

# UnFairbnb

How online rental platforms use the EU  
to defeat cities' affordable housing measures



# Table of contents

---

	Summary	3
1.	Introduction: Harmless hospitality?	4
2.	From an air mattress to billion-euro business	5
3.	Big business in the guise of the ‘sharing economy’	6
4.	The three key issues: restrictions, enforcement, data	8
5.	The cities fight back	9
6.	AirBnB goes to the EU	11
7.	Moving in with the Commission: privileged access	14
8.	Platforms against fact-finding	15
9.	Two directives from another era	17
10.	The battle over the EU rules	19
11.	Bringing the nuclear option into the game	21
12.	Complaint: work in progress in the dark	22
13.	Keeping up pressure	23
14.	Conclusion	24
	Notes	26

Corporate Europe Observatory is a research and campaign group working to expose and challenge the disproportionate influence that corporations and their lobbyists exert over EU policy-making.

The contents of this publication may be quoted or reproduced for noncommercial purpose, provided that Corporate Europe Observatory is acknowledged.

Corporate Europe Observatory, May 2018

Text: Kenneth Haar

Editing: Katharine Ainger

Design: Stijn Vanhandsaeme

With thanks to Murray Cox, Katalin Gennburg, Sergi Mari Pons, Guillermo Beltrá, Mayo Fuster Morell, Michela Vuerich, Steffen Stierle, Alexander Ulrich, Maxime Cochard, Sito Veracruz and Olivier Hoedeman.

Images: The maps of AirBnB rentals in European cities are from InsideAirBnB. The green dots are rooms for rent, the red dots are entire homes.

# Summary

AirBnB and other online rental platforms have been embraced by the European Commission as part of the 'collaborative economy'. But their effect on European cities has been far from utopian or sustainable, taking accommodation off the rental market which helps push up housing prices, and increasing tourism impacts. When cities like Barcelona and Berlin have taken measures to regulate these short-term lets, Corporate Europe Observatory can reveal how AirBnB and its likes are trying to use the EU institutions to fight back. They have worked systematically for EU rules to be interpreted in a way that fits their interests, and they have used the nuclear option and made official complaints to the EU institutions, which could ultimately lead to cases at the European Court of Justice. They have had an easy ride. In Brussels, the European Commission has been all too accommodating when lobbyists have asked for help to stem the tide of regulation at the city level to secure affordable housing.



# 1. Introduction: Harmless hospitality?

---

“Recently, AirBnB published a report on their older hosts, aged 60 and over, who use the sharing platform to open their homes to travellers from around the world. In Europe, they are its fastest-growing demographic and consistently the best-rated AirBnB hosts. Their numbers have almost doubled in the past year.”<sup>1</sup>

This positive appraisal of AirBnB given by Commissioner Ansip in September 2016 is just one among the many he offered as a European official helping to oversee the burgeoning short-term rental accommodation business that has grown exponentially in recent years. The Commissioner’s view is identical to how the biggest global accommodation rental platform AirBnB would like to see itself.

AirBnB is a ‘rental platform’ of US origin, a website where visitors find accommodation put up for rent in destinations across the world. AirBnB’s promotional materials focus on the spare rooms rented out by locals offering warm hospitality, perhaps an elderly person offering a genuine experience of the region, with a humble money transaction to help people get by. But while some AirBnB hosts do fit this picture – and who could object to this? – it does not reflect reality.

Data shows the majority of AirBnB listings in most cities are entire homes, many of which are rented all year round.<sup>2</sup> And many ‘hosts’ are businesses with multiple properties, making large profits and benefiting from a totally unregulated market. The explosive development of on-line booking of short stays in apartments or houses has created opposition in many European capitals for the way it restricts the availability of affordable housing for locals, and helps to push up rents. In Berlin, Barcelona, Brussels, Paris, Amsterdam, and elsewhere, AirBnB has generated stiff local resistance to the conversion of homes that used to be for renting into de facto tourist accommodation, if not hotels. In turn, this has led local authorities to take measures to counter a development that has shown its potential to change the face of cherished parts of cities, and displaces thousands out of their communities.

**The European Commission has been all too helpful with the propaganda war, and it is helping the accommodation platform industry find legal grounds to attack the cities.**

In response the companies behind the platforms such as AirBnB, HomeAway, and others – plus the trade associations they belong to, in this case the European Holiday Home Association – have launched a lobbying offensive in the EU institutions. This includes a complaint against four cities in particular, Barcelona, Berlin, Paris, and Amsterdam, that the local governments’ attempts to regulate the tourist rental market breach the EU’s single market rules, cases which could ultimately end up at the European Court of Justice. The online rental platforms are enlisting the European Commission’s help to roll back defensive measures against them taken at the local level.

With the EU institutions in Brussels, they have been among friends. The new internet-based economy is regarded as a sector with a desirable growth potential, and the platform industry’s lobbyists are certainly met with all the hospitality they could desire. As we see in the quote from Commissioner Ansip, the European Commission has been all too helpful with the propaganda war, and crucially, the Commission is helping the accommodation platform industry find legal grounds to attack the cities. Following a complaint filed by AirBnB, HomeAway and other platforms organised in the European Holiday Home Association, this is a move that could eventually end up in the European Court of Justice, that would have the power to strike down the measures taken by cities.

With AirBnB as the main focus, then, this report looks at the strategy of the companies behind the platforms and their lobbyists, what they are achieving in Brussels and how.

## 2. From an air mattress to billion-euro business


AirBnB belongs to the emerging sector known as the ‘sharing economy’, or the ‘collaborative economy’ as the EU institutions prefer. The involvement of thousands of ‘hosts’, many of them non-commercial, sets these platforms apart from webshops like Amazon.com or Opodo. What is now called the ‘collaborative economy’ in the EU is generally said to include transport, household services, ‘collaborative financial services’, professional services, and accommodation. Of these sectors, accommodation is by far the biggest. According to a report from PriceWaterhouseCoopers,<sup>3</sup> the annual turnover in Europe stood at €15 billion in 2016, whereas the second place, transport, was worth only a third of that amount at €5 billion. Of the two leaders in the sector, AirBnB far outranks ridesharing firm Uber.

There are many companies in the field, some of which operate across Europe, such as AirBnB and HomeAway – a company bought by Expedia to compete with AirBnB in 2015 – and many more similar firms with a more national strategy, such as Wimdu (Germany) and Schibsted (France). But AirBnB is by far the biggest. In late 2016 AirBnB had 2.8 million listings globally, whereas its closest competitor HomeAway had only 1.2 million.<sup>4</sup> An explosive development when considering that a decade ago, this business was a negligible niche.

These numbers reflect not only the entry of the platforms to the market, but increasing tourism as well, to some extent a result of cheaper flights. In the EU the number of nights spent by non-residents in an EU country increased by 40 per cent between 2009 and 2016, according to Eurostat.<sup>5</sup>

According to AirBnB its rentals in Europe really accelerated from 2014, when the continent became its biggest market with more than half of total stays – and growth in many European cities were in three digits.<sup>6</sup> The company’s share of total travellers is increasing steadily as well, with 14 per cent recorded in 2015, going up to 25-28 per cent in 2017.<sup>7</sup> This rapid development was clearly visible, and not only to hosts.

AirBnB’s leaders rarely misses an opportunity to highlight its sweet origin story, when its founders let out a floor and an air mattress to participants at a conference for designers in San Francisco in 2008, and thus conceived the basic features of a company that would become an immediate success, with the number of stays organised via the website taking several quantum leaps in the years that followed. But with the backing of venture capital from Silicon Valley and a massive increase in turnover and profit, the grassroots identity of AirBnB soon became hollow. Controversy grew as it became clearer how indiscriminate and unregulated expansion of short-term rental accommodation clashes with the public interest.



With the backing of venture capital from Silicon Valley and a massive increase in turnover and profit, the grassroots identity of AirBnB soon became hollow

### 3. Big business in the guise of the 'sharing economy'

The main point of contention is the so-called 'AirBnB effect', a detrimental impact on access to affordable housing - and evidence is growing by the day. Data on the effect of rental platforms on cities are published regularly from various sources, and some groups have developed methods to produce comprehensive statistics. One initiative is InsideAirBnB, run by digital activist Murray Cox from New York, whose website publishes information on AirBnB activities in major cities across the globe, including many European ones. By scraping the data from AirBnB's own listings, Inside AirBnB is an attempt to uncover the true nature of the company's lettings, with a focus on the incidence of commercial actors and their potential impact on the stock of apartments for rent.

The results for the European cities listed on his website are quite telling. Between 47 and 87 per cent of the listings concern the rent of entire houses or apartments, indicating the host is not staying at the place at the same time. Some of these would presumably be people who let their apartments while on vacation themselves, or are temporarily absent for other reasons. However, when you look at the number of listings with 'high availability' - available for three months or more - it appears there is a strong presence of places used largely or exclusively for the purpose of letting. On this topic, even the cities with limitations on short term lets rank high, such as Amsterdam (28.1 per cent), Berlin (38.2 per cent) and Paris (34.4 per cent).

When scrutinized in depth, Inside AirBnB's data is a valuable source which belie the claims of the platforms and their

City	Total listings	Entire house/apartment for rent	High availability
London	49,348	51.2%	58.8%
Berlin	20,576	50.0%	38.2%
Barcelona	18,531	46.6%	63.9%
Paris	61,152	86.9%	34.4%
Rome	25,275	60.1%	91.4%
Athens	5,127	83.2%	91.6%
Venice	6,027	74.9%	87.1%
Amsterdam	18,861	79.5%	28.1%
Brussels	6,192	64.6%	57.8%
Copenhagen	20,545	80.7%	37.6%
Dublin	6,729	47.0%	49.9%
Edinburgh	9,638	56.8%	57.4%
Madrid	16,313	63.4%	64.7%
Málaga	4,853	76.3%	85.3%
Mallorca	14,858	87.5%	94.4%
Manchester	868	41.3%	83.8%
Trentino	1,847	77.3%	92.0%
Vienna	7,893	67.3%	67.0%

Data taken from the InsideAirBnB website in April 2018.

lobbyists that there is no discernible impact on affordable housing. Even a report commissioned by the key department of the European Commission, DG GROW, uses its data, and concludes - albeit cautiously - that there is no denying there is an impact: "Collaborative economy tourism has not necessarily caused housing shortages and affordability issues but its growth may have aggravated these conditions," the report says. And in the four locations examined (Berlin, Barcelona, Amsterdam, and Paris), the same pattern is detected as everywhere else: it is far more profitable to rent out to tourists than to long-term residents.<sup>11</sup> While certainly not the only reason for low availability of affordable housing - speculation in real estate and low priority given to social housing come first - taking tens of thousands of apartments and houses off the regular rental market logically has an effect.

Patterns like this have been debated across the world for years, and several analyses have been made on the basis of available evidence to identify the impact of short-term rental accommodation on rents, and methodology has been developed as well.<sup>12</sup> Rents in Barcelona went up by 16.5

**"Where we see the right kinds of processes, the right steps being taken by cities, by police forces, tax agencies, that data is available to people."**

Patrick Robinson (AirBnB) to Washington Post

## What 'sharing', 'collaborative' economy?

AirBnB emerged a decade ago alongside companies such as ride-sharing app Uber, as part of a wave of online enterprises identified as the 'sharing' or 'collaborative' economy, supposedly built on the "social practices of sharing, collaboration and cooperation".<sup>8</sup> Most of these companies are structured as 'peer-to-peer platforms' (P2P), websites that link a consumer with a provider, as when you find a taxi via the Uber website or app, and the driver is not actually a taxi driver, but merely someone who happens to have a car, and would like to make a little extra. Or AirBnB where someone with extra space rents a room in their home, or a whole flat.

