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Unsettled State of Regulation: Italy's Hard Path Towards Effective Rules for the Sharing Economy

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Introduction: The State of the Art of the Italian Sharing Economy

In recent years, a variety of terms have been used to describe the shift towards new forms of economic activities and business models occurring online and fundamentally characterised by the rising culture of sharing

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underused resources. The idea of sharing economy in Italy is generally associated with a vast array of practices related to the swapping, exchanging, borrowing, lending, or renting, crowdsourcing, collective purchasing, shared owning, or shared managing of resources. As it has been often emphasised, ‘businesses in the sharing economy range from the small, grassroots-funded variety (...) to the big and venture-backed, many of which are online platforms’ (Balaram 2016, p. 11). In full awareness of the unsettled and volatile definition that the term may acquire, the chapter focuses on and tries to identify the most distinctive traits of the Italian sharing economy reality, embracing a cross-disciplinary perspective on the phenomenon.

The sharing economy in Italy has experienced rapid growth in the last decade. Both the number of companies and start-ups operating on the national territory offering a wide-ranging and diverse array of activities and services and the bases of users and consumers relying on such new market offerings have steadily increased (Ciuffini et al. 2020). In broad brush, one can identify two main clusters of active sharing economy realities: on the one side, consolidated services of shared mobility and shared accommodation and, on the other, a set of miscellaneous business realities, ranging from food sharing and social eating experiences to financial services and co-working spaces. Both these macro-categories of Italian sharing economy activities will be taken into consideration in the following sections of the chapter.

In one way or the other, all the operating sharing economy sectors have been profoundly affected by the outbreak of the COVID-19 pandemic.

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Italy was the first European country to declare a state of emergency in March 2020, suddenly facing lockdown restrictions without the possibility to draw assessments or replicate any reactive regulatory development in other countries in the continent. The emergency response of the Italian government resulted in a rapid expansion of online interactions among its population both in social and economic terms. Among others, the Italian sharing economy sectors had to operate unprecedented moves of re-organisation and re-purposing of their offered services and activities. A series of interviews conducted by the Turin School of Regulation between June and September 2020 showcases that, while the traditional economy was struggling, the sharing economy proved particularly dynamic during the initial phase of emergency measures, thanks to considerably malleable business structures and a consolidated ability to adapt the business models to fluctuating demands on the digital markets (Turin School of Regulation 2020). Several sharing economies experiences have arisen as new means through which it was possible to continue to relate to the local dimension of everyday life. Numerous examples can be found across the sectors mentioned above, from shared accommodation services to neighbourhood networks created and used by local communities to the re-shaping of small local platform-based businesses to meet the changing needs of the Italian society during the lockdown (Turin School of Regulation 2020).

The presence of sharing economy services across the entire Italian peninsula proves to be highly meaningful not only vis-à-vis the recent impact of the COVID-19 pandemic but, more generally, in terms of transactions volumes, organisational models, and growth expectations. Giving account to the overall landscape and its most recent developments, the following sections will provide an overview of the Italian sharing economy reality, focusing on its most advanced experiences in the mobility and accommodation sectors as well as on its most innovative facet, looking at food and other services on the rise. The analysis fundamentally retraces the main legislative responses that have been put forward until now to govern the challenges posed by the sharing economy in Italy, highlighting critical aspects thereof. In this light, the chapter serves a threefold purpose: it offers a snapshot of

the most active sharing economy sectors in Italy, with special attention paid to those activities which are platform-mediated and recently affected by the COVID-19 pandemic, it outlines the legal measures that aim to govern sharing economy activities in the country, and lastly, it draws considerations on the policy directions that most urgently call for attention.

