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CORE ANALYSIS

Airbnb, the city, and the drive for European integration

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Abstract

European cities struggle to regulate platform-mediated short-term rental services in response to local concerns over uncontrolled tourism and affordable housing. In their efforts to tame online platforms and local hosts, cities have consistently pointed to EU law as an obstacle to effective regulation and enforcement and called for solutions at EU level. To date, research has paid limited attention to the precise role of EU law in the regulatory responses to the growth of short-term renting. This article therefore offers an explanation of how EU internal market law structures the multi-level dynamics behind short-rental regulation. Methodologically, the article relies on a contextual analysis of the EU's legal framework for (electronic) services and an in-depth, longitudinal case study of the City of Amsterdam's efforts to regulate its Airbnb-driven short-term rental market (2013–2023). Comprehensive empirical evidence indicates that European e-commerce law can deter governments from enforcing platform cooperation in the upstream market and, instead, prompt them to shift the burden of regulation and compliance to the 'actual' service providers (the hosts) in the downstream market. These upstream/downstream dynamics also help to explain the successful adoption and normative content of the recent Short-Term Rental Regulation. With its focus on the power struggle between cities and platform actors in the EU internal market, the article also offers a unique, empirically grounded account of how EU law structures urban conflicts over housing and tourism in the context of platformisation and how platformisation might affect the dynamics of European market integration more generally.

Keywords: EU law; Airbnb; city; short-term rentals; European integration; platform economy

1. Introduction

> We think that cities are best placed to understand their residents' needs. They have always been allowed to organize local activities through urban planning or housing measures. The [Advocate-General] seems to imply that this will simply no longer be possible in the future when it comes to Internet giants.[1]

A. European cities versus internet giants

This article deals with a highly contested activity at an historical junction between the local, the European and the internet: the short-term rental of accommodation as mediated by online platforms. The above quote is from a seemingly desperate press release published by a coalition of European cities that was spearheaded by Amsterdam. With it, they hoped to influence the

[1]Amsterdam Municipality, 'Press Release: Cities alarmed about European protection of holiday rental', 19 June 2019, on file with author.

judges at the European Court of Justice that had to decide in *Airbnb Ireland* not to give 'carte blanche'[2] to the online short-term rental platforms under the controversial E-Commerce Directive.[3] Over the preceding years, urban governments across Europe had adopted policies and spent considerable resources to counter the negative effects of the rapid rise of Airbnb and similar platforms, hoping to safeguard the quality of life in their cities and protect their inhabitants against affordable housing shortages and 'touristification' of neighbourhoods.[4] Yet from the beginning, much uncertainty had existed over the scope of action urban governments have at their disposal under European Union (EU) law, an uncertainty platforms like Airbnb actively exploited when refusing to enforce local rules or share user data with the responsible authorities.[5] In the eyes of the cities, a negative decision of the European Court of Justice (ECJ) would be a final nail in the coffin of exercising public authority over the platforms, leaving cities with the choice between either slow and obsolete enforcement methods or voluntarily cooperating with the platforms as equal partners in regulatory governance.

To the frustration of European cities, Airbnb would eventually succeed in convincing the Court that its services could benefit from the liberties under the E-Commerce Directive.[6] Yet this 'big legal victory' for Airbnb only proved to be the start of the story.[7] Less than a year later, Airbnb had to swallow a serious 'setback' when the ECJ endorsed Parisian rules requiring Airbnb 'hosts'[8] to convert non-residential property into housing in order to combat affordable housing shortages.[9] The Court made clear that while Airbnb, by being formally established in Ireland with its European headquarters, might escape the clutches of direct regulation, local governments enjoy considerable room under the Services Directive to regulate the *underlying services* (ie short-term renting of homes) in the pursuit of important local interests.[10] Empowered by the Court to adopt local rules in order to 'tame the hosts', cities subsequently directed their attention to the EU level in an effort to convince the European institutions to 'tame Airbnb' as well, calling for 'a new legislative framework for the Digital Single Market'.[11] This call would finally be answered with the

[2]Ibid.

[3]Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178, 17.7.2000, which scholars have described as the ideal 'market access opener' in the emerging platform economy, V Hatzopoulos and S Roma, 'Caring for sharing? The collaborative economy under EU law' 54 (1) (2017) Common Market Law Review 81–127, 97.

[4]It follows from academic evidence that this is not without reason, F Celata and A Romano 'Overtourism and online short-term rental platforms in Italian cities' 30 (5) (2020) Journal of Sustainable Tourism 1020–39; MA Garcia-López et al, 'Do short-term rental platforms affect housing markets? Evidence from Airbnb in Barcelona' 119 (2020) Journal of Urban Economics <https://doi.org/10.1016/j.jue.2020.103278>.

[5]As will be made detailed in Section 4, but also follows from the various documents produced by the European Commission in the preparation of the Short-Term Rental Regulation, including its Inception Impact Assessment, Ref. Ares(2021)5673365, p. 2, and case law by the Court, including Case C-674/20 *Airbnb Ireland* ECLI:EU:C:2022:303, where Airbnb relied on the E-Commerce Directive in its refusal to provide information for the purpose of tourist tax collection.

[6]Case C-390/18 *Airbnb Ireland* ECLI:EU:C:2019:1112. In contrast to Uber earlier, Case C-434/15 *Asociación Profesional Elite Taxi* EU:C:2017:981.

[7]The quote is from 'Airbnb secures EU legal victory over its status as online platform' (*Financial Times*, 19 December 2019).

[8]While the terms landlord, lessor or property owner are sometimes more appropriate, the article uses the somewhat ideological and misleading term 'host' in order to capture the variety of short-term rental arrangements and follow the terminology of the EU legislator, which recently defined the host as 'a natural or legal person that provides on a professional or non-professional basis, on a regular or on a temporary basis, a short-term accommodation rental service provided for remuneration, through an online short-term rental platform.' Art 3(2) Regulation (EU) 2024/1028 of the European Parliament and of the Council of 11 April 2024 on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724, OJ L 2024/1028 ('STR Regulation').

[9]Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743. The quote is from 'EU top court backs crackdown on short-term home rentals in setback to Airbnb' (*Reuters*, 22 September 2020).

[10]Or 'mandatory requirements' as they have come to be known in the Court's case law on the freedom of establishment and services.

[11]Eurocities, 'European cities call for action on short-term holiday rentals', 4 March 2020, <https://eurocities.eu/latest/22-cities-call-for-stronger-european-regulation-of-holiday-rental-platforms/> accessed 10 November 2023.

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adoption of the Short-Term Rental Regulation in April 2024, which harmonised rules on registration procedures and data sharing that should 'enable' Member State authorities to 'effectively design and implement' their short-term rental policies.[12]

European Union law, it seems, critically influences local policy-making towards the platform-mediated services economy, alternately constraining and empowering private actors and urban governments, even forcing the latter to become active participants in European law and governance. These multi-level policy dynamics have so far not been comprehensively analysed. While, on the one hand, social scientists have crafted a rich literature explaining (the diversity of) local policy responses to the rapid growth of the Airbnb-driven short-term rental market, these explanations potentially miss an important factor by not explicitly incorporating EU law in the analysis.[13] Legal scholars, on the other hand, have extensively commented on the (potential) application of EU law to the platform economy[14] and covered developments in case-law and legislative action at EU level – the Digital Services Act in particular.[15] So far, however, no analytical or empirical research exists on the *precise* role played by EU law in the regulatory responses to the growth of short-term renting. The central question of this article therefore is how EU internal market rules condition the multi-level dynamics behind the local regulation of short-term rental services.

B. Methods and case selection

The article relies on an interdisciplinary methodology to analyse the role of EU law in the regulation of local short-term rental services. It combines a contextual analysis of the EU's legal framework on the (electronic) services economy with an in-depth, longitudinal case study of the City of Amsterdam's efforts to regulate its Airbnb-driven short-term rental market between 2013 and 2023. The legal analysis is concerned with the legislation and case law on the free movement of (electronic) services in the internal market, focussing on the legal norms that apply to (urban) governments when designing and enforcing short-term rental policies in their cities. The objective behind the empirical case study is not to compare the policies of Amsterdam with other cities or to evaluate their compatibility with EU law but rather to investigate – over a longer time period – *how* the normative content of EU law influences the regulatory strategies of an urban government towards the local platform economy and affects concrete local rules and enforcement practices. This requires more than merely analysing changes in the legal *status quo* over time in light of the (changing) political objectives of an urban government. It also requires analysing how the

[12]Recital 3 Short-Term Rental Regulation (n 8).

[13]Most contributions mention the difficulties with respect to enforcement, but do not mention the role of EU law as a factor in this, M Hübscher and T Kallert, 'Taming Airbnb Locally: Analysing Regulations in Amsterdam, Berlin and London' 114 (1) (2023) Tijdschrift voor Economische en Sociale Geografie 6–27; S Nieuwland and R van Melik, 'Regulating Airbnb: how cities deal with perceived negative externalities of short-term rentals' 23 (7) (2020) Current Issues in Tourism 811–25. When they do, it appears more as a side note than a mediating factor, for example, T Aguilera, F Artioli and C Colomb, 'Explaining the diversity of policy responses to platform-mediated short-term rentals in European cities: A comparison of Barcelona, Paris and Milan' 53 (7) (2021) Environment and Planning A: Economy and Space 1689–712, 175 and 1708. A recent contribution refers to the potential relevance of EU norms for the enforcement and effectiveness of regulation but does not make the causal relationship explicit, G Bei and F Celata, 'Challenges and effects of short-term rentals regulation: A counterfactual assessment of European cities' 101 (2023) Annals of Tourism Research <https://doi.org/10.1016/j.annals.2023.103605>.

[14]Including both descriptive and normative approaches, M Finck and S Ranchordás, 'Sharing and the City' 49 (2016) Vanderbilt Journal of Transnational Law 1299; Hatzopoulos and Roma (n 3); D Adamski, 'Lost on the digital platform: Europe's legal travails with the Digital Single Market' 55 (3) (2018) Common Market Law Review 719–51.

[15]Amongst others, A Chapuis-Doppler and V Delhomme, 'Regulating Composite Platform Economy Services: The State-of-play After Airbnb Ireland' 5 (1) (2020) European Papers 411–28; C Busch and V Mak, 'Putting the Digital Services Act in Context' 10 (3) (2021) Journal of European Consumer and Market Law 109–14; P Van Cleynenbreugel, 'Accommodating the freedom of online platforms to provide services through the incidental direct effect back door: Airbnb Ireland' 57 (4) (2020) Common Market Law Review 1201–28.

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decisions to achieve those political objectives are modulated by the government's *perception* of what EU law allows, the threat of and actual *mobilisation* of EU law by the platforms, hosts and interest groups and its *willingness* to take legal risks vis-à-vis those private actors.

Amsterdam is a highly suitable and rich case study to provide answers to the 'how' question that is central to this article – ie *how* EU law structures the local regulation of short-term renting.[16] First, getting a grip on short-term renting has been amongst Amsterdam's most important political objectives for years. A decades-long boom in tourism was further fuelled by a rapid expansion of Airbnb until the COVID-19 pandemic. By then, 1 out of 15 Amsterdam residencies (and 1 out of 9 in the centre) were offered on Airbnb against the highest price level in Europe.[17] A swing in public mood around the drawbacks of tourism and affordable housing put intense political pressure on the city government to find effective solutions, bringing Amsterdam to the international vanguard in the struggle against Airbnb. Secondly, Dutch courts are often described as adopting a loyal, even pro-active attitude towards the application and development of EU law,[18] forcing Dutch government bodies to take EU law seriously and apply it without reservations when it comes to public decision-making.[19] This does not mean that the normative content of EU law remains uncontested or Dutch government bodies do not test its limits,[20] but it does mean that if we want to study how the factor of EU law influences the way an urban government regulates short-term renting we are likely to find evidence in the Dutch capital.

This brings us to the third reason, which is the wealth of highly specific evidence that was available for a longitudinal case study of Amsterdam. Analysis could not only rely on national and local legislation and domestic case law, but also the entire archive of policy documents, letters, motions and videos of discussions in the national parliament and city council relating to short-term renting dating back to 2013.[21] Particularly useful was a detailed report by the Amsterdam Court of Auditors on the enforcement of short-renting rules which included reactions from Airbnb and other platforms.[22] For a better understanding of perceptions and relations 'behind the scenes', hundreds of pages of internal email correspondence among government officials and email correspondence between municipal officials and representatives of Airbnb could be accessed after they were released on the basis of the Government Information Act (GIA).[23] Research was further complemented with ten semi-structured interviews with a selection of 16 individuals representing almost all relevant actors in the process, at the local, national and European level (with the exception of Airbnb, which declined an interview). The aim behind the interviews was to learn about the preferences of the respondents and how they understood the content and role of EU law in the design and enforcement of short-term rental regulation. The annexes contain details about the interviews and the information letter sent to respondents.

