

The CTDPT is initially issued for a five year period and can be renewed only provided the professional taxi driver demonstrates that he continues to meet the aforementioned criteria of Art 6 para 2.²⁰ The license can be revoked, amongst others, if the driver commits a disciplinary offence or ceases to have the physical and/or mental capacity to act as a professional driver. Moreover, a criminal court condemning the driver of a criminal offence can deprive him/her of his/her professional license in addition to the sentence provided for by the Cyprus Criminal Code or any other law for the relevant criminal offence. The criminal offences that can result in such license deprivation by the court as well as the period of license deprivation in every case are listed in Annex 'B' of Law 80(I)/2011. For example in case of rape, the court can deprive the driver of his/her professional license for life.

Additional rules regarding taxis are contained in the Regulation of Road Traffic Carriage Law of 1982 (hereafter: RRTC)²¹. The particular legislation prohibits the use of any vehicle as a taxi (for remunerated rides) without the necessary 'road use' license for the specific category²² which is issued by the Licensing Authority.²³ This is a license attached to the vehicle (rather than the driver) and can be issued following an application by the owner of the vehicle.²⁴ The Licensing Authority must attest that the applicant is of good character²⁵ and that he is entering the transportation business as his/her main profession.²⁶ UberPop drivers will not normally meet these requirements. Law 9/1982 also imposes requirements that refer to the need for vehicles used as taxis to bear specific recognition plates and, in the case of urban taxis, to be equipped with taximeters too.²⁷

All of these rules and requirements mirror a strict regulatory regime for taxis in Cyprus and should be expected to cause problems to UberPop. Indeed, by virtue of Art. 11 para 1 Law 80(I)/2011, a person using a vehicle without the required professional license commits a criminal offence and may be subjected to imprisonment of a maximum of one year or a maximum fine of 2,000 Euro or to both of these sentences. It arises therefore that any driver who is not in possession of a professional license and seeks to co-operate with Uber will be exposed to criminal liability. Though the relevant law does not refer to the legal position of the party playing the role of Uber,²⁸ Uber itself may also be imposed with criminal liability, specifically by an operation of Art 20 of the Cyprus Criminal Code. According to this provision, a person who enables, aids, abets, counsels or procures another person to commit a criminal offence may be charged with actually committing the said offence.²⁹ By means of its website, Uber specifically invites and encourages drivers to join its service in order to make money fast and also undertakes to support their 'ride offering' activity, specifically by connecting them with interested passengers and handling payment. This particular role of Uber may result in it being attached with criminal liability as an abettor, facilitator or counselor, thus facing the same sanctions with the ones to be imposed on each and every individual driver who utilizes the Uber platform to provide remunerated rides without the required professional license. Though Uber acts as an intermediary bringing together drivers and potential drivers, it seems unlikely to come within the liability limitations of Art 15 and 17 of the Law on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce of 2004³⁰. Those refer to mere conduits and passive hosting providers that do not specifically solicit third party content as Uber does when inviting drivers to sign up.

The same hold true in relation to Law 9/1982 which renders it a criminal offence to use a private vehicle for the carriage of people for remuneration.³¹ The sanctions are additional to the ones to be imposed under Law 80(I)/2011 and again refer to

imprisonment and/or a fine, though in this case,³² the police can also apply ex parte for a court order prohibiting the use of the vehicle pending the relevant criminal prosecution.³³

Cyprus consumer protection laws may be another source of problems for UberPop. The Unfair Commercial Practices of Businesses to Consumers Law of 2007, Law 103(I)/2007 renders 'stating or otherwise creating the impression that a product can legally be sold when it cannot'³⁴ a blacklisted practice prohibited as unfair under all circumstances. Arguably, Uber creates this wrong impression if it promotes or offers its service without disclosing that the rides offered to potential passengers are, in fact, illegal. In this respect, an order may be secured again Uber ordering it to cease the unfair commercial practice³⁵ and in effect, the promotion and provision of its service. The relevant law implements an EU Directive of maximum harmonization³⁶ and thus, the same is true in relation to all Member States.