The Italian Take on Shared Mobility and Shared Accommodation

Looking at the Italian sharing mobility scenario, two ambivalent and apparently clashing elements emerge. On the one side, commercial ride-for-hire services (e.g., UberPop, Lyft), which match passengers with non-professional drivers of vehicles for hire, are either banned or subject to significant legal restrictions (see Italian Constitutional Court 2016). On the other side, shared mobility platforms are flourishing, often coupled with a growing sensitivity towards environmental protection and awareness of climate change. Most of these services are demand-driven, meaning that travellers share a vehicle either simultaneously as a group (ride-sharing) or over time (vehicle-sharing) as a short-term rental. When opting for the former (see Blablacar; JoJob; Scooterino), passengers share the cost of the journey with the driver, who provides the vehicle and fuel. Similarly, car-pooling platforms (see Autostrade per l'Italia) facilitate arrangements among automobile owners whereby each of them takes turns in driving the others to and from a designated place. On the other hand, sharing platforms of vehicles (see ShareNow; Enjoy), motor scooters (see Cooltra; ZigZag), and bikes (see Mobike; Tobike) differ from ride-sharing services, as individuals locate, hire, and drive means of transportation they do not own, typically paying by the minute or hour. Several of these platforms offer collateral services, such as short-term parking on public or private property (see Sparkyclub; Parkopedia). Inevitably, the impact of the pandemic on the mobility sector has been dramatic: mobility towards workplaces is estimated to have decreased by 60% during the first months of lockdown, while mobility towards public

transport nodes and retail activities reduced by 76% and 80% respectively (Celata et al. 2020). However, part of the shared mobility scenario underwent a swift transformation, showing a remarkable resilience. For instance, some platforms offered health sector workers the possibility to use their services for free (see Bicinicittà; E-vai; Popmove). After a first collapse, the number of average daily rentals showed some signs of recovery, especially in the case of bike sharing and e-scooter sharing services, whereas car sharing services seem far from rebounding to the pre-COVID baseline (Ciuffini 2020). Numerous Italian cities witnessed a sharp rise in the presence and use of on-street e-scooters (see among others Bird, Dott, Helbiz, Keriscooters, Lime), which can be presumably related to the market opportunities created by people's reluctance to use public transport during the pandemic.

The tourism and accommodation sectors are vital to the Italian economy, with tourism, directly and indirectly, accounting for over 15% of employment and 13% of the gross domestic product in 2017, which, according to the World Travel and Tourism Council, is higher than the average of EU countries and of the global economy as a whole (Barone et al. 2019). Sharing economy platforms offering private accommodation solutions seem to have steadily increased their relevance in the sector over the last decade. Among the most prominent players is Airbnb, a service that was originally conceived as a platform for individuals to share and exploit underused space in their homes. Alongside Airbnb's popularity, several other short-term rental international platforms operate on Italian soil, such as Booking.com and VRBO, as well as home exchange platforms which enable the swapping of residential or summer houses (see Scambiocasa; LoveHomeSwap). In addition to accommodation platforms, there is a minority of tourism-oriented sharing economy players that offer support services, such as management intermediaries, cleaning crews, deposit holders, and facilitate the organisation of sightseeing tours, holiday equipment, and experiences (see Guidemeright; Playaya). The short-term rental market sector was strongly affected by the travel restrictions imposed in the spring of 2020, not only in an economically detrimental way (Watson 2020). Several market actors opted for offering alternative products: Airbnb started offering online experiences

and activities—such as meditation, virtual visits, and cooking classes—and providing financial support to its own hosts (see Airbnb 2020a). Airbnb put aside a 250-million-dollar fund to support hosts who were required to fully refund guests between 14 March and 31 May 2020, with reimbursement up to 25% (Biondi 2020). Italy was also the first country where the platform launched the initiative ‘Airbnb for doctors and nurses,’ soon extended to other countries, with the aim to offer health and community workers free or low-priced accommodation near their workplace or homes to self-isolate (Airbnb 2020b). At the urban level, the decrease in touristic demand exacerbated the perception of silence and emptiness, especially in the historic centres of those Italian cities with a huge artistic and cultural heritage, thereby making more visible the processes of depopulation induced in those areas by the rise of short-term rentals mediated by sharing economy platforms (Picascia et al. 2017; Celata and Romano 2020). This led some to argue that the tourism-led economy is too fragile and unable to guarantee sustainable paths of growth (Bozzato 2020; Giossi 2020) and, in turn, to advocate for a more decentralised regulation of, among others, short-term rentals and other sharing economy sectors (Bonciani 2020). Meanwhile, according to data gathered by AirDNA, there are five Italian cities among the top ten European cities with the highest growth in new Airbnb bookings during the month of May 2020, compared to the continent’s negative peak at the end of March 2020 (DuBois 2020), showing the ability of the Italian tourism and accommodation sectors to rapidly recover and potentially return to pre-pandemic activity levels. In this light, it is reasonable to expect that the debate about how to regulate the tourism-led growth model will acquire increasing importance in the near future.