[16]It is not claimed that Amsterdam is a 'typical' or 'representative' case as the significance of a case can never rest in its typicality. Instead, selection rested on the capacity to exemplify the analytical object of inquiry. For this critique and selection approach, see G Thomas, 'A Typology for the Case Study in Social Science Following a Review of Definition, Discourse, and Structure', 17 (6) (2011) Qualitative Inquiry 511–21.

[17]Amsterdam Municipality, 'Rapportage toeristische verhuur van woonruimte 2019', 10 March 2020.

[18]M de Visser, 'Veranderingen in de dialoog tussen de Nederlandse rechters en het Hof van Justitie' (3) (2012) Tijdschrift voor Constitutioneel Recht 249–80.

[19]M Claes and M Stremler, 'The Netherlands: A Political Commitment to Europe in a Pragmatic Constitutional Culture' in A Nicòtina, P Popelier and P Bursens (eds), *EU Law and National Constitutions: The Constitutional Dynamics of Multi-Level Governance* (Routledge 2023) 130.

[20]As explicitly stated by the deputy mayor with respect to Amsterdam's short-term rental policies, L Ivens, 'Opinie: Brussel ligt dwars bij Amsterdamse aanpak toerisme' (*De Volkskrant*, 4 Augustus 2020).

[21]Largely retrieved by using the search term 'vakantieverhuur' in the relevant databases, <https://www.officielebekendmakingen.nl/>; <https://amsterdam.raadsinformatie.nl/> and <https://uitspraken.rechtspraak.nl/> accessed 16 December 2024.

[22]Amsterdam Court of Auditors, 'Handhaving Vakantieverhuur', (9 November 2019).

[23]I will refer to GIA request of 16 July 2019 (Memorandum of Understanding Airbnb), on file with author, and GIA request of 7 April 2021 (EU Notification Procedure Holiday Rental Act) <https://tinyurl.com/3f43f3s9> accessed 20 November 2023.

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C. The argument

The central contribution of this article is to explain the role of EU law in the responses of European cities to the Airbnb-driven short-term rental market. The case study of Amsterdam will indicate how the E-Commerce Directive has the strong potential to deter urban governments from targeting online platforms as part of a regulatory solution to growing local concerns over uncontrolled tourism and affordable housing. The findings suggest that this legal 'untouchability' of the large online platforms in the so-called *upstream market* also explains why an urban government might feel forced to adopt alternative policy strategies and intensify the regulation of the 'actual' service providers (the 'hosts') in the so-called *downstream market*, even though downstream regulation can hardly be enforced without platform cooperation. This regulatory tension between the up- and downstream market – as structured by EU law – also accounts for the recent drive for European integration and normative content of the Short-Term Rental Regulation. With this Regulation, the EU legislator acknowledges and aims to close a gap in upstream enforcement by targeting the gatekeeper position of online platforms in order to *enable* public authorities to effectively exercise their competences in the downstream market.

This article firstly aims to benefit the literature on platform regulation by explaining how the structure of EU law informs the decision-making behaviour of cities when regulating short-term rentals. The central argument suggests a reversal of the claim found in the literature that 'cities first introduced limits and regulations and only later realised the crucial role of platforms in their enforcement'.[24] Instead, the case of Amsterdam indicates that the very awareness of the uncertain limits to platform enforcement under EU law might have led cities to adopt increasingly restrictive limits and regulations, rely on voluntary cooperation with the platforms and start a lobby towards the EU institutions relatively early on. The article might also be of interest to scholars curious about how platformisation – here defined as online platforms' penetration into different economic sectors and spheres of life[25] – affects wider dynamics of European market integration.[26] The case of short-term renting points at a possibly more widespread dynamic whereby the process of platformisation forces a 'bottom-up' drive for re-regulation at EU level in ever more areas. Last but not least, the article hopes to speak to the growing literature on the interrelationship between EU law and the city by presenting an empirically grounded account of how EU law structures urban conflicts and urban concerns shape European (legal) integration.[27]

D. Structure of the article

The article is organised as follows. The next section makes a distinction between up- and downstream markets in order to analyse the EU's legal framework on e-commerce and services applying to the public regulation of short-term rentals. Section 3 continues by theoretically introducing the central actors, concepts and dynamics that form the backbone of the central

[24]Bei and Celata (n 13) 4.

[25]Loosely after DB Nieborg, T Poell, and J van Dijck, 'Platforms and platformization' in T Flew, J Thomas and J Holt (eds), *The SAGE Handbook of the Digital Media Economy* (Sage 2022) 29–49, 44.

[26]Including both the focused literature, including M Hiltunen, 'Social Media Platforms within Internal Market Construction: Patterns of Reproduction in EU Platform Law' 23 (9) (2022) German Law Journal 1226–45, and the more general literature on the drivers behind internal market integration and its constraints on democratic decision-making. For an overview, M Höpner and SK Schmidt, 'Can We Make the European Fundamental Freedoms Less Constraining? A Literature Review' 22 (2020) Cambridge Yearbook of European Legal Studies 182–204. As recently brought back to the fore in M van den Brink, M Dawson, and J Zglinski, 'Revisiting the asymmetry thesis: negative and positive integration in the EU' (2023) Journal of European Public Policy 1–26.

[27]Recently pitched as a subject central to EU legal geography, F de Witte, 'Here be Dragons: Legal geography and EU law' 1 (2022) European Law Open 113–25, 120. See the extensive literature cited there but amongst others, M Finck, *Subnational authorities in EU Law* (Oxford University Press 2017); F Nicola, 'Invisible Cities in Europe' 35 (2011) Fordham International Law Journal 1282–363 and M De Visser, 'The Future is Urban: The Progressive Renaissance of the City in EU Law' 7 (2) (2020) Journal of International and Comparative Law 389–407.

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argument outlined above. Section 4 explicates the argument by analysing Amsterdam's history of regulating short-term rentals in the city and, finally, section 5 discusses the push for and adoption of the Short-Term Rental Regulation. The conclusion provides a synthesis of the main findings and further reflects on their implications for the above-mentioned literatures.

2. The legal structure: upstream vs. downstream in the EU internal market

Online platforms and their users operate within the EU's internal market.[28] While the relevant Treaty provisions already structure conflicts between urban governments and platform service providers,[29] the regulation of short-term rental services is covered by two legislative instruments in particular: the E-Commerce Directive and Services Directive.[30] This section discusses these Directives with reference to the distinction between upstream and downstream markets in the platform economy.[31] This upstream/downstream distinction not only enhances our understanding of the relevant legal framework but will also prove critical for understanding the multi-level regulatory dynamics that will be theorised and demonstrated in the following sections.

A. The upstream market

Upstream are those markets that are considered to be 'above' or 'before' other connected markets.[32] In the platform economy, upstream is the specific *digital* service offered by a platform to match economic actors – businesses and/or consumers – on a digital marketplace. In the case of short-term rental platforms this consists of matching 'hosts' with 'guests' on a digital marketplace for short-term accommodation purposes. Adopted in the early days of the internet to stimulate (cross-border) electronic commerce and the development of the internet more broadly, the E-Commerce Directive – now updated by the Digital Services Act[33] – has been the main legal instrument covering such digital services in the EU.

Before online platforms might be able to benefit from the favourable provisions of the E-Commerce Directive and the DSA, their activities must first of all classify as so-called 'information society services'. These are defined as services that are normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.[34] While *online* activities such as facilitating relations between buyers and sellers fall under the Directive,[35] subsequent *offline* activities like the delivery of goods and services do not.[36] Since *Asociación Profesional Elite Taxi*, it is no longer self-evident that online platforms are covered by

[28]Art 26 TFEU.

[29]For a recent illustration, Case C-50/21 *Prestige and Limousine* ECLI:EU:C:2023:448. See C Colombo, 'Prestige and Limousine SL v. Area Metropolitana de Barcelona: how EU law addresses market transformation and urban conflicts in the field of urban mobility' (EU law live, 19 September 2023) <https://tinyurl.com/mtkadyv> accessed 28 August 2024.

[30]For a more comprehensive legal account, see D Kramer and M Schaub, 'EU Law and the Public Regulation of the Platform Economy: The Case of the Short-Term Rental Market' 59 (6) (2022) Common Market Law Review 1633–68.

[31]As proposed by AG Bobek in Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:251, para 2.

[32]To use the most famous example, the exploitation of oil fields is 'upstream' of the sale of gasoline and plastics to consumers 'downstream'.

[33]While amending Art 12–15 and generally complementing the E-Commerce Directive with a fully harmonised set of specific rules, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/ECOJ L 277 leaves the basic principles of this Directive intact, see Art 2(3) and recitals 9, 16 and 38. See also the Opinion of AG Szpunar in Case C-376/22 *Google Ireland* ECLI:EU:C:2023:467, para 8.

[34]Art 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241/17.9.2015. Art 2(a) E-Commerce Directive refers to the definition of Art 1(2) of Directive 98/34, which was consolidated and updated in 2015 with Directive 2015/1535.

[35]Case C-324/09 *L'Oréal v eBay* EU:C:2011:474, para 109.

[36]Case C-108/09 *Ker-Optika* EU:C:2010:725, paras 28–31.

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the E-Commerce Directive. In this case, the ECJ argued that Uber could not be qualified as a provider of information society services because of its active role with regard to the content and the performance of the transportation contracts that are concluded via Uber's online booking application.[37] Instead, the Court concluded that the online intermediary service forms an integral part of the overall service provision of Uber whose main component is a transport service.[38] Two years later, the Court drew the opposite conclusion with respect to Airbnb, arguing that Airbnb's activities consist of online intermediation rather than offering accommodation services as such.[39] As a result, Airbnb could rely on the principles related to the freedom to provide information society services under the E-Commerce Directive.[40]

There are a number of substantive e-commerce rules protecting platforms in the upstream market. First, the E-Commerce Directive requires Member States to make it easy to establish and operate online service providers on their territory.[41] Second, so-called 'safe harbour' clauses seek to encourage enterprises to develop the internet by exempting online intermediaries from liability for unlawful information that is transmitted or stored by third parties via their networks or servers.[42] Service providers only qualify for this exemption when they play a neutral, merely technical and passive role towards the hosted content and when they remove illegal content as soon as possible when they become aware of the illegal nature.[43] A third important feature is that Member States cannot expect platforms to monitor all the content they transmit or store in active search for illegal activities. Imposing such a 'general monitoring obligation' is prohibited.[44] National administrative and judicial authorities can therefore issue orders to remove, detect or prevent specific items of illegal information.[45] For example, a municipality can order the removal of content advertising accommodation that does not comply with local regulations or request information about this advertisement. It is a matter of some debate, however, whether administrative authorities can impose *specific* monitoring obligations on platforms. In *Glawischnig-Piesczek*, issued before the adoption of the DSA, the Court made clear that requests for the removal of content that is identical or equivalent to the illegal content can be permissible as long as these requests do not impose an 'excessive obligation' on the platforms with the help of machine tools.[46] Such an understanding offers some room for municipalities to request, for example, the removal of all advertisements for accommodation that do not show a registration number when this is required under local laws.[47]

In addition to these substantive rules, the E-Commerce Directive also seeks to guarantee the free movement of information society services. This is done with two principles: home state control and mutual recognition.[48] The principle of home state control means that online platforms like Airbnb are subjected to the law of the Member State of establishment – *in casu* Ireland – and

[37] *Asociación Profesional Elite Taxi* (n 6) paras 37–9.

[38] Ibid., para 40. See M Schaub, 'Why Uber is an information society service' 7 (3) (2018) Journal of European Consumer and Market Law 109–15.

[39] *Airbnb Ireland* (n 6).

[40] Ibid., para 69.

[41] Member States are inter alia required to allow electronic contracting and cannot subject electronic service providers to prior authorisation schemes, see Art 9 and 4 E-Commerce Directive respectively.

[42] Art 12–14 E-Commerce Directive, which were replaced by Art 4, 5 and 6 of the Digital Services Act.

[43] Art 14(1) E-Commerce Directive, now replaced by Art 6(1) Digital Services Act.

[44] See Art 15(1) E-Commerce Directive, now replaced by Art 8 Digital Services Act.

[45] Previously under Art 12-14 E-Commerce Directive, now Art 8 and 9 of the DSA.

