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Urban Agenda for the EU  
Urban Agenda for the EU

# Sustainable tourism. Regulating short-term rentals. Towards a sustainable transition in urban tourism

Action 1

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November 2021

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## Sustainable tourism. Regulating short-term rentals.

### Towards a sustainable transition in urban tourism

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#### *1) Who we are*

##### *Action Leader*

**URBACT**, with In house Thematic Programme Expert and external ad hoc expert,

##### *Cities members of the EU UA Partnership and external cities*

EU UA partnership: City of Berlin, City of Bordeaux , External to the EU UAURBACT cities from the Action Planning Networks Tourism Friendly cities and Kairós including the cities of Braga (Portugal), Cáceres (Spain), Druskininkai (Lithuania), Dubrovnik (Croatia), Dún Laoghaire (Ireland), Krakow (Poland), Rovaniemi (Finland), Florence (Italy).

##### *Members of the EU UA Partnership*

EUROCITIES, for their ongoing Action in relation to AirBnb

##### *Members of the EU UA Partnership asked to contribute to this Action implementation:*

JRC, EU COM DG Regio and DG Grow

##### *Additional members:*

Marimón Abogados, EU UA Housing, UIA

## 2) Background context

The Action 1 “Sustainable tourism - Regulating phenomena of sharing economy” of the EU Urban Agenda Partnership on Culture and Cultural Heritage coordinated by URBACT<sup>1</sup> stems from the concerns raised by [city governments across Europe](#) regarding the negative externalities of short-term holiday rental platforms in terms of “touristification”, gentrification, displacement of inhabitants especially in historic city centres. Furthermore, this action is in line with the process at the EU level of revising the Digital Service Act (in December 2020 the European Commission published its [proposal](#)) which aims to draft a new EU legislation to harmonise rules for digital services across Europe.

From around 2014-15, with the popularisation of digital platforms in the holiday rental business (such as Airbnb, Booking.com, HomeAway), cities across the world and with special intensity in Europe witnessed an unprecedented acceleration in the influx of international and domestic tourists and other visitors. While this sector started as a niche phenomenon (initially it was labelled as ‘home-sharing economy’, a definition that has now almost disappeared), short-term rentals available in digital platforms have rapidly become a most common option for tourists, especially in short visits such as the so-called ‘city breaks’.

Today, there exists a wide consensus amongst experts and policymakers that the rapid expansion of this industry has decisively contributed to exacerbating the housing crisis in Europe and elsewhere. Housing markets in Europe have been transformed by the arrival of platform-mediated short-term rentals. Even though this is a ubiquitous phenomenon, in many respects Southern Europe can be considered as the epicentre of the platform rental boom, as well as the area where the regulation of this sector remains more fragmented.

The unrestrained expansion of this industry poses a threat to urban societies, as fast-growing numbers of homes move from standard rentals for residents to short-term rentals for platform users. The shrinking supply of affordable housing forces permanent residents as well as indigenous businesses (particularly in the retail sector) to leave urban districts and neighbourhoods that attract large numbers of short-term rental listings. A growing number of local governments have adopted regulatory frameworks for short-term rentals, usually under conditions of emergency, when cities and other popular tourism destinations have

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<sup>1</sup> The team is steered by Nuala Morgan, Head of Unit - Capitalisation & Communication at URBACT, Dr Laura Colini, is Thematic Programme Expert representing URBACT at the EU UA C&CH responsible for scientific coordinator and implementation of Action 1, with the support of external legal expertise of the lawyer Yolanda Martinez, Barcelona ES, Ugo Rossi, professor of economic and political geography at the GSSI in L’Aquila, Italy, and the ad hoc Expert for URBACT Tourist Friendly Cities URBACT network Simone D’Antonio.



realised to have reached their peak, or have already exceeded it, in terms of tourism's environmental carrying capacity. For different reasons, regulatory initiatives have been limited in their results. [Experts](#) usually point to a variety of reasons behind regulatory failures, such as limitations in law enforcement, lack of corporate data concerning lodging listings, weak political will, amongst the others. Moreover, existing regulatory initiatives appear to be place-specific: they are locally fragmented, and they cannot be reproduced in other contexts.