While an internet platform might well offer community, collaboration, and sharing, the reality is that while these companies have the appearance of 'sharing' or 'collaboration', they are not a civic movement, but money-making machines. "AirBnB hosts are not collaborating with their guests any more than Marriott International is collaborating with its customers," as one commentator at the *Financial Times* aptly put it.<sup>9</sup>

And this business model is unencumbered by the traditional responsibilities that, say, standard taxi companies or bed and breakfasts might have to shoulder, for example background checks, employee rights, safety regulations, or taxes that mitigate tourism impacts on cities.

So while you can certainly find examples of AirBnB hosts and guests who match the ideal citizen-to-citizen exchange, the company has long since become a big commercial company, and hosts who make a lot of money from commercial letting abound. And when AirBnB comes under fire for the problems its success has caused across the globe, in particular the effect on locals' impaired access to affordable housing, it fights back like any other commercial colossus.

It will remain important to companies such as AirBnB to belong to that special category dubbed the 'collaborative economy', for it brings tangible benefits and special treatment. In the European Union special political initiatives are taken to support companies bearing the label, as they are believed to contribute to innovation and job creation in a sustainable fashion.<sup>10</sup> In the European Union, being accepted as an "information society provider", and not a regular company, means the world in terms of the rules that apply. For example no obligations to monitor illegal activity on the website, such as listing of apartments that may not be used for short-term rental purposes, can be imposed.

And appearing to be almost a civic movement remains a cornerstone of AirBnB's PR efforts. But behind the scenes it reveals it is simply another accommodation business: for example, as demonstrated in early 2015 when AirBnB sought a meeting with the Commission. In a letter the AirBnB representative wrote that bringing along the owner of Boutique Hôtels it worked with "shows complementarity between AirBnB and traditional accommodation offering!"

percent in 2016 alone, according to a real estate site,<sup>13</sup> and while not entirely caused by the spread of short-term tourist accommodation, it is an important part of this development. In Amsterdam it has been shown that if density of AirBnB rentals increased within a square kilometre, house prices go up 0.42 per cent.<sup>14</sup> But studies are often hampered as local authorities and researchers complain that the online platforms are reluctant to deliver the necessary data.<sup>15</sup>

And in the European Union, rules have been constructed to allow AirBnB to refuse access to data. This was recently

confirmed by the Administrative Court of Berlin,<sup>16</sup> a decision hailed by AirBnB's Policy Director in Europe, Patrick Robinson. According to him, AirBnB may hand over the data if the company sees an interest: "Where we see the right kinds of processes, the right steps being taken by cities, by police forces, tax agencies, that data is available to people," Robinson told the *Washington Post*.<sup>17</sup>



## 4. The three key issues: restrictions, enforcement, data

Patrick Robinson of AirBnB has had plenty of motives to deny access to data to public authorities, and he and his company have fought several of them in court. For AirBnB, the data is not just about concealing the full picture of the impact the company has on access to affordable housing, it is about avoiding the impact of regulation. Following the company's rapid expansion, concerns quickly emerged. Cities put in place rules to protect access to affordable housing, which presented obstacles to commercial hosts in particular. But if AirBnB can keep the data to itself, then rules can be rendered ineffective. Identifying illegal 'listings' (entries on the AirBnB or HomeAway websites) one by one can be an onerous task. For that reason, the struggle over access to the data has been heated in recent years.

For example in New York in 2010, AirBnB fought in court against a subpoena to hand over information about 15,000 hosts in the city. In the end the claim was narrowed down to include detailed information on the biggest players only. In return, AirBnB would supply anonymised data on nearly 500,000 transactions. Even this limited information led to staggering conclusions in the Attorney General's report: as many as 72 per cent of AirBnB reservations had been in violation of the law, and "commercial users" were making millions on the trade.<sup>18</sup> Clear proof of the importance of the data that the company prefers to keep to itself.

Thus the three main fronts of the struggle over short-term rental platforms can be identified: the restrictions by city governments themselves (be they a limitation on the number of days, or outright bans in particular areas or under particular circumstances), the administrative (enforcement) measures (including registration and authorization), and – related to enforcement – the access to data.

These topics all became political controversies in Europe when in 2014 a political pushback took off. City Councils across Europe adopted measures to stem the tide, applying rules with specifics that could garner support locally and that fitted the circumstances.

Though there are important differences between cities, the objectives and the methods are broadly similar. They are

**According to a report from the Attorney General, as many as 72 per cent of AirBnB reservations in New York had been in violation of the law.**

trying to limit the use of apartments in cities for short-term renting mainly to tourists, to avoid these apartments then being taken off the regular rental market. They do that because the stock of apartments available for rent is dwindling (and in many cases were so even before the AirBnB boom). This is applied with a limit on the time an apartment can be rented out, by putting a cap on the number of permits, or by bans on use of apartments for other purposes than long term renting. Depending on the circumstances, these rules are then backed up by authorization schemes and enforcement measures such as fines. The rules are fought politically and often in court, but they are having an effect in terms of defending the stock of apartments for rent on the regular market.





## 5. The cities fight back

It is not unusual for a city to have rules in place that restrict short-term lets. Even cities that AirBnB considers model examples, such as London, have limits to how far the business can evolve. Other cities, like Copenhagen, have strict rules, but have not been the stage of severe conflict so far. Here we outline measures taken by European cities where the political debate over AirBnB has been particularly heated or noteworthy.

In **Paris**, an existing law was recently tightened. The ‘rule of compensation’ obliges a person who takes an apartment off the rental market to buy a commercial property and turn it into a residential one. This rule had not been much enforced, but in 2014 the head of inspectors promised to change tack. The rules would be enforced from then on, and new properties bought to abide by the rule of compensation would have to be in the same district, to prevent traders from taking off an apartment in an attractive locality, and substituting it with another one in a less interesting quarter.<sup>19</sup> Mandatory registration has been introduced, and Deputy Mayor Ian Brossat’s office is in dialogue with the government to ensure that the next housing law “establishes dissuasive sanctions to make the platforms more accountable”. The rules are resisted by several rental platforms, some of which have been suspended, while AirBnB is challenging mandatory registration. The Deputy Mayor’s office has assigned the matter to court to bring the company into compliance. In Paris, Ian Brossat and his team has no intention of banning short-term tourist rentals, but they are hell-bent on regulating the area. “Too many homes are diverted and used as a cash machine year round. This phenomenon feeds real estate speculation, contributes to the sharp rise in prices, and generates strong neighbourhood nuisances,” Maxime Cochard, an advisor to Ian Brossat, told CEO.<sup>20</sup>

In **Barcelona** in 2014 it was decided to suspend the issuance of permits to use apartments for short-term rental in central Barcelona (Ciutat Vella) pending new rules, and in 2015 all new tourist flat licenses were suspended, and a large team of inspectors were hired to find unregistered properties listed on AirBnB. The following years would be marked by serious conflict between AirBnB and the municipality, culminating with a fine of €600,000 to both AirBnB and



From a demonstration in Barcelona against illegal rental of apartments in the city.

Photo: EFE.

HomeAway for breaking the rules, and an intensified hunt on illegal listings that would result in many fines, some at a high level.<sup>21</sup> In the case of AirBnB there has even been threat of banning the company from operating in the city.<sup>22</sup> An agreement between the city council and AirBnB was reached in July 2017 which required cooperation from AirBnB in the city’s fight against illegal listings.<sup>23</sup> A simple system proposed by the company would help it identify illegal tourist lodgings on its website, which would then be inspected immediately by the authorities. The negotiations continue to drag out. By April 2018, AirBnB had still not accepted a proposal to provide a slot on the website for tourist license registration numbers to alleviate the fight against illegal listings.<sup>24</sup>

At first **Amsterdam** took a different path. In January 2014 the City Council signed an agreement with AirBnB that made it easy to let apartments and houses with a limit of two months per year. In return, AirBnB would help the authorities ‘tackle illegal hotels’.<sup>25</sup> It would not be long, however, before the authorities had to admit it was next to impossible to keep up with the number of complaints, despite having 22 inspectors on the job.<sup>26</sup> In 2016 no less than three quarters of the listings seemed to break the rules, being available for more than two months per year. Under pressure AirBnB committed to help stop illegal listings.<sup>27</sup> This would not satisfy local politicians, though. Starting in

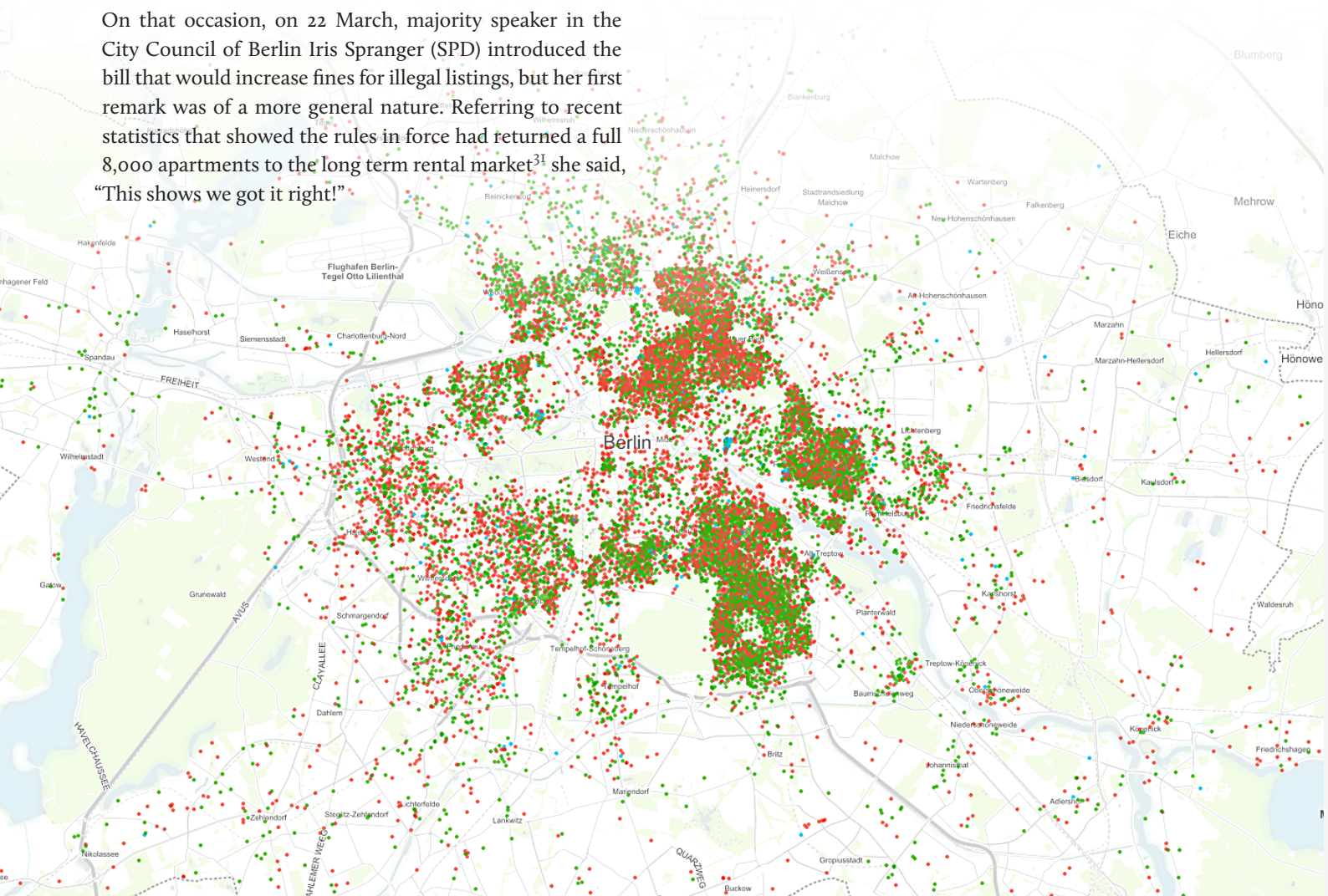
2017, all hosts would have to register with the authorities, and in January 2018, the period allowed was halved from two to one month per year.<sup>28</sup>

In **Berlin** AirBnB has been met by perhaps the stiffest opposition. In response to the rapid growth of short-term rentals the city council put a freeze on new permits for letting apartments and houses in the city in May 2016.<sup>29</sup> From then on the so-called Zweckentfremdungsverbot prevented apartments and houses from being used for short-term rental accommodation. AirBnB responded by a political offensive to have the rules changed to its advantage, while hosts took the issue to court. After a win in the regional court (Oberverwaltung Berlin-Brandenburg) in April 2017, the company hoped for a major change of rules to its advantage. That was not to happen and in March 2018 the rules were tightened.<sup>30</sup>

On that occasion, on 22 March, majority speaker in the City Council of Berlin Iris Spranger (SPD) introduced the bill that would increase fines for illegal listings, but her first remark was of a more general nature. Referring to recent statistics that showed the rules in force had returned a full 8,000 apartments to the long term rental market<sup>31</sup> she said, “This shows we got it right!”