[46] Case C-18/18 *Glawischnig-Piesczek* EU:C:2019:821, para 46. H Zech, 'General and specific monitoring obligations in the Digital Services Act: Observations regarding machine filters from a private lawyer's perspective', (Verfassungsblog 2021) <https://verfassungsblog.de/power-dsa-dma-07/> accessed 28 August 2024.

[47] For a discussion see Kramer and Schaub (n 30) 1657–61.

[48] Art 3(1), 3(2) and 4 E-Commerce Directive.

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that this Member State is responsible for their regulation and supervision.[49] Regulation and supervision 'at the source of the activity' is supposed to ensure an effective protection of public interest objectives 'for all Community citizens'.[50] The principle of mutual recognition subsequently means that Member States of destination 'may not [. . .] restrict the freedom to provide information society services from another Member State'.[51] It is clear that this system – underpinned by particular ideas of mutual trust – implies a significant loss of control for Member States of destination. As the Parisian public prosecutor found out in *Airbnb Ireland*, it could not require Airbnb to hold a professional license like a French law from 1970 required of French real estate agents: as a provider of information society services established in Ireland, Airbnb fell in principle under Irish law.[52] Theoretically however, there is still a way for the Member State of destination, *in casu* France, to impose measures on online platforms established elsewhere in the EU. First, such measures may only be taken against 'a given information society service'[53] and can only be justified on grounds of public policy, the protection of public health, public security or the protection of consumers.[54] Secondly, Member States of destination should give the Member State of establishment the opportunity to take adequate measures and notify the European Commission of its intention to take those measures unless there is a case of urgency.[55] It was mostly for procedural reasons that the Court found that Airbnb was shielded by the E-Commerce Directive, emphasising France's failure to notify this law in accordance with this Directive and thereby encroaching on the supervisory competences of the Commission and the Member State of establishment.[56] So far, however, the Court has not ruled specifically on the compatibility of restrictions that are duly notified and there is considerable uncertainty as to the meaning of public policy and the range of public interest justifications the Court might actually accept when it is asked.[57] The experience of this legal uncertainty and resulting chilling effect this created on the part of local governments will be demonstrated in section 4.

B. The downstream market

Downstream are those markets that come 'below' or 'after' a connected market. In the context of the platform-based services economy, the downstream market refers to the underlying services that are offered via online platforms in their 'real world' economic and social context.[58] The downstream services offered via Airbnb consist of the actual renting out of properties to tourists or other short-term visitors by natural persons or businesses. Particularly relevant for downstream service providers is the Services Directive, which essentially restrains and conditions the regulation of services against discriminatory, arbitrary and disproportionate interference by Member State authorities.[59]

Whether downstream services are actually covered by the Services Directive largely depends on the impressive list of areas excluded from the scope of the Directive.[60] Since transportation

[49]Art 3(1) E-Commerce Directive. See Joined Cases C-509/09 and 161/10 *eDate Advertising* EU:C:2011:685, para 57, as confirmed by the Court in Case C-376/22 *Google Ireland* ECLI:EU:C:2023:835, paras 42–43. For a further discussion see Kramer and Schaub (n 30) 1643–6.

[50]Recital 22 E-Commerce Directive.

[51]Art 3(2) E-Commerce Directive.

[52]*Airbnb Ireland* (n 6) para 82.

[53]As a result of which Google, Meta and Tiktok won their case against Austria, which tried to impose tranparency and notification rules on these platforms, Case C-376/22 *Google Ireland*.

[54]Art 3(4)(a)(i) E-Commerce Directive.

[55]Art 3(4)(b) and 3(5).

[56]*Airbnb Ireland* (n 6) para 91.

[57]Ibid., para 84; Kramer and Schaub (n 30) 1648–51.

[58]AG Bobek in *Cali Apartments* (n 31) para 2.

[59]With the aim of facilitating service provision and establishment while maintaining their high quality, Directive 2006/123/EC.

[60]Art 2.

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services are excluded, the Court considered the Services Directive not applicable to Uber.[61] By contrast, the Court ruled in *Cali Apartments* that short-term rental services, whether on a professional or non-professional basis, are covered by the Services Directive.[62]

Like the E-Commerce Directive, the Services Directive combines substantive harmonisation (eg chapter V) with specific free movement rules to facilitate the freedom of establishment for service providers and the free movement of services (eg chapter IV). Since *Visser Vastgoed* (2017),[63] it is generally understood that its rules on the establishment of service providers (chapter III) apply to both domestic and foreign service providers.[64] This is rather significant as it means that any national resident or company seeking to offer (new) services in a Member State territory – ie renting out homes via online platforms – can invoke these rules against the national or local authorities without having to show the 'cross-border element' that normally triggers free movement law.[65] Particularly relevant are the constraints on the use of prior authorisation schemes for service-providers: both the scheme *as a whole* (Article 9) and the *specific* conditions for granting individual authorisations (Article 10) should be non-discriminatory, justified by an overriding reason relating to the public interest and meet the proportionality test. Notice here that the Services Directive offers Member States more room than the E-Commerce Directive to justify interferences as they can basically invoke any 'overriding reason relating to the public interest'.[66]

It was only in 2020 that the Court of Justice had the chance to interpret the Services Directive in relation to Airbnb. In *Cali Apartments*, two owners of studio apartments had been ordered to pay fines to the City of Paris for renting out their apartments via Airbnb in violation of municipal rules. For the repeated short-term letting of furnished accommodation, the City of Paris required a prior authorisation which could be made subject to a so-called 'offset requirement', an obligation to convert non-residential premises – preferably in the same district – into housing in order to maintain long-term (rental) housing stock for residents.[67] This offset requirement was made possible by the French Construction and Housing Code, which allowed municipal councils to set the conditions for granting authorisations and determining offset requirements 'by quartier (neighbourhood) and, where appropriate, by district, in the light of social diversity objectives, according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage.'[68] Focussing first on the Parisian authorisation scheme for short-term letting as a whole, the Court ruled that this scheme could be justified by an overriding reason relating to the public interest.[69] It thereby recognised not only such public interests as the urban environment and social policy,[70] but also public housing policy, especially in situations of structural housing shortages and high population density.[71] The French government and the City of Paris were subsequently able to convince the Court on the basis of evidence that the short-term rental market had a significant inflationary effect on general rent levels and demonstrate the need to operate an *a priori* authorisation scheme for short-term rentals in densely populated municipalities.[72] Moving on to the contested specific condition for granting individual authorisations, the Court accepted the offset requirement as a 'suitable instrument for

[61] *Asociación Profesional Elite Taxi* (n 6) para 43. Neither could Uber benefit from Art 56, as Art 58 TFEU creates a separate competence for the Union to establish a common transport policy, paras 44–7.

[62] *Cali Apartments* (n 9) paras 33–6. The classification of these activities as services is supported by recital 33 of the Services Directive, where real estate services and services in the field of tourism are mentioned as examples of activities that are covered.

[63] C-360/15 and C-31/16, *Visser Vastgoed* ECLI:EU:C:2018:44, para 110; *Cali Apartments* (n 9) para 56.

[64] J Snell, 'Independence Day for the Services Directive: Visser' 56 (4) (2019) Common Market Law Review 1119–35.

[65] For a clear statement in that regard, *Cali Apartments* (n 9) para 56.

[66] Following the Court's case law on mandatory requirements, C-55/94 *Gebhard* ECLI:EU:C:1995:411, para 37.

[67] *Cali Apartments* (n 9) paras 14 and 18.

[68] Ibid., para 14.

[69] Ibid., para 69.

[70] Ibid., para 67.

[71] Ibid., para 68 and the case law referred.

[72] Ibid., paras 71–5.

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pursuing the objectives of socially diverse housing on its territory, a sufficient supply of housing units, and maintaining rents at an affordable level'.[73] In terms of proportionality, the Court seemed particularly charmed by the delegation of decision-making power to the municipalities, which have 'particular knowledge'[74] to assess – on the basis of objective evidence – whether an offset requirement is an effective response to a shortage of affordable residential housing at the level of the municipality, district or even neighbourhood.[75]

Even though the Services Directive offers urban governments more leeway than the E-Commerce Directive, it is clear that the rules on authorisation schemes shape and limit their available policy options to regulate the downstream market of the platform economy. In the case of short-term rental services, Member States are required to design and operate authorisation schemes that are justified by clearly identifiable public interests and use regulatory instruments that are effective responses to (local) needs, as substantiated by objective evidence. As has been rightly pointed out by others analysing the Court's approach to housing policy, this proportionality test is not a reciprocal one: the freedom of property owners to provide a given service – renting out properties to temporary visitors – is presented as the status quo while public interference with this freedom in pursuit of social objectives faces higher evidentiary and proportionality burdens.[76] What the Court also does in *Cali Apartments* however, is solidifying and widening the 'permissible corridor of proportionate outcomes'[77] within which (local) governments *can* address local challenges by portraying specific and diverse visions of the city: as a place of social diversity with sufficient affordable housing for the less well-off,[78] as having a viable centre without vacant shops,[79] and as a specific model of human coexistence that guarantees accessibility and protects the environment.[80] In section 4 we will see how this helped the city of Amsterdam and the Dutch government to defend strict municipal rules on short-term letting by depicting an image of an urban environment that offers sufficient housing, a high quality of life and protection against the nuisances of 'over-tourism'.

3. Actors and dynamics: from regulatory chill to legal integration

Before presenting the case study, this section introduces the central actors, concepts and dynamics that further our understanding of how EU law modulates the local regulation of the short-term rental market. It first situates the urban government vis-à-vis the critical actors in the up- and downstream markets of the platform economy within the legal and institutional structure of the European Union. The concept of *regulatory chill* is then introduced to explain why this structure might discourage an urban government from regulating the platforms and the consequences this has in terms of policy, governance and political communication. The section ends by discussing the ways in which an urban government can overcome regulatory chill and why the short-term rental market offers a favourable constellation to expect European (legal) integration.

[73]Ibid., paras 84–5.

[74]Ibid., para 82. The Court seems to embrace a central feature of federalism here, namely the benefit of local power in terms of expertise, D Halberstam, 'Federalism: A Critical Guide' Working Paper University of Michigan Public Law 2011/251, 15–16.

[75]*Cali Apartments* (n 9) paras 81–94.

[76]I Domurath, 'Housing as a 'Double Irritant' in EU Law: Towards an SGEI between Markets and Local Needs', 38 (1) 2019 Yearbook of European Law 412–5. Also: S Reynolds, 'Housing policy as a restriction of free movement and Member States' discretion to design programmes of social protection: *Libert*' 52 (1) (2015) Common Market Law Review 259–80.

[77]AG Bobek in *Cali Apartments* (31) para 120.

[78]*Cali Apartments* (n 9) para 108; Case C-567/07 *Woningstichting Sint Servatius* ECLI:EU:2009:593, para 30; Cases C-197/11 and C-203/11 *Libert and Others* ECLI:EU:C:2013:288, paras 50–2.

[79]As part of the protection of the urban environment, *Visser Vastgoed* (n 63) paras 134–5.

[80]In terms of town and country planning and environmental protection, Case C-400/08 *Commission v Spain* ECLI:EU:C:2011:172, paras 78–80.

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A. The structured conflict: local government and platform actors

The 'real-world' effects of short-term renting services are experienced most intensely at the local level – that of the city, neighbourhood, street or even apartment building. It is therefore no surprise that cities have globally taken the lead in politicising and addressing the negative consequences of this sector of the platform economy.[81] It is by exercising their decentralised powers in areas such as urban planning, (social) housing and economic licensing that local governments hope to protect their cities against overtourism, shortages in affordable housing and 'unliveable' neighbourhoods.[82] The policies adopted by local governments vary greatly across the EU.[83] By now, most cities affected by short-term renting require 'hosts' to obtain registration numbers and an increasing number of cities – including Amsterdam, Barcelona and Berlin – require prior authorisation in the form of permits. Conditions attached to short-term renting vary greatly but often include minimum quality and safety standards and restrictions on the number of nights properties can be rented. More recently, cities like Vienna, Florence and Amsterdam introduced spatial restrictions such as quotas or outright bans in certain areas.[84] At the moment of writing, Barcelona has announced a city-wide ban on short-term renting by 2028.[85]

Private actors in the downstream market contest these requirements and limitations. This group includes individual 'hosts' renting out (parts) of their property but also professional business actors[86] and collective interest groups – often mobilised by Airbnb itself – who coordinate advocacy for favourable regulation.[87] As we have seen in *Cali Apartments*, these downstream actors can rely on the Services Directive, which frames short-term rental rules as restrictions to the freedom to provide services. When mobilised, EU law might therefore guide a transformation of the regulatory *status quo* of life in the city: short-term rental services are liberalised economic activities unless urban governments are able to justify and defend the proportionality of regulation under EU law.