The restrictions imposed by the Covid-19 pandemic have dramatically impacted cities and particularly their service-oriented economies, starting with the cultural and entertainment sectors. Museums, theatres, restaurants, bars have heavily suffered from the shutdowns since early 2020 and many of them are now struggling to recover in a state of continuous threat to businesses being halted by recurring pandemic waves. Moreover, the spread of telework has dealt an almost fatal blow at several business districts as well as at the retail sector in general, causing the closure of several independent shops, while favouring the expansion of delivery services offered by online commerce giants and multinational retail chains. Within the wider public, there is now growing awareness of the risk of dissipating what some call the "[retail biodiversity](#)" of our cities.

In the Northern hemisphere, the summer of 2021 has seen urban tourism getting back to pre-pandemic levels especially in environmentally attractive destinations like coastal cities, while in other cities it is still well below those levels. The recovery of urban economies appears to be rather uneven, unpredictable and very much dependent on unforeseeable pandemic waves, which unevenly impacts cities and regions worldwide. Therefore, while some urban areas experience the effects of the post-Covid economic rebound, in other places (particularly those dependent on international tourism) the consequences of the shutdowns imposed by the pandemic are still significant. As [The New York Times](#) reported, commenting on the holiday season in the United States: "*Beach towns are jammed with tourists, but office towers in major cities remain ghost towns on weekdays, with the promised return of workers delayed by a resurgent coronavirus*". The sudden restart of tourism and of the entertainment economy in general increases the risk of congestion in those urban areas that are richly endowed with natural amenities such as access to seaside, lakes, or mountains. On the other hand, however, the persistent uncertainties about the evolution of the pandemic due to the different variants of the virus further aggravate the service crisis in those cities whose economies have developed around office-centric areas and entertainment districts.

It has become commonplace within public and scholarly debates alike to emphasise the fact that the unprecedented slowdown caused by the Covid-19 pandemic to the global economy represents a unique opportunity to correct the distortions of the standard pattern of economic development, including the urban tourism industry. This view rests on the assumption that pandemics and similar threats that have affected humankind historically offer opportunities for substantive change.



However, from the perspective of urban tourism and particularly of the short-term rental sector, the present situation is particularly ambivalent. It presents opportunities but also risks. There is certainly a widespread expectation of a major policy change associated with the recovery, as the idea of a sustainability transition has entered the mainstream of the policy agenda. The alarming succession of firestorms, catastrophic floods and heatwaves shows how the climate emergency requires urgent policy shifts in all economic realms involving carbon dioxide emissions, including tourism and travel. The EU Recovery plan is particularly illustrative of this increased awareness of the global environmental crisis, with its emphasis placed on the pursuit of a ‘European green deal’ as a policy priority. Stakeholders in tourism development are also aware of the pressing challenges ahead. The recent ‘Future of Tourism World Summit’ convened by the UN World Tourism Organization in Barcelona (26-27 October, 2021) has ended with a [‘call to action’](#) that clearly expresses the renewed concern for sustainable development in international tourism in the face of the pandemic: *“the sector must not only restart and recover, but it must also ensure future growth is more inclusive and responsible”*.

In previous years, the urban tourism boom induced by the arrival of digital platforms has turned a growing number of cities and small towns into highly tourism-dependant, mono-specialised economic entities, thus undermining sectoral diversification and urban resilience. In these economies, there are entrenched expectations for a rapid recovery of the tourism industry. For tourism stakeholders, getting back to normality is the priority. Normality here means [returning to 2019 levels](#), the year that saw the [peak of tourist arrivals](#) internationally (a 4% increase on the previous year according to UNWTO data). Particularly at the urban level, most analysts and stakeholders would agree that the peak of 2019 was the result of the new wave of mass tourism stimulated by the advent of short-term rental platforms in the early 2010s.

Under normal circumstances, the “regrowth” imperative would leave little room for a substantive refashioning of existing economic development patterns. Today, however, the exceptional concomitance of the climate crisis scenario with an unprecedented pandemic in terms of geographical spread has increased public awareness of the need for a sustainability transition. A consequence of the abrupt halt imposed by the Covid-19 pandemic is that it has allowed the wider public to develop a critical distance from the economic development pattern that we now tend to associate with the so-called ‘normality’. For instance, the direct relationship between the planetary spread of the coronavirus and the high levels of human mobility that characterise global societies has led many commentators to call for a novel [‘community-centred tourism framework’](#) centred on the needs of local residents and small businesses.

