

Background on UBER

Business profile

- Uber Technologies Inc. (also known as simply 'Uber') is an American company founded in 2009 by Garrett Camp and Travis Kalanick.
- Uber offers primarily ride-hailing and food-delivery services ("UberEats"), but is also active in the package-delivery and freight transportation sectors in the US.
- **Uber operates in over [REDACTED] metropolitan areas worldwide, covering [REDACTED] countries,** through [REDACTED] employees (2019 data) and has an estimated revenue of [REDACTED] (2020 data).
- **In Europe, Uber is perhaps the [REDACTED] platform economy operator, being active in [REDACTED] countries through more than [REDACTED] drivers and [REDACTED] riders (Uber's own data, 2020).**
- The Uber app was officially launched in 2011 in San Francisco. Initially, it only allowed users to hire luxury black cars. It then launched the UberX (2012) and UberPop (2014) services, the latter soon becoming the main source of controversies surrounding the company.
- UberPop allowed non-licensed people to offer rides to customers and was heavily contested by taxi-drivers, especially in Europe. In 2017, a [CJEU ruling](#) on a Barcelona case ended UberPop services being provided in the EU.
- **UberEats was launched in 2014 and is now one of the two main pillars of the company's business, the other being UberX.**
- Uber has been mired in corporate scandals, concerning i.a. its toxic work environment and allegations of sexual harassment by female employees.
- Uber's former [REDACTED] resigned from the board of directors and sold his shares as a result of the scandals.
- [REDACTED] has been [REDACTED] Uber since 2017. In 2019, he oversaw the IPO of Uber.
- **Uber has been loss-making since its foundation.** Observers claim its business strategy is, alongside that of many similar 'unicorns', to grow fast and aggressively by acquiring ever larger shares of the market and make profits in the long-term through semi-monopolistic rent gains.
- Uber has also been experimenting with self-driving vehicles through its Uber Engineering department, building on the large pools of data it has access to through its ride-hailing and food-delivery services.

On Uber's White Paper

- Uber's White Paper recognises that the sustainability of the platform economy depends on the fairness of platforms' business models.
- The paper explicitly refers to the European Pillar of Social Rights and describes key actions put forward by Uber to pursue these principles, in partnership with stakeholders like the OECD Forum and the Open University.
- The five pillars for good platform work that Uber identified are **Flexibility, Protection/Benefits, Earnings, Growth and Voice**.
- Uber is also introducing more transparency in some markets, by telling drivers and couriers how distant and how much paid a ride will be before they accept it (e.g. **the Earnings Estimator tool introduced in France**).
- In the White Paper, **Uber expresses the fear that courts may reclassify its drivers and/or riders because of the provision of social benefits** like the industry-funded portable benefits described in the paper.
- Empirically, however, this does not seem to be a criterion that courts take into account when ruling on the employment status of people working through platforms. Rather, thus far they have looked at the degree of control exerted by platform companies over the performance of tasks.

Court rulings on cases involving Uber

- Across the EU and the UK, there have been approximately 25 court rulings on cases involving Uber as a party in at least 4 Member States. These rulings concern the employment status of drivers but also algorithmic management.
- The outcome of the rulings is heterogeneous and sometimes contradictory. Below is a non-exhaustive overview of the most important of such rulings.

The UK Supreme Court ruling of February 2021

- The UK Supreme Court ruling (19/02), which refers to a case brought by Uber drivers in 2016 against the British subsidiary of Uber, confirms a trend in judiciary thinking that we have recently been witnessing across Europe.
- The British judges based their ruling on a factual assessment of Uber drivers' working conditions.
- They concluded that **digital labour platforms cannot unilaterally decide what is the employment status of people providing services through them**. The employment status of people working through platforms must be empirically verifiable.
- Similarly, with other court rulings on platform work in Spain, Italy and France, **the UK Supreme Court explained that Uber drivers are in a position of subordination and dependency in relation to Uber**.
- They have no ability to improve their economic position through their own skills, as would be the case with entrepreneurs. In practice, the only way in which they can increase their earnings is by working longer hours while constantly meeting Uber's measures of performance.
- Importantly, the UK Supreme Court also ruled that Uber drivers' working time calculation must also include the time spent logged-in the app while waiting to be assigned a new ride.
- In the UK ruling the judges also assert that contract flexibility *per se* is not incompatible with an employment contract.

- As a response to the court ruling, **Uber accepted the reclassification of its British drivers as ‘workers’** (in the UK meaning, see above) thus entitling them with the right to minimum wages, paid leave and a pension plan. However, **contrary to the ruling, Uber will not be considering ‘logged-in’ time as ‘working time’**, thus calculating a driver’s earned pay from the moment he/she accepts a ride up to the moment he/se completes it.
- Uber has so far disbursed more than [REDACTED] to comply with the ruling.¹ In November 2021, Uber announced it would increase fare prices by [REDACTED] in London, to attract more drivers and put up with the surge in consumer demand.²

Two recent French court rulings: Cour d’Appel de Lyon et Cour de Cassation

- On 4 March 2020, the French Supreme Court (*Cour de Cassation*) ruled that an Uber driver was a worker of the platform, and not a self-employed contractor.
- The court upheld a previous decision by a court of appeal, saying the Uber driver could not qualify as a self-employed contractor because he could not build his own clientele or set his own prices, making him an employee of the company.
- On 16 January 2021, however, the *Cour d’Appel de Lyon* found that an Uber driver was in fact a self-employed. The court did not follow the criteria set out by the Supreme Court one year earlier, relating to the factual control of the platform over the driver, and instead adopted a more ‘traditional focus’ on the lack of a formal obligation to work and a free determination of schedule.

Three recent Dutch court rulings on ‘algorithmic firing’

- In March 2021, a Dutch court found that Uber did not violate the GDPR when it terminated the accounts of a group of drivers via an algorithm-assisted process. The court also told Uber to give drivers access to certain datasets.
- On 14 April 2021, in a different case, it was made public that in February 2021 a Dutch court ordered Uber to rehire and compensate drivers who argued they had been “unlawfully dismissed by algorithmic means” in breach of Europe’s data protection rules. The App Drivers and Couriers Union (ADCU), which represents the drivers, welcomed the decision while a spokesperson for Uber said the company would contest it.
- In September 2021, the Amsterdam District Court ruled that Uber drivers in the Dutch capital are workers, not self-employed. It also issued a fine of EUR 50,000 which Uber should pay for failing to implement the terms of the collective agreement for taxi drivers.
- The case was filed by trade union FNV, who claimed 4000 drivers in Amsterdam should be granted worker benefits in line with the taxi sector. Uber said it would appeal the decision.

¹ Reuters article available [online](#).

² CNBC article available [online](#).