A larger problem for urban governments is the fact that they need the cooperation of online platforms if they want to enforce their 'downstream' rules effectively.[88] Upstream, the platform economy has come to be dominated by one or several multinational corporations that have grown into gatekeepers for the underlying services.[89] This gatekeeping position is not only problematic for its users and potential competitors, but also for public authorities since the platforms possess the entire (online) infrastructure, the data of their users, their economic transactions, and the means to block access to the underlying market. However, the legal dogmas underlying the E-Commerce Directive (in combination with privacy regulation) strengthen the already strong bargaining power of platforms claiming that they cannot be made responsible for the enforcement of local rules or be obliged to share the necessary data. While some cities have managed a degree of cooperation from the platforms, cities are often left with slow, costly and obsolete methods of enforcement and data gathering.[90] The 'untouchability' of platforms in the upstream market has

[81]Finck and Ranchordás (14).

[82]For an account on the inner-state division of competences in housing, see Domurath (n 76) 408–11.

[83]For a recent overview, see Bei and Celata (n 13).

[84]Hübscher and Kallert (n 13).

[85]Barcelona Municipality, 'New measures to tackle the housing crisis and increase housing supply' <https://www.barcelona.cat/internationalwelcome/en/news/new-measures-to-tackle-the-housing-crisis-and-increase-housing-supply-1413347> accessed 29 August 2024.

[86]For an account on the professionalisation of the Airbnb market in Madrid, see J Gil and J Sequera, 'The professionalization of Airbnb in Madrid: far from a collaborative economy' 25 (2022) Current Issues in Tourism 3343–62.

[87]L Yates, 'How platform businesses mobilize their users and allies: Corporate grassroots lobbying and the Airbnb 'movement' for deregulation', 21 (4) (2023) Socio-Economic Review 1917–43.

[88]For evidence, see Bei and Celata (n 13).

[89]J Büchel and C Rusche, 'Competition in the digital economy: An analysis of gatekeepers and regulations' (2020) IW-Policy Paper 2020/26.

[90]M Ferreri and R Sanyal, 'Platform Economies and Urban Planning: Airbnb and Regulated Deregulation in London' 55 (15) (2018) Urban Studies 3362–3

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therefore unmistakable regulatory consequences beyond the internet alone as it also makes it difficult – if not impossible – for urban governments to exercise their competences and find effective policy solutions in the downstream market, even when those downstream policies are in line with EU law.

Hence a complex picture emerges: while the democratic onus of reacting to the public 'real-world' challenges of the rapid growth of short-term rental services falls on urban governments, their problem-solving authority is critically limited for reasons of EU legal structure and the economic power of platforms to mobilise the law.[91] This is further complicated by the fact that – despite the constitutional promise of subsidiarity in the Treaties – cities only occupy a marginal position in the EU's legislative, administrative and judicial space.[92] Central governments remain uniquely competent to conduct the necessary formal relations and mediate their interests within the existing legal framework.[93] A case in point is the E-Commerce Directive, which attributes central governments with the duty to notify new measures for online service providers to the Commission and other Member States.[94] This dependence adds another barrier for urban governments as they have to ensure cooperation from their central governments, which might have different interests or political positions.[95]

B. 'Untouchable' platforms: regulatory chill and its effects

A particularly useful concept to explain the behaviour of urban governments within the context of the European platform-mediated services economy is that of *regulatory chill*. Following scholars of international trade and investment law,[96] we can speak of regulatory chill when public authorities are deterred from regulating socially desirable areas for fear of litigation and compensation claims, resulting in *delays* in regulatory action, as well as *modification* or *abandonment* of a particular course of regulatory action altogether.[97] For the purpose of this article, regulatory chill is therefore conceptualised as a specific instance of *perceived* law-abiding behaviour by public authorities, namely *inaction* – in the sense of not (completely) pursuing the desired course of regulatory action – in response to broad, unclear or ambiguous legal provisions or judgements that can be mobilised by private actors. In case of the platform-mediated services economy, chilling effects mostly manifest themselves in the 'upstream' market as public authorities refrain from imposing obligations on online platforms in light of uncertainties around the E-Commerce Directive.[98] The seemingly 'untouchable' nature of platforms in the upstream market creates (or reinforces) three simultaneous knock-on effects.

First, the 'untouchability' of platforms triggers a crucial dynamic in terms of *policy-making*. Chilled from directing coercive action at the platforms, an urban government might decide to target the downstream market by shifting the burden of regulation and compliance towards the providers of short-term rental services. This is typically done with ever more restrictive

[91]Also see KH Eller, 'The Political Economy of Tenancy Contract Law – Towards Holistic Housing Law' 1 (2023) European Law Open 987–1005, 996–7.

[92]See generally, Finck (n 27) and Nicola (n 27).

[93]J van Zeben, S Bardutzky, and E Fahey, 'Framing the subjects and objects of contemporary EU law', *Local governments as subjects and objects of EU law: legitimate limits?* (Edward Elgar 2017).

[94]Art 3(4) E-Commerce Directive.

[95]On this problem of inter-tier cooperation in short-term rental regulation more generally, see Aguilera et al, (n 13).

[96]The literature is extensive, but includes: J Bonnitcha, *Substantive Protection under Investment Treaties: A Legal and Economic Analysis* (Cambridge University Press 2014); J Brown, 'International Investment Agreements: Regulatory Chill in the Face of Litigious Heat?' 3 (1) (2013) Western Journal of Legal Studies <https://ojs.lib.uwo.ca/index.php/uwojls/article/view/5568/4653>; C Moehlecke, 'The Chilling Effect of International Investment Disputes: Limited Challenges to State Sovereignty' 64 (1) (2020) International Studies Quarterly 1–12.

[97]L Ankersmit, 'Regulatory autonomy and regulatory chill in Opinion 1/17' 4 (1) (2020) Europe and the World: A law review 1–21.

[98]The ECJ's judgement in *Airbnb Ireland* did not enhance much clarity in this respect. See section 2.A.

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authorisation schemes and a growing commitment of resources to alternative but cumbersome enforcement measures like onsite inspections, mystery guests and webscraping. This scramble for policy solutions in the downstream market is likely to result in regulatory fragmentation along national and local lines with variation from city to city in the internal market.[99] Rather than *deregulation* resulting from liberal free movement rules, we can therefore also expect the opposite: an *intensification* of regulation and enforcement towards the 'actual' market of service-providers, to the clear frustration of these professional rental companies and non-professional private hosts.[100] The *Cali Apartments* case, in other words, was the inevitable corollary of *Airbnb Ireland*.

A second effect can be witnessed in the sphere of *governance*. Chilled from following the path of coercion by means of public law, an urban government might have to resort to the option of voluntary cooperation with the platforms. In practice, we can therefore see urban governments enter into negotiations with the platforms whereby the platforms mobilise their practical power to enforce local rules or share data as a bargaining chip. This enables a corporation like Airbnb to position itself as an equal and responsible 'partner' of local governments while lamenting the 'patchwork of cities' regulations' that it faces, trying to persuade cities to adopt 'model legislation' that is transferable from one city to the other.[101] The legal 'untouchability' of platforms under the E-Commerce Directive therefore reinforces horizontal modes of governance in the form of 'public-private' partnerships[102] and the advance of corporate power in urban governance in policy areas as housing, tourism and urban planning.[103]

A third effect manifests itself in the sphere of *political communication*. Regulatory chill might trigger a series of 'blame games', whereby (urban) authorities try to shift blame to other levels of government within the complex and multi-level system of the European Union.[104] Local governments blame central governments and central governments shift that blame to 'Brussels' or 'Luxembourg', trying to convince local audiences – often via mass media – about their inability to act under EU law. Particularly telling is the press release at the start of this article, where a coalition of cities sketches an image of EU law as offering 'carte blanche' to internet giants and undermining the capacity of cities to protect residents' needs in terms of affordable housing, liveability and 'touristification' of their neighbourhoods.[105] Political communication of this sort 'localises' abstract EU internal market rules and shapes the conflict as not only one between the city and online platforms but also between the city and the European Union, (negatively) influencing citizens' 'lived experience' of EU integration.[106] There is also another side to this however: by directly addressing the Court – and asking support from the European Parliament and the European Commission[107] – local governments reconfigure the public imagination of the *scale*

[99]As also hypothesised by G Menegus, '"Uber test" Revised? Remarks on Opinion of AG Szpunar in Case Airbnb Ireland' 4 (2019) European Papers 603–14.

[100]This explains why in the public consultation for the Short-term Rental Regulation, hosts 'stressed the need to increase the responsibility of online platforms' and warned against the 'multiplication of restrictive rules for hosts at local level', Proposal for a Regulation of the European Parliament and of the Council on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724 (COM/2022/571 final), p 6. As also confirmed by respondents in interview 3.

[101]Ferreri and Sanyal (n 90) 3358. A great example is Airbnb's 'best practices guide' that should help local policymakers to develop 'fair and balanced short-term rental regulations' <https://news.airbnb.com/policy-toolkit-short-term-rental-regulations/> accessed 20 November 2023.

[102]See generally, G Stoker 'Public–Private Partnerships and Urban Governance' in J Pierre (ed), *Partnerships in Urban Governance: European and American Experiences* (Palgrave Macmillan 1998) 34–51.

[103]Ferreri and Sanyal (n 90) 13.

[104]T Heinkelmann-Wild and B Zangl, 'Multilevel blame games: Blame-shifting in the European Union' 33 (2020) Governance 953–69.

[105]Amsterdam Municipality (n 1).

[106]De Witte (n 27) 116.

[107]Amsterdam Municipality (n 1).

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where solutions are to be found for their local problems, creating legitimacy for further integration and re-regulation of the platform economy at EU level.

C. Overcoming regulatory chill, or: the drive for European (legal) integration

Constrained by the liberal and uncertain EU norms and faced with powerful transnationally operating platforms, cities are required to overcome the situation of regulatory chill and actively influence the process of European legal integration. Cities have two venues at their disposal: assertively engaging the EU's *judicial* system and/or actively lobbying the EU's multi-level *political* system.

A first way for cities to overcome regulatory chill is by simply acting and accepting the risk of litigation within the EU's judicial system that comprises both domestic courts and the European Court of Justice. Taking this step in the face of an economically powerful and transnationally operating 'repeat player' (like Airbnb) in the upstream market and many potential litigants in the downstream market requires a high degree of political capital and state capacity. However, the case of the short-term rental market suggests that urban governments are able to fend against the liberalising tendencies of the internal market if they succeed in convincing judges of the spatial and (re)distributive implications of the platform-mediated services by emphasising local concerns and enforcement problems. The preliminary reference system subsequently allows the ECJ to integrate local interests, objectives and norms into EU law, thereby (re)drawing the contours of the EU's economic freedoms and the kind of public interests justifying their limits.[108] This dynamic is clearly visible in the Court's endorsement of the Parisian rules in *Cali Apartments*.[109] The way in which Paris was able to limit the economic liberties of property owners under the Services Directive by portraying its city and neighbourhoods as places in need of social diversity and sufficient affordable housing for the less well-off, improved the chances of other cities to justify their desired policies in light of EU law and would later demarcate the scope of harmonisation at EU level. Hence the short-term rental market confirms the dynamic highlighted by Finck, that local fragmentation can amplify interlevel and transnational dialogue.[110]

A second strategy for cities is to lobby for re-regulation at the European level in order to compensate for the loss of problem-solving capacity at the local level. Given the many veto points of EU legislation – and the marginal formal role of cities in the EU's political system – the outcome of positive integration is not a sinecure.[111] Nonetheless, it can be argued that it is precisely the upstream/downstream dynamics triggered by the structure of EU internal market law that explains why re-regulation at EU level is a likely outcome with respect to the short-term rental market. First, the 'untouchability' of platforms made the 'Airbnb issue' such a salient, focussed and outstanding *local* issue of *European* policy that a core of cities could effectively mobilise their political legitimacy within the umbrella organisation 'Eurocities' to influence the EU institutions.[112] Secondly, the economic actors potentially benefiting from the status quo do not strongly oppose re-regulation. In fact, a platform like Airbnb heavily dislikes the fragmentation of local rules and therefore sees 'block-wide' harmonisation as an opportunity to standardise and

[108]Finck illustrates this point with reference to a range of free movement cases like *Omega* and *Aragonese*, M Finck, 'Fragmentation as an agent of integration: Subnational authorities in EU law' 15 (2017) International Journal of Constitutional Law 1119–34, 1122–5.