**“Too many homes are diverted and used as a cash machine year round. This phenomenon feeds real estate speculation, contributes to the sharp rise in prices, and generates strong neighbourhood nuisances.”**

Maxime Cochard, advisor to Paris  
Deputy Mayor Ian Brossat



## 6. AirBnB goes to the EU

AirBnB and the likes, meanwhile, have been not been sitting idly watching European city governments encroach on their business model. Not long after the first cities started tightening up on tourist lodgings AirBnB began developing a European response, turning to the EU in early 2015. The company was losing ground in many cities, but it saw the European institutions as a potential way to solve its problems once and for all. The far-reaching principles and disciplines of the EU single market have to be respected by cities, with European legislation a key element in almost anything that implies exchange of money in any market.

The freedom to deliver services is one of the fundamental freedoms in the EU Treaty, and over the years a large number of directives and regulations and decisions of the European Court of Justice have specified what that freedom entails. There are things local authorities cannot do, even if they think they are merely acting to protect the public interest.

The EU rules are rarely straightforward – their implications for Lisbon or London cannot simply be looked up. And in many cases, not least when it comes to new sectors such as online platforms – they are under construction.

In Brussels AirBnB was looking for European solutions that could assist the company in its quarrels with councillors and mayors, and its lobbyists would soon find allies – in and outside the institutions.

In early 2015 lobbying company Political Intelligence helped introduce AirBnB to the institution that would become back and front of its lobbying efforts, the European Commission.<sup>32</sup> And in February that same year, AirBnB was already involved with the Digital Tourism Network, a network of ‘stakeholders’ – primarily for industry – set up to discuss regulatory issues and how to remove obstacles to the digital industry.<sup>33</sup> Such a network requires a registration in the Commission’s register of expert groups, but this apparently never happened. But from other documents obtained by Corporate Europe Observatory, it becomes clear that AirBnB became a member of the Steering Group of the network, and was able to use this presence to gain a

**“What I found frustrating is that AirBnB is often seen as representing the consumer views in meetings, while they obviously represent their business only”**

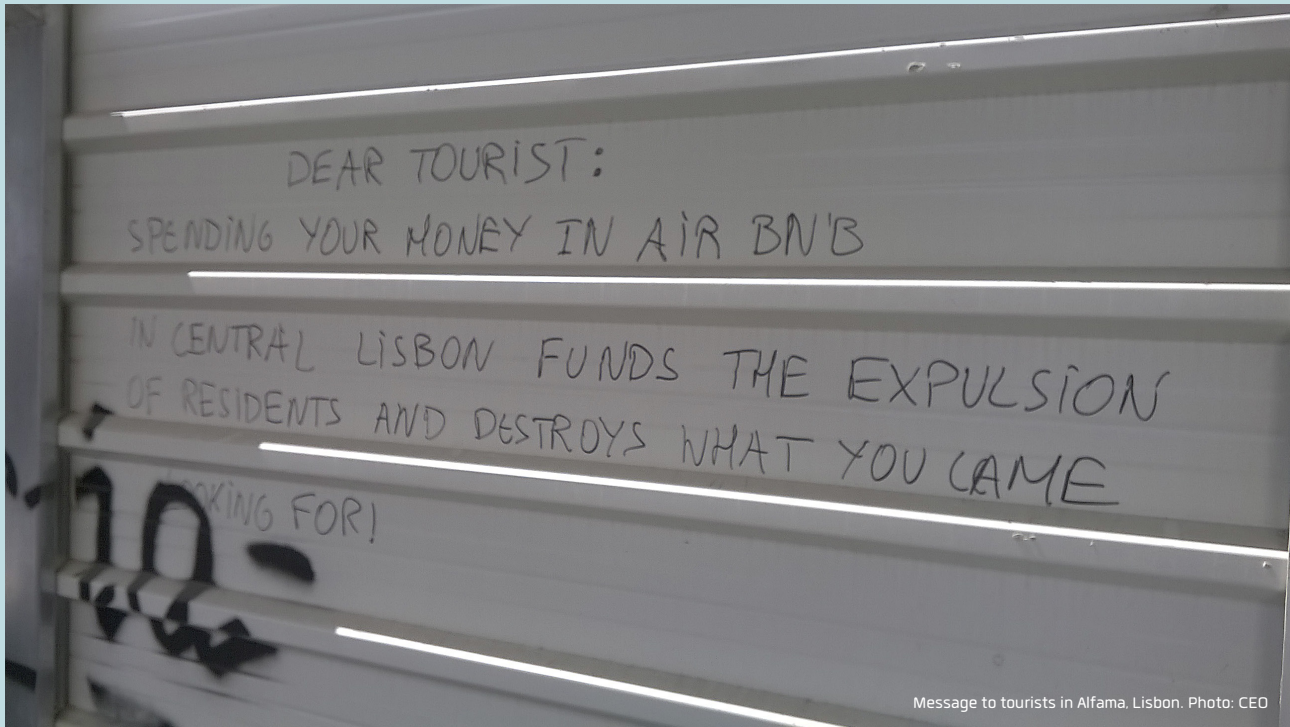
Michela Vuerich, consumer group ANEC

foothold inside the Commission that others in the business did not enjoy at the time.<sup>34</sup>

At such meetings AirBnB seems to have enjoyed a special prestige, as something more or other than a company. A consumer representative that joined meetings of the Digital Tourism Network found that striking: “What I found frustrating is that AirBnB is often seen as representing the consumer views in meetings, while they obviously represent their business only, and their users have progressively included businesses worried about the competition, rather than just individual consumers renting spare rooms to make some pocket money,” said Michela Vuerich from the consumer group ANEC to CEO.<sup>35</sup>

Participation in the network, or rather the advisory group, helped the company to become an early starter in what was to become a co-ordinated effort with all major players in the business. In this arena AirBnB is present at all important debates. When the Commission organizes conferences, workshops, and when it calls for key meetings on policy development, AirBnB is there in its own name. From February 2015 to September 2016, for instance, AirBnB met with high level officials of DG GROW nine times, including five meetings with members of the Commissioner’s cabinet.<sup>36</sup>





## The AirBnB effect: destroying what you came to see

"This is still a part of town with lots of character and a charm of its own, and it still belongs to the locals. But it is all changing very rapidly, and AirBnB is the cause", a local resident in the Alfama neighbourhood of Lisbon told Corporate Europe Observatory.

Alfama was where the poor lived outside the city walls, but for decades now it has grown in popularity due to its unquestionable charm. But it is under pressure as residents are ousted by landlords that can make more money from AirBnB,<sup>37</sup> and while groceries and other traditional shops disappear, their replacements are often expensive fashion or handicraft shops for visitors. "You are destroying what you came to see", a slogan says on a wall in Alfama.

This pattern is repeated in popular tourist destinations across Europe these days. Cities already under immense pressure from tourism, such as Venice and Barcelona, are experiencing an extra challenge with the success of platforms like Airbnb.<sup>38</sup> They price out residents looking for a place to live. They destroy conviviality and the social fabric of neighbourhoods, and transform cherished, historic spots into dead tourist zones deprived of authenticity, as locals are slowly ousted to make way for travelers.

In Florence researchers discovered that one out of five flats in the historic centre of the city is listed on AirBnB; all these flats then disappear from the regular long-term market. In Madrid similar concerns are increasing. The city centre has lost a staggering 15,000 residents since 2005,<sup>39</sup> and the influx of tourists into famous neighbourhoods such as Lavapiés is transforming them. Lavapiés is a part of Madrid with a mix of cultures and ethnicities, poor and sometimes tough, but

a place where residents created their own environment. Already hit by a first wave of gentrification, the neighbourhood is now experiencing an AirBnB-linked 'Gentrification 2.0'<sup>40</sup> where the new residents are tourists.

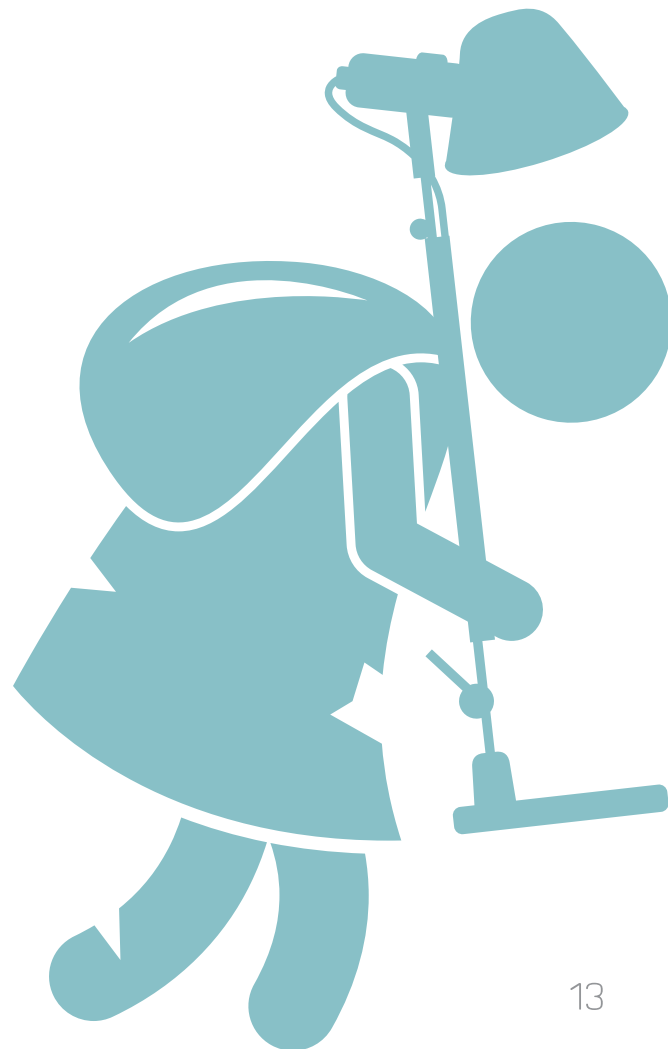
At the time of writing the Mayor's office in Madrid is planning a response to the 'AirBnB effect' which implies limitations on the company. The question is if the countermeasures now taken by the Madrid municipality, and municipalities across Europe, are fully accepted by the European Commission, or if they are considered in breach of single market rules. Protecting "the city environment" is acknowledged as a reason to push aside the market based disciplines of EU rules, but the final word in such matters do not rest with local politicians.