Sharing Economy Innovation in the Italian Food Sector

The sector of food sharing is well-developed in Italy, with a considerable number of active online services. In recent years, there has been

a boom in so-called social eating platforms, also known as home restaurants or social cooking services, that offer users the possibility to organise meals, cooking courses, or other culinary events in their homes or other private locations. Le Cesarine, a nationwide community of local home cooks founded in 2004, is a glaring example, aiming to safeguard Italy's food culture through home cooking, and recognised in 2019 as an official Slow Food community (see Le Cesarine). The Italian start-up Gnammo has become one of the most prominent players on an international scale, with more than 200,000 users and around 13,000 events organised as of 2020 (see Gnammo). Taking this idea to a socially driven model, Peoplecooks has combined an online cooking experience with elements of mutual support, building a platform explicitly aimed at students or off-site workers, tourists, and those who are seeking or can only afford low-cost meals (see Peoplecooks, platform currently inactive). The initiative aims to be a practical solution for social assistance and solidarity. Pursuing a similar aim, Scambiocibo is one of the main services supporting the fight against food waste by facilitating the exchange of food products and leftovers, a practice that has been consolidating and has attracted the attention of the Italian legislator (Act Nr. 166 of 19 August 2016; see also Scambiocibo). Since the outbreak of the pandemic, with restaurants closed or limited in their activities, only businesses that proved capable of quickly adapting to lockdown restrictions have been able to thrive (Farrer 2020). Many social eating platforms were forced to change their business models, opting for repurposing their services towards virtual online cooking classes with hosts from all around the world (see Travelingspoon; Eatwith). The perception of the economic and social innovation in the food sector in Italy sees the sharing economy scenario dovetailing with the digital platformisation of food delivery. Numerous platforms are exponentially growing their market power, steadily increasing the value of the food sector in the Italian digital economy. Even though falling beyond the scope of this analysis, the role of food delivery players is highly relevant to grasp the perception by the Italian population of the changing digital economic landscape and the general propensity to support new business models. Online services in the food sector have recently experienced a steep increase in their market share, reaching 18% of the total, and

experiencing growth at levels significant enough to influence consumer behaviours (Oncini et al. 2020). Stemming from this trend, important questions and a strong social sensitivity have arisen concerning the employment status and legal protection of delivery riders, animating a vibrant debate that directly or indirectly also affects workers in sharing economy activities (Quarta 2020; Tassinari et al. 2020).

Miscellaneous: Sharing Economy Innovation in Other Market Sectors in Italy

Along with the mobility, accommodation, and food sectors, the Italian sharing economy landscape boasts a wide-ranging corollary of activities and services on the rise. Finance is a good example of a growing area worth considering. Numerous crowdfunding platforms are flourishing, providing services that are based on reward—where donors receive a reward with a value that is much lower than the money raised (see Be Crowdly), donation—for ethical and social purposes to benefit not-for-profit organisations and charities (see Let's Donation; Rete del Dono; Universitiamo), lending—to help low-income population obtain mainly micro-credit schemes without specialised intermediaries (see Prestiamoci; Borsa del Credito; Smartika), or equity—where investors can mainly finance innovative start-ups, often linked to sustainability and green issues (see CrowdFundMe; Buonacausa; Produzione dal basso; see also Mainieri and Pais 2016). Sharing economy platforms are also active in the supply of consumer goods and services, with growing attention being paid to platforms that facilitate exchanges, rentals, sales, and donations of various items (see Coseinutili; Zerorelativo; Te lo regalo se vieni a prenderlo), among which books (see Comprovendolibri; Biblioshare) and train tickets (see Scambiotreno). Several social and family-related platforms offer selected household services, such as babysitting and caregiving (see Le Cicogne; Oltretata; Sitterlandia) or, pet-sitting (see Animaliallappari; Holidog; Petme). Some platforms facilitate relationships between neighbours, enabling users to barter food or handiwork support with other members of their neighbourhood (e.g., Nextdoor; BarattoB&B). Most of the professional services offered on

sharing economy platforms rely on skilled workers, who receive monetary payments or credits as a reward (see Fiverr; Solvercity; Tabbid; Timerepublik). Lastly, in contrast to many other EU Member States, Italy's market of shared spaces for professionals and co-working activities and events (see *What a Space*) is rather limited, with more than half of these services being concentrated in the metropolitan areas of Milan, Rome, Turin, and Florence (Akhavan et al. 2019).