[109]See Section 2.B.

[110]Finck (n 108).

[111]For the classic account, FW Scharpf, *Governing in Europe effective and democratic?* (Oxford University Press 1999). For a recent overview, Höpner and Schmidt (n 26).

[112]In conformity with the findings of Heinelt and Niederhafner regarding the effectiveness of city lobbying in the EU, H Heinelt and S Niederhafner, 'Cities and Organized Interest Intermediation in the EU Multi-Level System' 15 (2) (2008) European Urban and Regional Studies 173–87, 183.

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potentially liberalise short-term rental markets with the European Commission as a watchdog.[113] The providers of short-term rental services (and their business associates) also tend to be in favour of EU rules as they hope that by increasing the responsibility of platforms they will be relieved from the 'multiplication' of restrictive rules they experience at the local level.[114] Section 5 describes how the combination of political legitimacy from cities and regulatory fragmentation affecting economic actors in the much desired Digital Single Market fostered an institutional consensus and enabled the adoption of the Short-Term Rental Regulation.

4. Local case study: Amsterdam vs. Airbnb

Inhabited by around 900.000 long-term residents, the Dutch city of Amsterdam has seen an incredible boom in tourism since the start of the millennium, peaking in 2019 before the COVID-19 pandemic with more than 10 million tourists spending at least one night in tourist accommodations.[115] While undeniably driven by a global trend in urban tourism, Amsterdam's tourism boom has also been attributed to the efforts of city marketers, who, from the 1990s, sought to attract more affluent tourists to the city by promoting luxury services and its canal district whilst simultaneously cultivating the city's image as a 'tolerant' place in terms of liberal attitudes to sex and drugs.[116] This context offered Airbnb a fertile ground for expansion: the average number of residencies offered on Airbnb grew from 1,860 residencies in 2012, to 8,000 in 2015 and 20,000 at the end of 2019.[117] By that time, 1 out 15 Amsterdam residencies was advertised on Airbnb against the highest price level (€153 -) in Europe. In the city centre, 1 out of 9 residencies was advertised with an average price of €253 -.[118] While initially seen by commentators as a prime example of a 'minimalist' approach towards the regulation of short-term rental platforms,[119] Amsterdam shifted towards one of the most restrictive cities in the course of only seven years (2013–2020).[120] The longitudinal case study presented below will describe this process of regulatory change, explain the dynamics behind it and highlight the specific role of EU law.

A. Welcoming Airbnb: regulatory chill and voluntary cooperation

Respondents describe Amsterdam's attitude towards the emergence of short-term rental platforms as welcoming[121]: holiday rental would suit the character of Amsterdam as a hospitable city, result in a better allocation of housing stock and stimulate tourism and the local economy.[122] In 2014, the government adopted a number of rules to counter the risks associated with the new phenomenon, particularly those related to safety, nuisance, conversion of residential property and taxation.[123] Hosts complying with these rules were exempted from the requirement to request formal permission to convert residential property into tourist accommodation. See box 1 below for an overview of the rules.

[113]As the position statements of Airbnb highlight, 'Airbnb proposes new harmonized EU rules', <https://news.airbnb.com/airbnb-proposes-new-harmonised-eu-rules-responds-to-eu-consultation/> accessed 10 November 2023.

[114]See n 100 above.

[115]Amsterdam Municipality, *Toerisme MRA 2019–2020*, November 2020.

[116]FM Pinkster and WR Boterman, 'When the spell is broken: gentrification, urban tourism and privileged discontent in the Amsterdam canal district' 24 (2017) Cultural Geographies 457–72.

[117]Over 2019, there were 28.940 advertisements on Airbnb, while the number of properties offered on other platforms like Booking.com, Homeaway en Tripadvisor was growing. Municipality Amsterdam, 'Rapportage toeristische verhuur van woonruimte 2019', 10 March 2020.

[118]Ibid.

[119]Finck and Ranchordás (n 14) 42–3.

[120]Hübscher and Kallert (n 13).

[121]Interviews 1 and 10.

[122]Amsterdam Municipality, 'Toeristische verhuur van woningen ("vakantieverhuur") in Amsterdam', June 2013.

[123]These rules have not changed since 2014, although they were only formalised in municipal by-laws in 2016.

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Box 1. Overview of Amsterdam's rules on short-term vacation rentals in 2014

Downstream

1. Hosts should be legally resident in the properties they rent out (with a registration in the municipal database on that address).
2. Hosts can be homeowners or tenants with permission from their landlords.
3. Hosts have to declare municipal and tourist taxes.
4. Properties cannot be leased to more than four persons.
5. Properties need to conform to fire safety regulations.
6. Nuisances have to be avoided and neighbours informed.
7. Properties can only be rented out for 60 days per year.

As becomes apparent from this list, all of the rules were targeted at the hosts in the downstream market and not at the online platforms in the upstream market. In order to make sure that short-term rental policies would hold before courts, most of the rules, especially the 60-night limit, were cautious interpretations of national framework laws on housing (*Huisvestingswet* and *Woningwet*) and zoning (*Wet Algemene Bepalingen Omgevingsrecht*). Residencies found to be rented in violation of the short-term rental rules were classified as hotels and their owners found to be illegally withdrawing residencies from the housing stock and breaching the municipal zoning plan. While enforcement should have taken place through a combination of administrative fines, penalty payments and, in an ultimate case, enforced closure,[124] there was actually little enforcement in 2014 and 2015.[125]

From the start, Amsterdam understood that the involvement of platforms in the upstream market was crucial for the effective enforcement of its short-term rental policy: accommodation platforms like Airbnb possess essential information about the number, frequency and exact addresses of the residencies that are advertised and such information is not visible to the visitors of the website. However, a wide variety of evidence demonstrates that the uncertainties around the interpretation of the E-Commerce Directive and its marginal role as a subnational actor in the EU's administrative space led to serious chilling effects on the city. Airbnb had taken the position that as a digital intermediary service based in Ireland, it was not bound by the municipal rules and all of its cooperation was completely voluntary. According to Airbnb, enforcement was a public task for the local authorities.[126] This position was broadly accepted by Amsterdam city officials, who deemed Airbnb an 'intermediary' under the E-Commerce Directive.[127] In the words of the responsible deputy mayor: 'The E-Commerce rules were in the way. All the time I heard: "You cannot force a platform".' Legal officials of the city acknowledge to have never seriously taken the step to impose obligations on Airbnb and other platforms or hold them liable for the violations of municipal rules on short-term rentals that took place via its platform. They explain how, from their perspective, merely 'theoretical options' under the E-Commerce Directive were not the same as 'practical enforcement solutions' and emphasise that the city is not an actor in the European

[124]Amsterdam Municipality, 'Brief aan commissie wonen: Handhaving illegale toeristische verhuur van woningen', 30 August 2016.

[125]The yearly amount of collected fines increased from €115,000 in 2015 to €4 million in 2018, Amsterdam Court of Auditors (n 22) 125.

[126]Amsterdam Court of Auditors (n 22) 33. See, eg the preamble to Agreement City of Amsterdam and Airbnb, November 2016.

[127]Interviews 1 and 10. A legal advice by law firm Nauta from 2014 seems to have played important role in this legal interpretation.

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Union: a notification, in accordance with the E-Commerce Directive, would have to be filed to the European Commission via the central government, which was clearly hesitant to do so.[128]

It was largely because of a perceived lack of legal options that the city government chose the path of collaboration with the platforms.[129] Initially, this took the form of a 'Memorandum of Understanding' with Airbnb in 2014, which was celebrated as a 'unique deal' by both Airbnb and the responsible deputy mayor.[130] Airbnb would inform 'hosts' (and 'guests') about municipal regulations, undertake actions to stimulate good behaviour by guests and collect and transfer tourist taxation by means of a separate advance tax ruling agreement.[131] In the following years, e-mail correspondence between city officials and Airbnb shows close – at times even amicable – relations whereby both parties seem invested in convincing 'the outside world' that their cooperation should not be taken for granted and was actually reaping results.[132] However, the negotiation position of Airbnb remained clear: unless there were specific requests, it was not willing to share data of individual users and the company was of a 'principled opinion' that it could not act as an 'enforcer' of local rules, thereby referring to the 'general monitoring' prohibition under the E-Commerce Directive.[133] After lengthy negotiations, a second Memorandum of Understanding was concluded in November 2016. Airbnb took the 'big step' towards 'self-regulation'[134] by assisting the municipality in achieving their 'joint goals', amongst others by adding a counter to the website tracking the number of nights and by pledging to use automated systems to check 'with sound regularity' if users exceeded the maximum number of 60 nights.[135]

Although cooperation went relatively smooth initially,[136] the voluntary nature of the arrangements with the platforms posed serious limits to the effective enforcement of Amsterdam's short-term rental policies. Tourist tax was conveniently collected via lump-sum contributions by the platforms but the platforms did not provide information at the individual taxpayer level for reasons of privacy law.[137] Even more problematic was the platforms' refusal to share information about their individual users and listings. This left the city with laborious and slow enforcement alternatives as it could only rely on notifications by residents reporting the presence of tourists, nuisance or other suspicions about illegal holiday rentals as a source for information about illegal rentals.[138] Platforms would only deliver information on specific addresses or take down advertisements for illegal residencies after explicit and legally grounded requests from the municipalities.[139]

B. Taming the hosts: cracking down the downstream market

After a swing in public mood against over-tourism in the city, public debate about short-term rentals intensified in 2016. That year, the city council urged the government to explore options for

[128]Interview 1.

[129]See GIA request 18 July 2019, attachment 1, email of Tuesday 16 February 2016 to deputy mayor.

[130]A second agreement would be extended until 31 December 2018. A similar agreement was concluded with Booking.com for the year 2018. 'Airbnb beperkt verhuur in Amsterdam tot 60 dagen' (*NOS*, 1 December 2016).

[131]Agreement City of Amsterdam and Airbnb, November 2016.

[132]GIA request of 18 July 2019, attachment 15, email 16 February 2016.

[133]GIA request of 18 July 2019, attachment 28.

[134]GIA request of 18 July 2019, attachment 98, email 14 September 2016.

[135]Amsterdam Court of Auditors (n 22) 36; Agreement City of Amsterdam and Airbnb, November 2016.

[136]In its 2016 evaluation, the city government emphasised that Airbnb complied with its part of the Memorandum of Understanding, Amsterdam Municipality, 'Evaluatie toeristische verhuur van woningen' (2016) 31.

[137]Tourist tax was 6 per cent per night in 2018 and 7 per cent per night in 2019. The city government reports estimated earnings of 10 million yearly, with Airbnb reporting in 2019 to have contributed more than 25 million euro in taxes since 2015. Amsterdam Court of Auditors (n 22) 123–4. Although the municipal tax office considers this a highly effective way of tax collection, it warns about the fact that the municipality has to rely on the platforms to trust its completeness. Ibid., 58–60.

[138]Amsterdam Court of Auditors (n 22) 67–8.

[139]Ibid., 24.

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new measures and enforcement instruments to reduce the negative side-effects of short-term rentals in the city. Believing in the 'untouchability' of the online platforms, Amsterdam decided to focus its attention at the hosts and introduced a couple of further restrictions in the downstream market (see box 2 for an overview).[140] First, the municipality structurally allocated more resources to the enforcement of housing fraud, introducing such techniques as scraping, permanent hotlines and mystery guests.[141] Secondly, on 1 October 2017, the municipality introduced a notification duty. From now on, hosts would be required to electronically notify the municipality each time before renting out accommodation.[142] Thirdly, through January 2019, Amsterdam reduced the yearly limit from 60 to 30 nights. While the city government had been wanting to reduce the night limitation for a long time, it had considered this move to be legally risky and expected national judges to find this in violation of the national Housing Act.[143] This expectation turned out to be wrong: late 2017, the Amsterdam district court ruled (as later confirmed by the Council of State) that the very act of renting out residential property to tourists – ie regardless of its duration or frequency – already meant a violation of the Housing Act.[144] Having obtained legal clarity, Amsterdam could announce the introduction of the strictest night limitation in Europe at the time.[145]

The reduction of the yearly limit to 30 nights caused an impasse in the cooperation with the online platforms. Memorandums of Understanding – between Airbnb and later Booking – stayed in force until 1 January 2019, but would not be extended afterwards. While Amsterdam only wanted to continue cooperation when the platforms were willing to enforce the 30-night limitation, the platforms first wanted to test its legality and proportionality under EU rules.[146] In its reply to the Amsterdam Court of Auditors, Airbnb argued that the 30-night limitation is in violation of EU law and refers to a formal complaint filed to the European Commission.[147] This is probably a reference to the complaint submitted to the Commission by a local interest group of bed-and-breakfast owners and other Airbnb hosts (Amsterdam Gastvrij) in February 2019,[148] which argues that some of Amsterdam's short-term rental rules – including the 30-night limitation – are unjustified and disproportionate restrictions under the Services Directives and the right of property as contained in Article 17 of the EU Charter of Fundamental Rights.[149]

After the breakdown in cooperation with the platforms, Amsterdam decided to intensify its own regulatory and enforcement measures.[150] Important was the introduction of a permit system

[140]Interview 10.