Regarding urban tourism more specifically, the time-scale of the expansion of short-term rentals has played a key role in fostering the perception of an unregulated hospitality sector



as a potentially existential threat to urban societies; there is clear evidence that an unregulated hospitality industry represents a systemic risk not only for the traditionally most visited tourist cities (such as those commonly associated with ‘over-tourism’) but increasingly for all types of cities and towns. Therefore, the question is: How can we use the new normal imposed by the pandemic as an opportunity for achieving a more sustainable urban tourism?

### 3) Objectives

The purpose of Action 1 is double sided: first, it aims at providing an overview of the legal bottlenecks in terms of EU regulation<sup>2</sup> and to deliver the findings of cities opinion through a Study conducted with a selected sample of small, medium and large cities across Europe. The final scope is to outline potential perspectives for a sustainable management of tourism and the short-term rental platforms respecting the definition of sustainable tourism of the UNWTO.<sup>3</sup>

The first input has been provided by a legal advisor who has expertise on European Union law, specialising in Competition law. This input drafted at the time of Action 1 implementation ( mid 2021) has been used as the basis to conduct the cities’ surveys.

The second input is a Study drafted with the external expertise and URBACT Programme expert in urban studies, capitalising on the on the experience and knowledge of URBACT cities, in particular those involved in the Action Planning Networks [TOURISM-FRIENDLY CITIES](#) and [KAIRÓS](#) and the cities members of the UA EU C&CH partnership: five small-sized towns, Cáceres (ES), Druskininkai (LT), Dubrovnik (HR), Dún Laoghaire (IE), and Rovaniemi (FI); three medium-sized cities, Braga (PT), Florence (IT), and Kraków (PL); and two cities part of the EU UA partnerships con Culture namely Bordeaux (FR) and the capital city, Berlin (DE). The Action implementation is completed with an online peer-learning event held the 4th of November 2024<sup>1</sup>.

The objective of this study is to raise questions on how to move beyond the merely reactive approach to the governance of short-term rentals that has been predominant in pre-pandemic times, before the abrupt halt to tourism in March 2020. To do so, the policy

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<sup>2</sup> “ REGULATORY ENFORCEMENT DIFFICULTIES IN THE SHORT-TERM RENTAL ACCOMODATION SECTOR STEMMING FROM THE EUROPEAN LEGAL FRAMEWORK FOR DIGITAL SERVICES” author Yolanda Martinez, Marimón Abogados.

<sup>3</sup> Tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities. <https://www.unwto.org/sustainable-development>

<sup>4</sup> For the methodology of the City refer to the full Study available on URBACT website [www.right2housing.eu](http://www.right2housing.eu)



approach proposed in this study puts forward an anticipatory stance towards urban governance, based on the principle of risk management. The departing research questions in this perspective have been the following: how public policy can ensure cities' ability to prevent the risk of an excess of tourism? How can urban residents and local policymakers become prepared for the systemic risk of hyper-tourism? An anticipatory approach to risk management can make regulatory frameworks for short-term rentals more effective and resilient. Evidence shows that, even despite the best intentions in some local contexts, containing the risk of hyper-tourism is an example of what city planners have long defined as a 'wicked problem', which typically requires complex, multi-faceted policy strategies.

This study does not put forward a technical proposal for the regulation of short-term rentals, which lies outside of its remit. How the regulation of this sector will specifically look like in the coming future in Europe will depend on political willpower at different regulatory levels, starting with the European Union and national governments. Rather, the aim of the study is to understand how a stronger regulation of this sector can combine with a proactive approach to societal governance, in order to make regulations even more solid and socially supported. Resistance to regulation comes not only from short-term rental companies, but also from local actors, oftentimes sponsored by the short-term rental companies themselves in the form of lobbying groups and civic '[movements](#)'. Anticipation, therefore, means not only strengthening local capacities for risk management and reduction, but also preparing urban communities to deal with different forms of resistance to regulatory efforts.

#### *4) Results and main outcomes*

The main outcomes are the production of:

1. The **Memorandum** a legal input "Regulatory enforcement difficulties in the short term rental accommodation sector stemming from the European legal framework on digital services"
2. The **URBACT cities Study** on sustainable approach, and 3. the peer-learning event held online which saw the intervention of the previously mentioned contributions, with the input from selected cities and external experts<sup>5</sup>.

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<sup>5</sup> the results of the peer learning event are available





3. The **peer-learning** exchange among cities, researchers and experts. The URBACT cities STuy has been presented online with the participation of invited URBACT cities in an online event which saw the contribution of academics and EU COM who could provide a wider perspective on the topic.