A Fragmented Legal Response

If the most evident feature characterising the Italian sharing economy scenario is the variety of consolidated activities and business models involved, the second-most glaring aspect is the lack of a consistent regulatory response to the manifold disruptions caused by the rapid growth of the digital sharing culture. The situation has remained unaltered and de facto worsened with the crisis induced by the outbreak of the COVID-19 pandemic, with some sharing economy sectors thriving and others suffering dramatic economic losses. Challenged by the heterogeneous variety of sharing economy practices active across the national territory, the Italian legislator has, to date, failed to formulate a comprehensive and forward-looking regulatory response to the challenges posed by the phenomenon. To start with, in the national legal system, there is no binding definition of sharing economy. At EU level, in the first steps undertaken by the European Commission, the focus has been set on the notion of collaborative economy, addressing all 'business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods and services often provided by private individuals' (European Commission 2016, p. 3). Following the same direction, the Italian legislator has embraced a wide-spectrum approach towards the regulation of platform-based, gig, collaborative, and sharing economy realities, focusing on the common key role of digital intermediaries and platforms (Fabozzi and Bini 2019; Smorto 2015a), and mostly ignoring the specific differences between the various business models. In this light, three draft laws have been

proposed, specifically tackling the role and obligations of digital platforms in the evolving Italian economy (i.e., Draft Law Nr. 3564 of 27 January 2016; Draft Law Nr. 2268 of 3 March 2016; Draft Law Nr. 1497 of 15 January 2019). Despite lively doctrinal and public debates surrounding them (Delonge et al. 2018; d'Ippolito 2018), none of these bills has been adopted. The inclusive take on the sharing—and not only sharing—economy, the Italian legal landscape has developed a peculiar focus on the relationship between digital platforms and workers. Questioning the status and qualification of ‘workers’ in evolving economic sectors (see Quarta 2020), the national case law as well as regional and local legislative proposals have primarily looked at the protection of the rights of delivery riders in the food sector (e.g., Lazio Regional Law Nr. 4 of 12 April 2019; Emilia Romagna Resolution Nr. 206 of 26 June 2019; Campania Draft Regional Law Nr. 794 of 13 May 2020). These efforts culminated in the adoption of ad hoc national provisions ensuring minimum standards of protection for both permanent and occasional workers in the platform-based economy (Act Nr. 128 of 2 November 2019).

Looking at the sharing economy strictly intended—the sole direct supply of products and services from peer to peer (Smorto 2015b)—the relevant Italian legal scenario is characterised by a deep uncertainty concerning the applicability of the same rules tailored for the platform-based economy. Presumably due to the presence of big international players and a tendency towards the concentration of market power in the hands of few sharing economy actors in sectors that are key to the Italian economy, such as mobility, tourism, and accommodation, taxation has been one of the first and main legal tools that Italian governments have relied on. Such a reaction is not a typical within the Italian legislative environment, where according to some ‘the need to regulate a phenomenon often instinctively translates into mere taxing of that phenomenon’ (Picascia et al. 2017, p. 17). A new taxable category of income named ‘income deriving from non-professional sharing economy activities’ was envisioned, and further, more sectorial interventions have been promoted, such as the introduction of a 21% flat-rate tax on all short-term rentals (recently limited to a maximum of four property units, Act Nr. 178 of 30 December 2020) and the obligation for sharing

economy intermediaries operating in the country to elect a fiscal representative on Italian territory (Act Nr. 96 of 21 June 2017). Surprisingly, the Italian legislator's approach towards the needs and changes generated by the sharing economy proves more mature and sensitive towards taxation issues than towards problems of unfair competition between old and new market players. The judicial saga involving Uber is a good example. In light of the missing liberalisation of the mobility sector in Italy, the UberPop service has been declared an unfair competitor and, hence, unauthorised to operate on national territory (Tribunal of Rome 2017). Nevertheless, Uber showed resilience in the country, trying to become a platform accessible only to traditional taxi drivers and aiming to overcome policy resistance by establishing relationships with municipalities and local economic actors.