[141]The government structurally allocated a million euro's extra from 2016 onwards and made housing fraud an enforcement priority for 2017–2018, Amsterdam Municipality (n 136) 24; Amsterdam Municipality, *Stedelijke handhavingsprogramma 2017–2018*, December 2016, pp 16–19.

[142]Amendment Housing Decree Amsterdam 2016, *Gemeenteblad* 2017, no. 145188.

[143]Amsterdam Court of Auditors (n 22) 22. Amsterdam Municipality (n 136) 14. Meeting council committee housing and building, 3 October 2018, <https://amsterdam.raadsinformatie.nl/vergadering/530701#ai_4257199> accessed 20 November 2023.

[144]*In casu* it was four days, Amsterdam District Court (5 December 2017), ECLI:NL:RBAMS:2017:8938. Later confirmed by the Council of State (6 February 2019), ECLI:NL:RVS:2019:317.

[145]Amsterdam Municipality, 'Amsterdam verkort termijn vakantieverhuur naar 30 dagen' (18 January 2018). Although it could be said that Barcelona effectively prohibited Airbnb when it stopped granting permits for renting out properties for less than 31 days per year.

[146]Amsterdam Court of Auditors (n 22) 42. As also follows from internal emails about the position of Homeaway, 19 November 2018, GIA request of 18 June 2019, attachment 3, p 26.

[147]Amsterdam Court of Auditors (n 22) 33.

[148]Amsterdam Gastvrij states to be fully independent and not to receive any financial support from Airbnb. Media reporting suggest at least some involvement of Airbnb-employed community organisers during its foundation in 2017 and the advertisement of its events in 2019, 'Airbnb hielp Amsterdammers een handje zich te mobiliseren tegen hun gemeentebestuur' (*Brandpunt+*, 11 December 2019) <https://www.npo3.nl/brandpuntplus/hoe-Airbnb-in-amsterdam-echte-mensen-een-handje-hielp-zich-te-verenigen-tegen-de-overheid> accessed 18 September 2024.

[149]The complaint is published on the website of Amsterdam Gastvrij, <https://tinyurl.com/5n7v9w55> accessed 20 November 2023.

[150]Interview 10.

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in July 2020. The introduction of permits was made necessary by a rather unexpected and embarrassing[151] judgement from the Council of State in January 2020.[152] The Council ruled that the municipality of Amsterdam had never been competent under the national Housing Act to exempt owners from the obligation to obtain a permit when they want to let their properties to tourists. According to the judges, such usage of residential property served a different purpose than permanent residence and therefore always required a permit from the city government.[153] The judgement therefore meant that Amsterdam had to change its municipal housing bylaws and introduce a permit system if it wanted to allow for and regulate short-term rentals.[154] Doing so, the municipality made the deliberate decision to impose the highest possible fines (€8,700 -) on hosts who failed to obtain a permit.[155] According to the deputy mayor at the time, this was seen as the only way to genuinely dissuade the growing group of professional businesses running (essentially) illegal hotels.[156] Later, when these businesses had left the market and the fines wound up causing disproportionate outcomes for non-professional hosts for relatively small mistakes, the city government decided to lower the fines for some violations.[157] Most recently, the Council of State ruled that the city council should reconsider its entire fining policy on short-term renting for its lack of differentiation and, hence, proportionality.[158]

Not long after announcing the permit system, the city government also took the decision that it would not issue short-term rental permits for three neighbourhoods in the historical city centre.[159] This 'Airbnb ban' attracted world-wide media attention and an agitated response by Airbnb, which claimed to be 'deeply concerned the proposals are illegal and violate the basic rights of local residents'.[160] The government thought differently: banning short-term rentals would protect those local residents by restoring the disrupted balance between residential living and tourism. With explicit reference to the Services Directive, the decision not to grant permits in those neighbourhoods was justified as a measure of 'last resort' to protect their *leefbaarheid* ('liveability') after researching the impact of tourism in all of Amsterdam's 99 neighbourhoods.[161] In three neighbourhoods, tourism had deteriorated to such an extent that the government wanted to protect its residents against the bustle and nuisance caused by tourism in their direct living space – ie in the hallways, the gardens and on the balconies.[162] The 'Airbnb ban' turned out to be short-lived after interest groups successfully litigated against it before the Amsterdam District Court in March 2021.[163] In the appeal case before the Council of State in June 2023, their mobilisation of

[151]As follows from a heated debate in the city council on 5 February 2020.

[152]Council of State, 29 January 2020, ECLI:NL:RVS:2020:261; see also Council of State, 6 February 2019 ECLI:NL:RVS:2019:317.

[153]Ibid., para 4.1. The old Art 21(a) – now Art 21(1)(a) – of the Housing Act prohibited the conversion of residential property into other than personal use as residence or office without a permit from the municipal authority.

[154]The permit currently costs €48.10, is valid for a year and can be requested electronically, <https://www.amsterdam.nl/wonen-leefomgeving/wonen/vakantieverhuur/vergunning/> accessed 20 November 2023. Municipality of Amsterdam, *Gemeenteblad* 2020, no. 142596.

[155]Ibid., 11.

[156]Interview 10.

[157]Municipality Amsterdam, 'Proportionaliteitsbeleid vakantieverhuur' (15 November 2022).

[158]With reference to Art 6 of the European Convention of Human Rights and the proportionality principle under domestic administrative law, Council of State, 21 August 2024, ECLI:NL:RVS:2024:3416.

[159]The relevant neigbourhoods were Burgwallen-Oude Zijde, Burgwallen-Nieuwe Zijde and Grachtengordel-Zuid, *Gemeenteblad* 2020, no. 167435. The city government made use of this competence under the municipal housing bylaw that had been amended the year before, *Gemeenteblad* 2019, no. 32076731.

[160]'Airbnb says Amsterdam old town home sharing ban is "damaging"' (*Reuters*, 26 June 2020).

[161]*Gemeenteblad* 2020, No. 142596, p 9.

[162]*Gemeenteblad* 2020 No. 167435, pp 2–3.

[163]The District Court Amsterdam annulled the ban on grounds of national law, 13 March 2023, ECLI:NL:RBAMS:2021:1017.

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EU law would prove decisive.[164] In contrast to its earlier judgements, the Council now explicitly treated short-term renting as a form of service-provision covered by the Services Directive and therefore evaluated the conditions attached to the granting of permits as restrictions to the freedom to provide services. While the Council accepted that the protection of the urban environment could justify a complete prohibition of short-term renting in certain neighbourhoods, it found the measure disproportionate. In the eyes of the judges, the municipality had not seriously considered less restrictive measures like quotas and had not awaited the effects of the reduction of the night limitation to 30 days before taking such a 'far-reaching measure'.[165] Long before the judgement however, the city government had already decided not to push the limits of EU law any longer and withdraw plans for a reintroduction, to the disappointment of critical city council members who argued that much more was possible under the Services Directive.[166]

Concludingly, we observe a double and somewhat paradoxical development. In terms of *policy* and *enforcement*, Amsterdam changed its approach to short-term rentals from rather liberal to a permit-based system with strict conditions, costly enforcement practices and high fines. The evidence quite convincingly suggests that the 'untouchability' of platforms in the upstream market reinforced this multiplication of restrictive rules in the downstream market. This, in turn, increasingly forced Amsterdam to justify and defend the proportionality of its policies on the basis of a 'liveable city' against local litigants under the Services Directive, only running against its limits with the 'Airbnb-ban'. However, the consecutive judgements of the Council of State also reveal something much more profound, that is to say, a complete reversal of the local status quo as regards the *legal* status of short-term renting. The activity of short-term renting changed from plain illegal usage of residential property under the national Housing Act to an economic activity governed by the Services Directive.[167] EU law therefore aided a transformation of short-term renting from an illegitimate but somehow tolerated use of housing space to a formalised market activity insulated from (too much) democratic interference by such liberal principles as proportionality.

Box 2. Overview of rules on January 2021 (new rules in italics)

Downstream

1. Hosts should be legally resident in the properties they rent out (with a registration in the municipal database on that address).
2. Hosts can be homeowners or tenants with permission from their landlords.
3. *Hosts should obtain a yearly permit from the municipality.*
4. *No permits are granted for three neighbourhoods in the city centre (annulled by judiciary in2021).*
5. *Properties can only be rented out for 30 days per year.*
6. *Every rental period has to be notified to the municipality*.
7. Hosts have to declare municipal and tourist taxes.
8. Properties cannot be leased to more than four persons.
9. Properties need to conform to fire safety regulations.
10. Nuisances have to be avoided and neighbours informed.

[164]The Council overturned the decision of the District Court Amsterdam and rejected all other grounds of appeal that were based on national administrative law, Council of State, 31 May 2023, ECLI:NL:RVS:2023:2076, paras 6–14.

[165]Council of State, 31 May 2023, ECLI:NL:RVS:2023:2076, para 15.1.

[166]Motion no. 149 2022, 'Mbarki c.s. verbodswijken voor vakantieverhuur'.

[167]This reversal was completed with the coming into force of so-called Airbnb Act (see below), *Staatsblad* 2020, 46.

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C. Taming Airbnb: overcoming regulatory chill in the upstream market

As shown above, Amsterdam's reversal in attitude towards Airbnb materialised in the form of strict regulation in the downstream market, exclusively targeting the actual providers of short-term rental services. However, in order to enforce its short-term rules effectively, the city knew very well that it also had to impose obligations on the platforms in the upstream market. When confronted with critical city council members asking why the rules they made did not apply to Airbnb, deputy mayor Ivens claimed to be running against the outer limits of what was believed possible under EU regulation such as the E-Commerce Directive.[168] One way to overcome this legal obstacle was to move the central government to action, which was solely competent to change housing legislation and conduct the necessary formal relations within the European Union.

Amsterdam's lead in a lobbying campaign would move the central government to propose legislative amendments to the Housing Act in 2019.[169] The aim of the new rules was to create a clearer legislative framework for short-term rentals and attribute more regulatory and enforcement powers to municipalities. While short-term renting was formally allowed under the new Housing Act, municipalities would be able to require hosts to register their homes, set a night limitation, require hosts to notify every stayover and oblige hosts to obtain a permit against high fines, all depending on the local need to protect the housing stock or the liveability of residential environments.[170] However, to the disappointment of Amsterdam and other cities, platforms largely escaped the burden of legislation even though the responsible minister was all too familiar with problem from her time as an deputy mayor in Amsterdam.[171] Again, chilling effects under EU law appear to have been the most important explanation. While the options for targeting hosts were considered wide-ranging under the Services Directive, the ministry considered that taking a tougher stance towards platforms would be risky in light of the E-Commerce Directive as it required operating in a 'grey area without jurisprudence' and also meant notifying the European Commission.[172] Hence the publication of the proposal resulted in a heated multi-level blame game, whereby local governors blamed the national government for not taking on the platforms and the minister blamed 'European directives' for not being able to do so – a battle that was fought out in the national and local media.[173] Part of the critique, also expressed by national members of parliament (MPs), was the active presence of the platforms at the drafting table of the ministries with around 10 meetings in the runup to the legislative proposal.[174]

In an interesting turn of events, a rather unusual alliance of MPs managed to pass a range of amendments imposing obligations on platforms nonetheless.[175] The MPs, including those of coalition parties, clearly sided with Amsterdam by taking the view that involving platforms was vital for effective regulation.[176] The most important amendment considerably improved the effectiveness

[168]Interview 6, as can be observed in this city council meeting of 3 October 2018, <https://amsterdam.raadsinformatie.nl/vergadering/530701#ai_4257199> accessed 20 November 2023.

[169]Parliamentary document TK 2019-2020, 35 353, no. 2. The final act was published as Wet toeristische verhuur van woonruimte, *Staatsblad* 2020, 46.

[170]Art 23a to 23c of the Dutch Housing Act.