Besides its own presence, AirBnB plays a role in several other industry lobbying associations, including Sharing Economy UK, the European Collaborative Economy Forum (EUColab), and the European Digital Media Association. But the main lobbying vehicle was to be the European Holiday Home Association (EHHA). Founded in 2013 by Novasol, Interhome, DanCenter, and Hoseasons, it was originally framed as an attempt to “gather a myriad of small players”,<sup>41</sup> but today it appears to be a very different animal. Besides AirBnB, the EHHA has HomeAway, Schibsted, Tripadvisor, and Wimdu as members.

Both EUCoLab and the EHHA have received a helping hand to come to the fore at the European Commission, but of the two, the EHHA is by far the most important vehicle for AirBnB’s lobbying strategy. AirBnB sees the EHHA as a fully satisfactory representative of its views, in that the company repeatedly refers to the EHHA on a variety of issues.<sup>42</sup> And AirBnB’s lobbyists have made an effort to present the association to the Commission and have it pay proper attention to its views.

As with AirBnB, the EHHA is a regular guest in the Commission’s meeting rooms, with four meetings in 2016 and a further four in 2017, including two meetings with the Commissioner’s cabinet. On top of this comes the participation in a wide range of events, including workshops intended to help the Commission develop its policy in the field. Its lobby spending is fairly small, according to the Transparency Register, somewhere between €400,000 and half a million, according to the latest entry covering 2016. Still, it more than quadrupled from the preceding year (2015).<sup>43</sup> The same pattern is found with similar groups, including Expedia, owner of HomeAway, which saw a fivefold increase in lobby spending between 2015 and 2016.<sup>44</sup>



## 7. Moving in with the Commission: privileged access

The access to the Commission is not a product of a massive army of lobbyists. When it comes to numbers of lobbyists, nor AirBnB nor the EHHA are heavyweights. According to the Transparency Register, AirBnB has three people involved in EU lobbying, whereas the EHHA has only one. Even so, AirBnB and the EHHA emerge as powerful players due to the privileges the Commission gives them. While the Commission is not a monolith, and while some parts of the Commission see it as their job to find remedies to the challenges that arise from the sudden rise of the platform economy, the two most important departments are more than happy to oblige when AirBnB and its allies knock on the door. They are the Commissioner for the Internal Market Elżbieta Bieńkowska and her civil servants in DG GROW, and the Commissioner for the Digital Economy Andrus Ansip and his staff in DG CNECT. Of the two, the former has been the most important. And communication between AirBnB and DG GROW shows its lobbyists at home and among friends, two sides sharing the same cause. For example, when AirBnB said its Chief Executive would meet up with Commissioner Elżbieta Bieńkowska in New York to get “a positive headline” about the Commission’s political stance.<sup>45</sup>

It is with DG GROW in particular that the platforms have found a vehicle that is both powerful and helpful. AirBnB, for its part, is lavish with the praise. In a message to Corporate Europe Observatory, Bernard D’heygere says the company “welcome the leading role the Commission has played in

driving clear, simple and consistent regulations that remove barriers for regular people benefitting innovations like AirBnB, and we support their vision for making Europe a global leader in the collaborative economy”.<sup>46</sup>

At DG GROW the emerging ‘digital economy’ is certainly considered a vehicle for economic growth and ‘innovation’, and a series of strategies adopted over the past few years have put both technological infrastructure and the companies in the field high up on the agenda. It plays a part in several strategic documents, including the Single Market Strategy or the Digital Single Market Strategy; these are all about enacting supportive measures at the European level to underpin the growth and innovation expected.

And not long after the arrival of AirBnB on the Brussels lobbying scene, a crucial phase was opened. In a letter from 12 platforms to the Commission, AirBnB and others vowed to “play a proactive role in helping the Commission” to realise its goals within the Single Market framework, and encouraged the Commission to deal with “inconsistent regulations in the areas of housing and tourism.”<sup>47</sup> Soon after, the Commission would open the door to this endeavour with a single line in the Single Market Strategy from October 2015 in which the Commission announced it would “develop a European agenda for the collaborative economy, including guidance on how existing EU law applies to collaborative economy business models. It will assess possible regulatory gaps and monitor the development of the collaborative economy.”<sup>48</sup> From then on the scene was set for a showdown. A week later, AirBnB welcomed the decision. In a report from a meeting on 6 November 2015, it says: “AirBnB welcomed the SMS and the fact that there is specific action for the collaborative economy in it and particularly for accommodation.”<sup>49</sup> The representatives vowed to send more information on the regulatory approaches by member states. Now would come the battle over local restrictions, and the battlefield was implicit in the document: there was no sign of new legislative initiatives, it was all about interpretation of existing rules. A separate communication on the ‘collaborative economy’ was to be drafted, but no new laws were on the cards. That put the European Parliament out of the game – the Commission would be the focus of attention in the years to come.

**“We welcome the leading role the Commission has played in driving clear, simple and consistent regulations..., and we support their vision for making Europe a global leader in the collaborative economy”**

Bernard D’heygere (AirBnB)

## 8. Platforms against fact-finding

It was to be a battle that would be fought on many fronts, and one of them would be the simple struggle over the facts. What, for instance, does the market even look like? Is there a truth to the claims, that ‘sharing economy’ is becoming more and more of a misnomer, and that today we see a strong incidence of commercial players that put a strain on the local rental market?

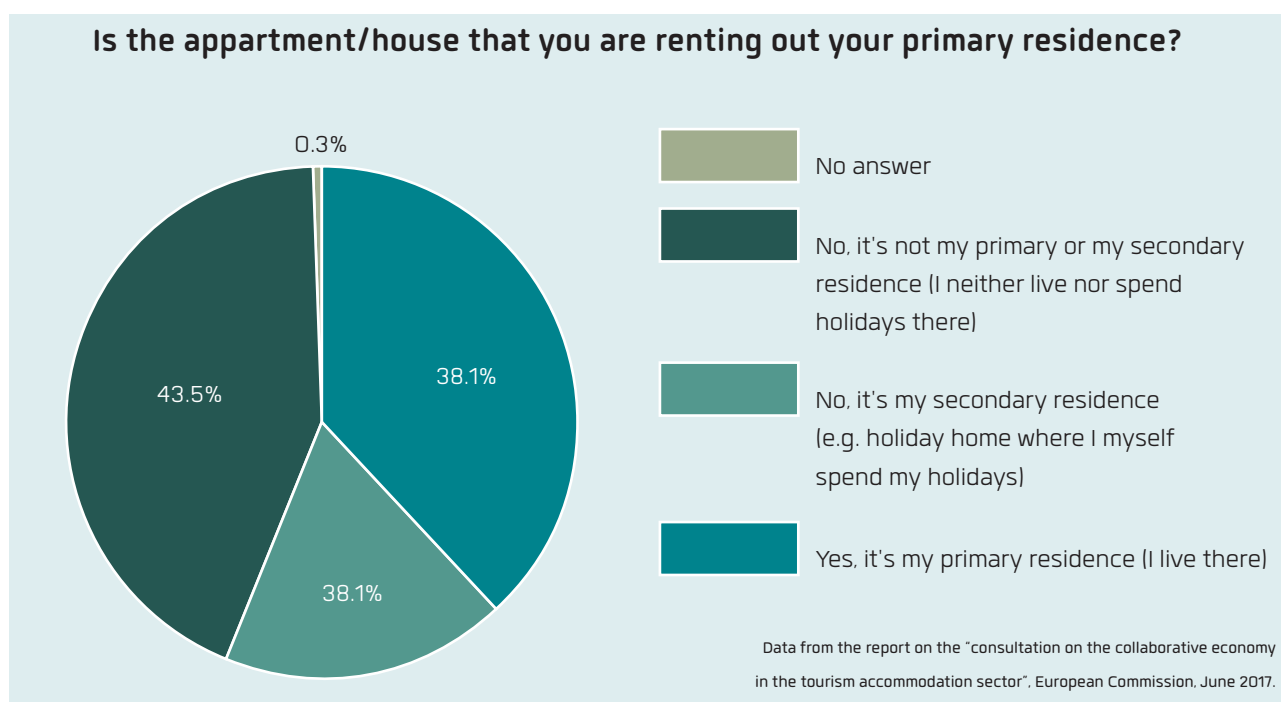
AirBnB is no alien to statistics. It produces reports on a regular basis with numbers on different aspects of the company’s business, and it has sent a plethora of these to the Commission. But a public authority cannot rely on reports based on data it cannot check, and in particular if they are presented by a company with a vested interest who is unwilling to share the raw information.

To get a clear look at the market the European Commission set out to produce its own statistics in April 2016. DG GROW decided to map hosts’ activities, but encountered many obstacles. Hosts are not ‘service providers’ in the classical sense, and they are not organised in a European

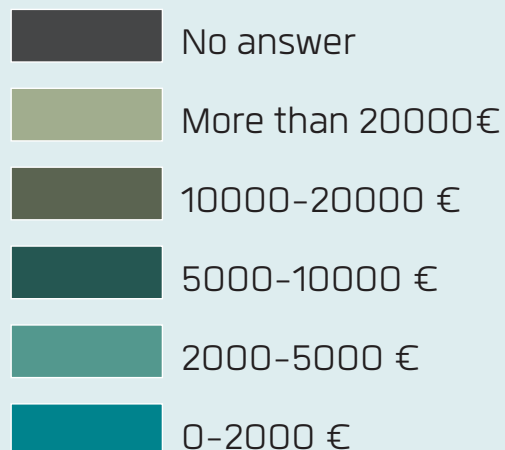
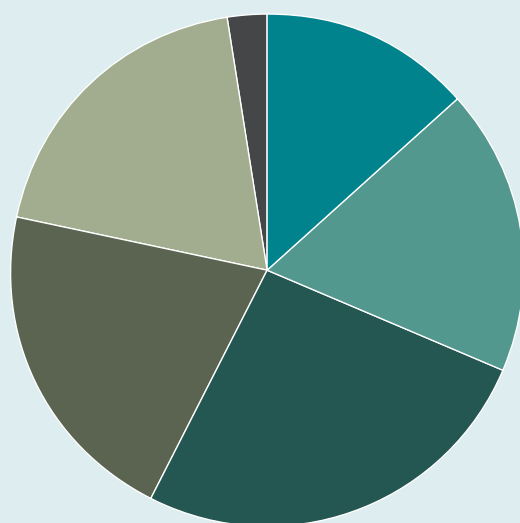
association, so in order to get a full picture the Commission had to ask the companies themselves.

On 1 April 2016 the first company the Commission turned to was AirBnB, with which it already had “an established relationship”.<sup>50</sup> Three weeks later AirBnB responded it was “enthusiastic” about the project, and mentioned that the company sends its “hosts and guests a qualitative questionnaire” on an annual basis. AirBnB hesitated to contact the hosts directly, and should that turn out to be “too complex”, it offered “some elements of our annual survey at aggregated EU level”.<sup>51</sup> AirBnB quickly helped DG GROW to get the help of the EHHA to ensure support from other platforms.

In September 2016 AirBnB, the EHHA, HomeAway, and Tripadvisor became involved in a discussion on the questions to be included in the questionnaire; a process in which “both sides showed flexibility”, a report from a meeting states.<sup>52</sup> In the process, AirBnB underlined its “concerns over data privacy”.<sup>53</sup>



### How much do you earn per year from this activity?



Data from the report on the "consultation on the collaborative economy in the tourism accommodation sector", European Commission, June 2017.

