures. In this respect, we note that multinational companies are characterized by extending activities beyond the territorial limits of the home country, but by exercising control, which may often vary according to the structure itself, the parent company manages to maintain an identity as well as a common architecture. In other words, the group structure expands through distinct entities, which through their diversity can exploit the advantages offered in different host states,

but this expansion essentially still summarizes the internalization process present within the group.

By comparison, digital platforms have understood that innovation is ubiquitous, it does not have to belong to a single company, but can be captured from the outside through appropriate mechanisms. While multinational companies, even in the presence of extraterritorial activities, remain core-oriented, digital platforms have understood that the managed ecosystem as a whole is far more valuable than the separate elements that compose it. Therefore, the development of a product, or providing a service, should not be limited to the effort of a single enterprise, but can express the contribution of the entire community. More accurately, the platform captures complementary innovation from the outside, and through the network effect includes third party participants in an ecosystem, which is not owned, but only coordinated. Network effects succeed in connecting users from different categories, producers, suppliers, developers, providers and beneficiaries, with the value generated by one category leading to benefits for participants operating on the 'other side'.

At the same time, we note that the platforms also mark the emergence of a digital labor market, which is improperly named, because from the perspective of the multilateral platform, those providing the service are self-employed. As such, we can no longer speak of traditional labor relations, characterized by continuity and stability, but we are talking about on-demand work, which involves meeting a request when it arises, a feature describing a concept that is extremely popular today, the gig-economy. On the other hand, however tempted we may be by the advantages of breaking down work into separate and occasional tasks, we cannot overlook the fact that the individuals involved are filtered through extensive reputational control, which in practice expresses authority vis-à-vis the employer. If we accept this conclusion, we have to accept that some users are deprived of specific protection mechanisms.

Because of these considerations, our thesis is composed of two distinct parts that deal with each aspect separately, summarizing the interdisciplinarity of our research. **The First Part** of our thesis is devoted to the presentation of platforms from a societal point of view, in comparison with the features revealed by a traditional multinational enterprise, as, in our opinion, the relationship between the multinational company and digital platforms can be described as a genus-species relationship. This part is composed of four chapters, the first two of

which are dedicated to understanding the mechanism presented by groups of companies, in order to subsequently compare these features with a platform-based business model, illustrating their specificity in relation to multinational companies.

Accordingly, Chapter I concerns the definition of multinational enterprises, given that, before we can analyze the mechanism of platforms it is necessary to start by defining the genus. As we shall demonstrate, the concept of multinational enterprise is far from having achieved consensus, and is susceptible to numerous interpretations. The same applies to the attribution of the prefix „*trans*” or multinational when talking about these companies. On the other hand, we believe that the aim of this chapter is not to homogenize the terminology used, but rather to reveal common features that distinguish the multinational enterprise from the national group. Despite the often superlative proportions expressed by multinationals, they retain a fluid architecture which allows them to expand or, conversely, to compress their corporate structure, depending on the needs indicated by the group interest.

In Chapter II, we show the main forms of organization within the multinational enterprise, which can be grouped into societal and contractual forms of organization. The classification is not without interest, since the corporate structure of multilateral platforms suggests the combination of these forms of organization. A significant part of this chapter is concerned with the analysis of the concept of control, as the instrument that gives cohesion to the group, marking the integration function for the component companies, if we refer to the common group identity, and the fragmentation function, while considering the separation of liability between the dominant company and its subsidiaries. Thus, as the group structure differs according to the form of organization, the presence of control and its intensity varies. However, it should be noted that MNEs are versatile, meaning at the present moment we will not encounter situations where they fit neatly into one category or another.

These chapters provide context for our discussion of multilateral platforms, and the next two chapters are designed to determine their features in comparison with the traditional multinational enterprise.

Chapter III maintains symmetry in our analysis. Our discussion concerning multinational companies began by illustrating some preliminary aspects of these enterprises and then showed

the main forms of organization identified. In the same way, in the context of multilateral platforms, we begin by describing the concept and the numerous interpretations it can have. The platform can be seen as a technology, a market or an enterprise, analyzing these formations from the perspective of the last meaning highlighted. The need to understand these enterprises is all the greater as the areas in which the platform-based business model is applied are essentially limitless, from alternative passenger transport and home delivery, accommodation services, payment systems, operating systems and digital solutions for any field of activity.

Additionally, we note that there are currently estimated to be over 80 models within digital platforms, with the classifications identified marking the different functions performed, the determining factor being the platform's ability to facilitate transactions between different users, be they vendors, service providers, application developers or consumers. On the other hand, as we will show, the classification of the platform into a certain category also generates a reconfiguration of their relevant features, which is dealt with in the next chapter.

Chapter IV focuses our approach on interpreting the platform as an enterprise that uses digital or technological means to create value by facilitating connections between two or more distinct categories of users. In this sense, the objectives of the chapter are to present the features of multisided platforms in a comparative manner, and on the other hand, to highlight the elements by which platforms distance themselves from the line drawn by the multinational group. We highlight the crucial role played by the network effect, which marks the efficiency of the platform in terms of the nature of the assets and resources used. Within platforms, we observe a limited need to own, precisely because of the external ecosystem that allows a coordination of resources coming from users.