[171]Interview 10; as also clearly follows from the explanatory memorandum to the proposal, TK 2019–2020, 35 353, no. 3, pp 14–15.

[172]Interview 4. As confirmed by respondents of interview 1, who remark that the central government was reluctant to notify measures under the E-Commerce Directive. See also the explanatory memorandum to the proposal, Memorie van Toelichting, TK 2019–2020, 35 353, no. 3, p. 4 and internal correspondence within the Amsterdam government under GIA request of 18 July 2019, attachment 88.

[173]'Steden en experts: "Airbnb-wet" gaat niet ver genoeg' (*NRC*, 2 December 2019).

[174]As revealed after media reports about the lobbying successes of Airbnb, Parliamentary document TK 2019-2020, 27926, no. 316. See 'Hoe Airbnb toch weer aan het langste eind trekt' (*NRC*, 4 December 2019).

[175]A particularly productive but unusual alliance was between opposition MP Beckerman of the Socialist Party and coalition MP Koerhuis of the People's Party for Freedom and Democracy, who submitted several amendments together after regular contacts and working visits to Amsterdam.

[176]Interviews 7 and 8.

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of enforcement by prohibiting platforms to advertise accommodation without a registration number.[177] Another amendment obliged platforms to inform their users about the local short-term rental rules.[178] Initially, the minister tried to reassure the MPs about the existing limits of EU law,[179] but when realising that the amendments would reach a majority of votes, she gave in and reached a compromise: the law would take force on 1 January 2021 but the provisions targeting the platforms would take force *after* the notification procedure under the E-Commerce Directive had been followed.[180] After the ECJ had rendered its *Airbnb Ireland* judgement, ministry officials knew that imposing rules on platforms required notifying both the European Commission and Ireland (the 'home' Member State of Airbnb and Expedia) and they could only rely on the four derogations listed in Article 3(4) of the E-Commerce Directive.[181] In a similar way to the city of Bonn in the famous *Omega* case,[182] the Dutch government gave a particular, localised interpretation of the European legal concept of public policy, namely that the large scale use of residential properties to tourists via online platforms seriously affected the liveability and safety in certain urban areas and exacerbated problems related to the supply and affordability of long-term (rental) housing.[183] Perhaps to its surprise, the Dutch government could consider the lengthy and labour-intensive notification procedure (counting 112 pages) to be successfully completed in early 2021 when it did not receive objections from the Commission or other Member States.[184]

It was only after the silent acceptance of the Commission that the upstream rules of the Housing Act would be put into effect and Amsterdam could require Airbnb and the other platforms to only publish properties with a registration number.[185] After Amsterdam announced to start operating a registration system from April 2021, Airbnb announced to 'voluntarily' support the city in implementing the system and to remove advertisements without a registration number from 1 October 2021 onwards.[186] The effects were profound: the number of advertisements dropped from 18,000 in September to 4,500 in December of 2021.[187] In January 2022, Amsterdam formalised the obligations for platforms in its by-laws, prohibiting them from advertising properties in Amsterdam without a registration number and obliging them to inform their users about the local short-term rental rules (see box 3 for an overview).[188]

To conclude, it took the city of Amsterdam almost eight years to exercise public authority over Airbnb and the other platforms in order to ensure a degree of effective compliance with its short-term rental rules. The city succeeded despite its marginal role as a subnational actor in the EU's administrative space but this required intensive lobbying efforts and the plain luck of a rather unusual coalition of individual members of parliament to overcome resistance by national government in light of the uncertainties around E-Commerce Directive. It was the vision of liveable city with sufficient affordable housing that gave expression to the local concerns of public policy justifying a derogation from the principles of home state control and mutual recognition under the E-Commerce Directive.

[177]Art 23a(3) of the Dutch Housing Act 2014.

[178]Art 23d and e of the Dutch Housing Act 2014.

[179]Parliamentary document TK 2020-2021, 35 353, no. 6, p 22.

[180]Interview 4. Parliamentary document TK 2020–2021, 35 353, no. 41.

[181]Interview 4.

[182]In which the authorities argued that mock homicides in games meant an infringement of the fundamental value of human dignity and therefore a threat to public policy, an argument accepted by the Court, Case C-36/02 *Omega-Spielhallen* EU:C:2004:614, para 32, as discussed by Finck (n 108).

[183]GIA request of 7 April 2021, attachment 13.

[184]Parliamentary document TK 2020-2021, 35 353, no. 41.

[185]On the taking force of the platform obligations, *Staatsblad* 2021, 230.

[186]Airbnb, 'Registration in Amsterdam', <www.airbnb.nl/d/registrationamsterdam> accessed 16 November 2023.

[187]Amsterdam Municipality, 'Rapportage Toerisitische Verhuur van woonruimte 1 januari 2021-31 december 2021' (19 April 2022).

[188]*Gemeenteblad* 2021, no. 484954, pp 24–5.

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Box 3. Overview of rules January 2022 (new rules in italics)

Downstream

1. Hosts are required to be legally resident in the properties they rent out (with a registration in the municipal database on that address).
2. Hosts can be homeowners or tenants with permission from their landlords.
3. Hosts should obtain a yearly permit from the municipality.
4. Properties can only be rented out for 30 days per year.
5. Every rental period has to be notified to the municipality.
6. Hosts have to declare municipal and tourist taxes.
7. Properties cannot be leased to more than four persons.
8. Properties need to conform to fire safety regulations.
9. Nuisances have to be avoided and neighbours informed.
10. *Hosts should obtain a registration number (since 1 April 2021).*

Upstream

1. *Platforms are obliged to only advertise properties with a registration number.*
2. *Platforms are obliged to inform their users about the local short-term rental rules.*

5. European integration: the short-term rental regulation

This section describes how the struggle of European cities to regulate short-term rentals would result in the adoption of the Short-Term Rental Regulation. It will first recount how this struggle would unite a coalition of European cities to campaign for legislative action at EU level. After briefly explaining the limited relevance of the Digital Services Act, the section continues by analysing the Short-Term Rental Regulation and explain why its adoption and normative content can also be understood as a result of the upstream/downstream dynamics at the heart of this article.

A. Playing Europe

Simultaneous to the push for action at the national level, cities felt forced to lobby for reform at the European level in order to make up for their perceived loss of regulatory autonomy at the local level. Zooming in on Amsterdam we find that it was already in 2016 that deputy mayor Ivens was mandated by the city council to start a lobby with other European cities towards the European Commission and Parliament.[189] Part of Amsterdam's strategy was to form an alliance with other cities who also had to deal with the same European rules.[190] The main objective was to gain 'clarity' about the European rules applying to the short term rental sector: while all cities had their own set of local rules to protect their residents from the negative consequences of the platform economy, the platforms appeared to receive a 'free pass' from Europe, which made the enforcement of their rules impossible.[191] This only materialised in the course of 2019 in the form of a broad coalition of cities – the so-called 'European cities alliance on short-term holiday

[189]Motion 116 of Amterdam City Council meeting at 2 June 2016, <https://amsterdam.raadsinformatie.nl/vergadering/238103#ai_2583781> accessed 20 November 2023.

[190]Meeting Amsterdam City Council, 3 October 2018, <https://amsterdam.raadsinformatie.nl/vergadering/530701#ai_4257199> accessed 20 November 2023.

[191]Interview 10.

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rentals' – within the umbrella of Eurocities that pushed for legislation on registration and data sharing to better control the activities of platforms and hosts at local level.[192]

Convincing the European institutions of the need to regulate the short-term rental platforms was not an easy task given their early enthusiasm for the platform economy. Since 2015, Airbnb had already enjoyed frequent access to the European Commission,[193] which published a guidance in 2016 that wholeheartedly embraced the economic potential of the 'collaborative economy' and an 'opportunity' to policymakers and legislators in the Member States to 'reassess' the justification and proportionality of existing regulation under EU law.[194] Building on the guidance, the Commission sent a letter of formal notice to Belgium in 2019, accusing the Brussels region of violating the Services Directive with its short-term rental policies.[195] In 2017, the European Parliament adopted a Resolution highlighting short-term renting as 'an excellent use of resources and under-used space' and condemning local regulations seeking to 'restrict the supply of tourist accommodation via the collaborative economy'.[196]

Towards the end of the decade, we witness a gradual turnaround that can be contributed to pressure for action from the Amsterdam-led alliance of European cities, some Member State governments in the Council, active members of the European Parliament and heightened media attention.[197] In a Resolution adopted in 2021, the Parliament strikes a markedly different note, pointing to the negative impact on housing affordability and liveability caused by the short-term rental market and demanding action from the Commission.[198] By then, the Council had already invited the European Commission to provide more clarity on short-term rental services, emphasising the need to achieve balanced and sustainable tourism development in the Single Market and address 'justified concerns in an appropriate manner'.[199] When the European Commission started consultations for a new initiative in 2021, it noticed not only a 'proliferation' of regulatory and burdensome requirements at local level but also the problematic lack of platform cooperation to achieve the type of local public interest objectives accepted by the Court in *Cali Apartments*.[200] A year later, the Commission could report broad support from all 'stakeholders' – including public authorities, online platforms and hosts – to harmonise data-sharing obligations and registration schemes across the EU.[201]

B. The digital services act

Cities initially placed high hopes in the long-awaited Digital Services Act ('DSA'), as this Regulation sought to update and amend the E-Commerce Directive to match the development of

[192]For a first press release by Eurocities on putting pressure on the European Commission, 'Joining forces on the platform economy' (Eurocities, 21 October 2019) <https://eurocities.eu/latest/joining-forces-on-the-platform-economy/> accessed 20 November 2023.

[193]For a comprehensive report on the lobbying activities of Airbnb towards the European Commission, see K Haahr, 'UnFairbnb: How online rental platforms use the EU to defeat cities' affordable housing measures', Corporate Europe Observatory, May 2018.

[194]European Commission, 'A European Agenda for the Sharing Economy', COM(2016) 356, p 4.

[195]European Commission, 'Commission takes action to ensure professionals and service providers can fully benefit from the EU Single Market for services', 24 January 2019. The Commission continued such investigations afterwards with respect to Spain and other Member States, Answers given by Mr Breton on behalf of the European Commission, E-002915/2022, 6 December 2022.

[196]European Parliament Resolution of 15 June 2017 on a European Agenda for the collaborative economy, (2017/2003(INI)), paras 64–5.

[197]Interview 5.

[198]European Parliament Resolution of 21 January 2021 on access to decent and affordable housing for all (2019/2187(INI)), para 48.

[199]Council of the European Union, 'Conclusions on the competitiveness of the tourism sector as a driver for sustainable growth, jobs and social cohesion in the EU for the next decade', EUCO 17/21 (27/05/2019).

[200]European Commission, 'Inception Impact Assessment: Short-Term Rental Initiative', Ref. Ares(2021)5673365 (16/09/2021).

[201]European Commission, Executive Summary of the Impact Assessment Report, SWD(2022) 349 final (7/11/2022).

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online platforms and their role in society. In particular, they hoped that the DSA would correct the unworkable home state control principle of the E-Commerce Directive and expand its scope for derogations 'to safeguard socio-economic and environmental quality in cities'.[202] In addition, the cities lobbied to update the 'safe harbour' provisions in order to prohibit the publication of illegal content and require platforms to share up-to-date and reliable data for the enforcement of short-term rental rules.[203] They received political support for these positions from the Dutch government in the Council, which – it is reminded – had just gone through the laborious process of notifying derogations under the E-Commerce Directive to support Amsterdam's short-term rental rules.[204]

The final version of the DSA – adopted on 5 July 2022 – must have been disappointing for the coalition of European cities.[205] While recital 12 explicitly mentions 'the illegal offer of accommodation services' as an example of what is considered to be illegal content, the DSA does not make the removal of such content much easier compared to the E-Commerce Directive.[206] Sure, the DSA streamlines specific removal orders and strengthens enforcement cooperation between national authorities, but also leaves the existing free movement rules and safe harbour provisions intact and does not impose data sharing obligations on platforms. In other words, local governments are still left with the task of detecting the 'illegal content' and notify the platforms with specific removal orders. The most tangible response from the Commission to this critique has been to point at Article 31, which requires platforms to make 'traders' on their platforms 'traceable;'[207] the critical question being whether short-term rental providers can always be classified as traders under EU law.[208]

C. The short-term rental regulation

At the end of 2022, the European Commission came with a proposal for a Short-Term Rental Regulation ('STR Regulation').[209] After a relatively quick legislative process, the Regulation was formally adopted on 11 April 2024 even though the rules will only take effect on 20 May 2026.[210] Where the DSA provides 'horizontal' rules for providers of information society services, the Commission sees the STR Regulation as 'sector-specific' legislation addressing the specific issues related to short-term rental platforms.[211] It is evident from its context and measures that the main objective behind the Regulation is to help Member State authorities respond effectively to the rapid growth in short-term rental services and 'design and implement' their policies to address the concerns of local communities related to affordable housing and balanced tourism.[212] The legal basis

[202]Eurocities, 'The Digital Services Act: Making digital opportunities work for people and the public good', September 2020, p 5. <https://eurocities.eu/resources/making-digital-opportunities-work-for-people-and-the-public-good/> accessed 30 October 2024.