In the end the help received by the Commission to carry out the investigation was rather limited. Some of the companies agreed to post an announcement and a link on their websites, but if the Commission had hoped for sincere cooperation from AirBnB, the result must have been disappointing. AirBnB merely announced the enquiry on its website, and left hosts little time to respond.<sup>54</sup>

Ultimately a mere 395 hosts in the EU responded. Nevertheless, the results were interesting:

- \* 38.1 per cent offered accommodation in more than one property;
- \* 43.5 per cent responded that the apartment/house was not their primary nor secondary residence (such as a summer cottage);
- \* 75 per cent of respondents rent out for more than 3 months per year, and 64.5 per cent rent out for more than 4 months per year;
- \* 21 per cent of respondents earn between €10,000 and €20,000 annually, 19.2 per cent earn more than 20,000 annually.<sup>55</sup>

While we may find the old lady that makes a little extra pocket money or just enough to pay the rent in here somewhere, for many if not most hosts, short-term rental accommodation is a business which can garner considerable income. And far from generally supplementing humble people with marginal incomes, the typical host has a university education (more than three quarters of the total). In sum, a well-educated and well-off segment has found an extra income. And their business success has consequences – on people striving to make the rent, looking to find a place to live, or trying to remain in their local neighbourhood.

**"Throughout, the Commission has remained loyal to its foremost priority, to tackle the risk of a 'fragmented single market' to help the 'home-sharing' platforms."**

Meanwhile the 'home-sharing' platforms, with their refusal to share data, seem to have outwitted the Commission. Those figures that did emerge were not used or put in a prominent place on the Commission's website, and the Commission itself does not seem to have drawn any conclusions from its own research. Had it taken its own investigation seriously, the Commission would have forced the companies to publish their data, as well as taken the critics seriously, not to mention the city councils. But throughout, it has remained loyal to its foremost priority, to tackle the risk of a 'fragmented single market' to help the 'home-sharing' platforms.



## 9. Two directives from another era

---

AirBnB, the EHHA, and other representatives of the short-term rental platforms have flooded the Commission with reports and folders for years, and they often include statistics intended to underpin their preferred image as peer-to-peer businesses. But the primary objective is not to win the PR battle, but to win the battle over the EU rules, not about what they should look like in the future, but about how existing rules should be understood. And here, the lobbyists have been in sync with the Commission in highlighting two old directives from a pre-AirBnB era, the e-Commerce Directive and the Services Directive.

These two directives can be understood in ways that would pose serious problems for the cities on all three main issues – restrictions, enforcement and access to data.

### The e-Commerce directive

The e-Commerce directive was adopted in June 2000, many years before short-term accommodation rental on internet platforms was a significant phenomenon.<sup>56</sup> It was adopted speedily at a time when the internet was developing quickly, and the EU lacked a set of rules. They were, in the end, almost copy-pasted from the US. The directive contains two elements that could make it more difficult for cities to enforce rules on short-term rental accommodation.

1. Under the E-commerce Directive, authorities are not allowed to impose a “general obligation” to monitor activity on the website. This could mean that eg AirBnB can be asked to act on a specific suspicion of an illegal listing, but in principle it cannot be asked to check systematically if listings are illegal. This means housing rented through AirBnB is de facto unregulated.
2. Article 3(2) of the directive is the so-called “country of origin principle”, which is that the rules and regulations of the country of establishment applies to the company in question, but everywhere else in the EU, nothing can be adopted that can be seen as an obstacle to the company’s day-to-day business. For an ‘information services

provider’, then, the smart move is to pick a base in a member state with favourable conditions, in this case Ireland. Home-sharing companies can challenge regulations passed elsewhere in courts, unless they are covered by the exemptions (on electronic money, neighbouring rights, intellectual property rights, contract law and more).

With this core principle in place, the hands of authorities in other member states to regulate were tied in many ways. Though there is a lack of clarity, the e-Commerce Directive has already been used successfully in court by AirBnB to reject demands to hand over data to the authorities.<sup>57</sup>

### The services directive

The second directive is the Services Directive, which covers accommodation.<sup>58</sup> From this directive, two elements are being used to defend rental platforms.

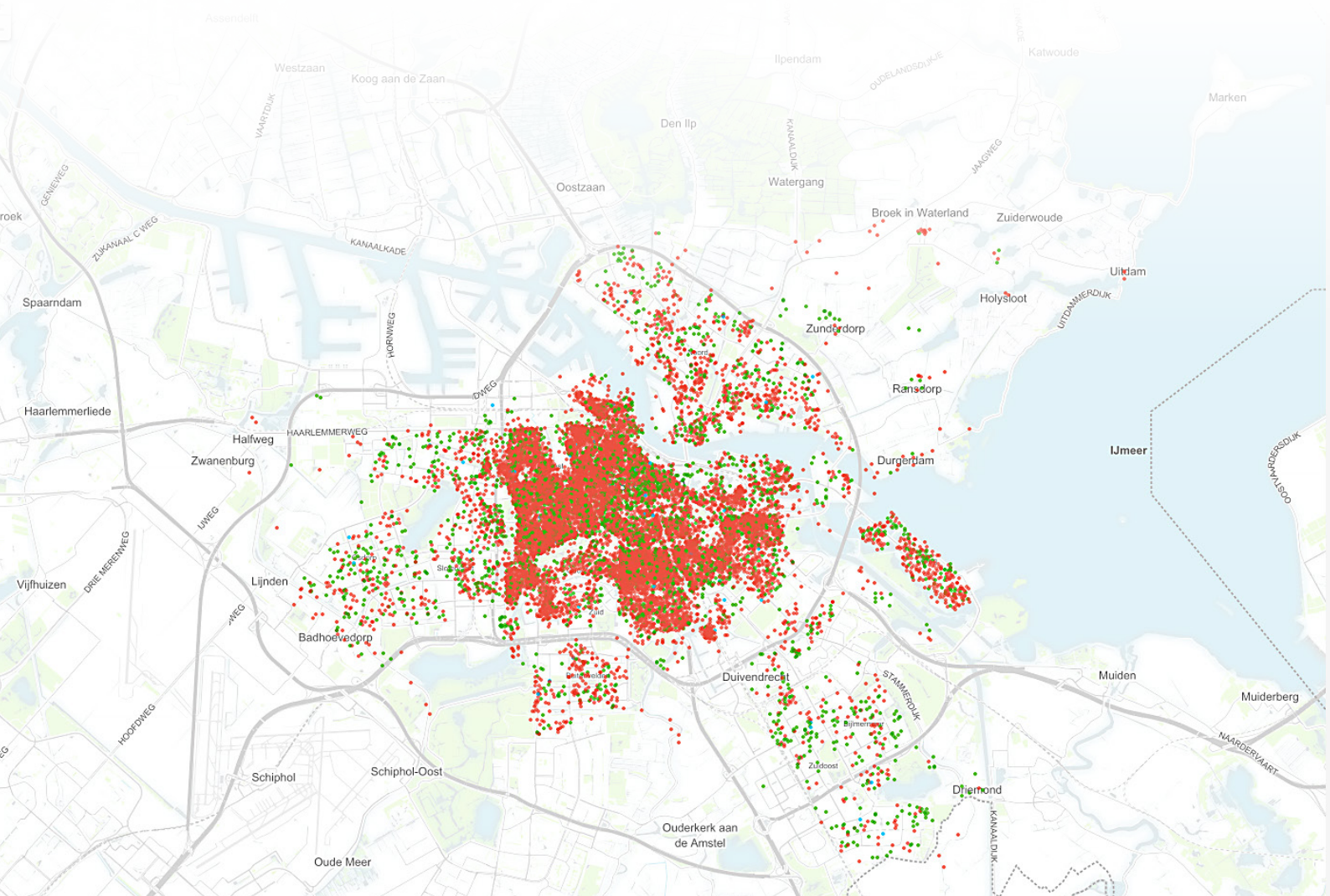
1. Under the Services Directive, many conditions will have to be fulfilled if the authorities are to require permits, licences, or authorization. Under the directive requirements of all sorts must be necessary, proportionate, and non-discriminatory. The “recipients”, which in this case can be both the hosts and the users, cannot be met with a demand “to obtain authorization or to make a declaration” to the competent authorities, in fact it is outright forbidden.<sup>59</sup>
2. The obstacles to authorization and licensing schemes become bigger when the prohibition against “quantitative restrictions” is taken into account. According to article 15, the imposition of limits of this kind – such as measures that aim to limit the number of houses or apartments for rent – have to be approved by the Commission.

Both directives are mentioned all the time by both the lobbyists for the rental platforms, and by the Commission. And if interpreted strictly, there is indeed a risk they could

Maxime Cochard, advisor to Paris Deputy Mayor Ian Brossat.

This ambiguity is at the bottom of the ongoing struggle. One in which the Commission wields tremendous power, and where the European Court of Justice has the final word.

basis that it is protected by European e-commerce rules.”<sup>61</sup> On a more general note, Maxime Cochard from the Deputy Mayor’s office in Paris said to CEO: “For the time being, the European Union has not given states and large cities the legal tools to better regulate the market to deal with the fraudulent practices of the platforms. More generally, the EU has not adopted a text supporting the right to housing and the development of accessible housing in metropolitan areas. There is significant room for improvement. We should not allow international rules that give all powers to multinationals and none to states.”<sup>62</sup>



# 10. The battle over the EU rules

The rental platform lobbyists set out to exploit the ambiguity in the EU directives as a key to undercut the cities' regulatory measures in Brussels. They went to battle with these two directives in hand, in order to counter (quantitative) restrictions on the rent of apartments and houses, as well as issues of registration and authorisation, and the access to data.

Confronted with real obstacles at the local and national levels, they needed to have the European rules specified and applied. The Single Market Strategy from 2015 had already provided them with a favourable starting point, in which the Commission had announced it would issue guidance on how the EU rules applied to the sector, "based on the Services Directive, E-Commerce Directive, European consumer legislation, as well as on relevant treaty provisions".<sup>63</sup>

The industry was quick to mobilise in support, and a few months later 50 companies – led by AirBnB<sup>64</sup> – issued an open letter to the Dutch Presidency of the European Council urging immediate action, and to "support the Commission's efforts to seek and remove obstacles in the broader European internal market for goods and services". Member states were urged to "ensure that local and national laws do not unnecessarily limit the development of the collaborative economy to the detriment of Europeans".<sup>65</sup> The letter was coordinated by Delany & Co, a lobby consultancy firm headed by Luc Delany, former Facebook lobbyist, who would soon come to lead EUColab – a lobby group with AirBnB and Uber as high-profile members.<sup>66</sup>

Shortly after on 17 March 2016, a meeting took place between the EHHA and the Commission. Besides representatives of the association, several EHHA members were present, one from Tripadvisor, and another from Expedia (owner of HomeAway). AirBnB was not present, but the EHHA presented itself as the "united voice of short-rental in Europe, with AirBnB as a key member".

The meeting was a key opportunity for the EHHA to influence the Commission's next steps, and it was used to lay out its political platform: it accepted no responsibility for checking official authorization of hosts, it wanted little if



"This is an opportunity, not a threat", said Commissioner Elzbieta Bienkowska at the launch of a communication intended to support the platform industry.

Photo: © European Union, 2018\*

any involvement in taxation, and last but not least, it lashed out at restrictions targeted at securing access to affordable housing. "Fixing a maximum number of days for rental is an anti-competitive measure", the minutes read.<sup>67</sup> This would feed into the guidance that the Commission was preparing following the adoption of the Single Market Strategy, and with some success.

The EHHA was soon to note some successes. In June 2016 the Commission issued the Communication on the Collaborative Economy,<sup>68</sup> and that was broadly speaking good news to AirBnB and to the EHHA. It is in the main a long call for member states to embrace the "new opportunities",<sup>69</sup> and to do that, the Commission provides guidance in the document about the meaning of European law for the sector, ie the consequences of the e-Commerce Directive and the Services Directive.

