

29
JULY
2021

REGULATION OF TOURIST RENTAL PLATFORMS AND POST-PANDEMIC STRATEGIES TO REINTRODUCE TOURIST APARTMENTS INTO THE HOUSING MARKET

Mariona Segú, Researcher at the Institut National d'Études Démographiques (Ined), France

Carles Mascarell, Political scientist, former advisor to the Council of European Municipalities and Regions (CEMR)

In recent years, rising housing prices have made access to rentals more difficult in many European cities. The growing presence of digital platforms offering short-term tourist rentals, has had a major impact in this regard. Recently, the COVID-19 pandemic has caused a drastic halt to this activity and some cities have taken this as an opportunity to reconvert tourist rentals into residential rentals. This report identifies these measures and brings together the different local strategies for regulating short-term rentals. It also examines the main elements of the new European Union regulatory framework, the Digital Services Act, which could contribute towards better regulation and management of this sector. The study includes the most important conclusions from a closed-door seminar with representatives from different European cities belonging to the Eurocities network.

1. Introduction

In the last few years, the economic activity of the city of Barcelona has been recovering from the crisis of 2008. Since 2013, this recovery has come with a change in the downward trend of the housing market after both purchase and rental prices began to rise again. At present, 42% of the population of Barcelona spends more than 40% of their income on rent, a very high figure by European standards. This increased effort made by families to pay the rent has entailed a worrying rise in the number of evictions because of non-payment. In fact, the data show that rents have risen steeply in the last few years, especially in 2017 and 2018.

Meanwhile, urban tourism has grown greatly in recent decades. In the 132 most popular cities in the world, the number of visitors increased by 45% between 2009 and 2015. Part of the increasing demand for tourist accommodation has been covered by digital tourist rental platforms like Airbnb. Barcelona is a paradigmatic case with more than 17,000 Airbnb advertisements in this website, representing 2% of the housing stock and 7% of the number of homes for rent.

The development of digital tourist rental platforms has enabled a new group of users, namely tourists, to compete for the same housing stock as local residents, which has had a major impact on residential markets in cities. Although still scarce, the academic literature has begun to analyse this question, focusing on the cases of some big cities where the activity of these platforms is greater.

In the case of **Barcelona**, Garcia-Lòpez et al. (2020) show that the expansion of Airbnb in 2012 contributed to increased rents and also purchasing prices. More specifically, rents rose by an average of 1.9% while purchasing prices increased by 4.6%. They also indicate that the city centre, where Airbnb activity is most concentrated, was even more affected with increases of 7% and 17% in rental and purchasing prices respectively.

As for **Berlin**, Duso et al. (2020) evaluate the ban on short-term residential rentals and conclude that it has reduced the number of accommodation offers announced on the Airbnb platform by eight advertisements per square kilometre. They also show that each home advertised on the platform has raised rents by 7 euro cents per square kilometre. Finally, the study by Koster et al. (2018) analyses the effect

of municipal ordinances regulating the use of Airbnb in **Los Angeles County**. The article shows that, as a result of these measures, Airbnb's activity has been significantly reduced (by around 50%) in municipalities that have applied them. It also shows that, on average, in neighbourhoods with the most Airbnb activity the platform would have brought about a rise of about 10% in rental and purchasing prices.

The present report describes the measures implemented by some European cities for reconverting tourist rentals into residential rentals and analyses the evolution of legal measures and the processes of regulating the tourist rental market in several of these cities. It also examines the main regulatory elements of the Digital Services Act in order to ascertain the impact it might have on the tourist rental market. On the basis of this comparative analysis, the study aims to contribute elements for reflection on the possible tools and policies that would allow progress in the regulation and management of short-term rentals in the city of Barcelona as well as reinforcement of the stock of residential housing.

Lisbon has established a series of measures in order to bolster social rental as opposed to the digital tourist rental platforms.

The information used in writing this report was obtained by means of a questionnaire about regulating the short-term rental market sent to an *ad hoc* network of European cities (an informal platform that has emerged in the domain of Eurocities). The research has also drawn on information provided in a range of documents, reports, and the existing literature in the field. More specifically, the study describes the experiences of the following European cities: **Amsterdam, Berlin, Bologna, Florence, Lisbon, London, Milan, Paris, Valencia, and Vienna**. Mention is also made of several cities outside the European Union with the aim of analysing the viability of measures taken in other parts of the world with a jurisdictional framework similar to that of the city of Barcelona.