4. The **collaboration** with the EU COM participating to the STR initiative. This action 11 has contributed to provide connection between the EU COM Tourist services – short-term rental initiative<sup>6</sup> led by DG grow and the EU UA partnership. More in particular cities joining the study have been participating to the online events organised by DG growth and the sneak preview of this report presented in November 2021. Further collaboration between the DG regio part of the EU UA C&CH, DG growth and URBACT is in place to link the work of the EU COM to cities.

The following points will summarise the results of the first two actions.

### 1. The Memorandum

The Memorandum aims at identifying the most significant difficulties and/or challenges that the current<sup>7</sup> and prospect EU regulatory framework -notably, but not only, dealing with digital platforms<sup>8</sup> may pose for an efficient and effective regulation of the short term rental accommodation sector by national authorities. Tourism and housing being mostly national competences, regional and local authorities are usually the relevant regulators and enforcers. However, mass tourism and, in particular, the short-term holiday rental (“STHR”) phenomenon have exponentially put under pressure local authorities; they face significant enforcement difficulties when they want to address mass tourism related negative externalities, albeit solid public interests may justify their regulatory action according to EU case-law<sup>9</sup>. Some of this difficulties derive from the new digital nature of STHR offers. Memorandum we aim at identifying the most significant hurdles stemming from EU law, in order to make recommendations that may help offsetting their negative effects.<sup>10</sup>

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<sup>6</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13108-Tourist-services-short-term-rental-initiative\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13108-Tourist-services-short-term-rental-initiative_en)

<sup>7</sup> The time of writing this Memorandum is June 2021.

<sup>8</sup> 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 (the “**ECD**”) and the Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services and amending Directive 2000/31/EC (the “**DSA Proposal**”).

<sup>9</sup> Judgment of the European Court of Justice (“**ECJ**”) of 22 September 2020, Joined Cases C-724/18 and C-727/18 - *Cali Apartments SCI and HX v Procureur général près la cour d'appel de Paris and Ville de Paris*, ECLI:EU:C:2020:743.

<sup>10</sup> Aligned with this work, see also public demands from several European cities in this same line of reasoning: <https://www.theguardian.com/cities/2019/jun/20/ten-cities-ask-eu-for-help-to-fight-airbnb-expansion>; <https://www.thelocal.com/20200917/cities-across-europe-demand-tougher-rules-for-airbnb-rentals>; <https://www.euronews.com/2020/09/29/eu-capitals-want-greater-control-over-short-term-rentals-despite-drop-in-tourism>; <https://www.nytimes.com/2020/10/25/world/europe/airbnb-lisbon-housing.html>.



According to Article 2(a) e-commerce Directive (ECD)<sup>11</sup>, information society services (“ISS”) are services normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.<sup>12</sup> The ECD regime may be partially modified in the short/mid-term because the European Commission recently published its Digital Services Act (DSA) Proposal<sup>13</sup>, whose cornerstones are<sup>14</sup>: the no general monitoring obligation<sup>15</sup>; the liability exemption<sup>16</sup>; the Country of origin principle<sup>17</sup>.

While explaining the hurdles of the ECD for Local authorities enforcement of regulations, the Memorandum identifies local authorities’ main areas of concern, where some sort of EU regulatory redress is needed. The following four areas are inevitably intertwined with one another:

#### a. What is illegal offline should be illegal online

In the context STHR services, lessors are subject to the same legal obligations, irrespective of whether they offer the service by traditional means or using the intermediation services of electronic platforms. The accommodation service is not affected by the intermediation of an electronic platform, as the latter is merely a means of promotion or commercialization, without interfering with the nature of the service as such. Lessors are subject to national and local regulations that apply to tourist accommodation services, regardless of the commercialization channel of their choice.

Theoretically, the principle that the same legal regime should be applicable irrespective of the commercialization channel (digital or traditional) is widely supported.<sup>18</sup> In practice, however, the current EU framework for STHR platforms impedes such an equivalence. Lessors and/or tourists (the provider and/or the recipient of the service) may be located in different Member States and digital intermediation may allow concluding distance contracts that may or may not comply with compulsory local rules.

Without an EU-wide general legal instrument for the mutual recognition and execution of administrative fines, and considering the governing principles of the ISS regime mentioned in

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<sup>11</sup> <https://digital-strategy.ec.europa.eu/en/policies/e-commerce-directive>

<sup>12</sup> Article 1(1)(b) 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.