- \* If there is to be any kind of authorization or licensing scheme, they have to be proven to be both necessary, proportionate, and non-discriminatory;
- \* generally, such schemes should not be used at all, if hosts only rent out for 90 days or less per year;



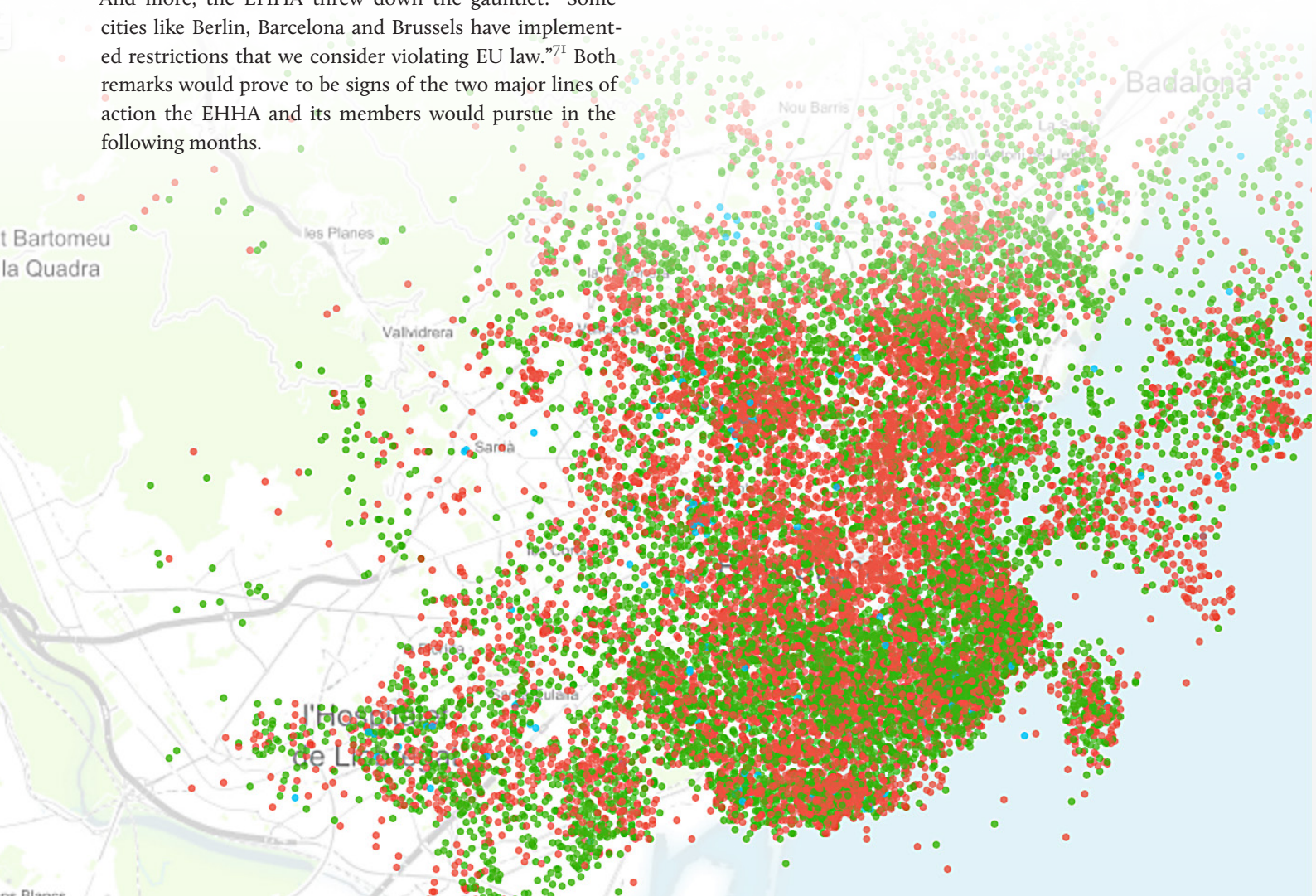
- \* member states cannot impose a “general obligation” on platforms to “actively seek facts or circumstances indicating illegal activity”;
- \* and last but not least, absolute bans or “quantitative restrictions” should only be applied if softer measures are not available.

“This is an opportunity, not a threat”, Commissioner Elżbieta Bieńkowska said at a press conference on the publication,<sup>70</sup> which was received worldwide as a sign that the EU is embracing AirBnB and its like.

The Communication was welcomed by the EHHA but the association felt there was still work to be done, in particular they would have liked to see “explicit recognition from the Commission that restrictive regulations such as day limits actively deter investment and reduce consumer choices”. And more, the EHHA threw down the gauntlet: “Some cities like Berlin, Barcelona and Brussels have implemented restrictions that we consider violating EU law.”<sup>71</sup> Both remarks would prove to be signs of the two major lines of action the EHHA and its members would pursue in the following months.

**“Fixing a maximum number of days for rental is an anti-competitive measure.”**

Minutes from a meeting between the Commission and the EHHA





# 11. Bringing the nuclear option into the game

Already at the meeting ahead of the publication on the ‘collaborative economy’, the EHHA had urged the Commission to better monitor the implementation of the EU directives, “specifically services and e-commerce”, and open a procedure that could eventually end at the European Court of Justice, if a member state should prove reluctant to change its approach (infringement procedure).<sup>72</sup> Shortly after the communication was out the EHHA took this a step further, and forced the Commission’s hands. And with the fresh optimism from the Commission’s communication, it decided to go for the nuclear option: to bring in the threat of a case at the European Court of Justice.

The first sign of what was coming was at a meeting between the Commission and AirBnB and a law firm on 5 September 2016. They informed the Commission representatives that “EHHA is about to file a formal complaint” covering Barcelona, Berlin, Paris, and Brussels, which could ultimately lead to action by the European Court of Justice. The details of the exchange, however, have been deleted from the documents obtained from the Commission by Corporate Europe Observatory.<sup>73</sup>

Filing a complaint is a serious matter, and the procedure as a whole gives businesses a powerful means to have their way at the EU level. If they meet obstacles in a member state that they believe can be challenged at the European level – for instance if a potential breach of an obligation under single market rules are at play – all they have to do is fill out a form.<sup>74</sup> Following a complaint, the Commission will look into the matter and decide whether there is a basis for the claim, and if that is the case, it initiates a discussion with the member state in question. Should this not conclude in a way that satisfies the Commission an ‘infringement procedure’ could be initiated. Under the infringement procedure, the claims and demands of the Commission are made clear, and if a solution is found through dialogue, that will be the end of it. But if not – if for instance a member state insists a measure is necessary to protect the public interest – and the Commission believes it is not, or that less restrictive measures are available, then the Commission can decide to take the issue to the European Court of Justice, which will have the final say in the matter.

**The complaint, it seems, strikes to the core of the regulation adopted by cities. Attempts to defend local residents’ access to housing could suffer a severe blow.**

The Commission took the case – or rather all four cases – against the European cities, thereby acknowledging that a breach of EU rules were likely to be at play. But exactly how the case developed is impossible to determine in any detail. The Commission has rejected repeated attempts by Corporate Europe Observatory to get information on the four cases, referring to an exception in the rules on public access to documents.<sup>75</sup>

There are, however, a few pieces of the puzzle available. Only three days after AirBnB had announced the complaint to the Commission, a meeting between the company and other EHHA members with high-level representatives of the Commission, including Fabrice Comptour of the Commissioner’s cabinet, took place in Brussels. According to the report of the meeting, the complainants believe the moratorium on registrations in Barcelona, and the compensatory measures in Paris, both constitute “de facto bans”, the kind of bans the Commission had stated in its communication should only be a last resort.<sup>76</sup>

When asked about the complaint Bernard D’heygere (AirBnB) refers to the press release from the EHHA from the day the complaint was filed, and that too provides a bit of insight. A host of measures deemed to be “overzealous rules and restrictions/bans” are attacked for being in violation of EU laws, as are fines for infringements, and the “colossal administrative process” facing hosts in Brussels. In Berlin, the authorization procedure is called into question – the cornerstone of the rules.<sup>77</sup>

The complaint, it seems, strikes to the core of the regulation adopted by cities. Should the Commission side with the EHHA, the attempts to defend local residents’ access to housing could suffer a severe blow.

## 12. Complaint: work in progress in the dark

For the Commission such a complaint must be tricky, in that it involves cities, not governments which are the standard targets of a complaint. The Commission has to go via governments and national ministries to establish a discussion, and it seems the cities are not necessarily consulted. Neither politicians nor civil servants in Barcelona appeared to have been made aware of the status of the complaint, when asked by Corporate Europe Observatory in March 2018.<sup>78</sup> When the Barcelona authorities investigated the matter, the response from the national government was that no infringement procedure had been opened, which was no surprise. But whether there was an ongoing discussion between the Spanish Government and the Commission on the complaint, was unclear.

With the closed door at the Commission, it is difficult for outsiders to trace the methods used. In Barcelona, Brussels, and Paris, councillors and mayors are aware that some issues concern EU rules, not least single market rules, and that they can imply limits to what can be adopted at the local level. In Paris, Deputy Mayor Ian Brossat has never heard of the complaint.<sup>79</sup> In Barcelona, they fear their work against illegal AirBnB listings could be compromised, but were not aware of the status of the complaint when Corporate Europe Observatory presented the evidence to city councillor Janet Sanz.<sup>80</sup>

Berlin is another story. In that case, the Senate, the Government of the larger Berlin area (Germany is a federal state) has been informed, but not the city council.<sup>81</sup> And here it seems there has been some manoeuvring in the dark to influence local politics. When Corporate Europe Observatory presented the evidence to Katalin Gennburg, a city councillor in Berlin and a fierce critic of AirBnB and its impacts on her city, she felt she finally had an explanation to something that had puzzled her for a while: “When we started looking at revising our rules for short-term rental accommodation, the Government told us the European Commission would soon adopt new rules that would outlaw the present model, and for that reason we would have to weaken the rules, and accept a 60 days rule, which would

automatically lead to a massive expansion of AirBnB activity,” she told us.<sup>82</sup>

In other European cities such rules are already in place, and Berlin has stood out as a more restrictive model. Giving in would have brought Berlin more into line with the approach of other cities, in that a simple 60 days limit would put thousands of apartments on the short-rental market that cannot be used for that purpose at the moment. But Katalin Gennburg wants none of it: “It is not just about the 60 days. Once we give in on the main principle, it would be very difficult in our experience to keep the market under control, and prevent lots of hosts suddenly renting out their flats for 61 days or a full 120 days. Luckily our collective response in the city council was to reject the idea of the Government. Instead the reforms made the rules even tighter.”<sup>83</sup>

At the time of writing, there is no indication that the complaint has been finally dealt with by the Commission. The latest information was in February 2018, when the Commission told Corporate Europe Observatory that disclosure of documents would “hurt the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to solve the case without having to refer it to the Court of Justice”.<sup>84</sup>



# 13. Keeping up pressure

Lobbyists for the accommodation platforms kept up pressure throughout 2017 to have the Commission decide on as strict an interpretation of EU rules as possible. For the Commission, that work was actually set to have finished with its communication from June 2016, but it was to continue in another form. In the communication the Commission had announced it would be followed up by “work with stakeholders and Member States... to exchange best practices”. In theory ‘best practices’ entails an exchange of good ideas to identify the best regulatory formula to apply, inspired by approaches tested elsewhere. But when this work took off in February 2017, it quickly became something else. From the first workshop in February to the end in September 2017, the issue was not so much about good ways to address challenges – the standard meaning of ‘best practices’ – but simply about what should be allowed within the framework of the single market. Now, it was about ‘policy guidelines’, somewhat stronger than ‘best practices’. And the Commission took the role of presenting a strict interpretation of existing rules at four of the seven workshops.<sup>85</sup>

But it was not to be all that easy. On the other side, representatives of member states and local governments generally defended measures taken by cities, and saw “ensuring the availability and affordability of local housing” as a legitimate policy that must be allowed to override the restrictions in the Services Directive and the e-Commerce Directive.