2. Tourist Rental in Times of COVID-19: An Opportunity to Strengthen the Residential market?

With the onset of the COVID-19 pandemic and the health measures imposed by governments, the activity of digital tourist rental platforms has dropped dramatically. A study by Servihabitat (2020) demonstrates that **the volume of homes in the residential rental market in September 2020 was 52% higher than it was the previous year** (2.9 homes per 1,000 inhabitants by comparison with 1.9 in 2019). It is still uncertain whether this increase in the supply of apartments to rent will be permanent or only temporary. In any case, this situation is a perfect opportunity for the public administrations to try to reintroduce tourist apartments into the residential housing market.

Nevertheless, few European cities have taken new measures to achieve this goal since March 2020. Indeed, **during the pandemic only Lisbon** has established a series of measures in order to bolster social rental as opposed to the digital tourist rental platforms. By means of tax breaks for property owners who come to agreements with local authorities allowing the latter to rent their apartments to essential workers for a minimum of five years, the council is aiming to reintroduce tourist apartments to the residential rentals market and consolidate that situation once the COVID-19 crisis is over. In this regard, the Lisbon City Council has committed to providing guarantees for owners who decide to join the programme by means of the following measures:

- attractive, risk-free income, immediately payable by the tenant families (teachers, transport workers, doctors, and nurses);
- exemption from the municipal property tax and also personal income tax or capital taxes with regard to

property revenue obtained as part of the project of municipal housing rental programmes at accessible prices;

- exemption from payment of tax on increase in urban land value for owners of accommodation that is included in the programme for accessibly priced rental housing;
- technical support in managing the contract and for the return of the property at the end of the specified term in conditions that are equivalent to those agreed upon at the time of signing the contract.

In addition, the **Paris** City Council has announced its intention to buy tourist apartments from owners who are experiencing economic difficulties. The Deputy Mayor for Housing, Ian Brossat, announced in May 2020 that the aim would be to offer these apartments for rent at 20% lower than market prices. The council thus hopes to be able to reintroduce these apartments into the market for residential rented housing.

3. Regulation of Short-Term Rentals

Before the onset of the pandemic, cities with a strong presence in the tourism sector had already begun to work on regulating tourist rental platforms and ensuring more stringent application of certain measures. Pressure arising from the possible consequences of the overlapping of the tourist industry and the housing market, as well as that

coming from citizen movements for housing have led many cities to try to limit the scope of short-term rentals. The measures introduced can be classified into three types: 1) **restrictions on access to the short-term rental market**; 2) **restrictions on the volume of the activity**; and 3) **measures aimed at strengthening compliance with the regulations**. Table 1 summarises the different types of measures and gives examples of the cities that have implemented them.

One important detail that should be noted is that, in most countries, the business of renting tourist apartments has existed or has been foreseen for a long time. In general, the development of this business requires that the homes have a *commercial use* in local use plans. The novelty of the advent of digital short-term rental platforms appears when this occurs with homes that are classified as being *for residential use*. As far as regulations are concerned, the

innovations consist, then, in **regulating short-term rentals in housing units that are for residential use**.

Similarly, another important point is the **distinction between professional hosts and shared homes**. The vast majority of regulations focus on controlling the activity of professional hosts and are more lenient with the activity of shared homes. In fact, some cities like Amsterdam, San Francisco, and Vancouver, *have introduced regulations that aim precisely at establishing a legal framework that would permit the activity of shared households while restricting the activity of professional hosts*. This regulation consists in banning short-term rental housing in case of not residing in the city, or in limiting the number of nights per year when an entire home is being rented. Since the existence of the activity is of a more sporadic nature in shared homes (and hence less detrimental for cities), **this report is particularly concerned with regulation of the professional activity**.

Table 1. Classification of measures implemented to regulate short-term rentals

Type of restriction	Subcategory	Description	Cities
Restricting access to the short-term rental market	Requirement of licence for the activity	The local authorities reserve the right to grant, or not to grant, licences required for operating in the market, and to make it obligatory to include the licence number in any advertising. This measure allows for better monitoring of the concentration of tourist rentals in a territory.	Barcelona
	Prohibition of the activity in certain areas	This means a total ban on this kind of economic activity. It is usually applied on a temporary basis and in a limited area of the city.	Amsterdam (centre), Los Angeles County (some municipalities), Vienna (residential areas)
	Restricting short-term rentals in primary residences	This consists of restricting the profile of short-term rental hosts, for example by making residence a condition for being able to rent a home (shared home).	Vancouver, San Francisco
Restricting the volume of the market	Imposition of a limit on the number of nights a home can be rented	The advantage of this measure is that it does not affect the activity of shared homes while restricting the professional activity of short-term rentals. The disadvantage is that it is difficult to ensure compliance without counting on cooperation from the platforms.	Paris (120 days p.a.), London (90 days p.a.), San Francisco (90 days p.a.)
Measures aimed at better compliance with regulations	Creating oversight teams	This involves setting up monitoring teams who trace and report tourist apartments that are illegally advertised on digital platforms.	Barcelona, Berlin, Paris, Amsterdam
	Citizen monitoring tools	This is an online service by means of which any person can provide information about apartments used for short-term rental in a way that contravenes the regulations.	Barcelona, Amsterdam
	Implementation of mandatory registration	This entails creating a register of tourist apartments to allow better monitoring of short-term rentals without having to depend on cooperation from the platforms.	Paris, London, Bologna
	Cooperation agreements with platforms	Removing and deleting illegal advertisements: the platform undertakes to remove advertisements by hosts who have reached the limit of rental days per year, and also to remove advertisements that fail to show the necessary licence.	Paris, Amsterdam, Barcelona
		Commitment to share data with administrations: convince digital platforms to share their data, in order to make it easier to monitor the activity.	Berlin, Amsterdam, Paris
	Commitment to collect taxes: agreements making the platforms responsible for collecting the tourist tax or obliging them to declare to the authorities the income received by each host.	Paris, Milan, Vienna, Bologna	