<sup>13</sup> <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

<sup>14</sup> For the complete information please access the Memorandum available on the URBACT platform [www.right2housing.eu](http://www.right2housing.eu)

<sup>15</sup> Article 15 ECD; Recital 28 and Article 7 DSA Proposal.

<sup>16</sup> Recital 42 and Article 14 ECD; Article 5 DSA Proposal.

<sup>17</sup> Article 3(2) ECD; no modification of this provision is foreseen in the DSA Proposal

<sup>18</sup> See statement from Executive Vice-President M. Vestager on 15 December 2020, when presenting the DSA Proposal: [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_20\\_2450](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_2450).



Section 2, effective enforcement of traditional rules that meet the applicable standards of EU services' rules and case-law becomes illusory.

### **b. Platform (mandatory) collaboration urgently required**

Although the *Cali Apartments* case<sup>19</sup> clearly validated an authorization scheme for STHR when local circumstances so justify (i.e. residential housing shortages or deterioration, liveability of city centres, protection of the urban environment,<sup>20</sup> etc.), the *Airbnb Ireland* judgment<sup>21</sup> also stated clearly that the absence of an obligation to monitor is fully applicable to STHR platforms that only intermediate in the accommodation business.

In practice, this leaves an open door for potential illegalities that are hidden behind the digital curtain, where enforcement capacities of local authorities are significantly impaired in case there is no platform collaboration. As indicated above, cities may even lack the basic information on the identification of the infringer or the exact location of an illegally advertised lodging and have no means other than platform collaboration to obtain such significant elements of the infringement.<sup>22</sup>

Up to now, collaboration has been publicly promoted on a voluntary basis,<sup>23</sup> advocating for adherence to codes of conduct, collaboration agreements with cities,<sup>24</sup> guaranteeing a good-Samaritan treatment in case of voluntary initiatives that help identify illegalities, etc.

Although such initiatives are overall positive, it is hardly deniable that voluntary collaboration differs greatly from well-established rules on administrative enforceability and execution.

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<sup>19</sup> *Supra*, footnote 16.

<sup>20</sup> See, also, in another context, Judgment of the ECJ of 30 January 2018, Joined Cases C-360/15 and 31/16 - *College van Burgemeester en Wethouders van de gemeente Amersfoort v X BV and Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam*, ECLI:EU:C:2018:44, paragraphs 134 - 136.

<sup>21</sup> *Supra*, footnote 19.

<sup>22</sup> Basic fundamental rights on due process or presumption of innocence common to the legal systems of EU Member States stop administrative authorities from prosecuting an infringement without such basic data. Besides, since STHR activities are normally performed in private dwellings, the fundamental right to inviolability of the home impair local staff from conducting inspections without the owner's consent or a judicial order. The effectiveness of a regulatory system is questionable when enforcement is impossible by ordinary means of redress.

<sup>23</sup> Recital 40 ECD; Recital 25 and Article 6 DSA Proposal. In addition, in accordance with Recital 67 and Articles 35 and 36, the drawing up of codes of conduct contributing to the implementation of the DSA Proposal will be encouraged, although their adoption by online platforms and other intermediary service providers will always operate on a voluntary basis.

<sup>24</sup> See, i.a., the collaboration agreement between Airbnb and the City of Barcelona in 2018:

[https://bcnroc.ajuntament.barcelona.cat/jsmui/bitstream/11703/111232/1/GM\\_Conveni\\_col\\_Airbnb\\_2018.pdf](https://bcnroc.ajuntament.barcelona.cat/jsmui/bitstream/11703/111232/1/GM_Conveni_col_Airbnb_2018.pdf) or the one between Airbnb and the City of Amsterdam in 2016: <https://sharingcitiesalliance.knowledgeowl.com/help/mou-comprehensive-agreement>, which failed to be renewed in 2019: <https://www.dutchnews.nl/news/2019/02/amsterdam-fails-to-reach-deal-with-airbnb-on-holiday-rental-rules/>.



Besides, platforms may well have solid and understandable commercial incentives and valid legal arguments to collaborate in a more lenient way than socially desirable. Reality proves that in cities where reputational risks arose affecting users' and citizens' perception of the platform itself, the latter were more prone to collaborate with local authorities than in cities where no such reputational risks existed. The effectiveness of a local regulatory regime cannot be dependent on such private interests.