The interventions of the Commission at the workshops constantly sought to line up the conditions for particular types of actions – friendly to the rental platforms – it believes stems from EU law. Whereas the Commission does not seem to question actions taken to secure availability and affordability of local housing as such, it underlined that in its view, restrictive measures to defend “public policy” can only be taken if there is a “serious and grave risk” to – for instance – the availability of affordable housing, and then only if “evidence” was produced. In other words, the Commission again argued there are limits to the options available to cities, if they are to avoid problems with the EU institutions, which could in the end lead to a case at the European Court of Justice.

The EHHA followed the workshops closely, and spoke at two of them. But apparently some developments in the workshop caused them concern, and being present occasionally as a speaker was not enough. At a separate meeting between the Commission and the EHHA with eight companies present (AirBnB excluded), the EHHA asked for “a more active role” in the workshops. The association underlined that it felt cases such as Berlin highlighted the need for the authorities to present evidence, and said it should not be compelled to be involved in official registration procedures, besides providing a field in its listings for registration numbers.

Two months later on 14 July 2017, the EHHA would take this a step further, when it sent a “Draft Principle on Regulation of Short-Term Rental to the Commission”. Corporate Europe Observatory has asked for the document under EU rules on access to documents, but this has been refused by the Commission in referring to an exception that relates to ‘business secrets’.<sup>86</sup>

Considering the track record, and the endless statements from the platform lobbyists about how almost any move to avert damage to city environments and the stock of rental apartments should be considered in breach of EU law, the content of the EHHA’s ‘draft principles’ will hardly bring surprises should they see the light of day. But whether the Commission is beginning to feel the pressure from European cities and change course, is more up in the air. AirBnB for one is waiting in anticipation. Bernard D’heygere from AirBnB expects a conclusions document from the Commission to form “the basis of a Charter framing the future of regulation on the sector. We look forward to the publication of the charter, and hope that it will contribute to a more consistent regulatory framework across the EU,” he told Corporate Europe Observatory.<sup>87</sup>

# 14. Conclusion

---

With the complaint intended to roll back regulation of rental platforms still in process, and with the ongoing work inside the Commission to provide new “policy guidance” or “a charter”, the fate of local restrictions on short-term rental accommodation is still undetermined at the EU level. It has yet to be seen if there will be an offensive from the European Commission that could imply the threat of a case at the European Court of Justice. But the role of the Commission so far gives good reason for concern. The European executive has repeatedly pointed to the obstacles in existing European law that could impede the measures taken in cities across Europe to stem the tide from rising tourism and the ease with which you can create a business for yourself by renting out apartments or houses. Whether it is about registration procedures, enforcement, or flat out the rules that are to ensure that large chunks of the existing or potential market are available for regular rent to locals, the Commission is finding many ways to ensure this cannot happen.

This is in no small part due to the effort of what appears to be a surprisingly small lobbying community. The lobbyists from AirBnB, the EHHA, and HomeAway are small in numbers when compared to other sectors, but they are clearly punching above their weight as their influence with the Commission is considerable. Their agenda is pretty clear: any obstacle to their continued expansion must be done away with via top-down measures via Brussels.

While a company such as AirBnB has – on occasion – portrayed itself as one that offers a genuine local experience inside a sustainable model for tourism, while at the same time helping people with few means to make the rent, there is no denying that today’s AirBnB is a corporate monster like any other.

For them, there was hardly any need to knock on the door of the Commission. In the department of the Commission investigated in this report (DG GROW), there is a strong belief that these simple online platforms are ambassadors for innovation and a pathway to sustained growth to the benefit of all. Consecutive strategies have put this firm belief on display.

We have not seen the end of the story of the complaint filed by the EHHA, and we haven’t seen the final version of the Commission’s “policy guidelines”. But judging by the process so far, nothing good should be expected.

If we want to defend our right to affordable housing, and if we don’t want to see cherished parts of our cities turned into dead touristic theme parks, we must act now. The lion’s share of that struggle must take place at the local level. But local resistance will not be enough in the long run, it needs to be supplemented with a pan-European campaign to stave off the brewing attacks on housing rights.

There are at least two approaches available: one is to demand changes to existing rules, or even adoption of new ones in order to protect the cityscape. But looking at recent discussion in the European Parliament indicates this is not an easy option; in 2017 MEPS passed with a huge majority a resolution that “condemns” public authorities seeking to restrict the supply of tourist accommodation from online platforms, showing how distant the MEPs were from the reality of the crisis of rental accommodation in some of Europe’s most emblematic cities (see box below).

The second option, then, seems more likely to succeed: to politely ask Brussels to mind its own business – not out of disappointment with the EU, but first and foremost because these issues are best handled at the local level, in cities, by politicians who understand the issues faced by their own citizens. The responses of cities are adapted to local circumstances, and if the so-called subsidiarity principle has any substance, it should apply to regulation of this kind.

Given the lobbying power of AirBnB and its like, though, this principle will have to be defended with an equally powerful vigour by city governments and the citizens they represent across Europe. But as it stands, such a scenario seems more and more likely. While Paris, Berlin, Amsterdam and Barcelona, though big important cities, are only four cities, the stories referred to here are only the tip of the iceberg. The risks of poorly regulated short-term accommodation are being acknowledged in many more places across Europe, and at the moment it seems every week brings



news on steps taken to preserve the local housing market or city environments. In the past month alone, counting from the time of writing (April 2018), saw new measures in Vienna<sup>88</sup> and Frankfurt<sup>89</sup>, and announcements of new steps in Madrid.<sup>90</sup> And in Palma de Mallorca, a decision has been made that will prevent homeowners from renting out to tourists as of this summer, making it the first Spanish city to go for a full ban.<sup>91</sup>

From that perspective, decision-makers in the Brussels bubble appear so far removed from reality, that despite the tremendous power that emanates from the EU institutions, the clash that is bound to come sooner or later, will not necessarily end the way the lobbyists hope for.

## European Parliament "condemns" cities

On 15 June 2017 the European Parliament voted on a resolution on the 'collaborative economy' prepared by the committee responsible for Single Market issues, the IMCO committee. In the process, the committee had received input from lobbyists from AirBnB, the EHHA, HomeAway, and EUCoLab, and they could only have been happy with the outcome. The message on accommodation platforms was overtly positive, with a large majority supporting the view that "home-sharing represents an excellent use of resources and under-used space". And city councillors and citizen movements against loss of affordable housing received a slap in the face. In the resolution, the Parliament "Condemns... the regulations being imposed by some public authorities, which seek to restrict the supply of tourist accommodation via the collaborative economy."<sup>92</sup>

The resolution was adopted with a big majority – 510 in favour and only 60 against.

# Notes

- 1 Speech by Vice-President of the Commission *Andrus Ansip*, Digital Assembly in Bratislava, 29 September 2016. [http://europa.eu/rapid/press-release\\_SPEECH-16-3219\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-16-3219_en.htm)
- 2 According to data from InsideAirbnb. <http://insideairbnb.com/>
- 3 *PriceWaterhouseCooper*; "Assessing the size and presence of the collaborative economy in Europe", April 2016. <https://publications.europa.eu/en/publication-detail/-/publication/2ac67619-b544-11e7-837e-01aa75ed71a1/language-en>
- 4 Quoted in *VRMintel*; "AirBnB vs. HomeAway", 15 December 2016. <http://www.vrmintel.com/airbnb-vs-homeaway-winning-race-top-vacation-rental-industry/>
- 5 *Eurostat*; "Trends in nights spent in EU-28 tourist accommodation establishments", September 2017. [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Trends\\_in\\_nights\\_spent\\_in\\_EU-28\\_tourist\\_accommodation\\_establishments\\_EU-28\\_2005-2016\\_\(index\\_2005=100\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Trends_in_nights_spent_in_EU-28_tourist_accommodation_establishments_EU-28_2005-2016_(index_2005=100).png)
- 6 AirBnB message on its website, 20 May 2014. <https://blog.atairbnb.com/airbnb-growth-europe/>
- 7 *MorganStanley/AlphaWise* quoted in *Financial Times* Alphaville blog; "Morgan Stanley says we are reaching peak AirBnB", 10 November 2017. <https://ftalphaville.ft.com/2017/11/10/2195745/morgan-stanley-says-were-reaching-peak-airbnb/>
- 8 *Laboratory for the governance of the cities as a commons*; "Poolism: sharing economy vs. pooling economy" <http://www.labgov.it/2015/08/20/poolism/>
- 9 Sarah O'Connor; "The gig economy is neither 'sharing' nor 'collaborative'", *Financial Times*, 14 June 2016.
- 10 See for instance European Commission; "A European agenda for the collaborative economy", COM (2016) 184 final.
- 11 *Dianne Dredge et al*; "The impact of regulatory approaches targeting collaborative economy in the tourism accommodation sector. Barcelona, Berlin, Amsterdam & Paris", *Impulse paper no. 9*, Aalborg University, 2016, page 3 and 24.
- 12 *Dayne Lee*; "How AirBnB Short Rentals Exacerbate Los Angeles' Affordable Housing Crisis", *Harvard Law & Policy Review*, vol.10, 2016.
- 13 *Euronews*; "Mental rental: the nightmare of Barcelona's housing market", 8 April 2017. <http://www.euronews.com/2017/04/08/the-nightmare-of-barcelonas-rental-market>
- 14 *Vincent van der Bijl*; "The effect of AirBnB on house prices in Amsterdam", *Universiteit van Amsterdam*, August 2016. Available at <https://www.citymetric.com/business/airbnb-getting-blamed-amsterdam-s-housing-crisis-so-city-council-going-war-against-airbnb>
- 15 *Nicole Gurran & Peter Phibbs*; "When Tourists Move in: How Should Urban Planners Respond to AirBnB?", *Journal of the American Planning Association*, vol. 83, no. 1, Winter 2017.
- 16 *Verwaltungsgericht Berlin*, decision on 14 March 2018. <http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/portal/t/1389/bs/10/page/sammlung.psm?doc.hl=1&doc.id=JURE180005652&documentnumber=42&numberofresults=76&doctype=juris-r&showdoccase=1&doc.part=1&paramfromHL=true#focuspoint>
- 17 *Washington Post*; "Berlin had some of the most restrictive rules for AirBnB rentals", 28 March 2018. [https://www.washingtonpost.com/world/europe/berlin-had-some-of-the-worlds-most-restrictive-rules-for-airbnb-rentals-now-its-loosening-up/2018/03/27/e3acda90-2603-11e8-a227-fd2b009466bc\\_story.html?utm\\_term=.bae38b580ae8](https://www.washingtonpost.com/world/europe/berlin-had-some-of-the-worlds-most-restrictive-rules-for-airbnb-rentals-now-its-loosening-up/2018/03/27/e3acda90-2603-11e8-a227-fd2b009466bc_story.html?utm_term=.bae38b580ae8)
- 18 *Leigh Gallagher*; "The AirBnB Story", *Virgin Books*, 2017, page 105 ff.
- 19 *BBC*; "Short-let apartments spark Paris row as AirBnB thrives", 26 December 2014. <http://www.bbc.com/news/world-europe-30580295>
- 20 Interview with *Maxime Cochard*, April 2018.
- 21 *The Guardian*; "Barcelona cracks down on AirBnB rentals with illegal apartment squads", 2 June 2017. <https://www.theguardian.com/technology/2017/jun/02/airbnb-faces-crackdown-on-illegal-apartment-rentals-in-barcelona>
- 22 *The Telegraph*; "Barcelona threatens to expel AirBnB from the city after accusing executive of illegally listing sublet", 27 June 2017. <https://www.telegraph.co.uk/news/2017/06/27/barcelona-threatens-expel-airbnb-city-accusing-executive-illegally/>
- 23 *The Local.es*; "Barcelona and AirBnB reach deal after months of conflict", 13 July 2017. <https://www.thelocal.es/20170713/barcelona-and-airbnb-reach-deal-after-months-of-conflict>
- 24 Interview with *Sergi Mari Pons*, April 2018.
- 25 *Iamsterdam*; "Amsterdam and Airbnb sign agreement on home sharing and tourist tax", 18 December 2014. <https://www.iamsterdam.com/en/our-network/media-centre/city-hall/press-releases/2014-press-room/amsterdam-airbnb-agreement>
- 26 *Dutch News.nl*; "Amsterdam admits it can't cope with Airbnb inspections", 12 October 2014. [http://www.dutchnews.nl/news/archives/2014/10/amsterdam\\_admits\\_it\\_cant\\_cope/](http://www.dutchnews.nl/news/archives/2014/10/amsterdam_admits_it_cant_cope/)
- 27 *Dutch News.nl*; "Amsterdam, Airbnb agree new deal to stop illegal rentals", 1 December 2016. <http://www.dutchnews.nl/news/archives/2016/12/amsterdam-airbnb-agree-new-deal-to-stop-illegal-rentals/>
- 28 *Iamexpat*; "Amsterdam city council cuts Airbnb rental period in half", 14 January 2018. <https://www.iamexpat.nl/lifestyle/lifestyle-news/amsterdam-city-council-cuts-airbnb-rental-period-half>
- 29 *BBC*; "Berlin cracks down on holiday apartments", 13 May 2016. <http://www.bbc.com/news/business-36287031>
- 30 *Tageszeitung*; "Neues Zweckentfremdungsverbot: Vermietung schwer gemacht", 12 March 2018. <http://www.taz.de/15491006/>
- 31 Statistics from *Senatsverwaltung für Stadtentwicklung und Wohnungen*, January 2018. Of the 8,000, 4,000 were actually apartments that were not in use. <https://www.rbb24.de/politik/beitrag/2018/01/zweckentfremdungsverbot-ferienwohnun-gen-berlin.html>
- 32 It may be that AirBnB was present before this, but it needed help from Political Intelligence to be introduced to the proper people at the Commission, according to documents obtained from the Commission by Corporate Europe Observatory.
- 33 *European Commission*; "Kick-off meeting of the 'Digital Tourism Network'", 10 March 2015. [http://ec.europa.eu/growth/content/kick-meeting-digital-tourism-network\\_o\\_en](http://ec.europa.eu/growth/content/kick-meeting-digital-tourism-network_o_en)
- 34 AirBnB and HomeAway were the only members of the network in the short-term accommodation platform according to a list of members obtained by Corporate Europe Observatory from the Commission. The documents obtained from the Commission are available on line at [Asktheeu.org](http://Asktheeu.org).
- 35 Interview with *Michela Vuerich*, April 2018.
- 36 List of meetings with AirBnB, EHHA and EUCoLab, DG GROW.
- 37 *The Straits Times*; "Priced out by tourists: The Airbnb effect in Lisbon's historic centre", 24 July 2016. <http://www.straitstimes.com/world/europe/priced-out-by-tourists-the-airbnb-effect-in-lisbons-historic-centre>