[203]Amongst other proposals, ibid.

[204]'Dutch Deputy Prime Minister calls for Digital Services Act regulation against AirBnB' (*Euractive*, 9 November 2020); See Permanent Representation of the Netherlands to the European Union, 'Dutch non-paper on the Digital Services Act package and the short-term holiday rental of residential spaces', 9 November 2020.

[205]As becomes apparent from the open letter by the city coalition and 77 MEPs 'on the need for legislative action on tackling illegal short-term rentals' from 13 July 2022. See also Eurocities, 'Digital Services Act, why should you care?' <https://eurocities.eu/latest/digital-service-act-why-should-you-care/> accessed 20 November 2023; Eurocities, 'DSA amendments: a mixed basket for cities' 24 January 2022 <https://eurocities.eu/latest/dsa-amendments-a-mixed-basket-for-cities/> accessed 20 November 2023.

[206]And, as argued elsewhere, maybe even more difficult, Kramer and Schaub (n 30) 1664–5.

[207]As Commissioner Breton writes in a letter to MEP Van Sparrentak of 15 September 2022, this article requires platforms to design their websites 'in a way that will allow each trader to clearly identify itself, the type of product or service it offers and publish any national registration number that it may have received.'

[208]See also recital 16 of the Short-Term Rental Regulation, which refers to this limitation of article 31 DSA as a justification to impose specific conditions on platforms with respect to short-term rental services.

[209]COM/2022/571 (n 100).

[210]Art 19 STR Regulation (n 8).

[211]Letter from Head of Unit Prabhat Agarwal to author, 4 April 2023, CNECT.F.2/FZ, on file with author.

[212]Recitals 1-3, STR Regulation.

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for the Regulation is the internal market competence of Article 114 TFEU, which the legislator justifies by explaining that that the rules are necessary to remove cross-border obstacles for online platforms intermediating short-term rental services and ensure the 'fair, unambiguous and transparent provision of short-term accommodation rental services within the internal market'.[213]

The regulatory instrument at the heart of the Regulation is a registration system close to the one operated by the city of Amsterdam (Section 4.C). An obligation on behalf of 'hosts' to obtain registration numbers for their properties is combined with a de facto obligation on behalf of the platforms to display those registration numbers on their websites and share the relevant data with Member State authorities. In order to achieve this, the Regulation fully harmonises registration procedures for short-term rentals in the European Union, whether established at the national, regional or local level. Articles 4 and 5 respectively stipulate how the registration procedures should operate and what kind of information hosts should provide. While the rapporteur (Greens/EFA) and other progressive MEP's tried to link the issuing of a registration number to a prior authorisation to actually enter the (local) short-term rental market (eg by means of a permit), liberal and conservative MEP's favoured the final outcome of a largely free of charge procedure resulting in an automatic and immediate issuing of a registration number.[214] Platforms, in turn, are obliged to design their website in a way that enables hosts to 'self-declare' whether their property is located in an area where a registration procedure applies and only allow those hosts to advertise when they provide a registration number.[215] Progressive MEP's tried to increase the responsibility of platforms by simply prohibiting platforms from advertising properties without a necessary registration number regardless of the self-declaration;[216] liberal and conservative MEPs took the side of Airbnb by arguing that such an obligation would introduce unnecessary burdensome red tape for the platforms and contradict the general monitoring prohibition under the DSA.[217] The final compromise could therefore be seen as a *specific* monitoring obligation in line with the *Glawischnig-Piesczek* jurisprudence: platforms have to make 'reasonable efforts' to 'randomly check' the validity of the self-declarations and registration numbers provided by hosts while taking account of the lists of areas where registration procedures apply as they are communicated by Member State authorities.[218] Finally, it is important to mention the data sharing obligation imposed on platforms. Every month, platforms are supposed to transmit activity data of the properties advertised on their websites for areas where registration procedures exist. This includes the number of nights rented, number of guests hosted, registration number and URL for the listing.[219]

Cities do pay a price for the Regulation. This price lies in the fact that *if* Member State authorities want to ensure platform cooperation under the Regulation, they can no longer operate registration procedures for short-term rental services in the way they see fit but have to do so in the exhaustive way stipulated by the Regulation.[220] This form of maximum harmonisation and the objective to make the data systems interoperable under direction of the European Commission[221] could be seen as an encroachment on the competences of Member States (and potentially their internal division of competences) at the intersection of housing, urban planning and tourism policies. It is a price most cities are probably willing to pay, however, in exchange for the legal uncertainties that currently persist over the cooperation of online platforms. Not unimportant is

[213]Recital 2, STR Regulation. Section 2 of the explanatory memorandum of the proposal is more explicit, COM/2022/571.

[214]Art 4 STR Regulation; 'Travel Platform Rules: EU Parliament hones in on registration, authorisation' (*Euractive*, 21 June 2023); see Amendment 39, Art 4(2)(b), Draft Resolution, 2022/0358(COD).

[215]Art 7 STR Regulation.

[216]Amended Art 7(1)(c), Draft Report, 2022/0358(COD).

[217]'Experts split on creation of industry-specific rules on illegal online content' (*Euractive*,12 September 2023). See also recital 16 STR Regulation.

[218]Art 7(1)(c), Art 13(1)(a) and recital 16 STR Regulation.

[219]Art 9 STR Regulation; small or micro platforms only have to so every quarter.

[220]Recital 4 and article 4 STR Regulation.

[221]Arts 10 and 11 STR Regulation.

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the fact that the platform lobby to harmonise the *substantive* rules on short-term rental services did not succeed.[222] After all, the Regulation stresses that Member States remain competent to regulate market access requirements for hosts (such as minimum quality and safety standards or quantitative restrictions) even though it emphasises that these downstream rules need to comply with the proportionality requirements under the Services Directive.[223]

Concludingly, the adoption of the STR Regulation can be seen as an illustration of the dynamics and outcome triggered by the upstream/downstream structure of EU internal market law. With it, the EU legislator essentially acknowledges that the downstream enforcement of short-term rental rules is near to impossible without targeting the gatekeeper position of online platforms and that this requires a sector-specific 'plug-in' to the E-Commerce Directive (and DSA).[224] The Regulation aims to close a gap in upstream enforcement in order to *enable* public authorities to effectively exercise their competences in the downstream market, which in turn – so the legislator seems to expect – should lead to more 'proportionate' short-term rental policies on the ground.[225] The effectiveness of this approach – obliging platforms to display registration numbers on their website – was earlier demonstrated in the case of Amsterdam, where this resulted in the removal of 75 per cent of Airbnb listings. The Short-Term Rental Regulation should therefore be seen as a serious attempt at re-regulating a specific sector of the *local* platform economy at the *European* level, helping cities to reclaim a degree of regulatory control over their short-term rental markets.

6. Conclusion

Cities are spaces where the effects of platform economies magnify. Hence it is no wonder that residents first look to their local governments for policy solutions. In their efforts to tame transnationally operating online platforms and their local users, cities in the European Union also face the challenge of navigating the legal hurdles erected by the Union's internal market. Curiously, the specific factor of EU law has so far been neglected in the extensive literature dealing with the regulatory responses to the emergence of platform economies. This article therefore offers an explanation of how EU internal market law structures the multi-level policy dynamics behind the regulation of the Airbnb-driven short-term rental market. It did so by combining a legal analysis of the EU's internal market law on services with an in-depth empirical case study of the regulatory strategies employed by the municipality of Amsterdam to get a grip on the explosive growth in short-term rental services in its city.

The central tenet of the article holds that the very structure of EU law produces a critical regulatory tension for urban governments which, in turn, stimulates the types of multi-level policy dynamics we are able to observe regarding short-term rental services. At the heart of this argument is an analytical distinction between up- and downstream markets of the platform economy. The case of Amsterdam served to illustrate the dynamic that, without intervention from central or EU levels, European e-commerce law can 'chill' an urban government from imposing direct obligations on online platforms like Airbnb in the *upstream market* in order to address local challenges associated with these platforms (affordable housing, overtourism, etc). Forced to find alternatives, a city might subsequently decide to target the *downstream market* by shifting the burden of regulation and compliance towards the actual providers of short-term rental services

[222]As follows from Airbnb's response to the Commission's proposal, Airbnb, 'Data collection and sharing relating to short-term accommodation rental services – Airbnb position' (December 2022) <https://news.airbnb.com/wp-content/uploads/sites/4/2022/12/Airbnb-EU-Position-Paper-December-2022.pdf> accessed 29 August 2024.

[223]Recital 4 STR Regulation.

[224]Recitals 1 and 3 STR Regulation. In the words of rapporteur of the European Parliament Kim van Sparrentak, enforcement of local rules is 'nearly impossible without cooperation of the online short-term holiday rental platforms', Explanatory statement, Draft European Parliament Legislative Resolution 2022/0358(COD).

[225]Recital 4 STR Regulation.

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(the 'hosts'), even though this is often costly, cumbersome and not nearly as effective as setting some simple rules for platforms. While EU law certainly offers more leeway to target the downstream market, this 'multiplication' of increasingly restrictive rules (from night limitations, offset requirements, permits and hefty fines to outright bans) implies an almost inevitable legal clash between urban governments and downstream service providers over the proportionality principle of the Services Directive. The final limp of the argument holds that these up- and downstream dynamics also account for the recent drive in European integration. The adoption of the Short-Term Rental Regulation should be seen as a sector-specific legislative correction to the E-Commerce Directive (and the DSA). By targeting the gatekeeper position of platforms, the Regulation acknowledges and tries to close the gap in upstream enforcement that exists under the current legal framework and re-empowers cities to reclaim a degree of regulatory control over their short-term rental markets.

These findings about the role of EU law in the regulation of short-term rental services also tap into other literatures beyond platform regulation alone. For one, they offer empirical insight into how the process of platformisation might affect wider dynamics of positive and negative integration in the EU internal market.[226] The case of short-term renting shows how the EU's decision in the year 2000 to stimulate the internet by shielding e-commerce providers would many years later undermine the very capacity of (local) governments to regulate 'real-life' activities within their areas of competences. The article highlighted the political dynamism released at the local level to overcome this legal challenge and also pointed at the responsiveness of both the European Court of Justice and the EU legislator to the concerns expressed by cities.[227] It should be emphasised, however, that this 'bottom-up' drive for European re-regulation originates from a federal dependence, whereby (local) governments *need* European regulatory action towards the upstream market before actually being able to address the local consequences of platform activities. Given how platforms continue to transform economic sectors and spheres of life,[228] it is expected that sector-specific corrections (or 'plug-ins') to the legal status quo of European e-commerce law similar to the Short-Term Rental Regulation will become a regular dynamic of European integration.

The findings also contribute to a growing academic interest into the relationship between EU law and the city.[229] The longitudinal analysis of Amsterdam offers an empirically grounded account of how EU law structures urban conflicts around housing and tourism in a context of platformisation and transforms cities into both critical spaces *and* actors of European (legal) integration. The legal *status quo* of short-term renting in Amsterdam is exemplary, which changed from plain illegal usage of residential property under Dutch housing law into a formalised *economic* activity protected by the freedom to provide services under EU law. Simultaneously, the cases of Amsterdam and Paris show the ability of (urban) governments to fend against this liberalising tendency of the internal market by 'localising' the legal conflict and invoking specific visions of the city (as a liveable or socially diverse place with affordable housing), which in turn shape the substance and limits of EU legal integration. On top of this, a collective sense of having lost the capacity to achieve their public tasks would unite European cities to form a coalition and vocalise the profound physical effects online platform activities have in their cities and campaign against the 'untouchable' status of platforms under EU law. As a consequence, 'Airbnb' became a *local* issue of *European* policy, in the process reconfiguring the scale where solutions to urban problems are to be found.

[226]See Van den Brink, Dawson, and Zglinski (n 26).
[227]Speaking to the argument by ibid.
[228]Nieborg, Poell, and Van Dijck (n 25) 30.
[229]See the literature cited in (n 27).

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