**c. Need to eliminate any doubts on the compatibility of data sharing with authorities with EU data protection rules**

Insofar as there is no EU-wide legal obligation for ISS providers to provide information on their users when so required by a national authority, the EU General Data Protection Regulation<sup>25</sup> (“**GDPR**”) is often invoked as an impediment for the provision of such data.

In practice, therefore, either there is a national legal basis for the request -which is rarely the case for the STHR sector because local regulators have the competencies to regulate tourism or housing but may not to regulate data protection<sup>26</sup>- or the platforms' terms and conditions expressly request any user to give express consent to data sharing prior to contracting with the platform.

In this context, it is also urgent to clarify that GDPR is no impediment when the request to share data comes from an administrative authority of a Member State and/or to foresee a legal mandate to include the necessary mentions in platforms' terms or conditions in order to oblige users to share identification details with regulatory authorities.

**d. Enforcement alternatives in case of platform's non-compliance should significantly improve**

The considerations above refer to platforms' necessary collaboration when illegal postings are identified. Illegalities, nevertheless, are not attributable to the platform itself, as a clear consequence of the liability exemption principle foreseen in the ECD.

A further question arises, though, when it is the platform itself that does not comply with whatever removal order, information request or fining decision from a national authority.<sup>27</sup>

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<sup>25</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>26</sup> Data protection is usually considered a fundamental right in EU Member States legal regimes. Such qualification impairs local authorities from impinging on data protection with their local regulations.

<sup>27</sup> E.g. when it does have actual knowledge of an illegality under Art. 14 ECD but it does not expeditiously remove illegal content; or in the new DSA Proposal regime, when it does not provide the information mandated under Articles 8 and 9.



In practice, again, the country-of-origin principle makes it extremely difficult or impossible to enforce such orders or fines. Execution may be dependent ultimately on the platform's own decision and, again, this outcome is utterly at odds with any regulatory enforcement system.

Although the DSA Proposal tackles this problem to some extent and provides for the European Commission intervention when the country of establishment does not adopt any correcting measures, such intervention is largely limited to dialogue advocacy when the questioned platform does not qualify as a very large online platform.<sup>28</sup> Ultimately, if the country of establishment fails to adopt enforcement measures, for instance for unrelated labour market or tax considerations, impunity would prevail.

Considering the above, local regulators would advocate for an EU-wide enforcement system that foresees the European Commission's intervention in case the following cumulative conditions are satisfied: (i) a common pattern of non-compliance in a given number of Member States is identified in relation to the same platform; and (ii) the country of establishment fails to act and adopt redress obligations vis-à-vis that platform.

The European Commission's general discretion to initiate proceedings would always be preserved, but at least it would not be legally prevented from intervening when the infringement relates to platforms other than very large platforms.

## 2. The **URBACT Cities Study** on sustainable approach to tourism

Starting from the principle that no regulations would be completely effective without community base awareness and clear involvement of the main beneficiaries of these regulations being citizens and local administrations, this Study is willing to better understand the state of the art of a representative sample of cities in relation to STR. The Study presents the findings of a qualitative survey based on in-depth interviews conducted with city officials of ten European towns and cities on the regulation of short-term rentals from a perspective of sustainable urban tourism. The Study focuses on cities and towns of varying sizes and with different levels of tourist attraction across Europe: from top tourist destinations such as Berlin, Bordeaux, Dubrovnik and Krakow to popular small towns such as Druskininkai and Rovaniemi, to emerging destinations such as Braga, Caceres, Dun Laoghaire, Šibenik. The select cities are illustrative of different understandings of urban tourism: while some are still striving to increase their number of visitors and don't see the growth of short-term rentals as a particular threat, some others are already coping with the negative effects of hyper-tourism and are aware of the risk related to an unbridled market of short-term rentals.

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<sup>28</sup> Articles 45 et seq. DSA Proposal in connection with the definition of very large online platforms in Article 25 DSA Proposal.