- 38 *The Local*.it; "Venice residents protest against tourist influx", 3 July 2017. <https://www.thelocal.it/20170703/venice-residents-protest-against-tourist-influx-mass-tourism-mi-no-vado-via>
- 39 *Público*; "Drama en el portal: vivir acorralado por turistas", 9 April 2018- <http://www.publico.es/sociedad/pisos-turistico-madrid.html>
- 40 *Público*; "Los pisos turísticos devoran la ciudad: consecuencias del 'efecto Airbnb'", 10 April 2018. <http://www.publico.es/sociedad/turistificacion-pisos-turisticos-devoran-ciudad.html>
- 41 *Needmore rentals*; "The European Holiday Home Association is founded", 2013. <http://www.needmorerentals.com/european-holiday-home-association/>
- 42 Documents obtained by Corporate Europe Observatory from the Commission (DG GROW).
- 43 *Lobbyfacts.eu* <https://lobbyfacts.eu/representative/eoc603b5d2774f98b0039d356288db56/airbnb-ireland-uc>
- 44 *Lobbyfacts.eu* <https://lobbyfacts.eu/representative/5884a2ce64ab4690852185c9ce88d2c1/expedia-group>
- 45 Report of meeting on 5 September 2016 between Airbnb and DG GROW.
- 46 Bernard D'heygere (AirBnB) to Corporate Europe Observatory, April 2018.
- 47 Letter to Commissioner Ansip from *AirBnB*, *Compare and Share*, *GoCarShare*, *Hassle.com*, *Hubble*, *JustPark*, *LocoSoco*, *Love Home Swap*, *Nimber*, *Sooqini*, *Splitcab*, *Storemates Ltd* and *We Are Pop Up*, 7 May 2015.
- 48 *European Commission*; "Upgrading the Single Market", COM (2015) 550 final, October 2015, page 4.
- 49 *European Commission* (DG GROW); Report of meeting with Airbnb, 6 November 2015.
- 50 Letter from DG GROW to Airbnb, 1 April 2016.
- 51 Letter from Airbnb to DG GROW, 22 April 2016.
- 52 Letters from the EHHA and Airbnb to DG GROW, September, October and November. Meeting Report, DG GROW, 7 December 2016.
- 53 *European Commission*, report on meeting between DG GROW and Airbnb, 5 September 2016.
- 54 Link provided by Bernard D'heygere (AirBnB) suggests hosts had only one week: <https://www.airnbctitizen.com/european-commission-wants-know-views-home-sharing/>
- 55 *European Commission*; "Consultation on the collaborative economy in the tourism accommodation sector . Summary of responses", 28 June 2017.
- 56 *European Parliament & Council*; "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 (Directive on electronic commerce)", 8 June 2000. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000L0031>
- 57 See footnote 16.
- 58 *European Commission*; "Handbook on the implementation of the Services Directive", 2007, page 10.
- 59 *European Parliament & Council*; "Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market", 12 December 2006, article 19 (a). <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0123>
- 60 *Ibid.*, article 4(8).
- 61 *Dutch News.nl*; "Amsterdam, other EU cities, urge Brussels to take action on Airbnb data", 26 January 2018. <https://www.dutchnews.nl/news/2018/01/amsterdam-other-eu-cities-urge-brussels-to-take-action-on-airbnb-data/>
- 62 Interview with Maxime Cochard, April 2018.
- 63 *European Commission*; "Upgrading the Single Market", COM (2015) 550 final, 28 October 2015.
- 64 *Bloomberg*; "AirBnB leads call for EU to block nations' sharing-economy laws", 11 February 2016.
- 65 *European Collaborative Economy Industry*; "Open letter to the Netherlands Presidency of the Council of the European Union", 10 February 2016.
- 66 *European Commission*, meeting report of meeting with Luc Delany (EUCoLab), 25 January 2017. On Delany, see *EUObserver*, 31 May 2017. <https://euobserver.com/business/137524>
- 67 *Ibid.*
- 68 *European Commission*; "A European Agenda for the Collaborative Economy", Communication, 2 June 2016.
- 69 *Ibid.* page 16.
- 70 *The Guardian*; "EU backs sharing economy in boost for Uber and Airbnb", 2 June 2016. <https://www.theguardian.com/business/2016/jun/02/eu-commission-backs-sharing-economy-uber-airbnb>
- 71 EHHA, press release, 2 June 2016. <http://ehha.eu/2016/06/02/ehha-welcomes-the-commissions-communication-on-collaborative-economy/>
- 72 *European Commission* (DG GROW), report of meeting with the EHHA, 17 March 2016, dated 22 March 2016.
- 73 Any mention of the substance of the complaint has been deleted from several documents obtained from the Commission by Corporate Europe Observatory. Also, only half of the report from a meeting with Airbnb on 5 September 2016, shortly before the complaint was filed, was disclosed. At a high level meeting between members of the Commissioner's cabinet and Airbnb representatives shortly after the complaint was handed in, no minutes were taken.
- 74 The complaint procedure is described in detail on the Commission's website: [https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/how-make-complaint-eu-level/submit-complaint\\_en](https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints/how-make-complaint-eu-level/submit-complaint_en)
- 75 The Commission refers to article 4 (3), regulation 1049/2001 according to which access to documents shall be refused if it relates to a matter where the decision has not been taken, and where "disclosure of the document would seriously undermine the institutions' decision-making process".
- 76 *European Commission* (DG GROW), report of Cabinet meeting with Airbnb et al., report circulated 8. September, meeting on 6 September 2016.
- 77 EHHA, press release, 22 September 2016. <http://ehha.eu/2016/09/22/industry-submits-official-complaint-to-european-commission-about-excessive-and-contradictory-local-rules-stifling-short-term-rental-sector/>
- 78 Berlin: interview with Katalin Gennburg (city councillor, Berlin), and the federal Governments answer to a parliamentary question asked by Alexander Ulrich, 26 March 2018. Barcelona: communication with city councillor Janet Sanz and civil servants, February-April 2018.
- 79 Interview with Maxime Cochard, April 2018.
- 80 Communication with Janet Sanz, city councillor of Barcelona.
- 81 Parliamentary question from Alexander Ulrich, no. 213 March 2018 and interview with Katalin Gennburg, Berlin city councillor.
- 82 Interview with Katalin Gennburg, April 2018.
- 83 Interview with Katalin Gennburg, April 2018. Several media, including major newspapers such as the *Washington Post*, reported wrongly in late March, that Berlin had weakened the rules to accommodate Airbnb.
- 84 Letter from the European Commission to Corporate Europe Observatory, 22. February 2018.
- 85 Corporate Europe Observatory has acquired these documents, which are not in the public domain.
- 86 Corporate Europe Observatory has appealed the decision, and has asked the Commission for a status on the development of new 'policy guidance' on the basis of the workshops. At the time of writing, the Commission has not responded.
- 87 Bernard D'heygere (AirBnB) to CEO, April 2018.
- 88 ORF; "Schlag gegen Airbnb: Wien ändert Bauordnung", 6 April 2018, <http://wien.orf.at/news/stories/2905460/>
- 89 *Frankfurter Neue Presse*; "Neue auflage für Airbnb & co", 28 March 2018. <http://www.fnp.de/lokales/frankfurt/Neue-Auflagen-fuer-Airbnb-und-Co-Kompromiss-in-Frankfurt:art675,2946466>
- 90 *20 minutos.es*; "Madrid descarta multar a Airbnb pero insiste en limitar el uso turístico de las viviendas", 12 April 2018. <https://www.20minutos.es/noticia/3311896/0/madrid-descarta-multar-airbnb-pero-insiste-en-limitar-uso-turistico/>
- 91 *El País*; "Palma de Mallorca will be first Spanish city to ban tourist apartments", 24 April 2018. [https://elpais.com/el-pais/2018/04/24/inenglish/1524555486\\_087855.html](https://elpais.com/el-pais/2018/04/24/inenglish/1524555486_087855.html)
- 92 *European Parliament*; "Motion for a resolution on a European agenda for the collaborative economy", 15 June 2017. <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0271&language=EN&ring=A8-2017-0195>