It follows that as much as Uber Taxi is unlikely to face any legal hurdles in Cyprus, UberPop (or any equivalent) will probably have a very hard time sustaining itself. Public transport and general consumer protection laws could serve as a tool in the hands of licensed drivers and/or taxi companies who would want to fight Uber. Given that the Cyprus taxi industry is a troubled one often on strike for problems perhaps less serious than the ones to be caused by the unexpected direct competition of Uber, the latter cannot count on any tolerance on the part of the affected parties.

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20 Art 6 para 5 Law 80(I)/2011.

21 Law 9/1982.

22 Art 5 para 2 Law 9/1982.

23 Art. 5 para 3 Law 9/1982.

24 Ibid.

25 Art 5 para 8 Law 9/1982. Good character must be certified by the Chief of the Cyprus Police. Where the owner of the vehicle is a legal person, the certificate of good character must be secured in relation to the persons responsible for its business.

26 Art 5 para 9 Law 9/1982.

27 Art 9 para 2 Law 9/1982.

28 Art 5 para 1 Law 80(I)/2011 refers not only to persons who drive but also to those who permit or tolerate another person driving a vehicle without the required professional license, yet given that the vehicles will not be those of Uber, it seems unlikely that it will qualify as one such person, thereby being exposed to criminal liability in accordance with Art 11 para 1 Law 80(I)/2011.

29 Art 20 (b), (c) and (d) CAP 154.

30 Law 156(I)/2004.

31 Art 14 Law 9/1982.

32 Art 21 para 1 Law 9/1982.

33 Art 21 para 2 Law 9/1982.

34 Law 103(I)/2007 Para 9 of Annex I.

35 Art 13 Law 103(I)/2007. Art 12 Law 103(I)/2007 lays down the additional administrative fines.

36 European Parliament and Council Directive (EC) 29/2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) [2005] OJ L149/22.

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UBER in Switzerland

In June 2013, Uber launched its services in Zurich. Since then it has gradually expanded and is currently present in four Swiss cities: Zurich, Geneva, Basel and Lausanne. Initially, Uber only offered products that require a licensed professional driver

(Code 121, professional transportation of passengers or taxi license)¹: UberBlack, UberX, and previously UberVan². What sets these products apart from one another are the different vehicles provided in each category (limousines, compact or medium-sized vehicles or vans, respectively.) In November 2014, however, UberPop was introduced in Zurich. This product connects ride-seekers with non-professional drivers. The sole requirements for UberPop drivers are the possession of a regular driver's license for at least three years (implies the driver has to be at least 21 years of age) and a clean criminal record. In addition, the car used for the service must feature four doors and may not be older than ten years. UberPop is available in all four aforementioned cities.³

So far, issues concerning Uber have only been brought to court in the canton of Geneva (see below). As a feature of Switzerland's distinctive federalism, matters are regulated by federal, cantonal or municipal law. What makes Swiss federalism even more complicated is that cantons, within the boundaries of their powers, have heterogeneous ways of allocating the sphere of competence regarding a specific issue. Moreover, one single issue can at the same time be a legal matter of both federal and cantonal law, and even municipal law.⁴ The cantons have the power to regulate the taxi business or to delegate this law-making power to municipalities.⁵ However, the taxi business can also be a matter of federal law, especially when it comes to issues pertaining to competition law, liability law or labor law which are all federally regulated sectors. Up to now, Uber's activity in Switzerland has mainly been established in Zurich and Geneva and therefore reactions stem especially from those two hubs.⁶ Interestingly enough their approaches can be described as two quite opposing trends:

In Geneva multiple complaints have reached the authorities. In November 2014, Geneva taxi drivers filed an unfair competition complaint with the Geneva civil court requesting a temporary precautionary prohibition of Uber's activities in Geneva.⁷ The court denied the request on the grounds that Uber's activities have no damaging character. The court further mentioned that compliance with statutory rules for the taxi business is an issue that falls into the sphere of competence of the cantonal authorities.⁸ The taxi drivers have appealed this decision to the Swiss Federal court. This case is still pending.⁹ In March 2015, the Geneva Department of Security and Economy banned Uber's services in Geneva, claiming that Uber qualifies as a taxi dispatching center under Geneva taxi law¹⁰ and that it fails to comply with the therein stated rules.¹¹ Uber argues its services qualify as a technology business and therefore should not be bound by the Geneva taxi law and has consequently appealed the order. Despite the ban, Uber is still operating in Geneva.¹² The Department of Security and Economy has even created a special unit of six police officers tasked to control illegal taxi services.¹³ Violations are punishable with fines ranging from CHF 100 to 20.000.¹⁴ On April 19, Geneva's Minister of Security and Economy announced in a newspaper interview that he intends to soon bring up a legislative project that addresses both traditional taxi companies and services like Uber and that implements rules regarding fair competition, transport safety and quality requirements, as well as social security and labor protection.¹⁵