The main outcome of the study is that in order to have a better and effective regulation of the STR sector, a multi-scalar framework needs to combine a prescriptive approach to regulation with a proactive strategy. In this sense, the methodological framework adopted for this study builds on the assumption that an innovative regulation strategy relying on a multi-scalar, mixed approach to public policy (prescriptive and proactive) should involve a wide range of co-design techniques and participatory methods aimed at getting local communities involved in urban tourism management. The **URBACT Cities Study** calls the approach “The 3Ps strategy” a framework for an integrated approach to short-term rental regulation, whose founding principles are the following three:

1. *Prevention is better than cure.* In public health, this common sense principle invites policymakers to embrace decisions, actions and plans that seek to achieve healthcare goals in an anticipatory manner rather than merely relieve symptoms associated with a disease. In tourism policy, an anticipatory approach seeks to avoid the reproduction of a systemic risk like over-tourism;
2. *Community engagement is the key to success.* Cultivating a sense of belonging to the local community is a precondition for exploring new economic projects and possibilities beyond the imperatives of unrestrained tourism growth. This means embracing an approach to tourism that places the needs of the local community at the centre of local policy strategies committed to economic diversification and urban sustainability.
3. *Local power matters.* A community-centred tourism framework cannot be limited to local needs as parameters for measuring the sustainability of tourism. In order to be effective, this framework requires a novel institutional strategy centred on municipal power. The local scale is crucial not only from the point of view of societal impact and policy implementation but also in terms of empowerment of local communities viewed as agents of institutional experimentation.

The goal here is to deal with the regulation of short-term rentals from a wider perspective, linking regulations to risk management and the experimentation with local alternatives to corporate-owned platforms. In particular, *prepare* means working side by side with local communities to prevent the risk of over-tourism. *Preserve* means implementing regulations aimed at preserving urban areas and their communities particularly exposed to the risk of over-tourism. *Platformise* means experimenting with community-led short-term rental platforms.

Prepare<sup>29</sup>

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<sup>29</sup> Refers to the full version of the report for more information [www.right2housing.eu](http://www.right2housing.eu)



The interview section – “Prepare” – aimed to discuss with city officials how to “prepare local communities to prevent over-tourism” focussing on the state of tourism prior to the pandemic; on the local governance framework on tourism; and on the question whether domestic tourism could be considered a more sustainable alternative to international tourism.

First result of the interviews shows that the description of the local context before, during and after the Covid-19 pandemic (i.e., its early emergency phases) with questions about the pre-pandemic peaks of tourism and the local solutions during the peaks of the pandemic such as investing on domestic tourism and residents, occupied major interest in the respondents, while questions of local preparedness to the risk of an excess of tourism remained overlooked in the answers.

### Preserve<sup>30</sup>

The section dedicated to “Preserve” focused on how to implement regulations of the short-term rental industry preserving urban areas and their communities, particularly those exposed to the risk of over-tourism. The questions in this section touched on important issues, such as existing regulations of the short-term rental industry at the city level and the kind of regulatory approach to be adopted.

The regulation of short-term rentals is a hot, controversial issue worldwide, especially in Europe and North America where the housing affordability crisis is felt strongly. Internationally, where there are stricter regulations at the local level, the most common approach is the so-called ‘90-day rule’. This is the case, for instance, of Berlin, Dublin and London in Europe, with some differences (regarding mainly the distinction between primary and secondary residences), or of US cities like San Francisco and Philadelphia. However, even in those contexts law enforcement remains a major limitation. Other local contexts find it hard to have a proper regulatory system. The responsibility for the lack of a proper regulation is often outside the reach of local governments. Another issue that concerns the regulation of short-term rental platforms is their uneven impact on urban areas. Some districts are strongly affected by the concentration of short-term rentals, while others are mildly or marginally interested in this phenomenon (Rovaniemi). This means that in those contexts where the presence of short-term accommodation is limited to a few areas, wider public attention towards the regulation of this sector can be weak (e.g. Berlin).

Respondents have different views on the need to adopt special protection regulations for these areas. In addition to place-specific restrictions, like strictly regulating or even banning short-term rentals in some areas, a mandatory registration system and the full disclosure of platform data would be key regulatory measures. However, their adoption pertains more

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<sup>30</sup> Ibidem



directly to national and EU legislations rather than to local and regional authorities. The upcoming revision of the EU's Digital Services Act may be the turning point in this respect.

### Platformise<sup>31</sup>

The third section of the survey – “Platformise” – focused on how to experiment with community-led, municipally controlled short-term rental platforms, once the corporate platforms are properly regulated at local, national and EU levels. Questions in this part focussed on the feasibility of this proposal and the existence of community-based experiments at the local level in this sector.

This proposal draws inspiration from ideas and practices – such as those of Fairbnb and MuniBnb – put forward by the [platform cooperativism](#) movement in recent years. Particularly in Europe and the US, the community economies movement advocates for ‘co-operative innovations’ in the housing sector, such as community-ownership models of housing tenure that include community land trusts and real estate cooperatives.