Before ending this section on the regulation of short-term rentals, it is important to mention the challenges of developing a legal framework to regulate this activity. Legislators working in the area of tourist rentals have found two main complications.

First, it is not always clear which is the **administrative level that has the capacity for regulating** this economic activity (city, region, nation). Second, there is an internal, organic question because this is regulation that affects two different administrative departments, the one in charge of housing policy and the one responsible for tourism. Because of these issues, **attempts at regulating tourist rentals are continually being appealed in the courts**, either by homeowners who are operating illegally, or by the platforms themselves. Indeed, the city councils that have confronted, by means of fines and sanctions, users who advertise properties infringing the regulations have found that some of them contest the fines in court. This has slowed down the penalty procedures and has called into question the validity of current regulations.

The digital economy market is basically regulated by the e-Commerce Directive, which, largely advantageous for digital platforms, was established long before the digital economy boom.

In this regard, **the role of the decisions of the Court of Justice of the European Union (CJEU) could be crucial** for legal validation of the various types of regulation. So far, the CJEU has issued two different rulings regarding regulation of short-term rentals. The first, in December 2019, referred to interpretation of Article 3 of the e-Commerce Directive 2000/31/CE. This ruling indicated that **digital platforms must be regarded as agents in the sector of digital services and not as real-estate agents**. The ruling determined that the former activity is not subject to national regulations on the housing market, but answers to European directives on digital commerce.

The second ruling, handed down by the CJEU in September 2020, declared that **European municipal authorities have jurisdictional power to impose restrictions on homeowners who rent their properties on a short-term basis**. According to the CJEU, it is legal to impose a system of permits on homeowners, such as that established by Article 631-7 of the French Construction and Housing Code, if it is in the public interest to do so. An important detail of the ruling is that “scarcity of accessible housing” is deemed to constitute sufficient justification of public interest to implement such restrictions.

4. Future European Regulation of Digital Services (Digital Services Act)

The *ad hoc* alliance of cities for regulation of Short-Term Holiday Rentals (STHR) is mobilising with the aim of ensuring that future European regulation of digital services will permit better control of short-term tourist rental platforms as a way of counteracting their harmful effects on the housing market.

At present, the digital economy market is basically regulated by the e-Commerce Directive, which, largely advantageous for digital platforms, was established long before the digital economy boom. This directive is presently being updated. In fact, in mid-December 2020, the European Commission presented a proposal for regulation, the Digital Services Act (DSA) package, which is now in the discussion phase in the European Parliament and the Council of the European Union.

The DSA presents an opportunity for dealing with the challenges related with the scarcity

of accessible housing and the impact of the platforms on rental prices. Accordingly, while the European Commission was in the process of drafting the DSA, 22 cities belonging to Eurocities formally requested that the new regulations should **make it obligatory for digital platforms to share relevant data**, and also to **remove illegal advertisements**. The latter request, which has been included in the Commission’s proposal, is a key part of any system of control and efficient application of national, regional, and local laws on tourist accommodation.

The proposal presented by the European Commission in December 2020 includes several other items along the lines of what the cities are asking. Notable among them are:

- The obligation of digital hosting services providers (like Airbnb) who act as intermediaries in the sale of goods and services to **remove illegal goods and services**;
- Making it possible for **municipal administrations to issue orders acting against illegal content on the platforms by means of a notification**. This is an out-of-court mechanism to ensure the traceability of advertisers and proceed with the removal of illegal advertisements;

- Establishment of **codes of conduct between municipal administrations and the big digital platforms** to guarantee appropriate cooperation agreements;
- The creation of **points of contact** for the digital platforms in each member state, which will have to intervene in the event that advertisements are not removed by homeowners, as well as the establishment of **Digital Services Coordinators (DSC)** and the **European Board for Digital Services**, which will bring together the DSCs of each member state;
- The imposition of **finest of up to 6% of a platform's global annual turnover** by the European Commission for non-compliance with the regulations by digital platforms with larger volumes of services (with an average of 45 million users per month).