In Zurich no legal actions against Uber have been taken so far. Nevertheless, some political discourse regarding the new player in the taxi market does exist, but reactions as a whole seem to be rather contained. The city of Zurich has its own taxi regulation.¹⁶ There are, however, efforts to enact a cantonal taxi law.¹⁷ According to the city council the taxi regulation of the city of Zurich does not apply to Uber and its various services (it also does not apply to regular limousine services), as the cars used for Uber's services are not marked as taxis and the services

neither use taxi stands nor are offered to the walking public. Further the Zurich city council holds that, since Uber does not own vehicles and the drivers determine their work modalities themselves, Uber does not qualify as an employer and is therefore exempt of duties established in labor law and insurance law.¹⁸ However, the city council admits that Uber's services might be legally problematic in the light of federal professional transportation regulation. Basically, drivers operating professionally need to comply with federal labor rules.¹⁹ These rules set standards concerning working hours, driving time and resting periods. They also require drivers to possess a license for the professional transport of passengers (Code 121)²⁰ and to use cars that are properly equipped with odometers: Non-professional drivers do not have to meet these criteria. Under federal rules an operation is to be qualified as professional if it is carried out regularly (at least twice within 16 days) and aimed at economic success (met, if the transportation cost exceeds the cost of the vehicle and the reimbursement of out-of-pocket expenses of the driver).²¹ To determine whether a driver is operating professionally or not proves to be very difficult for law enforcement agencies since there is no employer that is required to report or register the drivers and the vehicles are not marked as taxis.²² All in all, Uber's activity is perceived as disruptive to the local taxi market. However, in

- 1 Art 25 Verordnung über die Zulassung von Personen und Fahrzeugen zum Strassenverkehr (VZV, 741.51).
- 2 Formerly available in Zurich: <<http://blog.uber.com/uberxZHde>> accessed 20 May 2015.
- 3 Overview of the availability of Uber products: Zurich (UberPop, UberX and UberBlack), Geneva (UberPop, UberX and UberBlack), Basel (UberPop and UberBlack) and Lausanne (UberPop): <https://partners.uber.com/signup/city> accessed 20 May 2015.
- 4 See Pierre Tschannen, 'Staatsrecht der Schweizerischen Eidgenossenschaft' (3rd ed., Schulthess 2011) 276 ff. and 299 ff.
- 5 Certain areas are not regulated at all: mainly municipalities in the countryside in cantons without a cantonal taxi regulation: excerpt of the substantiated protocol of the 45th Zurich city council meeting, 18 May 2015, GR Nr. 2014/310.
- 6 Uber has only been offering its services in Basel from December 2014 and Lausanne from March 2014.
- 7 See <<http://www.nzz.ch/wirtschaft/newsticker/genfer-taxibranche-will-uber-gerichtlich-stoppen-1.18434334>> accessed 20 May 2015.
- 8 The decision and the reasons of the court of Geneva have yet to be published (intended case number: C/24062/2014: <<http://ge.ch/justice/cour-de-justice-cour-civile>>). See <http://www.nzz.ch/wirtschaft/newsticker/tagesueberblick-wirtschaft-1.18496902> accessed 20 May 2015.
- 9 See <<http://www.nzz.ch/schweiz/genfer-taxistreit-spitzt-sich-zu-1.18521900>> accessed 20 May 2015.
- 10 Loi sur les taxis et limousines (transport professionnel de personnes au moyen de voitures automobiles) de la République et canton de Genève (LTaxis, H 1 30).
- 11 See <http://www.tagesanzeiger.ch/schweiz/Kanton-Genf-verbietet-Fahrdienst-Uber/story/10846149?Dossier_id=2793> accessed 20 May 2015.
- 12 See <<http://www.tdg.ch/geneve/actu-genevoise/interdiction-uber-continue-dexercer/story/23994134>> accessed 20 May 2015.
- 13 See <<http://www.nzz.ch/schweiz/taxifahrer-machen-druck-auf-behorden-1.18519146>> accessed 20 May 2015.
- 14 See <<http://ge.ch/dares/service-du-commerce/accueil.html>> accessed 20 May 2015.
- 15 See <http://www.letemps.ch/Page/Uuid/9b593744-e672-11e4-94b8-e7cac4d21567/PierreMaudet_veut_propo_ser_une_lex_Uber> accessed 20 May 2015.
- 16 Verordnung über das Taxiwesen der Stadt Zürich (Taxiverordnung, 935.460).
- 17 <http://www.zh.ch/internet/de/aktuell/news/medienmitteilungen/2015/taxigesetz_vernehmlassung.html> accessed 20 May 2015.
- 18 See excerpt from the protocol of the Zurich, city council 18 March 2015, GR Nr. 2014/373, 2.
- 19 Verordnung über die Arbeits- und Ruhezeit der berufsmässigen Führer von leichten Personentransportfahrzeugen und schweren Personenwagen (ARV 2, 822.222).
- 20 See fn 1.
- 21 Art 3 para 1bis of Verordnung über die Arbeits- und Ruhezeit der berufsmässigen Führer von leichten Personentransportfahrzeugen und schweren Personenwagen (ARV 2, 822.222).
- 22 See excerpt from the protocol of the Zurich, city council 18 March 2015, GR Nr. 2014/373, 3.