A few attempts to regulate the growing Italian sharing economy more effectively have been moved forward, yet without passing into law. It is the case of Draft Law Nr. 4059 of 27 September 2016, which intended to promote and incentivize car sharing practices, and of Draft Law Nr. 3528 of 28 July 2015, attempting to introduce specific rules on home restaurant activities. A fragmented and rather involuted regulatory background can be noticed also with regards to the short-term accommodation sector. Due to its consolidated and relevant role in the Italian economy, the sector is quite emblematic of the main features of the national legal response to the sharing economy, that is to say (i) its substantial regulatory fragmentation, (ii) the emphasis on taxation, and (iii) the hard path towards building a more cohesive legal framework to tackle emerging social issues. The relevant legislation has evolved from a first phase of regional norms (commonly labelled as 'Airbnb rules,' e.g., Toscana Regional Law Nr. 86/2016; Lazio Regional Regulation Nr. 8/2015; Veneto Regional Law Nr. 11/2013), which showed considerable divergences, some tightening, some losing the grip on innovative accommodations options for tourists within private homes.

A subsequent push towards a national regulation has stemmed from the need to enhance clarity on the taxation schemes applying and provide the Italian Tax Authority with the necessary data (Act Nr. 96/2017). Only then the legislator's intention has moved towards a full-fledged consistent response defining how many house units could have been

made available by private citizens, for how many days a year, establishing the obligation to notify the public authority about the guests (Act Nr. 132/2018), and setting up a registration database for tax, public security, and liability purposes (Act Nr. 58/2019). A comprehensive legislative reform of the short-term accommodation sector was at the horizon, promising sensitive adjustments regarding historical city centres and an organic system of licenses to house owners (Draft Law Nr. 2079/2019). Yet, not only the outbreak of the pandemic but also heated discussions in the Italian Parliament and the lack of political consensus over the same definition of professional activity and new bureaucratic burdens hold the bill hostage, leaving most legal uncertainties still standing.

Summary

In light of the outlined reality of sharing economy experiences that are consolidating and arising in Italy, overcoming significant difficulties from the recent pandemic emergency, the legal framework that applies to these specific market services proves fragmented and most likely ineffective to sustain the sector. Regulatory gaps and grey zones of uncertain legal interpretation jeopardise the development and smooth operation of most of the activities forming the Italian sharing economy landscape. The present and future of the Italian sharing economy landscape seem to require sound and targeted policy intervention, with particular respect to three core aspects.

First and foremost, the most pressing need emerging is for a clear-cut definition of sharing economy, which reflects state of the art: while it is undisputed that the role of digital intermediaries is key to the business models relating to this notion, it is also true that sharing practices and experiences flourishing in Italy are not merely characterised by the 'platformisation' component. Second, the regulatory path should pursue and value regulatory consistency. The legislative interventions required to regulate the sector are potentially numerous, and only a coordinated effort of policymaking and cohesive legal principles can achieve the objective of enhancing legal certainty among the sharing economy stakeholders. In particular, defining the role and obligations of platforms

and service providers, the principles to prevent and fight discrimination practices across the involved economic sectors, a common taxation system, and principles of social sustainability, environmental protection, and community welfare seem to be top priorities in the prospective and inevitable process of structured legislative intervention on the sharing economy. Lastly, there are numerous open issues related to the COVID-19 pandemic and its social impact, with restrictions and changes that will potentially affect the sharing economy (the tourism and mobility sectors *in primis*) in Italy and beyond, both in the medium and long run. Despite the resilience demonstrated to date, it is likely that some sectors will continue to experience important transformations and limitations, thus making the pandemic not only a disruption of everyday life and urban spaces but also a ‘forced opportunity’ to rethink the growth and economic model at play in Italy, and its related systems of rules and incentives.

Acknowledgements The authors would like to thank Dr. Cary Yungmee Hendrickson for the insightful comments and generous feedback on prior drafts of this chapter.

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