To be sure, our argument differs depending on the type of platform described, but we note that from a corporate structure perspective, multilateral platforms are based on only a limited number of subsidiaries coordinated through corporate control, the enterprise architecture being extended by *users who - in our view - become the true carriers of the corporate structure*, while also challenging the dynamics of corporate governance that must address these stakeholders. Last but not least, by addressing the collaborative economy, we ensure that we point out the impact of platforms on the business environment, this last section of the chapter also having the role of providing the necessary transition to analyze the situation of workers on

digital work platforms. Therefore, the last topic covered in the first part opens our discussion in the second part of the thesis.

Part II starts from the premise that we cannot deny users their status as carriers of the corporate structure, but we must also address the social implications of multilateral platforms. The question is therefore to what extent certain participants are self-employed through the platforms, or whether we can assume the presence of a relationship of subordination which also determines the need to impose a specific protection regime for workers on digital work platforms.

Chapter V of our thesis considers the situation of these users, the problem being traced through three coordinates: doctrinal, jurisprudential and legislative. From the perspective of platforms, individuals providing services via the platform enjoy the status of partners, being in this sense professionals, who carry out an independent, occasional and self-interested activity. This is precisely where the crux of the debate lies, in the extent to which service providers organize their activity themselves. The answer certainly depends on the type of platform and the specific service under discussion, but it seems to be affirmative if we consider the category of *crowdworkers* in general.

On the other hand, if we consider workers on mobile apps, for services such as ride-sharing or parcel delivery, the factual situation indicates a dependent legal relationship, which should be based on an employment contract. The discussion is not without stakes, because if we admit that gig workers are in fact employees, they are deprived of the means of social protection. The issue is also increasingly being debated by the courts in the Member States, and there are already more than 100 judgments and administrative decisions on the subject. Although the individual decisions may be contrasting, the general trend is towards reclassifying the relationship, or at least granting a minimum level of protection, irrespective of the legal status of the employee.

The need for an EU-wide solution is about to be met with a Proposal for a Directive to protect workers' rights on digital platforms. The draft establishes a presumption as to the existence of the status of employee, and in its current form, for the presumption to operate, at

least two of the five conditions imposed must be met, which, as we shall see, are relatively easily met by ride-sharing platforms in Romania.

Chapter VI narrows down the scope of our research to the legal regime applicable to the activity of alternative passenger transport, or ride-sharing. Our motivation lies primarily in the way the activity is organized. Platforms such as Uber, Bolt or FreeNow are decentralized in terms of their corporate structure and are open and accessible. At the same time, from the perspective of the service provided, they are centralized, with elements such as price, order allocation and the route chosen being just a few examples that describe the control of the digital enterprise over the concrete conditions of the business.

Secondly, we note that this activity is regulated by the provisions of GEO No. 49/2019, thus we have the advantage of dealing with the situation also in terms of the applicable legislation. However, we highlight the fact that the purpose of this normative act is not to provide a protection regime for workers on mobile applications, their status being ignored by the emergency ordinance. The legislative act is strictly aimed at providing a legal framework for ride-sharing, in order to avoid tensions related to the usual taxi service, as well as problems of unfair competition. The emergency ordinance critically notes that the platforms act only as a mere intermediary, the transport contract being formed between the alternative transport operator and the passenger. On this point, we point out that it ignores the relevant case law of the Court of Justice of the European Union, which emphasizes the decisive influence exercised by platforms on the transport service.

In addition, this chapter aims to discuss the main ride-sharing platforms currently holding technical approval to operate in Romania, through a detailed analysis of the contractual terms and conditions applicable, summarizing how the activity is organized. As we shall see, we have no problem in demonstrating that all the conditions set out in the draft directive are met cumulatively, even though the directive only requires two of the five conditions to be met.

Chapter VII provides an empirical component to our research, as it deals with the description of the questionnaire on alternative passenger transport and the interpretation of the results. Beyond our conclusions on the applicable statute, given doctrinal and jurisprudential observations, it is necessary to describe how those who provide this service perceive their

activity. In this context, the questionnaire designed seeks to mediate the gap between the qualification of the relationship, as it results from the interpretation of legal provisions and case law, and the responses of those who are really concerned by the challenges revealed by digital work platforms, specifically the drivers of alternative transport.

The objectives of the questionnaire are to reveal the nature of the activity, regardless of the concrete form of organization imposed by the provisions of GEO No 49/2019, addressing elements such as the number of hours dedicated and the frequency of the activity, as well as the main or secondary nature of the activity taking into account the source of income declared by the respondents. At the same time, we present *reputational control*, both from the perspective of the components, which concern passenger evaluations, but also the acceptance rate, cancellation of rides, respectively delayed orders, and from the perspective of the measures that the platform can take namely temporary or definitive suspension from the platform. The system is set up, in theory, to ensure a quality standard for the service provided by the platform, but in practice it focuses on penalizing worker passivity. From this point of view, the attitude of the platforms is closer to the employer's authority, particularly in terms of regulatory and disciplinary prerogatives. Consequently, we note that the measures that can be ordered by the digital work platform are similar in nature to the disciplinary sanctions that can be ordered by an employer.

The thesis concludes with general conclusions, in which we present the main observations related to each part of the dissertation, summarizing how our objectives have been argued through the issues highlighted by our scientific approach.