Zurich the need for action in this matter seems not to be rated first priority.²³

At the federal level, the Swiss Federal Council seems reluctant, when approached with requests of members of the Parliament, to regulate newly emerged business models such as Uber or Airbnb.²⁴ The Swiss Federal Council intends to observe and analyze the developments, including a report on the effects of these platform-based marketplaces in Switzerland.²⁵ Primarily, the Federal Council directs the cantonal authorities to be responsible of monitoring the situation, taking note of problems and if need be take measures.²⁶

Uber in Switzerland is expanding geographically, additional locations such as Bern are reportedly being investigated.²⁷ Furthermore, with the recent introduction of UberPop, Uber has broadened the range of available products. The dimension of Uber's presence in Switzerland is still difficult to assess. According to a report of the Zurich city council UberPop has a low level of activity in their city.²⁸ Apart from in Geneva, Uber seems to cause less uproar in Switzerland than in other European countries. Reasons for this could be the small dimension of the Swiss taxi market or the well-developed public transportation system.²⁹

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23 See <<http://www.nzz.ch/zuerich/region/kein-streik-aber-aerger-ueber-google-taxis-1.18323675>> accessed 20 May 2015.

24 Selection of political proposals: Carlo Sommaruga (National Councilor): Internetplattformen zum Austausch von Dienstleistungen, insbesondere in den Bereichen Unterkunft und Transport. Bericht über Konsequenzen und zu treffende Massnahmen (14.3658); Lorenz Hess (National Councilor): Gleiche Rahmenbedingungen für traditionelle Dienstleistungsbetriebe und private Anbieter von Dienstleistungen über Online-Plattformen (14.4269); Roberto Zanetti (Council of States): Taxi- und Limousinenservices. Gleiche Rechte und Pflichten für alle Anbieter? (14.3793).

25 Fathi Derder (National Councilor): Partizipative Ökonomie. Fördern, Rahmenbedingungen umreissen, für künftige Herausforderungen gewappnet sein (14.4296).

26 See for example the answer of the Swiss Federal Council to Carlo Sommaruga's request: Internetplattformen zum Austausch von Dienstleistungen, insbesondere in den Bereichen Unterkunft und Transport. Bericht über Konsequenzen und zu treffende Massnahmen (14.3658).

27 See <<http://www.watson.ch/!500448966>> accessed 20 May 2015.

28 See excerpt from the protocol of the Zurich city council of 18 March 2015, GR Nr. 2014/373, 3.

29 See <<http://www.aargauerzeitung.ch/schweiz/taxi-dienst-uber-spielt-inder-schweiz-mit-anderen-spielregeln-128310109>> accessed 20 May 2015; <<http://www.nzz.ch/zuerich/region/kein-streik-aber-aerger-ueber-google-taxis-1.18323675>> accessed 20 May 2015.

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