Although these are positive aspects of the new regulatory framework for digital services, **the main shortcoming resides in the still applicable principle of country of origin and exemption from liability established in the e-Commerce Directive.** According to this principle, **the platforms will only be bound by the laws of the countries where they are established and not where they provide their services**, which makes it difficult for local authorities to enforce their own laws. Moreover, exemption from liability means that digital providers are only obliged to remove services or information from their platforms when they have “real knowledge” of infractions. Hence, the DSA establishes that when an authority reports an illegal service, the owner of the home will have to remove the advertisement and, failing this, the platforms will be obliged to do so as a consequence of having “real knowledge” of the existence of the infraction. If, resorting to the principle of country of origin, they decline to act, the Digital Services Coordinator in the country where the demand for removal of the advertisement has been made will have to work with the DSC of the platform's country of origin (Ireland in the case of Airbnb) to ensure withdrawal of the advertisement. If this country fails to act, the European Commission can directly intervene with a fine of up to 6% of the platform's **annual** global earnings.

5. Recommendations

Proposals in the framework of the health crisis for reintroducing housing into the residential market

- Designing a tax benefits programme between the city council and homeowners who commit to reintroducing their property into the residential market for a minimum of 5 years.
- Providing technical support for managing the contract and returning the property at the end of the period with conditions equivalent to those certified at the time of signing the contract.

Tax regulation recommendations

- Achieving payment of income tax on earnings from hosts of tourist accommodation.
- Systematic collection of the tourist tax.
- Continued progression towards a tax system in the framework of European institutions guaranteeing that the platforms pay taxes on their activity and profits.
- Establishing a surcharge on the tourist tax for people staying in housing used for tourism.

Monitoring mechanisms

- Introducing a mandatory register of shared homes (non-professionalised tourist rental).
 - Requiring proof of residence from hosts in shared homes.
- Measures that restrict market access and supply volume
- Including an expiry date in the system of granting licences in the sector.
 - Continuing the moratorium on licencing in the sector in certain central neighbourhoods.

Proposals for reinforcing mechanisms established by the Digital Services Act (DSA) for monitoring digital platforms

- Networking to achieve stronger, guarantee-based regulations that respond better to the challenges cities must face.
- Simplifying implementation of the DSA and restricting the principles of country of origin and exemption of liability to minimise complexity in the processes of notification and removal of illegal advertising.
- Requiring from digital platforms transmission of data concerning owners who regularly advertise their homes on them.
- Reinforcing the mechanisms of cooperation among Digital Services Coordinators.

6. References

Aguilera, T., Artioli, F., & Colomb, C. (2019). “Explaining the diversity of policy responses to platform-mediated short-term rentals in European cities: A comparison of Barcelona, Paris and Milan”. *Environment and Planning A: Economy and Space*, 0308518X19862286.

Cox, M. and Haar, K (2020). “Platform Failures: How Short-Term Rental Platforms Like Airbnb Fail to Cooperate with Cities and the Need for Strong Regulations to Protect Housing”. Available at: <https://www.guengl.eu/issues/publications/platform-failures-how-short-term-rental->

platforms-like-airbnb-fail-to-cooperate-with-cities-and-the-need-for-strong-regulations-to-protect-housing/.

Duso, T., Michelsen, C., Schäfer, M., & Tran, K. (2020). "Airbnb and Rents: Evidence from Berlin". DIW Discussion Paper.

FEANTSA (2020) The City is Ours! How to Regulate Airbnb in the Face of a Housing Crisis. Available at: <https://www.feantsa.org/en/report/2020/11/18/the-city-is-ours-how-to-regulate-airbnb-in-the-face-of-a-housing-crisis?bcParent=27>.

Garcia-López, M. À., Jofre-Monseny, J., Martínez-Mazza, R., & Segú, M. (2020). "Do short-term rental platforms affect housing markets? Evidence from Airbnb in Barcelona". *Journal of Urban Economics*, 119, 103278.

Koster, H., van Ommeren, J., & Volkhausen, N. (2018). "Short-term rentals and the housing market: Quasi-experimental evidence from Airbnb in Los Angeles". *Journal of Urban Economics*, 119, 103278.

Servihabitat (2020) "Mercado de alquiler residencial en España", *Servihabitat Trends*. October 2020. Available at: https://www.servihabitat.com/documents/15601896/15605480/ServihabitatTrends_MercadoAlquiler_ESP.pdf/2de38ad4-29a2-a264-4776-bc879651e677.