Some cities have already created an independent infrastructure offering accommodation adverts to visitors’ alternative to mainstream short-term holiday rental platforms. This is the case of Caceres, whose respondent however also underlines the market barriers to the success of local experiments caused by regulatory distortions. The issue of taxation is crucial, as tax collection might function as an incentive for local authorities to create independent platforms (e.g. Druskininkai) However, in discussing this issue, the Bordeaux’s respondent emphasises the need for a well-regulated market as the main road to come to a rational tax system. The lack of existing success stories is another issue that makes this proposal even more challenging (e.g. Dun Laoghaire).

## *5) Observations/Remarks/Recommendations*

The conceptual base of this Action 1 has drawn on URBACT’s integrated approach to sustainable urban development as well as on the defining principles of the Urban Agenda for the EU. Moreover, in the specific proposal for community-led, municipally controlled platforms has drawn inspiration from similar proposals advanced by the ‘platform cooperativism’ movement in previous years.

The Action 1 shows that cities, alongside with the need to push the economic recovery for the loss in the tourism sector in the early stages of the Covid-19 pandemic, consider this particular moment of crisis as an opportunity for policy change in the management of this sector. The European Commission’s ongoing initiative on the short-term rental sector and

<sup>31</sup> Ibidem





the recently published Inception Impact Assessment<sup>32</sup> are promising signs towards a new regulation that consults a wide range of actors including local authorities. The EU COM can indeed harmonise fragmented rules and improve transparency but in practice it is not clear how to mitigate and match EU wide regulations with measures adopted at national level, and how stringent new regulations at EU level can impact the decisions of local administrations.

While those questions remain unanswered due to multi-level governance issues not specifically covered in this text, the study relies on the input for better regulations as provided by the legal advisor to Action 1 in the Memorandum.

Furthermore, this study shows that there could be more space for manoeuvre for local administrations in making existing and potentially new regulations socially supported. Some questions – such as those related to the issue of preparedness, i.e. how to prepare local communities to the risk of over-tourism – have remained largely unanswered in the interviews. This shows how regulation of tourism is still perceived in a predominantly reactive manner and how an ecological approach to public policy – based on risk management and preparedness – still needs to be incorporated into the commonly held conception of policymaking at different institutional levels.

In conclusion, the Urbact Cities Study proposes to rethink urban tourism as a process of sustainable transition where new regulations call for a socio-ecological approach that incorporates the needs of local communities as well as their institutional capacities. The proposal for a sustainable transition relies on three main aspects. First, there is the issue of risk's awareness and preparation of communities. When it is not effectively regulated, tourism is no longer a resource for local communities but becomes a threat that requires general awareness of the consequences of an unbridled tourist sector. Second, the socialisation of regulations is essential for making regulations implemented successfully according to contextual constraints and demands. Regulations in this sense are not externally imposed, but they become part of an integrated socio-institutional ecosystem within a healthy urban metabolism. Third, municipal experimentation in cities should be encouraged to further innovate on municipal-led platforms and peer learning as in the philosophy of URBACT. As of today, the survey shows that although cities already experiment with municipally controlled platforms, there is not enough data on how successful these municipal-led platforms are across Europe and what kind of characteristics they have in different local contexts. In a perspective that departs from the logic of laissez-faire that is beneficial only to big corporations, cooperative experiments with municipal-led platforms can become the

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<sup>32</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13108-Tourist-services-short-term-rental-initiative\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13108-Tourist-services-short-term-rental-initiative_en)



backbones of a renewed urban entrepreneurialism which is self-reliant and at the service of local communities.

In this sense, short-term rental platforms can be rethought as a way to bring closer inhabitants, businesses and tourists, re-considering platforms as a positive potential for a more sustainable urban tourism.





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# Co-ordination Co-ordination



Germany

Federal Ministry of the Interior, Building and Community

Italy  
Federal Ministry of the Interior, Building and Community

National Governmental Agency for the Territorial Cohesion

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- Intermunicipal Community of the Coimbra Region (PT)
- Kazanlak Municipality (BG)
- Flanders Heritage, Flemish Region (BE)
- Dutch Federation of Cultural Heritage Cities (NL)
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- Alba Iulia Municipality (RO)
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- Marshal's Office of the Silesian Voivodeship (PL)
- City of Berlin (DE)
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- City of Espoo (FI)
- Jurmala City Council (LV)
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- European Committee of the Regions